

EXHIBIT 5

New text is underlined; deleted text is in brackets.

Nasdaq PHLX Rules**[Rule 136. Trading Halts in Certain Exchange Traded Funds**

(a) Rule 1047A(c) shall apply to the trading of Trust Shares listed pursuant to the terms of Rule 803(i). The term "option" as used therein shall be deemed for the purposes of this rule only to include a Trust Share.

(b) Rule 1047A(c) shall apply to the trading of Trust Issued Receipts listed pursuant to the terms of Rule 803(j). The term "option" as used therein shall be deemed for the purpose of this rule only to include a Trust Issued Receipt. The term "index" as used therein shall be deemed for the purposes of this rule only to mean "basket".

(c) (1) The Exchange will halt trading in:

(A) all New Derivative Securities Products if the circuit breaker parameters of Rule 133 have been reached; or

(B) New Derivative Securities Products 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 will 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.

(2) In exercising its discretion to halt or suspend trading in a New Derivative Securities Product pursuant to Rule 164(a), the Exchange 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. In particular, when the Exchange is the listing market for a New Derivative Securities Product, if the Required Value applicable to that New Derivative Securities Product is not being calculated and disseminated as required, the Exchange may halt trading during the day in which the interruption to the dissemination of the Required Value occurs. If the interruption to the dissemination of the Required Value persists past the trading day in which it occurred the Exchange will halt trading no later than the beginning of the trading day following the interruption.]

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[Standards for Trading Securities Pursuant to Unlisted Trading Privileges (Rules 800—868)]**Rule 800. Definitions**

The terms defined herein shall have the meanings specified herein for all purposes in Rules 800-899, unless the context of a Rule or Regulation requires otherwise.

(a) The term "Common Stock" or "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).

(b) "Public shareholder" or "public holder" does not include officers, directors, controlling shareholders or other owners of family or concentrated holdings, and beneficial holders rather than holders of record will be counted by the Exchange.

Rule 801. Securities Eligible to be Admitted to Dealings

Only such securities admitted pursuant to unlisted trading privileges shall be dealt in on the Exchange. The Exchange does not rate or guarantee the quality of any security dealt in on the Exchange. The Exchange lists only standardized options, as defined in Rule 9b-1 under the Exchange Act, issued by a clearing agency that is registered pursuant to Section 17A of the Exchange Act, pursuant to the Rule 1000, 1000A and 1000C Series. The Exchange will not list securities pursuant to any other Rule until the Exchange files a proposed rule change under Section 19(b)(2) under the Exchange Act to amend its Rules to make any changes needed to comply with Rules 10A-3 and 10C-1 under the Exchange Act and to incorporate additional qualitative and other listing criteria, and such proposed rule change is approved by the Commission. Therefore, the provisions of this Rule 800 Series are not effective to permit the listing of securities.

Rule 802. Reserved.

Reserved.

Rule 803. Listing Standards for Unlisted Trading Privileges

Issuers should consider whether to list their securities under the Tier I or Tier II listing standards. While all listed issues will be traded pursuant to the identical Exchange auction rules, issues listed pursuant to the Tier I and Tier II standards may be distinguished with respect to blue sky exemptions, transactions reporting symbols, listing fees and maintenance standards. The Exchange will identify and distinguish at all times which securities are listed pursuant to the Exchange's Tier I and Tier II standards. An issuer seeking to list its securities pursuant to the Tier I standards must satisfy one of the two alternative Tier I quantitative criteria and an issuer seeking to list its securities pursuant to the Tier II standards must satisfy the Tier II quantitative criteria. Issuers listing under either criteria must adhere to the policies and procedures and the corporate governance criteria provided in Rules 812 through 853.

The Exchange also places great emphasis upon the level of public interest in the securities of an issuer. Causes for concern may include a low trading volume on another

Exchange, lack of dealer interest in the over-the-counter market, unusual geographical concentration of shareholders or a low rate of transfers. Under such circumstances the Exchange may implement a higher distribution standard provided it perceives a relatively low level of investor interest.

The Exchange may extend unlisted trading privileges to any security for which the Exchange has in effect Rules providing for transactions in such class or type of security. Provisions of Rule 803 that govern trading hours, dissemination of information (i.e. Intraday Indicative Value and index value) and surveillance procedures, and that relate to information and prospectus delivery, shall apply to securities traded on an unlisted trading privileges basis.

The listing criteria for Tier I Issues are as follows:

(a) In the case of Common Stock:

- (1) Net Tangible Assets—Total assets (including the value of patents, copyrights and trademarks but excluding the value of goodwill) less total liabilities of at least \$4,000,000.
- (2) Earnings—Pretax income of \$750,000 and net income of at least \$400,000 in its last fiscal year.
- (3) Public Distribution—at least 500,000 publicly held shares and at least 800 public shareholders if the issuer has between 500,000 and 1 million shares publicly held, or at least 400 public shareholders if the issuer has either (i) over 1 million shares publicly held or (ii) over 500,000 shares publicly held and average daily trading volume in excess of 2,000 shares per day for a six month period preceding the date of application.
- (4) Stock Price/Market Value of Shares Publicly Held—\$5 per share on each of the five business days prior to the application date and \$3,000,000 aggregate market value.
- (5) Voting Rights—See Rule 812

(b) In the case of Preferred Stock:

- (1) Net Tangible Assets and Earnings—The issuer meets the net tangible assets and earnings criteria for common stock and appears to be able to service the dividend requirements of the issue.
- (2) Public Distribution—If issuer's common stock is listed and traded on the Exchange (or the NYSE Amex LLC ("NYSE Amex") or New York Stock Exchange):

Preferred Shares Publicly Held	100,000
Aggregate Market Value/Price	\$2,000,000/\$10
If not so listed and traded:	
Preferred Shares Publicly Held	400,000
Public Round-lot Holders	800
Aggregate Market Value/Price	\$4,000,000/\$10
(3) Voting Rights-See Rule 812	

(c) In the case of Bonds, Debentures and Notes:

(1) Net Tangible Assets and Earnings—The issuer meets the net tangible assets and earnings criteria for common stock and appears to be able to satisfy interest and principal when due.

(2) Public Distribution—If issuer's common stock is listed and traded on the Exchange (or the New York Stock Exchange or the NYSE Amex):

Principal Amount/Aggregate Market Value	\$5,000,000
Number of Public Holders	100
If not so listed and traded:	
Principal Amount/Aggregate Market Value	\$20,000,000
Number of Public Holders	100

(3) Current last sale information must be publicly available and independently certifiable with respect to the underlying security into which the bond or debenture is convertible.

(4) Redeemable issues must provide for redemption pro rata or by lot.

(5) In the case of municipal securities, to insure adequate public interest in the debt securities, of non-listed issuers, the following requirements must be met:

- a. Aggregate market value and principal amount outstanding of at least twenty million dollars (\$20,000,000);
- b. At least one hundred (100) public beneficial holders of record; and
- c. The security must be rated as investment grade by at least one nationally recognized rating service.

(d) In the case of Warrants:

(1) Net Tangible Assets and earnings—The issuer meets the net tangible assets and earnings criteria for common stock.

- (2) **Public Distribution**—The issuer meets the distribution criteria for equity issues. However, if the warrant issue is sold as part of a unit offering consisting of warrants and other securities, a minimum of 500,000 warrants must be publicly held by not less than 400 public holders.
 - (3) The common stock or other securities underlying the warrants must be listed on the Exchange (or on the NYSE Amex or the New York Stock Exchange).
- (e) In the case of Currency, Currency Index and Stock Index Warrants:
1. *Size and Earnings of Warrant Issuer*—Tangible net worth in excess of \$150,000,000 and the issuer meets the earnings criteria set forth in paragraph (a)(2) above.
 2. *Term*—One to five years from date of issuance.
 3. *Distribution/Market Value*—Minimum public distribution of 1,000,000 warrants together with a minimum of 400 public warrant holders and an aggregate market value of \$4,000,000.
 4. *Issuer Standards*—Even if an issuer meets the criteria in subsection 1 above, the Exchange shall not list stock index, currency index or currency warrants of that issuer if the value of such warrants plus the aggregate value, based upon the original issuing price, of all outstanding stock index, currency index and currency warrants of the issuer and its affiliates combined that are listed for trading on a national securities exchange or traded through the facilities of Nasdaq is greater than 25% of the warrant issuer's net worth. If, however, the issuer has a tangible net worth of at least \$250,000,000, this restriction will not apply.
 5. *Settlement Value*—With respect to stock index warrants where 25% or more of the value of the underlying index is represented by securities that are traded primarily in the United States, the warrant issuer will be expected to use the U.S. market opening prices of such United States securities in determining settlement values or the closing prices for American style warrants except within 48 hours prior to expiration.
 6. *Automatic Exercise*—All currency and index warrants must include in their terms provisions specifying: (i) the time by which all exercise notices must be submitted, (ii) 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 Exchange (if such warrant issues have not been listed on another organized securities market in the United States.)

7. *Foreign Securities*—Non-U.S. component securities (stocks or ADRs) that are not subject to comprehensive surveillance agreements should not in the aggregate represent more than 20% of the weight of the index. For purposes of this requirement, the term "non-U.S. component securities" means the securities of companies organized outside the United States where at least 50% of the combined worldwide trading volume in the ADR, the security underlying the ADR, other classes of common stock related to the underlying security and ADRs overlying such other stock over the prior three months occurs outside of the United States.
 8. *Changes in Number of Warrants Outstanding*—The Exchange expects that issuers of stock index warrants either will make arrangements with warrant transfer agents to advise the Exchange immediately of any change in the number of warrants outstanding due to the early exercise of such warrants or will provide this information themselves. With respect to stock index warrants for which 25% or more of the value of the underlying index is represented by securities traded primarily in the United States, such notice shall be filed with the Exchange's Regulatory staff no later than 4:30 p.m. E.T. on the date when the settlement value for such warrants is determined. Such notice shall be filed in such form and manner as may be prescribed by the Exchange from time to time.
 9. *Cash Settlement*—The warrants will be cash-settled in U.S. dollars.
- (f) In the case of Other Securities, the Exchange will consider listing any security not otherwise covered by the criteria set forth in this Rule, provided the issue is otherwise suited for trading on the Exchange. Such issues will be evaluated for listing against the following criteria:

issue is otherwise suited for auction market trading. Such issues will be evaluated for listing against the following criteria:

Initial Listing Requirements

1. *Assets/Equity*—The issuer shall have total assets in excess of \$100 million and shareholders' equity of at least \$ 10 million.
2. *Earnings*—The issuer shall have pre-tax income of at least \$750,000 in its last fiscal year or in two of its last three fiscal years. In the case where the issuer is unable to satisfy this earnings criteria, the Exchange generally will require the issuer to have the following: (i) assets in the excess of \$200 million and shareholders' equity of at least \$ 10 million; or (ii) assets in excess of \$ 100 million and shareholders' equity of at least \$20 million.
3. *Distribution*—Minimum public distribution of 1 million trading units including a minimum of 400 public holders.

4. Aggregate Market Value/Principal Amount—Not less than \$4 million.

Prior to commencement of trading of securities admitted to listing under this paragraph, the Exchange will evaluate the nature and complexity of the issue and, if appropriate, distribute a circular to the members and member organizations providing guidance regarding member firm compliance responsibilities when handling transactions in such securities.

Continued Listing Requirements

1. The aggregate market value or principal amount of publicly-held units (except index-linked securities that were listed pursuant to Rule 803(m)) must be at least \$1 million.
2. Delisting or removal proceedings will be commenced (unless the Commission has approved the continued trading) with respect to any index-linked security that was listed pursuant to Rule 803(m)(7)(B) if any of the standards set forth in such Rule are not continuously maintained, except that:
 - (i) the criteria that no single component represent more than 25% of the weight of the index and the five highest weighted components in the index may not represent more than 50% (or 60% for indexes with less than 25 components) of the weight of the Index, need only be satisfied for capitalization weighted and price weighted indexes as of the first day of January and July in each year;
 - (ii) the total number of components in the index may not increase or decrease by more than 33-1/3% from the number of components in the index at the time of its initial listing, and in no event may be less than ten (10) components;
 - (iii) the trading volume of each component security in the index must be at least 500,000 shares for each of the last six months, except that for each of the lowest weighted components in the index that in the aggregate account for no more than 10% of the weight of the index, trading volume must be at least 400,000 shares for each of the last six months; and
 - (iv) in a capitalization-weighted or modified capitalization-weighted index, the lesser of the five highest weighted component securities in the index or the highest weighted component securities in the index that in the aggregate represent at least 30% of the total number of stocks in the index have had an average monthly trading volume of at least 1,000,000 shares over the previous six months.
3. With respect to an index-linked security that was listed pursuant to Rule 803(m)(7)(A), delisting or removal proceedings will be commenced (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.

4. With respect to a Commodity-Linked Security that was listed pursuant to Rule 803(m), delisting or removal proceedings will be commenced (unless the Commission has approved the continued trading of the subject security) if any of the listing requirements set forth in Rule 803(m) that were applicable at the time of the initial listing of the security are no longer being met. Notwithstanding the foregoing, a security will not be delisted due to lack of comprehensive surveillance sharing agreements if the Reference Asset has at least 10 components and the Exchange has comprehensive surveillance sharing agreements with respect to at least 90% of the dollar weight of the Reference Asset for which such agreements are otherwise required.
 5. Delisting or removal proceedings will also be commenced with respect to any Linked Security listed pursuant to Rule 803(m) (unless the Commission has approved the continued trading of the subject security), under any of the following circumstances:
 - (i) if the aggregate market value or the principal amount of the Linked Security issue publicly held is less than \$400,000;
 - (ii) if the value of the index, composite value of the indexes or the value of the Reference Asset (as applicable) is no longer calculated or widely disseminated as required by Rule 803(m)(9);
 - (iii) with respect to a Commodity-Linked Security, if the value of the Reference Asset is no longer calculated or available and a new Reference Asset is substituted, unless the new Reference Asset meets the requirements of this Rule and Rule 803(m); or
 - (iv) if such other event shall occur or condition exists which in the opinion of the Exchange makes further dealings on the Exchange inadvisable.
- (g) In the case of Contingent Value Rights:
- (1) Issuer must meet the financial listing criteria for common stock;
 - (2) Issuer total assets in excess of \$100 million;
 - (3) Minimum public distribution of 600,000 rights with a minimum of 400 public holders of those rights;

- (4) Aggregate market value of \$18 million; and
- (5) The rights must have a term of at least one year; or
- (6) Contingent value rights have already been approved for trading on another national securities exchange.

Prior to the commencement of trading of securities admitted to listing under this paragraph, the Exchange will distribute a circular to the members and member organizations explaining specific risks associated with CVRs and emphasizing the need to disclose to CVR investors the special characteristics of CVRs and suggesting that transactions in CVRs be recommended only to investors whose accounts have been approved for options trading or after ascertaining that CVRs are suitable for the customer.

(h) In the case of Equity Linked Notes ("ELNs"):

ELNs are limited term debt securities of an issuer where the value of the debt is based in whole or in part on the value of another issuer's common stock, non-convertible preferred stock or sponsored American Depositary Receipts ("ADRs") overlying such equity securities. The Exchange will consider listing or trading ELNs, pursuant to Rule 19b-4(e) under the Securities and Exchange Act of 1934, that meet the following criteria:

(1) *Issuer Listing Standards*

- (A) The issuer of the ELN must be listed on a national securities exchange or the Nasdaq National Market or be an affiliate of a company listed on a national securities exchange or Nasdaq National Market;
- (B) The issuer of the ELN must have a minimum tangible net worth of \$150 million; and
- (C) The market value of the ELN offering when combined with the market value of all the ELN offerings previously completed by the issuer and traded on a national securities exchange or the Nasdaq National Market may not be greater than 25% of the issuer's net worth at the time of the issuance.

(2) *ELN Listing Standards*

- (A) The issue must have a minimum public distribution of one million ELNs;
- (B) There must be a minimum of 400 holders of the ELNs, provided, however, that if the ELNs are traded in \$1,000 denominations, there is no minimum number of holders;

- (C) The issue must have a minimum market value of \$4 million; and
- (D) The ELN must have a term of two to seven years, provided that if the issuer of the underlying security is a non-U.S. company, or if the underlying security is a sponsored ADR, the issue may not have a term of more than three years.

(3) *Linked Security Standards*

- (A) The underlying linked security must have either; (i) a minimum market capitalization of \$3 billion and during the 12 months preceding listing is shown to have traded at least 2.5 million shares in the United States, (ii) a minimum market capitalization of \$1.5 billion and during the 12 months preceding listing is shown to have traded at least 20 million shares in the United States; or (iii) a minimum market capitalization of \$500 million and during the 12 months preceding listing is shown to have traded at least 80 million shares in the United States. If an issuer proposes to list an ELN on an underlying linked stock that does not meet the market capitalization and trading volume standards set forth above, the Exchange, with the concurrence of the staff of the Division of Trading and Markets of the Securities and Exchange Commission, may, after evaluating the trading volume, public float, and market capitalization of the stocks, as well as other relevant factors, determine on a case-by-case basis that it is appropriate to list an ELN on that security.
- (B) The underlying linked security must be issued by a company that has a continuous reporting obligation under the Securities Exchange Act of 1934 (Act), as amended, and the security must be listed on a national securities exchange or the Nasdaq National Market and be subject to last sale reporting pursuant to Rule 11Aa3-1 under the Act; and
- (C) The underlying linked security must be issued by a U.S. company, a non-U.S. company (including a company that is traded in the United States through sponsored ADRs). For purposes of this subsection, a non-U.S. company is any company formed or incorporated outside of the United States. If the issuer of the underlying linked security is a non-U.S. company; (i) the Exchange must have in place a comprehensive surveillance sharing agreement with the primary exchange on which the non-U.S. security is traded, (in the case of an ADR, the primary exchange on which the security underlying the ADR is traded); or (ii) the combined trading volume of the non-U.S. security and other related non-U.S. securities occurring in the U.S. market represents (on a share equivalent basis for any ADRs) at least 50% of the combined worldwide trading volume in the non-U.S. security, other related non-U.S. securities, and other classes of common stock related to the non-U.S. security over the six month period preceding the date of designation; and

(D) If the underlying linked security is the stock of a non-U.S. company which is traded in the U.S. market as a sponsored ADR, ordinary shares or otherwise, then the minimum number of holders of the underlying linked security shall be 2,000.

(4) *Limits on the Number of ELNs Linked to a Particular Security*

(A) The issuance of ELNs relating to any underlying U.S. security may not exceed 5% of the total outstanding shares of such underlying security. The issuance of the ELNs relating to any underlying non-U.S. security or sponsored ADR may not exceed; (i) 2% of the total shares outstanding worldwide provided at least 30% of the worldwide trading volume in the underlying security occurs in the U.S. market during the six month period preceding the date of designation; (ii) 3% of the total worldwide shares outstanding provided at least 50% of the worldwide trading volume in the underlying security occurs in the U.S. market during the six month period preceding the date of designation; or (iii) 5% of the total shares outstanding worldwide provided at least 70% of the worldwide trading volume in the underlying security occurs in the U.S. market during the six month period preceding the date of designation. If a non-U.S. security (including sponsored ADRs) and related securities has less than 30% of the worldwide trading volume occurring in the U.S. market during the six month period preceding the date of listing, then the instrument may not be linked to that non-U.S. security.

If an issuer proposes to list an ELN that relates to more than the allowable percentages set forth above, the Exchange, 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.

(5) Equity Linked Notes will be treated as equity instruments.

(6) Prior to the commencement of trading of a particular ELN designated pursuant to this subsection, the Exchange will distribute a circular to the members providing guidance regarding member organization compliance responsibilities (including suitability recommendations and account approval) when handling transactions in ELNs.

(i) Trust Shares

(1) *Definitions.*

(i) Trust Shares. The term "Trust Share" means a security (a) that is based on a unit investment trust ("Trust") which holds the securities which comprise an index or portfolio underlying a series of Trust Shares; (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 plus a cash amount; (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 cash 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 stock index or portfolio of securities underlying the Trust Shares, less certain expenses and other charges as set forth in the Trust prospectus.

- (ii) **Reporting Authority.** The term "Reporting Authority" in respect of a particular series of Trust Shares means the Exchange, a wholly-owned subsidiary of the Exchange, an institution (including the Trustee for Trust Shares), or a reporting service designated by the Exchange or its subsidiary or by the exchange that lists a particular series of Trust Shares (if the Exchange is trading such series pursuant to unlisted trading privileges) as the official source for calculating and reporting information relating to such series, including, but not limited to, any current index or portfolio value; the current value of the portfolio of securities required to be deposited to the Trust in connection with issuance of Trust Shares; the amount of any dividend equivalent payment or cash distribution to holders of Trust Shares, net asset value, or other information relating to the creation, redemption or trading of Trust Shares.
 - (iii) 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 ("Exchange Act") or an American Depositary Receipt the underlying equity security of which is registered under Sections 12(b) or 12(g) of the Exchange Act.
 - (iv) The term "Non-US Component Stock" shall mean an equity security that is not registered under Sections 12(b) or 12(g) of the Exchange Act 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).
- (2) **Applicability.** This Rule is applicable only to Trust Shares. Except to the extent inconsistent with this Rule, or unless the context otherwise requires, the provisions of the By-Laws and all other Rules and policies of the Board of Directors shall be applicable to the trading on the Exchange of such securities. Trust Shares are included within the definition of "security" or "securities" as such terms are used in the By-Laws and Rules of the Exchange.
- (3) **Disclosure Requirements.** Members and member organizations shall provide to all purchasers of a series of Trust Shares a written description of the terms

and characteristics of such securities, in a form approved by the Exchange, not later than the time a confirmation of the first transaction in such series is delivered to such purchaser. In addition, members and member organizations shall include such a written description with any sales material relating to a series of Trust Shares that is provided to customers or the public. Any other written materials provided by a member or member organization to customers or the public making specific reference to a series of Trust 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 Trust Shares) is available from your broker. It is recommended that you obtain and review such circular before purchasing (the series of Trust Shares). In addition, upon request you may obtain from your broker a prospectus for (the series of Trust Shares)."

A member or member organization carrying an omnibus account for a non-member broker-dealer is required to inform such non-member that execution of an order to purchase a series of Trust Shares for such omnibus account will be deemed to constitute agreement by the non-member to make such written description available to its customers on the same terms as are directly applicable to members and member organizations under this Rule.

Upon request of a customer, a member or member organization shall also provide a prospectus for the particular series of Trust Shares.

(4) *Designation of an Index or Portfolio.* The trading of Trust Shares 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 Trust Shares based on each particular stock index or portfolio shall be identified as a separate series and shall be identified by a unique symbol. The stocks that are included in an index or portfolio on which Trust Shares are based shall be selected by the Exchange or its agent, a wholly-owned subsidiary of the Exchange, or by such other person as shall have a proprietary interest in and authorized use of such index or portfolio, and may be revised from time to time as may be deemed necessary or appropriate to maintain the quality and character of the index or portfolio.

(5) *Initial and Continued Listing and/or Trading.* A Trust upon which a series of Trust Shares are based will be listed and traded on the Exchange subject to application of the following criteria:

(A) *Commencement of Trading* - For each Trust, the Exchange will establish a minimum number of Trust Shares required to be outstanding at the time of commencement of trading on the Exchange.

(B) *Continued Trading* - Following the initial twelve month period following formation of a Trust and commencement of trading on the Exchange, the

Exchange will consider the suspension of trading in or removal from listing of a Trust upon which a series of Trust Shares is based under any of the following circumstances:

- (i) if the Trust has more than 60 days remaining until termination and there are fewer than 50 record and/or beneficial holders of Trust Shares for 30 or more consecutive trading days; or
 - (ii) if the value of the index or portfolio of securities on which the Trust is based is no longer calculated or available; or
 - (iii) if such other event shall occur or condition exists which in the opinion of the Exchange, makes further dealings on the Exchange inadvisable.
- (C) Termination of Trust - Upon termination of a Trust, the Exchange requires that Trust Shares issued in connection with such Trust be removed from Exchange 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.
- (D) The Exchange will obtain a representation from the issuer of each series of Trust Shares that the net asset value per share for the series will be calculated daily and will be made available to all market participants at the same time.
- (6) *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.
- (7) *Trustee.* The trustee 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.
- (8) *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.
- (9) *Limitation of Exchange Liability.* Neither the Exchange, the Reporting Authority nor any agent of the Exchange shall have any liability for damages, claims, losses or expenses caused by any errors, omissions, or delays in calculating or disseminating any current 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 Trust Shares; net asset value; or other information relating to the creation,

redemption or trading of Trust Shares, resulting from any negligent act or omission by the Exchange, or the Reporting Authority, or any agent of the Exchange, or any act, condition or cause beyond the reasonable control of the Exchange 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 reports of transactions in one or more underlying securities. The Exchange makes no warranty, express or implied, as to results to be obtained by any person or entity from the use of Trust Shares or any underlying index or data included therein and the Exchange makes no express or implied warranties, and disclaims all warranties of merchantability or fitness for a particular purpose with respect to Trust Shares or any underlying index or data included therein. This limitation of liability shall be in addition to any other limitation contained in the Exchange's Limited Liability Company Agreement or By-Laws or elsewhere in the Rules.

- (10) *Listing Fees and Other Rules.* The Exchange may, in its discretion, waive listing fees for any issuer of any particular series of Trust Shares listed on the Exchange pursuant to Rule 803(i). The provisions of Rules 847, 849, 850 and 851 do not apply to unit investment trusts issuing Trust Shares listed on the Exchange pursuant to Rule 803(i), or to the trustees or the sponsors thereof. In addition, consideration of the suspension of trading in or removal from listing of any Trust Shares pursuant to Rule 810 will be made pursuant to the criteria set forth in section 5(B) of this Rule 803(i) rather than the specific criteria set forth in subsections (1) through (5) of Rule 810(a).
- (11) The Exchange may approve a series of Trust Shares for listing and trading pursuant to Rule 19b-4(e) under the Exchange Act provided the criteria described in paragraphs (a), (b) or (c) below and (d) through (l) are satisfied:
- (a) *Series of Trust Shares that are based on an Index or Portfolio comprised solely of US Component Stocks.* Upon the initial listing of a series of Trust Shares on the Exchange, the component stocks of an index or portfolio underlying such series of Trust Shares shall meet the following criteria as of the date of the initial deposit of cash and securities into the trust:
- (i) Component stocks that in the aggregate account for at least 90% of the weight of the index or portfolio shall each have a minimum market value of at least \$75 million;
- (ii) The component stocks that in the aggregate account for at least 90% of the weight of the index or portfolio each must have a minimum monthly trading volume during each of the last six months of at least 250,000 shares;

- (iii) The most heavily weighted component stock cannot exceed 30% of the weight of the index or portfolio, and the five most heavily weighted component stocks cannot exceed 65% of the weight of the index or portfolio;
 - (iv) The underlying index or portfolio must include a minimum of 13 component stocks; and
 - (v) All securities in an underlying index or portfolio must be US Component Stocks listed on a national securities exchange and shall be NMS Stocks.
- (b) *Eligibility Criteria for series of Trust Shares that are based on an Index or Portfolio comprised solely of Non-US Component Stocks or Both US and Non-US Component Stocks.* Upon the initial listing of a series of Trust Shares, the component stocks of an index or portfolio underlying such series of Trust Shares shall meet the following criteria as of the date of the initial deposit of securities to the fund in connection with the initial issuance of shares of such fund:
- (i) Component stocks that in the aggregate account for at least 90% of the weight of the index or portfolio each must have a minimum market value of at least \$100 million;
 - (ii) Component stocks that in the aggregate account for at least 90% of the weight of the index or portfolio each must have a minimum worldwide monthly trading volume during each of the last six months of at least 250,000 shares;
 - (iii) the most heavily weighted component stock may not exceed 25% of the weight of the index or portfolio, and the five most heavily weighted component stocks may not exceed 60% of the weight of the index or portfolio;
 - (iv) the index or portfolio must include a minimum of 20 component stocks; and
 - (v) each US Component Stock must be listed on a national securities exchange and must be an NMS Stock, and each Non-US Component Stock must 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.* Upon the initial listing of a series of Trust Shares, pursuant to Rule 19b-4(e) under the Exchange Act, the index or portfolio underlying such series shall have been reviewed and approved for trading of options, Trust Shares, Index Fund Shares, Index-Linked Exchangeable Notes or

Index-Linked Securities by the Commission under Section 19(b)(2) of the Exchange Act and rules thereunder and the conditions set forth in the Commission's approval order, including comprehensive surveillance sharing agreements with respect to Non-US Component Stocks and requirements regarding dissemination of information continue to be satisfied. 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 or (II) a Non-US Component Stock that is listed and traded on an exchange that has last-sale reporting.

(d) *Index Methodology and Calculation.*

- (i) If the index is maintained by a broker-dealer or fund advisor, the broker-dealer or fund advisor shall erect a "fire wall" around the personnel who have access to information concerning changes and adjustments to the index and the index shall be calculated by a third party who is not a broker-dealer or fund advisor; and
- (ii) Any advisory committee, supervisory board, or similar entity that advises a Reporting Authority or a major market data vendor 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.

- (e) *Disseminated Information.* If a series of Trust Shares is listed for trading, or trades pursuant to unlisted trading privileges, on the Exchange in reliance upon Rule 19b-4(e) under the Exchange Act, and invests solely in US Component Stocks, the current value of the underlying index must be widely disseminated by one or more major market data vendors or disseminated over the consolidated tape at least every 15 seconds during trading hours on the Exchange. If a series of Trust Shares is listed for trading on the Exchange in reliance upon Rule 19b-4(e) under the Exchange Act and invest in both US Component Stocks and Non-US Component Stocks or only in Non-US Component Stocks, the current value of the underlying index must be widely disseminated by one or more major market data vendors or disseminated over the consolidated tape at least every 60 seconds during trading hours on the Exchange. If the index value does not change during some or all of the period when trading is occurring on the Exchange (for example, for indexes of Non-US Component Stocks because of time zone differences or holidays in the countries where such indexes' component stocks trade), then the last official calculated index value must remain available throughout Exchange trading hours.

There must be disseminated for each series of Trust Shares, whether listed or traded pursuant to unlisted trading privileges, an estimate, updated at least every 15 seconds, of

the value of a share of each series (the "Intraday Indicative Value") during the Core Session on PSX, and, if applicable, during the Pre Market Session on PSX. This may be based, for example, upon current information regarding the required deposit of securities plus any cash amount to permit the 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 Session on PSX, and, if applicable, during the Pre Market Session on PSX, 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 PSX, then the last official calculated Intraday Indicative Value must remain available throughout PSX's trading hours.

- (f) *Initial Shares Outstanding.* A minimum of 100,000 shares of a series of Trust Shares is required to be outstanding at start-up of trading on the Exchange.
- (g) *Trading Increment.* The minimum trading increment is set in Rule 125.
- (h) *Listing Fees.* The original listing fee is \$7,500 for each series of Trust Shares. The annual maintenance listing fee will be \$1,250 for each series of Trust Shares.
- (i) *Surveillance Procedures.* The Exchange will implement written surveillance procedures for Trust Shares.
- (j) *Applicability of Other Rules.* All other provisions of Rule 803(i) will apply to all series of Trust Shares.
- (k) *Creation and Redemption.* For Trust Shares listed pursuant to (i)(11)(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 Trust Shares must state that the series of Trust 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.
- (l) *Hours of Trading.* Trading will occur on PSX during the times set in Rule 3217. In addition, the Exchange may designate each series of Trust Shares for trading during the Pre Market Session and/or the Post Market Session; provided, however that the Exchange will not designate a series of Trust Shares for Pre Market or Post Market trading unless the requirements of Phlx Rule 803(i)(11)(e) are satisfied. If there is no overlap with the trading hours of the primary market(s) trading the underlying components of a series of Trust Shares, the Exchange may designate such series for Pre

Market trading as long as the last official calculated Intraday Indicative Value remains available.

(j) Trust Issued Receipts.

- (1) *Applicability.* Rule 803(j) is applicable only to Trust Issued Receipts. Except to the extent inconsistent with Rule 803(j) or unless the context otherwise requires, the provisions of the By-Laws and all other Rules and policies of the Board of Directors shall be applicable to the trading on the Exchange of such securities. Trust Issued Receipts are included within the definition of "security" or "securities" as such terms are used in the By-Laws and Rules of the Exchange.
- (2) *Definitions.* The following terms as used in the Rules shall, unless the context otherwise requires, have the meanings herein specified:
 - (A) Trust Issued Receipts. The term "Trust Issued Receipt" means a security (i) that is issued by a trust ("Trust") which holds specified securities deposited with the Trust; (ii) that, when aggregated in some specified minimum number, may be surrendered to the Trust by the beneficial owner to receive the securities; and (iii) that pays beneficial owners dividends and other distributions on the deposited securities, if any are declared and paid to the trustee by an issuer of the deposited securities.
 - (B) Reporting Authority. The term "Reporting Authority" in respect of a particular series of Trust Issued Receipts means the Exchange, a wholly-owned subsidiary of the Exchange, an institution (including the Trustee for that series of Trust Issued Receipts), or a reporting service designated by the Exchange or its subsidiary or by the exchange that lists a particular series of Trust Issued Receipts (if the Exchange is trading the particular series of Trust Issued Receipts pursuant to unlisted trading privileges) as the official source for calculating and reporting information relating to such series of Trust Issued Receipts, including, but not limited to, any current basket or portfolio value; the current value of the basket or portfolio of securities required to be deposited to the Trust in connection with issuance of that series of Trust Issued Receipts; the amount of any dividend equivalent payment or cash distribution to holders of that series of Trust Issued Receipts, net asset value, or other information relating to the creation, redemption or trading of that series of Trust Issued Receipts.
- (3) *Prospectus.* Members and member organizations shall provide to all purchasers of newly issued Trust Issued Receipts a prospectus for the series of Trust Issued Receipts.
- (4) Reserved.

- (5) *Designation.* The Exchange may list and trade Trust Issued Receipts based on one or more securities. The Trust Issued Receipts based on particular securities shall be designated as a separate series and shall be identified by a unique symbol. The securities that are included in a series of Trust Issued Receipts shall be selected by the Exchange or its agent, a wholly-owned subsidiary of the Exchange, or by such other person as shall have a proprietary interest in such Trust Issued Receipts.
- (6) *Initial and Continued Listing.* Trust Issued Receipts will be listed and traded on the Exchange subject to application of the following criteria:
- (A) *Initial Listing.* For each Trust, the Exchange will establish a minimum number of Trust Issued Receipts required to be outstanding at the time of commencement of trading on the Exchange.
- (B) *Continued Listing.* Following the initial twelve month period after formation of a Trust and commencement of trading on the Exchange, the Exchange will consider the suspension of trading in or removal from listing of a Trust upon which a series of Trust Issued Receipts is based under any of the following circumstances:
- (i) if the Trust has more than 60 days remaining until termination and there are fewer than 50 record and/or beneficial holders of Trust Issued Receipts for 30 or more consecutive trading days;
- (ii) if the Trust has fewer than 50,000 receipts issued and outstanding;
- (iii) if the market value of all receipts issued and outstanding is less than \$1,000,000; or
- (iv) if such other event shall occur or condition exists which in the opinion of the Exchange, makes further dealings on the Exchange inadvisable.
- (C) Upon termination of a Trust, the Exchange requires that Trust Issued Receipts issued in connection with such Trust be removed from Exchange listing. A Trust may terminate in accordance with the provisions of the Trust prospectus, which may provide for termination if the value of securities in the Trust falls below a specified amount.
- (7) *Term.* The stated term of the Trust shall be stated in the Trust prospectus. However, a Trust may be terminated under such earlier circumstances as may be specified in the Trust prospectus.
- (8) *Trustee.* The Trustee 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.

- (9) *Voting.* Voting rights shall be as set forth in the Trust prospectus.
- (10) *Limitation of Liability.* Neither the Exchange, the Reporting Authority nor any agent of the Exchange shall have any liability for damages, claims, losses or expenses caused by any errors, omissions, or delays in calculating or disseminating any current basket 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 Trust Issued Receipts; net asset value; or other information relating to the creation, redemption or trading of Trust Issued Receipts, resulting from any negligent act or omission by the Exchange, or the Reporting Authority, or any agent of the Exchange, or any act, condition or cause beyond the reasonable control of the Exchange 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 reports of transactions in one or more underlying securities. The Exchange makes no warranty, express or implied, as to results to be obtained by any person or entity from the use of Trust Issued Receipts or any underlying basket or portfolio of securities or data included therein and the Exchange makes no express or implied warranties, and disclaims all warranties of merchantability or fitness for a particular purpose with respect to Trust Issued Receipts or any underlying basket or portfolio of securities or data included therein. This limitation of liability shall be in addition to any other limitation contained in the Exchange's Limited Liability Company Agreement or By-Laws or elsewhere in the Rules.
- (11) *Listing Fees and Other Rules.* The Exchange may, in its discretion, waive listing fees for any issuer of Trust Issued Receipts listed on the Exchange pursuant to Rule 803(j). The provisions of Rules 847, 849, 850 and 851 do not apply to trusts issuing Trust Issued Receipts listed on the Exchange pursuant to Rule 803(j), or to the trustees or the sponsors thereof. In addition, consideration of the suspension of trading in or removal from listing of any Trust Issued Receipts pursuant to Rule 810 will be made pursuant to the criteria set forth in section 6(B) of this Rule 803(j) rather than the specific criteria set forth in subsections (1) through (5) of Rule 810(a).

••• *Commentary:* -----

.01 The Exchange may approve a series of Trust Issued Receipts for listing and trading on the Exchange pursuant to Rule 19b-4(e) under the Securities Exchange Act of 1934 (Exchange Act),

provided each of the component securities satisfies the following criteria:

Eligibility Criteria for Component Securities Represented by a series of Trust Issued Receipts:

- (i) each component security must be registered under Section 12 of the Exchange Act;
- (ii) each component security must have a minimum public float of at least \$150 million;
- (iii) each component security must be listed on a national securities exchange or traded through the facilities of Nasdaq and be a reported national market system security;
- (iv) each component security must have an average daily trading volume of at least 100,000 shares during the preceding sixty-day trading period;
- (v) each component security must have an average daily dollar value of shares traded during the preceding sixty-day trading period of at least \$1 million; and
- (vi) the most heavily weighted component security may not initially represent more than 20% of the overall value of the Trust Issued Receipt.

.02 The eligibility requirements for component securities that are represented by a series of Trust Issued Receipts and that became part of the Trust Issued Receipt when the security was either: (a) distributed by a company already included as a component security in the series of Trust Issued Receipts; or (b) received in exchange for the securities of a company previously included as a component security that is no longer outstanding due to a merger, consolidation, corporate combination or other event, shall be as follows:

- (i) the component security must be listed on a national securities exchange or traded through facilities of Nasdaq and be a reported national market system security;
- (ii) the component security must be registered under section 12 of the Exchange Act; and;
- (iii) the component security must have a Standard & Poor's Sector Classification that is the same as the Standard and Poor's Sector Classification represented by component securities included in the Trust Issued Receipt at the time of the distribution or exchange.

(k) Basket Linked Notes ("BLNs").

Income instruments which are linked, in whole or in part, to the market performance of up to thirty (30) common stocks or non-convertible preferred stocks will be considered for listing provided:

- (1) Both the issue and the issuer of such security meet the criteria established in Rule 803(f) and the issue has a minimum term of one year.
- (2) The issuer of such security will be expected to have a minimum tangible net worth in excess of \$250,000,000, and to otherwise substantially exceed the earnings requirement set forth in Rule 803(a). 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 Rule 803(a), and (ii) not to have issued such securities where the original issue price of all the issuer's other equity and basket linked note offerings (combined with equity and basket linked 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.
- (3) Each underlying linked stock either: (i) has a minimum market capitalization of \$3 billion and during the 12 months preceding listing is shown to have traded at least 2.5 million shares, (ii) has a minimum market capitalization of \$1.5 billion and during the 12 months preceding listing is shown to have traded at least 10 million shares; or (iii) has a minimum market capitalization of \$500 million and during the 12 months preceding listing is shown to have traded at least 15 million shares.
- (4) Each issuer of an underlying stock to which the instrument is to be linked shall be a 1934 Act reporting company which is listed on a national securities exchange or is traded through the facilities of a national securities system and is subject to last sale reporting. In addition, if any underlying security to which the instrument 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 the Exchange shall either: (i) have in place a comprehensive surveillance sharing agreement 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); or (ii) the combined trading volume of each non-U.S. security and other related non-U.S. securities occurring in the U.S. market or in markets with which the Exchange has in place a comprehensive surveillance sharing agreement represents (on a share equivalent basis for any ADS) at least 50% of the combined worldwide trading volume in each non-U.S. security, other related non-U.S. securities, and other classes of common stock related to each

non-U.S. security over the six month period preceding the date of listing; or (iii)(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 a BLN listing, (b) the average daily trading volume for each non-U.S. security in the U.S. markets over the six months preceding the selection of each non-U.S. security for a BLN listing is 100,000 or more shares, and (c) the trading volume is at least 60,000 shares per day in the U.S. markets on a majority of the trading days for the six months preceding the date of selection of each non-U.S. security for a BLN listing.

- (5) Each underlying linked stock to which the instrument relates may not exceed 5% of the total outstanding common shares of such entity, provided however, if any underlying linked stock is a non-U.S. security represented by ADSs, common shares, or otherwise, then for each such linked security the instrument may not exceed: (i) 2% of the total shares outstanding worldwide provided at least 20% of the worldwide trading volume in each non-U.S. security and related non-U.S. security during the six month period preceding the date of listing occurs in the U.S. market; (ii) 3% of the total worldwide shares outstanding provided at least 50% of the worldwide trading volume in each non-U.S. security and related non-U.S. security during the six month period preceding the date of listing occurs in the U.S. market; and (iii) 5% of the total shares outstanding worldwide provided at least 70% of the worldwide trading volume in each non-U.S. security and related non-U.S. security during the six month period preceding the date of listing occurs in the U.S. market. 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 instrument may not be linked to that non-U.S. security. If an issuer proposes to list a BLN that relates to more than the allowable percentages set forth above, the Exchange, 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 BLNs that may be issued on a case-by-case basis.
- (6) BLNs will be treated as equity instruments.
- (7) If any underlying security to which the instrument is to be linked is the stock of a non-U.S. company which is traded in the U.S. market as a sponsored ADS, ordinary shares or otherwise, then the minimum number of holders of such underlying linked security shall be 2,000.

- (1) Index Fund Shares.

- (1) *Applicability.* This Rule 803(l) is applicable only to Index Fund Shares. Except to the extent inconsistent with this Rule 803(l), or unless the context otherwise requires, the provisions of the Rules and policies of the Exchange shall be applicable to the trading on the Exchange of Index Fund Shares. Index Fund Shares are included within the definition of "security" or "securities" as such terms are used in the Rules of the Exchange.
- (2) *Definitions.* The following terms shall have the meanings specified herein:
- (A) The term "Index Fund Share" means a security (I) that is issued by an open-end management investment company based on a portfolio of stocks that seeks to provide investment results that correspond generally to the price and yield performance of specified foreign or domestic stock index; (II) that is issued by such an open-end management investment company in a specified aggregate minimum number in return for a deposit of specified numbers of shares of stock and/or a cash amount with a value equal to the next determined net asset value; and (III) that, when aggregated in the same specified minimum number, may be redeemed at a holder's request by such open-end investment company which will pay to the redeeming holder the stock and/or cash with a value equal to the next determined net asset value.
- (B) The term "Reporting Authority" with respect to a particular series of Index Fund Shares means the Exchange, or an institution or reporting service designated by the Exchange, as the official source for calculating and reporting information relating to such series, including, but not limited to, any current index or portfolio value; the current value of the portfolio of any securities required to be deposited in connection with issuance of Index Fund Shares; the amount of any dividend equivalent payment or cash distribution to holders of Index Fund Shares, net asset value, or other information relating to the issuance, redemption or trading of Index Fund Shares. Nothing in this section shall imply that an institution or reporting service that is the source for calculating and reporting information relating to Index Fund Shares must be designated by the Exchange, the term "Reporting Authority" shall not refer to an institution or reporting service not so designated.
- (C) 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 ("Exchange Act") or an American Depositary Receipt the underlying equity security of which is registered under Sections 12(b) or 12(g) of the Exchange Act.
- (D) The term "Non-US Component Stock" shall mean an equity security that is not registered under Sections 12(b) or 12(g) of the Exchange Act 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).

- (3) *Disclosure.* Unless Rule 803(1)(7) applies, the Exchange requires that members and member organizations provide to all purchasers of newly issued Index Fund Shares a prospectus for the series of Index Fund Shares.
 - (4) *Designation.* The trading of Index Fund Shares based on one or more securities, whether by listing or pursuant to unlisted trading privileges, shall be considered on a case-by-case basis. Each issue of Index Fund Shares based on each particular stock index or portfolio shall be designated as a separate series and shall be identified by a unique symbol. The securities that are included in a series of Index Fund Shares shall be selected by the Exchange or its agent, a wholly-owned subsidiary of the Exchange, or by such other person, as shall have authorized use of such index. Such index may be revised from time to time as may deemed necessary or appropriate to maintain the quality and character of the index.
 - (5) *Initial and Continued Listing and/or Trading.* Each series of Index Fund Shares will be listed and traded on the Exchange subject to application of the following criteria:
 - (A) *Commencement of Trading.* For each Series, the Exchange will establish a minimum number of Index Fund Shares required to be outstanding at the time of commencement of trading on the Exchange.
 - (B) *Continued Trading.* Following the initial twelve month period following commencement of trading on the Exchange of a series of Index Fund Shares, the Exchange will consider the suspension of trading or the removal from listing for such series under any of the following circumstances: (I) If there are fewer than 50 beneficial holders of the series of Index Fund Shares for 30 or more consecutive trading days; (II) If the value of the index or portfolio of securities on which the series of Index Fund Shares is based is no longer calculated or available; or (III) If such other event shall occur or condition exists which in the opinion of the Exchange, makes further dealings on the Exchange inadvisable.
- Upon termination of an open-end management investment company, the Exchange requires that Index Fund Shares issued in connection with such entity be removed from Exchange listing.
- (C) *Voting.* Voting rights shall be as set forth in the applicable open-end management investment company prospectus.
 - (D) The Exchange will obtain a representation from the issuer of each series of Index Fund Shares that the net asset value per share for the series will be

calculated daily and will be made available to all market participants at the same time.

(6) *Listing Pursuant to SEC rule 19b-4(e)*. The Exchange may approve a series of Index Fund Shares for listing and trading pursuant to Rule 19b-4(e) under the Exchange Act provided the criteria described in paragraph (A), (B) or (C) below and (D)-(K) are satisfied:

(A) Eligibility Criteria for series of Index Fund Shares that are based on an Index or Portfolio comprised solely of US Component Stocks. Upon the initial listing of a series of Index Fund Shares the component stocks of an index or portfolio underlying a series of Index Fund Shares shall meet the following criteria as of the date of the initial deposit of securities to the fund in connection with the initial issuance of shares of such fund: (I) 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; (II) Component stocks that in the aggregate account for at least 90% of the weight of the index or portfolio each must have a minimum monthly trading volume during each of the last six months of at least 250,000 shares; (III) The most heavily weighted component stock cannot exceed 30% of the weight of the index or portfolio, and the five most heavily weighted component stocks cannot exceed 65% of the weight of the index or portfolio; (IV) The underlying index or portfolio must include a minimum of 13 component stocks; and (V) All securities in an underlying index or portfolio must be US Component Stocks listed on a national securities exchange and shall be NMS Stocks.

(B) Eligibility Criteria for series of Index Fund Shares that are based on an index or portfolio comprised solely of Non-US Component Stocks or Both US and Non-US Component Stocks. Upon the initial listing of a series of Index Fund Shares, the component stocks of an index or portfolio underlying such series of Index Fund Shares shall meet the following criteria as of the date of the initial deposit of securities to the fund in connection with the initial issuance of shares of such fund: (I) Component stocks that in the aggregate account for at least 90% of the weight of the index or portfolio each must have a minimum market value of at least \$100 million; (II) Component stocks that in the aggregate account for at least 90% of the weight of the index or portfolio each must have a minimum worldwide monthly trading volume during each of the last six months of at least 250,000 shares; (III) the most heavily weighted component stock may not exceed 25% of the weight of the index or portfolio, and the five most heavily weighted component stocks may not exceed 60% of the weight of the index or portfolio; (IV) the index or portfolio must include a minimum of 20 component stocks; and (V) each US Component Stock must be listed on a national securities exchange and must be an NMS Stock, and each

Non-US Component Stock must 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. Upon the initial listing of a series of Index Fund Shares, pursuant to Rule 19b-4(e) under the Exchange Act, the index or portfolio underlying such series shall have been reviewed and approved for trading of options, Trust Shares, Index Fund Shares, Index-Linked Exchangeable Notes or Index-Linked Securities by the Commission under Section 19(b)(2) of the Exchange Act and rules thereunder and the conditions set forth in the Commission's approval order, including comprehensive surveillance sharing agreements with respect to Non-US Component Stocks and requirements regarding dissemination of information continue to be satisfied. 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 or (II) a Non-US Component Stock that is listed and traded on an exchange that has last-sale reporting.
- (D) Index Methodology and Calculation. (I) If the index is maintained by a broker-dealer or fund advisor, the broker-dealer or fund advisor shall erect a "fire wall" around the personnel who have access to information concerning changes and adjustments to the index and the index shall be calculated by a third party who is not a broker-dealer or fund advisor; and (II) Any advisory committee, supervisory board, or similar entity that advises a Reporting Authority or a major market data vendor 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.
- (E) Disseminated Information. If a series of Index Fund Shares is listed for trading, or trades pursuant to unlisted trading privileges, on the Exchange in reliance upon rule 19b-4(e) under the Exchange Act, and invests solely in US Component Stocks, the current value of the underlying index must be widely disseminated by one or more major market data vendors or disseminated over the consolidated tape at least every 15 seconds during trading hours on the Exchange. If a series of Index Fund Shares is listed for trading on the Exchange in reliance upon Rule 19b-4(e) under the Exchange Act and invest in both US Component Stocks and Non-US Component Stocks or only in Non-US Component Stocks, the current value of the underlying index must be widely disseminated by one or more major market data vendors or disseminated over the consolidated tape at least every 60 seconds during trading hours on the Exchange. If the index value does not change during some or all of the period when trading is occurring on the Exchange (for example, for indexes of Non-US Component Stocks because of time zone differences or holidays in the countries where such indexes'

component stocks trade), then the last official calculated index value must remain available throughout Exchange trading hours.

(7) *Product Description.* The following paragraphs only apply to series of Index 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. The Exchange will inform members and member organizations regarding application of these provisions to a particular series of Index Fund Shares by means of an Information Circular prior to commencement of trading in such series. The Exchange requires that members and member organizations provide to all purchasers of a series of Index Fund Shares a written description of the terms and characteristics of such securities, in a form prepared by the open-end management investment company issuing such securities, not later than the time a confirmation of the first transaction in such series is delivered to such purchaser. In addition, members and member organizations shall include such a written description with any sales material relating to a series of Index Fund Shares that is provided to customers or the public. Any other written materials provided by a member or member organization to customers or the public making specific reference to a series of Index Fund Shares as an investment vehicle must include a statement in substantially the following form: "A circular describing the terms and characteristics of and is available from your broker or the Exchange. It is recommended that you obtain and review such circular before purchasing. In addition, upon request you may obtain from your broker a prospectus for." A member or member organization carrying an omnibus account for a non-member broker-dealer is required to inform such non-member that execution of an order to purchase a series of Index Fund Shares for such omnibus account will be deemed to constitute agreement by the non-member to make such written description available to its customers on the same terms as are directly applicable to members and member organizations under this Rule. Upon request of a customer, the member or member organization shall also provide a prospectus for the particular series of Index Fund Shares.

(8) *Limitation of Exchange Liability.* Neither the Exchange, the Reporting Authority, nor any agent of the Exchange shall have any liability for damages, claims, losses or expenses caused by any errors, omissions, or delays in calculating or disseminating any current index or portfolio value, the current value of the portfolio of securities required to be deposited to the open-end management investment company in connection with issuance of Index Fund Shares; the amount of any dividend equivalent payment or cash distribution to holders of Index Fund Shares; net asset value; or other information relating to the purchase, redemption or trading of Index Fund Shares, resulting from any negligent act or omission by the Exchange, the Reporting Authority or any agent of the Exchange, or any act, condition or cause beyond the reasonable control of the Exchange, its agent, or the Reporting Authority, including, but

not limited to, an act of God; fire; flood; extraordinary weather conditions; war; insurrection; riot; strike; accident; action of government; communications or power failure; equipment or software malfunction; or any error, omission or delay in the reports of transactions in one or more underlying securities.

(m) Securities Linked to the Performance of Indexes and Commodities (Including Currencies)

The Exchange will consider for listing and trading equity index-linked securities ("Equity Index-Linked Securities") and commodity-linked securities ("Commodity-Linked Securities" and, together with Equity Index-Linked Securities, "Linked Securities") that in each case meet the applicable criteria of this Rule. Equity Index-Linked Securities are securities that provide for the payment at maturity of a cash amount based on the performance of an underlying equity index or indexes. The payment at maturity with respect to Commodity-Linked Securities is based on one or more physical Commodities or Commodity futures, options or other Commodity derivatives, Commodity-Related Securities, or a basket or index of any of the foregoing (any such basis for payment is referred to below as the "Reference Asset"). The terms "Commodity" and "Commodity-Related Security" are defined in Rule 3230.

Linked Securities may or may not provide for the repayment of the original principal investment amount. The Exchange may submit a rule filing pursuant to Section 19(b)(2) of the Act to permit the listing and trading of Linked Securities that do not otherwise meet the standards set forth below in paragraphs (1) through (12). The Exchange will consider Linked Securities for listing and trading pursuant to Rule 19b-4(e) under the Act, provided:

- (1) Both the issue and the issuer of such security meet the criteria for other securities set forth in Rule 803(f), except that if the security is traded in \$1,000 denominations or is redeemable at the option of holders thereof on at least a weekly basis, then no minimum number of holders and no minimum public distribution of trading units shall be required.
- (2) The issue has a term of not less than one (1) year and not greater than thirty (30) years.
- (3) The issue must be the non-convertible debt of the Company.
- (4) The payment at maturity may or may not provide for a multiple of the direct or inverse performance of an underlying index, indexes or Reference Asset; however, in no event will a loss (negative payment) at maturity be accelerated by a multiple that exceeds twice the performance of an underlying index, indexes or Reference Asset.

- (5) The Company will be expected to have a minimum tangible net worth in excess of \$250,000,000 and to exceed by at least 20% the earnings requirements set forth in paragraph (a)(1) of this Rule. In the alternative, the Company will be expected: (i) to have a minimum tangible net worth of \$150,000,000 and to exceed by at least 20% the earnings requirement set forth in paragraph (a)(1) of this Rule, and (ii) not to have issued securities where the original issue price of all the Company's other index-linked note offerings (combined with index-linked note offerings of the Company's affiliates) listed on a national securities exchange exceeds 25% of the Company's net worth.
- (6) The Company is in compliance with Rule 10A-3 under the Act.
- (7) Equity Index Criteria—In the case of an Equity Index-Linked Security, each underlying index is required to have at least ten (10) component securities. In addition, the index or indexes to which the security is linked shall either:
 - (A) have been reviewed and approved for the trading of options or other derivatives by the Commission under Section 19(b)(2) of the Act and rules thereunder and the conditions set forth in the Commission's approval order, including comprehensive surveillance sharing agreements for non-U.S. stocks, continue to be satisfied, or
 - (B) the index or indexes meet the following criteria:
 - (I) Each component security has a minimum market value of at least \$75 million, except that for each of the lowest weighted component securities in the index that in the aggregate account for no more than 10% of the weight of the index, the market value can be at least \$50 million;
 - (II) Each component security shall have trading volume in each of the last six months of not less than 1,000,000 shares, except that for each of the lowest weighted component securities in the index that in the aggregate account for no more than 10% of the weight of the index, the trading volume shall be at least 500,000 shares in each of the last six months;
 - (III) Indexes based upon the equal-dollar or modified equal-dollar weighting method will be rebalanced at least semiannually;
 - (IV) In the case of a capitalization-weighted or modified capitalization-weighted index, the lesser of the five highest weighted component securities in the index or the highest weighted component securities in the index that in the aggregate represent at least 30% of the total number of component securities in the index, each have an average monthly trading volume of at least 2,000,000 shares over the previous six months;

- (V) No underlying component security will represent more than 25% of the weight of the index, and the five highest weighted component securities in the index do not in the aggregate account for more than 50% of the weight of the index (60% for an index consisting of fewer than 25 component securities);
- (VI) 90% of the index's numerical value and at least 80% of the total number of component securities will meet the then current criteria for standardized option trading on a national securities exchange or a national securities association, provided, however, that an index will not be subject to this requirement if (a) no underlying component security represents more than 10% of the dollar weight of the index and (b) the index has a minimum of 20 components;
- (VII) All component securities shall be either (a) securities (other than securities of a foreign issuer and American Depositary Receipts ("ADRs")) that are (i) issued by a 1934 Act reporting company or by an investment company registered under the Investment Company Act of 1940 that, in each case, has securities listed on a national securities exchange and (ii) an "NMS stock" (as defined in Rule 600 of Regulation NMS under the Act) or (b) securities of a foreign issuer or ADRs, provided that securities of a foreign issuer (including when they underlie ADRs) whose primary trading market outside the United States is not a member of the Intermarket Surveillance Group ("ISG") or a party to a comprehensive surveillance sharing agreement with the Exchange will not in the aggregate represent more than 20% of the dollar weight of the index.
- (8) Reference Asset Criteria—In the case of a Commodity-Linked Security, the Reference Asset shall meet the criteria in either subparagraph (A) or subparagraph (B) below:
- (A) The Reference Asset to which the security is linked shall have been reviewed and approved for the trading of Commodity-Related Securities or options or other derivatives by the Commission under Section 19(b)(2) of the Act and rules thereunder and the conditions set forth in the Commission's approval order, including with respect to comprehensive surveillance sharing agreements, continue to be satisfied.
- (B) The pricing information for each component of a Reference Asset other than a Currency must be derived from a market which is an ISG member or affiliate or with which the Exchange has a comprehensive surveillance sharing agreement. Notwithstanding the previous sentence, pricing information for gold and silver may be derived from the London Bullion Market Association. The pricing information for each component of a Reference Asset that is a Currency must be either: (i) the generally accepted

spot price for the currency exchange rate in question; or (ii) derived from a market of which (x) is an ISG member or affiliate or with which the Exchange has a comprehensive surveillance sharing agreement and (y) is the pricing source for a currency component of a Reference Asset that has previously been approved by the Commission. A Reference Asset may include components representing not more than 10% of the dollar weight of such Reference Asset for which the pricing information is derived from markets that do not meet the requirements of this subparagraph (B), provided, however, that no single component subject to this exception exceeds 7% of the dollar weight of the Reference Asset. The term "Currency," as used in this subparagraph, shall mean one or more currencies, or currency options, futures, or other currency derivatives, Commodity-Related Securities if their underlying Commodities are currencies or currency derivatives, or a basket or index of any of the foregoing.

- (9) Maintenance and Dissemination—(A) If the index is maintained by a broker-dealer, the broker-dealer shall erect a "firewall" around the personnel who have access to information concerning changes and adjustments to the index and the index shall be calculated by a third party who is not a broker-dealer. (B) Unless the Commission order applicable under clause 7(A) or 8(A) hereof provides otherwise, the current value of the index or the Reference Asset (as applicable) will be widely disseminated at least every 15 seconds during the Exchange's regular market session, except as provided in the next clause (C). (C) The values of the following indexes need not be calculated and widely disseminated at least every 15 seconds if, after the close of trading, the indicative value of the Equity Index-Linked Security based on one or more of such indexes is calculated and disseminated to provide an updated value: CBOE S&P 500 BuyWrite Index(sm), CBOE DJIA Buy Write Index(sm), CBOE Nasdaq-100 BuyWrite Index(sm). (D) If the value of a Linked Security is based on more than one index, then the dissemination requirement of this paragraph (9) applies to the composite value of such indexes. (E) In the case of a Commodity-Linked Security that is periodically redeemable, the indicative value of the subject Commodity-Linked Security must be calculated and widely disseminated by one or more major market data vendors on at least a 15-second basis during the Exchange's regular market session.
- (10) Trading Halts. In the case of Commodity-Linked Securities, if the indicative value (if required to be disseminated) or the Reference Asset value is not being disseminated as required, or, in the case of Equity Index-Linked Securities, if the value of the index is not being disseminated as required, the Exchange may halt trading during the day on which such interruption occurs. The Exchange will halt trading no later than the beginning of trading following the trading day when the interruption commenced if such interruption persists at this time.

(11) Surveillance Procedures. FINRA will implement on behalf of the Exchange written surveillance procedures for Linked Securities. The Exchange will enter into adequate comprehensive surveillance sharing agreements for non-U.S. securities, as applicable.

(12) Linked Securities will be treated as equity instruments. Furthermore, for the purpose of fee determination, Linked Securities shall be deemed and treated as Other Securities.

(n) Managed Fund Shares

(1) The Exchange will consider listing Managed Fund Shares that meet the criteria of Rule 803(n).

(2) Applicability. Rule 803(n) is applicable only to Managed Fund Shares. Except to the extent inconsistent with Rule 803(n), or unless the context otherwise requires, the Rules and procedures of the Board of Directors shall be applicable to the trading on the Exchange of such securities. Managed Fund Shares are included within the definition of "security" or "securities" as such terms are used in the Rules of the Exchange.

(A) The Exchange will file separate proposals under Section 19(b) of the Act before the listing of Managed Fund Shares

(B) Transactions in Managed Fund Shares will occur throughout the Exchange's trading hours.

(C) Minimum Price Variance. The minimum price variation for quoting and entry of orders in Managed Fund Shares is \$0.01.

(D) Surveillance Procedures. The Exchange will implement written surveillance procedures for Managed Fund Shares.

(E) Creation and Redemption. For Managed Fund Shares based on an international or global portfolio, the statutory prospectus or the application for exemption from provisions of the Investment Company Act of 1940 for the series of Managed Fund Shares must state that such series must comply with the federal securities laws in accepting securities for deposits and satisfying redemptions with redemption securities, including that the securities accepted for deposits and the securities used to satisfy redemption requests are sold in transactions that would be exempt from registration under the Securities Act of 1933.

(3) Definitions. The following terms as used in the Rules shall, unless the context otherwise requires, have the meanings herein specified:

- (A) Managed Fund Share. The term "Managed Fund Share" means a security that (a) represents an interest in a registered investment company ("Investment Company") organized as an open-end management investment company or similar entity, that invests in a portfolio of securities selected by the Investment Company's investment adviser consistent with the Investment Company's investment objectives and policies; (b) is issued in a specified aggregate minimum number in return for a deposit of a specified portfolio of securities and/or a cash amount with a value equal to the next determined net asset value; and (c) when aggregated in the same specified minimum number, may be redeemed at a holder's request, which holder will be paid a specified portfolio of securities and/or cash with a value equal to the next determined net asset value.
- (B) Disclosed Portfolio. The term "Disclosed Portfolio" means the identities and quantities of the securities and other assets held by the Investment Company that will form the basis for the Investment Company's calculation of net asset value at the end of the business day.
- (C) Intraday Indicative Value. The term "Intraday Indicative Value" is the estimated indicative value of a Managed Fund Share based on current information regarding the value of the securities and other assets in the Disclosed Portfolio.
- (D) Reporting Authority. The term "Reporting Authority" in respect of a particular series of Managed Fund Shares means the Exchange, an institution, or a reporting service designated by the Exchange or by the exchange that lists a particular series of Managed Fund Shares (if the Exchange is trading such series pursuant to unlisted trading privileges) as the official source for calculating and reporting information relating to such series, including, but not limited to, the Intraday Indicative Value; the Disclosed Portfolio; the amount of any cash distribution to holders of Managed Fund Shares, net asset value, or other information relating to the issuance, redemption or trading of Managed Fund Shares. A series of Managed Fund Shares may have more than one Reporting Authority, each having different functions.
- (4) Initial and Continued Listing — Managed Fund Shares will be listed and traded on the Exchange subject to application of the following criteria:
- (A) Initial Listing — Each series of Managed Fund Shares will be listed and traded on the Exchange subject to application of the following initial listing criteria:
- (I) For each series, the Exchange will establish a minimum number of Managed Fund Shares required to be outstanding at the time of commencement of trading on the Exchange.

- (II) The Exchange will obtain a representation from the issuer of each series of Managed Fund Shares that the net asset value per share for the series will be calculated daily and that the net asset value and the Disclosed Portfolio will be made available to all market participants at the same time.

- (B) Continued Listing — Each series of Managed Fund Shares will be listed and traded on the Exchange subject to application of the following continued listing criteria:
 - (I) Intraday Indicative Value. The Intraday Indicative Value for Managed Fund Shares will be widely disseminated by one or more major market data vendors at least every 15 seconds during the time when the Managed Fund Shares trade on the Exchange.

 - (II) Disclosed Portfolio.
 - (a) The Disclosed Portfolio will be disseminated at least once daily and will be made available to all market participants at the same time.

 - (b) The Reporting Authority that provides the Disclosed Portfolio must implement and maintain, or be subject to, procedures designed to prevent the use and dissemination of material non-public information regarding the actual components of the portfolio.

- (C) Suspension of trading or removal. The Exchange will consider the suspension of trading in or removal from listing of a series of Managed Fund Shares under any of the following circumstances:
 - (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 Managed Fund Shares for 30 or more consecutive trading days;

 - (II) if the value of the Intraday Indicative Value is no longer calculated or available or the Disclosed Portfolio is not made available to all market participants at the same time;

 - (III) if the Investment Company issuing the Managed Fund Shares has failed to file any filings required by the Commission or if the Exchange is aware that the Investment Company is not in compliance with the conditions of any exemptive order or no-action relief granted by the Commission to the Investment Company with respect to the series of Managed Fund Shares;
or

- (IV) if such other event shall occur or condition exists which, in the opinion of the Exchange, makes further dealings on the Exchange inadvisable.
- (D) Trading Halt. If the Intraday Indicative Value of a series of Managed Fund Shares is not being disseminated as required, the Exchange may halt trading during the day in which the interruption to the dissemination of the Intraday Indicative Value occurs. If the interruption to the dissemination of the Intraday Indicative Value persists past the trading day in which it occurred, the Exchange will halt trading no later than the beginning of the trading day following the interruption. 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 Exchange requires that Managed Fund Shares issued in connection with such entity be removed from listing on the Exchange.
- (F) Voting. Voting rights shall be as set forth in the applicable Investment Company prospectus.
- (5) Limitation of Liability. Neither the Exchange, the Reporting Authority, nor any agent of the Exchange shall have any liability for damages, claims, losses or expenses caused by any errors, omissions, or delays in calculating or disseminating any current portfolio value; the current value of the portfolio of securities required to be deposited to the open-end management investment company in connection with issuance of Managed Fund Shares; the amount of any dividend equivalent payment or cash distribution to holders of Managed Fund Shares; net asset value; or other information relating to the purchase, redemption, or trading of Managed Fund Shares, resulting from any negligent act or omission by the Exchange, the Reporting Authority or any agent of the Exchange, or any act, condition, or cause beyond the reasonable control of the Exchange, its agent, or the Reporting Authority, including, but not limited to, an act of God; fire; flood; extraordinary weather conditions; war; insurrection; riot; strike; accident; action of government; communications or power failure; equipment or software malfunction; or any error, omission, or delay in the reports of transactions in one or more underlying securities.
- (6) Disclosures. The provisions of this subparagraph apply only to series of Managed Fund Shares that are the subject of an order by the Securities and Exchange Commission exempting such series from certain prospectus delivery requirements under Section 24(d) of the Investment Company Act of 1940 and are not otherwise subject to prospectus delivery requirements under the Securities Act of 1933. The Exchange will inform its members and member organizations regarding application of these provisions of this subparagraph to

a particular series of Managed Fund Shares by means of an information circular prior to commencement of trading in such series.

The Exchange requires that members and member organizations provide to all purchasers of a series of Managed Fund Shares a written description of the terms and characteristics of those securities, in a form prepared by the open-end management investment company issuing such securities, not later than the time a confirmation of the first transaction in such series is delivered to such purchaser. In addition, members and member organizations shall include such a written description with any sales material relating to a series of Managed Fund Shares that is provided to customers or the public. Any other written materials provided by a member or member organization to customers or the public making specific reference to a series of Managed Fund Shares as an investment vehicle must include a statement in substantially the following form: "A circular describing the terms and characteristics of (the series of Managed Fund Shares) has been prepared by the (open-end management investment company name) and is available from your broker. It is recommended that you obtain and review such circular before purchasing (the series of Managed Fund Shares)."

A member or member organization carrying an omnibus account for a non-member broker-dealer is required to inform such non-member that execution of an order to purchase a series of Managed Fund Shares for such omnibus account will be deemed to constitute agreement by the non-member to make such written description available to its customers on the same terms as are directly applicable to members and member organizations under this Rule.

Upon request of a customer, a member organization shall also provide a prospectus for the particular series of Managed Fund Shares.

(7) If the investment adviser to the Investment Company issuing Managed Fund Shares is affiliated with a broker-dealer, such investment adviser shall erect a "fire wall" between the investment adviser and the broker-dealer with respect to access to information concerning the composition and/or changes to such Investment Company portfolio. Personnel who make decisions on the Investment Company's portfolio composition must be subject to procedures designed to prevent the use and dissemination of material nonpublic information regarding the applicable Investment Company portfolio.

(o) Unlisted Trading Privileges

(1) Applicability. The Exchange may determine to extend unlisted trading privileges ("UTP") to a NMS Stock that is listed on another national securities exchange. Any such security will be subject to all Exchange trading Rules applicable to NMS Stocks, unless otherwise noted, including the Exchange's Rule 3000 Series. The Exchange lists only standardized options, as defined in

Rule 9b-1 under the Exchange Act, issued by a clearing agency that is registered pursuant to Section 17A of the Exchange Act, pursuant to the Rule 1000, 1000A and 1000C Series, and the provisions of this Rule 800 Series are not effective to permit the listing of securities. For purposes of this Rule, the term NMS Stock shall have the meaning given such term by Rule 600 under Regulation NMS, and may include, but is not limited to, common stock, preferred stock and similar issues, shares or certificates of beneficial interest of trusts, notes, limited partnership interests, warrants, certificates of deposit for common stock, convertible debt securities, American Depositary Receipts (ADRs), contingent value rights ("CVRs"), Trust Shares, Trust Issued Receipts, Index Fund Shares, Equity Index-Linked Securities, Commodity-Linked Securities, Equity-Linked Notes, and Managed Fund Shares.

- (2) Prior to the commencement of trading of CVRs on the Exchange, the Exchange will distribute a circular to its member organizations providing guidance regarding member organization compliance responsibilities (including suitability recommendations and account approval) when handling transactions in CVRs.
- (3) Any "new derivative securities product" ("NDSP") traded on the Exchange pursuant to UTP shall be subject to the additional following Rules:
 - (A) Information Circular. The Exchange shall distribute an information circular prior to the commencement of trading in such NDSP that generally includes the same information as the information circular provided by the listing exchange, including: (1) the special risks of trading the NDSP; (2) the Exchange's Rules that will apply to the NDSP, including the suitability rule; (3) information about the dissemination of value of the underlying assets or indexes; and (4) the risk of trading during the period from 9:00 a.m. to 9:30 a.m. and from 4:00 p.m. to 5:00 p.m. due to the lack of calculation or dissemination of the underlying index value, the Intraday Indicative Value, the Indicative Optimized Portfolio Value or other comparable estimate of the value of a share of the NDSP.
 - (B) Prospectus Delivery/Product Description. Members and member organizations are subject to the prospectus delivery requirements under the Securities Act of 1933, unless the NDSP 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. The Exchange shall inform its members and member organizations regarding the application of the provisions of this subparagraph to such NDSPs by means of an information circular.

The Exchange requires that members and member organizations provide to all purchasers of such NDSPs a written description of the terms and characteristics of those securities, in a form approved by the Exchange or prepared by the open-ended management company issuing such securities, not later than the time a confirmation of the first transaction in such series is delivered to such purchaser. In addition, the members and member organizations shall include a written description with any sales material relating to such NDSPs that is provided to customers or the public. Any other written materials provided by a member or member organization to customers or the public making specific reference to such NDSPs as an investment vehicle must include a statement substantially in the following form: "A circular describing the terms and characteristics of [such NDSPs] 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 [such NDSPs]."

A member or member organization carrying an omnibus account for a non-member is required to inform such non-member that execution of an order to purchase such NDSPs for such omnibus account will be deemed to constitute an agreement by the non-member to make such written description available to its customers on the same terms as are directly applicable to members and member organizations under this Rule.

Upon request of a customer, a member or member organization shall also provide a prospectus for such NDSPs.

(C) Comprehensive Surveillance Sharing Agreements. The Exchange shall enter into a comprehensive surveillance sharing agreement ("CSSA") with markets trading components of the index or portfolio on which the NDSP is based to the same extent as the listing Exchange's Rules require the listing exchange to enter into a CSSA with such markets.

••• *Commentary:* -----

.01 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 Trust Shares on the Exchange. Nasdaq and its affiliates do not guarantee the accuracy and/or completeness of the Nasdaq-100 Index or any data included therein. Nasdaq, the Exchange 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 Exchange 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 Exchange 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 Exchange 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.

Rule 804. Alternative Criteria for Listing—Tier I

The Exchange recognizes that certain financially sound companies may be unable to meet its full listing criteria due to the nature of their business: Such companies may still be eligible for listing provided the following criteria are met:

- (1) Net Tangible Assets—Total Assets (including the value of patents, copyrights and trademarks, but excluding the value of goodwill) less total liabilities must be \$12 million;
- (2) At least 1,000,000 shares publicly held with at least 400 public shareholders.
- (3) Stock price of \$3 per share on each of the five business days prior to the application date;
- (4) Aggregate Market Value \$15,000,000
- (5) Three years of operating history;
- (6) Voting Rights—See Rule 812;
- (7) The company must have sufficient financial resources to continue operating over an extended period of time and its securities are regarded by the Exchange as suitable for listing and auction market trading.

Rule 805. Listing Criteria—Tier II

The Exchange has established certain numerical criteria which companies that are too small to meet the Exchange's Tier I listing standards are required to meet in order to be eligible for listing. In addition, companies must adhere to the policies and procedures and corporate governance standards provided in Rules 812 through 853.

(a) In the case of Common Stock:

1. At least 750,000 shares are issued and outstanding having a minimum market value of \$2,250,000, exclusive of shares held by those required to report their

stock holdings under Section 16(a) of the Securities Exchange Act of 1934 ("Exchange Act") (hereinafter Section 16(a) Reporting Persons);

2. At least 500 public holders;
3. Net tangible assets, which is defined by the Exchange as total assets (which include the value of patents, copyrights and trademarks but exclude the value of goodwill) less total liabilities of at least \$1,500,000;
4. Net income after federal income taxes and before extraordinary items of \$100,000 a year for three of the last four years preceding the listing review or \$2,000,000 in net tangible assets; and
5. A minimum market price of \$3 per share on each of the five business days prior to the application date

(b) In the case of Warrants:

1. At least 500,000 warrants outstanding, exclusive of warrants held by Section 16(a) Reporting Persons; and
2. The company meets the net tangible assets and net income criteria applicable to common stock.

(c) In the case of Preferred Stock:

1. At least 500,000 shares outstanding, exclusive of shares held by Section 16 (a) Reporting Persons;
2. At least 250 public holders; and
3. The company meets the net tangible assets and net income criteria applicable to common stock and appears to be able to service the dividend requirements of the issue.

(d) In the case of Bonds, Debentures or Notes:

1. The issue has a principal amount of at least \$2,000,000;
2. The issue has an aggregate market value of at least \$2,000,000;
3. At least 250 public holders; and
4. The company meets the net tangible assets and net income criteria applicable to common stock and appears to be able to satisfy interest and principal when due.

(e) In the case of Units:

1. The Exchange will review unit offerings with respect to its components.

(f) In the case of shares of a foreign issuer either registered directly as American Depository Receipts (ADRs) or as American Depositary Shares (ADSs):

1. The shares must be registered or exempt from registration under the Exchange Act;
2. At least 750,000 shares or ADRs are issued and outstanding in the United States having a minimum market value of at least \$1,500,000 United States dollars, exclusive of shares held by Section 16(a) Reporting Persons;
3. At least 500 public holders in the United States;
4. Total net tangible assets of at least \$1,500,000 in United States dollars; and
5. Net income of \$100,000 a year for three of the last four years preceding the listing review or \$2,000,000 in net tangible assets (in United States dollars);
6. Share certificates shall be printed in English and in registered form and share certificates shall be interchangeable and capable of being delivered or transferred in the United States as well as in the country of origin;
7. The ADRs shall be issued by a United States bank or trust company, representing the deposit of an equivalent amount of underlying foreign shares;
8. ADRs dealt in on the Exchange must conform to customary standards as to form and printing and include a statement on the face of the certificate that title thereto is transferable with the same effect as in the case of an investment security under Article 8 of the Uniform Commercial Code; and
9. A foreign issuer is required to furnish to American shareholders an English language version of the materials provided to its shareholders; and
10. The Exchange will consider the law and commercial and business practices of the applicant's domicile in evaluating (a) the election and composition of its Board of Directors, (b) shareholder approval, voting rights and quorum requirements for meetings, and (c) the issuance of quarterly earnings statements. A company seeking relief under these provisions should provide written certification from independent local counsel that the non-complying practice is not prohibited by home country law.

Rule 806. Initial Public Offerings

(a) A new issue of securities shall be eligible for listing on the day that its registration statement is effective with the Securities and Exchange Commission, or where registration with Securities and Exchange Commission is not required, upon effectiveness of its registration statement or equivalent document filed with the appropriate regulatory authority, provided that the issuer has met the initial listing criteria as follows: prior to the offering, the issuer has met the initial listing criteria of Rules 803, 804 or 805 except that as a result of the offering, the criteria for shares outstanding, price per share and holder of record contained in Rules 803, 804 or 805 as applicable, were met for a majority of the trading days in the first month after the offering is complete.

(b) Prior to the offering the issuer must provide the Exchange with a letter from the principal investment bank which represents that, in their opinion, the company will attain the requisite level of shareholders, market value and price in order to be eligible for listing. Within one month after the offering has been completed and closed, the Exchange requires documentation from the company's transfer agent that the requisite criteria have been met for a majority of trading days during that month. If criteria has not been met, the issue will be immediately delisted. A new issue of securities listed pursuant to Rule 803(f), (h), (k), (m) and (n) shall be exempt from the provisions of Rule 806(b).

Rule 807. Registration Under the Exchange Act

A security approved for listing by the Exchange must be registered under Section 12(b) of the Exchange Act before it may be admitted to trading on the Exchange. Exchange Act registration is required even though the issuer may have previously registered all or part of the securities under the Securities Act of 1933 ("Securities Act"). However, a security which has already been registered under Section 12(g) of the Exchange Act, or has recently been the subject of a public offering registered under the Securities Act, may normally be registered under Section 12(b) of the Exchange Act for Exchange trading on SEC Form 8-A.

In addition, securities of an issuer which has another class or series of securities registered on another national securities exchange may also use SEC Form 8-A. If an applicant does not have a class of securities registered under Exchange Act Section 12(g) or another class of securities registered on a national securities exchange, SEC Form 10 may be required.

Applicants should prepare and file the SEC registration statement and exhibits concurrently with the Exchange listing application and exhibits. However, registration under Section 12(b) of the Exchange Act cannot become effective until after the issue has been approved for listing by the Exchange. Upon such approval, the Exchange is required to certify to the SEC that it has received its copy of the registration statement and has approved the particular securities for listing and registration. Registration of a class of securities on Form 8-A becomes effective automatically upon the later of the filing of the Form 8-A with the SEC, the SEC's receipt of certification from the Exchange, or (if the class of securities is concurrently being registered under the Securities Act) the effectiveness of the related Securities Act registration statement. Registration other than on Form 8-A becomes effective automatically 30 days after receipt by the SEC of the

Exchange's certification but may become effective within a shorter period, by order of the SEC, on request for acceleration of the effective date made by the company to the SEC.

One manually signed copy of the Exchange Act registration statement, including exhibits, must be filed with the listing application.

Rule 808. Submission of Original Listing Application

(a) An applicant company seeking listing privileges should submit to the Exchange a preliminary draft listing application (signed by an Executive Officer) along with the following supporting documentation:

1. Latest Form 10-K Annual report, Form 10-Q Quarterly Report(s) for the last three quarters, Form 8-K reports filed pursuant to the Exchange Act, and latest proxy statement for the annual meeting of stockholders; or
2. A prospectus declared effective by the SEC which contains the latest audited financial statements of the applicant company, Form 10-Q Quarterly Reports(s) and Form 8-K Current Report(s)(or comparable periodic reports filed with the appropriate regulatory agency of the applicant company pursuant to the Securities Exchange Act of 1934), for the last year and latest available proxy statement for a meeting of stockholders. In the event a Form 10-Q Quarterly Report (or comparable periodic report) for a quarter ended more than 45 days before the date of the listing application is not required to be filed with the SEC (or other appropriate regulatory agency), financial information comparable to that which would have been included in the Form 10-Q Quarterly Report shall be filed with the Exchange as part of the listing application; and
3. Latest annual report distributed to stockholders; and
4. Any other information deemed necessary by the Exchange in order to render a decision concerning listing eligibility.
5. Specimen Certificates. One specimen copy of each denomination of certificate of class to be listed. If transfer agent(s) and registrar(s) are located in more than one city, furnish one specimen of each denomination of certificates used in each city. Specimens should be accompanied by certificate and agreement of the banknote company. Foreign issuers must provide specimen certificates in English.
6. Opinion of Counsel. One copy of opinion of counsel of satisfactory standing, addressed to the Exchange, as to the following: (a) the legality of organization and valid existence of the applicant; (b) its qualification in jurisdictions other than that of incorporation (if applicable); (c) the validity of authorization and issuance (or proposed issuance) of the securities applied for; and (d) whether the securities are (or will be) fully paid and non-assessable, and whether personal liability attaches to ownership. If such counsel or any partner of such counsel (or, if a firm, and member thereof) is an officer, director or shareholder of the

applicant, this fact must be disclosed in the opinion and in the listing application. In addition, the opinion should enumerate the circumstances of original issuance of the securities from the date of incorporation to the date of application and, if an exemption from registration under the Securities Act has been claimed for any such issuance, the basis of exemption should be set forth. With respect to any unissued securities applied for which, upon issuance, will be issued without registration under the Securities Act, in reliance upon an exemption therefrom, the opinion should state that such certificates (identify blocks and purposes for which issuable) will bear a legend relating to the sale or transfer restriction. Such legend (which must be quoted in the opinion) should read substantially as follows: "The shares represented by this certificate have not been registered under the Securities Act of 1933. The shares may not be sold or transferred in the absence of such registration or an exemption therefrom under said Act."

7. Listing Resolution. Certified copy of resolution of board of directors, authorizing the filing of the listing application and designating the officer or officers authorized to sign documents or agreements relative thereto and (if requested) to appear before officials of the Exchange. A suggested wording is as follows:

"RESOLVED, that application be made to Nasdaq PHLX LLC ("Exchange") for the listing of (amount and designation of security) of this Corporation and that name(s) of officer(s) is (are) hereby authorized and directed by the Corporation to sign said application and any listing agreements or documents required by said Exchange in connection therewith and to make such changes in any of same as may be necessary to conform with the requirements for listing, and to appear (if requested) before officials of said Exchange."

8. Contract with Transfer Agent. One copy of the contract with transfer agent relative to the issuance of additional shares.
9. Contract with Registrar. One copy of the contract of each registrar relative to the registration of additional shares.
10. Option, Bonus, Profit-Participation, Pension and Retirement Plans. One certified copy of any such employee benefit plan.
11. Listing Fee—a check drawn to the Nasdaq PHLX LLC ("Exchange") in the amount of \$7500. Should the company not be eligible for listing the Exchange will retain \$500.

(b) Bond Listing Application

An original listing application for bond or debenture issues should essentially follow the same format in section (a) above except that the following descriptions should accompany the application in narrative form:

1. Description of Bonds. If a prospectus is attached to the listing application, the relevant information may be incorporated by reference to such document. If a prospectus is not attached, applicant will give the following information in narrative form:
 - (1) full title of issue; (2) title of instrument under which created; (3) name of trustee; (4) dates of authorization by directors, shareholders and public authorities; (5) amounts authorized, issued to date, retired, and outstanding; (6) date of issue maturity, and interest rate; (7) places and dates for payment of principal and interest and standard of money in which payable; (8) tax exemptions; (9) whether issuable in coupon or registered form; (10) denominations issuable; (11) whether exchangeable as between registered and coupon form, and interchangeable as to denominations, together with places and times at which exchanges may be made; and (12) where registerable and transferable.
2. Indenture Provision. Summarize the indenture provisions of the issue applied for with respect to the following:
 - (1) security, describing the lien created by the indenture or other instrument, properties covered (in general terms), and other assets pledged thereunder (describe also and underlying or prior liens); (2) additional issues, stating conditions under which additional amounts of indebtedness may be issued; (3) sinking fund; (4) redemption and call, including date on which redeemable, prices, method of selection in event of partial redemption, duration and place of published notice, disposition of bonds redeemed; (5) default, including events constituting default, remedies of bondholders' percentage of bonds necessary to direct or control trustee's action in regard to default (6) release of pledged property from lien, stating conditions under which pledged property may be released from lien of the indenture, or other property substituted for pledged property; (7) convertibility; (8) modification, stating extent to which indenture may be modified in any particular circumstance and conditions under which it may be so modified; (9) treatment of deposited funds, stating how funds deposited pursuant to the term of the indenture are required to be held, whether deposit of funds operates to discharge the properties pledged from the lien of the indenture and whether deposit of funds for payment of principal, interest of redemption operates to discharge the obligation of the issuer with respect thereto; (10) summarize the more important covenants of the indenture; and (11) names and addresses of trustee, fiscal and paying agent(s), agent(s) for registry, exchange and interchange of bonds.
3. Distributions. Schedule of distribution. If, as in the case of a non-registered bond, details concerning distribution cannot be determined, the Exchange will accept the best available estimate of the number of holders.

4. **Opinion of Counsel.** One copy of opinion of counsel of satisfactory standing addressed to the Exchange, as to the following: (a) the legality of organization and valid existence of the applicant; (b) the validity of authorization and issuance of the bonds; and (c) the legal, valid and binding nature of the obligations enforceable against the applicant in accordance with the terms of the instrument creating such bonds with remedies exceptions, if appropriate. If the bonds are convertible into equity securities of the applicant, an opinion should further set forth the basis for exemption from registration under the Securities Act that has been, or will be, claimed for the issuance of the bonds of the securities into which they are convertible; and, if they are to be issued under an exemption, the legend that such certificates will bear must be quoted in the opinion. If counsel, or any partner of such counsel (or, if a firm, any member thereof) is an officer, director or shareholder of the applicant, this fact must be disclosed in the opinion and in the listing application.
5. **Indenture.** One copy of the mortgage, indenture, or equivalent instrument certified by the trustee.
6. **Trustee's Certificate.** A certificate from the trustee showing: (a) acceptance of the trust; (b) that the securities have been issued in accordance with the terms of the indenture; (c) what disposition has been made of securities redeemed or refunded; (d) that pledged collateral has been deposited; and (e) what disposition has been made of prior obligations. (see suggested Form.)

Rule 809. Issuer Request for Removal and Delisting of Securities

(a) An issuer proposing to withdraw a security from listing on the Exchange shall submit a certified copy of a resolution adopted by the Board of Directors of the issuer authorizing withdrawal from listing and registration and a statement setting forth in detail the reasons for the proposed withdrawal and the facts in support thereof.

The issuer may be required to submit the proposed withdrawal to the security holders for their vote at a meeting for which proxies are solicited provided the stock is not also listed on another Exchange having similar requirements.

(b) An issuer proposing to withdraw a security from listing on the Exchange shall do so by electronically submitting to the Securities and Exchange Commission ("Commission") Form 25 via the EDGAR system in compliance with all of the requirements of Rule 12d2-2(c) under the Exchange Act, and shall simultaneously provide a copy of such Form 25 to the Exchange.

(c) Not less than ten days before the issuer submits Form 25 pursuant to paragraph (b) herein an issuer seeking to voluntarily apply to withdraw a security from listing on the Exchange where the issuer has received notice from the Exchange, pursuant to Rule 811 or otherwise, that the issuer is below the Exchange's continued listing policies and standards, or that the issuer is aware that it is below such continued listing policies and standards notwithstanding that it has not received such notice from the Exchange, must:

- (i) provide written notice to the Exchange of its decision to withdraw from listing indicating all material facts relating to the reasons for withdraw in compliance with Rule 12d2-2(c) under the Exchange Act, and
- (ii) contemporaneously with providing such notice to the Exchange disclose that it is no longer eligible for continued listing (including the specific continued listing policies and standards that the issue is below) in (A) its statement of all material facts relating to the reasons for withdrawal from listing provided to the Exchange along with written notice of its determination to withdraw from listing required by Rule 12d2-2(c)(2)(ii) under the Exchange Act and (B) its release and Web site notice required by Rule 12d2-2(c)(2)(iii) under the Exchange Act.

Rule 810. Suspension and Delisting Policies Based on Exchange Findings

The Exchange may suspend dealings in any security admitted to the list and/or institute proceedings to remove a security from the list. The issues will be reviewed on a quarterly basis and as necessary due to extraordinary corporate events. All issues listed prior to the adoption of this Rule will be reviewed by the Exchange in order to determine whether the company fully complies with the new maintenance criteria. All such issues will be given six months to demonstrate full compliance with the new maintenance standards. If the issuer cannot demonstrate full compliance after that time it will become subject to delisting proceedings pursuant to Rule 811.

- (a) The Exchange has adopted certain criteria which an issuer which has been listed pursuant to Rule 803 or 804 must meet in order to remain listed. The following minimum criteria does not limit or restrict the Exchange's right to delist a security. Upon reviewing the relevant circumstances in each case, the Exchange may suspend dealings in, or remove a security from listing or unlisted trading when, in its opinion, the security is unsuitable for continued trading on the Exchange, regardless of whether all of the following criteria is met:
 - (1) 200,000 publicly held shares with an aggregate market value of \$1,000,000;
 - (2) 400 public shareholders or 300 round lot shareholders;
 - (3) Net tangible assets of at least \$2 million if the issuer has sustained losses from continuing operations and/or net losses in two of its three most recent fiscal years; or \$4 million if the issuer has losses from continuing operations and/or net losses in three of its four most recent fiscal years;
 - (4) For CVRs, aggregate market value of at least \$1 million and the related equity security to which a cash payment is tied must remain listed.
 - (5) For Bonds, Debentures and Notes:
 - (i) aggregate market value or the principal amount of bonds publicly held of \$400,000; and

- (ii) the issuer must be able to meet its obligations in the listed debt securities
- (iii) a debt security convertible into a listed equity security will be reviewed when the underlying equity security is delisted and will be delisted when the underlying equity security is no longer subject to real-time trade reporting in the United States. In addition, if common stock is delisted for violation of any of the corporate governance criteria in Exchange Rules 812 through 899, the Exchange will also delist any listed debt securities convertible into that common stock.

(b) The Exchange has adopted certain criteria which an issuer which has been listed pursuant to Rule 805 must meet in order to remain listed. The following minimum criteria does not limit or restrict the Exchange's right to delist a security. Upon reviewing the relevant circumstances in each case, the Exchange may suspend dealings in, or remove a security from listing or unlisted trading when, in its opinion, the security is unsuitable for continued trading on the Exchange, regardless of whether all of the following criteria is met:

(1) In the Case of Common Stock:

- i. Less than 375,000 shares are issued and outstanding exclusive of shares held by Section 16(a) Reporting Persons;
- ii. Should the aggregate market value of publicly held shares (aggregate market value) remain below \$250,000 for a majority of trading days in the most recent three (3) calendar month period, below \$500,000 in the most recent six (6) calendar month period, below \$750,000 in the most recent nine (9) calendar month period or below \$1 million in the most recent twelve (12) calendar month period, it would be subject to delisting procedures. In each instance the aggregate market value shall be calculated by using the last sale of the trading day. Should no transactions be effected in the issue, the prevailing closing bid shall be the factor used in the aggregate market value calculation. In the event that there is not a bid price readily available, the Exchange will use its best efforts in determining an accurate share price on which to base its aggregate market value calculations.
- iii. Fewer than 250 public holders; or
- iv. Net tangible assets, as defined in Rule 805(a)(3) less than \$1,500,000; or
- v. A price per share of less than \$1.00 for a majority of days in a 60 trading day period.

(2) In the case of Warrants:

- i. Less than 250,000 warrants outstanding, exclusive of warrants held by Section 16(a) Reporting Persons; or
 - ii. The company does not satisfy the net tangible assets criteria for common stock.
- (3) In the case of Preferred Stock:
 - i. Less than 250,000 shares outstanding, exclusive of shares held by Section 16(a) Reporting Persons;
 - ii. Fewer than 100 public holders; or
 - iii. The issuer does not satisfy the net tangible assets criteria for common stock.
- (4) In the case of Bonds:
 - a. Publicly held principal amount outstanding less than \$1,000,000 having an aggregate market value of less than \$500,000;
 - b. Fewer than 125 public holders; or
 - c. The issuer does not satisfy the net tangible assets criteria for common stock.
 - d. In the case of municipal securities, such security is not rated as investment grade by at least one nationally recognized rating service, does not have at least a market value or principal amount outstanding of one half million dollars (\$500,000) or is not held by at least fifty (50) public beneficial holders of record.
- (5) In the case of Units:
 - a. The components of the unit no longer satisfy the respective criteria of Rule 810.
- (6) In the case of shares of a foreign issuer either registered directly or as ADRs or ADSs:
 - a. Less than 375,000 shares or ADRs or ADSs are issued and outstanding in the United States, exclusive of shares held by Section 16(a) Reporting Persons;
 - b. Aggregate market value of publicly held shares issued and outstanding in the United States is less than 750,000 United States dollars for a one-year period;

- c. Fewer than 250 public holders in the United States; or
- d. Net tangible assets are less than \$1,500,000.

(c) In considering whether a security should continue to be traded, the Exchange considers, among other things, the degree of investor interest in the security, the reputation of the issuer and whether its securities continue to be suitable for auction market trading. The Exchange may also review the continued listing of an issuer when there has been a substantial sale of operating assets or the issuer has taken steps toward liquidation.

The Exchange may at any time in its discretion suspend dealings in any security from listed or unlisted trading privileges. In addition to the quantitative criteria provided in this Rule, the Exchange may consider suspending trading in or removing from listing or unlisted trading in any security when in the opinion of the Exchange any one of the following conditions are found to exist:

- (1) Unsatisfactory Financial Condition—the financial condition and/or operating results of the issuer appear to be unsatisfactory, i.e., 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 Exchange, as to whether the company will be able to continue operations and/or meet its obligations as they mature; or
- (2) Disposal of Assets—the issuer has sold or otherwise disposed of its principal operating assets, or has ceased to be an operating company, absent extraordinary circumstances;
 - (i) If the company has sold or otherwise disposed of its principal operating assets or has ceased to be an operating company or has discontinued a substantial portion of its operations or business for any reason whatsoever, including without limitation, such events as sale, lease, spin-off, distribution, foreclosure, discontinuance, abandonment, destruction, condemnation, seizure or expropriation. Where the company 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 the success of which is questionable, it shall not be considered an operating company for the purposes of continued trading and listing on the Exchange.
 - (ii) If liquidation of the company has been authorized. However, where such liquidation has been authorized by stockholders and the company is committed to proceed, the Exchange will normally continue trading until substantial liquidation distributions have been made.

- (iii) If advice has been received, deemed by the Exchange to be authoritative, that the security is without value.
- (3) Listing Agreement—the issuer has failed to comply with its listing agreement with the Exchange.
- (4) Exchange Rules—the issuer of a company fails (or the transfer agent or registrar of which fails) to comply with the Exchange Rules in any material respect including the corporate governance rules in Rules 812 to 851.
- (5) Registration No longer Effective—if the registration (or exemption from registration thereof) pursuant to the Exchange Act is no longer effective.
- (6) Payment, Redemption or Retirement of Entire Class, Issue or Series—if the entire outstanding amount of a class, issue or series is retired through payment at maturity or through redemption, reclassification or otherwise. In such event the Exchange may, at a time which is appropriate under all circumstances of the particular case, suspend dealings in the security and, in the case of a listed security, give notice to the SEC on Form 25, of the Exchange's intention to remove such security from listing and registration as required by Rule 12d-2(a) under the Exchange Act.
- (7) Operations Contrary to Public Interest—if the company or its management shall engage in operations which, in the opinion of the Exchange, are contrary to the public interest.
- (8) Failure to Pay Listing Fees—if the company shall fail or refuse to pay, when due, any applicable listing fees established by the Exchange.
- (9) Low selling Price Issues—in the case of a common stock selling for a substantial period of time at a price less than \$3 per share, if the issuer shall fail to effect a reverse split of such shares within a reasonable time after being notified that the Exchange deems such action to be appropriate under all circumstances.

In its review of the question of whether it deems a reverse split of a given issue to be appropriate, the Exchange will consider all pertinent factors including, market conditions in general, the number of shares outstanding, plans which may have been formulated by management, applicable regulations of the state or country of incorporation or of any governmental agency having jurisdiction over the company, the relationship to other Exchange policies regarding continued listing, and, in respect of securities of foreign issuers, the general practice in the country of origin of trading in low-selling price issues.

- (10) Any other event shall occur or any other condition shall exist which makes further dealings on the Exchange inadvisable.

••• *Supplementary Material:* -----

.01 An application by the Exchange to strike a security from listing and/or registration will be submitted to the Securities and Exchange Commission electronically on Form 25 via the EDGAR system, and a copy of the application on Form 25 will be promptly delivered to the issuer.

Rule 811. Delisting Policies and Procedures

Once Exchange staff identifies a company as being below the Exchange's continued listing criteria (and not able to otherwise qualify under an initial listing standard), Exchange staff will so notify the company by letter. This letter will also provide the company with an opportunity to provide the Exchange staff with a plan (the "Plan") advising the Exchange of action the company has taken, or will take, that would bring it into compliance with the continued listing standards within three months of receipt of the letter. The company has 30 days from the receipt of the letter to submit its Plan to the Exchange for review; if it does not submit a Plan within this period the Exchange will promptly initiate delisting proceedings as provided in subsections (a)—(g) below. The Exchange will evaluate the Plan and determine whether the company has made reasonable demonstration in the Plan of an ability to regain compliance with the continued listing standards within the three month period. The Exchange will make such determination within 45 days of receipt of the proposed Plan, and will promptly notify the company of its determination in writing. If the Exchange does not accept the Plan, the Exchange will promptly initiate delisting proceedings as provided in subsections (a)—(g) below. If Exchange staff accepts the Plan, the three month Plan period will commence on the date the issuer is notified of such acceptance. The Exchange will then review the company on a periodic basis for compliance with the Plan. If the company does not show progress consistent with the Plan, the Exchange will review the circumstances and variance, and determine whether such variance warrants the commencement of delisting procedures. Should the Exchange determine to proceed with delisting procedures, it may do so regardless of the company's continued listing status at that time. If, prior to the end of the three month Plan period, the company is able to demonstrate compliance with the continued listing standards at the end of the three month Plan period, the Exchange will deem the Plan period over. If the company does not meet continued listing standards at the end of the three month Plan period, the Exchange will promptly initiate delisting procedures. If the company, within twelve months of the end of the Plan (including any early termination of the Plan period) is again determined to be below continued listing standards, the Exchange will examine the relationship between the two incidents of falling below continued listing standards and re-evaluate the company's method of recovery from the first incident. It will then take appropriate action which, depending upon the circumstances, may include truncating the procedures described above or immediately initiating delisting procedures.

Whenever the Exchange determines that it is appropriate to consider removing a security from listing for other than routine reasons (redemptions or maturities) it will follow the following procedures:

- (a) The Exchange will furnish the company with a statement in writing which indicates the facts and circumstances which have caused the Exchange to consider the removal of the company's security from listing (or unlisted trading) and which specifies the delisting policies and guidelines which are applicable. Such statement will also request that the company respond in writing within 20 days with any reasons why the company believes the security should not be removed from listing (or unlisted trading).
- (b) If after reviewing the company's response, the Exchange determines that the security should be removed, it will provide written notification to the company which delineates the reasons for the decision and the delisting policies which will apply. The company will also be informed that it may appeal to the Board of Directors of the Exchange and request a hearing.
- (c) If, within five days after receiving such written notice, the company informs the Exchange in writing that it wishes to appeal the decision and requests an opportunity for a hearing, the Exchange will give the company at least ten days prior written notice of the time and place at which a hearing shall be held. If no written request for a hearing is received within five days of receipt of such notice, the decision of the Exchange will become final and any further appeal rights will be waived.
- (d) Such hearing shall be held before an ad hoc Exchange committee appointed for the purpose of acting in an advisory capacity to the Board of Directors. The Committee will consist of three persons, at least one of which must be a member of the Board of Directors. The other two members of the Committee may be Directors, members, Exchange Presiding Officials, and/or other persons (not having an interest in the matter) as the Chairman of the Board of Directors shall determine.
- (e) Any documents or other written material which the company wishes the Committee to consider should be submitted to the Exchange at least five days prior to the date of the hearing.
- (f) At the hearing, the issuer and Exchange Staff must prove their respective cases by presenting testimony, evidence, and argument to the Committee. Both parties may present any witnesses they wish and all those witnesses and parties who testify are subject to cross examination by the opposing side and questioning from the members of the Committee. The form and manner in which the actual hearing will be conducted will be established by the Committee so as to assure the orderly conduct of the proceeding. At the hearing, the Committee may require

the parties to furnish additional written information which has come to its attention.

- (g) At the conclusion of the hearing the Committee will present its findings to the Board of Directors so that a final determination can be made. Such decision shall be final. If the Committee or the Board determines that the security of the issuer should be removed from listing, an application shall be submitted by the Exchange to the Securities and Exchange Commission ("Commission") to strike the security from listing and registration and a copy of such application shall be furnished to the issuer in accordance with Section 12 of the Exchange Act and the rules promulgated thereunder. If the decision is that the security should not be removed from listing, the issuer will receive a notice to that effect from the Exchange.

An application by the Exchange to strike a security from listing and / or registration will be submitted to the Commission electronically on Form 25 via the EDGAR system, and a copy of the application on Form 25 will be promptly delivered to the issuer.

The actions required to be taken by the Exchange and issuers to strike a security from listing and / or registration are set forth in Rule 12d2-2 and Rule 19d-1 promulgated under the Exchange Act.

The relevant portions of Section 12 of the Exchange Act and Rules promulgated thereunder pertaining to the suspension, removal or withdrawal of registration and/ or listing of securities, and the timing thereof are summarized below:

- (1) Withdrawal of registration and / or striking for certain corporate events from listing of Exchange listed security -Section 12(d) of the Exchange Act and Rule 12d2-d(a) thereunder;
- (2) suspension of trading by Exchange-Rule 12d2-1 under the Exchange Act;
- (3) application of Exchange to strike security from listing and or / registration and notice provisions - Rule 12d2-2(a) and (b) under the Exchange Act;
- (4) application of issuer to withdraw from listing and registration and notice provisions - Rule 12d2-2(c) under the Exchange Act;
- (5) timing and effectiveness of application by issuer or Exchange to strike a security from listing and / or registration - Rule 12d2-2(d) under the Exchange Act; or
- (6) exemption of certain standardized options and futures products from Section 12(d) of the Act - Rule 12d2-2(e)

In appropriate circumstances, when the Exchange is considering delisting because a company no longer meets the requirements for continued listing, a company may file a delisting application pursuant to Rule 809(b) and (c).

Pursuant to this Rule, the Exchange will provide public notice of its final determination to remove a security from listing and/or registration by issuing a press release and posting a notice on its web site. Such notice will be disseminated no fewer than ten days before the delisting becomes effective pursuant to paragraph (d)(1) of Rule 12d2-2 under the Exchange Act, and will remain posted on the web site until the delisting is effective.

Rule 812. Voting Rights Listing Standards—Disenfranchisement Rule

(a) No Rule, stated policy, practice, or interpretation of this Exchange 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 Act.

(b) For the purpose of paragraph (a) of this Rule, 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:

- (1) corporate action to impose any restriction on the voting power of shares of the common stock of the issuer held by a beneficial or record holder based on the number of shares held by such beneficial or record holder;
- (2) corporate action to impose any restriction on the voting power of shares of the common stock of the issuer held by a beneficial or record holder based on the length of time such shares have been held by such beneficial or record holder;
- (3) any issuance of securities through an exchange offer by the issuer for shares of an outstanding class of the 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;
- (4) 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.

(c) For the purpose of paragraph (a) of this Rule, 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:

- (1) the issuance of securities pursuant to an initial registered public offering;

- (2) 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;
- (3) 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;
- (4) corporate action taken pursuant to state law requiring a state's domestic corporation to condition the voting rights of a beneficial or record holder of a specified threshold percentage of the corporation's voting stock on the approval of the corporation's independent shareholders;
- (5) such other action, including the issuance of any class of securities under specified circumstances, which is deemed, pursuant to the rules of another exchange or association, to be excluded from the prohibition in paragraph (a) of this Rule.

(d) Definitions

The following terms shall have the following meanings for purposes of this Rule:

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

- (6) the term "exchange" shall mean a national securities exchange, registered as such with the Securities and Exchange Commission pursuant to Section 6 of the Act, which makes transaction reports available pursuant to Rule 11Aa3-1 under the Act.
- (7) the term "association" shall mean a national securities association registered as such with the Securities and Exchange Commission pursuant to Section 15A of the Act.

Rule 813. Certification to Securities and Exchange Commission

Pursuant to Rules 801 through 809, the Board may delegate to the Exchange staff, in respect to securities, the authority to list, admit to dealings, suspend from dealings and remove from the list.

The Exchange staff is authorized to certify to the Securities and Exchange Commission that the Exchange approved the listing and registration of securities and the admission of securities to dealings, and to file applications for the removal of securities from listing and registration and from dealings.

Rule 814. Outline of Exchange Disclosure Policies

The Exchange requires every listed company to make available to the public information necessary for informed investing and to take reasonable steps to ensure that all who invest in its securities enjoy equal access to such information. In applying this fundamental principle, the Exchange has adopted the following six specific policies concerning disclosure:

- (a) Immediate Public Disclosure of Material Information—A listed company is required to make immediate public disclosure of all material information concerning its affairs, except in unusual circumstances. When such disclosure is to be made during trading hours, it is essential that the Exchange be notified prior to the announcement.
- (b) Thorough Public Dissemination—A listed company is required to release material information to the public in a manner designed to obtain the widest possible public dissemination.
- (c) Clarification or Confirmation of Rumors and Reports—Whenever a listed company becomes aware of a rumor or report, true or false, that contains information that is likely to have, or has had, an effect on the trading in its securities, or would be likely to have a bearing on investment decisions, the company is required to publicly clarify the rumor or report as promptly as possible.
- (d) Response to Unusual Market Activity—Whenever unusual market activity takes place in a listed company's securities, the company is expected to make inquiry to

determine whether rumors or other conditions requiring corrective action exist, and, if so, to take whatever action is appropriate.

If, after this review, the unusual market activity remains unexplained, it may be appropriate for the company to issue a "no news" release in which it announces that there has been no material development in its business affairs not previously disclosed and to its knowledge, there is no other reason to account for the unusual market activity.

- (e) Unwarranted Promotional Disclosure—A listed company should refrain from promotional disclosure activity which exceeds that necessary to enable the public to make informed investment decisions. Such activity includes inappropriately worded news releases, public announcements not justified by actual developments in a company's affairs, exaggerated reports or predictions, flamboyant wording and other forms of over-stated or over-zealous disclosure activity which may mislead investors and cause unwarranted price movements and activity in a company's securities.
- (f) Insider Trading—Insiders should not trade on the basis of material information which is not known to the investing public. Moreover, insiders should refrain from trading, even after material information has been released to the press and other media, for a period sufficient to permit thorough public dissemination and evaluation of the information.

Rule 815. 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 be reviewed by the Exchange at least 15 minutes prior to its public dissemination. In addition, each release should conform to the following criteria:

- (a) Be factual, clear and succinct;
- (b) Contain sufficient quantitative information to allow investors to evaluate its relative importance to the activities of the company;
- (c) Be balanced and fair while avoiding the following:
 - The omission of important unfavorable facts, or the slighting of such facts (by "burying" them at the end of a press release).
 - The presentation of favorable possibilities as certain, or as more probable than is actually the case.
 - The presentation of projections without sufficient qualification or without sufficient factual basis.
 - Negative statements phrased so as to create a positive implication: "The company cannot now predict whether the development will have a materially

favorable effect on its earnings," (creating the implication that the effect will be favorable even if not materially favorable) or "The company expects that the development will not have a materially favorable effect on earnings in the immediate future," (creating the implication that the development will eventually have materially favorable effect).

— The use of over technical language or promotional jargon calculated to excite rather than to inform.

- (d) Explain, if the consequences or effects of the information on the company's future prospects cannot be assessed, why this is so; and
- (e) Clarify and point out any reasonable alternatives where the public announcement undertakes to interpret information disclosed.

The requirements of the Federal securities laws must also be carefully considered in the preparation of public announcements. In particular, these laws may impose special restrictions on the extent of permissible disclosure before or during a public offering of securities or a solicitation of proxies. Generally, in such circumstances, while the restrictions of the securities laws may affect the character of disclosure, they do not prohibit the timely disclosure of material factual information.

Whenever a conflict arises, the company should discuss the matter with the Securities and Exchange Commission, as well as with the Exchange.

Every press release or public announcement should be either prepared or reviewed by a company official having familiarity with the matters about which disclosure is to be made and a company official familiar with the requirements of the Exchange, (as well as any applicable requirements of the securities laws). In addition, review of these documents by legal counsel is often desirable and necessary, depending on the importance and complexity of the announcement.

Rule 816. Dividends and Stock Splits Notice of Dividend or Non-Payment of Dividend

- (a) A company is required to publicize and notify the Exchange immediately of any action taken by it in respect to the payment or non-payment of dividends.
- (b) If a company has been paying regular dividends and its board of directors determines to cease or postpone such payments, this fact should be announced at least twice: First, immediately at the time the board decides to cease or postpone payment, and second, on the next monthly, quarterly, or other periodic date of declaration (assuming it is again decided to omit or postpone payment). Such announcement should be released to the press and notice should be given to the Exchange as specified in Rule 818.

Rule 817. Record Date

A company is not permitted to close its stock transfer books for any reason, including the declaration of a dividend. Rather, it must establish a record date for shareholders entitled to a dividend which is at least ten days after the date on which the dividend is declared (declaration date).

A company is also required to give the Exchange at least ten days notice in advance of a record date established for any other purpose, including meetings of shareholders.

Rule 818. Form of Notice

Immediately after the board of directors has declared a cash or stock dividend, the company should: (a) release the news to the newspapers and news services, including the news-ticker services operated by Dow Jones & Company, Inc., and Reuters Ltd., and (b) notify the Exchange by telephone, telegram, telex, or facsimile transmission and confirm by letter. The announcement and notice should specify the name of the company, date of declaration, amount (per share) of the dividend, and the record and payment dates. In the case of stock dividends, the notice to the Exchange should also state whether cash is to be paid or order forms are to be issued in settlement of fractional share interests resulting from the stock dividend. If cash is to be paid, state the basis for determining the amount (for example, based on the "last sale" on the record date).

The stock dividend notice should also state the "cut-off" date (usually five to seven days after the record date) until which the transfer agent for the stock will accept instructions from brokers as to their requirements for full shares or cash with respect to stock registered in their names, as nominees, and as to which they must make exact allocations among their clients.

Rule 819. Split-Ups or Stock Dividends on Lower Priced Issues

The Exchange does not view favorably a split-up of a stock selling in a low price range or a split-up or substantial stock dividend which may result in an abnormally low price range for shares after the split or stock dividend. Any company considering a split-up (or a stock dividend of more than 5%) which would result in an adjusted price of less than \$5.00 per share for its stock should consult with the Exchange in advance of taking formal action.

Rule 820. Accounting for Stock Dividends

A listed company must account for stock dividends and stock splits in accordance with generally accepted accounting principles.

In instances where it is not clear that the accounting treatment being followed is in compliance with generally accepted accounting principles ("GAAP"), the Exchange may require that the company provide a written opinion from its independent accountants that the accounting treatment complies with GAAP.

Rule 821. Cash in Lieu of Fractional Shares

Most companies prefer to pay cash in settlement of fraction share interests since this procedure is the least expensive and easiest method. The work and problems of member

organizations are simplified when fractional share interests are paid in cash, since the use of order forms involves special handling. If cash is paid, the procedure is greatly simplified. For the foregoing reasons, the Exchange urges listed companies to follow the procedure of paying cash in lieu of fractional share interests.

The usual procedure of most companies is to compute the cash payment based on the last sale price of the stock on the record date, because: (a) the record date is the date on which the stockholder becomes "long" the stock dividend shares; and (b) by such date the stock will have been quoted "ex-dividend" (except in the case of large stock dividends of 25% or more), so that the market price of the stock will have been adjusted for the dividend. A company may prefer to compute the cash payment based on the last sale price of the stock on the dividend declaration date. Where this is done, the company should adjust the "dividend on" selling price of the stock on the declaration date to an "ex-dividend" basis. Otherwise, there will be an overpayment of the cash portion of the dividend. For example, if a company declares a 10% stock dividend and the last sale price on the declaration date is \$11, the value of the dividend at that time computes to \$1 per share, or an adjusted "ex-dividend" price for the stock of \$10 (10/11ths of \$11). On this basis, the fractional share interests should be paid for in cash at the rate of \$10 per full share.

This adjustment is even more important in cases of large stock dividends (25% or more). In these instances, the Exchange may postpone the "ex-dividend" date until the dividend has been paid (see Rule 831). For example, in the case of a 50% stock dividend, the "theoretical ex-dividend" price would be equivalent to 2/3rds of the "dividend on" price of the stock. Thus, if the price of the stock at the close of business on the declaration or record date is \$33 per share, the "theoretical ex-dividend" price would be adjusted to \$22 per share. Accordingly, fractional share interests should be settled based upon a price of \$22 per share.

Rule 822. Warrant Splits

Whenever a company having warrants listed on the Exchange effects a split of 3-for-2 or greater in the underlying shares, the Exchange requires that a corresponding split be made in the warrants.

Rule 823. Three Day Delivery Plan

All transactions effected on the Exchange (unless otherwise specified) will be settled pursuant to the "three day delivery plan". Under the three day delivery plan, a "regular way" transaction is due for settlement by delivery of the securities against payment on the third business day after the transaction date. For example, a "regular way" transaction made on Monday is due for settlement on the Thursday of the same week; a transaction on Tuesday, is due for settlement on Friday of the same week, etc. (an intervening holiday postpones the settlement date by one business day).

Rule 824. Definition of "Ex-dividend" and "Ex-rights"

The term "ex-dividend" means "without the dividend" and the term "ex-rights" means "without the rights". The effect of quoting a stock "ex-dividend" or "ex-rights" is that

quotations for, and transactions in, the stock on and after the "ex-dividend" or "ex-rights" date reflect the fact that the buyer is not entitled to the dividend or rights.

Transactions in stocks are not ex-dividend or ex-rights until an announcement to that effect is made by the Exchange.

Rule 825. Ex-dividend Procedure

Transactions in stocks (except those made for "cash") are ex-dividend on the first business day preceding the record date. If the record date selected is not a business day, the stock will be quoted ex-dividend on the second preceding business day. "Cash" transactions are ex-dividend on the business day following the record date.

Rule 826. Ex-rights Procedure

In the establishment and announcement of ex-rights dates, the Exchange proceeds as follows:

Subscription Price Established—Where the Subscription price and all other terms of the rights and subscription offering are established sufficiently in advance of the record date to determine the value of the rights (and the registration statement relating to the offering has been declared effective by the SEC sufficiently in advance of the record date), transactions in stocks to which the rights pertain are quoted ex-rights in a manner similar to that described in Rule 825 above.

Subscription Price Not Known—Where the subscription price and all other terms of the rights and subscription offering are not known sufficiently in advance of the record date to determine the value of the rights, the Exchange will rule the stock ex-rights on the day following the date the rights commence trading (which, in most instances, is a date subsequent to the record date for the subscription offering).

Under such circumstances, the Exchange requires that all deliveries of stock made after the record date in settlement of transactions made prior to the ex-rights date, and on a "rights on" basis carry "due bills" for the rights.

Rule 827. Return of Dividend

Members and member organizations, receiving deliveries in advance of the record date against ex-dividend or ex-rights transactions, who are able to effect transfer of the purchased security by the record date, will be responsible to return the dividend or rights to the member or member organization from whom delivery was received.

Rule 828. Optional Dividends

When a dividend is payable at the option of the stockholder, in either cash or securities, the stock will be ex-dividend the value of the cash or securities, whichever is greater.

Rule 829. Canadian Currency

When a dividend is payable in Canadian currency, the stock will be "ex" the amount of the dividend in U.S. currency at the rate of exchange prevailing on the ex-dividend date. Orders will not be reduced to an ex-dividend basis by the amount of any tax on the dividend deductible at the source.

Rule 830. American Depository Receipts

In the case of American shares or American Depository Receipts for stocks of foreign (other than Canadian) corporations, the reduction of orders to an ex-dividend basis shall be for the net amount of the dividend in U.S. currency after giving effect to all deductions, including taxes, foreign exchange discount, and the expenses of the Depository.

Rule 831. Special Ex-dividend Rulings

If, as required by Exchange Rules, the Exchange does not receive a notice of a dividend declaration sufficiently in advance of a record date to permit a stock to be quoted "ex-dividend" in the usual manner, the Exchange quotes the stock "ex-dividend" as soon as possible following receipt of notice of the dividend. The Exchange also rules that the "dividend on" purchaser (in transactions made during the interval between the date when the stock should have been quoted "ex" and the date when the stock is actually quoted "ex") is entitled to receive the dividend from the seller. The seller in such transactions is required to give to the purchaser a due bill, covering the amount of the dividend, to be redeemed subsequent to the payment date for the dividend.

Larger or Valuable Dividends, Dividends "Not in Kind", and Split-ups Effected as Stock Distributions—When large or valuable cash or stock dividends (usually 25% or more), or a dividend "not in kind", (i.e., a distribution of securities of another issuer), or a split-up is declared, it is the policy of the Exchange to postpone the "ex-dividend" or "ex-distribution" date until the dividend has been paid. The reason for this is so that the stock is not quoted at the substantially lower "ex-dividend" or "ex-distribution" price until the distribution is received by shareholders. If this were not the case, the collateral value of the stock would be reduced between the "ex" date and payment date, and the shareholder might be required to provide additional collateral.

In the case of dividends "not in kind" (regardless of its size in relation to the listed security), it will be necessary to postpone the "ex-dividend" date in the event a market does not exist in the security to be distributed at the time the listed issue would normally be quoted "ex-dividend".

In all of the above instances, the postponement of the "ex" date until after the payment date makes it possible for shareholders to sell all of their holdings at one time, on a "dividend on" basis (prior to the "ex" date). As a result of this ruling, purchasers of the stock prior to the "ex" date continue to pay a "dividend on" price, but will not receive the

dividend payment from the company. Accordingly, the Exchange Rules that the "dividend on" purchaser is entitled to receive the dividend from the seller. The seller, in turn, is required to give the purchaser a due bill, covering the amount of the dividend, to be redeemed on the date fixed by the Exchange.

"Cash" Transactions—The Ex-Dividend Rule of the Exchange specifies that "cash" transactions (in which delivery of the security must be made on the date of the transaction) shall be "ex-dividend" on the business day following the record date.

Rule 832. Price Adjustment of Open Orders on "Ex-date"

When a security is quoted ex-dividend, ex-distribution, ex-rights or ex-interest, all open orders to buy and open stop orders to sell shall be reduced by the cash value of the payment or rights, except where the security is quoted "ex" a stock dividend or stock distribution.

When a security is quoted "ex" a stock dividend, or stock distribution all open orders including open orders to sell and open orders to buy, shall be reduced by the proportional value of the dividend.

With respect to options contracts, open orders for one or more option contracts dealt in on the Exchange held by members or member organizations prior to the effective date of an adjustment by The Options Clearing Corporation ("OCC") to the terms of a class of options pursuant to the rules of OCC shall be adjusted on the "ex-date" by such amount as OCC shall specify, unless otherwise instructed by the customer.

Rule 833. Accounting

Rule 203 of the rules of Conduct of the American Institute of Certified Public Accounts' Code of Professional Ethics states that a member shall not express an opinion that financial statements are presented in conformity with GAAP, if such statements contain any departure from an accounting principle, promulgated by the body designated by the Institute to establish such principles, which has a material effect on the financial statements taken as a whole.

The Institute has designated the Financial Accounting Standards Board as such body and has also resolved that FASB Statements of Financial Accounting Standards together with those Accounting Research Bulletins and Accounting Principles Board Opinions, which are not superseded by action of the FASB, constitute accounting principles as contemplated by Rule 203.

The Exchange expects listed companies and their auditors, whether or not members of the AICPA, to adhere to the Institute's requirements concerning departures from GAAP.

Rule 834. Independent Accountants

All financial statements contained in the annual report of a listed company to its shareholders are required to be audited by independent accountants qualified under the laws of a state or country; and shall be accompanied by a report of the independent

accounts prepared in accordance with Regulation S-X (Rule 2.02), showing the scope of their audit and any qualifications.

Rule 835. Change in Accountants

A listed company is required to notify the Exchange promptly (prior to filing its 8-K) if it changes independent accountants and must state the reason for such change.

Rule 836. Defaults

A listed company must immediately notify the Exchange whenever there exists: (a) an event of default in any technical covenant of its outstanding loan agreements; (b) a default in interest or principal payments on outstanding indebtedness; (c) a default in cumulative dividend payments on an outstanding preferred stock issue; or (d) a failure to meet the sinking fund or redemption provisions of any outstanding debt or equity issues of the company.

Rule 837. Annual Reports

(a) A listed company is required to publish and furnish to its shareholders (or to holders of any other listed security when its common stock is not listed on a national securities exchange) an annual report containing audited financial statements of the company and its subsidiaries. Three copies of the report must be filed with the Exchange at the time it is distributed to shareholders. If the report is filed on the SEC's EDGAR system, such report will be deemed sent to the Exchange when accepted for filing on EDGAR.

(b) Annual reports must be submitted to shareholders and filed with the Exchange at least ten days in advance of the annual meeting of shareholders, and not later than four months after the close of the last preceding fiscal year of the company.

Rule 838. Request for Extension

(a) If, due to circumstances beyond a company's control, it becomes impossible to furnish shareholders with the required annual report within four months after the end of the company's fiscal year, the company should request an extension of time in which to distribute its annual report, and set forth the basis for its request. The request should be in the form of a letter directed to the Exchange as soon as it has been determined that the annual report cannot be distributed on time and, in any event, at least two weeks before the four months have expired. (A similar request must also be made of the SEC on Form 12b-25 in connection with annual reports on Form 10-K).

(b) The Exchange may grant the request if: there is good cause for the delay, the company has a record of filing annual reports on time in the past, and the lack of information as to the financial condition of the company does not warrant a halt or suspension of trading:

- (1) Good cause for delay in the publication of an annual report includes:
 - catastrophes such as a fire, flood, war, destruction of a company's records or unavoidable regulatory delays such as a pending review by the SEC of financial statements in a preliminary prospectus or proxy statement.

(2) Failure to retain auditors in time, shortages of personnel, or other avoidable reasons, do not generally constitute good cause for a delay. In addition, failure to clear a proxy statement in time to mail it with the annual report is not considered a good cause for a delay beyond the four-month period for the mailing of the annual report.

(c) If the Exchange, for any reason, does not grant the request, the securities of the company are subject to possible halt or suspension from trading after the expiration of the four-month period.

Rule 839. Contents of Report

The Annual Report of a listed company must contain the following financial statements:

- (a) balance sheets;
- (b) income statement; and
- (c) statements of changes in financial position.

Such financial statements should be prepared in accordance with GAAP and Regulation S-X which requires balance sheets to be presented for each of the two most recent fiscal years and statements of income and changes in financial position to be presented for each of the three fiscal years preceding the date of the most recent balance sheet being filed.

Rule 840. Options

A listed company is required to disclose in its report to shareholders, for the year covered by the report: (a) the number of unoptioned shares available for granting under the plan at the beginning and end of the year; and (b) any changes in the exercise price of outstanding options as a result of cancellations, reissuance or otherwise. Price changes resulting from the normal operation of anti-dilution provisions of options need not be reported.

Rule 841. President's Letter

Most annual reports contain a letter to shareholders from the President or other officer of the company. The Exchange expects that such letter, as well as all other releases and statements by the company, will be factual and that judgment and restraint will be used in not publicizing information which may be construed as over-optimistic, slanted or promotional.

Rule 842. Quarterly Reports

(a) Under SEC rules, quarterly statements of operating results and financial position (generally on Form 10-Q) must be prepared pursuant to GAAP and in conformity with Regulation S-X.

(b) SEC rules require that quarterly statements be published within 45 days after the end of the company's first, second and third fiscal quarters. No statement is required for the fourth quarter, since that period is covered by the annual report.

(c) A company should immediately notify the Exchange whenever it files with the SEC a request for extension of the filing of its quarterly statements on SEC Form 12b-25.

Rule 843. Dissemination of Quarterly Reports

Quarterly statements (unaudited) are not required to be sent to security holders by any company whose common stock is listed on a national securities exchange but shall be made available to security holders upon request. The Exchange recommends that companies send such statements to shareholders.

Companies whose common stock is not listed on a national securities exchange must send quarterly statements (unaudited) to holders of its securities which are listed on the Exchange.

Such information (whether or not furnished to security holders) must be disseminated in the form of a press release to one or more newspapers of general circulation regularly publishing financial news and to one or more of the national news-wire services. Three copies must also be sent to the Exchange.

Each issuer which 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 Exchange. The statement of operations contained in quarterly reports shall disclose, at a minimum, any substantial items of an unusual or non-recurrent nature and net income and the amount of estimated federal taxes.

Each issuer which 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 the regulatory authority shall be filed with the Exchange.

Rule 844. Filing Material Mailed to Shareholders

A listed company is required to file with the Exchange three copies of all material mailed to shareholders (including mailings for annual and special shareholder's meetings) such as notices, proxy statements, forms of proxy and other soliciting materials. This material should be sent to the Exchange as soon as it is mailed to shareholders.

Rule 845. Charter and By-Law Amendment

A listed company is required to file with the Exchange a copy of any amendment to its charter or by-laws (or equivalent documents) as soon as it becomes effective. Such filing must include:

- (a) in the case of a charter amendment-a certification by the Secretary of State (or similar authority) that the filing is a true and complete copy of the amendments; and
- (b) in the case of a by-law amendment-a resolution of the board of directors (certified by an officer of the company) authorizing the by-law amendment.

Rule 846. Shareholder Eligibility and Notice of Meetings

A listed company must immediately notify the Exchange when it establishes a date for the taking of a record of its shareholders. Such record date, which will determine shareholder eligibility to vote at a shareholder meeting, shall be at least ten days in advance of such meeting. Exchange Rules prohibit the closing of a listed company's transfer books, for any purpose.

In addition, a listed company is required to give written notice to shareholders in advance of all shareholders' meetings, and to provide for such notice in its by-laws.

The Exchange recommends that such notice and proxy soliciting material be received by stockholders as many days as possible (preferably at least 20 days) in advance of the meeting. A similar arrangement should be followed in delivering such proxy material to member organizations in order to allow such organizations ample time to mail the material to, and receive voting instructions from, beneficial owners.

In the case of a routine meeting, member organizations should be afforded ample opportunity in which to relay proxy materials and specific voting instructions between the company and the beneficial holders of record.

If a company plans to request brokers to forward proxy-soliciting material to customers, it should communicate with the brokers at least ten days in advance of the voting record date for the meeting in order to:

- (a) inform them of the record and meeting dates;
- (b) provide them with a return postcard on which they may indicate the number of sets of proxy material required for transmittal to customers; and
- (c) agree to provide reimbursement to them for out-of-pocket expenses incurred in handling the material. The sets of proxy material distributed to member organizations should include the required number of proxies and annual reports to assure compliance with the Rules and Regulations of the Exchange and the rules and regulations of the SEC.

Rule 847. Annual Meetings

A listed company is required to hold a meeting of its stockholders annually, at which a quorum shall be in effect, as specified in the by-laws, 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 no case shall a quorum be less than 33 1/3 percent of the outstanding shares of the common voting stock. 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 Exchange must be informed in writing, stating the reasons for the delay. The letter should also articulate the good faith efforts being undertaken by the company in order to ensure that such annual meeting is held as soon as reasonably practicable in light of the circumstances causing the delay.

Rule 848. Meeting and Solicitation of Proxies Required

A listed company is required, with respect to any matter requiring authorization by its stockholders, to hold a meeting of its stockholders in accordance with its charter, by-laws and applicable state or other laws and to solicit proxies (pursuant to a proxy statement conforming to the proxy rules of the SEC) for such meeting of stockholders; unless, upon prior Exchange review and approval, the Exchange permits the solicitation, from all stockholders of record, of written consents (conforming to the proxy rules of the SEC) in lieu of such meeting and proxy solicitation. An information statement under Regulation 14C of the SEC is not considered a proxy statement for purposes of this requirement. A copy of all proxy solicitations shall be provided to the Exchange.

Rule 849. Audit Committee/Conflicts of Interest

Introductory Note: The requirements set forth in this Rule 849 shall continue to apply pending implementation of Rule 867.

(a) A listed company shall establish and maintain an audit committee, a majority of the members of which shall be independent directors, as defined in Rule 851. The requirements set forth in this Rule 849(a) shall continue to apply pending the implementation of the new requirements set forth in 849(b)—(j) and Commentary Sections (1)—(4). Listed issuers must be in compliance with such new requirements, subject to any applicable exemptions set forth therein, by the following dates: (A) July 31, 2005 for foreign private issuers and small business issuers as defined in Commission Rule 12b-2 under the Securities Exchange Act of 1934 (the Act); and (B) for all other listed issuers, the earlier of the listed issuer's first annual shareholders meeting after January 15, 2004, or October 31, 2004.

(b) **Listing Standards Relating to Audit Committees.** Each issuer of securities listed on the Exchange must have, and certify that it has and will continue to have, an audit committee, as defined in Section 3(a)(58) of the Securities Exchange Act of 1934, of at least three members each of whom meet the following criteria.

(1) **Independence.**

(i) Each member of the audit committee must be a member of the board of directors of the listed issuer, and must otherwise be independent; provided that, where a listed issuer is one of two dual holding companies, those companies may designate one audit committee for both companies so long as each member of the audit committee is a member of the board of directors of at least one of such dual holding companies. The following restrictions 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" for purposes of this subsection (A) 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., as a consultant), may serve on the audit committee only if the issuer'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 issuer, 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.
- (ii) Independence requirements for non-investment company issuers. In order to be considered to be independent for purposes of this paragraph (b)(1), a member of an audit committee of a listed issuer that is not an investment company may not, other than in his or her capacity as a member of the audit committee, the board of directors, or any other board committee:
- (A) Accept directly or indirectly any consulting, advisory, or other compensatory fee from the issuer or any subsidiary thereof, provided that compensatory fees do not include the receipt of fixed amounts of compensation under a retirement plan (including deferred compensation) for prior service with the listed issuer (provided that such compensation is not contingent in any way on continued service); or
- (B) Be an affiliated person of the issuer or any subsidiary thereof.
- (iii) Independence requirements for investment company issuers. In order to be considered to be independent for purposes of this paragraph (b)(1), a member of an audit committee of a listed issuer that is an investment company may not, other than in his or her capacity as a member of the audit committee, the board of directors, or any other board committee:
- (A) Accept directly or indirectly any consulting, advisory, or other compensatory fee from the issuer or any subsidiary thereof, provided that compensatory fees do not include the receipt of fixed amounts of compensation under a retirement plan (including deferred compensation) for prior service with the listed issuer (provided that such compensation is not contingent in any way on continued service); or
- (B) Be an "interested person" of the issuer as defined in section 2(a)(19) of the Investment Company Act of 1940.
- (iv) Exemptions from the independence requirements.
- (A) For an issuer listing securities pursuant to a registration statement under section 12 of the Act, or for an issuer that has a registration statement under the Securities Act of 1933 covering an initial public offering of securities to be listed by the issuer, where in each case the listed issuer was not, immediately prior to the effective date of such registration statement,

required to file reports with the Commission pursuant to section 13(a) or 15(d) of the Act; and

- (1) A minority of the members of the listed issuer's audit committee may be exempt from the independence requirements of paragraph (b)(1)(ii) of this section for one year from the date of effectiveness of such registration statement.
- (B) An audit committee member that sits on the board of directors of a listed issuer and an affiliate of the listed issuer is exempt from the requirements of paragraph (b)(1)(ii)(B) of this section if the member, except for being a director on each such board of directors, otherwise meets the independence requirements of paragraph (b)(1)(ii) of this section for each such entity, including the receipt of only ordinary-course compensation for serving as a member of the board of directors, audit committee or any other board committee of each such entity.
- (C) An employee of a foreign private issuer who is not an executive officer of the foreign private issuer is exempt from the requirements of paragraph (b)(1)(ii) of this section if the employee is elected or named to the board of directors or audit committee of the foreign private issuer pursuant to the issuer's governing law or documents, an employee collective bargaining or similar agreement or other home country legal or listing requirements.
- (D) An audit committee member of a foreign private issuer may be exempt from the requirements of paragraph (b)(1)(ii)(B) of this section if that member meets the following requirements:
 - (1) The member is an affiliate of the foreign private issuer or a representative of such an affiliate;
 - (2) The member has only observer status on, and is not a voting member or the chair of, the audit committee; and
 - (3) Neither the member nor the affiliate is an executive officer of the foreign private issuer.
- (E) An audit committee member of a foreign private issuer may be exempt from the requirements of paragraph (b)(1)(ii)(B) of this section if that member meets the following requirements:
 - (1) The member is a representative or designee of a foreign government or foreign governmental entity that is an affiliate of the foreign private issuer; and
 - (2) The member is not an executive officer of the foreign private issuer.

(F) In addition to paragraphs (b)(1)(iv)(A) through (E) of this section, if the Commission exempts from the requirements of paragraphs (b)(1)(ii) or (b)(1)(iii) of Commission Rule 10A-3 under the Act a particular relationship with respect to audit committee members, as the Commission determines appropriate in light of the circumstances, such relationship shall also be exempt from the requirements of paragraphs (b)(1)(ii) or (b)(1)(iii) of this Rule 849.

- (2) **Responsibilities relating to registered public accounting firms.** The audit committee of each listed issuer, in its capacity as a committee of the board of directors, must 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.
- (3) **Complaints.** Each audit committee must establish procedures for:
- (i) The receipt, retention, and treatment of complaints received by the listed issuer regarding accounting, internal accounting controls, or auditing matters; and
 - (ii) The confidential, anonymous submission by employees of the listed issuer of concerns regarding questionable accounting or auditing matters; and
 - (iii) If the company is an investment company, the confidential, anonymous submission of concerns regarding questionable accounting or auditing matters by employees of the investment adviser, administrator, principal underwriter, or any other provider of accounting related services for the investment company, as well as employees of the investment company.
- (4) **Authority to engage advisers.** Each audit committee must have the authority to engage independent counsel and other advisers, as it determines necessary to carry out its duties.
- (5) **Funding.** Each listed issuer must provide for appropriate funding, as determined by the audit committee, in its capacity as a committee of the board of directors, for payment of:
- (i) Compensation to any registered public accounting firm engaged for the purpose of preparing or issuing an audit report or performing other audit, review or attest services for the listed issuer;

- (ii) Compensation to any advisers employed by the audit committee under paragraph (b)(4) of this section; and
- (iii) Ordinary administrative expenses of the audit committee that are necessary or appropriate in carrying out its duties.

(c) General exemptions.

- (1) At any time when an issuer has a class of common equity or similar securities that is listed on a national securities exchange or national securities association subject to the requirements of listing standards which comply with the requirements of Commission Rule 10A-3 under the Act, the listing of other classes of securities on the Exchange is not subject to the requirements of this section.
- (2) At any time when an issuer has a class of common equity securities (or similar securities) that is listed on a national securities exchange or national securities association subject to the requirements of listing standards which comply with the requirements of Commission Rule 10A-3 under the Act, the listing on the Exchange of classes of securities of a direct or indirect consolidated subsidiary or an at least 50% beneficially owned subsidiary of the issuer (except classes of equity securities, other than non-convertible, non-participating preferred securities, of such subsidiary) is not subject to the requirements of this section.
- (3) The listing of securities of a foreign private issuer is not subject to the requirements of paragraphs (b)(1) through (b)(5) of this section if the foreign private issuer meets the following requirements:
 - (i) The foreign private issuer has a board of auditors (or similar body), or has statutory auditors, established and selected pursuant to home country legal or listing provisions expressly requiring or permitting such a board or similar body;
 - (ii) The board or body, or statutory auditors is required under home country legal or listing requirements to be either:
 - (A) Separate from the board of directors; or
 - (B) Composed of one or more members of the board of directors and one or more members that are not also members of the board of directors;
 - (iii) The board or body, or statutory auditors, are not elected by management of such issuer and no executive officer of the foreign private issuer is a member of such board or body, or statutory auditors;

- (iv) Home country legal or listing provisions set forth or provide for standards for the independence of such board or body, or statutory auditors, from the foreign private issuer or the management of such issuer;
 - (v) Such board or body, or statutory auditors, in accordance with any applicable home country legal or listing requirements or the issuer's governing documents, are responsible, to the extent permitted by law, for the appointment, retention and oversight of the work of any registered public accounting firm engaged (including, to the extent permitted by law, the 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 issuer; and
 - (vi) The audit committee requirements of paragraphs (b)(3), (b)(4) and (b)(5) of this section apply to such board or body, or statutory auditors, to the extent permitted by law.
- (4) The listing of a security futures product cleared by a clearing agency that is registered pursuant to Section 17A of the Act or that is exempt from the registration requirements of Section 17A pursuant to paragraph (b)(7)(A) of such section is not subject to the requirements of this section.
- (5) The listing of a standardized option, as defined in Commission Rule 9b-1(a)(4) under the Act, issued by a clearing agency that is registered pursuant to Section 17A of the Act is not subject to the requirements of this section.
- (6) The listing of securities of the following listed issuers are not subject to the requirements of this section:
- (i) Asset-Backed Issuers (as defined in Commission Rules 13a-14(g) and 15d-14(g) under the Act);
 - (ii) Unit investment trusts (as defined in 15 U.S.C. 80a-4(2)); and
 - (iii) Foreign governments (as defined in Commission Rule 3b-4(a) under the Act).
- (7) The listing of securities of a listed issuer is not subject to the requirements of this section if:
- (i) The listed issuer, as reflected in the applicable listing application, is organized as a trust or other unincorporated association that does not have a board of directors or persons acting in a similar capacity; and
 - (ii) The activities of the listed issuer that is described in paragraph (c)(7)(i) of this section are limited to passively owning or holding (as well as administering

and distributing amounts in respect of) securities, rights, collateral or other assets on behalf of or for the benefit of the holders of the listed securities.

(d) **[Reserved]**.

(e) **Definitions.** Unless the context otherwise requires, all terms used in this section have the same meaning as in the Act. In addition, unless the context otherwise requires, the following definitions apply for purposes of this section:

(1) (i) The term affiliate of, or a person affiliated with, a specified person, means 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.

(ii)(A) A person will be deemed not to be in control of a specified person for purposes of this section if the person:

(1) Is not the beneficial owner, directly or indirectly, of more than 10% of any class of voting equity securities of the specified person; and

(2) Is not an executive officer of the specified person.

(B) Paragraph (e)(1)(ii)(A) of this section only creates a safe harbor position that a person does not control a specified person. The existence of the safe harbor does not create a presumption in any way that a person exceeding the ownership requirement in paragraph (e)(1)(ii)(A)(1) of this section controls or is otherwise an affiliate of a specified person.

(iii) The following will be deemed to be affiliates:

(A) An executive officer of an affiliate;

(B) A director who also is an employee of an affiliate;

(C) A general partner of an affiliate; and

(D) A managing member of an affiliate.

(iv) For purposes of paragraph (e)(1)(i) of this section, dual holding companies will not be deemed to be affiliates of or persons affiliated with each other by virtue of their dual holding company arrangements with each other, including where directors of one dual holding company are also directors of the other dual holding company, or where directors of one or both dual holding companies are also directors of the businesses jointly controlled, directly or indirectly, by the dual holding companies (and, in each case, receive only ordinary-course compensation for serving as a member of the board of directors, audit committee or any other

board committee of the dual holding companies or any entity that is jointly controlled, directly or indirectly, by the dual holding companies).

- (2) In the case of foreign private issuers with a two-tier board system, the term board of directors means the supervisory or non-management board.
- (3) In the case of a listed issuer that is a limited partnership or limited liability company where such entity does not have a board of directors or equivalent body, the term board of directors means the board of directors of the managing general partner, managing member or equivalent body.
- (4) The term control (including the terms controlling, controlled by and under common control with) means the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a person, whether through the ownership of voting securities, by contract, or otherwise.
- (5) The term dual holding companies means two foreign private issuers that:
 - (i) Are organized in different national jurisdictions;
 - (ii) Collectively own and supervise the management of one or more businesses which are conducted as a single economic enterprise; and
 - (iii) Do not conduct any business other than collectively owning and supervising such businesses and activities reasonably incidental thereto.
- (6) The term executive officer has the meaning set forth in Commission Rule 3b-7.
- (7) The term foreign private issuer has the meaning set forth in Commission Rule 3b-4(c).
- (8) The term indirect acceptance by a member of an audit committee of any consulting, advisory or other compensatory fee includes acceptance of such a fee by a spouse, a minor child or stepchild or a child or stepchild sharing a home with the member or by an entity in which such member is a partner, member, an officer such as a managing director occupying a comparable position or executive officer, or occupies a similar position (except limited partners, non-managing members and those occupying similar positions who, in each case, have no active role in providing services to the entity) and which provides accounting, consulting, legal, investment banking or financial advisory services to the issuer or any subsidiary of the issuer.
- (9) The terms listed and listing refer to securities listed on a national securities exchange or listed in an automated inter-dealer quotation system of a national securities association or to issuers of such securities.

(f) **Opportunity to cure defects.** A listed issuer shall have the opportunity provided for in Rule 811 to cure any defects that would be the basis for delisting under paragraph (a) of this section, before the imposition of such delisting. Additionally, if a member of an audit committee ceases to be independent in accordance with the requirements of this section for reasons outside the member's reasonable control, that person, with notice by the issuer to the Exchange, may remain an audit committee member of the listed issuer until the earlier of the next annual shareholders meeting of the listed issuer or one year from the occurrence of the event that caused the member to be no longer independent.

(g) **Notification of noncompliance.** Listed issuers must notify the Exchange promptly after an executive officer of the listed issuer becomes aware of any material noncompliance by the listed issuer with the requirements of this section.

(h) **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:

- (i) The scope of the audit committee's responsibilities and how it carries out those responsibilities, including structure, processes, and membership requirements;
- (ii) 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 that the audit committee is vested with all responsibilities and authority required by Rule 10A-3 under the Securities Exchange Act of 1934; and
- (iii) 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.

(i) **Expertise Requirement of audit committee members.**

- (i) 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

(ii) 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.

(j) **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:

- (i) any determination that the company's board of directors has made regarding the independence of directors pursuant to any of the subparagraphs above;
- (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; and
- (iv) the annual review and reassessment of the adequacy of the audit committee charter.

(k) **Related Party Transactions.** Each issuer shall conduct an appropriate review of all related party transactions on an ongoing basis and all such transactions must be approved by the company's audit committee or another independent body of the board of directors. For purposes of this Rule, the term "related party transaction" shall refer to transactions required to be disclosed pursuant to SEC Regulation S-K, Item 404.

••• *Commentary:* -----

1. The requirements in paragraphs (b)(2) through (b)(5), (c)(3)(v) and (c)(3)(vi) of this section do not conflict with, and do not affect the application of, any requirement or ability under a listed issuer's governing law or documents or other home country legal or listing provisions that requires or permits shareholders to ultimately vote on, approve or ratify such requirements. The requirements instead relate to the assignment of responsibility as between the audit committee and management. In such an instance, however, if the listed issuer provides a recommendation or nomination regarding such responsibilities to shareholders, the audit committee of the listed issuer, or body performing similar functions, must be responsible for making the recommendation or nomination.

2. The requirements in paragraphs (b)(2) through (b)(5), (c)(3)(v), (c)(3)(vi) and Commentary 1 of this section do not conflict with any legal or listing requirement in a listed issuer's home jurisdiction that prohibits the full board of directors from

delegating such responsibilities to the listed issuer's audit committee or limits the degree of such delegation. In that case, the audit committee, or body performing similar functions, must be granted such responsibilities, which can include advisory powers, with respect to such matters to the extent permitted by law, including submitting nominations or recommendations to the full board.

3. The requirements in paragraphs (b)(2) through (b)(5), (c)(3)(v) and (c)(3)(vi) of this section do not conflict with any legal or listing requirement in a listed issuer's home jurisdiction that vests such responsibilities with a government entity or tribunal. In that case, the audit committee, or body performing similar functions, must be granted such responsibilities, which can include advisory powers, with respect to such matters to the extent permitted by law.

4. For purposes of this section, the determination of a person's beneficial ownership must be made in accordance with Rule 13d-3 under the Act.

Rule 850. Shareholder Approval Policy

Each issuer shall require shareholder approval prior to the issuance of designated securities under subparagraph (a), (b), or (c) below:

- (a) when a stock option or purchase plan is to be established or materially amended or other equity compensation arrangement made or materially amended pursuant to which options or stock may be acquired by officers, directors, employees, or consultants, except for:
 - (i) warrants or rights issued generally to all security holders of the company or stock purchase plans available on equal terms to all security holders of the company (such as a dividend reinvestment plan); or
 - (ii) tax qualified, non-discriminatory employee benefit plans (e.g., plans that meet the requirements of Section 401(a) or 423 of the Internal Revenue Code) or parallel nonqualified plans, provided such plans are approved by the issuer's independent compensation committee or a majority of the issuer's independent directors; or plans that merely provide a convenient way to purchase shares on the open market or from the issuer at fair market value; or
 - (iii) plans or arrangements relating to an acquisition or merger as permitted under the Commentary to this Rule; or

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

Issuers shall notify the Exchange no later than 15 calendar days prior to establishing or materially amending a stock option plan, purchase plan or other equity compensation arrangement pursuant to which stock may be acquired by officers, directors, employees, or consultants without shareholder approval.

- (b) Actions resulting in a change in control of the issuer.
- (c) The acquisition, direct or indirect, of a business, a company, tangible or intangible assets or property or securities representing any such interests:
 - (i) From a director, officer or substantial security holder of the company (including its subsidiaries and affiliates) or from any company or party in which one of such persons has a direct or indirect interest; or
 - (ii) Where the present or potential issuance of common stock or securities convertible into common stock could result in an increase in outstanding common shares of 20% or more.

•• *Commentary:* -----

Employee ownership of company stock can be an effective tool to align employee interests with those of other shareholders. Stock option plans or other equity compensation arrangements can also assist in the recruitment and retention of employees, which is especially critical to young, growing companies, or companies with insufficient cash resources to attract and retain highly qualified employees. However, these plans can potentially dilute shareholder interests. As such, Rule 850(a) ensures that shareholders have a voice in these situations, given this potential for dilution.

Rule 850(a) requires shareholder approval when a plan or other equity compensation arrangement is established or materially amended. For these purposes, a material amendment would include, but not be limited to, the following:

- (1) any material increase in the number of shares to be issued under the plan (other than to reflect a reorganization, stock split, merger, spinoff or similar transaction);
- (2) any material increase in benefits to participants, including any material change to: (i) permit a repricing (or decrease in exercise price) of outstanding options, (ii) reduce the price at which shares or options to purchase shares may be offered, or (iii) extend the duration of a plan;
- (3) any material expansion of the class of participants eligible to participate in the plan; and
- (4) any expansion in the types of options or awards provided under the plan.

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

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

Rule 850(a) provides an exception to the requirement for shareholder approval for warrants or rights offered generally to all shareholders. In addition, an exception is provided for tax qualified, non-discriminatory employee benefit plans as well as parallel nonqualified plans as these plans are regulated under the Internal Revenue Code and Treasury Department regulations. An equity compensation

plan that provides non-U.S. employees with substantially the same benefits as a comparable tax qualified, non-discriminatory employee benefit plan that the issuer 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.

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

In addition, plans or arrangements involving a merger or acquisition do not require shareholder approval in two situations. First, shareholder approval will not be required to convert, replace or adjust outstanding options or other equity compensation awards to reflect the transaction. Second, shares available under certain plans acquired in acquisitions and mergers may be used for certain post-transaction grants without further shareholder approval. This exception applies to situations where the party which is not a listed company following the transaction has shares available for grant under pre-existing plans that were previously approved by shareholders and meet the requirements of this Rule 850(a). These shares may be used for post-transaction grants of options and other equity awards by the listed company (after appropriate adjustment of the number of shares to reflect the transaction), either under the pre-existing plan or arrangement or another plan or arrangement, without further shareholder approval, provided: (1) the time during which those shares are available for grants is not extended beyond the period when they would have been available under the pre-existing plan, absent the transaction, and (2) such options and other awards are not granted to individuals who were employed by the granting company or its subsidiaries at the time the merger or acquisition was consummated. The Exchange

would view a plan or arrangement adopted in contemplation of the merger or acquisition transaction as not pre-existing for purposes of this exception. This exception is appropriate because it will not result in any increase in the aggregate potential dilution of the combined enterprise. In this regard, any additional shares available for issuance under a plan or arrangement acquired in a connection with a merger or acquisition would be counted by the Exchange in determining whether the transaction involved the issuance of 20% or more of the company's outstanding common stock, thus triggering the shareholder approval requirements under Rule 850(c).

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

For purposes of Rule 850(a), including this Commentary, the term "parallel nonqualified plan" means a plan that is a "pension plan" within the meaning of the Employee Retirement Income Security Act ("ERISA"), 29 U.S.C. § 1002 (1999), that is designed to work in parallel with a plan intended to be qualified under Internal Revenue Code Section 401(a), to provide benefits that exceed the limits set forth in Internal Revenue Code Section 402(g) (the section that limits an employee's annual pre-tax contributions to a 401(k) plan), Internal Revenue Code Section 401(a)(17) (the section that limits the amount of an employee's compensation that can be taken into account for plan purposes) and/or Internal Revenue Code Section 415 (the section that limits the contributions and benefits under qualified plans) and/or any successor or similar limitations that may thereafter be enacted. However, a plan will not be considered a parallel nonqualified plan unless: (i) it covers all or substantially all employees of an employer who are participants in the related qualified plan whose annual compensation is in excess of the limit of Code Section 401(a)(17) (or any successor or similar limitation that may hereafter be enacted); (ii) its terms are substantially the same as the qualified plan that it parallels except for the elimination of the limitations described in the preceding sentence; and, (iii) no participant receives employer equity

contributions under the plan in excess of 25% of the participant's cash compensation.

Rule 850(a) and this Commentary will become effective upon Securities and Exchange Commission approval; however, existing plans will be grandfathered. Any material modification to plans in place or adopted after the effective date will require shareholder approval.

The Exchange will preclude its member organizations from giving a proxy to vote on equity-compensation plans unless the beneficial owner of the shares has given voting instructions. This is codified in Exchange Rule 862. Amended Rule 862 will be effective for any meeting of shareholders that occurs on or after the 90th day following the effective date of the Securities and Exchange Commission order approving the rule change.

Rule 851. Independent Directors

Each issuer listed pursuant to Rules 803, 804 or 805 shall maintain a minimum of two independent directors on its board of directors. For purposes of this section, "independent director" shall mean a person other than an officer or employee of the company or its subsidiaries or any other individual having a relationship which, in the opinion of the board of directors, would interfere with the exercise of independent judgment in carrying out the responsibilities of a director.

Rule 852. Limited Partnerships

No security issued in a limited partnership rollup transaction (as defined by Section 14(h) of the Exchange Act), shall be eligible for listing unless (a) 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 Exchange Act, as it may from time to time be amended and (b) a broker-dealer which is a member of a national securities association subject to Section 15A(b)(12) of the Exchange Act participates in the rollup transaction. The issuer shall further provide the exchange with an opinion of counsel stating that such broker-dealers' participation in the rollup transaction was conducted in compliance with the rules of a national securities association designed to protect the rights of limited partners, as specified in the Limited Partnership Rollup Reform Act of 1993.

In addition to any other applicable requirements, each limited partnership listed on the Exchange shall have a corporate general partner or co-general partner which must satisfy the audit committee and independent director requirements of Rules 849 and 851.

••• *Commentary:* -----

.01 The only currently existing national securities association subject to Section 15A(b)(12) of the Exchange Act is FINRA. On the date of adoption of this Commentary, its rules designed to protect the rights of limited partners, pursuant to the Limited Partnership Rollup Reform Act of 1993, are specified in Article III, Section 34 of the Rules of Fair Practice of FINRA.

Rule 853. Depository Eligibility

(a) Before any issue of securities of a domestic issuer (not including American Depository Receipts for securities of a foreign issuer) is listed on the Exchange on or after the effective date of the Rule, the Exchange 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 be reasonably modified to meet the criteria for depository eligibility at all securities depositories.

(b) 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 279 until:

- (1) 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 Exchange; or
- (2) 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 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 Exchange.

Rule 860. Restriction

No member organization shall give a proxy to vote stock registered in its name, except as required or permitted under the provisions of Rule 862, unless the firm is the beneficial owner of such stock.

Rule 861. Voting Instructions

Whenever a person soliciting proxies shall furnish a member organization:

(1) copies of all soliciting material which such person is sending to registered holders, and

(2) satisfactory assurance that he will reimburse such member organization for all out-of-pocket expenses, including reasonable clerical expenses, if any, incurred by such member organization, in obtaining instructions from the beneficial owners of stock.

Such organization shall transmit to each beneficial owner of stock the material furnished together with a request for voting instructions and also a statement to the effect that, if such instructions are not received by the tenth day before the meeting the proxy may be given at discretion by the owner of record of the stock. However, when the proxy soliciting material is transmitted to the beneficial owner of the stock twenty-five days or more before the meeting, the statement accompanying such material shall be to the effect that the proxy may be given fifteen days before the meeting at the discretion of the owner of record of the stock. This Rule shall not apply to beneficial owners outside the United States.

Rule 862. Proxies at Direction of Owner

A member organization shall give a proxy for stock registered in its name, at the direction of the beneficial owner. If the stock is not in the control or possession of the member organization, satisfactory proof of the beneficial ownership as of the record date may be required.

Member organization holdings as executor, etc.

A member organization may give a proxy to vote any stock registered in its name if the member organization holds such stock as executor, administrator, guardian, trustee, or in a similar representative or fiduciary capacity with authority to vote.

A member organization which has in its possession or control stock registered in the name of another member organization shall

(1) forward to such other member organization any voting instructions received from the beneficial owner, or

(2) if the proxy-soliciting material has been transmitted to the beneficial owner of the stock in accordance with Rule 861 and no instructions have been received by the date specified in the statement accompanying such material, notify such other member organization of such fact in order that such organization may give the proxy as provided below.

(a) When a member organization may vote without customer instructions—A member organization may give a proxy to vote stock provided that:

(1) it has transmitted proxy-soliciting material to the beneficial owner of stock

- (2) it has not received voting instructions from the beneficial owner by the date specified in the statement accompanying such material; and
 - (3) provided such action is adequately disclosed to stockholders and does not include authorization for a merger, consolidation or any matter which may substantially affect the rights or privileges of such stock.
- (b) When a member organization may not vote without customer instructions—A member organization may not give or authorize a proxy to vote without instructions from beneficial owners when the matter to be voted upon:
- (1) is submitted to stockholders by means of a proxy statement comparable to that specified in Schedule 14-A of the SEC;
 - (2) is the subject of a counter-solicitation, or is part of a proposal made by a stockholder which is being opposed by management;
 - (3) relates to a merger or consolidation (except when the company's proposal is to merge with its own wholly owned subsidiary, provided shareholders dissenting thereto do not have rights of appraisal and there is no change in the state of incorporation);
 - (4) involves right of appraisal;
 - (5) authorizes mortgaging of property;
 - (6) authorizes or creates indebtedness or increases the authorized amount of indebtedness;
 - (7) authorizes or creates a preferred stock or increases the authorized amount of an existing preferred stock;
 - (8) alters the terms or conditions of existing stock or indebtedness;
 - (9) involves a waiver or modification of preemptive rights;
 - (10) changes existing quorum requirements with respect to stockholder meetings;
 - (11) alters voting provisions or the proportionate voting power of a stock, or the number of its votes per share (except where cumulative voting provisions govern the number of votes per share for election of directors and the company proposal involves a change in the number of its directors by not more than 10% or not more than one);

- (12) authorizes the implementation of any equity compensation plan, or any material revision to the terms of any existing equity compensation plan (whether or not shareholder approval of such plan is required by Rule 850);

•••*Commentary*:-----

.01 A member organization may not give or authorize a proxy to vote without instructions on a matter relating to executive compensation, even if such matter would otherwise qualify for an exception from the requirements of Item 12, Item 13 or any other Item under this Rule 862. See Item 21.

- (13) authorizes:

- (i) a new profit-sharing or special remuneration plan, or a new retirement plan, the annual cost of which will amount to more than 10% of average annual income before taxes for the preceding five years, or
- (ii) the amendment of an existing plan which would bring its costs above 10% of such average annual income before taxes.

Exception may be made in cases of:

- (i) retirement plans based on agreement or negotiations with labor unions (or which have been or are to be approved by such unions) and
- (ii) any related retirement plan for benefit of non-union employees having terms substantially equivalent to the terms of such union-negotiated plan which is submitted for action of stockholders concurrently with such union-negotiated plan;

•••*Commentary*:-----

.02 A member organization may not give or authorize a proxy to vote without instructions on a matter relating to executive compensation, even if such matter would otherwise qualify for an exception from the requirements of Item 12, Item 13 or any other Item under this Rule 862. See Item 21.

- (14) changes the purposes or powers of a company to an extent which would permit it to change to a materially different line of business and it is the company's stated intention to make such a change;

- (15) authorizes the acquisition of property, assets or a company, where the consideration to be given has a fair value approximating 20% or more of the market value of the previously outstanding shares;
- (16) authorizes the sale or other disposition of assets or earning power approximating 20% or more of those existing prior to the transaction;
- (17) authorizes a transaction not in the ordinary course of business in which an officer, director or substantial security holder has a direct or indirect interest;
- (18) reduces earned surplus by 51% or more, or reduces earned surplus to an amount less than the aggregate of three years' common stock dividends computed at the current dividend rate.
- (19) is the election of directors, provided, however, that this prohibition shall not apply in the case of a company registered under the Investment Company Act of 1940;
- (20) materially amends an investment advisory contract with an investment company. A material amendment to an investment advisory contract would include any proposal to obtain shareholder approval of an investment company's investment advisory contract with a new investment adviser, which approval is required by the Investment Company Act of 1940, as amended (the "1940 Act"), and the rules thereunder. Such approval will be deemed to be a "matter which may affect substantially the rights or privileges of such stock" for purposes of this Rule so that a member organization may not give or authorize a proxy to vote shares registered in its name absent instruction from the beneficial holder of the shares. As a result, for example, a member organization may not give or authorize a proxy to vote shares registered in its name, absent instruction from the beneficial holder of the shares, on any proposal to obtain shareholder approval required by the 1940 Act of an investment advisory contract between an investment company and a new investment adviser due to an assignment of the investment company's investment advisory contract, including an assignment caused by a change in control of the investment adviser that is party to the assigned contract; or
- (21) is in connection with a vote on executive compensation matters, or any other significant matter, as determined by the Commission by rule.

•••Commentary:-----

.03 A matter relating to executive compensation would include, among other things, the items referred to in Section 14A of the Exchange Act (added by Section 951 of the Dodd-Frank Wall Street Reform and Consumer Protection Act), including (i) an advisory vote to approve the compensation of executives, (ii) a vote on whether to hold such an advisory vote every one, two or three years, and (iii) an advisory vote to approve any type

of compensation (whether present, deferred, or contingent) that is based on or otherwise relates to an acquisition, merger, consolidation, sale, or other disposition of all or substantially all of the assets of an issuer and the aggregate total of all such compensation that may (and the conditions upon which it may) be paid or become payable to or on behalf of an executive officer. In addition, a member organization may not give or authorize a proxy to vote without instructions on a matter relating to executive compensation, even if such matter would otherwise qualify for an exception from the requirements of Item 12, Item 13 or any other Item under this Rule 862. Any vote on these or similar executive compensation-related matters is subject to the requirements of Rule 862.

- (c) Discretionary and non-discretionary proposals in one proxy form—A proxy form may contain proposals, some of which may be acted upon at the discretion of the member organization in the absence of instruction, and others which may be voted only in accordance with the directions of the beneficial owner. This should be indicated in the letter of transmittal. In such cases, the member organization may vote the proxy in the absence of instructions if it physically crosses out those portions where it does not have discretion.
- (d) Cancellation of discretionary proxy where counter-solicitation develops—Where a discretionary proxy has been given in good faith under the rules and counter-solicitation develops at a later date, thereby creating a "contest", the question as to whether or not the discretionary proxy should then be canceled is a matter which each member organization must decide for itself. After a contest has developed, no further proxies should be given except at the direction of beneficial owners.
- (e) Subsequent proxy—Where a member organization gives a subsequent proxy, it should clearly indicate whether the proxy is in addition to, in substitution for, or in revocation of, any prior proxy.
- (f) Signing and dating proxy—All proxies should be dated and should show the number of shares voted. Since manual signatures are sometimes illegible, a member organization should also either type or rubber-stamp its name on such proxy.
- (g) Proxy records—Records covering the solicitation of proxies shall show the following:
 - (1) the date of receipt of the proxy material from the issuer or other person soliciting the proxies;
 - (2) names of customers to whom the material is sent together with date of mailing;

- (3) all voting instructions showing whether verbal or written; and
- (4) a summary of all proxies voted by the member organization clearly setting forth total shares voted for or against, or not voted, for each proposal to be acted upon at the meeting.

Verbal voting instructions may be accepted provided a record is kept of the instructions of the beneficial owner and the instructions are retained by the member organization. The record shall also indicate the date of the receipt of the instructions and the name of the recipient.

- (h) Retention of records—All proxy solicitation records, originals of all communications received and copies of all communications sent relating to such solicitation, shall be retained for a period of not less than three years, the first two years in an easily accessible place.

Rule 863. Proxy to Show Number of Shares

In all cases in which a proxy is given by a member organization the proxy shall state the actual number of shares of stock for which the proxy is given.

Rule 864. Transfer to Facilitate Solicitation

A member organization, when so requested by the Exchange shall transfer certificates of a listed stock held either for its own account or for the account of others, if registered in the name of a previous holder of record, into its own name, prior to the taking of a record of stockholders, to facilitate the convenient solicitation of proxies.

The Exchange will make such request at the instance of the issuer or of persons owning in the aggregate at least ten per cent of such stock, provided, if the Exchange so requires, the issuer or persons making such request agree to indemnify member organizations against transfer taxes, and the Exchange may make such a request whenever it deems it advisable.

Rule 865. Rule Applicable to Individual Members and Nominees

The provisions of Rules 860 to 864, inclusive, shall apply also to any nominees of member organizations. They shall apply also to voting in person.

Rule 866. Transmission of Interim Reports and Other Material

A member organization, when so requested by a company, and upon being furnished with:

- (1) copies of interim reports of earnings or other material being sent to stockholders, and
- (2) satisfactory assurance that it will be reimbursed by such company for all out-of-pocket expenses, including reasonable clerical expenses, shall transmit such reports or material to each beneficial owner of stock of such company held by

such member organization and registered in a name other than the name of the beneficial owner.

This Rule shall not apply to beneficial owners outside the United States.

Rule 867. Corporate Governance

General Application

Companies listed on the Exchange must comply with certain standards regarding corporate governance as codified in this Rule 867. Certain provisions of Rule 867 are applicable to some listed companies but not to others.

Equity Listings

Section 867 applies in full to all companies listing common equity securities, with the following exceptions:

Controlled Companies

A company of which more than 50% of the voting power is held by an individual, a group or another company need not comply with the requirements of Rules 867.01, .04 or .05. A controlled company that chooses to take advantage of any or all of these exemptions must disclose that choice, that it is a controlled company and the basis for the determination in its 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. Controlled companies must comply with the remaining provisions of Rule 867.

Limited Partnerships and Companies in Bankruptcy

Due to their unique attributes, limited partnerships and companies in bankruptcy proceedings need not comply with the requirements of Rules 867.01, .04 or .05. However, all limited partnerships (at the general partner level) and companies in bankruptcy proceedings must comply with the remaining provisions of Rule 867.

Closed-End Funds and Open-End Funds

The Exchange considers many of the significantly expanded standards and requirements provided for in Rule 867 to be unnecessary for closed-end and open-end management investment companies that are registered under the Investment Company Act of 1940, given the pervasive federal regulation applicable to them. However, registered closed-end funds must comply with the requirements of Rules 867.06, .07(a) and (c), .12 and .15. Note, however, that in view of the common practice to utilize the same directors for boards in the same fund complex, closed-end funds will not be required to comply with the disclosure requirement in the second paragraph of the Commentary to Rule

867.07(a), which calls for disclosure of a board's determination with respect to simultaneous service on more than three public company audit committees. However, the other provisions of that paragraph will apply.

Business development companies, which are a type of closed-end management investment company defined in Section 2(a)(48) of the Investment Company Act of 1940 that are not registered under that Act, are required to comply with all of the provisions of Rule 867 applicable to domestic issuers other than Rule 867.02 and .07(b). For purposes of Rules 867.01, .03, .04, .05 and .09, a director of a business development company shall be considered to be independent if he or she is not an "interested person" of the company, as defined in Section 2(a)(19) of the Investment Company Act of 1940.

As required by Rule 10A-3 under the Exchange Act, open-end funds (which can be listed as Index Fund Shares) are required to comply with the requirements of Rules 867.06 and .12(b).

Rule 10A-3(b)(ii) under the Exchange Act requires that each audit committee must establish procedures for the confidential, anonymous submission by employees of the listed issuer of concerns regarding questionable accounting or auditing matters. In view of the external management structure often employed by closed-end and open-end funds, the Exchange also requires the audit committees of such companies to establish such procedures for the confidential, anonymous submission by employees of the investment adviser, administrator, principal underwriter, or any other provider of accounting related services for the management company, as well as employees of the management company. This responsibility must be addressed in the audit committee charter.

Other Entities

Except as otherwise required by Rule 10A-3 under the Exchange Act (for example, with respect to open-end funds), Rule 867 does not apply to passive business organizations in the form of trusts (such as royalty trusts) or to derivatives and special purpose securities. To the extent that Rule 10A-3 applies to a passive business organization, listed derivative or special purpose security, such entities are required to comply with Rules 867.06 and .12(b).

Foreign Private Issuers

Listed companies that are foreign private issuers (as such term is defined in Rule 3b-4 under the Exchange Act) are permitted to follow home country practice in lieu of the provisions of this Rule 867, except that such companies are required to comply with the requirements of Rule 867.06, .11 and .12(b).

Preferred and Debt Listings

Rule 867 does not generally apply to companies listing only preferred or debt securities on the Exchange. To the extent required by Rule 10A-3 under the Exchange Act, all companies listing only preferred or debt securities on the Exchange are required to comply with the requirements of Rules 867.06 and .12(b).

Effective Dates/Transition Periods

Listed companies will have until the earlier of their first annual meeting after July 15, 2004, or October 31, 2004, to comply with the new standards contained in Rule 867, although if a company with a classified board would be required (other than by virtue of a requirement under Rule 867.06) to change a director who would not normally stand for election in such annual meeting, the company may continue such director in the office until the second annual meeting after such date, but no later than December 31, 2005. In addition, foreign private issuers and small business issuers will have until July 31, 2005, to comply with Rule 867. As a general matter, the existing requirements provided for in Rule 849 continue to apply to listed companies pending the transition to the new rules.

Companies listing in conjunction with their initial public offering will be permitted to phase in their independent nomination and compensation committees on generally 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. Such companies will be required to meet the majority independent board requirement within 12 months of listing. For purposes of Rule 867 other than sections 867.06 and .12(b), 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 Exchange will also permit companies that are emerging from bankruptcy or have ceased to be controlled companies within the meaning of Rule 867 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 Rules 867.06 and .12(b), 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 867.06 unless a transition period is available pursuant to Rule 10A-3 under the Exchange Act.

References to Form 10-K

There are provisions in this Rule 867 that call for disclosure in a company's Form 10-K under certain circumstances. If a company subject to such a provision is not a company required to file a Form 10-K, then the provision shall be interpreted to mean the annual periodic disclosure form that the company does file with the SEC. For example, for a closed-end fund, the appropriate form would be the annual Form N-CSR. If a company is not required to file either an annual proxy statement or an annual periodic report with the SEC, the disclosure shall be made in the annual report required under Rule 837, Annual Reports.

1. Listed companies must have a majority of independent directors.

••• Commentary -----

Effective boards of directors exercise independent judgment in carrying out their responsibilities. Requiring a majority of independent directors will increase the quality of board oversight and lessen the possibility of damaging conflicts of interest.

2. In order to tighten the definition of "independent director" for purposes of these standards:

(a) 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 disclose these determinations.

••• Commentary -----

It is not possible to anticipate, or explicitly to provide for, all circumstances that might signal potential conflicts of interest, or that might bear on the materiality of a director's relationship to a listed company (references to "company" would include any parent or subsidiary in a consolidated group with the company). Accordingly, it is best that boards making "independence" determinations broadly consider all relevant facts and circumstances. In particular, when assessing the materiality of a director's relationship with the company, the board should consider the issue not merely from the standpoint of the director, but also from that of persons or organizations with which the

director has an affiliation. Material relationships can include commercial, industrial, banking, consulting, legal, accounting, charitable and familial relationships, among others. However, as the concern is independence from management, the Exchange does not view ownership of even a significant amount of stock, by itself, as a bar to an independence finding.

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 company does not file an annual proxy statement, in the company's annual report on Form 10-K filed with the SEC. In this regard, 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. It may then make the general statement that the independent directors meet the standards set by the board without detailing particular aspects of the immaterial relationships between individual directors and the company. 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 the manner described above. This approach provides investors with an adequate means of assessing the quality of a board's independence and its independence determinations while avoiding excessive disclosure of immaterial relationships.

(b) In addition:

- (i) A director who is an employee, or whose immediate family member is an executive officer, of the company is not independent until three years after the end of such employment relationship.

••• *Commentary* -----

Employment as an interim chairman or CEO shall not disqualify a director from being considered independent following that employment.

- (ii) A director who receives, or whose immediate family member receives, more than \$100,000 per year 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), is not considered independent until three years after he or she ceases to receive more than \$100,000 per year in such compensation.

••• *Commentary* -----

Compensation received by a director for former service as an interim chairman or CEO need not be considered in determining independence under this test. Compensation received by an immediate family member for service as a non-executive employee of the listed company need not be considered in determining independence under this test.

- (iii) A director who is affiliated with or employed by, or whose immediate family member is affiliated with or employed in a professional capacity by, a present or former internal or external auditor of the company is not "independent" until three years after the end of the affiliation or the employment or auditing relationship.
- (iv) A director who is employed, or whose immediate family member is employed, as an executive officer of another company where any of the listed company's present executives serve on that company's compensation committee is not "independent" until three years after the end of such service or the employment relationship.
- (v) A director who is an executive officer or an employee, or whose immediate family member is an executive officer, of 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 (\$1 million if the listed company is also listed on the New York Stock Exchange), or 5% of such other company's consolidated gross revenues, is not "independent" until three years after falling below such threshold.

••• *Commentary* -----

In applying the test in Rule 867.02(b)(v), both the payments and the consolidated gross revenues to be measured shall be those reported in the last completed fiscal year. The look-back provision for this test applies solely to the financial relationship between the listed company and the director or immediate family

member's current employer; a listed company need not consider former employment of the director or immediate family member.

Charitable organizations shall not be considered "companies" for purposes of Rule 867.02(b)(v), 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 charitable contributions made by the listed company to any charitable organization in which a director serves as an executive officer if, within the preceding three years, contributions in any single fiscal year exceeded the greater of \$200,000 (\$1 million if the listed company is also listed on the New York Stock Exchange), or 5% of such charitable organization's consolidated gross revenues. Listed company boards are reminded of their obligations to consider the materiality of any such relationship in accordance with Rule 867.02(a) above.

General Commentary to Rule 867.02(b): An "immediate family member" includes a person's spouse, parents, children, siblings, mothers and fathers-in-law, sons and daughters-in-law, brothers and sisters-in-law, and anyone (other than domestic employees) who shares such person's home. When applying the look-back provisions in Rule 867.02(b), listed companies need not consider individuals who are no longer immediate family members as a result of legal separation or divorce, or those who have died or become incapacitated. In addition, references to the "company" would include any parent or subsidiary in a consolidated group with the company.

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 Exchange will phase in the "look-back" provisions by applying only a one-year look-back for the first year after adoption of these new standards. The three-year look-backs provided for in Rule 867.02(b) will begin to apply only from June 17, 2005 (the "Three-Year Look-Back Date").

As an example, until the Three-Year Look-Back Date, a company need look back only one year when testing compensation under Rule 867.02(b)(ii). Beginning on the Three-Year Look-Back Date, however, the company would need to look back the full three years provided in Rule 867.02(b)(ii).

3. To empower non-management directors to serve as a more effective check on management, the non-management directors of each company must meet at regularly scheduled executive sessions without management.

•• *Commentary* -----

To promote open discussion among the non-management directors, companies must schedule regular executive sessions in which those directors meet without management participation. "Non-management" directors are all those who are not company officers (as that term is defined in Rule 16a-1(f) under the Securities Act of 1933), and includes such directors who are not independent by virtue of a material relationship, former status or family membership, or for any other reason.

Regular scheduling of such meetings is important not only to foster better communication among non-management directors, but also to prevent any negative inference from attaching to the calling of executive sessions. There need not be a single presiding director at all executive sessions of the non-management directors. If one director is chosen to preside at these meetings, his or her name must be disclosed in the 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, a company may disclose the procedure by which a presiding director is selected for each executive session. For example, a company may wish to rotate the presiding position among the chairs of board committees.

In order that interested parties may be able to make their concerns known to the non-management directors, a company must disclose a method for such parties to communicate directly with the presiding director or with the non-management directors as a group. Companies may, if they wish, utilize for this purpose the same procedures they have established to comply with the requirements of Rule 10A-3(b)(3) under the Exchange Act, as applied to listed companies through Rule 867.06.

While this Rule 867.03 refers to meetings of non-management directors, if that group includes directors who are not independent under this Rule 867, listed companies should at least once a year schedule an executive session including only independent directors.

4. (a) Listed companies must have a nominating/corporate governance committee composed entirely of independent directors.

(b) The nominating/corporate governance committee must have a written charter that addresses:

- (i) the committee's purpose and responsibilities - which, at minimum, must be to: identify individuals qualified to become board members, consistent with criteria approved by the board, and to select, or to recommend that the board select, the director nominees for the next annual meeting of shareholders; develop and recommend to the board a set of corporate governance principles applicable to the corporation; and oversee the evaluation of the board and management; and
- (ii) an annual performance evaluation of the committee.

•• Commentary -----

A nominating/corporate governance committee is central to the effective functioning of the board. New director and board committee nominations are among a board's most important functions. Placing this responsibility in the hands of an independent nominating/corporate governance committee can enhance the independence and quality of nominees. The committee is also responsible for taking a leadership role in shaping the corporate governance of a corporation.

If a company is legally 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.

The nominating/corporate governance committee charter should also address the following items: committee member qualifications; committee member appointment and removal; committee structure and operations (including authority to delegate to subcommittees); and committee reporting to the board. In addition, the charter should give the nominating/corporate governance committee sole authority to retain and terminate any search firm to be used to identify director candidates, including sole authority to approve the search firm's fees and other retention terms.

Boards may allocate the responsibilities of the nominating/corporate governance committee to committees of

their own denomination, provided that the committees are composed entirely of independent directors. Any such committee must have a published committee charter.

5. The Exchange lists only standardized options, as defined in Rule 9b-1 under the Exchange Act, issued by a clearing agency that is registered pursuant to Section 17A of the Exchange Act, pursuant to the Rule 1000, 1000A and 1000C Series. The Exchange will not list securities pursuant to any other Rule until the Exchange files a proposed rule change under Section 19(b)(2) under the Exchange Act to amend its Rules to make any changes needed to comply with Rule Rule 10C-1 under the Exchange Act, relating to compensation committees, and such proposed rule change is approved by the Commission.

(a) Listed companies must have a compensation committee composed entirely of independent directors.

(b) The compensation committee must have a written charter that addresses:

- (i) the committee's purpose and responsibilities -- which, at minimum, must be to have direct responsibility to:
 - (A) 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; and
 - (B) make recommendations to the board with respect to non-CEO compensation, incentive-compensation plans and equity-based plans; and
 - (C) produce a compensation committee report on executive compensation as required by the SEC to be included in the company's annual proxy statement or annual report on Form 10-K filed with the SEC;
- (ii) an annual performance evaluation of the compensation committee.

••• Commentary -----

In determining the long-term incentive component of CEO compensation, the committee should consider the company's performance and relative shareholder return, the value of similar incentive awards to CEOs at comparable companies, and the awards given to the listed company's CEO in past years. To avoid confusion, note that the compensation committee is not

precluded from approving awards (with or without ratification of the board) as may be required to comply with applicable tax laws.

The compensation committee charter should also address the following items: committee member qualifications; committee member appointment and removal; committee structure and operations (including authority to delegate to subcommittees); and committee reporting to the board.

Additionally, if a compensation consultant is to assist in the evaluation of director, CEO or senior executive compensation, the compensation committee charter should give that committee sole authority to retain and terminate the consulting firm, including sole authority to approve the firm's fees and other retention terms.

Boards may allocate the responsibilities of the compensation committee to committees of their own denomination, provided that the committees are composed entirely of independent directors. Any such committee must have a published committee charter.

Nothing in this provision should be construed as precluding discussion of CEO compensation with the board generally, as it is not the intent of this standard to impair communication among members of the board.

6. Listed companies must have an audit committee that satisfies the requirements of Rule 10A-3 under the Exchange Act.

••• *Commentary* -----

The Exchange will apply the requirements of Rule 10A-3 in a manner consistent with the guidance provided by the Securities and Exchange Commission in SEC Release No. 34-47654 (April 1, 2003). Without limiting the generality of the foregoing, the Exchange will provide companies the opportunity to cure defects provided in Rule 10A-3(a)(3) under the Exchange Act.

7. (a) The audit committee must have a minimum of three members.

••• Commentary -----

Each member of the audit committee must be financially literate, as such qualification is interpreted by the company's board in its business judgment, or must become financially literate within a reasonable period of time after his or her appointment to the audit committee. In addition, at least one member of the audit committee must have accounting or related financial management expertise, as the company's board interprets such qualification in its business judgment. While the Exchange does not require that a listed company's audit committee include a person who satisfies the definition of audit committee financial expert set out in Item 401(h) of Regulation S-K, a board may presume that such a person has accounting or related financial management expertise.

Because of the audit committee's demanding role and responsibilities, and the time commitment attendant to committee membership, each prospective audit committee member should evaluate carefully the existing demands on his or her time before accepting this important assignment. Additionally, if an audit committee member simultaneously serves on the audit committees of more than three public companies, and the listed company does not limit the number of audit committees on which its audit committee members serve, then in each case, the board must determine that such simultaneous service would not impair the ability of such member to effectively serve on the listed company's audit committee and disclose such determination in the 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.

(b) In addition to any requirement of Rule 10A-3(b)(1), all audit committee members must satisfy the requirements for independence set out in Rule 867.02.

(c) The audit committee must have a written charter that addresses:

(i) the committee's purpose -- which, at minimum, must be to:

(A) assist board oversight of (1) the integrity of the company's financial statements, (2) the company's compliance with legal and regulatory requirements, (3) the independent auditor's qualifications and independence,

and (4) the performance of the company's internal audit function and independent auditors; and

(B) prepare an audit committee report as required by the SEC to be included in the company's annual proxy statement;

(ii) an annual performance evaluation of the audit committee; and

(iii) the duties and responsibilities of the audit committee - which, at a minimum, must include those set out in Rule 10A-3(b)(2), (3) (4) and (5) of the Exchange Act, as well as to:

(A) 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 company;

••• *Commentary* -----

After reviewing the foregoing report and the independent auditor's work throughout the year, the audit committee will be in a position to evaluate the auditor's qualifications, performance and independence. This evaluation should include the review and evaluation of the lead partner of the independent auditor. In making its evaluation, the audit committee should take into account the opinions of management and the company's internal auditors (or other personnel responsible for the internal audit function). In addition to assuring the regular rotation of the lead audit partner as required by law, the audit committee should further consider whether, in order to assure continuing auditor independence, there should be regular rotation of the audit firm itself. The audit committee should present its conclusions with respect to the independent auditor to the full board.

(B) discuss the company's annual audited financial statements and quarterly financial statements with management and the independent auditor, including the company's disclosures under "Management's Discussion and Analysis of Financial Condition and Results of Operations";

(C) discuss the company's earnings press releases, as well as financial information and earnings guidance provided to analysts and rating agencies;

••• *Commentary* -----

The audit committee's responsibility to discuss earnings releases as well as financial information and earnings guidance may be done generally (i.e., discussion of the types of information to be disclosed and the type of presentation to be made). The audit committee need not discuss in advance each earnings release or each instance in which a company may provide earnings guidance.

(D) discuss policies with respect to risk assessment and risk management;

••• *Commentary* -----

While it is the job of the CEO and senior management to assess and manage the company's exposure to risk, the audit committee must discuss guidelines and policies to govern the process by which this is handled. The audit committee should discuss the company's major financial risk exposures and the steps management has taken to monitor and control such exposures. The audit committee is not required to be the sole body responsible for risk assessment and management, but, as stated above, the committee must discuss guidelines and policies to govern the process by which risk assessment and management is undertaken. Many companies, particularly financial companies, manage and assess their risk through mechanisms other than the audit committee. The processes these companies have in place should be reviewed in a general manner by the audit committee, but they need not be replaced by the audit committee.

(E) meet separately, periodically, with management, with internal auditors (or other personnel responsible for the internal audit function) and with independent auditors;

••• *Commentary* -----

To perform its oversight functions most effectively, the audit committee must have the benefit of separate sessions with management, the independent auditors and those responsible for

the internal audit function. As noted herein, all listed companies must have an internal audit function. These separate sessions may be more productive than joint sessions in surfacing issues warranting committee attention.

(F) review with the independent auditor any audit problems or difficulties and management's response;

••• *Commentary* -----

The audit committee must regularly review with the independent auditor any difficulties the auditor encountered in the course of the audit work, including any restrictions on the scope of the independent auditor's activities or on access to requested information, and any significant disagreements with management. Among the items the audit committee may want to review with the auditor are: any accounting adjustments that were noted or proposed by the auditor but were "passed" (as immaterial or otherwise); any communications between the audit team and the audit firm's national office respecting auditing or accounting issues presented by the engagement; and any "management" or "internal control" letter issued, or proposed to be issued, by the audit firm to the company. The review should also include discussion of the responsibilities, budget and staffing of the company's internal audit function.

(G) set clear hiring policies for employees or former employees of the independent auditors; and

••• *Commentary* -----

Employees or former employees of the independent auditor are often valuable additions to corporate management. Such individuals' familiarity with the business, and personal rapport with the employees, may be attractive qualities when filling a key opening. However, the audit committee should set hiring policies taking into account the pressures that may exist for auditors consciously or subconsciously seeking a job with the company they audit.

(H) report regularly to the board of directors.

•• *Commentary* -----

The audit committee should review with the full board any issues that arise with respect to the quality or integrity of the company's financial statements, the company's compliance with legal or regulatory requirements, the performance and independence of the company's independent auditors, or the performance of the internal audit function.

General Commentary to Rule 867.07(c): While the fundamental responsibility for the company's financial statements and disclosures rests with management and the independent auditor, the audit committee must review: (A) 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; (B) 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; (C) the effect of regulatory and accounting initiatives, as well as off-balance sheet structures, on the financial statements of the company; and (D) the type and presentation of information to be included in earnings press releases (paying particular attention to any use of "pro forma," or "adjusted" non-GAAP, information), as well as review any financial information and earnings guidance provided to analysts and rating agencies.

(d) Each listed company must have an internal audit function.

•• *Commentary* -----

Listed companies must maintain an internal audit function to provide management and the audit committee with ongoing assessments of the company's risk management processes and system of internal control. A company may choose to outsource this function to a third party service provider other than its independent auditor.

General Commentary to Rule 867.07: To avoid any confusion, note that the audit committee functions specified in Rule 867.07 are the sole responsibility of the audit committee and may not be allocated to a different committee.

8. Requirements relating to shareholder approval of equity compensation plans and broker voting are set forth in Rule 850.

9. Listed companies must adopt and disclose corporate governance guidelines.

•• *Commentary* -----

No single set of guidelines would be appropriate for every company, but certain key areas of universal importance include director qualifications and responsibilities, responsibilities of key board committees, and director compensation. Given the importance of corporate governance, each listed company's website must include its corporate governance guidelines and the charters of its most important committees (including at least the audit, and if applicable, compensation and nominating committees). Each company's annual report on Form 10-K filed with the SEC must state that the foregoing information is available on its website, and that the information is available in print to any shareholder who requests it. Making this information publicly available should promote better investor understanding of the company's policies and procedures, as well as more conscientious adherence to them by directors and management.

The following subjects must be addressed in the corporate governance guidelines:

- **Director qualification standards.** These standards should, at minimum, reflect the independence requirements set forth in Rules 867.01 and .02. 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.
- **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.
- **Director access to management and, as necessary and appropriate, independent advisors.**

- **Director compensation.** Director compensation guidelines should include general principles for determining the form and amount of director compensation (and for reviewing those principles, as appropriate). The board should be aware that questions as to directors' independence may be raised when directors' fees and emoluments exceed what is customary. Similar concerns may be raised when the company makes substantial charitable contributions to organizations in which a director is affiliated, or enters into consulting contracts with (or provides other indirect forms of compensation to) a director. The board should critically evaluate each of these matters when determining the form and amount of director compensation, and the independence of a director.
- **Director orientation and continuing education.**
- **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.
- **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.

10. 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.

••• *Commentary* -----

No code of business conduct and ethics can replace the thoughtful behavior of an ethical director, officer or employee. However, such a code can focus the board and management on areas of ethical risk, provide guidance to personnel to help them recognize and deal with ethical issues, provide mechanisms to report unethical conduct, and help to foster a culture of honesty and accountability.

Each 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. This disclosure requirement should inhibit casual and perhaps questionable waivers, and should help assure that, when warranted, a waiver is accompanied by appropriate controls designed to protect the company. It will also give shareholders the opportunity to evaluate the board's performance in granting waivers.

Each code of business conduct and ethics must also contain compliance standards and procedures that will facilitate the effective operation of the code. These standards should ensure the prompt and consistent action against violations of the code. Each listed company's website must include its code of business conduct and ethics. Each company's annual report on Form 10-K filed with the SEC must state that the foregoing information is available on its website and that the information is available in print to any shareholder who requests it.

Each company may determine its own policies, but all listed companies should address the most important topics, including the following:

- **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. A conflict situation can arise when an employee, officer or director takes actions or has interests that may make it difficult to perform his or her company work objectively and effectively. Conflicts of interest also arise when an employee, officer or director, or a member of his or her family, receives improper personal benefits as a result of his or her position in the company. Loans to, or guarantees of obligations of, such persons are of special concern. The company should have a policy prohibiting such conflicts of interest, and providing a means for employees, officers and directors to communicate potential conflicts to the company.
- **Corporate opportunities.** Employees, officers and directors should be prohibited from (a) taking for themselves personally opportunities that are discovered through the use of corporate property, information or position; (b) using corporate property, information, or position for personal gain; and (c) competing with the company. Employees, officers and directors owe a duty to the company to advance its legitimate interests when the opportunity to do so arises.
- **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.
- **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 practice. Companies may write their codes in a manner that does not alter existing legal rights and obligations of companies and their employees, such as "at will" employment arrangements.

- **Protection and proper use of company assets.** All employees, officers and directors should protect the company's assets and ensure their efficient use. Theft, carelessness and waste have a direct impact on the company's profitability. All company assets should be used for legitimate business purposes.
- **Compliance with laws, rules and regulations (including insider trading laws).** The company should proactively promote compliance with laws, rules and regulations, including insider trading laws. Insider trading is both unethical and illegal, and should be dealt with decisively.
- **Encouraging the reporting of any illegal or unethical behavior.** The company should proactively promote ethical behavior. The company should encourage employees to talk to supervisors, managers or other appropriate personnel when in doubt about the best course of action in a particular situation. Additionally, employees should report violations of laws, rules, regulations or the code of business conduct to appropriate personnel. To encourage employees to report such violations, the company must ensure that employees know that the company will not allow retaliation for reports made in good faith.

11. Listed foreign private issuers must disclose any significant ways in which their corporate governance practices differ from those followed by domestic companies under Exchange listing standards.

•• *Commentary* -----

Foreign private issuers must make their U.S. investors aware of the significant ways in which their home-country practices differ from those followed by domestic companies under Exchange listing standards. However, foreign private issuers are not required to present a detailed, item-by-item analysis of these differences. Such a disclosure would be long and unnecessarily complicated. Moreover, this requirement is not intended to suggest that one country's corporate governance practices are better or more effective than another. The Exchange believes that U.S. shareholders should be aware of the significant ways that the governance of a listed foreign private issuer differs from that of a U.S. listed company. The Exchange underscores that what is required is a brief, general summary of the significant differences, not a cumbersome analysis.

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.

12. (a) Each listed company CEO must certify to the Exchange each year that he or she is not aware of any violation by the company of Exchange corporate governance listing standards.

••• *Commentary* -----

The CEO's annual certification to the Exchange that, as of the date of certification, he or she is unaware of any violation by the company of Exchange's corporate governance listing standards will focus the CEO and senior management on the company's compliance with the listing standards. Both this certification to the Exchange, and any CEO/CFO certifications required to be filed with the SEC regarding the quality of the company's public disclosure, must be disclosed in the company's annual report to shareholders or, if the company does not prepare an annual report to shareholders, in the company's annual report on Form 10-K filed with the SEC.

(b) Each listed company CEO must promptly notify the Exchange after any executive officer of the listed company becomes aware of any material non-compliance with any applicable provisions of this Rule 867.

13. The Exchange may issue a public reprimand letter to any listed company that violates an Exchange listing standard.

••• *Commentary* -----

Suspending trading in or delisting a company can be harmful to the very shareholders that the Exchange listing standards seek to protect; the Exchange must therefore use these measures sparingly and judiciously. For this reason it is appropriate for the Exchange to have the ability to apply a lesser sanction to deter companies from violating its corporate governance (or other) listing standards. Accordingly, the Exchange may issue a public reprimand letter to any listed company, regardless of type of security listed or country of incorporation, that it determines has violated an Exchange listing standard. For companies that repeatedly or flagrantly violate Exchange listing standards,

suspension and delisting remain the ultimate penalties. For clarification, this lesser sanction is not intended for use in the case of companies that fall below the financial and other continued listing standards set forth in Rules 803, 804 and 805, or that fail to comply with the audit committee standards set out in Rule 867.06. The processes and procedures provided for in Rule 811, Delisting Policies and Procedures, govern the treatment of companies falling below those standards.

14. Related Party Transactions. Each issuer shall conduct an appropriate review of all related party transactions on an ongoing basis and all such transactions must be approved by the company's audit committee or another independent body of the board of directors. For purposes of this Rule, the term "related party transaction" shall refer to transactions required to be disclosed pursuant to SEC Regulation S-K, Item 404.

15. 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:

- (i) any determination that the company's board of directors has made regarding the independence of directors pursuant to Section 867.02 above;
- (ii) the financial literacy of the audit committee members as required by Section 867.07 above;
- (iii) the determination that at least one of the audit committee members has accounting or related financial management expertise as required by Section 867.07 above; and
- (iv) the annual review and reassessment of the adequacy of the audit committee charter as required by Section 867.07 above.

Rule 868. DIRECT REGISTRATION SYSTEM (DRS) PARTICIPATION

(a) On or after January 1, 2007, all securities initially listing on the Exchange must be eligible for Direct Registration System operated by a securities depository that is a clearing agency registered under Section 17A(b)(2) of the Securities Exchange Act of 1934 ("Securities Depository"). This provision does not extend to: (i) securities of companies which already have securities listed on the Exchange, (ii) securities of companies which immediately prior to such listing had securities listed on another national securities exchange, (iii) derivative products, or (iv) securities (other than stocks) which are book-entry only.

(b) On or after January 1, 2008, all securities listed on the Exchange must be eligible for Direct Registration System operated by a Securities Depository. This provision does not extend to derivative products or securities (other than stocks) that are book-entry only.

(c) For the purposes of this Rule 868, the term "derivative products" shall mean, in addition to standardized options issued by The Options Clearing Corporation ("OCC"), other securities that are issued by OCC or another limited purpose entity or trust and which are based solely on the performance of an index or portfolio of other publicly traded securities. The term "derivative products" does not include warrants of any type or closed-end management investment companies.]

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Rule 990. Additional Requirements for Securities Listed on the Exchange Issued by Nasdaq or its Affiliates

(a) For purposes of this Rule 990, the terms below are defined as follows:

(1) "Nasdaq Affiliate" means Nasdaq, Inc. and any entity that directly or indirectly, through one or more intermediaries, controls, is controlled by, or is under common control with Nasdaq, Inc., where "control" means that the one entity possesses, directly or indirectly, voting control of the other entity either through ownership of capital stock or other equity securities or through majority representation on the board of directors or other management body of such entity.

(2) "Affiliate Security" means any security issued by a Nasdaq Affiliate or any Exchange-listed option on any such security, with the exception of Trust Shares [as defined in Rule 803(i)] and Index Fund Shares[as defined in Rule 803(l)].

(A) The term "Trust Shares" means a security (a) that is based on a unit investment trust ("Trust") which holds the securities which comprise an index or portfolio underlying a series of Trust Shares; (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 plus a cash amount; (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 cash 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 stock index or portfolio of securities underlying the Trust Shares, less certain expenses and other charges as set forth in the Trust prospectus.

(B) The term "Index Fund Shares" means a security (a) that is issued by an open-end management investment company based on a portfolio of stocks that seeks to provide investment results that correspond generally to the price and yield performance of specified foreign or domestic stock index; (b) that is issued by such an open-end management investment company in a specified aggregate minimum number in return for a deposit of

specified numbers of shares of stock and/or a cash amount with a value equal to the next determined net asset value; and (c) that, when aggregated in the same specified minimum number, may be redeemed at a holder's request by such open-end investment company which will pay to the redeeming holder the stock and/or cash with a value equal to the next determined net asset value.

(b) Upon initial and throughout continued listing and trading of the Affiliate Security on the Exchange, the Exchange shall:

(1) provide a quarterly report to the Exchange's Regulatory Oversight Committee detailing the Exchange's monitoring of:

(A) the [Nasdaq] Affiliate's Securities compliance with the listing requirements [contained in the Rule 800 Series]; and

(B) the trading of the Affiliate Security, which shall include summaries of all related surveillance alerts, complaints, regulatory referrals, trades cancelled or adjusted pursuant to Rule 3312, investigations, examinations, formal and informal disciplinary actions, exception reports and trading data of such security.

(2) engage an independent accounting firm once a year to review and prepare a report on the Affiliate Security to ensure that the [Nasdaq] Affiliate Security is in compliance with the listing requirements [contained in the Rule 800 Series] and promptly provide PHLX's Regulatory Oversight Committee with a copy of the report prepared by the independent accounting firm.

(c) In the event that the Exchange determines that the [Nasdaq] Affiliate Security is not in compliance with any of the listing requirements [contained in the Rule 800 Series] the Exchange shall file a report with the Commission within five business days of providing notice to the issuer[Nasdaq Affiliate] of its non-compliance. The report shall identify the date of non-compliance, type of non-compliance and any other material information conveyed to the issuer[Nasdaq Affiliate] in the notice of non-compliance. Within five business days of receipt of a plan of compliance from the issuer[Nasdaq Affiliate], the Exchange shall notify the Commission of such receipt, whether the plan of compliance was accepted by the Exchange or what other action was taken with respect to the plan and the time period provided to regain compliance within [the Rule 800 Series]the listing standards, if any.

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Rule 1000. Applicability, Definitions and References

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37. *Stock Index Warrant*. The term "stock index warrant" means a warrant on a stock index group [listed pursuant to Exchange Rule 803(e)].

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Nasdaq PSX Rules**Rule 3100. Limit Up-Limit Down Plan and Trading Halts on PSX****(a) Authority to Initiate Trading Halts or Pauses**

In circumstances in which the Exchange deems it necessary to protect investors and the public interest, and pursuant to the procedures set forth in [paragraph (c)]this Rule:

(1) The Exchange may halt trading on PSX of a security listed on another national securities exchange: (A) during a trading halt imposed by such exchange to permit the dissemination of material news; or (B)]when such exchange imposes a trading halt in that security because of an order imbalance or influx ("operational trading halt"). In the event that the Exchange initiates a trading halt based on another exchange's operational trading halt, PSX [Participants] may resume trading and permit PSX Participants to commence entry of orders and quotations and trading at any time following initiation of [the] the other exchange's operational trading halt[, without regard to procedures for resuming trading set forth in paragraph (c);].

[(2) The Exchange may halt trading in an index warrant on PSX whenever Exchange staff shall conclude that such action is appropriate in the interests of a fair and orderly market and to protect investors. Among the factors that may be considered are the following:

(A) trading has been halted or suspended in underlying stocks whose weighted value represents 20% or more of the index value;

(B) the current calculation of the index derived from the current market prices of the stocks is not available;

(C) other unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market are present; or

(3) The Exchange shall halt trading in Derivative Securities Products (as defined in Rule 3100(b)(4)(A)) for which a net asset value ("NAV") (and in the case of Managed Fund Shares or actively managed exchange-traded funds, a Disclosed Portfolio, as defined in Rule 803(n)) is disseminated if the Exchange becomes aware that the NAV (or, if applicable, the Disclosed Portfolio) is not being disseminated to all market participants at the same time. The Exchange will maintain the trading halt until such time as trading resumes in the listing market.

(4) If a primary listing market issues an individual stock trading pause in any of the Circuit Breaker Securities, as defined herein, the Exchange will pause trading in that security until trading has resumed on the primary listing market. If, however, trading has not resumed on the primary listing market and ten minutes have passed since the individual stock trading pause message has been received from the responsible single plan processor, the Exchange may resume trading in such stock. The provisions of this paragraph (a)(4) shall be in effect during a pilot set to end on

February 4, 2014. During the pilot, the term "Circuit Breaker Securities" shall mean all NMS stocks other than NMS stocks subject to the Regulation NMS Plan to Address Extraordinary Market Volatility.]

([5]2) Limit Up-Limit Down Mechanism.

(A) Definitions.

(1) "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).

(2) All capitalized terms not otherwise defined in this Rule shall have the meanings set forth in the Plan or Exchange rules, as applicable.

(B) 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.

(C) Member Organization Compliance. Member organizations shall comply with the applicable provisions of the Plan.

(D) Exchange Compliance with the Plan. Exchange systems shall not display or execute buy (sell) interest above (below) the Upper (Lower) Price Bands, unless such interest is specifically exempted under the Plan.

(E) Repricing and Cancellation of Interest. Exchange systems shall reprice and/or cancel buy (sell) interest that is priced or could be executed above (below) the Upper (Lower) Price Band. Any interest that is repriced pursuant to this Rule shall receive a new time stamp and new execution priority.

(1) Market Orders. If a market order with a time in force other than Immediate or Cancel cannot be fully executed at or within the Price Bands, Exchange systems shall post the unexecuted portion of the buy (sell) market order at the Upper (Lower) Price Band.

(2) Limit-priced Interest. Both displayable and non-displayable incoming limit-priced interest to buy (sell) that is priced above (below) the Upper (Lower) Price Band shall be repriced to the Upper (Lower) Price Band.

(a) For limit-priced orders entered via the OUCH protocol, the order shall be re-priced upon entry only if the Price Bands are such that the price of the limit-priced interest to buy (sell) would be above (below) the upper (lower) Price Band. Once slid:

- (i) if the Price Bands move such that the price of the order to buy (sell) would be below (above) the lower (upper) Price Band, the order will not be re-priced again. Rather, the order will either remain on the book at the same price or be cancelled back to the entering party, depending on how the entering party has configured its order entry port.
 - (ii) if the Price Bands move such that the price of the order to buy (sell) would be above (below) the upper (lower) Price Band, the order will not be re-priced again. Rather, the order will be cancelled.
 - (b) For limit-priced orders entered via RASH or FIX protocols, the order shall be eligible to be repriced by the system multiple times if the Price Bands move such that the price of resting limit-priced interest to buy (sell) would be above (below) the upper (lower) Price Band. Once slid, if the Price Bands again move such that the price of resting limit interest to buy (sell) would be below (above) the upper (lower) Price Band the order will continue to be repriced either to its original limit price or to the new price bands, whichever is less aggressive.
 - (3) IOC Orders. If an IOC order cannot be fully executed at or within the Price Bands, Exchange systems shall cancel any unexecuted portion of the IOC Order.
 - (4) Routable Orders. Exchange systems shall not route buy (sell) interest to an away market displaying a sell (buy) quote that is above (below) the Upper (Lower) Price Band. Orders that are eligible to be routed to away destinations will be price slid before routing if the buy (sell) is priced above (below) the Upper (Lower) Price Band.
 - (5) Sell Short Orders. During a Short Sale Price Test, as defined in Rule 3303, Short Sale Orders priced below the Lower Price Band shall be repriced to the higher of the Lower Price Band or the Permitted Price, as defined in Rule 3303.
- (b) [Trading Halts for Trading of Certain Derivative Securities Products on PSX Pursuant to Unlisted Trading Privileges
- (1) During Pre-Market Session. If a Derivative Securities Product begins trading on PSX in the Pre-Market Session and subsequently a temporary interruption occurs in the calculation or wide dissemination of an applicable Required Value, PSX may continue to trade the Derivative Securities Product for the remainder of the Pre-Market Session.
 - (2) During Regular Market Session. During the Regular Market Session, if a temporary interruption occurs in the calculation or wide dissemination of an applicable Required Value, and the listing market halts trading in the Derivative Securities Product, the Exchange, upon notification by the listing market of a halt due to such

temporary interruption, also shall immediately halt trading in the Derivative Securities Product on PSX.

(3) Post-Market Session and Next Trading Day.

(A) If an applicable Required Value continues not to be calculated or widely disseminated after the close of the Regular Market Session, PSX may trade the Derivative Securities Product in the Post-Market Session only if the listing market traded the Derivative Securities Product until the close of its regular trading session without a halt.

(B) If an applicable Required Value continues not to be calculated or widely disseminated as of the beginning of the Pre-Market Session on the next trading day, PSX shall not commence trading of the Derivative Securities Product in the Pre-Market Session that day. If an interruption in the calculation or wide dissemination of an applicable Required Value continues, PSX may resume trading in the Derivative Securities Product only if calculation and wide dissemination of the applicable Required Value resumes or trading in the Derivative Securities Product resumes in the listing market.]

[(4)] **Definitions.** For purposes of this Rule:

[(A)] "Derivative Securities Product" means a series of Trust Shares, Index Fund Shares, Managed Fund Shares or Trust Issued Receipts [(as defined in Rule 803)], a series of Commodity-Related Securities (as defined in Rule 3230), securities representing interests in unit investment trusts or investment companies, or any other derivative security traded on PSX.

(A) The term "Trust Shares" means a security (a) that is based on a unit investment trust ("Trust") which holds the securities which comprise an index or portfolio underlying a series of Trust Shares; (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 plus a cash amount; (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 cash 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 stock index or portfolio of securities underlying the Trust Shares, less certain expenses and other charges as set forth in the Trust prospectus.

(B) The term "Index Fund Shares" means a security (a) that is issued by an open-end management investment company based on a portfolio of stocks that seeks to provide investment results that correspond generally to the price and yield performance of specified foreign or domestic stock index;

(b) that is issued by such an open-end management investment company in a specified aggregate minimum number in return for a deposit of specified numbers of shares of stock and/or a cash amount with a value equal to the next determined net asset value; and (c) that, when aggregated in the same specified minimum number, may be redeemed at a holder's request by such open-end investment company which will pay to the redeeming holder the stock and/or cash with a value equal to the next determined net asset value.

(C) The term "Managed Fund Shares" 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.

(D) The term "Trust Issued Receipts" means a security (a) that is issued by a trust ("Trust") which holds specified securities deposited with the Trust; (b) that, when aggregated in some specified minimum number, may be surrendered to the Trust by the beneficial owner to receive the securities; and (c) that pays beneficial owners dividends and other distributions on the deposited securities, if any are declared and paid to the trustee by an issuer of the deposited securities.

[(B)2] "Pre-Market Session" means the trading session that begins at 8:00 a.m. and continues until 9:30 a.m.

[(C)3] "Post-Market Session" means the trading session that begins at 4:00 p.m. or 4:15 p.m., and that continues until 5:00 p.m.

[(D)4] "Regular Market Session" means the trading session from 9:30 a.m. until 4:00 p.m. or 4:15 p.m.

[(E) "Required Value" shall mean (i) the value of any index or any commodity-related value underlying a Derivative Securities Product, (ii) the indicative optimized portfolio value, intraday indicative value, or other comparable estimate of the value of a share of a Derivative Securities Product updated regularly during the trading day, (iii) a net asset value in the case of a Derivative Securities Product for which a net asset value is disseminated, and (iv) a "disclosed portfolio" in the case of a Derivative Securities Product that is a series of

managed fund shares or actively managed exchange-traded funds for which a disclosed portfolio is disseminated.]

(5) The term “UTP Listing Market” means the primary listing market for a UTP Security.

(6) 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.

(7) The term “UTP Security” means a security that is listed on a national securities exchange other than the Exchange and that trades on the Exchange pursuant to unlisted trading privileges.

(c) Procedure for Initiating and Terminating a Trading Halt

(1) Should the Exchange determine that a basis exists under Rule 3100 for initiating a trading halt, the commencement of the trading halt will be effective at the time specified by the Exchange in a notice posted on a publicly available Exchange website. In addition, the Exchange shall disseminate notice of the commencement of a trading halt through major wire services.

(2) Trading in a halted security shall resume at the time specified by the Exchange in a notice posted on a publicly available Exchange website. In addition, the Exchange shall disseminate notice of the resumption of trading through major wire services.

(3) [(A)] A trading halt initiated under [Rule 3100(a)(3) or Rule 3100]this Rule shall be terminated when the Exchange releases the security for trading, at a time announced to market participants in advance by the Exchange.

[(B) During any trading halt or pause, orders entered during the trading halt or pause will not be accepted.]

(d) UTP Regulatory Halts. If the UTP Listing Market, as defined in (b)(5) above, declares a UTP Regulatory Halt, as defined in (b)(6) above, the Exchange 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 Rule 3100(a)(2) and Phlx Rule 133 provided that, during Regular Market Session, 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 Exchange 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.

(e) The Exchange will not conduct a halt cross or re-opening cross in a UTP Security and will process new and existing orders in a UTP Security during a trading halt as follows:

- (1) cancel any unexecuted portion of Midpoint Peg and Midpoint Peg Post-Only Orders;
- (2) maintain all other resting Orders in the Exchange Book at their last ranked price and displayed price;
- (3) accept and process all cancellations; and
- (4) Orders, including Order modifications, entered during the trading halt or pause will not be accepted.

(f) Halts in Exchange Traded Products. Trading Halts for UTP Exchange Traded Products. A "UTP Exchange Traded Product" means one of the following Exchange Traded Products that trades on the Exchange pursuant to unlisted trading privileges: Equity Linked Notes, Investment Company Units, Index Fund Shares, NextShares, Index-Linked Exchangeable Notes, Equity Gold Shares, Equity Index-Linked Securities, Commodity-Linked Securities, Currency-Linked Securities, Fixed-Income Index-Linked Securities, Futures-Linked Securities, Multifactor-Index-Linked Securities, Trust Certificates, Currency and Index Warrants, Portfolio Depository Receipts, Trust Issued Receipts, Commodity-Based Trust Shares, Currency Trust Shares, Commodity Index Trust Shares, Commodity Futures Trust Shares, Partnership Units, Paired Trust Shares, Trust Units, Managed Fund Shares, and Managed Trust Securities.

(1) Pre-Market Session. If a UTP Exchange Traded Product begins trading on the Exchange in the Pre-Market 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 Exchange Traded Product, by a major market data vendor, the Exchange may continue to trade the UTP Exchange Traded Product for the remainder of the Pre-Market Session.

(2) Regular Market Session. During the Regular Market 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 Exchange Traded Product, the Exchange, upon notification by the primary listing market of such halt due to such temporary interruption, also shall immediately halt trading in the UTP Exchange Traded Product on the Exchange.

(3) Post-Market Session and Next Business Day's Pre-Market Session.

(A) If the IIV or the value of the underlying index continues not to be calculated or widely available after the close of the Regular Market Session, the Exchange may trade the UTP Exchange Traded Product in the

Post-Market Session only if the listing market traded such securities until the close of its regular trading session without a halt.

(B) If the IIV or the value of the underlying index continues not to be calculated or widely available as of the commencement of the Pre-Market Session on the next business day, the Exchange shall not commence trading of the UTP Exchange Traded Product in the Pre-Market Session that day. If an interruption in the calculation or wide dissemination of the IIV or the value of the underlying index continues, the Exchange may resume trading in the UTP Exchange Traded Product only if calculation and wide dissemination of the IIV or the value of the underlying index resumes or trading in the UTP Exchange Traded Product resumes in the primary listing market.

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Rule 3202. Application of Other Rules of the Exchange

The following Rules of the Exchange shall be applicable to market participants trading on PSX.

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[Rule 803. Listing Standards for Unlisted Trading Privileges]

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Rule 3204. Securities Traded under Unlisted Trading Privileges

(a) General Provisions and Unlisted Trading Privileges. Only such securities admitted pursuant to unlisted trading privileges shall be dealt in on the Exchange. The Exchange will not list equity securities pursuant to any Rule until the Exchange files a proposed rule change under Section 19(b)(2) under the Exchange Act to amend its Rules to make any changes needed to comply with Rules 10A-3 and 10C-1 under the Exchange Act and to incorporate additional qualitative and other listing criteria, and such proposed rule change is approved by the Commission. Therefore, the provisions of the Exchange's Rules are not effective to permit the listing of equity securities.

(1) The Exchange may extend unlisted trading privileges ("UTP") to any security that is an NMS Stock that is listed on another national securities exchange or with respect to which unlisted trading privileges may otherwise be extended in accordance with Section 12(f) of the Exchange Act and any such security shall be subject to all Exchange rules applicable to trading on the Exchange, unless otherwise noted.

(2) UTP Exchange Traded Product. Any UTP Security, which is defined in Rule 3100(b)(7), that is a UTP Exchange Traded Product, which is defined in Rule 3100(f), will be subject to the additional following rules:

(A) Information Circular. The Exchange will distribute an information circular prior to the commencement of trading in each such UTP Exchange Traded Product 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 Exchange Traded Product, (b) the Exchange Rules that will apply to the new Exchange Traded Product, and (c) information about the dissemination of value of the underlying assets or indices.

(B) Product Description.

(i) Prospectus Delivery Requirements. Member organizations are subject to the prospectus delivery requirements under the Securities Act of 1933, unless the UTP Exchange Traded Product 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.

(ii) Written Description of Terms and Conditions. The Exchange will inform member organizations of the application of the provisions of this subparagraph to UTP Exchange Traded Products by means of an information circular. The Exchange requires that member organizations provide each purchaser of UTP Exchange Traded Products 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, member organizations will include a written description with any sales material relating to UTP Exchange Traded Products that is provided to customers or the public. Any other written materials provided by a member organization to customers or the public making specific reference to the UTP Exchange Traded Products as an investment vehicle must include a statement substantially in the following form:

"A circular describing the terms and characteristics of [the UTP Exchange Traded Products] 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 Exchange Traded Products]."

A member organization carrying an omnibus account for a non-member organization is required to inform such non-member organizations that execution of an order to purchase UTP Exchange Traded Products for such omnibus account will be deemed to constitute an agreement by the non-member organizations to make such written description available to its customers on the same terms as are directly applicable to the member organization under this Rule.

(iii) Customer Requests for a Prospectus. Upon request of a customer, a member organization will also provide a prospectus for the particular UTP Exchange Traded Product.

(C) Trading Halts. The Exchange will halt trading in a UTP Exchange Traded Product as provided for in Rule 3100. Nothing in this rule will limit the power of the Exchange under the Rules 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.

(D) Market Maker Restrictions. The following restrictions will apply to each member organization acting as a registered Market Maker on the Exchange in a UTP Exchange Traded Product 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"):

(i) The member organization acting as a registered Market Maker on the Exchange in a UTP Exchange Traded Product 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 (collectively with Reference Assets, "Related Instruments"), which the member organization acting as a registered Market Maker on the Exchange may have or over which it may exercise investment discretion. No member organization acting as a registered Market Maker on the Exchange in the UTP Exchange Traded Product will trade in the underlying physical asset or commodity, related futures or options on futures, or any other related derivatives, in an account in which a member organization acting as a registered Market Maker on the Exchange, 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.

(ii) A Market Maker on the Exchange will, 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: (a) in which the Market Maker holds an interest; (b) over which it has investment discretion; or (c) in which it shares in the profits and/or losses.

A Market Maker on the Exchange 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.

(iii) In addition to the existing obligations under Exchange rules regarding the production of books and records, a Market Maker on the Exchange will, 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 on the Exchange for which Related Instruments are traded.

(iv) A Market Maker on the Exchange will not use any material nonpublic information in connection with trading a Related Instrument.

(E) Surveillance. The Exchange will enter into comprehensive surveillance sharing agreements with markets that trade components of the index or portfolio on which the UTP Exchange Traded Product 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.

(3) Prior to the commencement of trading of CVRs on the Exchange, the Exchange will distribute a circular to its member organizations providing guidance regarding member organization compliance responsibilities (including suitability recommendations and account approval) when handling transactions in CVRs.

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Rule 3232. Advertising Practices

(a) No member organization, directly or indirectly, in connection with the purchase or sale of any security that has listed or unlisted trading privileges on the Exchange, shall publish, circulate or distribute any advertisement, sales literature or market letter or make oral statements or presentations which the member organization knows, or in the exercise of reasonable care should know, contain any untrue statement of material fact or which is

otherwise false or misleading. Exaggerated or misleading statements or claims are prohibited.

(b) Advertisements, sales literature and market letters shall contain the name of the member organization, the person or firm preparing the material, if other than the member organization, and the date on which it was first published, circulated or distributed (except that in advertisements only the name of the member organization need be stated).

(c) No cautionary statements or caveats, often called hedge clauses, may be used if they could mislead the reader or are inconsistent with the content of the material.

(d) Each item of advertising and sales literature and each market letter shall be approved by signature or initial, prior to use, by an officer, partner or other official the member organization has designated to supervise all such matters.

(e) A separate file of all advertisements, sales literature and market letters, including the names of the persons who prepared them and/or approved their use, shall be maintained by the member organization for a period of three years from the date of each use (for the first two years in a place readily accessible to examination or spot checks). Each member organization shall file with the Exchange, or the designated self-regulatory organization for such member organization, within five business days after initial use, each advertisement (i.e., any material for use in any newspaper or magazine or other public media or by radio, telephone, recording, motion picture or television, except tombstone advertisements), unless such advertisement may be published under the rules of another self-regulatory organization regulating the member organization under the Act.

(f) Testimonial material based on experience with the member organization or concerning any advice, analysis, report or other investment related service rendered by the member organization must make clear that such testimony is not necessarily indicative of future performance or results obtained by others. Testimonials also shall state whether any compensation has been paid to the maker, directly or indirectly, and if the material implies special experience or expert opinion, the qualifications of the maker of the testimonial should be given.

(g) Any statement to the effect that a report or analysis or other service will be furnished free or without any charge shall not be made unless such report or analysis or other service actually is or will be furnished entirely free and without condition or obligation.

(h) No claim or implication may be made for research or other facilities beyond those which the member organization actually possesses or has reasonable capacity to provide.

Rule 3233. Prevention of the Misuse of Material, Nonpublic Information

(a) Every member organization must establish, maintain and enforce written policies and procedures reasonably designed, taking into consideration the nature of such member organization's business, to prevent the misuse of material, non-public information by

such member or member organization. Any member or member organization who becomes aware of a possible misuse of material, non-public information must promptly notify the Exchange's regulatory staff.

Supplementary Material:

.01 For purposes of Rule 3233, 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, nonpublic 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 This Rule provides that each member organization for which the Exchange is the DEA should establish, maintain, and enforce written policies and procedures similar to the following, as applicable:

- A. All members must be advised in writing of the prohibition against the misuse of material, non-public information; and
- B. All members of the member organization 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 member organization must receive and retain copies of trade confirmations and monthly account statements for each account in which a member: 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 member organization for the express purpose of detecting the possible misuse of material, non-public information; and
- D. All members must disclose to the member organization 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 may not, in all cases, satisfy the requirements and intent of this Rule. The adequacy of each member organization's policies and procedures will depend upon the nature of each member organization's business.

.03 Member organizations acting as a registered Market Maker in UTP Exchange Traded Products, 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 3234. Additional Requirements for Securities Issued by Nasdaq or its Affiliates

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

(1) "Nasdaq Affiliate" means Nasdaq, Inc. and any entity that directly or indirectly, through one or more intermediaries, controls, is controlled by, or is under common control with Nasdaq, Inc., where "control" means that one entity possesses, directly or indirectly, voting control of the other entity either through ownership of capital stock or other equity securities or through majority representation on the board of directors or other management body of such entity.

(2) "Affiliate Security" means any security issued by a Nasdaq Affiliate or any Exchange-listed option on any such security.

(b) No equity Affiliate Security will be listed on the Exchange.

(c) Throughout the trading of the Affiliate Security on the Exchange, the Exchange will prepare a quarterly report on the Affiliate Security for the Exchange's Regulatory Oversight Committee that describes Exchange regulatory staff's monitoring of the trading of the Affiliate Security including summaries of all related surveillance alerts, complaints, regulatory referrals, adjusted trades, investigations, examinations, formal and informal disciplinary actions, exception reports and trading data used to ensure the Affiliate Security's compliance with the Exchange's trading rules.

Rule 3236. Restriction

No member organization shall give a proxy to vote stock registered in its name, except as required or permitted under the provisions of Rule 3238, unless the firm is the beneficial owner of such stock.

Rule 3237. Voting Instructions

Whenever a person soliciting proxies shall furnish a member organization:

(1) copies of all soliciting material which such person is sending to registered holders, and

(2) satisfactory assurance that he will reimburse such member organization for all out-of-pocket expenses, including reasonable clerical expenses, if any, incurred by such member organization, in obtaining instructions from the beneficial owners of stock.

Such organization shall transmit to each beneficial owner of stock the material furnished together with a request for voting instructions and also a statement to the effect that, if such instructions are not received by the tenth day before the meeting the proxy may be given at discretion by the owner of record of the stock. However, when the proxy soliciting material is transmitted to the beneficial owner of the stock twenty-five days or more before the meeting, the statement accompanying such material shall be to the effect that the proxy may be given fifteen days before the meeting at the discretion of the owner of record of the stock. This Rule shall not apply to beneficial owners outside the United States.

Rule 3238. Proxies at Direction of Owner

A member organization shall give a proxy for stock registered in its name, at the direction of the beneficial owner. If the stock is not in the control or possession of the member organization, satisfactory proof of the beneficial ownership as of the record date may be required.

Member organization holdings as executor, etc.

A member organization may give a proxy to vote any stock registered in its name if the member organization holds such stock as executor, administrator, guardian, trustee, or in a similar representative or fiduciary capacity with authority to vote.

A member organization which has in its possession or control stock registered in the name of another member organization shall

(1) forward to such other member organization any voting instructions received from the beneficial owner, or

(2) if the proxy-soliciting material has been transmitted to the beneficial owner of the stock in accordance with Rule 3237 and no instructions have been received by the date specified in the statement accompanying such material, notify such other member organization of such fact in order that such organization may give the proxy as provided below.

(a) When a member organization may vote without customer instructions—A member organization may give a proxy to vote stock provided that:

(1) it has transmitted proxy-soliciting material to the beneficial owner of stock

(2) it has not received voting instructions from the beneficial owner by the date specified in the statement accompanying such material; and

(3) provided such action is adequately disclosed to stockholders and does not include authorization for a merger, consolidation or any matter which may substantially affect the rights or privileges of such stock.

(b) When a member organization may not vote without customer instructions—A member organization may not give or authorize a proxy to vote without instructions from beneficial owners when the matter to be voted upon:

(1) is submitted to stockholders by means of a proxy statement comparable to that specified in Schedule 14-A of the SEC;

(2) is the subject of a counter-solicitation, or is part of a proposal made by a stockholder which is being opposed by management;

(3) relates to a merger or consolidation (except when the company's proposal is to merge with its own wholly owned subsidiary, provided shareholders dissenting thereto do not have rights of appraisal and there is no change in the state of incorporation);

(4) involves right of appraisal;

(5) authorizes mortgaging of property;

(6) authorizes or creates indebtedness or increases the authorized amount of indebtedness;

(7) authorizes or creates a preferred stock or increases the authorized amount of an existing preferred stock;

(8) alters the terms or conditions of existing stock or indebtedness;

(9) involves a waiver or modification of preemptive rights;

(10) changes existing quorum requirements with respect to stockholder meetings;

(11) alters voting provisions or the proportionate voting power of a stock, or the number of its votes per share (except where cumulative voting provisions govern the number of votes per share for election of directors and the company proposal involves a change in the number of its directors by not more than 10% or not more than one);

(12) authorizes the implementation of any equity compensation plan, or any material revision to the terms of any existing equity compensation plan;

••Commentary:-----

.01 A member organization may not give or authorize a proxy to vote without instructions on a matter relating to executive compensation, even if such matter would otherwise qualify for an exception from the requirements of Item 12, Item 13 or any other Item under this Rule. See Item 21.

(13) authorizes:

- (i) a new profit-sharing or special remuneration plan, or a new retirement plan, the annual cost of which will amount to more than 10% of average annual income before taxes for the preceding five years, or
- (ii) the amendment of an existing plan which would bring its costs above 10% of such average annual income before taxes.

Exception may be made in cases of:

- (i) retirement plans based on agreement or negotiations with labor unions (or which have been or are to be approved by such unions) and
- (ii) any related retirement plan for benefit of non-union employees having terms substantially equivalent to the terms of such union-negotiated plan which is submitted for action of stockholders concurrently with such union-negotiated plan;

••Commentary:-----

.02 A member organization may not give or authorize a proxy to vote without instructions on a matter relating to executive compensation, even if such matter would otherwise qualify for an exception from the requirements of Item 12, Item 13 or any other Item under this Rule. See Item 21.

(14) changes the purposes or powers of a company to an extent which would permit it to change to a materially different line of business and it is the company's stated intention to make such a change;

(15) authorizes the acquisition of property, assets or a company, where the consideration to be given has a fair value approximating 20% or more of the market value of the previously outstanding shares;

(16) authorizes the sale or other disposition of assets or earning power approximating 20% or more of those existing prior to the transaction;

- (17) authorizes a transaction not in the ordinary course of business in which an officer, director or substantial security holder has a direct or indirect interest;
- (18) reduces earned surplus by 51% or more, or reduces earned surplus to an amount less than the aggregate of three years' common stock dividends computed at the current dividend rate.
- (19) is the election of directors, provided, however, that this prohibition shall not apply in the case of a company registered under the Investment Company Act of 1940;
- (20) materially amends an investment advisory contract with an investment company. A material amendment to an investment advisory contract would include any proposal to obtain shareholder approval of an investment company's investment advisory contract with a new investment adviser, which approval is required by the Investment Company Act of 1940, as amended (the "1940 Act"), and the rules thereunder. Such approval will be deemed to be a "matter which may affect substantially the rights or privileges of such stock" for purposes of this Rule so that a member organization may not give or authorize a proxy to vote shares registered in its name absent instruction from the beneficial holder of the shares. As a result, for example, a member organization may not give or authorize a proxy to vote shares registered in its name, absent instruction from the beneficial holder of the shares, on any proposal to obtain shareholder approval required by the 1940 Act of an investment advisory contract between an investment company and a new investment adviser due to an assignment of the investment company's investment advisory contract, including an assignment caused by a change in control of the investment adviser that is party to the assigned contract; or
- (21) is in connection with a vote on executive compensation matters, or any other significant matter, as determined by the Commission by rule.

••Commentary:-----

.03 A matter relating to executive compensation would include, among other things, the items referred to in Section 14A of the Exchange Act (added by Section 951 of the Dodd-Frank Wall Street Reform and Consumer Protection Act), including (i) an advisory vote to approve the compensation of executives, (ii) a vote on whether to hold such an advisory vote every one, two or three years, and (iii) an advisory vote to approve any type of compensation (whether present, deferred, or contingent) that is based on or otherwise relates to an acquisition, merger, consolidation, sale, or other disposition of all or substantially all of the assets of an issuer and the aggregate total of all such compensation that may (and the conditions upon which it may) be paid or become payable to or on behalf of an executive officer. In addition, a member organization may not give or authorize a proxy to vote without instructions on a matter relating to executive compensation, even if such matter would otherwise qualify for an exception from the

requirements of Item 12, Item 13 or any other Item under this Rule. Any vote on these or similar executive compensation-related matters is subject to the requirements of this Rule.

(c) Discretionary and non-discretionary proposals in one proxy form—A proxy form may contain proposals, some of which may be acted upon at the discretion of the member organization in the absence of instruction, and others which may be voted only in accordance with the directions of the beneficial owner. This should be indicated in the letter of transmittal. In such cases, the member organization may vote the proxy in the absence of instructions if it physically crosses out those portions where it does not have discretion.

(d) Cancellation of discretionary proxy where counter-solicitation develops—Where a discretionary proxy has been given in good faith under the rules and counter-solicitation develops at a later date, thereby creating a "contest", the question as to whether or not the discretionary proxy should then be canceled is a matter which each member organization must decide for itself. After a contest has developed, no further proxies should be given except at the direction of beneficial owners.

(e) Subsequent proxy—Where a member organization gives a subsequent proxy, it should clearly indicate whether the proxy is in addition to, in substitution for, or in revocation of, any prior proxy.

(f) Signing and dating proxy—All proxies should be dated and should show the number of shares voted. Since manual signatures are sometimes illegible, a member organization should also either type or rubber-stamp its name on such proxy.

(g) Proxy records—Records covering the solicitation of proxies shall show the following:

(1) the date of receipt of the proxy material from the issuer or other person soliciting the proxies;

(2) names of customers to whom the material is sent together with date of mailing;

(3) all voting instructions showing whether verbal or written; and

(4) a summary of all proxies voted by the member organization clearly setting forth total shares voted for or against, or not voted, for each proposal to be acted upon at the meeting.

Verbal voting instructions may be accepted provided a record is kept of the instructions of the beneficial owner and the instructions are retained by the member organization. The record shall also indicate the date of the receipt of the instructions and the name of the recipient.

(h) Retention of records—All proxy solicitation records, originals of all communications received and copies of all communications sent relating to such solicitation, shall be retained for a period of not less than three years, the first two years in an easily accessible place.

Rule 3239. Proxy to Show Number of Shares

In all cases in which a proxy is given by a member organization the proxy shall state the actual number of shares of stock for which the proxy is given.

Rule 3240. Transfer to Facilitate Solicitation

A member organization, when so requested by the Exchange shall transfer certificates of a listed stock held either for its own account or for the account of others, if registered in the name of a previous holder of record, into its own name, prior to the taking of a record of stockholders, to facilitate the convenient solicitation of proxies.

The Exchange will make such request at the instance of the issuer or of persons owning in the aggregate at least ten percent of such stock, provided, if the Exchange so requires, the issuer or persons making such request agree to indemnify member organizations against transfer taxes, and the Exchange may make such a request whenever it deems it advisable.

Rule 3241. Rule Applicable to Individual Members and Nominees

The provisions of Rules 3236 to 3240, inclusive, shall apply also to any nominees of member organizations. They shall apply also to voting in person.

Rule 3242. Transmission of Interim Reports and Other Material

A member organization, when so requested by a company, and upon being furnished with:

- (1) copies of interim reports of earnings or other material being sent to stockholders, and
- (2) satisfactory assurance that it will be reimbursed by such company for all out-of-pocket expenses, including reasonable clerical expenses, shall transmit such reports or material to each beneficial owner of stock of such company held by such member organization and registered in a name other than the name of the beneficial owner.

This Rule shall not apply to beneficial owners outside the United States.

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