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[NYSE Arca Equities Rules

RULE 0

Rule 0. Regulation of the Exchange and Exchange Trading Permit Holders

The Exchange and the Financial Industry Regulatory Authority, Inc. ("FINRA") are parties to a Regulatory Services Agreement ("RSA") pursuant to which FINRA has agreed to perform certain regulatory functions of the Exchange on behalf of the Exchange. Exchange Rules that refer to Exchange staff and Exchange departments should be understood as also referring to FINRA staff and FINRA departments acting on behalf of the Exchange pursuant to the RSA, as applicable. Notwithstanding the fact that the Exchange has entered into an RSA with FINRA to perform certain of the Exchange's functions, the Exchange shall retain ultimate legal responsibility for, and control of, such functions.

RULE 1 DEFINITIONS

Rule 1.1. Definitions

Whenever and wherever used herein, unless the context requires otherwise, the following terms shall be deemed to have the meanings indicated:

NYSE Arca Book

(a) The term "NYSE Arca Book" refers to the NYSE Arca Marketplace's electronic file of orders, which contains all orders entered on the NYSE Arca Marketplace.

Affiliate

(b) An "affiliate" of, or person "affiliated with," a specific person, is a person that directly, or indirectly through one or more intermediaries, controls or is controlled by, or is under common control with, the person specified.

Allied Person

(c) The term "Allied Person" shall refer to an individual, who is:

- (1) an employee of an ETP Holder who controls such firm, or
- (2) an employee of an ETP Holder corporation who is a director or a principal executive officer of such corporation, or

(3) an employee of an ETP Holder limited liability company who is a manager or a principal executive officer of such limited liability company, or

(4) a general partner in an ETP Holder partnership;

and who has been approved by the Corporation as an Allied Person.

Approved Person

(d) The term "Approved Person" shall refer to a person who is not an ETP Holder, nor an employee or an Allied Person of an ETP Holder, and who:

(1) is a director of an ETP Holder, or

(2) controls an ETP Holder, or

(3) beneficially owns, directly or indirectly, 5% or more of the outstanding equity securities of an ETP Holder, or

(4) has contributed 5% or more of the partnership capital;

and who has been approved by the Corporation as an Approved Person.

NYSE Arca Marketplace

(e) The term "NYSE Arca Marketplace" shall mean the electronic securities communications and trading facility designated by the Board of Directors through which orders of Users are consolidated for execution and/or display.

Associated Person

(f) The term "Associated Person" shall refer to a person who is a partner, officer, director, member of a limited liability company, trustee of a business trust, employee of an ETP Holder or any person directly or indirectly controlling, controlled by or under common control with an ETP Holder.

Authorized Trader

(g) The term "Authorized Trader" or "AT" shall mean a person who may submit orders to the Corporation's Trading Facilities on behalf of his or her ETP Holder or Sponsored Participant.

BBO

(h) The term "BBO" means the best bid or offer that is a protected quotation on the NYSE Arca Marketplace. The term "BB" means the best bid on the NYSE Arca Marketplace and the term "BO" means the best offer on the NYSE Arca Marketplace.

Control

(i) The term "control" shall mean the power, directly or indirectly, to direct the management or policies of a person, whether through ownership of securities, by contract, or otherwise. A person shall be presumed to control another person if such person:

- (1) is a director, general partner or officer exercising executive responsibility (or having similar status or functions);
- (2) directly or indirectly has the right to vote 25% or more of a class of a voting security or has the power to sell or direct the sale of 25% or more of a class of voting securities;
- (3) is entitled to receive 25% or more of the net profits; or
- (4) in the case of a partnership, has the right to receive upon dissolution, or has contributed, 25% or more of the capital of the other person.

Any person who does not so own voting securities, participate in profits or function as a director, general partner or principal executive officer of another person, shall be presumed not to control such other person. Any presumption may be rebutted by evidence, but shall continue until a determination to the contrary has been made by the Corporation.

Core Trading Hours

(j) The term "Core Trading Hours" shall mean the hours of 9:30 am Eastern Time through 4:00 pm (Eastern Time) or such other hours as may be determined by the Corporation from time to time.

Corporation

(k) The term "Corporation" shall mean NYSE Arca Equities, Inc., as described in the NYSE Arca Equities, Inc.'s Certificate of Incorporation and Bylaws.

Eligible Security

(l) The term "Eligible Security" shall mean any equity security (i) either listed on the Corporation or traded on the Corporation pursuant to a grant of unlisted trading privileges under Section 12(f) of the Exchange Act and (ii) specified by the Corporation to be

traded on the NYSE Arca Marketplace, NYSE Arca Equities Application or other facility, as the case may be.

ETP

(m) The term "ETP" shall refer to an Equity Trading Permit issued by the Corporation for effecting approved securities transactions on the Corporation's Trading Facilities. An ETP may be issued to a sole proprietor, partnership, corporation, limited liability company or other organization which is a registered broker or dealer pursuant to Section 15 of the Securities Exchange Act of 1934, as amended, and which has been approved by the Corporation.

ETP Holder

(n) The term "ETP Holder" shall refer to a sole proprietorship, partnership, corporation, limited liability company or other organization in good standing that has been issued an ETP. An ETP Holder must be a registered broker or dealer pursuant to Section 15 of the Securities Exchange Act of 1934. An ETP Holder shall agree to be bound by the Certificate of Incorporation, Bylaws and Rules of the Corporation, and by all applicable rules and regulations of the Securities and Exchange Commission.

An ETP Holder shall not have ownership or distribution rights in the Corporation. An ETP Holder will have limited voting rights to nominate two Directors to the Corporation's Board of Directors and one Director to the Board of Directors of the NYSE Arca Parent. An ETP Holder will have status as a "member" of the NYSE Arca Parent as that term is defined in Section 3 of the Securities Exchange Act of 1934, as amended.

FINRA

(o) The term "FINRA" shall mean the Financial Industry Regulatory Authority, Inc.

General Authorized Trader

(p) The term "General Authorized Trader" or "GAT" shall mean an authorized trader who performs only non-market making activities on behalf of an ETP Holder.

Good Standing

(q) The term "good standing" shall refer to an ETP Holder who is not in violation of any of its agreements with the Corporation or any of the provisions of the Rules or Bylaws of the Corporation, and who has maintained all of the conditions for approval of the ETP.

Reserved

(r) Reserved

Reserved

(s) Reserved

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(t) Reserved

Marketable

(u) The term "Marketable" means for a Limit Order, an order that can be immediately executed or routed. Market Orders are always considered marketable.

Market Maker

(v) The term "Market Maker" shall refer to an ETP Holder that acts as a Market Maker pursuant to Rule 7.

Market Maker Authorized Trader

(w) The term "Market Maker Authorized Trader" or "MMAT" shall mean an authorized trader who performs market making activities pursuant to Rule 7 on behalf of a Market Maker.

Market Participant

(x) For the purposes of Rule 7, the term "Market Participant" shall include electronic communications networks ("ECN"), dealer-specialists registered with a national securities exchange, and market makers registered with a national securities association.

Reserved

(y) Reserved

Nasdaq

(z) The term "Nasdaq" means The NASDAQ Stock Market LLC.

Reserved

(aa) Reserved

Reserved

(bb) Reserved

Reserved

(cc) Reserved

NBBO, Best Protected Bid, Best Protected Offer, Protected Best Bid and Offer (PBBO)

(dd) The term "NBBO" means the national best bid or offer. The terms "NBB" mean the national best bid and "NBO" means the national best offer. The terms "Best Protected Bid" or "PBB" means the highest Protected Bid, and "Best Protected Offer" or "PBO" means the lowest Protected Offer, and the term "Protected Best Bid and Offer" ("PBBO") means the Best Protected Bid and the Best Protected Offer.

Notice of Consent

(ee) The term "Notice of Consent" shall mean a written statement provided to the Corporation by a Sponsoring ETP Holder by which the Sponsoring ETP Holder acknowledges responsibility for the orders, executions and actions of its Sponsored Participant(s).

Away Market

(ff) The term "Away Market" means any exchange, alternative trading system ("ATS") or other broker-dealer (1) with which the NYSE Arca Marketplace maintains an electronic linkage and (2) which provides instantaneous responses to orders routed from the NYSE Arca Marketplace. The Corporation will designate from time to time those ATS's or other broker-dealers that qualify as Away Markets.

Official Closing Price

(gg) The term "Official Closing Price" means the reference price to determine the closing price in a security for purposes of Rule 7 Equities Trading. The Official Closing Price is determined as follows:

(1) For Auction-Eligible Securities, as defined in Rule 7.35(a)(1), the Official Closing Price is the price established in a Closing Auction of one round lot or more on a trading day. If there is no Closing Auction or if a Closing Auction trade is less than a round lot on a trading day, the Official Closing Price is the most recent consolidated last sale eligible trade during Core Trading Hours on that trading day.

(A) If there were no consolidated last sale eligible trades during Core Trading Hours on that trading day, the Official Closing Price will be the prior trading day's Official Closing Price.

(B) For a security that has transferred its listing to NYSE Arca and does not have any consolidated last-sale eligible trades on its first trading day, the Official

Closing Price will be the prior day's closing price disseminated by the primary listing market that previously listed such security.

- (C) For a security that is a new listing and does not have any consolidated last-sale eligible trades on its first trading day, the Official Closing Price will be based on a derived last sale associated with the price of such security before it begins trading on the Corporation.
- (2) If the Corporation determines at or before 3:00 p.m. Eastern Time that it is unable to conduct a Closing Auction in one or more NYSE Arca-listed securities due to a systems or technical issue, the Corporation will designate an alternate exchange for such security or securities and the Official Closing Price of each security will be determined on the following hierarchy:
- (A) the Official Closing Price will be the official closing price for such security under the rules of the designated alternate exchange;
 - (B) if the designated alternate exchange does not have an official closing price in a security, the Official Closing Price will be the volume-weighted average price ("VWAP") of the consolidated last-sale eligible prices of the last five minutes of trading during Core Trading Hours up to the time that the VWAP is processed, including any closing transactions on an exchange, and taking into account any trade breaks or corrections up to the time the VWAP is processed;
 - (C) if the designated alternate exchange does not have an official closing price in a security and there were no consolidated last-sale eligible trades in the last five minutes of trading during Core Trading Hours in such security, the Official Closing Price will be the last consolidated last-sale eligible trade during Core Trading Hours on that trading day;
 - (D) if the designated alternate exchange does not have an official closing price in a security and there were no consolidated last-sale eligible trades on a trading day in such security, the Official Closing Price will be the prior day's Official Closing Price; or
 - (E) if an Official Closing Price for a security cannot be determined under (A), (B), or (C) of this paragraph (2) and there is no prior day's Official Closing Price, the Corporation will not publish an Official Closing Price for such security.
- (3) If the Corporation determines after 3:00 p.m. Eastern Time that it is unable to conduct a Closing Auction in one or more NYSE-Arca listed securities due to a systems or technical issue, the Official Closing Price of each such security will be determined on the following hierarchy:
- (A) the Official Closing Price will be the VWAP of the consolidated last-sale eligible prices of the last five minutes of trading during Core Trading Hours up to

the time that the VWAP is processed, including any closing transactions on an exchange, and taking into account any trade breaks or corrections up to the time the VWAP is processed;

(B) if there were no consolidated last-sale eligible trades in the last five minutes of trading during Core Trading Hours in such security, the Official Closing Price will be the last consolidated last-sale eligible trade during Core Trading Hours on that trading day;

(C) if there were no consolidated last-sale eligible trades in such security on a trading day, the Official Closing Price will be the prior day's Official Closing Price; or

(D) if an Official Closing Price for a security cannot be determined under (A), (B), or (C) of this paragraph (3) and there is no prior day's Official Closing Price, the Exchange will not publish an Official Closing Price for such security.

(4) If the Corporation determines the Official Closing Price under paragraphs (2) or (3) of this Rule, the Corporation will publicly announce the manner by which it will determine its Official Closing Price and the designated alternate exchange, if applicable, and all open interest designated for the Closing Auction residing in the NYSE Arca Marketplace will be deemed cancelled to give ETP Holders the opportunity to route their closing interest to alternate execution venues.

(5) For purposes of Rules 7.31(a)(1)(B)(i) and 7.35(a)(8)(A) for UTP Securities only, the Official Closing Price is the official closing price disseminated by the primary listing market for that security via a public data feed on a trading day. If the primary listing market does not disseminate an official closing price on a trading day, the Official Closing Price is the most recent consolidated last sale eligible trade during Core Trading Hours on that trading day. If there were no consolidated last sale eligible trades during Core Trading Hours on that trading day, the Official Closing Price will be the prior trading day's Official Closing Price.

An Official Closing Price may be adjusted to reflect corporate actions or a correction to a closing price, as disseminated by the primary listing market for the security.

Reserved

(hh) Reserved

UTP Security

(ii) The term "UTP Security" means a security that is listed on a national securities exchange other than the Exchange and that trades on the NYSE Arca Marketplace pursuant to unlisted trading privileges

UTP Listing Market

(jj) The term "UTP Listing Market" means the primary listing market for a UTP Security.

UTP Regulatory Halt

(kk) The term "UTP Regulatory Halt" means a trade suspension, halt, or pause called by the UTP Listing Market in a UTP Security that requires all market centers to halt trading in that security.

Parent

(ll) A "parent" of a specified person or organization is an affiliate controlling such person or organization directly or indirectly through one or more intermediaries.

Participant

(mm) The term "Participant" shall mean any ETP Holder, Allied Person, partner, approved person, stockholder associate, registered employee or other full-time employee of an ETP Holder.

NYSE Arca Parent

(nn) The term "NYSE Arca Parent" shall refer to the NYSE Arca, Inc., a Delaware corporation and national securities exchange as that term is defined in Section 6 of the Securities Exchange Act of 1934, as amended. The NYSE Arca, Inc. is the sole shareholder of the Corporation.

Person

(oo) The term "person" shall refer to a natural person, corporation, partnership, limited liability company, association, joint stock company, trustee of a trust fund, or any organized group of persons whether incorporated or not.

Registered Employee

(pp) The term "Registered Employee" shall mean any person soliciting or conducting business in securities on behalf of an ETP Holder.

Routing Agreement

(qq) The term "Routing Agreement" shall mean the form of Agreement between an ETP Holder and the broker-dealer affiliate of NYSE Arca, L.L.C., under which the broker-dealer affiliate of NYSE Arca, L.L.C., agrees to act as agent for routing orders of the ETP Holder and the ETP Holder's Sponsored Participants entered into the NYSE Arca

Marketplace to other market centers or broker-dealers for execution, other than excluded by the terms of the Routing Agreement, whenever such routing is required.

Security

(rr) The terms "security" and "securities" mean any security as defined in Rule 3(a)(10) under the Securities Exchange Act of 1934; provided, however, that for purposes of Rule 7 such terms mean any NMS stock

Self-Regulatory Organization ("SRO")

(ss) The terms "self-regulatory organization" and "SRO" shall have the same meaning as set forth in the provisions of the Securities Exchange Act of 1934 relating to national securities exchanges.

Sponsored Participant

(tt) The term "Sponsored Participant" shall mean a person which has entered into a sponsorship arrangement with a Sponsoring ETP Holder pursuant to Rule 7.29.

Sponsoring ETP Holder

(uu) The term "Sponsoring ETP Holder" shall mean a broker-dealer that has been issued an ETP by the Corporation who has been designated by a Sponsored Participant to execute, clear and settle transactions resulting from the NYSE Arca Marketplace. The Sponsoring ETP Holder shall be either (i) a clearing firm with membership in a clearing agency registered with the Commission that maintains facilities through which transactions may be cleared or (ii) a correspondent firm with a clearing arrangement with any such clearing firm.

Sponsorship Provisions

(vv) The term "Sponsorship Provisions" shall mean the provisions set forth in Rule 7.29(b)(2). For a Sponsored Participant to obtain authorized access to the NYSE Arca Marketplace, the Sponsored Participant and its Sponsoring ETP Holder must enter into an agreement which incorporates the Sponsorship Provisions.

Stockholder Associate

(ww) The term "Stockholder Associate" means a person who is the employee of an ETP Holder, who is actively engaged in its business and devotes the major portion of his or her time thereto, who is not an ETP Holder or Allied Person, and who, as a holder of equity securities, has been approved by the Corporation as a stockholder associate.

Trading Facilities

(xx) The term "Trading Facilities" or "Facilities" shall refer to any and all electronic or automatic trading systems provided by the Corporation to ETP Holders.

User

(yy) The term "User" shall mean any ETP Holder or Sponsored Participant who is authorized to obtain access to the NYSE Arca Marketplace pursuant to Rule 7.29.

User Agreement

(zz) The term "User Agreement" shall mean an appropriate subscription agreement entered into by the User with NYSE Arca, L.L.C.

Wholly Owned Subsidiary

(aaa) The term "wholly owned subsidiary" shall mean a subsidiary substantially all of whose outstanding voting securities are owned by its parent and/or the parent's other wholly owned subsidiaries.

Derivative Securities Product and UTP Derivative Securities Product

(bbb) The term "Derivative Securities Product" means a security that meets the definition of "derivative securities product" in Rule 19b-4(e) under the Securities Exchange Act of 1934 and a "UTP Derivative Securities Product" means a Derivative Securities Product that trades on the Exchange pursuant to unlisted trading privileges.

Lead Market Maker

(ccc) The term "Lead Market Maker" shall mean a registered Market Maker that is the exclusive Designated Market Maker in listings for which the Corporation is the primary market.

NMS Stock

(ddd) The term "NMS stock" shall mean any security, other than an option, for which transaction reports are collected, processed, and made available pursuant to an effective transaction reporting plan.

Protected Bid, Protected Offer, Protected Quotation

(eee) The term "Protected Bid" or "Protected Offer" shall mean a quotation in an NMS stock that is (i) displayed by an Automated Trading Center; (ii) disseminated pursuant to an effective national market system plan; and (iii) an Automated Quotation that is the best bid or best offer of a national securities exchange, the best bid or best offer of The Nasdaq Stock Market, Inc. or the best bid or best offer of a national securities association that is not the best bid or best offer of The Nasdaq Stock Market, Inc. The term

"Protected Quotation" shall mean a quotation that is a Protected Bid or Protected Offer. For purposes of the foregoing definitions, the terms "Automated Trading Center," "Automated Quotation," "Manual Quotation," "Best Bid," and "Best Offer," shall have the meanings ascribed to them in Rule 600(b) of Regulation NMS under the Securities Exchange Act.

Trade-Through

(fff) The term "trade-through" shall mean the purchase or sale of an NMS stock during regular trading hours, either as principal or agent, at a price that is lower than a Protected Bid or higher than a Protected Offer.

Trading Center

(ggg) For purposes of Rule 7, the term "Trading Center" shall mean a national securities exchange or a national securities association that operates an SRO trading facility, an alternative trading system, an exchange market maker, an OTC market maker or any other broker or dealer that executes orders internally by trading as principal or crossing orders as agent. For purposes of this definition, the terms "SRO trading facility," "alternative trading system," "exchange market maker" and "OTC market maker" shall have the meanings ascribed to them in Rule 600(b) of Regulation NMS under the Securities Exchange Act.

Effective National Market System Plan, Regular Trading Hours

(hhh) For purposes of Rule 7, the terms "effective national market system plan" and "regular trading hours," shall have the meanings set forth in Rule 600(b) of Regulation NMS under the Securities Exchange Act of 1934.

RULE 2 EQUITY TRADING PERMITS

Rule 2.1. Securities Business

(a) Every ETP Holder shall have as its principal purpose the conduct of a securities business.

(b) An ETP Holder shall be deemed to have such a purpose if and so long as the ETP Holder has qualified and acts in respect of its business in an approved capacity pursuant to the Certificate of Incorporation, Bylaws, Rules and procedures of the Corporation; and all transactions are in compliance with Section 11(a) of the Securities Exchange Act of 1934 as amended and the Rules and regulations adopted thereunder.

(c) No ETP Holder shall utilize any scheme, device, arrangement, agreement or understanding designed to circumvent or avoid, by reciprocal means or in any other manner, the provisions of this Rule 2.1.

Rule 2.2. Qualifications of Applicants

An ETP may be held by an entity which is a registered broker or dealer pursuant to Section 15 of the Securities Exchange Act of 1934, as amended, including sole proprietors, partnerships, limited liability partnerships, corporations, and limited liability companies. A corporation, limited liability company, or limited liability partnership must be organized under the laws of one of the states of the United States or under other laws as the Corporation's Board of Directors shall approve.

Rule 2.3. Application Procedures

(a) Every person applying to become an ETP Holder shall complete an application on a form prescribed by the Corporation and shall file it with the Corporation. Every person seeking to become an ETP Holder must electronically submit to the FINRA's Web Central Registration Depository System ("CRD") (i) a Uniform Application for Securities Industry Registration or Transfer ("Form U-4") and (ii) any required amendment to Form U-4. The application shall be filed with all applicable fees and documents as prescribed by the Corporation. Application fees are not transferable and not refundable.

(b) An applicant that is an approved NYSE Arca OTP Holder may apply to become an ETP Holder through an expedited process, by submitting a Short Form ETP Holder Application and an NYSE Arca Equities User Agreement. The Short Form ETP Holder Application shall contain information sufficient to establish the identity of the applicant as an approved NYSE Arca OTP Holder, its proposed activity on the Exchange, and certain contact personnel, in addition to any other information that may be required by the Exchange.

(c) Every applicant and all persons associated with the applicant may be investigated by the Corporation. The applicant shall file with the Corporation such additional documents as may be requested by the Corporation.

(d) Following completion of the application process, the Corporation shall determine whether to approve or deny the application. Sole proprietor applicants and persons associated with applicant entities may be required to appear before the Corporation. Any ETP Holder or person associated with an ETP Holder who may possess information relevant to the applicant's suitability for holding an ETP may be required to provide information or testimony.

(e) The Corporation shall approve an application if it finds that the applicant meets all of the qualifications for holding an ETP. The Corporation shall reject an application if it does not make such a finding or if it finds that, if the application were approved, the permit holder would be subject to suspension or expulsion under the provisions of the Bylaws, Rules or procedures of the Corporation or the rules, regulations and procedures promulgated under the Securities Exchange Act of 1934, as amended.

(f) Written notice of the Corporation's determination shall be given promptly to the applicant. If an application is denied, the grounds for such determination will be included in the notice.

(g) If an application is denied by the Corporation, the applicant shall have an opportunity to be heard upon the specific grounds for the denial, pursuant to provisions of Rule 10. An applicant denied an ETP may challenge the denial by filing with the Corporate Secretary, a petition for review of the denial by the Committee for Review. Such petition shall be filed within thirty (30) calendar days of the date upon which the Corporation's decision was mailed to the applicant and shall be filed in accordance with the provisions of Rule 10.13.

Rule 2.4. Denial of or Conditions to ETPs

(a) The Corporation may deny (or may condition) trading privileges under an ETP or may bar a natural person from becoming associated (or may condition an association) with an ETP Holder for the same reasons that the Securities and Exchange Commission may deny or revoke a broker or dealer registration and for those reasons required or allowed under the Securities Exchange Act of 1934, as amended.

(b) The Corporation may deny or may condition trading privileges under an ETP, or may prevent a natural person from becoming associated (or may condition an association) with an ETP Holder when the applicant directly or indirectly:

- (1) is unable to satisfactorily demonstrate its present capacity to adhere to all applicable Corporation and Securities and Exchange Commission policies, rules and regulations, including, without limitation, those concerning record-keeping, reporting, finance and trading procedures;
- (2) has previously violated, and there is a reasonable likelihood such applicant will again engage in acts or practices violative of, any applicable Corporation or Securities and Exchange Commission policies, rules and regulations, including, without limitation, those concerning record-keeping, reporting, finance and trading procedures or those rules of other self-regulatory organizations of which such applicant is or was a member;
- (3) has engaged, and there is a reasonable likelihood such applicant will again engage, in acts or practices inconsistent with just and equitable principles of trade;
- (4) has a negative net worth, or has financial difficulties involving an amount that is more than 5% of the applicant's net worth;
- (5) is subject to any unsatisfied liens, judgments or unsubordinated creditor claims of a material nature, which, in the absence of a reasonable explanation therefor, remain outstanding for more than sixty (60) calendar days (the term "material"

means any amount which equals more than 5% of the total assets of the broker-dealer);

- (6) owes an undisputed debt to an ETP Holder arising out of the securities business, in which case the Corporation may take such action as it deems appropriate, including, without limitation, denying the application or conditioning the issuance of the ETP upon the execution of an agreement regarding repayment of the debt;
- (7) allegedly owes a debt to an ETP Holder arising out of the securities business, in which case the Corporation may take such action as it deems appropriate, including, without limitation, denying the application or conditioning the issuance of the ETP upon the debt being submitted to arbitration pursuant to Rule 12 at the request of the ETP Holder to whom the debt is allegedly owed;
- (8) has been itself, or is the successor to an entity which has been subject to any bankruptcy proceeding, receivership or arrangement for the benefit of creditors within the past three years;
- (9) has engaged in an established pattern of failure to pay just debts;
- (10) does not successfully complete examinations as required by the Corporation to verify the applicant's qualifications to function in capacities covered by the application;

Series 7 Requirement

- (A) Traders of ETP Holders for which the Corporation is the Designated Examining Authority ("DEA") must successfully complete the Series 7 Examination. ETP Holders performing the function of a registered Market Maker pursuant to Rule 7.21(b)(2) are exempt from this requirement.

For purposes of this Rule:

- (i) The term "trader" means a person (a) who is directly or indirectly compensated by an ETP Holder, or who is any other associated person of an ETP Holder and (b) who trades, makes trading decisions with respect to, or otherwise engages in the proprietary or agency trading of securities
- (B) The requirement to complete the Series 7 Examination will apply to current traders of ETP Holders that meet the criteria of subsection (A), above, as well as to future traders of ETP Holders that meet the criteria of subsection (A), above, at a later date. Traders of ETP Holders that meet the criteria of subsection (A), above, at the time of SEC approval of this Rule, must successfully complete the Series 7 Examination within six months of notification by the Corporation.

(11) does not meet such other standards of training, experience, and competence as may be established by the Corporation;

(12) would bring the Corporation into disrepute; or

(13) for such other cause as the Corporation reasonably may decide.

(c) The Corporation may, at its discretion in exceptional cases where good cause is shown, waive the applicable examination requirement and accept other standards as evidence of an applicant's qualifications for registration. Advanced age or physical infirmity will not individually of themselves constitute sufficient grounds to waive an examination requirement. Experience in fields ancillary to the investment banking or securities business may constitute sufficient grounds to waive an examination requirement. In such cases, the Corporation must be satisfied that the candidate is qualified for registration.

Within fifteen calendar days after the Corporation reviews a request for a waiver of the examination requirement, the Corporation shall provide the applicant with a written determination of whether the waiver was granted or denied. If the Corporation denies the request for a waiver, the notice shall include a statement with the reasons for the denial. An applicant whose request for a waiver is denied may appeal the decision of the Corporation in accordance with the terms and conditions of Rule 10.13.

(d) The Corporation shall regard the failure by any applicant to carry out any contract or honor any financial commitment with an ETP Holder as a violation of just and equitable principles of trade, and an indication of a broker or dealer applicant's inability to meet such standards of financial responsibility as may be set by the Corporation.

(e) When an applicant is the subject of an investigation conducted by any self-regulatory organization or government agency, the Corporation is under no obligation to act on the application until the matter has been resolved.

(f) The Corporation's Business Conduct Committee may take action against an ETP Holder under Rule 10 when any of the above reasons for denying or conditioning the issuance of an ETP come into existence after an application has been approved and an ETP has been issued.

Rule 2.5. Reserved.

Requirements of Holding an ETP Requirements Applicable Generally

Rule 2.6. Revocable Privilege

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

Rule 2.7. No Liability for Using Trading Facilities

The Corporation shall not be liable for any damages sustained by an ETP Holder growing out of the use or enjoyment by such ETP Holder of the facilities afforded by the Corporation in the conduct of its business. Each ETP Holder expressly agrees, in consideration of the issuance of the ETP, to release and discharge the Corporation, its officers, directors, employees and agents, of and from all claims or damages arising from their acceptance and use of such ETP and their agreement to be bound by the Certificate of Incorporation, Bylaws and Rules of the Corporation.

Rule 2.8. Corporation Not Bound By ETP Holder Agreements

Nothing contained in any partnership agreement, limited partnership agreement, articles of incorporation, resolutions, by-laws or any other organizational documents, or amendment thereto, of an ETP Holder, nor any other agreements between any ETP Holder and a third party, or any amendment thereto, even though submitted to or filed with the Corporation, shall obligate or be binding upon the Corporation.

Rule 2.9. Only ETP Holder Organizations May Carry Customer Accounts

Only ETP Holders which are partnerships, limited liability partnerships, corporations or limited liability companies shall carry accounts for customers or conduct business under a firm name.

Rule 2.10. Sole Proprietors

(a) A sole proprietor ETP Holder may not carry public customer accounts.

(b) Sole proprietor ETP Holders shall comply with such additional requirements as the Corporation may from time to time prescribe.

Rule 2.11. ETP Holder Organizations

(a) Each ETP Holder shall maintain at the Corporation at all times a record of the name and address of the individual duly authorized by such ETP Holder to receive and accept legal or other notices on its behalf.

(b) An ETP Holder shall adopt such restrictions on the conduct of its affairs as may be prescribed by the Corporation, including, without limitation, restrictions to the payment of dividends and loans to officers, directors, stockholders, partners or members.

[An ETP Holder]

Rule 2.12. An ETP Holder that intends to admit any person to partnership, or to elect or appoint any person as an officer or director, or to enter into a partnership agreement, or to form a corporation or limited liability company or other entity, or to alter the terms of an

existing partnership agreement or articles of incorporation or limited liability company agreement or other similar operating agreement shall notify the Corporation in writing of such proposed admission, arrangement, or alteration before said becomes effective and shall submit such papers and information and comply with such requirements in connection therewith as the Corporation may prescribe.

[Allied Persons and Approved Persons]

Rule 2.13. (a) Allied Persons and Approved Persons, as defined in Rule 1, shall be subject to approval by the Corporation. An ETP Holder which proposes to admit an Allied Person or an Approved Person shall notify the Corporation in writing, shall pay any applicable fees and shall submit such information as may be reasonably required by the Corporation.

(b) In order to maintain its trading privileges, each ETP Holder shall obtain approval from the Corporation for all persons required to be approved, and each such ETP Holder shall maintain continuous compliance with all standards prescribed by the Bylaws and Rules of the Corporation.

(c) Each ETP Holder shall promptly give the Corporation written notice on such form as may be required by the Corporation of the death, retirement, or other termination of any ETP Holder, Allied Person, Approved Person and of the dissolution of the ETP Holder.

(d) Each ETP Holder shall designate "principal executive officers" of such corporation who must be Allied Persons, and who must exercise supervision and control over the various areas of the business of such ETP Holder in such areas as the Rules of the Corporation may prescribe.

(e) Each ETP Holder shall include in its name an appropriate identifier of its corporate or business association status, in English (e.g., Incorporated, Corporation, Limited Liability Company, Limited Liability Partnership, or an appropriate abbreviation thereof).

(f) The Corporation may require each applicant becoming a general partner, officer, voting stockholder, limited liability company member, or director of any ETP Holder to pass an examination to demonstrate that they have adequate experience and knowledge of the securities business before undertaking any active duties with the firm. Compliance with this requirement may be waived if the principal is a member of an ETP Holder belonging to another national securities exchange having comparable requirements.

(g) Each ETP Holder shall be liable for all liabilities to the Corporation of authorized traders, which shall include, without limitation, the payment of all fees and charges as well as meeting all obligations accruing in the course of an ETP Holder's or AT's business with the Corporation.

(h) Each Approved Person, Allied Person, Affiliate, and Associated Person shall be liable to the same discipline and penalties for the acts and omissions of his or her ETP Holder as for their own acts.

(i) Claims of Affiliates, Allied Persons, directors, officers, and Associated Persons of an ETP Holder shall be subordinate in right of payment or provision for payment of all claims of customers of such ETP Holder.

(j) Each ETP Holder shall submit to the Corporation, at such times as the Corporation may require, an affidavit listing, to the best of its knowledge and belief, the name of each party directly or indirectly beneficially owning 1 or more of its outstanding voting stock and showing the percentage of such ownership.

(k) No parent or person controlling any parent of an ETP Holder may engage in any transaction or action for the purpose of circumventing any Rule of the Corporation governing the activities of an ETP Holder.

(l) ETP Holders shall comply with such additional requirements as the Corporation may from time to time prescribe.

[Each ETP Holder that is a partnership]

Rule 2.14. (a) Each ETP Holder that is a partnership (whether general or limited) and which has only one general partner shall provide in its partnership agreement that:

- (1) The partnership shall be dissolved upon the death or incapacity of the general partner in which event the limited partner shall wind up the affairs of the partnership. (Such other events causing dissolution and persons to wind up partnership affairs may be designated as the parties shall choose.)
- (2) The partnership shall at all times, in addition to the general partner, authorize at least one other person associated with the partnership business by individual signatures to sign checks, perform clearing transactions and handle all other routine business matters for the partnership. This authorization may be contingent upon terms acceptable to the Corporation. The person so appointed as authorized agent shall continue to have such authority upon the death or incapacity of the general partner for the purpose of winding up the affairs of the partnership as agent of any limited partners (subject to revocation of authority thereafter by such limited partners).

(b) Upon the death or withdrawal of any partner, if the partnership business is continued by the surviving partners, the continuing partnership will not be recognized as an ETP Holder if the unsubordinated claim of the deceased or withdrawing partner to a return of such deceased or withdrawing partner's capital contribution would result in a net capital impairment of the continuing partnership. The continuing partnership will ordinarily be recognized as an ETP Holder during the period of subordination of such claim if

subordination provisions substantially as follows are included in the partnership agreement:

Upon the death or withdrawal of any partner, if the surviving partners desire to continue the partnership business, the capital contribution of such deceased or withdrawing partner shall remain at the risk of the business and shall be considered capital of such continuing firm for a period of fifteen (15) calendar days to the extent necessary to comply with the net capital requirements of the Corporation. Any claim of the withdrawing partner or of the personal representative of the deceased partner to the repayment of such deceased or withdrawing partner's capital contribution during such period shall be subordinated to the payment in full of such claims of all present and future creditors of the continuing partnership arising out of any matters occurring before the end of such period.

Rule 2.15. Responsibilities of Non-Resident Firms

(a) An ETP Holder that does not maintain an office in the United States responsible for preparing and maintaining financial and other reports required to be filed with the Securities and Exchange Commission and the Corporation must:

- (1) prepare all such reports, and maintain a general ledger chart of accounts and any description thereof, in English and U.S. dollars;
- (2) reimburse the Corporation for any expenses incurred in connection with examinations of the ETP Holder to the extent that such expenses exceed the cost of examining an ETP Holder located within the continental United States in the geographic location most distant from the principal office of the Corporation or, in such other amount as the Corporation may deem to be an equitable allocation of such expenses,
- (3) ensure the availability of an individual fluent in English and knowledgeable in securities and financial matters to assist representatives of the Corporation during examinations, and
- (4) utilize, either directly or indirectly, the services of a broker/dealer registered with the Securities and Exchange Commission, a bank or a clearing agency registered with the Securities and Exchange Commission located in the United States in clearing all transactions involving persons affiliated with the ETP Holder except where both parties to a transaction agree otherwise.

Rule 2.16. Amendments to ETP Holder Documents

(a) All formation documents for ETP Holders for which NYSE Arca, Inc. is the Designated Examining Authority, such as articles of incorporation, by-laws, partnership

agreements, limited liability company agreements, and all amendments thereto, now in effect or adopted in the future, shall be filed with the Corporation and shall be subject to approval by the Corporation.

(b) Each ETP Holder must electronically file amendments to any document in connection with an application for an ETP, including but not limited to amendments to documents required by Rule 2.3, amendments to Form BD, and changes to home or business address, within thirty (30) days of the occurrence requiring the amendment.

(c) An ETP Holder shall promptly file a Uniform Termination Notice for Securities Industry Registration ("Form U-5") electronically with the Central Registration Depository ("CRD"), but not later than 30 calendar days after the date of termination of a person associated with that ETP Holder. Any amendment to a Form U-5 shall also be promptly filed electronically with the CRD, but not later than 30 calendar days after learning of the facts or circumstances giving rise to the amendment. All Forms U-5 shall also be provided to the terminated person concurrently with filing.

Rule 2.17. Activity Assessment Fees

(a) Section 31 of the Securities Exchange Act of 1934 ("Exchange Act"), as amended, requires national securities exchanges and associations to pay to the Securities and Exchange Commission ("SEC") certain fees and assessments on specified securities transactions. Each ETP Holder that effects securities transactions on the Corporation that are defined in Section 31 of the Exchange Act as "covered sales" of securities shall pay to the Corporation Activity Assessment Fees based upon all of their covered sales. The Corporation shall calculate Activity Assessment Fees by multiplying the aggregate dollar amount of covered sales effected on the Corporation by the ETP Holder during the appropriate computational period by the Section 31(b) fee rate in effect during that computational period. Activity Assessment Fees shall be due and payable at such times and intervals as prescribed by the Corporation. ETP Holders that cease to effect securities transactions on the Corporation shall promptly pay to the Corporation any sum due pursuant to this rule.

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

(c) To the extent that there may be excess monies collected under paragraph (a) above, the Corporation may retain those monies to help fund its regulatory expenses.

Commentary:

.01 Pursuant to Rule 2.17, the Corporation makes an assessment on ETP Holders that the Corporation uses to pay fees owing to the SEC in accordance with Section 31 of the Exchange Act ("the Rule 2.17

assessment"). The Section 31 fees payable by the Corporation to the SEC is determined based on the aggregate dollar amount of "covered sales," as defined by SEC Rule 31, effected on the Corporation by or through any ETP Holder. ETP Holders, in some cases, have passed along the Rule 2.17 assessment on a trade-by-trade basis to their customers or correspondent firms. For certain reasons, including the difference between the calculation of the Rule 2.17 assessment on an aggregate basis and its collection by ETP Holders from customers or correspondent firms on a disaggregated trade-by-trade basis, there may exist an historical accumulation of funds collected by ETP Holders that are in excess of their Rule 2.17 assessment. Consequently, these funds may not have been remitted to the Corporation. In addition, the Exchange has accumulated amounts remitted to the Corporation by ETP Holders collected by such ETP Holders in excess of their Rule 2.17 assessment, and in excess of amounts paid by the Corporation to the SEC pursuant to Section 31 of the Exchange Act ("Corporation accumulated excess").

The Corporation has determined that it is appropriate for any accumulated funds, if remitted to the Corporation (with respect to funds held by ETP Holders), to be used to pay the Corporation's current Section 31 fees, which conforms the use of those funds with the stated purpose for which they were collected. Consequently, ETP Holders may voluntarily remit all or part of historically accumulated funds that were collected and are in surplus to the Rule 2.17 assessment of such ETP Holders in accordance with the terms of this Commentary .01. In addition, an ETP Holder may designate all or part of the Corporation accumulated excess allocated to such ETP Holder to be used by the Corporation in accordance with the terms of this Commentary .01.

The effective date of this temporary program will be September 28, 2009, and the program will automatically sunset on December 31, 2009, and thereafter may not be utilized by ETP Holders. ETP Holders are reminded that the SEC stated in its release adopting Rule 31 that "it is misleading to suggest that a customer or an SRO member incurs an obligation to the Commission under Section 31."

Rule 2.18. Exemption from Registration Requirements

An ETP Holder shall be exempt from such registration requirements as the Corporation may designate if it is a member organization of another self-regulatory organization, which is the appointed Designated Examining Authority ("DEA") for such organization by the Securities and Exchange Commission.

Rule 2.19. Termination of ETP

(a) An ETP will terminate upon the occurrence of any one of the following conditions:

- (1) the expulsion of the ETP Holder from the Corporation's Trading Facilities;
- (2) the suspension of the ETP Holder where such ETP Holder failed to be reinstated at the expiration of the period of suspension, including any extension of such period which may have been granted by the Corporation;
- (3) the formal or informal dissolution or winding up of an ETP Holder;
- (4) the death of an ETP Holder; or
- (5) the declaration of legal incompetence of an ETP Holder.

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

Rule 2.20. Limited Transferability

(a) Transfer by Purchase, Sale or Lease Prohibited. ETPs may not be purchased (other than from the Corporation), sold or leased. Any purported purchase (other than from the Corporation), sale or lease of an ETP shall be void ab initio without further action by the Corporation.

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

Rule 2.21. Employees of ETP Holders Registration

(a) Each employee of an ETP Holder compensated directly or indirectly for the solicitation or handling of business in securities, including trading in securities for the account of the organization must be registered with the Corporation. In connection with their registration, such individuals shall electronically file a Form U4 with the CRD by appropriately checking NYSE Arca as a requested registration on the electronic Form U4

filing. Individuals for whom registration is maintained on CRD are required to promptly electronically file any required amendments to Form U4 with the CRD.

(b) In order to satisfy the registration requirement, employees of ETP Holders must satisfy applicable examination requirements as prescribed by the Corporation, complete documentation and pay the related fees. Continuance of any registered employee is at the sole discretion of the Corporation.

- (i) For employees of ETP Holders for which the Corporation serves as the Designated Examining Authority, all the requirements of subsection (b) apply;
- (ii) For employees of ETP Holders for which the Corporation does not serve as the Designated Examining Authority, such employees shall be deemed registered with the Corporation if the ETP Holder has recorded registration of such employees with the Corporation in the manner prescribed in paragraph (a) of this Rule;
- (iii) For employees of ETP Holders seeking limited registration as Securities Traders, as described below, the Exchange requires the Securities Trader qualification examination ("Series 57").

(c) The Corporation may require each applicant for employment as a registered employee to successfully complete such examinations as the Corporation may prescribe to establish the applicant's qualification for such registration. The Corporation may exempt an individual from the examination requirements if such individual has successfully completed comparable examinations (e.g. Series 7 Examination).

(d) Continuing Education. No ETP Holder shall permit any registered person to continue to, and no registered person shall continue to, perform duties as a registered person, unless such person has complied with the continuing education requirements of this Rule 2.21(d).

- (1) *Regulatory Element*—Each registered person shall complete the Regulatory Element of the continuing education program beginning with the occurrence of their second registration anniversary date, and every three years thereafter, or as otherwise prescribed by the Corporation. On each occasion, the Regulatory Element must be completed within one hundred twenty (120) days after the person's registration anniversary date. A person's initial registration date, also known as the "base date," shall establish the cycle anniversary dates for purposes of this Rule. The content of the Regulatory Element of the program shall be consistent with the standards set forth by the Corporation and other self regulatory organizations for each registration category of persons subject to the Rule. A person qualified solely as a Securities Trader shall comply with the continuing education requirements appropriate for the Series 57 by completing the S101 Program. All other registered persons shall comply with the continuing education requirements applicable to their particular registration.

(A) Reserved.

(B) *Failure to Complete*—Any registered persons who have not completed the Regulatory Element of the program within the prescribed time frames will have their registration deemed inactive until such time as the requirements of the program have been satisfied. Any person whose registration has been deemed inactive under this Rule shall cease all activities as a registered person and shall be prohibited from performing any duties and functioning in any capacity requiring registration.

(C) *Disciplinary Actions*—Unless otherwise determined by the SRO, a registered person will be required to retake the Regulatory Element and satisfy all of its requirements in the event such person:

- (i) becomes subject to any statutory disqualification as defined in Section (3)(a)(39) of the Securities Exchange Act of 1934;
- (ii) becomes subject to suspension or to the imposition of a fine of \$5,000 or more for violation of any provision of any securities law or regulation, or any agreement with, rule, or standard of conduct of any securities governmental agency, securities self-regulatory organization, or as imposed by any such regulatory or self-regulatory organization in connection with a disciplinary proceeding; or
- (iii) is ordered as a sanction in a disciplinary action to retake the Regulatory Element by any securities governmental agency or securities self-regulatory organization.

A retaking of the Regulatory Element shall commence with participation within 120 days of the registered person becoming subject to the statutory disqualification, in the case of (i) above, or the disciplinary action becoming final, in the case of (ii) or (iii) above. The date that the disciplinary action becomes final will be deemed the person's new base date for purposes of this Rule.

(D) *Regulatory Element Notifications*—Each ETP Holder shall designate an individual or individuals responsible for receiving e-mail notifications provided via the Central Registration Depository ("Web CRD") regarding when a registered person is approaching the end of his or her Regulatory Element time frame and when a registered person is deemed inactive due to failure to complete the requirements of the Regulatory Element program. Each ETP Holder must, not less than quarterly, review and, if necessary, update the information regarding its Regulatory Element contact person(s) with Web CRD.

(2) Firm Element

(A) *Persons Subject to the Firm Element*—The requirements of this Rule 2.21(d)(2) shall apply to any registered person who has direct contact with customers in the conduct of the ETP Holder's securities sales, trading or investment banking activities, and to the immediate supervisors of such persons (collectively, "covered registered persons").

(B) *Standards*

(i) Each ETP Holder must maintain a continuing and current education program for its covered registered persons to enhance their securities knowledge, skills and professionalism. At a minimum, each ETP Holder shall at least annually evaluate and prioritize its training needs and develop a written training plan. The plan must take into consideration the ETP Holder's size, organizational structure, and scope of business activities, as well as regulatory developments and the performance of covered registered persons in the Regulatory Element. If an ETP Holder's analysis establishes the need for supervisory training for persons with supervisory responsibilities, such training must be included in the ETP Holder's training plan.

(ii) *Minimum Standards for Training Programs*—Programs used to implement an ETP Holder's training plan must be appropriate for the business of the ETP Holder and, at a minimum, must cover the following matters concerning securities products, services and strategies offered by the ETP Holder:

(a) General investment features and associated risk factors;

(b) Suitability and sales practice considerations; and

(c) Applicable regulatory requirements.

(iii) *Administration of Continuing Education Program*—Each ETP Holder must administer its continuing education program in accordance with its annual evaluation and written plan and must maintain records documenting the content of the programs and completion of the programs by covered registered persons.

(C) *Participation in the Firm Element*—Covered registered persons included in an ETP Holder's plan must take all appropriate and reasonable steps to participate in continuing education programs as required by the ETP Holder.

(D) *Specific Training Requirements*—The Corporation may require an ETP Holder, either individually or as part of a larger group, to provide specific training to its covered registered persons in such areas that the Corporation deems appropriate. Such a requirement may stipulate the class of covered registered persons for which it is applicable, the time period in which the requirement must be satisfied and, where appropriate, the actual training content.

(e) Reserved.

(f) No ETP Holder may employ a Corporation employee during regular Corporation business hours. No ETP Holder may employ a Corporation employee outside regular Corporation employment hours without having obtained the prior written approval of the Corporation and registering the name of the employee, the nature of the services rendered and the amount of related compensation.

(g) Reserved.

(h) Reserved.

(i) An ETP Holder shall promptly file a Uniform Termination Notice for Securities Industry Registration ("Form U-5") electronically with the Central Registration Depository ("CRD"), but not later than 30 calendar days after the date of termination of an employee. Any amendment to a Form U-5 shall also be promptly filed electronically with the CRD, but not later than 30 calendar days after learning of the facts or circumstances giving rise to the amendment. All Forms U-5 shall also be provided to the terminated person concurrently with filing.

(j) Process to Register Employees. To register an employee the employer must file an application on Form U4 and any amendment thereto in the manner prescribed by paragraph (a) of this Rule, as well as complete any relevant application process prescribed by the Corporation.

Commentary:

.01 For purposes of this Rule, the term "registered person" means any ETP Holder, Allied Person thereof, registered representative or other person registered or required to be registered under the Rules of the Corporation.

.02 For purposes of this Rule, the term "customer" means any natural person or any organization, other than a registered broker or dealer, executing transactions in securities or other similar instruments with or through, or receiving investment banking services from, an ETP Holder.

.03 For purposes of this Rule, the term "Securities Trader" means as any person engaged in the purchase or sale of securities or other similar instruments for the account of an ETP Holder with which such person is associated, as an employee or otherwise, and who does not transact any business with the public. A Securities Trader must be registered as such on Web CRD and pass the Series 57 Examination.

A supervisor of a Securities Trader must satisfy its registration requirements under this Commentary .03 by registering and qualifying as a Securities Trader Principal in Web CRD if (a) such supervisor's supervisory responsibilities are limited solely to supervising Securities Traders; (b) such supervisor is qualified to be so registered by passing the General Securities Principal Qualification Examination - Series 24; and (c) such supervisor is registered pursuant to Exchange Rules as a Securities Trader. Such a supervisor shall not be qualified to function in a Principal or supervisory capacity with responsibility over any area of business other than that involving proprietary trading.

.04 Any registered person who has terminated association with a registered broker or dealer and who has, within two years of the date of termination, become reassociated in a registered capacity with a registered broker or dealer shall participate in the Regulatory Element of the continuing education program at such intervals that apply (second registration anniversary and every three years thereafter) based on their initial base date, rather than based on the date of reassociation in a registered capacity. Any former registered person who becomes reassociated in a registered capacity with a registered broker or dealer more than two years after termination as such will be required to satisfy the program's requirements in their entirety based on the most recent registration date.

.05 Any registration that is deemed inactive for a period of two calendar years pursuant to section (d)(1)(B) of this Rule for failure of a registered person to complete the Regulatory Element, shall be terminated. A person whose registration is so terminated may become registered only by reapplying for registration and satisfying applicable registration and qualification requirements of the Corporation.

.06 Reserved.

Rule 2.22. Exchange Backup Systems and Mandatory Testing

(a) The Exchange will establish standards for the designation of ETP Holders it reasonably determines are, taken as a whole, the minimum necessary for the maintenance of fair and orderly markets in the event of the activation of the Exchange's business continuity and disaster recovery plans.

(b) An ETP Holder designated pursuant to standards established in paragraph (a) of this Rule will be required to participate in scheduled functional and performance testing of the Exchange's business continuity and disaster recovery plans in the manner and frequency specified by the Exchange, which will not be less than once every 12 months.

(c) Lead Market Makers that have been determined by the Exchange to contribute a meaningful percentage of the Exchange's overall volume, measured on a quarterly or monthly basis, will be required to participate in scheduled functional and performance testing. The Exchange may also consider other factors in determining the ETP Holder that will be required to participate in scheduled functional and performance testing, including average daily volume traded on the Exchange measured on a quarterly or monthly basis, or ETP Holders who collectively account for a certain percentage of market share on the Exchange.

(d) At least three (3) months prior to a scheduled functional and performance testing of the Exchange's business continuity and disaster recovery plans, the Exchange will publish the criteria to be used by the Exchange to determine which ETP Holder will be required to participate in such testing, and notify those ETP Holders that are required to participate based on such criteria.

(e) ETP Holders not designated pursuant to standards established in paragraph (a) of this Rule are permitted to connect to the Exchange's backup systems and may participate in scheduled functional and performance testing of the Exchange's business continuity and disaster recovery plans.

Rule 2.23. Electronic Mail Address

Each ETP Holder must maintain with the NYSE Arca Equities, Inc. ("NYSE Arca Equities") an Internet electronic mail account for communication with the NYSE Arca Equities. Each ETP Holder must update firm contact information via the electronic mail account or such other means as prescribed by the NYSE Arca Equities. The NYSE Arca Equities will use the electronic mail account to provide ETP Holders with regulatory bulletins, rule adoption notices, and other official notices.

Rule 2.24. ETP Books and Records

ETP Holders shall make and retain all the books and records prescribed by the Bylaws and Rules of the Corporation, the rules and regulations of the Securities and Exchange Commission and the constitution, rules and regulations of other regulatory or governmental bodies to which such ETP Holders are subject. Such books and records shall be retained for periods as prescribed and shall be made available for inspection by the Corporation.

If such books and records are prepared or maintained by an outside service bureau, depository, bank, or other recordkeeping service on behalf of the ETP Holder, the ETP Holder shall provide the Corporation with a copy of the written undertaking required to be filed with the Commission under SEC Rule 17a-4(i) for the Corporation's records.

RULE 3 ORGANIZATION AND ADMINISTRATION

Part I—Committees of the Corporation

Rule 3.1. Overview

(a) In accordance with the Bylaws of the Corporation, the Board of Directors may establish one or more committees consisting of one or more directors of the Corporation (each, a "Board Committee"). In addition, the Board of Directors may establish one or more committees, consisting of people other than directors of the Corporation, which committees shall be established in accordance with the Bylaws of the Corporation (each, an "Equity Committee"). Each Board Committee and Equity Committee shall comply with the Certificate of Incorporation and the Bylaws of the Corporation and with these Rules.

Rule 3.2. Equity Committees

(a) *General Provisions:*

- (1) *Organization.* Each Equity Committee shall have and may exercise all the power and authority granted to such committee in these Rules. Each Equity Committee shall establish substantive and procedural rules for conducting meetings and exercising its authority, which rules shall be in accordance with the Certificate of Incorporation and Bylaws of the Corporation and with applicable law. The Chief Executive Officer or such other designee of the Corporation shall, except as otherwise provided in the Bylaws and Rules, appoint the members of all Equity Committees for terms of one year. The Chief Executive Officer or such other designee of the Corporation shall appoint the Chair and Vice Chair of each Equity Committee. The Incorporator shall appoint the initial members of the Equity Committees, including the Nominating Committee.
- (2) *Quorum.* The presence of a majority of the members of an Equity Committee shall be necessary to constitute a quorum for the transaction of business at a meeting of an Equity Committee.
- (3) *Voting.* The act of a majority of the members present at any meeting at which there is a quorum shall be the act of such Equity Committee, except as may be otherwise specifically required by the Certificate of Incorporation or Bylaws of the Corporation, these Rules, or applicable law.
- (4) *Conference Call Meeting.* Unless otherwise restricted by the Certificate of Incorporation or Bylaws of the Corporation, these Rules, applicable law, or rule of the particular Equity Committee, members of an Equity Committee or of any subcommittee thereof may participate in meetings by means of conference call or similar communications equipped by means of which all persons participating in the meeting can hear each other, and such participation shall constitute presence in person at the meeting.
- (5) *Vacancies.* Whenever any vacancy exists on an Equity Committee by reason of death, resignation, removal or increase in the size of the committee, the Chief

Executive Officer of the Corporation may appoint a qualified person to fill such vacancy.

- (6) *Removal.* The Board of Directors may remove any member of an Equity Committee for refusal, neglect or inability to discharge his or her duties on the committee.
 - (7) *Resignation.* A member of an Equity Committee may resign at any time by giving written notice of his or her resignation to the Corporation and such resignation, unless specifically contingent upon its acceptance, will be effective as of its date or as of the effective date specified therein.
 - (8) *Eligibility for and Appointment to Equities Committees.* Any ETP Holder of the Corporation in good standing, any Allied Person or Associated Person of an ETP Holder, or any person from the public is eligible for appointment or election to Equity Committees. Only one person affiliated with the same ETP Holder shall be eligible for service on the same Equity Committee. Except as otherwise set forth in these Rules, the Chief Executive Officer of the Corporation shall appoint eligible ETP Holders, Allied Persons or Associated Persons of an ETP Holder, and persons from the public to the positions so allocated on Equity Committees for terms of one (1) year.
 - (9) *Alternate Members.* The Chief Executive Officer of the Corporation may designate one or more ETP Holders, Allied Persons or Associated Persons of an ETP Holder, and persons from the public as alternate members of any Equity Committee, who may replace any absent or disqualified member at any meeting of such committee.
 - (10) *Interested Persons.* No member of a committee shall participate in the adjudication of any matter in which he or she is personally interested, although his or her presence at a meeting at which such matter is considered shall count toward the quorum requirements for the meeting.
 - (11) *Subcommittees.* Unless restricted by the Certificate of Incorporation or Bylaws of the Corporation, these Rules, or applicable law, each Equity Committee may appoint subcommittees when and as it deems appropriate. Each subcommittee shall consist of one or more members or alternate members of such committee.
- (b) *Equity Committees.* As set forth below, the Board of Directors has delegated certain authority and functions to its committees. Action taken pursuant to delegated authority, however, is subject to review, ratification or rejection by the Board of Directors.
- (1) *Business Conduct Committee.*
 - (A) *Composition.* In addition to any members of the public on the Business Conduct Committee, the Business Conduct Committee shall have a minimum of one ETP Holder or Allied Person or Associated Person of an ETP Holder.

(B) *Functions and Authority.* The Business Conduct Committee shall, in accordance with the Bylaws, Rules and procedures of the Corporation, have the following functions and authority:

- (i) examine the business conduct and financial condition of ETP Holders and associated persons;
- (ii) conduct hearings and render decisions in summary disciplinary actions and proceedings and in expedited proceedings pursuant to Rule 11.9;
- (iii) impose appropriate sanctions of expulsion, suspension, fine, censure or any other fitting sanctions where the Committee finds that a violation within the disciplinary jurisdiction of the Corporation has been committed; and
- (iv) require the production of detailed financial reports of an ETP Holder and such other operational reports as it may deem relevant.

(C) This Committee shall have authority, whenever it appears that an ETP Holder is in violation of Rule 4, to direct a representative of such ETP Holder to appear before the Committee for examination upon 48 hours notice, either orally or in writing. After such examination, the Committee shall have authority to suspend such ETP Holder until the requirements of Rule 4 are fully met. Any such suspension directed by the Committee shall be subject to review by the Board. Such review shall not operate as a stay of the suspension unless specifically allowed by the Board. In the event of a reversal of the suspension imposed by the Committee, an ETP Holder or officer, partner, director, stockholder, or representative thereof shall be prohibited from instituting a lawsuit in any forum against the Corporation or the members of the Committee, based in whole or in part upon the suspension imposed by the Committee.

(D) *Appeals.* Decisions of the Business Conduct Committee or sanctions imposed by the Regulatory Staff relating to disciplinary proceedings may be appealed in accordance with the Bylaws and Rule 10 of the Corporation.

(2) *Nominating Committee.*

(A) *Composition.* The Nominating Committee shall have six members consisting of six ETP Holders or Allied Persons or Associated Persons of an ETP Holder.

(B) *Appointment.* The Board of Directors of NYSE Arca Equities, Inc. shall appoint members of the Nominating Committee.

(C) *Representatives to the Board of Directors of the Corporation and the Board of Directors of the NYSE Arca, Inc.*

- (i) *Nomination.* The Nominating Committee shall publish the names of two (2) ETP Holders, or persons affiliated with such Holders (in any combination) as its nominees for the Board of Directors of the Corporation and one ETP Holder, or Allied Person or Associated Person of an ETP Holder, as nominee for the Board of Directors of the NYSE Arca, Inc. The nominee for the Board of Directors of the NYSE Arca, Inc. may be a person nominated to the Board of Directors of the Corporation. The names of the nominees shall be published on a date in each year (the "Announcement Date") sufficient to accommodate the process described in this Rule 3.2(b)(2)(C). ETP Holders in good standing may submit a petition to the Corporation in writing to nominate additional eligible candidates to fill ETP positions during the next term. If a written petition of at least 10 percent of ETP Holders in good standing is submitted to the Nominating Committee within two weeks of the Announcement Date, such person(s) shall also be nominated by the Nominating Committee; *provided, however,* that no ETP Holder, either alone or together with other ETP Holders who are deemed its affiliates, may account for more than 50% of the signatories to a petition endorsing a particular petition nominee for the ETP Holders' position on the Board of Directors of the Corporation or the Board of Directors of the NYSE Arca, Inc. Each petition for a petition candidate must include a completed questionnaire used to gather information concerning director candidates (the Exchange shall provide the form of questionnaire upon the request of any ETP Holder). Notwithstanding anything to the contrary, the Nominating Committee shall determine whether any petition candidate is eligible to serve on the Board of Directors of the Corporation or the Board of Directors of the NYSE Arca, Inc. (including whether such person is free of any statutory disqualification (as defined in section 3(a)(39) of the Exchange Act)), and such determination shall be final and conclusive.
- (ii) *Selection of Nominees.* In the event that the number of nominees exceeds the number of available seats, the Nominating Committee shall submit the contested nomination(s) to the ETP Holders for selection. ETP Holders shall be afforded a confidential voting procedure and shall be given no less than 20 calendar days to submit their votes. Each ETP Holder in good standing may select two nominees for contested seats on the Board of Directors of the Corporation and one nominee for contested seats on the Board of Directors of the NYSE Arca, Inc.; *provided, however* that no ETP Holder, either alone or together with other ETP Holders who are deemed its affiliates, may account for more than 20% of the votes cast for a particular nominee for the ETP Holders' position on the Board of Directors of the Corporation or the Board of Directors of the NYSE Arca, Inc. With respect to contested positions, the two nominees for the Board of Directors of the Corporation and the nominee for the Board of Directors of the NYSE Arca, Inc. receiving the most votes of ETP Holders shall be submitted by the Nominating Committee to the Board of Directors of the Corporation or the Board of Directors of the NYSE Arca, Inc., as the case may be. Similarly, the Nominating Committee shall submit uncontested nominees to the Board of Directors of the Corporation or the Board of

Directors of NYSE Arca, Inc., as the case may be. Tie votes shall be decided by the respective Board of Directors at its first meeting following the election.

(c) Each Equity Committee shall have such other powers and duties as delegated to it by the Board of Directors. Each Equity Committee is subject to the control, review, and supervision of the Board of Directors.

Rule 3.3. Committee for Review ("CFR")

(a) The NYSE Arca Board of Directors shall, on an annual basis, appoint the CFR as a sub-committee of the Regulatory Oversight Committee.

(1) CFR Appeals Panels.

(A) *Composition.* The CFR may appoint one or more CFR Appeals Panels made up of members of the CFR. The CFR Appeals Panel will conduct reviews of matters subject to the applicable provisions of Rule 3.2(b)(1)(C), 5 or 10. A CFR Appeals Panel shall be made up of no less than three (3) but no more than five (5) individuals. The CFR will determine the size of any CFR Appeals Panel that it appoints. Each CFR Appeals Panel will contain at least one public director and at least one director that is an ETP Holder or Allied Person or Associated Person of an ETP Holder.

(B) Subject to Rule 10 of the Corporation, decisions of the CFR shall be subject to the review of the NYSE Arca Board of Directors. The decision of the NYSE Arca Board of Directors shall constitute the final action of the Corporation, unless such Board remands the proceedings.

Part II—Regulation

Rule 3.4. Self-Regulatory Responsibilities

The NYSE Arca, Inc. ("NYSE Arca Parent"), as a self-regulatory organization registered with the Securities and Exchange Commission pursuant to Section 6 of the Exchange Act, shall have ultimate responsibility in the administration and enforcement of rules governing the operation of its subsidiary, NYSE Arca Equities, Inc. ("Corporation"). Notwithstanding the delegation of authority to the subsidiary, as set forth below in Rule 3.5, the NYSE Arca Parent shall review and ratify any rule change adopted by the Board of Directors of the Corporation before such rule change becomes the final action.

Rule 3.5. Delegation of Authority

(a) Except as otherwise provided in the Bylaws, Rules and procedures of the Corporation, the Chief Regulatory Officer or such other designated officer of the Corporation shall have the following delegated authority:

- (1) To establish and interpret rules and regulations for ETP Holders or associated persons including, but not limited to trading rules, fees, access to and use of system facilities, and arbitration procedures.
- (2) To determine regulatory and trading policies, including the development and adoption of necessary or appropriate rule changes, relating to the business conduct and trading activities of ETP Holders and associated persons. This includes, but is not limited to, the following:
 - (A) arbitration of disputes between ETP Holders or associated persons arising from transactions on the facility;
 - (B) financial responsibility;
 - (C) clearance and settlement of securities transactions and other financial responsibility and operational matters affecting ETP Holders or associated persons in general; and
 - (D) qualification requirements for ETP Holders and associated persons.
- (3) To take necessary or appropriate action to assure compliance with the Rules and procedures of the Corporation, the federal securities laws, and other laws, rules and regulations that the Corporation has the authority to administer or enforce, through examination, surveillance, investigation, enforcement, disciplinary, and other programs.
- (4) To administer programs and systems for the surveillance and enforcement of rules governing the conduct and trading activities of ETP Holders and associated persons.
- (5) To administer the Corporation's disciplinary programs, including investigations, adjudication of cases, and the imposition of fines and other sanctions.
- (6) To examine and investigate ETP Holders and associated persons to determine if they have violated the Rules and procedures of the Corporation, the federal securities laws, and other laws, rules, and regulations that the Corporation has the authority to administer, interpret, or enforce.
- (7) To place restrictions on the business activities of ETP Holders and associated persons consistent with the public interest, the protection of investors, and the federal securities laws.
- (8) To conduct arbitrations, mediations and other dispute resolution programs.
- (9) To appoint staff, as necessary, that shall be responsible for the general supervision of the conduct and dealings of ETP Holders and associated persons on the trading facilities. These duties include, but are not limited to, the following:

- (A) arbitrate differences between ETP Holders or associated persons arising from transactions on the trading facilities;
 - (B) supervise all connections or means of communication with the trading facilities, which may require the discontinuance of any such connection or means of communication that is deemed contrary to the welfare or interest of the Corporation;
 - (C) issue a citation when it appears that a Minor Rule Plan violation has occurred as specified in Rule 10;
 - (D) declare a "fast market," invoke a trading halt in a security due to an influx of orders or other unusual market conditions or circumstances, or take such other actions as are deemed necessary in the interest of maintaining a fair and orderly market; and
 - (E) supervise and regulate the operation of any Application of the System during active openings, heavy trading and unusual situations.
- (10) To administer or enforce policies and Rules of the Corporation (as well as federal and state regulations) governing the initial and continued listing or trading of securities on the Corporation.

Rule 3.6. Surveillance Agreements

The Corporation may enter into agreements with domestic and foreign self-regulatory organizations providing for the exchange of information and other forms of mutual assistance for market surveillance, investigative, enforcement and other regulatory purposes.

Part III - Dues, Fees and Fines

Rule 3.7. Dues, Fees and Charges

ETP Holders of the Corporation, whether or not in good standing, shall pay to the Corporation such dues, fees and charges as the Board of Directors shall prescribe.

Rule 3.8. Liability for Payment

An ETP Holder failing to pay any dues, fees, charges or fines to the Corporation for thirty days after the same shall become payable, may be suspended by the Board of Directors or the Chief Executive Officer of the Corporation in accordance with Rule 11.2.

Rule 3.9. Fines

The Board of Directors may adopt and prescribe fines for violation of the Bylaws, Rules and procedures of the Corporation.

Rule 3.10. Certain Relationships

- (a) Unless approved by the Securities and Exchange Commission, no ETP Holder shall be affiliated (as such term is defined in Rule 12b-2 under the Exchange Act) with NYSE Group, Inc. (or any successors thereto) or any of its affiliated entities.
- (b) Unless approved by the Securities and Exchange Commission, neither NYSE Group, Inc. nor any of its affiliates (as such term is defined in Rule 12b-2 under the Exchange Act) shall hold, directly or indirectly, any ownership interest in any ETP Holder.
- (c) Any person who fails to meet the requirements of this Rule 3.10 shall not be eligible to become an ETP Holder. Any failure by an ETP Holder to comply with this Rule 3.10 shall be subject to the disciplinary actions prescribed by Rule 11.2(a)(2)(v).

Rule 3.11. Fingerprint-Based Background Checks of Corporation Employees and Others

- (a) In order to enhance the security of the respective facilities, systems, data, and/or records of the Corporation (collectively, "facilities and records"), the Corporation shall obtain fingerprints from, and conduct a fingerprint-based background check of, all prospective and current employees, temporary personnel, independent contractors, and service providers of each of the Corporation and its principal subsidiaries. However, the Corporation may determine not to obtain fingerprints from, or to seek fingerprint-based background information with respect to, a person due to that person's limited, supervised, or restricted access to facilities and records; or the nature or location of his or her work or services. The Corporation shall apply this rule in all circumstances where permitted by applicable law.
- (b) The Corporation shall submit fingerprints obtained pursuant to this rule to the Attorney General of the United States or his or her designee for identification and processing. The Corporation shall at all times maintain the security of all fingerprints provided to, and all criminal history record information received from, the Attorney General or his or her designee. The Corporation, however, may provide a subsidiary with access to information from background checks based on fingerprints obtained from that subsidiary. The Corporation shall not disseminate fingerprints or information to the extent prohibited by applicable law.
- (c) The Corporation shall evaluate information received from the Attorney General or his or her designee and otherwise administer this rule in accordance with Corporation fingerprint procedures as in effect from time to time and the provisions of applicable law. Fingerprint-based background information, such as a felony or

serious misdemeanor conviction, will be a factor in making employment decisions; engaging or retaining any temporary personnel, independent contractors, or service providers; or permitting any fingerprinted person access to facilities and records.

••• *Supplementary Material:* -----

.10 Fingerprints and the Issuance of Identification Badges.—The Corporation intends, with limited exceptions, to obtain fingerprints from, and fingerprint-based background information with respect to, all employees, temporary personnel, independent contractors, and service providers who receive Corporation -issued photo badges or other identification permitting them access to facilities and records for more than one day ("Long-Term Badges"). The Corporation has the capacity electronically to immediately limit or terminate the access to facilities and records that Long-Term Badges permit, and reserves the right to do so. On a case-by-case basis, the Corporation may determine not to obtain fingerprints from a person to whom a Long-Term Badge is issued, based on the decision of a committee of Corporation officers who oversee application of the rule that there exists an exception to obtaining the fingerprints, as contemplated by the rule.

RULE 4 CAPITAL REQUIREMENTS, FINANCIAL REPORTS, MARGINS

Section 1. Capital Requirements

Rule 4.1. Minimum Net Capital

ETP Holders that are subject to Rule 15c3-1 under the Securities Exchange Act of 1934 ("Exchange Act"), as amended, shall maintain a minimum net capital in accordance with the provisions of Rule 15c3-1 under the Exchange Act. Each ETP Holder shall promptly notify the Corporation and, pursuant to the provisions of Rule 17a-11 under the Exchange Act, the Securities and Exchange Commission if such ETP Holder's net capital does not equal or exceed the appropriate minimum required by Rule 15c3-1 or if notice is otherwise required by Rule 17a-11. Each Market Maker shall report its net capital to the Corporation in a form and manner prescribed by the Corporation.

Commentary:

.01 ETP Holders Who Do Not Carry Customers' Accounts

An ETP Holder operating under paragraph (a)(2) of SEC Rule 15c3-1 shall file a written application with the Corporation for approval on a form prescribed by the Corporation.

Rule 4.2. Reserved.

Rule 4.3(a). Corporate Affiliates and Subsidiaries

An ETP Holder shall not form a corporate affiliate or subsidiary without the prior written approval of the Corporation. All affiliates or subsidiaries of an ETP Holder shall be subject to compliance with the Bylaws, Rules and procedures of the Corporation, or other conditions as may be established by the Corporation. ETP Holders and Allied Persons of ETP Holders shall be responsible for any fraud committed by a corporate affiliate or subsidiary organization or for any act or proceeding thereof contrary to just and equitable principles of trade or detrimental to the interest or welfare of the Corporation.

An ETP Holder proposing to organize an affiliate or subsidiary corporation shall submit full details to the Corporation.

Rule 4.3 shall apply to all ETP Holders of the Corporation unless the ETP Holder is subject to the jurisdiction of another national securities exchange or association designated by the Board of Directors as having comparable standards, or it is subject to the jurisdiction of another national securities exchange or association designated by the Securities and Exchange Commission as the primary regulatory body.

Rule 4.3(b). Changes in Stockholder Status

Whenever a person owning 5% or more of any class of equity securities, directly or indirectly, of an ETP Holder ceases to be an ETP Holder, Allied Person or Approved Person, the firm shall redeem or convert such securities to fixed income securities so that such security interest is less than 5%. Provided, however, that if such redemption or conversion would cause such ETP Holder not to comply with the capital requirement of Rule 4, the ETP Holder will so notify the Corporation and the assets which the person receives upon redemption of such securities, will be loaned by the person to the ETP Holder as a loan subordinated to the claims of all customers and general creditors of the ETP Holder, or the fixed income securities which the person receives upon conversion of such securities will be subordinated to the claims of all customers and general creditors of the ETP Holder. Any such subordination shall be pursuant to an agreement approved by the Corporation.

Rule 4.3(c). Reserved

Reserved.

Rule 4.3(d). Change in Capitalization

No ETP Holder shall make any change in its capitalization without prior written approval of the Corporation.

Rule 4.3(e). Owners of 5% or More Equity Securities

Every party who owns beneficially 5% or more of any class of equity security, either directly or indirectly, of the firm shall be an ETP Holder, Allied Person or Approved Person.

Rule 4.3(f). Conditions for Issuance of Freely Transferable Securities

ETP Holders which issue freely transferable securities must maintain a ratio of not more than 50 percent of properly subordinated debt equity (including common and preferred stock) after giving the effect to any public financing, and ETP Holders or parents thereof which issue freely transferable securities must:

- (1) Have a net worth of \$250,000 (net worth being determined by generally accepted accounting principles);
- (2) Have two years of operations by the ETP Holder as a bona fide broker-dealer;
- (3) Submit all advertising related to its freely transferable securities and reports to holders of such securities to the staff for approval; and
- (4) Pay a filing fee for approval by the Corporation of the ETP Holder's issuance of freely transferable securities.

Rule 4.3(g). Reserved.

Rule 4.3(h). Voting Agreement

None of the stock of a corporate ETP Holder shall at any time be held under or subject to any voting agreement whereby the voting of such stock is pooled or joined with the stock of any then ETP Holder, Allied Person, stockholder associate or Approved Person unless approved by the Board of Directors.

Rule 4.3(i). Participation in ETP Holders

The Corporation hereby specifically approves the beneficial ownership of an interest in any other ETP Holder by an ETP Holder, Allied Person, or Approved Person of any ETP Holder:

- (1) If the interest owned is stock and such stock is freely transferable and is publicly held, provided that less than 5% of such stock is owned. Under appropriate circumstances the Corporation may treat as a single holding stock which is nominally held by different persons or firms;
- (2) In connection with an underwriting of such stock; or

- (3) In connection with his, her or its activity as a Market Maker in such stock, in which event the ETP Holder or Allied Person, or Approved Person thereof shall be required to be registered with the Corporation as a Market Maker in such stock.

Rule 4.4. Restrictions on ETP Holder Activities

The Corporation may restrict the conduct of an ETP Holder's activities if at any time the ETP Holder appears to be approaching financial difficulties or appears to be experiencing difficulties in its daily operations.

(a) The Corporation may implement the provisions of Paragraph (b) of this Section if it determines the existence of one or more of the following conditions:

- (1) The ETP Holder fails to maintain net capital, above the requirements of Rule 4, equivalent to the greater of (i) one-half of the losses of an ETP Holder in the twelve-month period immediately preceding the date of such computation, or (ii) the loss experienced by the ETP Holder in the six-month period immediately preceding such computation.

In determining profit or loss, the ETP Holder shall mark its trading accounts to the market, and, its expenses shall reflect, among other things, all partners' drawings and salaries, and appropriate amounts for assets doubtful of collection.

- (2) The ETP Holder has subordinated capital which will mature within the next 180 days, and which, if not renewed, would cause (i) the ratio of aggregate indebtedness to net capital to exceed 12 to 1, or, in the case of an ETP Holder which is operating pursuant to paragraph (f) of SEC Rule 15c3-1 (Alternative Net Capital Requirement), net capital to be less than 6% of the aggregate debits; (ii) a reduction in excess of net capital below the standard set forth in subparagraph (1) of this Section, or (iii) a reduction in net capital below 120% of the minimum required net capital.
- (3) The ETP Holder has experienced a reduction in net capital of 15% in the preceding month or 30% in the three-month period immediately preceding such computation, other than as a result of increased capital haircuts on firm proprietary securities positions.
- (4) The ETP Holder's net capital is less than \$1,000,000 and (i) its ratio of aggregate indebtedness to net capital equals or exceeds 8 to 1, or (ii) its net capital is less than 150% of the minimum required net capital.
- (5) The ETP Holder's net capital equals or exceeds \$1,000,000 and (i) its ratio of aggregate indebtedness to net capital equals or exceeds 10 to 1, or (ii) its net capital is less than 120% of the minimum required net capital.

- (6) Notwithstanding the provisions of subparagraphs (4) and (5) above, if the ETP Holder is operating pursuant to Paragraph (f) of SEC Rule 15c3-1 (Alternative Net Capital Requirement), its net capital is less than the greater of \$200,000 or 6% of its aggregate debits.
 - (7) The ETP Holder has experienced a substantial change in the nature of the business conducted which, in the view of the Corporation, increases the potential risk of loss to customers and ETP Holders.
 - (8) The ETP Holder's books and records are not maintained in accordance with the provisions of SEC Rules 17a-3 and 17a-4.
 - (9) The ETP Holder is unable to demonstrate compliance with applicable net capital requirements.
 - (10) The ETP Holder has substantial unsecured loans, advances or other similar receivables relative to its net capital position. For purposes of this provision, 15% is considered substantial.
 - (11) The ETP Holder's subordinated capital equals or exceeds 40% of its debt-equity total, as defined under paragraph (d) of SEC Rule 15c3-1.
 - (12) The ETP Holder is subject to undue concentration charges on proprietary positions, the aggregate market value of which equals or exceeds 25% of the total market value of all proprietary positions.
 - (13) The ETP Holder is unable to clear and settle transactions promptly.
 - (14) The ETP Holder is not in compliance, or is unable to demonstrate compliance, with SEC Rule 15c3-3 (Customer Protection-Reserves and Custody of Securities).
 - (15) The ETP Holder is subject to the reporting provisions of SEC Rule 17a-11.
- (b) If the Corporation determines that any of the conditions listed under Paragraph (a) of this Section exist, or otherwise determines that the ETP Holder is guilty of (i) conduct inconsistent with just and equitable principles of trade, (ii) acts detrimental to the interest or welfare of the Corporation; or (iii) conduct contrary to an established practice of the Corporation, the Corporation may require that the ETP Holder take appropriate action by effecting one or more of the following or similar steps, until such time as the Corporation determines otherwise:
- (1) Promptly pay all free credit balances to customers.
 - (2) Promptly effect delivery to customers of all fully paid securities in the ETP Holder's physical possession or control.

- (3) Introduce all or a portion of its business to another ETP Holder on a fully disclosed basis.
 - (4) Reduce the size or modify the composition of its inventory.
 - (5) Postpone the opening of new branch offices or require the closing of one or more existing branch offices.
 - (6) Promptly collect outstanding unsecured loans, advances or other similar receivables, where practicable.
 - (7) Accept no new customer accounts.
 - (8) Undertake an immediate audit by an independent public accountant at the ETP Holder's expense.
 - (9) Restrict the payment of salaries or other sums to partners, officers, directors, shareholders or affiliated persons of the ETP Holder.
 - (10) Effect liquidating transactions only.
 - (11) Accept unsolicited orders only.
 - (12) File special financial and operating reports.
- (c) The provisions contained in this Section do not limit the Corporation's authority to use other standards or to impose other restrictions, or take other action deemed appropriate under the circumstances in the public interest and for the protection of ETP Holders.

Commentary:

.01 For purposes of this Rule, "SEC Rules" refer to the rules and regulations promulgated under the Securities Exchange Act of 1934, as amended.

Section 2. Financial Reports

Rule 4.5. Reports To Be Filed

Unless the Corporation determines otherwise, every ETP Holder, except as otherwise provided in Rule 4.7, shall file with the Corporation the reports prescribed by this Section. Each ETP Holder subject to Exchange Act Rule 15c3-1 shall designate a Financial/Operations Principal. The duties of a Financial/Operations Principal shall include taking appropriate actions to assure that the ETP Holder complies with applicable financial and operational requirements under the Rules and the Exchange Act, including but not limited to those requirements relating to the submission of financial reports and

the maintenance of books and records. Each Financial/Operations Principal is required to successfully complete the Financial and Operations Principal Examination (Series 27 Exam). Each Financial/Operations Principal designated by an ETP Holder shall be registered in that capacity with the Corporation in a form and manner prescribed by the Corporation. A Financial/Operations Principal of an ETP Holder may be a full-time employee of the ETP Holder or, with the prior written approval of the Corporation, may be a part-time employee or independent contractor of the ETP Holder. All ETP Holders shall be in compliance with this Rule by September 30, 2005.

Rule 4.5(a). Monthly Reports

Part I of SEC Form X-17A-5 shall be filed monthly by any ETP Holder which carries or clears accounts for customers. Such report shall be due by the tenth business day following the end of the month being reported upon.

Rule 4.5(b). Part II Quarterly Reports

Part II of SEC Form X-17A-5 shall be filed electronically with, and in a manner prescribed by, the Corporation for each calendar quarter by any ETP Holder which carries or clears accounts for customers. Such report shall be due by the seventeenth business day following the end of the calendar quarter being reported upon. Original copies of such reports with manual signatures shall be maintained by the ETP Holder in accordance with NYSE Arca Equities Rule 2.24.

Rule 4.5(c). Part IIA Quarterly Reports

Part IIA of SEC Form X-17A-5 shall be filed electronically with, and in a manner prescribed by, the Corporation for each calendar quarter by any ETP Holder which does not carry or clear accounts for customers. Such report shall be due by the seventeenth business day following the end of the calendar quarter being reported upon. Original copies of such reports with manual signatures shall be maintained by the ETP Holder in accordance with NYSE Arca Equities Rule 2.24.

Rule 4.5(d). Part II or Part IIA Filings on Other Than Calendar Quarters

An ETP Holder shall file an additional Part II or Part IIA of SEC Form X-17A-5, as appropriate, within seventeen business days after the date selected for the annual audited financial statements of the ETP Holder, pursuant to the provisions of Rule 4.10, where such date does not coincide with the end of a calendar quarter.

Rule 4.5(e). Periodic Reports

Every ETP Holder shall submit, as required by the Corporation periodic reports with respect to short positions in securities.

Commentary:

.01 Short Positions. ETP Holders for which the Corporation is the designated examining authority ("DEA") are required to report "short" positions, including odd lots, in each stock or warrant listed or traded on the Corporation, and in each other stock or warrant not listed or traded on the Corporation (and not otherwise reported to another self-regulatory organization), using such automated format and methods as prescribed by the Corporation. Such reports must include customer and proprietary positions and must be made at such times and covering such time period as may be designated by the Corporation.

Every ETP Holder for which the Corporation is not the DEA must report "short" positions to the self-regulatory organization that is the DEA for such ETP Holder, if such DEA has a requirement for such reports. If the DEA does not have such a reporting requirement, then such ETP Holder must comply with the provisions of this Rule 4.5(e).

ETP Holders whose short positions have been properly reported to, and are carried by, a non-ETP clearing organization will be in compliance with this Rule 4.5(e) if adequate arrangements have been made for such clearing organization to report such positions to the Corporation or to another self-regulatory organization.

"Short" positions to be reported are those resulting from "short" sales as defined in SEC Rule 200(a), but excluding positions resulting from sales specified in one of the following categories:

- (A) Any sale by any person, for an account in which he has an interest, if such person owns the security sold and intends to deliver such security as soon as is possible without undue inconvenience or expense;
- (B) Any sale of a security on a national securities exchange, effected with the approval of such exchange, which is necessary to equalize the price of such security thereon with the current price of such security on another national securities exchange which is the principal exchange market for such security;
- (C) Any sale of a security for a special arbitrage account by a person who then owns another security by virtue of which he is, or presently will be, entitled to acquire an equivalent number of securities of the same class as the securities sold; provided such sale, or the purchase with such sale offsets, is effected for the bona fide purpose of profiting from a current difference between the price of security sold and the security owned and that such right of acquisition was originally attached to or represented by another security or was issued to all the holders of any such of securities of the issuer;

- (D) Any sale of a security registered on, or admitted to unlisted trading privileges on, a national securities exchange effected for a special international arbitrage account for the bona fide purpose of profiting from a current difference between the price of such security on a securities market not within or subject to the jurisdiction of the United States and on a securities market subject to the jurisdiction of the United States; provided the seller at the time of such sale knows or, by virtue of information currently received, has reasonable grounds to believe that an offer enabling him to cover such sale is then available to him such foreign securities market and intends to accept such offer immediately;
- (E) Any sale by an underwriter, or any member of a syndicate or group participating in the distribution of a security, in connection with an over-allotment of securities, or any lay-off sale by such a person in connection with a distribution of securities through rights or a standby underwriting commitment;
- (F) "Short" positions carried for other ETP Holders reporting for themselves.

Only one report should be made for each stock or warrant in which there is a short position. If more than one account has a short position in the same stock or warrant, the combined aggregate should be reported.

The term "designated examining authority" means the self-regulatory organization that has been assigned responsibility for examining an ETP Holder for compliance with applicable financial responsibility rules.

.02 ETP Holders for which the Corporation is the DEA need not report "short" positions to the Corporation as provided in Commentary .01 if such ETP Holder has made arrangements, satisfactory to the Corporation, to report such positions to another self-regulatory organization.

Rule 4.6. Accelerated Reporting

Unless the Corporation determines otherwise, if any of the conditions described in this Section is applicable, an ETP Holder subject to the provisions of Rule 4.5 shall file with the Corporation on a monthly basis (or more frequently if the Corporation so determines) Part II or Part IIA of SEC Form X-17A-5, as appropriate, together with a schedule of proprietary securities and commodities, and related "haircuts", and any other supplementary schedules deemed appropriate by the Corporation. Such reports shall be due by the fifteenth calendar day following the end of the month during which this Section becomes applicable to an ETP Holder and such accelerated reports shall continue to be filed each month thereafter (or more frequently if the Corporation so determines) until the ETP Holder is otherwise advised by the Corporation.

Rule 4.6(a). SIPC Referral

An ETP Holder subject to the referral provisions of Section 5(a) of the Securities Investor Protection Act will be notified by the Corporation to file accelerated reports.

Rule 4.6(b). Financial or Operational Condition

An ETP Holder that has exceeded or is exceeding the financial or operational parameters set forth in Rule 4.4 shall file without further notice the reports required by this Section.

Rule 4.6(c). General Conditions

The Corporation requires the filing of accelerated reports for reasons relating to (i) the financial or operational condition of the ETP Holder (notwithstanding the provisions of paragraph (b) of this Section), (ii) the condition of the securities markets, or (iii) the condition of the securities industry, in which events the Corporation will notify the ETP Holder to file accelerated reports.

Rule 4.7. Exemptions

(a) An ETP Holder shall be exempt from the filing requirements prescribed by Rules 4.5 and 4.6 under the following conditions: Any ETP Holder which is a member of another self-regulatory organization which has been designated the examining authority for such ETP Holder by the Securities and Exchange Commission.

(b) An ETP Holder qualifying for an exemption pursuant to this Paragraph shall file with the Corporation a copy of Notice and Part II of SEC Form X-17A-5, including such supplementary schedules as may be required, pursuant to the provisions of Rule 17a-11 under the Securities Exchange Act of 1934, as amended, at such time and at such frequency as prescribed by such other designated examining authority or by any applicable rule.

Rule 4.8. Report Filed upon Termination of Membership Interest

If an ETP Holder holding any membership interest in a national securities exchange ceases to be a member in good standing of such exchange, such ETP Holder shall, within two business days after such event, file with the Securities and Exchange Commission and with the Corporation, Part II of Form X-17A-5, as of the date of such event, pursuant to the provisions of Paragraph (b) of Rule 17a-5 under the Securities Exchange Act of 1934, as amended.

Rule 4.9. Customer Statements

Every ETP Holder shall furnish to its customers, principal stockholders and subordinated lenders, and shall file with the Securities and Exchange Commission, the Corporation, and any other self-regulatory organizations of which it is a member, certain financial

statements in accordance with the provisions of Paragraph (c) of Rule 17a-5 under the Securities Exchange Act of 1934, as amended.

Rule 4.10. Annual Filing of Audited Financial Statements

Every ETP Holder shall file annually a report which shall be audited by an independent public accountant in accordance with the provisions of paragraphs (d) through (n) of Rule 17a-5 under the Securities Exchange Act of 1934, as amended.

Rule 4.11(a). Financial Reports

Every ETP Holder which is not a member of another national securities exchange or registered national securities association which is the Designated Examining Authority for that ETP Holder shall file with the Corporation answers to Financial Questionnaires, Reports of Income and Expenses and additional financial information in the type, form, manner and time prescribed by the Corporation.

Rule 4.11(b) ETP Holder

(1) Each ETP Holder shall file with the Corporation a Report of Financial Condition on SEC Form X-17A-5 as required by Securities and Exchange Commission Rules 17a-5 and 17a-10. Any ETP Holder who fails to file such Report of Financial Condition in a timely manner shall be subject to late filing charges as follows:

Occurrence	Number of Days	Amount of Charge
1 st	1-30	\$100.00 per day (capped at \$500)
	31-60	\$750.00
	61-90	\$1000.00
2 nd	1-30	\$100.00 per day (capped at \$1000)
	31-60	\$1500.00
	61-90	\$2000.00
3 rd	1-30	\$2000.00
	31-60	\$2500.00
	61-90	\$3000.00

Occurrences will be calculated on a running two-year basis. Repeated or aggravated failure to file such Report of Financial Condition or failure to file such report may be referred to the Enforcement Department for appropriate disciplinary action.

(2) Each ETP Holder for which the Corporation is the designated collection agent must file with the Corporation such forms and assessments as are required pursuant to the Securities Investor Protection Act of 1970. Any ETP Holder that fails to file such form or assessment in a timely manner will be subject to a late filing charge as follows:

Number of Days Late	Amount of Charge
1—30	\$100.00
31—60	200.00
61—90	300.00

Provided however: (A) if an ETP Holder files its SIPC form and assessment after its receipt of SIPC's final late notice, but files within five business days after its receipt of SIPC's final late notice, such ETP Holder will be subject to a fine pursuant to Rule 10.12(i)(2); and

(B) if an ETP Holder fails to file its SIPC form and assessment within five business days after its receipt of SIPC's final late notice, such ETP Holder will be subject to formal disciplinary action pursuant to Rule 10.4.

Commentary:

.01 An ETP Holder that files its SIPC form and assessment more than 90 days late but before its receipt of SIPC's final late notice will be subject to a late charge of \$800.

.02 Repeated or aggravated failure to file a SIPC form and assessment will be referred to the Business Conduct Committee for appropriate disciplinary action.

Rule 4.11(c). Financial Responsibility and Operational Condition

The Corporation shall have the authority to examine the financial responsibility and/or operational conditions of any ETP Holder. In conducting such examinations, the Corporation may require an ETP Holder to furnish requested information. If the Corporation deems it necessary, ETP Holders shall make available their books and records as well as provide sworn or unsworn testimony. All examinations shall be conducted in a manner consistent with the rules and regulations governing the duty of the Corporation.

Rule 4.12. Underwriting Commitments

Each ETP Holder for which the Corporation is the designated examining authority, which enters into a security underwriting commitment, either with respect to an original or a secondary distribution of securities, whether or not admitted to dealing on the Corporation, shall notify the Corporation thereof in such manner as the Corporation shall prescribe.

Rule 4.13. Lawsuits

Each ETP Holder for which the Corporation is the designated examining authority, shall give written notice to the Corporation regarding all lawsuits involving such ETP Holder or any participant therein, including a description of the nature and principal allegations of such lawsuits, and a statement of the amount of damages claimed therein. Similar notice shall be given to the Corporation regarding any claims or contingent liabilities that appear likely to result in litigation.

Section 3. Margins

Rule 4.14(a). Daily Margin Record

Each ETP Holder registered on the Corporation, carrying margin accounts for customers shall make and maintain a record of every case in which initial or additional margin must be obtained in a customer's account because of transactions effected in such account. This record shall show for each account the date of the transaction, the customer's name, the amount of margin required and the time when and manner in which such margin is furnished or obtained. This record shall be in a form acceptable to the Corporation and contain such additional information as the Corporation may from time to time prescribe. This record shall be preserved for at least twelve months.

Rule 4.14(b). Margin by Liquidation

No ETP Holder registered on the Corporation shall permit a customer to make a practice of effecting transactions requiring initial or additional margin pursuant to rules of the Corporation or regulations of the Board of Governors of the Federal Reserve System and then furnishing such margin by the liquidation of the same or other commitments; except that the provisions of this section shall not apply to any account maintained for another broker or dealer in which are carried only the commitments of the customers of such other broker or dealer exclusive of his partners, provided such other broker or dealer (i) is an ETP Holder of the Corporation; or (ii) has agreed in good faith with the ETP Holder carrying the account that it will maintain a record equivalent to that referred to in Rule 4.14(a); or (iii) is not subject to the regulations of the Board of Governors of the Federal Reserve System.

Rule 4.14(c). Members Other Exchanges

An ETP Holder registered as a member on another national securities exchange or association which has comparable standards and which has been designated by the

Securities and Exchange Commission as the primary regulator is exempt from the provisions of this Rule, unless otherwise stated.

Rule 4.14(d). Customer Defined

For the purpose of this Rule, the term customer shall include any person or entity for whom securities are purchased or sold or to whom securities are sold or from whom securities are purchased whether on a regular way, when issued, delayed or future delivery basis. It will also include any person or entity for whom securities are held or carried. The term will not include a broker or dealer from whom a security has been purchased or to whom a security has been sold for the account of the ETP Holder or its customers.

Rule 4.14(e). Initial Margin

Initial margin shall be required and obtained in accordance with the provisions of Regulation T of the Board of Governors of the Federal Reserve System.

Rule 4.15(a). Margin Requirements

For the purpose of effecting new securities transactions and commitments, the margin required shall be an amount equivalent to the requirements of paragraph (b) of this section, or such greater amount as the Corporation may from time to time require for specific securities, with a minimum equity in the account of at least \$2,000, except that cash need not be deposited in excess of the cost of any security purchased. The foregoing minimum equity and cost of purchase provisions shall not apply to "when distributed" securities in cash accounts and the exercise of rights to subscribe.

Withdrawals of cash or securities may be made from any account, provided that after such withdrawal the equity in the account is at least the greater of \$2,000 or the amount required by the maintenance requirement of this Rule.

Rule 4.15(b). Maintenance Margin Rule

The margin which must be maintained in margin accounts of customers, whether ETP Holders, Allied Persons thereof or non-ETP Holders, shall be as follows:

- (1) 25% of the market value of all securities "long" in the account; plus
- (2) \$2.50 per share or 100% of the market value, in cash, whichever amount is greater, of each stock "short" in the account selling at less than \$5.00 per share; plus
- (3) \$5.00 per share or 30% of the market value, in cash, whichever amount is greater, of each stock "short" in the account selling at \$5.00 per share or above; plus

- (4) 5% of the principal amount or 30% of the market value, in cash, whichever amount is greater, of each bond "short" in the account.
- (5) In the case of securities listed pursuant to Rule 5.2, 100% of the market value, in cash, of each security held "long" in the account.

Rule 4.15(c). Exceptions to Rule

The foregoing requirements of this Rule are subject to the following exceptions:

- (1) "Long" and "Short" Positions in Exchangeable or Convertible Securities (Excluding Options). When a security carried in a "long" position is exchangeable or convertible within a reasonable time, without restriction other than the payment of money, into a security carried in a "short" position for the same customer, the minimum margin on such positions shall be 10% of the market value of the "long" securities, plus 10% of any payment of money. In determining such margin requirement, "short" positions shall be marked to the market.

- (2) Exempted Securities.

- (A) Positions in United States Government Obligations—The minimum margin on any positions in obligations issued or unconditionally guaranteed as to principal or interest by the United States Government shall be 5% of the principal amount of such obligations.

- (B) Positions in "Exempted Securities" Other Than Obligations of the United States Government—The minimum margin on any positions in such obligations shall be 15% of the principal amount of such obligations or 25% of the market value, whichever amount is lower.

(The term "exempted securities" has the meaning given it in section 2(g) of Regulation T of the Board of Governors of the Federal Reserve System.)

- (C) Cash Transactions With Customers—Special Provisions—When a customer purchases an issued "exempted" security from or through an ETP Holder, in a cash account, full payment shall be made promptly. If, however, delivery or payment therefore is not made promptly after the trade date, a deposit shall be required as if it were a margin transaction, unless it is a transaction with a bank, trust company, insurance company, investment trust or charitable or nonprofit educational institution.

In connection with any net position resulting from any transaction in issued "exempted" securities made for an ETP Holder or a non-ETP broker-dealer, or made for or with a bank, trust company, insurance company, investment trust or charitable or non-profit educational institution, no margin need be required and such net position need not be marked to market. However, where such net

position is not marked to the market, an amount equal to the loss at the market in such position shall be considered as cash required to provide margin in the computation of the net capital of the ETP Holder under the Corporation's capital requirements.

- (3) Joint Accounts in Which the Carrying Firm or a Partner or Stockholder Therein Has an Interest—In the case of a joint account carried by a firm, in which such firm, or any partner, ETP Holder, Allied Person or any stockholder (other than a holder of freely transferable stock only) of such ETP Holder participate with others, the interest of each participant other than the carrying ETP Holder shall be margined by each such participant pursuant to the provisions of this Rule as if such interest were in a separate account.
- (4) Offsetting "Long" and "Short" Positions in the Same Security (Excluding OPTIONS). No margin shall be required on either position if delivery has been made by the use of the "long" securities. Otherwise, the minimum margin shall be 10% of the market value of the "long" securities. In determining such margin requirement "short" positions shall be marked to the market.
- (5) Market Maker Accounts
- (A) The account of an ETP Holder in which are effected only transactions in securities in which he is a Market Maker may be carried upon a margin basis which is satisfactory to the Market Maker and the ETP Holder. The amount of any deficiency between the margin deposited by the Market Maker and the haircut requirements of SEC Rule 15c3-1 shall be considered as a debit item in the computation of the net capital of ETP Holders under the Corporation's capital requirements.
- (B) In the case of joint accounts carried by an ETP Holder for Market Makers, in which the ETP Holder participates, the margin deposited by the other participants may be in any amount which is mutually satisfactory. The amount of any deficiency between the amount deposited by the other participant, or participants, based upon their proportionate share of the haircut requirements of SEC Rule 15c3-1, shall be considered as a debit item in the computation of the net capital of ETP Holders under the Corporation's capital requirements.
- (6) Broker/Dealer Accounts
- (A) An ETP Holder may carry the proprietary account of another broker-dealer that is registered with the Securities and Exchange Commission, upon a margin basis that is satisfactory to both parties, provided the requirements of Regulation T of the Board of Governors of the Federal Reserve System are adhered to and the account is not carried in a deficit equity condition. The amount of any deficiency between the equity maintained in the account and the haircut requirements of SEC

Rule 15c3-1 shall be deducted in computing the Net Capital of the ETP Holder under the Corporation's Capital Requirements.

(B) *Joint Back Offices Arrangements.* An arrangement may be established between two or more registered broker-dealers pursuant to Regulation T, Section 220.11 to form a joint back office ("JBO") arrangement for carrying and clearing, or carrying accounts of participating broker-dealers. ETP Holders must provide written notification to the Corporation prior to establishing a JBO.

(i) A carrying and clearing, or clearing ETP Holder must:

- (a) maintain a minimum Tentative Net Capital of \$25 million as computed pursuant to SEC Rule 15c3-1, except that an ETP Holder whose primary business consists of the clearance of options market-maker accounts, may carry JBO accounts provided that it does not allow its Net Capital, as computed pursuant to SEC Rule 15c3-1, to fall below \$7 million for a period in excess of three consecutive business days. In addition, the ETP Holder must include in its ratio of gross options market maker deductions to Net Capital required by the provisions of SEC Rule 15c3-1, gross deductions for JBO participant accounts. Clearance of options market maker accounts shall be deemed to be a broker-dealer's primary business if a minimum of 60% of the aggregate deductions in the above ratio are options market maker deductions;
- (b) maintain a written risk analysis methodology for assessing the amount of credit extended to participating broker-dealers which shall be made available to the Corporation upon request; and
- (c) deduct from Net Capital haircut requirements pursuant to SEC Rule 15c3-1 in excess of the equity maintained in the accounts of participating broker-dealers.

(ii) A participating broker-dealer must:

- (a) be a registered broker-dealer subject to the SEC's Net Capital Rule;
- (b) maintain an ownership interest in the carrying/clearing ETP Holder pursuant to Regulation T, Section 220.11; and
- (c) maintain a minimum liquidating equity of \$1 million in the Joint Back Office arrangement exclusive of the ownership interest established in (b) above. When the minimum liquidating equity decreases below the \$1 million requirement, the participant must deposit an amount sufficient to eliminate this deficiency within 5 business days. If funds or securities sufficient to eliminate the deficiency are not received within 5 business days, the carrying

organization must margin the account in accordance with the requirements prescribed for a customer in Regulation T.

- (d) If at any time a clearing ETP Holder operating pursuant to subsection 6(b)(1)(a) above determines that its tentative net capital or that its net capital, respectively, has fallen below the applicable requirements, such clearing ETP Holder must immediately notify the Corporation of such deficiency by telegraphic or facsimile notice; and such clearing ETP Holder will be subject to the prohibitions against withdrawal of equity capital set forth in SEC Rule 15c3-1(e) and to the prohibitions against reduction, prepayment, and repayment of subordination agreements set forth in paragraph (b)(1) of SEC Rule 15c3-1, as if such broker or dealer's net capital were below the minimum standards specified by each of these paragraphs.

Rule 4.15(d). Other Provisions

Determination of Value for Margin Purposes.

- (1) Active securities dealt in on a recognized exchange shall, for margin purposes, be valued at current market prices. Other securities shall be valued conservatively in the light of current market prices and the amount which might be realized upon liquidation. Substantial additional margin must be required in all cases where the securities carried are subject to unusually rapid or violent changes in value, or do not have an active market on a recognized exchange, or where the amount carried is such that it cannot be liquidated promptly.

To qualify for margin value, securities shall be in negotiable form and, except for bearer securities, shall be registered in street name (firm name, or firm agent, or firm nominee or in process of being transferred to such) after constructive receipt thereof. A cash margin deficiency shall be treated as a debit item in the computation of net capital.

- (2) Puts, Calls Other Options, Currency Warrants, Currency Index Warrants and Stock Index Warrants.

- (A) Except as provided below, no put, call, currency warrant, currency index warrant or stock index warrant carried for a customer shall be considered of any value for the purpose of computing the margin required in the account of such customer.
- (B) The issuance, guarantee or sale (other than a "long" sale) for a customer of a put or a call shall be considered as a security transaction subject to Rule 4.15(a). The short sale for a customer of a currency warrant, currency index warrant or stock index warrant shall be considered as a security transaction subject to paragraph (a) of this Rule 4.15.

(C) For purposes of this paragraph (2), obligations issued by the United States Government shall be referred to as United States Government obligations. Mortgage pass-through obligations guaranteed as to timely payment of principal and interest by the Government National Mortgage Association shall be referred to as GNMA obligations. The terms "current market value" or "current market price" of an option shall mean the total cost or net proceeds of the option contract on the day the option was purchased or sold and at any other time shall be the preceding business day's closing price of that option (times the appropriate unit of trading or multiplier) as shown by any regularly published reporting or quotation service. The term "exercise settlement amount" shall mean the difference between the "aggregate exercise price" and the "aggregate current index value" (as such terms are defined in Article XVII of the By-Laws of The Options Clearing Corporation.)

The term "stock option (contract)" shall mean an option contract on a single stock. The term "index stock group option (contract)" shall mean an option contract on an index stock group.

Definitions

The term "currency call warrant" means a warrant structured as a call on the underlying foreign currency.

The term "currency index warrant" means a warrant structured as a call on the underlying currency index group.

The term "currency index put warrant" means a warrant structured as a put on the underlying currency index group.

The term "currency put warrant" means a warrant structured as a put on the underlying foreign currency.

The term "currency warrant," "currency index group," "currency index warrant," "stock warrant group" and "stock index warrant" when used in reference to a currency, currency index or stock index warrant shall have the meanings that Rule 8 assigns to them.

The terms "current market value" and "current market price" when used in reference to an option contract, currency warrant, currency index warrant or stock index warrant, shall mean the total cost or net proceeds of the option contract, currency warrant, currency index warrant or stock index warrant on the day it was purchased or sold and at any other time shall mean the preceding business day's closing price of that option contract, currency warrant, currency index warrant or stock index warrant indicated by any regularly published reporting or quotation service multiplied by the applicable multiplier in the case of an option contract or, in the case of a currency warrant, the units of underlying currency per warrant.

The term "index group value" in respect of a currency index warrant means the numerical index value of a particular currency index multiplied by \$1.00 U.S. with the product thereof divided by the applicable divisor stated in the prospectus, if any. The term "index group value" in respect of a stock index warrant means the numerical index value of a particular index multiplied by \$1.00 U.S. with the product thereof divided by the applicable divisor stated in the prospectus, if any.

The term "index stock group option (contract)" shall mean an option contract on an index stock group.

The term "numerical index value" in respect of a currency index warrant means the level of a particular currency index as reported by the reporting authority for the index. The term "numerical index value" in respect of a stock index warrant means the level of a particular index as reported by the reporting authority for the index.

The term "reporting authority" in respect of a currency index warrant means the institution or reporting service specified in the prospectus as the official source for calculating and reporting the levels of such currency index. The term "reporting authority" in respect of a stock index warrant means the institution or reporting service specified in the prospectus as the official source for calculating and reporting the levels of such stock index.

The term "spot price" in respect of a currency warrant means the noon buying rate per U.S. \$1.00 in New York City for cable transfers of the particular underlying currency as certified for customs purposes by the Federal Reserve Bank of New York.

The term "stock index call warrant" means a warrant structured as a call on the underlying stock index group.

The term "stock index put warrant" means a warrant structured as a put on the underlying stock index group.

The term "stock option (contract)" shall mean an option contract on a single stock.

The terms "strike price" or "exercise price" in respect of a currency warrant means the price per unit of underlying currency specified in the prospectus.

The terms "strike price" or "exercise price" in respect of a currency index warrant mean the index group value specified in the prospectus. The terms "strike price" or "exercise price" in respect of a stock index warrant mean the index group value specified in the prospectus. The term "unit of underlying currency" in respect of a currency warrant means a single unit of the currency covered by a warrant (e.g., one British pound, one German mark, etc.).

(D) The margin on any put, call, currency warrant, currency index warrant or stock index warrant issued, guaranteed or carried "short" in a customer's account shall be:

- (i) In the case of puts and calls listed or traded on a registered national securities exchange or a registered securities association and issued by a registered clearing corporation, 100% of the current market value of the option plus the percentage of the current market value of the underlying security or index specified in column II of this subsection (D)(i) below.

Notwithstanding the margin required below, the minimum margin on any put or call issued, guaranteed or carried "short" in a customer's account may be reduced by any "out-of-the-money amount" (as defined in this subparagraph (D)(i) below), but shall not be less than 100% of the current market value of the option plus the percentage of the current market value of the underlying security or index specified in column III of this subsection D(i) below.

<i>I</i> <i>Security or Index</i>	<i>II</i> <i>Initial and/or Maintenance Margin Required</i>	<i>III</i> <i>Minimum Margin Required</i>	<i>IV</i> <i>Underlying Component Value</i>
(1) Stock	20%	10%	The equivalent number of shares at current market prices
(2) Industry index stock group	20%	10%	The product of the current index group value and the applicable index multiplier
(3) Broad index stock group	15%	10%	The product of the current index group value and the applicable index multiplier
(4) U.S. Treasury Bills— 95 days or less to maturity	3.5%	1/20%	The underlying principal amount
(5) U.S. Treasury notes	3%	1/2%	The underlying principal amount
(6) U.S. Treasury bonds	3.5%	1/2%	The underlying principal amount
(7) Foreign Currencies:			
Australian dollar	4%	3/4%	The product of units per
British pound	4%	3/4%	foreign currency
Canadian dollars	1%	3/4%	contract and the

			closing
German marks	4%	3/4%	spot price
European			
Currency Unit	4%	3/4%	
French franc	4%	3/4%	
Japanese yen	4%	3/4%	
Swiss franc	4%	3/4%	
(8) Stock index warrant put or call	15%	10%	The product of the current index group value and the applicable index multiplier
(9) Currency warrant put or call			The product of the units of underlying currency per warrant and the spot price of such currency
Australian dollar	4%	3/4%	The product of units per
British pound	4%	3/4%	foreign currency
Canadian dollars	4%	3/4%	contract and the closing
German marks	4%	3/4%	spot price
European Currency Unit	4%	3/4%	
French franc	4%	3/4%	
Japanese yen	4%	3/4%	
Swiss franc	4%	3/4%	
(10) Currency index warrant put or call:			

The applicable margin requirements for currency index warrants shall be determined on a case-by-case basis and shall be subject to approval by the Securities and Exchange Commission.

For the purposes of this subsection (D)(i), "out-of-the-money amounts" are determined as follows:

<i>Option Issue</i>	<i>Call</i>	<i>Put</i>
Stock options	Any excess of the aggregate exercise price of the option over the	Any excess of the current market value of the equivalent number

	current market value of the equivalent number of shares of the underlying security.	of shares of the underlying security over the aggregate exercise price of the option.
U.S. Treasury options	Any excess of the aggregate exercise price of the option over the current market value of the underlying principal amount.	Any excess of the current market value of the underlying principal amount over the aggregate exercise price of the option.
Index stock group options	Any excess of aggregate exercise price of the option over the product of the current index group value and the applicable multiplier.	Any excess of the product of the current index group value and the applicable multiplier over the aggregate exercise price of the option.
Foreign currency options	Any excess of the aggregate exercise price of the option over the product of units per foreign currency contract and the closing spot prices.	The product of units per foreign currency contract and the closing spot prices over the aggregate price of the option.

If the option contract provides for the delivery of obligations with different maturity dates or coupon rates, the computation of the "out-of-the-money amount" if any, where required by this Rule, shall be made in such a manner as to result in the highest margin requirement on the short option position.

<i>Warrant Issue</i>	<i>Call</i>	<i>Put</i>
Stock index warrant put call	Any excess of the strike price of the warrant over the current index group value	Any excess of the current index group value over the strike or price of the warrant.
Currency warrant put or call	Any excess of the strike price of the warrant over the product of the units of underlying currency per warrant and the spot price of the currency	Any excess of the product of the units of underlying currency per warrant and the spot price over the strike price of the warrant
Currency index warrant put or call	Any excess of strike price of the warrant over the index group value	Any excess of the product of the product over the strike price of

the warrant

- (ii) In the case of puts and calls listed or traded on a registered national securities exchange or a registered securities association and issued by a registered clearing corporation which represents options on GNMA obligations in the principal amount of \$100,000, 130% of the current market value of the option plus \$1,500, except that the margin required need not exceed \$5,000 plus the current market value of the option.
 - (iii) In the case of puts and calls not traded on a registered national securities exchange and not issued by a registered clearing corporation and representing stock options or index stock group options, 100% of the option premium received plus 45% of the current market value of the equivalent number of shares of the underlying security or the product of the current index group value of the underlying index stock group and the applicable index multiplier, reduced by any excess of the exercise price over the current market value of the underlying security or the product of the current index group value of the underlying index stock group and the applicable multiplier, in the case of a call, or any excess of the current market value of the underlying security or the product of the current index group value of the underlying index stock group and the applicable multiplier, over the exercise price, in the case of a put. In either case, the minimum margin shall not be less than 100% of the option premium received plus 10% of the current market value of the equivalent number of shares of the underlying security or the product of the current index group value of the underlying index stock group and the applicable index multiplier.
- (E) Each such put or call shall be margined separately and any difference between the market price of the underlying security and the exercise price of a put or call shall be considered to be of value only in providing the amount of margin required on that particular put or call. Substantial additional margin must be required on options issued, guaranteed or carried "short" with an unusually long period of time to expiration (generally, more than six months and ten days), or written on securities which are subject to unusually rapid or violent changes in value, or which do not have an active market, or where the securities subject to the option cannot be liquidated or acquired promptly.
- (F)
- (1) If both a put and call specifying the same number of shares of the same underlying security, the same principal amount of the same United States Government obligation or the same index multiplier for the same index stock group are issued, guaranteed or carried "short" for a customer, the amount of margin required shall be the margin on the put or call whichever is greater, as required pursuant to (D)(i) above, plus 100% of the current market value of the other option. The minimum margin requirement, however, shall not apply to the other option.

(2) If both a put and call for the same GNMA obligation in the principal amount of \$100,000 are issued, guaranteed or carried "short" for a customer, the amount of margin required shall be the margin on the put or call whichever is greater, as required pursuant to (D)(ii) above, plus the current market value of the other option.

(3) When a "short" position in a stock index call warrant is offset by a "short" position of equivalent underlying value in a stock index put warrant or stock index put option issued by the Options Clearing Corporation on the same index, or a "short" position in a stock index put warrant is offset by a "short" position of equivalent underlying value in a stock index call warrant or a "short" stock index call option issued by the Options Clearing Corporation on the same index, the margin required shall be the margin on the put or the call, whichever is greater, plus the current market value of the other position.

(4) When a "short" position in a currency call warrant is offset by a "short" position of equivalent underlying value in currency put warrant or currency put option issued by the Options Clearing Corporation on the same currency or a "short" position in a currency put warrant is offset by a "short" position of equivalent underlying value in a currency call warrant or a "short" call issued by the Options Clearing Corporation on the same currency, the margin required shall be the margin on the put or the call, whichever is greater, plus the current market value of the other position. This same offset provision shall also be available to "short" call or put positions in currency index warrants.

(G) Spreads in Listed Options, Currency Warrants and Index Warrants

(1) Where a call that is listed or traded on a registered national securities exchange or registered securities association is carried "long" for a customer's account and the account is also "short" a call listed or traded on a registered national securities exchange, expiring on or before the date of expiration of the "long" listed call and specifying the same number of shares of the same underlying security, the same principal amount of the same United States Government obligation or the same index multiplier for the same index stock group, the margin required on the "short" call shall be the lower of (i) the margin required pursuant to (D)(i) above, in the case of stock options, United States Government obligations, or index stock group options or (ii) the amount, if any, by which the exercise price of the "long" call exceeds the exercise price of the "short" call.

For the purposes of this subparagraph (1), in instances where the exercise value of the "short" call equals or exceeds the exercise value of "long" call, no margin need be required.

(2) Where a put that is listed or traded on a registered national securities exchange or registered securities association is carried "long" for a customer's account and the account is also "short" a put listed or traded on a registered national securities

exchange, expiring on or before the date of expiration of the "long" listed put and specifying the same number of shares of the same underlying security or the same principal amount of the same United States Government obligations or the same index multiplier for the same index stock group, the margin required on the "short" put shall be the lower of (i) the margin required pursuant to (D)(i) above, in the case of stock options, United States Government obligations, or index stock group options or (ii) the amount, if any, by which the exercise price of the "short" put exceeds the exercise price of the "long" put.

For purposes of this subparagraph (2), in instances where the exercise value of the "long" put equals or exceeds the exercise value of the "short" put, no margin need be required.

- (3) Where a call that is listed or traded on a registered national securities exchange or registered securities association is carried "long" for a customer's account and the account is also "short" a call listed or traded on a registered national securities exchange, expiring on or before the date of expiration of the "long" listed call and, written on the same GNMA obligation in the principal amount of \$100,000, the margin required on the "short" call shall be the lower of (i) the margin required pursuant to (D)(ii) above or (ii) the amount, if any, by which the exercise price of the "long" call exceeds the exercise price of the "short" call multiplied by the appropriate multiplier factor set forth below.
- (4) When a "long" position in a stock index call warrant is offset by a "short" position of equivalent underlying value in a stock index call warrant or a "short" stock index call option on the same index and the "long" position expires no earlier than the "short" position, the margin required shall be the amount, if any, by which the strike price on the "long" position exceeds the strike price of the "short" position.
- (5) When a "long" position in a stock index put warrant is offset by a "short" position of equivalent underlying value in a stock index put warrant or a "short" stock index put option issued by the Options Clearing Corporation on the same index and the "long" position expires not earlier than the "short" position, the margin required shall be the amount, if any, by which the strike price of the "short" position exceeds the strike price of the "long" position.
- (6) When a "long" position in a currency call warrant is offset by a "short" position of equivalent underlying value in a currency call warrant or a "short" currency call option issued by the Options Clearing Corporation on the same currency and the "long" position expires no earlier than the "short" position, the margin required shall be the amount, if any, by which the strike price of the "long" position exceeds the strike price of the "short" position, times the units of underlying currency per warrant. This same offset provision shall also be available to call positions in currency index warrants.

(7) When a "long" position in a currency put warrant is offset with a "short" position of equivalent underlying value in a currency put warrant or a "short" currency put option issued by the Options Clearing Corporation on the same currency and the "long" position expires not earlier than the "short" position, the margin required shall be the amount, if any, by which the strike price of the "short" position exceeds the strike price of the "long" position times the units of underlying currency per warrant. This same offset provision shall also be available to put positions in currency index warrants.

Where a put that is listed or traded on a registered national securities exchange or registered securities association is carried "long" for a customer's account and the account is also "short" a put listed or traded on a registered national securities exchange, expiring on or before the date of expiration of the "long" listed put and, written on the same GNMA obligation in the principal amount of \$100,000, the margin required on the "short" put shall be the lower of (iii) the margin required pursuant to (D)(ii) above or (iv) the amount, if any by which the exercise price of the "short" put exceeds the exercise price of the "long" put multiplied by the appropriate multiplier factor set forth below.

For purposes of this subparagraph (G)(3), the multiplier factor to be applied shall depend on the then current highest qualifying rate as defined by the rules of the national securities exchange on which the option is listed or traded.

If the then current highest qualifying rate is less than 8%, the multiplier factor shall be 1; if the then current highest qualifying rate is greater than or equal to 8% but less than 10%, the multiplier factor shall be 1.2; if the then current highest qualifying rate is greater than or equal to 10% but less than 12%, the multiplier factor shall be 1.4; if the then current highest qualifying rate is greater than or equal to 12%, but less than 14%, the multiplier factor shall be 1.5; if the then current highest qualifying rate is greater than or equal to 14%, but less than 16%, the multiplier factor shall be 1.6; and if the then current highest qualifying rate is greater than or equal to 16%, but less than or equal to 18%, the multiplier factor shall be 1.7. The multiplier factor or factors for higher qualifying rates shall be established by the Corporation as required.

(H) "Long" and "Short" Positions in Securities and Options.

(1) "Long" Stock and "Short" Call—

Where a call is issued, guaranteed or carried "short" against an existing net "long" position in the underlying stock, no margin need be required on the "short" call, provided such net "long" stock position is adequately margined in accordance with this Rule.

(2) "Long" Exchangeable or Convertible Security and "Short" Call—

Where a call is issued, guaranteed or carried "short" against an existing net "long" position in any security (excluding options) exchangeable or convertible within a reasonable time without restriction other than the payment of money into the security under option, no margin need be required on the "short" call, provided such net "long" security position is adequately margined in accordance with this Rule, except that margin shall also be required on the "short" call equal to any amount by which the conversion price of the net "long" security position exceeds the exercise price of the call.

For purposes of this subparagraph (2), no offsetting value may be given to a long position in an exchangeable or convertible security if the rights of the holder thereof to effect such exchange or conversion will expire prior to the expiration date of the related option contracts carried "short" in such account.

(3) "Specific Deposit" or "Escrow Deposit" —

To the extent that a short option contract is covered by a "specific deposit" or an "escrow deposit" of shares of the underlying stock represented by such option contract, no margin shall be required on the short option; provided, however, that in the case of a specific deposit, if such shares are carried in a margin account, they are margined in accordance with the provisions of this Rule. Where the short option contract is covered by an "escrow deposit", executed and delivered to the Options Clearing Corporation, the underlying stock deposited in respect of such option contract shall not be deemed to have any value for margin purposes. A deposit of shares of the underlying stock represented by an option contract shall be deemed a "specific deposit" or "escrow deposit" for the purposes of this Rule if the agreements required by the Rules of the Options Clearing Corporation have been executed and delivered to the Options Clearing Corporation.

(4) "Short" Stock and "Short" Put—

Where a put is issued, guaranteed or carried "short" against an existing net "short" position in the stock under option, no margin need be required on the "short" put, provided such net "short" stock position is adequately margined in accordance with this Rule.

(5) Bank Guarantee Letters—

No margin need be required in respect of a put option contract carried in a "short" position where the customer has delivered to the ETP Holder with which such position is maintained a letter of guarantee issued by a bank approved to issue escrow receipts under Rule 610 of the Rules of the Options Clearing Corporation, in form satisfactory to the Corporation, which certifies that such bank holds on deposit for the account of the customer cash in the full amount of the aggregate exercise price of such put option contract, and that such amount will be paid to the

ETP Holder against delivery of the underlying security covered by such put option contract.

(6) No margin is required in respect of a warrant on a market index carried in a short position where the customer has delivered, promptly after the warrant has been sold short, to the ETP Holder with which such position is maintained, a Market Index Warrant Escrow Receipt in a form satisfactory to the Corporation, issued by a bank or trust company pursuant to specific authorization from the customer certifying that the issuer of the agreement holds for the account of the customer: (1) cash, (2) cash equivalents, (3) one or more qualified equity securities, or (4) a combination thereof; that such deposit has an aggregate market value, at the time the warrant has been sold short, of not less than 100% of the aggregate currency index value; and that the issuer will promptly pay the ETP Holder the exercise settlement amount in the event the account is assigned an exercise notice.

(7) Determining Net "Long" and Net "Short" Positions—

In determining net "long" and net "short" positions, in the underlying securities, offsetting "long" and "short" positions in exchangeable or convertible securities or in the same security, as discussed in Rule 4.15(c)(1) and Rule 4.15(c)(4), shall be deducted.

In computing margin on such an existing net position in the underlying security, including a specific deposit, carried against a put or call, the current market price to be used shall not be greater than the call price in the case of a call or less than the put price in the case of a put.

Under this subparagraph (G), therefore, in the case of so-called "convertible hedge" positions (i.e., where a security, other than an option, carried in a "long" position is exchangeable or convertible within a reasonable time, without restriction other than the payment of money, into a security carried in a "short" position) or "short against the box" positions in a customer's account, neither the "long" nor "short" position is available for purposes of offsetting the margin required on any option position carried for such customer.

(I) When an ETP Holder issues or guarantees an option to receive or deliver securities for a customer, such option shall be margined as if it were a put or call.

(J) Option Specialists, Market Makers and Traders. Notwithstanding the other provisions of this sub-section (d)(2), an ETP Holder may clear and carry the listed option transactions of one or more registered specialists, registered market makers or registered traders in options (which registered traders are deemed specialists for all purposes under the Securities Exchange Act of 1934 pursuant to the rules of a national securities exchange) (hereafter referred to as "specialist(s)"), upon a "Good Faith" margin basis satisfactory to the concerned parties, provided the "Good Faith" margin requirement is not less than the Net Capital haircut deduction of the ETP

Holder carrying the transaction pursuant to SEC Rule 15c3-1. In lieu of collecting the "Good Faith" margin requirement, a carrying ETP Holder may elect to deduct in computing its net capital the amount of any deficiency between the equity maintained in the account and the "Good Faith" margin required.

For purposes of the subsection (d)(2)(J), a permitted offset position means, in the case of an option in which a specialist makes a market, a position in the underlying asset or other related assets, and in the case of other securities in which a specialist makes a market, a position in options overlying the securities in which a specialist makes a market. Accordingly, a specialist in options may establish, on a share-for-share basis, a long or short position in the securities underlying the options in which the specialist makes a market, and a specialist in securities other than options may purchase or write options overlying the securities in which the specialist makes a market, if the account holds the following permitted offset positions:

- (i) a short option position that is "in or at the money" and is not offset by a long or short option position for an equal or greater number of shares of the same underlying security that is "in the money";
- (ii) a long option position that is "in or at the money" and is not offset by a long or short option position for an equal or greater number of shares of the same underlying security that is "in the money";
- (iii) a short option position against which an exercise notice was tendered;
- (iv) a long option position that was exercised;
- (v) a net long position in a security (other than an option) in which a specialist makes a market;
- (vi) a net short position in a security (other than an option) in which a specialist makes a market; or
- (vii) a specified portfolio type as referred to in SEC Rule 15c3-1, including its appendices, or any applicable SEC staff interpretation or no-action position.

Permitted offset transactions must be effected for market making purposes such as hedging, risk reduction, rebalancing of positions, liquidation, or accommodation of customer orders, or other similar market making purposes.

For purposes of this paragraph (d)(2)(J), the term "in or at the money" means the current market price of the underlying security is not more than two standard exercise intervals below (with respect to a call option) or above (with respect to a put option) the exercise price of the option; and, the term "overlying option" means a put option purchased or a call option written against a long position in an

underlying asset; or a call option purchased or a put option written against a short position in an underlying asset.

Securities, including options, in such accounts shall be valued conservatively in the light of current market prices and the amount that might be realized upon liquidation. Substantial additional margin must be required or excess net capital maintained in all cases where the securities carried: (i) are subject to unusually rapid or violent changes in value including volatility in the expiration months of options, (ii) do not have an active market, or (iii) in one or more or all accounts, including proprietary accounts combined, are such that they cannot be liquidated promptly or represent undue concentration of risk in view of the carrying organization's net capital and its overall exposure to material loss.

(K) The Corporation may at any time impose higher margin requirements with respect to any option or warrant position(s) if it deems such higher margin requirements are appropriate.

(L) Exclusive designation - A customer may designate at the time an option order is entered which security position held in the account is to serve in lieu of the required margin, if such service is offered by the ETP Holder; or the customer may have a standing agreement with the ETP Holder as to the method to be used for determining on any given day which security position will be used in lieu of the margin to support an option transaction. Any security held in the account that serves in lieu of the required margin for a short put or short call shall be unavailable to support any other option transaction in the account.

(M) Cash account transactions.—An ETP Holder may make option transactions in a customer's cash account, providing:

(i) The transaction is permissible under Section 220.8 of Regulation T of the Board of Governors of the Federal Reserve System; and

(ii) The transaction is a debit put spread in listed broad-based index options with European-style exercise comprised of a long put(s) coupled with a short put(s) overlying the same broad-based index with an equivalent underlying aggregate index value and the short put(s) and long put(s) expire simultaneously, and the strike price of the long put(s) exceed the strike price of the short put(s).

(3) "When Issued" and "When Distributed" Securities—

(A) Margin Accounts

The minimum amount of margin on any transaction or net position in each "when issued" security shall be the same as if such security were issued.

Each position in a "when issued" security shall be margined separately and any unrealized profit shall be of value only in providing the amount of margin required on that particular position.

When an account has a "short" position in a "when issued" security and there are held in the account securities in respect of which the "when issued" security may be issued, such "short" position shall be marked to the market and the balance in the account shall for the purpose of this rule be adjusted for any unrealized loss in such "short" position.

(B) Cash Accounts

In connection with any transactions or net position resulting from contracts for a "when issued" security in an account other than that of an ETP Holder, non-ETP broker or dealer, bank, trust company, insurance company, investment trust, or charitable or non-profit educational institution, deposits shall be required equal to the margin required were such transaction or position in a margin account.

In connection with any net position resulting from contracts for a "when issued" security made for or with a non-ETP broker or dealer, no margin need be required, but such net position must be marked to the market.

In connection with any net position resulting from contracts for a "when issued" security made for an ETP Holder or for or with a bank, trust company, insurance company, investment trust, or charitable or non-profit educational institution, no margin need be required and such net position need not be marked to the market. However, where such net position is not marked to the market, an amount equal to the loss at the market in such position shall be considered as cash required to provide margin in the computation of the net capital of the ETP Holder under the Corporation's capital requirements.

The provisions of this subparagraph shall not apply to any position resulting from contracts on a "when issued" basis in a security

(i) which is the subject of a primary distribution in connection with a bona fide offering by the issuer to the general public for "cash", or

(ii) which is exempt by the Corporation as involving a primary distribution.

The term "when issued" as used herein also means "when distributed."

(4) Guaranteed Accounts—Any account guaranteed by another account may be consolidated with such other account and the required margin may be determined on the net position of both accounts, provided the guarantee is in writing and permits the ETP Holder carrying the account, without restriction, to use the

money and securities in the guaranteeing account to carry the guaranteed account or to pay any deficit therein; and provided further that such guaranteeing account is not owned directly or indirectly by (a) a partner, ETP Holder, Allied Person thereof or any stockholder (other than a holder of freely transferable stock only) in the firm carrying such account or (b) an ETP Holder, a partner, Allied Person, or any stockholder (other than a holder of freely transferable stock only) therein having a definite arrangement for participating in the commissions earned on the guaranteed account. However, the guarantee of a limited partner or of a holder of non-voting stock, if based upon his resources other than his capital contribution to or other than his interest in an ETP Holder is not affected by the foregoing prohibition, and such a guarantee may be taken into consideration in computing margin in the guaranteed account.

- (5) Consolidation of Accounts—When two or more accounts are carried for any person or entity, the required margin may be determined on the net position of said accounts, provided the customer has consented that the money and securities in each of such accounts may be used to carry, or pay any deficit in, all such accounts.
- (6) Time Within Which Margin, Deposit or "Mark to Market" Must Be Obtained—The amount of margin, deposit or "mark to market" required by any provision of this Rule shall be obtained as promptly as possible and in any event within a reasonable time.
- (7) Practice of Meeting Margin Calls by Liquidation Prohibited—No ETP Holder shall permit a customer to make a practice of effecting transactions requiring margin and then either deferring the furnishing of margin beyond the time when such transactions would ordinarily be settled or cleared, or meeting such demand for margin by the liquidation of the same or other commitments in his account.
- (8) Free Riding in Cash Accounts Prohibited—No ETP Holder shall permit a customer (other than a broker/dealer or bank, trust company, insurance company, investment trust, or charitable or non-profit educational institution) to make a practice, directly or indirectly, of effecting transactions in a cash account where the cost of securities purchased is met by the sale of the same securities. No ETP Holder shall permit such a customer to make a practice of selling securities which were purchased in a cash account at another broker-dealer and are not yet paid for. A customer shall not be deemed to be continuing this practice if for a period of 90 days (or less with the approval of the Corporation) no such transactions have taken place. An ETP Holder transferring an account which is under restraint to another broker-dealer shall inform the receiving broker-dealer of the restraint.
- (9) BOUNDS

- (A) Except as provided below, no BOUND carried for a customer shall be considered of any value for the purpose of computing the margin required in the account of such customer.
- (B) The issuance, guarantee or opening sale (writing) for a customer of a BOUND shall be considered as a security transaction subject to paragraph (a) of this Rule 4.15.
- (C) the terms "current market value" and "current market price," when used with reference to a BOUND, shall mean the total cost or net proceeds of the BOUND on the day it was purchased or sold and at any other time shall mean the preceding business day's closing price of that BOUND indicated by any regularly published reporting or quotation service.
- (D) Subject to the exception set forth in subparagraphs (F) through (J) of this paragraph (d)(9), the minimum margin on any BOUND issued, guaranteed or carried "short" in a customer's account shall be 100% of the BOUND price plus 20% of the market value of the BOUND, provided, however, that the maximum margin required on each such BOUND shall not exceed the strike price for such BOUND.
- (E) Except as provided below, each BOUND issued, guaranteed or carried "short" in a customer's account shall be margined separately.
- (F) When a BOUND is carried "short" for a customer's account and the account is also "long" a BOUND expiring on or before the expiration date of the "short" BOUND and written on the same number of shares of the same equity security, the minimum margin that must be maintained in respect of the "short" position shall be the lesser of (1) the margin required pursuant to subparagraph (D) of this paragraph (d)(9), or (2) the amount, if any, by which the strike price of the "short" BOUND exceeds the strike price of the "long" BOUND.
- (G)
- (i) When a BOUND is issued, guaranteed or carried "short" against an existing net "long" position in the security underlying the BOUND, or in any security which meets the requirements of Rule 6.1(a)(23) of the NYSE Arca Parent relating to covered options or in any security immediately exchangeable or convertible, other than warrants without restriction including the payment of money, into the security underlying the BOUND, no margin need be required on the BOUND, provided (1) such net "long" position is adequately margined in accordance with this Rule and (2) the right to exchange or convert the net "long" position does not expire on or before the expiration date of the "short" BOUND.

- (ii) When a BOUND and a LEAP with the same expiration and strike price are issued, guaranteed or carried "short" against an existing net "long" position in the security underlying the BOUND and LEAP, or in any security that meets the requirements of Rule 6.1(a)(23) of the NYSE Arca Parent relating to covered options or in any security immediately exchangeable or convertible, other than warrants without restriction including the payment of money, into the security underlying the BOUND and LEAP, no margin need be required on either the BOUND or the LEAP provided (1) such net "long" position is adequately margined in accordance with this Rule and (2) the right to exchange or convert the net "long" position does not expire on or before the expiration date of the "short" BOUND or LEAP.
- (iii) When a BOUND is issued, guaranteed or carried "short" against an existing net "long" position in a warrant convertible into an equivalent number of shares of the same underlying equity security, margin shall be required on the same BOUND equal to the lesser of (1) the margin required pursuant to subparagraph (D) of this Paragraph (d)(9), or (2) the amount, if any, by which the conversion price of the "long" warrant exceeds the strike price of the "short" BOUND, provided such net "long" position is adequately margined in accordance with this Rule and the right to convert the net "long" position does not expire on or before the date of expiration of the "short" BOUND. Such warrants shall have no value for purposes of this Rule.
- (iv) In determining net "long" and "short" positions for purposes of subparagraphs (G)(i) and (ii) above, offsetting "long" and "short" positions in exchangeable or convertible securities (including warrants) or in the same security, as discussed in paragraphs (c)(1) and (c)(4) of this Rule, shall be deducted. In computing margin on such existing net security position carried against a "short" BOUND, the current market price to be used shall not be greater than the strike price, and the required margin shall be increased by an unrealized loss on the short security position.
- (H) Notwithstanding the other provisions of this paragraph (d)(9), the account of a person in which are effected only transactions in which such person is registered and acts as a specialist or market maker on an exchange, and the account of a registered trader containing only transactions effected by him in his capacity as a registered trader, may be cleared and carried on a margin basis which is satisfactory to the specialist, market maker or registered trader and the ETP Holder carrying the account.
- (I) The Corporation may at any time impose higher margin requirements than those set forth above in respect to any BOUND position(s) when it deems such higher margin requirements are appropriate.

Commentary:

.01 The margin treatment for spread positions pursuant to subsections (F)(3), (F)(4), and (G)(4)-(G)(7) of Rule 4.15(d)(2) is subject to a one-year pilot program scheduled to begin August 29, 1995.

Rule 4.16. Notice to Corporation

An ETP Holder commencing to carry margin accounts shall immediately notify the Corporation in writing.

Rule 4.17. Location of Records

An ETP Holder shall maintain at its main office the daily margin record required by Rule 4.14(a). An ETP Holder maintaining margin records at two or more offices shall maintain such records at each office for inspection.

Rule 4.18. Determination of Margin

Margin requirements shall be determined pursuant to Rule 4.14.

Rule 4.19. Fidelity Bonds

(a) Each ETP Holder which transacts business with the public or clears transactions for other ETP Holders shall carry fidelity bonds in such form and in such amounts as the Corporation may require covering the sole proprietor ETP Holder, or, in the case of an ETP Holder organization, its general partners or officers and its employees.

(b) ETP Holders subject to this Rule are required to maintain basic and specific coverages in amounts not less than those prescribed in this Rule. Where applicable such coverage must also extend to limited partners as employees, and outside organizations providing electronic data processing services and the handling of U.S. Government securities in bearer form.

(c) Each ETP Holder that introduces customers' accounts on a fully disclosed basis must maintain coverage as follows:

(i) Minimum basic coverage for such ETP Holder whose net capital requirement under Rule 4:

A. does not exceed \$670,000 shall be the greater of \$25,000 or 120% of their net capital requirement.

B. exceeds \$670,000 shall be determined by the schedule set forth in paragraph (d) of this Rule.

(ii) Specific coverage for such ETP Holders shall be as follows:

- A. Misplacement and Check Forgery—the amount of the basic bond minimum requirement.
- B. Fraudulent Trading (not required of ETP Holders, those not associated with an ETP Holder or partnerships having no employees)—the greater of \$25,000 or 50% of the basic bond minimum requirement, up to \$500,000.
- C. Security Forgery—the greater of \$25,000 or 25% of the basic bond minimum requirement, up to \$250,000.

(d) Each ETP Holder which carries customers' accounts or clears transactions for other ETP Holders must maintain coverage as follows:

- (i) Minimum basic coverage for such ETP Holder shall be based on their net capital requirement under Rule 4 as follows:

<i>Net Capital Requirement Under Rule 4</i>	<i>Basic Minimum Coverage</i>
\$25,000—\$50,000	\$200,000
\$50,001—\$100,000	\$300,000
\$100,001—\$200,000	\$500,000
\$200,001—\$300,000	\$600,000
\$300,001—\$500,000	\$700,000
\$500,001—\$1,000,000	\$800,000
\$1,000,001—\$2,000,000	\$1,000,000
\$2,000,001—\$3,000,000	\$1,500,000
\$3,000,001—\$4,000,000	\$2,000,000
\$4,000,001—\$6,000,000	\$3,000,000
\$6,000,001—\$12,000,000	\$4,000,000
\$12,000,001 and higher	\$5,000,000

- (ii) Specific coverages for such ETP Holder shall be as follows:

- A. Misplacement and Check Forgery—the amount of the basic bond minimum requirement.
- B. Fraudulent Trading (not required of partnerships having no employees)—the greater of \$100,000 or 50% of the basic bond minimum requirement, up to \$500,000.
- C. Security Forgery—the greater of \$100,000 or 25% of the basic bond minimum requirement, up to \$250,000.

(iii) Misplacement, Fraudulent Trading, Check Forgery and Securities Forgery.

A. Each ETP Holder shall be expected to review carefully any need for coverage greater than that provided by the required minimums. Where experience or the nature of the business warrants additional coverage, the Corporation expects the ETP Holder to acquire it.

B. ETP Holders required to carry the above form(s) of insurance shall advise the Corporation in writing if such insurance is entirely or partially canceled.

(e) The highest net capital requirement during the preceding twelve months, based upon either the basic or alternative method for computing net capital requirements, whichever is applicable, and which shall be recalculated on an annual basis, shall determine the minimum required coverage for the succeeding twelve-month period.

RULE 5 LISTINGS

Section 1. General Provisions and Definitions

Rule 5.1(a). General Provisions and Unlisted Trading Privileges.

(1) Only such securities as shall have been approved by the Board of Directors for listing or admission to unlisted trading privileges shall be dealt in on the Corporation. For the purposes of the Securities Exchange Act of 1934 ("Exchange Act"), securities traded on the Corporation shall be admitted to unlisted trading privileges or listed on the NYSE Arca Parent, subject to the NYSE Arca Parent's delegation of the responsibility for the administration and enforcement of the unlisted trading privileges and listing requirements to the Corporation. Unlisted trading privileges may be extended to any security that is an NMS Stock (as defined in Rule 600 of Regulation NMS under the Act) that is listed on another national securities exchange and any such security shall be subject to all the Exchange trading rules applicable to NMS Stocks, unless otherwise noted. Securities may be listed or admitted to unlisted trading privileges on a "when issued" or "when distributed" basis.

(2) *UTP Derivative Securities.* Any unlisted trading privileges 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 pursuant to Rule 19b-4(e) under the Exchange Act shall be subject to the additional following rules:

- (i) Form 19b-4(e). The Exchange shall file with the Securities and Exchange Commission a Form 19b-4(e) with respect to each UTP Derivative Security within five business days after commencement of trading.
- (ii) 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 is contained in the information circular provided

by the listing exchange, including (a) the special risks of trading the new derivative securities product, (b) the Exchange Rules that will apply to the new derivative securities product, including Rule 9.2(a)(2), (c) information about the dissemination of value of the underlying assets or indices, and (d) the risk of trading during the Opening session (1:00 a.m. - 6:30 a.m. Pacific Time) and the Late Trading Session (1:00 p.m. - 5:00 p.m. Pacific Time) due to the lack of calculation or dissemination of the intra-day indicative value or a similar value.

(iii) Product Description.

(A) Prospectus Delivery Requirements. ETP Holders 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 Securities and Exchange 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.

(B) Written Description of Terms and Conditions. The Exchange shall inform ETP Holders of the application of the provisions of this subparagraph to UTP Derivative Securities by means of an information circular. The Exchange requires that ETP Holders provide each purchaser 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 securities is delivered to such purchaser. In addition, ETP Holders 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 an ETP Holder 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*]."

An ETP Holder carrying an omnibus account for a non-ETP Holder is required to inform such non-ETP Holder that execution of an order to purchase UTP Derivative Securities for such omnibus account will be deemed to constitute an agreement by the non-ETP Holder to make such written description available to its customers on the same terms as are directly applicable to the ETP Holder under this Rule.

(C) Customer Requests for a Prospectus. Upon request of a customer, a ETP Holder shall also provide a prospectus for the particular UTP Derivative Security.

(iv) Trading Halts. If a temporary interruption occurs in the calculation or wide dissemination of the intraday indicative value (or similar value) or the value of the underlying index or instrument and the listing market halts trading in the product, the Exchange, upon notification by the listing market of such halt due to such temporary interruption, also shall immediately halt trading in that product on the Exchange. If the intraday indicative value (or similar value) or the value of the underlying index or instrument continues not to be calculated or widely available as of the commencement of trading on the Exchange on the next business day, the Exchange shall not commence trading of the product that day. If an interruption in the calculation or wide dissemination of the intraday indicative value (or similar value) or the value of the underlying index or instrument continues, the Exchange may resume trading in the product only if calculation and wide dissemination of the intraday indicative value (or similar value) or the value of the underlying index or instrument resumes or trading in such series resumes in the listing market. The Exchange also shall halt trading in a UTP Derivative Security listed on the Exchange for which a net asset value (and in the case of managed fund shares or actively managed exchange-traded funds, a "disclosed portfolio") is disseminated if the Exchange becomes aware that the net asset value or, if applicable, the disclosed portfolio is not being disseminated to all market participants at the same time. The Exchange shall maintain the trading halt until such time as the Exchange becomes aware that the net asset value and, if applicable, the disclosed portfolio is available to all market participants. Nothing in this rule shall limit the power of the Exchange under the Rules (including without limitation Rules 7.12, 7.13, 7.18, and 7.34) or procedures of the Exchange with respect to the Exchange's ability to suspend trading in any securities if such suspension is necessary for the protection of investors or in the public interest.

(v) (v) Market Maker Restrictions. The following restrictions shall apply to each ETP Holder registered as a Market Maker in a UTP Derivative Security that derives its value from one or more currencies, commodities, or derivatives based on one or more currencies or commodities, or is based on a basket or index composed of currencies or commodities (collectively, "Reference Assets"):

(A) The ETP Holder acting as a registered Market Maker in a UTP Derivative Security must file with the Exchange, in a manner prescribed by the Exchange, and keep current a list identifying all accounts for trading the underlying physical asset or commodity, related futures or options on futures, or any other related derivatives, which the ETP Holder acting as registered Market Maker may have or over which it may exercise investment discretion. No ETP Holder acting as registered Market Maker in the UTP Derivative Security shall trade in the underlying physical asset or commodity, related futures or options on futures, or any other related derivatives, in an account in which an ETP Holder acting as 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 the Exchange as required by this Rule.

(B) A Market Maker shall, in a manner prescribed by the Exchange, file with the Exchange and keep current a list identifying any accounts ("Related Instrument Trading Accounts") for which Related Instruments are traded:

- (1) in which the Market Maker holds an interest;
- (2) over which it has investment discretion; or
- (3) in which it shares in the profits and/or losses.

A Market Maker may not have an interest in, exercise investment discretion over, or share in the profits and/or losses of a Related Instrument Trading Account that has not been reported to the Exchange as required by this Rule.

(C) In addition to the existing obligations under Exchange rules regarding the production of books and records, a Market Maker shall, upon request by the Exchange, make available to the Exchange any books, records, or other information pertaining to any Related Instrument Trading Account or to the account of any registered or non-registered employee affiliated with the Market Maker for which Related Instruments are traded.

(D) A Market Maker shall not use any material nonpublic information in connection with trading a Related Instrument.

(vi) Surveillance. The Exchange shall enter into comprehensive surveillance sharing agreements with markets that trade 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 comprehensive surveillance sharing agreements with such markets.

Rule 5.1(b). Definitions

The following terms used in Rules 5.2 through 5.5 shall, unless otherwise indicated, have the meanings herein specified:

- (1) The term "security" means any security as defined in Rule 3(a)(10) under the Securities Exchange Act of 1934.
- (2) The term "equity security" shall include any equity security defined as such pursuant to Rule 3a11-1 under the Securities Exchange Act of 1934.
- (3) The term "domestic issuer" shall mean an issuer that is not a "foreign private issuer" as defined in Rule 3b-4 under the Securities Exchange Act of 1934.

- (4) The term "listed" and the phrase "listed on the Corporation" mean a security that has been listed on the NYSE Arca Parent pursuant to Section 12(b) of the Securities Act of 1934. Such security shall be listed pursuant to a formal application and request for such listing filed by the issuing company.
- (5) The term "beneficial holder" means any person who, directly or indirectly through any contract, arrangement, understanding, relationship, or otherwise has or shares:
 - (i) voting power that includes the power to vote or to direct the voting of, such securities; and/or
 - (ii) investment power that includes the power to dispose, or to direct the disposition of such security.
- (6) The term "public beneficial holder" means a beneficial holder, who, with respect to the issuer, is not a director or officer or member of the immediate family thereof or an affiliate or associate thereof, and whose ownership of an equity security is less than 5% of the total number of shares issued and outstanding.
- (7) The term "voting power outstanding" refers to the aggregate number of votes that 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.
- (8) The term "independent director" means a person other than an officer or employee of the company or its subsidiaries or any other individual having a relationship that, in the opinion of the board of directors, would interfere with the exercise of independent judgment in carrying out the responsibilities of a director.
- (9) The term "net worth" means the total assets (excluding the value of goodwill) less total liabilities.
- (10) The term "net tangible assets" means the amount of funds remaining after deducting intangible assets from stockholders' equity. Intangible assets include, but are not limited to goodwill, patents, copyrights, trademarks, leaseholds, franchises, licenses, permits, research and development costs, organization costs, and similar types of property rights.
- (11) The term "publicly held shares" means the total number of shares issued and outstanding exclusive of any shares held by directors, officers, or their immediate families and other concentrated holdings of 5% or more.
- (12) The term "common stock" shall include any security of an issuer designated as common stock and any security of an issuer, however designated, which by statute or by its terms, is a common stock (e.g., a security which entitles the holders thereof to vote generally on matters submitted to the issuer's security holders for a vote).

- (13) A "unit investment trust interest" means an interest in a trust consisting of or otherwise based upon the following:
- (i) a portfolio of stocks included in a domestic broad-based stock market index, which is of the type the Securities and Exchange Commission has previously reviewed and approved for index products; and/or
 - (ii) a portfolio of money market instruments or other debt securities that may be listed on the Corporation.
- (14) Equity Linked Notes ("ELNs") are notes that are linked, in whole or in part, to the market performance of a common stock, non-convertible preferred stock or sponsored American Depository Receipts ("ADRs") overlying such equity securities.
- (15) A Unit is a security that represents an interest in a registered investment company ("Investment Company") that could be organized as a unit investment trust, an open-end management investment company, or a similar entity.
- (16) The term "Reporting Authority" in respect of a particular series of Investment Company Units ("Units") means the Corporation, a subsidiary of the Corporation, or an institution or reporting service designated by the Corporation or its subsidiary 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 Units; the amount of any dividend equivalent payment or cash distribution to holders of Units, net asset value, or other information relating to the issuance, redemption or trading of Units. Nothing in Rule 5.2(j)(3) implies that an institution or reporting service that is the source for calculating and reporting information relating to ICUs must be designated by the Corporation. The term "Reporting Authority" shall not refer to an institution or reporting service not so designated.
- (17) The term "Structured Products" means products that are derived from and/or based on a single security or securities, a basket of stocks, an index, a commodity, debt issuance and/or a foreign currency, among other things. Structured Products include index and equity linked notes, term notes and units generally consisting of a contract to purchase equity and/or debt securities at a specified time.
- (18) The term Exchange-Traded Funds ("ETFs") include unit investment trusts, portfolio depository receipts and trust issued receipts designed to track the performance of the broad stock or bond market, stock industry sector, and U.S. Treasury and corporate bonds, among other things.
- (19) The term Closed-End Funds ("CEFs") are a type of investment company registered under the Investment Company Act of 1940 that offers a fixed number of

shares. Their assets are professionally managed in accordance with the CEF's investment objectives and policies, and may be invested in stocks, fixed income securities or a combination of both.

Rule 5.1(c). Listing of an Affiliate or Entity that Operates and/or Owns a Trading System or Facility of the Corporation

(a) For purposes of this Rule 5.1(c), the terms below are defined as follows:

- (1) "ICE Affiliate" means Intercontinental Exchange, Inc. ("ICE") and any entity that directly or indirectly, through one or more intermediaries, controls, is controlled by, or is under common control with ICE, where "control" means that 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 an ICE Affiliate or any Exchange-listed option on any such security.
- (3) "NYSE Arca Equities, Inc." (the "Corporation") is a wholly owned subsidiary of ICE.

(b) Prior to the initial listing of the Affiliate Security on the Exchange, Exchange regulatory staff shall determine that such securities satisfy the Corporation's rules for listing, and such finding must be approved by the Exchange's Regulatory Oversight Committee.

(c) Throughout the continued listing and trading of the Affiliate Security on the Exchange,

- (1) The Corporation will prepare a quarterly report on the Affiliate Security for the Exchange's Regulatory Oversight Committee that describes: (a) the Exchange Regulatory staff monitoring of the Affiliate Security's compliance with the Corporation's listing standards, including (i) the Affiliate Security's compliance with the Corporation's bid price requirement and (ii) the Affiliate Security's compliance with each of the quantitative and qualitative maintenance requirements; and (b) Exchange regulatory staff's monitoring of the trading of the Affiliate Security including summaries of all related surveillance alerts, complaints, regulatory referrals, busted or adjusted trades, investigations, examinations, formal and informal disciplinary actions, exceptions reports, and trading data used to ensure the Affiliate Security's compliance with the Exchange's listing and trading rules. A copy of said report will be forwarded promptly to the Securities and Exchange Commission ("Commission").
- (2) Once a year, an independent accounting firm shall review the listing standards for the Affiliate Security to ensure that the issuer is in compliance with the listing

requirements and a copy of the report shall be forwarded promptly to the Exchange's Regulatory Oversight Committee and the Commission.

- (3) In the event that Exchange regulatory staff determines that the Affiliate Security is not in compliance with any of the Corporation's listing standards, Exchange regulatory staff shall notify the issuer of such non-compliance promptly and request a plan of compliance. Exchange regulatory staff shall file a report with the Commission within five business days of providing such notice to the issuer of its non-compliance. The report shall identify the date of the non-compliance, type of non-compliance, and any other material information conveyed to the issuer in the notice of non-compliance. Within five business days of receipt of a plan of compliance from the issuer, Exchange regulatory staff shall notify the Commission of such receipt, whether the plan was accepted by Exchange regulatory staff or what other action was taken with respect to the plan and the time period provided to regain compliance with the Corporation's listing standards, if any.

Section 2. Applications to List

Rule 5.2(a). Applications to List

All applications for admitting securities to the list shall be in the form prescribed by the Board of Directors. In order for the securities of any class to be considered for listing, the issuer shall have equal voting rights per share for shareholders in each class of common stock.

The approval of an application for the listing of securities is a matter solely within the discretion of the Corporation. The Corporation has established specific quantitative requirements, as outlined below, that will be applied in evaluating listing eligibility. The fact that an applicant may meet these listing requirements does not necessarily mean that its application will be approved. Other factors, if applicable, that will be considered by the Corporation in determining a company's listing eligibility are as follows:

- (1) the voting rights of shareholders, voting arrangements and pyramiding of control, and related party transactions;
- (2) the nature and scope of the applicant's operations, including its demonstrated ability to acquire or discover and develop new products or properties, the potential or proven market for existing or future products, and the company's plans for future development and expansion of its existing resources;
- (3) the applicant's financial condition and accounting practices, its ability to service existing debt and other obligations, the availability of financing for currently committed programs and future expansion, and the size of its development expenses in relation to its equity and revenues;

- (4) the composition of the applicant's assets including its reserves, royalties, or other rights and patents;
- (5) the experience and reputation of the applicant and its management;
- (6) the nature and effect of governmental policies or restrictions on the company's products or properties and the extent of competition and economic conditions within the particular industry;
- (7) in the case of initial public offerings, the estimated proceeds to be received by the issuer from the offering, and the specific purposes for which the proceeds are to be used by the issuer (e.g., product development, marketing and licensing, fund acquisitions of complementary businesses, repayment of debt, working capital, compensation to insiders); and
- (8) in the case of bonds and debentures, the Corporation will consider the credit rating by agencies designated as nationally recognized statistical rating organizations (e.g., Standard & Poor's and Moody's Investors Services) as an indication of the quality of the issuer.

Listing Requirements

Rule 5.2(b). General

The Corporation has a two-tier listing structure. Any security listed pursuant to this Rule 5.2, paragraphs (c) through (j), and any index product listed in accordance with Rule 8 shall be designated as a Tier I security except for any security listed under Tier II listing requirements; provided, however, that a security that is convertible into or carries a right to subscribe to or purchase common stock will be a Tier II security unless the common stock into which it is convertible qualifies for inclusion under the Tier I designation. Furthermore, in cases where a company's security does not qualify for inclusion under the Tier I designation, yet the security is listed or has been approved for listing on either the New York Stock Exchange ("NYSE"), NYSE MKT, or Nasdaq National Market ("NNM"), the Corporation may list such security under Tier II in reliance upon the listing requirements of the applicable exchange (or association).

A listing under the Tier I designation generally signifies that the company has achieved maturity and high status in its industry in terms of assets, earnings, and shareholder interest and acceptance. The Tier II designation is limited, except for specific circumstances as discussed above, to the listing of common stock, preferred stock, bonds and debentures, and warrants. A listing under the Tier II designation generally signifies that the company has limited commercial operations, lower capitalization, and lacks a demonstrated earnings history.

.01 The Exchange will generally authorize the listing of a unit if each of the component parts meet the applicable requirements for listing as set forth in NYSE Arca Equities Rules 5.2(c) and 5.2(e)(1)-(2).

The Exchange's quantitative listing requirements for equity securities are set forth in this Rule 5.2. Listing requirements for certain index products are set forth in Rule 8. Rule 5.3 sets forth certain corporate governance, voting rights and disclosure requirements applicable to all listed companies. Rule 5.5 sets forth certain additional continued listing requirements that a listed company must meet to continue to be listed on the Exchange. An issuer with securities listed under Rule 5.2 or Rule 8 must provide the Corporation with prompt notification after the issuer becomes aware of any noncompliance by the issuer with the applicable continued listing requirements of Rule 5.2, Rule 5.5 or Rule 8.

Commentary:

.01 The Exchange is permitted to list any Derivative Product, as described below, that (1) was originally listed on another registered national securities exchange ("Other SRO") and continues to be listed on such Other SRO; and (2) satisfies the Exchange's continued listing criteria that are applicable to the product class that would include such Derivative Product. For the purposes of this rule, the term "Derivative Product" shall include securities described in NYSE Arca Equities Rules 5.2(j)(2) (Equity Linked Notes); 5.2(j)(3) (Investment Company Units); 5.2(j)(4) (Index-Linked Exchangeable Notes); 5.2(j)(6) (Equity Index-Linked Securities, Commodity-Linked Securities, Currency-Linked Securities, Fixed Income Index-Linked Securities, Futures-Linked Securities and Multifactor Index-Linked Securities); 8.100 (Portfolio Depositary Receipts); and Commentary .01 to Rule 8.200 (Trust Issued Receipts).

Rule 5.2(b)(1). Reserved

Reserved.

Designation of Tier I Securities Initial Listing Requirements

Rule 5.2(c). Common Stock-Select Market Companies

In the case of common stock, the following Basic or Alternate Listing requirements must be met:

Basic Listing Requirements

(1) At least 500,000 publicly held shares and a market value of at least \$3,000,000.

- (2) At least 800 public beneficial holders if the issuer has at least 500,000 and less than 1,000,000 shares publicly held, or a minimum of 400 public beneficial holders if the issuer has either:
 - (i) at least 1,000,000 shares publicly held; or
 - (ii) at least 500,000 shares publicly held and average daily trading volume in excess of 2,000 shares for the six months preceding the date of application.
- (3) Net worth of at least \$4,000,000.
- (4) Pre-tax income from continuing operations of at least \$750,000 in the last fiscal year or two of the last three fiscal years.
- (5) The maintenance of at least \$5 per share closing bid price for a majority of business days for the most recent six-month period prior to the date of application by the issuer. To meet this price requirement, the bid closing price must be at or above \$5 per share at the time of application.

Alternate Listing Requirements

- (1) At least 1,000,000 publicly held shares and a market value of at least \$15,000,000.
- (2) At least 400 public beneficial holders.
- (3) Net worth of at least \$12,000,000.
- (4) The maintenance of at least \$3 per share closing bid price for a majority of business days for the most recent six-month period prior to the date of application by the issuer. To meet this price requirement, the bid price must close at or above \$3 per share at the time of application.
- (5) An operating history of at least three continuous years.

Commentary:

.01 A company listing its common stock under Tier I of this Rule 5.2(c) must meet the applicable corporate governance requirements as set forth under Rule 5.3.

.02 The Corporation may approve an initial public offering "upon official notice of issuance" prior to completion of the offering.

.03 To be considered for listing under Tier I, an initial public offering must have an offering price of at least \$5.

Rule 5.2(d). Preferred Stock and Similar Issues

In the case of preferred stock and similar issues, the following listing requirements must be met:

- (1) The issuer must meet the net worth and earnings requirements as set forth in the Tier I Basic Listing Requirements under Rule 5.2(c), and must meet and appear to be able to service the dividend requirements for the preferred stock.
- (2) If the company's common stock is traded on the Corporation or on either the NYSE MKT or New York Stock Exchange, the following public distribution requirements must be met:
 - (i) At least 100,000 preferred shares publicly held and an aggregate market value of at least \$2,000,000, and a minimum closing bid price of \$10.

If the related common stock is not traded on any of the above referenced exchanges then the requirements are:

- (ii) At least 400,000 preferred shares publicly held and an aggregate market value of at least \$4,000,000, and a minimum closing bid price of \$10. At least 800 public beneficial holders of 100 shares or more shall also be required.
- (3) The preferred stock shall give the beneficial holders voting rights as set forth in Rule 5.3(h).

Commentary:

.01 The Corporation will not list convertible preferred issues containing a provision that permits the company, at its discretion, to change the conversion price other than in accordance with the terms of the company's stated Articles of Incorporation or any amendments thereof.

.02 If preferred stock is convertible into a class of common stock, such class must meet either the Tier I Basic or Alternate Listing Requirements under Rule 5.2(c). Current last sale information must be available with respect to the underlying security into which the security is convertible.

.03 Redeemable issues must provide for redemption pro rata or by lot.

Rule 5.2(e). Bonds and Debentures

In the case of bonds and debentures, the following listing requirements must be met:

- (1) The issuer must meet the net worth and earnings requirements as set forth in the Tier I Basic Listing Requirements under Rule 5.2(c), and must meet and appear to be able to satisfy interest and principal when due on the bond or debenture to be listed.
- (2) If the company's common stock is traded on the Corporation, or either the NYSE MKT or New York Stock Exchange, the following public distribution requirements must be met:
 - (i) Aggregate market value and principal amount of at least \$5,000,000 each, and at least 100 public beneficial holders.

If the related common stock is not traded on any of the above referenced exchanges then the requirements are:

- (ii) Aggregate market value and principal amount of at least \$20,000,000 each, and at least 100 public beneficial holders.
- (3) In the case of municipal securities, to ensure adequate public interest in the debt securities of non-listed issuers, the following requirements must be met:
 - (i) Aggregate market value and principal amount of at least \$20,000,000.
 - (ii) At least 100 public beneficial holders.
 - (iii) Security must be rated as investment grade by at least one nationally recognized rating service.

Commentary:

.01 The Corporation will not list convertible debt issues containing a provision that permits the company, at its discretion, to change the conversion price other than in accordance with the terms of the company's Indenture Agreement.

.02 If a debt security is convertible into a class of equity security, such equity security must meet the applicable Tier I listing requirements under this Rule 5.2. Current last sale information must be available with respect to the underlying security into which the security is convertible.

.03 Redeemable issues must provide for redemption pro rata or by lot.

Rule 5.2(f). Warrants

In the case of warrants, the following listing requirements must be met:

- (1) At least 500,000 warrants must be publicly held by not less than 250 public beneficial holders.
- (2) The Corporation will not list warrants unless the common stock of the company or other security underlying the warrants is already listed (and meets the pertinent maintenance requirements for continued listing) or will be listed on the Corporation concurrently with the warrants under the Tier I designation. This provision does not apply to warrants based on currency and/or market indices.

Commentary:

.01 The Corporation will not list warrants containing a provision that permits the company, at its discretion, to change the exercise price other than in accordance with the terms of the company's Warrant Agreement.

.02 The listing requirements for currency and index warrants are contained in Rule 8.

Rule 5.2(g). Contingent Value Rights ("CVRs")

In the case of CVRs, the following listing requirements must be met:

- (1) At least 600,000 publicly held CVRs and a market value of at least \$18,000,000.
- (2) At least 1,200 public beneficial holders.
- (3) Total assets of at least \$100,000,000.
- (4) The issuer must meet the net worth and earnings requirements as set forth in the Tier I Basic Listing Requirements under Rule 5.2(c).
- (5) Maturity of at least one year.

Commentary:

.01 Prior to the commencement of trading of securities admitted to listing under this Rule 5.2(g), the Corporation will distribute a circular to its membership explaining the specific risks associated with CVRs and providing guidance regarding ETP Holder compliance responsibilities when handling transactions in such securities.

Rule 5.2(h). Unit Investment Trusts ("UITs")

In the case of unit investment trusts, the following listing requirements must be met:

- (1) At least 1,000,000 publicly held shares or units.
- (2) At least 400 public beneficial holders.
- (3) Total trust assets of at least \$60,000,000 at the time of formation.
- (4) Stated term of at least two years, but may be subject to earlier termination under specific circumstances set forth in the UIT's governing documents and disclosed in the UIT prospectus.
- (5) Where a UIT interest has been divided into separate components, any voting rights accorded the UIT interest may be divided between the component securities as specified in the UIT prospectus.
- (6) The trustee of a UIT interest must be a trust company or banking institution having substantial capital and surplus. Such trustee shall not have an executive officer who is also an officer of the issuing sponsor nor shall the trustee and issuer be under common control. No change in the trustee shall be made without prior notice to, and approval of, the Corporation. 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.

Commentary:

.01 Customers must be provided with a prospectus and an explanation of any special characteristics and risks attendant to trading UIT interests. Before an ETP Holder, or an officer, partner, or employee of such an ETP Holder, undertakes to recommend a transaction in the UIT interest or in the component securities, such officer, partner or employee should make a determination that such UIT interest, components or units are not unsuitable for such customer, and the person making the recommendation should have a reasonable basis for believing at the time of making the recommendation, that the customer has such knowledge and experience in financial matters that he may reasonably be expected to be capable of evaluating the risks and the special characteristics of the recommended transaction and is financially able to bear the risks of the recommended transaction and constituent interest.

.02 An ETP Holder must provide a prospectus to an investor in connection with each transaction in a UIT interest, unless such ETP Holder has in place a procedure by which to verify previous receipt of a current prospectus. The investor must receive such prospectus prior to or concurrently with the transaction confirmation.

.03 All discretionary orders in UIT interests listed for trading by the Corporation that permit separation into distinct trading components must be approved and initialed on the day entered by a designated person who has been properly selected and delegated such responsibility under the terms and provisions of the Rules of the Corporation governing the proper conduct and supervision of customer accounts.

Rule 5.2(i). Limited Partnerships

No security issued in a limited partnership rollup transaction (as defined by Section 14(h) of the Securities Exchange Act), shall be eligible for the 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 Securities Exchange Act, as amended; (ii) a broker-dealer that is a member of a national securities association subject to Section 15A(b)(12) of the Securities Exchange Act participates in the rollup transaction; and (iii) the applicant provides the Corporation with an opinion of counsel that the rollup transaction was conducted in accordance with the procedures established by such association.

Each limited partnership listed on the Corporation shall have a corporate general partner or co-counsel partner that satisfies the independent director and audit committee requirements of Rule 5.3(b).

Commentary:

.01 The only currently existing national securities association subject to Section 15A(b)(12) of the Securities Exchange Act is the National Association of Securities Dealers, Inc. Its rules designed to protect the rights of limited partners, pursuant to the Limited Partnership Rollup Reform Act of 1993, are on the date of adoption of this Commentary specified in Rule 4430 of the National Association of Securities Dealers, Inc.

Rule 5.2(j)(1). Other Securities

The Corporation will consider listing any security not otherwise covered by the requirements of Rule 5.2(c) through (h), provided the issue is suited for listing and trading. In the case of such other securities, the following listing requirements must be met on an initial and continued listing basis (except that the minimum principal amount/market value requirement in Rule 5.2(j)(1)(A) must only be met on an initial basis):

- (A) At least 1,000,000 publicly held trading units and a principal amount/market value of at least \$20,000,000.

- (B) At least 400 public beneficial holders, provided, however, that if the securities are traded in thousand dollar denominations or are redeemable at the option of the holders thereof on at least a weekly basis, then no minimum number of public beneficial holders.
- (C) Total assets of at least \$100,000,000 and net worth of at least \$10,000,000. In the case of an issuer that is unable to satisfy the earnings requirements as set forth in Rule 5.2(c)(4) under Tier I Basic Listing Requirements, the Corporation will require the issuer to have:
 - (i) total assets of at least \$200,000,000 and net worth of at least \$10,000,000 or
 - (ii) total assets of at least \$100,000,000 and net worth of at least \$20,000,000.
- (D) If the issue contains cash settlement provisions, settlement must be made in U.S. dollars.

Commentary:

.01 Prior to commencement of trading of securities admitted to listing pursuant to this Rule 5.2(j)(1), the Corporation will evaluate the nature and complexity of the issue and, if appropriate, distribute a circular to the ETP Holders providing guidance regarding the Holder's compliance responsibilities when handling transactions in such securities.

Rule 5.2(j)(2). Equity Linked Notes ("ELNs")

The Exchange may approve for listing and trading ELNs pursuant to Rule 19b-4(e) under the Securities and Exchange Act of 1934. The following listing requirements must be met on an initial and continued listing basis (except that the requirements in Rule 5.2(j)(2)(B)(i)(c)-(d) must only be met on an initial basis):

(A) Issuer Listing Standards.

The issuer of ELNs must be an entity that:

- (i) has assets in excess of \$100 million and stockholders' equity of at least \$10 million;
- (ii) has one of the following: (1) pre-tax income from continuing operations of at least \$750,000 in its last fiscal year, or in two of its last three fiscal years, (2) assets in excess of \$200 million and stockholders' equity of at least \$10 million; or (3) assets in excess of \$100 million and stockholders' equity of at least \$20 million; and

(iii) has a minimum tangible net worth in excess of \$250 million, and otherwise substantially exceeds the income requirements set forth above in paragraph (A)(ii)(1). In the alternative, the issuer must: (1) have a minimum tangible net worth of \$150 million and to otherwise substantially exceed the income requirements set forth in paragraph (A)(ii)(1), and (2) not have issued such securities where the original issue price of all the issuer's other ELN offerings (combined with ELN offerings of the issuer's affiliates) listed on a national securities exchange exceeds 25% of the issuer's net worth.

(B) ELN Listing Standards.

(i) The issue must have:

- (a) a minimum public distribution of one million ELNs (provided, however, that if the ELN is traded in \$1,000 denominations, there is no minimum public distribution);
- (b) a minimum of 400 public holders of the ELNs (provided, however, that if the ELN is traded in \$1,000 denominations, or if the ELNs are redeemable at the option of the holders thereof on at least a weekly basis, there is no minimum number of holders);
- (c) a minimum market value of \$4 million; and
- (d) a minimum term of one year.

(C) Minimum Standards Applicable to the Linked Securities.

(i) Each underlying security must have:

- (a) a market capitalization of at least \$3 billion and trading volume in the United States of at least 2.5 million shares in the one-year period preceding the listing of the ELNs; or
- (b) a market capitalization of at least \$1.5 billion and trading volume in the United States of at least 10 million shares in the one-year period preceding the listing of the ELNs; or
- (c) a market capitalization of at least \$500 million and trading volume in the United States of at least 15 million shares in the one-year period preceding the listing of the ELNs.

(ii) Each issuer of an underlying security to which the ELN is to be linked shall be either a Securities Exchange Act of 1934 reporting company or an Investment Company Act of 1940 registered investment company. In either case, any underlying security to which the ELN is to be linked shall be listed on a national

securities exchange. In addition, if any underlying security to which the ELN is to be linked is the stock of a non-U.S. company which is traded in the U.S. market as sponsored American Depositary Shares ("ADS"), ordinary shares or otherwise, then for each such security, one of the following conditions must be met:

- (1) the Corporation has a comprehensive surveillance sharing agreement in place with the primary exchange on which each non-U.S. security is traded (in the case of an ADS, the primary exchange on which the security underlying the ADS is traded);
 - (2) the combined trading volume of each 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 or in markets with which the Corporation has in place a comprehensive surveillance sharing agreement represents (on a share equivalent basis for any ADSs) at least 50% of the combined world-wide trading volume in each non-U.S. security, other related non-U.S. securities, and other classes of shares related to each non-U.S. security over the six month period preceding the date of listing; or
 - (3) (A) the combined trading volume of each 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 each 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 an ELN listing; (B) the average daily trading volume for each non-U.S. security in the U.S. markets over the six-month period preceding the date of selection of each non-U.S. security for an ELN listing is 100,000 or more shares; and (C) the trading volume for each 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 an ELN listing.
- (iii) If any underlying security to which the ELN is to be linked is the stock of a non-U.S. company that is traded in the U.S. market as a sponsored ADS, ordinary shares or otherwise, then the minimum number of holders of the underlying security shall be 2,000.

(D) Limits on the Number of ELNs Linked to a Particular Security.

- (i) The issuance of ELNs relating to any underlying U.S. security may not exceed five percent of the total outstanding shares of such underlying security. In addition, the issuance of ELNs relating to any underlying non-U.S. security represented by ADSs, shares, or otherwise, may not exceed:
 - (a) two percent of the total shares outstanding worldwide if at least 20 percent of the worldwide trading volume in each non-U.S. security and related non-U.S.

security occurs in the U.S. market during the six-month period preceding the date of listing; or

- (b) three percent of the total shares outstanding worldwide if at least 50 percent of the worldwide trading volume in each non-U.S. security and related non-U.S. security occurs in the U.S. market during the six-month period preceding the date of listing; and
- (c) five percent of the total shares outstanding worldwide if at least 70 percent of the worldwide trading volume in each non-U.S. security and related non-U.S. security occurs in the U.S. market during the six-month period preceding the date of listing.

If any non-U.S. security and related securities has less than 20% of the worldwide trading volume occurring in the U.S. market during the six month period preceding the date of listing, then the ELN may not be linked to that non-U.S. security.

If an issuer proposes to list ELNs that relate to more than the allowable percentages specified above, then the Corporation, with the concurrence of the staff of the Division of Trading and Markets of the Securities and Exchange Commission, will evaluate the maximum percentage of ELNs that may be issued on a case-by-case basis.

- (E) Prior to the commencement of trading of particular ELNs listing pursuant to this Rule, the Corporation will evaluate the nature and complexity of the issue and, if appropriate, distribute a circular to ETP Holders providing guidance regarding compliance responsibilities (including suitability recommendations and account approval) when handling transactions in ELNs.
- (F) ELNs will be treated as equity instruments.
- (G) The Corporation may submit a rule filing pursuant to Section 19(b) of the Securities Exchange Act of 1934 to permit the listing and trading of a series of ELNs that do not otherwise meet the standards set forth in this Rule 5.2(j)(2). All statements or representations contained in such rule filing regarding (a) the underlying linked-stock or portfolio, (b) limitations on the underlying linked-stock or portfolio, or (c) the applicability of Exchange listing rules specified in such rule filing will constitute continued listing requirements. An issuer of such securities must notify the Exchange of any failure to comply with such continued listing requirements. If a series of ELNs does not satisfy these requirements, the Exchange may halt trading in the securities and will initiate delisting proceedings pursuant to Rule 5.5(m).

Rule 5.2(j)(3). Investment Company Units

The Corporation will consider for trading, whether by listing or pursuant to unlisted trading privileges, units of trading ("Units") that meet the criteria of this Rule. A Unit is a security that represents an interest in a registered investment company ("Investment Company") that could be organized as a unit investment trust, an open-end management investment company, or a similar entity. The term "US Component Stock" shall mean an equity security that is registered under Sections 12(b) or 12(g) of the Securities Exchange Act of 1934 or an American Depositary Receipt, the underlying equity security of which is registered under Sections 12(b) or 12(g) of the Securities Exchange Act of 1934. The term "Non-US Component Stock" shall mean an equity security that is not registered under Sections 12(b) or 12(g) of the Securities Exchange Act of 1934 and that is issued by an entity that (a) is not organized, domiciled or incorporated in the United States, and (b) is an operating company (including Real Estate Investment Trusts (REITS) and income trusts, but excluding investment trusts, unit trusts, mutual funds, and derivatives).

The Corporation may submit a rule filing pursuant to Section 19(b) of the Securities Exchange Act of 1934 to permit the listing and trading of a series of Units that do not otherwise meet the standards set forth below. All statements or representations contained in such rule filing regarding (a) the description of the index, portfolio or reference asset, (b) limitations on index or portfolio holdings or reference assets, or (c) the applicability of Exchange listing rules specified in such rule filing will constitute continued listing requirements. An issuer of such securities must notify the Exchange of any failure to comply with such continued listing requirements. If a series of Units does not satisfy these requirements, the Exchange may halt trading in the securities and will initiate delisting proceedings pursuant to Rule 5.5(m).

(A) *Unit Listing Standards*

(i) The Investment Company must:

- (a) hold securities (including fixed income securities) comprising, or otherwise based on or representing an interest in, an index or portfolio or securities; or
- (b) hold securities in another registered investment company that holds securities as described in (a) above.

An index or portfolio may be revised as necessary or appropriate to maintain the quality and character of the index or portfolio.

(ii) The Investment Company must issue Units in a specified aggregate number in return for a deposit (the "Deposit") consisting of either:

- (a) a specified number of shares of securities (and, if applicable, a specified portfolio of fixed income securities) that comprise the index or portfolio, or are otherwise based on or represent an investment in securities comprising such index or portfolio, and/or a cash amount; or

- (b) shares of a registered investment company, as described in subsection (A)(i)(a) above, and/or a cash amount.
 - (iii) Units must be redeemable, directly or indirectly, from the Investment Company for securities (including fixed income securities) and/or cash then comprising the Deposit. Units must pay holders periodic cash payments corresponding to the regular cash dividends or distributions declared with respect to the securities held by the Investment Company, less applicable expenses and charges.
 - (iv) The minimum number of Units required to be outstanding at the commencement of trading is set forth in Commentary .01 paragraph (d) of this Rule.
 - (v) The Corporation will obtain a representation from the issuer of each series of Units 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) *Underlying Indices and Portfolios.* The Corporation may trade, whether by listing or pursuant to unlisted trading privileges, specified series of Units, with each Series based on a specified index or portfolio of securities. The value of the index or portfolio must be calculated and disseminated to the public at least once per business day; provided that, if the securities representing at least half the value of the index or portfolio are securities of a single country other than the United States, then the value of the index or portfolio may be calculated and disseminated to the public at least once per business day in that country.
- (C) *Form of Certificates.* Units may be either certified or issued in the form of a single global certificate.
- (D) *Limitation of Liability of the Corporation.* Neither the Corporation, the Reporting Authority nor any agent of the Corporation 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; the amount of any dividend equivalent payment or cash distribution to holders of Units; net asset value; or other information relating to the creation, redemption or trading of Units, resulting from any negligent act or omission by the Corporation, or the Reporting Authority, or any agent of the Corporation, or any act, condition or cause beyond the reasonable control of the Corporation or 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 reporting of transactions in one or more underlying securities. The Corporation makes no warranty, express or implied, as to results to be obtained by any person or entity from the use of Units or any underlying index or data included therein and the Corporation makes no express or implied warranties, and disclaims all warranties of

merchantability or fitness for a particular purpose with respect to Units or any underlying index or data included therein. This limitation of liability shall be in addition to any other limitation contained in the Corporation's Bylaws and Rules.

Commentary:

.01 Equity. The Corporation may approve a series of Units for listing and/or trading (including pursuant to unlisted trading privileges) pursuant to Rule 19b-4(e) under the Securities Exchange Act of 1934. Units listed pursuant to Rule 19b-4(e) shall satisfy the criteria set forth in (a)(A), (B) or (C) and (b), (c) and (f) through (h) below on an initial and continued listing basis, provided further, that the Corporation may not so approve a series of Units that are issued by an open-end management investment company that seeks to provide investment results, before fees and expenses, in an amount that exceeds -300% of the percentage performance on a given day of a particular domestic equity, international or global equity securities index.

(a) *Eligibility Criteria for Index Components.*

(A) US index or portfolio. Components of an index or portfolio of (a) only US Component Stocks or (b) US Component Stocks and cash underlying a series of Units listed pursuant to Rule 19b-4(e) under the Securities Exchange Act of 1934 shall meet the following criteria on an initial and continued listing basis:

- (1) Component stocks (excluding Units and securities defined in Section 2 of Rule 8, collectively, "Derivative Securities Products") that in the aggregate account for at least 90% of the weight of the US Component Stocks portion of the index or portfolio (excluding such Derivative Securities Products) each shall have a minimum market value of at least \$75 million;
- (2) Component stocks (excluding Derivative Securities Products) that in the aggregate account for at least 70% of the US Component Stocks portion of the weight of the index or portfolio (excluding such Derivative Securities Products) each shall have a minimum monthly trading volume of 250,000 shares, or minimum notional volume traded per month of \$25,000,000, averaged over the last six months;
- (3) The most heavily weighted component stock (excluding Derivative Securities Products) shall not exceed 30% of the US Component Stocks portion of the weight of the index or portfolio, and, to the extent applicable, the five most heavily weighted component stocks (excluding Derivative Securities Products) shall not exceed 65% of the US Component Stocks portion of the weight of the index or portfolio;

(4) The index or portfolio shall include a minimum of 13 component stocks; provided, however, that there shall be no minimum number of component stocks if (a) one or more series of Units or Portfolio Depositary Receipts constitute, at least in part, components underlying a series of Units, or (b) one or more series of Derivative Securities Products account for 100% of the US Component Stocks portion of the weight of the index or portfolio; and

(5) All securities in the index or portfolio shall be US Component Stocks listed on a national securities exchange and shall be NMS Stocks as defined in Rule 600 of Regulation NMS under the Securities Exchange Act of 1934.

(B) International or global index or portfolio. Components of an index or portfolio underlying a series of Units listed pursuant to Rule 19b-4(e) under the Securities Exchange Act of 1934 that consist of (a) only Non-US Component Stocks, (b) Non-US Component Stocks and cash, (c) both US Component Stocks and Non-US Component Stocks, or (d) US Component Stocks, Non-US Component Stocks and cash shall meet the following criteria on an initial and continued listing basis:

(1) Component stocks (excluding Derivative Securities Products) that in the aggregate account for at least 90% of the weight of the US and Non-US Component Stocks portions of the index or portfolio (excluding such Derivative Securities Products) each shall have a minimum market value of at least \$100 million;

(2) Component stocks (excluding Derivative Securities Products) that in the aggregate account for at least 70% of the US and Non-US Component Stocks portions of the weight of the index or portfolio (excluding such Derivative Securities Products) each shall have a minimum global monthly trading volume of 250,000 shares, or minimum global notional volume traded per month of \$25,000,000, averaged over the last six months;

(3) The most heavily weighted component stock (excluding Derivative Securities Products) shall not exceed 25% of the combined US and Non-US Component Stocks portions of the weight of the index or portfolio, and, to the extent applicable, the five most heavily weighted component stocks (excluding Derivative Securities Products) shall not exceed 60% of the combined US and Non-US Component Stocks portions of the weight of the index or portfolio;

(4) The index or portfolio shall include a minimum of 20 component stocks; provided, however, that there shall be no minimum number of component stocks if (a) one or more series of Units or Portfolio Depositary Receipts constitute, at least in part, components underlying a series of Units, or (b) one or more series of Derivative Securities Products account for 100% of the weight of the combined US and Non-US Component Stocks portions of the index or portfolio; and

(5) 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 Securities Exchange Act of 1934, and each Non-US Component Stock shall be listed and traded on an exchange that has last-sale reporting.

(C) Index or portfolio approved in connection with options or other derivative securities. For the initial and continued listing of a series of Units pursuant to Rule 19b-4(e) under the Securities Exchange Act of 1934, the index or portfolio underlying the series of Units shall have been reviewed and approved for trading of options, Portfolio Depositary Receipts, Units, Index-Linked Exchangeable Notes or Index-Linked Securities by the Securities and Exchange Commission under Section 19(b) of the Securities Exchange Act of 1934 and rules thereunder and the conditions set forth in the Securities and Exchange Commission's approval order, including comprehensive surveillance sharing agreements with respect to Non-US Component Stocks and the requirements regarding dissemination of information, must continue to be satisfied. On an initial and continued listing basis, each component stock of the index or portfolio shall be either (i) 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 Securities Exchange Act of 1934, or (ii) a Non-US Component Stock that is listed and traded on an exchange that has last-sale reporting.

(b) *Index Methodology and Calculation.*

(1) If the index is maintained by a broker-dealer or fund advisor, the broker-dealer or fund advisor shall erect and maintain 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 or fund advisor. In addition, 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; and

(2) The current index value for Units listed pursuant to (a) Commentary .01(a)(A) above will be widely disseminated by one or more major market data vendors at least every 15 seconds during the Core Trading Session (as defined in NYSE Arca Equities Rule 7.34); (b) Commentary .01(a)(B) above will be widely disseminated by one or more major market data vendors at least every 60 seconds during the Core Trading Session; or (c) Commentary .01(a)(C) above will be widely disseminated during the Core Trading Session 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. If the official index value does not change during some or all of the period when trading is occurring on the NYSE Arca

Marketplace (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 calculated official index value must remain available throughout NYSE Arca Marketplace trading hours.

- (c) *Disseminated Information.* One or more major market data vendors will disseminate for each series of Units listed or traded on the Corporation an estimate, updated at least every 15 seconds during the Core Trading Session, of the value in U.S. dollars 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 will be updated at least every 15 seconds during the Core Trading Session to reflect changes in the exchange rate between the U.S. 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 NYSE Arca Marketplace, then the last official calculated Intraday Indicative Value must remain available throughout NYSE Arca Marketplace trading hours.
- (d) *Initial Shares Outstanding.* A minimum of 100,000 shares of a series of Units is required to be outstanding at commencement of trading.
- (e) *Hours of Trading.* The hours of trading for series of Units are the same as those provided in Rule 7.34(a).
- (f) *Surveillance Procedures.* The Corporation will implement written surveillance procedures for Units.
- (g) *Disclosures.* The provisions of this subparagraph apply only to series of Units 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 Corporation will inform ETP Holders regarding application of these provisions of this subparagraph to a particular series of Units by means of an information circular prior to commencement of trading in such series.

The Corporation requires that ETP Holders provide to all purchasers of a series of Units a written description of the terms and characteristics of those securities, in a form approved by the Corporation or 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, ETP Holders shall include such a written description with any sales material relating to a series of Units that is provided to customers or the public. Any other written materials provided by an ETP Holder to customers or the public making specific reference to a series of Units as an investment vehicle must include a statement in

substantially the following form: "A circular describing the terms and characteristics of (the series of Units) 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 Units)."

An ETP Holder carrying an omnibus account for a non-ETP Holder is required to inform such non-ETP Holder that execution of an order to purchase a series of Units for such omnibus account will be deemed to constitute agreement by the non-ETP Holder to make such written description available to its customers on the same terms as are directly applicable to ETP Holders under this rule.

Upon request of a customer, an ETP Holder shall also provide a prospectus for the particular series of Units.

(h) **Creation and Redemption.** For Units listed pursuant to Commentary .01(a)(B) or (C) above, the statutory prospectus or the application for exemption from provisions of the Investment Company Act of 1940 for the series of Units must state that the series of Units 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.

.02 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 a subdivision thereof. The Corporation may approve a series of Units based on Fixed Income Securities for listing and 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, Units, Portfolio Depository Receipts, Index-Linked Exchangeable Notes or Index-Linked Securities by the Commission under Section 19(b) 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) satisfy the following criteria, and provided further, that the Corporation may not so approve a series of Units that are issued by an open-end management investment company that seeks to provide investment results, before fees and expenses, in an amount that exceeds -300% of the percentage performance on a given day of a particular Fixed Income Securities index. Units listed pursuant to Rule 19b-4(e) shall satisfy the criteria set forth in (a) through (c), (f) and (g) below on an initial and continued listing basis.

(a) *Eligibility Criteria for Index Components.* Components of an index or portfolio underlying a series of Units listed pursuant to Rule 19b-4(e) under the Securities Exchange Act of 1934 shall meet the following criteria on an initial and continued listing basis:

- (1) The index or portfolio must consist of (a) only Fixed Income Securities or (b) Fixed Income Securities and cash;
- (2) Fixed Income Security components that in aggregate account for at least 75% of the Fixed Income Securities portion of the weight of the index or portfolio each shall have a minimum original principal amount outstanding of \$100 million or more;
- (3) A component may be a convertible security, however, once the convertible security component converts to the underlying equity security, the component is removed from the index or portfolio;
- (4) No component fixed-income security (excluding Treasury Securities and GSE Securities) shall represent more than 30% of the Fixed Income Securities portion of the weight of the index or portfolio, and the five most heavily weighted component fixed-income securities in the index or portfolio shall not in the aggregate account for more than 65% of the Fixed Income Securities portion of the weight of the index or portfolio;
- (5) An underlying index or portfolio (excluding one consisting entirely of exempted securities) must include a minimum of 13 non-affiliated issuers; and
- (6) Component securities that in aggregate account for at least 90% of the Fixed Income Securities portion 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 Securities Exchange Act of 1934; 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 and maintain a "firewall" around the personnel who have access to information concerning changes and adjustments to the index;
- (ii) The current index value for Units listed pursuant to Commentary .02(a) above will be widely disseminated by one or more major market data vendors at least

once per day and if the index value does not change during some or all of the period when trading is occurring on the NYSE Arca Marketplace, the last official calculated index value must remain available throughout NYSE Arca Marketplace trading hours; 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.
- (c) *Disseminated Information.* One or more major market data vendors shall disseminate for each series of Units listed pursuant to Commentary .02(a) above an estimate, updated at least every 15 seconds during the Core Trading Session, 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 Corporation 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. If the Intraday Indicative Value does not change during some or all of the period when trading is occurring on the NYSE Arca Marketplace, then the last official calculated Intraday Indicative Value must remain available throughout NYSE Arca Marketplace trading hours.
- (d) *Initial Shares Outstanding.* The provisions of Commentary .01(d) above shall apply to series of Units listed pursuant to Commentary .02(a) above.
- (e) *Hours of Trading.* The provisions of Commentary .01(e) above shall apply to series of Units listed pursuant to Commentary .02(a) above.
- (f) *Surveillance Procedures.* The provisions of Commentary .01(f) above shall apply to series of Units based on Fixed Income Securities that are listed and/or traded pursuant to UTP.
- (g) *Disclosures.* The provisions of Commentary .01(g) above will apply to series of Units based on Fixed Income Securities.

.03 The Corporation may approve a series of Units based on a combination of indexes or an index or portfolio of component securities representing the U.S. or domestic 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 have been reviewed and approved for the trading of options, Units,

Portfolio Depository Receipts, Index-Linked Exchangeable Notes or Index-Linked Securities by the Commission under Section 19(b) 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 meet either the criteria set forth in Commentary .01(a) or .02(a) above, and provided further, that the Corporation may not so approve a series of Units that is issued by an open-end management investment company that seeks to provide investment results, before fees and expenses, in an amount that exceeds -300% of the percentage performance on a given day of a particular domestic equity, international or global equity securities index or Fixed Income Securities index or a combination thereof. Units listed pursuant to Rule 19b-4(e) shall satisfy the criteria set forth in (a) below and in Commentary .01 (c) and (f) - (g) on an initial and continued listing basis.

(a) *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 and maintain a "firewall" around the personnel who have access to information concerning changes and adjustments to the index;
- (ii) The current composite index value for Units listed pursuant to Commentary .01(a) or .02(a) above shall be widely disseminated by one or more major market data vendors at least once every 15 seconds during the Core Trading 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 Core Trading 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 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.

(b) *Other Applicable Provisions.* The provisions of Commentary .01(c)-(h) shall also apply to series of Units based on a combination of indexes or an index or portfolio of component securities representing the U.S. or domestic equity market, the international equity market, and the fixed income market.

.04 The provisions of this Commentary apply only to series of Units that are issued by an open-end management investment company that

- (i) seeks to provide investment results, before fees and expenses, that

correspond to a specific multiple of the percentage performance on a given day of a particular domestic equity, international or global equity securities index or Fixed Income Securities index or a combination thereof ("Multiple Fund Shares") or (ii) seeks to provide investment results, before fees and expenses, that correspond inversely up to -300% of the percentage performance on a given day of a particular domestic equity, international or global equity securities index or Fixed Income Securities index or a combination thereof ("Inverse Fund Shares"). For the initial and continued listing of Multiple Fund Shares and/or Inverse Fund Shares, the following requirements must be adhered to:

- (a) Daily public Web site disclosure of portfolio holdings that will form the basis for the calculation of the net asset value by the issuer of a series of Multiple Fund Shares or Inverse Fund Shares, including, as applicable, the following instruments:
 - (i) The identity and number of shares held of each specific equity security;
 - (ii) The identity and amount held of each specific Fixed Income Security;
 - (iii) The specific types 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; and repurchase agreements (the "Financial Instruments") and characteristics of such Financial Instruments; and
 - (iv) Cash equivalents and the amount of cash held in the portfolio.
- (b) If the Corporation becomes aware that the net asset value related to a Multiple Fund Share or Inverse Fund Share is not being disseminated to all market participants at the same time or the daily public Web site disclosure of portfolio holdings does not occur, the Corporation shall halt trading in such series of Multiple Fund Shares or Inverse Fund Shares, as appropriate. The Corporation may resume trading in such Fund Shares only when the net asset value is disseminated to all market participants at the same time or the daily public Web site disclosure of portfolio holdings occurs, as appropriate.

Rule 5.2(j)(4). Index-Linked Exchangeable Notes

Index-linked exchangeable notes which are exchangeable debt securities that are exchangeable at the option of the holder (subject to the requirement that the holder in most circumstances exchange a specified minimum amount of notes), on call by the issuer or at maturity for a cash amount (the "Cash Value Amount") based on the reported market prices of the Underlying Stocks of an Underlying Index will be considered for listing and trading by the Corporation pursuant to Rule 19b-4(e) under the Securities Exchange Act of 1934, provided:

- (a) Both the issue and the issuer of such security initially meet and continuously maintain the criteria set forth above in "Other Securities" (NYSE Arca Equities Rule 5.2(j)(1)), except that the minimum public distribution shall be 150,000 notes with a minimum of 400 public note-holders, except, if traded in thousand dollar denominations no minimum public distribution and no minimum number of holders.
- (b) The issue has a minimum term of one year.
- (c) On an initial and continued listing basis, the issuer will be expected to have a minimum tangible net worth in excess of \$250,000,000, and to otherwise substantially exceed the earnings requirements set forth in NYSE Arca Equities Rule 5.2(j)(1). In the alternative, the issuer will be expected: (i) to have a minimum tangible net worth of \$150,000,000 and to otherwise substantially exceed the earnings requirements set forth in NYSE Arca Equities Rule 5.2(j)(1); and (ii) not to have issued index-linked exchangeable notes where the original issue price of all the issuer's other index-linked exchangeable note offerings (combined with other index-linked exchangeable note offerings of the issuer's affiliates) listed on a national securities exchange or traded through the facilities of Nasdaq exceeds 25% of the issuer's net worth.
- (d) The index to which an exchangeable-note is linked shall either be (i) indices that have been created by a third party and been reviewed and have been approved for the trading of options or other derivatives securities (each, a "Third-Party Index") either by the Commission under Section 19(b) of the Securities Exchange Act of 1934, as amended (the "Exchange Act") and rules thereunder or by the Corporation under rules adopted pursuant to Rule 19b-4(e); or (ii) indices which the issuer has created and for which the Corporation will have obtained approval from either the Commission pursuant to Section 19(b) and rules thereunder or from the Corporation under rules adopted pursuant to Rule 19b-4(e) (each an "Issuer Index"). The Issuer Indices and their underlying securities must meet one of the following on an initial and continued listing basis:
- (i) the procedures and criteria set forth in NYSE Arca Rule 5.13(b)-(c); or
 - (ii) the criteria set forth in subsections (C) and (D) of NYSE Arca Equities Rule 5.2(j)(2), the index concentration limits set forth in NYSE Arca Rule 5.13(b)(6), and NYSE Arca Rule 5.13(b)(12) insofar as it relates to NYSE Arca Rule 5.13(b)(6).
- (e) Index-linked Exchangeable Notes will be treated as equity instruments;
- (f) Continued Listing. The Corporation will maintain surveillance procedures for securities listed under this Rule 5.2(j)(4) and consider the suspension of trading in, and will initiate delisting proceedings under Rule 5.5(m) of, a series of Index-Linked Exchangeable Notes, under any of the following circumstances:

- (i) if, following the initial twelve month period following the initial issuance of a series of index-linked exchangeable notes and commencement of trading on the Corporation, the series has fewer than 50,000 notes issued and outstanding;
 - (ii) if, following the initial twelve month period following the initial issuance of a series of index-linked exchangeable notes and commencement of trading on the Corporation, the market value of all index-linked exchangeable notes of that series issued and outstanding is less than \$1,000,000;
 - (iii) if any of the continued listing requirements set forth in this Rule 5.2(j)(4) are not continuously maintained;
 - (iv) if the Corporation submits a rule filing pursuant to Section 19(b) of the Securities Exchange Act to permit the listing and trading of a series of Index-Linked Exchangeable Notes that do not otherwise meet the standards set forth in this Rule 5.2(j)(4) and any of the statements or representations regarding (a) the description of the index, (b) limitations on the index, or (c) the applicability of Exchange listing rules specified in such rule filing are not continuously maintained; or
 - (v) if such other event shall occur or such other condition exists which in the opinion of the Corporation makes further dealings of the Corporation inadvisable.
- (g) The Corporation may submit a rule filing pursuant to Section 19(b) of the Securities Exchange Act of 1934 to permit the listing and trading of a series of Index-Linked Exchangeable Notes that do not otherwise meet the standards set forth in this Rule 5.2(j)(4). All statements or representations contained in such rule filing regarding (a) the description of the index, (b) limitations on the index, or (c) the applicability of Exchange listing rules specified in such rule filing will constitute continued listing requirements. An issuer of such securities must notify the Exchange of any failure to comply with such continued listing requirements. If a series of Index-Linked Exchangeable Notes does not satisfy these requirements, the Exchange may halt trading in the securities and will initiate delisting proceedings pursuant to Rule 5.5(m).

Rule 5.2(j)(5). Equity Gold Shares

(A) The provisions of this Rule 5.2(j)(5) apply only to Equity Gold Shares, that represent units of fractional undivided beneficial interest in and ownership of the Equity Gold Trust. While Equity Gold Shares are not technically Investment Company Units and thus are not covered by NYSE Arca Equities Rule 5.2(j)(3), all other rules that reference "Investment Company Units" shall also apply to Equity Gold Shares.

(B) Except to the extent that specific provisions in this rule govern, or unless the context otherwise requires, the provisions of all other NYSE Arca Equities Rules and policies shall be applicable to the trading of Equity Gold Shares on the Corporation.

(C) The provisions set forth in Rule 8.201(g)-(i) shall also apply to Equity Gold Shares.

Rule 5.2(j)(6). Equity Index-Linked Securities, Commodity-Linked Securities, Currency-Linked Securities, Fixed Income Index-Linked Securities, Futures-Linked Securities and Multifactor Index-Linked Securities

The Corporation will consider listing equity index-linked securities ("Equity Index-Linked Securities"), commodity-linked securities ("Commodity-Linked Securities"), currency-linked securities ("Currency-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, Currency-Linked Securities, Fixed Income Index-Linked Securities and Futures-Linked Securities, "Index-Linked Securities") that in each case meet the applicable criteria of this Rule 5.2(j)(6).

The payment at maturity with respect to Equity Index-Linked Securities, Commodity-Linked Securities, Currency-Linked Securities, Fixed Income Index-Linked Securities, Futures-Linked Securities and Multifactor Index-Linked Securities is based on the performance of:

- (i) in the case of Equity Index-Linked Securities, an underlying index or indexes of equity securities (an "Equity Reference Asset"), or
- (ii) in the case of Commodity-Linked Securities, one or more physical commodities or commodity futures, options or other commodity derivatives or Commodity-Based Trust Shares (as defined in NYSE Arca Equities Rule 8.201) or a basket or index of any of the foregoing (a "Commodity Reference Asset"), or
- (iii) in the case of Currency-Linked Securities, one or more currencies, or options or currency futures or other currency derivatives or Currency Trust Shares (as defined in NYSE Arca Equities Rule 8.202) or a basket or index of any of the foregoing (a "Currency Reference Asset", or
- (iv) in the case of Fixed Income Index-Linked Securities, 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"), or
- (v) in the case of Futures-Linked Securities, 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; (b) interest rate futures or options or derivatives on the foregoing in this subparagraph

(b); (c) CBOE Volatility Index (VIX) Futures; or (d) EURO STOXX 50 Volatility Index (VSTOXX) Futures (a "Futures Reference Asset"), or

- (vi) in the case of Multifactor Index-Linked Securities, any combination of two or more Equity Reference Assets, Commodity Reference Assets, Currency Reference Assets, Fixed Income Reference Assets or Futures Reference Assets (a "Multifactor Reference Asset", and together with Equity Reference Asset, Commodity Reference Asset, Currency 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.

Index-Linked Securities may or may not provide for the repayment of the original principal investment amount. The Corporation may submit a rule filing pursuant to Section 19(b) of the Securities Exchange Act of 1934 ("Act") to permit the listing and trading of Index-Linked Securities that do not otherwise meet the standards set forth below. All statements or representations contained in such rule filing regarding (a) the description of the reference asset, (b) limitations on reference assets, or (c) the applicability of Exchange listing rules specified in such rule filing will constitute continued listing requirements. An issuer of such securities must notify the Exchange of any failure to comply with such continued listing requirements. If a series of Index-Linked Securities does not satisfy these requirements, the Exchange may halt trading in the securities and will initiate delisting proceedings pursuant to Rule 5.5(m).

The Corporation will consider for listing and trading pursuant to Rule 19b-4(e) under the Act, Index-Linked Securities provided the following criteria are met:

(A) Requirements Common to All Index-Linked Securities

- (a) Both the issue and the issuer of such security initially meet and continuously maintain the criteria set forth in NYSE Arca Equities Rule 5.2(j)(1) except that: (i) if the Index-Linked Securities are redeemable at the option of the holders thereof on at least a weekly basis, then no minimum number of publicly held trading units, and (ii) a minimum principal amount/market value outstanding of at least \$4 million, and (iii) if the Index-Linked Securities are traded in thousand dollar denominations or are redeemable at the option of the holders thereof on at least a weekly basis, then no minimum number of holders.
- (b) The issue has a minimum term of one (1) year but not greater than thirty (30) years.
- (c) The issue must, on an initial and continued listing basis, be the non-convertible debt of the issuer.
- (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

Reference Asset; however, in no event will a loss or negative payment at maturity be accelerated by a multiple that exceeds three times the performance of an underlying Reference Asset.

- (e) On an initial and continued listing basis, the issuer will be expected to have a minimum tangible net worth of \$250,000,000 (if the Index-Linked Securities are fully and unconditionally guaranteed by an affiliate of the issuer, the Corporation will rely on such affiliate's tangible net worth for purposes of this requirement). In the alternative, the issuer will be expected to have a minimum tangible net worth of \$150,000,000 and the original issue price of the Index-Linked Securities, combined with all of the issuer's other Index-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 issuer's tangible net worth at the time of issuance (if the Index-Linked Securities are fully and unconditionally guaranteed by an affiliate of the issuer, the Corporation will apply the provisions of this paragraph to such affiliate instead of the issuer and will include in its calculation all Index-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) The issuer is in compliance with Rule 10A-3 under the Act on an initial and continued listing basis.

(B) Requirements Specific to Equity Index-Linked Securities, Commodity-Linked Securities, Currency-Linked Securities, Fixed Income Index-Linked Securities, Futures-Linked Securities and Multifactor Index-Linked Securities.

The issue must meet one of the criteria set forth below.

I. Equity Index-Linked Securities Listing Standards

- (1) The Corporation will consider listing Equity Index-Linked Securities that meet the requirements of this subparagraph (B)(I), where the payment at maturity or earlier redemption is based on an index or indexes of equity securities, securities of closed-end management investment companies registered under the Investment Company Act of 1940 (the "1940 Act") and/or investment company units. The issue must meet the following initial listing criteria:
- (a) Each underlying index is required to have at least ten (10) component securities.
- (b) The index or indexes to which the security is linked shall either (1) have been reviewed and approved for the trading of investment company units 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:

- (i) Each component security has a minimum market value of at least \$75 million, except that for each of the lowest dollar weighted component securities in the index that in the aggregate account for no more than 10% of the dollar weight of the index, the market value can be at least \$50 million;
- (ii) Component stocks that in the aggregate account for at least 90% of the weight of the index 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;
- (iii) No underlying component security will represent more than 25% of the dollar weight of the index, and the five highest dollar weighted component securities in the index do not in the aggregate account for more than 50% of the dollar weight of the index (60% for an index consisting of fewer than 25 component securities); and
- (iv) 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 set forth in NYSE Arca Rule 5.3; 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; and
- (v) All component securities shall be either:
 - (A) Securities (other than foreign country securities and American Depository Receipts ("ADRs")) that are (x) issued by a 1934 Act reporting company or by an investment company registered under the 1940 Act, which in each case is listed on a national securities exchange, and (y) an "NMS stock" (as defined in Rule 600 of SEC Regulation NMS); or
 - (B) Foreign country securities or ADRs, provided that foreign country securities or foreign country securities underlying ADRs having their primary trading market outside the United States on foreign trading markets that are not members of the Intermarket Surveillance Group ("ISG") or parties to comprehensive surveillance sharing agreements with the Exchange 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.

(2) Continued Listing Criteria—(a) The Corporation will maintain surveillance procedures for securities listed under this Rule 5.2(j)(6) and may halt trading in such securities and will initiate delisting proceedings pursuant to Rule 5.5(m) (unless the Commission has approved the continued trading of the subject Index-Linked Security), if any of the standards set forth above in paragraphs 1(a) and (b)(2) are not continuously maintained, except that:

- (i) the criteria that no single component represent more than 25% of the dollar weight of the index and the five highest dollar weighted components in the index 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;
 - (ii) Component stocks that in the aggregate account for at least 90% of the weight of the index 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.
- (b) In connection with an Index-Linked Security that is listed pursuant to paragraph (b)(1) above, the Corporation may halt trading in the securities and will initiate delisting proceedings pursuant to Rule 5.5(m) (unless the Commission has approved the continued trading of the subject 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.
- (c) The Corporation may halt trading in the securities and will initiate delisting proceedings pursuant to Rule 5.5(m) (unless the Commission has approved the continued trading of the subject Index-Linked Security), under any of the following circumstances:
- (i) if the aggregate market value or the principal amount of the Equity Index-Linked Securities publicly held is less than \$400,000;
 - (ii) if the value of the index or composite value of the indexes 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 the NYSE Arca Marketplace (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 NYSE Arca Marketplace trading hours; or

(iii) if such other event shall occur or condition exists which in the opinion of the Corporation makes further dealings on the Corporation inadvisable.

(d) Index Rebalancing—Indexes will be rebalanced at least annually.

II. Commodity-Linked Securities Listing Standards

(1) The issue must meet the initial listing standard set forth in either (a) or (b) below:

(a) The Commodity Reference Asset to which the security is linked shall have been reviewed and approved for the trading of Commodity-Based Trust 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 with respect to comprehensive surveillance sharing agreements, continue to be satisfied.

(b) The pricing information for components of a Commodity Reference Asset 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. A Commodity Reference Asset may include components representing not more than 10% of the dollar weight of such Commodity 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 Commodity Reference Asset.

In addition, the issue must meet both of the following initial listing criteria:

(i) the value of the Commodity 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 Core Trading Session (as defined in NYSE Arca Equities Rule 7.34); and

(ii) in the case of Commodity-Linked Securities that are periodically redeemable, the indicative value of the subject Commodity-Linked Securities must be calculated and widely disseminated by the Corporation or one or more major market data vendors on at least a 15-second basis during the Core Trading Session.

(2) The issue must meet the following continued listing criteria:

- (a) The Corporation may halt trading in the securities and will initiate delisting proceedings pursuant to Rule 5.5(m) if any of the initial listing criteria described above are not continuously maintained.
- (b) The Corporation may also halt trading in the securities and will initiate delisting proceedings pursuant to Rule 5.5(m) under any of the following circumstances:
 - (i) If the aggregate market value or the principal amount of the Commodity-Linked Securities publicly held is less than \$400,000;
 - (ii) The value of the Commodity Reference Asset 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 5.2(j)(6); or
 - (iii) If such other event shall occur or condition exists which in the opinion of the Corporation makes further dealings on the Corporation inadvisable.

III. Currency-Linked Securities Listing Standards

- (1) The issue must meet the initial listing standard set forth in either (a) or (b) below:
 - (a) The Currency Reference Asset to which the security is linked shall have been reviewed and approved for the trading of Currency Trust 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 with respect to comprehensive surveillance sharing agreements, continue to be satisfied.
 - (b) The pricing information for each component of a Currency Reference Asset must be:
 - (x) the generally accepted spot or forward price (subject to the list of currencies below), applicable to the component of such Currency Reference Asset, for the currency exchange rate in question or
 - (y) derived from a market which (i) is an ISG member or affiliate or with which the Exchange has a comprehensive surveillance sharing agreement and (ii) is the pricing source for components of a Currency Reference Asset that has previously been approved by the Commission.

If pricing information is based upon the generally accepted forward price, the currency must be one of the following: US Dollar, Euro, Japanese Yen, British Pound Sterling, Swiss Franc, Canadian Dollar, Australian Dollar, Brazilian Real, Chinese Renminbi, Czech Koruna, Danish Krone, Hong Kong Dollar, Hungarian

Forint, Indian Rupee, Indonesian Rupiah, Korean Won, Mexican Peso, Norwegian Krone, New Zealand Dollar, Philippine Peso, Polish Zloty, Russian Ruble, Swedish Krona, South African Rand, Singapore Dollar, Taiwan Dollar, Thai Baht, or New Turkish Lira.

A Currency Reference Asset may include components representing not more than 10% of the dollar weight of such Currency Reference Asset for which the pricing information is derived from markets that do not meet the requirements of either (x) or (y) above; provided, however, that no single component subject to this exception exceeds 7% of the dollar weight of the Currency Reference Asset.

Commentary:

.01 In the event a Currency Reference Asset is based upon the forward price and the forward price becomes unavailable due to a holiday, the spot price may be used for calculating the pricing information of the Currency Reference Asset. The pricing information of the Currency Reference Asset on the following business day must be based upon the forward price.

In addition, the issue must meet both of the following initial listing criteria:

- (i) the value of the Currency Reference Asset must be calculated and widely disseminated by one or more market data vendors on at least a 15-second basis during the Core Trading Session; and
- (ii) in the case of Currency-Linked Securities that are periodically redeemable, the indicative value of the subject Currency-Linked Securities must be calculated and widely disseminated by the Corporation or one or more major market data vendors on at least a 15-second basis during the Core Trading Session.

(2) The issue must meet the following continued listing criteria:

- (a) The Corporation may halt trading in the securities and will initiate delisting proceedings pursuant to Rule 5.5(m) if any of the initial listing criteria described above are not continuously maintained.
- (b) The Corporation may also halt trading in the securities and will initiate delisting proceedings pursuant to Rule 5.5(m) under any of the following circumstances:
 - (i) If the aggregate market value or the principal amount of the Currency-Linked Securities publicly held is less than \$400,000;

- (ii) If the value of the Currency Reference Asset is no longer calculated or available and a new Currency Reference Asset is substituted, unless the new Currency Reference Asset meets the requirements of this Rule 5.2(j)(6); or
- (iii) If such other event shall occur or condition exists which in the opinion of the Corporation makes further dealings on the Corporation inadvisable.

IV. Fixed Income Index-Linked Securities Listing Standards

- (1) The issue must meet initial listing standards set forth in either (a) or (b) below:
 - (a) The Fixed Income Reference Asset to which the security is linked shall have been reviewed and approved for the trading of options, Investment Company Units, 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.
 - (b) The issue must meet the following initial listing criteria:
 - (i) 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;
 - (ii) 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;
 - (iii) 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;
 - (iv) An underlying Fixed Income Reference Asset (excluding one consisting entirely of exempted securities) must include a minimum of 13 non-affiliated issuers; and
 - (v) 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 Securities Exchange Act of 1934; 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 Securities Exchange Act of 1934, or (e) issuers that are a government of a foreign country or a political subdivision of a foreign country.

- (2) 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.
- (3) The issue must meet the following continued listing criteria:
- (a) The Corporation may halt trading in the securities and will initiate delisting proceedings pursuant to Rule 5.5(m) if any of the initial listing criteria described above are not continuously maintained.
 - (b) The Corporation may also halt trading in the securities and will initiate delisting proceedings pursuant to Rule 5.5(m) under any of the following circumstances:
 - (i) If the aggregate market value or the principal amount of the Fixed Income Index-Linked Securities publicly held is less than \$400,000;
 - (ii) The value of the Fixed Income Reference Asset 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 5.2(j)(6); or
 - (iii) If such other event shall occur or condition exists which in the opinion of the Corporation makes further dealings inadvisable.

V. Futures-Linked Securities Listing Standards

- (1) The issue must meet the initial listing standard set forth in either (a) or (b) below:
- (a) 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 Securities Exchange Act of 1934 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 components of a Futures Reference Asset must be derived from a market which is an ISG member or affiliate or with which the Exchange 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 (b); provided, however, that no single component subject to this exception exceeds 7% of the dollar weight of the Futures Reference Asset.

In addition, the issue must meet both of the following initial listing criteria:

- (i) 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 Core Trading Session (as defined in NYSE Arca Equities Rule 7.34); and
- (ii) in the case of Futures-Linked Securities that are periodically redeemable, the indicative value of the subject Futures-Linked Securities must be calculated and widely disseminated by the Corporation or one or more major market data vendors on at least a 15-second basis during the Core Trading Session.

(2) The issue must meet the following continued listing criteria:

- (a) The Corporation may halt trading in the securities and will initiate delisting proceedings pursuant to Rule 5.5(m) if any of the initial listing criteria described above are not continuously maintained.
- (b) The Corporation may also halt trading in the securities and will initiate delisting proceedings pursuant to Rule 5.5(m) under any of the following circumstances:
 - (i) If the aggregate market value or the principal amount of the Futures-Linked Securities publicly held is less than \$400,000;
 - (ii) The value of the Futures Reference Asset 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 5.2(j)(6); or
 - (iii) If such other event shall occur or condition exists which in the opinion of the Corporation makes further dealings on the Corporation inadvisable.

VI. Multifactor Index-Linked Securities Listing Standards

- (1) The issuer must meet the following initial listing standards set forth in either (a) or (b) below:
 - (a) 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, Investment Company Units, or other derivatives 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.

- (b) 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 5.2(j)(6).
- (2) In addition, the issue must meet both of the following initial listing criteria:
- (a) 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 the Exchange; and
 - (b) 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 the Exchange.
- (3) The Exchange may halt trading in the securities and will initiate delisting proceedings pursuant to Rule 5.5(m) under any of the following circumstances:
- (a) If any of the initial listing criteria described above are not continuously maintained;
 - (b) If the aggregate market value or the principal amount of the Multifactor Index-Linked Securities publicly held is less than \$400,000;
 - (c) The value of the Multifactor Reference Asset 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 5.2(j)(6); or
 - (d) If such other event shall occur or condition exists which in the opinion of the Exchange makes further dealings on the Exchange advisable.

(C) Firewalls

If the value of an Index-Linked Security listed under Rule 5.2(j)(6) is based in whole or in part on an index that is maintained by a broker-dealer, the broker-dealer shall erect and maintain a "firewall" around the personnel responsible for the maintenance of such index or 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.

Any advisory committee, supervisory board or similar entity that advises an index licensor or administrator or that makes decisions regarding 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 or portfolio.

(D) Equity Trading Rules

Index-Linked Securities will be subject to the Exchange's equity trading rules.

(E) Trading Halts

If the indicative value or Reference Asset value applicable to a series of Index-Linked Securities is not being disseminated as required, the Exchange may halt trading during the day on which the interruption first occurs. If such interruption 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.

(F) Surveillance Procedures

The Corporation will implement written surveillance procedures for Index-Linked Securities, including adequate comprehensive surveillance sharing agreements with markets trading in non-U.S. components, as applicable.

Commentary:

.01 (a) The ETP Holder acting as a registered Market Maker in Commodity-Linked Securities, Currency-Linked Securities, Futures-Linked Securities or Multifactor Index-Linked Securities, if applicable, must file with the Corporation, in a manner prescribed by the Corporation, and keep current a list identifying all accounts for trading in the Index Asset components, the commodities, currencies or futures underlying the Index Asset components, or any derivative instruments based on the Index Asset or based on any Index Asset component or any physical commodity, currency or futures underlying an Index Asset component, which the ETP Holder acting as registered Market Maker may have or over which it may exercise investment discretion. No ETP Holder acting as registered Market Maker in the Commodity-Linked Securities, Currency-Linked Securities, Futures-Linked Securities or Multifactor Index-Linked Securities, if applicable, shall trade in the Index Asset components, the commodities currencies or futures underlying the Index Asset components, or any derivative instruments based on the Index Asset or based on any Index Asset component or any physical commodity, or futures currency underlying an Index Asset component, in an account in which an ETP Holder acting as 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 the Corporation as required by this Rule.

(b) In addition to the existing obligations under Corporation rules regarding the production of books and records (See, e.g. Rule 4.4), the ETP Holder acting as a registered Market Maker in Commodity-Linked Securities, Currency-Linked Securities, Futures-Linked Securities or Multifactor Index-Linked Securities, if applicable, shall make available to the Corporation 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 Index Asset components, the commodities, currencies or futures underlying the Index Asset components, or any derivative instruments based on the Index Asset or based on any Index Asset component or any physical commodity, currency or futures underlying an Index Asset component, as may be requested by the Corporation.

Rule 5.2(j)(7). Trust Certificates

The Corporation will consider for trading, whether by listing or pursuant to unlisted trading privileges, certificates ("Trust Certificates") representing an interest in a special purpose trust (the "Trust") created pursuant to a trust agreement. The Trust will only issue Trust Certificates. Trust Certificates may or may not provide for the repayment of the original principal investment amount. Trust Certificates pay an amount at maturity which is based upon the performance of specified assets as set forth below:

- (i) an underlying index or indexes of equity securities (an "Equity Index Reference Asset"), or
- (ii) instruments that are direct obligations of the issuing company, either exercisable throughout their life (i.e., American style) or exercisable only on their expiration date (i.e., European style), entitling the holder to a cash settlement in U.S. dollars to the extent that the foreign or domestic index has declined below (for put warrant) or increased above (for a call warrant) the pre-stated cash settlement value of the index ("Index Warrants"), or
- (iii) a combination of two or more Equity Index Reference Assets or Index Warrants.

Commentary:

.01 Continued Listing. The Corporation will maintain surveillance procedures for securities listed under this Rule 5.2(j)(7) and consider the suspension of trading in, and will initiate delisting proceedings under Rule 5.5(m) of, an issue of Trust Certificates (unless the Commission has approved the continued trading of such issue), under any of the following circumstances:

- (i) if the aggregate market value or the principal amount of the securities publicly held is less than \$400,000;
- (ii) if the value of the index or composite value of the indexes 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 the NYSE Arca Marketplace (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 NYSE Arca Marketplace trading hours;
- (iii) if any of the continued listing requirements set forth in this Rule 5.2(j)(7) are not continuously maintained;
- (iv) if the Corporation submits a rule filing pursuant to Section 19(b) of the Securities Exchange Act to permit the listing and trading of a series of Trust Certificates and any of the statements or representations regarding (a) the description of the index, portfolio or reference asset, (b) limitations on index or portfolio holdings or reference assets, or (c) the applicability of Exchange listing rules specified in such rule filing are not continuously maintained; or
- (v) if such other event shall occur or condition exists which in the opinion of the Corporation makes further dealings on the Corporation inadvisable.

.02 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.

.03 Trustee—The following requirements apply on an initial and continued listing business:

- (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 Corporation.

.04 Voting—Voting rights shall be as set forth in the applicable Trust prospectus.

.05 Surveillance Procedures. The Exchange will implement written surveillance procedures for Trust Certificates.

.06 Equity Trading Rules. The Trust Certificates will be subject to the Exchange's equity trading rules.

.07 Information Circular. Prior to the commencement of trading of a particular Trust Certificates listing pursuant to this Rule, the Corporation will evaluate the nature and complexity of the issue and, if appropriate, distribute a circular to ETP Holders providing guidance regarding compliance responsibilities (including suitability recommendations and account approval) when handling transactions in Certificates.

.08 Trust Certificates may be exchangeable at the option of the holder into securities that participate in the return of the applicable underlying asset. In the event that the Trust Certificates are exchangeable at the option of the holder and contains an Index Warrant, then the ETP Holder must ensure that the holder's account is approved for options trading in accordance with NYSE Arca Rule 9.2 in order to exercise such rights.

.09 Trust Certificates may pass-through periodic payments of interest and principle of the underlying securities.

.10 Trust Insurance. The Trust payments may be guaranteed pursuant to a financial guaranty insurance policy which may include swap agreements.

.11 Early Termination. The Trust Certificates may be subject to early termination or call features.

.12 The Corporation may submit a rule filing pursuant to Section 19(b) of the Securities Exchange Act of 1934 to permit the listing and trading of Trust Certificates. All statements or representations contained in such rule filing regarding (a) the description of the index, portfolio or reference asset, (b) limitations on index or portfolio holdings or reference assets, or (c) the applicability of Exchange listing rules specified in such rule filing will constitute continued listing requirements. An issuer of such securities must notify the Exchange of any failure to comply with such continued listing requirements. If an issue of Trust Certificates does not satisfy these requirements, the Exchange may halt trading in the securities and will initiate delisting proceedings pursuant to Rule 5.5(m).

Rule 5.2(k). Common Stock—Development Stage Companies

In the case of common stock, the following Basic or Alternate Listing Requirements must be met:

Basic Listing Requirements

- (1) At least 500,000 publicly held shares and a market value of at least \$1,500,000.
- (2) At least 500 public beneficial holders.
- (3) Total net tangible assets of at least \$2,000,000.
- (4) Net income from continuing operations of at least \$100,000 in the last fiscal year or in two of the last three fiscal years, or total net tangible assets of \$2,500,000.
- (5) The maintenance of at least \$3 per share closing bid price for a majority of business days for the most recent six-month period prior to the date of application by the issuer. To meet this price requirement, the closing bid price must be at or above \$3 per share at the time of application.
- (6) An operating history of at least three continuous years.

Alternate Listing Requirements

- (1) At least 1,000,000 publicly held shares and a market value of at least \$2,000,000.
- (2) At least 500 public beneficial holders.
- (3) Net worth of at least \$8,000,000.
- (4) The maintenance of at least \$1 per share closing bid price for a majority of business days for the most recent six-month period prior to the date of application by the issuer. To meet this price requirement, the closing bid price must be at or above \$1 per share at the time of application.

Commentary:

.01 A company listing its common stock under Tier II of this Rule 5.2(k) must meet the applicable corporate governance requirements as set forth under Rule 5.3.

.02 The Corporation may approve an initial public offering "upon official notice of issuance" prior to completion of the offering.

.03 To be considered for listing under Tier II, an initial public offering must have an offering price of at least \$3.

Rule 5.2(k)-1. Units

(1) Initial and Continued Listing Requirements

- (a) All Units shall have at least one equity component. All components of such Units shall satisfy the requirements for initial and continued listing under Arca Equities Rules 5.2(k) and Arca Equities 5.5(a) - (e), as applicable, or, in the case of debt components, satisfy the requirements of Arca Equities Rule 5.2(k)(1)(b).
- (b) All debt components of a Unit, if any, shall meet the following requirements:
 - (i) the debt issue must have an aggregate market value or principal amount of at least \$5 million;
 - (ii) the issuer of the debt security must have equity securities that are listed on a national securities exchange; and
 - (iii) 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.
- (c) For the purposes of determining whether an individual component satisfies the applicable distribution requirements specified in the Exchange's continued listing standards in Arca Equities Rule 5.5(a) - (e), 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.
- (d) Notwithstanding Arca Equities Rule 5.2(k)(1)(c), the Exchange will consider the suspension of trading in, or removal from listing of, any individual component or unit when, in the opinion of the Exchange, 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.
- (e) 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 under Arca Equities Rules 5.2(k) and 5.5(a) - (e), as applicable.

(2) 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. Issuers and underwriters seeking to withdraw Units from listing must provide the Exchange with notice of such intent at least 15 days prior to withdrawal.

(3) Disclosure Requirements for Units

Each 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. An issuer shall also disclose when a component of the Unit is separately listed on an exchange. These disclosures shall be made on the issuer's website, or if it does not maintain a website, in its annual report provided to Unit holders. An issuer shall also immediately publicize through, at a minimum, a public announcement through the news media, 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 notification shall be made as soon as practicable in relation to the effective date of the change.

Rule 5.2(l). Preferred Stock and Similar Issues

In the case of preferred stock and similar issues, the following listing requirements must be met:

- (1) At least 500,000 preferred shares publicly held and an aggregate market value of at least \$1,000,000.
- (2) At least 250 public beneficial holders.
- (3) The issuer must meet the net tangible asset and earnings requirements as set forth in the Tier II Basic Listing Requirements under Rule 5.2(k), and must meet and appear to be able to service the dividend requirements for the preferred stock.
- (4) An operating history of at least three continuous years.
- (5) The preferred stock shall give the beneficial holders voting rights as set forth in Rule 5.3(h).

Commentary:

.01 The Corporation will not list convertible preferred issues containing a provision that permits the company, at its discretion, to change the conversion price other than in accordance with the terms of the company's stated articles of incorporation or any amendments thereof.

.02 If preferred stock is convertible into a class of common stock, such class must meet either the Tier II Basic or Alternate Listing Requirements under Rule 5.2(k). Current last sale information must be available with respect to the underlying security into which the security is convertible.

.03 Redeemable issues must provide for redemption pro rata or by lot.

Rule 5.2(m). Bonds and Debentures

In the case of bonds and debentures, the following listing requirements must be met:

- (1) Aggregate market value and principal amount of at least \$5,000,000 each, and at least 200 public beneficial holders.
- (2) The company must meet the net tangible asset and earnings requirements as set forth in the Tier II Basic Listing Requirements under Rule 5.2(k), and must meet and appear to be able to satisfy interest and principal when due on the bond or debenture to be listed.

Commentary:

.01 The Corporation will not list convertible debt issues containing a provision that permits the company, at its discretion, to change the conversion price other than in accordance with the terms of the company's Indenture Agreement.

.02 If a debt security is convertible into a class of equity security, such equity security must meet the applicable Tier II listing requirements under this Rule 5.2. Current last sale information must be available with respect to the underlying security into which the security is convertible.

.03 Redeemable issues must provide for redemption pro rata or by lot.

Rule 5.2(n). Warrants

In the case of warrants, the following listing requirements must be met:

- (1) At least 500,000 warrants must be publicly held by not less than 250 public beneficial holders.
- (2) The Corporation will not list warrants unless the common stock of the company or other security underlying the warrants is already listed (and meets the pertinent maintenance requirements for continued listing) or will be listed on the Corporation concurrently with the warrants under the Tier II designation. This provision does not apply to warrants based on currency and/or market indices.

Commentary:

.01 The Corporation will not list warrants containing a provision that permits the company, at its discretion, to change the exercise price other than in accordance with the terms of the company's Warrant Agreement.

.02 The listing requirements for currency and index warrants are contained in Rule 8.

Section 3. Corporate Governance and Disclosure Policies

Rule 5.3. Corporate Governance and Disclosure Policies

The Corporation shall require that specific corporate governance and disclosure policies be established by domestic issuers of any equity security listed pursuant to Rule 5.2. Issuers of any security that is listed pursuant to the Rules of the Corporation must comply with all of the provisions of Rule 5.3 except for registered management investment companies, preferred and debt listings, passive business organizations (such as royalty trusts), and derivative or special purpose securities (securities listed pursuant to Rules 5.2(h), 5.2(j)(1)-(3) and Rule 8.) Registered management investment companies shall only be required to comply with the provisions of Rules 5.3(a), 5.3(c) - 5.3(i)(4), 5.3(k)(1), 5.3(k)(5), 5.3(m) and 5.3(o). Preferred and debt listings, passive business organizations (such as royalty trusts), derivative or special purpose securities shall only be required to comply with the provisions of Rules 5.3(a), 5.3(c)—5.3(i)(4), 5.3(k)(1), 5.3(o) and all applicable provisions of Rule 10A-3 of the Securities and Exchange Act of 1934. 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 the Act, are required to comply with all provisions of Rule 5.3 applicable to domestic issuers.

Rule 5.3(a). Conflicts of Interest

Applicants shall be required to eliminate material conflicts of interest between officers, directors, or principal shareholders and the applicant issuer prior to approval of the listing. Each issuer shall conduct an appropriate review of all related party transactions on

an ongoing basis and shall use the company's audit committee or a comparable body to review potential conflict of interest situations where appropriate.

Rule 5.3(b). Independent Directors

The Corporation shall require that each listed domestic issuer have at least two independent directors on its board of directors. Upon the applicability of Rule 5.3(k)(5)(A)(ii) each listed domestic issuer shall have at least three independent directors on its board of directors.

Rule 5.3(c). Quorum

A quorum for any meeting of shareholders of common stock may not consist of less than 33 1/3 percent of the common shares issued and outstanding and entitled to vote. If less than a majority of the shares issued and outstanding and entitled to vote is specified, the Corporation is to be consulted when the listing application is filed.

Rule 5.3(d). Shareholder Approval Policy

Each issuer shall require shareholder approval of a plan or arrangement pursuant to subparagraphs (1) through (7) below or, except in the case of limited partnerships, prior to the issuance of designated securities under subparagraphs (8) through (11) below.

- (1) *Shareholder Approval.* Except as provided for in this Rule 5.3(d) all equity-compensation plans, and any material revisions to the terms of such plans, must be approved by the shareholders of the listed company.
- (2) *Equity Compensation Plan Defined.* An equity compensation plan is a plan or other arrangement that provides for the delivery of equity securities (either newly issued or treasury shares) of the listed company to any employee, director or other service provider as compensation for services. For purposes of this rule, a compensatory grant of options or other equity securities that is not made under a plan is, nonetheless, an equity compensation plan.
- (A) *Exceptions.* The following are not equity compensation plans even if the brokerage and other costs of the plan are paid for by the listed company:
 - (i) Plans that are made available to shareholders generally, such as a typical dividend reinvestment plan.
 - (ii) Plans that merely allow employees, directors or other service providers to elect to buy shares on the open market or from the listed company for their current fair market value, regardless of whether:
 - (a) the shares are delivered immediately or on a deferred basis; or

(b) the payments for the shares are made directly or by giving up compensation that is otherwise due (for example, through payroll deductions).

(3) *Material Revisions*. A material revision of an equity compensation plan includes, but is not limited to, the following:

(A) A material increase in the number of shares available under the plan (other than an increase solely to reflect a reorganization, stock split, merger, spinoff or similar transaction).

(i) 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 formula, each such increase or grant will be considered a revision requiring shareholder approval unless the plan has a term of not more than ten years.

This type of plan (regardless of its term) is referred to as a formula plan.

Examples of automatic grants pursuant to a formula plan are:

(a) annual grants to directors of restricted stock having a certain dollar value;
and

(b) matching contributions, whereby stock is credited to a participant's account based upon the amount of compensation the participant elects to defer.

(ii) If a plan contains no limit on the number of shares available and is not a formula plan, then each grant under the plan will require separate shareholder approval regardless of whether the plan has a term of not more than ten years.

This type of plan is referred to as a discretionary plan. A requirement that grants be made out of treasury shares or repurchased shares will not, in itself, be considered a limit or preestablished formula so as to prevent a plan from being considered a discretionary plan.

(B) An expansion of the types of awards available under the plan.

(C) A material expansion of the class of employees, directors or other service providers eligible to participate in the plan.

(D) A material extension of the term of the plan.

(E) A material change to the method of determining the strike price of options under the plan.

(F) The deletion or limitation of any provision prohibiting repricing of options.

An amendment will not be considered a Material Revision if it curtails rather than expands the scope of the plan in question.

(4) *Repricings*. Repricing means any of the following or any other action that has the same effect:

(A) Lowering the strike price of an option after it is granted.

(B) Any other action that is treated as a repricing under generally accepted accounting principles.

(C) Canceling an option at a time when its strike price exceeds the fair market value of the underlying stock, in exchange for another option, restricted stock, or other equity, unless the cancellation occurs in connection with a merger, acquisition, spin-off or other similar corporate transaction.

A plan that does not contain a provision that specifically permits repricing of options will be considered for purposes of this rule as prohibiting repricing. Therefore, any actual repricing of options will be considered a material revision of a plan even if the plan itself is not revised. This consideration will not apply to a repricing through an exchange offer that commenced before the date this rule became effective.

(5) *Exemptions*. This rule does not require shareholder approval of employment inducement awards, certain grants, plans and amendments in the context of mergers and acquisitions, and certain specific types of plans, as described below. These exempt grants, plans and amendments may be made only with the approval of the listed company's independent compensation committee or the approval of a majority of the company's independent directors. Listed companies must notify the Exchange in writing when they use these exemptions.

(A) *Employment Inducement Awards*. An employment inducement award is a grant of options or other equity based compensation as a material inducement to a person or persons being hired by the listed company or any of its subsidiaries, or being rehired following a bona fide period of interruption of employment. Inducement awards include grants to new employees in connection with a merger or acquisition. Promptly following a grant of any inducement award in reliance of this exemption, the listed company must disclose in a press release the material terms of the award, including the recipient(s) of the award and the number of shares involved.

(B) *Mergers and Acquisitions*. In the context of corporate acquisitions and mergers, the following exemptions apply:

(i) Shareholder approval is not required to convert, replace or adjust outstanding options or other equity compensations awards to reflect the transaction.

- (ii) Shares available under certain plans acquired in corporate acquisitions and mergers may be used for certain post-transaction grants without further shareholder approval. This exemption applies where a party that is not a listed company following the transaction has shares available for grant under pre-existing plans that were previously approved by shareholders. A plan adopted in contemplation of the merger or acquisition transaction would not be considered pre-existing for purposes of this exemption.

Shares available under a pre-existing plan may be used for post-transaction grants of options and other awards with respect to equity of the entity that is the listed company after the transaction, either under the pre-existing plan or another plan, without further shareholder approval, so long as:

- (a) the number of shares available for grants is appropriately adjusted to reflect the transaction;
- (b) the time during which those shares are available is not extended beyond the period when they would have been available under the pre-existing plan, absent the transaction; and
- (c) the options and other awards are not granted to individuals who were employed, immediately before the transaction, by the post-transaction listed company or entities that were its subsidiaries immediately before the transaction.

Any shares reserved for listing in connection with a transaction pursuant to either of these exemptions 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 and thus requires shareholder approval pursuant to Rule 5.3(d)(9)(B).

(C) *Qualified Plans, Parallel Excess Plans and Section 423 Plans.* The following types of plans, and material revisions thereto, are exempt from the shareholder approval requirement:

- (i) plans intended to meet the requirement of Section 401(a) of the Internal Revenue Code (e.g. ESOP);
- (ii) plans intended to meet the requirements of Section 423 of the Internal Revenue Code;
- (iii) parallel excess plans. A parallel excess plan is a plan that is a pension plan within the meaning of the Employee Retirement Income Security Act 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 the

contributions and benefits under qualified plans), 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 hereafter be enacted.

A plan will not be considered a parallel excess plan unless:

- (a) 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 Internal Revenue Code Section 401(a)(17) or any successor or similar limits that may hereafter be enacted;
 - (b) its terms are substantially the same as the qualified plan that it parallels except for the elimination of the limits described in the preceding sentence and the limitation described in clause (c) below; and
 - (c) no participant receives employer equity contributions under the plan in excess of 25% of the participant's cash compensation.
- (iv) an equity compensation plan that provides non-U.S. employees with substantially the same benefits as a comparable Section 401(a) plan, Section 423 plan or parallel excess plan that the listed company provides to its U.S. employees, but for features necessary to comply with applicable foreign tax law, are also exempt from shareholder approval under this section.

(6) *Transition Rules.* Except as provided below, a plan that was adopted before the date of the Securities and Exchange Commission order approving this rule will not be subject to shareholder approval under this section unless and until it is materially revised.

In the case of a discretionary plan, as defined in Rule 5.3(d)(3)(A)(ii), whether or not previously approved by shareholders, additional grants may be made after the effective date of this rule without further shareholder approval only for a limited transition period, defined below, and then only in a manner consistent with past practice. In applying this rule, if a plan can be separated into a discretionary plan portion and a portion that is not discretionary, the non-discretionary portion of the plan can continue to be used separately, under the appropriate transition rule. For example, if a shareholder approved plan permits both grants pursuant to a provision that makes available a specific number of shares, and grants pursuant to a provision authorizing the use of treasury shares without regard to the specific share limit, the former provision (but not the latter) may continue to be used after the transition period, under the general rule.

In the case of a formula plan, as defined in Rule 5.3(d)(3)(A)(i), that either has not previously been approved by shareholders or does not have a term of ten years or less, additional grants may be made after the effective date of this rule without further shareholder approval only for a limited transition period defined below.

The limited transition period will end upon the first to occur of:

- (A) the listed company's next annual meeting at which directors are elected that occurs more than 180 days after the effective date of this rule;
- (B) the first anniversary of the effective date of this rule; and
- (C) the expiration of the plan.

A shareholder approved formula plan may continue to be used after the end of this transition period if it is amended to provide for a term of ten years or less from the date of its original adoption or, if later, the date of its most recent shareholder approval. Such an amendment may be made before or after the effective date of this rule, and would not itself be considered a material revision requiring shareholder approval.

A formula plan may continue to be used, without shareholder approval, if the grants after the effective date of this rule are made only from the shares available immediately before the effective date, in other words, based on formulaic increases that occurred prior to such effective date.

(7) *Broker Voting*. See Rule 9.4 (Proxy Voting) (which contains certain prohibitions on broker voting).

(8) The issuance will result in a change of control of the issuer.

(9) In connection with the acquisition of the stock or assets of another company, shareholder approval is needed in the following circumstances:

- (A) if any director, officer, or substantial shareholder of the listed 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) where the present or potential issuance of common stock, or securities convertible into or exercisable for common stock (other than in a public offering for cash), could result in an increase in outstanding common shares of 20% or

more or could represent 20% or more of the voting power outstanding before the issuance of such stock or securities.

(10) In connection with a transaction other than a public offering involving:

(A) the sale or issuance by the company of common stock (or securities convertible into or exercisable for common stock) at a price less than the greater of book or market value, which together with sales by officers, directors or principal shareholders of the company equals 20% or more of presently outstanding common stock, or 20% or more of the presently outstanding voting power; or

(B) the sale or issuance by the company of common stock (or securities convertible into or exercisable for common stock) equal to 20% or more of presently outstanding stock or voting power for less than the greater of book or market value of the stock.

(11) Exceptions may be made upon application to the Corporation when:

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

(B) reliance by the company on this exception is expressly approved by the audit committee of the board or a comparable body.

A company relying on this exception must mail to all shareholders, no 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 and indicating that the audit committee of the board or a comparable body has expressly approved the exception.

Commentary:

.01 Only shares actually issued and outstanding (excluding treasury shares or shares held by a subsidiary) are to be used in making any calculation provided for in this Rule 5.3(d).

.02 For the purposes of this Rule 5.3(d), an interest consisting of less than either 5% of the number of shares of common stock, or 5% of the voting power outstanding of an issuer or party shall not be considered a substantial interest or cause the holder of such an interest to be regarded as a substantial security holder.

Rule 5.3(e). Shareholder/Annual Meetings

A listed company is required to hold an annual meeting of shareholders to elect directors and to take action on other corporate matters in accordance with its charter, by-laws and

applicable state or other laws. In the event unusual circumstances affecting the company shall preclude the holding of its annual meeting within a reasonable period after the time specified in its charter, the Corporation must be informed in writing, stating the reasons for the delay, and good faith efforts must be made to ensure that such annual meeting is held as soon as reasonably practicable in light of the circumstances causing the delay.

The company is also required to give written notice to shareholders and to the Corporation at least ten (10) days in advance of all shareholders' meetings, and to provide for such notice in its by-laws.

Rule 5.3(f). Solicitation of Proxies and Consents

A listed company is required, with respect to any matter requiring authorization by shareholders, to hold a meeting in accordance with its by-laws and to solicit proxies for such meeting of shareholders. The company shall provide copies of such proxy solicitation to the Corporation. Whenever it is determined by the Corporation that a convened meeting of shareholders is not required, the Corporation permits the solicitation of written consents from shareholders in lieu of a meeting and the proxy solicitation. If it appears that a contest or controversy will develop, the Corporation will require a shareholder meeting.

Rule 5.3(g). Common Voting Rights

- (1) No Rule, stated policy, practice, or interpretation of the Corporation shall permit the listing, or the continuance of the listing, of any common stock or other equity security of a domestic issuer, if, on or after July 7, 1988, the issuer of such security issues any class of security, or takes other corporate action, with the effect of nullifying, restricting or disparately reducing the per share voting rights of holders of an outstanding class or classes of common stock of such issuer registered pursuant to Section 12 of the Securities Exchange Act of 1934.
- (2) For the purposes of this Rule 5.3(g), the following shall be presumed to have the effect of nullifying, restricting, or disparately reducing the per share voting rights of an outstanding class or classes of common stock:
 - (i) Corporate action to impose any restriction on the voting power of shares of the common stock of the issuer held by a beneficial owner or record holder based on the number and/or the length of time such shares have been held by such beneficial owner or record holder.
 - (ii) Any issuance of securities through an exchange offer by the issuer for shares of an outstanding class of common stock of the issuer, in which the securities issued have voting rights greater than or less than the per share voting rights of any outstanding class of the common stock of the issuer.

(iii) Any issuance of securities pursuant to a stock dividend, or any other type of distribution of stock, in which the securities issued have voting rights greater than the per share voting rights of any outstanding class of the common stock of the issuer.

(3) For purposes of this paragraph (g) of Rule 5.3, the following, standing alone, shall be presumed not to have the effect of nullifying, restricting, or disparately reducing the per share voting rights of holders of an outstanding class or classes of common stock:

(i) The issuance of securities pursuant to an initial registered public offering.

(ii) The issuance of any class of securities, through a registered public offering with voting rights not greater than the per share voting rights of any outstanding class of the common stock of the issuer.

(iii) The issuance of any class of securities to effect a bona fide merger or acquisition, with voting rights not greater than the per share voting rights of any outstanding class of the common stock of the issuer.

(iv) Corporate action taken pursuant to state law requiring a state's domestic corporation to condition the voting rights of a beneficial owner or record holder of a specified threshold percentage of the corporation's voting stock on the approval of the corporation's independent shareholders.

(4) For purposes of this paragraph (g) of Rule 5.3, the term "security" shall include any security defined as such pursuant to Section 3(a)(10) of the Securities Exchange Act of 1934, but shall exclude any class of security having a preference or priority over the issuer's common stock as to dividends, interest payments, redemption or payments in liquidation, if the voting rights of such securities only become effective as a result of specified events, not relating to an acquisition of the common stock of the issuer, which reasonably can be expected to jeopardize the issuer's financial ability to meet its payment obligations to the holders of that class of securities.

Rule 5.3(h). Preferred Voting Rights

To be eligible for listing, a preferred stock shall give the holders the right to elect no later than two years after a default in the payment of fixed dividends at least two members of the issuer's board of directors and shall not provide for:

(1) Any change in the rights, privileges or preferences of such issue without at least two-thirds favorable vote of the preferred class, voting as a class; or

(2) The creation of an additional class of preferred stock senior to the issue to be listed or equal in preference to the issue to be listed without at least a favorable majority vote of the preferred class voting as a class.

Rule 5.3(i). Disclosure Policies

The essence of continuing confidence and good corporate investor relations is complete and immediate disclosure to qualified persons of all material facts and figures relating to the status and the progress of a business. Accordingly, the spirit of this principle extends to the dissemination of corporate news to the investing public by companies whose securities are listed on the Corporation. The main points of this policy are described in this Rule 5.3(i).

Rule 5.3(i)(1). Financial Reports and Related Notices

Companies applying for listing enter into agreements with the Corporation and become subject to its Rules, regulations and policies applicable to listed companies. Pursuant to the listing agreement with the Corporation and the rules of the Securities and Exchange Commission under the Securities Exchange Act of 1934, each listed company is required to submit the following information and is subject to the following requirements:

- (i) Reports, Notifications and Changes to Indices:
 - (A) Annual reports containing audited financial statements of the company and its subsidiaries should be distributed to shareholders and the Corporation no later than 120 days after the close of each fiscal year, but at least fifteen days in advance of the annual meeting.
 - (B) All notices to shareholders such as annual and special meetings, proxy statements, forms of proxy and other soliciting materials should be sent to the Corporation as soon as it is mailed to shareholders.
 - (C) The Company should file with the Corporation any proposed amendments to its certificate of incorporation or by-laws. A copy of any amendment shall be certified by the appropriate authority.
 - (D) Changes in company name, address, par value of a listed security, its principal executive officers, directors, its independent public accountants, its transfer agent or registrar, or the general character or nature of the company's business.
 - (E) Notification of at least fifteen days in advance of the redemption, cancellation or retirement of any listed security.
 - (F) The Corporation shall be notified of any material changes in accounting practices, in policies as to depreciation and depletion, or in bases of valuation of inventories or other assets. The effect of any such change must be disclosed in the company's next succeeding interim and annual report to its shareholders.
 - (G) The Company shall notify the Corporation of any material charges against paid-in-surplus or any of its majority-owned subsidiaries.

- (H) Any notice with respect to the payment or non-payment of dividends should be provided to the Corporation at least ten calendar days prior to record date. The same notice requirements apply to proposed issuance of rights to subscribe, closing of stock transfer books, or taking a record of shareholders for any purposes.
- (I) The Company shall notify the Corporation of any change in the form or nature of any listed security or in the rights and privileges of the holders of such security, at least twenty days in advance of such change.
- (J) The Company shall notify the Corporation of any diminution in the supply of the security available for trading caused by deposit of the security under voting trust, tender offer or other agreements.
- (K) The Company shall notify the Corporation of the existence of any technical default or default in interest or principal payment, cumulative dividends, sinking funds, or redemption fund requirements of the Company or any controlled corporation, whether consolidated or unconsolidated.
- (L) The Company shall notify the Corporation within fifteen days after the close of a fiscal quarter of any securities reacquired or disposed of for the account of the Company. The Company or its transfer agent shall also notify the Corporation monthly of all issuances of securities, as well as providing the total number of shares or principal amount of debt securities issued to date.
- (M) The Company shall provide sufficient advance application to the Corporation for the listing of additional amounts of securities.
- (N) The Company shall provide sufficient advance application for the listing of securities in substitution for securities, the obligations, rights or privileges of which have been altered by merger, acquisition, consolidation or other corporate action, unless specifically exempted by the Corporation.
- (O) The Company shall furnish the Corporation any other information concerning its business as the Corporation may reasonably require.
- (P) This paragraph (P) sets forth procedures to be followed in relation to any listed Derivative Securities Product (as defined in Rule 5.2(j)(3), Commentary .01(a)(A)(1)) or listed Structured Product (as defined in Rule 5.1(b)(17)) based on an index or portfolio of securities with respect to which: (1) the value of such index or portfolio is no longer calculated or available and a new index or portfolio is substituted; or (2) such index or portfolio is replaced with a new index or portfolio from the same or a different index provider; or (3) the index or portfolio is significantly modified (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) (each of (1), (2) or (3), a "Material Index or Portfolio Change").

The issuer of any listed Derivative Securities Product or listed Structured Product must notify the Corporation no fewer than ten business days in advance of the effective date of any change or modification in the index or portfolio associated with such security and, if required by the Corporation, make application for the continued listing of the security as so changed and announce such change via a method acceptable under Rule 5.3(i)(2). Issuers are advised to consult with regulatory staff in advance of any Material Index or Portfolio Change which could cause the applicable security to cease to be qualified for continued listing without the approval or immediate effectiveness of a rule filing, in which case the issuer is advised to provide adequate notice to the Corporation to provide sufficient time to obtain approval or immediate effectiveness of such rule filing prior to implementation of the Material Index or Portfolio Change, thereby avoiding any disruption in trading.

If an issuer of a listed Derivative Securities Product or listed Structured Product effectuates a Material Index or Portfolio Change which requires the filing of a proposed rule change pursuant to Section 19(b)(1) and such rule filing has not yet been approved or has not yet taken effect (as applicable), then the Corporation will immediately halt trading in the applicable security until such rule filing is approved or takes effect. In such circumstances, the Corporation will have sole discretion as to whether it chooses to submit a rule filing pursuant to Section 19(b)(1) designed to permit the continued listing of the security. If at any time it becomes clear, in the opinion of the Corporation, that such rule filing will not be approved by the Commission, will not be allowed to take effect, or if the Corporation decides in its sole discretion to withdraw or not file such rule filing, the Corporation will immediately commence delisting procedures with respect to such security.

(ii) Materials to be filed pursuant to the Securities Exchange Act of 1934:

(A) Forms 8-K Current Report, 10-Q Quarterly Report, 10-K Annual Report, or other annual report forms for issuers using other than Form 10-K.

(B) Any proxy soliciting material.

(C) Forms 3 and 4—reports of the Company's officers, directors, and holders of more than 10% of the registered equity security. One signed copy, except when a company having securities listed on another national securities exchange has taken advantage of SEC Regulation 240.16a-1(c) and has designated another exchange as the only exchange with which such reports are to be filed. Designating an exchange may be accomplished by filing a letter with the Securities and Exchange Commission with a copy to each exchange on which the stock is listed.

(D) Form 144—notice of proposed sale of restricted securities.

This report need be filed under SEC Regulation 230.144(h) only with the principal exchange on which the securities are listed.

Commentary:

.01 Each issuer that is subject to SEC Rule 13a-13 shall make available to shareholders copies of quarterly reports including statements of operating results either prior to or as soon as practicable following the company's filing its Form 10-Q with the SEC. If the form of such quarterly report differs from the Form 10-Q, both the quarterly report and the Form 10-Q shall be filed with the Corporation. The statement of operations contained in quarterly reports shall disclose, as a minimum, any substantial items if an unusual or nonrecurrent nature and net income, and the amount of estimated federal taxes.

.02 Each issuer that is not subject to SEC Rule 13a-13 and which is required to file with the SEC, or another federal or state 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 made available to shareholders differs from that filed with the regulatory authority, both the report to shareholders and the report to regulatory authority shall be filed with the Corporation.

.03 In connection with Commentaries .01 and .02 above, any listed company that distributes interim financial reports to shareholders should distribute such reports to both registered and beneficial shareholders. The financial reports that are subject to this Commentary are those that are voluntarily distributed by the company as part of its shareholder relations activities, and not the quarterly financial reports required to be filed with the SEC pursuant to Sections 13(a) and 15(d) of the Securities Exchange Act of 1934.

.04 Material required to be filed pursuant to the Securities Exchange Act of 1934 will be considered as effectively filed with the Corporation upon filing such documents through the SEC's Electronic Data Gathering Analysis and Retrieval ("EDGAR") system, excepting Form 8-Ks and proxy soliciting material.

Rule 5.3(i)(2). Immediate Public Disclosure of Material Information

Immediate disclosure should be made of information about a company's affairs or about events or conditions in the market for its securities when the information is likely to have a significant effect on the price of any of the company's securities, or such information (including, in certain cases, any necessary interpretation by securities analysts or other experts) is likely to be considered important by a reasonable investor in determining a choice of action.

The types of information about a company's affairs that should be disclosed are any material information of a factual nature that bears on the value of a company's securities, or on decisions as to whether or not to invest or trade in such securities. Included is information known to the company concerning:

- (i) its property, business, financial condition and prospects;
- (ii) a joint venture, tender offer, merger or acquisition;
- (iii) the material sale, transfer, exchange or other disposition of assets or securities by it or any of its subsidiary or controlled companies;
- (iv) any material changes in, or removal of, collateral deposited under a mortgage or trust indenture, under which listed securities of the Company have been issued, or change of trustee thereof;
- (v) dealings with employees, suppliers, customers and others;
- (vi) information concerning a significant change in ownership of the company's securities by insiders, principal shareholders, or control persons; and
- (vii) any significant litigation.
- (viii) changes to the terms and conditions of a 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 components within the unit. Such public notification should be as soon as practicable in relation to the effective date of the change, and should, at a minimum, include release of an announcement to the national and business financial news-wire services. In addition, the issuer must also 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 on its website, or if it does not maintain a website, include a description of the current terms and conditions of the components of the unit (including a description of any original issue discount or other significant tax attribute of any component) and the ratio of the components comprising the unit, in its annual report to unit holders.

Rule 5.3(i)(3). Procedure for Public Dissemination

A listed company is expected to make timely and adequate disclosure to its shareholders, the financial community, and investing public of any news or information that might reasonably be expected to materially affect the market for its securities. Furthermore, a company should also act promptly to dispel any unfounded rumors that result in unusual market activity or price variations.

The following information will provide guidance to a listed company in making appropriate public disclosure and, therefore, ensure the maintenance of a fair and orderly marketplace to all participants:

(i) Consultation with the NYSE Regulation

The Corporation expects a company to notify the NYSE Regulation in advance of public disclosure of information which is non-routine or is anticipated to have an impact on the market for its securities. The Corporation, with the benefit of the facts provided by the company, will be able to consider whether a temporary halt in trading, pending an announcement, would be advisable. A temporary halt in trading is not a reflection on the company or its securities, but provides an opportunity for disseminating and evaluating the information released. This procedure will help to eliminate rumors and market instability, as well as serve to enhance the integrity of the marketplace and protect the public interest.

By means of such advance consultation, effective liaison between companies and the Corporation is maintained, and a company can obtain the benefit of the NYSE Regulation's experience in the daily application of the Corporation's policies relating to corporate disclosure. Preliminary discussions between the company officials and the staff of the Corporation will be afforded the strictest confidentiality.

(ii) Internal Handling of Confidential Corporate Matters

Although public disclosure is generally necessary to protect the public interest, certain circumstances may be evident that require the company to temporarily refrain from making public disclosure of material information. Corporate developments that would defer disclosure for a more appropriate time would be matters involving discussion and study by corporate officials of facts that are in a state of flux (e.g., negotiations leading to acquisitions and mergers, stock splits, changes in dividend rates or earnings, calls for redemptions, new contracts, product, or discoveries, etc.). In such situations, it may be proper to withhold public disclosure until a definitive announcement can be made to avoid premature or inadvertent disclosure of corporate plans, which may confuse or mislead the public rather than enlighten it. These types of situations are limited and constitute an infrequent exception to the standard requirement of immediate public disclosure. Therefore, in cases of doubt, the presumption must always be in favor of disclosure. The extent of the disclosure(s) will depend upon the stage of discussion, studies, or negotiations.

Whenever material information is temporarily withheld, extreme care must be exercised by the company to keep the information confidential. During this period, the market activity of the company's securities should be closely monitored since unusual market activity frequently signifies the occurrence of information leaks or rumors. Therefore, it is important to keep NYSE Regulation fully apprised of material corporate developments. In view of the importance of this matter and the potential difficulties involved, the Corporation recommends that a periodic review be made by each company of the manner in which confidential information is being treated within its organization. In general, it is recommended that a listed company remind its employees on a regular basis of its policies on confidentiality.

(A) Immediate Release Policy—Information required to be released quickly to the public under Rules 5.3(i)(2) and (3) should be disclosed by means of any Regulation FD compliant method (or combination of methods). While foreign private issuers and Investment Company Act registrants other than closed end funds are not required to comply with Regulation FD, foreign private issuers and Investment Company Act registrants other than closed end funds must comply with Rules 5.3(i)(2) and (3) and may do so by any method (or combination of methods) that would constitute compliance with Regulation FD for a domestic U.S. issuer subject to the Exchange Act. While not requiring them to do so, the Exchange encourages listed companies to comply with the immediate release policy by issuing press releases.

Any public disclosure of material information made by means of a press release should be released to the major news wire services, including, at a minimum, Dow Jones & Company, Inc., Reuters Economic Services and Bloomberg Business News.

Any company choosing to comply with the immediate release policy by disseminating information on its website or via social media must comply with the SEC's guidelines applicable to Regulation FD communication via websites or social media.

When difficulty is encountered or anticipated in the dissemination of a material corporate development, the company should contact NYSE Regulation for assistance.

(iii) Relationships between Company Officials and Others

(A) Security Analysts, Media, and Shareholders:

The Corporation recommends that companies observe an "open door" policy in dealing with analysts, journalists, shareholders and others. However, under no circumstances should disclosure of material corporate developments be made on an individual or selective basis to analysts, shareholders or other persons unless such information has previously been fully disclosed and disseminated to the

public. In the event that material information is inadvertently disclosed on the occasion of any meetings with analysts or others, it must be publicly disseminated as promptly as possible by the means described in subparagraph (ii)(A), above.

The Corporation also believes that even any appearance of preference or partiality in the release or explanation of information should be avoided. Therefore, at meetings with analysts or other special groups, where the procedure of the group sponsoring the meeting permits, representatives of the newswire services, the press, and other media should be permitted to attend.

(B) Market Makers

Market Makers are obligated to contribute, insofar as reasonably practical, to the maintenance of a fair and orderly market pursuant to the Rules and procedures of the Corporation. In fulfilling this responsibility, it is desirable for the Market Makers to have appropriate liaison with one or more corporate officials. Such liaison, properly conducted, provides opportunity for communication in the event of particular questions or problems encountered by either the Market Makers or the company. Company officials should be informed of any unusual market problems if deemed appropriate and would be free to call NYSE Regulation for information if a question arises about the market in the security.

There is a point beyond which it is improper for the company to go in providing information to Market Makers. Therefore, for the company to give advance earnings, dividend, stock split, or merger information to a Market Maker or anyone else would be inappropriate. Alternatively, it is entirely appropriate for company officials to discuss matters such as the trend of business with a Market Maker, much as they would with shareholders, security analysts, or anyone having a legitimate interest in the company. In this way, a Market Maker may be better able to maintain a market beneficial to the company and its present and prospective shareholders.

Rule 5.3(i)(4). Content and Preparation of Public Announcements

The content of a press release or other public announcement is as important as its timing. Each announcement should contain the following:

- (i) facts that are clear and succinct;
- (ii) sufficient quantitative information to allow investors to evaluate its relative importance to the activities of the company;
- (iii) balanced and fair representations; and
- (iv) avoid the following:

- (A) The omission of important unfavorable facts, or the slighting of such facts (e.g., by "burying" them at the end of a press release).
- (B) The representation of favorable possibilities as certain, or as more probable than is the case.
- (C) The presentation of projections without sufficient qualification or without sufficient factual basis.
- (D) Negative statements phrased so as to create a positive implication.
- (E) The use of promotional jargon calculated to excite rather than to inform:
 - (a) avoid over-technical language, and should be expressed to the extent possible in language comprehensible to the general investor;
 - (b) explain, if the consequences or effects of the information on the company's future prospects cannot be assessed, why this is so; and
 - (c) clarify and point out any reasonable alternatives where the public announcement undertakes to interpret information disclosed.

Rule 5.3(j). Corporate Governance Guidelines/Code of Conduct

(1) *Corporate Governance Guidelines.* Listed companies must adopt and disclose corporate governance guidelines. Each listed company's web site must include its corporate governance guidelines, the charters of its most important committees (including at least the audit, compensation and nominating committees) and the company's code of business conduct and ethics. Each company's annual report must state that the foregoing information is available on its web site, and that the information is available in print to any shareholder who requests it. The following subjects must be addressed in the corporate governance guidelines:

- (A) Director qualification standards. These standards should, at minimum, reflect the independence requirements set forth in subsection (k) below. Companies may also address other substantive qualification requirements, including policies limiting the number of boards on which a director may sit, and director tenure, retirement and succession.
- (B) Director responsibilities. These responsibilities should clearly articulate what is expected from a director, including basic duties and responsibilities with respect to attendance at board meetings and advance review of meeting materials.
- (C) Director access to management and, as necessary and appropriate, independent advisors.

(D) Director compensation. These guidelines should include general principles for determining the form and amount of director compensation (and for reviewing those principles, as appropriate).

(E) Director orientation and continuing education.

(F) Management succession. Succession planning should include policies and principles for CEO selection and performance review, as well as policies regarding succession in the event of an emergency or the retirement of the CEO.

(G) Annual performance evaluation of the board. The board should conduct a self-evaluation at least annually to determine whether it and its committees are functioning effectively.

(2) *Code of Business Conduct and Ethics*. Listed companies must adopt and disclose a code of business conduct and ethics for directors, officers and employees, and promptly disclose any waivers of the code for directors or executive officers. The code of business conduct and ethics 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 promptly disclosed to shareholders. The code of business conduct and ethics must also contain compliance standards and procedures that will facilitate the effective operation of the code. All codes should address the following topics:

(A) Conflicts of interest. A conflict of interest occurs when an individual's private interest interferes in any way, or even appears to interfere, with the interests of the corporation as a whole.

(B) Corporate opportunities. Employees, officers and directors should be prohibited from (1) taking for themselves opportunities that are discovered through the use of corporate property, information or position; (2) using corporate property, information, or position for personal gain; and (3) competing with the company.

(C) Confidentiality. Employees, officers and directors should maintain the confidentiality of information entrusted to them by the company or its customers, except when disclosure is authorized or legally mandated. Confidential information includes all non-public information that might be of use to competitors, or harmful to the company or its customers, if disclosed.

(D) Fair dealing. Each employee, officer and director should endeavor to deal fairly with the company's customers, suppliers, competitors and employees. None should take unfair advantage of anyone through manipulation, concealment, abuse of privileged information, misrepresentation of material facts, or any other unfair-dealing practices.

(E) Protection and proper use of company assets. All employees, officers and directors should protect the company's assets and ensure their efficient use.

- (F) Compliance with laws, rules and regulations. The company should proactively promote compliance with laws, rules and regulations, including insider trading laws.
- (G) Encouraging the reporting of any illegal or unethical behavior to appropriate personnel. The company should proactively promote ethical behavior. The company must ensure that employees know that the company will not allow retaliation for reports made in good faith.

Rule 5.3(k). Independent Directors/Board Committees

The Corporation shall require that each listed domestic issuer have a majority of independent directors on its board of directors, except that a listed domestic issuer of which more than 50% of the voting power is held by an individual, a group or another company, a limited partnership and any company in bankruptcy need not have a majority of independent directors on its board or have nominating/corporate governance and compensation committees composed of independent directors as set forth in Rule 5.3(k). However, all such controlled companies, limited partnerships and any company in bankruptcy must have at least a minimum three person audit committee and otherwise comply with the audit committee requirements provided for in this Rule 5.3(k)(5).

- (1) *Independent Directors.* For purposes of this Rule 5.3(k), no director qualifies as independent unless the board of directors affirmatively determines that the director has no material relationship with the listed company, either directly or as a partner, shareholder or officer of an organization that has a relationship with the company. Companies must identify which directors are independent and disclose the basis for that determination. The identity of the independent directors and the basis for a board determination that a relationship is not material must be disclosed in the company's annual proxy statement (or, if the issuer does not file a proxy, in its Form 10-K, 20-F or N-CSR). A board may adopt and disclose categorical standards to assist it in making determinations of independence and may make a general disclosure if a director meets these standards. Any determination of independence for a director who does not meet these standards must be specifically explained. A company must disclose any standard it adopts. In the event that a director with a business or other relationship that does not fit within the disclosed standards is determined to be independent, a board must disclose the basis for its determination.

In addition, the following directors do not qualify as independent directors:

- (A) A director who is or has been within the last three years, an employee of the listed company, or whose immediate family member is or has been within the last three years an executive officer of the listed company. Employment as an interim Chairman or CEO or other executive officer shall not disqualify a director from being considered independent following that employment. For purposes of this rule the term executive officer shall have the same meaning as "officer" as set forth in Rule 16a-1(f) under the Securities and Exchange Act of 1934.

(B)

(i) A director or a director who has an immediate family member who is a current partner of a firm that is the company's internal or external auditor;

(ii) A director who is a current employee of such a firm;

(iii) A director who has an immediate family member who is a current employee of such a firm and who participates in the firm's audit, assurance or tax compliance (but not tax planning) practice; or

(iv) A director or a director who has an immediate family member who was within the last three years (but is no longer) a partner or employee of such a firm and personally worked on the listed company's audit within that time.

(C) A director or a director who has an immediate family member who is, or in the past three years has been, part of an interlocking directorate in which an executive officer of the listed company serves or served on the compensation committee of another company that concurrently employs or employed the director.

(D) Reserved.

(E) A director who is an executive officer or an employee, or whose immediate family member is an executive officer, of a company that makes payments to, or receives payments from, the listed company for property or services in an amount which, in any single fiscal year, exceeds the greater of \$200,000 or 5% of such other company's consolidated gross revenues, is not "independent" until three years after falling below such threshold. For purposes of this rule, contributions to tax exempt organizations shall not be considered "payments", provided however that a listed company shall disclose in its annual proxy statement, or if the listed company does not file an annual proxy statement, in the company's annual report on Form 10-K filed with the SEC, any such contributions made by the listed company to any tax exempt organization in which any independent director serves as an executive officer if, within the preceding three years, contributions in any single fiscal year from the listed company to the organization exceeded the greater of \$200,000 or 5% of such tax exempt organization's consolidated gross revenues. At any time, however, when an issuer has a class of securities that is listed on and meets the requirements of a similar rule of the New York Stock Exchange or the National Association of Securities Dealers (for the Nasdaq National Market or Small Cap Market), the issuer shall not be required to separately meet the requirements set forth in this Section 5.3(k)(1)(E).

(F) A director who received, or whose immediate family member is an executive officer who received, during any twelve-month period within the last three years, more than \$100,000 in direct compensation from the listed company, other than director and committee fees and pension or other forms of deferred compensation

for prior service (provided such compensation is not contingent in any way on continued service). Compensation received by a director for former service as an interim Chairman or CEO or other executive officer need not be considered in determining independence under this test. For purposes of this rule the term executive officer shall have the same meaning as "officer" as set forth in Rule 16a-1(f) under the Securities and Exchange Act of 1934.

(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.

(H) As used throughout this rule, the term "immediate family member" includes a person's spouse, parents, children, siblings, mothers-in-law and fathers-in-law, sons and daughters-in-law, brothers and sisters-in-law, and anyone (other than employees) who shares such person's home.

Transition Rule: Each of the above standards contains a three-year "look back" provision. In order to facilitate a smooth transition to the new independence standards, the Corporation will phase in the "look back" provision by applying only a one-year look back for the first year after adoption of these new standards. The three year look back will begin to apply only from and after June 4, 2005.

Due to this proposed tightening of the independence test and to avoid a sudden change to the status of a current director, companies will have until their first annual meeting after June 30, 2005 to replace a director who was independent under the prior test but who is not independent under the current test.

(2) *Regularly Scheduled Non-Management Directors Executive Sessions.* The non-management directors of each listed company must meet at regularly scheduled executive sessions without management. Non-management directors are all those who are not executive officers, and includes such directors who are not independent by virtue of a material relationship, former status or family membership, or for any other reason. A non-management director must preside over each executive session of the non-management directors, although the same director is not required to preside at all executive sessions of the non-management directors. If one director is chosen to preside at all of these meetings, his or her name must be disclosed in the listed company's annual proxy statement, or if the company does not file an annual proxy statement, in the company's annual report on Form 10-K filed with the SEC. Alternatively, if the same individual is not the presiding director at every meeting, a listed company must disclose the procedure by which a presiding director is selected for each executive session. In order that interested parties may be able to make their concerns known to the non-management directors, a listed company must disclose a method for such parties to communicate directly with the presiding director or with the non-management directors as a group. Such disclosure must be made in the listed company's annual proxy statement or, if the company does not file an annual

proxy statement, in the company's annual report on Form 10-K filed with the SEC. If the non-management directors include directors who are not independent, then the company should at least once a year schedule an executive session including only independent directors.

- (3) *Nominating/Corporate Governance Committee.* Listed companies must have a Nominating Committee/Corporate Governance Committee composed entirely of independent directors, except that if such committee is made up of three or more individuals, then one member of the committee need not be an independent director. The director who is not independent may not be a current officer or employee or immediate family member of an officer or employee. Such individual may be appointed to the Nominating/Corporate Governance 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, and the board discloses, in the proxy statement for the next annual meeting subsequent to such determination (or, if the issuer does not file a proxy, in its Form 10-K or 20-F), the nature of the relationship and the reasons for the determination. The member appointed under this exception may not serve for longer than two years. The committee must have a written charter that addresses:
- (A) The committee's purpose, which at a minimum, must be to: identify individuals qualified to become board members, and to select, or to recommend that the board select, the director nominees for the next annual meeting of shareholders; and develop and recommend to the board a set of corporate governance guidelines applicable to the company.
 - (B) The committee's goals and responsibilities, which must reflect, at a minimum, the board's criteria for selecting new directors, and oversight of the evaluation of the board and management.
 - (C) An annual performance evaluation of the committee.
 - (D) Committee member qualifications, committee member appointment and removal, committee structure and operations (including authority to delegate to subcommittees), and committee reporting to the board.
 - (E) The committee's authority to retain and terminate any search firm to be used to identify director candidates, including the sole authority to approve the search firm's fees and other retention terms.

If a company is required by contract or otherwise to provide third parties with the ability to nominate directors (for example, preferred stock rights to elect directors upon a dividend default, shareholder agreements, and management agreements), the selection and nomination of such directors need not be subject to the nominating committee process.

Boards may allocate the responsibilities of the nominating/corporate governance committee and the compensation committee to committees of their own denomination, provided that the committees are composed entirely of independent directors, except that if such committee is made up of three or more individuals, then one member of the committee need not be an independent director. Any such committee must have a published committee charter.

Controlled companies, limited partnerships and any company in bankruptcy need not comply with the requirements of this provision.

(4) Compensation Committee.

The following is the operative text of NYSE Arca Equities Rules 5.3(k(4) through June 30, 2013.

Listed companies must have a compensation committee composed entirely of independent directors, except that if such committee is made up of three or more individuals, then one member of the committee need not be an independent director. The director who is not independent may not be a current officer or employee or immediate family member of an officer or employee. Such individual 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, and the board discloses, in the proxy statement for the next annual meeting subsequent to such determination (or, if the issuer does not file a proxy, in its Form 10-K or 20-F), the nature of the relationship and the reasons for the determination. The member appointed under this exception may not serve for longer than two years. The committee must have a written charter that addresses:

- (A) The committee's purpose which, at a minimum, must be to discharge the board's responsibilities relating to compensation of the company's executives, and to produce an annual report on executive officer compensation for inclusion in the listed company's proxy statement (or, if the issuer does not file a proxy, in its Form 10-K or 20-F), in accordance with applicable rules and regulations.
- (B) The committee's duties and responsibilities, which at a minimum, must be to:
 - (i) Review and approve corporate goals and objectives relevant to CEO compensation, evaluate the CEO's performance in light of those goals and objectives, and, either as a committee or together with the other independent directors (as directed by the board), determine and approve the CEO's compensation level based on this evaluation.
 - (ii) Make recommendations to the board with respect to non-CEO executive officer compensation, and incentive-compensation and equity-based plans that are subject to board approval.

- (C) An annual performance evaluation of the compensation committee.
- (D) Committee member qualifications, committee member appointment and removal, committee structure and operations (including authority to delegate to subcommittees), and committee reporting to the board.
- (E) The committee's authority to retain and terminate a consultant to assist in the evaluation of a director, CEO or senior executive compensation. The committee shall have the sole authority to approve the consultant's fees and other retention terms.

Controlled companies, limited partnerships and any company in bankruptcy need not comply with the requirements of this provision.

The following will be the operative text of NYSE Arca Equities Rules 5.3(k)(4) effective commencing July 1, 2013.

(4) *Compensation Committee.*

- (i) (a) *Compensation Committee Composition.* Listed companies must have a compensation committee composed entirely of independent directors.
- (b) *Accommodation Applicable to Smaller Reporting Companies.* Solely in the case of an issuer that satisfies the definition of smaller reporting company in Exchange Act Rule 12b-2, if such committee is made up of three or more individuals, then one member of the committee need not be an independent director. The director who is not independent may not be a current officer or employee or immediate family member of an officer or employee. Such individual 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, and the board discloses, in the proxy statement for the next annual meeting subsequent to such determination (or, if the issuer does not file a proxy, in its Form 10-K or 20-F), the nature of the relationship and the reasons for the determination. The member appointed under this exception may not serve for longer than two years.
- (ii) *Compensation Committee Independence.* In addition to the director independence requirements of Rule 5.3(k)(1), the board must affirmatively determine that all of the members of the Compensation Committee are independent under this Rule 5.3(k)(4)(ii). In affirmatively determining the independence of any director who will serve on the Compensation Committee, the Board must consider all factors specifically relevant to determining whether a director has a relationship to the listed 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: (A) the source of compensation of such director, including any consulting, advisory or other compensatory fee paid by the listed

company to such director; and (B) whether such director is affiliated with the listed company, a subsidiary of the listed company or an affiliate of a subsidiary of the listed company.

In affirmatively determining the independence of any director who will serve on the compensation committee of the listed company's board of directors, the board of directors must consider all factors specifically relevant to determining whether a director has a relationship to the listed 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, the two factors that are set forth in the immediately preceding paragraph. When considering the sources of a director's compensation in determining his independence for purposes of compensation committee service, the board should consider whether the director receives compensation from any person or entity that would impair his ability to make independent judgments about the listed 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 his 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 listed 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 his ability to make independent judgments about the listed company's executive compensation.

If a listed company fails to comply with the Compensation Committee composition requirements of Rule 5.3(k)(4)(i) and (ii) for reasons outside the member's reasonable control, that person, with prompt notice to the Corporation and only so long as a majority of the members of the Compensation Committee continue to be independent, may remain a member of the Compensation Committee until the earlier of the next annual shareholders' meeting of the listed company or one year from the occurrence of the event that caused the member to be no longer independent.

(iii) *Compensation Committee Charter.* The committee must have a written charter that addresses:

(A) The committee's purpose which, at a minimum, must be to discharge the board's responsibilities relating to compensation of the company's executives, and to produce an annual report on executive officer compensation for inclusion in the listed company's proxy statement (or, if the issuer does not file a proxy, in its Form 10-K or 20-F), in accordance with applicable rules and regulations.

(B) The committee's duties and responsibilities, which at a minimum, must be to:

(i) Review and approve corporate goals and objectives relevant to CEO compensation, evaluate the CEO's performance in light of those goals and objectives, and, either as a committee or together with the other independent

directors (as directed by the board), determine and approve the CEO's compensation level based on this evaluation.

- (ii) Make recommendations to the board with respect to non-CEO executive officer compensation, and incentive-compensation and equity-based plans that are subject to board approval.

(C) An annual performance evaluation of the compensation committee.

(D) Committee member qualifications, committee member appointment and removal, committee structure and operations (including authority to delegate to subcommittees), and committee reporting to the board.

(iv) *Compensation Consultants.*

(I) The Compensation Committee may, in its sole discretion, retain or obtain the advice of a compensation consultant, independent legal counsel or other adviser.

(II) The Compensation Committee shall be directly responsible for the appointment, compensation and oversight of the work of any compensation consultant, independent legal counsel or other adviser retained by the Compensation Committee.

(III) The listed company must provide for appropriate funding, as determined by the Compensation Committee, for payment of reasonable compensation to a compensation consultant, independent legal counsel or any other adviser retained by the Compensation Committee.

(v) *Compensation Consultant Independence.*

The Compensation Committee may select a compensation consultant, legal counsel or other adviser to the Compensation Committee only after taking into consideration all factors relevant to that person's independence from management, including the following:

(I) The provision of other services to the listed company by the person that employs the compensation consultant, legal counsel or other adviser;

(II) The amount of fees received from the listed 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 listed 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 listed company.

Commentary:

.01 Controlled companies, limited partnerships and any company in bankruptcy need not comply with the requirements of Rule 5.3(k)(4).

.02 Issuers that satisfy the definition of smaller reporting company in Exchange Act Rule 12b-2 must comply with Rule 5.3(k)(4), except that they need not comply with Rules 5.3(k)(4)(ii) and (v).

Under Exchange Act Rule 12b-2, a company tests its status as a smaller reporting company on an annual basis at the end of its most recently completed second fiscal quarter (hereinafter, for purposes of this Commentary .02, the "Smaller Reporting Company Determination Date"). A smaller reporting company with a public float of \$75 million or more as the end of its second fiscal quarter will cease to be a smaller reporting company as of the beginning of the fiscal year following the Smaller Reporting Company Determination Date. The compensation committee of a company that has ceased to be a smaller reporting company shall be required to comply with Rule 5.3(k)(4)(v) as of six months from the date it ceases to be a smaller reporting company and must have:

- one member of its compensation committee that meets the independence standard of Rule 5.3(k)(4)(ii) within six months of that date;
- a majority of directors on its compensation committee meeting those requirements within nine months of that date; and
- a compensation committee comprised solely of members that meet those requirements within twelve months of that date.

.03 Listed foreign private issuers are subject to Rule 5.3 (k)(4), except that a listed foreign private issuer may avail itself of an exemption from the application of Rule 5.3(k)(4) if it discloses in its annual report it is required to file with the SEC that includes audited financial statements (including on Forms 10-K, 20-F, or 40-F) the

reason why it does not have an independent Compensation Committee.

.04 Nothing in Rule 5.3(k)(4)(v) shall be construed: (A) to require the Compensation Committee to implement or act consistently with the advice or recommendations of the compensation consultant, independent legal counsel or other adviser to the Compensation Committee; or (B) to affect the ability or obligation of the Compensation Committee to exercise its own judgment in fulfillment of the duties of the Compensation Committee.

.05 The Compensation Committee is required to conduct the independence assessment outlined in Rule 5.3(k)(4)(v) with respect to any compensation consultant, legal counsel or other adviser that provides advice to the Compensation Committee, other than: (i) in-house legal counsel; and (ii) any compensation consultant, legal counsel or other adviser whose role is limited to the following activities for which no disclosure would be required under Item 407(e)(3)(iii) of Regulation S-K: consulting on any broad-based plan that does not discriminate in scope, terms, or operation, in favor of executive officers or directors of the listed company, and that is available generally to all salaried employees; or providing information that either is not customized for a particular company or that is customized based on parameters that are not developed by the compensation consultant, and about which the compensation consultant does not provide advice.

.06 Nothing in Rule 5.3(k)(4)(v) 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. The Compensation Committee may select or receive advice from any compensation adviser they prefer including ones that are not independent, after considering the six independence factors outlined in Rule 5.3(k)(v)(I)—(VI).

(5) *Audit Committee.*

(A) General Provisions.

- (i) Each listed company must have an audit committee as defined by Section 3(a)(58) of the Securities and Exchange Act of 1934. The audit committee must be composed entirely of independent directors. The audit committee must comply with all the rules and procedures set forth in Rule 10A-3 of the Securities and Exchange Act of 1934. If a member of the audit committee ceases to be independent for reasons outside the member's reasonable control, that person,

with notice by the issuer to the Corporation, may remain an audit committee member of the listed issuer until the earlier of the next annual meeting or special meeting of the listed issuer or one year from the occurrence of the event that caused the member to be no longer independent. Should an individual who ceases to be independent for reasons outside the member's reasonable control remain a member of the audit committee after the time permitted by this Rule 5.3(k)(5)(A)(i), then the Corporation shall remove the issuer's securities from listing pursuant to the procedures set forth in Rule 5.5(m).

- (ii) Listed issuers, other than foreign private issuers and small business issuers (as defined in Rule 12b-2 of the Securities and Exchange Act of 1934), must be in compliance with this Rule 5.3(k)(5)(A) by the earlier of their first annual shareholders meeting after January 15, 2004, or October 31, 2004. Foreign private issuers and small business issuers must be in compliance with this Rule 5.3(k)(5) by July 31, 2005.
- (iii) If an executive officer of a listed issuer becomes aware of any material noncompliance by the listed issuer with the requirements of this Rule 5.3(k)(5), the listed issuer must promptly notify the Corporation of such noncompliance.
- (iv) To be eligible for continued listing, a listed issuer must comply with all of the requirements set forth in this Rule 5.3(k)(5). Except as provided for in Rule 5.3(k)(5)(A)(i), should a listed issuer fail to comply with any of the requirements set forth in this Rule 5.3(k)(5) for a period of six (6) consecutive months, then the Corporation shall remove the issuer's securities from listing pursuant to the procedures set forth in Rule 5.5(m). A listed issuer who is not in compliance with the requirements of Rule 5.3(k)(5) must provide the Corporation with a plan of remediation within 15 days after notifying the Corporation of such noncompliance. The listed issuer must provide the Corporation with written monthly updates on the progress of the plan of remediation.
- (v) Audit committees for investment companies must also establish procedures for the confidential, anonymous submission of concerns regarding questionable accounting or audit matters by employees of the investment advisor, administrator, principal underwriter, or any other provider of accounting related services for the investment company, as well as employees of the investment company. This responsibility must be addressed in the audit committee charter.

(B) Written Charter. The audit committee must have a written charter that addresses:

- (i) The committee's purpose which, at a minimum, must be to:
 - (a) Assist board oversight of (1) the integrity of the listed company's financial statements, (2) the listed company's compliance with legal and regulatory requirements, (3) the independent auditor's qualifications and independence,

and (4) the performance of the listed company's internal audit function and independent auditors.

- (b) Prepare the report that SEC rules require be included in the listed company's annual proxy statement (or, if the issuer does not file a proxy, in its Form 10-K, 20-F or N-CSR).
- (ii) The duties and responsibilities of the audit committee, which, at a minimum, must be to:
- (a) Be directly responsible for the appointment, compensation, retention, and oversight of the work of any registered public accounting firm engaged (including resolution of disagreements between management and the auditor regarding financial reporting) for the purpose of preparing or issuing an audit report or performing other audit, review or attest services for the listed issuer, and each such registered public accounting firm must report directly to the audit committee.
 - (b) At least annually, obtain and review a report by the independent auditor describing the firm's internal quality control procedures; any material issues raised by the most recent internal quality-control review, or peer review, of the firm, or by any inquiry or investigation by governmental or professional authorities, within the preceding five years, respecting one or more independent audits carried out by the firm, and any steps taken to deal with any such issues; and (to assess the auditor's independence) all relationships between the independent auditor and the listed company.
 - (c) Meet to review and discuss the listed company's annual audited financial statements and quarterly financial statements with management and the independent auditor, including reviewing the company's specific disclosure under "Management Discussion and Analysis of Financial Condition and Results of Operations."
 - (d) Discuss earnings press releases, as well as financial information and earnings guidance provided to analysts and rating agencies.
 - (e) Engage independent counsel and other advisers, as it determines necessary to carry out its duties.
 - (f) Discuss policies with respect to risk assessment and risk management.
 - (g) Meet separately, periodically, with management, with internal auditors (or other personnel responsible for the internal audit function) and with independent auditors.

- (h) Review with the independent auditor any audit problems or difficulties and management's response.
 - (i) Set clear policies for hiring employees or former employees of the independent auditors.
 - (j) Report regularly to the board of directors.
 - (k) Review major issues regarding accounting principles and financial statement presentations; including any significant changes in the company's selection or application of accounting principles, and major issues as to the adequacy of the company's internal controls and any special audit steps adopted in light of material control deficiencies.
 - (l) Review analyses prepared by management and/or the independent auditor setting forth significant financial reporting issues and judgments made in connection with the preparation of the financial statements, including analyses of the effects of alternative GAAP methods on the financial statements.
 - (m) Review the effect of regulatory and accounting initiatives, as well as off-balance sheet structures, on the financial statements of the company.
 - (n) Review earnings press releases (paying particular attention to any use of "pro forma," or "adjusted" non-GAAP, information), as well as financial information and earnings guidance provided to analysts and rating agencies.
 - (o) Establish procedures for: (1) the receipt, retention, and treatment of complaints received by the issuer regarding accounting, internal accounting controls, or auditing matters and (2) the confidential, anonymous submission by employees of the issuer of concerns regarding questionable accounting, internal accounting controls or auditing matters.
- (iii) An annual performance evaluation of the audit committee.
- (C) Composition/Expertise Requirement of Audit Committee Members.
- (i) Each audit committee will consist of at least three independent directors, as defined in Rule 5.3(k)(1).
 - (ii) Each member of the audit committee must be financially literate, as such qualification is interpreted by the company's board of directors in its business judgment, or must become financially literate within a reasonable period of time after his or her appointment to the audit committee.

- (iii) At least one member of the audit committee must have accounting or related financial management expertise, as the board of directors interprets such qualification in its business judgment.

(D) Written Affirmation.

As part of the initial listing process, and with respect to any subsequent changes to the composition of the audit committee, and otherwise once each year, each company shall provide the Exchange written confirmation regarding:

- (i) Any determination that the company's board of directors has made regarding the independence of directors.
- (ii) The financial literacy of the audit committee member.
- (iii) The determination that at least one of the audit committee members has accounting or related financial management expertise.
- (iv) The annual review and reassessment of the adequacy of the audit committee charter.

Beginning June 30, 2005 the company must submit the written affirmation no later than 30 calendar days after the company's annual meeting. If the company's 2005 annual meeting occurs prior to June 30, 2005, the company must submit a written affirmation for the year 2005 no later than December 31, 2005.

(E) Ongoing Compliance.

Until such time as a Tier I listed issuer is required to comply with the provisions of Rule 5.3(k)(5) (as determined by Rule 5.3(k)(5)(A)(ii) and Rule 5.3(o)), all Tier I listed issuers shall comply with the following provisions related to Audit Committees:

The Corporation shall require that each listed domestic issuer have at least two independent directors on its board of directors. Such issuer shall maintain an audit committee. All audit committee members shall be independent directors that satisfy the audit committee requirement set forth below.

- (i) *Audit Committee Charter.* The board of directors must adopt and approve a formal written charter for the audit committee. The audit committee must review and reassess the adequacy of the formal written charter on an annual basis. The charter must specify the following:
 - (a) The scope of the audit committee's responsibilities and how it carries out those responsibilities, including structure, processes, and membership requirements;

- (b) That the outside auditor is ultimately accountable to the board of directors and the audit committee of the company, that the audit committee and board of directors have the ultimate authority and responsibility to select, evaluate, and, where appropriate, replace the outside auditor (or to nominate the outside auditor to be proposed for shareholder approval in any proxy statement); and
 - (c) That the audit committee is responsible for ensuring that the outside auditor submits on a periodic basis to the audit committee a formal written statement delineating all relationships between the auditor and the company and that the audit committee is responsible for actively engaging in a dialogue with the outside auditor with respect to any disclosed relationships or services that may impact the objectivity and independence of the outside auditor and for recommending that the board of directors take appropriate action in response to the outside auditors' report to satisfy itself of the outside auditors' independence.
- (ii) *Composition/Expertise Requirement of Audit Committee Members.*
- (a) Each audit committee will consist of at least three independent directors, all of whom have no relationship to the company that may interfere with the exercise of their independence from management and the company ("Independent");
 - (b) Each member of the audit committee must be financially literate, as such qualification is interpreted by the company's board of directors in its business judgment, or must become financially literate within a reasonable period of time after his or her appointment to the audit committee; and
 - (c) At least one member of the audit committee must have accounting or related financial management expertise, as the board of directors interprets such qualification in its business judgment.
- (iii) *Independence Requirement of Audit Committee Members.* In addition to the definition of Independent provided in 5.3(k)(5)(E)(ii)(a), the following restrictions shall apply to every audit committee member:
- (a) *Employees.* A director who is an employee (including non-employee executive officers) of the company or any of its affiliates may not serve on the audit committee until three years following the termination of his or her employment. In the event the employment relationship is with a former parent or predecessor of the company, the director could serve on the audit committee after three years following the termination of the relationship between the company and the former parent or predecessor. "Affiliate" includes a subsidiary, sibling company, predecessor, parent company, or former parent company.

- (b) **Business relationship.** A director (a) who is a partner, controlling shareholder, or executive officer of an organization that has a business relationship with the company, or (b) who has a direct business relationship with the company (e.g., a consultant) may serve on the audit committee only if the company's board of directors determines in its business judgment that the relationship does not interfere with the director's exercise of independent judgment. In making a determination regarding the independence of a director pursuant to this paragraph, the board of directors should consider, among other things, the materiality of the relationship to the company, to the director, and, if applicable, to the organization with which the director is affiliated.
- "Business relationships" can include commercial, industrial, banking, consulting, legal, accounting and other relationships. A director can have this relationship directly with the company, or the director can be a partner, officer or employee of an organization that has such a relationship. The director may serve on the audit committee without the above-referenced board of directors' determination after three years following the termination of, as applicable, either (a) the relationship between the organization with which the director is affiliated and the company, (b) the relationship between the director and his or her partnership status, shareholder interest or executive officer position, or (c) the direct business relationship between the director and the company.
- (c) **Cross Compensation Committee Link.** A director who is employed as an executive of another corporation where any of the company's executives serves on that corporation's compensation committee may not serve on the audit committee.
- (d) **Immediate Family.** A director who is an Immediate Family member of an individual who is an executive officer of the company or any of its affiliates cannot serve on the audit committee until three years following the termination of such employment relationship. "Immediate Family" includes a person's spouse, parents, children, siblings, mothers-in-law and fathers-in-law, sons and daughters-in-law, and anyone (other than employees) who shares such person's home.
- (e) Notwithstanding the requirements of subparagraphs (iii)(a) and (iii)(d), one director who is no longer an employee or who is an Immediate Family member of a former executive officer of the company or its affiliates, but is not considered independent pursuant to these provisions due to the three-year restriction period, may be appointed, under exceptional and limited circumstances, to the audit committee if the company's board of directors determines in its business judgment that membership on the committee by the individual is required by the best interests of the corporation and its shareholders, and the company discloses, in the next annual proxy statement subsequent to such determination, the nature of the relationship and the reasons for that determination.

(iv) *Written Affirmation*. As part of the initial listing process, and with respect to any subsequent changes to the composition of the audit committee, and otherwise approximately once each year, each company should provide the Exchange written confirmation regarding:

(a) any determination that the company's board of directors has made regarding the independence of directors pursuant to any of the subparagraphs above;

(b) the financial literacy of the audit committee member;

(c) the determination that at least one of the audit committee members has accounting or related financial management expertise; and

(d) the annual review and reassessment of the adequacy of the audit committee charter.

(v) "Officer" has the meaning specified in Rule 16a-1(f) under the Securities Exchange Act of 1934, or any successor rule.

(vi) *Initial Public Offering*. Companies listing in conjunction with their initial public offering (including spin-offs and carve outs) will be required to have two qualified audit committee members in place within three months of listing and a third qualified member in place within twelve months of listing.

(6) *Internal Audit Function*. Each listed company must have an internal audit function. This does not necessarily mean that a company must establish a separate internal audit department or dedicate employees to the task on a full-time basis. It is sufficient for the company to have in place an appropriate control process for reviewing and approving its internal transactions and accounting. A company may outsource this function to a firm other than its independent auditors.

Rule 5.3(l). Reserved.

Rule 5.3(m). CEO Certification

Each listed company CEO must certify to the Corporation each year that he or she is not aware of any violation by the company of the Corporation's corporate governance listing standards, qualifying the certification to the extent necessary. The certification filed with the Corporation, including any qualifications to that certification, as well as the CEO/CFO certifications required to be filed with the SEC regarding the quality of the company's public disclosure, must be disclosed in the listed company's annual report to shareholders. Beginning June 30, 2005 the company must submit the certification to the Corporation no later than 30 calendar days after the company's annual meeting. If the company's 2005 annual meeting occurs prior to June 30, 2005, the company must submit the certification for the year 2005 no later than December 31, 2005.

Each listed company's CEO must promptly notify the Corporation after any executive officer of the listed company becomes aware of any material non-compliance with any applicable provision of Section 5.3.

Each listed company must submit an executed written affirmation annually to the Corporation. Beginning June 30, 2005 the company must submit the written affirmation no later than 30 calendar days after the company's annual meeting. If the company's 2005 annual meeting occurs prior to June 30, 2005, the company must submit a written affirmation for the year 2005 no later than December 31, 2005. In addition, each listed company must submit an interim written affirmation each time a change in the membership occurs of the board or any of the committees subject to Rule 5.3(k).

Rule 5.3(n). Listed Foreign Private Issuers

The following is the operative rule text of NYSE Arca Equities Rule 5.3(n) through June 30, 2013.

Listed foreign private issuers must disclose any significant ways in which their corporate governance practices differ from those followed by domestic companies under the Corporation's listing standards. Listed foreign private issuers must comply with the provisions of Rule 5.3(k)(5). Listed foreign private issuers may provide this disclosure either on their web site (provided it is in the English language and accessible from the United States) and/or in their annual report as distributed to shareholders in the United States (again, in the English language). If the disclosure is only made available on the web site, the annual report shall so state and provide the web address at which the information may be obtained.

The following will be the operative text of NYSE Arca Equities Rule 5.3(n) effective commencing July 1, 2013.

Listed foreign private issuers must disclose any significant ways in which their corporate governance practices differ from those followed by domestic companies under the Corporation's listing standards. Listed foreign private issuers need not comply with Rule 5.3(k)(4), subject to the disclosure requirement set forth in Commentary .03 to that rule. The disclosure requirement in Commentary .03 to Rule 5.3(k)(4) is separate from the disclosure requirements in this Rule 5.3(n) and, where applicable, companies must comply with the specific requirements of both provisions. Listed foreign private issuers must comply with the provisions of Rule 5.3(k)(5). Listed foreign private issuers may provide this disclosure either on their web site (provided it is in the English language and accessible from the United States) and/or in their annual report as distributed to shareholders in the United States (again, in the English language). If the disclosure is only made available on the web site, the annual report shall so state and provide the web address at which the information may be obtained.

Rule 5.3(o). Deadline for Compliance

Listed issuers, other than foreign private issuers and small business issuers (as defined in Rule 12b-2 of the Securities and Exchange Act of 1934), must be in compliance with all applicable sections of Rule 5.3 by the earlier of (1) their first annual shareholders meeting after July 31, 2004, or (2) December 31, 2004, except that the deadline for compliance with Rule 5.3(k)(5)(A) shall be as set forth therein. Foreign private issuers and small business issuers must be in compliance with all applicable sections of Rule 5.3 by July 31, 2005. If a company with a classified board would be required (other than by virtue of a requirement under Rule 5.3(k)(5)) to change a director who would not normally stand for election in such annual meeting, the company may continue such director in office until the second annual meeting after such date, but in no event later than December 31, 2005.

Companies listing in conjunction with their initial public offering will be permitted to phase in their independent nomination and compensation committees on the same schedule as is permitted pursuant to Rule 10A-3 under the Exchange Act for audit committees, that is, one independent member at the time of listing, a majority of independent members within 90 days of listing and fully independent committees within one year. (It should be noted, however, that investment companies are not afforded these exemptions under Rule 10A-3.) Such companies will be required to meet the majority of independent board requirements within 12 months of listing. For purposes of Rule 5.3 other than Rule 5.3(k)(5) and Rule 5.3(m), a company will 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 Exchange Act. The Corporation will also permit companies that are emerging from bankruptcy or have ceased to be controlled companies within the meaning of Rule 5.3 to phase in independent nomination and compensation committees and majority independent boards on the same schedule as companies listing in conjunction with an initial public offering. However, for purposes of Rule 5.3(k)(5) and Rule 5.3(m), a company will be considered to be listing in conjunction with an initial public offering only if it meets the conditions of Rule 10A-3(b)(1)(iv)(A) under the Exchange Act, namely, that the company was not, immediately prior to the effective date of a registration statement, required to file reports with the SEC pursuant to Section 13(a) or 15(d) of the Exchange Act.

Companies listing upon transfer from another market have 12 months from the date of transfer in which to comply with any requirement to the extent the market on which they were listed did not have the same requirement. To the extent the other market has a substantially similar requirement but also had a transition period from the effective date of that market's rule, which period had not yet expired, the company will have the same transition period as would have been available to it on the other market. This transition period for companies transferring from another market will not apply to the requirements of Rule 5.3(k)(5) unless a transition period is available pursuant to Rule 10A-3 under the Exchange Act.

Section 4. Suspension, Public Reprimand or Issuer Withdrawal from Listing

Rule 5.4(a). Suspension/Public Reprimand

The Corporation may suspend dealings in or institute proceedings to remove any security from listed or unlisted trading privileges. The Corporation may issue a public reprimand letter to any listed company that violates a Corporation listing standard. The Corporation shall remove any security from listed or unlisted trading privileges if the listed company violates any provisions of Rule 5.3(k)(5).

Rule 5.4(b). Issuer Proposing to Withdraw

An issuer may delist a security from the Exchange after its board approves the action and the issuer (i) furnishes the Exchange with a copy of the Board resolution authorizing such delisting certified by the secretary of the issuer and (ii) complies with all of the requirements of Rule 12d2-2(c) under the Securities Exchange Act of 1934. The issuer must thereafter file a Form 25 with the Securities and Exchange Commission to withdraw the security from listing on the Exchange and from registration under the Securities Exchange Act of 1934. In addition, the issuer must provide a copy of the Form 25 to the Exchange simultaneously with the filing of such Form 25 with the Securities and Exchange Commission. If an issuer delists a class of stock from the Exchange pursuant to this Rule, but does not delist other classes of listed securities, the Exchange will give consideration to delisting one or more of such other classes.

If, however, an issuer proposing to withdraw from listing is also listed on a national securities exchange, it need not submit the board resolution required by Rule 5.4(b)(i) above, but, in lieu thereof, must provide a letter signed by an authorized executive officer of the issuer setting forth the reasons for the proposed withdrawal. Such issuers must still otherwise comply with the other requirements of this Rule and Rule 12d2-2(c) under the Securities Exchange Act of 1934.

The Exchange, upon receiving written notification of the issuer's intent to withdraw its securities from listing and registration, shall post notice of such intent on the Exchange's website by the next business day and until the delisting becomes effective. An issuer seeking to voluntarily apply to withdraw a class of securities from listing on NYSE Arca pursuant to this paragraph that has received notice from NYSE Arca, pursuant to Rule 5.3, Rule 5.5 or otherwise, that it is below NYSE Arca's continued listing policies and standards, or that is aware that it is below such continued listing policies and standards notwithstanding that it has not received such notice from NYSE Arca, must disclose that it is no longer eligible for continued listing (identifying the specific continued listing policies and standards with which it does not comply) in: (i) its statement of all material facts relating to the reasons for withdrawal from listing provided to NYSE Arca along with written notice of its determination to withdraw from listing required by Rule 12d2-2(c)(2)(ii) under the Exchange Act; and (ii) its public press release and Web site notice required by Rule 12d2-2(c)(2)(iii) under the Exchange Act.

Section 5. Maintenance Requirements and Delisting Procedures

Rule 5.5(a). Maintenance Requirements and Delisting Procedures

The Corporation does not rate or evaluate any security dealt in on the Corporation. In making a determination concerning listing and delisting it acts normally upon information furnished it by the issuer, and it does not verify this information from independent sources or gather independent information about the issuers whose securities are dealt in on the Corporation. As a matter of policy, when a listed company fails to meet any of the listing maintenance requirements and has more than one class of securities listed, the Corporation will give consideration to delisting all such classes. However, the Corporation may continue the listing of one class of securities regardless of its decision to delist another class, except for failure to comply with Rule 5.3(k)(5), in which case all such classes shall be delisted. The securities of a company will be subject to suspension and/or withdrawal from listing and registration as a listed issue if the Corporation finds that a listed company fails to meet the continued listing requirements as set forth in this Rule 5.5, or fails to comply with the Exchange's listing policies or agreements.

Commentary:

.01 When the issuer fails to meet any provision of the applicable maintenance requirements of this Rule 5.5, the Exchange shall determine whether to suspend dealings in the security and/or request the issuer to take action to remedy any identified deficiency. Should the issuer fail to correct any deficiency, the Exchange shall take action to delist the security.

.02 Securities listed under the Tier I designation will not be granted waivers from the Corporation's maintenance requirements. Any security that no longer meets the Tier I maintenance requirements, but meets the Tier II maintenance requirements, will be reclassified as a Tier II security. The Corporation, however, may grant a waiver for the continued listing of any security in cases where the security remains listed on either the NYSE, NYSE MKT, or Nasdaq National Market; provided, however, that the Corporation determines that there is a reasonable basis for a waiver. In such cases, the security will be included under the Tier II designation.

.03 Any security approved by the Board of Directors for listing prior to July 22, 1994 must meet one of the following:

- (a) To qualify for inclusion under the Tier I designation, a security must meet the applicable initial listing requirements as set forth in Rule 5.2 (including any index product listed pursuant to Rule 8); however, a security listed on either the NYSE, NYSE MKT, or Nasdaq National Market may be designated as a Tier I security so long as it meets the applicable Tier I maintenance requirements in this Rule 5.5; or

(b) Any security not meeting the applicable maintenance requirements must do so within six months of July 22, 1994. Until such time, the former standards will be applied and the security will be designated as a Tier II security.

.04 In the case of units, the Exchange will normally consider suspending dealings in, or removing from the list, if any of the component parts do not meet the applicable listing standards as set forth in NYSE Arca Equities Rules 5.5(b) and 5.5(d). However, if one or more of the components is otherwise qualified for listing, that component may remain listed.

Tier I Securities

Maintenance Requirements

Rule 5.5(b). Common Stock—Select Market Companies, Equity Securities and Similar Issues

In the case of common stock, the following maintenance requirements must be met:

- (1) At least 200,000 publicly held shares and a market value of at least \$1,000,000.
- (2) At least 400 public beneficial holders, or at least 300 beneficial holders of 100 shares or more.
- (3) The issuer must have a net worth of at least:
 - (i) \$2,000,000 if the issuer has sustained losses from continuing operations and/or net losses in two of the last three fiscal years; or
 - (ii) \$4,000,000 if the issuer has sustained losses from continuing operations and/or net losses in three of the last four fiscal years.
- (4) A share bid price of at least \$3.

Commentary:

.01 Any issue that fails to meet the maintenance requirements under Tier I of this Rule 5.5(b) will be removed from trading under Tier I and, if in compliance with Tier II maintenance requirements, will be admitted to trading under Tier II.

.02 With regard to the share bid price requirements, as set forth in Rule 5.5(b), the Corporation may waive such requirements upon consideration of market conditions, the issuer's capitalization, the

number of outstanding and publicly held shares, and any other factors the Corporation deems appropriate.

Rule 5.5(c). Preferred Stock and Similar Issues

In the case of preferred stock and similar issues, the following maintenance requirements must be met:

- (1) At least 100,000 publicly held shares and a market value of at least \$1,000,000.
- (2) At least 150 public beneficial holders.
- (3) The issuer must have a net worth of at least:
 - (i) \$2,000,000 if the issuer has sustained losses from continuing operations and/or net losses in two of the last three fiscal years; or
 - (ii) \$4,000,000 if the issuer has sustained losses from continuing operations and/or net losses in three of the last four fiscal years.
- (4) The issuer has not sustained losses from continuing operations and/or net losses in the five most recent fiscal years.

Commentary:

.01 If preferred stock is convertible into a class of common stock, such class must meet the Tier I maintenance requirements under Rule 5.5(b). Current last sale information must be available with respect to the underlying security into which the security is convertible.

Rule 5.5(d). Bonds and Debentures

In the case of bonds and debentures, the following maintenance requirements must be met:

- (1) Aggregate market value and principal amount of at least \$1,000,000 each.
- (2) At least 100 public beneficial holders.
- (3) The issuer must have a net worth of at least:
 - (i) \$2,000,000 if the issuer has sustained losses from continuing operations and/or net losses in two of the last three fiscal years; or
 - (ii) \$4,000,000 if the issuer has sustained losses from continuing operations and/or net losses in three of the last four fiscal years.

- (4) The issuer has not sustained losses from continuing operations and/or net losses in the five most recent fiscal years.
- (5) Municipal Securities. In the case of debt securities of non-listed issuers, such security is rated as investment grade by at least one nationally recognized rating service and has a market value or principal amount outstanding of at least \$400,000.

Commentary:

.01 If a debt security is convertible into a class of equity security, such equity security must meet the applicable Tier I maintenance requirements under this Rule 5.5. Current last sale information must be available with respect to the underlying security into which the security is convertible.

Rule 5.5(e). Warrants

In the case of warrants, the following maintenance requirements must be met:

- (1) The common stock of the company or other security underlying the warrants must meet the applicable Tier I maintenance requirements under this Rule 5.5. This provision does not apply to warrants based on currency and/or market indices.

Rule 5.5(f). Contingent Value Rights ("CVRs")

In the case of CVRs, the following maintenance requirements must be met:

- (1) An aggregate market value of at least \$1,000,000.
- (2) If the equity security to which the cash payment of the CVR at maturity is tied is delisted, the CVR shall be suspended or relisted.

Rule 5.5(g)(1). Unit Investment Trusts ("UITs")

In the case of UITs, the following maintenance requirements must be met:

- (A) An aggregate market value of at least \$1,000,000.
- (B) If the security to which the cash payment of the UIT at term is tied is delisted, the UIT shall be suspended or delisted.
- (C) The Corporation will consider the suspension of trading in, or removal from listing of any UIT interest when, in its opinion, further dealing in such interests appear unwarranted under any of the following circumstances:

- (i) the UIT interest has more than 60 days remaining until termination and there are less than 50 record and/or beneficial holders of shares, units, or trading components thereof for 20 or more consecutive trading days; or
- (ii) there has been a failure on the part of the UIT and/or sponsor to comply with the Corporation's listing policies or agreements; or
- (iii) such other event occurs or condition exists that, in the opinion of the Corporation, makes further dealings on the Corporation inadvisable.

Rule 5.5(g)(2). Investment Company Units

(a) *Continued Listing Criteria.* The Corporation will maintain surveillance procedures for securities listed under Rule 5.2(j)(3) and consider the suspension of trading in, and will initiate delisting proceedings under Rule 5.5(m) of, a series of Investment Company Units in any of the following circumstances:

- (1) Following the initial twelve-month period beginning upon the commencement of trading of a series of Units, there are fewer than 50 record and/or beneficial holders of Units;
- (2) The value of the index or portfolio of securities on which the series is based is no longer calculated or available;
- (3) If any of the continued listing requirements set forth in Rule 5.2(j)(3) are not continuously maintained;
- (4) If the Corporation submits a rule filing pursuant to Section 19(b) of the Securities Exchange Act to permit the listing and trading of a series of Units that do not otherwise meet the standards set forth in Rule 5.2(j)(3) and any of the statements or representations regarding (a) the description of the index, portfolio or reference asset, (b) limitations on index or portfolio holdings or reference assets, or (c) the applicability of Exchange listing rules specified in such rule filing are not continuously maintained; or
- (5) Such other event occurs or condition exists that, in the opinion of the Corporation, makes further dealings on the Corporation inadvisable.

(b) The Corporation will halt trading in a series of Units if the circuit breaker parameters of Rule 7.12 have been reached. In exercising its discretion to halt or suspend trading in a series of Units, the Corporation may consider factors such as the extent to which trading in the underlying securities is not occurring or whether other unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market are present, in addition to other factors that may be relevant. The remainder of this paragraph (b) shall apply only when the Corporation is the listing market for a series of Units. If the Intraday Indicative Value (as defined in Commentary .01 to Rule 5.2(j)(3)) or the official index

value applicable to that series of Units is not being disseminated as required, the Corporation may halt trading during the day in which the interruption to the dissemination of the Intraday Indicative Value or the official index value occurs. If the interruption to the dissemination of the Intraday Indicative Value or the official index value persists past the trading day in which it occurred, the Corporation will halt trading

(c) In addition, the Corporation will remove Units from trading and listing (if applicable) upon termination of the issuing Investment Company or upon the termination of listing of the Units on their primary market, if the primary market is not the Corporation.

Tier II Securities Maintenance Requirements

Rule 5.5(h). Common Stock—Development Stage Companies

In the case of common stock, the following maintenance requirements must be met:

- (1) At least 300,000 publicly held shares and a market value of at least \$500,000.
- (2) At least 250 public beneficial holders.
- (3) Total net tangible assets of at least \$500,000, or net worth of at least \$2,000,000.
- (4) A share bid price of at least \$1.

Commentary:

.01 Any issue that fails to meet the maintenance requirements under Tier I of Rule 5.5(b) will be removed from trading under Tier I and, if in compliance with Tier II maintenance requirements, will be admitted to trading under Tier II.

.02 With regard to the share bid price requirements, as set forth in this Rule 5.5(h), the Corporation may waive such requirements upon consideration of market conditions, the issuer's capitalization, the number of outstanding and publicly held shares, and any other factors the Corporation deems appropriate.

Rule 5.5(i). Preferred Stock and Similar Issues

In the case of preferred stock and similar issues, the following maintenance requirements must be met:

- (1) At least 250,000 shares must be publicly held by not less than 100 public beneficial holders.
- (2) The issuer must meet the net tangible asset or net worth requirements as set forth in the Tier II maintenance requirements under Rule 5.5(h).

Commentary:

.01 If the preferred stock is convertible into a class of common stock, such class must meet the Tier II maintenance requirements under Rule 5.5(h). Current last sale information must be available with respect to the underlying security into which the security is convertible.

Rule 5.5(i)-1. The Corporation will commence

The Corporation will maintain surveillance procedures for securities listed pursuant to Rule 5.2(j)(1) ("Other Securities") and will commence delisting or removal proceedings pursuant to Rule 5.5(m) (unless the Commission has approved the continued trading of such issue), under any of the following circumstances:

- (i) if the aggregate market value or the principal amount of the securities publicly held is less than \$400,000;
- (ii) if any of the continued listing requirements set forth in Rule 5.2(j)(1) are not continuously maintained;
- (iii) if such other event shall occur or condition exists which in the opinion of the Corporation makes further dealings on the Corporation inadvisable.

Rule 5.5(j). Bonds and Debentures

In the case of bonds and debentures, the following maintenance requirements must be met:

- (1) Aggregate market value and principal amount of at least \$1,000,000 each, and at least 100 public beneficial holders.
- (2) The issuer must meet the net tangible asset or net worth requirements as set forth in the Tier II maintenance requirements under Rule 5.5(h)

Commentary:

.01 If a debt security is convertible into a class of equity security, such equity security must meet the applicable Tier II maintenance requirements under this Rule 5.5. Current last sale information must be available with respect to the underlying security into which the security is convertible.

Rule 5.5(j)-1. The Corporation will commence

The Corporation will maintain surveillance procedures for securities listed pursuant to Rule 5.2(j)(2) and will commence delisting or removal proceedings pursuant to Rule 5.5(m) (unless the Commission has approved the continued trading of such issue), under any of the following circumstances:

- (i) if the aggregate market value or the principal amount of the securities publicly held is less than \$400,000;
- (ii) if any of the continued listing requirements set forth in Rule 5.2(j)(2) are not continuously maintained;
- (iii) if the Corporation submits a rule filing pursuant to Section 19(b) of the Securities Exchange Act to permit the listing and trading of a series of Equity Linked Notes that do not otherwise meet the standards set forth in Rule 5.2(j)(2) and any of the statements or representations regarding (a) the description of the underlying linkedstock or portfolio, (b) limitations on the underlying linked-stock or portfolio, or (c) the applicability of Exchange listing rules specified in such rule filing are not continuously maintained; or
- (iv) if such other event shall occur or condition exists which in the opinion of the Corporation makes further dealings on the Corporation inadvisable.

Rule 5.5(k). Warrants

In the case of warrants, the following maintenance requirements must be met:

- (1) The common stock of the company or other security underlying the warrants must meet the applicable Tier II maintenance requirements under this Rule 5.5. This provision does not apply to warrants based on currency and/or market indices.

Rule 5.5(l). Other Reasons for Suspending or Delisting

The Corporation will consider suspending dealings in, or removing from the list, securities of a company whenever any of the following are evident:

- (1) Failure to comply with the Corporation's listing policies or agreements.
- (2) The issuer's independent public accountants issue a disclaimer opinion on financial statements required to be certified.
- (3) The issuer has sustained losses which are so substantial in relation to its overall operations or its existing financial resources, or its financial condition has become so impaired that it appears questionable, in the opinion of the Corporation, as to whether such company will be able to continue operations and/or meet its obligations as they mature.

- (4) The issuer has depleted, sold or otherwise disposed of its principal operating assets to the extent that it can no longer operate as a going concern, or has discontinued a substantial portion of its operations or business for any reasons whatsoever.
- (5) Where the issuer has substantially discontinued the business that it conducted at the time it was listed or admitted to trading, and has become engaged in ventures or promotions which have not developed to a commercial stage or success of which is problematical, it shall not be considered an operating company for the purposes of continued trading and listing on the Corporation.
- (6) The liquidation of the company has been authorized. However, where such liquidation has been authorized by shareholders and the company is committed to proceed, the Corporation will normally continue trading until substantial liquidation distributions have been made.
- (7) Advice has been received, deemed by the Corporation to be authoritative, that the security is without value. In this connection, it should be noted that the Corporation does not pass judgment upon the value of any security.
- (8) A "reverse take-over" involves a business combination (i.e., any plan of acquisition, merger or consolidation) in which the listed company is acquired by an unlisted company even though the listed company is the nominal survivor. Under such circumstances, consideration will be given to all relevant factors, including, but not limited to, the following:
 - (i) the proportionate amount of the securities of the resulting company to be issued to each of the combining companies;
 - (ii) changes in ownership and management of the listed company;
 - (iii) whether the unlisted company is larger than the listed company;
 - (iv) the nature of the businesses being combined. Generally, the Corporation will not approve an application to list additional shares of a listed company that has fallen below any of the Corporation's maintenance requirements in connection with a business combination with an unlisted company acquiring the listed company. An exception to this policy may be made if the unlisted company meets the listing requirements of the Corporation in all respects except share distribution and number of beneficial holders, and the company resulting from the combination appears to have a substantially improved financial condition as compared to the listed company; and
 - (v) whether substantive information on the affairs of the unlisted company is disseminated to the shareholders of the listed company and to the investing public in timely manner, and whether the shareholders of the listed company have the right to approve the reverse take-over.

- (9) Any other event or condition that makes further dealings on the Corporation unwarranted, including, but not limited to, the following:
- (i) registration is no longer effective;
 - (ii) payment, redemption or retirement of entire class, issue, or series; and
 - (iii) the issuer's operations are contrary to public interest.

Rule 5.5(m). Delisting Procedures

Whenever the Corporation determines that it may be appropriate to either suspend dealings in and/or remove securities from listing pursuant to Rule 5.2, Rule 5.3, Rule 5.5 or the applicable provisions of Rule 8, except for reasons specified in subsection (a) of Rule 12d2-2 promulgated under Section 12(d) of the Securities Exchange Act of 1934, as amended ("Exchange Act Rule 12d2-2"), or violations of Rule 5.3(k)(5) in which case the Corporation shall initiate delisting a listed company's securities, it will follow, insofar as practicable, the following procedures:

(1) Consideration of Commencement of Delisting Action

- (a) The Corporation shall notify the issuer in writing describing the basis on which the Corporation is considering the delisting of the company's security. Such notice shall be sent by certified mail and shall include the time and place of a meeting to be held by the Corporation to hear any reasons why the issuer believes its security should not be delisted. Generally, the issuer will be notified at least three (3) weeks prior to the meeting and will be requested to submit a written response.
- (b) If, after such meeting, the Corporation determines that the security should be delisted, the Corporation shall notify the issuer in writing (if possible, the same day of the meeting) of the delisting decision and the basis thereof. The written notice will also inform the issuer that it may appeal the decision to the Board of Directors and request a hearing.
- (c) Concurrent with the Corporation's decision to delist the issuer's security, the Corporation will prepare a press announcement, which will be disseminated to the Market Makers and the investing public no later than the opening of trading the business day following the Corporation's decision (NYSE Regulation will also distribute the information to the ETP Holders). Accordingly, the suspension of trading in the issuer's security will become effective at the opening of business on the day following the Corporation's decision.

(2) Appeal Procedures

- (a) If the issuer requests an appeal hearing, it must file its request along with (i) a \$2,500 delisting appeal fee and (ii) an answer to the causes specified by the

Corporation with the Secretary of the Corporation no later than five (5) business days following service of notice of the proposed delisting. If the issuer does not request a hearing within the specified period of time, or it does not submit the \$2,500 fee to the Corporation in the form and manner prescribed, the Corporation will file an application on Form 25 to the Securities and Exchange Commission to strike the security from the list of companies listed on the Corporation. The Corporation will furnish a copy of such application on Form 25 to the issuer in accordance with Section 12 of the Securities Exchange Act of 1934 and the Rules promulgated thereunder.

- (b) If a request for a hearing is made and the requirements of Rule 5.5(m)(2)(a) are met within the time specified, the issuer will be entitled to an appeal hearing and the Corporation will provide the issuer at least fifteen (15) business days notice of the time and place of the hearing.
- (c) The hearing shall be held before the CFR appointed by the Board of Directors for such purpose. Only those members of the CFR who attend the hearing may vote with respect to any decisions the Committee may make.
- (d) Any documents or other written material the issuer wishes to consider should be submitted to the appropriate office of the Corporation at least five (5) business days prior to the date of the hearing.
- (e) At the hearing, the issuer must prove its case by presenting testimony, evidence, and argument to the CFR. The form and manner in which the actual hearing will be conducted will be established by the CFR so as to assure the orderly conduct of the proceeding. At the hearing, the CFR may require the issuer to furnish additional written information that has come to its attention.
- (f) After the conclusion of the proceeding, the CFR shall make its decision. The decision of the CFR shall be in writing with one copy served upon the issuer and the second copy filed with the Secretary of the Corporation. Such decision shall be final and conclusive. If the decision is that the security should be removed from listing, the Corporation shall follow the procedures set forth below. If the decision is that the security should not be removed from listing, the issuer shall receive a notice to that effect from the Corporation.

(3) *Public Notice of Delisting Action*

If the final decision is that the security of the issuer is to be removed from listing, then, no fewer than ten (10) days before the delisting becomes effective: (a) an application on Form 25 shall be submitted by the Corporation to the Securities and Exchange Commission to strike the security from listing and registration in accordance with Exchange Act Rule 12d2-2, (b) a copy of such application shall be provided to the issuer in accordance with Exchange Act Rule 12d2-2, and (c) public notice of the

Corporation's final determination to delist the security shall be made via a press release and posting on the Corporation's website until the delisting is effective.

RULE 6 BUSINESS CONDUCT

Rule 6.1. Adherence to Law and Good Business Practice

(a) The acceptance of any account, whether on a disclosed or undisclosed basis, by any ETP Holder shall at all times comply with just and equitable principles of trade, the applicable regulations of the Securities and Exchange Commission and of the Federal Reserve Board, and the Bylaws and Rules of the Corporation.

(b) Every ETP Holder, all associated persons thereof, and all other participants therein, shall at all times adhere to the principles of good business practice in the conduct of its or their business affairs.

Rule 6.2. Prohibited Acts

Any ETP Holder or any associated person thereof found guilty in accordance with the Rules and procedures of the Corporation of any of the following prohibited acts shall be subject to the imposition of penalties in accordance with the Rules of the Corporation.

- (a) Violations of the Bylaws, Rules and procedures of the Corporation, or any Board order, directive, or policy, required to be filed with the Securities and Exchange Commission.
- (b) Conduct or proceeding inconsistent with just and equitable principles of trade, it being declared among other things, that the willful violation of any provision of the federal securities laws, the regulations of the Securities and Exchange Commission and of the Federal Reserve Board, and the Bylaws and Rules and procedures of the Corporation shall be considered conduct or proceedings inconsistent with just and equitable principles of trade.
- (c) Willful misstatement of a material fact, or willful omission to state a material fact required to be stated in any application submitted to the Corporation or in any proceeding, investigation, report or questionnaire or other matter presented to or requested by the Board of Directors or any standing or special committee thereof or by the Corporation.
- (d) Willful failure to carry out any contract with another ETP Holder of the Corporation.
- (e) Willful action deemed to be detrimental to the welfare of investors, creditors, ETP Holders or the Corporation.

- (f) Subjecting the Corporation or any Director or officer thereof to litigation seeking to restrain the lawful exercise of powers and duties under the Bylaws, Rules and procedures of the Corporation.
- (g) An ETP Holder may not split any order into multiple smaller orders for any purpose other than seeking the best execution of the entire order.

Rule 6.3. Prevention of the Misuse of Material, Nonpublic Information

(a) Every ETP Holder must establish, maintain and enforce written policies and procedures reasonably designed, taking into consideration the nature of such ETP Holder's business, to prevent the misuse of material, non-public information by such ETP Holder or persons associated with such ETP Holder. ETP Holders for whom the Corporation is the Designated Examining Authority ("DEA") that are required, pursuant to Rule 4.5, to file SEC form X-17A-5 with the Corporation on an annual or more frequent basis must file contemporaneously with the submission for the calendar year end ITSFEA compliance acknowledgements stating that the procedures mandated by this Rule have been established, enforced and maintained. Any ETP Holder or associated person who becomes aware of a possible misuse of material, non-public information must promptly notify the Corporation's Surveillance Department.

(b) Any ETP Holder who fails to file a compliance acknowledgment form in a timely manner shall be subject to a late filing charge of \$500.00 for each occurrence. Repeated or aggravated failure to file may be referred to the Enforcement Department for appropriate disciplinary action.

Commentary:

.01 For purposes of Rule 6.3, conduct constituting the misuse of material, non-public information includes, but is not limited to, the following:

- A. Trading in any securities issued by a corporation, or in any related securities or related options or other derivative securities, while in possession of material, non-public information concerning that issuer; or
- B. Trading in a security or related options or other derivative securities, while in possession of material non-public information concerning imminent transactions in the security or related securities; or
- C. Disclosing to another person or entity any material, non-public information involving a corporation whose shares are publicly traded or an imminent transaction in an underlying security or related securities for the purpose of facilitating the possible misuse of such material, non-public information.

.02 The terms "associated person" and "person associated with an ETP Holder" mean anyone who directly is engaged in the ETP Holder's trading-related activities, including general partners, officers, directors, managers (or any person occupying a similar status or performing similar functions), any person directly or indirectly controlling, controlled by, or under common control with an ETP Holder or any employee of the ETP Holder.

For the purposes of this Rule, the term "employee" includes every person who is compensated directly or indirectly by the ETP Holder for the solicitation or handling of business in securities, including individuals trading securities for the account of the ETP Holder, whether such securities are dealt in on an exchange or are dealt over-the-counter.

.03 Rule 6.3 provides that, at a minimum, each ETP Holder establish, maintain, and enforce the following policies and procedures:

- A. All associated persons must be advised in writing of the prohibition against the misuse of material, non-public information; and
- B. All associated persons of the ETP Holder must sign attestations affirming their awareness of, and agreement to abide by the aforementioned prohibitions. These signed attestations must be maintained for at least three years, the first two years in an easily accessible place; and
- C. Each ETP Holder must receive and retain copies of trade confirmations and monthly account statements for each account in which an associated person: has a direct or indirect financial interest or makes investment decisions. The activity in such brokerage accounts should be reviewed at least quarterly by the ETP Holder for the purpose of detecting the possible misuse of material, non-public information; and
- D. All associated persons must disclose to the ETP Holder whether they, or any person in whose account they have a direct or indirect financial interest, or make investment decisions, are an officer, director or 10% shareholder in a company whose shares are publicly traded. Any transaction in the stock (or option thereon) of such company shall be reviewed to determine whether the transaction may have involved a misuse of material non-public information.

Maintenance of the foregoing policies and procedures will not, in all cases, satisfy the requirements and intent of Rule 6.3; the adequacy of each ETP Holder's policies and procedures will depend upon the nature of such ETP Holder's business.

.04 ETP Holders acting as a registered Market Maker in products listed under NYSE Arca Equities Rules 5 and 8, and their affiliates,

shall also establish, maintain and enforce written policies and procedures reasonably designed to prevent the misuse of any material nonpublic information with respect to such products, any components of the related products, any physical asset or commodity underlying the product, applicable currencies, underlying indexes, related futures or options on futures, and any related derivative instruments.

Rule 6.4. Rumors

No ETP Holder or any participant therein shall circulate, in any manner, rumors of a character which might affect market conditions on the Corporation; provided, however, that this Rule shall not prohibit discussion of unsubstantiated information when its source and unsubstantiated nature are disclosed.

Rule 6.5. Manipulation

No ETP Holder or any participant therein shall effect or induce the purchase or sale or otherwise effect transactions in any security for the purpose of creating or inducing a false, misleading or artificial appearance of activity in such security, or for the purpose of unduly or improperly influencing the market price of such security, or for the purpose of making a price which does not reflect the true state of the market in such security.

Rule 6.6. Front-running of Block Transactions

An ETP Holder or associated person obtaining information of an immediate pending transaction or a transaction executed but not yet reported on any national securities exchange or association involving 10,000 shares or more of a security including an equivalent number of option contracts admitted to dealings on the NYSE Arca, Inc., or securities underlying the options so admitted, shall not initiate or transmit an order in the security involved, or options relating to that security, through the facilities of the Corporation for any account in which he or she or his or her organization are participants until after the transaction appears on the ticker or is otherwise disclosed, in the case of orders pertaining to equities, or until two minutes after such disclosure, in the case of orders pertaining to options. Exceptions will require prior approval from the Corporation.

Rule 6.7. Trading Ahead of Research Reports

(a) No ETP Holder shall establish, increase, decrease or liquidate an inventory position in a security or a derivative of such security based on non-public advance knowledge of the content or timing of a research report in that security.

(b) ETP Holders must establish, maintain and enforce policies and procedures reasonably designed to restrict or limit the information flow between research department personnel, or other persons with knowledge of the content or timing of a research report, and trading department personnel, so as to prevent trading department personnel from utilizing non-

public advance knowledge of the issuance or content of a research report for the benefit of the ETP Holder or any other person.

Rule 6.8. Excessive Trading

No ETP Holder nor any participant therein shall effect through the facilities of the Corporation purchases or sales for any account in which such ETP Holder or participant therein is directly or indirectly interested, which purchases or sales are excessive in view of the financial resources of such ETP Holder or participant therein or in view of the market for such security.

Commentary:

.01 An ETP Holder who issues a commitment to trade through the facilities of the Corporation or any other Application of the System shall, as a consequence thereof, be deemed to be initiating a purchase or a sale of a security through the facilities of the Corporation as referred to in this Rule.

Rule 6.9. Taking or Supplying Securities to Fill Customer's Order

No ETP Holder who has accepted for execution, personally or through the ETP Holder or any participant therein, an order for the purchase of securities shall fill such order by selling such securities for any account in which the ETP Holder or any participant therein has a direct or indirect interest, or having so accepted an order for the sale of securities, shall fill such order by buying such securities for such an account, except as follows:

- (1) An ETP Holder who neglects to execute an order may be compelled to take for or supply from such ETP Holder's account the securities named in the order;
- (2) An ETP Holder, acting for another ETP Holder, may take or supply the securities named in the order provided the price is justified by the condition of the market and provided that the ETP Holder who gave the order shall directly, or through a broker authorized to act for him or her, after prompt notification, accept the trade;
- (3) An ETP Holder, acting as a broker, is permitted to report to his or her principals a transaction as made with himself or herself when he or she has offsetting orders from two principals to buy and to sell and not to give up;
- (4) A Market Maker in accordance with his or her duty to provide an orderly market in the securities in which he or she is registered may purchase or sell for principal account, such securities named in his or her firm's customer's order and record the transaction through the facilities of the Corporation provided that:
 - (i) the price is consistent with the market;

- (ii) full disclosure to his or her customer is made on the confirmation of the transaction in a manner that defines the interest of the ETP Holder.
- (5) An ETP Holder may purchase or sell for principal account the securities named in his customer's order, and record the transaction through the facilities of the Corporation provided that:
- (i) the price is consistent with the market;
 - (ii) full disclosure of the interest of the ETP Holder is made to his customer on the confirmation of the transaction.

Rule 6.10. ETP Holders Holding Options

(a) No ETP Holder shall initiate the purchase or sale through the facilities of the Corporation for his or her own account or for any account in which the ETP Holder or any participant therein is directly or indirectly interested, of any security admitted to dealings through the facilities of the Corporation in which he or she holds or has granted any put, call, straddle or option, or in which he or she has knowledge that the ETP Holder or any participant therein holds or has granted any put, call, straddle or option, unless such put, call, straddle, or option is issued by the Options Clearing Corporation and is immediately reported to the Corporation in accordance with such procedures as may be prescribed by the Corporation.

Commentary:

.01 An ETP Holder who issues a commitment to trade through the facilities of the Corporation or any other Application of the System shall, as a consequence thereof, be deemed to be initiating a purchase or a sale of a security through the facilities of the Corporation as referred to in this Rule.

(b) Each ETP Holder shall report to the Corporation such information as may be required with respect to any substantial option relating to securities admitted to dealings through the facilities of the Corporation in which such ETP Holder or any participant therein is directly or indirectly interested or of which such ETP Holder or any participant therein has knowledge by reason of transactions executed by or through such ETP Holder. The Corporation may disapprove of the connection of any ETP Holder or any participant therein with any such option which it shall determine to be contrary to the best interest or welfare of the Corporation or to be likely to create prices which will not fairly reflect market values.

Rule 6.11. Disclosure of Financial Arrangements

(a) An ETP Holder who enters into a financial arrangement with any other person or entity shall disclose to the Corporation the identity of such person or entity and the terms of the arrangement. For the purposes of this rule, a financial arrangement is defined as:

- (1) the direct financing of an ETP Holder's dealings upon the Corporation; or
- (2) any direct equity investment or profit sharing arrangement; or
- (3) any consideration over the amount of \$5,000.00, including, but not limited to, gifts, loans, annual salaries or bonuses.

(b) ETP Holders with financial arrangements must submit to the Corporation notification of the initiation, modification or termination of such financial arrangements in a form, time and manner approved by the Corporation within ten (10) business days of the effective date of such arrangements or within such shorter period of time as the Corporation may require. Any ETP Holder who fails to file as such in a timely manner shall be subject to a late filing charge of \$500.00 for each occurrence. Repeated or aggravated failure to file may be referred to the Enforcement Department for appropriate disciplinary action.

Rule 6.12. Joint Accounts

(a) No ETP Holder shall, without the prior approval of the Corporation, initiate the purchase or sale through the facilities of the Corporation of any security admitted to dealings through the facilities of the Corporation for any account in which the ETP Holder or any participant therein is directly or indirectly interested with any person other than such ETP Holder or participant therein.

The provisions of this rule shall not apply to any purchase or sale (1) by any ETP Holder for any joint account maintained solely for effecting bona fide domestic or foreign arbitrage transactions or (2) by a Market Maker for any joint account in which he or she is expressly permitted to have an interest or participation by this Rule.

Commentary:

.01 An ETP Holder who issues a commitment to trade through the facilities of the Corporation or any other Application of the System shall, as a consequence thereof, be deemed to be initiating a purchase or a sale of a security through the facilities of the Corporation as referred to in this Rule.

(b) *Reporting.* No ETP Holder nor any participant therein shall directly or indirectly hold any interest or participation in any substantial joint account for buying or selling any security through the facilities of the Corporation, unless such joint account is reported to and not disapproved by the Corporation. Such reports, in form prescribed by the

Corporation, shall be filed with the Corporation before any transaction is completed through the facilities of the Corporation for such joint account.

The Corporation shall require weekly reports, in a form prescribed by the Corporation, to be filed with it with respect to every substantial joint account for buying or selling any specific security on the Corporation and with respect to every joint account which actively trades in any security on the Corporation in which any ETP Holder or participant therein holds any interest or participation or of which such ETP Holder or participant therein has knowledge by reason of transactions executed by or through such ETP Holder or participant therein; provided, however, that this paragraph shall not apply to joint accounts specifically permitted by this Rule.

In the event the requirements hereof should be applicable to a security also dealt in on another national securities exchange having requirements substantially equivalent hereto and an ETP Holder is a member or member firm of such other exchange and complies with such requirements of such other exchange, then such ETP Holder need not comply with the reporting provisions hereof.

Rule 6.13. Disciplinary Action By Other Organizations

Every ETP Holder shall promptly notify the Corporation in writing of any disciplinary action, including the basis therefore, taken by any national securities exchange or association, clearing corporation, commodity futures market or government regulatory body against the ETP Holder or its associated persons, and shall similarly notify the Corporation of any disciplinary action taken by the ETP Holder itself against any of its associated persons involving suspension, termination, the withholding of commissions or imposition of fines in excess of \$2,500.00, or any other significant limitation on activities.

Rule 6.14. Officers and Employees Restricted

(a) Every salaried officer or employee of the Corporation and every salaried officer or employee of any corporation in which the Corporation owns the majority of the stock shall report promptly to the Corporation every purchase or sale for his own account or the account of others of any security which is the underlying security of any option contract admitted to dealings on the Corporation.

(b) No salaried officer or employee of the Corporation or salaried officer or employee of any corporation in which the Corporation owns the majority of the corporate stock may purchase or sell for his own account or for the account of others any option contract which entitles the purchaser to purchase or sell any security described in paragraph (a) of Rule 6.14.

Rule 6.15. Miscellaneous Prohibitions

No ETP Holder or any participant therein shall:

(a) Directly or indirectly participate in or have any interest in the profits of a manipulative operation, or knowingly manage or finance a manipulative operation. For the purpose of this paragraph, (A) any pool, syndicate or joint account, whether in corporate form or otherwise, organized or used intentionally for the purpose of unfairly influencing the market price of any security, by means of options or otherwise, and for the purpose of making a profit thereby, shall be deemed to be a manipulative operation; (B) the soliciting of subscriptions to any such pool, syndicate or joint account, or the accepting of discretionary orders from any such pool, syndicate or joint account, shall be deemed to be managing a manipulative operation; and (C) the carrying on margin of either a "long" or a "short" position in securities for, or the advancing of credit through loans of money or securities to, any such pool, syndicate or joint account, shall be deemed to be financing a manipulative operation.

(b) Participate in a prearranged trade. An offer to sell coupled with an offer to buy back at the same or at an advanced price, or the reverse, is a prearranged trade and is prohibited. This provision applies both to transactions in the unit of trading and in lesser or greater amounts.

Rule 6.16. Reserved

Reserved.

Rule 6.16A. Reserved

Reserved.

Rule 6.17. Anti-Money Laundering Compliance Program

Each ETP Holder must develop and implement a written anti-money laundering program reasonably designed to achieve and monitor the ETP Holder's compliance with the requirements of the Bank Secrecy Act (31 U.S.C. 5311, et seq.), and the implementing regulations promulgated thereunder by the Department of the Treasury. Each ETP Holder's anti-money laundering program must be approved in writing by a representative of its senior management staff. The anti-money laundering programs required by this Rule must include, at minimum, a requirement to:

- (a) establish and implement policies, procedures and controls that can be reasonably expected to detect and cause the reporting of transactions required under 31 U.S.C. 5318(g) and implementing regulations thereunder;
- (b) establish and implement policies, procedures and internal controls reasonably designed to achieve compliance with the Bank Secrecy Act and the implementing regulations thereunder;
- (c) Provide for annual (i.e., on a calendar-year basis) independent testing for compliance to be conducted by member or member organization personnel or by a

qualified outside party, unless the member or member organization does not conduct a public business (e.g., engages solely in proprietary trading, or conducts business only with other broker-dealers) in which case "independent testing" is required every two years (on a calendar-year basis). All members should undertake more frequent testing than required by this rule if circumstances warrant;

(d) designate an individual or individuals responsible for implementing and monitoring the day-to-day operations and controls of the program (such individual or individuals must be an associated person of the member) and provide prompt notification to the Exchange regarding any change in such designation(s); and

(e) provide ongoing training for appropriate personnel.

Commentary:

.01 Independent testing pursuant to Rule 6.17(c) must be conducted by a designated person with a working knowledge of applicable requirements under the Bank Secrecy Act and its implementing regulations. Independent testing should not be conducted by (1) a person who performs the functions being tested, (2) the designated AML compliance officer, or (3) a person who reports to either (1) or (2).

Adopted: September 6, 2002 (PCX-2002-44).

Rule 6.18. Supervision

(a) Adherence to Law.

No ETP Holder may engage in conduct in violation of the federal securities laws, the Constitution or the Rules of the Corporation. Every ETP Holder must supervise persons associated with it as to assure compliance therewith.

(b) Supervisory System.

Each ETP Holder must establish and maintain a system to supervise the activities of its associated persons and the operation of its business. Such system must be reasonably designed to ensure compliance with applicable federal securities laws and regulations and NYSE Arca Equities Rules. Final responsibility for proper supervision will rest with the ETP Holder. The ETP Holder's supervisory system must provide, at a minimum, for the following:

(1) The establishment and maintenance of written procedures as required by paragraph (c) of this Rule.

- (2) The designation of a person with authority to reasonably discharge his/her duties and obligation in connection with supervision and control of the activities of the associated persons of the ETP Holder.
- (3) The ETP Holder must undertake reasonable efforts to determine that all supervisory personnel are qualified by virtue of experience or training to carry out their assigned responsibilities.
- (4) Each ETP Holder must designate and specifically identify to the Corporation one or more persons who will be responsible for such supervision.

(c) Written Procedures.

Each ETP Holder must establish, maintain, and enforce written procedures to supervise the business in which it engages and to supervise the activities of its associated persons that are reasonably designed to achieve compliance with applicable federal securities laws and regulations, and with the NYSE Arca Equities Rules.

(d) Each individual not associated with an ETP Holder and in the case of an ETP Holder, the person (or persons) designated to direct day-to-day compliance activity (such as the Compliance Officer, Partner or Director) and each other person at the ETP Holder directly supervising ten or more persons engaged in compliance activity should have overall knowledge of the securities laws and Exchange rules and must pass the General Securities Principal Examination (Series 24) and, if the ETP Holder does business with the public, the General Securities Sales Supervisor Qualification Examination (Series 9/10). Where good cause is shown, the Corporation, at its discretion, may waive all or a portion of the examination requirements. The Corporation may give consideration to the scope of the ETP Holder's activity, to previous related employment, and to examination requirements of other self-regulatory organizations. In such cases, the Corporation must be satisfied that the person is qualified for the position.

Commentary .01

(a) ETP Holders shall comply with NASD Rule 3010(a)(1), (b)(1), and (c)(1) as if such rule were part of NYSE Arca's Rules.

(b) For Purposes of this Rule:

- (1) References to "NASD Rules", "FINRA Rules", "Rules of FINRA", or "Rules of this Association" shall be construed as references to "NYSE Arca Equities Rules", and
- (2) references to registration with FINRA or the Association shall be construed as references to registration with NYSE Arca.

Commentary .02

For purposes of this Rule, for ETP Holders that are registered Market Makers in products listed under NYSE Arca Equities Rules 5 and 8, references to the term associated persons shall be construed to include affiliates.

Rule 6.6800 Consolidated Audit Trail Compliance Rule

Rule 6.6810. Consolidated Audit Trail—Definitions

For purposes of the Rule 6.6800 Series:

(a) "Account Effective Date" means:

(1) with regard to those circumstances in which an Industry Member has established a trading relationship with an institution but has not established an account with that institution:

(A) when the trading relationship was established prior to November 15, 2018 for Industry Members other than Small Industry Members, or prior to November 15, 2019 for Small Industry Members, either

(i) the date the relationship identifier was established within the Industry Member;

(ii) the date when trading began (i.e., the date the first order was received) using the relevant relationship identifier; or

(iii) if both dates are available, the earlier date will be used to the extent that the dates differ; or

(B) when the trading relationship was established on or after November 15, 2018 for Industry Members other than Small Industry Members, or on or after November 15, 2019 for Small Industry Members, the date the Industry Member established the relationship identifier, which would be no later than the date the first order was received;

(2) where an Industry Member changes back office providers or clearing firms prior to November 15, 2018 for Industry Members other than Small Industry Members, or prior to November 15, 2019 for Small Industry Members, the date an account was established at the relevant Industry Member, either directly or via transfer;

(3) where an Industry Member acquires another Industry Member prior to November 15, 2018 for Industry Members other than Small Industry Members, or prior to November 15, 2019 for Small Industry Members, the date an account was established at the relevant Industry Member, either directly or via transfer;

(4) where there are multiple dates associated with an account established prior to November 15, 2018 for Industry Members other than Small Industry Members, or prior to November 15, 2019 for Small Industry Members, the earliest available date;

(5) with regard to Industry Member proprietary accounts established prior to November 15, 2018 for Industry Members other than Small Industry Members, or prior to November 15, 2019 for Small Industry Members:

(A) the date established for the account in the Industry Member or in a system of the Industry Member or

(B) the date when proprietary trading began in the account (i.e., the date on which the first orders were submitted from the account).

With regard to paragraphs (2) - (5), the Account Effective Date will be no later than the date trading occurs at the Industry Member or in the Industry Member's system.

(b) "Active Accounts" means an account that has had activity in Eligible Securities within the last six months.

(c) "Allocation Report" means a report made to the Central Repository by an Industry Member that identifies the Firm Designated ID for any account(s), including subaccount(s), to which executed shares are allocated and provides the security that has been allocated, the identifier of the firm reporting the allocation, the price per share of shares allocated, the side of shares allocated, the number of shares allocated to each account, and the time of the allocation; provided, for the avoidance of doubt, any such Allocation Report shall not be required to be linked to particular orders or executions.

(d) "Business Clock" means a clock used to record the date and time of any Reportable Event required to be reported under this Rule Series.

(e) "CAT" means the consolidated audit trail contemplated by SEC Rule 613.

(f) "CAT NMS Plan" means the National Market System Plan Governing the Consolidated Audit Trail, as amended from time to time.

(g) "CAT-Order-ID" means a unique order identifier or series of unique order identifiers that allows the Central Repository to efficiently and accurately link all Reportable Events for an order, and all orders that result from the aggregation or disaggregation of such order.

(h) "CAT Reporting Agent" means a Data Submitter that is a third party that enters into an agreement with an Industry Member pursuant to which the CAT Reporting Agent agrees to fulfill such Industry Member's reporting obligations under this Rule Series.

(i) "Central Repository" means the repository responsible for the receipt, consolidation, and retention of all information reported to the CAT pursuant to SEC Rule 613 and the CAT NMS Plan.

(j) "Compliance Threshold" has the meaning set forth in Rule 6.6893(d).

(k) "Customer" means:

(1) the account holder(s) of the account at an Industry Member originating the order; and

(2) any person from whom the Industry Member is authorized to accept trading instructions for such account, if different from the account holder(s).

(l) "Customer Account Information" shall include, but not be limited to, account number, account type, customer type, date account opened, and large trader identifier (if applicable); except, however, that:

(1) in those circumstances in which an Industry Member has established a trading relationship with an institution but has not established an account with that institution, the Industry Member will:

(A) provide the Account Effective Date in lieu of the "date account opened";

(B) provide the relationship identifier in lieu of the "account number"; and

(C) identify the "account type" as a "relationship";

(2) in those circumstances in which the relevant account was established prior to November 15, 2018 for Industry Members other than Small Industry Members, or prior to November 15, 2019 for Small Industry Members, and no "date account opened" is available for the account, the Industry Member will provide the Account Effective Date in the following circumstances:

(A) where an Industry Member changes back office providers or clearing firms and the date account opened is changed to the date the account was opened on the new back office/clearing firm system;

(B) where an Industry Member acquires another Industry Member and the date account opened is changed to the date the

account was opened on the post-merger back office/clearing firm system;

(C) where there are multiple dates associated with an account in an Industry Member's system, and the parameters of each date are determined by the individual Industry Member; and

(D) where the relevant account is an Industry Member proprietary account.

(m) "Customer Identifying Information" means information of sufficient detail to identify a Customer, including, but not limited to:

(1) with respect to individuals: name, address, date of birth, individual tax payer identification number ("ITIN")/social security number ("SSN"), individual's role in the account (*e.g.*, primary holder, joint holder, guardian, trustee, person with the power of attorney); and

(2) with respect to legal entities: name, address, Employer Identification Number ("EIN")/Legal Entity Identifier ("LEI") or other comparable common entity identifier, if applicable; provided, however, that an Industry Member that has an LEI for a Customer must submit the Customer's LEI in addition to other information of sufficient detail to identify a Customer.

(n) "Data Submitter" means any person that reports data to the Central Repository, including national securities exchanges, national securities associations, broker-dealers, the SIPs for the CQS, CTA, UTP and Plan for Reporting of Consolidated Options Last Sale Reports and Quotation Information ("OPRA") Plans, and certain other vendors or third parties that may submit data to the Central Repository on behalf of Industry Members.

(o) "Eligible Security" includes (1) all NMS Securities and (2) all OTC Equity Securities.

(p) "Error Rate" means the percentage of Reportable Events collected by the Central Repository in which the data reported does not fully and accurately reflect the order event that occurred in the market.

(q) "Firm Designated ID" means a unique identifier for each trading account designated by Industry Members for purposes of providing data to the Central Repository, where each such identifier is unique among all identifiers from any given Industry Member for each business date.

(r) "Industry Member" means a member of a national securities exchange or a member of a national securities association.

- (s) "Industry Member Data" has the meaning set forth in Rule 6.6830(a)(2).
- (t) "Initial Plan Processor" means the first Plan Processor selected by the Operating Committee in accordance with SEC Rule 613, Section 6.1 of the CAT NMS Plan and the National Market System Plan Governing the Process for Selecting a Plan Processor and Developing a Plan for the Consolidated Audit Trail.
- (u) "Listed Option" or "Option" have the meaning set forth in Rule 600(b)(35) of Regulation NMS.
- (v) "Manual Order Event" means a non-electronic communication of order-related information for which Industry Members must record and report the time of the event.
- (w) "Material Terms of the Order" includes: the NMS Security or OTC Equity Security symbol; security type; price (if applicable); size (displayed and non-displayed); side (buy/sell); order type; if a sell order, whether the order is long, short, short exempt; open/close indicator (except on transactions in equities); time in force (if applicable); if the order is for a Listed Option, option type (put/call), option symbol or root symbol, underlying symbol, strike price, expiration date, and open/close (except on market maker quotations); and any special handling instructions.
- (x) "NMS Security" means any security or class of securities for which transaction reports are collected, processed, and made available pursuant to an effective transaction reporting plan, or an effective national market system plan for reporting transactions in Listed Options.
- (y) "NMS Stock" means any NMS Security other than an option.
- (z) "Operating Committee" means the governing body of the CAT NMS, LLC designated as such and described in Article IV of the CAT NMS Plan.
- (aa) "Options Market Maker" means a broker-dealer registered with an exchange for the purpose of making markets in options contracts traded on the exchange.
- (bb) "Order" or "order", with respect to Eligible Securities, shall include:
- (1) Any order received by an Industry Member from any person;
 - (2) Any order originated by an Industry Member; or
 - (3) Any bid or offer.
- (cc) "OTC Equity Security" means any equity security, other than an NMS Security, subject to prompt last sale reporting rules of a registered national securities association and reported to one of such association's equity trade reporting facilities.

(dd) "Participant" means each Person identified as such in Exhibit A of the CAT NMS Plan, as amended, in such Person's capacity as a Participant in CAT NMS, LLC.

(ee) "Person" means any individual, partnership, limited liability company, corporation, joint venture, trust, business trust, cooperative or association and any heirs, executors, administrators, legal representatives, successors and assigns of such Person where the context so permits.

(ff) "Plan Processor" means the Initial Plan Processor or any other Person selected by the Operating Committee pursuant to SEC Rule 613 and Sections 4.3(b)(i) and 6.1 of the CAT NMS Plan, and with regard to the Initial Plan Processor, the National Market System Plan Governing the Process for Selecting a Plan Processor and Developing a Plan for the Consolidated Audit Trail, to perform the CAT processing functions required by SEC Rule 613 and set forth in the CAT NMS Plan.

(gg) "Received Industry Member Data" has the meaning set forth in Rule 6.6830(a)(2).

(hh) "Recorded Industry Member Data" has the meaning set forth in Rule 6.6830(a)(1).

(ii) "Reportable Event" includes, but is not limited to, the original receipt or origination, modification, cancellation, routing, execution (in whole or in part) and allocation of an order, and receipt of a routed order.

(jj) "SRO" means any self-regulatory organization within the meaning of Section 3(a)(26) of the Exchange Act.

(kk) "SRO-Assigned Market Participant Identifier" means an identifier assigned to an Industry Member by an SRO or an identifier by a Participant.

(ll) "Small Industry Member" means an Industry Member that qualifies as a small broker-dealer as defined in Rule 0-10(c) under the Securities Exchange Act of 1934, as amended.

(mm) "Trading Day" shall have the meaning as is determined by the Operating Committee. For the avoidance of doubt, the Operating Committee may establish different Trading Days for NMS Stocks (as defined in SEC Rule 600(b)(47)), Listed Options, OTC Equity Securities, and any other securities that are included as Eligible Securities from time to time.

Rule 6.6820. Consolidated Audit Trail - Clock Synchronization

(a) Clock Synchronization

(1) Each Industry Member shall synchronize its Business Clocks, other than such Business Clocks used solely for Manual Order Events or used solely for the time of allocation on Allocation Reports, at a minimum to within a fifty (50) millisecond tolerance of the time maintained by the atomic clock of the National Institute of

Standards and Technology ("NIST"), and maintain such synchronization.

(2) Each Industry Member shall synchronize (A) its Business Clocks used solely for Manual Order Events and (B) its Business Clocks used solely for the time of allocation on Allocation Reports at a minimum to within a one second tolerance of the time maintained by the NIST atomic clock, and maintain such synchronization.

(3) The tolerance for paragraphs (a)(1) and (2) of this Rule includes all of the following:

(A) The difference between the NIST atomic clock and the Industry Member's Business Clock;

(B) The transmission delay from the source; and

(C) The amount of drift of the Industry Member's Business Clock.

(4) Business Clocks must be synchronized every business day before market open to ensure that timestamps for Reportable Events are accurate. To maintain clock synchronization, Business Clocks must be checked against the NIST atomic clock and re-synchronized, as necessary, throughout the day.

(b) Documentation

Industry Members must document and maintain their synchronization procedures for Business Clocks. Industry Members must keep a log of the times when they synchronize their Business Clocks and the results of the synchronization process. This log should include notice of any time a Business Clock drifts more than the applicable tolerance specified in paragraph (a) of this Rule. Such log must include results for a period of not less than five years ending on the then current date, or for the entire period for which the Industry Member has been required to comply with this Rule if less than five years.

(c) Certification

Each Industry Member shall certify to the Exchange that its Business Clocks satisfy the synchronization requirements set forth in paragraph (a) of this Rule periodically in accordance with the certification schedule established by the Operating Committee pursuant to the CAT NMS Plan.

(d) Violation Reporting

Each Industry Member with Business Clocks must report to the Plan Processor and the Exchange violations of paragraph (a) of this Rule pursuant to the thresholds set by the Operating Committee pursuant to the CAT NMS Plan.

Rule 6.6830. Consolidated Audit Trail - Industry Member Data Reporting

(a) Recording and Reporting Industry Member Data

(1) Subject to paragraph (3) below, each Industry Member shall record and electronically report to the Central Repository the following details for each order and each Reportable Event, as applicable ("Recorded Industry Member Data") in the manner prescribed by the Operating Committee pursuant to the CAT NMS Plan:

(A) for original receipt or origination of an order:

- (i) Firm Designated ID(s) for each Customer;
- (ii) CAT-Order-ID;
- (iii) SRO-Assigned Market Participant Identifier of the Industry Member receiving or originating the order;
- (iv) date of order receipt or origination;
- (v) time of order receipt or origination (using timestamps pursuant to Rule 6.6860); and
- (vi) Material Terms of the Order;

(B) for the routing of an order:

- (i) CAT-Order-ID;
- (ii) date on which the order is routed;
- (iii) time at which the order is routed (using timestamps pursuant to Rule 6.6860);
- (iv) SRO-Assigned Market Participant Identifier of the Industry Member routing the order;
- (v) SRO-Assigned Market Participant Identifier of the Industry Member or Participant to which the order is being routed;
- (vi) if routed internally at the Industry Member, the identity and nature of the department or desk to which the order is routed; and
- (vii) Material Terms of the Order;

(C) for the receipt of an order that has been routed, the following information:

- (i) CAT-Order-ID;
- (ii) date on which the order is received;
- (iii) time at which the order is received (using timestamps pursuant to Rule 6.6860);
- (iv) SRO-Assigned Market Participant Identifier of the Industry Member receiving the order;
- (v) SRO-Assigned Market Participant Identifier of the Industry Member or Participant routing the order; and
- (vi) Material Terms of the Order;

(D) if the order is modified or cancelled:

- (i) CAT-Order-ID;
- (ii) date the modification or cancellation is received or originated;
- (iii) time at which the modification or cancellation is received or originated (using timestamps pursuant to Rule 6.6860);
- (iv) price and remaining size of the order, if modified;
- (v) other changes in the Material Terms of the Order, if modified; and
- (vi) whether the modification or cancellation instruction was given by the Customer or was initiated by the Industry Member;

(E) if the order is executed, in whole or in part:

- (i) CAT-Order-ID;
- (ii) date of execution;
- (iii) time of execution (using timestamps pursuant to Rule 6.6860);
- (iv) execution capacity (principal, agency or riskless principal);
- (v) execution price and size;

(vi) SRO-Assigned Market Participant Identifier of the Industry Member executing the order;

(vii) whether the execution was reported pursuant to an effective transaction reporting plan or the Plan for Reporting of Consolidated Options Last Sale Reports and Quotation Information; and

(F) other information or additional events as may be prescribed pursuant to the CAT NMS Plan.

(2) Subject to paragraph (3) below, each Industry Member shall record and report to the Central Repository the following, as applicable ("Received Industry Member Data" and collectively with the information referred to in Rule 6.6830(a)(1) "Industry Member Data")) in the manner prescribed by the Operating Committee pursuant to the CAT NMS Plan:

(A) if the order is executed, in whole or in part:

(i) An Allocation Report;

(ii) SRO-Assigned Market Participant Identifier of the clearing broker or prime broker, if applicable; and

(iii) CAT-Order-ID of any contra-side order(s);

(B) if the trade is cancelled, a cancelled trade indicator; and

(C) for original receipt or origination of an order, the Firm Designated ID for the relevant Customer, and in accordance with Rule 6.6840, Customer Account Information and Customer Identifying Information for the relevant Customer.

(3) Each Industry Member that is an Options Market Maker is not required to report to the Central Repository the Industry Member Data regarding the routing, modification or cancellation of its quotes in Listed Options. Each Industry Member that is an Options Market Maker shall report to the Exchange the time at which its quote in a Listed Option is sent to the Exchange (and, if applicable, any subsequent quote modification time and/or cancellation time when such modification or cancellation is originated by the Options Market Maker).

(b) Timing of Recording and Reporting

(1) Each Industry Member shall record Recorded Industry Member Data contemporaneously with the applicable Reportable Event.

(2) Each Industry Member shall report:

(A) Recorded Industry Member Data to the Central Repository by 8:00 a.m. Eastern Time on the Trading Day following the day the Industry Member records such Recorded Industry Member Data; and

(B) Received Industry Member Data to the Central Repository by 8:00 a.m. Eastern Time on the Trading Day following the day the Industry Member receives such Received Industry Member Data.

(3) Industry Members may, but are not required to, voluntarily report Industry Member Data prior to the applicable 8:00 a.m. Eastern Time deadline.

(c) Applicable Securities

(1) Each Industry Member shall record and report to the Central Repository the Industry Member Data as set forth in paragraph (a) of this Rule for each NMS Security registered or listed for trading on such exchange or admitted to unlisted trading privileges on such exchange.

(2) Each Industry Member shall record and report to the Central Repository the Industry Member Data as set forth in this paragraph (a) of this Rule for each Eligible Security for which transaction reports are required to be submitted to FINRA.

(d) Security Symbology

(1) For each exchange-listed Eligible Security, each Industry Member shall report Industry Member Data to the Central Repository using the symbology format of the exchange listing the security.

(2) For each Eligible Security that is not exchange-listed, each Industry Member shall report Industry Member Data to the Central Repository using such symbology format as approved by the Operating Committee pursuant to the CAT NMS Plan.

(e) Error Correction

For each Industry Member for which errors in Industry Member Data submitted to the Central Repository have been identified by the Plan Processor or otherwise, such Industry Member shall submit corrected Industry Member Data to the Central Repository by 8:00 a.m. Eastern Time on T+3.

Rule 6.6840. Consolidated Audit Trail - Customer Information Reporting

(a) Initial Set of Customer Information

Each Industry Member shall submit to the Central Repository the Firm Designated ID, Customer Account Information and Customer Identifying Information for each of its Customers with an Active Account prior to such Industry Member's commencement of reporting to the Central Repository and in accordance with the deadlines set forth in Rule 6.6880.

(b) Daily Updates to Customer Information

Each Industry Member shall submit to the Central Repository any updates, additions or other changes to the Firm Designated ID, Customer Account Information and Customer Identifying Information for each of its Customers with an Active Account on a daily basis.

(c) Periodic Updates to Complete Set of Customer Information

On a periodic basis as designated by the Plan Processor and approved by the Operating Committee, each Industry Member shall submit to the Central Repository a complete set of Firm Designated IDs, Customer Account Information and Customer Identifying Information for each of its Customers with an Active Account.

(d) Error Correction

For each Industry Member for which errors in Firm Designated ID, Customer Account Information and Customer Identifying Information for each of its Customers with an Active Account submitted to the Central Repository have been identified by the Plan Processor or otherwise, such Industry Member shall submit corrected data to the Central Repository by 5:00 p.m. Eastern Time on T+3.

Rule 6.6850. Consolidated Audit Trail - Industry Member Information Reporting

Each Industry Member shall submit to the Central Repository information sufficient to identify such Industry Member, including CRD number and LEI, if such LEI has been obtained, prior to such Industry Member's commencement of reporting to the Central Repository and in accordance with the deadlines set forth in Rule 6.6880, and keep such information up to date as necessary.

Rule 6.6860. Consolidated Audit Trail - Time Stamps

(a) Millisecond Time Stamps

(1) Subject to paragraphs (a)(2) and (b), each Industry Member shall record and report Industry Member Data to the Central Repository with time stamps in milliseconds.

(2) Subject to paragraph (b), to the extent that any Industry Member's order handling or execution systems utilize time stamps in increments finer than milliseconds, such

Industry Member shall record and report Industry Member Data to the Central Repository with time stamps in such finer increment.

(b) One Second Time Stamps/Electronic Order Capture

(i) Each Industry Member may record and report Manual Order Events to the Central Repository in increments up to and including one second, provided that each Industry Member shall record and report the time when a Manual Order Event has been captured electronically in an order handling and execution system of such Industry Member ("Electronic Capture Time") in milliseconds; and

(ii) Each Industry Member may record and report the time of Allocation Reports in increments up to and including one second.

Rule 6.6865. Consolidated Audit Trail - Clock Synchronization Rule Violation

An Industry Member that engages in a pattern or practice of reporting Reportable Events outside of the required clock synchronization time period as set forth in this Rule Series without reasonable justification or exceptional circumstances may be considered in violation of this Rule.

Rule 6.6870. Consolidated Audit Trail - Connectivity and Data Transmission

(a) Data Transmission

Each Industry Member shall transmit data as required under the CAT NMS Plan to the Central Repository utilizing such format(s) as may be provided by the Plan Processor and approved by the Operating Committee.

(b) Connectivity

Each Industry Member shall connect to the Central Repository using a secure method(s), including, but not limited to private line(s) and virtual private network connection(s).

(c) CAT Reporting Agents

(1) Any Industry Member may enter into an agreement with a CAT Reporting Agent pursuant to which the CAT Reporting Agent agrees to fulfill the reporting obligations of such Industry Member under this Rule 6.6800 Series. Any such agreement shall be evidenced in writing, which shall specify the respective functions and responsibilities of each party to the agreement that are required to effect full compliance with the requirements of this Rule Series.

(2) All written documents evidencing an agreement described in subparagraph (1) shall be maintained by each party to the agreement.

(3) Each Industry Member remains primarily responsible for compliance with the requirements of this Rule Series, notwithstanding the existence of an agreement described in this paragraph.

Rule 6.6880. Consolidated Audit Trail - Development and Testing

(a) Development

(1) Connectivity and Acceptance Testing

(i) Industry Members (other than Small Industry Members) shall begin connectivity and acceptance testing with the Central Repository no later than August 15, 2018.

(ii) Small Industry Members shall begin connectivity and acceptance testing with the Central Repository no later than August 15, 2019.

(2) Reporting Customer and Industry Member Information

(i) Industry Members (other than Small Industry Members) shall begin reporting Customer and Industry Member information, as required by Rules 6.6840(a) and 6.6850, respectively, to the Central Repository for processing no later than October 15, 2018.

(ii) Small Industry Members shall begin reporting Customer and Industry Member information, as required by Rules 6.6840(a) and 6.6850, respectively, to the Central Repository for processing no later than October 15, 2019.

(3) Submission of Order Data

(i) Industry Members (other than Small Industry Members)

(A) Industry Members (other than Small Industry Members) are permitted, but not required, to submit order data for testing purposes beginning no later than May 15, 2018.

(B) Industry Members (other than Small Industry Members) shall participate in the coordinated and structured testing of order submission, which will begin no later than August 15, 2018.

(ii) Small Industry Members

(A) Small Industry Members are permitted, but not required, to submit order data for testing purposes beginning no later than May 15, 2019.

(B) Small Industry Members shall participate in the coordinated and structured testing of order submission, which will begin no later than August 15, 2019.

(4) Submission of Options Market Maker Quote. Industry Members are permitted, but not required to, submit Quote Sent Time on Options Market Maker quotes, beginning no later than October 15, 2018.

(b) Testing

Each Industry Member shall participate in testing related to the Central Repository, including any industry-wide disaster recovery testing, pursuant to the schedule established pursuant to the CAT NMS Plan.

Rule 6.6890. Consolidated Audit Trail - Recordkeeping

Each Industry Member shall maintain and preserve records of the information required to be recorded under this Rule Series for the period of time and accessibility specified in SEC Rule 17a-4(b). The records required to be maintained and preserved under this Rule may be immediately produced or reproduced on "micrographic media" as defined in SEC Rule 17a-4(f)(1)(i) or by means of "electronic storage media" as defined in SEA Rule 17a-4(f)(1)(ii) that meet the conditions set forth in SEC Rule 17a-4(f) and be maintained and preserved for the required time in that form.

Rule 6.6893. Consolidated Audit Trail - Timely, Accurate and Complete Data

(a) General

Industry Members are required to record and report data to the Central Repository as required by this Rule Series in a manner that ensures the timeliness, accuracy, integrity and completeness of such data.

(b) LEIs

Without limiting the requirement set forth in paragraph (a), Industry Members are required to accurately provide the LEIs in their records as required by this Rule Series and may not knowingly submit inaccurate LEIs to the Central Repository; provided, however, that this requirement does not impose any additional due diligence obligations on Industry Members with regard to LEIs for CAT purposes.

(c) Compliance with Error Rate

If an Industry Member reports data to the Central Repository with errors such that the error percentage exceeds the maximum Error Rate established by the Operating Committee pursuant to the CAT NMS Plan, then such Industry Member would not be in compliance with the Rule 6.6800 Series.

(d) Compliance Thresholds

Each Industry Member shall be required to meet a separate compliance threshold which will be an Industry Member-specific rate that may be used as the basis for further review or investigation into the Industry Member's performance with regard to the CAT (the "Compliance Thresholds"). Compliance Thresholds will compare an Industry Member's error rate to the aggregate Error Rate over a period of time to be defined by the Operating Committee. An Industry Member's performance with respect to its Compliance Threshold will not signify, as a matter of law, that such Industry Member has violated this Rule Series.

Rule 6.6895. Consolidated Audit Trail - Compliance Dates

(a) General

Paragraphs (b) and (c) of this Rule set forth the additional details with respect to the compliance date of Rules 6.6800 through 6.6895. Unless otherwise noted, Rules 6.6800 through 6.6895 are fully effective and ETP Holders must comply with their terms.

(b) Clock Synchronization

(1) Each Industry Member shall comply with Rule 6.6820 with regard to Business Clocks that capture time in milliseconds commencing on or before March 15, 2017.

(2) Each Industry Member shall comply with Rule 6.6820 with regard to Business Clocks that do not capture time in milliseconds commencing on or before February 19, 2018.

(c) CAT Data Reporting

(1) Each Industry Member (other than a Small Industry Member) shall record and report the Industry Member Data to the Central Repository by November 15, 2018.

(2) Each Industry Member that is a Small Industry Member shall record and report the Industry Member Data to the Central Repository by November 15, 2019.

RULE 7 EQUITIES TRADING

Section 1. General Provisions

Rule 7.1. Hours of Business

(a) Except as may be otherwise determined by the Board of Directors as to particular days, the Corporation shall be open for the transaction of business on every business day. The hours at which trading sessions shall open and close shall be during such hours as may be specified by Exchange rule or established by the Board of Directors.

(b) Dealings upon the Corporation shall be limited to the hours during which the Corporation is open for the transaction of business. No ETP Holder shall make any bid, offer or transaction through the facilities of the Corporation, before or after those hours.

(c) Except as may be otherwise determined by the Board of Directors, the President of the Corporation or his or her designee may take any of the following actions:

- (1) halt or suspend trading in some or all securities traded on the Corporation;
- (2) extend the hours for the transaction of business on the Corporation;
- (3) close some or all Corporation facilities;
- (4) determine the duration of any halt, suspension or closing undertaken pursuant to this rule; or
- (5) determine to trade securities on the Exchange's disaster recovery facility.

(d) The President or his or her designee shall take any of the actions described in paragraph (c) above only when he or she deems such action to be necessary or appropriate for the maintenance of a fair and orderly market, or the protection of investors or otherwise in the public interest, due to extraordinary circumstances such as (i) actual or threatened physical danger, severe climatic conditions, civil unrest, terrorism, acts of war, or loss or interruption of facilities utilized by the Exchange, (ii) a request by a governmental agency or official, or (iii) a period of mourning or recognition for a person or event.

(e) The President or his or her designee shall notify the Board of Directors of actions taken pursuant to this rule, except for a period of mourning or recognition for a person or event, as soon thereafter as is feasible.

Rule 7.2. Holidays

The Corporation will not be open for business on New Year's Day, Martin Luther King Jr. Day, Presidents' Day, Good Friday, Memorial Day, Independence Day, Labor Day, Thanksgiving Day and Christmas Day.

When a holiday observed by the Corporation falls on a Saturday, the Corporation will not be open for business on the preceding Friday unless unusual business conditions exist, such as the ending of a monthly or yearly accounting period.

Rule 7.3. Commissions

(a) *Fixed Rates.* Nothing contained in the Rules of the Corporation or its practices shall be construed to require or authorize its ETP Holders or any associated person, to agree or arrange, directly or indirectly, for the charging of fixed rates of commission for transactions effected on, or effected by the use of, the facilities of the Corporation.

(b) *Acting as Broker.* In all transactions in which an ETP Holder acts solely as a broker, the bills and confirmations rendered must so indicate, and all commissions charged, if any, shall be appropriately identified.

(c) *Acting as Principal.* In all transactions in which an ETP Holder acts as principal or in which the ETP Holder or any of its Allied Persons, partners, approved persons or stockholder associates have an interest as principal in any manner, the bills and confirmations rendered must so indicate.

Rule 7.4. Ex-Dividend or Ex-Right Dates

This version of Rule 7.4 will remain operative until the Exchange files separate proposed rule changes as necessary to establish the operative date of "Rule 7.4T. Ex-Dividend or Ex-Right Dates," to delete this version of Rule 7.4 and preamble, and to remove the preamble text from the version of Rule 7.4T. In addition to filing the necessary proposed rule changes, the Exchange will announce via Information Memo the operative date of the deletion of this Rule and implementation of "Rule 7.4T. Ex-Dividend or Ex-Right Dates."

Transactions in stocks, traded "regular" shall be "ex-dividend" or "ex-rights" as the case may be, on the second business day preceding the record date fixed by the company or the date of the closing of transfer books, except when the Board of Directors rules otherwise. Should such record date or such closing of transfer books occur upon a day other than a business day this Rule shall apply for the third preceding business day.

Rule 7.4T. Ex-Dividend or Ex-Right Dates

The Exchange will file separate proposed rule changes to establish the operative date of Rule 7.4T, to delete "Rule 7.4. Ex-Dividend or Ex-Right Dates" and the preamble text from Rule 7.4, and to remove the preamble text from the version of Rule 7.4T. Until such time, "Rule 7.4. Ex-Dividend or Ex-Right Dates" will remain operative. In addition to filing the necessary proposed rule changes, the Exchange will announce via Information Memo the implementation of this Rule and the operative date of the deletion of "Rule 7.4. Ex-Dividend or Ex-Right Dates."

Transactions in stocks, traded "regular" shall be "ex-dividend" or "ex-rights" as the case may be, on the business day preceding the record date fixed by the company or the date of the closing of transfer books, except when the Board of Directors rules otherwise.

Should such record date or such closing of transfer books occur upon a day other than a business day this Rule shall apply for the second preceding business day.

Rule 7.5. Trading Units

The unit of trading in stocks is 1 share. A "round lot" is 100 shares, unless specified by the primary listing market to be fewer than 100 shares. Any amount less than a round lot will constitute an "odd lot," and any amount greater than a round lot that is not a multiple of a round lot will constitute a "mixed lot."

Rule 7.6. Trading Differentials

The minimum price variation ("MPV") for quoting and entry of orders in securities traded on the NYSE Arca Marketplace is \$0.01, with the exception of securities that are priced less than \$1.00 for which the MPV for quoting and entry of orders is \$0.0001.

Rule 7.7. Transmission of Bids or Offers

(a) No ETP Holder having the right to trade through the facilities of the Corporation and who has been a party to or has knowledge of an execution shall be under obligation to divulge the name of the buying or selling firm in any transaction.

(b) Except as otherwise permitted by these Rules, no ETP Holder shall transmit through the facilities of the Corporation any information regarding a bid, offer, other indication of an order, or the ETP Holder's identity, to a non-holder of an ETP or to another ETP Holder until permission to disclose and transmit such bid, offer, other indication of an order, or the ETP Holder's identity has been obtained from the originating ETP Holder or the originating ETP Holder affirmatively elects to disclose its identity.

Rule 7.8. Bid or Offer Deemed Regular Way

Bids and offers will be considered to be "regular way."

Rule 7.9. Execution Price Binding

Notwithstanding Rules 7.10 and 7.11, the price at which an order is executed shall be binding notwithstanding the fact that an erroneous report in respect thereto may have been rendered.

Rule 7.10. Clearly Erroneous Executions

An amended version of this rule, which is available [here](#), has been approved but is not yet operative SEC approval order. The Exchange will announce by Trader Update when the amended version of the rule will be operative. Until such time, this version of the rule remains in effect'.

The provisions of paragraphs (c), (e)(2), (f), and (g) of this Rule, as amended on September 10, 2010, and the provisions of paragraphs (i) through (k), will be in effect during a pilot period to coincide with the pilot period for the Limit Up-Limit Down Plan, including any extensions to the pilot period for the Plan. If the Plan is not either extended or approved as permanent, the prior versions of sections (c), (e)(2), (f), and (g) will be in effect, and the provisions of paragraphs (i) through (k) will be null and void.

(a) *Definition.* For purposes of this Rule, the terms of a transaction executed on the Corporation are "clearly erroneous" when there is an obvious error in any term, such as price, number of shares or other unit of trading, or identification of the security. A transaction made in clearly erroneous error and cancelled by both parties or determined by the Corporation to be clearly erroneous will be removed from the Consolidated Tape.

(b) *Request and Timing of Review.* An ETP Holder that receives an execution on an order that was submitted erroneously to the Corporation for its own or customer account may request that the Corporation review the transaction under this Rule. An Officer of the Corporation or such other employee designee of the Corporation ("Officer") will review the transaction under dispute and determine whether it is clearly erroneous, with a view toward maintaining a fair and orderly market and the protection of investors and the public interest. Such request for review will be made in writing via e-mail or other electronic means specified from time to time by the Exchange in a circular distributed to ETP Holders.

(i) *Requests for Review.* Requests for review must be received within thirty (30) minutes of execution time and will include information concerning the time of the transaction(s), security symbol(s), number of shares, price(s), side (bought or sold), and factual basis for believing that the trade is clearly erroneous. Upon receipt of a timely filed request that satisfies the numerical guidelines set forth in Section (c)(1) of this Rule, the counterparty to the trade will be notified by the Corporation as soon as practicable, but generally within 30 minutes. An Officer may request additional supporting written information to aid in the resolution of the matter. If requested, each party to the transaction will provide, within thirty (30) minutes of the request, any supporting written information. Either party to the disputed trade may request the supporting written information provided by the other party on the matter.

(ii) *Routed Executions.* Other market centers will generally have an additional 30 minutes from receipt of their participant's timely filing, but no longer than 60 minutes from the time of the execution at issue, to file with the Exchange for review of transactions routed to the Exchange from that market center and executed on the Exchange.

(c) *Thresholds.* Determinations of a clearly erroneous execution will be made as follows:

(1) *Numerical Guidelines.* Subject to the provisions of paragraph (c)(3) below, a transaction executed during the Core Trading Session or the Early and Late Trading Session will be found to be clearly erroneous if the price of the transaction to buy (sell)

that is the subject of the complaint is greater than (less than) the Reference Price by an amount that equals or exceeds the Numerical Guidelines set forth below. The Reference Price will be equal to the consolidated last sale immediately prior to the execution(s) under review except for: (A) Multi-Stock Events involving twenty or more securities, as described in (c)(2) below; and (B) in other circumstances, such as, for example, relevant news impacting a security or securities, periods of extreme market volatility, sustained illiquidity, or widespread system issues, where use of a different Reference Price is necessary for the maintenance of a fair and orderly market and the protection of investors and the public interest.

Reference Price, Circumstance or Product:	Core Trading Session Numerical Guidelines (Subject transaction's % difference from the Reference Price:	Early and Late Trading Session Numerical Guidelines (Subject transaction's % difference from the Reference Price:
Between \$0.00 and \$25.00	10%	20%
Between \$25.01 and \$50.00	5%	10%
Greater than \$50.00	3%	6%
Multi-Stock Event - Filings involving five or more, but less than twenty, securities whose executions occurred within a period of five minutes or less	10%	10%
Multi-Stock Event - Filings involving twenty or more securities whose executions occurred within a period of five minutes or less	30%, subject to the terms of paragraph (c)(2) below	30%, subject to the terms of paragraph (c)(2) below
Leveraged ETF/ETN securities	Core Trading Session Numerical Guidelines multiplied by the leverage multiplier (e.g.,	Core Trading Session Numerical Guidelines multiplied by the leverage multiplier (e.g. 2x)

2x)

(2) **Multi-Stock Events Involving Twenty or More Securities.** During Multi-Stock Events involving twenty or more securities the number of affected transactions may be such that immediate finality is necessary to maintain a fair and orderly market and to protect investors and the public interest. In such circumstances, the Exchange may use a Reference Price other than consolidated last sale. To ensure consistent application across market centers when this paragraph is invoked, the Exchange will promptly coordinate with the other market centers to determine the appropriate review period, which may be greater than the period of five minutes or less that triggered application of this paragraph, as well as select one or more specific points in time prior to the transactions in question and use transaction prices at or immediately prior to the one or more specific points in time selected as the Reference Price. The Exchange will nullify as clearly erroneous all transactions that are at prices equal to or greater than 30% away from the Reference Price in each affected security during the review period selected by the Exchange and other markets consistent with this paragraph.

(3) **Additional Factors.** Except in the context of a Multi-Stock Event involving five or more securities, an Officer may also consider additional factors to determine whether an execution is clearly erroneous, including but not limited to, system malfunctions or disruptions, volume and volatility for the security, derivative securities products that correspond to greater than 100% in the direction of a tracking index, news released for the security, whether trading in the security was recently halted/resumed, whether the security is an IPO, whether the security was subject to a stock-split, reorganization, or other corporate action, overall market conditions, Early and Late Trading Session executions, validity of the consolidated tapes trades and quotes, consideration of primary market indications, and executions inconsistent with the trading pattern in the stock. Each additional factor will be considered with a view toward maintaining a fair and orderly market and the protection of investors and the public interest.

(d) **Outlier Transactions.** In the case of an Outlier Transaction, an Officer may at its sole discretion, and on a case-by-case basis, consider requests received pursuant to subsection (b) of this Rule after 30 minutes, but not longer than sixty minutes after the transaction in question, depending on the facts and circumstances surrounding such request.

(1) "Outlier Transaction" means a transaction where:

(A) the execution price of the security is greater than three times the current Numerical Guidelines set forth in Paragraph (c)(1) of this Section, or

(B) the execution price of the security in question is not within the Outlier Transaction parameters set forth in Paragraph (d)(1)(A) of the Section but breaches the 52-week high or 52-week low, the Corporation may consider Additional Factors as outlined in 7.10(c)(3), in determining if the transaction qualifies for further review or if the Corporation shall decline to act.

(e) Review Procedures.

(1) *Determination by Officer.* Unless both parties (or party, in the case of a Cross Order) to the disputed transaction agree to withdraw the initial request for review, the transaction under dispute will be reviewed, and a determination will be rendered by the Officer. If the Officer determines that the transaction is not clearly erroneous, the Officer will decline to take any action in connection with the completed trade. In the event that the Officer determines that the transaction in dispute is clearly erroneous, the Officer will declare the transaction null and void. A determination will be made generally within 30 minutes of receipt of the complaint, but in no case later than the start of Core Trading on the following trading day. The parties will be promptly notified of the determination.

(2) *Appeals.* If an ETP Holder affected by a determination made under this Rule so requests within the time permitted below, the Clearly Erroneous Execution Panel ("CEE Panel") will review decisions made by the Officer under this Rule, including whether a clearly erroneous execution occurred and whether the correct determination was made; provided however that the CEE Panel will not review decisions made by an officer under subsection (f) of this Rule if such Officer also determines under subsection (f) of this Rule that the number of the affected transactions is such that immediate finality is necessary to maintain a fair and orderly market and to protect investors and the public interest, and further provided that with respect to rulings made in conjunction with one or more additional market centers, the number of the affected transactions is similarly such that immediate finality is necessary to maintain a fair and orderly market and to protect investors and the public interest and, hence, are also non-appealable.

(A) The CEE Panel will consist of the Exchange Chief Regulatory Officer ("CRO"), or a designee of the CRO, and representatives from two (2) ETP Holders.

(B) The Exchange will designate at least ten (10) ETP Holder representatives to be called upon to serve on the CEE Panel as needed. In no case will a CEE Panel include a person related to a party to the trade in question. To the extent reasonably possible, the Exchange will call upon the designated representatives to participate on a CEE Panel on an equally frequent basis.

(3) A request for review on appeal must be made via e-mail within thirty (30) minutes after the party making the appeal is given notification of the initial determination being appealed. The CEE Panel will review the facts and render a decision as soon as practicable, but generally on the same trading day as the execution(s) under review. On requests for appeal received between 3:00 p.m. Eastern Time and the close of trading in the Late Trading Session, a decision will be rendered as soon as practicable, but in no case later than the trading day following the date of the execution under review.

(4) The CEE Panel may overturn or modify an action taken by the Officer under this Rule. All determinations by the CEE Panel will constitute final action by the Corporation on the matter at issue.

(5) If the CEE Panel votes to uphold the decision made pursuant to Rule 7.10(e)(1), the Exchange will assess a \$500.00 fee against the ETP Holder(s) who initiated the request for appeal.

(6) Any determination by an Officer or by the CEE Panel will be rendered without prejudice as to the rights of the parties to the transaction to submit their dispute to arbitration.

(f) *System Disruption or Malfunctions.* In the event of any disruption or a malfunction in the operation of any electronic communications and trading facilities of the Corporation in which the nullification of transactions may be necessary for the maintenance of a fair and orderly market or the protection of investors and the public interest exist, the Officer, on his or her own motion, may review such transactions and declare such transactions arising out of the operation of such facilities during such period null and void. In such events, the Officer of the Corporation or such other senior level employee designee will rely on the provisions of Section (c)(1)-(3) of this Rule, but in extraordinary circumstances may also use a lower Numerical Guideline if necessary to maintain a fair and orderly market, protect investors and the public interest. Absent extraordinary circumstances, any such action of the Officer pursuant to this subsection (f) will be taken within thirty (30) minutes of detection of the erroneous transaction. When extraordinary circumstances exist, any such action of the Officer must be taken by no later than the start of Core Trading on the day following the date of execution(s) under review. Each ETP Holder involved in the transaction will be notified as soon as practicable, and the ETP Holder aggrieved by the action may appeal such action in accordance with the provisions of subsection (e)(2)-(4).

(g) *Officer Acting On Own Motion.* An Officer, acting on its own motion, may review potentially erroneous executions and declare trades null and void or will decline to take any action in connection with the completed trade(s). In such events, the Officer of the Corporation or such other senior level employee designee will rely on the provisions of Section (c)(1)-(3) of this Rule. Absent extraordinary circumstances, any such action of the Officer will be taken in a timely fashion, generally within thirty (30) minutes of the detection of the erroneous transaction. When extraordinary circumstances exist, any such action of the Officer must be taken by no later than the start of Core Trading on trading day following the date of execution(s) under review. When such action is taken independently, each party involved in the transaction will be notified as soon as practicable by the Corporation, and the party aggrieved by the action may appeal such action in accordance with the provisions of subsection (e)(2)-(4) above.

(h) *Trade Nullification for UTP Securities that are Subject of Initial Public Offerings ("IPOs").* Pursuant to SEC Rule 12f-2, as amended, the Corporation may extend unlisted trading privileges to a security that is the subject of an initial public offering when at least one transaction in the subject security has been effected on the national securities exchange or association upon which the security is listed and the transaction has been reported pursuant to an effective transaction reporting plan. A clearly erroneous error may be deemed to have occurred in the opening transaction of the subject security if the

execution price of the opening transaction on the Corporation is the lesser of \$1.00 or 10% away from the opening price on the listing exchange or association. In such circumstances, the Officer will declare the opening transaction null and void or will decline to take action in connection with the completed trade(s). Clearly erroneous executions of subsequent transactions of the subject security will be reviewed in the same manner as the procedure set forth in (e)(1). Absent extraordinary circumstances, any such action of the Officer pursuant to this subsection (h) will be taken in a timely fashion, generally within thirty (30) minutes of the detection of the erroneous transaction. When extraordinary circumstances exist, any such action of the Officer must be taken by no later than the start of Core Trading on the day following the date of execution(s) under review. Each party involved in the transaction will be notified as soon as practicable by the Corporation, and the party aggrieved by the action may appeal such action in accordance with the provisions of subsection (e)(2)-(4) above.

(i) *Securities Subject to Limit Up-Limit Down Plan.* For purposes of this paragraph, the phrase "Limit Up-Limit Down Plan" or "Plan" means the Plan to Address Extraordinary Market Volatility Pursuant to Rule 608 of Regulation NMS under the Act. The provisions of paragraphs (a) through (h) above and (j) through (k) below will govern all Exchange transactions, including transactions in securities subject to the Plan, other than as set forth in this paragraph (i). If as a result of an Exchange technology or systems issue any transaction occurs outside of the applicable price bands disseminated pursuant to the Plan, an Officer of the Exchange or senior level employee designee, acting on his or her own motion or at the request of a third party, will review and declare any such trades null and void. Absent extraordinary circumstances, any such action of the Officer of the Exchange or other senior level employee designee will be taken in a timely fashion, generally within thirty (30) minutes of the detection of the erroneous transaction. When extraordinary circumstances exist, any such action of the Officer of the Exchange or other senior level employee designee must be taken by no later than the start of the Core Trading Hours on the trading day following the date on which the execution(s) under review occurred. Each ETP Holder involved in the transaction will be notified as soon as practicable by the Exchange, and the party aggrieved by the action may appeal such action in accordance with the provisions of paragraph (e)(2) above. In the event that a single plan processor experiences a technology or systems issue that prevents the dissemination of price bands, the Exchange will make the determination of whether to nullify transactions based on paragraphs (a) through (h) above and (j) through (k) below.

(j) *Multi-Day Event.* A series of transactions in a particular security on one or more trading days may be viewed as one event if all such transactions were effected based on the same fundamentally incorrect or grossly misinterpreted issuance information resulting in a severe valuation error for all such transactions (the "Event"). An Officer, acting on his or her own motion, will take action to declare all transactions that occurred during the Event null and void not later than the start of trading on the day following the last transaction in the Event. If trading in the security is halted before the valuation error is corrected, an Officer will take action to declare all transactions that occurred during the Event null and void prior to the resumption of trading. Notwithstanding the foregoing, no action can be taken pursuant to this paragraph with respect to any transactions that have

reached settlement date or that result from an initial public offering of a security. To the extent transactions related to an Event occur on one or more other market centers, the Exchange will promptly coordinate with such other market center(s) to ensure consistent treatment of the transactions related to the Event, if practicable. Any action taken in connection with this paragraph will be taken without regard to the Numerical Guidelines set forth in this Rule. Each ETP Holder involved in a transaction subject to this paragraph will be notified as soon as practicable by the Exchange, and the party aggrieved by the action may appeal such action in accordance with the provisions of paragraph (e)(2) above.

(k) *Trading Halts.* In the event of any disruption or malfunction in the operation of the electronic communications and trading facilities of the Exchange, another market center or responsible single plan processor in connection with the transmittal or receipt of a regulatory trading halt, suspension or pause, an Officer, acting on his or her own motion, will nullify any transaction in a security that occurs after the primary listing market for such security declares a regulatory trading halt, suspension or pause with respect to such security and before such regulatory trading halt, suspension or pause with respect to such security has officially ended according to the primary listing market. In addition, in the event a regulatory trading halt, suspension or pause is declared, then prematurely lifted in error and is then re-instituted, an Officer will nullify transactions that occur before the official, final end of the halt, suspension or pause according to the primary listing market. Any action taken in connection with this paragraph will be taken in a timely fashion, generally within thirty (30) minutes of the detection of the erroneous transaction and in no circumstances later than the start of Core Trading Hours on the trading day following the date of execution(s) under review. Any action taken in connection with this paragraph will be taken without regard to the Numerical Guidelines set forth in this Rule. Each ETP Holder involved in a transaction subject to this paragraph will be notified as soon as practicable by the Exchange, and the party aggrieved by the action may appeal such action in accordance with the provisions of paragraph (e)(2) above.

Rule 7.11. Limit Up—Limit Down Plan and Trading Pauses in Individual Securities Due to Extraordinary Market Volatility

An amended version of this rule, which is available [here](#), has been approved but is not yet operative SEC approval order. The Exchange will announce by Trader Update when the amended version of the rule will be operative. Until such time, this version of the rule remains in effect''.

The provisions of this Rule shall be in effect during a pilot to coincide with the pilot period for the Regulation NMS Plan to Address Extraordinary Market Volatility.

Rules 7.11(a)(5) and (a)(6) govern order processing when ETP Holders communicate with the NYSE Arca Marketplace using Pillar phase I protocols. Rule 7.11(a)(5P) governs order processing when ETP Holders communicate with the NYSE Arca Marketplace using Pillar phase II protocols. The Exchange will file a separate proposed

rule change to delete Rules 7.11(a)(5) and (a)(6) when the Pillar phase I protocols are no longer available.

(a) Limit Up-Limit Down Mechanism.

(1) Definitions

(A) "Plan" means the Plan to Address Extraordinary Market Volatility Submitted to the Securities and Exchange Commission Pursuant to Rule 608 of Regulation NMS under the Securities Exchange Act of 1934, Exhibit A to Securities Exchange Act Release No. 67091 (May 31, 2012), 77 FR 33498 (June 6, 2012), as it may be amended from time to time.

(B) All capitalized terms not otherwise defined in this Rule shall have the meanings set forth in the Plan or Exchange rules, as applicable.

(2) Exchange Participation in the Plan. The Exchange is a Participant in, and subject to the applicable requirements of, the Plan, which establishes procedures to address extraordinary volatility in NMS Stocks.

(3) ETP Holder Compliance. ETP Holders will comply with the applicable provisions of the Plan.

(4) Exchange Compliance with the Plan. Exchange systems will not display or trade buy (sell) interest above (below) the Upper (Lower) Price Bands, unless such interest is specifically exempted under the Plan.

(5) Cancellation of Orders. Exchange systems will cancel buy (sell) interest that is priced or could be traded above (below) the Upper (Lower) Price Band, except as specified in (a)(6) below.

(A) Incoming marketable interest, including Market Orders, Limit Orders, and Limit Orders designated IOC will be traded, or if applicable, routed to an Away market, to the fullest extent possible, subject to Rules 7.31(a)(1)(B) (Trading Collars for Market Orders) and 7.31(a)(2)(B) (price check for Limit Orders), at prices at or within the Price Bands. Any untraded quantity of such incoming marketable interest that cannot be traded at prices at or within the Price Bands will be cancelled and the ETP Holder will be notified of the reason for the cancellation.

(B) Cross Orders with a cross price above the Upper Price Band or below the Lower Price Band will be rejected.

(5P) Repricing and Cancellation of Orders. Exchange systems will reprice or cancel buy (sell) orders that are priced or could be traded above (below) the Upper (Lower) Price Band.

(A) Incoming Market Orders, Limit Orders designated IOC, and Day ISOs will be traded, or if applicable, routed to an Away Market, to the fullest extent possible, subject to Rule 7.31(a)(1)(B) (Trading Collars for Market Orders) and 7.31(a)(2)(B) (price check for Limit Orders) at prices at or within the Price Bands.

(i) Any quantity of such orders that cannot be traded or routed at prices at or within the Price Bands will be cancelled and the ETP Holder will be notified of the reason for the cancellation.

(ii) If Price Bands move and the working price of a resting Market Order or Day ISO to buy (sell) is above (below) the updated Upper (Lower) Price Band, such orders will be cancelled.

(B) Incoming Limit Orders will be traded, or if applicable, routed to an Away Market, to the fullest extent possible, subject to Rule 7.31(a)(2)(B) (price check for Limit Orders) at prices at or within the Price Bands.

(i) Unless the ETP Holder has entered an instruction to cancel any quantity of a Limit Order that cannot be traded or routed at prices at or within the Price Bands, such order will be assigned a working price, and if applicable, display price, at the Upper (Lower) Price Band, consistent with the terms of the order.

(ii) The repricing of Limit Orders will be applicable to both incoming and resting orders. If the Price Bands move and the limit price of a repriced order is at or within the Price Band, such Limit Order will be adjusted to its limit price.

(iii) Primary Until 9:45 Orders and Primary After 3:55 Orders will be priced under paragraph (a)(5P)(B) of this Rule only when such orders are entered on or resting on the NYSE Arca Book.

(C) **Sell Short Orders.** If a Limit Order does not include a cancel instruction and is also a sell short order, during a Short Sale Price Test, as set forth in Rule 7.16(f), such short sale order priced below the Lower Price Band will be repriced to the higher of the Lower Price Band or the Permitted Price, as defined in Rule 7.16(f)(5)(A). Sell short orders that are not eligible to be repriced will be treated as the order types specified in (a)(5P)(A) above.

(D) Incoming Q Orders to buy (sell) with a limit price above (below) the Upper (Lower) Price Band will be rejected. If Price Bands move and the limit price of a resting Q Order to buy (sell) is above (below) the updated Upper (Lower) Price Band, the Q Order will be cancelled.

- (E) Limit IOC Cross Orders with a cross price above (below) the Upper (Lower) Price Band will be rejected.
- (F) If the midpoint of the PBBO is above (below) the Upper (Lower) Price Band, an MPL Order to buy (sell) will not be repriced or rejected and will not be eligible to trade. An MPL Order will be cancelled or rejected if the ETP Holder enters an instruction to cancel or reject such MPL Order.
- (6) **Discretionary Instruction to Reprice Eligible Limit Orders.** ETP Holders may enter an instruction for the working price of a Limit Order to buy (sell) with a limit price above (below) the Upper (Lower) Price Band to be adjusted a price that is equal to the Upper (Lower) Price Band rather than cancel the order.
- (A) Repricing instructions are not available for Market Orders, Auction-Only Orders, Primary Only Orders, Day ISO, Q Orders, or any Limit Order that includes an IOC modifier, including Cross Orders. Instructions to reprice included with a Primary Until 9:45 Order or Primary After 3:55 Order will only be enforced when such orders are entered on or resting on the NYSE Arca Book.
- (B) Instructions to reprice eligible Limit Orders will be applicable to both incoming and resting orders. If the Price Bands move and the original limit price of a repriced order is at or within the Price Bands, such Limit Order would be adjusted to its original limit price.
- (C) An MPL Order that has an instruction to reprice will not cancel, but will not be repriced or be eligible to trade if the midpoint of the PBBO is below the Lower Price Band or above the Upper Price Band.
- (D) **Sell Short Orders.** If an eligible order includes a repricing instruction and is also a sell short order, during a Short Sale Price Test, as set forth in Rule 7.16(f), a short sale order priced below the Lower Price Band will be repriced to the higher of the Lower Price Band or the Permitted Price, as defined in Rule 7.16(f)(5)(A). Sell short orders that are not eligible for repricing instructions will be treated as any other order pursuant to (a)(5) above.
- (7) **Routing to Away Markets.** Exchange systems will not route buy (sell) orders to an Away Market displaying a sell (buy) quote that is above (below) the Upper (Lower) Price Band, provided that the Exchange will route Primary Only Orders, Primary Until 9:45, and Primary After 3:55 Orders to the primary listing market regardless of price.
- (8) **Trading Pause during a Straddle State.** The Exchange may declare a Trading Pause for a NMS Stock listed on the Exchange when (i) the National Best Bid (Offer) is below (above) the Lower (Upper) Price Band and the NMS Stock is not

in a Limit State; and (ii) trading in that NMS Stock deviates from normal trading characteristics.

(9) After the Exchange opens or reopens an Exchange-listed security but before receiving Price Bands from the SIP under the Regulation NMS Plan to Address Extraordinary Market Volatility, the Exchange will calculate Price Bands based on the first Reference Price provided to the SIP and if such Price Bands are not in the MPV for the security, such Price Bands will be rounded to the nearest price at the applicable MPV.

(b) **Re-opening of Trading following a Trading Pause.** During Phase 1 of the Plan, a Trading Pause in Tier 1 NMS Stocks subject to the requirements of the Plan, will be subject to Plan requirements and paragraph (b)(2) of this Rule; a Trading Pause in Tier 1 NMS Stocks not yet subject to the requirements of the Plan will be subject to the requirements in paragraphs (b)(1) - (5) of this Rule; and a Trading Pause in Tier 2 NMS Stocks will be subject to the requirements set forth in paragraphs (b)(1)(B) - (5) of this Rule. Once the Plan has been fully implemented and all NMS Stocks are subject to the Plan, a Trading Pause under the Plan will be subject to only paragraphs (b)(2) of this Rule.

(1) Between 9:45 a.m. and 3:35 p.m. Eastern Time, or in the case of an early scheduled close, 25 minutes before the close of trading, if the price of a security listed on the Corporation, other than rights and warrants, moves by a percentage specified below within a five-minute period ("Threshold Move"), as calculated pursuant to paragraph (c) below, trading in that security will immediately pause on the Corporation for a period of five minutes (a "Trading Pause").

(A) The Threshold Move will be 10% or more with respect to securities included in the S&P 500® Index, Russell 1000® Index, and a pilot list of Exchange Traded Products;

(B) The Threshold Move will be 30% or more with respect to all Tier 2 NMS Stocks with a price equal to or greater than \$1; and

(C) The Threshold Move will be 50% or more with respect to all Tier 2 NMS Stocks with a price less than \$1.

The determination that the price of a stock is equal to or greater than \$1 under paragraph (b)(i)(B) above or less than \$1 under paragraph (b)(i)(C) above will be based on the closing price on the previous trading day, or, if no closing price exists, the last sale reported to the Consolidated Tape on the previous trading day.

(2) Re-opening of Trading following a Trading Pause. At the end of the Trading Pause, the Corporation will re-open the security in accordance with the procedures set forth in Rule 7.35 for a Trading Halt Auction. In the event of a

significant imbalance at the end of a Trading Pause, the Corporation may delay the re-opening of a security. The Exchange will issue a notification if it cannot resume trading for a reason other than a significant imbalance. Any interest repriced pursuant to paragraph (a)(6) of this Rule will return to its original order instructions for purposes of the re-opening transaction following a Trading Pause.

- (3) Calculation of Threshold Move. Every second the Corporation will calculate the Threshold Move by comparing each last consolidated sale price of a security ("Trigger Trade") during the preceding second to a reference price (the "Calculation Time"). The reference price will be any transaction in that security printed to the Consolidated Tape during the five-minute period before the Calculation Time, except for Trigger Trades in the first five minutes following 6:45 a.m., for which reference prices will begin at 6:45 a.m. Only regular way, in-sequence transactions qualify as either a Trigger Trade or a reference price. The Corporation can exclude a transaction price from use as a reference price or Trigger Trade if it concludes that the transaction price resulted from an erroneous execution.
- (4) Notification of Trading Pauses. If a Trading Pause is triggered under this Rule, the Corporation will immediately notify the single plan processor responsible for consolidation of information for the security pursuant to Rule 603 of Regulation NMS under the Securities Exchange Act of 1934.
- (5) If a primary listing market issues an individual stock trading pause, the Corporation will pause trading in that security until trading has resumed on the primary listing market or notice has been received from the primary listing market that trading may resume. If the primary listing market does not reopen the security within 10 minutes of notification of a Trading Pause, the Corporation may resume trading the security.

Rule 7.12. Trading Halts Due to Extraordinary Market Volatility

This Rule shall be in effect during a pilot period to coincide with the pilot period for the Regulation NMS Plan to Address Extraordinary Market Volatility. If the pilot is not either extended or approved permanently at the end of the pilot period, the prior version of Rule 7.12 shall be in effect.

The Corporation shall halt trading in all stocks and shall not reopen for the time periods specified in this Rule if there is a Level 1, 2, or 3 Market Decline.

- (i) For purposes of this Rule, a Market Decline means a decline in price of the S&P 500® Index between 9:30 a.m. and 4:00 p.m. Eastern Time on a trading day as compared to the closing price of the S&P 500® Index for the immediately preceding trading day. The Level 1, Level 2, and Level 3 Market Declines that will be applicable for the trading day will be publicly disseminated before 9:30 a.m.

- (ii) A "Level 1 Market Decline" means a Market Decline of 7%.
- (iii) A "Level 2 Market Decline" means a Market Decline of 13%.
- (iv) A "Level 3 Market Decline" means a Market Decline of 20%.

(b) Halts in Trading.

- (i) If a Level 1 Market Decline or a Level 2 Market Decline occurs after 9:30 a.m. Eastern Time and up to and including 3:25 p.m. Eastern Time, or in the case of an early scheduled close, 12:25 p.m. Eastern Time, the Exchange shall halt trading in all stocks for 15 minutes after a Level 1 or Level 2 Market Decline. The Corporation shall halt trading based on a Level 1 or Level 2 Market Decline only once per trading day. The Corporation will not halt trading if a Level 1 Market Decline or a Level 2 Market Decline occurs after 3:25 p.m. Eastern Time, or in the case of an early scheduled close, 12:25 Eastern Time.
- (ii) If a Level 3 Market Decline occurs at any time during the trading day, the Corporation shall halt trading in all stocks until the primary listing market opens the next trading day.

(c) Re-opening of Trading

- (i) The re-opening of trading following a Level 1 or 2 trading halt shall follow the procedures set forth in Rule 7.35.
- (ii) If the primary listing market halts trading in all stocks, the Corporation will halt trading in all stocks until trading has resumed on the primary listing market or notice has been received from the primary listing market that trading may resume. If the primary listing market does not reopen a security within 15 minutes following the end of the 15-minute halt period, the Corporation may resume trading in that security.

(d) Nothing in this Rule should be construed to limit the ability of the Corporation to otherwise halt, suspend, or pause the trading in any stock or stocks traded on the Corporation pursuant to any other Corporation rule or policy.

Rule 7.13. Trading Suspensions

Except as otherwise stated in Rule 5.5, the Chair of the Board or the President, or the officer designee of the Chair or the President, shall have the power to suspend trading in any and all securities traded on the Corporation whenever in his or her opinion such suspension would be in the public interest. No such action shall continue longer than a period of two days, or as soon thereafter as a quorum of Directors can be assembled, unless the Board approves the continuation of such suspension.

Rule 7.14. Clearance and Settlement

(a) Each ETP Holder shall either:

- (1) be a clearing firm;
- (2) clear transactions on the Corporation through a clearing firm; or
- (3) clear transactions through an entity duly authorized by the Corporation.

(b) An ETP Holder must give up the name of the clearing firm through which each transaction on the Corporation will be cleared. If there is a subsequent change in identity of the clearing firm through which the transaction on the Corporation will be cleared, the ETP Holder shall report such change to the Corporation at least five (5) business days in advance.

(c) Each clearing firm must be admitted to the Corporation as an ETP Holder by meeting the qualification requirements set forth above in Rule 2; provided, however, if the clearing firm has become an ETP Holder for the sole purpose of acting as a clearing firm on the Corporation, such clearing firm need not pay the regular ETP Holder fee. The clearing firm shall be responsible for the clearance of the transactions effected by each ETP Holder which gives up such clearing firm's name pursuant to a letter of authorization, letter of guarantee or other authorization given by such clearing firm to such ETP Holder, which authorization shall be submitted to the Corporation.

(d) Notwithstanding any other provisions contained in the Rule to the contrary, the Board may extend or postpone the time of the delivery of a transaction on the Corporation whenever in its opinion, such action is called for by the public interest, by just and equitable principles of trade or by the need to meet unusual conditions. In such case, delivery shall be effected at such time, place and manner as directed by the Board of Directors.

Rule 7.15. Stock Option Transactions

(a) No Market Maker nor his or her firm, nor any participant therein, shall, directly or indirectly, be interested in a pool dealing or trading in any security in which he or she is registered as a Market Maker.

(b) No Market Maker, nor his or her firm, nor any participant therein shall acquire, hold or grant, directly or indirectly, any interest in any option to buy or to sell or to receive or to deliver shares of any security in which he or she is registered as a Market Maker, unless such option is issued by the Options Clearing Corporation and is immediately reported to the Corporation in accordance with such procedures as may be prescribed by the Corporation.

Rule 7.16. Short Sales

(a) The terms "long", "short", and "short exempt" will have the meaning given to each by Regulation SHO, 17 CFR 240.200 et seq.

(b) Order Identification. No ETP Holder of the Corporation may, by the use of any facility of the Corporation, execute any sell order unless such order is indicated as either "long", "short", or "short exempt".

(c) Marking Orders. An ETP Holder must mark all sell orders as "long", "short", or "short exempt". Sales should be marked "short", "short exempt", and "long" in accordance with SEC Rule 200(g).

(d) Covering Short Sales. No ETP Holder of the Corporation will lend, or arrange for the loan of any security for delivery to the broker for the purchaser after sale, or will fail to deliver a security on the date delivery is due, if such ETP Holder knows or has reasonable grounds to believe that the sale was effected, or will be effected, pursuant to an order marked "long" unless such ETP Holder knows, or has been informed by the seller (i) that the security sold has been forwarded to the account for which the sale was effected, or (ii) that the seller owns the security sold, that it is then impracticable to deliver such security to such account and that delivery will be made as soon as is possible without undue inconvenience or expense. The provisions of this subsection (d) will not apply to:

- (1) The lending of a security by an ETP Holder through the medium of a loan to another ETP Holder; or
- (2) Any loan, or arrangement for the loan, of any security, or any failure to deliver any security if, prior to such loan, arrangement, or failure to deliver, the Corporation finds (A) that such sale resulted from a mistake made in good faith; (B) either that the condition of the market at the time the mistake was discovered was such that undue hardship would result from covering the transaction by a "purchase for cash" or that the mistake was made by the seller's broker; and (C) that due diligence was used to ascertain that either (i) the security to be delivered after sale is carried in the account for which the sale was effected, or (ii) such ETP Holder had been informed that the seller owns the security being sold, and as soon as possible without undue inconvenience or expense, will deliver the security owned to the account for which the sale was effected.

(e) **General.** Short sale executions, order marking and securities lending in connection with short sales by ETP Holders will be subject to, and comply with, the provisions of Regulation SHO under the Securities Exchange Act of 1934.

(f) **Short Sale Price Test Pursuant to Rule 201 of Regulation SHO.** The following provisions will apply to short sales subject to the provisions of Rule 201 of Regulation SHO:

- (1) **Definitions.** For purposes of this Rule, the terms "covered security," "listing market," and "national best bid" ("NBB") will have the same meaning as such terms have in Rule 201 of Regulation SHO.
- (2) **Short Sale Price Test.** Except as provided in subparagraphs (f)(6) and (f)(7) below, Corporation systems will not execute or display a short sale order with respect to a covered security at a price that is less than or equal to the current NBB if the price of that security decreases by 10% or more, as determined by the listing market for the security, from the Official Closing Price on the Corporation as of the end of regular trading hours on the prior day ("Trigger Price").
- (3) **Determination of Trigger Price.** For covered securities for which NYSE Arca is the listing market, Corporation systems will determine whether the short sale price test restrictions of Rule 201 of Regulation SHO have been triggered (i.e., whether a transaction in a covered security has occurred at a Trigger Price) and will immediately notify the single plan processor responsible for consolidation of information for the covered security pursuant to Rule 603(b) of Regulation NMS.
- (A) The Corporation will not calculate the Trigger Price of a covered security until after the Core Open Auction for that security.
- (4) **Duration of Short Sale Price Test.** If the Short Sale Price Test is triggered by the listing market with respect to a covered security, the Short Sale Price Test will remain in effect until the close of trading on the next trading day, as provided for in Regulation SHO Rule 201(b)(1)(ii) (the "Short Sale Period").
- (A) If the Corporation determines pursuant to Rule 7.10 that the Short Sale Price Test for a covered security was triggered because of a clearly erroneous execution, the Corporation may lift the Short Sale Price Test before the Short Sale Period ends for securities for which the Corporation is the listing market or, for securities listed on another market, notify the other market of the Corporation's determination that the triggering transaction was a clearly erroneous execution. The Corporation may also lift the Short Sale Price Test before the Short Sale Period ends, for a covered security for which the Corporation is the listing market, if the Corporation has been informed by another exchange or a self-regulatory organization ("SRO") that a transaction in the covered security that occurred at the Trigger Price was a clearly erroneous execution, as determined by the rules of that exchange or SRO.
- (B) If the Corporation determines that the prior day's closing price for a listed security is incorrect in Corporation systems and resulted in an incorrect determination of the Trigger Price, the Corporation may correct the prior day's closing price and lift the Short Sale Price Test before the Short Sale Period ends for securities for which the Corporation is the listing market.

- (5) **Re-pricing of Orders during Short Sale Period.** During the Short Sale Period, short sale orders will be handled by Corporation systems as follows:
- (A) **Re-pricing of Orders** —Except as provided for in paragraphs (f)(5)(B) - (I) of this Rule, short sale orders with a working price and/or display price equal to or lower than the NBB will have the working price and/or display price adjusted one minimum price increment above the current NBB ("Permitted Price"). The Permitted Price for securities for which the NBB is \$1 or more is \$.01 above the NBB; the Permitted Price for securities for which the NBB is below \$1 is \$.0001 above the NBB. To reflect declines in the NBB, the Corporation will continue to adjust the working price of a short sale order at the lowest Permitted Price down to the order's original limit price, or if a Market Order, until the order is filled.
 - (B) **Priority 1 and Priority 3 Orders** —Market Orders and orders and reserve interest ranked Priority 3- Non-Display Orders will have a working price adjusted to a Permitted Price and will continuously adjust to a Permitted Price as the NBB moves both up and down. Reserve interest that replenishes the displayed quantity of a Reserve Order will be replenished at a Permitted Price.
 - (C) **Pegged Orders and MPL Orders** —Pegged Orders and MPL Orders, including orders marked buy, sell long and sell short exempt, will use the NBBO instead of the PBBO as the reference price. The working price of MPL Orders will be the mid-point of the NBBO, including situations where the mid-point is less than one minimum price increment above the NBB.
 - (D) **Tracking Orders** —The working price of Tracking Orders will not be adjusted. Tracking Orders will not be eligible to trade at or below the NBB.
 - (E) **IOC Orders** —Limit Orders designated IOC requiring that all or part of the order be traded immediately will be traded to the extent possible at a Permitted Price and higher and then cancelled, and the working price will not be adjusted.
 - (F) **ISO** —ISOs will be rejected if the limit price is at or below the NBB.
 - (G) **Cross Orders** —Cross Orders with a cross price at or below the NBB will be rejected.
 - (H) **Returned Orders** —If a Short Sale Price Test is triggered after an order has routed, any returned quantity of the order and the order it joins on the NYSE Arca Book will be adjusted to a Permitted Price. If the order that was routed was a Reserve Order, the returned quantity of the order will first join the reserve interest at a Permitted Price before being evaluated for replenishing the display quantity of the Reserve Order.
 - (I) **Proactive if Locked/Crossed Modifier** —Proactive if Locked/Crossed Modifiers will be ignored.

- (6) **Execution of Permissible Orders during the Short Sale Period.** During the Short Sale Period, a short sale order will be executed and displayed without regard to price if, at the time of initial display of the short sale order, the order was at a price above the then current NBB. Except as specifically noted in subparagraph (f)(5), short sale orders that are entered into the Corporation prior to the Short Sale Period but are not displayed, including the reserve interest of a Reserve Order, will be adjusted to a Permitted Price.
- (7) **Short Exempt Orders.** During the Short Sale Period, Corporation systems will execute and display orders marked "short exempt" without regard to whether the order is at a Permitted Price. Corporation systems will accept orders marked "short exempt" at any time when such systems are open for order entry, regardless of whether the Short Sale Price Test has been triggered.

Rule 7.17. Firm Orders and Quotes

- (a) *Orders at Stated Prices and Sizes.* No ETP Holder shall submit to the Corporation an order (including Q Orders) to buy from or sell to any person any security at a stated price and/or size unless such ETP Holder is prepared to, and, upon submission of an appropriate contra-side order, does, purchase or sell, as the case may be, at such price and/or size and under such conditions as are stated at the time of submission of such order to buy or sell.
- (b) *Firm Quotes.* Firm Quotes. All bids made and all offers made shall be in accordance with the provisions of Rule 602 of Regulation NMS, governing the dissemination of quotations for reported securities.

Rule 7.18. Halts

Halts

- (a) **UTP Regulatory Halts.** If the UTP Listing Market declares a UTP Regulatory Halt, the Corporation will halt trading in that security until it receives notification from the UTP Listing Market that the halt or suspension is no longer in effect or as provided for in Rules 7.11P and 7.12, provided that, during Core Trading Hours, the Exchange will halt trading until it receives the first Price Band in that security. If a UTP Regulatory Halt was issued for the purpose of dissemination of material news, the Corporation will assume that adequate publication or dissemination has occurred upon the expiration of one hour after initial publication in a national news dissemination service of the information that gave rise to an UTP Regulatory Halt and may, at its discretion, reopen trading at that time, notwithstanding notification from the UTP Listing Market that the halt or suspension is no longer in effect.
- (b) The NYSE Arca Marketplace will not conduct a Trading Halt Auction in a UTP Security and will process new and existing orders in a UTP Security during a UTP Regulatory Halt as follows:

- (1) cancel any unexecuted portion of Market Orders and orders not eligible to trade in the current trading session on the NYSE Arca Book;
 - (2) maintain all other resting orders in the NYSE Arca Book at their last working price and display price;
 - (3) accept and process all cancellations;
 - (4) process a request to cancel and replace as a cancellation without replacing the order;
 - (5) accept and route new Market Orders, Auction-Only Orders, Primary Only MOO/LOO Orders, Primary Only Day Orders, and Primary Only MOC/LOC Orders to the primary listing market; and
 - (6) reject all other incoming order instructions until the security begins trading on the NYSE Arca Marketplace pursuant to paragraph (a) of this Rule.
- (c) The NYSE Arca Marketplace will process new and existing orders in securities listed on the Exchange during a halt, suspension or pause as follows:
- (1) cancel any unexecuted portion of Market Orders;
 - (2) maintain all other resting orders in the NYSE Arca Book at their last working price and display price;
 - (3) accept and process all cancellations;
 - (4) reject incoming Limit Orders designated IOC, Cross Orders, Tracking Orders, Market Pegged Orders, Discretionary Pegged Orders, and Retail Orders and process a request to cancel and replace a Tracking Order, Market Pegged Order, Discretionary Pegged Order, or Retail Order as a cancellation without replacing the order; and
 - (5) accept all other incoming order instructions until the Auction Processing Period for the Trading Halt Auction, at which point, Rule 7.35(g) will govern the entry of incoming orders and order instructions.
- (d) Halts in Derivative Securities Products.
- (1) Trading Halts for UTP Derivative Securities Products.
 - (A) Early Trading Session. If a UTP Derivative Security Product begins trading on the NYSE Arca Marketplace in the Early Trading Session and subsequently a temporary interruption occurs in the calculation or wide dissemination of the Intraday Indicative Value ("IIV") or the value of the underlying index, as

applicable, to such UTP Derivative Securities Product, by a major market data vendor, NYSE Arca may continue to trade the UTP Derivative Securities Product for the remainder of the Early Trading Session.

(B) Core Trading Session. During the Core Trading Session, if a temporary interruption occurs in the calculation or wide dissemination of the applicable IIV or value of the underlying index by a major market data vendor and the listing market halts trading in the UTP Derivative Securities Product, NYSE Arca, upon notification by the primary listing market of such halt due to such temporary interruption, also shall immediately halt trading in the UTP Derivative Securities Product on the NYSE Arca Marketplace.

(C) Late Trading Session and Next Business Day's Early Session.

(1) If the IIV or the value of the underlying index continues not to be calculated or widely available after the close of the Core Trading Session, NYSE Arca may trade the UTP Derivative Securities Product in the Late Trading Session only if the listing market traded such securities until the close of its regular trading session without a halt.

(2) If the IIV or the value of the underlying index continues not to be calculated or widely available as of the commencement of the Early Trading Session on the next business day, NYSE Arca shall not commence trading of the UTP Derivative Securities Product in the Early Trading Session that day. If an interruption in the calculation or wide dissemination of the IIV or the value of the underlying index continues, NYSE Arca may resume trading in the UTP Derivative Securities Product only if calculation and wide dissemination of the IIV or the value of the underlying index resumes or trading in the UTP Derivative Securities Product resumes in the primary listing market.

(2) Trading Halts of Derivative Securities Products Listed on the NYSE Arca Marketplace. With respect to Derivative Securities Products listed on the NYSE Arca Marketplace for which a Net Asset Value ("NAV") (and in the case of Managed Fund Shares under NYSE Arca Equities Rule 8.600 and Managed Trust Securities under NYSE Arca Equities Rule 8.700, a Disclosed Portfolio) is disseminated, if the Exchange becomes aware that the NAV (or in the case of Managed Fund Shares, the Disclosed Portfolio) is not being disseminated to all market participants at the same time, it will halt trading in the affected Derivative Securities Product on the NYSE Arca Marketplace until such time as the NAV (or in the case of Managed Fund Shares, the Disclosed Portfolio, as applicable) is available to all market participants.

Rule 7.19. Reserved.

Section 2. Market Makers

Rule 7.20. Registration of Market Makers

(a) No ETP Holder shall act as a Market Maker in any security (including but not limited to entering Q orders as defined in Rule 7.31(l)) unless such ETP Holder is registered as a Market Maker in such security by the Corporation pursuant to this Rule and the Corporation has not suspended or canceled such registration. Registered Market Makers are designated as dealers on the Corporation for all purposes under the Securities Exchange Act of 1934 and the rules and regulations thereunder.

(b) An applicant for registration as a Market Maker shall file an application in writing on such form as the Corporation may prescribe. Applications shall be reviewed by the Corporation, which shall consider such factors including, but not limited to capital operations, personnel, technical resources, and disciplinary history.

(c) An applicant's registration as a Market Maker shall become effective upon receipt by the ETP Holder of notice of an approval of registration by the Corporation. In the event that an application is disapproved by the Corporation, the applicant shall have an opportunity to be heard upon the specific grounds for the denial, in accordance with the provisions of Rule 10.13.

(d) The registration of a Market Maker may be suspended or terminated by the Corporation upon a determination of any substantial or continued failure by such Market Maker to engage in dealings in accordance with Rule 7.23.

(e) Any registered Market Maker may withdraw its registration by giving written notice to the Corporation. Such withdrawal of registration shall become effective on the tenth business day following the Corporation's receipt of the notice. A Market Maker who fails to give a ten-day written notice of withdrawal to the Corporation may be subject to formal disciplinary action pursuant to Rule 10. Subsequent to withdrawal, the ETP Holder shall not be permitted to re-register as a Market Maker for a period of six months.

Rule 7.21. Obligations of Market Maker Authorized Traders

(a) *General.* MMATs are permitted to enter orders only for the account of the Market Maker for which they are registered.

(b) *Registration of Market Maker Authorized Traders.* The Corporation may, upon receiving an application in writing from a Market Maker on a form prescribed by the Corporation, register a person as a MMAT.

(1) MMATs may be officers, partners, employees or other associated persons of ETP Holders that are registered with the Corporation as Market Makers.

(2) To be eligible for registration as a MMAT, a person must successfully complete the Securities Trader Examination (Series 57) and complete a training and certification program sponsored by the Corporation; provided, however, the requirement to

complete the Series 57 Examination may be waived by the Corporation if the applicant MMAT has served as a dealer-specialist or market maker on a registered national securities exchange or association for at least two consecutive years within three years of the date of application.

- (3) The Corporation may require a Market Maker to provide additional information the Corporation considers necessary to establish whether registration should be granted.
- (4) The Corporation may grant a person conditional registration as a MMAT subject to any conditions it considers appropriate in the interests of maintaining a fair and orderly market.
- (5) A Market Maker must ensure that a MMAT is properly qualified to perform market making activities, including but not limited to ensuring the MMAT has met the requirements set forth in paragraph (b)(2) of this Rule.

(c) Suspension or Withdrawal of Registration.

- (1) The Corporation may suspend or withdraw the registration previously given to a person to be a MMAT if the Corporation determines that:
 - (A) the person has caused the Market Maker to fail to comply with the securities laws, rules and regulations or the Bylaws, Rules and procedures of the Corporation;
 - (B) the person is not properly performing the responsibilities of a MMAT;
 - (C) the person has failed to meet the conditions set forth under paragraph (b) above; or
 - (D) the Corporation believes it is in the interest of maintaining fair and orderly markets.
- (2) If the Corporation suspends the registration of a person as a MMAT, the Market Maker must not allow the person to submit orders into the NYSE Arca Marketplace.
- (3) The registration of a MMAT will be withdrawn upon the written request of the ETP Holder for which the MMAT is registered. Such written request shall be submitted on the form prescribed by the Corporation.

Rule 7.22. Registration of Market Makers in a Security

- (a) A Market Maker may become registered in a newly authorized security or in a security already admitted to dealings on the Corporation by filing a security registration form with the Corporation. Registration in the security shall become effective on the first business day following the Corporation's approval of the registration. In considering the

approval of the registration of the Market Maker in a security, the Corporation may consider:

- (1) the financial resources available to the Market Maker;
- (2) the Market Maker's experience, expertise and past performance in making markets, including the Market Maker's performance in other securities;
- (3) the Market Maker's operational capability;
- (4) the maintenance and enhancement of competition among Market Makers in each security in which they are registered;
- (5) the existence of satisfactory arrangements for clearing the Market Maker's transactions;
- (6) the character of the market for the security, *e.g.*, price, volatility, and relative liquidity.

(b) A Market Maker's registration in a security may be terminated by the Corporation if the Market Maker fails to enter quotations in the security within five (5) business days after the Market Maker's registration in the security becomes effective.

(c) The Corporation may limit the number of Designated Market Makers in a security upon prior written notice to ETP Holders.

(d) Designated Market Makers and Lead Market Makers shall be selected by the Corporation. Such selection shall be based on, but is not limited to, the following: experience with making markets in equities; adequacy of capital; willingness to promote the Exchange as a marketplace; issuer preference; operational capacity; support personnel; and history of adherence to Exchange rules and securities laws.

(e) *Voluntary Termination of Security Registration.* A Market Maker may voluntarily terminate its registration in a security by providing the Corporation with a one-day written notice of such termination. A Market Maker that fails to give advanced written notice of termination to the Corporation may be subject to formal disciplinary action pursuant to Rule 10.

(f) The Corporation may suspend or terminate any registration of a Market Maker in a security or securities under this Rule whenever, in the Corporation's judgment, the interests of a fair and orderly market are best served by such action.

(g) An ETP Holder may seek review of any action taken by the Corporation pursuant to this Rule, including the denial of the application for, or the termination or suspension of, a Market Maker's registration in a security or securities, in accordance with Rule 10.13.

Rule 7.23. Obligations of Market Makers

(a) *General.* ETP Holders who are registered as Market Makers in one or more securities traded on the Corporation must engage in a course of dealings for their own account to assist in the maintenance, insofar as reasonably practicable, of fair and orderly markets on the Corporation in accordance with this Rule. The responsibilities and duties of a Market Maker specifically include, but are not limited to, the following:

- (1) A Market Maker shall maintain continuous, two-sided trading interest in those securities in which the Market Maker is registered to trade ("Two-Sided Obligation").
 - (A) *Two-Sided Obligation.* For each security in which an ETP Holder is registered as a Market Maker, in satisfaction of the ETP Holder's Two-Sided Obligation, the ETP Holder shall be willing to buy and sell such security for its own account on a continuous basis during Core Trading Hours and shall enter and maintain two-sided trading interest that is identified to the Corporation as the interest meeting the Two-Sided Obligation and is displayed in the NYSE Arca Book at all times. Interest eligible to be considered as part of a Market Maker's Two-Sided Obligation shall have a displayed size of at least one normal unit of trading (or a larger multiple thereof); provided, however, that a Market Maker may augment its Two-Sided Obligation size to display limit orders priced at the same price as the Two-Sided Obligation. After an execution against its Two-Sided Obligation, a Market Maker must ensure that additional trading interest exists in the NYSE Arca Book to satisfy its Two-Sided Obligation either by immediately entering new interest to comply with this obligation to maintain continuous two-sided quotations or by identifying existing interest on the NYSE Arca Book that will satisfy this obligation.
 - (B) *Pricing Obligations.* For NMS stocks (as defined in Rule 600 under Regulation NMS) a Market Maker shall adhere to the pricing obligations established by this Rule during Core Trading Hours; provided, however, that such pricing obligations (i) shall not commence during any trading day until after the first regular way transaction on the primary listing market in the security, as reported by the responsible single plan processor, and (ii) shall be suspended during a trading halt, suspension, or pause, and shall not re-commence until after the first regular way transaction on the primary listing market in the security following such halt, suspension, or pause, as reported by the responsible single plan processor.
 - (i) *Bid (Offer) Quotations.* At the time of entry of bid (offer) interest satisfying the Two-Sided Obligation, the price of the bid (offer) interest shall be not more than the Designated Percentage away from the then current National Best Bid (Offer), or if no National Best Bid (Offer), not more than the Designated Percentage away from the last reported sale from the responsible single plan processor. In the event that the National Best Bid (Offer) (or if no National Best Bid (Offer), the last reported sale) increases (decreases) to a level that

would cause the bid (offer) interest of the Two- Sided Obligation to be more than the Defined Limit away from the National Best Bid (Offer) (or if no National Best Bid (Offer), the last reported sale) or if the bid (offer) is executed or cancelled, the Market Maker shall enter new bid (offer) interest at a price not more than the Designated Percentage away from the then current National Best Bid (Offer) (or if no National Best Bid (Offer), the last reported sale), or identify to the Corporation current resting interest that satisfies the Two-Sided Obligation.

(ii) The National Best Bid and Offer shall be determined by the Corporation in accordance with its procedures for determining protected quotations under Rule 600 under Regulation NMS.

(iii) For purposes of this Rule, the "Designated Percentage" shall be 8% for securities subject to Rule 7.11(a)(i), 28% for securities subject to Rule 7.11(a)(ii), and 30% for securities subject to Rule 7.11(a)(iii), except that between 6:30 a.m. and 6:45 a.m. Pacific Time and between 12:35 p.m. Pacific Time and the close of Core Trading Hours, when Rule 7.11 is not in effect, the Designated Percentage shall be 20% for securities subject to Rule 7.11(a)(i), 28% for securities subject to Rule 7.11(a)(ii), and 30% for securities subject to Rule 7.11(a)(iii).

(iv) For purposes of this rule, the " Defined Limit" shall be 9.5% for securities subject to Rule 7.11(a)(i), 29.5% for securities subject to Rule 7.11(a)(ii), and 31.5% for securities subject to Rule 7.11(a)(iii), except that between 6:30 a.m. and 6:45 a.m. Pacific Time and between 12:35 p.m. Pacific Time and the close of Core Trading Hours, when Rule 7.11 is not in effect, the Defined Limit shall be 21.5% for securities subject to Rule 7.11(a)(i), 29.5% for securities subject to Rule 7.11(a)(ii), and 31.5% for securities subject to Rule 7.11(a)(iii).

(C) Nothing in this Rule shall preclude a Market Maker from entering trading interest at price levels that are closer to the National Best Bid and Offer than the levels required by this Rule;

(2) A Market Maker shall maintain adequate minimum capital in accordance with Rule 4.1;

(3) A Market Maker shall remain in Good Standing with the Corporation;

(4) A Market Maker shall inform the Corporation of any material change in financial or operational condition or in personnel.

(5) A Market Maker shall clear and settle transactions through the facilities of a registered clearing agency. This requirement may be satisfied by direct participation, use of direct clearing services, or by entry into a correspondent clearing arrangement with another ETP Holder that clears trades through such agency.

(b) A Market Maker must satisfy the responsibilities and duties as set forth in paragraph (a) of this Rule during the Core Trading Hours on all days in which the Corporation is open for business.

(c) If the Corporation finds any substantial or continued failure by a Market Maker to engage in a course of dealings as specified in paragraph (a) of this Rule, such Market Maker will be subject to disciplinary action or suspension or revocation of the registration by the Corporation in one or more of the securities in which the Market Maker is registered. Nothing in this Rule will limit any other power of the Board of Directors under the Bylaws, Rules, or procedures of the Corporation with respect to the registration of a Market Maker or in respect of any violation by a Market Maker of the provisions of this Rule. In accordance with Rule 10, an ETP Holder may seek review of actions taken by the Corporation pursuant to this Rule.

(d) *Temporary Withdrawal.* A Market Maker may apply to the Corporation to withdraw temporarily from its Market Maker status in the securities in which it is registered. The Market Maker must base its request on demonstrated legal or regulatory requirements that necessitate its temporary withdrawal, or provide the Corporation an opinion of counsel certifying that such legal or regulatory basis exists. The Corporation will act promptly on such request and, if the request is granted, the Corporation may temporarily reassign the securities to another Market Maker.

Rule 7.24. Designated Market Maker Performance Standards

(a) Designated Market Makers will be required to maintain minimum performance standards the levels of which may be determined from time to time by the Corporation. Such levels will vary depending on the price, liquidity, and volatility of the security in which the Designated Market Maker is registered. The performance measurements will include (i) percent of time at the NBBO; (ii) percent of executions better than the NBBO; (iii) average displayed size; (iv) average quoted spread; and (v) in the event the security is a derivative security, the ability of the Designated Market Maker to transact in underlying markets.

(b) Designated Market Makers that are Lead Market Makers will be held to higher performance standards in the securities in which they are registered as Lead Market Maker than Designated Market Makers that are not Lead Market Makers.

(c) Market Makers that are not Designated Market Makers will not be required to maintain the minimum performance standards as described in paragraph (a) above.

Rule 7.25. Crowd Participant Program

The NYSE Arca Crowd Participant Program ("CP Program") shall be effective on a pilot basis set to end on June 23, 2016.

(a) **Crowd Participant Definition.** A Crowd Participant ("CP") is an ETP Holder that:

- (1) is qualified as a Market Maker, and in good standing, on the Exchange;
- (2) electronically enters quotes and orders into the systems and facilities of the Exchange; and
- (3) is obligated to maintain a displayed bid or offer at the National Best Bid ("NBB") or the National Best Offer ("NBO"), respectively, in each assigned exchange-traded product ("ETP") consistent with paragraph (g) below.

(b) Eligible Products.

An ETP shall be eligible to participate in the CP Program if:

- (1) it is listed on the Exchange as of the commencement of the pilot period or becomes listed during the pilot period;
- (2) the listing is under NYSE Arca Equities Rules 5.2(j)(3) (Investment Company Units), 5.2(j)(5) (Equity Gold Shares), 8.100 (Portfolio Depositary Receipts), 8.200 (Trust Issued Receipts), 8.201 (Commodity-Based Trust Shares), 8.202 (Currency Trust Shares), 8.203 (Commodity Index Trust Shares), 8.204 (Commodity Futures Trust Shares), 8.300 (Partnership Units), 8.600 (Managed Fund Shares), or 8.700 (Managed Trust Securities);
- (3) it is neither participating in the ETP Incentive Program under Rule 8.800 nor has a Lead Market Maker assigned to it;
- (4) with respect to an ETP that was listed on the Exchange before the commencement of the CP Program, the ETP has a consolidated average daily volume ("CADV") of one million shares or less for at least the preceding three months; and
- (5) it is compliant with continuing listing standards, if the ETP is added to the CP Program after listing on the Exchange.

(c) Issuer Application Process.

- (1) To be eligible for its ETP to participate in the CP Program, the issuer must be current in all payments due to the Exchange.
- (2) An issuer that wishes to have an ETP participate in the CP Program and pay the Exchange a CP Program Fee shall submit a written application in a form prescribed by the Exchange for each ETP. An issuer may elect for its ETP to participate at the time of listing or thereafter at the beginning of each month. The Exchange may, on a CP Program-wide basis, limit the number of ETPs that any one issuer may have in the CP Program.

- (3) The Exchange shall communicate the ETP(s) proposed for inclusion in the CP Program on a written solicitation that is sent to all qualified CPs along with the CP Program Fee the issuer will pay the Exchange for each ETP, which shall be set forth in the Exchange's Listing Fee Schedule.
- (4) The Exchange shall provide notification on a dedicated page on its website regarding (i) the ETPs participating in the CP Program, (ii) the date a particular ETP begins participating in the CP Program, (iii) the date the Exchange receives written notice of an issuer's intent to withdraw its ETP from the CP Program, and the intended withdrawal date, if provided, (iv) the date a particular ETP ceases participating in the CP Program, (v) the CPs assigned to each ETP participating in the CP Program, (vi) the date the Exchange receives written notice of a CP's intent to withdraw from its ETP assignment(s) in the CP Program, and the intended withdrawal date, if provided, and (vii) the amount of the CP Program Fee for each ETP. This page shall also include a fair and balanced description of the CP Program, including (a) a description of the CP Program's operation as a pilot, including the effective date thereof, (b) the potential benefits that may be realized by an ETP's participation in the CP Program, (c) the potential risks that may be attendant with an ETP's participation in the CP Program, (d) the potential impact resulting from an ETP's entry into and exit from the CP Program, and (e) how interested parties can request additional information regarding the CP Program and/or the ETPs participating therein.
- (5) An issuer of an ETP that is approved to participate in the CP Program shall issue a press release to the public when an ETP commences or ceases participation in the CP Program. The press release shall be in a form and manner prescribed by the Exchange, and if practicable, shall be issued at least two days before the ETP commences or ceases participation in the CP Program. The issuer shall dedicate space on its website, or, if it does not have a website, on the website of the adviser or sponsor of the ETP, that (i) includes any such press releases and (ii) provides a hyperlink to the dedicated page on the Exchange's website that describes the CP Program, as described in paragraph (4) above.

(d) CP Application Process.

- (1) To qualify as a CP, an ETP Holder must:
- (A) be qualified as a Market Maker, and in good standing, on the Exchange; and
 - (B) have adequate information barriers between the business unit of the ETP Holder acting as a CP in a proprietary capacity and the ETP Holder's customer, research and investment banking business, if any.
- (2) To become a CP, an ETP Holder must submit a CP application form with all supporting documentation to the Exchange.

- (3) Exchange staff shall determine whether an applicant is qualified to become a CP based on the qualifications described in paragraph (d)(1) above.
- (4) After an applicant submits a CP application to the Exchange, with supporting documentation, the Exchange shall notify the applicant of its decision.
- (5) If an applicant is approved by the Exchange to receive CP status, such applicant must have connectivity with relevant Exchange systems before such applicant shall be permitted to quote and trade as a CP on the Exchange. If approved to receive CP status, a CP shall be assigned to participating ETPs in the same manner that Market Makers are currently assigned to securities listed on the Exchange.
- (6) In the event that an applicant is disapproved by the Exchange, such applicant may seek review under Rule 10.13 and/or reapply for CP status at least three calendar months following the month in which the applicant received the disapproval notice from the Exchange.

(e) Issuer's Payment of CP Program Fee.

- (1) An issuer (or sponsor on behalf of the issuer) of an ETP that is participating in the CP Program shall pay the Exchange a non-refundable "CP Program Fee" in accordance with the Exchange's Listing Fee Schedule, which shall be credited to the Exchange's general revenues. An ETP shall not be permitted to begin participation in the CP Program unless there are eligible CPs assigned to such ETP.

(f) Size Event Tests.

- (1) The Exchange shall measure the performance of a CP in an assigned ETP by calculating Size Event Tests ("SETs") during Core Trading Hours on every day on which the Exchange is open for business.
- (2) The Exchange shall measure the quoted displayed size at the NBB (NBO) of each CP at least once per second to determine bid (offer) SETs (a "Bid (Offer) SET").
- (3) A CP shall be considered to have a winning Bid (Offer) SET (a "Winning Bid (Offer) SET") for a particular ETP if, at the time of the SET, the CP:
 - (A) is quoting at least 500 shares of the ETP at the NBB (NBO);
 - (B) has the greatest aggregate displayed size at the NBB (NBO); and
 - (C) is quoting an offer (bid) of at least 100 shares at a price at or within 1.2% of the CP's best bid (offer).

(g) CP Quoting Requirements.

- (1) General Quoting Requirement. Each CP that is assigned to one or more ETPs in the CP Program shall be required to maintain continuous, two-sided displayed quotes or orders in accordance with Rule 7.23(a)(1) for each such ETP.
 - (2) Daily Quoting Requirement. A CP must have Winning Bid (Offer) SETs equal to at least 10% of the total Bid (Offer) SETs on any trading day in order to meet its daily quoting requirement and to be eligible for the daily "CP Payments" for an ETP, as described in the Exchange's Trading Fee Schedule.
 - (3) Monthly Quoting Requirement. A CP must have displayed quotes or orders of at least 100 shares at the NBB (NBO) at least 10% of the time that the Exchange calculates Bid (Offer) SETs to meet its monthly quoting requirement.
 - (4) Proprietary or Principal Quotes and Orders. For purposes of meeting the daily and monthly quoting requirements set forth above, CP quotes may be for the account of the CP in either a proprietary capacity or a principal capacity on behalf of an affiliated or unaffiliated person. For purposes of measuring CP quoting, the Exchange shall include all Market Maker quotes and orders in assigned ETPs of an ETP Holder that is a CP.
- (h) CP Payment by Exchange.
- (1) The Exchange shall credit a CP for a CP Payment from its general revenues in accordance with the Exchange's Trading Fee Schedule.
- (i) Withdrawal of ETP.
- (1) If an ETP liquidates or suspends the redemption of shares, it shall be automatically withdrawn from the CP Program as of the ETP liquidation or suspension date.
 - (2) The Exchange shall withdraw an ETP from the CP Program upon request from the issuer.
 - (3) If the issuer is not current in all payments due to the Exchange after two consecutive quarters, such ETP shall be automatically removed from the CP Program.
 - (4) If an ETP maintains a CADV of one million shares or more for three consecutive months, it shall be automatically withdrawn from the CP Program within one month thereafter. If after such automatic withdrawal the ETP fails to maintain a CADV of one million shares or more for three consecutive months, the issuer of the ETP may reapply for the CP Program one month thereafter.
- (j) Withdrawal of CP Status.

- (1) A CP that does not satisfy the monthly quoting requirement of paragraph (g)(3) above for three consecutive months shall be subject to the potential withdrawal of its CP status. Any such withdrawal determinations shall be for a specific ETP.
- (2) A CP may initiate withdrawal from an ETP assignment in the CP Program by giving notice to the Exchange. The Exchange shall effect such withdrawal as soon as practicable, but no later than 30 days after the date the notice is received by the Exchange. Such withdrawal may be for a specific ETP or for all ETPs to which the CP is assigned.

Rule 7.26. Reserved.

Rule 7.27. Reserved.

Rule 7.28. NMS Market Access

NMS Market Access

- (a) Pursuant to the requirements of Rule 610 of Regulation NMS, NYSE Arca Users may elect to allow efficient order execution access to its quotations through the utilization of private electronic linkages between the NMS Participant and other Trading Centers.
- (b) In accordance with Regulation NMS, an NMS Participant shall not impose, nor permit to be imposed, any fee or fees for the execution of an order against a Protected Quotation of the NMS Participant in an Eligible Security or against any other quotation of the NMS Participant in an Eligible Security that is the NMS Participant's best bid or offer for that Eligible Security, where such fee or fees exceed the limits provided for in Rule 610(c) of Regulation NMS. As required under Regulation NMS, the terms of access to an NMS Participant's quotations in an Eligible Security may not be unfairly discriminatory so as to prevent or prohibit any person from obtaining efficient access to such displayed quotations through a member of the NMS Participant.

Section 3. NYSE Arca Marketplace

Rule 7.29. Access

- (a) *General.* The NYSE Arca Marketplace shall be available for entry and execution of orders by Users with authorized access. To obtain authorized access to the NYSE Arca Marketplace, each User must enter into a User Agreement.
- (b) *Sponsored Participants.* A Sponsored Participant may obtain authorized access to the NYSE Arca Marketplace only if such access is authorized in advance by one or more Sponsoring ETP Holders as follows:
 - (1) Sponsored Participants must enter into and maintain customer agreements with one or more Sponsoring ETP Holders establishing proper relationship(s) and account(s)

through which the Sponsored Participant may trade on the NYSE Arca Marketplace. Such customer agreement(s) must incorporate the Sponsorship Provisions set forth in paragraph (2) below.

- (2) For a Sponsored Participant to obtain and maintain authorized access to the NYSE Arca Marketplace, a Sponsored Participant and its Sponsoring ETP Holder must agree in writing to the following Sponsorship Provisions:
 - (A) Sponsored Participant and its Sponsoring ETP Holder must have entered into and maintained a User Agreement with NYSE Arca, L.L.C. The Sponsoring ETP Holder must designate the Sponsored Participant by name in its User Agreement as such.
 - (B) Sponsoring ETP Holder acknowledges and agrees that
 - (i) All orders entered by the Sponsored Participants and any person acting on behalf of or in the name of such Sponsored Participant and any executions occurring as a result of such orders are binding in all respects on the Sponsoring ETP Holder and
 - (ii) Sponsoring ETP Holder is responsible for any and all actions taken by such Sponsored Participant and any person acting on behalf of or in the name of such Sponsored Participant.
 - (C) Sponsored ETP Holder shall comply with the NYSE Arca Equities Certificate of Incorporation, Bylaws, Rules and procedures with regard to the NYSE Arca Marketplace and Sponsored Participant shall comply with NYSE Arca Equities Certificate of Incorporation, Bylaws, Rules and procedures with regard to the NYSE Arca Marketplace, as if Sponsored Participant were an ETP Holder.
 - (D) Sponsored Participant shall maintain, keep current and provide to the Sponsoring ETP Holder a list of Authorized Traders who may obtain access to the NYSE Arca Marketplace on behalf of the Sponsored Participant.
 - (E) Sponsored Participant shall familiarize its Authorized Traders with all of the Sponsored Participant's obligations under this Rule and will assure that they receive appropriate training prior to any use or access to the NYSE Arca Marketplace.
 - (F) Sponsored Participant may not permit anyone other than Authorized Traders to use or obtain access to the NYSE Arca Marketplace.
 - (G) Sponsored Participant shall take reasonable security precautions to prevent unauthorized use or access to the NYSE Arca Marketplace, including unauthorized entry of information into the NYSE Arca Marketplace, or the information and data made available therein. Sponsored Participant understands

and agrees that Sponsored Participant is responsible for any and all orders, trades and other messages and instructions entered, transmitted or received under identifiers, passwords and security codes of Authorized Traders, and for the trading and other consequences thereof.

(H) Sponsored Participant acknowledges its responsibility to establish adequate procedures and controls that permit it to effectively monitor its employees, agents and customers' use and access to the NYSE Arca Marketplace for compliance with the terms of this agreement.

(I) Sponsored Participant shall pay when due all amounts, if any, payable to Sponsoring ETP Holder, NYSE Arca, L.L.C., NYSE Arca Equities or any other third parties that arise from the Sponsored Participants access to and use of the NYSE Arca Marketplace. Such amounts include, but are not limited to applicable exchange and regulatory fees.

(3) The Sponsoring ETP Holder must provide the Corporation with a Notice of Consent acknowledging its responsibility for the orders, executions and actions of its Sponsored Participant at issue.

Rule 7.30. Authorized Traders

(a) An ETP Holder shall maintain a list of ATs who may obtain access to the NYSE Arca Marketplace on behalf of the ETP Holder or the ETP Holder's Sponsored Participants. The ETP Holder shall update the list of ATs as necessary. ETP Holders must provide the list of ATs to the Corporation upon request.

(b) An ETP Holder must have reasonable procedures to ensure that all ATs comply with the trading Rules and procedures related to the NYSE Arca Marketplace and all other Rules of the Corporation.

(c) An ETP Holder must suspend or withdraw a person's status as an AT if the Corporation has determined that the person has caused the ETP Holder to fail to comply with the Rules of the Corporation and the Corporation has directed the ETP Holder to suspend or withdraw the person's status as an AT.

(d) An ETP Holder must have reasonable procedures to ensure that the ATs maintain the physical security of the equipment for accessing the facilities of the Corporation to prevent the improper use or access to the systems, including unauthorized entry of information into the systems.

Rule 7.31. Orders and Modifiers

An amended version of this rule, which is available [here](#), has been approved but is not yet operative SEC approval order. The Exchange will announce by Trader Update

when the amended version of the rule will be operative. Until such time, this version of the rule remains in effect''.

(a) Primary Order Types

(1) Market Order. An unpriced order to buy or sell a stated amount of a security that is to be traded at the best price obtainable without trading through the NBBO. A Market Order must be designated Day and will be rejected on arrival or cancelled if resting if there is no contra-side NBBO. Unexecuted Market Orders are ranked Priority 1 - Market Orders.

(A) On arrival, a Market Order to buy (sell) is assigned a working price of the NBO (NBB) and will trade with all sell (buy) orders on the NYSE Arca Book priced at or below (above) the NBO (NBB) before routing to the NBO (NBB) on an Away Market. The quantity of a Market Order to buy (sell) not traded or routed will remain undisplayed on the NYSE Arca Book at a working price of the NBO (NBB) and be eligible to trade with incoming sell (buy) orders at that price. When the updated NBO (NBB) is displayed, the Market Order to buy (sell) will be assigned a new working price of the updated NBO (NBB) and will trade with all sell (buy) orders on the NYSE Arca Book priced at or below (above) the updated NBO (NBB) before routing to the updated NBO (NBB) on an Away Market. Such assessment will continue at each new contra-side NBBO until the order is filled or a Trading Collar is reached. If the NBBO becomes locked or crossed while the order is held undisplayed, the Market Order to buy (sell) will be assigned a working price of the NBB (NBO).

(B) Trading Collar. During Core Trading Hours, a Market Order to buy (sell) will not trade or route to an Away Market at a price at or above (below) the Trading Collar. Trading Collars will not apply to Limit Orders.

(i) Calculation of the Trading Collar. The Trading Collar will be based on a price that is a specified percentage away from the consolidated last sale price and it will be continuously updated based on market activity. The specified percentage is equal to the corresponding "numerical guideline" percentage set forth in Rule 7.10(c)(1) (Clearly Erroneous Executions) for the Core Trading Session. The upper boundary of the Trading Collar is the consolidated last sale price increased by the specified percentage truncated to the MPV for the security, and the lower boundary is the consolidated last sale price decreased by the specified percentage truncated to the MPV for the security. A halt, suspension, or pause in trading will zero out the Trading Collar values, and the Trading Collar will be recalculated with the first consolidated last sale after trading resumes. If there is no consolidated last sale price on the same trading day, the Exchange will use the last Official Closing Price for the security.

(ii) If a Trading Collar is triggered, the unexecuted quantity of a Market Order to buy (sell) will be held undisplayed and assigned a working price one MPV

below (above) the Trading Collar. The Market Order to buy (sell) will be available to trade with incoming orders to sell (buy) at that working price but will not trade with interest on the NYSE Arca Book or route until (i) additional opportunities to trade consistent with the Trading Collar restriction become available, either on the Corporation or an Away Market, or (ii) a new Trading Collar is calculated and the remaining quantity of the order(s) is then able to trade or route at prices consistent with the new Trading Collar and NBBO.

- (2) Limit Order. An order to buy or sell a stated amount of a security at a specified price or better. Unless otherwise specified, the working price and the display price of a Limit Order equal the limit price of the order, it is eligible to be routed, and it is ranked Priority 2 - Display Orders.
- (A) A marketable Limit Order to buy (sell) will trade with all sell (buy) orders on the NYSE Arca Book priced at or below (above) the PBO (PBB) before routing to the PBO (PBB) and may route to prices higher (lower) than the PBO (PBB) only after trading with orders to sell (buy) on the NYSE Arca Book at each price point. Once no longer marketable, the Limit Order will be ranked and displayed on the NYSE Arca Book.
- (B) Limit Order Price Protection. A Limit Order to buy (sell) will be rejected if it is priced at or above (below) a specified percentage away from the NBO (NBB). The specified percentage is equal to the corresponding "numerical guideline" percentage set forth in paragraph (c)(1) of Rule 7.10 (Clearly Erroneous Executions) for the Core Trading Session. The Limit Order Price Protection will not be applied to an incoming Limit Order to buy (sell) if there is no NBO (NBB). Limit Order Price Protection will be applied when an order is eligible to trade. A Limit Order entered before the Core Trading Session that is designated for the Core Trading Session only will become subject to Limit Order Price Protection after the Core Open Auction. Limit Order Price Protection for both buy and sell orders that are not in the minimum price variation ("MPV") for the security, as defined in Rule 7.6, will be rounded down to the nearest price at the applicable MPV.
- (C) If a BB (BO) that is locked or crossed by an Away Market PBO (PBB) is cancelled, executed or routed and the next best-priced resting Limit Order(s) on the NYSE Arca Book that would become the new BB (BO) would have a display price that would lock or cross the PBO (PBB), such Limit Order(s) to buy (sell) will be assigned a display price one MPV below (above) the PBO (PBB) and a working price equal to the PBO (PBB). When the PBO (PBB) is updated, the Limit Order(s) to buy (sell) will be repriced consistent with the original terms of the order. If a Day ISO to buy (sell) arrives before the PBO (PBB) is updated and would result in at least a round lot being displayed as a new BB (BO), such repriced Limit Order(s) to buy (sell) will be repriced to the lower (higher) of the display price of the Day ISO or the original price of the Limit Order(s). If the arriving Day ISO to buy (sell) would not result in at least a round lot being

displayed, the Day ISO will be assigned a display price one MPV below (above) the PBO (PBB) and a working price equal to the PBO (PBB).

(3) Inside Limit Order. A Limit Order that is to be traded at the best price obtainable without trading through the NBBO.

(A) On arrival, a marketable Inside Limit Order to buy (sell) is assigned a working price of the NBO (NBB) and will trade with all sell (buy) orders on the NYSE Arca Book priced at or below (above) the NBO (NBB) before routing to the NBO (NBB) on an Away Market. Once the NBO (NBB) is exhausted, the Inside Limit Order to buy (sell) will be displayed at its working price and be eligible to trade with incoming sell (buy) orders at that price. When the updated NBO (NBB) is displayed, the Inside Limit Order to buy (sell) will be assigned a new working price of the updated NBO (NBB) and will trade with all sell (buy) orders on the NYSE Arca Book priced at or below the updated NBO (NBB) before routing to the updated NBO (NBB) on an Away Market. Such assessment will continue at each new NBO (NBB) until the order is filled, no longer marketable, or the limit price is reached. Once the order is no longer marketable, it will be ranked and displayed in the NYSE Arca Book.

(B) An Inside Limit Order designated as a Primary Until 9:45 Order or a Primary After 3:55 Order will follow the order processing of an Inside Limit Order only when the order is on the NYSE Arca Book.

(C) An Inside Limit Order may not be designated as a Limit IOC Order but may be designated as a Limit Routable IOC Order. An Inside Limit Order to buy (sell) designated as a Limit Routable IOC Order will trade with sell (buy) orders on the NYSE Arca Book priced at or below (above) the NBO (NBB) and the quantity not traded will be routed to the NBO (NBB). Any unfilled quantity not traded on the NYSE Arca Marketplace or an Away Market will be cancelled.

(b) Time in Force Modifiers

(1) Day Modifier. Any order to buy or sell designated Day, if not traded, will expire at the end of the designated session on the day on which it was entered. A Day Modifier cannot be combined with any other Time in Force Modifier.

(2) Immediate-or-Cancel ("IOC") Modifier. A Limit Order may be designated IOC or Routable IOC, as described in paragraphs (A) and (B) of this paragraph (b)(2). The IOC Modifier will override any posting or routing instructions of orders that include the IOC Modifier. A Limit Order designated IOC is not eligible to participate in any auctions.

(A) Limit IOC Order. A Limit Order designated IOC is to be traded in whole or in part on the NYSE Arca Marketplace as soon as such order is received, and the quantity not so traded is cancelled. A Limit IOC Order does not route. A Limit

IOC Order to buy (sell) may be designated with a minimum trade size ("MTS"), which will trade against sell (buy) orders in the NYSE Arca Book that in the aggregate, meets its MTS. On entry, a Limit IOC Order with an MTS must have a minimum of one round lot and will be rejected on arrival if the MTS is larger than the size of the Limit IOC Order. A Limit IOC Order with an MTS that cannot be immediately traded at its minimum size will be cancelled in its entirety.

(B) Limit Routable IOC Order. A Limit Order designated Routable IOC is to be traded in whole or in part on the NYSE Arca Marketplace as soon as such order is received, and the quantity not so traded routed to Away Market(s). Any quantity not immediately traded either on the NYSE Arca Marketplace or an Away Market will be cancelled. A Limit Routable IOC Order may not be designated with an MTS.

(c) Auction-Only Order. A Limit or Market Order that is to be traded only within an auction pursuant to Rule 7.35 or routed pursuant to Rule 7.34. Any quantity of an Auction-Only Order that is not traded in the designated auction will be cancelled.

(1) A Limit-on-Open Order ("LOO Order"). A LOO Order is a Limit Order that is to be traded only during the Core Open Auction or a Trading Halt Auction. LOO Orders intended for a Trading Halt Auction will be accepted only during trading halts, which may occur in any trading session.

(2) A Market-on-Open Order ("MOO Order"). A MOO Order is a Market Order that is to be traded only during the Core Open Auction or a Trading Halt Auction. MOO Orders intended for a Trading Halt Auction will be accepted only during trading halts that occur during the Core Trading Session.

(3) Limit-on-Close Order ("LOC Order"). A LOC Order is a Limit Order that is to be traded only during the Closing Auction.

(4) Market-on-Close Order ("MOC Order"). A MOC Order is a Market Order that is to be traded only during the Closing Auction.

(d) Orders with a Conditional or Undisplayed Price and/or Size

(1) Reserve Order. A Limit or Inside Limit Order with a quantity of the size displayed and with a reserve quantity of the size ("reserve interest") that is not displayed. The displayed quantity of a Reserve Order is ranked Priority 2 - Display Orders and the reserve interest is ranked Priority 3 - Non-Display Orders. Both the display quantity and the reserve interest of an arriving marketable Reserve Order are eligible to trade with resting interest in the NYSE Arca Book or route to Away Markets.

(A) On entry, the display quantity of a Reserve Order must be entered in round lots. The displayed portion of a Reserve Order will be replenished following any

execution. The Exchange will display the full size of the Reserve Order when the unfilled quantity is less than the minimum display size for the order.

(B) Each time a Reserve Order is replenished from reserve interest, a new working time is assigned to the replenished quantity of the Reserve Order, while the reserve interest retains the working time of original order entry.

(C) A Reserve Order must be designated Day and may be combined with the following orders only: Arca Only Order or Primary Pegged Order.

(2) Limit Non-Displayed Order. A Limit Order that is not displayed and does not route. A Limit Non-Displayed Order is ranked Priority 3 - Non-Display Orders. A Limit Non-Displayed Order must be designated Day, is valid for any trading session, and does not participate in any auctions.

(A) The working price of a Limit Non-Displayed Order will be adjusted both on arrival and when resting on the NYSE Arca Book based on the limit price of the order. If the limit price of a Limit Non-Display Order to buy (sell) is at or below (above) the PBO (PBB), it will have a working price equal to the limit price. If the limit price of a Limit Non-Displayed Order to buy (sell) is above (below) the PBO (PBB), it will have a working price equal to the PBO (PBB).

(B) A Limit Non-Displayed Order may be designated with a Non-Display Remove Modifier. If so designated, a Limit Non-Displayed Order to buy (sell) will trade as the liquidity-taking order with an incoming ALO Order to sell (buy) that has a working price equal to the working price of the Limit Non-Displayed Order.

(3) Mid-Point Liquidity Order ("MPL Order"). A Limit Order that is not displayed and does not route, with a working price at the midpoint of the PBBO. An MPL Order is ranked Priority 3- Non-Display Orders. MPL Orders are valid for any session and do not participate in any auctions.

(A) An MPL Order to buy (sell) must be designated with a limit price in the MPV for the security and is eligible to trade only if the midpoint of the PBBO is at or below (above) the limit price of the order.

(B) If there is no PBB, PBO, or the PBBO is locked or crossed, both an arriving and resting MPL Order will wait for a PBBO that is not locked or crossed before being eligible to trade. If a resting MPL Order(s) to buy (sell) trades with MPL Order(s) to sell (buy) after there is an unlocked or uncrossed PBBO, the MPL Order with the later working time will be the liquidity-removing order.

(C) On arrival, an MPL Order to buy (sell) that is eligible to trade will trade with resting orders to sell (buy) with a working price at or below (above) the midpoint of the PBBO. Resting MPL Orders to buy (sell) will trade at the midpoint of the PBBO against all incoming orders to sell (buy) priced at or below (above) the

midpoint of the PBBO. An incoming Limit Order may be designated with a "No Midpoint Execution" modifier, in which case the incoming Limit Order will not trade with resting MPL Orders and may trade through MPL Orders.

- (D) An MPL Order may be designated with an MTS of a minimum of one round lot and will be rejected on arrival if the MTS is larger than the size of the MPL Order. On arrival, an MPL Order to buy (sell) with an MTS will trade with sell (buy) orders in the NYSE Arca Book that in the aggregate, meets its MTS. If the sell (buy) orders do not meet the MTS, the MPL Order to buy (sell) will not trade on arrival and will be ranked in the NYSE Arca Book. Once resting, an MPL Order to buy (sell) with an MTS will trade with an order to sell (buy) that meets the MTS and is priced at or below (above) the midpoint of the PBBO. If an order does not meet an MPL Order's MTS, the order will not trade with and may trade through such MPL Order. If an MPL Order with an MTS is traded in part or reduced in size and the remaining quantity of the order is less than the MTS, the MPL Order will be cancelled.
- (E) An MPL Order may be designated IOC ("MPL-IOC Order"). Subject to such IOC instructions, an MPL-IOC Order will follow the same trading and priority rules as an MPL Order, except that an MPL-IOC Order will be rejected if (i) the order entry size is less than one round lot, or (ii) there is no PBBO or the PBBO is locked or crossed. An MPL-IOC Order cannot be designated ALO or with a Non-Display Remove Modifier.
- (F) An MPL Order may be designated with an ALO Modifier ("MPL-ALO Order"). On arrival, an MPL-ALO Order to buy (sell) will trade with resting orders to sell (buy) with a working price below (above) the midpoint of the PBBO, but will not trade with resting orders to sell (buy) priced at the midpoint of the PBBO. A resting MPL-ALO Order to buy (sell) will trade with an arriving order to sell (buy) that is eligible to trade at the midpoint of the PBBO.
- (G) MPL Orders designated Day and MPL-ALO Orders may be designated with a Non-Display Remove Modifier. On arrival, an MPL Order or MPL-ALO Order to buy (sell) with a Non-Display Remove Modifier will trade with resting MPL Orders to sell (buy) priced at the midpoint of the PBBO and be the liquidity taker, regardless of whether the resting order to sell (buy) also has a Non-Display Remove Modifier. A resting MPL Order or MPL-ALO Order with a Non-Display Remove Modifier will be the liquidity taker when trading with arriving MPL Orders, including MPL-ALO Orders, that do not include a Non-Display Remove Modifier.
- (4) Tracking Order. An order to buy (sell) with a limit price that is not displayed, does not route, must be entered in round lots and designated Day, and will trade only with an order to sell (buy) that is eligible to route. The working price of a Tracking Order to buy (sell) is the PBB (PBO), provided that such price is at or below (above) the limit price of the Tracking Order, it is ranked Priority 4- Tracking Orders, and it

may trade in odd lot or mixed lot quantities. A Tracking Order is not eligible to trade if the PBBO is locked or crossed.

- (A) A Tracking Order to buy (sell) does not trade on arrival and is triggered to trade by an order to sell (buy) that (i) has exhausted all other interest eligible to trade at the Exchange, (ii) has a remaining quantity equal to or less than the size of a resting Tracking Order, and (iii) would otherwise route to an Away Market. A Tracking Order will trade with the entire unexecuted quantity of the contra-side order, not just the quantity being routed.
- (B) Each time a Tracking Order is traded in part, any remaining quantity of the Tracking Order will be assigned a new working time. A Tracking Order with a later working time will trade ahead of a Tracking Order with an earlier working time that does not meet the size requirement of an incoming order.
- (C) A Tracking Order may be designated with an MTS of one round lot or more. If an incoming order cannot meet the MTS, a Tracking Order with a later working time will trade ahead of the Tracking Order designated with an MTS with an earlier working time. If a Tracking Order with an MTS is traded in part or reduced in size and the remaining quantity is less than the MTS, the Tracking Order will be cancelled.

(e) Orders with Instructions Not to Route

(1) Arca Only Order. A Limit Order that does not route.

- (A) An Arca Only Order to buy (sell) that, at the time of entry and after trading with any sell (buy) orders in the NYSE Arca Book priced at or below (above) the PBO (PBB), would create a violation of Rule 610(d) of Regulation NMS by locking or crossing the protected quotation of an Away Market or would cause a violation of Rule 611 of Regulation NMS, will be priced as follows:
 - (i) It will have a working price of the PBO (PBB) of an Away Market and a display price one MPV below (above) that PBO (PBB).
 - (ii) If the PBO (PBB) of an Away Market re-prices higher (lower), it will be assigned a new working price of the updated PBO (PBB) and a new display price of one MPV below (above) that updated PBO (PBB).
 - (iii) If the PBO (PBB) of an Away Market re-prices to be equal to or lower (higher) than its last display price, its display price will not change, but the working price will be adjusted to be equal to its display price.
 - (iv) If its limit price no longer locks or crosses the PBO (PBB) of an Away Market, it will be assigned a working price and display price equal to its limit

price and will not be assigned a new working price or display price based on changes to the PBO (PBB).

(B) An Arca Only Order with a working price different from the display price is ranked Priority 3-Non-Display Orders and an Arca Only Order with a working price equal to the display price is ranked Priority 2-Display Orders.

(C) An Arca Only Order may be designated with a Non-Display Remove Modifier. If so designated, an Arca Only Order to buy (sell) with a working price, but not display price, equal to the working price of an ALO Order to sell (buy) will trade as the liquidity taker against such ALO Order.

(2) ALO Order. An Arca Only Order that, except as specified below, will not remove liquidity from the NYSE Arca Book. Upon entry, an ALO Order must have a minimum of one displayed round lot.

(A) ALO Orders may participate in auctions, but the ALO designation will be ignored. An ALO Order that has not traded in an auction will be assigned a working price and display price pursuant to paragraph (e)(2)(B) of this Rule.

(B) An ALO Order to buy (sell) that, at the time of entry, is marketable against an order of any size to sell (buy) on the NYSE Arca Book or would lock or cross a protected quotation in violation of Rule 610(d) of Regulation NMS, will be priced or trade, or both as follows:

(i) If there are no displayed or non-displayed orders to sell (buy) on the NYSE Arca Book priced equal to or below (above) the PBO (PBB), the ALO Order to buy (sell) will have a working price equal to the PBO (PBB) and a display price one MPV below (above) the PBO (PBB).

(ii) If the limit price of the ALO Order to buy (sell) crosses the working price of any displayed or non-displayed order on the NYSE Arca Book priced equal to or below (above) the PBO (PBB), it will trade as the liquidity taker with such order(s). Any untraded quantity of the ALO Order will have a working price equal to the PBO (PBB) and a display price one MPV below (above) the PBO (PBB).

(iii) If the limit price of the ALO Order to buy (sell) locks the display price of any order ranked Priority 2 - Display Orders on the NYSE Arca Book priced equal to or below (above) the PBO (PBB), it will be assigned a working price and display price one MPV below (above) the price of the displayed order on the NYSE Arca Book.

(iv) If the limit price of the ALO Order to buy (sell) locks the working price of any order ranked Priority 3 - Non-Display Orders on the NYSE Arca Book priced equal to or below (above) the PBO (PBB), it will be assigned a working

price equal to the PBO (PBB) and a display price one MPV below (above) the PBO (PBB), provided that,

(a) if there are any displayed orders at the working price of an order to sell (buy) ranked Priority 3 - Non-Display Orders, the ALO Order to buy (sell) will be priced under paragraph (e)(2)(B)(iii) of this Rule; and

(b) if the resting order(s) is a Limit Non-Displayed Order or Arca Only Order to sell (buy) that has been designated with a Non-Display Remove Modifier, the ALO Order will trade with such order(s) as the liquidity provider. Unless a resting order is designated with a Non-Display Remove Modifier, an ALO Order will trade only with arriving interest.

(v) An ALO Order to buy (sell) will not be assigned a working price or display price above (below) the limit price of such order.

(C) Once resting on the NYSE Arca Book, ALO Orders will be re-priced or trade, or both, as follows:

(i) If the order(s) to sell (buy) ranked Priority 2 - Display Orders or PBO (PBB) re-prices higher (lower), an ALO Order to buy (sell) will trade or be priced, or both, consistent with paragraphs (e)(2)(B)(i) - (iv) of this Rule.

(ii) If the PBO (PBB) re-prices lower (higher) to be equal to or lower (higher) than its last display price or if its limit price no longer locks or crosses the PBO (PBB), an ALO Order to buy (sell) will be priced pursuant to paragraphs (e)(1)(A)(iii) and (iv) of this Rule.

(D) An ALO Order will not trigger a contra-side MPL Order to trade.

(3) Intermarket Sweep Order ("ISO"). A Limit Order that does not route and meets the requirements of Rule 600(b)(30) of Regulation NMS.

(A) An ISO may trade through a protected bid or offer, and will not be rejected or cancelled if it would lock, cross, or be marketable against an Away Market provided that it meets the following requirements:

(i) It is identified as an ISO in the manner prescribed by the Exchange; and

(ii) Simultaneously with the routing of an ISO to the Exchange, the ETP Holder routes one or more additional Limit Orders, as necessary, to trade against the full displayed size of any protected bids (for sell orders) or protected offers (for buy orders) on Away Markets. These additional routed orders must be identified as ISO.

(B) An ISO designated IOC ("IOC ISO") will be immediately traded with contra-side interest in the NYSE Arca Book up to its full size and limit price and the quantity not so traded will be immediately and automatically cancelled. An IOC ISO may not be designated with an MTS.

(C) An ISO designated Day ("Day ISO"), if marketable on arrival, will be immediately traded with contra-side interest in the NYSE Arca Book up to its full size and limit price. Any untraded quantity of a Day ISO will be displayed at its limit price and may lock or cross a protected quotation that was displayed at the time of arrival of the Day ISO.

(D) A Day ISO may be designated with an ALO Modifier ("Day ISO ALO") and must be entered with a minimum of one displayed round lot. An arriving Day ISO ALO to buy (sell) may trade through or lock or cross a protected quotation that was displayed at the time of arrival of the Day ISO ALO, and will be priced or trade, or both, as follows:

(i) If the limit price of the Day ISO ALO to buy (sell) crosses the working price of any displayed or non-displayed order on the NYSE Arca Book, it will trade as the liquidity taker with such order(s). Any untraded quantity of the Day ISO ALO will have a working price and display price equal to its limit price.

(ii) If the limit price of the Day ISO ALO to buy (sell) locks the display price of any order ranked Priority 2 - Display Orders on the NYSE Arca Book, it will be assigned a working price and display price one MPV below (above) the price of the displayed order on the NYSE Arca Book.

(iii) If the limit price of the Day ISO ALO Order to buy (sell) locks the working price of any order ranked Priority 3 - Non-Display Orders on the NYSE Arca Book, it will be assigned a working price and display price equal to the limit price of the order, provided that,

(a) if there are any displayed orders at the working price of an order to sell (buy) ranked Priority 3 - Non-Display Orders, the Day ISO ALO to buy (sell) will be priced under paragraph (e)(3)(D)(ii) of this Rule; and

(b) if the resting order(s) is a Limit Non-Displayed Order or Arca Only Order to sell (buy) that has been designated with a Non-Display Remove Modifier, the Day ISO ALO will trade with such order(s) as the liquidity provider.

(iv) After being displayed, a Day ISO ALO will be re-priced and re-displayed or trade, or both, based on changes to orders ranked Priority 2 - Display Orders or the PBO (PBB) consistent with paragraphs (e)(2)(C)(i) and (ii) of this Rule.

(f) Orders with Specific Routing Instructions

- (1) Primary Only Order. A Market or Limit Order that on arrival is routed directly to the primary listing market without being assigned a working time or interacting with interest on the NYSE Arca Book. A Primary Only Order must be designated for the Core Trading Session. The primary listing market will validate whether the order is eligible to be accepted by that market and if the primary listing market rejects the order, the order will be cancelled. A Primary Only Order instruction on a security listed on the Exchange will be ignored.
- (A) Primary Only MOO/LOO Order. A Primary Only Order designated for participation in the primary listing market's opening or re-opening process as a MOO or LOO Order.
- (B) Primary Only Day/IOC Order. A Primary Only Order designated Day or IOC, but not ISO. A Primary Only Day Order may be designated as a Reserve Order. A Primary Only Day/IOC Order will be routed to an Away Market as a nonroutable order, and will remain at the Away Market until executed or cancelled. A Primary Only Day/IOC Order in NYSE- and NYSE MKT-listed securities may include an instruction to be routed to NYSE or NYSE MKT as a routable order, in which case such order would remain at the NYSE or NYSE MKT until executed, routed away, or cancelled.
- (C) Primary Only MOC/LOC Order. A Primary Only Order designated for participation in the primary listing market's closing process as a MOC or LOC Order.
- (2) Primary Until 9:45 Order. A Limit or Inside Limit Order that, on arrival and until 9:45 a.m. Eastern Time, routes to the primary listing market. After 9:45 a.m. Eastern Time, the order is cancelled on the primary listing market and entered on the NYSE Arca Book. The Primary Until 9:45 Order must be designated Day. Orders that return to the NYSE Arca Book after routing to the primary listing market will retain their original order attributes and be assigned a working time based on when the order is returned from the primary listing market and entered on the NYSE Arca Book. A Primary Until 9:45 Order can be combined with a Primary After 3:55 Order.
- (3) Primary After 3:55 Order. A Limit or Inside Limit Order entered on the Exchange until 3:55 p.m. Eastern Time after which time the order is cancelled on the Exchange and routed to the primary listing market. The Primary After 3:55 Order must be designated Day. Orders that route to the primary listing market at 3:55 pm Eastern Time will retain their original order attributes.
- (g) Cross Orders. Two-sided orders with instructions to match the identified buy-side with the identified sell-side at a specified price (the "cross price"). A Cross Order is not eligible to participate in any auctions.

(1) Limit IOC Cross Order. A Cross Order that must trade in full at its cross price, will not route, and will cancel at the time of order entry if the cross price is not between the BBO or would trade through the PBBO.

(h) Pegged Orders. A Limit Order that does not route with a working price that is pegged to a dynamic reference price. If the designated reference price is higher (lower) than the limit price of a Pegged Order to buy (sell), the working price will be the limit price of the order.

(1) Market Pegged Order. A Pegged Order to buy (sell) with a working price that is pegged to the PBO (PBB). A Market Pegged Order to buy (sell) will be rejected on arrival, or cancelled when resting, if there is no PBO (PBB) against which to peg. Market Pegged Orders will not participate in any auctions.

(A) Market Pegged Orders are not displayed and are ranked Priority 3 - Non-Display Orders.

(B) If the PBBO is locked or crossed, both an arriving and resting Market Pegged Order will wait for a PBBO that is not locked or crossed before the working price is adjusted and the order becomes eligible to trade.

(C) A Market Pegged Order to buy (sell) may include an offset value that will set the working price below (above) the PBO (PBB) by the specified offset, which may be specified up to two decimals.

(2) Primary Pegged Order. A Pegged Order to buy (sell) with a working price that is pegged to the PBB (PBO), with no offset allowed. A Primary Pegged Order to buy (sell) will be rejected on arrival, or cancelled when resting, if there is no PBB (PBO) against which to peg. A Primary Pegged Order is eligible to participate in auctions at the limit price of the order.

(A) A Primary Pegged Order must include a minimum of one round lot displayed. The working price of a Primary Pegged Order equals the display price and the display quantity is ranked Priority 2 - Display Orders and the reserve interest is ranked Priority 3 - Non-Display Orders.

(B) A Primary Pegged Order will be rejected if the PBBO is locked or crossed. If after arrival, the PBBO becomes locked or crossed, the Primary Pegged Order will wait for a PBBO that is not locked or crossed before the working price is adjusted, but remains eligible to trade at its current working price.

(3) Discretionary Pegged Order. A Pegged Order to buy (sell) that upon entry to the NYSE Arca Marketplace is assigned a working price equal to the lower (higher) of the midpoint of the PBBO ("Midpoint Price") or the limit price of the order. Any untraded shares of such order are assigned a working price equal to the lower (higher) of PBB (PBO) or the order's limit price and is automatically adjusted in

response to changes to the PBB (PBO) for buy (sell) orders up (down) to the order's limit price. In order to trade with contra-side orders on the NYSE Arca Book, a Discretionary Pegged Order to buy (sell) will exercise the least amount of price discretion necessary from its working price to its discretionary price (defined as the lower (higher) of the Midpoint Price or the Discretionary Pegged Order's limit price), except during periods of quote instability, as defined in paragraph (h)(3)(D) below.

(A) Discretionary Pegged Orders are not displayed, must be designated Day, do not participate in any auctions, and are eligible to be designated for the Core Trading Session only. Discretionary Pegged Orders that include a designation for the Early Trading Session or Late Trading Session will be rejected.

(B) When exercising discretion, Discretionary Pegged Orders maintain their time priority at their working price as Priority 3 - Non-Display Orders and are prioritized behind Priority 3 - Non-Display Orders with a working price equal to the discretionary price of a Discretionary Pegged Order at the time of execution. If multiple Discretionary Pegged Orders are exercising price discretion during the same book processing action, they maintain their relative time priority at the discretionary price.

(C) A Discretionary Pegged Order is eligible to exercise price discretion to its discretionary price, except during periods of quote instability, as specified in paragraph (h)(3)(D) below.

(i) If the Corporation determines the PBB for a particular security to be an unstable quote in accordance with paragraph (h)(3)(D), it will restrict buy Discretionary Pegged Orders in that security from exercising price discretion to trade against interest above the PBB.

(ii) If the Corporation determines the PBO for a particular security to be an unstable quote in accordance with paragraph (h)(3)(D), it will restrict sell Discretionary Pegged Orders in that security from exercising price discretion to trade against interest below the PBO.

(D) Quote Stability. The Corporation utilizes real-time relative quoting activity of protected quotations and a mathematical calculation (the "quote instability calculation") to assess the probability of an imminent change to the current PBB to a lower price or PBO to a higher price for a particular security ("quote instability factor"). When the quoting activity meets predefined criteria and the quote instability factor calculated is greater than the Corporation's defined threshold ("quote instability threshold"), the Corporation treats the quote as not stable ("quote instability" or a "crumbling quote"). During all other times, the quote is considered stable ("quote stability"). The Corporation independently assesses the stability of the PBB and PBO for each security.

(i) **Crumbling Quote.** When the Corporation determines a quote, either the PBB or the PBO, is unstable, the determination remains in effect at that price level for ten (10) milliseconds. The Corporation will only treat one side of the PBBO as unstable in a particular security at any given time. Quote instability or a crumbling quote is determined by the Corporation when following factors occur:

(A) the PBB and PBO are the same as the PBB and PBO one (1) millisecond ago; and

(B) the PBBO spread is less than or equal to the thirty (30) day median PBBO spread during the Core Trading Session; and

(C) there are more protected quotations on the far side, i.e. more protected quotations on the PBO than the PBB for buy orders, or more protected quotations on the PBB than the PBO for sell orders; and

(D) the quote instability factor result from the quote stability calculation is greater than the defined quote instability threshold.

(1) **Quote Instability Factor.** The quote stability calculation used to determine the current quote instability factor is defined by the following formula that utilizes the quote stability coefficients and quote stability variables defined below: $1 / (1 + e^{-(C0 + C1 * N + C2 * F + C3 * N - 1 + C4 * F - 1)})$

(a) **Quote Stability Coefficients.** The Corporation utilizes the values below for the quote stability coefficients.

(i) $C0 = -2.39515$

(ii) $C1 = -0.76504$

(iii) $C2 = 0.07599$

(iv) $C3 = 0.38374$

(v) $C4 = 0.14466$

(b) **Quote Stability Variables.** The Corporation utilizes the quote stability variables defined below to calculate the current quote instability factor.

(i) N = the number of protected quotations on the near side of the market, i.e. PBB for buy orders and PBO for sell orders.

(ii) F = the number of protected quotations on the far side of the market, i.e. PBO for buy orders and PBB for sell orders.

(iii) N-1 = the number of protected quotations on the near side of the market one (1) millisecond ago.

(iv) F-1 = the number of protected quotations on the far side of the market one (1) millisecond ago.

(2) Quote Instability Threshold. The Corporation utilizes a quote instability threshold of 0.32.

(3) The Corporation reserves the right to modify the quote instability coefficients or quote instability threshold at any time, subject to a filing of a proposed rule change with the SEC.

(E) If the PBBO is locked or crossed, both an arriving and resting Discretionary Pegged Order will wait for a PBBO that is not locked or crossed before the working price is adjusted and the order becomes eligible to trade.

(i) Additional Order Instructions and Modifiers:

(1) Proactive if Locked/Crossed Modifier. A Limit Order or Inside Limit Order that is displayed and eligible to route and designated with a Proactive if Locked/Crossed Modifier will route to an Away Market if the Away Market locks or crosses the display price of the order. If any quantity of the routed order is returned unexecuted, the order will be displayed in the NYSE Arca Book.

(2) Self Trade Prevention Modifier ("STP"). Any incoming order to buy (sell) designated with an STP modifier will be prevented from trading with a resting order to sell (buy) also designated with an STP modifier and from the same ETP ID. The STP modifier on the incoming order controls the interaction between two orders marked with STP modifiers. Orders marked with an STP modifier will not be prevented from interacting during any auction.

(A) STP Cancel Newest ("STPN"). An incoming order to buy (sell) marked with the STPN modifier will not trade with resting interest to sell (buy) marked with any of the STP modifiers from the same ETP ID. The incoming order marked with the STPN modifier will be cancelled back to the originating ETP Holder. The resting order marked with one of the STP modifiers will remain on the NYSE Arca Book.

(B) STP Cancel Oldest ("STPO"). An incoming order to buy (sell) marked with the STPO modifier will not trade with resting interest to sell (buy) marked with any of the STP modifiers from the same ETP ID. The resting order marked with the STP modifier will be cancelled back to the originating ETP Holder. The incoming order marked with the STPO modifier will remain on the NYSE Arca Book.

(C) STP Decrement and Cancel ("STPD"). An incoming order to buy (sell) marked with the STPD modifier will not trade with resting interest to sell (buy) marked

with any of the STP modifiers from the same ETP ID. If both orders are equivalent in size, both orders will be cancelled back to the originating ETP Holder. If the orders are not equivalent in size, the equivalent size will be cancelled back to the originating ETP Holder and the larger order will be decremented by the size of the smaller order with the balance remaining on the NYSE Arca Book.

(D) STP Cancel Both ("STPC"). An incoming order to buy (sell) marked with the STPC modifier will not trade with resting interest to sell (buy) marked with any of the STP modifiers from the same ETP ID. The entire size of both orders will be cancelled back to originating ETP Holder.

(E) For purposes of STP, references to ETP ID mean an ETP ID when using Pillar phase I protocols to communicate with the NYSE Arca Marketplace or an MPID when using Pillar phase II protocols to communicate with the NYSE Arca Marketplace.

(j) Q Order. A Limit Order submitted to the NYSE Arca Marketplace by a Market Maker, and designated by a Market Maker as a "Q Order" through such means as the Corporation will specify. Q Orders entered by ETP Holders that are not registered in that security as a market maker will be rejected.

(1) A Q Order must have a minimum of one round lot displayed on entry, must be designated Day, and does not route. A Q Order to buy (sell) will be rejected if: (i) it has limit price at or above (below) the PBO (PBB); or (ii) it is designated as an Arca Only Order, ALO Order, or ISO.

(2) Market Makers must enter Q Orders in securities in which they are registered in accordance with Rule 7.23, beginning at the start of the Core Trading Session and continuing until the end of the Core Trading Session. Market Makers are not obligated to but may enter Q Orders in securities in which they are registered during the Early and Late Trading Sessions. Nothing in this Rule will be construed to relieve a Market Maker of any of its obligations pursuant to Rule 7.23.

Commentary:

.01 Order Type and Modifier Combinations. Users may combine order types and modifiers, unless the terms of the proposed combination are inconsistent.

.02 If two order types are combined that include instructions both for operation on arrival and for how the order operates while resting on the NYSE Arca Book, the instructions governing functionality while incoming will be operative upon arrival. Functionality governing how the order operates while resting on the NYSE Arca Book will govern any remaining balance of the order that is not executed upon arrival.

Rule 7.32. Order Entry

Orders entered that are greater than five million shares in size will be rejected. Upon at least 24 hours advance notice to market participants, the Exchange may decrease the maximum order size on a security-by-security basis.

Rule 7.33. ETP Holder Users

Consistent with Rules of the Corporation, ETP Holder Users of the NYSE Arca Marketplace shall input accurate information into the NYSE Arca Marketplace, including, but not limited to, whether the ETP Holder User is acting in a principal, agency, or riskless principal capacity for each order entered. Proprietary orders accepted by the NYSE Arca Marketplace from ETP Holder Users are subject to the same display and execution processes as agency orders.

Rule 7.34. Trading Sessions

(a) *Sessions.* The NYSE Arca Marketplace will have three trading sessions each day the Corporation is open for business unless otherwise determined by the Corporation:

- (1) *Early Trading Session.* The Early Trading Session will begin at 4:00 a.m. Eastern Time and conclude at the commencement of the Core Trading Session. The Corporation will begin accepting orders 30 minutes before the Early Trading Session begins. The Early Open Auction will begin the Early Trading Session.
- (2) *Core Trading Session.* The Core Trading Session will begin for each security at 9:30 a.m. Eastern Time and end at the conclusion of Core Trading Hours or the Core Closing Auction, whichever comes later. The Core Open Auction will begin the Core Trading Session.
- (3) *Late Trading Session.* The Late Trading Session will begin following the conclusion of the Core Trading Session and conclude at 8:00 p.m. Eastern Time.

(b) *Order Designation.*

- (1) Any order entered into the NYSE Arca Marketplace must include a designation for which trading session(s) the order will remain in effect. For ETP Holders that communicate with the NYSE Arca Marketplace using Pillar phase II protocols, orders entered without a trading session designation will be rejected. An order is eligible to participate in the designated trading session(s) only and may remain in effect for one or more consecutive trading sessions on a particular day. Unless otherwise specified, an order designated for a later trading session will be accepted but not eligible to trade until the designated trading session begins. An order designated solely for a trading session that has already ended will be rejected.

(2) For ETP Holders that communicate with the NYSE Arca Marketplace using Pillar phase I protocols, an order with a day time-in-force instruction entered before or during the Early Trading Session will be deemed designated for the Early Trading Session and the Core Trading Session.

(3) For ETP Holders that communicate with the NYSE Arca Marketplace using Pillar phase I protocols, an order with a day time-in-force instruction entered during the Core Trading Session will be deemed designated for the Core Trading Session.

(c) *Orders Permitted in Each Session.*

(1) Early Trading Session. Unless otherwise specified in paragraphs (c)(1)(A) - (E), orders and modifiers defined in Rule 7.31 that are designated for the Early Trading Session are eligible to participate in the Early Trading Session.

(A) Market Orders and Pegged Orders are not eligible to participate in the Early Trading Session. Market Orders and Pegged Orders that include a designation for the Early Trading Session will be rejected. Market Pegged Orders and Discretionary Pegged Orders, regardless of the session designated for the order, may not be entered before or during the Early Trading Session and will be rejected.

(B) Limit Orders designated IOC and Cross Orders are not eligible to participate in the Early Open Auction and will be rejected if entered before the Early Open Auction concludes.

(C) Limit Orders designated IOC and Cross Orders entered before or during the Early Trading Session and designated for the Core Trading Session will be rejected if entered before the Auction Processing Period for the Core Open Auction.

(D) For securities that are not eligible for an auction on the Exchange, Market Orders designated for the Core Trading Session and Auction-Only Orders will be routed to the primary listing market on arrival. Any order routed directly to the primary listing market on arrival will be cancelled if that market is not accepting orders.

(E) MOO Orders, MOC Orders, LOC Orders, and Primary Only Orders designated for the Early Trading Session will be rejected.

(2) Core Trading Session. Unless otherwise specified in paragraphs (c)(2)(A) - (B), all orders and modifiers defined in Rules 7.31 and 7.44 that are designated for the Core Trading Session are eligible to participate in the Core Trading Session.

(A) Market Orders in securities that are not eligible for the Core Open Auction will be routed to the primary listing market until the first opening print of any size on the primary listing market or 10:00 a.m. Eastern Time, whichever is earlier.

(B) Auction-Only Orders in securities that are not eligible for an auction on the Exchange will be accepted and routed directly to the primary listing market.

(C) Limit Orders designated IOC and Cross Orders entered before or during the Core Trading Session and designated for the Late Trading Session will be rejected if entered before the Auction Processing Period for the Closing Auction.

(3) Late Trading Session. Unless otherwise specified in paragraph (c)(3)(A) - (C), the orders and modifiers defined in Rule 7.31 that are designated for the Late Trading Session are eligible to participate in the Late Trading Session:

(A) Market Orders and Pegged Orders are not eligible to participate in the Late Trading Session. Market Orders and Pegged Orders that include a designation for the Late Trading Session will be rejected.

(B) Orders that are routed directly to the primary listing market on arrival will be cancelled if that market is not accepting orders.

(C) MOO Orders, MOC Orders, LOC Orders, and Primary Only Orders designated for the Late Trading Session will be rejected.

(d) *Customer Disclosures.* No ETP Holder may accept an order from a non-ETP Holder for execution in the Early or Late Trading Session without disclosing to such non-ETP Holder that:

(1) Limit Orders are the only orders that are eligible for execution during the Early and Late Trading Sessions;

(2) An order must be designated specifically for trading in the Early and/or Late Trading Session to be eligible for trading in the Early and/or Late Trading Session; and

(3) Extended hours trading involves material trading risks, including the possibility of lower liquidity, high volatility, changing prices, unlinked markets, an exaggerated effect from news announcements, wider spreads and any other relevant risk. The absence of an updated underlying index value or intraday indicative value is an additional trading risk in extended hours for Derivative Securities Products.

The disclosures required pursuant to this subparagraph (d)(3) may take the following form or such other form as provides substantially similar information:

- (1) Risk of Lower Liquidity. Liquidity refers to the ability of market participants to buy and sell securities. Generally, the more orders that are available in a market, the greater the liquidity. Liquidity is important because with greater liquidity it is easier for investors to buy or sell securities, and as a result, investors are more likely to pay or receive a competitive price for securities purchased or sold. There may be lower liquidity in extended hours trading as compared to regular market hours. As a result, your order may only be partially executed, or not at all.
- (2) Risk of Higher Volatility. Volatility refers to the changes in price that securities undergo when trading. Generally, the higher the volatility of a security, the greater its price swings. There may be greater volatility in extended hours trading than in regular market hours. As a result, your order may only be partially executed, or not at all, or you may receive an inferior price in extended hours trading than you would during regular market hours.
- (3) Risk of Changing Prices. The prices of securities traded in extended hours trading may not reflect the prices either at the end of regular market hours, or upon the opening of the next morning. As a result, you may receive an inferior price in extended hours trading than you would during regular market hours.
- (4) Risk of Unlinked Markets. Depending on the extended hours trading system or the time of day, the prices displayed on a particular extended hours system may not reflect the prices in other concurrently operating extended hours trading systems dealing in the same securities. Accordingly, you may receive an inferior price in one extended hours trading system than you would in another extended hours trading system.
- (5) Risk of News Announcements. Normally, issuers make news announcements that may affect the price of their securities after regular market hours. Similarly, important financial information is frequently announced outside of regular market hours. In extended hours trading, these announcements may occur during trading, and if combined with lower liquidity and higher volatility, may cause an exaggerated and unsustainable effect on the price of a security.
- (6) Risk of Wider Spreads. The spread refers to the difference in price between what you can buy a security for and what you can sell it for. Lower liquidity and higher volatility in extended hours trading may result in wider than normal spreads for a particular security.
- (7) Risk of Lack of Calculation or Dissemination of Underlying Index Value or Intraday Indicative Value ("IIV"). For certain Derivative Securities Products, an updated underlying index value or IIV may not be calculated or publicly disseminated in extended trading hours. Since the underlying index value and IIV are not calculated or widely disseminated during the Early and Late Trading Sessions, an investor who is unable to calculate implied values for certain

Derivative Securities Products in those sessions may be at a disadvantage to market professionals.

(e) Trades on the NYSE Arca Marketplace executed and reported outside of the Core Trading Session are designated as .T trades.

Rule 7.35. Auctions

*An amended version of this rule, which is available [here](#), has been approved but is not yet operative **SEC approval order**. The Exchange will announce by Trader Update when the amended version of the rule will be operative. Until such time, this version of the rule remains in effect".*

(a) For purposes of this Rule, unless otherwise specified, the term "Market Orders" includes MOO Orders (for the Core Open Auction and Trading Halt Auction) and MOC Orders (for the Closing Auction). The following are definitions for purposes of this Rule:

(1) "Auction-Eligible Security" means:

(A) For the Early Open Auction, Core Open Auction, and Closing Auction, all securities for which NYSE Arca is the primary listing market and UTP Securities designated by the Corporation.

(B) For a Trading Halt Auction, securities for which NYSE Arca is the primary listing market.

(2) "Auction Processing Period" means the period during which the applicable auction is being processed.

(3) "Auction Imbalance Freeze" means the period that begins before the scheduled time for the Early Open Auction, Core Open Auction, or Closing Auction, as specified in paragraphs (b), (c), and (d) of this Rule, and that ends once the Auction Processing Period begins.

(4) "Auction Imbalance Information" means the information that is disseminated by the Corporation for an auction and includes, if applicable, the Total Imbalance, Market Imbalance, Indicative Match Price, and Matched Volume.

(A) Auction Imbalance Information is updated at least every second, unless there is no change to the information.

(B) Order entry eligibility during an Auction Imbalance Freeze is based on the most recently-updated Auction Imbalance Information.

(C) The Corporation disseminates Auction Imbalance Information via a proprietary data feed during the times specified in this Rule.

- (5) "Auction NBBO" means an NBBO that is used for purposes of pricing an auction. An NBBO is an Auction NBBO when (i) there is an NBB above zero and NBO for the security and (ii) the NBBO is not crossed. In addition, for the Core Open Auction, an NBBO is an Auction NBBO when the midpoint of the NBBO when multiplied by a designated percentage, is greater than or equal to the spread of that NBBO. The designated percentage will be determined by the Corporation from time to time upon prior notice to ETP Holders.
- (6) "Auction Ranking" means how orders on the side of an Imbalance are ranked for allocation in an auction. Such orders will be ranked in price-time priority under Rule 7.36(c) - (g) consistent with the priority ranking associated with each order, provided that:
- (A) Limit Orders, LOO Orders, and LOC Orders will be ranked based on their limit price and not the price at which they would participate in the auction;
 - (B) MOO Orders and MOC Orders will be ranked Priority 1 - Market Orders;
 - (C) LOO Orders and LOC Orders will be ranked Priority 2 - Display Orders; and
 - (D) Orders on the side of the Imbalance are not guaranteed to participate in an auction.
- (7) "Imbalance" means the number of buy (sell) shares that cannot be matched with sell (buy) shares at the Indicative Match Price at any given time and unless otherwise specified, includes the non-displayed quantity of Reserve Orders eligible to participate in the applicable auction.
- (A) "Total Imbalance" means the net Imbalance of all buy (sell) shares at the Indicative Match Price for all orders that are eligible to trade in the applicable auction.
 - (B) "Market Imbalance" means the imbalance of any remaining buy (sell) Market Orders that are not matched for trading in the applicable auction.
- (8) "Indicative Match Price" means the best price at which the maximum volume of shares, including the non-displayed quantity of Reserve Orders, is tradable in the applicable auction, subject to the Auction Collars.
- (A) If there are two or more prices at which the maximum volume of shares is tradable, the Indicative Match Price will be the price closest to the Auction Reference Price, specified below, provided that the Indicative Match Price will not be lower (higher) than the price of an order to buy (sell) ranked Priority 2 - Display Orders that was eligible to participate in the applicable auction.

Auction

Auction Reference Price

Early Open Auction	Prior trading day's Official Closing Price
Core Open Auction	The midpoint of the Auction NBBO or, if the Auction NBBO is locked, the locked price. If there is no Auction NBBO, the prior trading day's Official Closing Price
Closing Auction	Last consolidated round-lot price of that trading day and, if none, the prior trading day's Official Closing Price
Trading Halt Auction	Last consolidated round-lot price of that trading day and, if none, the prior trading day's Official Closing Price
IPO Auction	Zero, unless the Corporation is provided with a price for the security

(B) If there are two prices at which the maximum volume of shares is tradable and both prices are equidistant to the Auction Reference Price, the Indicative Match Price will be the Auction Reference Price.

(C) If the Matched Volume for an auction consists of buy and sell Market Orders only, the Indicative Match Price will be:

(i) For the Core Open Auction, the Auction Reference Price;

(ii) For the Closing Auction, the midpoint of the Auction NBBO as of the time the auction is conducted, provided that if the Auction NBBO is locked, it will be the locked price, and if there is no Auction NBBO, it will be the Auction Reference Price.

(iii) For the Trading Halt Auction, the Auction Reference Price.

(D) If there is a BBO, but no Matched Volume, the Indicative Match Price and Total Imbalance for the Auction Imbalance Information will be:

(i) The side of the BBO that has the higher volume; or

(ii) If the volume of the BB equals the volume of the BO, the BB.

(E) If there is no Matched Volume and Market Orders on only one side of the market, the Indicative Match Price for the Auction Imbalance Information will be zero.

(9) "Matched Volume" means the number of buy and sell shares that can be matched at the Indicative Match Price at any given time.

(10) "Auction Collar" means the price collar thresholds for the Indicative Match Price for the Core Open Auction, Trading Halt Auction, or Closing Auction.

(A) The Auction Collar will be based on a price that is a specified percentage away from the Auction Reference Price for the applicable auction. The upper (lower) boundary of the Auction Collar is the Auction Reference Price increased (decreased) by the specified percentage, truncated to the MPV. The specified percentages for price collar thresholds are:

Auction Reference Price	Core Open Auction** and Trading Halt Auction*	
	Auction*	Closing Auction
\$25.00 or less	10%	5%
Greater than \$25.00 but less than or equal to \$50.00	5%	2%
Greater than \$50.00	3%	1%

*The price collar thresholds specified in this paragraph applicable to Trading Halt Auctions are in effect until SR-NYSEArca-2016-130 is both approved and operative.

**If as of 9:00 a.m. Eastern Time, the E-mini S&P 500 Futures are +/- 2% from the prior day's closing price of the E-mini S&P 500 Futures, or if the Corporation determines that it is necessary or appropriate for the maintenance of a fair and orderly market, the Auction Collar for the Core Open Auction will be 10%, regardless of the Auction Reference Price.

(B) An Indicative Match Price that is equal to or higher (lower) than the upper (lower) boundary of the Auction Collar will be adjusted to one MPV below (above) the upper (lower) boundary of the Auction Collar and orders eligible to participate in the applicable auction will trade at the collared Indicative Match Price.

(C) Limit Orders to buy (sell) with a limit price at or above (below) the upper (lower) Auction Collar will be included in the Auction Imbalance Information at the collared Indicative Match Price and will be eligible to trade at the Indicative Match Price.

(D) Limit Orders to buy (sell) with a limit price below (above) the lower (upper) Auction Collar will not be included in the Auction Imbalance Information and will not participate in the applicable auction.

(b) Early Open Auction. The Early Open Auction will be conducted at the beginning of the Early Trading Session. Only Limit Orders in Auction-Eligible Securities designated for the Early Trading Session will be eligible to participate in the Early Open Auction. If there is no Matched Volume for the Early Open Auction, the NYSE Arca Marketplace will open the Early Trading Session with a quote.

- (1) Thirty minutes before the Early Trading Session begins, the NYSE Arca Marketplace will begin disseminating the Early Open Auction Imbalance Information. The non-displayed quantity of Reserve Orders eligible to participate in the Early Open Auction will not be included in the Matched Volume or Total Imbalance until the Early Open Auction Imbalance Freeze begins.
- (2) The Early Open Auction Imbalance Freeze will begin one minute before the scheduled time for the Early Open Auction.
- (3) Limit Orders eligible to trade in the Early Open Auction will be matched and traded at the Indicative Match Price following Auction Ranking as of the time of the Early Open Auction.
- (4) The Early Open Auction trade will be designated with a modifier to identify it as an extended hour .T trade.

(c) Core Open Auction. The Core Open Auction will be conducted at the beginning of the Core Trading Session. Orders in Auction-Eligible Securities that include a designation for the Core Trading Session and that are eligible to participate in an auction will be eligible to participate in the Core Open Auction.

- (1) The NYSE Arca Marketplace will begin publishing Core Open Auction Imbalance Information at 8:00 a.m. Eastern Time. The non-displayed quantity of Reserve Orders that are eligible to participate in the Core Open Auction will not be included in the Matched Volume, Total Imbalance, or Market Imbalance until the Core Open Auction Imbalance Freeze begins.
- (2) Beginning one minute before the schedule time for the Core Open Auction, requests to cancel and requests to cancel and replace MOO Orders and LOO Orders will be rejected.
- (3) The Core Open Auction Imbalance Freeze will begin five seconds before the scheduled time for the Core Open Auction. Order entry and cancellation will be processed during the Core Open Auction Imbalance Freeze as follows:
 - (A) MOO Orders and LOO Orders will be rejected.
 - (B) Market Orders (other than MOO Orders) and Limit Orders designated for the Core Trading Session only will be accepted but will not be included in the calculation of the Indicative Match Price or the Core Open Auction Imbalance

Information. Such orders will participate in the Core Open Auction only to offset the Imbalance that is remaining after all orders entered before the Core Open Auction Imbalance Freeze, including the non-display quantity of Reserve Orders, are allocated in the Core Open Auction, and will be allocated in price-time priority under Rule 7.36(c) - (g) consistent with the priority ranking associated with each order.

(C) Requests to cancel and requests to cancel and replace Market Orders (other than MOO Orders) and Limit Orders designated for the Core Trading Session only will be accepted but not processed until after the Core Open Auction concludes.

(D) All other order instructions will be accepted.

(4) All orders eligible to trade in the Core Open Auction will be matched and traded at the Indicative Match Price following Auction Ranking as of the time of the Core Open Auction.

(5) The Core Open Auction trade will be designated with a modifier to identify it as a Core Open Auction trade.

(d) Closing Auction. The Closing Auction will be conducted at the end of the Core Trading Session. Orders in Auction-Eligible Securities that include a designation for the Core Trading Session and that are eligible to participate in an auction will be eligible to participate in the Closing Auction.

(1) The NYSE Arca Marketplace will begin publishing Closing Auction Imbalance Information one hour before the scheduled time for the Closing Auction. The non-displayed quantity of Reserve Orders that are eligible to participate in the Closing Auction will not be included in the Matched Volume, Total Imbalance, or Market Imbalance until the Closing Auction Imbalance Freeze begins.

(2) The Closing Auction Imbalance Freeze will begin one minute before the scheduled time for the Closing Auction. Order entry and cancellation will be processed during the Closing Auction Imbalance Freeze as follows:

(A) LOC Orders and MOC Orders that are on the same side of the Imbalance, would flip the Imbalance, or would create a new Imbalance will be rejected.

(B) Requests to cancel and requests to cancel and replace MOC Orders and LOC Orders will be rejected.

(C) All other order instructions will be accepted.

(3) All orders eligible to trade in the Closing Auction will be matched and traded at the Indicative Match Price following Auction Ranking as of the time of the Closing Auction.

(4) The Closing Auction trade will be designated with a modifier to identify it as a Closing Auction trade. The Corporation will report an Official Closing Price, as defined in Rule 1.1(gg)(1), for all securities that trade on the NYSE Arca Marketplace, provided that an Official Closing Price will not be reported for a security if there were no consolidated last-sale eligible trades in such security on a trading day. Official Closing Prices determined under Rule 1.1(gg)(2) - (4) will be disseminated as provided for in that rule.

(e) Trading Halt Auction. A Trading Halt Auction will be conducted to re-open trading in an Auction-Eligible Security following a halt or pause of trading in that security in either the Early Trading Session, Core Trading Session, or Late Trading Session, as applicable. Orders that include a designation for the applicable trading session and are eligible to participate in an auction will be eligible to participate in a Trading Halt Auction.

(1) Immediately after trading in an Auction-Eligible Security is halted or paused, the NYSE Arca Marketplace will begin publishing Trading Halt Auction Imbalance Information.

(2) After trading in a security has been halted or paused, the NYSE Arca Marketplace will disseminate the estimated time at which trading in that security will re-open (the "Re-Opening Time").

(3) During a trading halt or pause in an Auction-Eligible Security, entry and cancellations of orders eligible to participate in the Trading Halt Auction will be processed as provided for in Rule 7.18(c).

(4) All orders eligible to trade in a Trading Halt Auction will be matched and traded at the Indicative Match Price following Auction Ranking as of the Re-Opening Time.

(5) A Trading Halt Auction that occurs during the Early Trading Session or Late Trading Session will be designated with a modifier to identify it as an extended hour .T trade. A Trading Halt Auction that occurs during the Core Trading Session will be designated with a modifier to identify it as a halt auction.

(f) IPO Auction. An IPO Auction will be conducted during the Core Trading Session on the first day of trading for any security, including a Derivative Securities Product, for which NYSE Arca is the primary listing market, excluding transfers. An IPO Auction will follow the processing rules of a Core Open Auction, provided that:

(1) NYSE Arca Marketplace will specify the time that an IPO Auction will be conducted.

(2) There will be no Auction Imbalance Freeze, Auction Collars, or restrictions on the cancellation of orders for an IPO Auction. Limit Orders designated IOC, Limit Non-Displayed Orders, MPL Orders, Tracking Orders, Market Pegged Orders, Discretionary Pegged Orders, Cross Orders, Retail Orders, and Retail Price

Improvement Orders will be rejected until after the Auction Processing Period for the IPO Auction has concluded.

(3) An IPO Auction will not be conducted if there are only Market Orders on both sides of the market.

(g) Order Processing during an Auction Processing Period. New orders received during the Auction Processing Period will be accepted but will not be processed until after the Auction Processing Period. For purposes of paragraphs (g) and (h) of this rule, an "order instruction" refers to a request to cancel, cancel and replace, or modify an order. During the Auction Processing Period, order instructions will be processed as follows:

(1) An order instruction received during the Auction Processing Period will not be processed until after the Auction Processing Period if it relates to an order that was received before the Auction Processing Period. Any subsequent order instructions relating to such order will be rejected.

(2) An order instruction received during the Auction Processing Period will be processed on arrival if it relates to an order that was received during the Auction Processing Period.

(h) Transition to Continuous Trading. After auction processing concludes, including if there is no Matched Volume and an auction is not conducted or when transitioning from one trading session to another, the Exchange will transition to continuous trading following an auction or when transitioning from one trading session to another as follows:

(1) Orders that are no longer eligible to trade, either because they are Auction-Only Orders or not eligible for the next trading session, will expire.

(2) During the transition to continuous trading, order instructions will be processed as follows:

(A) An order instruction received during the Auction Imbalance Freeze, the transition to continuous trading, or the Auction Processing Period under paragraph (g)(1) of this Rule will be processed in time sequence with the processing of orders as specified in paragraphs (h)(3)(A) or (B) of this Rule if it relates to an order that was received before the Auction Processing Period. Any subsequent order instructions relating to such order will be rejected.

(B) An order instruction received during the transition to continuous trading will be processed on arrival if it relates to an order that was entered during the Auction Processing Period or the transition to continuous trading.

(3) When transitioning to continuous trading from a prior trading session or following an auction, orders will be processed as follows:

(A) A quote will be published based on previously-live orders. For the Core Open Auction, Trading Halt Auction, and Closing Auction, "previously-live orders" are unexecuted orders that were eligible to trade in the trading session both before and after the transition or auction. For the IPO Auction, "previously-live orders" are unexecuted orders that were entered before the IPO Auction Processing Period began.

- (i) Before publishing a quote when transitioning from a prior trading session or following the Core Open Auction or Closing Auction: (1) previously-live orders that are marketable will be traded, routed, or cancelled in time sequence; (2) a new quote will be published only if different from the last-published quote; and (3) if the new published quote is worse than the previously-published quote and would lock or cross the PBBO, the display price of Limit Orders will be adjusted consistent with Rule 7.31(a)(2)(C).
- (ii) Before publishing a quote following a Trading Halt Auction or IPO Auction: (1) previously-live Limit Orders that are designated with a Proactive if Locked/Crossed Modifier or that would be the result of reserve interest replenishing the fully-executed display quantity of a routable Reserve Order will route, if marketable against protected quotations on Away Markets; (2) for the Trading Halt Auction only, previously-live orders that are marketable against other orders in the NYSE Arca Book and that would not trade through a protected quotation will trade; and (3) the display price of all other orders that are marketable against a protected quotation on an Away Market will be adjusted consistent with Rule 7.31(a)(2)(C).

(B) Next, unexecuted orders that (1) were not eligible to trade in the prior trading session, (2) for a Trading Halt Auction, were received during a halt or pause, (3) for the Early Open Auction, were received before the Early Open Auction Processing Period, or (4) were received during the Auction Processing Period will be assigned a new working time at the end of the Auction Processing Period in time sequence relative to one another based on original entry time and will be processed in time sequence. Following an IPO Auction, previously-live orders that did not trade in the auction will retain the working time assigned at original entry time.

(C) When processing orders, the display price and working price of an order will be adjusted based on the PBBO or NBBO, as provided for in Rule 7.31.

When transitioning to continuous trading, the display price and working price of Day ISOs will be adjusted in the same manner as Arca Only Orders until the Day ISO is either traded in full or displayed at its limit price.

(i) Whenever in the judgment of the Corporation the interests of a fair and orderly market so require, the Corporation may adjust the timing of or suspend the auctions set forth in this Rule with prior notice to ETP Holders.

(j) For purposes of Rule 611(b)(3) of Regulation NMS, the Early Open Auction, Core Open Auction, Closing Auction, Trading Halt Auction, and IPO Auction are single-priced opening, reopening, or closing transactions and may trade through any other Away Market's Manual or Protected Quotations.

Commentary:

.01 During a Short Sale Period (as defined in Rule 7.16(f)):

- (a) For purposes of pricing an auction and ranking orders for allocation in an auction, sell short Market Orders that are adjusted to a Permitted Price (as defined in Rule 7.16(f)) will be processed as Limit Orders ranked Priority 2 - Display Orders and will not be included in the Market Imbalance.
- (b) Sell short orders that are included in Auction Imbalance Information, but are not eligible for continuous trading before the applicable auction, will be adjusted to a Permitted Price as the NBB moves both up and down.

Rule 7.36. Order Ranking and Display

(a) Definitions for purposes of Rule 7 Equities Trading:

- (1) "Display price" means the price at which a Limit Order is displayed, which may be different from the limit price or working price of the order.
- (2) "Limit price" means the highest (lowest) specified price at which a Limit Order to buy (sell) is eligible to trade.
- (3) "Working price" means the price at which an order is eligible to trade at any given time, which may be different from the limit price or display price of the order.
- (4) "Working time" means the effective time sequence assigned to an order for purposes of determining its priority ranking.

(b) *Display*. The Exchange displays all non-marketable Limit Orders, unless the order or modifier instruction specifies that all or a portion of the order is not to be displayed.

- (1) An order is considered displayed for ranking purposes if the price, side, and size of the order are disseminated via a market data feed. Odd-lot sized Limit Orders and the displayed portion of a Reserve Orders are considered displayed for ranking purposes.
- (2) Except as otherwise permitted by Rule 7.7, all non-marketable displayed Limit Orders will be displayed on an anonymous basis.

(3) The best-ranked non-marketable displayed Limit Order(s) to buy and the best ranked non-marketable displayed Limit Order(s) to sell in the NYSE Arca Book and the aggregate displayed size of such orders associated with such prices will be collected and made available to quotation vendors for dissemination pursuant to the requirements of Rule 602 of Regulation NMS under the Exchange Act. If non-marketable odd-lot sized orders at multiple price levels can be aggregated to equal at least a round lot, such odd-lot sized orders will be displayed as the best ranked displayed orders to sell (buy) at the least aggressive price at which such odd-lot sized orders can be aggregated to equal at least a round lot.

(c) *Ranking*. All non-marketable orders are ranked and maintained in the NYSE Arca Book according to price-time priority in the following manner: (1) price; (2) priority category; (3) time; and (4) ranking restrictions applicable to an order or modifier condition.

(d) *Price*. All orders are ranked based on the working price of an order. Orders to buy are ranked from highest working price to lowest working price. Orders to sell are ranked from lowest working price to highest working price. If the working price of an order changes, the price priority of the order changes.

(e) *Priority Categories*. At each price point, all orders are assigned a priority category. If at a price point there are no orders in a priority category, the next priority category has first priority.

(1) Priority 1 - Market Orders. Unexecuted Market Orders have priority over all other same-side orders with the same working price.

(2) Priority 2 - Display Orders. Non-marketable Limit Orders with a displayed working price have second priority.

(3) Priority 3 - Non-Display Orders. Non-marketable Limit Orders for which the working price is not displayed, including reserve interest of Reserve Orders, have third priority.

(4) Priority 4 - Tracking Orders. Tracking Orders have fourth priority.

(f) *Time*. Within each priority category, orders are ranked based on time priority.

(1) An order is assigned a working time based on its original entry time, which is the time when an order is first placed in the NYSE Arca Book.

(A) An order that is fully routed to an Away Market on arrival is not assigned a working time unless and until any unexecuted portion of the order returns to the NYSE Arca Book.

(B) For an order that is partially routed to an Away Market on arrival, the portion that is not routed is assigned a working time. If any unexecuted portion of the order returns to the NYSE Arca Book and joins any remaining resting portion of the original order, the returned portion of the order is assigned the same working time as the resting portion of the order. If the resting portion of the original order has already executed and any unexecuted portion of the order returns to the NYSE Arca Book, the returned portion of the order is assigned a new working time.

(2) An order is assigned a new working time any time the working price of an order changes.

(3) An order is assigned a new working time if the size of an order increases. An order retains its working time if the size of the order is decreased.

(4) An order retains its working time if the order marking is changed from: (A) sell to sell short; (B) sell to sell short exempt; (C) sell short to sell; (D) sell short to sell short exempt; (E) sell short exempt to sell; and (F) sell short exempt to sell short.

(g) *Ranking Restrictions.* The Exchange will enforce ranking restrictions applicable to specific order or modifier instructions as provided for in Rules 7.31 and 7.44.

Rule 7.37. Order Execution and Routing

(a) *Order Execution.* An incoming marketable order will be matched for execution against contra-side orders in the NYSE Arca Book according to the price-time priority ranking of the resting orders, subject to the following.

(1) Orders that are routed to an Away Market on arrival will not be assigned a working time or matched for execution on the NYSE Arca Book.

(2) Unless an order qualifies for an exception from the Order Protection Rule in Rule 611 of Regulation NMS, an order will not trade at prices that trade through a protected quotation.

(3) Limit Orders will be executed at prices that are equal to or better than the PBBO.

(4) Market Orders and Inside Limit Orders will be executed at prices that are equal to or better than the NBBO.

(b) *Routing.* Unless an order has an instruction not to route, after being matched for execution with any contra-side orders in the NYSE Arca Book pursuant to paragraph (a) of this Rule, marketable orders will be routed to Away Market(s).

(1) An order that cannot meet the pricing parameters of paragraph (a) of this Rule may be routed to Away Market(s) before being matched for execution against contra-side orders in the NYSE Arca Book.

- (2) If an order with an instruction not to route would trade through or lock or cross a protected quotation and is not eligible for an exception to Rule 610 or 611 of Regulation NMS, it will cancel, re-price, or be held undisplayed on the NYSE Arca Book, as provided for in Rules 7.31 and 7.44.
- (3) Orders eligible to route will be routed to all available Away Markets unless the order includes an instruction to bypass Away Markets that are not displaying protected quotations.
- (4) Limit Orders that are routed to Away Market(s) may be routed to more than one price level, up (down) to the limit price of an order to buy (sell).
- (5) Except for orders routed to the primary listing market on arrival pursuant to Rule 7.34 or designated to route to the primary listing market pursuant to Rule 7.31, orders routed to Away Market(s) will be sent as IOC ISOs.
- (6) Any order or portion thereof that has been routed is not eligible to trade on the NYSE Arca Book, unless all or a portion of the order returns unexecuted.
- (7) Requests to cancel an order that has been routed will be processed as follows:
- (A) For orders that are eligible to be matched for execution against orders in the NYSE Arca Book, the request to cancel will not be processed unless and until all or a portion of the order returns unexecuted.
- (B) For orders routed to the primary listing market on arrival pursuant to Rule 7.34 or designated to route to the primary listing market pursuant to Rule 7.31, the request to cancel will be routed to the primary listing market.
- (C) For MOC Orders or LOC Orders in NYSE or NYSE MKT-listed securities, requests to cancel or reduce in size that are electronically entered after the times specified in NYSE Rule 123C(3)(b) and NYSE MKT Rule 123C(3)(b) - Equities and Supplementary Materials .40 to those rules will be rejected.
- (8) An order marked "short" when a short sale price test restriction is in effect will not be routed.
- (c) After executing with eligible contra-side interest on the NYSE Arca Book and/or returning unexecuted after routing to an Away Market(s), any unexecuted non-marketable portion of an order will be ranked consistent with Rule 7.36.
- (d) *Use of Data Feeds.* The Exchange uses the following data feeds for the handling, execution, and routing of orders, as well as for regulatory compliance:

Market Center	Primary Source	Secondary Source
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BATS Exchange, Inc.	Direct Feed	SIP Data Feed
BATS Y-Exchange, Inc.	Direct Feed	SIP Data Feed
Chicago Stock Exchange, Inc.	SIP Data Feed	n/a
EDGA Exchange, Inc.	Direct Feed	SIP Data Feed
EDGX Exchange, Inc.	Direct Feed	SIP Data Feed
Investors' Exchange, LLC	SIP Data Feed	n/a
NASDAQ OMX BX LLC	Direct Feed	SIP Data Feed
NASDAQ OMX PHLX LLC	Direct Feed	SIP Data Feed
NASDAQ Stock Market LLC	Direct Feed	SIP Data Feed
National Stock Exchange, LLC	SIP Data Feed	n/a
New York Stock Exchange LLC	Direct Feed	SIP Data Feed
NYSE MKT LLC	Direct Feed	SIP Data Feed

(1) The Exchange receives data feeds directly from broker dealers for purposes of routing interest to Away Markets that are not displaying protected quotations.

(e) Locking or Crossing Quotations in NMS Stocks.

(1) Definitions. For purposes of this Rule, the following definitions shall apply:

(A) The term Crossing Quotation shall mean the display of a bid for an NMS stock during regular trading hours at a price that is higher than the Best Protected Offer for such NMS stock, or the display of an offer for an NMS stock during regular trading hours at a price that is lower than the Best Protected Bid for such NMS stock.

(B) The term Locking Quotation shall mean the display of a bid for an NMS stock during regular trading hours at a price that equals the Best Protected Offer for

such NMS stock, or the display of a offer for an NMS stock during regular trading hours at a price that equals the Best Protected Bid for such NMS stock.

(2) Prohibition. Except for quotations that fall within the provisions of paragraph (e)(3) of this Rule, the Exchange and members of the Exchange shall reasonably avoid displaying, and shall not engage in a pattern or practice of displaying, any quotations that lock or cross the PBBO.

(3) Locked or Crossed Market Exceptions. The prohibition against Locking and Crossing Quotations in paragraph (e)(2) of this Rule will not apply when:

(A) The Locking or Crossing Quotation was displayed at a time when the Trading Center displaying the locked or crossed quotation was experiencing a failure, material delay, or malfunction of its systems or equipment;

(B) The Locking or Crossing Quotation was displayed at a time when the Best Protected Bid was higher than the Best Protected Offer in the NMS stock; or

(C) The Locking or Crossing Quotation was an Automated Quotation, and the ETP Holder displaying such Automated Quotation simultaneously routed an ISO to execute against the full displayed size of any locked or crossed Protected Quotation.

(f) Exceptions to the Order Protection Rule

(1) Self-Help Exception. The self-help exception will apply to any trade-through of a Protected Quotation displayed by a Trading Center that is experiencing a failure, material delay, or malfunction of its systems or equipment. In these instances, Protected Quotations may be bypassed by:

(A) notifying the non-responding Trading Center immediately after (or at the same time as) electing self-help; and

(B) following the established NYSE Arca policies and procedures for electing the self-help exception.

(2) Intermarket Sweep Order Exception.

(A) NYSE Arca will accept ISO orders to be executed in the NYSE Arca Book against orders at NYSE Arca's best bid or best offer without regard to whether the execution would trade through another market's Protected Quotation.

(B) If an ISO is marked as "Immediate-or-Cancel," any portion of the order not executed upon arrival will be automatically cancelled. If an ISO is not marked as "Immediate-or-Cancel," any balance of the order will be displayed by NYSE Arca

without regard to whether that display would lock or cross another market center if the User has complied with Rule 7.37(e)(3)(C).

- (3) **Single-Price Openings, Reopenings, and Closing Transactions.** A transaction that constituted the trade through is excepted from the Order Protection Rule if it was a single-priced opening, reopening, or closing transaction by NYSE Arca
- (4) **Benchmark Trades.** NYSE Arca may execute volume-weighted average price ("VWAP") orders, as well as other types of orders that are not priced with reference to the quoted price of the NMS stock at the time of execution and for which the material terms were not reasonably available at the time the commitment to execute the order was made. Benchmark Trades may not trade through the NYSE Arca Book.
- (5) **Contingent Order Exemption.** Transactions Qualifying as "Contingent Trades" may trade-through both Manual and Protected Quotes. Transactions executed under this exemption may not trade through the NYSE Arca Book. A "Qualified Contingent Trade" is a transaction consisting of two or more component orders, executed as agent or principal, where:
- (A) at least one component order is in an NMS stock;
 - (B) all components are effected with a product or price contingency that either has been agreed to by the respective counterparties or arranged for by a broker-dealer as principal or agent;
 - (C) the execution of one component is contingent upon the execution of all other components at or near the same time;
 - (D) the specific relationship between the component orders (e.g., the spread between the prices of the component orders) is determined at the time the contingent order is placed;
 - (E) the component orders bear a derivative relationship to one another, represent different classes of shares of the same issuer, or involve the securities of participants in mergers or with intentions to merge that have been announced or since cancelled; and
 - (F) the Exempted NMS Stock Transaction is fully hedged (without regard to any prior existing position) as a result of the other components of the contingent trade.

Rule 7.38. Odd and Mixed Lots

- (a) *Order Types.* Rules 7.31 and 7.44 specify whether an order may not be entered as an odd lot or mixed lot.

(b) *Ranking and Execution.* Round lot, mixed lot and odd lot orders are treated in the same manner in the NYSE Arca Marketplace, provided that:

- (1) The working price of an odd lot order will be adjusted both on arrival and when resting on the NYSE Arca Book based on the limit price of the order. If the limit price of an odd lot order to buy (sell) is at or below (above) the PBO (PBB), it will have a working price equal to the limit price. If the limit price of an odd lot order to buy (sell) is above (below) the PBO (PBB), it will have a working price equal to the PBO (PBB). If the limit price of an odd lot order to buy (sell) is above (below) the PBO (PBB) and the PBBO is crossed, it will have a working price equal to the PBB (PBO).
- (2) For an order that is partially routed to an Away Market on arrival, if any returned quantity of the order joins resting odd-lot quantity of the original order and the returned and resting quantity, either alone or together with other odd-lot orders, would be displayed as a new BBO, both the returned and resting quantity will be assigned a new working time.

Rule 7.39. Adjustment of Open Orders

The NYSE Arca Marketplace will automatically adjust the price and/or size of round and odd lot Open Orders, as defined in NYSE Arca Equities Rule 7.31, in all NYSE Arca Marketplace eligible securities (unless instructed otherwise by the entering party) resident in the system in response to issuer corporate actions (i.e. dividend payment or distribution, stock split, mergers and acquisitions), as follows:

- (a) Sell Orders--Sell Orders in the system shall not be adjusted by the Corporate Action Processing ("CAP") System and must be modified, if desired, by the entering party, except for reverse splits where such sell side orders shall be purged from the system.
- (b) Buy Orders--Buy side orders shall be adjusted by the CAP System based on the particular corporate action impacting the security as set forth below:
 - (1) Cash Dividends: Buy side order prices shall be first reduced by the dividend amount and the resulting price will be rounded to the nearest penny.
 - (2) Stock Dividends and Stock Splits: Buy side order prices shall be determined by first rounding up the dollar value of the stock dividend or split to the nearest penny. The resulting amount shall then be subtracted from the price of the buy order. The size of the order shall be adjusted by first, (A) multiplying the size of the original order by the numerator of the ratio of the dividend split, then (B) dividing that result by the denominator of the ratio of the dividend split, then (C) rounding that result to the next lowest share.
 - (3) Dividends Payable in Either Cash or Securities at the Option of the Stockholder: Buy side order prices shall be reduced by the dollar value of either the cash or

securities, whichever is greater. The dollar value of the cash shall be determined using the formula in paragraph (1) above, while the dollar value of the securities shall be determined using the formula in paragraph (2) above. If the stockholder opts to receive securities, the size of the order shall be increased pursuant to the formula in subparagraph (2) above.

(4) Combined Cash and Stock Dividends/Split: In the case of a combined cash dividend and stock split/dividend, the cash dividend portion shall be calculated first as per section (1) above, and stock portion thereafter pursuant to sections (2) and/or (3) above.

(5) Reverse Splits: All orders (buy and sell) shall be cancelled and returned to the entering party.

(c) Open Orders that are adjusted by the CAP System pursuant to the above rules, and that thereafter continuously remain in the system, shall retain the time priority of their original entry.

(d) In the event a corporate action is identified by the Corporation at a time in which an adjustment to all affected open buy orders could not be made, the Corporation will cancel all such orders and notify the entering party(ies).

Rule 7.40. Trade Execution and Reporting

Trade Execution and Reporting

Executions occurring as a result of orders matched against the NYSE Arca Book shall be reported by the Corporation to an appropriate consolidated transaction reporting system. Executions occurring as a result of orders routed away from the NYSE Arca Marketplace shall be reported to an appropriate consolidated transaction reporting system by the relevant reporting market center. The NYSE Arca Marketplace shall promptly notify Users of all executions of their orders as soon as such executions take place.

Executions occurring as a result of orders matched against the NYSE Arca Book shall be reported by the Corporation to an appropriate consolidated transaction reporting system. Executions occurring as a result of orders routed away from the NYSE Arca Marketplace shall be reported to an appropriate consolidated transaction reporting system by the relevant reporting market center. The NYSE Arca Marketplace shall promptly notify Users of all executions of their orders as soon as such executions take place. Executions that occur through a Protected Quotation shall be marked with the appropriate designation as defined by the transaction reporting plans.

Rule 7.41. Clearance and Settlement

(a) The details of each transaction executed within the NYSE Arca Marketplace shall be automatically processed for clearance and settlement on a locked-in basis. ETP Holders

need not separately report their transactions to the Corporation for trade comparison purposes. All transactions effected by a Sponsored Participant shall be cleared and settled, using the relevant Sponsoring ETP Holder's mnemonic (or its clearing firm's mnemonic as applicable).

(b) Except as provided herein, transactions executed on the NYSE Arca Marketplace will be processed anonymously. The transaction reports will indicate the details of the transaction, but will not reveal contra party identities. The anonymity process is not available for Directed Orders.

(c) The NYSE Arca Marketplace will reveal the identity of an ETP Holder or ETP Holder's clearing firm in the following circumstances:

- (1) for regulatory purposes or to comply with an order of a court or arbitrator;
- (2) when the National Securities Clearing Corporation ("NSCC") ceases to act for an ETP Holder or the ETP Holder's clearing firm; and NSCC determines not to guarantee the settlement of the ETP Holder's trades; or
- (3) on risk management reports provided to the contra party of the ETP Holder or ETP Holder's clearing firm each day by 4:00 p.m. (E.S.T.) which disclose trading activity on an aggregate dollar value basis.

(d) The NYSE Arca Marketplace will reveal to an ETP Holder, no later than the end of the day on the date an anonymous trade was executed, when that ETP Holder submits an order that has executed against an order submitted by that same ETP Holder.

(e) In order to satisfy the ETP Holder's record keeping obligations under SEC Rules 17a-3(a)(1) and 17a-4(a), (i) the NYSE Arca Marketplace shall, with the exception of those circumstances described below in (ii), retain for the period specified in Rule 17a-4(a) the identity of each ETP Holder that executes an anonymous transaction described in paragraph (b) of this rule, and (ii) ETP Holders shall retain the obligation to comply with SEC Rules 17-3(a)(1) and 17-4(a) whenever they possess the identity of their contra party. In either case, the information shall be retained in its original form or a form approved under Rule 17a-6.

Rule 7.42. Limitation of Liability

(a) Neither the Corporation, any affiliate of the Corporation, NYSE Arca, L.L.C., nor any affiliate of the NYSE Arca, L.L.C., shall be liable to Users for any loss, damages, claim or expense:

- (1) growing out of the use or enjoyment of the NYSE Arca Marketplace; or
- (2) arising from or occasioned by any inaccuracy, error or delay in, or omission of or from the collection, calculation, compilation, maintenance, reporting or

dissemination of any information derived from the NYSE Arca Marketplace, resulting either from any act or omission by the Corporation, any affiliate of the Corporation, NYSE Arca, L.L.C., or any affiliate of NYSE Arca, L.L.C., or from any act condition or cause beyond the reasonable control of the Corporation, any affiliate of the Corporation, NYSE Arca, L.L.C., or any affiliate of NYSE Arca, L.L.C., including, but not limited to, flood, extraordinary weather conditions, earthquake or other acts of God, fire, war, insurrection, riot, labor dispute, accident, action of government, communications or power failure, or equipment or software malfunction.

(b) Each ETP Holder expressly agrees, in consideration of the issuance of the ETP, to release and discharge the Corporation, any affiliate of the Corporation, NYSE Arca, L.L.C., and any affiliate of the NYSE Arca, L.L.C., and any officers, directors, employees and agents thereof, of and from all claims and damages arising from their acceptance and use of the NYSE Arca Marketplace.

(c) Neither the Corporation, any affiliate of the Corporation, NYSE Arca, L.L.C., nor any affiliate of the NYSE Arca, L.L.C., makes any express or implied warranties or conditions to Users as to results that any person or party may obtain from the NYSE Arca Marketplace for trading or for any other purpose, and all warranties of merchantability or fitness for a particular purpose or use, title, and non-infringement with respect to the NYSE Arca Marketplace are hereby disclaimed.

Rule 7.43. Reserved

Rule 7.44. Retail Liquidity Program

(a) Definitions.

- (1) Retail Liquidity Provider. A "Retail Liquidity Provider" or "RLP" is an ETP Holder that is approved by the Exchange under this Rule to act as such and that is required to submit Retail Price Improvement Orders in accordance with this Rule.
- (2) Retail Member Organization. A "Retail Member Organization" or "RMO" is an ETP Holder that is approved by the Exchange under this Rule to submit Retail Orders.
- (3) Retail Order. A "Retail Order" is an agency order or a riskless principal order that meets the criteria of FINRA Rule 5320.03 that originates from a natural person and is submitted to the Exchange by an RMO, provided that no change is made to the terms of the order with respect to price or side of market and the order does not originate from a trading algorithm or any other computerized methodology.

A Retail Order will operate in accordance with Rule 7.44(k). A Retail Order may be an odd lot, round lot, or mixed lot.

- (4) Retail Price Improvement Order. A "Retail Price Improvement Order" or "RPI" consists of non-displayed interest in NYSE Arca-listed securities and UTP Securities, excluding NYSE-listed (Tape A) securities, that would trade at prices better than the PBB or PBO by at least \$0.001 and that is identified as such.
- (A) An RPI remains non-displayed in its entirety, is ranked Priority 3 - Non-Display Orders.
- (B) Exchange systems will monitor whether RPI buy or sell interest is eligible to trade with incoming Retail Orders. An RPI to buy (sell) with a limit price at or below (above) the PBB (PBO) or at or above (below) the PBO (PBB) will not be eligible to trade with incoming Retail Orders to sell (buy), and such an RPI will cancel if a Retail Order to sell (buy) trades with all displayed liquidity at the PBB (PBO) and then attempts to trade with the RPI. If not cancelled, an RPI to buy (sell) with a limit price that is no longer at or below (above) the PBB (PBO) or at or above (below) the PBO (PBB) will again be eligible to trade with incoming Retail Orders.
- (C) For securities to which it is assigned, an RLP may only enter an RPI in its RLP capacity. An RLP is permitted, but not required, to submit RPIs for securities to which it is not assigned, and will be treated as a non-RLP ETP Holder for those particular securities. Additionally, ETP Holders other than RLPs are permitted, but not required, to submit RPIs.
- (D) An RPI may be an odd lot, round lot, or mixed lot. An RPI must be designated as either a Limit Non-Displayed Order or MPL Order, and an order so designated will interact with incoming Retail Orders only and will not interact with either a Type 2- Retail Order Day or Type 2- Retail Order Market that is resting on the NYSE Arca Book.

(b) RMO Qualifications and Application.

- (1) To qualify as an RMO, an ETP Holder must conduct a retail business or route retail orders on behalf of another broker-dealer. For purposes of this Rule, conducting a retail business includes carrying retail customer accounts on a fully disclosed basis
- (2) To become an RMO, an ETP Holder must submit:
- (A) an application form;
- (B) supporting documentation, which may include sample marketing literature, Web site screenshots, other publicly disclosed materials describing the ETP Holder's retail order flow, and any other documentation and information requested by the Exchange in order to confirm that the applicant's order flow would meet the requirements of the Retail Order definition; and

(C) an attestation, in a form prescribed by the Exchange, that substantially all orders submitted as Retail Orders will qualify as such under this Rule.

- (3) After an applicant submits the application form, supporting documentation, and attestation, the Exchange will notify the applicant of its decision in writing.
- (4) A disapproved applicant may: (A) request an appeal of such disapproval by the Exchange as provided in paragraph (i) below; and/or (B) reapply for RMO status 90 days after the disapproval notice is issued by the Exchange.
- (5) An RMO may voluntarily withdraw from such status at any time by giving written notice to the Exchange.
- (6) An RMO must have written policies and procedures reasonably designed to assure that it will only designate orders as Retail Orders if all requirements of a Retail Order are met. Such written policies and procedures must require the ETP Holder to (i) exercise due diligence before entering a Retail Order to assure that entry as a Retail Order is in compliance with the requirements of this Rule, and (ii) monitor whether orders entered as Retail Orders meet the applicable requirements. If an RMO does not itself conduct a retail business but routes Retail Orders on behalf of another broker-dealer, the RMO's supervisory procedures must be reasonably designed to assure that the orders it receives from such other broker-dealer that are designated as Retail Orders meet the definition of a Retail Order. The RMO must (i) obtain an annual written representation, in a form acceptable to the Exchange, from each other broker-dealer that sends the RMO orders to be designated as Retail Orders that entry of such orders as Retail Orders will be in compliance with the requirements of this Rule; and (ii) monitor whether Retail Order flow routed on behalf of such other broker-dealer meets the applicable requirements.

(c) RLP Qualifications. To qualify as an RLP, an ETP Holder must:

- (1) be registered as a Market Maker ("MM") or Lead Market Maker ("LMM");
- (2) demonstrate an ability to meet the requirements of an RLP;
- (3) have the ability to accommodate Exchange-supplied designations that identify to the Exchange RLP trading activity in assigned RLP securities. An ETP Holder may not use such designation for non-RLP trading activity at the Exchange. An ETP Holder will not receive credit for its RLP trading activity for which it does not use its designation; and
- (4) have adequate trading infrastructure and technology to support electronic trading.

(d) RLP Application.

- (1) To become an RLP, an ETP Holder must submit an RLP application form with all supporting documentation to the Exchange.
- (2) After an applicant submits an RLP application form with supporting documentation to the Exchange, the Exchange will notify the applicant of its decision. The Exchange may approve one or more ETP Holders to act as an RLP for a particular security. The Exchange may also approve a particular ETP Holder to act as RLP for one or more securities. Approved RLPs may be assigned securities according to requests made to, and approved by, the Exchange.
- (3) If an applicant is approved by the Exchange to receive RLP status, such applicant must establish connectivity with relevant Exchange systems before such applicant is permitted to trade as an RLP on the Exchange.
- (4) If an applicant is disapproved under this paragraph (d) by the Exchange, the Exchange will provide written notice of its disapproval. The disapproved applicant may: (A) request an appeal of such disapproval by the Exchange as provided in paragraph (i) below; and/or (B) reapply for RLP status 90 days after the disapproval notice is issued by the Exchange.

(e) Voluntary Withdrawal of RLP Status. An RLP may withdraw from its status as an RLP by giving notice to the Exchange. Such withdrawal will become effective when those securities assigned to the withdrawing RLP are reassigned to another RLP. After the Exchange receives the notice of withdrawal from the withdrawing RLP, the Exchange will reassign such securities as soon as practicable, but no later than 30 days after the date said notice is received by the Exchange. In the event the reassignment of securities takes longer than the 30-day period, the withdrawing RLP will have no obligations under this Rule 7.44 and will not be held responsible for any matters concerning its previously assigned RLP securities upon termination of this 30-day period.

(f) RLP Requirements.

- (1) An RLP may only enter a Retail Price Improvement Order electronically and directly into Exchange systems and facilities designated for this purpose and only in an RLP capacity for the securities to which it is assigned as RLP. An RLP entering RPIs in securities to which it is not assigned is not required to satisfy the requirements in this paragraph. An RLP must maintain:
 - (A) a Retail Price Improvement Order that is better than the PBB at least five percent of the trading day for each assigned security; and
 - (B) a Retail Price Improvement Order that is better than the PBO at least five percent of the trading day for each assigned security.
- (2) An RLP's five-percent requirements are calculated by determining the average percentage of time an RLP maintains a Retail Price Improvement Order in each of

its RLP securities during the regular trading day on a daily and monthly basis. The Exchange will determine whether an RLP has met this requirement by calculating the following:

- (A) the "Daily Bid Percentage" is calculated by determining the percentage of time an RLP maintains a Retail Price Improvement Order with respect to the PBB during each trading day for a calendar month;
 - (B) the "Daily Offer Percentage" is calculated by determining the percentage of time an RLP maintains a Retail Price Improvement Order with respect to the PBO during each trading day for a calendar month;
 - (C) the "Monthly Average Bid Percentage" is calculated for each RLP security by summing the security's "Daily Bid Percentages" for each trading day in a calendar month then dividing the resulting sum by the total number of trading days in such calendar month; and
 - (D) the "Monthly Average Offer Percentage" is calculated for each RLP security by summing the security's "Daily Offer Percentage" for each trading day in a calendar month and then dividing the resulting sum by the total number of trading days in such calendar month.
 - (E) Only Retail Price Improvement Orders entered throughout the trading day will be used when calculating whether an RLP is in compliance with its five-percent requirements.
- (3) The five-percent requirement will not be applicable in the first two calendar months an ETP Holder operates as an RLP. The requirement will take effect on the first day of the third consecutive calendar month the ETP Holder operates as an RLP.

(g) Failure of RLP to Meet Requirements.

- (1) If, after the first two months an RLP acts as an RLP, an RLP fails to meet any of the requirements set forth in paragraph (f) of this Rule for any assigned RLP security for three consecutive months, the Exchange may, in its discretion, take one or more of the following actions:
 - (A) revoke the assignment of any or all of the affected securities from the RLP;
 - (B) revoke the assignment of unaffected securities from the RLP; or
 - (C) disqualify the ETP Holder from its status as an RLP.
- (2) Disqualification Determinations. The Exchange will determine if and when an ETP Holder is disqualified from its status as an RLP. One calendar month prior to any such determination, the Exchange will notify an RLP of such impending

disqualification in writing. When disqualification determinations are made, the Exchange will provide a written disqualification notice to the ETP Holder.

- (3) Appeal and/or Reapplication for RLP Status. An RLP that is disqualified under this paragraph (g) may: (A) appeal such disqualification as provided in paragraph (i) below; and/or (B) reapply for RLP status 90 days after the disqualification notice is issued by the Exchange.

(h) Failure of RMO to Abide by Retail Order Requirements.

- (1) If an RMO designates orders submitted to the Exchange as Retail Orders and the Exchange determines, in its sole discretion, that such orders fail to meet any of the requirements set forth in paragraph (a) of this Rule, the Exchange may disqualify an ETP Holder from its status as an RMO.
- (2) Disqualification Determinations. The Exchange will determine if and when an ETP Holder is disqualified from its status as an RMO. When disqualification determinations are made, the Exchange will provide a written disqualification notice to the ETP Holder.
- (3) Appeal and/or Reapplication for RMO Status. An RMO that is disqualified under this paragraph (h) may: (A) appeal such disqualification as provided in paragraph (i) below; and/or (B) reapply for RMO status 90 days after the date of the disqualification notice from the Exchange.

(i) Appeal of Disapproval or Disqualification.

- (1) If an ETP Holder disputes the Exchange's decision to disapprove it under Rule 7.44(b) or (d) or disqualify it under Rule 7.44(g) or (h), the ETP Holder ("appellant") may request, within five business days after notice of the decision is issued by the Exchange, that the Retail Liquidity Program Panel ("RLP Panel") review the decision to determine if it was correct.
- (A) In the event an ETP Holder is disqualified from its status as an RLP pursuant to paragraph (g) of this Rule, the Exchange will not reassign the appellant's securities to a different RLP until the RLP Panel has informed the appellant of its ruling.
- (2) The RLP Panel will consist of the Exchange's Chief Regulatory Officer ("CRO"), or a designee of the CRO, and two qualified Exchange employees.
- (3) The RLP Panel will review the facts and render a decision within the time frame prescribed by the Exchange.

- (4) The RLP Panel may overturn or modify an action taken by the Exchange under this Rule. A determination by the RLP Panel will constitute final action by the Exchange.

(j) Retail Liquidity Identifier. An identifier will be disseminated through the Consolidated Quotation System or the UTP Quote Data Feed, as applicable, when RPI interest priced at least \$0.001 better than the PBB or PBO for a particular security is available in Exchange systems ("Retail Liquidity Identifier"). The Retail Liquidity Identifier will reflect the symbol for the particular security and the side (buy or sell) of the RPI interest, but will not include the price or size of the RPI interest.

(k) Retail Order Designation. A Retail Order may not be designated with a "No Midpoint Execution" Modifier or with a minimum trade size. An RMO can designate how a Retail Order will trade with available contra-side interest as follows:

(1) Type 1. A Type 1- Retail Order to buy (sell) is a Limit IOC Order that will trade only with available Retail Price Improvement Orders to sell (buy) and all other orders to sell (buy) with a working price below (above) the PBO (PBB) on the NYSE Arca Book and will not route. The quantity of a Type 1- Retail Order to buy (sell) that does not trade with eligible orders to sell (buy) will be immediately and automatically cancelled. A Type-1 designated Retail Order will be rejected on arrival if the PBBO is locked or crossed.

(2) Type 2. A Type 2- Retail Order may be a Limit Order designated IOC or Day or a Market Order, and will function as follows:

(A) A Type 2- Retail Order IOC to buy (sell) is a Limit IOC Order that will trade first with available Retail Price Improvement Orders to sell (buy) and all other orders to sell (buy) with a working price below (above) the PBO (PBB) on the NYSE Arca Book. Any remaining quantity of the Retail Order will trade with orders to sell (buy) on the NYSE Arca Book at prices equal to or above (below) the PBO (PBB) and will be traded as a Limit IOC Order and will not route.

(B) A Type 2- Retail Order Day to buy (sell) is a Limit Order that will trade first with available Retail Price Improvement Orders to sell (buy) and all other orders to sell (buy) with a working price below (above) the PBO (PBB) on the NYSE Arca Book. Any remaining quantity of the Retail Order, if marketable, will trade with orders to sell (buy) on the NYSE Arca Book or route, and if non-marketable, will be ranked in the NYSE Arca Book as a Limit Order.

(C) A Type 2- Retail Order Market to buy (sell) is a Market Order that will trade first with available Retail Price Improvement Orders to sell (buy) and all other orders to sell (buy) with a working price below (above) the NBO (NBB). Any remaining quantity of the Retail Order will function as a Market Order.

(l) Priority and Order Allocation.

Retail Price Improvement Orders in the same security will be ranked together with all other interest ranked as Priority 3 - Non-Display Orders. Odd-lot orders ranked as Priority 2 - Display Orders will have priority over orders ranked Priority 3 - Non-Display Orders at each price. Any remaining unexecuted RPI interest will remain available to trade with other incoming Retail Orders. Any remaining unfilled quantity of the Retail Order will cancel, execute, or post to the NYSE Arca Book in accordance with Rule 7.44(k).

Examples of priority and order allocation are as follows:

PBBO for security ABC is \$10.00 - \$10.05

RLP 1 enters a Retail Price Improvement Order to buy ABC at \$10.01 for 500

RLP 2 then enters a Retail Price Improvement Order to buy ABC at \$10.02 for 500

RLP 3 then enters a Retail Price Improvement Order to buy ABC at \$10.03 for 500

An incoming Type 1- Retail Order to sell ABC for 1,000 would trade first with RLP 3's bid for 500 at \$10.03, because it is the best-priced bid, then with RLP 2's bid for 500 at \$10.02, because it is the next best-priced bid. RLP 1 would not be filled because the entire size of the Retail Order to sell 1,000 would be depleted. The Retail Order trades with RPI Orders in price/time priority.

However, assume the same facts above, except that RLP 2's Retail Price Improvement Order to buy ABC at \$10.02 was for 100. The incoming Retail Order to sell 1,000 would trade first with RLP 3's bid for 500 at \$10.03, because it is the best-priced bid, then with RLP 2's bid for 100 at \$10.02, because it is the next best-priced bid. RLP 1 would then receive an execution for 400 of its bid for 500 at \$10.01, at which point the entire size of the Retail Order to sell 1,000 would be depleted.

Assume the same facts as above, except that RLP 3's order was not an RPI Order to buy ABC at \$10.03, but rather, a non-displayed order to buy ABC at \$10.03. The result will be similar to the result immediately above, in that the incoming Retail Order to sell 1,000 trades first with RLP 3's non-displayed bid for 500 at \$10.03, because it is the best-priced bid, then with RLP 2's bid for 100 at \$10.02, because it is the next best-priced bid. RLP 1 then receives an execution for 400 of its bid for 500 at \$10.01, at which point the entire size of the Retail Order to sell 1,000 is depleted.

As a final example, assume the original facts, except that LMT 1 enters a displayed odd lot limit order to buy ABC at \$10.02 for 60. The incoming Retail Order to sell for 1,000 trades first with RLP 3's bid for 500 at \$10.03, because it is the best-priced bid, then with LMT 1's bid for 60 at \$10.02 because it is the next best-priced bid and is ranked Priority 2 - Display Orders and has priority over same-priced RPIs. The incoming Retail Order would then trade 440 shares with RLP 2's bid for 500 at \$10.02 because it is the next priority category at that price, at which point the entire size of the Retail Order to sell

1,000 is depleted. The balance of RLP 2's bid would remain on the NYSE Arca Book and be eligible to trade with the next incoming Retail Order to sell.

To demonstrate how the different types of Retail Orders would trade with available Exchange interest, assume the following facts:

PBBO for security DEF is \$19.99 - \$20.01 (100 x 100)

LMT 1 enters a Limit Order to buy DEF at \$20.00 for 100

RLP 1 then enters a Retail Price Improvement Order to buy DEF at \$20.003 for 100

MPL 1 then enters a Midpoint Passive Liquidity Order to buy DEF at \$21.00 for 100

An incoming Type 2- Retail Order IOC to sell DEF for 300 at \$20.00 would trade first with MPL 1's bid for 100 at \$20.005, because it is the best-priced bid, then with RLP 1's bid for 100 at \$20.003, because it is the next best-priced bid, and then with LMT 1's bid for 100 at \$20.00 because it is the next best-priced bid, at which point the entire size of the Retail Order to sell 300 is depleted.

Assume the same facts as above except the incoming order is a Type 2-Retail Order Day to sell DEF for 500 at \$20.00. The Retail Order would trade first with MPL 1's bid for 100 at \$20.005, because it is the best-priced bid, then with RLP 1's bid for 100 at \$20.003, because it is the next best-priced bid, and then with LMT 1's bid for 100 at \$20.00 because it is the next best-priced bid. The remaining balance of the Retail Order is displayed on the NYSE Arca Book at \$20.00 as a Limit Order, resulting in a PBBO of \$19.99 - \$20.00 (100 x 200).

Assume the same facts as above except the incoming order is a Type 1- Retail Order to sell DEF for 300. The Retail Order would trade first with MPL 1's bid for 100 at \$20.005, because it is the best-priced bid, and then with RLP 1's bid for 100 at \$20.003. The remaining balance of the Retail Order would be cancelled and not trade with LMT 1 because Type 1-designated Retail Orders do not trade with interest on the NYSE Arca Book other than non-displayed orders and odd-lot orders priced better than the PBBO on the opposite side of the Retail Order.

Finally, to demonstrate the priority of displayed interest over Retail Price Improvement Orders, assume the following facts:

PBBO for security GHI is \$30.00 - \$30.05

RLP 1 enters a Retail Price Improvement Order to buy GHI at \$30.02 for 100

LMT 1 then enters a Limit Order to buy GHI at \$30.02 for 100

New PBBO of \$30.02 - \$30.05

RLP 2 then enters a Retail Price Improvement Order at \$30.03 for 100

An incoming Type 2-Retail Order IOC to sell GHI for 300 at \$30.01 would trade first with RLP 2's bid for 100 at \$30.03, because it is the best-priced bid, then with LMT 1 for 100 at \$30.02 because it is the next best-priced bid. The Retail Order would then attempt to trade with RLP 1, but because RLP 1 was priced at the PBBO and no longer price improving, RLP 1 will cancel. At that point, the remaining balance of the Retail Order will cancel because there are no remaining orders within its limit price.

Assume the same facts as above except the incoming Retail Order is for 200. The Retail Order would trade with RLP 2's bid for 100 at \$30.03, because it is the best-priced bid, then with LMT 1 for 100 at \$30.02 because it is the next best-priced bid. RLP 1 does not cancel because the incoming Retail Order was depleted before attempting to trade with RLP 1. RLP 1 would be eligible to trade with another incoming Retail Order because it would be priced better than the PBBO.

(m) Rule Pilot Program. This rule will operate for a pilot period set to expire on June 30, 2017. During the pilot period, the Program will be limited to trades occurring at prices equal to or greater than \$1.00 per share, and Exchange systems will reject Retail Orders and RPIs priced below \$1.00. However, Type 2-designated Market Retail Orders may interact at prices below \$1.00 with liquidity outside the Program in the NYSE Arca Book. The Program will operate only during the Core Trading Session and Retail Orders will be accepted during Core Trading Hours only.

Section 4. Operation of Routing Broker

Rule 7.45. Operation of Routing Broker

(a) The term "Routing Broker" shall mean the broker-dealer affiliate of NYSE Arca, LLC and/or any other non-affiliate third-party broker-dealer that acts as a facility of NYSE Arca, LLC for routing orders entered into Exchange systems to other market centers for execution whenever such routing is required by the Rules of the Corporation and federal securities laws. The Routing Brokers will operate as described in this Rule 7.45.

(b) Outbound Routing Function

(1) (A) The Routing Broker(s) will receive routing instructions from the Exchange, to route orders to other market centers and report such executions back to the Exchange. Except as provided in paragraph (b)(1)(B) below, the Routing Broker(s) cannot change the terms of an order or the routing instructions, nor does the Routing Broker(s) have any discretion about where to route an order.

(B) In the sole discretion of the Routing Broker(s), pursuant to risk management controls and supervisory procedures maintained by the Routing Broker(s) pursuant to SEC Rule 15c3-5, the Routing Broker(s) may reject any order or series of orders as necessary to manage the financial, regulatory, and other risks of the Routing

Brokers(s) providing "market access," as that term is defined in SEC Rule 15c3-5(a)(1).

- (2) The broker-dealer affiliate of the Exchange that acts as a Routing Broker will not engage in any business other than (a) the functions set forth in this Rule; and (b) any other activities it may engage in as approved by the Commission.
- (3) The use of the Routing Broker(s) to route orders to another market center will be optional. Any ETP Holder that does not want to use the Routing Broker(s) must enter an immediate-or-cancel order or any such other order type available on the Exchange that is not eligible for routing.
- (4) All bids and offers entered on the Exchange routed to other market centers via the Routing Broker(s) that result in an execution shall be binding on the ETP Holder that entered such bid and offer.
- (5) The Exchange will regulate the Routing Broker(s) as a facility (as defined in Section 3(a)(2) of the Securities Exchange Act of 1934 (the "Exchange Act")), subject to Section 6 of the Act. In particular, and without limitation, under the Exchange Act, the Exchange will be responsible for filing with the Commission rule changes and fees relating to the functions performed by the Routing Broker(s) for the Exchange and will be subject to exchange non-discrimination requirements.
- (6) The books, records, premises, officers, agents, directors and employees of the Routing Broker(s), as a facility of the Exchange, shall be deemed to be the books, records, premises, officers, agents, directors and employees of the Exchange for purposes of, and subject to oversight pursuant to, the Exchange Act. The books and records of the Routing Broker(s) as a facility of the Exchange shall be subject at all times to inspection and copying by the Exchange and the Commission.
- (7) A self-regulatory organization ("SRO") unaffiliated with the Exchange or any of its affiliates will carry out the oversight and enforcement responsibilities as the designated examining authority designated by the Commission pursuant to Rule 17d-1 of the Exchange Act with the responsibility for examining the Routing Broker(s) for compliance with the applicable financial responsibility rules.
- (8) The Exchange shall establish and maintain procedures and internal controls reasonably designed to adequately restrict the flow of confidential and proprietary information between the Exchange and its facilities (including the non-affiliate third-party broker-dealer acting as a facility of the Exchange ("third-party Routing Facility"), and any other entity, including any affiliate of the third-party Routing Facility, and, if the third-party Routing Facility or any of its affiliates engage in any other business activities other than providing routing services to the Exchange, between the segment of the third-party Routing Facility or affiliate that provides the other business activities and the routing services.

(c) Inbound Routing Function

- (1) For so long as the Exchange is affiliated with NYSE MKT LLC ("NYSE MKT") and New York Stock Exchange, LLC ("NYSE"), and Archipelago Securities LLC ("Arca Securities") in its capacity as a facility of NYSE MKT and NYSE is utilized for the routing of any approved types of orders from those exchanges to the Exchange (such function of Arca Securities is referred to as the "Inbound Router"), each of the Exchange and Arca Securities shall undertake as follows:
- (A) The Exchange shall (1) maintain an agreement pursuant to Rule 17d-2 under the Exchange Act with a non-affiliated SRO to relieve the Exchange of regulatory responsibilities for Arca Securities with respect to rules that are common rules between the Exchange and the non-affiliated SRO, and (2) maintain a regulatory services agreement with a non-affiliated SRO to perform regulatory responsibilities for Arca Securities for unique Exchange rules.
- (B) The regulatory services agreement described in Rule 7.45(c)(1)(A) shall require the Exchange and the non-affiliated SRO to monitor Arca Securities for compliance with the Exchange's trading rules, and collect and maintain all alerts, complaints, investigations and enforcement actions (collectively "Exceptions") in which Arca Securities (in routing orders to the Exchange) is identified as a participant that has potentially violated applicable Exchange or SEC rules. The Exchange and the non-affiliated SRO shall retain these records in an easily accessible manner. The regulatory services agreement described in 7.45(c)(1)(A) shall require that the non-affiliated SRO provide a report, at least quarterly, to the Chief Regulatory Officer of the Exchange quantifying all Exceptions (of which the Exchange and the non-affiliated SRO become aware) in which Arca Securities is identified as a participant that has potentially violated Exchange or SEC Rules.
- (C) The Exchange, on behalf of the holding company owning both the Exchange and Arca Securities, shall establish and maintain procedures and internal controls reasonably designed to prevent Arca Securities from receiving any benefit, taking any action or engaging in any activity based on non-public information regarding planned changes to Exchange systems, obtained as a result of its affiliation with the Exchange, until such information is available generally to similarly situated ETP Holders of the Exchange in connection with the provision of inbound order routing to the Exchange.
- (D) The Exchange may furnish to Arca Securities the same information on the same terms that the Exchange makes available in the normal course of business to any other ETP Holder.
- (2) Provided the above conditions are complied with, and provided further that Arca Securities operates as an outbound router on behalf of NYSE MKT and NYSE on the same terms and conditions as it does for the Exchange, and in accordance with

the Rules of NYSE MKT and NYSE, Arca Securities may provide inbound routing services to the Exchange from NYSE MKT and NYSE.

(d) Cancellation of Orders and Error Account

(1) The Exchange or Arca Securities may cancel orders as either deems to be necessary to maintain fair and orderly markets if a technical or systems issue occurs at the Exchange, Arca Securities, or a routing destination. The Exchange or Arca Securities shall provide notice of the cancellation to affected ETP Holders as soon as practicable.

(2) Arca Securities shall maintain an error account for the purpose of addressing positions that result from a technical or systems issue at Arca Securities, the Exchange, a routing destination, or a non-affiliate third-party Routing Broker that affects one or more orders ("error positions").

(A) For purposes of this Rule 7.45(d), an error position shall not include any position that results from an order submitted by an ETP Holder to the Exchange that is executed on the Exchange and processed pursuant to NYSE Arca Rule 7.41(a).

(B) Except as provided in Rule 7.45(d)(2)(C), Arca Securities shall not (i) accept any positions in its error account from an account of an ETP Holder, or (ii) permit any ETP Holder to transfer any positions from the ETP Holder's account to Arca Securities' error account.

(C) If a technical or systems issue results in the Exchange not having valid clearing instructions for an ETP Holder to a trade, Arca Securities may assume that ETP Holder's side of the trade so that the trade can be processed pursuant to NYSE Arca Rule 7.41(a).

(3) In connection with a particular technical or systems issue, Arca Securities or the Exchange shall either (i) assign all resulting error positions to ETP Holders in accordance with subparagraph (A) below, or (ii) have all resulting error positions liquidated in accordance with subparagraph (B) below. Any determination to assign or liquidate error positions, as well as any resulting assignments, shall be made in a nondiscriminatory fashion.

(A) Arca Securities or the Exchange shall assign all error positions resulting from a particular technical or systems issue to the ETP Holders affected by that technical or systems issue if Arca Securities or the Exchange:

(i) determines that it has accurate and sufficient information (including valid clearing information) to assign the positions to all of the ETP Holders affected by that technical or systems issue;

(ii) determines that it has sufficient time pursuant to normal clearance and settlement deadlines to evaluate the information necessary to assign the positions to all of the ETP Holders affected by that technical or systems issue; and

(iii) has not determined to cancel all orders affected by that technical or systems issue in accordance with subparagraph (d)(1) above.

(B) If Arca Securities or the Exchange is unable to assign all error positions resulting from a particular technical or systems issue to all of the affected ETP Holders in accordance with subparagraph (A) above, or if Arca Securities or the Exchange determines to cancel all orders affected by the technical or systems issue in accordance with subparagraph (d)(1) above, then Arca Securities shall liquidate the error positions as soon as practicable. Arca Securities shall:

(i) provide complete time and price discretion for the trading to liquidate the error positions to a third-party broker-dealer and shall not attempt to exercise any influence or control over the timing or methods of such trading; and

(ii) establish and enforce policies and procedures that are reasonably designed to restrict the flow of confidential and proprietary information between the third-party broker-dealer and Arca Securities/the Exchange associated with the liquidation of the error positions.

(4) Arca Securities and the Exchange shall make and keep records to document all determinations to treat positions as error positions and all determinations for the assignment of error positions to ETP Holders or the liquidation of error positions, as well as records associated with the liquidation of error positions through the third-party broker-dealer.

Section 5. Plan to Implement a Tick Size Pilot Program

Rule 7.46. Tick Size Pilot Plan

The provisions of this Rule will be in effect during a pilot to coincide with the pilot period for the Regulation NMS Tick Size Pilot Plan.

(a) Tick Size Pilot Program

(1) Definitions.

(A) "Plan" means the Tick Size Pilot Plan Submitted to the Securities and Exchange Commission Pursuant to Rule 608(a)(3) of Regulation NMS under the Exchange Act.

- (B) "Pilot Test Groups" means the three test groups established under the Plan, consisting of 400 Pilot Securities each, which satisfy the respective criteria established by the Plan for each such test group.
- (C) "Retail Investor Order" means an agency order or a riskless principal order that meets the criteria of FINRA Rule 5320.03 that originates from a natural person and is submitted to the Corporation by a retail ETP Holder, provided that no change is made to the terms of the order with respect to price or side of market and the order does not originate from a trading algorithm or any other computerized methodology. A Retail Investor Order may be an odd lot, round lot, or partial round lot.
- (D) "Trade-at Intermarket Sweep Order" means a limit order for a Pilot Security that meets the following requirements:
- (i) When routed to a Trading Center, the limit order is identified as a Trade-at Intermarket Sweep Order; and
 - (ii) Simultaneously with the routing of the limit order identified as a Trade-at Intermarket Sweep Order, one or more additional limit orders, as necessary, are routed to execute against the full displayed size of any protected bid, in the case of a limit order to sell, or the full displayed size of any protected offer, in the case of a limit order to buy, for the Pilot Security with a price that is better than or equal to the limit price of the limit order identified as a Trade-at Intermarket Sweep Order. These additional routed orders also must be marked as Trade-at Intermarket Sweep Orders or Intermarket Sweep Orders.
- (E) All capitalized terms not otherwise defined in this Rule shall have the meanings set forth in the Plan, Regulation NMS under the Exchange Act, or Corporation rules, as applicable.
- (2) Corporation Participation in the Plan. The Corporation is a Participant in, and subject to the applicable requirements of, the Plan, which establishes a Tick Size Pilot Program that will allow the Securities and Exchange Commission, market participants, and the public to study and assess the impact of increment conventions on the liquidity and trading of the common stocks of small capitalization companies.
- (3) ETP Holder Compliance. ETP Holders shall establish, maintain and enforce written policies and procedures that are reasonably designed to comply with the applicable requirements of the Plan.
- (4) Corporation Compliance with the Plan. Corporation systems will not display, quote or trade in violation of the applicable quoting and trading requirements for a Pilot Security specified in the Plan and this Rule, unless such quotation or transaction is specifically exempted under the Plan.

- (5) Pilot Securities That Drop Below \$1.00 during the Pilot Period. If the price of a Pilot Security drops below \$1.00 during regular trading on any given business day, such Pilot Security will continue to be subject to the Plan and the requirements enumerated in (c)-(e) below and will continue to trade in accordance with such Rules as if the price of the Pilot Security had not dropped below \$1.00. However, if the Closing Price of a Pilot Security on any given business day is below \$1.00, such Pilot Security will be moved out of its respective Pilot Test Group into the Control Group, and may then be quoted and traded at any price increment that is currently permitted by Corporation rules for the remainder of the Pilot Period. Notwithstanding anything contained herein to the contrary, at all times during the Pilot Period, Pilot Securities (whether in the Control Group or any Pilot Test Group) will continue to be subject to the requirements contained in Paragraph (b).

(b) Compliance with Data Collection Requirements

- (1) Policies and Procedures Requirement. An ETP Holder that operates a Trading Center shall establish, maintain and enforce written policies and procedures that are reasonably designed to comply with the data collection and transmission requirements of Items I and II of Appendix B of the Plan, and an ETP Holder that is a Market Maker shall establish, maintain and enforce written policies and procedures that are reasonably designed to comply with the data collection and transmission requirements of Item IV of Appendix B of the Plan and Item I of Appendix C of the Plan.
- (2) The Corporation shall collect and transmit to the SEC the data described in Items I and II of Appendix B of the Plan relating to trading activity in Pre-Pilot Data Collection Securities and Pilot Securities on a Trading Center operated by the Corporation. The Corporation shall transmit such data to the SEC in a pipe delimited format, on a disaggregated basis by Trading Center, within 30 calendar days following month end for:
- (A) Each Pre-Pilot Data Collection Security for the period beginning six months prior to the Pilot Period through thirty-one days prior to the first day of the Pilot Period; and
- (B) Each Pilot Security for the period beginning thirty days prior to the first day of the Pilot Period through six months after the end of the Pilot Period.

The Corporation also shall make such data publicly available on the Corporation web site within 120 calendar days following month end at no charge and shall not identify the ETP Holder that generated the 45 of 48 data.

(3) Daily Market Maker Participation Statistics Requirement

- (A) An ETP Holder that is a Market Maker shall collect and transmit to their Designated Examining Authority ("DEA") data relating to Item IV of Appendix B

of the Plan, with respect to activity conducted on any Trading Center in Pre-Pilot Data Collection Securities and Pilot Securities in furtherance of its status as a Market Maker, including a Trading Center that executes trades otherwise than on a national securities exchange, for transactions that have settled or reached settlement date. Market Makers shall transmit such data in a format required by their DEA by 12:00 p.m. EST on T+4:

(i) For transactions in each Pre-Pilot Data Collection Security for the period beginning six months prior to the Pilot Period through thirty-one days prior to the first day of the Pilot Period; and

(ii) For transactions in each Pilot Security for the period beginning thirty days prior to the first day of the Pilot Period through six months after the end of the Pilot Period.

(B) An ETP Holder that is a Market Maker whose DEA is not a Participant to the Plan shall transmit the data collected pursuant to paragraph (3)(A) above to the Financial Industry Regulatory Authority, Inc. ("FINRA"). Market Makers shall transmit such data in a format required by FINRA by 12:00 p.m. EST on T+4 in accordance with paragraphs (3)(A)(i) and (ii) above.

(C) The Corporation shall transmit the data collected by the DEA or FINRA pursuant to paragraphs (3)(A) and (B) above relating to Market Maker activity on a Trading Center operated by the Exchange to the SEC in a pipe delimited format within 30 calendar days following month end. The Corporation shall also make such data publicly available on the Corporation web site within 120 calendar days following month end at no charge and shall not identify the Trading Center that generated the data.

(4) Market Maker Profitability

(A) An ETP Holder that is a Market Maker shall collect and transmit to their DEA the data described in Item I of Appendix C of the Plan with respect to executions on any Trading Center that have settled or reached settlement date. Market Makers shall transmit such data in a format required to their DEA by 12:00 p.m. EST on T+4 for executions during and outside of Regular Trading Hours in each:

(i) Pre-Pilot Data Collection Security for the period beginning six months prior to the Pilot Period through thirty-one days prior to the first day of the Pilot Period; and

(ii) Pilot Security for the period beginning thirty days prior to the first day of the Pilot Period through six months after the end of the Pilot Period.

(B) An ETP Holder that is a Market Maker whose DEA is not a Participant to the Plan shall transmit the data collected pursuant to paragraph (4)(A) above to

FINRA. Market Makers shall transmit such data in a format required by FINRA by 12:00 p.m. EST on T+4 for executions during and outside of Regular Trading Hours in accordance with paragraphs (4)(A)(i) and (ii) above.

(C) The Corporation, as DEA, shall collect the data required by Item I of Appendix C to the Plan and paragraph (b)(4)(A) above for those ETP Holders that are Market Makers for which the Corporation is DEA, and on a monthly basis transmit such data, categorized by the Control Group and each Test Group, to the SEC in a pipe delimited format. The Corporation, as DEA, shall also make the data collected pursuant to subparagraph (4) of Rule 7.46(b) available to FINRA for aggregation and publication, categorized by the Control Group and each Test Group, on the FINRA website pursuant to FINRA Rules.

(5) Market Maker Registration Statistics. The Corporation shall collect and transmit to the SEC the data described in Item III of Appendix B of the Plan relating to daily Market Maker registration statistics in a pipe delimited format within 30 calendar days following month end for:

(A) Transactions in each Pre-Pilot Data Collection Security for the period beginning six months prior to the Pilot Period through the trading day immediately preceding the Pilot Period; and

(B) Transactions in each Pilot Security for the period beginning on the first day of the Pilot Period through six months after the end of the Pilot Period.

The Corporation also shall make such data publicly available on the Corporation web site within 120 calendar days following month end at no charge and shall not identify the ETP Holder that generated the data.

(c) Pilot Securities in Test Group One will be subject to the following requirement: No ETP Holder may display, rank, or accept from any person any displayable or nondisplayable bids or offers, orders, or indications of interest in increments other than \$0.05. However, orders priced to trade at the midpoint of the national best bid and national best offer ("NBBO") or best protected bid and best protected offer ("PBBO") and orders entered in the Corporation's Retail Liquidity Program as Retail Price Improvement Orders (as defined in Rule 7.44) may be ranked and accepted in increments of less than \$0.05. Pilot Securities in Test Group One may continue to trade at any price increment that is currently permitted by Rule 7.6.

(d) Pilot Securities in Test Group Two shall be subject to the following requirements:

(1) No ETP Holder may display, rank, or accept from any person any displayable or non-displayable bids or offers, orders, or indications of interest in increments other than \$0.05. However, orders priced to trade at the midpoint of the NBBO or PBBO and orders entered in the Corporation's Retail Liquidity Program as Retail Price

Improvement Orders (as defined in Rule 7.44) may be ranked and accepted in increments of less than \$0.05.

(2) Absent any of the exceptions listed in (3) below, no ETP Holder may execute orders in any Pilot Security in Test Group Two in price increments other than \$0.05. The \$0.05 trading increment will apply to all trades, including Brokered Cross Trades.

(3) Pilot Securities in Test Group Two may trade in increments less than \$0.05 under the following circumstances:

(A) Trading may occur at the midpoint between the NBBO or the PBBO;

(B) Retail Investor Orders may be provided with price improvement that is at least \$0.005 better than the PBBO;

(C) Negotiated Trades may trade in increments less than \$0.05; and

(D) Execution of a customer order to comply with Rule 5320 following the execution of a proprietary trade by the ETP Holder at an increment other than \$0.05, where such proprietary trade was permissible pursuant to an exception under the Plan.

(e) Pilot Securities in Test Group Three shall be subject to the following requirements:

(1) No ETP Holder may display, rank, or accept from any person any displayable or non-displayable bids or offers, orders, or indications of interest in increments other than \$0.05. However, orders priced to trade at the midpoint of the NBBO or PBBO and orders entered in the Corporation's Retail Liquidity Program as Retail Price Improvement Orders (as defined in Rule 7.44) may be ranked and accepted in increments of less than \$0.05.

(2) Absent any of the exceptions listed in (3) below, no ETP Holder may execute orders in any Pilot Security in Test Group Three in price increments other than \$0.05. The \$0.05 trading increment will apply to all trades, including Brokered Cross Trades.

(3) Pilot Securities in Test Group Three may trade in increments less than \$0.05 under the following circumstances:

(A) Trading may occur at the midpoint between the NBBO or PBBO;

(B) Retail Investor Orders may be provided with price improvement that is at least \$0.005 better than the Best Protected Bid or the Best Protected Offer;

(C) Negotiated Trades may trade in increments less than \$0.05; and

(D) Execution of a customer order to comply with Rule 5320 following the execution of a proprietary trade by the ETP Holder at an increment other than \$0.05, where such proprietary trade was permissible pursuant to an exception under the Plan.

(4) Pilot Securities in Test Group Three will be subject to the following Trade-at Prohibition:

(A) "Trade-at Prohibition" means the prohibition against executions by a Trading Center of a sell order for a Pilot Security at the price of a Protected Bid or the execution of a buy order for a Pilot Security at the price of a Protected Offer during regular trading hours.

(B) Absent any of the exceptions listed in (C) below, no ETP Holder may execute a sell order for a Pilot Security in Test Group Three at the price of a Protected Bid or execute a buy order for a Pilot Security in Test Group Three at the price of a Protected Offer.

(C) ETP Holders may execute a sell order for a Pilot Security in Test Group Three at the price of a Protected Bid or execute a buy order for a Pilot Security in Test Group Three at the price of a Protected Offer if any of the following circumstances exist:

(i) The order is executed as agent or riskless principal by an independent trading unit, as defined under Rule 200(f) of Regulation SHO, of a Trading Center within an ETP Holder that has a displayed quotation as agent or riskless principal, via either a processor or an SRO Quotation Feed, at a price equal to the traded at Protected Quotation, that was displayed before the order was received, but only up to the full displayed size of that independent trading unit's previously displayed quote;

(ii) The order is executed by an independent trading unit, as defined under Rule 200(f) of Regulation SHO, of a Trading Center within an ETP Holder that has a displayed quotation for the account of that Trading Center on a principal (excluding riskless principal) basis, via either a processor or an SRO Quotation Feed, at a price equal to the traded-at Protected Quotation, that was displayed before the order was received, but only up to the full displayed size of that independent trading unit's previously displayed quote;

(iii) The order is of Block Size at the time of origin and may not be:

A. an aggregation of non-block orders; or

B. broken into orders smaller than Block Size prior to submitting the order to a Trading Center for execution.

- (iv) The order is a Retail Investor Order executed with at least \$0.005 price improvement;
- (v) The order is executed when the Trading Center displaying the Protected Quotation that was traded at was experiencing a failure, material delay, or malfunction of its systems or equipment;
- (vi) The order is executed as part of a transaction that was not a "regular way" contract;
- (vii) The order is executed as part of a single-priced opening, reopening, or closing transaction on the Corporation;
- (viii) The order is executed when a Protected Bid was priced higher than a Protected Offer in the Pilot Security;
- (ix) The order is identified as a Trade-at Intermarket Sweep Order;
- (x) The order is executed by a Trading Center that simultaneously routed Trade-at Intermarket Sweep Orders or Intermarket Sweep Orders to execute against the full displayed size of the Protected Quotation that was traded at;
- (xi) The order is executed as part of a Negotiated Trade;
- (xii) The order is executed when the Trading Center displaying the Protected Quotation that was traded at had displayed, within one second prior to execution of the transaction that constituted the Trade-at, a Best Protected Bid or Best Protected Offer, as applicable, for the Pilot Security with a price that was inferior to the price of the Trade-at transaction;
- (xiii) The order is executed by a Trading Center which, at the time of order receipt, the Trading Center had guaranteed an execution at no worse than a specified price (a "stopped order"), where:
 - A. The stopped order was for the account of a customer;
 - B. The customer agreed to the specified price on an order-by-order basis; and
 - C. The price of the Trade-at transaction was, for a stopped buy order, equal to or less than the National Best Bid in the Pilot Security at the time of execution or, for a stopped sell order, equal to or greater than the National Best Offer in the Pilot Security at the time of execution, as long as such order is priced at an acceptable increment;
- (xiv) The order is for a fractional share of a Pilot Security, provided that such fractional share order was not the result of breaking an order for one or more

whole shares of a Pilot Security into orders for fractional shares or was not otherwise effected to evade the requirements of the Trade-at Prohibition or any other provisions of the Plan; or

- (xv) The order is to correct a bona fide error, which is recorded by the Trading Center in its error account. A bona fide error is defined as:
 - A. The inaccurate conveyance or execution of any term of an order including, but not limited to, price, number of shares or other unit of trading; identification of the security; identification of the account for which securities are purchased or sold; lost or otherwise misplaced order tickets; short sales that were instead sold long or vice versa; or the execution of an order on the wrong side of a market;
 - B. The unauthorized or unintended purchase, sale, or allocation of securities, or the failure to follow specific client instructions;
 - C. The incorrect entry of data into relevant systems, including reliance on incorrect cash positions, withdrawals, or securities positions reflected in an account; or
 - D. A delay, outage, or failure of a communication system used to transmit market data prices or to facilitate the delivery or execution of an order.
- (D) No ETP Holder shall break an order into smaller orders or otherwise effect or execute an order to evade the requirements of the Trade-at Prohibition of this Rule or any other provisions of the Plan.

(f) Exchange handling of orders during the Pilot Period for the Plan.

(1) Trade-at Intermarket Sweep Orders ("TA ISO")

(A) The Exchange will accept TA ISOs in all securities. TA ISOs must be designated as IOC, may be designated with a "No Midpoint Execution" modifier, may not be designated with an MTS, and do not route.

(B) A TA ISO will be immediately traded with contra-side displayed and nondisplayed interest in the NYSE Arca Book up to its full size and limit price and the quantity not so traded will be immediately and automatically cancelled.

(2) For Pilot Securities in Test Groups One, Two and Three:

(A) References in Exchange rules to the MPV, as defined in Rule 7.6, instead mean the quoting MPV specified in paragraphs (c), (d), and (e) of this Rule. References to truncating to the MPV in Exchange rules instead mean rounding down to the applicable quoting MPV for Pilot Securities.

- (B) MPL Orders must be entered with a limit price in a \$0.05 pricing increment.
- (3) For all Pilot Securities Market Pegged Orders will be rejected.
- (4) For Pilot Securities in Test Groups Two and Three, Retail Price Improvement Orders must be entered in pricing increments of \$0.005.
- (5) For Pilot Securities in Test Groups Three:
 - (A) At each price point, the priority of resting orders will be:
 - (i) Priority 2 - Display Orders. Non-marketable Limit Orders with a displayed working price have first priority.
 - (ii) Protected Quotations of Away Markets. Protected quotations of Away Markets have second priority.
 - (iii) Priority 1 - Market Orders. Unexecuted Market Orders have third priority.
 - (iv) Priority 3 - Non-Display Orders. Non-marketable Limit Orders for which the working price is not displayed, including reserve interest of Reserve Orders, have fourth priority.
 - (B) Orders will not be routed to Away Markets that are not displaying protected quotations.
 - (C) The display price of Limit Orders to buy (sell) repriced under Rule 7.31P(a)(2)(C) will be the same as provided for in that rule, but the working price of such orders will be the same as the display price.
 - (D) If a Reserve Order to buy (sell) is displayed at a price that is locked or crossed by a protected offer (bid), the portion of the Reserve Order that is not displayed will be assigned a working price \$0.05 below (above) the protected offer (bid), but if routable, will route to a protected offer (bid) based on the limit price of the order.
 - (E) If the limit price of a resting Limit Non-Displayed Order to buy (sell) is equal to or higher (lower) than the PBO (PBB), it will have a working price \$0.05 below (above) the PBO (PBB).
 - (F) Orders with instructions not to route, as defined in Rule 7.31P(e):
 - (i) On arrival, orders with instructions not to route will trade with resting orders in the NYSE Arca Book consistent with the terms of the order and the Trade-At Prohibition.

(a) On arrival, Day ISOs will be eligible for the exception set forth in paragraph (e)(4)(C)(ix) of this Rule.

(b) An IOC ISO to buy (sell) will not trade with orders to sell (buy) ranked Priority 1 - Market Orders or Priority 3 - Non-Display Orders that are the same price as a protected offer (bid) unless the limit price of such IOC ISO is higher (lower) than the price of protected offer (bid).

(ii) When being added to the NYSE Arca Book, an Arca Only Order or ALO Order to buy (sell) with a limit price equal to or above (below) the PBO (PBB) will be assigned a display price and working price one MPV below (above) the PBO (PBB).

(iii) Once resting on the NYSE Arca Book, an Arca Only Order or ALO Order to buy (sell) will not be eligible to trade with later-arriving orders to sell (buy) ranked Priority 2 - Display Orders priced equal to the PBO (PBB). A laterarriving order to buy (sell) that is eligible to trade with the PBO (PBB) may trade before such resting order.

(G) The only orders eligible for the exception set forth in paragraph (e)(4)(C)(iii) of this Rule are Limit IOC Cross orders that meet the Block Size definition. A Limit IOC Cross Order that is at the same price as the PBBO but does not meet the Block Size definition will be rejected.

(H) Tracking Orders will be rejected.

••• ***Supplementary Material:***

.10 For purposes of the reporting requirement in Appendix B.II.(n), a Trading Center shall report "Y" to their DEA where it is relying upon the Retail Investor Order exception to Test Groups Two and Three, and "N" in all other instances.

.20 For purposes of Appendix B.I, the field "Affected by Limit-Up Limit-Down bands" shall be included. A Trading Center shall report a value of "Y" to their DEA when the ability of an order to execute has been affected by the Limit-Up Limit-Down (LULD) bands in effect at the time of order receipt. A Trading Center shall report a value of "N" to their DEA when the ability of an order to execute has not been affected by the LULD bands in effect at the time of order receipt. For purposes of Appendix B.I, the Participants shall classify all orders in Pilot and Pre-Pilot Securities that may trade in a foreign market as: (1) fully executed domestically or (2) fully or partially executed on a foreign market. For purposes of Appendix B.II, the Participants shall classify all orders in Pilot Securities and Pre-Pilot Data Collection Securities that may trade in a foreign market as: (1) directed to a domestic venue for execution; (2) may only be directed to a foreign venue for execution; or (3) fully or partially directed to a foreign venue at the discretion of the ETP Holder.

.30 (a) For purposes of Appendix B.I.a(14), B.I.a(15), B.I.a(21) and B.I.a(22), the time ranges shall be changed as follows:

- (1) Appendix B.I.a(14A): The cumulative number of shares of orders executed from 100 microseconds to less than 1 millisecond after the time of order receipt;
- (2) Appendix B.I.a(15): The cumulative number of shares of orders executed from 1 millisecond to less than 100 milliseconds after the time of order receipt;
- (3) Appendix B.I.a(21A): The cumulative number of shares of orders canceled from 100 microseconds to less than 1 millisecond after the time of order receipt; and
- (4) Appendix B.I.a(22): The cumulative number of shares of orders canceled from 1 millisecond to less than 100 milliseconds after the time of order receipt.

(b) For purposes of Appendix B.I.a(21) through B.I.a(27), unexecuted Immediate or Cancel orders shall be categorized separately irrespective of the duration of time after order receipt.

.40 For purposes of Appendix B.I.a(31)-(33), the relevant measurement is the time of order receipt.

.50 For purposes of Appendix B, the following order types and numbers shall be included and assigned the following numbers: "not held" orders (18); clean cross orders (19); auction orders (20); orders that cannot otherwise be classified, including orders received when the NBBO is crossed (21); and limit orders priced more than \$0.10 away from NBBO (22). For purposes of order types 12-14 in Appendix B, such order types shall include all orders and not solely "resting" orders.

.60 An ETP Holder shall not be deemed a Trading Center for purposes of Appendix B of the Plan where that ETP Holder only executes orders otherwise than on a national securities exchange for the purpose of: (i) correcting a bona fide error related to the execution of a customer order; (ii) purchases a security from a customer at a nominal price solely for purposes of liquidating the customer's position; or (iii) completing the fractional share portion of an order.

.70 A Trading Center shall begin the data collection required pursuant to Appendix B.I.a(1) through B.II.(y) of the Plan and Item I of Appendix C of the Plan on April 4, 2016. The requirement that the Corporation or their DEA provide information to the SEC within 30 days following month end pursuant to Appendix B and C of the Plan shall commence at the beginning of the Pilot Period. Notwithstanding the provisions of paragraphs (b)(2), (b)(3)(C) and (b)(5) of this Rule, with respect to data for the Pre-Pilot Period and Pilot Period, the requirement that the Corporation or their DEA make Appendix B data publicly available on the Corporation's or DEA's website shall commence on April 28, 2017. Notwithstanding the provisions of paragraph (b)(4) of this Rule, the Corporation or their DEA shall make Appendix C data for the Pre-Pilot Period

through January 2017 publicly available on the Corporation's or DEA's website by February 28, 2017.

.80 For purposes of Item I of Appendix C, the Participants shall calculate daily Market Maker realized profitability statistics for each trading day on a daily last in, first out (LIFO) basis using reported trade price and shall include only trades executed on the subject trading day. The daily LIFO calculation shall not include any positions carried over from previous trading days. For purposes of Item I.c of Appendix C, the Participants shall calculate daily Market Maker unrealized profitability statistics for each trading day on an average price basis. Specifically, the Participants must calculate the volume weighted average price of the excess (deficit) of buy volume over sell volume for the current trading day using reported trade price. The gain (loss) of the excess (deficit) of buy volume over sell volume shall be determined by using the volume weighted average price compared to the closing price of the security as reported by the primary listing exchange. In calculating unrealized trading profits, the Participant also shall report the number of excess (deficit) shares held by the Market Maker, the volume weighted average price of that excess (deficit), and the closing price of the security as reported by the primary listing exchange used in reporting unrealized profit.

.90 "Pre-Pilot Data Collection Securities" are the securities designated by the Participants for purposes of the data collection requirements described in Items I, II and 48 of 48 IV of Appendix B and Item I of Appendix C of the Plan for the period beginning six months prior to the Pilot Period through thirty-one days prior to the Pilot Period. The Participants shall compile the list of Pre-Pilot Data Collection Securities by selecting all NMS stocks with a market capitalization of \$5 billion or less, a Consolidated Average Daily Volume (CADV) of 2 million shares or less and a closing price of \$1 per share or more. The market capitalization and the closing price thresholds shall be applied to the last day of the pre-pilot measurement period, and the CADV threshold shall be applied to the duration of the pre-pilot measurement period. The Pre-Pilot measurement period shall be the three calendar months ending on the day when the Pre-Pilot Data Collection Securities are selected. The Pre-Pilot Data Collection Securities shall be selected thirty days prior to the commencement of the six-month Pre-Pilot Period.

.100 For purposes of Appendix B.IV, the count of the number of Market Makers used in the calculation of share (trade) participation shall be added to each category. For purposes of Appendix B.IV(b) and (c), share participation and trade participation shall be calculated by using a total count instead of a share-weighted average or a trade-weighted average. For purposes of Appendix B, B.IV(d) (cross-quote share (trade) participation), (e) (inside-the-quote share (trade) participation), (f) (at-the-quote share (trade) participation), and (g) (outside-the-quote share (trade) participation), shall be calculated by reference to the National Best Bid or National Best Offer in effect immediately prior to the trade.

Rule 7.55-7.59. Reserved

Reserved.

Section 6. Contracts in Securities

Rule 7.60. Definitions and General Provisions

(a) The following terms used in this Rule shall, unless otherwise indicated, have the meanings herein specified:

(1) The term "securities depository" shall mean a securities depository registered as a clearing agency under Section 17A of the Securities Exchange Act of 1934.

(2) The term "depository eligible securities" shall mean securities that (A) are part of an issue (as identified by a single CUSIP number) of securities that is eligible for deposit at a securities depository and (B) with respect to a particular transaction, are eligible for book-entry transfer at the depository at the time of settlement of the transaction.

(b) *Municipal Securities.* Notwithstanding the provisions of Rule 7, all contracts in municipal securities must be compared, settled and cleared in accordance with the applicable regulations of the Municipal Securities Rulemaking Board.

Rule 7.61

(a) *ETP Contracts.* All contracts in the ordinary course of business of an ETP Holder with any other ETP Holder for the purchase, sale, borrowing, loaning or hypothecating of securities, or for the borrowing, loaning or payment of money, whether occurring through the facilities of the Corporation or elsewhere, are ETP contracts of the Corporation unless made subject to the rules of another exchange.

(b) *Provisions Included in ETP Contracts.* All bids made and accepted, and all offers made and accepted in accordance with the Bylaws, Rules, and procedures of the Corporation shall be binding. The applicable provisions of the Bylaws, Rules, and procedures of the Corporation and all other regulations adopted pursuant thereto, shall be part of the terms and conditions of all ETP contracts and all contracts thereby effected, and shall be subject to said provisions and to the exercise by the Board of Directors of the Corporation of the powers in respect thereto vested in them.

(c) *Extend or Postpone Time, Prescribe Special Terms.* Notwithstanding the foregoing subparagraphs (a) and (b) of this Rule or any other provisions of the Bylaws or Rules of the Corporation to the contrary, the Board of Directors may extend or postpone the time or prescribe special terms and conditions for the performance or settlement of ETP contracts whenever such action is called for by the public interest or by just and equitable principles of trade.

Rule 7.62. Delivery of Securities

(a) *Depository Eligibility.*

- (1) Before any issue of securities of a domestic issuer (not including American Depository Receipts for securities of a foreign issuer) is listed on the Corporation on or after June 1, 1995, the Corporation must have received a representation from the issuer that a CUSIP number identifying the securities has been included in the file of eligible issues maintained by a securities depository registered as a clearing agency under Section 17A of the Securities Exchange Act of 1934 ("securities depository" or "securities depositories"), except that this paragraph shall not apply to a security if the terms of the security do not and cannot reasonably be modified to meet the criteria for depository eligibility at all securities depositories.
- (2) A security depository's inclusion of the CUSIP number identifying a security in its file of eligible issues does not render a security "depository eligible" within the meaning of Rule 7.60(a)(2) 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 commencement of trading in such security on the Corporation; 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 distribution date, such date as is the subject of a notification submitted by the managing underwriter to the securities depository, but in no event more than three months after the commencement of trading in such security on the Corporation.
- (3) The term "depository eligible securities" shall mean securities that (A) are part of an issue (as identified by a single CUSIP number) of securities that is eligible for deposit at a securities depository and (B) with respect to a particular transaction, are eligible for book entry transfer at the depository at the time of settlement of the transaction.

(b) *Book Entry Settlement of Transactions.*

- (1) An ETP Holder shall use the facilities of a securities depository for the book-entry settlement of all transactions in depository eligible securities with another financial intermediary or a member of a national securities exchange or a registered securities association.
- (2) An ETP Holder shall not effect a delivery-versus-payment or receipt-versus-payment transaction in a depository eligible security with a customer unless the transaction is settled by book-entry using the facilities of a securities depository.
- (3) This Rule shall not apply to transactions that are settled outside of the United States.

(4) The requirements of this Rule shall supersede any inconsistent requirements under the Bylaws and Rules of the Corporation.

(5) This Rule shall not apply to any transaction where the securities to be delivered in settlement of the transaction are not on deposit at a securities depository and

(A) if the transaction is for same-day settlement, the deliverer cannot by reasonable efforts deposit the securities in a securities depository prior to the cutoff time established by the depository for same-day crediting of deposited securities; or

(B) the deliverer cannot by reasonable efforts deposit the securities in a depository prior to a cut-off date established by the depository for that issue of securities.

(c) Direct Registration System Eligibility

(1) All securities initially listing on the Corporation on or after January 1, 2007 must be eligible for a direct registration system operated by a securities depository (as defined in Rule 7.62(a)(1)). This provision does not extend to securities (i) of companies which already have securities listed on the Corporation, (ii) of companies which immediately prior to such listing had securities listed on another registered securities exchange in the U.S., or (iii) which are specifically permitted by the Corporation's Rules to be, and which are, book-entry only.

(2) On and after January 1, 2008, all securities listed on the Corporation must be eligible for a direct registration system operated by a securities depository (as defined in Rule 7.62(a)(1)). This provision does not extend to securities which are specifically permitted by the Corporation's Rules to be, and which are, book-entry only.

Section 7. Special Offerings

Rule 7.63(a). Approval

The Corporation may, subject to the following conditions and provisions, permit a "Special Offering" as defined hereinafter, to be made through the facilities of the Corporation, provided that the Corporation shall have determined that the regular market on the facilities of the Corporation cannot, within a reasonable time and at a reasonable price or prices, absorb the particular block of stock which is to be the subject of such Special Offering. In making such determination the following factors may be taken into consideration:

(1) Price range and the volume of transactions in such stock on the facilities of the Corporation during the preceding month;

(2) Attempts which have been made to dispose of the stock in the regular market on the facilities of the Corporation;

- (3) The existing condition of the NYSE Arca Book with respect to such stock;
- (4) The apparent past and current interest in such stock in such regular market on the facilities of the Corporation; and
- (5) The number of shares and the current market value of the block of such stock proposed to be covered by such Special Offering.

Except in special circumstances a "Special Offering" will not be permitted unless the offering involves at least 1,000 shares of stock or shares having an aggregate market value of \$25,000, whichever is greater.

Rule 7.63(b). Definition—Price—Special Commission

A Special Offering is defined as an offering (designated as a fixed price offering) by one or more ETP Holders acting for his, her or their own account or for the account of one or more other persons, for the sale of a block of stock dealt in on the Corporation, through the facilities of the Corporation, at a price not in excess of the last sale of such stock or the current offer of such stock, in the regular market on the facilities of the Corporation, whichever is the lower; but not lower than the current bid for such stock in such market, unless otherwise specifically permitted by the Corporation, whereby the offeror may agree to pay a special commission to such ETP Holders as may accept all or any part of such Offering for the account of his, her or their customers.

(c) *Conditions.* Subject to compliance with Regulation M, to the extent applicable, no Special Offering, as provided by this Rule, shall be made unless all of the following conditions are satisfied:

- (1) **Stabilizing.** The person for whose account such Special Offering is to be made shall at the time of such offering be the owner of the entire block of stock so to be offered, except that, for the purpose of stabilizing, there also may be sold for such person's account, or for the account of any ETP Holder offering the block of stock on his or her behalf as part of the Special Offering, an amount not to exceed 10% of the shares owned and originally offered in the Special Offering by such person.
- (2) **All to be Offered within Reasonable Time.** The person for whose account such Special Offering is to be made shall include within the Offering all of the security which he or she then intends to offer within a reasonable time; and there shall be furnished to the Corporation before the Offering is made a written statement by the offeror to that effect, or a written statement by his or her broker stating that the broker has been so advised by the offeror.
- (3) **"Regular Way" Offering—Minimum Period—Withdrawal.** In the event "a regular way" offering goes into the market below the price of the Special Offering, the Special Offering is thereby automatically suspended as long as such "regular way" offering is present. Unless otherwise specifically exempted by the

Corporation, every Special Offering shall remain open for a minimum period of 15 minutes, inclusive of any period during which it is suspended by the entry of a "regular way" offering at a price lower than the Special Offering price. A Special Offering which has not been completed in the fifteen minute minimum period shall not be withdrawn before completion without the approval of the Corporation.

(4) **Agreement by Offeror.** The person for whose account such Special Offering is made shall agree that during the period such offering is open he or she will not offer in the regular market on the facilities of the Corporation any shares of the stock which is the subject of such Special Offering, unless the prior permission of the Corporation is first obtained.

(5) **No Special Commission Member, Etc.** No ETP Holder shall directly or indirectly receive any part of the special commission referred to in Section 1(b) in connection with any purchase for his, her or its own account or the account of any participant therein or for the account of any other ETP Holder or any participant therein, made pursuant to a Special Offering, except that an ETP Holder may accept and retain such special commission for his, her or its own account in respect of securities purchased as principal for the bona fide purpose of distribution, even though such firm has been unable to distribute the securities.

(6) **Acceptable Lesser Amounts.** A Special Offering shall not be made unless it can be accepted in a lesser amount or amounts than the total of the securities offered.

(7) **Round or Odd Lots.** A Special Offering shall be made for acceptance in round lots or in odd lots, without preference, and in the case of an odd lot purchase, no differential shall be added to the gross purchase price of the Special Offering.

(8) **Allotments.** The offeror may, at the time of the announcement of a Special Offering, allot on a firm basis to ETP Holders engaged in the distributing business not more than 50% of the securities involved in the offering. When buying orders in a Special Offering exceed the amount of the offering, the remainder of the offered securities will be allocated in reasonably proportionate amounts.

(d) *Effective.* A Special Offering, when approved, shall become effective upon the announcement by the Corporation on the tape of the terms and conditions of such Offering.

(e) *Information on Tape.* The terms of a Special Offering shall be printed on the tape before it is effective, with statement, if such be the fact, that stabilizing transactions have been effected or are contemplated and that it is intended to over allot shares as permitted by Rule 7.63(c)(1). Transactions effected pursuant to a Special Offering shall when feasible be printed currently on the tape, and the tape shall show the gross price and the special commission in a legend such as "SP OFF 100 XYZ 40 COM .50," as well as the number of orders involved in such transaction where more than one order is involved; and after the close of the market, any unprinted remainder of such transactions executed

during the day shall be so printed. When the offering is terminated, an announcement to that effect shall be printed on the tape; and when the intention to stabilize is terminated, such fact shall be announced on the tape together with a statement that stabilizing transactions have been effected, if such be the fact.

(f) *Eligibility.* Transactions effected pursuant to a Special Offering shall not elect the execution of any outstanding "regular way" odd lot orders.

(g) *Authorization.* A Special Offering may be approved and made only if the person or persons for whose account it is proposed to be made shall have specifically authorized such Offering and its terms.

(h)(1) *Confirmations.* An ETP Holder effecting for the account of a customer, a purchase pursuant to a Special Offering, shall confirm such transaction to such customer at the offering price and shall not charge to or collect from such customer any commission on account of such transaction.

The confirmation by an ETP Holder to a buyer or seller in a Special Offering shall state in full the terms and conditions of the Special Offering. The confirmation to a buyer shall state at least:

- (A) That the purchase was part of a Special Offering;
- (B) That no commission is to be charged to the customer;
- (C) That the seller is to pay a special commission to the ETP Holder, if such be the fact;
- (D) The amount of such special commission;
- (E) The information printed on the tape regarding stabilizing transactions or the intention to stabilize; and
- (F) The nature of the ETP Holder interest in the special offering, if any, other than its interest as a recipient of the special commission.

(2) *Soliciting Orders.* An ETP Holder soliciting purchase orders for execution pursuant to a Special Offering shall advise the person so solicited of the terms and conditions of such Offering before effecting any transaction for such person pursuant thereto. Such disclosure shall include at least the items described in paragraphs (A) to (F) of Rule 7.63(h)(1).

(3) *More Advantageous Price.* An ETP Holder

- (A) Holding an open order for the purchase of a stock at a time when a Special Offering with respect to such stock becomes effective, or

(B) Receiving an unsolicited order for the purchase of such stock when a Special Offering with respect to said stock is in effect (unless such order specifically directs that it is to be executed pursuant to such Special Offering), or

(C) Proposing, pursuant to discretionary authority from a customer, to effect a purchase of stock which is the subject of a Special Offering then in effect,

shall, before executing any such order or effecting any such purchase pursuant to such Special Offering, make a bona fide attempt to execute such order or to effect such purchase in the regular market on the facilities of the Corporation at a price more advantageous to the customer than the gross offering price under the Special Offering.

(i) *Size of Offering.* Rule 7.63(a) places a general limitation on the size of Special Offerings, except in special circumstances. Such an exception might be a Special Offering of a stock designated as an "inactive" stock.

(j) *Preliminary Information Required.* The broker for the offeror will be required to furnish the following information to the Corporation, prior to the announcement of the Special Offering on the tape:

(1) Name of the security and ticker symbol.

(2) Number of shares.

(3) Special Offering price.

(4) Special Commission.

(5) Current bid and offer and last sale.

(6) Name of the offeror.

(7) Daily price range and volume of transactions on the Corporation, in the security which it is proposed to offer, for a period of one month prior to the date of the proposed offering. In the case of an "inactive" stock, or upon determination by the Corporation, the weekly price range and volume for a one-month period will be accepted in lieu of the daily price range and value.

(8) Description of efforts to dispose of the security through the facilities of the Corporation.

(9) Written assurance of the offeror, or the broker upon advice from the offeror, that the shares contained in the Offering are all of the security which he or she then intends to offer within a reasonable time, as required in Rule 7.63(c)(2).

- (10) Assurance of agreement of offeror to terms of Offering.
- (11) Statement as to whether stabilizing operations will be engaged in to facilitate Special Offering.
- (12) Statement as to whether the offeror or his or her agent intends, for the purpose of stabilizing, to sell stock in the Special Offering in excess of that owned and included in the original offer as permitted to Rule 7.63(c)(1).
- (13) Statement that the shares covered by the application do or do not require registration under the Securities Act of 1933, together with explanation thereof.

The foregoing information should be given to the Corporation as soon as possible in advance of the time it is proposed to make the Special Offering. Announcement will not be made on the tape of the Special Offering (and the Special Offering thus cannot become effective) until the Corporation has the requisite information and has approved it.

(k) *Ownership*. The offeror in a Special Offering must be the owner of the entire block of stock offered for sale, except for the purpose of stabilizing as permitted by Rule 7.63(c)(1).

(l) *All or None Offerings*. "Piecemeal" or successive offerings of the same security by the same offeror, and offerings on an "all or none" basis, will not be permitted.

(m) *Other Offers*. It should be noted that under Rule 7.63(c)(4), an offeror may not, while his or her Special Offering is open, offer any shares of the same stock in the regular trading through the facilities without prior permission of the Corporation.

(n) *Orders After Close*. Orders accumulated after the close shall be completed on the facilities of the Corporation at the opening of the next market session.

(o) *Special Offering Transactions*. The handling of the order on either the purchase or the offering side may be entrusted to a Market Maker in the same manner as in the case of regular orders. In connection with a Special Offering, the broker for the buyer is acting in an agency capacity and the agency obligation to buy at the most advantageous price to the customer shall be observed.

(p) *Stabilizing*. The right to sell an amount not to exceed 10 percent of the number of shares owned and originally offered in the Special Offering for the purpose of stabilizing and as part of a Special Offering is subject to the prior approval of the Corporation. Stabilizing operations in connection with Special Offerings must be discussed in advance with the Corporation.

(q) *Confirmations*. Confirmation need not be on a specially prepared form but must show clearly in type no smaller than 8-point that the purchase was part of a Special Offering; that no commission is to be charged to the customer; that the seller is to pay a special

commission to the ETP Holder if such be the fact; the amount of such special commission; the information printed on the tape regarding stabilizing transactions or the intention to stabilize; and the nature of the ETP Holder's interest in the Special Offering, if any, other than its interest as a recipient of the special commission.

Confirmations used by the broker for the seller similarly need not be on a specially prepared form, but must show clearly in type no smaller than 8-point that the sale is part of a Special Offering of . . . shares of . . . stock at . . . per share less . . . special commission, and, separately, the selling commission charged by the broker for the seller.

(r) *Reports.* The applicant shall submit to the Corporation at the close of each day a report of all transactions in the offered security affected for the account of any person having an interest, as seller or as agent, offering the block of stock on the seller's behalf, in the Special Offering. Such reports shall cover the period beginning with the date of commencement of the offering or the stabilizing, whichever is earlier, and ending with the date on which the short position has been covered or the Special Offering account has been terminated, whichever is later.

Section 8. Exchange Distributions

Rule 7.64. Exchange Distributions

(a) *Definition.* An important feature of an Exchange Distribution is that an ETP Holder may now pay compensation to its registered representatives for soliciting others to purchase through the facilities of the Corporation a security admitted to dealing which is the subject of an approved Exchange Distribution. Or it may on its own behalf or on behalf of a customer make an arrangement to pay a special commission, as mutually agreed, for distributing the security to one or more ETP Holders, who may in turn give special compensation to their registered representatives for purchases they have solicited in connection with the distribution.

Under an Exchange Distribution, purchase orders may be grouped from time to time, as they are received, and sent to the facilities of the Corporation together with an order to sell an equal amount and "crossed" under the rules of the Corporation.

(b) *Similar to Special Offering.* An Exchange Distribution is somewhat similar to a Special Offering in the following respects:

- (1) An Exchange Distribution may be made only with prior consent of the Corporation;
- (2) Approval will be given only when it is determined that the regular market on the facilities could not, within a reasonable time and at a reasonable price or prices, otherwise absorb the block of securities;
- (3) It may be made either on a principal or an agency basis;

- (4) All transactions will take place on the facilities of the Corporation;
- (5) Only ETP Holders are eligible for participation in the solicitation of purchase orders and in the special commission, if any, paid by the offeror on purchases resulting from such solicitation;
- (6) The person for whose account the distribution is to be made shall, at the time of the distribution, be the owner of the entire block of the security to be so distributed, and shall include within the distribution all of the security which he or she then intends to offer within a reasonable time;
- (7) Each ETP Holder soliciting purchase orders in connection with an Exchange Distribution must advise the person being solicited, before effecting any transaction for such person pursuant thereto, that the securities being offered are part of a specified number of shares being offered in an Exchange Distribution and that he or she is receiving a special commission from the seller or his or her broker, if that is the case.

(c) *Differences from Special Offering.* An Exchange Distribution differs from a Special Offering in that:

- (1) It is effected in the regular market and not at a fixed price;
- (2) The execution does not take place at a fixed time, but various executions may take place from time to time as orders are accumulated;
- (3) The purchasing customer may be charged a commission, except where the soliciting firm owns the security;
- (4) During the period when the distribution is being made, neither the person for whose account the distribution is being made nor the ETP Holders who are parties to the distribution, shall bid for or purchase any of the securities for an account in which the ETP Holder has a direct or indirect interest;
- (5) No ETP Holder who is connected in any way with an Exchange Distribution may, with respect to such distribution, (A) effect stabilizing transactions, (B) effect short sales, (C) make firm allotments, (D) accept over-subscriptions.

(d) *Procedure.* To effect an "Exchange Distribution" of a block of a security admitted to dealing on the Corporation, an ETP Holder for his, her or its own account, or the account of a customer, may

- (1) Make an arrangement with one or more other ETP Holders under which
 - (A) The ETP Holders, with whom the arrangement is made, solicit others to purchase such security;

(B) The selling ETP Holder may pay to the ETP Holders, with whom the arrangement is made, a special commission which is mutually agreeable; and

(C) The ETP Holders, with whom the arrangement is made, may pay a special commission to their registered representatives; and/or

(2) Pay a special commission to his, her or its registered representatives for soliciting others to purchase such security.

(e) *Approval Required.* An "Exchange Distribution" may be made only with the prior approval of the Corporation. Such a Distribution shall not be approved unless the Corporation shall have determined that the regular market on the facilities of the Corporation cannot, within a reasonable time and at a reasonable price or prices, otherwise absorb the block of securities which is to be the subject of the "Exchange Distribution." In making such determination, the following factors may be taken into consideration:

(1) Price range and the volume of transactions in such security on the facilities of the Corporation during the preceding month;

(2) Attempts which have been made to dispose of the security on the facilities of the Corporation;

(3) The existing conditions of the NYSE Arca Book with respect to such security;

(4) The apparent past and current interest in such security on the facilities; and

(5) The number of shares or bonds and the current market value of the block of such security proposed to be covered by such "Exchange Distribution."

(f) *Conditions.* No "Exchange Distribution" shall be made unless all of the following conditions are satisfied:

(1) The person for whose account the Distribution is to be made shall, at the time of the Distribution, be the owner of the entire block of the security to be so distributed;

(2) The person for whose account the Distribution is to be made shall include within the Distribution all of the security which he or she then intends to offer within a reasonable time; and there shall be furnished to the Corporation, before the Distribution is made, a written statement by the offeror to the effect or a written statement by his or her broker stating that the broker has been so advised by the offeror;

(3) The person for whose account the Distribution is made shall agree that during the period the Distribution is being made he or she will not bid for or purchase any of the security for any account in which he or she has a direct or indirect interest;

- (4) The ETP Holders who are parties to the arrangement for the Distribution shall not, during the period the Distribution is being made, bid for or purchase any of the security for an account in which they have a direct or indirect interest;
- (5) No ETP Holder shall be granted approval to effect an "Exchange Distribution" of a block of a security for an account in which he or she has a direct or indirect interest if he or she is registered as a Market Maker in such security, unless the Corporation has determined that such Market Maker has been unable, within a reasonable period of time, to dispose of the block of the security in the ordinary course of his or her dealings as a Market Maker. Such approval shall stipulate that the Market Maker may not deal directly with the public but must make an arrangement with one or more other ETP Holders to solicit others to purchase the security, and pay, if any, a special commission to such other ETP Holders as provided under Section (1)(a) of this Rule;
- (6) Each ETP Holder soliciting purchase orders for execution in the Distribution shall advise the person so solicited, before effecting any transaction for such person pursuant thereto, that the securities being offered are part of a specified number of shares or bonds being offered in an "Exchange Distribution," and that he or she or it
 - (A) is acting for the seller and will receive a special commission from the seller or his or her broker if that is the case, or is acting as a principal; and
 - (B) is charging the buying customer a commission, if any, or is making the sale at a net amount, whichever the case may be.
- (7) No "short" sale may be made in connection with the Distribution except that securities may be borrowed to make delivery where the person owns the securities sold and intends to deliver such securities as soon as possible without undue inconvenience or expense.

The conditions set forth in (2), (3) and (4) above shall not apply

- (A) To transactions effected on the Corporation, for the purpose of maintaining a fair and orderly market, by an ETP Holder in a security in which he or she is registered as a Market Maker and which is the subject of an Exchange Distribution for an account in which he or she has an interest, except that, when such Distribution is in effect, he or she shall not bid for or purchase such stock through the facilities of the Corporation for an account in which he or she has an interest:
 - (i) at a price above the preceding sale, or
 - (ii) at a price above the next preceding different sale price, or
- (B) To transactions effected by an ETP Holder on the Corporation in less than the unit of trading for the purpose of purchasing odd lots offered to him or her in a security

in which he or she is registered as a Market Maker and which is the subject of an Exchange Distribution in which he or she has an interest.

The conditions set forth in (3) and (4) above shall not apply to purchases necessitated solely in connection with "crossing" orders pursuant to the Distribution.

(g) *Execution.* In effecting an "Exchange Distribution" the orders for the purchase of the securities being distributed must be sent to the facilities of the Corporation together with an order to sell an equal amount to be "crossed" in accordance with the Rules applicable to the crossing of orders on the facilities, and such transactions shall be printed on the ticker tape.

(h) *Reports.* The ETP Holder selling securities in an "Exchange Distribution" shall report to the Corporation all transactions in such securities effected by him, her or it for any account in which the seller had a direct or indirect interest, commencing with the time arrangements for the Distribution were made and ending with the time the Distribution was completed.

RULE 8 TRADING OF CERTAIN EQUITY DERIVATIVES

Section 1. Currency and Index Warrants

Rule 8.1. General

Rule 8 is applicable only to index warrants and, where stated, to currency warrants and currency index warrants. Except to the extent that specific provisions of Rule 8 govern, or unless the context otherwise requires, the provisions of the Bylaws and Rules and procedures of the Corporation shall be applicable to trading of the index warrants, currency warrants and currency index warrants on the Corporation.

Rule 8.2. Definitions

(a) The term "currency index group" means a group of currencies each of whose inclusion and relative representation in the group is determined by its inclusion and relative representation in a currency index.

(b) The term "currency index warrant" means a warrant on a currency index group listed pursuant to Rule 8.3.

(c) The term "currency warrant" means a warrant on a currency index group listed pursuant to Rule 8.3. The term "cross currency" means the relationship between any two non-U.S. currencies.

(d) The term "foreign currency warrants" shall mean instruments that are direct obligations of the issuing company, either exercisable throughout their life (i.e., American style) or exercisable only on their expiration date (i.e., European style),

entitling the holder thereof to a cash settlement in U.S. dollars to the extent that the value of the underlying foreign currency has declined below (in the case of a put warrant) or increased above (in the case of a call warrant) the pre-stated cash settlement value of the underlying foreign currency. The term "foreign currency warrants" shall also include cross-rate currency warrants.

(e) The term "index warrants" means instruments that are direct obligations of the issuing company, either exercisable throughout their life (i.e., American style) or exercisable only on their expiration date (i.e., European style), entitling the holder to a cash settlement in U.S. dollars to the extent that the index has declined below (for put warrant) or increased above (for a call warrant) the pre-stated cash settlement value of the index. Index warrants may be based on either foreign or domestic indexes.

(f) The term "stock index group" means a group of stocks each of whose inclusion and relative representation in the group is determined by its inclusion and relative representation in a stock index.

(g) The term "stock index warrant" means a warrant on a stock index group listed pursuant to Rule 8.3.

Rule 8.3. Listing of Currency and Index Warrants

(a) The Corporation will submit a rule filing pursuant to Section 19(b) of the Securities Exchange Act of 1934 to permit the listing and trading of Currency and Index Warrants. All statements or representations contained in such rule filing regarding (a) the underlying reference assets, (b) limitations on the underlying reference assets, or (c) the applicability of Exchange listing rules specified in such rule filing will constitute continued listing requirements. An issuer of such securities must notify the Exchange of any failure to comply with such continued listing requirements. If a series of currency and index warrants does not satisfy these requirements, the Exchange may halt trading in the securities and will initiate delisting proceedings pursuant to Rule 5.5(m).

(b) Each warrant issue will be evaluated for listing against the following initial and continued listing criteria (except that the minimum term requirement in Rule 8.3(a)(2) must only be met on an initial basis):

- (1) *Size and Earnings of Warrant Issuer*—The warrant issuer will be expected to have a minimum tangible net worth in excess of \$250,000,000 and otherwise to exceed substantially the earnings requirements set forth in Rule 5.2(c) (Basic Listing Requirements). In the alternative, the warrant issuer will be expected: (A) to have a minimum tangible net worth of \$150,000,000 and otherwise to exceed substantially the earnings requirements set forth in Rule 5.2(c) (Basic Listing Requirements), and (B) not to have issued warrants where the original issue price of all the issuer's index and currency warrant offerings (combined with index and currency warrant offerings of the issuer's affiliates) listed on a national securities exchange or traded through the facilities of Nasdaq exceeds 25% of the warrant issuer's net worth.

- (2) *Term*—One to five years from date of issuance.
- (3) *Distribution/Market Value*—(i) Minimum public distribution of 1,000,000 warrants together with a minimum of 400 public holders, and an aggregate market value of \$4,000,000; or (ii) Minimum public distribution of 2,000,000 warrants together with a minimum number of public warrant holders determined on a case by case basis, an aggregate market value of \$12,000,000 and an initial warrant price of \$6.
- (4) *Cash Settlement*—The warrants will be cash settled in U.S. dollars.
- (5) *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 opening prices of the stocks comprising the index will be used to determine (A) the final settlement value (i.e., the settlement value for warrants that are exercised at expiration) and (B) the settlement value for such warrants that are exercised on either of the two business days preceding the day on which the final settlement value is to be determined.
- (6) *Automatic Exercise*—All currency and index warrants must include in their terms provisions specifying: (A) the time by which all exercise notices must be submitted, and (B) that all unexercised warrants that are in the money will be automatically exercised on their expiration date or on or promptly following the date on which such warrants are delisted by the Corporation (if such warrant issue has not been listed on another organized securities market in the United States.)
- (7) *Foreign Country Securities*—Foreign Country Securities or American Depository Receipts ("ADRs") thereon that: (A) are not subject to a comprehensive surveillance agreement, and (B) 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.
- (8) *Changes in Number of Warrants Outstanding*—The Corporation expects that issuers of stock index warrants either will make arrangements with warrant transfer agents to advise the Corporation 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 Corporation no later than 1:30 p.m. Pacific 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 Corporation from time to time.

Rule 8.4. Account Approval

No ETP Holder shall accept an order from a customer to purchase or sell a stock index, currency index or currency warrant unless the customer's account has been approved for options trading pursuant to Rule 9.18(b).

Rule 8.5. Suitability

The provisions of Rule 9.18(c) shall apply to recommendations in stock index, currency index and currency warrants and the term "option" as used therein shall be deemed for purposes of this Rule to include such warrants.

Rule 8.6. Discretionary Accounts

Rule 9.6(a) shall not apply to customer accounts insofar as an ETP Holder exercises discretion to trade in stock index, currency index and currency warrants, and any such account shall instead be subject to the provisions of Rule 9.18(e) with respect to such trading. For purposes of this Rule, the term "option" as used in Rule 9.18(e) shall be deemed to include such warrants.

Rule 8.7. Supervision of Accounts

Rule 9.18(d) shall apply to all customer accounts of an ETP Holder in which transactions in stock index, currency index or currency warrants are effected. The term "option" as used in Rule 9.18(d) shall be deemed to include such warrants.

Rule 8.8. Customer Complaints

Rule 9.18(1) shall apply to all customer complaints received by an ETP Holder regarding stock index, currency index or currency warrants. The term "options" as used in Rule 9.18(1) shall be deemed to include such warrants.

Rule 8.9. Prior Approval of Certain Communications to Customers

(a) No ETP Holder or person associated with an ETP Holder shall utilize any advertisement, educational material, sales literature or other communication to any customer or member of the public concerning stock index, currency index or currency warrants that:

- (1) contains any untrue statement or omission of a material fact or is otherwise false or misleading;
- (2) contains promises of specific results, exaggerated or unwarranted claims, opinions for which there is no reasonable basis or forecasts of future events that are unwarranted or that are not clearly labeled as forecasts; or

(3) contains hedge clauses or disclaimers that are not legible, that attempt to disclaim responsibility for the content of such literature or for opinions expressed therein, or that are otherwise inconsistent with such communications.

(b) All advertisements, sales literature and educational material issued by an ETP Holder to any customer or member of the public pertaining to stock index, currency index or currency warrants shall comply with the requirements set forth in the Commentaries to Rule 9.28. For purposes of this Rule, the term "option" as used in such Commentaries shall be deemed to include such warrants, and the term "The Options Clearing Corporation" as used in such Commentaries shall be deemed to mean the issuer(s) of such warrants.

(c) All advertisements, sales literature (except completed worksheets) and educational materials issued by an ETP Holder to any customer or member of the public pertaining to stock index, currency index or currency warrants shall be approved in advance by a Compliance Registered Options Principal or designee thereof. Copies of such advertisements, literature or materials, together with the names of the persons who prepared them, the names of the persons who approved them and, in the case of sales literature, the source of any recommendations contained therein, shall be retained by the ETP Holder and be kept in an easily accessible place for examination by the Corporation for a period of three years.

(d) In addition to the approval required by subsection (c) of this Rule, every advertisement and all educational material of an ETP Holder pertaining to stock index, currency index and currency warrants shall be submitted to the Corporation at least ten days prior to use (or such shorter time as the Corporation may allow in particular instances) for approval and, if changed or expressly disapproved by the Corporation, shall be withheld from circulation until any changes specified by the Corporation have been made or, in the event of disapproval, until such material has been resubmitted for, and has received, Corporation approval. The requirements of this paragraph shall not be applicable to:

(1) advertisements or educational material submitted to another self-regulatory organization having comparable standards pertaining to such advertising or educational material; or

(2) advertisements in which the only reference to stock index, currency index or currency warrants is contained in a listing of services of an ETP Holder.

(e) *Definitions.* For purposes of this Rule 8.9, the following definitions shall apply:

(1) The term "advertisement" shall include any sales material that reaches a mass audience through public media such as newspapers, periodicals, magazines, radio, television, telephone recordings, motion pictures, audio or video devices, telecommunications devices, billboards, signs or through written sales communications to customers or the public.

- (2) The term "educational material" shall include any explanatory material distributed or made generally available to customers or the public that is limited to information describing the general nature of the stock index, currency index or currency warrant markets or one or more strategies.
- (3) The term "sales literature" shall include any written communication (not defined as an "advertisement" or as "educational material") distributed or made generally available to customers or the public that contains any analysis, performance report, projection or recommendation with respect to stock index, currency index or currency warrants, underlying indexes or market conditions, any standard forms of worksheets, or any seminar text that pertains to stock index, currency index or currency warrants and that is communicated to customers or the public at seminars, lectures or similar events.

Rule 8.10. Position Limits

(a) Except with prior written approval of the Corporation in each instance, no ETP Holder shall effect for any account in which such ETP Holder has an interest or for the account of any partner, officer, director or employee thereof or for the account of any customer, a purchase or sale transaction (whether on the Corporation or on or through the facilities of, or otherwise subject to the rules of, another national securities exchange or national securities association) in a stock index warrant if the ETP Holder has reason to believe that as a result of such transaction the ETP Holder or partner, officer, director or employee thereof or customer would, acting alone or in concert with others, directly or indirectly, control an aggregate position in an index warrant issue, or in all warrants issued on the same stock index group, on the same side of the market, in excess of the following position limits:

- (1) As to index warrants overlying the same index with an initial offering price of \$10 or less, 15 million warrants; and
- (2) For stock index warrants with an initial issue price greater than ten dollars, positions in these warrants must be aggregated with positions in stock index warrants on the same index priced initially at or below ten dollars by dividing the original offering price of the index warrant price above ten dollars by ten and multiplying this number by the size of the index warrant position. For example, if an investor held 100,000 stock index warrants priced initially at \$20 per warrant, the size of this position for position limit purposes would be 200,000 or 100,000 times 20/10.

(b) Whenever the Corporation determines that a person or group of persons acting in concert holds or controls an aggregate position (whether long or short) in stock index warrants in excess of the applicable position limits established pursuant to paragraph (a) of this Rule 8.10, it may direct all ETP Holders carrying a position in stock index warrants for such person or persons to liquidate such position, as expeditiously as possible consistent with the maintenance of an orderly market, to the extent necessary to

assure that such person or persons are in compliance with applicable position limits. Whenever such a directive is issued by the Corporation, no ETP Holder receiving notice thereof shall accept any order to purchase or sell any stock index warrants based on the same stock index for the account of the person or persons named in such directive, unless in each instance the Corporation provides its express approval therefor, or until such directive is rescinded.

Commentary:

.01 The Corporation will not approve any transaction or the carrying of any positions which would exceed the limits established pursuant to this Rule, except in highly unusual circumstances. Requests for such approval must be accompanied by a detailed statement of the facts justifying an exception to such position limits.

.02 The Corporation may establish higher position limits for Market Maker transactions than those applicable with respect to other accounts. Whenever a Market Maker reasonably anticipates that he or she may exceed such position limits in the performance of his or her Market Maker functions, he or she must consult with and obtain the prior approval of the regulatory staff.

Rule 8.11. Exercise Limits

Except with the prior approval of the Corporation in each instance, no ETP Holder shall exercise, for any account in which such ETP Holder has an interest, or for the account of any partner, officer, director or employee thereof, or, for the account of any customer, a long position in any stock index warrant dealt in on the Corporation if as a result thereof such ETP Holder or partner, officer, director or employee thereof or customer, acting alone or in concert with others, directly or indirectly, has or will have exercised within any five (5) consecutive business days aggregate long positions in the number of stock index warrants set forth in Rule 8.10. The Corporation may from time to time institute other limitations concerning the exercise of stock index warrants. All such exercise limitations are separate and distinct from any other exercise limitations imposed by the issuers of index warrants.

Rule 8.12. Trading Halts or Suspensions

The Corporation will maintain surveillance procedures for currency and index warrants listed under Rule 8.3 and will consider the suspension of trading in, and will initiate delisting proceedings under Rule 5.5(m) of, a series of currency or index warrants under any of the following circumstances:

- (i) whenever trading in underlying securities whose weighted value represents more than 20%, in the case of a broad based index, and 10% for all other indices, of the index value is halted or is suspended;

- (ii) all trading has been halted or suspended in the market that is the primary market for a plurality of the underlying stocks;
- (iii) the current calculation of the index derived from the current market prices of the stocks is not available;
- (iv) if any of the continued listing requirements set forth in Rule 8.3 are not continuously maintained;
- (v) if the Corporation submits a rule filing pursuant to Section 19(b) of the Securities Exchange Act of 1934 to permit the listing and trading of Currency or Index Warrants and any of the statements or representations regarding (a) the description of the underlying reference asset, (b) limitations on the underlying reference assets, or (c) the applicability of Exchange listing rules specified in such rule filing are not continuously maintained; or
- (vi) other unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market and the protection of investors are present.

Trading in currency or index warrants that have been the subject of a halt or suspension by the Corporation may resume if the Corporation determines that the conditions which led to the halt or suspension are no longer present, or that the interests of a fair and orderly market are best served by a resumption of trading.

Rule 8.13. Reporting of Warrant Positions

(a) Each ETP Holder shall file with the Corporation a report with respect to each account in which the ETP Holder has an interest, each account of a partner, officer, director, or employee of such ETP Holder and each customer account, that has established an aggregate position (whether long or short) of 100,000 warrants covering the same underlying index, currency or currency index, combining for purposes of this Rule: (1) long positions in put warrants and short positions in call warrants, and (2) short positions in put warrants with long positions in call warrants. The report shall be in such form as may be prescribed by the Corporation and shall be filed no later than the close of business on the next day following the day on which the transaction or transactions requiring the filing of such report occurred. Whenever a report shall be required to be filed with respect to an account pursuant to this Rule, the ETP Holder filing the same file with the Corporation such additional periodic reports with respect to such account as the Corporation may from time to time prescribe. In computing reportable positions, warrants on a stock index shall not be aggregated with: (1) warrants on any other stock index, (2) options on any stock index or (3) options or warrants on any stock or group of stocks included in such index.

(b) In addition to the reports required by subsection (a) of this Rule, each ETP Holder shall report promptly to the Corporation any instance in which such ETP Holder has reason to believe that a person, acting alone or in concert with others, has exceeded or is

attempting to exceed the position limits prescribed in Rule 8.10 or the exercise limits prescribed in Rule 8.11.

(c) All reports required by this Rule shall be filed with the Corporation in such manner and form as prescribed by the Corporation.

Section 2. Portfolio Depositary Receipts

Rule 8.100. Portfolio Depositary Receipts

(a) Definitions.

(1) *Portfolio Depositary Receipt*. The term "Portfolio Depositary Receipt" means a security (a) that is based on a unit investment trust ("Trust") that holds the securities that comprise an index or portfolio underlying a series of Portfolio Depositary Receipts; (b) 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; (c) 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 (d) 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 Depositary Receipts, less certain expenses and other charges as set forth in the Trust prospectus.

(2) *Reporting Authority*. The term "Reporting Authority" in respect of a particular series of Portfolio Depositary Receipts means the Corporation, an institution (including the Trustee for a series of Portfolio Depositary Receipts), or a reporting service designated by the Corporation or by the exchange that lists a particular series of Portfolio Depositary Receipts (if the Corporation 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, any current index or portfolio value; the current value of the portfolio of securities required to be deposited to the Trust in connection with the issuance of Portfolio Depositary Receipts; the amount of any dividend equivalent payment or cash distribution to holders of Portfolio Depositary Receipts, net asset value, or other information relating to the creation, redemption or trading of Portfolio Depositary Receipts.

(3) *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 Securities Exchange Act of 1934 or an American Depositary Receipt, the underlying equity security of which is registered under Sections 12(b) or 12(g) of the Securities Exchange Act of 1934.

(4) **Non-US Component Stock.** The term "Non-US Component Stock" shall mean an equity security that is not registered under Sections 12(b) or 12(g) of the Securities Exchange Act of 1934 and that is issued by an entity that (a) is not organized, domiciled or incorporated in the United States, and (b) is an operating company (including Real Estate Investment Trusts (REITS) and income trusts, but excluding investment trusts, unit trusts, mutual funds, and derivatives).

(b) *Applicability.* This Rule is applicable only to Portfolio Depositary Receipts. Except to the extent inconsistent with this Rule, or unless the context otherwise requires, the provisions of the Bylaws and all other Rules and policies of the Board of Directors are applicable to the trading on the Corporation of such securities. Portfolio Depositary Receipts are included within the definition of "security" or "securities" as such terms are used in the Bylaws and Rules of the Corporation.

(c) *Disclosures.* The provisions of this subparagraph apply only to series of Portfolio Depositary Receipts 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 Corporation will inform ETP Holders regarding application of these provisions of this subparagraph to a particular series of Portfolio Depositary Receipts by means of an information circular prior to commencement of trading in such series.

ETP Holders shall provide to all purchasers of a series of Portfolio Depositary Receipts a written description of the terms and characteristics of such securities, in a form approved by the Corporation, or prepared by the unit investment trust issuing such securities, not later than the time a confirmation of the first transaction in such series is delivered to such purchaser. In addition, ETP Holders shall include such a written description with any sales material relating to a series of Portfolio Depositary Receipts that is provided to customers or the public. Any other written materials provided by an ETP Holder to customers or the public making specific reference to a series of Portfolio Depositary Receipts as an investment vehicle must include a statement in substantially the following form: "A circular describing the terms and characteristics of [the series of Portfolio Depositary Receipts] is available from your broker. It is recommended that you obtain and review such circular before purchasing [the series of Portfolio Depositary Receipts]. In addition, upon request you may obtain from your broker a prospectus for [the series of Portfolio Depositary Receipts]."

An ETP Holder carrying an omnibus account for a non-ETP Holder broker-dealer is required to inform such non-ETP Holder that execution of an order to purchase a series of Portfolio Depositary Receipts for such omnibus account will be deemed to constitute agreement by the non-ETP Holder to make such written description available to its customers on the same terms as are directly applicable to ETP Holders under this Rule.

Upon request of a customer, an ETP Holder shall also provide a prospectus for the particular series of Portfolio Depositary Receipts.

(d) *Designation of an Index or Portfolio.* The trading of Portfolio Depositary Receipts based on one or more stock indexes or securities portfolios, whether by listing or pursuant to unlisted trading privileges, shall be considered on a case-by-case basis. The Portfolio Depositary Receipts based on each particular stock index or portfolio shall be designated as a separate series and shall be identified by a unique symbol. The stocks that are included in an index or portfolio on which Portfolio Depositary Receipts are based shall be selected by the Corporation 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.

(e) The Corporation may submit a rule filing pursuant to Section 19(b) of the Securities Exchange Act of 1934 to permit the listing and trading of Portfolio Depositary Receipts that do not otherwise meet the standards set forth in this rule. All statements or representations contained in such rule filing regarding (a) the description of the index, portfolio or reference asset, (b) limitations on index or portfolio holdings or reference assets, or (c) the applicability of Exchange listing rules specified in such rule filing will constitute continued listing requirements. An issuer of such securities must notify the Exchange of any failure to comply with such continued listing requirements.

(f) *Initial and Continued Listing and/or Trading.* A Trust upon which a series of Portfolio Depositary Receipts is based will be traded on the Corporation, whether by listing or pursuant to unlisted trading privileges, subject to the following criteria:

(1) Initial Listing

- (i) The minimum number of Portfolio Depositary Receipts required to be outstanding at commencement of trading is set forth in Commentary .01 paragraph (d) of this Rule.
- (ii) The Corporation will obtain a representation from the issuer of each series of Portfolio Depositary 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.

(2) Continued Listing

- (i) The Corporation will maintain surveillance procedures for securities listed under this rule and will consider the suspension of trading in, and will initiate delisting proceedings under Rule 5.5(m) of, a Trust upon which a series of Portfolio Depositary Receipts is based under any of the following circumstances:
 - (A) if any of the continued listing requirements set forth in this Rule 8.100 are not continuously maintained;

- (B) if the Corporation files separate proposals under 19(b) of the Securities Exchange Act of 1934 and any of the statements or representations regarding (a) the description of the index, portfolio or reference asset, (b) limitations on index or portfolio holdings or reference assets, or (c) the applicability of Exchange listing rules specified in such rule filing are not continuously maintained;
- (C) if, following the initial twelve month period after the formation of a Trust and commencement of trading on the NYSE Arca Marketplace, the Trust has more than 60 days remaining until termination and there are fewer than 50 record and/or beneficial holders of Portfolio Depositary Receipts;
- (D) if the value of the index or portfolio of securities on which the Trust is based is no longer calculated or available; or
- (E) if such other event shall occur or condition exists which in the opinion of the Corporation, makes further dealings on the Corporation inadvisable.
- (ii) The Corporation will halt trading in a series of Portfolio Depositary Receipts if the circuit breaker parameters of Rule 7.12 have been reached. In exercising its discretion to halt or suspend trading in a series of Portfolio Depositary Receipts, the Corporation may consider factors such as the extent to which trading in the underlying securities is not occurring or whether other unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market are present, in addition to other factors that may be relevant. The remainder of this paragraph (ii) shall apply only when the Corporation is the listing market for a series of Portfolio Depositary Receipts. If the Intraday Indicative Value (as defined in Commentary .01 to Rule 8.100) or the official index value applicable to that series of Portfolio Depositary Receipts is not being disseminated as required, the Corporation may halt trading during the day in which the interruption to the dissemination of the Intraday Indicative Value or the index value occurs. If the interruption to the dissemination of the Intraday Indicative Value or the official index value persists past the trading day in which it occurred, the Corporation will halt trading no later than the beginning of the trading day following the interruption. Procedures for trading halts in connection with an interruption in the calculation or dissemination of the Intraday Indicative Value or the official index value for Portfolio Depositary Receipts traded pursuant to unlisted trading privileges are set forth in Rule 7.34(a)(4).
- (iii) Upon termination of a Trust, the Corporation requires that Portfolio Depositary Receipts issued in connection with such Trust be removed from Corporation listing or have their unlisted trading privileges terminated. 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.

- (3) **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.
- (4) **Trustee**—The trustee must on an initial and continued listing basis 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.
- (5) **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.

Commentary:

.01 Equity.The Corporation may approve a series of Portfolio Depository Receipts for listing and/or trading (including pursuant to unlisted trading privileges) pursuant to Rule 19b-4(e) under the Securities Exchange Act of 1934. Portfolio Depository Receipts listed pursuant to Rule 19b-4(e) shall satisfy the criteria set forth in (a)(A), (B) or (C) and (b) through (g) below.

(a) *Eligibility Criteria for Index Components.*

- (A) US index or portfolio. Component stocks of an index or portfolio of US Component Stocks underlying a series of Portfolio Depository Receipts listed pursuant to Rule 19b-4(e) under the Securities Exchange Act of 1934 shall meet the following criteria on an initial and continued listing basis:
- (1) 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;
 - (2) 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;
 - (3) 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 65% of the weight of the index or portfolio;
 - (4) The index or portfolio shall include a minimum of 13 component stocks; and
 - (5) All securities in the index or portfolio shall be US Component Stocks listed on a national securities exchange and shall be NMS Stocks as defined in Rule 600 of Regulation NMS under the Securities Exchange Act of 1934.

(B) International or global index or portfolio. Component stocks of an index or portfolio underlying a series of Portfolio Depositary Receipts listed pursuant to Rule 19b-4(e) under the Securities Exchange Act of 1934 that consist of either (a) only Non-US Component Stocks or (b) both US Component Stocks and Non-US Component Stocks shall meet the following criteria on an initial and continued listing basis:

- (1) 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;
- (2) 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;
- (3) 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;
- (4) The index or portfolio shall include a minimum of 20 component stocks; and
- (5) 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 Securities Exchange Act of 1934, and each Non-US Component Stock shall be listed and traded on an exchange that has last-sale reporting.

(C) Index or portfolio approved in connection with options or other derivative securities. For the initial and continued listing of a series of Portfolio Depositary Receipts pursuant to Rule 19b-4(e) under the Securities Exchange Act of 1934, the index or portfolio underlying a series of Portfolio Depositary Receipts shall have been reviewed and approved for trading of options, Portfolio Depositary Receipts, Investment Company Units, Index-Linked Exchangeable Notes or Index-Linked Securities by the Securities and Exchange Commission under Section 19(b) of the Securities Exchange Act of 1934 and rules thereunder and the conditions set forth in the Securities and Exchange Commission's approval order, including comprehensive surveillance sharing agreements with respect to Non-US Component Stocks and the requirements regarding dissemination of information, must continue to be satisfied. On an initial and continued listing basis, each component stock of the index or portfolio shall be either (i) 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 Securities Exchange Act of 1934 or (ii) a Non-US Component Stock that is listed and traded on an exchange that has last-sale reporting.

(b) *Index Methodology and Calculation.* All requirements set forth in this paragraph must be satisfied on an initial and continued listing basis.

- (1) The index underlying a series of Portfolio Depositary Receipts will be calculated based on either the market capitalization, modified market capitalization, price, equal-dollar or modified equal-dollar weighting methodology;
 - (2) If the index is maintained by a broker-dealer or fund advisor, the broker-dealer or fund advisor shall erect and maintain 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 or fund advisor. In addition, 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;
 - (3) The current index value for Portfolio Depositary Receipts listed pursuant to (a) Commentary .01(a)(A) above will be widely disseminated by one or more major market data vendors at least every 15 seconds during the Core Trading Session (as defined in NYSE Arca Equities Rule 7.34); (b) Commentary .01(a)(B) above will be widely disseminated by one or more major market data vendors at least every 60 seconds during the Core Trading Session; or (c) Commentary .01(a)(C) above will be widely disseminated during the Core Trading Session 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. If the official index value does not change during some or all of the period when trading is occurring on the NYSE Arca Marketplace (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 NYSE Arca Marketplace trading hours.
- (c) *Disseminated Information.* One or more major market data vendors will disseminate for each series of Portfolio Depositary Receipts listed or traded on the Corporation an estimate, updated at least every 15 seconds, during the Core Trading Session of the value in U.S. dollars 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 will be updated at least every 15 seconds during the Core Trading Session to reflect changes in the exchange rate between the U.S. 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 NYSE Arca Marketplace, then the last official calculated Intraday Indicative Value must remain available throughout NYSE Arca Marketplace trading hours. All requirements set forth in this paragraph must be satisfied on an initial and continued listing basis.

- (d) *Initial Shares Outstanding.* A minimum of 100,000 shares of a series of Portfolio Depository Receipts is required to be outstanding at commencement of trading.
- (e) *Hours of Trading.* The hours of trading for series of Portfolio Depository Receipts are the same as those provided in Rule 7.34(a).
- (f) *Surveillance Procedures.* The Corporation will implement written surveillance procedures for Portfolio Depository Receipts.
- (g) *Creation and Redemption.* For Portfolio Depository Receipts listed pursuant to Commentary .01(a)(B) or (C) 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.

.02 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 a subdivision thereof. The Corporation may approve a series of Portfolio Depository Receipts based on Fixed Income Securities for listing and 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, Investment Company Units, Portfolio Depository Receipts, Index-Linked Exchangeable Notes or Index-Linked Securities by the Commission under Section 19(b) 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) the following criteria is satisfied.

- (a) *Eligibility Criteria for Index Components.* Components of an index or portfolio underlying a series of Portfolio Depository Receipts listed pursuant to Rule 19b-4(e) under the Securities Exchange Act of 1934 shall meet the following criteria on an initial and continued listing basis:
- (1) The index or portfolio must consist of Fixed Income Securities;
 - (2) Components that in aggregate account for at least 75% of the weight of the index or portfolio each shall have a minimum original principal amount outstanding of \$100 million or more;

- (3) A component may be a convertible security, however, once the convertible security component converts to the underlying equity security, the component is removed from the index or portfolio;
 - (4) No component fixed-income security (excluding Treasury Securities and GSE Securities) shall represent more than 30% of the weight of the index or portfolio, and the five most heavily weighted component fixed-income securities in the index or portfolio shall not in the aggregate account for more than 65% of the weight of the index or portfolio;
 - (5) An underlying index or portfolio (excluding one consisting entirely of exempted securities) must include a minimum of 13 non-affiliated issuers; and
 - (6) 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 Securities Exchange Act of 1934; 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.* All requirements set forth in this paragraph must be satisfied on an initial and continued listing basis.
- (i) If the index is maintained by a broker-dealer or fund advisor, the broker-dealer or fund advisor shall erect and maintain a "firewall" around the personnel who have access to information concerning changes and adjustments to the index;
 - (ii) The current index value for Portfolio Depositary Receipts listed pursuant to Commentary .02(a) above will be widely disseminated by one or more major market data vendors at least once per day and if the index value does not change during some or all of the period when trading is occurring on the NYSE Arca Marketplace, the last official calculated index value must remain available throughout NYSE Arca Marketplace trading hours; 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.
- (c) *Disseminated Information.* One or more major market data vendors shall disseminate for each series of Portfolio Depositary Receipts listed pursuant to

Commentary .02(a) above an estimate, updated at least every 15 seconds during the Core Trading Session, 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 Corporation 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. If the Intraday Indicative Value does not change during some or all of the period when trading is occurring on the NYSE Arca Marketplace, then the last official calculated Intraday Indicative Value must remain available throughout NYSE Arca Marketplace trading hours. All requirements set forth in this paragraph must be satisfied by the issuer on an initial and continued listing basis.

- (d) *Initial Shares Outstanding.* The provisions of Commentary .01(d) above shall apply to series of Portfolio Depository Receipts listed pursuant to Commentary .02(a) above.
- (e) *Hours of Trading.* The provisions of Commentary .01(e) above shall apply to series of Portfolio Depository Receipts listed pursuant to Commentary .02(a) above.
- (f) *Surveillance Procedures.* The provisions of Commentary .01(f) above shall apply to series of Portfolio Depository Receipts based on Fixed Income Securities that are listed and/or traded pursuant to UTP.

.03The Corporation may approve a series of Portfolio Depository Receipts based on a combination of indexes or an index or portfolio of component securities representing the U.S. or domestic 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 have been reviewed and approved for the trading of options, Investment Company Units, Portfolio Depository Receipts, Index-Linked Exchangeable Notes or Index-Linked Securities by the Commission under Section 19(b) 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 meet either the criteria set forth in Commentary .01(a) or .02(a) above.

- (a) *Index Methodology and Calculation.* All requirements set forth in this paragraph must be satisfied on an initial and continued listing basis.

- (i) If the index is maintained by a broker-dealer or fund advisor, the broker-dealer or fund advisor shall erect and maintain a "firewall" around the personnel who have access to information concerning changes and adjustments to the index;
- (ii) The current composite index value for Portfolio Depositary Receipts listed pursuant to Commentary .01(a) or .02(a) above shall be widely disseminated by one or more major market data vendors at least once every 15 seconds during the Core Trading 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 Core Trading 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 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.

(b) *Other Applicable Provisions.* The provisions of Commentary .01(c)-(g) shall also apply to series of Portfolio Depositary Receipts based on a combination of indexes or an index or portfolio of component securities representing the U.S. or domestic equity market, the international equity market, and the fixed income market.

Rule 8.100(f). Limitation of Liability of the Corporation

Neither the Corporation, the Reporting Authority nor any agent of the Corporation 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 Depositary Receipts; net asset value; or other information relating to the creation, redemption or trading of Portfolio Depositary Receipts, resulting from any negligent act or omission by the Corporation, or the Reporting Authority, or any agent of the Corporation, or any act, condition or cause beyond the reasonable control of the Corporation or 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 reporting of transactions in one or more underlying securities. The Corporation makes no warranty, express or implied, as to results to be obtained by any person or entity from the use of Portfolio Depositary Receipts or any underlying index or data included therein and the Corporation makes no express or implied warranties, and disclaims all warranties of merchantability or fitness for a particular purpose with respect to Portfolio Depositary Receipts or any underlying index or data included therein. This limitation of liability shall be in addition to any other limitation contained in the Corporation's Bylaws and Rules.

Rule 8.100(g). Nasdaq-100 Index

The Nasdaq Stock Market, Inc. ("Nasdaq") has licensed the use of the Nasdaq-100 Index® for certain purposes in connection with trading in a particular series of Portfolio Depositary Receipts on the Corporation (Nasdaq-100 SharesSM). Nasdaq and their affiliates do not guarantee the accuracy and/or completeness of the Nasdaq-100 Index or any data included therein. Nasdaq, the Corporation and their affiliates make no warranty, express or implied, as to results to be obtained by any person or entity from the use of the Nasdaq-100 Index or any data included therein in connection with the rights licensed or for any other use. Nasdaq, the Corporation and their affiliates make no express or implied warranties, and disclaim all warranties of merchantability or fitness for a particular purpose with respect to the Nasdaq-100 Index or any data included therein. Without limiting any of the foregoing, in no event shall Nasdaq, the Corporation and their affiliates have any liability for any lost profits or special, punitive, incidental, indirect or consequential damages, even if notified of the possibility of such damages. In addition, Nasdaq, the Corporation and their affiliates shall have no liability for any damages, claims, losses or expenses caused by any errors or delays in calculating or disseminating the Nasdaq-100 Index.

Commentary:

.01 The Corporation will trade, pursuant to unlisted trading privileges, Portfolio Depositary Receipts based on the Standard and Poor's Corporation's S&P 500 Index, known a SPDRs.

.02 The Corporation will trade, pursuant to unlisted trading privileges, Portfolio Depositary Receipts based on the S&P MidCap 400 Index, known as MidCap SPDRs.

.03 The Corporation will trade, pursuant to unlisted trading privileges, Portfolio Depositary Receipts based on the Nasdaq-100 Index, known as Nasdaq-100.

Rule 8.200. Trust Issued Receipts

(a) The Corporation will consider for trading, whether by listing or pursuant to unlisted trading privileges, Trust Issued Receipts that meet the criteria of this Rule. The Corporation may submit a rule filing pursuant to Section 19(b) of the Securities Exchange Act of 1934 to permit the listing and trading of a series of Trust Issued Receipts that do not meet the standards set forth in Commentary .01 to this Rule 8.200. All statements or representations contained in such rule filing regarding (a) the description of the index, portfolio or reference asset, (b) limitations on index or portfolio holdings or reference assets, or (c) the applicability of Exchange listing rules specified in such rule filing will constitute continued listing requirements. An issuer of such securities must notify the Exchange of any failure to comply with such continued listing requirements. If an issue of Trust Certificates does not satisfy these requirements, the

Exchange may halt trading in the securities and will initiate delisting proceedings pursuant to Rule 5.5(m).

(b) *Definitions.* A Trust Issued Receipt is a security (1) that is issued by a trust ("Trust") which holds specific securities deposited with the Trust; (2) that, when aggregated in some specified minimum number, may be surrendered to the Trust by the beneficial owner to receive the securities; and (3) that pay beneficial owners dividends and other distributions on the deposited securities, if any are declared and paid to the trustee ("Trustee") by an issuer of the deposited securities.

(c) *Designation.* The Corporation may trade, whether by listing or pursuant to unlisted trading privileges, 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 Corporation or by such other person as shall have a proprietary interest in such Trust Issued Receipts.

(d) *Initial and Continued Listing and/or Trading.* Trust Issued Receipts will be traded on the Corporation subject to application of the following criteria:

- (1) Commencement of Trading—For each Trust, the Corporation will establish a minimum number of Trust Issued Receipts required to be outstanding at the time of commencement of trading on the Corporation.
- (2) Continued Trading—The Corporation will consider the suspension of trading in or termination of unlisted trading privileges for, and will initiate delisting proceedings under Rule 5.5(m) of, a Trust upon which a series of Trust Issued Receipts is based under any of the following circumstances:
 - (A) if, following the initial twelve month period following formation of a Trust and commencement of trading on the Corporation, 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;
 - (B) if, following the initial twelve month period following formation of a Trust and commencement of trading on the Corporation, the Trust has fewer than 50,000 receipts issued and outstanding;
 - (C) if, following the initial twelve month period following formation of a Trust and commencement of trading on the Corporation, the market value of all receipts issued and outstanding is less than \$1,000,000;
 - (D) if any of the continued listing requirements set forth in this Rule 8.200 are not continuously maintained; or

(E) if the Corporation files separate proposals under 19(b) of the Securities Exchange Act of 1934 and any of the statements or representations regarding (a) the description of the index, portfolio or reference asset, (b) limitations on index or portfolio holdings or reference assets, or (c) the applicability of Exchange listing rules specified in such rule filing are not continuously maintained;

(F) if any other event shall occur or condition exists which, in the opinion of the Corporation, makes further dealings on the Corporation inadvisable.

Upon termination of a Trust, the Corporation requires that Trust Issued Receipts issued in connection with such trust be removed from listing or have their unlisted trading privileges terminated. 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.

(3) 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.

(4) Trustee—The trustee must on an initial and continued listing basis 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, as qualified trust company or banking institution must be appointed co-trustee.

(5) Voting—Voting rights shall be as set forth in the Trust prospectus.

(e) *ETP Holders*. ETP Holders shall provide to all purchasers of newly issued Trust Issued Receipts a prospectus for the series of Trust Issued Receipts.

(f) *Applicability*. This Rule is applicable only to Trust Issued Receipts. Except to the extent inconsistent with this Rule, or unless the context otherwise requires, the provisions of the Bylaws and all other rules and procedures of the Board of Directors shall be applicable to the trading on the Corporation of such securities. Trust Issued Receipts are included within the definition of "security" or "securities" as such terms are used in the Bylaws and Rules of the Corporation.

Commentary:

.01 The Corporation may approve trust issued receipts for trading, whether by listing or pursuant to unlisted trading privileges, pursuant to Rule 19b-4(e) under the Securities Exchange Act of 1934, provided that the following criteria (other than clause (f) which need only be satisfied on an initial listing basis) are satisfied on an initial and continued listing basis:

- (a) each security underlying the trust issued receipt must be registered under Section 12 of the Exchange Act;
- (b) each security underlying the trust issued receipt must have a minimum public float of at least \$150 million;
- (c) each security underlying the trust issued receipt must be listed on a national securities exchange or traded through the facilities of Nasdaq as a reported national market system security;
- (d) each security underlying the trust issued receipt must have an average daily trading volume of at least 100,000 shares during the preceding sixty-day trading period;
- (e) each security underlying the trust issued receipt 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 security in the trust issued receipt cannot initially represent more than 20% of the overall value of the trust issued receipt.

.02

- (a) The provisions of this Commentary apply only to Trust Issued Receipts that invest in "Investment Shares" or "Financial Instruments" as defined below. Rules that reference Trust Issued Receipts shall also apply to Trust Issued Receipts investing in Investment Shares or "Financial Instruments" .
- (b) **Definitions.** The following terms as used in this Commentary shall, unless the context otherwise requires, have the meanings herein specified:
 - (1) *Investment Shares.* The term "Investment Shares" means a security (a) that is issued by a trust, partnership, commodity pool or other similar entity that invests in any combination of futures contracts, options on futures contracts, forward contracts, commodities, swaps or high credit quality short-term fixed income securities or other securities; and (b) issued and redeemed daily at net asset value in amounts correlating to the number of receipts created and redeemed in a specified aggregate minimum number.
 - (2) *Futures Contract.* The term "futures contract" is commonly known as a "contract of sale of a commodity for future delivery" set forth in Section 2(a) of the Commodity Exchange Act.
 - (3) *Forward Contract.* A forward contract is a contract between two parties to purchase and sell a specific quantity of a commodity at a specified price with delivery and settlement at a future date. Forwards are traded over-the-counter ("OTC") and not listed on a futures exchange.

(4) *Financial Instruments*. The term "Financial Instruments" means any combination of investments, including cash; securities; options on securities and indices; futures contracts; options on futures contracts; forward contracts; equity caps, collars and floors; and swap agreements.

(c) **Designation**. The Corporation may list and trade Trust Issued Receipts investing in Investment Shares or Financial Instruments. Each issue of a Trust Issued Receipt based on a particular Investment Share shall be designated as a separate series and shall be identified by a unique symbol.

(d) **Initial and Continued Listing**. Trust Issued Receipts based on Investment Shares or Financial Instruments will be listed and traded on the Corporation subject to application of the following criteria:

(1) **Initial Listing** — The Corporation will establish a minimum number of receipts required to be outstanding at the time of commencement of trading on the Corporation.

(2) **Continued Listing** — The Corporation will maintain surveillance procedures for securities listed under this rule and will consider the suspension of trading in, and will initiate delisting proceedings under Rule 5.5(m) of, Trust Issued Receipts based on an Investment Share or Financial Instruments under any of the following circumstances:

(i) if following the initial twelve month period following the commencement of trading of the shares, (A) the Issuer has more than 60 days remaining until termination and there are fewer than 50 record and/or beneficial holders of Trust Issued Receipts; (B) if the Issuer has fewer than 50,000 securities or shares issued and outstanding; or (C) if the market value of all securities or shares issued and outstanding is less than \$1,000,000;

(ii) if the value of an underlying index or portfolio is no longer calculated or available on at least a 15-second delayed basis or the Corporation stops providing a hyperlink on its website to any such asset or investment value;

(iii) if the Indicative Value is no longer made available on at least a 15-second delayed basis;

(iv) if any of the continued listing requirements set forth in this Rule 8.200 are not continuously maintained;

(v) if the Corporation submits a rule filing pursuant to Section 19(b) of the Securities Exchange Act of 1934 to permit the listing and trading of a series of Trust Issued Receipts based on separate Investment Shares or Financial Instruments and any of the statements or representations regarding (a) the description of the index, portfolio or reference asset, (b) limitations on index or

portfolio holdings or reference assets, or (c) the applicability of Exchange listing rules specified in such rule filing are not continuously maintained; or

(vi) if such other event shall occur or condition exists which in the opinion of the Corporation makes further dealings on the Corporation inadvisable.

Upon termination of the Trust, the Corporation requires that Trust Issued Receipts issued in connection with such Trust be removed from Corporation listing. A Trust may terminate in accordance with the provisions of the Trust prospectus, which may provide for termination if the value of the Trust falls below a specified amount.

(3) Term — The stated term of the Trust shall be as stated in the prospectus. However, such entity may be terminated under such earlier circumstances as may be specified in the Trust prospectus.

(4) Trustee — The following requirements apply on an initial and continued listing basis:

(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 Corporation.

(5) Voting — Voting rights shall be as set forth in the applicable Trust prospectus.

(e) Market Maker Accounts.

(1) The ETP Holder acting as a registered Market Maker in Trust Issued Receipts must file, with the Corporation, in a manner prescribed by the Corporation, and keep current a list identifying all accounts for trading the underlying physical asset or commodity, related futures or options on futures, or any other related derivatives, which the ETP Holder acting as registered Market Maker may have or over which it may exercise investment discretion. No ETP Holder acting as registered Market Maker in the Trust Issued Receipts shall trade in the underlying physical asset or commodity, related futures or options on futures, or any other related derivatives, in an account in which an ETP Holder acting as 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 the Corporation as required by this Rule.

(2) In addition to the existing obligations under Corporation rules regarding the production of books and records (See, e.g. Rule 4.4), the ETP Holder acting as a registered Market Maker in Trust Issued Receipts shall make available to the Corporation such books, records or other information pertaining to transactions by such entity or registered or non-registered employee affiliated with such entity for its or their own accounts in the underlying physical asset or commodity, related futures or options on futures, or any other related derivatives, as may be requested by the Corporation.

(f) **Limitation of Corporation Liability.** Neither the Corporation nor any agent of the Corporation shall have any liability for damages, claims, losses or expenses caused by any errors, omissions, or delays in calculating or disseminating any underlying asset or commodity value, the current value of the underlying asset or commodity if required to be deposited to the Trust in connection with issuance of Trust Issued Receipts; net asset value; or other information relating to the purchase, redemption or trading of Trust Issued Receipts, resulting from any negligent act or omission by the Corporation or any agent of the Corporation, or any act, condition or cause beyond the reasonable control of the Corporation or its agent, 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 an underlying asset or commodity.

(g) The Corporation will file separate proposals under Section 19(b) of the Securities Exchange Act of 1934 before listing and trading Trust Issued Receipts based on separate Investment Shares or Financial Instruments. All statements or representations contained in such rule filing regarding (a) the description of the index, portfolio or reference asset, (b) limitations on index or portfolio holdings or reference assets, or (c) the applicability of Exchange listing rules specified in such rule filing will constitute continued listing requirements. An issuer of such securities must notify the Exchange of any failure to comply with such continued listing requirements.

Rule 8.201. Commodity-Based Trust Shares

(a) The Corporation will consider for trading, whether by listing or pursuant to unlisted trading privileges, Commodity-Based Trust Shares that meet the criteria of this Rule.

(b) *Applicability.* This Rule is applicable only to Commodity-Based Trust Shares. Except to the extent inconsistent with this Rule, or unless the context otherwise requires, the provisions of the trust issued receipts rules, Bylaws, and all other rules and procedures of the Board of Directors shall be applicable to the trading on the Corporation of such securities. Commodity-Based Trust Shares are included within the definition of "security" or "securities" as such terms are used in the Bylaws and Rules of the Corporation.

(c) *Definitions.* The following terms as used in the Rules shall, unless the context otherwise requires, have the meaning herein specified:

(1) *Commodity-Based Trust Shares.* The term "Commodity-Based Trust Shares" means a security (a) that is issued by a trust ("Trust") that holds a specified commodity deposited with the Trust; (b) that is issued by such Trust in a specified aggregate minimum number in return for a deposit of a quantity of the underlying commodity; and (c) that, when aggregated in the same specified minimum number, may be redeemed at a holder's request by such Trust which will deliver to the redeeming holder the quantity of the underlying commodity.

(2) *Commodity.* The term "commodity" is defined in Section 1(a)(4) of the Commodity Exchange Act.

(d) *Designation of an Underlying Commodity.* The Corporation may trade, either by listing or pursuant to unlisted trading privileges, Commodity-Based Trust Shares based on an underlying commodity. Each issue of a Commodity-Based Trust Share shall be designated as a separate series and shall be identified by a unique symbol.

(e) *Initial and Continued Listing.* Commodity-Based Trust Shares will be listed and traded on the Corporation subject to application of the following criteria:

(1) *Initial Listing*—the Corporation will establish a minimum number of Commodity-Based Trust Shares required to be outstanding at the time of commencement of trading on the Corporation.

(2) *Continued Listing*—The Corporation will maintain surveillance procedures for securities listed under this rule and will consider the suspension of trading in, and will initiate delisting proceedings under Rule 5.5(m) of, such series under any of the following circumstances:

(i) if, following the initial twelve month period following commencement of trading on the Corporation of Commodity-Based Trust Shares, the Trust has more than 60 days remaining until termination and there are fewer than 50 record and/or beneficial holders of Commodity-Based Trust Shares; or

(ii) if, following the initial twelve month period following commencement of trading on the Corporation of Commodity-Based Trust Shares, the Trust has fewer than 50,000 receipts issued and outstanding; or

(iii) if, following the initial twelve month period following commencement of trading on the Corporation of Commodity-Based Trust Shares, the market value of all receipts issued and outstanding is less than \$1,000,000; or

(iv) if the value of the underlying commodity is no longer calculated or available on at least a 15-second delayed basis from a source unaffiliated with the sponsor,

Trust, custodian or the Exchange or the Exchange stops providing a hyperlink on its Web site to any such unaffiliated commodity value;

- (v) if the Indicative Trust Value is no longer made available on at least a 15-second delayed basis;
- (vi) if any of the continued listing requirements set forth in this Rule 8.201 are not continuously maintained;
- (vii) if the Corporation submits a rule filing pursuant to Section 19(b) of the Securities Exchange Act of 1934 to permit the listing and trading of a series of Commodity-Based Trust Shares and any of the statements or representations regarding (a) the description of the index, portfolio or reference asset, (b) limitations on index or portfolio holdings or reference assets, or (c) the applicability of Exchange listing rules specified in such rule filing are not continuously maintained; or
- (viii) if such other event shall occur or condition exists which in the opinion of the Corporation makes further dealings on the Corporation inadvisable.

Upon termination of a Trust, the Corporation requires that Commodity-Based Trust Shares issued in connection with such entity Trust be removed from Corporation listing. A Trust may terminate in accordance with the provisions of the Trust prospectus, which may provide for termination if the value of the Trust falls below a specified amount.

- (3) *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.
- (4) *Trustee*—The following requirements apply on an initial and continued listing basis:
 - (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 Corporation.
- (5) *Voting*—Voting rights shall be as set forth in the applicable Trust prospectus.

(f) *Limitation of Corporation Liability*. Neither the Corporation nor any agent of the Corporation shall have any liability for damages, claims, losses or expenses caused by any errors, omissions, or delays in calculating or disseminating any underlying

commodity value, the current value of the underlying commodity required to be deposited to the Trust in connection with issuance of Commodity-Based Trust Shares; resulting from any negligent act or omission by the Corporation, or any agent of the Corporation, or any act, condition or cause beyond the reasonable control of the Corporation, its agent, 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 an underlying commodity.

(g) *Market Maker Accounts.* An ETP Holder acting as a registered Market Maker in Commodity-Based Trust Shares with no exposure to a non-U.S. currency or currencies must file with the Exchange in a manner prescribed by the Exchange and keep current a list identifying all accounts for trading in an underlying commodity, related commodity futures or options on commodity futures, or any other related commodity derivatives, which the Market Maker may have or over which it may exercise investment discretion. An ETP Holder acting as a registered Market Maker in Commodity-Based Trust Shares with exposure to one or more non-U.S. currencies ("Underlying FX") also must file with the Exchange, in a manner prescribed by the Exchange, and keep current a list identifying all accounts for trading in Underlying FX and derivatives overlying Underlying FX which the Market Maker may have or over which it may exercise investment discretion, as well as a list of all commodity and commodity-related accounts referenced above. No Market Maker in Commodity-Based Trust Shares shall trade in a commodity, Underlying FX or any related derivative in an account that the Market Maker (1) directly or indirectly controls trading activities or has a direct interest in the profits or losses thereof, (2) is required by this rule to disclose to the Exchange, and (3) has not reported to the Exchange.

In addition to the existing obligations under Exchange rules regarding the production of books and records, the ETP Holder acting as a Market Maker in Commodity-Based Trust Shares shall make available to the Exchange such books, records or other information pertaining to transactions by such entity or registered or non-registered employee affiliated with such entity for its or their own accounts for trading the underlying physical commodity, related commodity futures or options on commodity futures, applicable Underlying FX, or any other related commodity or applicable Underlying FX derivatives, as may be requested by the Exchange.

Commentary:

.01 A Commodity-Based Trust Share is a Trust Issued Receipt that holds a specified commodity deposited with the Trust.

.02 The Corporation requires that ETP Holders provide all purchasers of newly issued Commodity-Based Trust Shares a prospectus for the series of Commodity-Based Trust Shares.

.03 Transactions in Commodity-Based Trust Shares will occur during the trading hours specified in NYSE Arca Equities Rule 7.34.

.04 The Corporation will file separate proposals under Section 19(b) of the Securities Exchange Act of 1934 before trading, either by listing or pursuant to unlisted trading privileges, Commodity-Based Trust Shares. All statements or representations contained in such rule filing regarding (a) the description of the index, portfolio or reference asset, (b) limitations on index or portfolio holdings or reference assets, or (c) the applicability of Exchange listing rules specified in such rule filing will constitute continued listing requirements. An issuer of such securities must notify the Exchange of any failure to comply with such continued listing requirements.

Rule 8.202. Currency Trust Shares

(a) The Corporation will consider for trading, whether by listing or pursuant to unlisted trading privileges, Currency Trust Shares that meet the criteria of this Rule.

(b) *Applicability.* This Rule is applicable only to Currency Trust Shares. Except to the extent inconsistent with this Rule, or unless the context otherwise requires, the provisions of the trust issued receipts rules, Bylaws, and all other rules and procedures of the Board of Directors shall be applicable to the trading on the Corporation of such securities. Currency Trust Shares are included within the definition of "security" or "securities" as such terms are used in the Bylaws and Rules of the Corporation.

(c) *Currency Trust Shares.* The term "Currency Trust Shares" as used in the Rules shall, unless the context otherwise requires, mean a security that (a) is issued by a trust ("Trust") that holds a specified non-U.S. currency or currencies deposited with the Trust; (b) when aggregated in some specified minimum number may be surrendered to the Trust by an Authorized Participant (as defined in the Trust's prospectus) to receive the specified non-U.S. currency or currencies; and (c) pays beneficial owners interest and other distributions on the deposited non-U.S. currency or currencies, if any, declared and paid by the Trust.

(d) *Designation of Non-U.S. Currency.* The Corporation may trade, either by listing or pursuant to unlisted trading privileges, Currency Trust Shares that hold a specified non-U.S. currency or currencies. Each issue of Currency Trust Shares shall be designated as a separate series and shall be identified by a unique symbol.

(e) *Initial and Continued Listing.* Currency Trust Shares will be listed and traded on the Corporation subject to application of the following criteria:

(1) *Initial Listing* --the Corporation will establish a minimum number of Currency Trust Shares required to be outstanding at the time of commencement of trading on the Corporation.

(2) *Continued Listing* --The Corporation will maintain surveillance procedures for securities listed under this rule and will consider the suspension of trading in, and will initiate delisting proceedings under Rule 5.5(m) of, such series under any of the following circumstances:

- (i) if, following the initial 12 month period following commencement of trading on the Corporation of Currency Trust Shares, the Trust has more than 60 days remaining until termination and there are fewer than 50 record and/or beneficial holders of Currency Trust Shares; or
- (ii) if, following the initial 12 month period following commencement of trading on the Corporation of Currency Trust Shares, the Trust has fewer than 50,000 Currency Trust Shares issued and outstanding; or
- (iii) if, following the initial 12 month period following commencement of trading on the Corporation of Currency Trust Shares, the market value of all Currency Trust Shares issued and outstanding is less than \$1,000,000; or
- (iv) if the value of the applicable non-U.S. currency is no longer calculated or available on at least a 15-second delayed basis from a source unaffiliated with the sponsor, Trust, custodian or the Exchange or the Exchange stops providing a hyperlink on its Web site to any such unaffiliated applicable non-U.S. currency value;
- (v) if the Indicative Trust Value is no longer made available on at least a 15-second delayed basis;
- (vi) if any of the continued listing requirements set forth in this Rule 8.202 are not continuously maintained;
- (vii) if the Corporation submits a rule filing pursuant to Section 19(b) of the Securities Exchange Act of 1934 to permit the listing and trading of a series of Currency Trust Shares and any of the statements or representations regarding (a) the description of the portfolio or reference asset, (b) limitations on portfolio holdings or reference assets, or (c) the applicability of Exchange listing rules specified in such rule filing are not continuously maintained; or
- (viii) if such other event shall occur or condition exists which in the opinion of the Corporation makes further dealings on the Corporation inadvisable.

Upon termination of a Trust, the Corporation requires that Currency Trust Shares issued in connection with such entity Trust be removed from Corporation listing. A Trust may terminate in accordance with the provisions of the Trust prospectus, which may provide for termination if the value of the Trust falls below a specified amount.

(3) *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.

(4) *Trustee* --The following requirements apply on an initial and continued listing basis:

(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 Corporation.

(5) *Voting* --Voting rights shall be as set forth in the applicable Trust prospectus.

(f) *Limitation of Corporation Liability.* Neither the Corporation nor any agent of the Corporation shall have any liability for damages, claims, losses or expenses caused by any errors, omissions, or delays in calculating or disseminating any applicable non-U.S. currency value; the current value of the applicable non-U.S. currency required to be deposited to the Trust in connection with issuance of Currency Trust Shares; net asset value; or any other information relating to the purchase, redemption, or trading of the Currency Trust Shares, resulting from any negligent act or omission by the Corporation, or any agent of the Corporation, or any act, condition or cause beyond the reasonable control of the Corporation, its agent, 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 an applicable non-U.S. currency.

(g) *Market Maker Accounts.* An ETP Holder acting as a registered Market Maker in Currency Trust Shares must file with the Exchange in a manner prescribed by the Exchange and keep current a list identifying all accounts for trading in the applicable non-U.S. currency, options, futures or options on futures on such currency, or any other derivatives based on such currency, which the Market Maker may have or over which it may exercise investment discretion. No Market Maker shall trade in the applicable non-U.S. currency, options, futures or options on futures on such currency, or any other derivatives based on such currency, in an account in which a 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 the Exchange as required by this Rule.

In addition to the existing obligations under Exchange rules regarding the production of books and records, the ETP Holder acting as a Market Maker in Currency Trust Shares shall make available to the Exchange such books, records or other information pertaining to transactions by such entity or registered or non-registered employee affiliated with such entity for its or their own accounts for trading the applicable non-U.S. currency,

options, futures or options on futures on such currency, or any other derivatives based on such currency, as may be requested by the Exchange.

(h) The Corporation may submit a rule filing pursuant to Section 19(b)(2) of the Securities Exchange Act of 1934 ("Act") to permit the listing and trading of Currency Trust Shares that do not otherwise meet the standards set forth in Commentary .04, below. All statements or representations contained in such rule filing regarding (a) the description of the portfolio or reference asset, (b) limitations on portfolio holdings or reference assets, or (c) the applicability of Exchange listing rules specified in such rule filing will constitute continued listing requirements. An issuer of such securities must notify the Exchange of any failure to comply with such continued listing requirements.

Commentary:

.01 A Currency Trust Share is a Trust Issued Receipt that holds a specified non-U.S. currency or currencies deposited with the Trust.

.02 The Corporation requires that ETP Holders provide all purchasers of newly issued Currency Trust Shares a prospectus for the series of Currency Trust Shares.

.03 Transactions in Currency Trust Shares will occur during the trading hours specified in NYSE Arca Equities Rule 7.34.

.04 The Corporation may approve an issue of Currency Trust Shares for listing and/or trading (including pursuant to unlisted trading privileges) pursuant to Rule 19b-4(e) under the Act. Such issue shall satisfy the criteria set forth in this rule and below on an initial and continued listing basis (except that the requirement in subparagraph (a) below need only be satisfied on an initial basis).

- (a) A minimum of 100,000 shares of a series of Currency Trust Shares is required to be outstanding at commencement of trading.
- (b) The value of the applicable non-U.S. currency, currencies or currency index must be disseminated by one or more major market data vendors on at least a 15-second delayed basis.
- (c) The Indicative Trust Value must be calculated and widely disseminated by the Corporation or one or more major market data vendors on at least a 15-second basis during the Core Trading Session as defined in Rule 7.34.
- (d) The Corporation will implement written surveillance procedures applicable to Currency Trust Shares.

.05 If the value of a Currency Trust Share is based in whole or in part on an index that is maintained by a broker-dealer, the broker-dealer shall erect and maintain a "firewall" around the personnel responsible for the maintenance of such index or 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.

Any advisory committee, supervisory board or similar entity that advises an index licensor or administrator or that makes decisions regarding 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 or portfolio.

.06 Equity Trading Rules

Currency Trust Shares will be subject to the Exchange's equity trading rules.

.07 Trading Halts

If the Indicative Trust Value, or the value of the non-U.S. currency or currencies or the currency index applicable to a series of Currency Trust Shares is not being disseminated as required, the Exchange may halt trading during the day on which such interruption first occurs. If such interruption 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 the Exchange becomes aware that the net asset value applicable to a series of Currency Trust Shares is not being disseminated to all market participants at the same time, it will halt trading in such series until such time as the net asset value is available to all market participants.

Rule 8.203. Commodity Index Trust Shares

(a) The Corporation will consider for trading, whether by listing or pursuant to unlisted trading privileges, Commodity Index Trust Shares that meet the criteria of this Rule.

(b) Applicability. This Rule is applicable only to Commodity Index Trust Shares. Except to the extent inconsistent with this Rule, or unless the context otherwise requires, the provisions of the trust issued receipts rules, Bylaws, and all other rules and procedures of the Board of Directors shall be applicable to the trading on the Corporation of such securities. Commodity Index Trust Shares are included within the definition of "security" or "securities" as such terms are used in the Bylaws and Rules of the Corporation.

(c) **Commodity Index Trust Shares.** The term "Commodity Index Trust Shares" as used in the Rules shall, unless the context otherwise requires, mean a security that (a) is issued by a trust ("Trust") that (i) is a commodity pool as defined in the Commodity Exchange Act and regulations thereunder, and that is managed by a commodity pool operator registered with the Commodity Futures Trading Commission, and (ii) that holds long positions in futures contracts on a specified commodity index, or interests in a commodity pool which, in turn, holds such long positions; (b) when aggregated in some specified minimum number may be surrendered to the Trust by the beneficial owner to receive positions in futures contracts on a specified index and cash or short term securities. The term "futures contract" is commonly known as a "contract of sale of a commodity for future delivery" set forth in Section 2(a) of the Commodity Exchange Act.

(d) **Designation.** The Corporation may trade, either by listing or pursuant to unlisted trading privileges, Commodity Index Trust Shares based on one more more securities. The Commodity Index Trust Shares based on particular securities shall be designated as a separate series and shall be identified by a unique symbol.

(e) **Initial and Continued Listing.** Commodity Index Trust Shares will be listed and traded on the Corporation subject to application of the following criteria:

(1) *Initial Listing*—the Corporation will establish a minimum number of Commodity Index Trust Shares required to be outstanding at the time of commencement of trading on the Corporation.

(2) *Continued Listing*—the Corporation will maintain surveillance procedures for securities listed under this rule and will consider the suspension of trading in, and will initiate delisting proceedings under Rule 5.5(m) of, a series of Commodity Index Trust Shares under any of the following circumstances:

(i) following the initial twelve-month period beginning upon the commencement of trading of the Commodity Index Trust Shares, there are fewer than 50 record and/or beneficial holders of Commodity Index Trust Shares;

(ii) if the value of the applicable underlying index is no longer calculated or available on at least a 15-second delayed basis from a source unaffiliated with the sponsor, the Trust or the trustee of the Trust; or

(iii) if the net asset value for the trust is no longer disseminated to all market participants at the same time;

(iv) if the Indicative Trust Value is no longer made available on at least a 15-second delayed basis;

(v) if any of the continued listing requirements set forth in this Rule 8.203 are not continuously maintained;

- (vi) if the Corporation submits a rule filing pursuant to Section 19(b) of the Securities Exchange Act of 1934 to permit the listing and trading of a series of Commodity Index Trust Shares and any of the statements or representations regarding (a) the description of the index, portfolio or reference asset, (b) limitations on index or portfolio holdings or reference assets, or (c) the applicability of Exchange listing rules specified in such rule filing are not continuously maintained; or
- (vii) if such other event shall occur or condition exists which in the opinion of the Corporation makes further dealings on the Corporation inadvisable.

Upon termination of a Trust, the Corporation requires that Commodity Index Trust Shares issued in connection with such entity Trust be removed from Corporation listing. A Trust may terminate in accordance with the provisions of the Trust prospectus, which may provide for termination if the value of the Trust falls below a specified amount.

- (3) *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.
- (4) *Trustee*—The following requirements apply on an initial and continued listing basis:
 - (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 Corporation.
- (5) *Voting*—Voting rights shall be as set forth in the applicable Trust prospectus.

(f) *Limitation of Corporation Liability.* Neither the Corporation nor any agent of the Corporation shall have any liability for damages, claims, losses or expenses caused by any errors, omissions, or delays in calculating or disseminating any applicable underlying index value; the current value of the applicable positions or interests required to be deposited to the Trust in connection with issuance of Commodity Index Trust Shares; net asset value; or any other information relating to the purchase, redemption, or trading of the Commodity Index Trust Shares, resulting from any negligent act or omission by the Corporation, or any agent of the Corporation, or any act, condition or cause beyond the reasonable control of the Corporation, its agent, 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 the applicable positions or interests.

(g) Market Maker Accounts. An ETP Holder acting as a registered Market Maker in Commodity Index Trust Shares must file with the Exchange in a manner prescribed by the Exchange and keep current a list identifying all accounts for trading in the applicable physical commodities included in, or options, futures or options on futures on, an index underlying an issue of Commodity Index Trust Shares or any other derivatives based on such index or based on any commodity included in such index, which the Market Maker may have or over which it may exercise investment discretion. No Market Maker shall trade in the applicable physical commodities included in, or options, futures or options on futures on, an index underlying an issue of Commodity Index Trust Shares or any other derivatives based on such index or based on any commodity included in such index, in an account in which a 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 the Exchange as required by this Rule.

In addition to the existing obligations under Exchange rules regarding the production of books and records, the ETP Holder acting as a Market Maker in Commodity Index Trust Shares shall make available to the Exchange such books, records or other information pertaining to transactions by such entity or registered or non-registered employee affiliated with such entity for its or their own accounts for trading the applicable physical commodities included in, or options, futures or options on futures on, an index underlying an issue of Commodity Index Trust Shares or any other derivatives based on such index or based on any commodity included in such index, as may be requested by the Exchange.

Commentary:

.01 A Commodity Index Trust Share is a Trust Issued Receipt that holds long positions in futures contracts on a specified commodity index, or interests in a commodity pool which, in turn, holds such long positions, deposited with the Trust.

.02 The Corporation requires that ETP Holders provide all purchasers of newly issued Commodity Index Trust Shares a prospectus for the series of Commodity Index Trust Shares.

.03 Transactions in Commodity Index Trust Shares will occur during the trading hours specified in PCXE Rule 7.34.

.04 The Corporation will file separate proposals under Section 19(b) of the Securities Exchange Act of 1934 before trading, either by listing or pursuant to unlisted trading privileges, Commodity Index Trust Shares. All statements or representations contained in such rule filing regarding (a) the description of the index, portfolio or reference

asset, (b) limitations on index or portfolio holdings or reference assets, or (c) the applicability of Exchange listing rules specified in such rule filing will constitute continued listing requirements. An issuer of such securities must notify the Exchange of any failure to comply with such continued listing requirements.

Rule 8.204. Commodity Futures Trust Shares

(a) The Corporation will consider for trading, whether by listing or pursuant to unlisted trading privileges, Commodity Futures Trust Shares that meet the criteria of this Rule.

(b) ***Applicability*** . This Rule is applicable only to Commodity Futures Trust Shares. Except to the extent inconsistent with this Rule, or unless the context otherwise requires, the provisions of the trust issued receipts rules, Bylaws, and all other rules and procedures of the Board of Directors shall be applicable to the trading on the Corporation of such securities. Commodity Futures Trust Shares are included within the definition of "security" or "securities" as such terms are used in the Bylaws and Rules of the Corporation.

(c) ***Commodity Futures Trust Shares*** . The term "Commodity Futures Trust Shares" as used in the Rules shall, unless the context otherwise requires, mean a security that (i) is issued by a trust ("Trust") that (1) is a commodity pool as defined in the Commodity Exchange Act and regulations thereunder, and that is managed by a commodity pool operator registered with the Commodity Futures Trading Commission, and (2) holds positions in futures contracts that track the performance of a specified commodity, or interests in a commodity pool which, in turn, holds such positions; and (ii) is issued and redeemed daily in specified aggregate amounts at net asset value. The term "futures contract" is a "contract of sale of a commodity for future delivery" set forth in Section 2(a) of the Commodity Exchange Act. The term "commodity" is defined in Section 1(a)(4) of the Commodity Exchange Act.

(d) ***Designation of an Underlying Commodity Futures Contract*** . The Corporation may trade, either by listing or pursuant to unlisted trading privileges, Commodity Futures Trust Shares based on an underlying commodity futures contract. Each issue of Commodity Futures Trust Shares shall be designated as a separate series and shall be identified by a unique symbol.

(e) ***Initial and Continued Listing*** . Commodity Futures Trust Shares will be listed and traded on the Corporation subject to application of the following criteria:

- (1) **Initial Listing**—The Corporation will establish a minimum number of Commodity Futures Trust Shares required to be outstanding at the time of commencement of trading on the Corporation.
- (2) **Continued Listing**—The Corporation will maintain surveillance procedures for securities listed under this rule and will consider the suspension of trading in, and

will initiate delisting proceedings under Rule 5.5(m) of, a series of Commodity Futures Trust Shares under any of the following circumstances:

- (i) if, following the initial twelve-month period beginning upon the commencement of trading of the Commodity Futures Trust Shares: (A) the Trust has fewer than 50,000 Commodity Futures Trust Shares issued and outstanding; or (B) the market value of all Commodity Futures Trust Shares issued and outstanding is less than \$1,000,000, or (C) there are fewer than 50 record and/or beneficial holders of Commodity Futures Trust Shares;
- (ii) if the value of the underlying futures contracts is no longer calculated or available on at least a 15-second delayed basis during the Corporation's Core Trading Session, as defined in Rule 7.34(a), from a source unaffiliated with the sponsor, the Trust or the trustee of the Trust;
- (iii) if the net asset value for the Trust is no longer disseminated to all market participants at the same time;
- (iv) if the Indicative Trust Value is no longer disseminated on at least a 15-second delayed basis during the Corporation's Core Trading Session, as defined in Rule 7.34(a);
- (v) if any of the continued listing requirements set forth in this Rule 8.204 are not continuously maintained;
- (vi) if the Corporation submits a rule filing pursuant to Section 19(b) of the Securities Exchange Act of 1934 to permit the listing and trading of a series of Commodity Futures Trust Shares and any of the statements or representations regarding (a) the description of the index, portfolio or reference asset, (b) limitations on index or portfolio holdings or reference assets, or (c) the applicability of Exchange listing rules specified in such rule filing are not continuously maintained; or
- (vii) if such other event shall occur or condition exists which in the opinion of the Corporation makes further dealings on the Corporation inadvisable.

Upon termination of a Trust, the Corporation requires that Commodity Futures Trust Shares issued in connection with such trust be removed from Corporation listing. A Trust will terminate in accordance with the provisions of the Trust prospectus.

- (3) **Term** —The stated term of the Trust shall be as stated in the prospectus. However, a Trust may be terminated under such earlier circumstances as may be specified in the Trust prospectus.
- (4) **Trustee** —The following requirements apply on an initial and continued listing basis:

- (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 Corporation.

(5) Voting—Voting rights shall be as set forth in the applicable Trust prospectus.

(f) ***Market Maker Accounts.***

- (1) The ETP Holder acting as a registered Market Maker in Commodity Futures Trust Shares must file, with the Corporation, in a manner prescribed by the Corporation, and keep current a list identifying all accounts for trading the underlying commodity, related futures or options on futures, or any other related derivatives, which the ETP Holder acting as registered Market Maker may have or over which it may exercise investment discretion. No ETP Holder acting as registered Market Maker in the Commodity Futures Trust Shares shall trade in the underlying commodity, related futures or options on futures, or any other related derivatives, in an account in which an ETP Holder acting as 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 the Corporation as required by this Rule.
- (2) In addition to the existing obligations under Corporation rules regarding the production of books and records (see, e.g., Rule 4.4), the ETP Holder acting as a registered Market Maker in Commodity Futures Trust Shares shall make available to the Corporation such books, records or other information pertaining to transactions by such entity or any limited partner, officer or approved person thereof, registered or non-registered employee affiliated with such entity for its or their own accounts in the underlying commodity, related futures or options on futures, or any other related derivatives, as may be requested by the Corporation.

(g) ***Limitation of Corporation Liability*** . Neither the Corporation, the Reporting Authority nor any agent of the Corporation shall have any liability for damages, claims, losses or expenses caused by any errors, omissions, or delays in calculating or disseminating any underlying futures contract value; the current value of positions or interests if required to be deposited to the Trust in connection with issuance of Commodity Futures Trust Shares; net asset value; or other information relating to the purchase, redemption or trading of Commodity Futures Trust Shares, resulting from any negligent act or omission by the Corporation, or the Reporting Authority, or any agent of the Corporation, or any act, condition or cause beyond the reasonable control of the Corporation or 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 reporting of transactions in an underlying futures contract.

(h) The Corporation will file separate proposals under Section 19(b) of the Securities Exchange Act of 1934 before listing and trading separate and distinct Commodity Futures Trust Shares designated on different underlying futures contracts. All statements or representations contained in such rule filing regarding (a) the description of the index, portfolio or reference asset, (b) limitations on index or portfolio holdings or reference assets, or (c) the applicability of Exchange listing rules specified in such rule filing will constitute continued listing requirements. An issuer of such securities must notify the Exchange of any failure to comply with such continued listing requirements.

Commentary:

.01 The Corporation requires that ETP Holders provide all purchasers of newly issued Commodity Futures Trust Shares a prospectus for the series of Commodity Futures Trust Shares.

.02 Transactions in Commodity Futures Trust Shares will occur during the trading hours specified in NYSE Arca Equities Rule 7.34.

.03 If the Indicative Trust Value or the value of the underlying futures contract is not being disseminated as required, the Exchange may halt trading during the day in which the interruption to the dissemination of the Indicative Trust Value or the value of the underlying futures contract occurs. If the interruption to the dissemination of the Indicative Trust Value or the value of the underlying futures contract 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.

In addition, if the Exchange becomes aware that the net asset value with respect to a series of Commodity Futures Trust 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.

.04 The Corporation's rules governing the trading of equity securities apply.

.05 The Corporation will implement written surveillance procedures for Commodity Futures Trust Shares.

Rule 8.300. Partnership Units

- (a) The Corporation will consider for trading, whether by listing or pursuant to unlisted trading privileges, Partnership Units that meet the criteria of this Rule.
- (b) **Definitions** . The following terms as used in the Rule shall, unless the context otherwise requires, have the meanings herein specified:
- (1) **Commodity**. The term "commodity" is defined in Section 1(a)(4) of the Commodity Exchange Act.
 - (2) **Partnership Units**. The term "Partnership Units" for purposes of this Rule means a security (a) that is issued by a partnership that invests in any combination of futures contracts, options on futures contracts, forward contracts, commodities and/or securities; and (b) that is issued and redeemed daily in specified aggregate amounts at net asset value.
- (c) **Designation** . The Corporation may list and trade Partnership Units based on an underlying asset, commodity or security. Each issue of a Partnership Unit shall be designated as a separate series and shall be identified by a unique symbol.
- (d) **Initial and Continued Listing** . Partnership Units will be listed and/or traded on the Corporation subject to application of the following criteria:
- (1) **Initial Listing**—The Corporation will establish a minimum number of Partnership Units required to be outstanding at the time of commencement of trading on the Corporation.
 - (2) **Continued Listing**—The Corporation will maintain surveillance procedures for securities listed under this rule and will consider the suspension of trading in, and will initiate delisting proceedings under Rule 5.5(m) of, Partnership Units under any of the following circumstances:
 - (i) if following the initial twelve month period following the commencement of trading of Partnership Units, (A) the partnership has more than 60 days remaining until termination and there are fewer than 50 record and/or beneficial holders of Partnership Units; (B) if the partnership has fewer than 50,000 Partnership Units issued and outstanding; or (C) if the market value of all Partnership Units issued and outstanding is less than \$1,000,000;
 - (ii) if the value of the underlying benchmark investment, commodity or asset is no longer calculated or available on at least a 15-second delayed basis or the Corporation stops providing a hyperlink on its website to any such investment, commodity, or asset value;
 - (iii) if the Indicative Partnership Value is no longer made available on at least a 15-second delayed basis;

- (iv) if any of the continued listing requirements set forth in this Rule 8.300 are not continuously maintained;
- (v) if the Corporation submits a rule filing pursuant to Section 19(b) of the Securities Exchange Act of 1934 to permit the listing and trading of a series of Partnership Units and any of the statements or representations regarding (a) the description of the portfolio or reference asset, (b) limitations on portfolio holdings or reference assets, or (c) the applicability of Exchange listing rules specified in such rule filing are not continuously maintained; or
- (vi) if such other event shall occur or condition exists which in the opinion of the Corporation makes further dealings on the Corporation inadvisable.

Upon termination of a partnership, the Corporation requires that Partnership Units issued in connection with such partnership be removed from Corporation listing. A partnership will terminate in accordance with the provisions of the partnership prospectus.

- (3) Term—The stated term of the partnership shall be as stated in the prospectus. However, such entity may be terminated under such earlier circumstances as may be specified in the Partnership prospectus.
- (4) General Partner—The following requirements apply on an initial and continued listing basis:
 - (i) The general partner of a partnership must be an entity having substantial capital and surplus and the experience and facilities for handling partnership business. In cases where, for any reason, an individual has been appointed as general partner, a qualified entity must also be appointed as general partner.
 - (ii) No change is to be made in the general partner of a listed issue without prior notice to and approval of the Corporation.
- (5) Voting—Voting rights shall be as set forth in the applicable partnership prospectus.

(e) ***Market Maker Accounts.***

- (1) The ETP Holder acting as a registered Market Maker in Partnership Units must file, with the Corporation, in a manner prescribed by the Corporation, and keep current a list identifying all accounts for trading the underlying asset or commodity, related futures or options on futures, or any other related derivatives, which the ETP Holder acting as registered Market Maker may have or over which it may exercise investment discretion. No ETP Holder acting as registered Market Maker in the Partnership Units shall trade in the underlying asset or commodity, related futures or options on futures, or any other related derivatives, in an

account in which an ETP Holder acting as 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 the Corporation as required by this Rule.

(2) In addition to the existing obligations under Corporation rules regarding the production of books and records (See, e.g. Rule 4.4), the ETP Holder acting as a registered Market Maker in Partnership Units shall make available to the Corporation such books, records or other information pertaining to transactions by such entity or any limited partner, officer or approved person thereof, registered or non-registered employee affiliated with such entity for its or their own accounts in the underlying asset or commodity, related futures or options on futures, or any other related derivatives, as may be requested by the Corporation.

(f) ***Limitation of Corporation Liability*** . Neither the Corporation nor any agent of the Corporation shall have any liability for damages, claims, losses or expenses caused by any errors, omissions, or delays in calculating or disseminating any underlying asset or commodity value, the current value of the underlying asset or commodity if required to be deposited to the partnership in connection with issuance of Partnership Units; net asset value; or other information relating to the purchase, redemption or trading of Partnership Units, resulting from any negligent act or omission by the Corporation or any agent of the Corporation, or any act, condition or cause beyond the reasonable control of the Corporation or its agent, 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 an underlying asset or commodity.

(g) The Corporation will file separate proposals under Section 19(b) of the Securities Exchange Act of 1934 before listing and trading separate and distinct Partnership Units designated on different underlying investments, commodities and/or assets. All statements or representations contained in such rule filing regarding (a) the description of the portfolio or reference asset, (b) limitations on portfolio holdings or reference assets, or (c) the applicability of Exchange listing rules specified in such rule filing will constitute continued listing requirements. An issuer of such securities must notify the Exchange of any failure to comply with such continued listing requirements.

Commentary:

.01 The Exchange requires that Equity Trading Permit holders provide to all purchasers of newly issued Partnership Units a prospectus for the series of Partnership Units.

Rule 8.400. Paired Trust Shares

(a) **Applicability.** The provisions in this Rule are applicable only to Paired Trust Shares. In addition, except to the extent inconsistent with this Rule, or unless the context otherwise requires, the rules and procedures of the Board of Directors shall be applicable to the trading on the Corporation of such securities. Paired Trust Shares are included within the definition of "security," "securities" and "derivative products" as such terms are used in the Rules of the Corporation.

(b) **Definitions.** The following terms as used in the Rules shall, unless the context otherwise requires, have the meanings herein specified:

(1) **Paired Trust Shares.** Two distinct types of securities are included in the term "Paired Trust Shares." The term Paired Trust Shares refers to: (i) both "Holding Shares" and "Tradeable Shares," as defined below, or (ii) solely Trading Shares, as defined below.

(A) **Holding Shares and Tradeable Shares**

(i) **Holding Shares.** The term "Holding Share" means a security (a) that is issued by either of a matched pair of trusts ("Holding Trusts") whose respective underlying values move in opposite directions as the value of a specified Reference Price (defined in Rule 8.400(c)) varies from its starting level, (b) that is issued in exchange for cash, (c) a majority (but not necessarily all) of which will be acquired and deposited in a related Tradeable Trust (as defined herein), (d) the issuance proceeds of which are invested and reinvested in highly rated short-term financial instruments that mature prior to the next scheduled income distribution date for the security and that serve the functions of (i) securing the contractual obligations between the two paired Holding Trusts, (ii) covering the trust's expenses, and (iii) if any amount remains, providing periodic income distributions to investors, based on income (after expenses) from the financial instruments held by the paired Holding Trusts,¹ (e) that represents a beneficial interest in the Holding Trust that issued it, (f) the value of which is determined by the underlying value of the related Holding Trust, which underlying value will either (1) increase as a result of an increase in the Reference Price and decrease as a result of a decrease in the Reference Price (in the case of an "Up Holding Share" issued by an "Up Holding Trust") or (2) increase as a result of a decrease in the Reference Price and decrease as the result of an increase in the Reference Price (in the case of a "Down Holding Share" issued by the paired "Down Holding Trust"), (g) whose issuing Holding Trust enters into one or more settlement contracts² and an income distribution agreement³ with the other paired Holding Trust, (h) that, when timely aggregated in a specified minimum number or amount of securities, along with a specified multiple of that number or amount of securities issued by the other paired Holding Trust (these minimum specified amounts together constituting a "Creation Unit" of the paired Holding Shares), may be redeemed for a distribution of cash and/or securities on specified dates by authorized parties, and (i) that may be subject to

early mandatory redemption of all Holding Shares prior to the final scheduled termination date under specified circumstances.

(ii) Tradeable Shares. The term "Tradeable Share" means a security (a) that is issued by a trust ("Tradeable Trust") in exchange for the deposit of Holding Shares (or cash, which cash is then used to purchase Holding Shares) into the Tradeable Trust, with the Holding Shares that are held by the Tradeable Trust being either (1) Up Holding Shares (in the case of an "Up Tradeable Share" issued by an "Up Tradeable Trust") or (2) "Down Holding Shares" (in the case of a "Down Tradeable Share" issued by a "Down Tradeable Trust"), (b) that represents an undivided beneficial interest in the Tradeable Trust that issued it, (c) the distributions on which (which are solely pass through distributions received on the Holding Shares that are held by the issuing Tradeable Trust) will thereby either (1) increase as a result of an increase in the Reference Price and decrease as a result of a decrease in the Reference Price (in the case of an Up Tradeable Share) or (2) increase as a result of a decrease in the Reference Price and decrease as the result of an increase in the Reference Price (in the case of a Down Tradeable Share), in each case as a result of the corresponding change in the underlying value of the Holding Trust (see paragraph (b)(2) of this rule) whose Holding Shares are held by the issuing Tradeable Trust, (d) that may have an exchange feature that will allow authorized parties to exchange such Tradeable Shares for the underlying Holding Shares that are held by the Tradeable Trust that issued the Tradeable Shares and that can be redeemed for cash and/or securities (any such redemption to be done in specified aggregates called Creation Units that include Holding Shares issued by the other paired Holding Trust, as described in the preceding paragraph), and (e) that may be subject to early mandatory redemption of all Tradeable Shares prior to the final scheduled termination date under specified circumstances.

(B) Trading Shares. The term "Trading Share" means a security (a) that is issued by either of a matched pair of trusts ("Trading Trusts") whose respective underlying values move in opposite directions as the value of a specified Reference Price (defined in Rule 8.400(c)) varies from its starting level, (b) that is issued in exchange for cash, (c) the issuance proceeds of which are invested and reinvested in highly rated short-term financial instruments that mature prior to the next scheduled income distribution date for the security and that serve the functions of (i) securing the contractual obligations between the two paired Trading Trusts, (ii) covering the trust's expenses, and (iii) if any amount remains, providing periodic income distributions to investors, based on income (after expenses) from the financial instruments held by the paired Trading Trusts, (d) that represents a beneficial interest in the Trading Trust that issued it, (e) the value of which is determined by the underlying value of the related Trading Trust, which underlying value will either (i) increase as a result of an increase in the Reference Price and decrease as a result of a decrease in the Reference Price (in the case of an "Up Trading Share" issued by an "Up Trading Trust") or (ii) increase as a

result of a decrease in the Reference Price and decrease as the result of an increase in the Reference Price (in the case of a "Down Trading Share" issued by the paired "Down Trading Trust"), (f) whose issuing Trading Trust enters into one or more settlement contracts and an income distribution agreement with the other paired Trading Trust, (g) that, when timely aggregated in a specified minimum number or amount of securities, along with a specified multiple of that number or amount of securities issued by the other paired Trading Trust (these minimum specified amounts together constituting a "Creation Unit" of the paired Trading Shares), may be redeemed for a distribution of cash and/or securities on specified dates by authorized parties, and (h) that may be subject to early mandatory redemption of all Trading Shares prior to the final scheduled termination date under specified circumstances.

(c) Designation of an Underlying Reference Price. The Corporation may list and trade Paired Trust Shares whose values are determined based on the value of a "Reference Price," which is an index or other numerical variable that may measure assets, prices or other economic interests. The mechanism that incorporates the value of the Reference Price into the value determination for the Paired Trust Shares consists of one or more settlement contracts and an earnings distribution agreement that are entered into by and between the paired Holding Trusts that issue the Holding Shares or by and between the paired Trading Trusts that issue the Trading Shares, as the case may be. Each issue of Paired Trust Shares shall be designated as a separate series and shall be identified by a unique symbol.

(d) Initial and Continued Listing. Paired Trust Shares will be listed and traded on the Corporation subject to application of the following criteria:

(1) Initial Listing

- (i) For each Holding Trust, Tradeable Trust or Trading Trust, the Corporation will establish a minimum number of Paired Trust Shares required to be outstanding at the time of commencement of trading on the Corporation.
- (ii) The Corporation will obtain a representation on behalf of the trusts for each series of Paired Trust Shares that the underlying value per share of each Up Holding Share, Down Holding Share, Up Tradeable Share and Down Tradeable Share (in the case of a series with Holding Shares and Tradeable Shares) or each Up Trading Share and Down Trading Share (in the case of a series with Trading Shares) will be calculated daily and will be made available to all market participants at the same time.

(2) Continued Listing—The Corporation will maintain surveillance procedures for securities listed under this rule and will consider the suspension of trading in, and will initiate delisting proceedings under Rule 5.5(m) of, any series of Paired Trust Shares under any of the following circumstances:

- (i) if following the initial twelve month period following the commencement of trading of the shares, (A) a Tradeable Trust or a Trading Trust, as the case may be, has more than 60 days remaining until termination and there are fewer than 50 record and/or beneficial holders of Up Tradeable Shares or Down Tradeable Shares, or Up Trading Shares or Down Trading Shares, as the case may be; (B) if a Tradeable Trust has fewer than 50,000 Up Tradeable Shares or Down Tradeable Shares issued and outstanding, or if a Trading Trust has fewer than 50,000 Up Trading Shares or Down Trading Shares issued and outstanding; or (C) if the combined market value of all shares issued and outstanding for a matched pair of Holding Trusts, Tradeable Trusts or Trading Trusts representing opposite positions in the value of a Reference Price is less than \$1,000,000;
- (ii) if the intraday value of the Reference Price, as specified in the prospectus for the series of Paired Trust Shares, is no longer calculated or available on at least a 15-second delayed basis during the time such Paired Trust Shares trade on the Corporation from a source unaffiliated with the sponsor, custodian, depositor, Tradeable Trust, Trading Trust, Holding Trust or the Corporation that is a major market data vendor (e.g., Reuters or Bloomberg), as applicable; provided, however, that, for a series of Paired Trust Shares for which the value of the Reference Price is not updated intraday, such value shall be calculated and available once each trading day;
- (iii) unless a series of Paired Trust Shares has been approved for listing and trading by the Commission under Section 19(b) of the Securities Exchange Act of 1934 without the requirement that an intraday indicative value be made available as set forth in this subparagraph (iii), if the intraday indicative value of the underlying value of each listed Up Holding Share, Down Holding Share, Up Tradeable Share or Down Tradeable Share (in the case of a series with Holding Shares and Tradeable Shares) or each Up Trading Share and Down Trading Share (in the case of a series with Trading Shares), as the case may be, is no longer made available on at least a 15-second delayed basis by a major market data vendor during the time the Tradeable Shares or Trading Shares trade on the Corporation;
- (iv) if a substitute index or other replacement benchmark is selected for the determination of the Reference Price, unless the Corporation files with the Commission a related proposed rule change pursuant to Rule 19b-4 under the Securities Exchange Act of 1934 seeking approval to continue trading the Tradeable Shares or Trading Shares, as the case may be, and such rule change is approved by the Commission;
- (v) if any of the continued listing requirements set forth in this Rule 8.400 are not continuously maintained;
- (vi) if the Corporation submits a rule filing pursuant to Section 19(b) of the Securities Exchange Act of 1934 to permit the listing and trading of a series of Paired Trust Shares and any of the statements or representations regarding (a) the description of

the portfolio or reference asset, (b) limitations on portfolio holdings or reference assets, or (c) the applicability of Exchange listing rules specified in such rule filing are not continuously maintained; or

- (vii) if such other event shall occur or condition exists which in the opinion of the Corporation makes further dealings on the Corporation inadvisable.

The Corporation will halt trading in a series of Paired Trust Shares if the circuit breaker parameters of Rule 7.12 have been reached. In exercising its discretion to halt or suspend trading in a series of Paired Trust Shares, the Corporation may consider factors such as the extent to which trading in the underlying securities is not occurring or whether other unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market are present, in addition to other factors that may be relevant. The remainder of this paragraph shall apply only when the Corporation is the listing market for a series of Paired Trust Shares. If the intraday indicative value of the underlying value allocable to an Up Tradeable Share or Down Tradeable Share (in the case of a series with Holding Shares and Tradeable Shares) or to an Up Trading Share or Down Trading Share (in the case of a series with Trading Shares) or the intraday value of the Reference Price applicable to that series of Paired Trust Shares is not being disseminated as required, the Corporation may halt trading during the day in which the interruption to the dissemination of the intraday indicative value of such underlying value allocation or the intraday value of the applicable Reference Price occurs. If the interruption to the dissemination of the intraday indicative value of such underlying value allocation or the intraday value of the applicable Reference Price persists past the trading day in which it occurred, the Corporation will halt trading no later than the beginning of the trading day following the interruption.

Upon termination of a Holding Trust, Tradeable Trust or Trading Trust, the Corporation requires that Paired Trust Shares issued in connection with such trust be removed from Corporation listing. A Holding Trust, Tradeable Trust or Trading Trust may terminate in accordance with the provisions of the trust prospectus under circumstances specified therein.

(3) Term - The stated term of a Holding Trust, Tradeable Trust or Trading 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.

(4) Trustee - The following requirements apply on an initial and continued listing basis:

- (i) The trustee of a Holding Trust, Tradeable Trust or Trading 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 Corporation.

(5) Voting - Voting rights shall be as set forth in the applicable Holding Trust, Tradeable Trust or Trading Trust prospectus.

(e) Market Maker Accounts.

(1) The ETP Holder acting as a registered Market Maker in Paired Trust Shares must file, with the Corporation, in a manner prescribed by the Corporation, and keep current a list identifying all accounts for trading the asset, commodity or other economic interest underlying the Reference Price, related options, related futures or options on futures, or any other related derivatives, which the ETP Holder acting as registered Market Maker may have or over which it may exercise investment discretion. No ETP Holder acting as registered Market Maker in the Paired Trust Shares shall trade in the asset, commodity or other economic interest underlying the Reference Price, related options, related futures or options on futures, or any other related derivatives, in an account in which an ETP Holder acting as 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 the Corporation as required by this Rule.

(2) In addition to the existing obligations under Corporation rules regarding the production of books and records (See, e.g. Rule 4.4), the ETP Holder acting as a registered Market Maker in Paired Trust Shares shall make available to the Corporation such books, records or other information pertaining to transactions by such entity or any limited partner, officer or approved person thereof, registered or non-registered employee affiliated with such entity for its or their own accounts in the asset, commodity or other economic interest underlying the Reference Price, related options, related futures or options on futures, or any other related derivatives, as may be requested by the Corporation.

(f) Limitation of Corporation Liability. Neither the Corporation nor any agent of the Corporation shall have any liability for damages, claims, losses or expenses caused by any errors, omissions, or delays in calculating or disseminating any Reference Price value, the underlying values of the trusts; distribution values; or other information relating to the purchase, redemption or trading of Paired Trust Shares, resulting from any negligent act or omission by the Corporation or any agent of the Corporation, or any act, condition or cause beyond the reasonable control of the Corporation or its agent, 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 an underlying economic variable.

Commentary:

.01 The Corporation requires that ETP Holders provide to all purchasers of newly issued Paired Trust Shares a prospectus for the series of Paired Trust Shares.

.02 Transactions in Paired Trust Shares will occur during the trading hours specified in NYSE Arca Equities Rule 7.34.

.03 The Corporation will file separate proposals under Section 19(b) of the Securities Exchange Act of 1934 before listing and trading Paired Trust Shares designated on different Reference Prices. All statements or representations contained in such rule filing regarding (a) the description of the portfolio or reference asset, (b) limitations on portfolio holdings or reference assets, or (c) the applicability of Exchange listing rules specified in such rule filing will constitute continued listing requirements. An issuer of such securities must notify the Exchange of any failure to comply with such continued listing requirements.

¹ The periodic distributions from each Holding Trust will be made immediately following the periodic transfer of such income (after expenses) between the paired Holding Trusts under the terms of the income distribution agreement as described in clause (g) of this definition.

² When Holding Shares are redeemed in a paired optional redemption or upon early or final termination, the settlement contracts between the two Holding Trusts provide for the appropriate transfer of assets between the paired Holding Trusts so that the Holding Shares of each Holding Trust may be redeemed in proportion to the per share underlying value of that Holding Trust.

³ The income distribution agreement between the two Holding Trusts provides for the periodic transfer between the paired Holding Trusts of income (after payment of expenses) received by each Holding Trust from the financial instruments held by that Holding Trust, with the amount of each periodic transfer based on the proportionate change in the Reference Price from its starting level at one or more points during the period following the previous periodic transfer of such income between the paired Holding Trusts.

Rule 8.500. Trust Units

(a) Applicability. The provisions in this Rule are applicable only to Trust Units. In addition, except to the extent inconsistent with this Rule, or unless the context otherwise requires, the rules and procedures of the Board of Directors shall be applicable to the trading on the Corporation of such securities. Trust Units are included within the definition of "security," "securities" and "derivative products" as such terms are used in the Rules of the Corporation.

(b) Definitions. The following terms as used in this Rule shall, unless the context otherwise requires, have the meanings herein specified:

(1) Commodity. The term "commodity" is defined in Section 1(a)(4) of the Commodity Exchange Act.

(2) Trust Units. The term "Trust Units" for purposes of this Rule means a security that is issued by a trust or other similar entity that is constituted as a commodity pool that holds investments comprising or otherwise based on any combination of futures contracts, options on futures contracts, forward contracts, swap contracts, commodities and/or securities.

(c) Designation. The Corporation may list and trade Trust Units based on an underlying asset, commodity, security or portfolio. Each issue of a Trust Unit shall be designated as a separate series and shall be identified by a unique symbol.

(d) Initial and Continued Listing. Trust Units will be listed and/or traded on the Corporation subject to application of the following criteria:

(1) Initial Listing.

(i) The Corporation will establish a minimum number of Trust Units required to be outstanding at the time of commencement of trading on the Corporation.

(ii) The Exchange will obtain a representation from the issuer of each series of Trust Units 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.

(2) Continued Listing.

(i) The Corporation will maintain surveillance procedures for securities listed under this rule and will consider the suspension of trading in, and will commence delisting proceedings under Rule 5.5(m) of, Trust Units under any of the following circumstances:

(A) if following the initial twelve month period following the commencement of trading of Trust Units, (A) the trust has more than 60 days remaining until termination and there are fewer than 50 record and/or beneficial holders of Trust Units; (B) if the trust has fewer than 50,000 Trust Units issued and outstanding; or (C) if the market value of all Trust Units issued and outstanding is less than \$1,000,000;

(B) if any of the continued listing requirements set forth in this Rule 8.500 are not continuously maintained;

(C) if the Corporation submits a rule filing pursuant to Section 19(b) of the Securities Exchange Act of 1934 to permit the listing and trading of a series of Trust Units and any of the statements or representations regarding (a) the description of the portfolio or reference asset, (b) limitations on portfolio holdings or reference assets, or (c) the applicability of Exchange listing rules specified in such rule filing are not continuously maintained; or

(D) if such other event shall occur or condition exists which in the opinion of the Corporation makes further dealings on the Corporation inadvisable.

(ii) The Corporation will halt trading in a series of Trust Units if the circuit breaker parameters in Rule 7.12 have been reached. In exercising its discretion to halt or suspend trading in a series of Trust Units, the Corporation may consider any relevant factors. In particular, if the portfolio and net asset value per share are not being disseminated as required, the Corporation may halt trading during the day in which the interruption to the dissemination of the portfolio holdings or net asset value per share occurs. If the interruption to the dissemination of the portfolio holdings or net asset value per share persists past the trading day in which it occurred, the Corporation will halt trading no later than the beginning of the trading day following the interruption.

Upon termination of a trust, the Corporation requires that Trust Units issued in connection with such trust be removed from Corporation listing. A trust will terminate in accordance with the provisions of the prospectus.

(3) Term — The stated term of the trust shall be as stated in the prospectus. However, such entity may be terminated under such earlier circumstances as may be specified in the prospectus.

(4) Trustee — The following requirements apply on an initial and continued listing basis:

(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 Corporation.

(5) Voting — Voting rights shall be as set forth in the prospectus.

(e) Limitation of Corporation Liability. Neither the Corporation nor any agent of the Corporation shall have any liability for damages, claims, losses or expenses caused by any errors, omissions, or delays in calculating or disseminating any underlying portfolio value; net asset value; or other information relating to the purchase, redemption or trading

of Trust Units, resulting from any negligent act or omission by the Corporation or any agent of the Corporation, or any act, condition or cause beyond the reasonable control of the Corporation or its agent, 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 the Trust Units.

(f) Market Maker Accounts. An ETP Holder acting as a registered Market Maker in Trust Units must file with the Exchange in a manner prescribed by the Exchange and keep current a list identifying all accounts for trading in an underlying commodity, related commodity futures or options on commodity futures, or any other related commodity derivatives, which the Market Maker may have or over which it may exercise investment discretion. No Market Maker shall trade in an underlying commodity, related commodity futures or options on commodity futures, or any other related commodity derivatives, in an account in which a 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 the Exchange as required by this Rule.

In addition to the existing obligations under Exchange rules regarding the production of books and records, the ETP Holder acting as a Market Maker in Trust Units shall make available to the Exchange such books, records or other information pertaining to transactions by such entity or registered or non-registered employee affiliated with such entity for its or their own accounts for trading the underlying physical commodity, related commodity futures or options on commodity futures, or any other related commodity derivatives, as may be requested by the Exchange.

Commentary:

.01 The Corporation requires that ETP Holders provide to all purchasers of newly issued Trust Units a prospectus for the series of Trust Units.

.02 Transactions in Trust Units will occur during the trading hours specified in NYSE Arca Equities Rule 7.34.

.03 The Corporation will file separate proposals under Section 19(b) of the Securities Exchange Act of 1934 before listing and trading separate and distinct Trust Units designated on different underlying investments, commodities, assets and/or portfolios. All statements or representations contained in such rule filing regarding (a) the description of the portfolio or reference asset, (b) limitations on portfolio holdings or reference assets, or (c) the applicability of Exchange listing rules specified in such rule filing will constitute continued listing requirements. An issuer of such securities must notify the Exchange of any failure to comply with such continued listing requirements.

Rule 8.600. Managed Fund Shares

(a) The Corporation will consider for trading, whether by listing or pursuant to unlisted trading privileges, Managed Fund Shares that meet the criteria of this Rule.

(b) Applicability. This Rule is applicable only to Managed Fund Shares. Except to the extent inconsistent with this Rule, or unless the context otherwise requires, the rules and procedures of the Board of Directors shall be applicable to the trading on the Corporation of such securities. Managed Fund Shares are included within the definition of "security" or "securities" as such terms are used in the Rules of the Corporation.

(c) Definitions. The following terms as used in the Rules shall, unless the context otherwise requires, have the meanings herein specified:

(1) 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.

(2) 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. The website for each series of Managed Fund Shares shall disclose the following information regarding the Disclosed Portfolio, to the extent applicable:

(A) ticker symbol;

(B) CUSIP or other identifier;

(C) description of the holding;

(D) with respect to holdings in derivatives, the identity of the security, commodity, index or other asset upon which the derivative is based;

(E) the strike price for any options;

(F) the quantity of each security or other asset held as measured by;

- (i) par value,
 - (ii) notional value,
 - (iii) number of shares,
 - (iv) number of contracts, and
 - (v) number of units;
- (G) maturity date;
- (H) coupon rate;
- (I) effective date;
- (J) market value; and
- (K) percentage weighting of the holding in the portfolio.
- (3) **Portfolio Indicative Value.** The term "Portfolio 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.
- (4) **Reporting Authority.** The term "Reporting Authority" in respect of a particular series of Managed Fund Shares means the Corporation, an institution, or a reporting service designated by the Corporation or by the exchange that lists a particular series of Managed Fund Shares (if the Corporation 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 Portfolio 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.
- (5) **Normal Market Conditions.** The term "normal market conditions" includes, but is not limited to, the absence of trading halts in the applicable financial markets generally; operational issues (e.g., systems failure) causing dissemination of inaccurate market information; or force majeure type events such as natural or manmade disaster, act of God, armed conflict, act of terrorism, riot or labor disruption or any similar intervening circumstance.
- (d) **Initial and Continued Listing** -- Managed Fund Shares will be listed and traded on the Corporation subject to application of the following criteria:

- (1) Initial Listing -- Each series of Managed Fund Shares will be listed and traded on the Corporation subject to application of the following initial listing criteria:
 - (A) For each series, the Corporation will establish a minimum number of Managed Fund Shares required to be outstanding at the time of commencement of trading on the Corporation.
 - (B) The Corporation 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.
 - (C) All Managed Fund Shares shall have a stated investment objective, which shall be adhered to under normal market conditions.
- (2) Continued Listing -- Each series of Managed Fund Shares will be listed and traded on the Corporation subject to application of the following continued listing criteria:
 - (A) Portfolio Indicative Value. The Portfolio 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 Core Trading Session (as defined in NYSE Arca Equities Rule 7.34).
 - (B) Disclosed Portfolio.
 - (i) The Disclosed Portfolio will be disseminated at least once daily and will be made available to all market participants at the same time.
 - (ii) 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.
 - (C) Suspension of trading or removal. The Corporation will maintain surveillance procedures for securities listed under this rule and will consider the suspension of trading in, and will commence delisting proceedings under Rule 5.5(m) of, a series of Managed Fund Shares under any of the following circumstances:
 - (i) 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 Management Fund Shares;
 - (ii) if the value of the Portfolio Indicative Value is no longer calculated or available or the Disclosed Portfolio is not made available to all market participants at the same time;

- (iii) if the Investment Company issuing the Managed Fund Shares has failed to file any filings required by the Securities and Exchange Commission or if the Corporation is aware that the Investment Company is not in compliance with the conditions of any exemptive order or no-action relief granted by the Securities and Exchange Commission to the Investment Company with respect to the series of Managed Fund Shares;
 - (iv) if any of the continued listing requirements set forth in Rule 8.600 are not continuously maintained;
 - (v) if the Corporation submits a rule filing pursuant to Section 19(b) of the Securities Exchange Act of 1934 to permit the listing and trading of a series of Managed Fund Shares that do not otherwise meet the standards set forth in this Rule 8.600 and any of the statements or representations regarding (a) the description of the portfolio or reference asset, (b) limitations on portfolio holdings or reference assets, or (c) the applicability of Exchange listing rules specified in such rule filing are not continuously maintained; or
 - (vi) if such other event shall occur or condition exists which, in the opinion of the Corporation, makes further dealings on the Corporation inadvisable.
- (D) Trading Halt. If the Portfolio Indicative Value (as defined in Rule 8.600(c)(3)) of a series of Managed Fund Shares is not being disseminated as required, the Corporation may halt trading during the day in which the interruption to the dissemination of the Portfolio Indicative Value occurs. If the interruption to the dissemination of the Portfolio Indicative Value persists past the trading day in which it occurred, the Corporation 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 Corporation pursuant to unlisted trading privileges, the Corporation will halt trading in that series as specified in Rule 7.34(a). 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.
- (E) Termination. Upon termination of an Investment Company, the Corporation requires that Managed Fund Shares issued in connection with such entity be removed from Corporation listing.
- (F) Voting. Voting rights shall be as set forth in the applicable Investment Company prospectus.
- (e) Limitation of Corporation Liability. Neither the Corporation, the Reporting Authority, nor any agent of the Corporation 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 Corporation, the Reporting Authority or any agent of the Corporation, or any act, condition, or cause beyond the reasonable control of the Corporation, 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.

Commentary:

.01 The Corporation may approve Managed Fund Shares for listing and/or trading (including pursuant to unlisted trading privileges) pursuant to Rule 19b-4(e) under the Securities Exchange Act of 1934. Components of a series of Managed Fund Shares listed pursuant to Rule 19b-4(e) shall satisfy the criteria set forth in this Rule 8.600 upon initial listing and on a continual basis. The Corporation will file separate proposals under Section 19(b) of the Securities Exchange Act of 1934 before the listing and trading of a series of Managed Fund Shares with components that do not satisfy the criteria set forth in this Commentary .01 or components other than those specified below. All statements or representations contained in such rule filing regarding (a) the description of the portfolio or reference asset, (b) limitations on portfolio holdings or reference assets, or (c) the applicability of Exchange listing rules specified in such rule filing will constitute continued listing requirements. An issuer of such securities must notify the Exchange of any failure to comply with such continued listing requirements.

- (a) Equity -Equity securities include the following: U.S. Component Stocks (as described in Rule 5.2(j)(3)); Non-U.S. Component Stocks (as described in Rule 5.2(j)(3)); Derivative Securities Products (i.e., Investment Company Units and securities described in Section 2 of Rule 8); and Index-Linked Securities that qualify for Exchange listing and trading under Rule 5.2(j)(6). For Derivative Securities Products and Index-Linked Securities, no more than 25% of the equity weight of the portfolio shall consist of leveraged and/or inverse leveraged Derivative Securities Products or Index- Linked Securities. The securities described in Rule 5.2(j)(3), Rule 5.2(j)(6) and Section 2 of Rule 8, as referenced above, shall include securities listed on another national securities exchange pursuant to substantially equivalent listing rules. To the extent that a portfolio includes convertible securities, the equity security into which such security is converted shall meet the criteria of this Commentary .01(a) after converting.

- (1) U.S. Component Stocks. The component stocks of the equity portion of a portfolio that are U.S. Component Stocks shall meet the following criteria initially and on a continuing basis:
 - (A) Component stocks (excluding Derivative Securities Products and Index-Linked Securities) that in the aggregate account for at least 90% of the equity weight of the portfolio (excluding such Derivative Securities Products and Index-Linked Securities) each shall have a minimum market value of at least \$75 million;
 - (B) Component stocks (excluding Derivative Securities Products and Index-Linked Securities) that in the aggregate account for at least 70% of the equity weight of the portfolio (excluding such Derivative Securities Products and Index-Linked Securities) each shall have a minimum monthly trading volume of 250,000 shares, or minimum notional volume traded per month of \$25,000,000, averaged over the last six months;
 - (C) The most heavily weighted component stock (excluding Derivative Securities Products and Index-Linked Securities) shall not exceed 30% of the equity weight of the portfolio, and, to the extent applicable, the five most heavily weighted component stocks (excluding Derivative Securities Products and Index-Linked Securities) shall not exceed 65% of the equity weight of the portfolio;
 - (D) Where the equity portion of the portfolio does not include Non-U.S. Component Stocks, the equity portion of the portfolio shall include a minimum of 13 component stocks; provided, however, that there shall be no minimum number of component stocks if (i) one or more series of Derivative Securities Products or Index-Linked Securities constitute, at least in part, components underlying a series of Managed Fund Shares, or (ii) one or more series of Derivative Securities Products or Index-Linked Securities account for 100% of the equity weight of the portfolio of a series of Managed Fund Shares;
 - (E) Except as provided herein, equity securities in the portfolio shall be U.S. Component Stocks listed on a national securities exchange and shall be NMS Stocks as defined in Rule 600 of Regulation NMS under the Securities Exchange Act of 1934; and
 - (F) American Depositary Receipts ("ADRs") in a portfolio may be exchange-traded or nonexchange-traded. However, no more than 10% of the equity weight of a portfolio shall consist of non-exchange-traded ADRs.
- (2) Non-U.S. Component Stocks. The component stocks of the equity portion of a portfolio that are Non-U.S. Component Stocks shall meet the following criteria initially and on a continuing basis:

- (A) Non-U.S. Component Stocks each shall have a minimum market value of at least \$100 million;
 - (B) Non-U.S. Component Stocks each shall have a minimum global monthly trading volume of 250,000 shares, or minimum global notional volume traded per month of \$25,000,000, averaged over the last six months;
 - (C) The most heavily weighted Non-U.S. Component stock shall not exceed 25% of the equity weight of the portfolio, and, to the extent applicable, the five most heavily weighted Non-U.S. Component Stocks shall not exceed 60% of the equity weight of the portfolio;
 - (D) Where the equity portion of the portfolio includes Non-U.S. Component Stocks, the equity portion of the portfolio shall include a minimum of 20 component stocks; provided, however, that there shall be no minimum number of component stocks if (i) one or more series of Derivative Securities Products or Index-Linked Securities constitute, at least in part, components underlying a series of Managed Fund Shares, or (ii) one or more series of Derivative Securities Products or Index-Linked Securities account for 100% of the equity weight of the portfolio of a series of Managed Fund Shares; and
 - (E) Each Non-U.S. Component Stock shall be listed and traded on an exchange that has last-sale reporting.
- (b) 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 a subdivision thereof, investment grade and high yield corporate debt, bank loans, mortgage and asset backed securities, and commercial paper. To the extent that a portfolio includes convertible securities, the fixed income security into which such security is converted shall meet the criteria of this Commentary .01(b) after converting. The components of the fixed income portion of a portfolio shall meet the following criteria initially and on a continuing basis:
- (1) Components that in the aggregate account for at least 75% of the fixed income weight of the portfolio each shall have a minimum original principal amount outstanding of \$100 million or more;
 - (2) No component fixed-income security (excluding Treasury Securities and GSE Securities) shall represent more than 30% of the fixed income weight of the portfolio, and the five most heavily weighted component fixed income securities in the portfolio (excluding Treasury Securities and GSE Securities) shall not in the aggregate account for more than 65% of the fixed income weight of the portfolio;

- (3) An underlying portfolio (excluding exempted securities) that includes fixed income securities shall include a minimum of 13 non-affiliated issuers, provided, however, that there shall be no minimum number of non-affiliated issuers required for fixed income securities if at least 70% of the weight of the portfolio consists of equity securities as described in Commentary .01(a) above;
 - (4) Component securities that in aggregate account for at least 90% of the fixed income weight of the portfolio must be either (a) from issuers that are required to file reports pursuant to Sections 13 and 15(d) of the Securities Exchange Act of 1934; (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; and
 - (5) Non-agency, non-GSE and privately-issued mortgage-related and other asset-backed securities components of a portfolio shall not account, in the aggregate, for more than 20% of the weight of the fixed income portion of the portfolio.
- (c) Cash and Cash Equivalents. Cash equivalents shall include short-term instruments with maturities of less than 3 months (as described herein). In addition, a portfolio may hold cash.
- (1) There shall be no limitation to the percentage of the portfolio invested in such holdings.
 - (2) Short-term instruments shall include the following:
 - (i) U.S. Government securities, including bills, notes and bonds differing as to maturity and rates of interest, which are either issued or guaranteed by the U.S. Treasury or by U.S. Government agencies or instrumentalities;
 - (ii) certificates of deposit issued against funds deposited in a bank or savings and loan association;
 - (iii) bankers' acceptances, which are short-term credit instruments used to finance commercial transactions;
 - (iv) repurchase agreements and reverse repurchase agreements;
 - (v) bank time deposits, which are monies kept on deposit with banks or savings and loan associations for a stated period of time at a fixed rate of interest;
 - (vi) commercial paper, which are short-term unsecured promissory notes; and

(vii) money market funds.

(d) Listed Derivatives. The portfolio may hold listed derivatives, including futures, options and swaps on commodities, currencies and financial instruments (e.g., stocks, fixed income, interest rates, and volatility) or a basket or index of any of the foregoing. There shall be no limitation to the percentage of the portfolio invested in such holdings, subject to the following requirements:

- (1) in the aggregate, at least 90% of the weight of such holdings invested in futures, exchange-traded options, and listed swaps shall, on both an initial and continuing basis, consist of futures, options, and swaps for which the Exchange may obtain information via the Intermarket Surveillance Group ("ISG") from other members or affiliates of the ISG or for which the principal market is a market with which the Exchange has a comprehensive surveillance sharing agreement. (For purposes of calculating this limitation, a portfolio's investment in listed derivatives will be calculated as the aggregate gross notional value of the listed derivatives.); and
- (2) the aggregate gross notional value of listed derivatives based on any five or fewer underlying reference assets shall not exceed 65% of the weight of the portfolio (including gross notional exposures), and the aggregate gross notional value of listed derivatives based on any single underlying reference asset shall not exceed 30% of the weight of the portfolio (including gross notional exposures).

(e) Over-the-Counter ("OTC") Derivatives. The portfolio may hold OTC derivatives, including forwards, options and swaps on commodities, currencies and financial instruments (e.g., stocks, fixed income, interest rates, and volatility) or a basket or index of any of the foregoing; however, on both an initial and continuing basis, no more than 20% of the assets in the portfolio may be invested in OTC derivatives. For purposes of calculating this limitation, a portfolio's investment in OTC derivatives will be calculated as the aggregate gross notional value of the OTC derivatives.

(f) To the extent that listed or OTC derivatives are used to gain exposure to individual equities and/or fixed income securities, or to indexes of equities and/or indexes of fixed income securities, the aggregate gross notional value of such exposure shall meet the criteria set forth in Commentary .01(a) and .01(b) (including gross notional exposures), respectively.

.02 Transactions in Managed Fund Shares will occur during the trading hours specified in NYSE Arca Equities Rule 7.34(a).

.03 Surveillance Procedures. The Exchange will implement written surveillance procedures for Managed Fund Shares.

.04 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 the series of Managed 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.

.05 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 Corporation will inform ETP Holders 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 Corporation requires that ETP Holders 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, ETP Holders shall include such a written description with any sales material relating to a series of Units that is provided to customers or the public. Any other written materials provided by an ETP Holder 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)."

An ETP Holder carrying an omnibus account for a non-ETP Holder is required to inform such non-ETP Holder 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-ETP Holder to make such written description available to its customers on the same terms as are directly applicable to ETP Holders under this rule.

Upon request of a customer, an ETP Holder shall also provide a prospectus for the particular series of Managed Fund Shares.

.06 If the investment adviser to the Investment Company issuing Managed Fund Shares is affiliated with a broker-dealer, such investment adviser shall erect and maintain 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.

Rule 8.700. Managed Trust Securities

(a) The Corporation will consider for trading, whether by listing or pursuant to unlisted trading privileges, Managed Trust Securities that meet the criteria of this Rule.

(b) **Applicability** . This Rule is applicable only to Managed Trust Securities. Managed Trust Securities are included within the definition of "security" or "securities" as such terms are used in the Bylaws and Rules of the Corporation.

(c) **Definitions** . The following terms as used in the Rules shall, unless the context otherwise requires, have the meanings herein specified:

- (1) Managed Trust Securities. The term "Managed Trust Securities" as used in the Rules shall, unless the context otherwise requires, mean a security that is registered under the Securities Act of 1933, as amended, and (i) is issued by a trust ("Trust"), or any series thereof, that (1) is a commodity pool as defined in the Commodity Exchange Act and regulations thereunder, is not registered or required to be registered as an investment company under the Investment Company Act of 1940, as amended, and is managed by a commodity pool operator registered with the Commodity Futures Trading Commission, and (2) holds long and/or short positions in exchange-traded futures contracts and/or certain currency forward contracts and/or swaps selected by the Trust's advisor consistent with the Trust's investment objectives, which will only include exchange-traded futures contracts involving commodities, commodity indices, currencies, currency indices, stock indices, fixed income indices, interest rates and sovereign, private and mortgage or asset backed debt instruments, and/or forward contracts on specified currencies, and/or swaps on stock indices, fixed income indices, commodity indices, commodities, currencies, currency indices, or interest rates, each as disclosed in the Trust's prospectus as such may be amended from time to time, and cash and cash equivalents; and (ii) is issued and redeemed continuously in specified aggregate amounts at the next applicable net asset value.

- (2) **Disclosed Portfolio.** The term "Disclosed Portfolio" means the identities and quantities of the securities and other assets held by the Trust that will form the basis for the Trust's calculation of net asset value at the end of the business day.
- (3) **Intraday Indicative Value.** The term "Intraday Indicative Value" is the estimated indicative value of a Managed Trust Security based on current information regarding the value of the securities and other assets in the Disclosed Portfolio.
- (4) **Reporting Authority.** The term "Reporting Authority" in respect of a particular series of Managed Trust Securities means the Corporation, an institution, or a reporting or information service designated by the Corporation or by the Trust or the exchange that lists a particular series of Managed Trust Securities (if the Corporation 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 Trust Securities, net asset value, or other information relating to the issuance, redemption or trading of Managed Trust Securities. A series of Managed Trust Securities may have more than one Reporting Authority, each having different functions.

(d) **Designation** . The Corporation may trade, either by listing or pursuant to unlisted trading privileges, Managed Trust Securities based on the underlying portfolio of exchange-traded futures, and/or swaps, and/or certain currency forward contracts described in the related prospectus. Each issue of Managed Trust Securities shall be designated as a separate trust or series and shall be identified by a unique symbol.

(e) **Initial and Continued Listing** . Managed Trust Securities will be listed and traded on the Corporation subject to application of the following criteria:

- (1) **Initial Listing**—Each series of Managed Trust Securities will be listed and traded on the Corporation subject to application of the following initial listing criteria:
- (A) The Corporation will establish a minimum number of Managed Trust Securities required to be outstanding at the time of commencement of trading on the Corporation.
- (B) The Corporation will obtain a representation from the issuer of each series of Managed Trust Securities 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.
- (2) **Continued Listing**—Each series of Managed Trust Securities will be listed and traded on the Corporation subject to application of the following continued listing criteria:

- (A) Intraday Indicative Value. The Intraday Indicative Value for Managed Trust Securities will be widely disseminated by one or more major market data vendors at least every 15 seconds during the Core Trading Session (as defined in NYSE Arca Equities Rule 7.34).
- (B) Disclosed Portfolio.
- (i) The Disclosed Portfolio will be disseminated at least once daily and will be made available to all market participants at the same time.
 - (ii) 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.
- (C) Suspension of trading or removal. The Corporation will maintain surveillance procedures for securities listed under this rule and will consider the suspension of trading in, and will commence delisting proceedings under Rule 5.5(m) of, a series of Managed Trust Securities under any of the following circumstances:
- (i) if, following the initial twelve-month period beginning upon the commencement of trading of the Managed Trust Securities: (A) the Trust has fewer than 50,000 Managed Trust Securities issued and outstanding; or (B) the market value of all Managed Trust Securities issued and outstanding is less than \$1,000,000, or (C) there are fewer than 50 record and/or beneficial holders of Managed Trust Securities;
 - (ii) if the Intraday Indicative Value for the Trust is no longer calculated or available or the Disclosed Portfolio is not made available to all market participants at the same time;
 - (iii) if the Trust issuing the Managed Trust Securities has failed to file any filings required by the Securities and Exchange Commission or if the Corporation is aware that the Trust is not in compliance with the conditions of any exemptive order or no-action relief granted by the Securities and Exchange Commission to the Trust with respect to the series of Managed Trust Securities;
 - (iv) if any of the continued listing requirements set forth in Rule 8.700 are not continuously maintained;
 - (v) if the Corporation submits a rule filing pursuant to Section 19(b) of the Securities Exchange Act of 1934 to permit the listing and trading of a series of Managed Trust Securities and any of the statements or representations regarding (a) the description of the index, portfolio or reference asset, (b) limitations on index or portfolio holdings or reference assets, or (c) the

applicability of Exchange listing rules specified in such rule filing are not continuously maintained; or

(vi) if such other event shall occur or condition exists which in the opinion of the Corporation makes further dealings on the Corporation inadvisable.

(D) **Trading Halt.** If the Intraday Indicative Value of a series of Managed Trust Securities is not being disseminated as required, the Corporation 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 Corporation will halt trading no later than the beginning of the trading day following the interruption. If a series of Managed Trust Securities is trading on the Corporation pursuant to unlisted trading privileges, the Corporation will halt trading in that series as specified in Rule 7.34(a). In addition, if the Exchange becomes aware that the net asset value or the Disclosed Portfolio with respect to a series of Managed Trust Securities 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.

(E) Upon termination of a Trust, the Corporation requires that Managed Trust Securities issued in connection with such trust be removed from Corporation listing. A Trust will terminate in accordance with the provisions of the Trust prospectus.

(3) **Term** —The stated term of the Trust shall be as stated in the prospectus. However, a Trust may be terminated under such earlier circumstances as may be specified in the Trust prospectus.

(4) **Trustee** —The following requirements apply on an initial and continued listing basis:

(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 Corporation.

(5) **Voting**—Voting rights shall be as set forth in the applicable Trust prospectus.

(f) **Market Maker Accounts** .

(1) The ETP Holder acting as a registered Market Maker in Managed Trust Securities must file, with the Corporation, in a manner prescribed by the Corporation, and keep current a list identifying all accounts for trading the underlying commodity or applicable currency, related futures or options on futures, or any other related derivatives, which the ETP Holder acting as registered Market Maker may have or over which it may exercise investment discretion. No ETP Holder acting as registered Market Maker in the Managed Trust Securities shall trade in the underlying commodity or applicable currency, related futures or options on futures, or any other related derivatives, in an account in which an ETP Holder acting as 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 the Corporation as required by this Rule.

(2) In addition to the existing obligations under Corporation rules regarding the production of books and records (see, e.g., Rule 4.4), the ETP Holder acting as a registered Market Maker in Managed Trust Securities shall make available to the Corporation such books, records or other information pertaining to transactions by such entity or any limited partner, officer or approved person thereof, registered or non-registered employee affiliated with such entity for its or their own accounts in the underlying commodity or applicable currency, related futures or options on futures, or any other related derivatives, as may be requested by the Corporation.

(g) ***Limitation of Corporation Liability*** . Neither the Corporation, the Reporting Authority nor any agent of the Corporation shall have any liability for damages, claims, losses or expenses caused by any errors, omissions, or delays in calculating or disseminating any underlying futures contract value; the current value of positions or interests if required to be deposited to the Trust in connection with issuance of Managed Trust Securities; net asset value; or other information relating to the purchase, redemption or trading of Managed Trust Securities, resulting from any negligent act or omission by the Corporation, or the Reporting Authority, or any agent of the Corporation, or any act, condition or cause beyond the reasonable control of the Corporation or its agent, or the Reporting Authority, including, but not limited to, 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 reporting of transactions in an underlying futures contract.

(h) The Corporation will file separate proposals under Section 19(b) of the Securities Exchange Act of 1934 before listing and trading separate and distinct Managed Trust Securities. All statements or representations contained in such rule filing regarding (a) the description of the index, portfolio or reference asset, (b) limitations on index or portfolio holdings or reference assets, or (c) the applicability of Exchange listing rules specified in such rule filing will constitute continued listing requirements. An issuer of such securities must notify the Exchange of any failure to comply with such continued listing requirements.

Commentary:

.01 The Corporation requires that ETP Holders provide all purchasers of newly issued Managed Trust Securities a prospectus for the series of Managed Trust Securities.

.02 Transactions in Managed Trust Securities will occur during the trading hours specified in NYSE Arca Equities Rule 7.34.

.03 The Corporation's rules governing the trading of equity securities apply.

.04 The Corporation will implement written surveillance procedures for Managed Trust Securities.

.05 If the Trust's advisor is affiliated with 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 Disclosed Portfolio. Personnel who make decisions on the Trust's portfolio composition must be subject to procedures designed to prevent the use and dissemination of material nonpublic information regarding the applicable Trust portfolio.

Section 3. NYSE Arca ETP Incentive Program

The NYSE Arca ETP Incentive Program ("Incentive Program") shall be effective on a pilot basis set to end on July 31, 2017.

Rule 8.800. Terms of Incentive Program

Terms of Incentive Program

(a) Eligible Products

An exchange-traded product ("ETP") shall be eligible to participate in the Incentive Program if:

- (1) it is listed on the Exchange as of the commencement of the pilot period or becomes listed during the pilot period;
- (2) the listing is under NYSE Arca Equities Rules 5.2(j)(3) (Investment Company Units), 5.2(j)(5) (Equity Gold Shares), 8.100 (Portfolio Depositary Receipts), 8.200 (Trust Issued Receipts), 8.201 (Commodity-Based Trust Shares), 8.202 (Currency Trust Shares), 8.203 (Commodity Index Trust Shares), 8.204 (Commodity Futures Trust Shares), 8.300 (Partnership Units), 8.600 (Managed Fund Shares), or 8.700 (Managed Trust Securities);

- (3) with respect to an ETP that was listed on the Exchange before the commencement of the Incentive Program, the ETP has a consolidated average daily volume ("CADV") of one million shares or less for at least the preceding three months and the issuer of such ETP has not suspended the issuance or redemption of new shares; and
- (4) it is compliant with continuing listing standards, if the ETP is added to the Incentive Program after listing on the Exchange.

(b) Issuer Application and LMM Assignment

- (1) An issuer that wishes to have an ETP participate in the Incentive Program and pay the Exchange an Optional Incentive Fee shall submit a written application in a form prescribed by the Exchange for each ETP. An issuer may apply to have its ETP participate at the time of listing or thereafter at the beginning of each month during the pilot period. An issuer may not have more than five ETPs that were listed on the Exchange prior to the pilot period participate in the Incentive Program.
- (2) In order for its ETP to be eligible to participate in the Incentive Program, an issuer must be current in all payments due to the Exchange.
- (3) The Exchange shall communicate the ETP(s) proposed for inclusion in the Incentive Program on a written solicitation that is sent to all qualified LMMs along with the Optional Incentive Fee the issuer will pay the Exchange for each ETP. The issuer shall determine the amount of the Optional Incentive Fee for each ETP. The permitted range for the Optional Incentive Fee shall be set forth in the Exchange's Listing Fee Schedule.
- (4) After the Exchange provides the written solicitation to LMMs, no individual associated with an LMM may contact such issuer or the Exchange staff about such ETP until the assignment of the LMM is made, except as otherwise permitted in paragraph (b)(5) below.
- (5) If more than one qualified LMM proposes to serve as such for a particular ETP, Exchange staff shall select the LMM pursuant to the following provisions:
 - (A) An LMM may provide material to the Exchange staff, which may include a corporate overview of the LMM and the trading experience of its personnel.
 - (B) Exchange staff shall meet with representatives of each LMM if requested by the LMM. No more than three representatives of each LMM may participate in the meeting, each of whom must be employees of the LMM, and one of whom must be the individual trader of the LMM who is proposed to trade the ETP. If the LMM is unavailable to appear in person, a telephone interview with that LMM is acceptable. Meetings shall normally be held at the Exchange, unless the Exchange has agreed that they may be held elsewhere.

(C) The issuer of the ETP may choose to submit a letter to the Exchange staff indicating its preference and supporting justification for a particular LMM. The Exchange staff may consider such letter in performing its duty to select an LMM, but such letter shall not be determinative of the particular LMM selected by the Exchange.

(D) Within two business days after the final LMM interview, the Exchange staff, in its sole discretion, shall select an LMM. The Exchange staff shall notify the LMM and the issuer.

(6) The Exchange shall provide notification on a dedicated page on its website regarding (i) the ETPs participating in the Incentive Program, (ii) the date a particular ETP begins participating in the Incentive Program, (iii) the date the Exchange receives written notice of an issuer's intent to withdraw its ETP from the Incentive Program, and the intended withdrawal date, if provided, (iv) the date a particular ETP ceases participating in the Incentive Program, (v) the LMM assigned to each ETP participating in the Incentive Program, (vi) the date the Exchange receives written notice of an LMM's intent to withdraw from its ETP assignment(s) in the Incentive Program, and the intended withdrawal date, if provided, and (vii) the amount of the Optional Incentive Fee for each ETP. This page shall also include a fair and balanced description of the Incentive Program, including (i) a description of the Incentive Program's operation as a pilot, including the effective date thereof, (ii) the potential benefits that may be realized by an ETP's participation in the Incentive Program, (iii) the potential risks that may be attendant with an ETP's participation in the Incentive Program, (iv) the potential impact resulting from an ETP's entry into and exit from the Incentive Program, and (v) how interested parties can request additional information regarding the Incentive Program and/or the ETPs participating therein.

(7) An issuer of an ETP that is approved to participate in the Incentive Program shall issue a press release to the public when an ETP commences or ceases participation in the Incentive Program. The press release shall be in a form and manner prescribed by the Exchange, and if practicable, shall be issued at least two days before the ETP commences or ceases participation in the Incentive Program. The issuer shall dedicate space on its website, or, if it does not have a website, on the website of the adviser or sponsor of the ETP, that (i) includes any such press releases and (ii) provides a hyperlink to the dedicated page on the Exchange's website that describes the Incentive Program, as described in paragraph (6) above.

(c) LMM Performance Standards

The following minimum performance standards shall apply to an LMM for each Incentive Program security it is assigned:

(1) General - An LMM shall satisfy the requirements of NYSE Arca Equities Rule 7.23.

(2) Market Wide Requirement.

(A) An LMM shall maintain quotes or orders at the NBBO or better (the "Inside") during the month during Core Trading Hours in accordance with the maximum width and minimum depth thresholds provided in Commentary .01 to this Rule 8.800; provided, however, that this requirement shall not apply to an LMM if the thresholds provided in Commentary .01 are otherwise met by quotes or orders of all market participants across all markets trading the security.

(3) NYSE Arca-Specific Requirement - An LMM shall maintain quotes or orders on NYSE Arca at the NBBO pursuant to (A) or (B) below.

(A) Time-at-the-Inside Requirement - An LMM shall maintain quotes or orders on NYSE Arca at the NBBO or better at least 15% of the time when quotes may be entered during Core Trading Hours each trading day, as averaged over the course of a month.

(B) Size-Setting NBBO Requirement - An LMM shall maintain "Size-Setting" quotes or orders on NYSE Arca, as compared to trading interest on other markets, at the NBBO or better at least 25% of the time when quotes or orders may be entered during Core Trading Hours each trading day, as averaged over the course of a month; provided, however, that this requirement shall not apply to an LMM if this threshold is otherwise met by quotes or orders of other market participants on NYSE Arca.

(4) For at least 90% of the time when quotes may be entered during Core Trading Hours each trading day, as averaged over the course of a month, an LMM shall maintain:

(A) at least 2,500 shares of attributable, displayed posted buy liquidity on the Exchange that is priced no more than 2% away from the NBB for the particular ETP; and

(B) at least 2,500 shares of attributable, displayed posted offer liquidity on the Exchange that is priced no more than 2% away from the NBO for the particular ETP.

(d) LMM Payment by Exchange

(1) The Exchange shall credit an LMM for the LMM Payment, which shall be determined by the Exchange and set forth in the Fee Schedule.

(e) Withdrawal

- (1) If an ETP no longer meets continuing listing standards, suspends the creation and/or redemption of shares, or liquidates, it shall be automatically withdrawn from the Incentive Program as of the ETP suspension date.
- (2) NYSE Arca, in its discretion, may allow an issuer to withdraw an ETP from the Incentive Program before the end of the pilot period if the assigned LMM is unable to meet its performance standards for any two of the three months of a quarter or for five months during the pilot period and no other qualified ETP Holder is able to take over the assignment.
- (3) An LMM may withdraw from all of its ETP assignments in the Incentive Program. NYSE Arca, in its discretion, may allow an LMM to withdraw from a particular ETP before the end of the pilot period if the Exchange determines that there are extraneous circumstances that prevent the LMM from meeting its performance standards for such ETP that do not affect its other ETP assignments in the Incentive Program. In either such event, the LMM's ETP(s) shall be reallocated in accordance with paragraph (f) below.
- (4) If an ETP maintains a CADV of one million shares or more for three consecutive months, it shall be automatically withdrawn from the Incentive Program within one month thereafter. If after such automatic withdrawal the ETP fails to maintain a CADV of one million shares or more for three consecutive months, the issuer of the ETP may reapply for the Incentive Program one month thereafter.
- (5) If the issuer is not current in all payments due to the Exchange after two consecutive quarters, its ETP shall be automatically terminated from the Incentive Program.

(f) Reallocation

If the LMM for a particular ETP does not meet or exceed its performance standards for any two of the three months of a quarter or for five months during the pilot period, or chooses to withdraw from the Incentive Program, and at least one other qualified Market Maker has agreed to become the assigned LMM under the Incentive Program, then the ETP shall be reallocated and another LMM shall be solicited and assigned in accordance with paragraph (b) above. The reallocation process shall be completed no sooner than the end of the current quarter and no later than the end of the following quarter.

Commentary:

.01

- (1) The following maximum width and minimum depth thresholds shall apply during Core Trading Hours for purposes of the LMM Performance Standards of Rule 8.800(c)(2).

<i>Daily Share Volume</i>	<i>Quote Type</i>	<i>Requirement</i>	<i>Prices (\$)</i>			
			<i>0-4.99</i>	<i>5-14.99</i>	<i>15-49.99</i>	<i>50 or more</i>
<i>0-4,999</i>	<i>Inside</i>	<i>Width (%)</i>	<i>15.00</i>	<i>6.00</i>	<i>5.00</i>	<i>4.00</i>
		<i>Depth (sh)</i>	<i>700</i>	<i>400</i>	<i>300</i>	<i>200</i>
<i>5,000-24,999</i>	<i>Inside</i>	<i>Width (%)</i>	<i>7.00</i>	<i>3.00</i>	<i>2.00</i>	<i>1.50</i>
		<i>Depth (sh)</i>	<i>700</i>	<i>400</i>	<i>300</i>	<i>200</i>
<i>25,000-74,999</i>	<i>Inside</i>	<i>Width (%)</i>	<i>5.00</i>	<i>1.50</i>	<i>1.00</i>	<i>0.70</i>
		<i>Depth (sh)</i>	<i>700</i>	<i>400</i>	<i>300</i>	<i>200</i>
<i>75,000-199,999</i>	<i>Inside</i>	<i>Width (%)</i>	<i>3.00</i>	<i>1.00</i>	<i>0.50</i>	<i>0.30</i>
		<i>Depth (sh)</i>	<i>700</i>	<i>400</i>	<i>300</i>	<i>200</i>
<i>200,000-499,999</i>	<i>Inside</i>	<i>Width (%)</i>	<i>2.00</i>	<i>0.60</i>	<i>0.30</i>	<i>0.20</i>
		<i>Depth (sh)</i>	<i>700</i>	<i>400</i>	<i>300</i>	<i>200</i>
<i>500,000 or more</i>	<i>Inside</i>	<i>Width (%)</i>	<i>1.00</i>	<i>0.30</i>	<i>0.20</i>	<i>0.10</i>
		<i>Depth (sh)</i>	<i>2000</i>	<i>1000</i>	<i>500</i>	<i>300</i>

(2) The spread thresholds of this Commentary .01 shall be calculated as the time-weighted average throughout the trading day and then averaged, by day, across the month. The depth thresholds of this Commentary .01 shall be calculated as the average of (a) the average time-weighted bid depth and (b) the average time-weighted ask depth.

(3) The Time-at-the-Inside Requirement shall be calculated as the average of (a) the percentage of time the LMM has a bid on NYSE Arca at the NBB and (b) the percentage of time the LMM has an offer on NYSE Arca at the NBO.

(4) The Size-Setting NBBO Requirement shall be calculated throughout the trading day and then averaged, by day, across the month. Quotes and orders of all market participants across all markets trading the security shall be considered when calculating the Size-Setting NBBO Requirement. A quote or order shall be considered "Size-Setting" if it is at the NBB or NBO. If multiple quotes or orders exist at the same price, the quote or order with the largest size shall be considered "Size-Setting." If multiple quotes or orders exist at the same price and the same size, the quote or order with the earliest entry time shall be considered "Size-Setting."

(5) Only displayed quotes and orders shall be considered for purposes of the LMM Performance Standards of Rule 8.800(c), including this Commentary .01.

RULE 9 CONDUCTING BUSINESS WITH THE PUBLIC

Section 1. Conducting Business with the Public

Rule 9.1(a). Register with the Corporation

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

Rule 9.1(b). Reserved

Rule 9.1(c). Office Supervision

(1) Each office of an ETP Holder shall be under the supervision and control of such ETP Holder to assure compliance with applicable securities laws and regulations and Rules of the Corporation.

(2) The ETP Holders and Allied Persons thereof shall designate from among their group a person or persons to assume authority and responsibility for supervision of the firm's activities and establishment and maintenance of appropriate procedures and follow-up and review to determine that such control and supervision is maintained.

Rule 9.1(d). ETP Holders shall at all times

ETP Holders shall at all times have responsibility for the proper supervision and control of their registered employees and as provided in Rule 9.1(c) shall designate a principal of the firm to be responsible for the execution of such supervisory procedures.

Rule 9.1(e). Guarantees

(1) No registered employee shall guarantee the payment of the debit balance in a customer's account to his or her employer or to any other creditor carrying such account without the prior consent of the Corporation.

(2) No registered employee shall represent to any customer that he or she will personally guarantee the account of such customer.

(3) No registered employee shall guarantee any customer against losses in his or her account, or in any way represent to any customer that he or she or his or her employer will guarantee the customer against such losses.

Rule 9.1(f). Reserved.

Rule 9.1(g). Compensation Rebate

No registered employee shall directly or indirectly, rebate to any person, firm or corporation any part of the compensation he or she may receive as a registered employee; nor shall he or she pay such compensation or any part thereof, directly or indirectly, to any person, firm, or corporation, as a bonus, commission, fee or other consideration, for business sought or produced for him or her or any ETP Holder.

Rule 9.1(h). Registered Employee Compensation

No registered employee shall, directly or indirectly, take, accept or receive, from any person, firm, corporation or association, other than the ETP Holder with whom he or she is registered, compensation of any nature, as a bonus, commission fee, gratuity or other consideration, in connection with any securities transactions, unless the provisions of Rule 4.3(b) have been previously complied with.

Rule 9.2(a). Diligence As To Accounts

(1) Every ETP Holder, through a general partner, a principal executive officer or a designated authorized person, shall use due diligence to learn the essential facts relative to every customer, every order, every account accepted or carried by such ETP Holder and every person holding power of attorney over any account accepted or carried by such ETP Holder.

(2) In recommending to a customer the purchase, sale or exchange of any security, an ETP Holder shall have reasonable grounds for believing that the recommendation is suitable for such customer upon the basis of any facts disclosed by the customer as to his other security holdings, financial situation and needs. Prior to the execution of a transaction recommended to a non-institutional customer (defined below), other than transactions with customers where investments are limited to money market mutual funds, an ETP Holder shall make reasonable efforts to obtain information

concerning the customer's financial status, tax status, investment objectives, and such other information used or considered to be reasonable by such ETP Holder or registered representative in making recommendations to the customer.

- (3) For purposes of this Rule, the term "non-institutional customer" shall mean a customer that does not qualify as an "institutional account." The term "institutional account" means the account of a bank, savings and loan association, insurance company, registered investment company, investment adviser registered either with the Securities and Exchange Commission under Section 203 of the Investment Advisers Act of 1940 or with a state securities commission (or any agency or office performing like functions), or any other natural person or entity with total assets of at least \$50 million.

Rule 9.2(b). Account Supervision

Every ETP Holder shall supervise diligently all accounts accepted or carried by such firm and shall exercise diligence in supervising the business practices of its registered persons and otherwise licensed persons. An ETP Holder shall adopt appropriate procedures for the opening and the maintaining of accounts, including the maintaining of records prescribed by the Bylaws and Rules of the Corporation and by the rules and regulations of the Securities and Exchange Commission, which shall include:

- (1) Maintaining adequate records to provide for the supervision of accounts;
- (2) Approval of all new accounts by an individual designated for such purpose;
- (3) Approving all transactions and correspondence with or for any account of the registered employee to be evidenced in writing as a permanent record of the firm;
- (4) Reviewing accounts periodically for any irregularities or abuses;
- (5) Following up and reviewing the activities of all offices, including at least an annual inspection of each office of the firm.

Rule 9.2(c). Customer Records

The ETP Holder shall keep current and preserve records concerning all accounts of customers in such form and substance as to disclose at least the following information:

- (1) Name and address of customer;
- (2) If customer is a natural person:
 - (A) Occupation of customer and name of employer,
 - (B) Age of customer (or approximate age),

- (C) Citizenship of customer;
- (3) Taxpayer ID Number;
- (4) Signature of registered employee introducing the customer;
- (5) Signature of a general partner, a principal executive officer or an authorized person who approved the opening of the account prior to or promptly after the completion of any transaction for the account of or with a customer; provided, however, that in the case of branch offices, the opening of an account for a customer may be approved by the manager of such branch office but the action of such branch office manager shall within a reasonable time be approved by a general partner, a principal executive officer or an authorized person designated as having such authority by the general partner or by the principal executive officer who has the overall authority and responsibility for account supervision and control. The general partner, principal executive officer or authorized person approving the opening of the account shall, prior to giving his or her approval, be personally informed as to the essential facts relative to the customer and to the nature of and the investment objectives of the proposed account and shall indicate his or her approval in writing.

Commentary:

.01 In the case of a margin account carried by an ETP Holder for a non-ETP corporation, definite knowledge should be had to the effect that the non-ETP corporation has the right under its charter and by-laws to engage in margin transactions for its own account and that the persons from whom orders and instructions are accepted have been duly authorized by the corporation to act on its behalf. It is advisable in each such case for the carrying firm to have in its possession a copy of the corporate charter, by-laws and authorizations. Where it is not possible to obtain such documents, an Allied Person in the ETP Holder carrying the account should prepare and sign a memorandum for its files indicating the basis upon which he or she believes that the corporation may properly engage in margin transactions and that the persons acting for the corporation have been duly authorized to do so.

In the case of a cash account carried for a non-ETP corporation, the carrying ETP Holder should assure itself through a general partner or an officer who is a holder of voting stock that persons entering orders and issuing instructions with respect to the account do so upon the proper authority.

.02 When an agency account is carried by an ETP Holder its files should contain the name of the principal for whom the agent is acting and written evidence of the agent's authority.

.03 When Estate and Trustee accounts are involved an ETP Holder should obtain counsel's advice as to the documents which should be obtained.

Rule 9.3(a). Employee Accounts

No ETP Holder shall, without the prior consent of the employer, make:

- (1) A cash or margin transaction or carry a margin account in securities or in commodities in which an employee of the Corporation, or of any ETP Holder, is directly or indirectly interested. Duplicate reports and statements shall be sent promptly to the employer.
- (2) A margin transaction or carry a margin account in securities or in commodities in which an employee of a bank, trust company, savings institution, insurance company or any individual or firm engaged in the business of dealing in securities, is directly or indirectly interested.

This Rule applies to all employees of insurance companies regardless of whether they are compensated on a salary or commission basis. However, it is not considered applicable to independent insurance agents.

A person who is clearly designated by the charter or by-laws of a bank, trust company, insurance company, etc., as an officer of such institution is not considered an "employee" for the purpose of this Rule.

Rule 9.3(b). ETP Holder and Allied Person Accounts

No ETP Holder shall carry an account for another ETP Holder or Allied Person of another ETP Holder without the prior written consent of another person who is an ETP Holder or Allied Person of such other firm.

Duplicate reports and statements shall be sent to such general partner or an officer who is a holder of voting stock designated in such consent unless their submission is waived in writing and a permanent record of such waiver is retained by both the carrying firm and the consenting firm.

Rule 9.4. Proxies Voting

No ETP Holder shall sign, give or authorize a proxy to vote any stock registered in the name or under control of such ETP Holder unless (a) the ETP Holder is the beneficial owner thereof, (b) pursuant to the written instructions of such beneficial owner, or (c) pursuant to the rules of another national securities exchange or association of which he or she or his or her firm is a member, provided that the records of the ETP Holder clearly indicate the procedure it is following.

Commentary:

.01 Notwithstanding the foregoing, no ETP Holder that is not the beneficial owner of a security registered under Section 12 of the Exchange Act may grant a proxy to vote the security in connection with a shareholder vote on the election of a member of the board of directors of an issuer (except for a vote with respect to the uncontested election of a member of the board of directors of an investment company registered under the Investment Company Act of 1940), executive compensation, or any other significant matter, as determined by the Securities and Exchange Commission, by rule, unless the beneficial owner of the security has instructed such ETP Holder to vote the proxy in accordance with the voting instructions of the beneficial owner.

Rule 9.5. Solicitation Expense

Any expense incident to the securing of proxy instructions shall be charged by the ETP Holder to the party or parties requesting their solicitation.

Rule 9.6(a). Discretion as to Customers' Accounts

No ETP Holder shall permit any person employed by such ETP Holder or by any other ETP Holder to exercise discretion in the handling of a transaction for a customer of such ETP Holder, and no ETP Holder or any participant therein shall delegate to any such employee any discretionary power vested by a customer in such ETP Holder unless in either case the prior written authorization of the customer has been received; and if such discretionary authority runs, directly or by redelegation, to an employee of another ETP Holder, the carrying ETP Holder must obtain the prior written consent of the employer of the individual authorized to exercise discretion. An ETP Holder or Allied Person of the carrying ETP Holder shall approve and initial each discretionary order entered by an employee of such ETP Holder of another ETP Holder on the day the order is entered. The provisions of this Rule shall not apply to discretion as to the price at which or the time when an order given by a customer for the purchase or sale of a definite amount of a specified security shall be executed.

Rule 9.6(b). Records of Discretionary Accounts

The ETP Holder shall keep and preserve records of all customer discretionary accounts pursuant to the provisions of this Rule which shall include the signature of the individual who may exercise discretion in handling the account. All such accounts shall be reviewed by a general partner or principal executive officer at frequent intervals.

Rule 9.6(c). Marking Discretionary Orders

Every ETP Holder shall identify each discretionary order by appropriately marking each discretionary order accordingly.

Rule 9.7(a). Pledging Customer Securities

An agreement between an ETP Holder and a customer authorizing the ETP Holder to pledge securities carried for the account of a customer or to lend such securities does not justify pledging or loaning more of such securities than is fair and reasonable in view of the indebtedness of said customer to said ETP Holder.

Rule 9.7(b). Use of Customer Securities

The improper use of customer fully-paid and excess margin securities is inconsistent with just and equitable principles of trade, and no form of general agreement between an ETP Holder and a customer shall warrant the use or lending of such securities by the ETP Holder.

Rule 9.7(c). Customer Protection—Reserves and Custody of Securities

An ETP Holder shall obtain custody and control of securities and maintain reserves as prescribed by Rule 15c3-3 promulgated under the Securities Exchange Act of 1934.

Rule 9.7(d). Agreements for Use of Customer Securities

No ETP Holder shall lend, either to itself as a broker-dealer or to others, securities which are held on margin for a customer and which are eligible to be pledged or loaned, unless such ETP Holder shall first have obtained a separate written authorization from such customer permitting the loaning of such securities by the ETP Holder.

Rule 9.8. Business Connections

No ETP Holder shall be directly or indirectly interested in or associated in business with, or have his or her office directly or indirectly connected by public or private wire or other method or contrivance with, or transact any business directly or indirectly with or for

- (a) Any bucket shop; or
- (b) Any organization, firm or individual making a practice of dealing in market quotations; or
- (c) Any organization, firm or individual engaged in purchasing or selling securities for customers making a practice of taking the side of the market opposite to the side taken by customers.

Rule 9.9. Margin Agreements

No ETP Holder shall hypothecate or re-hypothecate customer securities unless such ETP Holder has obtained from its customer an executed margin agreement in a form satisfactory to the Corporation.

Rule 9.10. Reserved

Rule 9.11. Confirmations

No ETP Holder shall address confirmations, statements or other communications to a non-ETP customer in care of a person holding power of attorney over the customers' account unless either (a) the customer has instructed the ETP Holder in writing to send such confirmations, statements or other communications in care of such person, or (b) duplicate copies are sent to the customer at some other address designated in writing by him or her, or at the address of any ETP Holder, or in care of a partner or employee of any firm.

Upon written request, the Corporation may waive these requirements.

Rule 9.12. COD Orders—Partial Delivery

(a) No ETP Holder shall accept an order from a customer pursuant to an arrangement whereby payment for securities purchased or delivery of securities sold is to be made to or by an agent of the customer unless all of the following procedures are complied with:

- (1) The ETP Holder shall have received from the customer prior to or at the time of accepting the order, the name and address of the agent and the name and account number of the customer on file with the agent;
- (2) Each order accepted from the customer pursuant to such an arrangement has noted thereon the fact that it is a payment on delivery (POD) or collect on delivery (COD) transaction;
- (3) The ETP Holder delivers to the customer a confirmation, or all relevant data customarily contained in a confirmation with respect to the execution of the order, in whole or in part, not later than the close of business on the next business day after any such execution; and
- (4) The ETP Holder has obtained an agreement from the customer that the customer will furnish his or her agent instructions with respect to the receipt or delivery of the securities involved in the transaction promptly upon receipt by the customer of each confirmation, or the relevant data as to each execution, relating to such order (even though such execution represents the purchase or sale of only a part of the order), and that in any event the customer will assure that such instructions are delivered to his or her agent no later than:

(A) In the case of a purchase by the customer where the agent is to receive the securities against payment (COD), the close of business on the second business day after the date of execution of the trade as to which the particular confirmation relates; or

(B) In the case of a sale by the customer where the agent is to deliver the securities against payment (POD), the close of business on the first business day after the date of execution of the trade as to which the particular confirmation relates.

(5) The customer or its agent shall utilize the facilities of a securities depository for the confirmation, acknowledgement, and book entry settlement of all depository eligible transactions.

(A) For the purpose of this Rule "securities depository" shall mean a clearing agency as defined in Section 3(a)(23) of the Securities Exchange Act of 1934 that is registered with the Securities and Exchange Commission pursuant to Section 17A(b)(2) of the Act.

(B) For the purpose of this Rule, "depository eligible transactions" shall mean transactions in those securities for which confirmation, acknowledgement, and book entry settlement can be performed through the facilities of a securities depository as defined in Rule 9.12(a)(5)(A).

(b) The following transactions shall be exempt from the provisions of paragraph (a)(5) of this Rule:

(1) Transactions that are to be settled outside of the United States;

(2) Transactions wherein both an ETP Holder and its agent are not participants in a securities depository;

(3) Transactions wherein both a customer and its agent are not participants in a securities depository.

Rule 9.13. Long Sales

(a) For the purposes of effecting delivery within the time period required under regular settlement procedures:

(1) Any sale of a security for a customer which is designated as a "long" sale may be effected only if:

(A) The customer is "long," in good deliverable form, the security to be sold on the books of the selling ETP Holder, or

(B) The selling ETP Holder notes on the order ticket that

- (i) it has received from the customer assurance that the security to be sold is placed or deposited, in good deliverable form, in such a manner as to be obtainable only by the customer by physical means other than the giving of instructions, and that the customer may be bought in with respect to the security within a time period which is reasonable in view of the circumstances, or
 - (ii) such security is on deposit, in good deliverable form, with a member of a registered securities exchange, a member of FINRA, any broker-dealer registered with the Securities and Exchange Commission or any organization subject to state or federal banking regulations and that instructions have been or are being forwarded to such depository to deliver such security against payment, or
- (2) the selling firm has available such security to lend to or has arranged to borrow such security for the customer, or
- (3) the customer presents to the selling ETP Holder, with proper instructions, a security convertible into or exchangeable for, or an option, warrant or right which entitles him or her to purchase, together with the necessary funds, prior to settlement date, the security to be sold.

Rule 9.14. Account Designation

Before any order for a customer of an ETP Holder is executed, there shall be placed upon the order slip or other record the name or designation of the account for which such order is to be executed. No change in such account name or designation shall be made unless the change has been authorized by the ETP Holder or a partner, who shall, prior to giving his or her approval of such change, be personally informed of the essential facts relative thereto and shall indicate his or her approval of such change in writing on the order.

Rule 9.15. Statements of Account to Customers

(a) General. Except as otherwise provided by paragraph (b), each general securities member shall, with a frequency of not less than once every calendar quarter, send a statement of account ("account statement") containing a description of any securities positions, money balances, or account activity to each customer whose account had a security position, money balance, or account activity during the period since the last such statement was sent to the customer. In addition, each general securities member shall include in the account statement a statement that advises the customer to report promptly any inaccuracy or discrepancy in that person's account to his or her brokerage firm. (In cases where the customer's account is serviced by both an introducing and clearing firm, each general securities member must include in the advisory a reference that such reports be made to both firms.) Such statement also shall advise the customer that any oral communications should be re-confirmed in writing to further protect the customer's rights, including rights under the Securities Investor Protection Act (SIPA).

(b) Delivery Versus Payment/Receive Versus Payment (DVP/RVP) Accounts. Quarterly account statements need not be sent to a customer pursuant to paragraph (a) of this Rule if:

- (1) the customer's account is carried solely for the purpose of execution on a DVP/RVP basis;
- (2) all transactions effected for the account are done on a DVP/RVP basis in conformity with FINRA Rule 11860;
- (3) the account does not show security or money positions at the end of the quarter (provided, however that positions of a temporary nature, such as those arising from fails to receive or deliver, errors, questioned trades, dividend or bond interest entries and other similar transactions, shall not be deemed security or money positions for the purpose of this paragraph (b));
- (4) the customer consents to the suspension of such statements in writing. The member must maintain such consents in a manner consistent with NASD Rule 3110 and SEC Rule 17a-4;
- (5) the member undertakes to provide any particular statement or statements to the customer promptly upon request; and
- (6) the member undertakes to promptly reinstate the delivery of such statements to the customer upon request.

Nothing in this Rule shall be seen to qualify or condition the obligations of a member under SEC Rule 15c3-2 concerning quarterly notices of free credit balances on statements.

(c) Definitions. For purposes of this Rule, the following terms will have the stated meanings:

- (1) "account activity" includes, but is not limited to, purchases, sales, interest credits or debits, charges or credits, dividend payments, transfer activity, securities receipts or deliveries, and/or journal entries relating to securities or funds in the possession or control of the ETP Holder.
- (2) a "general securities member" refers to any ETP Holder that conducts a general securities business and is required to calculate its net capital pursuant to the provisions of SEC Rule 15c3-1(a). Notwithstanding the foregoing definition, an ETP Holder that does not carry customer accounts and does not hold customer funds or securities is exempt from the provisions of this section.
- (3) a "DVP/RVP account" is an arrangement whereby payment for securities purchased is made to the selling customer's agent and/or delivery of securities sold is made to

the buying customer's agent in exchange for payment at time of settlement, usually in the form of cash.

Rule 9.16. Statement or Notice on Interest

Each customer's statement or a separate notice enclosed with such statement shall disclose the annual rate of interest and the amount of interest charged as shown on such statement.

Rule 9.17. Reserved

Reserved

Rule 9.18. Doing A Public Business In Options

Rule 9.18 shall be applicable to ETP Holders transacting business with the public in option contracts issued by the Options Clearing Corporation. Except to the extent that specific provisions of Rule 9.18 govern, or unless the context otherwise requires, the provisions of all other sections of this Rule shall be applicable to the conduct of accounts.

(a) Registration of Principals and Representatives.

No ETP Holder shall be approved to transact business with the public in option contracts, unless those persons associated with the ETP Holder who are designated as Options Principals or who are designated as Registered Representatives have been approved by and registered with the Corporation as such, pursuant to the provisions of Rule 9.26 and Rule 9.27, as appropriate.

(b) Opening of Accounts

No ETP Holder shall accept an order from a customer for the purchase or sale (writing) of an option contract unless the customer's account has been approved for options trading in accordance with the provisions of Rule 9.18.

- (1) Diligence in Opening Account—In approving a customer's account for options transactions, an ETP Holder shall exercise due diligence to learn the essential facts as to the customer and his or her investment objectives and financial situation, and shall make a record of such information which shall be retained in accordance with Rule 9.18(d). Based upon such information, the branch office manager or other Registered Options Principal shall approve in writing the customer's account for options transactions; provided, that if the branch office manager is not a Registered Options Principal, his or her approval shall within a reasonable time be confirmed by a Registered Options Principal.

- (2) Disclosure—At or prior to the time a customer's account is approved for options trading, the ETP Holder shall deliver to the customer a current Options Disclosure Document in accordance with the requirements of paragraph (g) of this Section.
- (3) Account Agreement—Within 15 days after a customer's account has been approved for options transactions an ETP Holder shall obtain from the customer a written agreement that (A) the customer is aware of and agrees to be bound by the Rules of the Corporation and the NYSE Arca Parent applicable to the trading of option contracts and the Rules of the Options Clearing Corporation and (B) the customer agrees not to violate, either alone or in concert with others, the position limits or the exercise limits established by the NYSE Arca Parent.
- (4) Verification of Customer Background and Financial Information—The background and financial information upon which the account of every new customer that is a natural person has been approved for options trading, unless the information is included in the customer's account agreement, shall be sent to the customer for verification within fifteen (15) days after the customer's account has been approved for options transactions. A copy of the background and financial information on file with the ETP Holder shall also be sent to the customer for verification within fifteen (15) days after the ETP Holder becomes aware of any material change in the customer's financial situation.
- (5) Options Disclosure Document to be Furnished—At or prior to the time a customer's account is approved for options transactions, an ETP Holder shall furnish the customer with a current Options Disclosure Document in accordance with the requirements of Rule 9.18(g).
- (6) Every ETP Holder transacting business with the public in uncovered options contracts shall develop, implement, and maintain specific written procedures governing the conduct of such business which shall include, but not be limited to, the following:
 - (A) Specific criteria and standards to be used in evaluating the suitability of uncovered short options transactions for a particular customer;
 - (B) Specific procedures for approval of accounts engaged in writing uncovered short option contracts, including written approval of such accounts by a Registered Options Principal;
 - (C) Designation of the Senior Registered Options Principal and/or Compliance Registered Options Principal as the person responsible for approving accounts which do not meet the specific criteria and standard for writing uncovered short option transactions and for maintaining written records of the reasons for every account so approved;

- (D) Establishment of specific minimum net equity requirements for initial approval and maintenance of customer uncovered option accounts; and
- (E) Requirements that customers approved for writing uncovered short options transactions be provided with a special written description of the risks inherent in writing uncovered short option transactions at or prior to the initial uncovered short options transaction. See Rule 9.18(g)(3).

Commentary:

.01 In fulfilling its obligations pursuant to paragraph (b)(1) of Rule 9.18 with respect to options customers that are natural persons, an ETP Holder shall seek to obtain the following information at a minimum (information shall be obtained for all participants in a joint account):

1. Investment objectives (e.g., safety of principal, income, growth, trading profits, speculation)
2. Employment status (name of employer, self-employed or retired)
3. Estimated annual income from all sources
4. Estimated net worth (exclusive of family residence)
5. Estimated liquid net worth (cash, securities, other)
6. Marital status; number of dependents
7. Age
8. Investment experience and knowledge (e.g., number of years, size, frequency and type of transaction) for options, stocks and bonds, commodities, other.

In addition, the customer's account records shall contain the following information, if applicable:

- a. Source or sources of background and financial information (including estimates) concerning the customer
- b. Discretionary trading authorization: agreement on file name, relationship to customer and experience of person holding trading authority
- c. Date Options Disclosure Document furnished to customer

- d. Nature and type of transaction for which account is approved (e.g., buying, covered writing, uncovered writing, spreading, discretionary transactions)
- e. Name of registered representative
- f. Name of ROP approving account; date of approval
- g. Dates of verification of currency of account information.

The ETP Holder should consider utilizing a standard account approval form so as to ensure the receipt of all the required information.

.02 Refusal of a customer to provide any of the information called for in Commentary .01 shall be so noted on the customer's records at the time the account is opened. Information provided shall be considered together with other information available in determining whether and to what extent to approve the account for options transactions.

.03 The requirement of paragraph (b)(4) of Rule 9.18 for the initial and subsequent verification of customer background and financial information may be satisfied by sending to the customer the information required in Items 1 through 6 of Commentary .01 above as contained in the ETP Holder's records and providing the customer with an opportunity to correct or complete the information. In all cases, absent from the customer to the contrary, the information will be deemed to be verified.

.04 Before approving an account of a trust, pension fund, profit sharing plan or other fiduciary for options trading, an ETP Holder shall be satisfied that the instruments under which the fiduciary is acting permit options trading.

.05 Before approving an account with respect to which trading authorization has been granted to a third person who is not an employee of the ETP Holder for options trading, the ETP Holder shall obtain written evidence of the agent's authority to act and that such authority specifically includes options trading.

.06 Before approving an account of an investment partnership or an investment club for options trading, the ETP Holder shall obtain written evidence of the authority of the person signing the agreement required by this paragraph to sign such agreement on behalf of such partnership or club, as the case may be, and that such authority specifically includes options trading. Information shall also be obtained with respect to any current long or short option positions of

the respective partners or member of the partnership or investment club.

.07 For purposes of Rule 9.18(b) (Opening of Accounts), Rule 9.18(d) (Supervision of Account), and Rule 9.18(g) (Delivery of Options Disclosure Document and Prospectus), the term "writing uncovered short option positions" shall include orders involving combinations and any transactions which involve naked writing.

(c) Suitability.

- (1) No ETP Holder or registered person thereof shall recommend to any customer any transaction for the purchase or sale (writing) of an option contract, currency warrant, or an index warrant unless such ETP Holder or registered person has reasonable grounds to believe that the entire recommended transaction is not unsuitable for such customer on the basis of information furnished by such customer after reasonable inquiry concerning the customer's investment objectives, financial situation and needs and any other information known by such ETP Holder or registered person.
- (2) No ETP Holder, Registered Options Principal or Registered Representative shall recommend to a customer an opening transaction in any option contract, currency warrant, or index warrant unless the person making the recommendation has a reasonable basis for believing at the time of making the recommendation that the customer has such knowledge and experience in financial matters that he or she may reasonably be expected to be capable of evaluating the risks of the recommended transaction, and is financially able to bear the risks of the recommended position in the option contract, currency warrant, or index warrant.

(d) Supervision of Accounts.

Every ETP Holder shall comply with the following provisions as they relate to its options business.

- (1) Senior Registered Options Principal—Every ETP Holder shall develop and implement a written program for the review of the organization's non-ETP customer accounts and all orders in such accounts, insofar as such accounts and orders relate to option contracts. This program shall be under the supervision of a designated Senior Registered Options Principal ("Senior ROP") who is an officer (in the case of a corporation) or general partner (in the case of a partnership) of the ETP Holder who is specifically identified to the Corporation as the senior ROP.
- (2) Compliance Registered Options Principal—ETP Holders shall designate and specifically identify to the Corporation a Compliance Registered Options Principal, (who may be the Senior Registered Options Principal), who shall have no sales functions and shall be responsible to review and to propose appropriate action to secure the ETP Holder's compliance with securities laws and regulations in respect

of its options business. The Compliance Registered Options Principal shall regularly furnish reports directly to the compliance officer (if the Compliance Registered Options Principal is not himself or herself the compliance officer) and to other senior management of the ETP Holder. The requirement that the Compliance Registered Options Principal shall have no sales functions does not apply to an ETP Holder that has received less than \$1,000,000 in gross commissions on options business as reflected in its FOCUS Report for either of the preceding two fiscal years or that currently has 10 or fewer Registered Options Representatives.

- (3) Maintenance of Customer Records—Background and financial information of customers who have been approved for options transactions shall be maintained at both the branch office servicing the customer's account and the principal supervisory office having jurisdiction over that branch. Copies of account statements of options customers shall be maintained at both the branch office supervising the accounts and the principal supervisory office having jurisdiction over that branch for the most recent six-month period. With respect solely to the above-noted record retention requirements applicable to principal supervisory offices, however, the customer information and account statements may be maintained at a location other than the principal supervisory office if such documents and information are readily accessible and promptly retrievable. Other records necessary to the proper supervision of accounts will be maintained at a place easily accessible both to the branch office servicing the customer's account and to the principal supervisory office having jurisdiction over that branch office.
- (4) Each ETP Holder shall maintain at the principal supervisory office having jurisdiction over the office servicing the customer's account, or have readily accessible and promptly retrievable, information to permit review of each customer's options account, on a timely basis to determine (i) the compatibility of options transactions with investment objectives and with the types of transactions for which the account was approved; (ii) the size and frequency of options transactions; (iii) commission activity in the account; (iv) profit or loss in the account; (v) undue concentration in any options class or classes, and (vi) compliance with the provisions of Regulation T of the Federal Reserve Board.

Commentary:

.01 The Senior Registered Options Principal may delegate to qualified employees the responsibility and authority for the supervision and control of customer accounts and orders required by the provisions of this paragraph, provided that the Senior Registered Options Principal shall have overall authority and responsibility for establishing appropriate procedures of supervision and control over such employees.

.02 Every ETP Holder shall establish, maintain and enforce written procedures which detail the methods used to supervise exchange

options transactions. These procedures should also detail the methods used to supervise all non-ETP customer accounts including all orders in such accounts, insofar as such accounts and orders relate to option contracts.

.03 Every ETP Holder shall also develop and implement specific written procedures concerning the manner of supervision of customer accounts maintaining uncovered short (written) option positions and specifically providing for frequent supervisory review of such accounts.

(e) Discretionary Accounts

- (1) Authorization and Approval Required—No ETP Holder shall exercise any discretionary power with respect to trading in option contracts, currency warrants, or index warrants in a customer's account, or accept orders for currency warrants, index warrants or option contracts for an account from a person other than the customer, except in compliance with the provisions of Rule 9.6(a) and in addition (i) the written authorization of the customer required by Rule 9.6(a) shall specifically authorize options trading in the account; (ii) the account shall have been accepted in writing by a Registered Options Principal. The Senior Registered Options Principal shall review the acceptance of each discretionary account to determine that the Registered Options Principal accepting the account had a reasonable basis for believing that the customer was able to understand and bear the risks of the strategies or transactions proposed, and he or she shall maintain a record of the basis for his or her determination. Each discretionary order shall be approved and initialed on the day entered by the branch office manager or other Registered Options Principal, provided that if the branch office manager is not a Registered Options Principal, his or her approval shall be confirmed within a reasonable time by a Registered Options Principal. Every discretionary order shall be identified as discretionary on the order at the time of entry. Discretionary accounts shall receive frequent appropriate supervisory review by the Compliance Registered Options Principal. The provisions of this subparagraph shall not apply to discretion as to the price at which or the time when an order given by a customer for the purchase or sale of a definite number of option contracts in a specified security shall be executed.
- (2) Prohibited Transactions—No ETP Holder having discretionary power over a customer's account shall, in the exercise of such discretion, execute or cause to be executed therein any purchases or sales of option contracts, currency warrants, or index warrants which are excessive in size or frequency in view of the financial resources in such account.
- (3) Record of Transactions—A record shall be made of every transaction in option contracts, currency warrants, or index warrants in respect to which an ETP Holder has exercised discretionary authority, clearly reflecting such fact and indicating the

name of the customer, the designation and number of the option contracts, currency warrants, or index warrants the premium and the date and time when such transaction was effected.

- (4) Options Programs—Where the discretionary account utilizes options programs involving the systematic use of one or more options strategies, the customer shall be furnished with a written explanation, meeting the requirements of Rule 9.28, of the nature and risks of such strategies.

Commentary:

.01 No transactions shall be executed in a discretionary account which would result in an uncovered short position in option contracts or in the uncovering of any existing short position in option contracts unless the person for whom the account is maintained has specifically authorized, in writing, transactions of this nature and such transactions are effected with due regard to the provisions of this paragraph (e).

(f) Confirmations.

Every ETP Holder shall promptly furnish to each customer a written confirmation of each transaction in option contracts for such customer's account. Each such confirmation shall show the type of option, the underlying stock, the expiration month, the exercise price, the number of option contracts, the premium, commissions, the transaction and settlement dates, whether the transaction was a purchase or a sale (writing) transaction, whether the transaction was an opening or a closing transaction, and whether the transaction was effected on a principal or agency basis. The confirmation shall by appropriate symbols distinguish between exchange option transactions and other transactions in option contracts and between such transactions and transactions in other options.

(g) Delivery of Current Options Disclosure Document and Prospectus

- (1) Options Disclosure Documents. Every ETP Holder shall deliver a current Options Disclosure Document (the formal title of which is "Understanding the Risks and Uses of Listed Options") to each customer at or prior to the time each customer's account is approved for options trading. Thereafter, each amended Options Disclosure Document shall be distributed to every customer having an account approved for options trading, or, in the alternative, shall be distributed not later than the time a confirmation of a transaction is delivered to each customer who enters into an options transaction. The term "current Options Disclosure Document" means, as to any category of underlying security, the most recent edition of such document that meets the requirements of Rule 9b-1 under the Securities Exchange Act of 1934.

- (2) Prospectus. Every ETP Holder shall deliver a copy of the current prospectus of the Options Clearing Corporation to each customer who requests one. The Corporation will advise ETP Holders when a new prospectus is available. The term "current prospectus of the Options Clearing Corporation" means the prospectus portion of Form S-20 which then meets the delivery requirements of Rule 153(b) of the Securities Act of 1933.
- (3) The written description of risks required by Rule 9.18(b)(6) shall be in a format prescribed by the Corporation or in a format developed by the ETP Holder, provided it contains substantially similar information as the prescribed Corporation format and has received prior written approval of the Corporation.

Commentary:

.01 Where the customer of an ETP Holder is a broker or dealer entering his or her orders with the ETP Holder in a single omnibus account, such ETP Holder shall take reasonable steps to assure that the broker or dealer is furnished reasonable quantities of current Options Disclosure Documents, as requested by him or her in order to enable him or her to comply with the requirements of this paragraph (g).

.02 Where a broker or dealer enters orders for his or her customers with, or clears transactions through, an ETP Holder on a fully disclosed basis and such ETP Holder carries the accounts of such customers, the responsibility for delivering a current Options Disclosure Document as provided herein shall rest with the carrying ETP Holder. However, such ETP Holder may rely upon the good faith representation of the introducing broker or dealer that a current Options Disclosure Document has been delivered in compliance with this paragraph (g).

(h) Transactions with Issuers.

No ETP Holder shall accept an order for the account of any corporation which is the issuer of an underlying stock for the sale (writing) of an option contract with respect to that underlying stock.

(i) Restricted Stock.

For the purposes of: (i) covering a short position in a call option contract, or (ii) delivery pursuant to the exercise of a put option contract, or (iii) satisfying an exercise notice assigned in respect of a call option contract, no ETP Holder shall accept shares of an underlying stock, which may not be sold by the holder thereof except upon registration pursuant to the provisions of the Securities Act of 1933 or pursuant to SEC rules promulgated under the Securities Act of 1933, unless, at the time such securities are

accepted and at any later time such securities are delivered, applicable provisions of the Securities Act of 1933 and the rules thereunder have been complied with by the holder of such securities.

(j) Statement of Accounts.

Every ETP Holder shall send to its customers statements of account showing security and money positions entries, interest charges and any special charges that have been assessed against such account during the period covered by the statement; provided, however, that such charges need not be specifically delineated on the statement if they are otherwise accounted for on the statement and have been itemized on transaction confirmations. With respect to options customers having a general (margin) account, such statement shall also provide the mark-to-market price and market value of each options position and other security position in the general (margin) account, the total market value of all positions in the account, the outstanding debit balance in the account, and the general (margin) account equity. The statement shall bear a legend stating that further information with respect to commissions and other charges related to the execution of listed option transactions has been included in confirmations of such transactions previously furnished to the customer, and that such information will be made available to the customer promptly upon request.

Statements of account shall be sent at least quarterly to all accounts having a money or a security position during the preceding quarter and not less frequently than once every month to each customer in whose account there has been an entry during the preceding month with respect to an option contract.

The statement shall also bear a legend requesting the customer to promptly advise the ETP Holder of any material change in the customer's investment objectives or financial situation.

Commentary:

.01 For purposes of the foregoing Section, general (margin) account equity shall be computed by subtracting the total of the "short" security values and any debit balance from the total of the "long" security values and any credit balance.

(k) Doing Business with the Public.

An sole proprietor ETP Holder may not transact business with the public, unless such Holder receives prior written approval from the Corporation. To qualify to transact business with the public, the sole proprietor ETP Holder shall demonstrate compliance with the general requirements of the Corporation as prescribed by the Bylaws, Rules and procedures of the Corporation.

(l) Customer Complaints.

(1) Every ETP Holder conducting a non-ETP customer business shall make and keep current a separate central log, index or other file for all options-related complaints, through which these complaints can easily be identified and retrieved. The term "options-related complaint" shall mean any written statement by a customer or person acting on behalf of a customer alleging a grievance arising out of or in connection with listed options. The central file shall be located at the principal place of business of the ETP Holder or such other principal office as shall be designated by the ETP Holder. At a minimum, the central file shall include: (i) identification of complainant, (ii) date complaint was received, (iii) identification of Registered Representative servicing the account, (iv) a general description of the matter complained of, and (v) a record of what action, if any, has been taken by the ETP Holder with respect to the complaint. Each options-related complaint received by a branch office of an ETP Holder shall be forwarded to the office in which the separate, central file is located not later than thirty (30) days after receipt by the branch office. A copy of every options-related complaint shall be maintained at the branch office that is the subject of the complaint.

(m) Branch Offices of ETP Holders.

No branch office of an ETP Holder shall transact options business with the public unless the manager of such branch office has been qualified as a Registered Options Principal; provided, that this requirement shall not apply to branch offices in which not more than three Registered Representatives are located so long as the ETP Holder can demonstrate that the options activities of such branch offices are appropriately supervised by a Registered Options Principal.

Rule 9.19. Transfer of Accounts

Every ETP Holder shall, upon written request of a customer, expedite the transfer of a customer's account pursuant to such customer's instructions.

Rule 9.20(a). Transactions for Public Customers

Where an ETP Holder is doing business with the public in accordance with these Rules and is also associated with a Market Maker, such ETP Holder shall file such reports as the Corporation may require of transactions for customers in classes of option contracts to which such Market Maker has been appointed pursuant to NYSE Arca Parent Rule 6.35.

Rule 9.20(b). Telemarketing

(1) General Telemarketing Requirements

No ETP Holder or Associated Person shall initiate any outbound telephone call to:

(A) Time of Day Restriction

Any residence of a person before the hour of 8 a.m. or after 9 p.m. (local time at the called party's location), unless

- (i) the ETP Holder has an established business relationship with the person pursuant to paragraph (13)(L)(i),
- (ii) the ETP Holder has received that person's prior express invitation or permission; or
- (iii) the person called is a broker or dealer;

(B) Firm-Specific Do-Not-Call List

Any person that previously has stated that he or she does not wish to receive an outbound telephone call made by or on behalf of the ETP Holder; or

(C) National Do-Not-Call List

Any person who has registered his or her telephone number on the Federal Trade Commission's national do-not-call registry.

(2) National Do-Not-Call List Exceptions

An ETP Holder making outbound telephone calls will not be liable for violating paragraph (1)(C) if:

(A) Established Business Relationship Exception

The ETP Holder has an established business relationship with the recipient of the call. A person's request to be placed on the firm-specific do-not-call list terminates the established business relationship exception to that national do-not-call list provision for that ETP Holder even if the person continues to do business with the ETP Holder;

(B) Prior Express Written Consent Exception

The ETP Holder has obtained the person's prior express invitation or permission. Such permission must be evidenced by a signed, written agreement (which may be obtained electronically under the E-Sign Act) between the person and ETP Holder which states that the person agrees to be contacted by the ETP Holder and includes the telephone number to which the calls may be placed; or

(C) Personal Relationship Exception

The Associated Person making the call has a personal relationship with the recipient of the call.

(3) Safe Harbor Provision

An ETP Holder or Associated Person making outbound telephone calls will not be liable for violating paragraph (1)(C) if the ETP Holder or Associated Person demonstrates that the violation is the result of an error and that as part of the ETP Holder's routine business practice, it meets the following standards:

- (A) Written procedures. The ETP Holder has established and implemented written procedures to comply with the national do-not-call rules;
- (B) Training of personnel. The ETP Holder has trained its personnel, and any entity assisting in its compliance, in procedures established pursuant to the national do-not-call rules;
- (C) Recording. The ETP Holder has maintained and recorded a list of telephone numbers that it may not contact; and
- (D) Accessing the national do-not-call database. The ETP Holder uses a process to prevent outbound telephone calls to any telephone number on any list established pursuant to the do-not-call rules, employing a version of the national do-not-call registry obtained from the administrator of the registry no more than 31 days prior to the date any call is made, and maintains records documenting this process.

(4) Procedures

Prior to engaging in telemarketing, an ETP Holder must institute procedures to comply with paragraph (1). Such procedures must meet the following minimum standards:

- (A) Written policy. ETP Holders must have a written policy for maintaining a do-not-call list.
- (B) Training of personnel engaged in telemarketing. Personnel engaged in any aspect of telemarketing must be informed and trained in the existence and use of the do-not-call list.
- (C) Recording, disclosure of do-not-call requests. If an ETP Holder receives a request from a person not to receive calls from that ETP Holder, the ETP Holder must record the request and place the person's name, if provided, and telephone number on the firm's do-not-call list at the time the request is made. ETP Holders must honor a person's do-not-call request within a reasonable time from the date such request is made. This period may not exceed 30 days from the date of such request. If such requests are recorded or maintained by a party other than the ETP Holder on whose behalf the outbound telephone call is made, the ETP Holder on whose behalf the outbound telephone call is made will be liable for any failures to honor the do-not-call request.

(D) Identification of sellers and telemarketers. An ETP Holder or Associated Person making an outbound telephone call must provide the called party with the name of the individual caller, the name of the ETP Holder, an address or telephone number at which the ETP Holder may be contacted, and that the purpose of the call is to solicit the purchase of securities or related service. The telephone number provided may not be a 900 number or any other number for which charges exceed local or long distance transmission charges.

(E) Affiliated persons or entities. In the absence of a specific request by the person to the contrary, a person's do-not-call request shall apply to the ETP Holder making the call, and will not apply to affiliated entities unless the consumer reasonably would expect them to be included given the identification of the caller and the product being advertised.

(F) Maintenance of do-not-call lists. An ETP Holder making outbound telephone calls must maintain a record of a person's request not to receive further calls.

(5) Wireless Communications

The provisions set forth in this Rule are applicable to ETP Holders and Associated Persons making outbound telephone calls to wireless telephone numbers.

(6) Outsourcing Telemarketing

If an ETP Holder uses another appropriately registered or licensed entity or person to perform telemarketing services on its behalf, the ETP Holder remains responsible for ensuring compliance with all provisions contained in this Rule.

(7) Caller Identification Information

(A) Any ETP Holder that engages in telemarketing, as defined in paragraph (13)(T) of this Rule, must transmit or cause to be transmitted the telephone number, and, when made available by the ETP Holder's telephone carrier, the name of the ETP Holder, to any caller identification service in use by a recipient of an outbound telephone call.

(B) The telephone number so provided must permit any person to make a do-not-call request during regular business hours.

(C) Any ETP Holder that engages in telemarketing, as defined in paragraph (13)(T) of this Rule, is prohibited from blocking the transmission of caller identification information.

(8) Unencrypted Consumer Account Numbers

No ETP Holder or Associated Person shall disclose or receive, for consideration, unencrypted consumer account numbers for use in telemarketing. The term "unencrypted" means not only complete, visible account numbers, whether provided in lists or singly, but also encrypted information with a key to its decryption. This paragraph shall not apply to the disclosure or receipt of a customer's billing information to process a payment pursuant to a telemarketing transaction.

(9) Submission of Billing Information

For any telemarketing transaction, an ETP Holder or Associated Person must obtain the express informed consent of the person to be charged and to be charged using the identified account.

(A) In any telemarketing transaction involving preacquired account information and a free-to-pay conversion feature, the ETP Holder or Associated Person must:

- (i) obtain from the customer, at a minimum, the last four digits of the account number to be charged;
- (ii) obtain from the customer an express agreement to be charged and to be charged using the account number pursuant to paragraph (9)(A)(i); and
- (iii) make and maintain an audio recording of the entire telemarketing transaction.

(B) In any other telemarketing transaction involving preacquired account information not described in paragraph (9)(A), the ETP Holder or Associated Person must:

- (i) identify the account to be charged with sufficient specificity for the customer to understand what account will be charged; and
- (ii) obtain from the customer an express agreement to be charged and to be charged using the account number identified pursuant to paragraph (9)(B)(i).

(10) Abandoned Calls

(A) No ETP Holder or Associated Person shall "abandon" any outbound telemarketing call. An outbound call is "abandoned" if a person answers it and the call is not connected to an Associated Person within two seconds of the person's completed greeting.

(B) An ETP Holder or Associated Person shall not be liable for violating paragraph (10)(A) if:

- (i) the ETP Holder or Associated Person employs technology that ensures abandonment of no more than three percent of all telemarketing calls answered

by a person, measured over the duration of a single calling campaign, if less than 30 days, or separately over each successive 30-day period or portion thereof that the campaign continues;

- (ii) the ETP Holder or Associated Person, for each telemarketing call placed, allows the telephone to ring for at least 15 seconds or four rings before disconnecting an unanswered call;
- (iii) whenever an Associated Person is not available to speak with the person answering the telemarketing call within two seconds after the person's completed greeting, the ETP Holder or Associated Person promptly plays a recorded message that states the name and telephone number of the ETP Holder or Associated Person on whose behalf the call was placed; and
- (iv) the ETP Holder retains records establishing compliance with paragraph (10)(B).

(11) Prerecorded Messages

- (A) No ETP Holder or Associated Person shall initiate any outbound telemarketing call that delivers a prerecorded message other than a prerecorded message permitted for compliance with the call abandonment safe harbor in (10)(B)(iii) unless:
 - (i) the ETP Holder has obtained from the recipient of the call an express agreement, in writing, that:
 - (a) the ETP Holder obtained only after a clear and conspicuous disclosure that the purpose of the agreement is to authorize the ETP Holder to place prerecorded calls to such person;
 - (b) the ETP Holder obtained without requiring, directly or indirectly, that the agreement be executed as a condition of opening an account or purchasing any good or service;
 - (c) evidences the willingness of the recipient of the call to receive calls that deliver prerecorded messages by or on behalf of a specific ETP Holder; and
 - (d) includes such person's telephone number and signature (which may be obtained electronically under the E-Sign Act);
 - (ii) the ETP Holder or Associated Person allows the telephone to ring for at least 15 seconds or four rings before disconnecting an unanswered call; and within two seconds after the completed greeting of the person called, plays a prerecorded message that promptly provides the disclosures in paragraph (4)(D), followed immediately by a disclosure of one or both of the following:

(a) for a call that could be answered by a person, that the person called can use an automated interactive voice and/or keypress-activated opt-out mechanism to assert a firm-specific do-not-call request pursuant to the ETP Holder's procedures instituted under paragraph (4)(C) at any time during the message. The mechanism must:

1. automatically add the number called to the ETP Holder's firm-specific do-not-call list;
2. once invoked, immediately disconnect the call; and
3. be available for use at any time during the message;

(b) for a call that could be answered by an answering machine or voicemail service, that the person called can use a toll-free telephone number to assert a firm-specific do-not-call request pursuant to the ETP Holder's procedures instituted under paragraph (4)(C). The number provided must connect directly to an automated interactive voice or keypress-activated opt-out mechanism that:

1. automatically adds the number called to the ETP Holder's firm-specific do-not-call list;
2. immediately thereafter disconnects the call; and
3. is accessible at any time throughout the duration of the telemarketing campaign; and

(iii) the ETP Holder complies with all other requirements of this Rule and other applicable federal and state laws.

(B) Any call that complies with all applicable requirements of paragraph (11) shall not be deemed to violate paragraph (10).

(12) Credit Card Laundering.

Except as expressly permitted by the applicable credit card system, no ETP Holder or Associated Person shall:

- (A) present to or deposit into, the credit card system for payment, a credit card sales draft generated by a telemarketing transaction that is not the result of a telemarketing credit card transaction between the cardholder and the ETP Holder;
- (B) employ, solicit, or otherwise cause a merchant, or an employee, representative or agent of the merchant, to present to or to deposit into the credit card system for payment, a credit card sales draft generated by a telemarketing transaction that is

not the result of a telemarketing credit card transaction between the cardholder and the merchant; or

- (C) obtain access to the credit card system through the use of a business relationship or an affiliation with a merchant, when such access is not authorized by the merchant agreement or the applicable credit card system.

(13) Definitions

For purposes of this Rule:

- (A) The term "account activity" shall include, but not be limited to, purchases, sales, interest credits or debits, charges or credits, dividend payments, transfer activity, securities receipts or deliveries, and/or journal entries relating to securities or funds in the possession or control of the ETP Holder.
- (B) The term "acquirer" means a business organization, financial institution, or an agent of a business organization or financial institution that has authority from an organization that operates or licenses a credit card system to authorize merchants to accept, transmit, or process payment by credit card through the credit card system for money, goods or services, or anything else of value.
- (C) The term "billing information" means any data that enables any person to access a customer's or donor's account, for example a credit or debit card number, a brokerage, checking, or savings account number, or a mortgage loan account number.
- (D) The term "broker-dealer of record" refers to the broker-dealer identified on a customer's account application for accounts held directly at a mutual fund or variable insurance product issuer.
- (E) The term "caller identification service" means a service that allows a telephone subscriber to have the telephone number, and, where available, name of the calling party transmitted contemporaneously with the telephone call, and displayed on a device in or connected to the subscriber's telephone.
- (F) The term "cardholder" means a person to whom a credit card is issued or who is authorized to use a credit card on behalf of or in addition to the person to whom the credit card is issued.
- (G) The term "credit" means the right granted by a creditor to a debtor to defer payment of debt or to incur debt and defer its payment.
- (H) The term "credit card" means any card, plate, coupon book, or other credit device existing for the purpose of obtaining money, property, labor, or services on credit.

- (I) The term "credit card sales draft" means any record or evidence of a credit card transaction.
- (J) The term "credit card system" means any method or procedure used to process credit card transactions involving credit cards issued or licensed by the operator of that system.
- (K) The term "customer" means any person who is or may be required to pay for goods or services offered through telemarketing.
- (L) The term "established business relationship" means a relationship between an ETP Holder and a person if:
- (i) the person has made a financial transaction or has a security position, a money balance, or account activity with the ETP Holder or at a clearing firm that provides clearing services to such ETP Holder within the previous 18 months immediately preceding the date of the telemarketing call;
 - (ii) the ETP Holder is the broker-dealer of record for an account of the person within the previous 18 months immediately preceding the date of the telemarketing call; or
 - (iii) the person has contacted the ETP Holder to inquire about a product or service offered by the ETP Holder within the previous three months immediately preceding the date of the telemarketing call.

A person's established business relationship with an ETP Holder does not extend to the ETP Holder's affiliated entities unless the person would reasonably expect them to be included. Similarly, a person's established business relationship with an ETP Holder's affiliate does not extend to the ETP Holder unless the person would reasonably expect the ETP Holder to be included.

- (M) The term "free-to-pay conversion" means, in an offer or agreement to sell or provide any goods or services, a provision under which a customer receives a product or service for free for an initial period and will incur an obligation to pay for the product or service if he or she does not take affirmative action to cancel before the end of that period.
- (N) The term "merchant" means a person who is authorized under a written contract with an acquirer to honor or accept credit cards, or to transmit or process for payment credit card payments, for the purchase of goods or services or a charitable contribution. A "charitable contribution" means any donation or gift of money or any other thing of value, for example a transfer to a pooled income fund.

- (O) The term "merchant agreement" means a written contract between a merchant and an acquirer to honor or accept credit cards, or to transmit or process for payment credit card payments, for the purchase of goods or services or a charitable contribution.
- (P) The term "outbound telephone call" means a telephone call initiated by a telemarketer to induce the purchase of goods or services or to solicit a charitable contribution from a donor. A "donor" means any person solicited to make a charitable contribution.
- (Q) The term "person" means any individual, group, unincorporated association, limited or general partnership, corporation, or other business entity.
- (R) The term "personal relationship" means any family member, friend, or acquaintance of the Associated Person making an outbound telephone call.
- (S) The term "preacquired account information" means any information that enables a seller or telemarketer to cause a charge to be placed against a customer's or donor's account without obtaining the account number directly from the customer or donor during the telemarketing transaction pursuant to which the account will be charged.
- (T) The term "telemarketing" means consisting of or relating to a plan, program, or campaign involving at least one outbound telephone call, for example cold-calling. The term does not include the solicitation of sales through the mailing of written marketing materials, when the person making the solicitation does not solicit customers by telephone but only receives calls initiated by customers in response to the marketing materials and during those calls takes orders only without further solicitation. For purposes of the pervious sentence, the term "further solicitation" does not include providing the customer with information about, or attempting to sell, anything promoted in the same marketing materials that prompted the customer's call.

•••Commentary:

.01 Compliance with Other Requirements.

(a) This Rule does not affect the obligation of any ETP Holder or Associated Person that engages in telemarketing to comply with relevant state and federal laws and rules, including but not limited to the Telemarketing and Consumer Fraud and Abuse Prevention Act codified at 15 U.S.C. 6101-6108, as amended, the Telephone Consumer Protection Act codified at 47 U.S.C. 227, and the rules of the Federal Communications Commission relating to telemarketing practices and the rights of telephone consumers codified at 47 CFR 64.1200.

Section 2. Advertising and Sales Literature

Rule 9.21. Communications with the Public

(a) Definitions

For purposes of this Rule and any interpretation thereof, "communications with the public" consist of:

- (1) "Advertisement." Any material, other than an independently prepared reprint and institutional sales material, that is published, or used in any electronic or other public media, including any Web site, newspaper, magazine or other periodical, radio, television, telephone or tape recording, videotape display, signs or billboards, motion pictures, or telephone directories (other than routine listings).
- (2) "Sales Literature." Any written or electronic communication, other than an advertisement, independently prepared reprint, institutional sales material and correspondence, that is generally distributed or made generally available to customers or the public, including circulars, research reports, performance reports or summaries, form letters, telemarketing scripts, seminar texts, reprints (that are not independently prepared reprints) or excerpts of any other advertisement, sales literature or published article, and press releases concerning an ETP Holder's products or services.
- (3) "Correspondence" as defined in NASD Rule 2211(a)(1).
- (4) "Institutional Sales Material" as defined in NASD Rule 2211(a)(2).
- (5) "Public Appearance." Participation in a seminar, forum (including an interactive electronic forum), radio or television interview, or other public appearance or public speaking activity.
- (6) "Independently Prepared Reprint."
 - (A) Any reprint or excerpt of any article issued by a publisher, provided that:
 - (i) the publisher is not an affiliate of the ETP Holder using the reprint or any underwriter or issuer of a security mentioned in the reprint or excerpt and that the ETP Holder is promoting;
 - (ii) neither the ETP Holder using the reprint or excerpt nor any underwriter or issuer of a security mentioned in the reprint or excerpt has commissioned the reprinted or excerpted article; and
 - (iii) the ETP Holder using the reprint or excerpt has not materially altered its contents except as necessary to make the reprint or excerpt consistent with applicable regulatory standards or to correct factual errors;

(B) Any report concerning an investment company registered under the Investment Company Act of 1940, provided that:

- (i) the report is prepared by an entity that is independent of the investment company, its affiliates, and the ETP Holder using the report (the "research firm");
- (ii) the report's contents have not been materially altered by the ETP Holder using the report except as necessary to make the report consistent with applicable regulatory standards or to correct factual errors;
- (iii) the research firm prepares and distributes reports based on similar research with respect to a substantial number of investment companies;
- (iv) the research firm updates and distributes reports based on its research of the investment company with reasonable regularity in the normal course of the research firm's business;
- (v) neither the investment company, its affiliates nor the ETP Holder using the research report has commissioned the research used by the research firm in preparing the report; and
- (vi) if a customized report was prepared at the request of the investment company, its affiliate or an ETP Holder, then the report includes only information that the research firm has already compiled and published in another report, and does not omit information in that report necessary to make the customized report fair and balanced.

(b) Approval and Recordkeeping

(1) Registered Principal Approval for Advertisements, Sales Literature and Independently Prepared Reprints

- (A) A registered principal of the ETP Holder must approve by signature or initial and date each advertisement, item of sales literature and independently prepared reprint before the earlier of its use or filing with FINRA's Advertising Regulation Department ("Department").
- (B) With respect to debt and equity securities that are the subject of research reports as that term is defined in NYSE Rule 472, the requirements of paragraph (A) may be met by the signature or initial of a supervisory analyst approved pursuant to NYSE Rule 344.
- (C) A registered principal qualified to supervise security futures activities must approve by signature or initial and date each advertisement or item of sales literature concerning security futures.

(D) The requirements of paragraph (A) shall not apply with regard to any advertisement, item of sales literature, or independently prepared reprint if, at the time that an ETP Holder intends to publish or distribute it:

- (i) another ETP Holder has filed it with the Department and has received a letter from the Department stating that it appears to be consistent with applicable standards; and
- (ii) the ETP Holder using it in reliance upon this paragraph has not materially altered it and will not use it in a manner that is inconsistent with the conditions of the Department's letter.

(2) Record-keeping

(A) ETP Holders must maintain all advertisements, sales literature, and independently prepared reprints in a separate file for a period beginning on the date of first use and ending three years from the date of last use. The file must include:

- (i) a copy of the advertisement, item of sales literature or independently prepared reprint, and the dates of first and (if applicable) last use of such material;
- (ii) the name of the registered principal who approved each advertisement, item of sales literature, and independently prepared reprint and the date that approval was given, unless such approval is not required pursuant to paragraph (b)(1)(D); and
- (iii) for any advertisement, item of sales literature or independently prepared reprint for which principal approval is not required pursuant to paragraph (b)(1)(D), the name of the ETP Holder that filed the advertisement, sales literature or independently prepared reprint with the Department, and a copy of the corresponding review letter from the Department.

(B) ETP Holders must maintain in a file information concerning the source of any statistical table, chart, graph or other illustration used by the ETP Holder in communications with the public.

(c) Filing Requirements and Review Procedures

(1) Date of First Use and Approval Information. The ETP Holder must provide with each filing under this paragraph the actual or anticipated date of first use, the name and title of the registered principal who approved the advertisement or sales literature, and the date that the approval was given.

(2) Requirement to File Certain Material. Within 10 business days of first use or publication, an ETP Holder must file the following communications with the Department:

- (A) Advertisements and sales literature concerning registered investment companies (including mutual funds, variable contracts, continuously offered closed-end funds, and unit investment trusts) not included within the requirements of paragraph (c)(3). The filing of any advertisement or sales literature that includes or incorporates a performance ranking or performance comparison of the investment company with other investment companies must include a copy of the ranking or comparison used in the advertisement or sales literature.
 - (B) Advertisements and sales literature concerning public direct participation programs (as defined in NASD Rule 2810).
 - (C) Advertisements concerning government securities (as defined in Section 3(a)(42) of the Act).
 - (D) any template for written reports produced by, or advertisements and sales literature concerning, an investment analysis tool, as such term is defined in NASD Rule IM-2210-6.
- (3) Sales Literature Containing Bond Fund Volatility Ratings. Sales literature concerning bond mutual funds that include or incorporate bond mutual fund volatility ratings, as defined in NASD Rule IM-2210-5, shall be filed with the Department for review at least 10 business days prior to use (or such shorter period as the Department may allow in particular circumstances) for approval and, if changed by FINRA, shall be withheld from publication or circulation until any changes specified by FINRA have been made or, if expressly disapproved, until the sales literature has been refiled for, and has received, FINRA approval. ETP Holders are not required to file advertising and sales literature which have previously been filed and which are used without change. The ETP Holder must provide with each filing the actual or anticipated date of first use. Any ETP Holder filing sales literature pursuant to this paragraph shall provide any supplemental information requested by the Department pertaining to the rating that is possessed by the ETP Holder.
- (4) Requirement to File Certain Material Prior to Use. At least 10 business days prior to first use or publication (or such shorter period as the Department may allow), an ETP Holder must file the following communications with the Department and withhold them from publication or circulation until any changes specified by the Department have been made:
- (A) Advertisements and sales literature concerning registered investment companies (including mutual funds, variable contracts, continuously offered closed-end funds and unit investment trusts) that include or incorporate performance rankings or performance comparisons of the investment company with other investment companies when the ranking or comparison category is not generally published or is the creation, either directly or indirectly, of the investment company, its

underwriter or an affiliate. Such filings must include a copy of the data on which the ranking or comparison is based.

(B) Advertisements concerning collateralized mortgage obligations.

(C) Advertisements concerning security futures.

(5) Requirement for Certain ETP Holders to File Material Prior to Use

(A) Each ETP Holder that has not previously filed advertisements with the Department (or with a registered securities exchange having standards comparable to those contained in this Rule) must file its initial advertisement with the Department at least 10 business days prior to use and shall continue to file its advertisements at least 10 business days prior to use for a period of one year.

(B) Notwithstanding the foregoing provisions, the Department, upon review of an ETP Holder's advertising and/or sales literature, and after determining that the ETP Holder has departed from the standards of this Rule, may require that such ETP Holder file all advertising and/or sales literature, or the portion of such ETP Holder's material which is related to any specific types or classes of securities or services, with the Department, at least 10 business days prior to use. The Department will notify the ETP Holder in writing of the types of material to be filed and the length of time such requirement is to be in effect. Any filing requirement imposed under this paragraph will take effect 21 calendar days after service of the written notice, during which time the ETP Holder may request a hearing under FINRA Rules 9551 and 9559.

(6) Filing of Television or Video Advertisements. If an ETP Holder has filed a draft version or "story board" of a television or video advertisement pursuant to a filing requirement, then the ETP Holder also must file the final filmed version within 10 business days of first use or broadcast.

(7) Spot-Check Procedures. In addition to the foregoing requirements, each ETP Holder's written and electronic communications with the public may be subject to a spot-check procedure. Upon written request from the Department, each ETP Holder must submit the material requested in a spot-check procedure within the time frame specified by the Department.

(8) Exclusions from Filing Requirements. The following types of material are excluded from the filing requirements and (except for the material in paragraphs (G) through (J)) the foregoing spot-check procedures:

(A) Advertisements and sales literature that previously have been filed and that are to be used without material change.

- (B) Advertisements and sales literature solely related to recruitment or changes in a ETP Holder's name, personnel, electronic or postal address, ownership, offices, business structure, officers or partners, telephone or teletype numbers, or concerning a merger with, or acquisition by, another ETP Holder.
 - (C) Advertisements and sales literature that do no more than identify a national securities exchange symbol of the ETP Holder or identify a security for which the ETP Holder is a registered market maker.
 - (D) Advertisements and sales literature that do no more than identify the ETP Holder or offer a specific security at a stated price.
 - (E) Prospectuses, preliminary prospectuses, fund profiles, offering circulars and similar documents that have been filed with the Securities and Exchange Commission (the "SEC") or any state, or that is exempt from such registration, except that an investment company prospectus published pursuant to SEC Rule 482 under the Securities Act of 1933 will not be considered a prospectus for purposes of this exclusion.
 - (F) Advertisements prepared in accordance with Section 2(10)(b) of the Securities Act of 1933, as amended, or any rule thereunder, such as SEC Rule 134, and announcements as a matter of record that an ETP Holder has participated in a private placement, unless the advertisements are related to direct participation programs or securities issued by registered investment companies.
 - (G) Press releases that are made available only to members of the media.
 - (H) Independently prepared reprints.
 - (I) Correspondence.
 - (J) Institutional sales material. Although the material described in paragraphs (c)(8)(G) through (J) is excluded from the foregoing filing requirements, investment company communications described in those paragraphs shall be deemed filed with FINRA for purposes of Section 24(b) of the Investment Company Act of 1940 and Rule 24b-3 thereunder.
- (9) Material that refers to investment company securities, direct participation programs, or exempted securities (as defined in Section 3(a)(12) of the Securities Exchange Act of 1933) solely as part of a listing of products or services offered by the ETP Holder, is excluded from the requirements of paragraphs (c)(2) and (c)(4).
- (10) Pursuant to the FINRA Rule 9600 Series, FINRA may exempt an ETP Holder or person associated with an ETP Holder from the pre-filing requirements of this paragraph (c) for good cause shown.

(d) Content Standards

(1) Standards Applicable to All Communications with the Public

- (A) All ETP Holder communications with the public shall be based on principles of fair dealing and good faith, must be fair and balanced, and must provide a sound basis for evaluating the facts in regard to any particular security or type of security, industry, or service. No ETP Holder may omit any material fact or qualification if the omission, in the light of the context of the material presented, would cause the communications to be misleading.
- (B) No ETP Holder may make any false, exaggerated, unwarranted or misleading statement or claim in any communication with the public. No ETP Holder may publish, circulate or distribute any public communication that the ETP Holder knows or has reason to know contains any untrue statement of a material fact or is otherwise false or misleading.
- (C) Information may be placed in a legend or footnote only in the event that such placement would not inhibit an investor's understanding of the communication.
- (D) Communications with the public may not predict or project performance, imply that past performance will recur or make any exaggerated or unwarranted claim, opinion or forecast. A hypothetical illustration of mathematical principles is permitted, provided that it does not predict or project the performance of an investment or investment strategy.
- (E) If any testimonial in a communication with the public concerns a technical aspect of investing, the person making the testimonial must have the knowledge and experience to form a valid opinion.

(2) Standards Applicable to Advertisements and Sales Literature

- (A) Advertisements or sales literature providing any testimonial concerning the investment advice or investment performance of an ETP Holder or its products must prominently disclose the following:
 - (i) The fact that the testimonial may not be representative of the experience of other clients.
 - (ii) The fact that the testimonial is no guarantee of future performance or success.
 - (iii) If more than a nominal sum is paid, the fact that it is a paid testimonial.
- (B) Any comparison in advertisements or sales literature between investments or services must disclose all material differences between them, including (as

applicable) investment objectives, costs and expenses, liquidity, safety, guarantees or insurance, fluctuation of principal or return, and tax features.

(C) All advertisements and sales literature must:

- (i) prominently disclose the name of the ETP Holder and may also include a fictional name by which the ETP Holder is commonly recognized or which is required by any state or jurisdiction;
- (ii) reflect any relationship between the ETP Holder and any non-ETP Holder or individual who is also named; and
- (iii) if it includes other names, reflect which products or services are being offered by the ETP Holder.

This paragraph (C) does not apply to so-called "blind" advertisements used to recruit personnel.

(3) Disclosure of Fees, Expenses and Standardized Performance

(A) Communications with the public, other than institutional sales material and public appearances, that present non-money market fund open-end management investment company performance data as permitted by Rule 482 under the Securities Act of 1933 and Rule 34b-1 under the Investment Company Act of 1940 must disclose:

- (i) the standardized performance information mandated by Rule 482 and Rule 34b-1; and
- (ii) to the extent applicable:
 - (a) the maximum sales charge imposed on purchases or the maximum deferred sales charge, as stated in the investment company's prospectus current as of the date of submission of an advertisement for publication, or as of the date of distribution of other communications with the public; and
 - (b) the total annual fund operating expense ratio, gross of any fee waivers or expense reimbursements, as stated in the fee table of the investment company's prospectus described in paragraph (a).

(B) All of the information required by paragraph (A) must be set forth prominently, and in any print advertisement, in a prominent text box that contains only the required information and, at the ETP Holder's option, comparative performance and fee data and disclosures required by Rule 482 and Rule 34b-1.

(e) Violation of Other Rules

Any violation by an ETP Holder of any rule of the SEC, the Securities Investor Protection Corporation, FINRA or the Municipal Securities Rulemaking Board applicable to ETP Holder communications with the public will be deemed a violation of this Rule.

Rule 9.21(a). Reserved

Rule 9.21(b). Reserved

Rule 9.22(a). Reserved

Rule 9.22(b). Reserved

Rule 9.23. Reserved

Rule 9.24. Reserved

Rule 9.25. Reserved

Rule 9.26. Registration of Options Principals

No ETP Holder shall transact any business with the public in option contracts unless those persons engaged in the management of the ETP Holder's business pertaining to option contracts are registered with and approved by the Corporation as Options Principals. No individual ETP Holder shall transact any business directly with the public in option contracts unless he or she is registered with and approved by the Corporation as an Options Principal. In connection with their registration, Options Principals shall file an application with the Corporation on a form prescribed by the Corporation and shall be required to successfully complete an examination prescribed by the Corporation for the purpose of demonstrating an adequate knowledge of options trading generally, the Rules of the Corporation applicable to trading of option contracts and the Rules of the Options Clearing Corporation. In the event the employment of any Registered Options Principal is terminated or any Registered Options Principal ceases to act in such capacity, such fact shall be reported promptly to the Corporation together with a brief statement of the reason therefore.

Commentary:

.01 Each ETP Holder shall be required to designate a Registered Options Principal who is a general partner or officer as the person responsible for overall supervision and training in areas relating to transactions in option contracts.

.02 The Corporation may waive the examination prescribed by this Section if the applicant previously had passed an examination and had been approved as a Registered Options Principal by another

exchange or association having standards of approval acceptable to the Corporation.

Rule 9.27. Registration of Representatives

(a) *General.* No ETP Holder shall be approved to transact business with the public until those persons associated with it who are designated as Representatives have been registered with and approved by the Corporation pursuant to the provisions of Rule 2.21. Persons who perform duties for the ETP Holder which are customarily performed by sales representatives, solicitors, customers' men or branch office managers shall be designated as Representatives.

(b) *Registered Options Representatives.* No person associated with an ETP Holder shall transact any business with the public in option contracts, unless those persons are registered with and approved by the Corporation pursuant to the provisions of paragraph (a) of this Section and are registered with and approved by the Corporation as Options Representatives. In connection with their registration as Options Representatives, such persons shall file an application with the Corporation on a form prescribed by the Corporation, shall successfully complete a training course and an examination for the purpose of demonstrating adequate knowledge in the trading of option contracts, and shall sign an agreement to abide by the Bylaws, Rules and procedures of the Corporation and the Rules of the Options Clearing Corporation; provided, however, that representatives of an ETP Holder which is a member of another national securities exchange or association which has standards of approval acceptable to the Corporation may be deemed to be registered with and approved by the Corporation, so long as such representatives are registered with and approved by such other exchange or association. An ETP Holder whose representatives are deemed registered and approved pursuant to the last clause of the preceding sentence shall inform their representatives of their obligation to adhere to the Bylaws, Rules and procedures of the Corporation and the Rules of the Options Clearing Corporation. Termination of employment or affiliation of any Registered Options Representative in such capacity shall be reported promptly to the Corporation together with a brief statement of the reason for such termination, pursuant to Rule 2.21(i).

Commentary:

.01 The Corporation considers the Uniform Registered Representative Examination, Series 7, as adequate in measuring an applicant's knowledge of the securities industry and satisfies the examination requirements prescribed under paragraphs (a) and (b) of this Section.

.02 Persons designated as representatives who had been previously registered with an exchange or association would be required to requalify with the Corporation as Registered Options Representatives, if such persons had not successfully completed the

Series 7 Examination or some other examination which adequately measures an applicant's knowledge in the trading of option contracts. To qualify as a Registered Options Representative the applicant shall successfully complete a training course in options and pass a special options examination approved or prescribed by the Corporation.

.03 Registered persons who have not re-qualified with the Corporation as Registered Options Representatives shall not solicit or conduct a public business in option contracts.

Rule 9.27(c). Continuing Education Requirements

No ETP Holder shall permit any registered person to continue to, and no registered person shall continue to, perform duties as a registered person, unless such person has complied with the continuing education requirements of this Rule 2.21.

Rule 9.28. Advertisements, Market Letters and Sales Literature Relating to Options

(a) General Rule. No ETP Holder or person associated therewith shall utilize any advertisement, educational material, sales literature or other communications to any customer or member of the public concerning options which:

- (1) contains any untrue statement or omission of material fact or is otherwise false or misleading;
- (2) contains promises of specific results, exaggerated or unwarranted claims, opinions for which there is no reasonable basis or forecasts of future events which are unwarranted or which are not clearly labeled as forecasts;
- (3) contains hedge clauses or disclaimers which are not legible, which attempt to disclaim responsibility for the content of such literature or for opinions expressed therein, or which are otherwise inconsistent with such communications; or
- (4) would constitute a prospectus as that term is defined in the Securities Act of 1933, unless it meets the requirements of Section 10 of said Act.

(b) Approval by Compliance Registered Option Principal. All advertisements, sales literature (except completed worksheets), and educational material issued by an ETP Holder pertaining to options shall be approved in advance by the Compliance Registered Options Principal or designee. Copies thereof, together with the names of the persons who prepared the material, the names of the persons who approved the material and, in the case of sales literature, the source of any recommendations contained therein, shall be retained by the ETP Holder and be kept at an easily accessible place for examination by the Corporation for a period of three years.

(c) Approval Required for Options Advertisements. In addition to the approval required by paragraph (b) of this Rule, every advertisement of an ETP Holder pertaining to options shall be submitted to the Corporation at least ten days prior to use (or such shorter period as the Corporation may allow in particular instances) for approval and, if changed or expressly disapproved by the Corporation, shall be withheld from circulation until any changes specified by the Corporation have been made or, in the event of disapproval, until the advertisement has been resubmitted for, and has received, Corporation approval. The requirements of this paragraph shall not be applicable to:

- (1) advertisements submitted to another self-regulatory organization having comparable standards pertaining to advertisements; and
- (2) advertisements in which the only reference to options is contained in a listing of the services of an ETP Holder.

(d) Except as otherwise provided in the Commentary hereunder, no written materials respecting options may be disseminated to any person who has not previously or contemporaneously received a current Options Disclosure Document, as defined in Rule 9.18(g).

(e) Definitions. For purposes of this Rule, the following definitions shall apply:

- (1) The term "advertisement" shall include any sales material that reaches a mass audience through public media such as newspapers, periodicals, magazines, radio, television, telephone recording, motion picture, audio or video devices, telecommunications device, billboards, signs, or through written communications to customers or the public not required to be accompanied or preceded by a current Clearing Corporation prospectus.
- (2) The term "sales literature" shall include any written communication (not defined as an "advertisement") distributed or made available to customers or the public that contains any analysis, performance report, projection or recommendation with respect to options, underlying securities or market conditions, any standard forms of worksheets, or any seminar text which pertains to options which is communicated to customers or the public at seminars, lectures or similar such events, or any materials produced by the Corporation pertaining to options.

Commentary:

.01 The special risks attendant to options transactions and the complexities of certain options investment strategies shall be reflected in any advertisement, educational material or sales literature which discusses the uses or advantages of options. Such communications shall include a warning to the effect that options are not suitable for all investors. In the preparation of written

communications respecting options, the following guidelines should be observed:

- A. Any statement referring to the potential opportunities or advantages presented by options shall be balanced by a statement of the corresponding risks. The risk statement shall reflect the same degree of specificity as the statement of opportunities, and broad generalities should be avoided. Thus, a statement such as "with options, an investor has an opportunity to earn profits while limiting his or her risk of loss", should be balanced by a statement such as "of course, an options investor may lose the entire amount committed to options in a relatively short period of time."
- B. It shall not be suggested that options are suitable for all investors.
- C. Statements that guarantee the certain availability of a secondary market for options shall not be made.

.02 Advertisements pertaining to options shall conform to the following standards:

- A. Advertisements may only be used (and copies of the advertisements may be sent to persons who have not received an Options Disclosure Document) if the material meets the requirements of Rule 134 under the Securities Act of 1933, as that Rule has been interpreted as applying to options. Under Rule 134, advertisements must be limited to general descriptions of the security being offered and of its issuer. Advertisements under this Rule shall state the name and address of the person from whom a current Options Disclosure Document may be obtained. Such advertisements may have the following characteristics:
 - (i) The text of the advertisement may contain a brief description of such options, including a statement that the issuer of every such option is the Clearing Corporation. The text may also contain a brief description of the general attributes and method of operation of the exchange or exchanges on which such options are traded and of the Clearing Corporation, including a discussion of how the price of an option is determined on the trading floor(s) of such exchange(s);
 - (ii) The advertisement may include any statement required by any state law or administrative authority;
 - (iii) Advertising designs and devices, including borders, scrolls, arrows, pointers, multiple and combined logos and unusual type faces and lettering as well as attention-getting headlines and photographs and other graphics may be used, provided such material is not misleading.

B. The use of recommendations or of past or projected performance figures, including annualized rates of return, is not permitted in any advertisement pertaining to options.

.03 Written communications (other than advertisements) pertaining to options shall conform to the following standards:

A. Sales literature shall state that supporting documentation for any claims (including any claims made on behalf of options programs or the options expertise of sales persons), comparisons, recommendations, statistics or other technical data will be supplied upon request.

B. Such communications may contain projected performance figures (including projected annualized rates of return) provided that:

- (i) no suggestion of certainty of future performance is made;
- (ii) parameters relating to such performance figures are clearly established (e.g., to indicate exercise price of option, purchase price of the underlying stock and its market price, option premium, anticipated dividends, etc.);
- (iii) all relevant costs, including commissions and interest charges (if applicable with regard to margin transactions) are disclosed;
- (iv) such projections are plausible and are intended as a source of reference or a comparative device to be used in the development of a recommendation;
- (v) all material assumptions made in such calculations are clearly identified (e.g., "assume option expires", "assume option unexercised", "assume option exercised", etc.);
- (vi) the risks involved in the proposed transactions are also discussed;
- (vii) in communications relating to annualized rates of return, that such returns are not based upon any less than a sixty-day experience; any formulas used in making calculations are clearly displayed; and a statement is included to the effect that the annualized returns cited might be achieved only if the parameters described can be duplicated and that there is no certainty of doing so.

C. Such communications may feature records and statistics which portray the performance of past recommendations or of actual transactions, provided that:

- (i) any such portrayal is done in a balanced manner, and consists of records or statistics that are confined to a specific "universe" that can be fully isolated and circumscribed and that covers at least the most recent 12-month period;

- (ii) such communications include the date of each initial recommendation or transaction, the price of each such recommendation or transaction as of such date, and the date and price of each recommendation or transaction at the end of the period or when liquidation was suggested or effected, whichever was earlier; provided that if the communications are limited to summarized or averaged records or statistics, in lieu of the complete record there may be included the number of items recommended or transacted, the number that advanced and the number that declined, together with an offer to provide the complete record upon request;
- (iii) such communications disclose all relevant costs, including commissions and interest charges (if applicable with regard to margin transactions) and, whenever annualized rates of return are used, all material assumptions used in the process of annualization;
- (iv) an indication is provided of the general market condition during the period(s) covered, and any comparison made between such records and statistics and the overall market (e.g., comparison to an index) is valid;
- (v) such communications state that the results presented should not and cannot be viewed as an indicator of future performance; and
- (vi) a Registered Options Principal determines that the records or statistics fairly present the status of the recommendations or transactions reported upon and so initials the report.

D. In the case of an options program (i.e., an investment plan employing the systematic use of one or more options strategies), the cumulative history or unproven nature of the program and its underlying assumptions shall be disclosed.

E. Options worksheets utilized by ETP Holders or associated persons must comply with the requirements applicable to sales literature.

F. Communications that portray performance of past recommendations or actual transactions and completed worksheets shall be kept at a place easily accessible to the sales office for the accounts or customers involved.

Rule 9.29. Borrowing From or Lending to Customers

(a) No person associated with an ETP Holder in any registered capacity may borrow money from or lend money to any customer of such person unless:

- (1) The ETP Holder has written procedures allowing the borrowing and lending of money between such registered persons and customers of the ETP Holder; and
- (2) The lending or borrowing arrangement meets one of the following conditions:

- (A) the customer is a member of such person's immediate family;
- (B) the customer is a financial institution regularly engaged in the business of providing credit, financing, or loans, or other entity or person that regularly arranges or extends credit in the ordinary course of business;
- (C) the customer and the registered person are both registered persons of the same ETP Holder;
- (D) the lending arrangement is based on a personal relationship with the customer, such that the loan would not have been solicited, offered, or given had the customer and the associated person not maintained a relationship outside of the broker/customer relationship; or
- (E) the lending arrangement is based on a business relationship outside of the broker/customer relationship;

(b) Procedures.

- (1) ETP Holders must pre-approve in writing the lending or borrowing arrangements described in subparagraphs (a)(2)(C), (D), and (E) above.
- (2) With respect to the lending or borrowing arrangements described in subparagraph (a)(2)(A) above, an ETP Holder's written procedures may indicate that registered persons are not required to notify the ETP Holder, or receive ETP Holder approval either prior to or subsequent to entering into such lending or borrowing arrangements.
- (3) With respect to the lending or borrowing arrangements described in subparagraph (a)(2)(B) above, an ETP Holder's written procedures may indicate that registered persons are not required to notify the ETP Holder or receive their approval either prior to or subsequent to entering into such lending or borrowing arrangements, provided that the loan has been made on commercial terms that the customer generally makes available to members of the public similarly situated as to need, purpose, and creditworthiness. For purposes of this subparagraph, the ETP Holder may rely on the registered person's representation that the terms of the loan meet the above-described standards.

(c) The term immediate family shall include parents, grandparents, mother-in-law or father-in-law, husband or wife, brother or sister, brother-in-law or sister-in-law, son-in-law or daughter-in-law, children, grandchildren, cousin, aunt or uncle, or niece or nephew, and shall also include any other person whom the registered person supports, directly or indirectly, to a material extent.

RULE 10 DISCIPLINARY PROCEEDINGS, OTHER HEARINGS, AND APPEALS

Rule 10.1. Disciplinary Jurisdiction

(a) An ETP Holder or associated person of an ETP Holder who is alleged to have violated or aided and abetted a violation of any provision of the Securities Exchange Act of 1934, as amended, the rules and regulations promulgated thereunder, any provision of the Corporation's Bylaws or Rules or any commentary thereof, any resolution of the Board of Directors of the Corporation regulating the conduct of business of the Corporation, or any policy or procedure of the Corporation shall be subject to the disciplinary jurisdiction of the Corporation under this Rule, and after notice and opportunity for a hearing may be appropriately disciplined by cancellation of trading privileges, suspension, limitation of activities, functions, and operations, suspension or bar from association with an ETP Holder, fine, censure or any other fitting sanction, in accordance with the provisions of this Rule. An ETP Holder may be charged with any violation committed by its employees or other person who is associated with such ETP Holder, as though such violation were its own.

(b) Any ETP Holder, or associated person of an ETP Holder shall continue to be subject to the disciplinary jurisdiction of the Corporation following suspension or cancellation of ETP trading privileges or termination of association with an ETP Holder with respect to matters that occurred prior to such termination, provided that written notice of the commencement of an inquiry into such matters is given by the Corporation to such former ETP Holder or associated person of an ETP Holder within one year of receipt by the Corporation of written notice of the termination of such person's status as an ETP Holder or associated person of an ETP Holder.

(c) The Board of Directors may authorize any officer, on behalf of the Exchange, subject to the approval of the Board of Directors, to enter into one or more agreements with another self-regulatory organization to provide regulatory services to the Exchange to assist the Exchange in discharging its obligations under Section 6 and Section 19(g) of the Securities Exchange Act of 1934. Any action taken by another self-regulatory organization, or its employees or authorized agents, acting on behalf of the Exchange pursuant to a regulatory services agreement shall be deemed to be an action taken by the Exchange; provided, however, that nothing in this provision shall affect the oversight of such other self-regulatory organization by the Securities and Exchange Commission. Notwithstanding the fact that the Exchange may enter into one or more regulatory services agreements, the Exchange shall retain ultimate legal responsibility for, and control of, its self-regulatory responsibilities, and any such regulatory services agreement shall so provide.

Rule 10.2. Investigations and Regulatory Cooperation

(a) The Corporation's Chief Regulatory Officer and his or her delegees will function independently of the commercial interests of the Corporation and the commercial interests of the ETP Holders and the Chief Regulatory Officer or his or her delegees will have the discretion to investigate, and will investigate, possible violations within the disciplinary jurisdiction of the Corporation. The Regulatory Staff may consult as

necessary with the NYSE Arca Parent Regulatory Staff. No member of the Board of Directors or non-Regulatory Staff may interfere with or attempt to influence the process or resolution of any pending investigation or disciplinary proceeding.

(b) Any person, committee of the Corporation, or the Board of Directors may submit for investigation a complaint alleging possible violations. Each complaint must specify in reasonable detail the facts constituting the violation and any specific provision of the Bylaws, Rules, policies or procedures of the Corporation, or the rules, regulations and procedures promulgated under the Exchange Act allegedly violated.

(c) An ETP Holder or associated person of an ETP Holder is entitled to be represented by counsel during any investigation by the Corporation.

(d) No ETP Holder, associated person of an ETP Holder, or other person or entity over whom the Corporation has jurisdiction pursuant to Rule 10.1 may impede or delay a regulatory investigation with respect to possible violations within the disciplinary jurisdiction of the Corporation nor refuse to furnish testimony, documentary materials or other information requested by the Corporation during the course of its investigation. Failure to furnish such testimony, documentary materials, or other information requested by the Corporation pursuant to this Rule on the date or within the time period required by the Corporation will be considered obstructive of an inquiry or investigation and subject to formal disciplinary action.

(e) An ETP Holder or associated person of an ETP Holder must submit such trade data elements specified in Commentary .01 below in such automated format as may be prescribed by the Corporation from time to time, in regard to such transaction or transactions as may be the subject of a particular request for information made by the Corporation. Failure to submit such data in the required format will be considered obstructive of an inquiry or investigation and subject to formal disciplinary action.

Commentary:

.01 (A) If the transaction were a proprietary transaction effected or caused to be effected by the ETP Holder for any account in which such ETP Holder or associated person of an ETP Holder is directly or indirectly interested, such ETP Holder shall submit or cause to be submitted the following information:

- (i) Clearing house number(s), or alpha symbol(s), as used by the ETP Holder submitting the data;
- (ii) Clearing house number(s), or alpha symbol(s) as may be used from time to time, of the ETP Holder(s) on the opposite side of the transaction;
- (iii) Identifying symbol assigned to the security;
- (iv) Date transaction was executed;

(v) Number of shares or quantity of bonds for each specific transaction and whether each transaction was a purchase, sale or short sale;

(vi) Transaction price;

(vii) Account number; and

(viii) Market center where transaction was executed.

(B) If the transaction were effected or caused to be effected by the ETP Holder for any customer account, such ETP Holder shall submit or cause to be submitted the following information:

(i) Data elements (i) through (viii) as contained in paragraph (A) above; and

(ii) Customer name, address(es), branch office number, registered representative number, whether order was solicited or unsolicited, date account opened and employer name and the tax identification number(s).

(iii) If the transaction were effected for a customer of a broker-dealer, whether the broker-dealer was acting as principal or agent on the transaction that is the subject of the Corporation's request.

(C) In addition to the above trade data elements, an ETP Holder shall submit such other information in such automated format as may be prescribed by the Corporation, as may from time to time be required.

(D) The Corporation may grant exceptions, in such cases and for such time periods as it deems appropriate, from the requirement that the data elements prescribed in paragraphs (A) and (B) above be submitted to the Corporation in an automated format.

(f) No ETP Holder, associated person of an ETP Holder, or other person or entity over whom the Corporation has jurisdiction pursuant to Rule 10.1 may refuse to appear and testify before another exchange or self-regulatory organization in connection with a regulatory investigation, examination, or disciplinary proceeding or refuse to furnish documentary materials or other information or otherwise impede or delay such investigation, examination or disciplinary proceeding if the Corporation requests such information or testimony in connection with any inquiry resulting from an agreement entered into by the Corporation or its self-regulatory organization. The requirements of this Rule 10.2(f) will apply regardless of whether the Corporation has initiated an investigation pursuant to Rule 10.2(a) or a disciplinary proceeding pursuant to Rule 10.4.

Commentary:

.01 The terms "exchange" and "self-regulatory organization," as used in Rule 10.2(f), will include, but are not limited to, any member or affiliate member of the Intermarket Surveillance Group.

.02 Any person required to furnish information or testimony pursuant to Rule 10.2(f) will be afforded the same rights and procedural protections as that person would have if the Corporation had initiated the request for information or testimony.

Rule 10.3. Ex Parte Communications

(a) Prohibited Communications. Unless on adequate notice and reasonable opportunity for all parties to participate:

- (1) No person who is a subject of a pending investigation by the Corporation ("Subject") or a Respondent in a pending disciplinary proceeding, or counsel for or a representative of the Subject or the Respondent, or any interested Corporation staff, with knowledge of a pending investigation or disciplinary proceeding, may make or knowingly cause to be made an ex parte communication, as defined below, relevant to the facts or allegations of the investigation or the disciplinary proceeding to: (a) a member of the Board of Directors; (b) a person who advises the Board of Directors; (c) any member of the Corporation's Regulatory Staff that is not participating in the resolution of the investigation or the disciplinary proceeding; (d) a member of the Business Conduct Committee or CFR; or (e) a member of the NYSE Arca Board of Directors.
- (2) No person who is a member of the Business Conduct Committee or Conduct Panel with knowledge of a pending investigation or disciplinary proceeding, or any interested Corporation staff, may make or knowingly cause to be made an ex parte communication, as defined below, relevant to the facts or allegations of the investigation or the disciplinary proceeding to: (a) a member of the Board of Directors; (b) a person who advises the Board of Directors; (c) any member of the Corporation's Regulatory Staff; (d) the Subject of a pending investigation by the Corporation or a Respondent in a pending disciplinary proceeding, or counsel for or a representative of the Subject or the Respondent; or (e) a member of the NYSE Arca Board of Directors.
- (3) No person who is a member of the Board of Directors, or any person who advises the Board of Directors, or any interested Corporation staff, with knowledge of a pending investigation or disciplinary proceeding, may knowingly make or cause to be made an ex parte communication, as defined below, relevant to the facts or allegations of the investigation or the disciplinary proceeding to: (a) any member of the Corporation's Regulatory Staff; (b) the Subject of a pending investigation by the Corporation or a Respondent in a pending disciplinary proceeding, or counsel for or a representative of the Subject or the Respondent; (c) a member of the Business Conduct Committee; or (d) a member of the NYSE Arca Parent Board of Directors.

(b) Disclosure of Prohibited Communications. Any person who receives, makes or knowingly causes to be made a communication prohibited by this Rule must promptly submit to the Regulatory Staff for inclusion in the record of the investigation or disciplinary proceeding:

- (1) all such written communications;
- (2) memoranda stating the substance of all such oral communications; and
- (3) all written responses and memoranda stating the substance of any oral responses to such communications.

(c) Remedies. Any ETP Holder, or associated person of an ETP Holder who made or knowingly caused to be made an ex parte communication prohibited by subsection (a) will be subject to disciplinary action. Furthermore, the Business Conduct Committee, to the extent consistent with the interests of justice, may issue to the ETP Holder, or associated person of an ETP Holder, or interested Corporation staff, responsible for the communication or who benefited from the communication an order to show cause why the claim, defense or interest of the ETP Holder, or associated person of an ETP Holder, or interested Corporation staff, should not be adversely affected by reason of such ex parte communication, including but not limited to the entry of an adverse summary decision. All parties to a disciplinary proceeding and the Regulatory Staff will be provided with adequate notice and a reasonable opportunity to respond to any allegations or contentions contained in the prohibited communication and any responses will be included in the record of the investigation or disciplinary proceeding.

(d) Permitted Communications. Nothing in this Rule prohibits the members of a disciplinary committee or the Regulatory Staff from discussing a pending investigation or disciplinary proceeding at a meeting of the committee in connection with: (1) the adjudication of the investigation pursuant to the Minor Rule Plan; (2) the determination of whether to impose informal discipline; (3) the determination of whether to authorize a complaint or take no further action; or (4) the determination of whether to accept an offer of settlement.

(e) No member of the Business Conduct Committee or Conduct Panel, as defined in Rule 10.5(a), may participate in a matter governed by Rule 10.3(c) as to which that person has a conflict of interest or bias, or if circumstances otherwise exist where his or her fairness might reasonably be questioned. In such a case, the person shall recuse himself or herself or shall be disqualified as follows:

- (1) The Chief Regulatory Officer shall have the authority to direct the disqualification of the interested member of the Business Conduct committee or Conduct Panel.
- (2) The Chief Executive Officer shall have the authority to direct the disqualification of the Chief Regulatory Officer.

Commentary:

.01 "Ex parte communication" means an oral or written communication made without notice to all parties, i.e., the Corporation's Regulatory Staff and the Subjects of investigations or Respondents in disciplinary proceedings. A written communication is ex parte unless a copy has been previously or simultaneously delivered to all interested parties. An oral communication is ex parte unless it is made in the presence of all interested parties except those who, on adequate prior notice, declined to be present.

.02 A disciplinary proceeding will be considered to be pending from the date that a Complaint has been issued pursuant to Rule 10.4 until the proceeding, including any appeals, becomes final.

Rule 10.4. Complaints

(a) The Chief Regulatory Officer and his or her delegee(s) have the authority to determine whether there is probable cause for finding that a violation within the disciplinary jurisdiction of the Corporation has occurred and if further proceedings are warranted. If the Regulatory Staff, on behalf of the Corporation, ("the Complainant") determines that further proceedings are warranted, then the Corporation will initiate a formal disciplinary action by preparing a statement of charges ("the Complaint") against any ETP Holder, or associated person of an ETP Holder alleged to have committed a violation ("the Respondent") specifying the acts in which the Respondent is alleged to have engaged in, or which the Respondent is alleged to have omitted, and alleging the specific provisions of the Bylaws, Rules, policies or procedures of the Corporation, or the rules, regulations and procedures promulgated under the Securities Exchange Act of 1934, of which such acts or omissions are alleged to be in violation.

(b) At any time prior to service of the written answer to the Complaint, the Complaint may be amended to allege new matters of fact or law. After service of the written answer, the Business Conduct Committee may allow amendment of the Complaint upon submission of a written motion by the Regulatory Staff and a showing of good cause.

The Respondent shall have fifteen (15) business days after service of the charges to file a written answer thereto. The answer shall specifically admit or deny each allegation contained in the charges, and the Respondent shall be deemed to have admitted any allegation not specifically denied. The answer may also contain any defense which the Respondent wishes to submit and may be accompanied by documents in support of the answer or defense. In the event the Respondent fails to file an answer, the charges shall be considered to be admitted.

The time period to file any answer may be extended for such further periods as may be granted by the Regulatory Staff, if such request for extension of the filing period is

received by the Regulatory Staff within five (5) business days prior to the date on which the answer is due.

(c) Summary Proceedings. Notwithstanding the provisions of Rule 10.5, the Business Conduct Committee may make a determination without a hearing and may impose a penalty as to such charges which the Respondent has admitted or has failed to answer or which otherwise do not appear to be in dispute. Notice of such summary determination, specifying the violations and penalty, shall be served upon the Respondent.

Commentary:

.01 The term "probable cause" means that facts and circumstances establish a reasonable likelihood that the person committed the violation in issue.

Rule 10.5. Hearing

(a) Upon Respondent's filing an answer, the Respondent may request a hearing. The Business Conduct Committee shall appoint one or more members to hear the matter (the "Conduct Panel"). Parties shall be given at least fifteen (15) calendar days notice of the time and place of the hearing and a statement of the matters to be considered therein.

(b) Prior to the hearing, the Parties shall be notified of the composition of the Conduct Panel. Any objection to the composition of the Conduct Panel must be submitted to the Hearing Administrator within five (5) business days of receipt of the notification regarding the composition of the Conduct Panel.

(c) At least five (5) business days prior to the hearing the parties shall submit to the Hearing Administrator a list of witnesses and any documentary evidence or other materials to be presented at the hearing. The Hearing Administrator shall immediately furnish such list of witnesses, documentary evidence or other materials to the other parties.

(d) At the hearing, both the Complainant and the Respondent shall be entitled to be heard in person and to present any relevant matter. Any witnesses, testimony or evidence offered by the Complainant or the Respondent shall be subject to cross-examination by the other party. The Conduct Panel shall determine all questions concerning the admissibility of evidence and shall otherwise regulate the conduct of the hearing. Formal rules of evidence shall not apply. The charges shall be presented by the Corporation, who along with Respondent and any other party, may present evidence and produce witnesses who shall testify under oath and are subject to being questioned by the Conduct Panel and other parties. The Conduct Panel, upon its own motion or the motion of the Complainant or Respondent, may request the production of documentary materials and witnesses. No ETP Holder, or associated person of an ETP Holder shall refuse to furnish relevant testimony, documentary materials or other information requested by the Conduct Panel during the course of the hearing. The Respondent and intervening parties are entitled to

be represented by counsel who may participate fully in the hearing. A transcript of the hearing shall be made and shall become part of the record.

(e) Any person not otherwise a party may intervene as a party to the hearing upon demonstrating to the satisfaction of the Conduct Panel that the party has an interest in the subject of the hearing and that the disposition of the matter may, as a practical matter, impair or impede the party's ability to protect that interest. Also, the Conduct Panel may, in its discretion, permit a person to intervene as a party to the hearing when the person's claim or defense and the main action have questions of law or fact in common. Any person wishing to intervene as a party to a hearing shall file with the Conduct Panel a notice requesting the right to intervene, stating the grounds therefor, and setting forth the claim or defense for which intervention is sought. The Conduct Panel, in exercising its discretion concerning intervention, shall take into consideration whether the intervention will unduly delay or prejudice the adjudication of the rights of the original parties.

Rule 10.6. Offers of Settlement

(a) When Offer Allowed; No Stay of Proceeding

- (1) A Respondent, as defined in NYSE Arca Equities Rule 10.4, who is notified that a matter has been referred to the Department of Enforcement of the Exchange against him or her may propose in writing to the Department of Enforcement of the Exchange an offer of settlement at any time.
- (2) If a Respondent proposes an offer of settlement after a hearing on the merits has begun, the making of an offer of settlement shall not stay the proceeding, unless otherwise decided by the Conduct Panel as defined in NYSE Arca Equities Rule 10.5(a).

(b) Settlement Offer Shall Conform to Rule

A Respondent who makes an offer of settlement shall do so in conformity with the provisions of this Rule 10.6 and shall not make such an offer of settlement frivolously or propose a sanction inconsistent with the seriousness of the violations to be found.

(c) Contents and Signature Requirements

An offer of settlement shall be in writing and signed by the person making the offer, and, if the person is represented by counsel or a representative, signed also by the counsel or representative. The offer of settlement shall contain in reasonable detail:

- (1) the specific statutory or rule provisions that the ETP Holder or associated person is alleged to have violated;

- (2) a statement containing the acts or practices that the ETP Holder or associated person is alleged to have engaged in or omitted;
- (3) a statement consenting to findings of fact and violations consistent with the statements contained in the offer of settlement required by subparagraphs (c)(1) and (c)(2);
- (4) a proposed sanction to be imposed that is consistent with the Exchange's then current sanction guidelines or, if inconsistent with the sanction guidelines, a detailed statement supporting the proposed sanction(s); and
- (5) the effective date of any sanction(s) imposed, or a statement that the effective date of the sanction(s) will be determined by the General Counsel of the Exchange.

(d) *Waiver*

If a Respondent submits an offer of settlement, by the submission thereof, such Respondent expressly waives:

- (1) any right of such Respondent to appeal or otherwise challenge the acceptance or the rejection of the offer or the related decision before a Conduct Panel, the BCC, any other Board committee, the Board, the Securities and Exchange Commission, the courts, or any other relevant authority;
- (2) any right of such Respondent to claim bias or prejudice of the Chief Regulatory Officer, BCC, Chairman of the BCC, the Conduct Panel, the Chairman of the Conduct Panel, a panelist of the Conduct Panel, the General Counsel, the Board, or any member of the Board, in connection with such person's or body's participation in discussions regarding the terms and conditions of the offer of settlement and the decision, or other consideration of the offer of settlement and decision, including acceptance, or rejection of such offer of settlement and decision; and
- (3) any right of such Respondent to claim that a person or body violated the ex parte prohibitions of NYSE Arca Equities Rule 10.3, in connection with such person's or body's participation in discussions regarding the terms and conditions of the offer of settlement and the decision, or other consideration of the offer of settlement and decision, including acceptance or rejection of such offer of settlement and decision.

(e) *Uncontested Offers of Settlement*

- (1) If a Respondent makes an offer of settlement and the Department of Enforcement of the Exchange does not oppose it, the offer of settlement is uncontested.

- (2) If an offer of settlement is uncontested by the Department of Enforcement prior to the issuance of a Complaint pursuant to Rule 10.4, the Department of Enforcement shall transmit the uncontested offer and a proposed decision to the General Counsel of the Exchange with its recommendation.
 - (A) A proposed decision accepting an offer of settlement shall (i) recite the facts and findings to which Respondent has stipulated in the offer of settlement; (ii) impose sanctions consistent with those to which Respondent has consented in the offer of settlement; and (iii) recite the rule(s), regulation(s), or statutory provision(s) related to such sanctions to which Respondent has consented.
 - (B) The General Counsel of the Exchange shall accept or reject the offer of settlement and proposed decision.
 - (C) If the offer of settlement and decision are accepted by the General Counsel of the Exchange, they shall become final and the Department of Enforcement shall issue the decision and notify the Respondent.
- (3) If an offer of settlement is uncontested by the Department of Enforcement after the issuance of a Complaint pursuant to Rule 10.4 but prior to the commencement of a hearing on the merits has begun, the Department of Enforcement shall transmit the uncontested offer and a proposed decision to the General Counsel of the Exchange with its recommendation.
 - (A) A proposed decision accepting an offer of settlement shall (i) recite the facts and findings to which Respondent has stipulated in the offer of settlement; (ii) impose sanctions consistent with those to which Respondent has consented in the offer of settlement; and (iii) recite the rule(s), regulation(s), or statutory provision(s) related to such sanctions to which Respondent has consented.
 - (B) The General Counsel of the Exchange shall accept or reject the offer of settlement and proposed decision.
 - (C) If the offer of settlement and decision are accepted by the General Counsel of the Exchange, they shall become final and the General Counsel of the Exchange shall issue the decision and notify the Department of Enforcement and Respondent.
- (4) If an offer of settlement is uncontested by the Department of Enforcement after the issuance of a Complaint pursuant to Rule 10.4 and after a hearing on the merits has begun, the Department of Enforcement shall transmit the uncontested offer of settlement and a proposed decision to the Conduct Panel with its recommendation.
 - (A) A proposed decision accepting an offer of settlement shall (i) recite the facts and findings to which Respondent has stipulated in the offer of settlement; (ii)

impose sanctions consistent with those to which Respondent has consented in the offer of settlement; and (iii) recite the rule(s), regulation(s), or statutory provision(s) related to such sanctions to which Respondent has consented.

(B) The Conduct Panel shall accept or reject the uncontested offer of settlement and the proposed decision.

(C) If the uncontested offer of settlement and decision are accepted by the Conduct Panel, they shall become final and the General Counsel of the Exchange shall issue the decision and notify the Department of Enforcement and Respondent.

(f) *Contested Offers of Settlement*

(1) If a Respondent makes an offer of settlement and the Department of Enforcement of the Exchange opposes it, the offer of settlement is contested.

(2) A Respondent may not submit a contested offer of settlement for consideration to the BCC or the Conduct Panel prior to the issuance of a Complaint pursuant to Rule 10.4.

(3) If an offer of settlement is contested by the Department of Enforcement after the issuance of a Complaint pursuant to Rule 10.4 but prior to the commencement of a hearing on the merits has begun, the Department of Enforcement shall transmit the contested offer and a proposed decision to the BCC with its recommendation.

(A) A proposed decision accepting an offer of settlement shall (i) recite the facts and findings to which Respondent has stipulated in the offer of settlement; (ii) impose sanctions consistent with those to which Respondent has consented in the offer of settlement; and (iii) recite the rule(s), regulation(s), or statutory provision(s) related to such sanctions to which Respondent has consented.

(B) The BCC shall accept or reject the contested offer of settlement and proposed decision.

(C) If the contested offer of settlement and decision are accepted by the BCC, they shall become final and the General Counsel of the Exchange shall issue the decision and notify the Department of Enforcement and Respondent.

(4) If an offer of settlement is contested by the Department of Enforcement after the issuance of a Complaint pursuant to Rule 10.4 and after a hearing on the merits has begun, the Department of Enforcement shall transmit the contested offer of settlement and a proposed decision to the Conduct Panel with its recommendation.

(A) A proposed decision accepting an offer of settlement shall (i) recite the facts and findings to which Respondent has stipulated in the offer of settlement; (ii) impose sanctions consistent with those to which Respondent has consented in the offer of settlement; and (iii) recite the rule(s), regulation(s), or statutory provision(s) related to such sanctions to which Respondent has consented.

(B) The Conduct Panel shall accept or reject the contested offer of settlement and the proposed decision.

(C) If the contested offer of settlement and decision are accepted by the Conduct Panel, they shall become final and the General Counsel of the Exchange shall issue the decision and notify the Department of Enforcement and Respondent.

(g) Final Disciplinary Action

(1) A proceeding pursuant to Rule 10.6(e)(2) shall conclude as of the date the decision is issued by the Department of Enforcement. The decision shall constitute final disciplinary action of the Exchange. The sanction(s) shall take effect as set forth in the decision.

(2) A proceeding pursuant to Rule 10.6(e)(3), (e)(4), (f)(3) or (f)(4) shall conclude as of the date the decision is issued by the General Counsel of the Exchange. The decision shall constitute final disciplinary action of the Exchange. The sanction(s) shall take effect as set forth in the decision.

(h) Rejection of Offer of Settlement

(1) If an uncontested offer of settlement or a decision is rejected by the General Counsel of the Exchange or the Conduct Panel, the Respondent shall be notified in writing and the offer of settlement and proposed decision shall be deemed withdrawn.

(2) If a contested offer of settlement or a decision is rejected by the BCC or the Conduct Panel, the Respondent shall be notified in writing and the offer of settlement and proposed decision shall be deemed withdrawn.

(3) A rejected offer of settlement or a rejected proposed decision shall not constitute a part of the record in any proceeding against the Respondent making the offer.

(4) As set forth in subsection (d)(1) above, if an offer of settlement or a decision is rejected by the General Counsel of the Exchange, BCC or the Conduct Panel, the Respondent shall have no right to challenge or contest the rejection of the offer of settlement or the decision before a Conduct Panel, the BCC, any Board Committee, the Board, the Securities and Exchange Commission, the courts, or any other relevant authority.

(i) Disciplinary Proceeding with Multiple Respondents

When a disciplinary proceeding names multiple Respondents, settlement offers may be accepted or rejected as to any one or all of the Respondents submitting offers. The proceedings shall thereafter be terminated as to those Respondents whose offer of settlements are accepted, but such Respondents may be required to participate in any hearing conducted as to those Respondents that did not submit offers of settlement or whose offers of settlement were rejected.

(j) No Prejudice from Rejected Offer of Settlement

If an offer of settlement is rejected by the General Counsel of the Exchange, BCC or the Conduct Panel, the Respondent shall not be prejudiced by the offer, which shall not be introduced into evidence in connection with the determination of the issues involved in the pending complaint or in any other proceeding.

(k) Review of Final Disciplinary Actions

- (1) The BCC and the CFR, as defined in NYSE Arca Equities Rule 3.3(a)(2), shall review each quarter final disciplinary actions pursuant to Rule 10.6(g) in order to provide the Department of Enforcement and the General Counsel of the Exchange with guidance related to future settlement practices and sanction amounts.
- (2) The CFR and the Board shall not have the ability to reject final disciplinary actions pursuant to Rule 10.6.

Rule 10.7. Decision

Within thirty (30) calendar days after the date of a hearing conducted pursuant to Rule 10.5, the Conduct Panel shall prepare a decision in writing determining whether the Respondent has committed a violation and imposing the penalty, if any, therefor. The decision shall include a statement of findings and conclusions, with the reasons therefore upon all material issues presented on the record. Where a penalty is imposed, the decision shall include a statement specifying the acts or practices in which the Respondent has been found to have engaged, or which the Respondent has been found to have omitted, and setting forth the specific provisions of the Bylaws, Rules, policies or procedures of the Corporation, or the rules, regulations and procedures promulgated under the Securities Exchange Act of 1934, which the act or omission to act are deemed to violate. The Respondent shall be promptly sent a copy of the decision. The determination of the Conduct Panel and any penalty imposed shall become final fifteen (15) calendar days after notifying the Respondent; provided, however, that if a request for review of such determination and penalty, or both, is filed as hereinafter provided, the penalty shall be stayed pending outcome of that review.

Rule 10.8. Review

(a) Either the Complainant or the Respondent may request a review of the decision pursuant to Rule 10.7 or a summary determination pursuant to Rule 10.4(c) by petitioning the CFR for such review within fifteen (15) calendar days after service of notice of a decision made pursuant to Rule 10.7 or Rule 10.4(c). Such petition shall be in writing and shall specify the findings and conclusions to which exceptions are taken together with reasons for such exceptions. Any objections to a decision not specified by written exception shall be considered to have been abandoned. Respondent shall submit a filing fee of five hundred dollars (\$500) with its request for review. The CFR may waive such filing fee upon a showing of hardship or other compelling reason. If the decision is overruled in whole, the filing fee shall be refunded. If the decision is overruled in part as a result of Respondent's request for review, refund of the filing fee, or any portion thereof, shall be in the discretion of the CFR.

(b) The CFR may appoint a CFR Panel to conduct reviews of disciplinary proceedings, or may decide to conduct review proceedings on its own. The composition of the CFR Appeals Panel will be determined by the CFR in accordance with Rule 3.3. The body conducting the review, either the CFR itself or the CFR Appeals Panel, is referred to herein as "the Review Board." Unless the Review Board shall decide to open the record for the introduction of new evidence or to hear argument, such review shall be based solely upon the record and the written exceptions filed by the parties. The standard of review shall be de novo. Based upon such review, the Review Board may affirm, reverse or modify in whole or in part, the decision of the Conduct Panel. Such modification may include an increase or decrease of the sanction. The decision of the Review Board shall be in writing and, shall become final fifteen (15) calendar days after notifying the parties; provided, however, that if a request for review of such determination is filed pursuant to Rule 10.8(c) or Rule 10.8(d) below, the penalty shall be stayed pending the outcome of that review.

Each Review Board member shall be required to disclose to the CFR any circumstances which might preclude such Review Board member from rendering an objective and impartial determination. Prior to the commencement of the first hearing session, the CFR may remove a Review Board member who discloses such information. The CFR shall also inform the parties of any information disclosed pursuant to this section, if the Review Board member who disclosed the information is not removed.

In the event that any Review Board member, after the commencement of the Review, but prior to the rendition of the decision, should become disqualified, resign, die, refuse or be unable to perform or discharge his or her duties, the CFR, upon such proof as they deem satisfactory, shall either (a) appoint a new member to the Review Board to replace such member; or (b) direct that the review proceed without the substitution of a new member.

(c) Either the Complainant or the Respondent may request a review of the decision of the Review Board by the NYSE Arca Board of Directors within fifteen (15) calendar days after service of notice of a decision made pursuant to Rule 10.8(b). Such petition shall be in writing and shall specify the findings and conclusions to which exceptions are taken together with reasons for such exceptions. Any objections to a decision not specified by

written exception shall be considered to have been abandoned. Respondent shall submit a filing fee of five hundred dollars (\$500) with its request for review. The NYSE Arca Board of Directors may waive such filing fee upon a showing of hardship or other compelling reason. If the decision is overruled in whole, the filing fee shall be refunded. If the decision is overruled in part as a result of Respondent's request for review, refund of the filing fee, or any portion thereof, shall be in the discretion of the NYSE Arca Board of Directors.

(d) The NYSE Arca Board of Directors may, on its own initiative, order review of a decision made by the Review Board within 30 days after notice of the decision has been served on the Respondent. If the NYSE Arca Board of Directors does not order review of a decision of the Review Board, the decision of the Review Board shall become final.

(e) Nothing contained in this Rule shall affect any right which a Respondent may have to seek review of the Corporation's decision by the Securities and Exchange Commission.

Rule 10.9. Judgment and Penalty

(a) An ETP Holder, or associated person of an ETP Holder shall be subject to appropriate discipline by the Corporation for violations under this Rule including: cancellation or suspension of trading privileges, limitation of activities, functions and operations, suspension or bar from association with an ETP Holder, fine, censure, or any other fitting sanction.

(b) Penalties imposed under this Rule shall not become effective until the Corporation review process is completed or the decision otherwise becomes final.

(c) Notwithstanding anything contained in this Rule to the contrary, the Corporation may impose such conditions and/or restrictions on the activities of the Respondent as the Corporation considers reasonably necessary for the protection of investors and of the Corporation.

Rule 10.10. Miscellaneous Provisions

Any charges, notices or other documents may be served upon the Respondent either personally or by leaving the same at Respondent's place of business or by deposit in the United States Post Office, postage prepaid via registered or certified mail addressed to the Respondent at its address as it appears on the books and records of the Corporation.

Rule 10.11. Appeal of Minor Rule Plan Sanctions

(a) This Section provides the following procedures for persons aggrieved by action taken by the Corporation pursuant to the provisions of the Bylaws and Rules of the Corporation for which action an ETP Holder or associated person of an ETP Holder has been sanctioned pursuant to Rule 10.12 (the Minor Rule Plan), and applies for an opportunity to make an oral presentation or to have the matter reviewed on the papers alone. (This

Section shall not apply to disciplinary action taken pursuant to Rule 10.4 herein, non-disciplinary action taken pursuant to Rule 10.13 herein, or to an action in Arbitration.)

(b) *Submission of Application to Corporation.* Any ETP Holder, or associated person of an ETP Holder who is aggrieved by any action of the Corporation within the scope of this Section and who desires the opportunity to make an oral presentation with respect to such action or to have such action reviewed on the papers alone shall file a written application with the Business Conduct Committee within five (5) business days after notification that such action has been taken. The notification submitted by the Corporation shall state the specific grounds for the action taken by the Corporation, and shall notify the party of the party's right to make an oral presentation or to have the matter reviewed on the papers alone. The application shall contain: (1) an identification of the Corporation action over which the review is being requested; (2) the reason(s) why the applicant disagrees with such action; and (3) the relief sought. In addition, the application shall indicate whether the applicant desires to make an oral presentation, in which event it shall be considered a "request for a hearing," or to proceed only upon the existing and/or any additional documents or materials, in which event it shall be considered a "request for a review on the papers." Hereinafter, the terms "hearing" and "review on the papers" shall be referred to jointly as the "Proceeding(s)."

(c) *Intervention.* Any person associated with the applicant whose interest might be affected by the Proceeding shall be entitled to participate as a party. Further, in the discretion either of the Conduct Panel appointed pursuant to paragraph (d) hereof or of the Business Conduct Committee, any other person whose interests might be affected by the Proceeding may be permitted to intervene in the Proceeding, and may be granted such rights of a party as either the Conduct Panel or the Business Conduct Committee, deems appropriate. Any determination of the Conduct Panel or the Business Conduct Committee as to participation in the Proceedings is subject to review by the CFR at the close of the Proceedings or, in the CFR's discretion, during the course of the Proceedings.

(d) *Procedure Following Application for Hearing and/or Review on the Papers.*

(1) *Appointment of the Panel.* Applications for hearing and/or review on the papers shall be referred to the Business Conduct Committee. The Business Conduct Committee shall appoint a Conduct Panel pursuant to Rule 10.5(a). The Conduct Panel shall be furnished with all materials considered by the Regulatory Staff in connection with its initial action. Parties to the Proceedings shall be notified of the composition of the Conduct Panel. Any objection to the composition of the Conduct Panel must be submitted within five (5) business days of receipt of the notification regarding the composition.

(2) *Additional Submissions and Notice.* Within fifteen (15) business days after receipt of the notification regarding composition of the Conduct Panel, the applicant, if the application is for a review on the papers, shall submit to the Conduct Panel any additional documents, statements, arguments or other materials. The Regulatory Staff will then have fifteen (15) business days to submit to the Conduct Panel any

additional documents, statements, arguments or other materials in response to the applicant's submission. If the application is for a hearing, the parties may, at this time, request an opportunity to call witnesses to the hearing; the Conduct Panel, in its discretion, may or may not grant this request. In the event of a hearing, each party shall furnish to the Conduct Panel and to the other parties, not less than five (5) business days in advance of the scheduled hearing date, copies of all documentary evidence such party intends to present at the hearing. Parties shall be given at least fifteen (15) business days notice of the time and place of the hearing.

- (3) *Conduct of the Proceeding.* Whether the Proceeding is a hearing or a review on the papers alone, the Conduct Panel shall determine all questions concerning the admissibility of evidence and shall otherwise regulate the conduct of the Proceeding. The formal rules of evidence shall not apply. In the event of a hearing, each of the parties shall be permitted to make an opening statement, present witnesses pursuant to paragraph (d)(2), present documentary evidence, cross-examine witnesses and present closing arguments. The Conduct Panel shall have the right to question all parties and witnesses to the Proceeding. The Conduct Panel may also request the production of documentary evidence and witnesses. No ETP Holder, or associated person of an ETP Holder shall refuse to furnish relevant testimony, documentary materials or other information requested by the Conduct Panel during the course of the Proceeding. All parties are entitled to be represented by counsel who may participate fully in the Proceeding. In the event of a hearing, a transcript of the hearing shall be made and shall become part of the record.
- (4) *The Decision of the Panel.* Within thirty (30) calendar days after the date of the hearing or the review on the papers, the Conduct Panel shall render its decision. The standard of review shall be de novo. The Conduct Panel may confirm, reverse or modify in whole or in part the decision of the Regulatory Staff, and may make any findings or conclusions which in its judgment are proper. The decision of the Conduct Panel shall be in writing, contain a concise statement setting forth the specific findings and conclusions of the Conduct Panel and the reasons in support thereof, and shall be sent to the parties to the Proceedings.
- (5) If after a hearing or review on the papers pursuant to subsection (d) of this Rule, the Conduct Panel determines that an ETP Holder, or associated person of an ETP Holder has violated one or more rules of the Corporation, as alleged, the Conduct Panel: (i) may impose any one or more of the disciplinary sanctions authorized by the Corporation's Bylaws and Rules; and (ii) shall impose a forum fee against the person charged in the amount of two hundred fifty dollars (\$250) if the determination was reached based on a review of the papers, or in the amount of five hundred dollars (\$500) if a hearing was conducted. However, notwithstanding the foregoing, in the event that the Conduct Panel determines that the ETP Holder, or associated person of an ETP Holder has violated one or more Rules of the Corporation, as alleged, and the sole disciplinary sanction imposed by the Conduct Panel for such rule violation(s) is a fine which is less than the total fine initially

imposed by the Regulatory Staff for the subject violation(s), the Conduct Panel shall have the discretion to waive the imposition of a forum fee.

(6) *Review by the CFR.* The decision of the Conduct Panel shall be subject to review by the CFR either on the Board's own motion within thirty days after issuance (or upon presentation to the Board, whichever is later), or upon written petition of any party to the Proceeding filed within fifteen (15) business days after issuance. Such review of the Proceedings shall be in accordance with paragraph (e).

(e) *Procedure Following Petition for Review by the CFR.*

(1) *Additional Submissions and Appointment of the CFR.* Petitions for review of the Proceeding pursuant to paragraph (d)(6), shall be referred to the CFR which shall be furnished with all material considered by the Regulatory Staff and the Conduct Panel. Parties may submit a written statement to the CFR and may request an opportunity to make an oral presentation before the CFR. The CFR, in its discretion, may grant or deny the request for oral presentation. In the absence of a request for such a presentation, or at any time, the CFR may require an oral presentation. Whether review is conducted by hearing or by review on the papers alone, the matter shall be referred to the CFR. A transcript shall be made of any oral presentation and shall become part of the record.

(2) *Decision of the CFR.* Review by the CFR shall be made upon the material furnished it by the Regulatory Staff or Conduct Panel as well as by the parties, and shall be made after such further proceedings as the CFR shall order. The standard of review shall be de novo. The CFR may appoint a CFR Appeals Panel to conduct reviews under this subsection, or may decide to conduct review proceedings on its own. The CFR or CFR Appeals Panel may confirm, reverse or modify in whole or in part the decision of the Regulatory Staff or Conduct Panel and may make any findings or conclusions which in its judgment are proper. The decision of the CFR or CFR Appeals Panel shall be in writing, contain a concise statement of the findings and conclusions of the CFR or CFR Appeals Panel and the reasons in support thereof, and shall be sent to the parties to the Proceedings.

(f) Nothing contained in this Rule shall affect any right which a Respondent may have to seek review of the Corporation's decision by the Securities and Exchange Commission.

Rule 10.12. Minor Rule Plan

(a) In lieu of initiating a formal disciplinary action or proceeding, the Corporation may, subject to the requirements set forth in this Rule, impose a fine not to exceed five thousand dollars (\$5,000) on any ETP Holder or associated person of an ETP Holder, for any violation of a Rule of the Corporation that has been determined to be minor in nature.

(b) Whenever it appears that an ETP Holder, or associated person of an ETP Holder has violated a Rule under this Minor Rule Plan, the Corporation shall serve on such person or

organization a written statement setting forth (i) the Rule(s) alleged to have been violated; (ii) the act or omission constituting each such violation; and (iii) notice that such person or organization may submit a written statement to a designated committee for its consideration.

(c) The Business Conduct Committee and the Regulatory Staff designated by the Corporation shall have the authority to impose a fine pursuant to this Rule.

(d) If a person or organization that has been fined pursuant to this Rule pays the fine, such payment shall be deemed a waiver of any right to a disciplinary proceeding under Rule 10.11 and of any right to review of the matter by the Business Conduct Committee, CFR, or the NYSE Arca Board of Directors.

(e) Any person or organization that has been fined pursuant to this Rule may contest such fine by filing with the Corporation a written application meeting the requirements of Rule 10.11. Such written application must be submitted not more than five (5) business days after receipt of written notification that a fine has been imposed pursuant to this Rule. If a determination is contested pursuant to this subsection, the matter shall become a formal disciplinary action, and any penalty imposed by a hearing panel shall be publicly reported after such decision has become "final" pursuant to Rule 10.7. Pursuant to Securities Exchange Act Release No. 34-30958, any person or organization found in violation of a minor rule under this plan is not required to report such violation on SEC Form BD or Form U-4, provided that the sanction imposed consists of a fine not exceeding two thousand five hundred dollars (\$2,500) and the sanctioned person or organization has not sought an adjudication, including a hearing, or otherwise exhausted the administrative remedies available with respect to the matter. Any fine imposed in excess of two thousand five hundred dollars (\$2,500) will be subject to current rather than quarterly reporting to the Securities and Exchange Commission pursuant to Rule 19d-1 under the Securities Exchange Act of 1934.

(f) Nothing in this Rule shall require the Corporation to impose a fine for a violation of any Rule under this Minor Rule Plan. If the Corporation determines that any violation is not minor in nature, the Corporation may, at its discretion, proceed under Rule 10.4 rather than under this Rule.

(g) *Minor Rule Plan: Minor Trading Rule Violations.*

(1) Short Sale Rules. (Rule 7.16)

(2) Failure to maintain continuous, two-sided Q Orders in those securities in which the Market Maker is registered to trade (Rule 7.23(a)(1)).

(3) Failure to comply with Sponsored Participant Access requirements. (Rule 7.29)

(4) Failure to comply with Authorized Trader requirements. (Rule 7.30)

(5) Acting as a Market Maker in a security without being registered as such as required by Rule 7.20(a).

(6) Committing any act prohibited by Rules 6.1(b), 6.2(g) or 6.15(b).

(h) *Minor Rule Plan: Record Keeping and Other Minor Rule Violations.*

(1) Failure to submit trade data to the Corporation in a timely manner. (Rule 10.2(e))

(2) Failure to file a Securities Investor Protection Corporation form and assessment in a timely manner. (Rule 4.11(b)). Note: Failure to file a SIPC form and assessment within five (5) business days after ETP Holder's receipt of SIPC's final notice will result in formal disciplinary action.

(3) Failure to furnish in a timely manner books, records or other requested information or testimony in connection with an examination of financial responsibility and/or operational conditions. (Rule 4.11(c))

(4) Failure to comply with the filing and/or notification requirements of Rules 2.16(b) or 2.23.

(5) Failure to file a financial report or financial information in the type, form, manner and time prescribed by the Corporation. (Rule 4.11(a))

(6) Delaying, impeding or failing to cooperate in an investigation by the Corporation. (Rule 10.2(d))

(7) Failure to comply with the requirements for preventing the misuse of material nonpublic information as set forth in Rule 6.3 and its Commentaries.

(8) Failure to comply with the Supervision requirements set forth in Rule 6.18(a)-(d), including but not limited to, an ETP Holder's failure to:

(a) supervise persons associated with it to assure their compliance with the federal securities laws and the Constitution and Rules of the Corporation (Rule 6.18(a)); or

(b) establish and maintain a system to supervise the activities of its associated persons and the operations of its business that is reasonably designed to ensure compliance with applicable federal securities laws and regulations and NYSE Arca Equities Rules (Rule 6.18(b)); or

(c) establish, maintain, and enforce written procedures to supervise the business in which it engages and the activities of its associated persons that are reasonably designed to achieve compliance with applicable federal securities laws and regulations and with the NYSE Arca Equities Rules (Rule 6.18(c)).

- (9) (a) Failure to exercise due diligence as to accounts as required by Rule 9.2(a).
- (b) Failure to diligently supervise all accounts and licensed personnel as required by Rule 9.2(b).
- (c) Failure to keep current and preserve records concerning all customer accounts as required by Rule 9.2(c) and its Commentaries.
- (10) Failure to comply with the books and records requirements of Rule 2.24.
- (11) Failure to comply with the employee registration or other requirements of Rule 2.21.
- (12) Failure to satisfy the anti-money laundering compliance program requirements set forth in Rule 6.17.
- (13) Failure to comply with Notification Requirements for Offering of Securities (Rule 5.2(b)(1))

(i) *Minor Rule Plan: Recommended Fine Schedule.*

The following fine schedule sets forth the amount of the fine(s) to be imposed. Except as noted below, the amount of the fine(s) shall be imposed at the First Level pursuant to the chart below. If another Minor Rule Plan Fine has been issued to the same ETP Holder or associated person for the same or similar conduct violating the same rule (regardless of when paid) within 24 months from the date of occurrence of the violation(s) set forth in the current Notice of Minor Rule Plan Fine, then the fine(s) shall be imposed at the Second Level. If two or more separate Notices of Minor Rule Plan Fine have previously been issued to the same ETP Holder or associated person for the same or similar conduct violating the same rule within 24 months from the date of occurrence of the violation(s) set forth in the current Notice of Minor Rule Plan Fine, then the fine(s) shall be imposed at the Third Level.

These fines are intended to apply to minor violations. For more serious violations, other disciplinary action may be sought.

	<i>Fine Levels</i>		
	<i>1st Level</i>	<i>2nd Level</i>	<i>3rd Level</i>
(1) Minor Trading Rule Violations			
1. Short Sale Rules. (Rule 7.16)	\$500.00	\$1,000.00	\$2,500.00
2. Failure to follow the provisions of the rules and regulations governing the use of the	\$500.00	\$1,500.00	\$2,500.00

Intermarket Trading System
("ITS"). (Rules 7.55-7.57)

3. Failure to maintain continuous two-sided Q Orders in those securities in which the Market Maker is registered to trade. (Rule 7.23(a)(1))	\$250.00	\$500.00	\$1,000.00
4. Failure to comply with Sponsored Participant Access requirements. (Rule 7.29)	\$1,000.00	\$2,500.00	\$3,500.00
5. Failure to comply with Authorized Trader requirements. (Rule 7.30).	\$1,000.00	\$2,500.00	\$3,500.00
6. Acting as a Market Maker in a security without being registered as such as required by Rule 7.20(a).	\$250.00	\$500.00	\$1,000.00
7. Prohibited Acts and Bad Business Practice. (Rules 6.1(b), 6.2(g) or 6.15(b)).	\$1,000.00	\$2,500.00	\$3,500.00

Fine Levels

(2) Record Keeping and Other Minor Rule Violations

	<i>1st Level</i>	<i>2nd Level</i>	<i>3rd Level</i>
1. Failure to submit trade data to the Corporation in a timely manner. (Rule 10.2(e))	\$1,000.00	\$2,500.00	\$3,500.00
2. Failure to file a Securities Investor Protection Corporation form and assessment in a timely manner. (Rule 4.11(b))	\$1,000.00	\$2,500.00	\$3,500.00
3. Failure to furnish in a timely manner records or other requested information or testimony in connection with an examination of financial responsibility and/or operational conditions. (Rule 4.11(c))	\$2,000.00	\$4,000.00	\$5,000.00
4. Failure to comply with the filing and/or notification requirements of Rules 2.16(b)	\$500.00	\$1,000.00	\$2,500.00

or 2.23.			
5. Failure to file a financial report or financial information in the type, form, manner and time prescribed by the Corporation. (Rule 4.11(a))	\$2,000.00	\$4,000.00	\$5,000.00
6. Delaying, impeding or failing to cooperate in a Corporation investigation. (Rule 10.2(d))	\$3,500.00	\$4,000.00	\$5,000.00
7. Failure to comply with the requirements for preventing the Misuse of Material Nonpublic Information as set forth in Rule 6.3 and its Commentaries	\$2,000.00	\$4,000.00	\$5,000.00
8. Failure to comply with the Supervision requirements set forth in Rule 6.18(a)-(d) ¹	\$3,500.00	\$4,000.00	\$5,000.00
9a. Failure to exercise due diligence as to accounts as required by Rule 9.2(a). ¹	\$3,500.00	\$4,000.00	\$5,000.00
9b. Failure to diligently supervise all accounts and licensed personnel as required by Rule 9.2(b). ¹	\$3,500.00	\$4,000.00	\$5,000.00
9c. Failure to keep current and preserve records concerning all customer accounts as required by Rule 9.2(c)and its Commentaries.	\$2,000.00	\$4,000.00	\$5,000.00
10. Failure to comply with the books and records requirements of Rule 2.24.	\$2,000.00	\$4,000.00	\$5,000.00
11. Failure to comply with the employee registration or other requirements of Rule 2.21.	\$1,000.00	\$2,500.00	\$3,500.00
12. Anti-Money Laundering Compliance Program Violations (Rule 6.17). ¹	\$2,000.00	\$4,000.00	\$5,000.00
13. Failure to comply with Notification Requirements for Offering of Securities (Rule 5.2(b)(1))	\$2,000.00	\$4,000.00	\$5,000.00

¹In addition to the specified fines, the Exchange may require the violator to make specified changes to its supervisory or other compliance procedures.

²In addition to the specified fines, the Exchange may require the violator to remit all fees that it should have paid to the Exchange pursuant to compliance with Rule 2.21.

Rule 10.13. Hearings and Review of Decisions

(a) General Provisions. This Rule provides the procedure for persons aggrieved by any of the following actions taken by the Corporation to apply for an opportunity to be heard and to have the action reviewed. These actions are:

- (1) the denial of an ETP;
- (2) the barring of any person from becoming associated with an ETP Holder;
- (3) the suspension or cancellation of ETP trading privileges;
- (4) the prohibition or limitation with respect to access to services provided by the Corporation, or the access to services of any ETP Holder taken pursuant to the Bylaws, or Rules or procedures of the Corporation;
- (5) actions taken by the Corporation pursuant to Rule 7.22, including the denial of the application for, or the termination or suspension of, a Market Maker's registration in a security or securities; and
- (6) actions taken by the Corporation pursuant to Rule 7.23.

The provisions of this Rule shall not apply to reviews of the following:

- (A) disciplinary action, for which review is already provided within Rule 10;
- (B) actions in Arbitration; and
- (C) reviews of delisting decisions for which review is already provided within Rule 5.

For purposes of this Section, a person must be "aggrieved" in an economic sense.

(b) Submission of Application. A person who is aggrieved by any action of the Corporation within the scope of this Rule and who desires an opportunity to be heard shall file a written application with the Secretary of the Corporation within thirty (30) calendar days after such action has been taken. The application shall state the action complained of and the specific reasons why the applicant takes exception to such action and the relief sought. In addition, if the applicant intends to submit any additional documents, statements, arguments, or other material in support of the application, the same should be so stated and identified.

(c) Extension of Time. An application not filed within the time specified in Rule 10.13(b) shall not be considered by the CFR, unless an extension of time is allowed by the CFR upon a showing of good cause. In order to obtain an extension of time within which to file an appeal, the applicant must, within the time specified in Rule 10.13(b) file with the Secretary of the Corporation a request for an extension of time within which to submit the application. The request for extension will be ruled upon by the CFR, whose ruling will be given in writing. Rulings on requests for extension of time are not subject to appeal under Rule 10.

(d) Panel. Applications for hearing or review shall be referred by the Secretary to the CFR which shall, if requested, appoint a hearing panel (the "Hearing Panel") of no less than three persons. A record of the proceedings shall be kept.

(e) Documents. The Hearing Panel will set a hearing date and shall be furnished with all materials relevant to the proceeding at least seventy-two (72) hours prior to the hearing. Each party shall have the right to inspect and copy the other party's materials prior to the hearing or review.

(f) Notice. Parties to the proceeding shall be informed by the Secretary of the composition of the Hearing Panel at least seventy-two (72) hours prior to the scheduled hearing or review.

(g) Participants. The parties to the hearing shall consist of the applicant and a representative of the Corporation who shall present the reasons for the action taken by the Corporation. In addition, any other person may intervene as a party in the hearing when that person claims an interest in the transaction that is the subject of the action. An intervening party must be so situated that the disposition of the action may, as a practical matter, impair or impede that person's ability to protect that interest unless it is adequately represented by existing parties. Also, the Hearing Panel may, in its discretion, permit a person to intervene in the action as a party when that person's claim or defense and the main action have questions of law and fact in common. The applicant is entitled to be represented by counsel at all stages of the proceeding.

(h) Procedure for Intervention. The person seeking intervention shall serve a motion to intervene on the Secretary which will be transmitted to the Hearing Panel. The motion shall state the grounds therefor and shall set forth the claim or defense upon which the intervention is sought. The Hearing Panel, in its discretion, shall consider whether the intervention will unduly delay or prejudice the adjudication or the rights of the original parties.

(i) Conduct of Hearing. The Hearing Panel shall determine all questions concerning the admissibility of evidence and shall regulate the conduct of the hearing. Each of the parties shall be permitted to make an opening statement, present witnesses and documentary evidence, cross-examine opposing witnesses and present closing arguments, orally or in writing as determined by the Hearing Panel. The Hearing Panel shall also

have the right to question all parties and witnesses to the proceeding and a record shall be kept. Formal rules of evidence shall not apply. The standard of review shall be de novo.

(j) Decision. The Hearing Panel's decision shall be in writing and contain the reasons supporting the conclusions of the panel.

(k) Petition. The decision of the Hearing Panel shall be subject to review by the NYSE Arca Board of Directors either on its own motion within thirty (30) calendar days after issuance, upon written request submitted by the applicant, by the Chief Executive Officer of the Corporation, or by the Chairperson of the committee whose action was subject to the prior review, within fifteen (15) calendar days after issuance of the decision. Such petition shall be in writing and shall specify the findings and conclusions to which exceptions are taken together with the reasons for such exceptions. Only written exceptions shall be considered. The NYSE Arca Board of Directors, or committee of the NYSE Arca Board of Directors, shall have sole discretion to allow oral argument.

(l) Service of Notice. Any charges, notices or other documents may be served upon the applicant either personally or by leaving the same at applicant's place of business or by deposit in the United States Post Office, postage prepaid via registered or certified mail addressed to the applicant at his or her address as it appears on the books and records of the Corporation.

(m) Extension of Time. Any time limits imposed under this Rule for the submission of answers, petition or other materials may be extended by permission of the Secretary of the Corporation. All papers and documents relating to review by the CFR, the NYSE Arca Board of Directors, or its designated committee, must be submitted to the Secretary of the Corporation.

Rule 10.14. Miscellaneous Provision

Unless otherwise stated, any time limits imposed under Rule 10 for the submission of answers, petitions or other materials may be extended only by the Corporation.

Rule 10.15. Release of Disciplinary Complaints, Decisions and Other Information

(a) General Standards

(1) The Corporation shall release to the public a copy of, and at the Corporation's discretion information with respect to, any disciplinary complaint or disciplinary decision issued by the Corporation, as defined in paragraph (e) of this Rule, other than minor rule violations, on its website. The Corporation shall, in response to a request, release to the requesting party a copy of any identified disciplinary complaint or disciplinary decision issued by the Corporation, as defined in paragraph (e) of this Rule.

- (2) The Corporation shall release to the public a copy of, and at the Corporation's discretion information with respect to, any statutory disqualification decision, notification, or notice issued by the Corporation pursuant to Rules 10 or 11 that will be filed with the SEC.
- (3) The Corporation shall release to the public information with respect to any suspension, cancellation, expulsion, or bar that constitutes final Exchange action imposed pursuant to Rule 11.
- (4) The Corporation may release to the public a copy of, and information with respect to, any decision or notice appealable to the SEC under Exchange Act Section 19(d).

(b) Release Specifications

- (1) Copies of, and information with respect to, any disciplinary complaint released to the public pursuant to paragraph (a) of this Rule shall indicate that a disciplinary complaint represents the initiation of a formal proceeding by the Corporation in which findings as to the allegations in the complaint have not been made and does not represent a decision as to any of the allegations contained in the complaint.
- (2) Copies of, and information with respect to, any disciplinary decision or other decision, order, notification, or notice released to the public pursuant to paragraph (a) of this Rule prior to the expiration of the time period provided for an appeal or call for review as permitted under Corporation rules or the Exchange Act, or while such an appeal or call for review is pending, shall indicate that the findings and sanctions imposed therein are subject to review and modification by the Corporation or the SEC.

(c) Discretion to Redact Certain Information or Waive Publication

- (1) Notwithstanding paragraph (a) of this Rule, the Corporation reserves the right to redact, on a case-by-case basis, information that contains confidential customer information, including customer identities, or information that raises significant identity theft, personal safety, or privacy concerns that are not outweighed by investor protection concerns.
- (2) Notwithstanding paragraph (a) of this Rule, the Corporation may determine, in its discretion, to waive the requirement to release a copy of, or information with respect to, any disciplinary complaint, disciplinary decision or other decision, order, notification, or notice under those extraordinary circumstances where the release of such information would violate fundamental notions of fairness or work an injustice.

(d) Notice of Appeals of Exchange Decisions to the SEC

The Corporation shall provide notice to the public if a disciplinary decision of the Corporation is appealed to the SEC and the notice shall state whether the effectiveness of the decision has been stayed pending the outcome of proceedings before the SEC.

(e) Definitions

- (1) For the purpose of this Rule, the term "disciplinary complaint" shall mean any complaint issued pursuant to Rule 10.4 or any notice served pursuant to Rule 10.16.
- (2) For the purpose of this Rule, the term "disciplinary decision" shall mean any decision issued pursuant to the Rule 10.4(c), 10.6, 10.7 or 10.8, including, decisions issued by the BCC or a Conduct Panel, the CFR or the Board of Directors and orders accepting offers of settlement and suspension orders pursuant to Rule 10.16; provided, however, such term does not include decisions, notifications, or notices addressed by paragraphs (a)(2), (a)(3) and (a)(4) of this Rule. Minor rule violation plan letters issued pursuant to Rule 10.12 are not subject to this Rule.

Rule 10.16. Expedited Client Suspension Proceeding

(a) Initiation of Proceeding

(1) Scope of Authority

With the prior written authorization of the Chief Regulatory Officer ("CRO") or such other senior officers as the CRO may designate, Enforcement may initiate an expedited suspension proceeding with respect to alleged violations of Rule 5220 (Disruptive Quoting and Trading Activity Prohibited).

(2) Service of Notice

Enforcement shall initiate the proceeding by serving a notice on a ETP Holder or associated person of an ETP Holder (hereinafter "Respondent"). Enforcement shall serve the notice by personal service or overnight commercial courier. The notice shall be effective upon service.

(3) Content of Notice

The notice shall state whether Enforcement is requesting the Respondent to be required to take action or to refrain from taking action. The notice shall be accompanied by:

- (A) a declaration of facts, signed by a person with knowledge of the facts contained therein, that specifies the acts that constitute the alleged violation; and
- (B) a proposed order that contains the required elements of a suspension order (except the date and hour of the order's issuance), which are set forth in sub-paragraph (d)(2) of this Rule).

(b) Appointment of a Conduct Panel

As soon as practicable after Enforcement initiates a suspension proceeding, a Conduct Panel shall be assigned in accordance with paragraphs (a) of Rule 10.5.

(c) Hearing

(1) When Held. The hearing shall be held not later than 15 days after service of the notice initiating the suspension proceeding, unless otherwise extended by the Hearing Administrator with the consent of the parties for good cause shown.

(2) Service of Notice of Hearing. A notice of date, time, and place of the hearing shall be served on the parties not later than seven days before the hearing, unless otherwise ordered by the Hearing Administrator. Service shall be made by personal service or overnight commercial courier. The notice shall be effective upon service.

(3) Authority of Hearing Administrator. A Hearing Administrator shall have authority to do all things necessary and appropriate to discharge his or her duties as set forth in Rule 10.5.

(4) Witnesses. A person who is subject to the jurisdiction of the Exchange shall testify under oath or affirmation. The oath or affirmation shall be administered by a court reporter or a notary public.

(5) Additional Information. At any time during its consideration, the Conduct Panel may direct a party to submit additional information. Any additional information submitted shall be provided to all parties at least one day before the Conduct Panel renders its decision.

(6) Transcript. The hearing shall be recorded by a court reporter and a written transcript thereof shall be prepared. A transcript of the hearing shall be available to the parties for purchase from the court reporter at prescribed rates. A witness may purchase a copy of the transcript of his or her own testimony from the court reporter at prescribed rates. Proposed corrections to the transcript may be submitted by affidavit to the Conduct Panel within a reasonable time determined by the Conduct Panel. Upon notice to all the parties to the proceeding, the Conduct Panel may order corrections to the transcript as requested or sua sponte.

(7) Record and Evidence Not Admitted. The record shall consist of the notice initiating the proceeding, the declaration, and the proposed order described in subparagraph (a)(3) above; the transcript of the hearing; all evidence considered by the Conduct Panel; and any other document or item accepted into the record by the Conduct Panel. Enforcement shall be the custodian of the record. Proffered evidence that is not accepted into the record by the Conduct Panel shall be retained by the custodian of the

record until the date when the Exchange's decision becomes final or, if applicable, upon the conclusion of any review by the SEC or the federal courts.

(8) Failure to Appear at a Hearing. If a Respondent fails to appear at a hearing for which it has notice, the allegations in the notice and accompanying declaration may be deemed admitted, and the Conduct Panel may issue a suspension order without further proceedings. If Enforcement fails to appear at a hearing for which it has notice, the Conduct Panel may order that the suspension proceeding be dismissed.

(d) Issuance of Suspension Order by Conduct Panel

(1) Basis for Issuance. The Conduct Panel shall issue a written decision stating whether a suspension order shall be imposed. The Conduct Panel shall issue the decision not later than ten days after receipt of the hearing transcript, unless otherwise extended by the Hearing Administrator with the consent of the parties for good cause shown. A suspension order shall be imposed if the Conduct Panel finds:

(A) by a preponderance of the evidence that the alleged violation specified in the notice has occurred; and

(B) that the violative conduct or continuation thereof is likely to result in significant market disruption or other significant harm to investors.

(2) Content, Scope, and Form of Order. A suspension order shall:

(A) be limited to: (i) ordering a Respondent to cease and desist from violating Rule 5220, and/or (ii) ordering a Respondent to cease and desist from providing access to the Exchange to a client of Respondent that is causing violations of Rule 5220;

(B) set forth the alleged violation and the significant market disruption or other significant harm to investors that is likely to result without the issuance of an order;

(C) describe in reasonable detail the act or acts the Respondent is to take or refrain from taking and to suspend the Respondent unless and until such action is taken or refrained from; and

(D) include the date and hour of its issuance.

(3) Duration of Order. A suspension order shall remain effective and enforceable unless modified, set aside, limited, or revoked pursuant to paragraph (e), below.

(4) Service. The Conduct Panel's decision and any suspension order shall be served by personal service or overnight commercial courier. The suspension order shall be effective upon service.

(e) Review by Conduct Panel

At any time after the Respondent is served with a suspension order, a party may apply to the Conduct Panel to have the order modified, set aside, limited, or revoked. The application shall set forth with specificity the facts that support the request. The opposing party shall have an opportunity to respond to the request within a period of time set by the Hearing Administrator. The Conduct Panel shall respond to the request in writing within ten days after receipt of the request, unless otherwise extended by the Hearing Administrator with the consent of the parties for good cause shown. The Conduct Panel's response shall be served on the Respondent via personal service or overnight commercial courier. The filing of an application under this Rule shall not stay the effectiveness of the suspension order.

(f) Call for Review by the Board of Directors

If there is no pending application to the Conduct Panel to have a suspension order modified, set aside, limited, or revoked, the Board of Directors, in accordance with Rule 10.8, may call for review the Conduct Panel decision on whether to issue a suspension order. A call for review by the Board of Directors shall not stay the effectiveness of a suspension order.

(g) Application to SEC for Review

If there is no call for review by the Board of Directors, sanctions imposed pursuant to this Rule constitute final and immediately effective disciplinary sanctions imposed by the Exchange. If there is a call for review by the Board of Directors, their decision shall constitute final and immediately effective disciplinary sanctions imposed by the Exchange. The right to have any action under this Rule reviewed by the SEC is governed by Section 19 of the Exchange Act. The filing of an application for review shall not stay the effectiveness of a suspension order unless the SEC otherwise orders.

RULE 11 CANCELLATION, SUSPENSION AND REINSTATEMENT

Rule 11.1. Notice of Expulsion or Suspension

(a) An ETP Holder which is expelled or suspended from any self-regulatory organization, encounters financial difficulty or operating inadequacies, fails to perform contracts, or becomes insolvent shall give prompt written notification to the Corporation of any such occurrence.

(b) An ETP Holder shall give prompt written notification to the Corporation with respect to the expulsion or suspension of any associated person of such ETP Holder by any self-regulatory organization.

Rule 11.2. Procedures for Suspension

(a) This Rule sets forth the procedures for certain suspensions, cancellations, bars, limitations and prohibitions on access to the Corporation's services.

- (1) *Summary Suspension.* In accordance with Section 6(d)(3) of the Exchange Act, the Board of Directors of the Corporation or a committee thereof may summarily:
- (i) suspend the trading privileges of an ETP Holder, or associated person of an ETP Holder who has been and is expelled or suspended from any self-regulatory organization or barred or suspended from being associated with a member of any self-regulatory organization;
 - (ii) suspend the trading privileges of an ETP Holder, who is in such financial or operating difficulty that the Corporation determines and so notifies the Commission that such suspension is necessary for the protection of the investors, creditors, ETP Holders or the Corporation;
 - (iii) suspend the trading privileges of an ETP Holder, or associated person of an ETP Holder who is found in violation of any of the prohibited acts as specified in Rule 6.2(a)-(f) that are violations of Rules of the Corporation; or
 - (iv) limit or prohibit any person with respect to access to services offered by the Corporation if subparagraph (i) or (ii) is applicable to such person or, in the case of a person who is not an ETP Holder, if the Corporation determines that such person does not meet the qualification requirements or prerequisites for such access with safety to investors, creditors, ETP Holders or the Corporation.
- (2) *Non-Summary Suspension.* The Corporation also may take the following actions, after written notice, after the passage of any grace period and/or applicable cure period, and after opportunity for hearing:
- (i) cancel ETP trading privileges of an ETP Holder that becomes ineligible for ETP trading privileges, or that continues to be associated with an ineligible person, or suspend or bar a person from continuing to be associated with an ETP Holder because such person is or becomes ineligible for association under Rule 2.19(a);
 - (ii) suspend or cancel trading privileges of an ETP Holder for failure to pay any fees, charges, assessments, or fines to the Corporation under Rule 3.8; or failure to comply with an arbitration award or settlement agreement related to an arbitration or mediation under Rule 12;
 - (iii) cancel trading privileges of an ETP Holder for failure to file or submit or request any report, document, or other information required to be filed with or requested by the Corporation under Rule 10.2(d); or
 - (iv) limit or prohibit any ETP Holder or associated person of an ETP Holder or other person with respect to access to services offered by the Corporation, if the

Corporation determines that such person does not meet the qualification requirements or prerequisites for such access or such person cannot be permitted to continue to have access with safety to investors, creditors, ETP Holders or the Corporation.

(v) suspend all trading rights and privileges of an ETP Holder for failure to comply with Rule 3.10; provided that, in the event of circumstances contemplated by this Rule 11.2(a)(2)(v), the Corporation shall: (1) provide notice to the applicable ETP Holder within five business days of learning of the events contemplated by this Rule 11.2(a)(2)(v); (2) allow the applicable ETP Holder fifteen calendar days to cure any such failure to comply contemplated by this Rule 11.2(a)(2)(v); (3) in the event that the applicable ETP Holder does not cure such failure to comply within such fifteen calendar day cure period, schedule a hearing to occur within thirty calendar days following the expiration of such fifteen calendar day cure period; and (4) render its decision as to the suspension of all trading rights and privileges of the applicable ETP Holder no later than ten calendar days following the date of such hearing.

(b) Any person aggrieved by any summary action taken under Rule 11.2(a)(1) shall be promptly notified of the suspension and the reason therefore, and afforded an opportunity for a hearing by the Corporation in accordance with the provisions of this Rule and any other applicable Rules of the Corporation. The Corporation shall provide the suspended or affected person or organization with a written statement of, and give them an opportunity to be heard upon or defend against, the specific grounds for the suspension or disciplinary proceeding. A record of any such hearing shall be maintained. A determination by the Corporation to continue the suspension or impose a disciplinary sanction shall be supported by a statement setting forth the specific grounds for such suspension or sanction.

(c) Any action taken pursuant to Rule 11.2(a)(1) or (2) shall also be subject to the applicable provisions of Rule 10.13.

Commentary:

.01 In the event a determination is made by the Corporation to take summary action pursuant to this Rule, notice thereof will be sent to the Securities and Exchange Commission. In addition, the Securities and Exchange Commission may on its own motion order, or any person or organization aggrieved by any summary action take under this Rule may apply to the Securities and Exchange Commission for, a stay of such summary action pending the results of a hearing.

Rule 11.3. Effect of Suspension or Cancellation

When an ETP Holder, or associated person of an ETP Holder has its trading privileges suspended or canceled by the Corporation for any reason specified in Rule 11.2(a)(1) or

(2), such a person or organization shall be deprived during the term of the suspension of all rights and trading privileges conferred by the ETP, except as otherwise provided in the Rules of the Corporation. The person or organization having trading privileges suspended or canceled shall remain subject to the disciplinary power of the Corporation with respect to any disciplinary action as provided by the Rules of the Corporation.

Rule 11.4. Disciplinary Measures During Suspension

An ETP Holder, or associated person of an ETP Holder whose trading privileges are suspended under the provisions of Rule 11.2(a)(1) or (2) may be disciplined pursuant to the Rules of the Corporation for any offense committed either before or after the announcement of the suspension, in all respects as if no suspension were in effect.

Rule 11.5. Investigation Following Summary Suspension

Every ETP Holder, or associated person of an ETP Holder whose trading privileges are suspended under the provisions of Rule 11.2(a)(1) shall immediately afford every facility required by the Corporation for the investigation of its affairs as required by the Board of Directors and shall, after the notification of the suspension, file with the Corporation a written statement covering all information required by the Corporation.

Rule 11.6. Grounds for Cancellation

If an ETP Holder, or associated person of an ETP Holder has had trading privileges suspended under the provisions of Rule 11.2(a)(1) and such person or organization does not request a hearing within thirty (30) calendar days to review such suspension or at such hearing it is determined that the suspension was properly imposed, and such person or organization, has not within forty-five (45) calendar days after the suspension remedied the reason for such suspension and has not applied for reinstatement, the Board may cancel the trading privileges of such person or organization. If application for reinstatement is made within forty-five (45) calendar days of suspension as provided in this Rule, and such application is disapproved, the Board may cancel the trading privileges of such person or organization.

Rule 11.7. Reinstatement

When an ETP Holder, or associated person of an ETP Holder has had trading privileges suspended under the provisions of Rule 11.2(a)(1) or (2) applies for reinstatement, it must be demonstrated to the satisfaction of the Corporation that the problem or problems responsible for such suspension have been satisfactorily resolved. If such problem involves financial difficulty or operating inadequacies, the person or organization shall furnish the Corporation comprehensive financial and operating reports in a form and manner to be prescribed by the Corporation. If the ETP Holder or associated person of an ETP Holder furnishes satisfactory proof of a resolution of the problem or problems responsible for such suspension, then at a meeting of the Board of Directors at which a quorum is present the ETP Holder, or associated person of an ETP Holder may be

reinstated provided not less than a majority of the Directors voting approve the application.

Amended. February 23, 2004 (PCX 04-02).

Rule 11.8. Failure to Obtain Reinstatement

If an ETP Holder or associated person of an ETP Holder whose trading privileges have been suspended under the provisions of this Rule fails or is unable to apply for reinstatement in accordance with Rule 11.7, or fails to obtain reinstatement as therein provided, trading privileges conferred by an ETP will terminate.

Rule 11.9. Failure to Meet the Eligibility or Qualification Standards or Prerequisites for Access to Services

(a) Notice to ETP Holder or Associated Person of ETP Holder of Suspension, Cancellation, Bar, or Limitation or Prohibition on Access to Services

- (1) If an ETP Holder or Associated Person of an ETP Holder does not meet the eligibility or qualification standards set forth in the Exchange's Rules, Exchange staff may provide written notice to such ETP Holder or Associated Person of an ETP Holder stating that the failure to become eligible or qualified will result in a suspension or cancellation of trading privileges or a suspension or bar from associating with any ETP Holder.
- (2) If an ETP Holder or Associated person of an ETP Holder does not meet the prerequisites for access to services offered by the Exchange or an ETP Holder thereof or cannot be permitted to continue to have access to services offered by the Exchange or an ETP Holder thereof with safety to investors, creditors, ETP Holders, or the Exchange, Exchange staff may provide written notice to such ETP Holder or Associated Person of an ETP Holder limiting or prohibiting access to services offered by the Exchange or an ETP Holder thereof.

(b) Service of Notice

Except as provided below, Exchange staff shall serve the ETP Holder or Associated Person of an ETP Holder with such notice. A copy of a notice under this Rule that is served on an Associated Person of an ETP Holder also shall be served on such ETP Holder. When counsel for the ETP Holder or Associated Person of an ETP Holder agrees to accept service of such notice, then Exchange staff shall serve notice on counsel.

(c) Contents of Notice

A notice issued under this Rule shall state the specific grounds and include the factual basis for the Exchange action. The notice shall state when the Exchange action will take effect and explain what the respondent must do to avoid such action. The notice shall

state that the respondent may file a written request for a hearing with the BCC. The notice also shall inform the respondent of the applicable deadline for filing a request for a hearing and shall state that a request for a hearing must set forth with specificity any and all defenses to the Exchange action. In addition, the notice shall explain that the BCC may approve, modify or withdraw any and all sanctions or limitations imposed by the notice, and may impose any other fitting sanction.

(d) Effective Date of Limitation, Prohibition, Suspension, Cancellation or Bar

The limitation, prohibition, suspension, cancellation or bar referenced in a notice issued under this Rule shall become effective 14 days after service of the notice, except that the effective date for a notice of a limitation or prohibition on access to services offered by the Exchange or an ETP Holder thereof with respect to services to which the ETP Holder or Associated Person of an ETP Holder does not have access shall be upon service of the notice. A request for a hearing shall stay the effectiveness of the notice, except that the effectiveness of a notice of a limitation or prohibition on access to services offered by the Exchange or an ETP Holder thereof with respect to services to which the ETP Holder or Associated Person of an ETP Holder does not have access shall not be stayed by a request for a hearing.

(e) Request for Hearing

An ETP Holder or Associated Person of an ETP Holder served with a notice under this Rule may file with the BCC a written request for a hearing. A request for a hearing shall be made within 14 days after service of the notice. A request for a hearing must set forth with specificity any and all defenses to the Exchange action.

(f) Failure to Request Hearing

If an ETP Holder or Associated Person of an ETP Holder does not timely request a hearing, the limitation, prohibition, suspension, cancellation or bar specified in the notice shall become effective 14 days after service of the notice, except that the effective date for a notice of a limitation or prohibition on access to services offered by the Exchange or an ETP Holder with respect to services to which the ETP Holder or Associated Person of an ETP Holder does not have access shall be upon service of the notice. The notice shall constitute final Exchange action if the ETP Holder or Associated Person of an ETP Holder does not request a hearing within 14 days after service of the notice.

(g) Request for Termination of the Limitation, Prohibition or Suspension

An ETP Holder or Associated Person of an ETP Holder subject to a limitation, prohibition or suspension under this Rule may file a written request for termination of the limitation, prohibition or suspension on the ground of full compliance with the notice or decision. Such request shall be filed with the head of the Exchange department or office that issued the notice or, if another department or office is named as the party handling the matter on behalf of the issuing department or office, with the head of the department

or office that is so designated. The appropriate head of the department or office may grant relief for good cause shown.

(h) Hearing

The following procedures shall apply to hearings under this Rule.

- (1) A hearing shall be held within 30 days after a respondent subject to a notice files a written request under paragraph (e) of this Rule.
- (2) The BCC shall issue a notice stating the date, time, and place of the hearing at least 21 days prior to the hearing. Not less than 14 days before the hearing, Exchange staff shall provide to the respondent who requested the hearing, all documents that were considered in issuing the notice.
- (3) Not less than seven days before the hearing, the parties shall exchange proposed exhibit and witness lists. The exhibit and witness lists shall be served by overnight courier.
- (4) The BCC may approve, modify or withdraw any and all sanctions, requirements, restrictions or limitations imposed by the notice and may impose any fitting sanction.
- (5) Within 60 days of the date of the close of the hearing, the BCC shall prepare a proposed written decision and provide it to the Board of Directors. The decision shall include:
 - (A) a statement describing the investigative or other origin of the notice issued under this Rule;
 - (B) the specific statutory or rule provision alleged to have been violated or providing the authority for the Exchange action;
 - (C) a statement setting forth the findings of fact with respect to any act or practice the respondent was alleged to have committed or omitted or any condition specified in the notice;
 - (D) the conclusions of the BCC regarding the alleged violation or condition specified in the notice;
 - (E) a statement of the BCC in support of the disposition of the principal issues raised in the proceeding; and
 - (F) a statement describing any sanction, requirement, restriction or limitation imposed, the reasons therefore, and the date upon which such sanction, requirement, restriction or limitation shall become effective.

- (6) The Board of Directors may, on its own initiative, order review of a decision prepared by the BCC pursuant to Rule 11.9 within 30 days after notice of the decision has been served on the ETP Holder or Associated Person of an ETP Holder.
- (7) The right to have any action pursuant to this Rule reviewed by the SEC is governed by Section 19 of the Exchange Act. The filing of an application for review by the SEC shall not stay the effectiveness of final Exchange action, unless the SEC otherwise orders.

Adopted: July 27, 2016 (NYSEArca-2016-102).

RULE 12 ARBITRATION

Rule 12. Arbitration

(a) General. All arbitrations filed with the Corporation after January 31, 2007 and prior to August 15, 2007 shall be governed by the Code of Arbitration contained in the 600 series of the New York Stock Exchange, L.L.C. Rules ("NYSE Arbitration Rules"), as the same may be in effect from time to time, except that arbitrations filed on or prior to January 31, 2007 shall be governed by NYSE Arca Equities Rule 12 as it was in effect on that date.

The term "member" as used in this Rule 12 and in the NYSE Arbitration Rules shall mean and refer to ETP Holders. From and after August 15, 2007 (i) any dispute, claim or controversy between or among ETP Holders and/or associated persons shall be arbitrated pursuant to the FINRA Dispute Resolution, Inc. ("FINRA DR") Codes of Arbitration Procedure; and, (ii) any dispute, claim or controversy between a customer or non-member and an ETP Holder and/or associated person arising in connection with the business of such ETP Holder and/or in connection with the activities of an associated person, shall be arbitrated pursuant to FINRA DR Codes of Arbitration Procedure as provided by any duly executed and enforceable written agreement, or upon demand of the customer or non-member. Such obligation to arbitrate shall extend only to those matters that are permitted to be arbitrated under FINRA DR Codes of Arbitration Procedure.

(b) Referrals. The Corporation may receive, investigate and take disciplinary action with respect to any referral it receives from a FINRA DR arbitrator of any matter which comes to the attention of such arbitrator during and in connection with the arbitrator's participation in a proceeding, either from the record of the proceeding or from material or communications related to the proceeding, that the arbitrator has reason to believe may constitute a violation of the Corporation's Rules or the federal securities laws.

(c) Failure to Arbitrate or to Pay an Arbitration Award. Any ETP Holder and/or associated person who fails to submit to arbitration a matter required to be arbitrated pursuant to this Rule, or that fails to honor an arbitration award made pursuant to the FINRA DR Codes of Arbitration Procedure, or made under the auspices of any other self-regulatory organization, shall be subject to disciplinary proceedings in accordance with NYSE Arca Equities Rule 10.

(d) Other Actions. The submission of any matter to arbitration as provided for under this Rule shall in no way limit or preclude any right, action or determination by the Corporation that it would otherwise be authorized to adopt, administer or enforce.

RULE 13 LIABILITY OF DIRECTORS AND CORPORATION

Rule 13.1. Liability of Directors

Any provision of the Certificate of Incorporation, Bylaws, or the Rules of the Corporation that provides or purports to provide that the members of the Board of Directors shall not be liable to the Corporation or its ETP Holders for monetary damages for breach of fiduciary duty as a Director shall not be applied in any instance in which such liability arises directly or indirectly as a result of a violation of federal securities laws.

Rule 13.2. Liability of Corporation

(a) Except as otherwise expressly provided in these Rules, neither the Corporation nor its Directors, officers, committee members, employees or agents shall be liable to the ETP Holders of the Corporation or to persons associated therewith for any loss, expense, damages or claims that arise out of the use or enjoyment of the facilities or services afforded by the Corporation, any interruption in or failure or unavailability of any such facilities or services, or any action taken or omitted to be taken in respect to the business of the Corporation except to the extent such loss, expense, damages or claims are attributable to the willful misconduct, gross negligence, bad faith or fraudulent or criminal acts of the Corporation or its officers, employees or agents acting within the scope of their authority. The limitation of liability set forth in this paragraph shall not apply to violations of federal securities laws.

Without limiting the generality of the foregoing and subject to the same exception, the Corporation shall have no liability to any person for any loss, expense, damages or claims that result from any error, omission or delay in calculating or disseminating any current or closing index value, or any reports of transactions in or quotations for securities traded on the Corporation.

The Corporation makes no warranty, express or implied, as to results to be obtained by any person or entity from the use of any data transmitted or disseminated by or on behalf of the Corporation or any reporting authority designated by the Corporation, including but not limited to reports of transactions in or quotations for securities traded on the Corporation, or reports index values or related data, and the Corporation makes no express or implied warranties of merchantability or fitness for a particular purpose or use with respect to any such data. The foregoing limitations of liability and disclaimers shall be in addition to, and not in limitation of, any other provisions of the Bylaws or Rules.

(b) Whenever custody of an unexecuted order is transmitted by an ETP Holder to or through the Corporation's order routing systems, electronic book or automatic executions

systems or to any other automated facility of the Corporation whereby the Corporation assumes responsibility for the transmission or execution of the order, provided that the Corporation has acknowledged receipt of such order, the Corporation's liability for the negligent acts or omissions of its employees or for the failure of its systems or facilities shall not exceed the limits provided in this paragraph (b), and no assets of the Corporation shall be applied or shall be subject to such liability in excess of the following limits:

- (1) As to any one or more claims made by a single ETP Holder growing out of the use or enjoyment of the facilities afforded by the Corporation on a single trading day, the Corporation shall not be liable in excess of the larger of \$100,000, or the amount of any recovery obtained by the Corporation under any applicable insurance maintained by the Corporation;
- (2) As to the aggregate of all claims made by all ETP Holders growing out of the use or enjoyment of the facilities afforded by the Corporation on a single trading day, the Corporation shall not be liable in excess of the larger of \$250,000 or the amount of the recovery obtained by the Corporation under any applicable insurance maintained by the Corporation;
- (3) As to the aggregate of all claims made by all ETP Holders growing out of the use or enjoyment of the facilities afforded by the Corporation during a single calendar month, the Corporation shall not be liable in excess of the larger of \$500,000, or the amount of the recovery obtained by the Corporation under any applicable insurance maintained by the Corporation.

(c) If all of the claims arising out of the use or enjoyment of the facilities afforded by the Corporation cannot be fully satisfied because in the aggregate they exceed the applicable maximum amount of liability provided for in paragraph (b) above, then such maximum amount shall be allocated among all such claims arising on a single trading day or during a single calendar month, as applicable, written notice of which has been given to the Corporation no later than the opening of trading on the next business day following the day on which the use or enjoyment of the Corporation's facilities giving rise to the claim occurred, based on the proportion that each such claim bears to the sum of all such claims.

Rule 13.3. Legal Proceedings Against Directors, Officers, Employees or Agents

No ETP Holder or any other associated person shall institute a lawsuit or other legal proceeding against any Director, officer, employee, agent or other official of the Corporation or any subsidiary of the Corporation, for actions taken or omitted to be taken in connection with the official business of the Corporation or any subsidiary, except to the extent such actions or omissions constitute violations of federal securities laws for which a private right of action exists and except with respect to the Directors of the Corporation, to the extent inconsistent with the Certificate of Incorporation. This Rule

shall not apply to appeals of disciplinary actions or other actions by the Corporation as provided for in the Rules.

Rule 13.4. Corporation's Costs of Defending Legal Proceedings

Any ETP Holder or any other associated person who fails to prevail in a lawsuit or other legal proceeding instituted by such person against the Corporation or any of its Directors, officers, committee members, employees or agents, and related to the business of the Corporation, shall pay to the Corporation all reasonable expenses, including attorneys' fees, incurred by the Corporation in the defense of such proceeding, but only in the event that such expenses exceed Fifty Thousand Dollars (\$50,000.00). This provision shall not apply to disciplinary actions by the Corporation, to administrative appeals of actions of the Corporation or in any specific instance where the Board of Directors has granted a waiver of this Rule.

RULE 14 PLAN OF DELEGATION OF FUNCTIONS BY THE NYSE ARCA, INC. TO NYSE ARCA EQUITIES, INC.

Rule 14.1. NYSE Arca, Inc.

The NYSE Arca, Inc. ("NYSE Arca"), the registered national securities exchange, is the parent company of the wholly-owned subsidiary NYSE Arca Equities Inc. ("NYSE Arca Equities"). The term "Exchange" shall refer to the NYSE Arca and NYSE Arca Equities collectively.

(a) *Functions and Authority of the NYSE Arca.* The NYSE Arca shall have ultimate responsibility for the rules and regulations of the Exchange and its operation and administration. As set forth below in Rule 14.2(a), the NYSE Arca has delegated certain authority and functions to NYSE Arca Equities. Actions taken pursuant to delegated authority, however, remain subject to review, ratification or rejection by the NYSE Arca Board of Directors ("NYSE Arca Board") in accordance with procedures established by that Board. Any function or responsibility as a registered national securities exchange under the Securities Exchange Act of 1934 ("Act"), or as set forth in the Certificate of Incorporation, the Constitution or the NYSE Arca Rules is hereby reserved, except as expressly delegated to NYSE Arca Equities. In addition, the NYSE Arca expressly retains the following authority and functions:

- (1) To exercise overall responsibility for ensuring that the Exchange's statutory and self-regulatory obligations and functions are fulfilled.
- (2) To delegate authority to NYSE Arca Equities to take actions on behalf of the NYSE Arca.
- (3) In the NYSE Arca's role as the sole shareholder of NYSE Arca Equities, to elect the Board of Directors of the NYSE Arca Equities ("NYSE Arca Equities Board") pursuant to a shareholder agreement.

- (4) To review the rulemaking and disciplinary decisions of NYSE Arca Equities (See Rule 14.2(b) below).
- (5) To coordinate actions of the NYSE Arca Equities Board as necessary.
- (6) To administer common overhead and technology of NYSE Arca Equities and NYSE Arca.
- (7) To manage external Exchange relations on major policy issues.
- (8) To direct NYSE Arca Equities to take action necessary to effectuate the purposes and functions of the Exchange.
- (9) To take action in an area of responsibility delegated to NYSE Arca Equities in Rule 14.2(a).

(b) *Access to and Status of Officers, Directors, Employees, Books, Records, and Premises of NYSE Arca Equities.* Notwithstanding the delegation of authority to NYSE Arca Equities, as set forth in Rule 14.2(a) below, the staff, books, records, premises, officers, directors, employees and agents of the NYSE Arca Equities are subject to the oversight of the NYSE Arca pursuant to the Act, and all officers, directors, employees, and agents of NYSE Arca Equities are officers, directors, employees, and agents of the NYSE Arca for purposes of the Act. The books and records of NYSE Arca Equities shall be subject at all times to inspection and copying by the NYSE Arca.

Rule 14.2. NYSE Arca Equities Inc. ("NYSE Arca Equities")

(a) *Delegation of Functions and Authority.*

- (1) Subject to Rule 14.1(a)(9), the NYSE Arca hereby delegates to NYSE Arca Equities and its subsidiary Pacific Clearing Corporation and NYSE Arca Equities assumes the following responsibilities and functions with respect to the equities business of the Exchange:
 - (A) To establish and interpret rules and regulations and provide exemptions for ETP Holders or associated persons including, but not limited to trading rules, fees, access to and use of system facilities and arbitration procedures.
 - (B) To determine regulatory and trading policies, including the development and adoption of necessary or appropriate rule changes, relating to the business conduct and trading activities of ETP Holders and associated persons. This includes, but is not limited to,
 - (i) arbitration of disputes among and between ETP Holders and associated persons and customers arising from transactions on the facility;

- (ii) financial responsibility;
 - (iii) qualifications for ETP Holders and associated persons;
 - (iv) clearance and settlement of securities transactions and other financial responsibility and operational matters affecting ETP Holders, and associated persons in general and securities traded on NYSE Arca Equities;
 - (v) administration, interpretation, and enforcement of NYSE Arca Equities rules; and
 - (vi) administration and enforcement of the federal securities laws, and other laws, rules and regulations that NYSE Arca Equities has the authority to administer or enforce.
- (C) To take necessary or appropriate action to assure compliance with the Rules and procedures of NYSE Arca Equities, the federal securities laws, and other laws, rules and regulations that the NYSE Arca Equities has the authority to administer or enforce, through examination, surveillance, investigation, enforcement, disciplinary, and other programs.
- (D) To administer programs and systems for the surveillance and enforcement of rules governing ETP Holders and associated persons' conduct and trading activities on NYSE Arca Equities.
- (E) To examine and investigate ETP Holders and associated persons to determine if they have violated the Rules or procedures of NYSE Arca Equities, the federal securities laws, and other laws, rules, and regulations that the Exchange has the authority to administer, interpret, or enforce.
- (F) To administer the NYSE Arca Equities' disciplinary programs, including investigations, adjudication of cases, and the imposition of fines and other sanctions.
- (G) To conduct arbitrations, mediations, and other dispute resolution programs.
- (H) To determine whether ETP Holder applicants have met the requirements established by NYSE Arca Equities for holding an ETP.
- (I) To determine whether persons seeking to register as associated persons of ETP Holders have met such qualifications for registration as may be established by NYSE Arca Equities, including whether statutorily disqualified persons will be permitted to associate with particular ETP Holders and the conditions of such association.

- (J) To place restrictions on the business activities of ETP Holders and associated persons consistent with the public interest, the protection of investors, and the federal securities laws.
 - (K) To establish and assess fees and other charges on ETP Holders, associated persons, issuers and others using the products, services or facilities of NYSE Arca Equities.
 - (L) To oversee the operation of the trading facilities of NYSE Arca Equities.
 - (M) To provide, maintain and supervise a communications network infrastructure for the efficient processing and handling of quotations, orders, transaction reports, and comparisons of transactions.
 - (N) To collect, process and consolidate the information requisite to operation of the surveillance audit trail.
 - (O) To develop and adopt rule changes applicable to the collection, processing, and dissemination of quotation and transaction information for securities traded on NYSE Arca Equities.
 - (P) To develop and adopt Rules, interpretations, policies, and procedures and provide exemptions to maintain and enhance the integrity, fairness, efficiency, and competitiveness of NYSE Arca Equities.
 - (Q) To administer the Exchange's involvement in National Market System Plans related to NYSE Arca Equities.
 - (R) To develop, adopt, administer and enforce policies and Rules of NYSE Arca Equities governing listing standards applicable to securities traded on NYSE Arca Equities and the issuers of those securities.
 - (S) To manage external relations on matters related to enforcement, regulatory and other policy issues as well as on matters related to trading on, and the operation and functions of, NYSE Arca Equities with Congress, the Securities and Exchange Commission, state regulators, other self-regulatory organizations, business groups, and the public.
 - (T) To establish the annual budget and business plan for NYSE Arca Equities.
 - (U) To determine the allocation of NYSE Arca Equities resources.
- (2) All action taken pursuant to authority delegated pursuant to (1) shall be subject to the review, ratification, or rejection by the NYSE Arca Board in accordance with procedures established by the NYSE Arca Board.

(b) *Rule Filings.* The NYSE Arca Board shall review and ratify a rule change adopted by the NYSE Arca Equities Board before the rule change becomes a final action of the Exchange.

(c) *Supplemental Delegation Regarding Management and Committees.* The NYSE Arca Equities Board may designate the Chief Executive Officer, another designated officer or one or more committees and delegate to such person or committee such powers and authority, as necessary and appropriate, to act on behalf of the NYSE Arca Equities Board in carrying out the functions and authority delegated to NYSE Arca Equities by the NYSE Arca. Such delegations shall be in conformance with law and the Bylaws and Rules of NYSE Arca Equities. Any action taken by a NYSE Arca Equities officer or committee pursuant to delegated authority shall be subject to review, ratification or rejection by the NYSE Arca Equities Board in accordance with procedures established by the NYSE Arca Equities Board.

Rule 14.3. NYSE Arca, L.L.C. and Archipelago Securities, L.L.C.

(a) *Access to and Status of Books, Records, Premises, Officers, Directors, Agents and Employees of NYSE Arca, L.L.C. and Archipelago Securities, L.L.C.* The books, records, premises, officers, directors, agents and employees of NYSE Arca, L.L.C. and its broker-dealer affiliate, Archipelago Securities, L.L.C. ("Arca Securities"), to the extent that those business activities of Arca Securities are deemed a facility of NYSE Arca Equities, shall be deemed to be the books, records, premises, officers, directors, agents and employees of NYSE Arca and NYSE Arca Equities for purposes of and subject to oversight pursuant to the Securities Exchange Act. The books and records of NYSE Arca, L.L.C. and Arca Securities, to the extent that those business activities of Arca Securities are deemed a facility of NYSE Arca Equities, shall be subject at all times to inspection and copying by the NYSE Arca, NYSE Arca Equities and the SEC.

(b) Reserved.

(c) Paragraph (a) above shall not be deemed to create any rights or benefits for any person or entity other than the SEC.

(d) *Location of Books and Records.* NYSE Arca, L.L.C. must maintain all books and records related to the NYSE Arca within the United States.

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

(f) NYSE Arca, NYSE Arca Equities or NYSE Arca, L.L.C. may furnish to Arca Securities the same information on the same terms that NYSE Arca, NYSE Arca Equities or NYSE Arca, L.L.C. makes available in the normal course of business to any other ETP Holder or Sponsored Participant.

CONDUCT RULES

Rule 2010 Standards of Commercial Honor and Principles of Trade

An ETP Holder, in the conduct of its business, shall observe high standards of commercial honor and just and equitable principles of trade.

Rule 2020 Use of Manipulative, Deceptive or Other Fraudulent Devices

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

Rule 2150 Improper Use of Customers' Securities or Funds; Prohibition Against Guarantees and Sharing in Accounts

(a) Improper Use

No ETP Holder or person associated with an ETP Holder shall make improper use of a customer's securities or funds.

(b) Prohibition Against Guarantees

No ETP Holder or person associated with an ETP Holder shall guarantee a customer against loss in connection with any securities transaction or in any securities account of such customer.

(c) Sharing in Accounts; Extent Permissible

(1)(A) Except as provided in paragraph (c)(2), no ETP Holder or person associated with an ETP Holder shall share directly or indirectly in the profits or losses in any account of a customer carried by the ETP Holder or any other ETP Holder; provided, however, that an ETP Holder or person associated with an ETP Holder may share in the profits or losses in such an account if:

- (i) such person associated with an ETP Holder obtains prior written authorization from the ETP Holder employing the associated person;
- (ii) such ETP Holder or person associated with an ETP Holder obtains prior written authorization from the customer; and

(iii) such ETP Holder or person associated with an ETP Holder shares in the profits or losses in any account of such customer only in direct proportion to the financial contributions made to such account by either the ETP Holder or person associated with an ETP Holder.

(B) Exempt from the direct proportionate share limitation of paragraph (c)(1)(A)(iii) are accounts of the immediate family of such ETP Holder or person associated with an ETP Holder. For purposes of this Rule, the term "immediate family" shall include parents, mother-in-law or father-in-law, husband or wife, children or any relative to whose support the ETP Holder or person associated with an ETP Holder otherwise contributes directly or indirectly

(2) Notwithstanding the prohibition of paragraph (c)(1), an ETP Holder or person associated with an ETP Holder that is acting as an investment adviser may receive compensation based on a share in profits or gains in an account if:

(A) such person associated with an ETP Holder seeking such compensation obtains prior written authorization from the ETP Holder employing the associated person;

(B) such ETP Holder or person associated with an ETP Holder seeking such compensation obtains prior written authorization from the customer; and

(C) all of the conditions in Rule 205-3 of the Investment Advisers Act (as the same may be amended from time to time) are satisfied.

Commentary:

.01 Inapplicability of Rule to Certain Guarantees. For purposes of paragraph (b) of this Rule, a "guarantee" that is extended to all holders of a particular security by an issuer as part of that security generally would not be subject to the prohibition against guarantees.

.02 Permissible Reimbursement by ETP Holder of Certain Losses. Nothing in this Rule shall preclude an ETP Holder, but not an associated person of the ETP Holder, from determining on an after-the-fact basis, to reimburse a customer for transaction losses; provided, however, that the ETP Holder shall comply with all reporting requirements that may be applicable to such payment. For example, if the payment can reasonably be construed as a settlement, the ETP Holder shall report the payment as a settlement under the applicable reporting requirement(s). In addition, nothing in this Rule shall preclude an ETP Holder, but not an associated person of the ETP Holder, from correcting a bona fide error. This Commentary .02 does not apply to an associated person of an ETP Holder because of the concern that any such payment may conceal individual misconduct.

.03 Record Retention. For purposes of paragraph (c) of this Rule, ETP Holders shall preserve the required written authorization(s) for at least six years after the date the account is closed.

.04 Applicability of Other Rules to Sharing Arrangements. ETP Holders and associated persons should be aware that participation in a sharing arrangement permitted under paragraph (c) of this Rule does not affect the applicability of other rules of the Corporation, including paragraph (b) of this Rule, or certain Exchange Rules, including Rules 9.3(a), 9.3(b) and 3270, to such sharing arrangement.

Rule 2262 Disclosure of Control Relationship with Issuer

A ETP Holder controlled by, controlling, or under common control with, the issuer of any security, shall, before entering into any contract with or for a customer for the purchase or sale of such security, disclose to such customer the existence of such control, and if such disclosure is not made in writing, it shall be supplemented by the giving or sending of written disclosure at or before the completion of the transaction.

Rule 2269 Disclosure of Participation or Interest in Primary or Secondary Distribution

A ETP Holder that is acting as a broker for a customer or for both such customer and some other person, or an ETP Holder that is acting as a dealer and that receives or has promise of receiving a fee from a customer for advising such customer with respect to securities, shall, at or before the completion of any transaction for or with such customer in any security in the primary or secondary distribution of which such ETP Holder is participating or is otherwise financially interested, give such customer written notification of the existence of such participation or interest.

Rule 3220 Influencing or Rewarding Employees of Others

(a) No ETP Holder or person associated with an ETP Holder shall, directly or indirectly, give or permit to be given anything of value, including gratuities, in excess of one hundred dollars per individual per year to any person, principal, proprietor, employee, agent or representative of another person where such payment or gratuity is in relation to the business of the employer of the recipient of the payment or gratuity. A gift of any kind is considered a gratuity.

(b) This Rule shall not apply to contracts of employment with or to compensation for services rendered by persons enumerated in paragraph (i) provided that there is in existence prior to the time of employment or before the services are rendered, a written agreement between the ETP Holder and the person who is to be employed to perform such services. Such agreement shall include the nature of the proposed employment, the amount of the proposed compensation, and the written consent of such person's employer or principal.

(c) A separate record of all payments or gratuities in any amount known to the ETP Holder, the employment agreement referred to in paragraph (ii) and any employment compensation paid as a result thereof shall be retained by the ETP Holder for the period specified by Rule 17a-4 under the Securities Exchange Act of 1934.

Rule 3270 Outside Business Activities of Registered Persons

No registered person may be an employee, independent contractor, sole proprietor, officer, director or partner of another person, or be compensated, or have the reasonable expectation of compensation, from any other person as a result of any business activity outside the scope of the relationship with his or her ETP Holder, unless he or she has provided prior written notice to the ETP Holder, in such form as specified by the ETP Holder. Passive investments and activities subject to the requirements of NASD Rule 3040 shall be exempted from this requirement.

Commentary:

.01 Obligations of ETP Holder Receiving Notice. Upon receipt of a written notice under Rule 3270, an ETP Holder shall consider whether the proposed activity will: (1) interfere with or otherwise compromise the registered person's responsibilities to the ETP Holder and/or the ETP Holder's customers or (2) be viewed by customers or the public as part of the ETP Holder's business based upon, among other factors, the nature of the proposed activity and the manner in which it will be offered. Based on the ETP Holder's review of such factors, the ETP Holder must evaluate the advisability of imposing specific conditions or limitations on a registered person's outside business activity, including where circumstances warrant, prohibiting the activity. An ETP Holder also must evaluate the proposed activity to determine whether the activity properly is characterized as an outside business activity or whether it should be treated as an outside securities activity subject to the requirements of NASD Rule 3040. An ETP Holder must keep a record of its compliance with these obligations with respect to each written notice received and must preserve this record for the period of time and accessibility specified in SEC Rule 17a-4(e)(1).

Rule 5190 Notification Requirements for Offering Participants

(a) General

This Rule 5190 sets forth the notice requirements applicable to all ETP Holders participating in offerings of securities for purposes of monitoring compliance with the provisions of SEC Regulation M. In addition to the requirements under this Rule 5190, ETP Holders also must comply with all applicable rules governing the withdrawal of quotations in accordance with SEC Regulation M.

(b) Definitions

For purposes of this Rule, the following terms shall have the meanings as set forth in Rules 100 and 101 of SEC Regulation M: "actively traded", "affiliated purchaser", "covered security", "distribution", "distribution participant", "offering price", "penalty bid", "restricted period", "selling security holder", "stabilizing" and "syndicate covering transaction".

(c) Notice Relating to Distributions of Securities Subject to a Restricted Period Under SEC Regulation M

- (1) An ETP Holder acting as a manager (or in a similar capacity) of a distribution of any security that is a covered security subject to a restricted period under Rule 101 of SEC Regulation M shall provide written notice to the Exchange, in such form as specified by the Exchange, of the following:
 - (A) the ETP Holder's determination as to whether a one-day or five-day restricted period applies under Rule 101 of SEC Regulation M and the basis for such determination, including the contemplated date and time of the commencement of the restricted period, the security name and symbol, and identification of the distribution participants and affiliated purchasers, no later than the business day prior to the first complete trading session of the applicable restricted period, unless later notification is necessary under specific circumstances;
 - (B) the pricing of the distribution, including the security name and symbol, the type of security, the number of shares offered, the offering price, the last sale before the distribution, the pricing basis, the SEC effective date and time, the trade date, the restricted period, and identification of the distribution participants and affiliated purchasers, no later than the close of business the next business day following the pricing of the distribution, unless later notification is necessary under specific circumstances; and
 - (C) the cancellation or postponement of any distribution for which prior notification of commencement of the restricted period has been submitted under paragraph (c)(1)(A) above, immediately upon the cancellation or postponement of such distribution. If no ETP Holder is acting as a manager (or in a similar capacity) of such distribution, then each ETP Holder that is a distribution participant or affiliated purchaser shall provide the notice required under this paragraph (c)(1), unless another ETP Holder has assumed responsibility in writing for compliance therewith.
- (2) Any ETP Holder that is an issuer or selling security holder in a distribution of any security that is a covered security subject to a restricted period under Rule 102 of SEC Regulation M shall comply with the notice requirements of paragraph (c)(1), unless another ETP Holder has assumed responsibility in writing for compliance therewith.

(d) Notice Relating to Distributions of "Actively Traded" Securities Under SEC Regulation M

An ETP Holder acting as a manager (or in a similar capacity) of a distribution of any security that is considered an "actively traded" security under Rule 101 of SEC Regulation M shall provide written notice to the Exchange, in such form as specified by the Exchange, of the following:

- (1) the ETP Holder's determination that no restricted period applies under Rule 101 of SEC Regulation M and the basis for such determination; and
- (2) the pricing of the distribution, including the security name and symbol, the type of security, the number of shares offered, the offering price, the last sale before the distribution, the pricing basis, the SEC effective date and time, the trade date, and identification of the distribution participants and affiliated purchasers,

Such notice shall be provided no later than the close of business the next business day following the pricing of the distribution, unless later notification is necessary under specific circumstances.

If no ETP Holder is acting as a manager (or in a similar capacity) of such distribution, then each ETP Holder that is a distribution participant or an affiliated purchaser shall provide the notice required under this paragraph (d), unless another ETP Holder has assumed responsibility in writing for compliance therewith.

(e) Notice of Stabilizing Bids, Penalty Bids and Syndicate Covering Transactions in Securities

An ETP Holder placing or transmitting a stabilizing bid, imposing a penalty bid, or engaging in a syndicate covering transaction in connection with an offering of a security pursuant to Rule 104 of SEC Regulation M shall, unless another ETP Holder has assumed responsibility in writing for compliance with this paragraph (e), provide written notice to the Exchange, in such form as specified by the Exchange, of the following:

- (1) the ETP Holder's intention to conduct such activity, prior to placing or transmitting the stabilizing bid, imposing the penalty bid or engaging in the first syndicate covering transaction, including identification of the security and its symbol and the date such activity will occur; and
- (2) confirmation that the ETP Holder has placed or transmitted a stabilizing bid, imposed a penalty bid or engaged in a syndicate covering transaction, within one business day of completion of such activity, including identification of the security and its symbol, the total number of shares and the date(s) of such activity.

Rule 5210 Publication of Transactions and Quotations

No ETP Holder shall publish or circulate, or cause to be published or circulated, any notice, circular, advertisement, newspaper article, investment service, or communication of any kind which purports to report any transaction as a purchase or sale of any security unless such ETP Holder believes that such transaction was a bona fide purchase or sale of such security; or which purports to quote the bid price or asked price for any security, unless such ETP Holder believes that such quotation represents a bona fide bid for, or offer of, such security.

Supplementary Material:

.01 Manipulative and Deceptive Quotations. It shall be deemed inconsistent with Rules 2010 (Standards of Commercial Honor and Principles of Trade), 2020 (Use of Manipulative, Deceptive or Other Fraudulent Devices) and 5210 (Publication of Transactions and Quotations) for a ETP Holder to publish or circulate or cause to be published or circulated, by any means whatsoever, any report of any securities transaction or of any purchase or sale of any security unless such ETP Holder knows or has reason to believe that such transaction was a bona fide transaction, purchase or sale.

Similarly, it shall be deemed inconsistent with Rules 2010, 2020 and 5210 for a ETP Holder, for itself or for any other person, to publish or circulate or to cause to be published or circulated, by any means whatsoever, any quotation for any security without having reasonable cause to believe that such quotation is a bona fide quotation, is not fictitious and is not published or circulated or caused to be published or circulated for any fraudulent, deceptive or manipulative purpose.

For the purposes of this Rule, the term "quotation" shall include any bid or offer or any formula, such as "bid wanted" or "offer wanted," designed to induce any person to make or submit any bid or offer.

Rule 5220. Disruptive Quoting and Trading Activity Prohibited

(a) No ETP Holder or associated person of an ETP Holder shall engage in or facilitate disruptive quoting and trading activity on the Exchange, including acting in concert with other persons to effect such activity.

(b) For purposes of this rule, disruptive quoting and trading activity shall include a frequent pattern in which the following facts are present:

(1) Disruptive Quoting and Trading Activity Type 1:

(A) a party enters multiple limit orders on one side of the market at various price levels (the "Displayed Orders"); and

- (B) following the entry of the Displayed Orders, the level of supply and demand for the security changes; and
- (C) the party enters one or more orders on the opposite side of the market of the Displayed Orders (the “Contra-Side Orders”) that are subsequently executed; and
- (D) following the execution of the Contra-Side Orders, the party cancels the Displayed Orders.

(3) Disruptive Quoting and Trading Activity Type 2:

- (A) a party narrows the spread for a security by placing an order inside the national best bid and national best offer (“NBBO”); and
- (B) the party then submits an order on the opposite side of the market that executes against another market participant that joined the new inside market established by the order described in paragraph (A).

(c) Applicability. For purposes of this Rule, disruptive quoting and trading activity shall include a frequent pattern in which the facts listed above are present. Unless otherwise indicated, the order of the events indicating the pattern does not modify the applicability of the Rule. Further, disruptive quoting and trading activity includes a pattern or practice in which all of the quoting and trading activity is conducted on the Exchange as well as a pattern or practice in which some portion of the quoting or trading activity is conducted on the Exchange and the other portions of the quoting or trading activity is conducted on one or more other exchanges.

Rule 5320 Prohibition Against Trading Ahead of Customer Orders

(a) Except as provided herein, an ETP Holder that accepts and holds an order in an equity security from its own customer or a customer of another broker-dealer without immediately executing the order is prohibited from trading that security on the same side of the market for its own account at a price that would satisfy the customer order, unless it immediately thereafter executes the customer order up to the size and at the same or better price at which it traded for its own account.

(b) An ETP Holder must have a written methodology in place governing the execution and priority of all pending orders that is consistent with the requirements of this Rule and NASD Rule 2320. An ETP Holder also must ensure that this methodology is consistently applied.

Commentary:

.01 Large Orders and Institutional Account Exceptions. With respect to orders for customer accounts that meet the definition of an

"institutional account" as defined in NASD Rule 3110, or for orders of 10,000 shares or more (unless such orders are less than \$100,000 in value), an ETP Holder is permitted to trade a security on the same side of the market for its own account at a price that would satisfy such customer order, provided that the ETP Holder has provided clear and comprehensive written disclosure to such customer at account opening and annually thereafter that:

- (a) discloses that the ETP Holder may trade proprietarily at prices that would satisfy the customer order, and
- (b) provides the customer with a meaningful opportunity to opt in to the Rule 5320 protections with respect to all or any portion of its order.

If the customer does not opt in to the Rule 5320 protections with respect to all or any portion of its order, the ETP Holder may reasonably conclude that such customer has consented to the ETP Holder trading a security on the same side of the market for its own account at a price that would satisfy the customer's order.

In lieu of providing written disclosure to customers at account opening and annually thereafter, an ETP Holder may provide clear and comprehensive oral disclosure to and obtain consent from the customer on an order-by-order basis, provided that the ETP Holder documents who provided such consent and such consent evidences the customer's understanding of the terms and conditions of the order.

.02 No-Knowledge Exception

(a) With respect to NMS stocks, as defined in Rule 600 of SEC Regulation NMS, if an ETP Holder implements and utilizes an effective system of internal controls, such as appropriate information barriers, that operate to prevent one trading unit from obtaining knowledge of customer orders held by a separate trading unit, those other trading units trading in a proprietary capacity may continue to trade at prices that would satisfy the customer orders held by the separate trading unit. An ETP Holder that structures its order handling practices in NMS stocks to permit its market-making desk to trade at prices that would satisfy customer orders held by a separate trading unit must disclose in writing to its customers, at account opening and annually thereafter, a description of the manner in which customer orders are handled by the ETP Holder and the circumstances under which the ETP Holder may trade proprietarily at its market-making desk at prices that would satisfy the customer order.

(b) If an ETP Holder implements and utilizes appropriate information barriers in reliance on this exception, the ETP Holder must uniquely identify such information barriers as prescribed in FINRA Rule 7440(b)(19), which is incorporated by reference in NYSE Arca Equities Rule 7440.

.03 Riskless Principal Exception. The obligations under this Rule shall not apply to an ETP Holder's proprietary trade if such proprietary trade is for the purposes of facilitating the execution, on a riskless principal basis, of an order from a customer (whether its own customer or the customer of another broker-dealer) (the "facilitated order"), provided that the ETP Holder:

- (a) submits a report, contemporaneously with the execution of the facilitated order, identifying the trade as riskless principal to the Exchange (or another self-regulatory organization if not required under Exchange rules); and
- (b) has written policies and procedures to ensure that riskless principal transactions for which the ETP Holder is relying upon this exception comply with applicable Exchange rules. At a minimum these policies and procedures must require that the customer order was received prior to the offsetting principal transaction, and that the offsetting principal transaction is at the same price as the customer order exclusive of any markup or markdown, commission equivalent or other fee and is allocated to a riskless principal or customer account in a consistent manner and within 60 seconds of execution.

An ETP Holder must have supervisory systems in place that produce records that enable the ETP Holder and the Exchange to reconstruct accurately, readily, and in a time-sequenced manner all facilitated orders for which the ETP Holder relies on this exception.

.04 ISO Exception. An ETP Holder shall be exempt from the obligation to execute a customer order in a manner consistent with this Rule with regard to trading for its own account that is the result of an intermarket sweep order routed in compliance with Rule 600(b)(30)(ii) of SEC Regulation NMS ("ISO") where the customer order is received after the ETP Holder routed the ISO. Where an ETP Holder routes an ISO to facilitate a customer order and that customer has consented to not receiving the better prices obtained by the ISO, the ETP Holder also shall be exempt with respect to any trading for its own account that is the result of the ISO with respect to the consenting customer's order.

.05 Odd Lot and Bona Fide Error Transaction Exceptions. The obligations under this Rule shall not apply to an ETP Holder's proprietary trade that is (1) to offset a customer order that is in an

amount less than a normal unit of trading; or (2) to correct a bona fide error. An ETP Holder is required to demonstrate and document the basis upon which a transaction meets the bona fide error exception.

.06 Minimum Price Improvement Standards. The minimum amount of price improvement necessary for an ETP Holder to execute an order on a proprietary basis when holding an unexecuted limit order in that same security, and not be required to execute the held limit order is as follows:

- (a) For customer limit orders priced greater than or equal to \$1.00, the minimum amount of price improvement required is \$0.01 for NMS stocks;
- (b) For customer limit orders priced greater than or equal to \$0.01 and less than \$1.00, the minimum amount of price improvement required is the lesser of \$0.01 or one-half (1/2) of the current inside spread;
- (c) For customer limit orders priced less than \$0.01 but greater than or equal to \$0.001, the minimum amount of price improvement required is the lesser of \$0.001 or one-half (1/2) of the current inside spread;
- (d) For customer limit orders priced less than \$0.001 but greater than or equal to \$0.0001, the minimum amount of price improvement required is the lesser of \$0.0001 or one-half (1/2) of the current inside spread;
- (e) For customer limit orders priced less than \$0.0001 but greater than or equal to \$0.00001, the minimum amount of price improvement required is the lesser of \$0.00001 or one-half (1/2) of the current inside spread;
- (f) For customer limit orders priced less than \$0.00001, the minimum amount of price improvement required is the lesser of \$0.000001 or one-half (1/2) of the current inside spread; and
- (g) For customer limit orders priced outside the best inside market, the minimum amount of price improvement required must either meet the requirements set forth above or the ETP Holder must trade at a price at or inside the best inside market for the security.

In addition, if the minimum price improvement standards above would trigger the protection of a pending customer limit order, any better-priced customer limit order(s) must also be protected under this Rule, even if those better-priced limit orders would not be directly triggered under the minimum price improvement standards above.

.07 Order Handling Procedures. An ETP Holder must make every effort to execute a marketable customer order that it receives fully and promptly. An ETP Holder that is holding a customer order that is marketable and has not been immediately executed must make every effort to cross such order with any other order received by the ETP Holder on the other side of the market up to the size of such order at a price that is no less than the best bid and no greater than the best offer at the time that the subsequent order is received by the ETP Holder and that is consistent with the terms of the orders. In the event that an ETP Holder is holding multiple orders on both sides of the market that have not been executed, the ETP Holder must make every effort to cross or otherwise execute such orders in a manner that is reasonable and consistent with the objectives of this Rule and with the terms of the orders. An ETP Holder can satisfy the crossing requirement by contemporaneously buying from the seller and selling to the buyer at the same price.

.08 Trading Outside Normal Market Hours. An ETP Holder generally may limit the life of a customer order to the period of normal market hours of 6:30 a.m. to 1:00 p.m. Pacific Standard Time. However, if the customer and ETP Holder agree to the processing of the customer's order outside normal market hours, the protections of this Rule shall apply to that customer's order(s) at all times the customer order is executable by the ETP Holder.

Adopted: August 18, 2011 (NYSEArca-2011-57).

ORDER AUDIT TRAIL SYSTEM

Rule 7410. Definitions

For purposes of the Rule 7400 Series:

- (a) Terms shall have the same meaning as those defined in the Exchange Rules, unless otherwise specified.
- (b) "Bunched Order" shall mean two or more orders that are aggregated prior to execution.
- (c) "Customer" shall mean a person other than a broker or dealer.
- (d) "Electronic Communication Network" shall mean any electronic system that widely disseminates to third parties orders entered therein by an exchange market maker or over-the-counter market maker, and permits such orders to be executed in whole or in part, and as further defined in Rule 600(b)(23) of SEC Regulation NMS.

- (e) "Electronic Order" shall mean an order captured by an ETP Holder in an electronic order-routing or execution system.
- (f) "Exchange System" shall mean the service provided by the Exchange that provides for the automated execution and reporting of transactions in NMS stocks.
- (g) "Index Arbitrage" shall mean a trading strategy in which pricing is based on discrepancies between a "basket" or group of stocks and the derivative index product (i.e. a basis trade) involving the purchase or sale of a "basket" or group of stocks in conjunction with the purchase or sale, or intended purchase or sale, of one or more derivative index products in an attempt to profit by the price difference between the "basket" or group of stocks and the derivative index products. While the purchase or sale of the stocks must be in conjunction with the purchase or sale of derivative index products, the transaction need not be executed contemporaneously to be considered index arbitrage. The term "derivative index products" refers to cash-settled options or futures contracts on index stock groups, and options on any such futures contracts.
- (h) "Intermarket sweep order" shall have the same meaning as contained in Rule 600(b)(30) of SEC Regulation NMS.
- (i) "Manual Order" shall mean an order that is captured by an ETP Holder other than in an electronic order-routing or execution system.
- (j) "NMS stock" shall have the same meaning as contained in Rule 600(b)(47) of SEC Regulation NMS.
- (k) "Order" shall mean any oral, written, or electronic instruction to effect a transaction in an NMS stock that is received by an ETP Holder from another person for handling or execution, or that is originated by a department of an ETP Holder for execution by the same or another ETP Holder, other than any such instruction to effect a proprietary transaction originated by a trading desk in the ordinary course of an ETP Holder's market making activities.
- (l) "Order Audit Trail System" shall mean the automated system owned and operated by FINRA that is designed to capture order information in NMS stocks reported by ETP Holders for integration with trade and quotation information to provide the Exchange with an accurate time sequenced record of orders and transactions.
- (m) "Program Trading" means either (A) index arbitrage or (B) any trading strategy involving the related purchase or sale of a "basket" or group of 15 or more stocks. Program trading includes the purchases or sales of stocks that are part of a coordinated trading strategy, even if the purchases or sales are neither entered nor executed contemporaneously, nor part of a trading strategy involving options or futures contracts on an index stock group, or options on any such futures contracts, or otherwise relating to a stock market index.

- (n) "Reporting Agent" shall mean a third party that enters into any agreement with an ETP Holder pursuant to which the Reporting Agent agrees to fulfill such ETP Holder's obligations under Rule 7450.
- (o) "Reporting ETP Holder" shall mean an ETP Holder that receives or originates an order and has an obligation to record and report information under Rules 7440 and 7450. An ETP Holder shall not be considered a Reporting ETP Holder in connection with an order, if the following conditions are met:
- (1) the ETP Holder engages in a non-discretionary order routing process, pursuant to which it immediately routes, by electronic or other means, all of its orders to a single receiving Reporting ETP Holder;
 - (2) the ETP Holder does not direct and does not maintain control over subsequent routing or execution by the receiving Reporting ETP Holder;
 - (3) the receiving Reporting ETP Holder records and reports all information required under Rules 7440 and 7450 with respect to the order; and
 - (4) the ETP Holder has a written agreement with the receiving Reporting ETP Holder specifying the respective functions and responsibilities of each party to effect full compliance with the requirements of Rules 7440 and 7450.
- (p) "Proprietary Trading Firm" shall mean an ETP Holder that trades its own capital and that does not have "customers," as that term is defined in NYSE Arca Equities Rule 7410(c), and that is not a FINRA member. The funds used by a Proprietary Trading firm must be exclusively firm funds and all trading must be in the firm's accounts. Traders must be owners of, employees of, or contractors to the firm.

Rule 7420. Applicability

- (a) Unless otherwise indicated, the requirements of the Rule 7400 Series are in addition to the requirements contained elsewhere in Exchange Rules.
- (b) Unless otherwise indicated, the requirements of the Rule 7400 Series shall apply to all ETP Holders and to their associated persons.
- (c) Unless otherwise indicated, the requirements of the Rule 7400 Series shall apply to all executed or unexecuted orders for all NMS stocks traded on the Exchange.

Rule 7430. Synchronization of ETP Holder Business Clocks

Each ETP Holder shall synchronize its business clocks that are used for purposes of recording the date and time of any event that must be recorded pursuant to the Rules of the Exchange, with reference to a time source as designated by the Exchange, and shall

maintain the synchronization of such business clocks in conformity with such procedures as are prescribed by the Exchange.

Rule 7440. Recording of Order Information

(a) ETP Holders and associated persons shall comply with FINRA Rule 7440 as if such Rule were part of the Exchange's rules. The Exchange and FINRA are parties to the Regulatory Services Agreement pursuant to which FINRA has agreed to perform certain functions on behalf of the Exchange. Therefore, ETP Holders are complying with NYSE Arca Equities Rule 7440 by complying with FINRA Rule 7440 as written, including, for example, filing requirements and notifications. In addition, functions performed by FINRA, FINRA departments, and FINRA staff under NYSE Arca Equities Rule 7440 are being performed by FINRA on behalf of the Exchange.

(b) For purposes of this Rule, references to Rules 7420 through 7460 shall be construed as references to NYSE Arca Equities Rules 7420 through 7460.

(c) ETP Holders shall assign and enter a unique order identifier, in the form prescribed by the Exchange, to all orders that are electronically transmitted to the Exchange. An order identifier shall not be required for orders that are manually transmitted.

Rule 7450. Order Data Transmission Requirements

(a) Except as provided in paragraph (b), ETP Holders and associated persons shall comply with FINRA Rule 7450 as if such Rule were part of the Exchange's rules. The Exchange and FINRA are parties to the Regulatory Services Agreement pursuant to which FINRA has agreed to perform certain functions on behalf of the Exchange. Therefore, ETP Holders are complying with NYSE Arca Equities Rule 7450 by complying with FINRA Rule 7450 as written, including, for example, filing requirements and notifications. In addition, functions performed by FINRA, FINRA departments, and FINRA staff under NYSE Arca Equities Rule 7450 are being performed by FINRA on behalf of the Exchange.

(b) Proprietary Trading Firms shall be required to comply with FINRA Rule 7450 as if such Rule were part of the Exchange's rules, only when they receive a request from the Exchange to submit order information with respect to specific time periods identified in such request. Nothing in this Rule shall be construed to limit the obligations of Proprietary Trading Firms under any other Rule of the 7400 Series, including but not limited to, Rule 7440.

(c) For purposes of this Rule, references to Rule 7440 shall be construed as references to NYSE Arca Equities Rule 7440.

Rule 7460. Violation of Order Audit Trail System Rules

Failure of an ETP Holder or associated person to comply with any of the requirements of Rule 7410 through Rule 7460 may be considered conduct that is inconsistent with high standards of commercial honor and just and equitable principles of trade, in violation of Rule 2010.

Rule 7470. Exemption to the Order Recording and Data Transmission Requirements

(a) The Exchange, for good cause shown after taking into consideration all relevant factors, may exempt subject to specified terms and conditions, an ETP Holder from the recording and order data transmission requirements of Rules 7440 and 7450, respectively, for manual orders, if such exemption is consistent with the protection of investors and the public interest, and the ETP Holder meets the following criteria:

- (1) the ETP Holder and current control affiliates and associated persons have not been subject within the last five years to any final disciplinary action, and within the last ten years to any disciplinary action involving fraud;
- (2) the ETP Holder has annual revenues of less than \$2 million;
- (3) the ETP Holder does not conduct any market making activities in NMS stocks;
- (4) the ETP Holder does not execute principal transactions with its customers (with limited exception for principal transactions executed pursuant to error corrections); and
- (5) the ETP Holder does not conduct clearing or carrying activities for other firms.

(b) An exemption provided pursuant to this Rule shall not exceed a period of two years. At or prior to the expiration of a grant of exemptive relief under this Rule, an ETP Holder meeting the criteria set forth in paragraph (a) above may request a subsequent exemption, which will be considered at the time of the request consistent with the protection of investors and the public interest.

(c) This Rule shall be in effect until July 10, 2015.]