

## **Rule 1**

### **Definitions**

Rule 1.1. Whenever and wherever used herein, unless the context requires otherwise, the following terms shall be deemed to have the meanings indicated:

#### **Arca Book**

(a) The term "Arca Book" shall refer to the Archipelago Exchange's electronic file of orders, which contains all the User's orders in each of the Directed Order, Display Order, Working Order and Tracking Order Processes.

#### **Affiliate**

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

#### **Allied Person**

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

- (1) an employee of an ETP Holder who controls such firm, or
- (2) an employee of an ETP Holder corporation who is a director or a principal executive officer of such corporation, or
- (3) an employee of an ETP Holder limited liability company who is a manager or a principal executive officer of such limited liability company, or
- (4) a general partner in an ETP Holder partnership;

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

#### **Approved Person**

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

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

- (2) controls an ETP Holder, or
- (3) beneficially owns, directly or indirectly, 5% or more of the outstanding equity securities of an ETP Holder, or
- (4) has contributed 5% or more of the partnership capital;

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

### **Archipelago Exchange**

(e) The term “Archipelago Exchange” shall mean the electronic securities communications and trading facility designated by the Board of Directors through which orders of Users are consolidated for execution and/or display.

### **Associated Person**

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

### **Authorized Trader**

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

### **BBO**

(h) The term “BBO” shall refer to the best bid or offer on the Archipelago Exchange.

### **Control**

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

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

- (4) in the case of a partnership, has the right to receive upon dissolution, or has contributed, 25% or more of the capital of the other person.

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

### **Core Trading Hours**

(j) The term "Core Trading Hours" shall mean the hours of 6:30 am through 1:00 pm (Pacific Time) or such other hours as may be determined by the Corporation from time to time.

### **Corporation**

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

### **Eligible Security**

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

### **ETP**

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

### **ETP Holder**

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

An ETP Holder shall not have ownership or distribution rights in the Corporation. An ETP Holder will have limited voting rights to nominate two Directors to the Corporation's Board of Directors and one Governor to the Board of Governors of the PCX Parent. An ETP Holder

will have status as a "member" of the PCX Parent as that term is defined in Section 3 of the Securities Exchange Act of 1934, as amended.

### **General Authorized Trader**

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

### **Good Standing**

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

### **Imbalance**

(q) For the purposes of the Opening Auction and the Market Order Auction, as the case may be, the term "Imbalance" shall mean the number of buy or sell orders that can not be matched with other orders at the Indicative Match Price at any given time.

### **Indicative Match Price**

(r) For the purposes of the Opening Auction or the Market Order Auction, as the case may be, the term "Indicative Match Price" shall mean for each security (1) the price at which the maximum volume of orders are executable; or (2) if there are two or more prices at which the maximum volume of orders are executable, the price that is closest to the closing price of the previous trading day's normal market hours, as determined by the Consolidated Tape.

### **Limited Price Order**

(s) The term "Limited Price Order" shall mean any order with a specified price or prices (*e.g.*, limit orders and Working Orders), other than Stop Orders.

### **Marketable**

(t) The term "Marketable" shall mean, for a Limited Price Order, the price matches or crosses the NBBO on the other side of the market. Market orders are always considered marketable.

### **Market Maker**

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

### **Market Maker Authorized Trader**

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

### **Market Participant**

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

### **NBBO**

(x) The term "NBBO" shall refer to the national best bid or offer.

### **Notice of Consent**

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

### **NOW Recipient**

(z) The term "NOW Recipient" shall mean any exchange, ECN or other broker-dealer (1) with which the Archipelago Exchange maintains an electronic linkage, which includes ITS, and (2) which provides instantaneous responses to NOW Orders routed from the Archipelago Exchange. The Corporation shall designate from time to time those exchanges, ECNs or other broker-dealers that qualify as NOW Recipients.

### **Odd Lot Dealer**

(aa) The term "Odd Lot Dealer" shall refer to a Market Maker that is registered as an Odd Lot Dealer as described in Rule 7.25.

### **Parent**

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

### **Participant**

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

## **PCX Parent**

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

## **Person**

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

## **Registered Employee**

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

## **Routing Agreement**

(gg) The term "Routing Agreement" shall mean the form of Agreement between an ETP Holder and the broker-dealer affiliate of Archipelago Exchange, L.L.C., under which the broker-dealer affiliate of Archipelago Exchange, L.L.C., agrees to act as agent for routing orders of the ETP Holder and the ETP Holder's Sponsored Participants entered into the Archipelago Exchange to other market centers or broker-dealers for execution, whenever such routing is required.

## **Security**

(hh) The terms "security" and "securities" mean any security as defined in Rule 3(a)(10) under the Securities Exchange Act of 1934.

## **Self-Regulatory Organization ("SRO")**

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

## **Sponsored Participant**

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

## **Sponsoring ETP Holder**

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

## **Sponsorship Provisions**

(ll) The term “Sponsorship Provisions” shall mean the provisions set forth in Rule 7.29(b)(2). For a Sponsored Participant to obtain authorized access to the Archipelago Exchange, the Sponsored Participant and its Sponsoring ETP Holder must enter into an agreement which incorporates the Sponsorship Provisions.

## **Stockholder Associate**

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

## **Trading Facilities**

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

## **User**

(oo) The term “User” shall mean any ETP Holder or Sponsored Participant who is authorized to obtain access to the Archipelago Exchange pursuant to Rule 7.29.

## **User Agreement**

(pp) The term “User Agreement” shall mean an appropriate subscription agreement entered into by the User with Archipelago Exchange, L.L.C.

## **Wholly Owned Subsidiary**

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

## **Rule 2**

### **Equity Trading Permits**

#### **Securities Business**

Rule 2.1.(a) Every ETP Holder shall have as its principal purpose the conduct of a securities business.

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

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

#### **Qualifications of Applicants**

Rule 2.2. An ETP may be held by an entity which is a registered broker or dealer pursuant to Section 15 of the Securities Exchange Act of 1934, as amended, including sole proprietors, partnerships, limited liability partnerships, corporations, and limited liability companies. A corporation, limited liability company, or limited liability partnership must be organized under the laws of one of the states of the United States or under other laws as the Corporation's Board of Directors shall approve.

#### **Application Procedures**

Rule 2.3.

(a) Every person applying to become an ETP Holder shall complete an application on a form prescribed by the Corporation and shall file it with the Corporation. The application shall be filed with such application fees and such documents as may be required by the Corporation. Application fees are not transferable and not refundable.

(b) Within a reasonable period of time following receipt of an application for an ETP, the name of the applicant shall be distributed to all ETP Holders and shall be posted by the Corporation by publishing the name of each applicant in the Corporation's Weekly Bulletin for at least ten (10) calendar days prior to the approval or rejection of the application by the Corporation.

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

(d) Upon completion of the application process, the Corporation shall consider and then approve or reject the application, unless there is just cause for delay. Sole proprietor applicants and persons associated with applicant entities may be required to appear in person before the Corporation. The Corporation may also require any ETP Holder or person associated with an ETP Holder who may possess information relevant to the applicant's suitability for holding an ETP to provide information or testimony.

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

(f) Written notice of the action of the Corporation, specifying in the case of rejection of an application the grounds therefor, shall be given promptly to the applicant.

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

### **Denial of or Conditions to ETPs**

Rule 2.4(a) The Corporation may deny (or may condition) trading privileges under an ETP or may bar a natural person from becoming associated (or may condition an association) with an ETP Holder for the same reasons that the Securities and Exchange Commission may deny or revoke a broker or dealer registration and for those reasons required or allowed under the Securities Exchange Act of 1934, as amended.

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

- (1) is unable to satisfactorily demonstrate its present capacity to adhere to all applicable Corporation and Securities and Exchange Commission policies,

rules and regulations, including, without limitation, those concerning record-keeping, reporting, finance and trading procedures;

- (2) has previously violated, and there is a reasonable likelihood such applicant will again engage in acts or practices violative of, any applicable Corporation or Securities and Exchange Commission policies, rules and regulations, including, without limitation, those concerning record-keeping, reporting, finance and trading procedures or those rules of other self-regulatory organizations of which such applicant is or was a member;
- (3) has engaged, and there is a reasonable likelihood such applicant will again engage, in acts or practices inconsistent with just and equitable principles of trade;
- (4) has a negative net worth, or has financial difficulties involving an amount that is more than 5% of the applicant's net worth;
- (5) is subject to any unsatisfied liens, judgments or unsubordinated creditor claims of a material nature, which, in the absence of a reasonable explanation therefor, remain outstanding for more than sixty (60) calendar days (the term "material" means any amount which equals more than 5% of the total assets of the broker-dealer);
- (6) owes an undisputed debt to an ETP Holder arising out of the securities business, in which case the Corporation may take such action as it deems appropriate, including, without limitation, denying the application or conditioning the issuance of the ETP upon the execution of an agreement regarding repayment of the debt;
- (7) allegedly owes a debt to an ETP Holder arising out of the securities business, in which case the Corporation may take such action as it deems appropriate, including, without limitation, denying the application or conditioning the issuance of the ETP upon the debt being submitted to arbitration pursuant to Rule 12 at the request of the ETP Holder to whom the debt is allegedly owed;
- (8) has been itself, or is the successor to an entity which has been subject to any bankruptcy proceeding, receivership or arrangement for the benefit of creditors within the past three years;
- (9) has engaged in an established pattern of failure to pay just debts;
- (10) does not successfully complete such written proficiency examinations as required by the Corporation to enable it to examine and verify the

applicant's qualifications to function in one or more of the capacities applied for;

### **Series 7 Requirement**

- (A) Traders of ETP Holders for which the Corporation is the Designated Examining Authority (“DEA”) must successfully complete the General Securities Registered Representative Examination (Test Series 7), if the primary business of the ETP Holder involves the trading of securities that is unrelated to the performance of the functions of a registered Market Maker. Unless required to complete the Series 7 under Rule 7.21(b)(2), the following are exempt from the requirement to successfully complete the Series 7 Examination: ETP Holders who are performing the function of a registered Market Maker (pursuant to Rule 7).

For purposes of this Rule:

- (i) The term “trader” means a person (a) who is directly or indirectly compensated by an ETP Holder, or who is any other associated person of an ETP Holder and (b) who trades, makes trading decisions with respect to, or otherwise engages in the proprietary or agency trading of securities; and
- (ii) The term “primary business” means greater than 50% of the ETP Holder's business.
- (B) Each ETP Holder for which the Corporation is the DEA must complete, on an annual basis, and on a form prescribed by the Corporation, a written attestation as to whether the ETP Holder's primary business is conducted in the performance of the function of a registered Market Maker (pursuant to Rule 7).
- (C) The requirement to complete the Series 7 Examination will apply to current traders of ETP Holders that meet the criteria of subsection (A), above, as well as to future traders of ETP Holders that meet the criteria of subsection (A), above, at a later date. Traders of ETP Holders that meet the criteria of subsection (A), above, at the time of SEC approval of this Rule, must successfully complete the Series 7 Examination within six months of notification by the Corporation.

- (11) does not meet such other standards of training, experience, and competence as may be established by the Corporation;
- (12) would bring the Corporation into disrepute; or
- (13) for such other cause as the Corporation reasonably may decide.

(c) The Corporation may waive or modify a required examination for any applicant if, within two years of the date such applicant applied to the Corporation for an ETP, such applicant has successfully completed a comparable examination administered by a self-regulatory organization or the Securities and Exchange Commission.

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

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

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

### **Publication of Approved ETP Applications**

Rule 2.5. With respect to each ETP that is issued, the Corporation shall promptly distribute a notice thereof to all ETP Holders by publishing the name of each new ETP Holder in the Corporation's Weekly Bulletin.

### **Requirements of Holding an ETP**

#### **Requirements Applicable Generally**

#### **Revocable Privilege**

Rule 2.6. The issuance of an ETP constitutes only a revocable privilege and confers on its holder no right or interest of any nature to continue as an ETP Holder.

#### **No Liability for Using Trading Facilities**

Rule 2.7. The Corporation shall not be liable for any damages sustained by an ETP Holder growing out of the use or enjoyment by such ETP Holder of the facilities afforded by the Corporation in the conduct of its business. Each ETP Holder expressly agrees, in consideration of the issuance of the ETP, to release and discharge the Corporation, its officers, directors,

employees and agents, of and from all claims or damages arising from their acceptance and use of such ETP and their agreement to be bound by the Certificate of Incorporation, Bylaws and Rules of the Corporation.

### **Corporation Not Bound By ETP Holder Agreements**

Rule 2.8. Nothing contained in any partnership agreement, limited partnership agreement, articles of incorporation, resolutions, by-laws or any other organizational documents, or amendment thereto, of an ETP Holder, nor any other agreements between any ETP Holder and a third party, or any amendment thereto, even though submitted to or filed with the Corporation, shall obligate or be binding upon the Corporation.

### **Only ETP Holder Organizations May Carry Customer Accounts**

Rule 2.9. Only ETP Holders which are partnerships, limited liability partnerships, corporations or limited liability companies shall carry accounts for customers or conduct business under a firm name.

### **Sole Proprietors**

Rule 2.10.(a) A sole proprietor ETP Holder may not carry public customer accounts.

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

### **ETP Holder Organizations**

Rule 2.11(a) Each ETP Holder shall maintain at the Corporation at all times a record of the name and address of the individual duly authorized by such ETP Holder to receive and accept legal or other notices on its behalf.

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

Rule 2.12. An ETP Holder that intends to admit any person to partnership, or to elect or appoint any person as an officer or director, or to enter into a partnership agreement, or to form a corporation or limited liability company or other entity, or to alter the terms of an existing partnership agreement or articles of incorporation or limited liability company agreement or other similar operating agreement shall notify the Corporation in writing of such proposed admission, arrangement, or alteration before said becomes effective and shall submit such papers and information and comply with such requirements in connection therewith as the Corporation may prescribe.

## Rule 2.13

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

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

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

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

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

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

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

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

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

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

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

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

#### Rule 2.14.

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

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

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

Upon the death or withdrawal of any partner, if the surviving partners desire to continue the partnership business, the capital contribution of such deceased or withdrawing partner shall remain at the risk of the business and shall be considered capital of such continuing firm for a period of fifteen (15) calendar days to the extent necessary to comply with the net capital requirements of the

Corporation. Any claim of the withdrawing partner or of the personal representative of the deceased partner to the repayment of such deceased or withdrawing partner's capital contribution during such period shall be subordinated to the payment in full of such claims of all present and future creditors of the continuing partnership arising out of any matters occurring before the end of such period.

### **Responsibilities of Non-Resident Firms**

Rule 2.15(a) An ETP Holder that does not maintain an office in the United States responsible for preparing and maintaining financial and other reports required to be filed with the Securities and Exchange Commission and the Corporation must:

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

### **Amendments to ETP Holder Documents**

Rule 2.16(a) All formation documents for ETP Holders, such as articles of incorporation, by-laws, partnership agreements, limited liability company agreements, and all amendments thereto, now in effect or adopted in the future, shall be filed with the Corporation and shall be subject to approval by the Corporation.

(b) Each ETP Holder must submit to the Corporation any amendment to any document submitted as part of their application, including but not limited to amendments to documents required by Rule 2.3, amendments to the ETP Holder's Form BD, and changes to the ETP Holder's home or business address, within fifteen (15) business days of such amendment or change.

## **ETP Charges**

Rule 2.17(a) Securities and Exchange Commission Registration Fee: Section 31 of the Securities Exchange Act of 1934 imposes upon every national securities exchange the payment of a fee of 1/300th of 1 percentum of the aggregate dollar amount of the sales of securities transacted on the exchange, subject to some limitations. There shall be paid to the Corporation by each ETP Holder in such manner and at such times as the Corporation shall direct, Section 31 fees equal to the sum of one cent for each \$300 or fraction thereof of the aggregate dollar amount of the sales of securities transacted by it through the Corporation, except in respect of transactions in securities which are direct obligations of or guaranteed as to principal or interest by the United States, or such securities issued, or obligations guaranteed by corporations in which the United States has a direct or indirect interest as may be designated for exemption therefrom by the Secretary of the Treasury. Such sum shall be paid by the selling ETP Holder as appearing on the comparison ticket of each transaction effected. The selling ETP Holder shall charge and collect such sum from the person for whom he, she or it was acting in making the transaction. Market Makers shall pay such sum on both odd lots and round lots that they sell.

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

## **Exemption from Registration Requirements**

Rule 2.18. An ETP Holder shall be exempt from such registration requirements as the Corporation may designate if it is a member organization of another self-regulatory organization, which is the appointed Designated Examining Authority (“DEA”) for such organization by the Securities and Exchange Commission.

## **Termination of ETP**

Rule 2.19(a) An ETP will terminate upon the occurrence of any one of the following conditions:

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

(5) the declaration of legal incompetence of an ETP Holder.

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

### **Limited Transferability**

Rule 2.20(a) **Transfer by Purchase, Sale or Lease Prohibited.** ETPs may not be purchased (other than from the Corporation), sold or leased. Any purported purchase (other than from the Corporation), sale or lease of an ETP shall be void ab initio without further action by the Corporation.

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

### **Employees of ETP Holders Registration**

Rule 2.21(a) Every employee, including any branch office manager, of an ETP Holder who is compensated directly or indirectly for the solicitation or handling of business in securities, including trading in securities for the account of the organization, whether such securities are those dealt in on the Corporation or those dealt in over-the-counter, must be registered with and approved by the Corporation.

The Corporation may waive compliance with the requirements of Rule 2.21(a) in the event the ETP Holder is also a member organization of another national securities exchange having comparable requirements.

(b) Registration of registered employees shall be in such form as the Corporation shall prescribe and the continuance of any registered employee in that capacity shall at all times be in the sole discretion of the Corporation.

(c) The Corporation may require each applicant for employment as a registered employee to pass such examinations as the Corporation may prescribe to establish the applicant's qualification for such registration.

(d) A registered employee may not be engaged in any other business or be employed by another employer in any capacity or receive compensation without the prior written and continuing approval of his or her ETP Holder and such registered employee shall devote a substantial portion of the business day to the activities of his or her ETP Holder.

(e) No ETP Holder may employ any employee of the Corporation during the hours of regular employment by the Corporation. No ETP Holder may employ any employee of the Corporation outside the hours of regular employment by the Corporation without having obtained the prior, written approval therefor of the Corporation and registering therewith the name of said employee, the nature of the services rendered and the amount of said compensation.

(f) No ETP Holder shall give any compensation or gratuity in any one calendar year in excess of \$100 to any employee of any other ETP Holder, or to any employee of a broker or dealer, bank or institution that is not an ETP Holder, without the prior consent of the employee's employer.

(g) No ETP Holder shall give any compensation to any officer, director, employee or other agent of the Corporation without the prior written consent of the Corporation. No ETP Holder shall give any gratuity or gift in any one calendar year in excess of \$100 to any officer, director, employee or other agent of the Corporation without the prior written consent of the Corporation. All requests for such consent should contain the following information:

- (1) name and position of the Corporation director, officer, employee or agent;
- (2) nature of the gratuity or gift;
- (3) dollar amount of compensation or gratuity;
- (4) reason for the compensation, gift or gratuity; and
- (5) any other details which may be useful in considering the request.

(h) Termination of the employment of a registered employee shall be reported to the Corporation, and the Corporation shall be notified in writing of the specific grounds for termination immediately when the employment of any person is terminated by an ETP Holder under circumstances involving misconduct, fraud or unethical practices.

### **Mandatory Decimal Pricing Testing**

Rule 2.22(a) *Point-to-Point Testing*. Each ETP Holder that has an electronic interface with the Corporation must participate in point-to-point testing with the Corporation of its computer systems designed to ascertain decimal pricing conversion compatibility of those computer systems, in a manner and frequency as prescribed by the Corporation. An ETP Holder that has its electronic interface through a service provider need not participate in point-to-point testing if, by a time designated by the Corporation,

- (1) the service provider conducts successful tests with the Corporation on behalf of the firms it serves,
- (2) the ETP Holder conducts successful point-to-point testing with the service provider and
- (3) the Corporation agrees that further testing is not necessary.

(b) *Industry Wide Testing.* The Corporation may require certain of its ETP Holders to participate in industry wide testing of computer systems for decimal pricing conversion compatibility. The Corporation may require any ETP Holder who will participate in industry wide testing to also participate in any tests necessary to ensure preparedness to participate in industry wide testing.

(c) *Reports.* ETP Holders participating in point-to-point testing (whether between the firm and the Corporation, between the firm and its service provider, or between the ETP Holder's service provider and the Corporation) or industry wide testing must file reports with the Corporation concerning the required tests in the manner and frequency required by the Corporation.

(d) *Documentation.* ETP Holders must maintain adequate documentation of tests required by this Rule and the results of such testing for examination by the Corporation.

*Commentary:*

.01 This Rule will expire automatically upon the full implementation of decimal pricing.

### **Transition**

Rule 2.100. Any PCX member, as defined in the PCX Parent Rule 1.1, or Equity ASAP Holder that wishes to continue to effect securities transactions without interruption on the Corporation's Trading Facilities must obtain an ETP prior to the first day the Archipelago Exchange becomes operational. If the PCX member or Equity ASAP Holder fails to obtain an ETP prior to the first day the Archipelago Exchange becomes operational, the PCX member or Equity ASAP Holder will not be permitted to effect securities transactions on the Corporation's Trading Facilities until such PCX member or Equity ASAP Holder obtains an ETP.

## **Rule 3 Organization and Administration**

### **Part I - Committees of the Corporation**

#### **Overview**

Rule 3.1(a). In accordance with the Bylaws of the Corporation, the Board of Directors may establish one or more committees consisting of one or more directors of the Corporation (each, a “Board Committee”). In addition, the Board of Directors may establish one or more committees, consisting of people other than directors of the Corporation, which committees shall be established in accordance with the Bylaws of the Corporation (each, an “Equity Committee”). Each Board Committee and Equity Committee shall comply with the Certificate of Incorporation and the Bylaws of the Corporation and with these Rules.

#### **Equity Committees**

Rule 3.2.

(a) *General Provisions:*

- (1) *Organization.* Each Equity Committee shall have and may exercise all the power and authority granted to such committee in these Rules. Each Equity Committee shall establish substantive and procedural rules for conducting meetings and exercising its authority, which rules shall be in accordance with the Certificate of Incorporation and Bylaws of the Corporation and with applicable law. The Chief Executive Officer or such other designee of the Corporation shall, except as otherwise provided in the Bylaws and Rules, appoint the members of all Equity Committees for terms of one year. The Chief Executive Officer or such other designee of the Corporation shall appoint the Chair and Vice Chair of each Equity Committee. The Incorporator shall appoint the initial members of the Equity Committees, including the Nominating Committee.
- (2) *Quorum.* The presence of a majority of the members of an Equity Committee shall be necessary to constitute a quorum for the transaction of business at a meeting of an Equity Committee.
- (3) *Voting.* The act of a majority of the members present at any meeting at which there is a quorum shall be the act of such Equity Committee, except as may be otherwise specifically required by the Certificate of Incorporation or Bylaws of the Corporation, these Rules, or applicable law.

- (4) *Conference Call Meeting.* Unless otherwise restricted by the Certificate of Incorporation or Bylaws of the Corporation, these Rules, applicable law, or rule of the particular Equity Committee, members of an Equity Committee or of any subcommittee thereof may participate in meetings by means of conference call or similar communications equipped by means of which all persons participating in the meeting can hear each other, and such participation shall constitute presence in person at the meeting.
- (5) *Vacancies.* Whenever any vacancy exists on an Equity Committee by reason of death, resignation, removal or increase in the size of the committee, the Chief Executive Officer of the Corporation may appoint a qualified person to fill such vacancy.
- (6) *Removal.* The Board of Directors may remove any member of an Equity Committee for refusal, neglect or inability to discharge his or her duties on the committee.
- (7) *Resignation.* A member of an Equity Committee may resign at any time by giving written notice of his or her resignation to the Corporation and such resignation, unless specifically contingent upon its acceptance, will be effective as of its date or as of the effective date specified therein.
- (8) *Eligibility for and Appointment to Equities Committees.* Any ETP Holder of the Corporation in good standing or allied person of an ETP Holder, or any person from the public is eligible for appointment or election to Equity Committees. Only one person affiliated with the same ETP Holder shall be eligible for service on the same Equity Committee. Except as otherwise set forth in these Rules, the Chief Executive Officer of the Corporation shall appoint eligible ETP Holders and persons from the public to the positions so allocated on Equity Committees for terms of one (1) year.
- (9) *Alternate Members.* The Chief Executive Officer of the Corporation may designate one or more ETP Holders, an allied person of an ETP Holder, and persons from the public as alternate members of any Equity Committee, who may replace any absent or disqualified member at any meeting of such committee.
- (10) *Interested Persons.* No member of a committee shall participate in the adjudication of any matter in which he or she is personally interested, although his or her presence at a meeting at which such matter is considered shall count toward the quorum requirements for the meeting.
- (11) *Subcommittees.* Unless restricted by the Certificate of Incorporation or Bylaws of the Corporation, these Rules, or applicable law, each Equity Committee may appoint subcommittees when and as it deems appropriate.

Each subcommittee shall consist of one or more members or alternate members of such committee.

(b) *Equity Committees.* As set forth below, the Board of Directors has delegated certain authority and functions to its committees. Action taken pursuant to delegated authority, however, is subject to review, ratification or rejection by the Board of Directors.

(1) *Business Conduct Committee.*

(A) *Composition.* In addition to any members of the public on the Business Conduct Committee, the Business Conduct Committee shall have a minimum of one ETP Holder or allied person of an ETP Holder.

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

(i) examine the business conduct and financial condition of ETP Holders and associated persons;

(ii) conduct hearings and render decisions in summary disciplinary actions and proceedings;

(iii) impose appropriate sanctions of expulsion, suspension, fine, censure or any other fitting sanctions where the Committee finds that a violation within the disciplinary jurisdiction of the Corporation has been committed; and

(iv) require the production of detailed financial reports of an ETP Holder and such other operational reports as it may deem relevant.

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

against the Corporation or the members of the Committee, based in whole or in part upon the suspension imposed by the Committee.

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

(2) *Nominating Committee.*

(A) *Composition.* The Nominating Committee shall have seven members consisting of six ETP Holders and one person from the public.

(B) *Nomination, Appointment and Election.*

(i) *Nomination.* Sixty-five days prior to the expiration of the term of its members, the Nominating Committee shall publish a slate of six eligible nominees to fill the positions during the next annual term of the Nominating Committee. ETP Holders in good standing may submit a petition to the Corporation in writing to nominate additional eligible candidates to fill the ETP positions during the next annual term, and upon written petition of at least 10 percent of ETP Holders in good standing on or before the forty-fifth day preceding the expiration of the existing term such person(s) shall also be nominated by the Nominating Committee.

(ii) *Appointment.* Prior to the expiration of the term of the members of the Nominating Committee, the Chief Executive Officer shall appoint a person from the public to fill the public position during the next annual term of the Nominating Committee.

(iii) *Election.* In the event that ETP Holders, or allied persons of an ETP Holders, are nominated by the Nominating Committee pursuant to petition by the ETP Holders, and there are more than six nominees to fill the ETP Holders positions on the Nominating Committee, the Nominating Committee shall submit the nominees to the ETP Holders, collectively for election. Each ETP Holder in good standing shall be permitted to vote for up to six nominees and the six nominees receiving the most votes shall fill the ETP positions as members during the next annual term of the Nominating Committee. Tie votes shall be decided by

the Board of Directors at its first meeting following the election.

- (iv) *Acclamation of Slate.* In the event there are only six nominees to fill the ETP positions on the Nominating Committee on or after the forty-fifth day prior to the expiration of the terms of the outgoing Nominating Committee, those six nominees shall be deemed elected to the next annual term of the Nominating Committee.

(C) *Representatives to the Board of Directors of the Corporation and the Board of Governors of the Pacific Exchange, Inc.*

- (i) *Nomination.* Sixty-five days prior to the expiration of the term of its Directors, the Nominating Committee shall publish the names of two (2) ETP Holders, or persons affiliated with such Holders (in any combination) as its nominees for the Board of Directors of the Corporation and one ETP Holder, or allied person of an ETP Holder, as nominee for the Board of Governors of the Pacific Exchange, Inc. The nominee for the Board of Governors may be a person nominated to the Board of Directors. ETP Holders in good standing may submit a petition to the Corporation in writing to nominate additional eligible candidates to fill ETP positions during the next term, and upon written petition of at least 10 percent of ETP Holders in good standing on or before the forty-fifth day preceding the expiration of the existing term such person(s) shall also be nominated by the Nominating Committee.
- (ii) *Selection of Nominees.* In the event that ETP positions are nominated by the Nominating Committee pursuant to petition by the ETP Holders, and there are three or more nominees for the Board of Directors or two or more nominees for the Board of Governors, the Nominating Committee shall submit the contested nomination(s) to the ETP Holders for selection. Each ETP Holder in good standing may select two nominees for contested seats on the Board of Directors and one nominee for contested seats on the Board of Governors. With respect to contested positions, the two nominees for the Board of Directors and the nominee for the Board of Governors selected by the most ETP Holders shall be submitted by the Nominating Committee to the Board of Directors of the Corporation or the Board of Governors of the Pacific Exchange, Inc., as the case may be. Similarly, the Nominating Committee

shall submit uncontested nominees to the Board of Directors of the Corporation or the Board of Governors of the Pacific Exchange, Inc., as the case may be. Tie votes shall be decided by the respective Board at its first meeting following the election.

- (3) *Member Advisory Committee.* The Member Advisory Committee shall act in an advisory capacity regarding rule changes related to disciplinary matters and off-board trading rules.

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

### **Board Committees**

Rule 3.3(a). *Board Committees.*

- (1) *Board Appeals Committee.*
- (A) *Composition.* The Board of Directors may appoint one or more Appeals Committees to conduct reviews of matters subject to the applicable provisions of Rule 3.2(b)(1)(C), 5 or 10. The Board of Directors will determine the size of any Appeals Committee that it appoints. Each Appeals Committee will contain at least one public director and at least one director that is an ETP Holder or allied person of an ETP Holder.
- (B) Subject to Rule 10 of the Corporation, decisions of the Board Appeals Committee shall be subject to the review of the PCX Board of Governors. The decision of the PCX Board of Governors shall constitute the final action of the Corporation, unless such Board remands the proceedings.

## **Part II – Regulation**

### **Self-Regulatory Responsibilities**

Rule 3.4. The Pacific Exchange, Inc. (“PCX Parent”), as a self-regulatory organization registered with the Securities and Exchange Commission pursuant to Section 6 of the Exchange Act, shall have ultimate responsibility in the administration and enforcement of rules governing the operation of its subsidiary, PCX Equities, Inc. (“Corporation”). Notwithstanding the delegation of authority to the subsidiary, as set forth below in Rule 3.5, the PCX Parent shall review and ratify any rule change adopted by the Board of Directors of the Corporation before such rule change becomes the final action.

### **Delegation of Authority**

Rule 3.5(a). Except as otherwise provided in the Bylaws, Rules and procedures of the Corporation, the Chief Regulatory Officer or such other designated officer of the Corporation shall have the following delegated authority:

- (1) To establish and interpret rules and regulations for ETP Holders or associated persons including, but not limited to trading rules, fees, access to and use of system facilities, and arbitration procedures.
- (2) To determine regulatory and trading policies, including the development and adoption of necessary or appropriate rule changes, relating to the business conduct and trading activities of ETP Holders and associated persons. This includes, but is not limited to, the following:
  - (A) arbitration of disputes between ETP Holders or associated persons arising from transactions on the facility;
  - (B) financial responsibility;
  - (C) clearance and settlement of securities transactions and other financial responsibility and operational matters affecting ETP Holders or associated persons in general; and
  - (D) qualification requirements for ETP Holders and associated persons.
- (3) To take necessary or appropriate action to assure compliance with the Rules and procedures of the Corporation, the federal securities laws, and other laws, rules and regulations that the Corporation has the authority to administer or enforce, through examination, surveillance, investigation, enforcement, disciplinary, and other programs.

- (4) To administer programs and systems for the surveillance and enforcement of rules governing the conduct and trading activities of ETP Holders and associated persons.
- (5) To administer the Corporation's disciplinary programs, including investigations, adjudication of cases, and the imposition of fines and other sanctions.
- (6) To examine and investigate ETP Holders and associated persons to determine if they have violated the Rules and procedures of the Corporation, the federal securities laws, and other laws, rules, and regulations that the Corporation has the authority to administer, interpret, or enforce.
- (7) To place restrictions on the business activities of ETP Holders and associated persons consistent with the public interest, the protection of investors, and the federal securities laws.
- (8) To conduct arbitrations, mediations and other dispute resolution programs.
- (9) To appoint staff, as necessary, that shall be responsible for the general supervision of the conduct and dealings of ETP Holders and associated persons on the trading facilities. These duties include, but are not limited to, the following:
  - (A) arbitrate differences between ETP Holders or associated persons arising from transactions on the trading facilities;
  - (B) supervise all connections or means of communication with the trading facilities, which may require the discontinuance of any such connection or means of communication that is deemed contrary to the welfare or interest of the Corporation;
  - (C) issue a citation when it appears that a Minor Rule Plan violation has occurred as specified in Rule 10;
  - (D) declare a "fast market," invoke a trading halt in a security due to an influx of orders or other unusual market conditions or circumstances, or take such other actions as are deemed necessary in the interest of maintaining a fair and orderly market; and
  - (E) supervise and regulate the operation of ITS, or any other application of the system during active openings, heavy trading and unusual situations.

- (10) To administer or enforce policies and Rules of the Corporation (as well as federal and state regulations) governing the initial and continued listing or trading of securities on the Corporation.

### **Surveillance Agreements**

Rule 3.6. The Corporation may enter into agreements with domestic and foreign self-regulatory organizations providing for the exchange of information and other forms of mutual assistance for market surveillance, investigative, enforcement and other regulatory purposes.

## **Part III - Dues, Fees and Fines**

### **Dues, Fees and Charges**

Rule 3.7. ETP Holders of the Corporation, whether or not in good standing, shall pay to the Corporation such dues, fees and charges as the Board of Directors shall prescribe.

### **Liability for Payment**

Rule 3.8. An ETP Holder failing to pay any dues, fees, charges or fines to the Corporation for thirty days after the same shall become payable, may be suspended by the Board of Directors or the Chief Executive Officer of the Corporation in accordance with Rule 11.2.

### **Fines**

Rule 3.9. The Board of Directors may adopt and prescribe fines for violation of the Bylaws, Rules and procedures of the Corporation.

## **Rule 4**

### **Capital Requirements, Financial Reports, Margins**

#### **Section 1. Capital Requirements**

##### **Minimum Net Capital**

Rule 4.1. ETP Holders that are subject to Rule 15c3-1 under the Securities Exchange Act of 1934 (“Exchange Act”), as amended, shall maintain a minimum net capital in accordance with the provisions of Rule 15c3-1 under the Exchange Act. Each ETP Holder shall promptly notify the Corporation and, pursuant to the provisions of Rule 17a-11 under the Exchange Act, the Securities and Exchange Commission if such ETP Holder’s net capital does not equal or exceed the appropriate minimum required by Rule 15c3-1 or if notice is otherwise required by Rule 17a-11. Each Market Maker shall report its net capital to the Corporation in a form and manner prescribed by the Corporation.

*Commentary:*

.01 ETP Holders Who Do Not Carry Customers’ Accounts

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

.02 Trading in Gold and Silver Bullion:

- (a) Where gold or silver bullion, which upon payment to the seller is within the ETP Holder’s control in good deliverable form and covered by appropriate insurance, is purchased by customers under agreements wherein full payment is required and is made within seven business days after the date of purchase, or full payment is required and made within an extended or longer period of time as approved by the Corporation upon application, such purchases may be considered bona fide cash transactions which require no deduction from net worth in computing net capital. In all other purchases by customers of such gold or silver bullion, which liquidate to an equity, cash required, if any, to provide margin equal to 25% (10% if hedged by futures contracts in the same commodity) of the market value of the gold or silver bullion in each such customer’s account in equity shall be deducted from net worth in computing net capital.
- (b) If upon payment to the seller, gold or silver bullion purchased by customers and paid for by them is not within the ETP Holder’s control in good deliverable form and covered by appropriate insurance, the market value of such gold or silver bullion shall be deducted from net worth in

computing net capital so long as the ETP Holder is accountable therefore. If upon payment to the seller, gold or silver bullion purchased for a proprietary account is not within the ETP Holder's control in good deliverable form and covered by appropriate insurance, such gold or silver bullion shall be considered to have no market value for purposes of net capital.

(c) Definitions:

(1) "Within the ETP Holder's Control"

Gold or silver in bullion form, identified by serial number or otherwise, and subject to immediate disposition at the direction of the ETP Holder.

Storage arrangements acceptable to insurance carriers will satisfy the Corporation provided the coverage complies with the "appropriate insurance" requirement discussed below. While the Corporation will not specify acceptable bullion depositories to ETP Holders, certain custodial requirements must be satisfied whenever gold or silver bullion is stored in outside depositories. The ETP Holder shall satisfy itself that the depository will maintain physical possession or control of the bullion stored for its customers free of any lien or claim on such bullion other than that arising out of, and limited to the extent of, any margin transaction or other unpaid for transaction. Records shall be maintained to separately identify customer pledged gold and silver bullion subject to lien from that customer bullion not pledged and fully paid for. The ETP Holder shall include as part of a written agreement with the depository such other protections as may be deemed necessary. ETP Holders considering the utilization of foreign depositories are cautioned to familiarize themselves with foreign laws on banking and bankruptcy to insure compliance with this paragraph, since these laws may differ significantly from those of the United States.

(2) "Good Deliverable Form"

All gold bullion purchased, whether delivered to the customer or stored for the customer against written evidence of ownership, shall be a minimum 995 parts per 1000 fine gold and shall either have been refined by a refiner or assayed by an assayer recognized as being acceptable to those organized national U.S. commodity exchanges trading in gold or the London Gold Market.

All silver bullion purchased, whether delivered to the customer or stored for the customer against written evidence of ownership, shall be a minimum 999 parts per 1000 fine silver and shall bear a mark or brand recognized as being acceptable to those organized national U.S. commodity exchanges trading in silver or the London Silver Market or the London Metals Exchange.

(3) “Appropriate Insurance”

All gold or silver under the control of an ETP Holder, whether stored in a depository, in its own custody, in transit, or in any other location, within the ETP Holder’s control, shall be covered by insurance of the ETP Holder.

“Appropriate insurance” is defined to mean inclusion of gold and silver bullion as covered property under a broker’s blanket bond as required by Rule 2, subject to the following additional criteria which specifically apply to gold and silver bullion wherever stored:

- (A) That gold and silver stored meets the ETP Holder’s insurance carrier’s standards including specific identification so as to preclude non-coverage as an inventory loss;
- (B) that gold and silver bullion be insured at full market value when in transit;
- (C) that no dollar amount of gold and silver bullion stored in a depository exceed the sum of the ETP Holder’s (i) insurance coverage and (ii) excess net capital; and
- (D) that the value of any bullion stored in a depository and in transit in excess of the sum of (C)(i) and (ii) is charged to net capital. (The ETP Holder may, should it wish, avoid this capital charge by acquiring separate insurance to fully cover bullion exceeding the amount in the broker’s blanket bond.) ETP Holders shall file with the Corporation copies of letters from its insurance underwriters setting forth the extent of its coverage for bullion stored in its depositories.

(d) Further Customer Protections—To further ensure protection of customers of ETP Holders, the Corporation has established the following guidelines:

(1) Disclosure to Customer

The ETP Holder shall fully disclose to its customer all relevant information pertaining to a transaction, including, but not limited to, names and locations of depositories, insurance coverage, charges incidental to storage, requirements and costs related to taking physical delivery of the bullion (e.g., possible need for assay), and applicable federal, state or local laws or regulations (e.g., sales tax implications of the purchase). Communications to the public with regard to gold and silver shall state that SIPC coverage is not available. Due to the varying degrees of fineness, and the need for the customer to be informed as to the quality of bullion being purchased and its attendant variation in price, the fineness, weight, price per ounce, and any markup, commissions, fees, taxes or other costs shall be disclosed to the customer. Salesmen must convey to each customer the special risks and expenses involved in investing in gold and silver bullion. In particular, the customer must be given the opportunity to take delivery of the gold or silver and be informed whether or not the ETP Holder will buy it back at a later date, and if so, on what basis.

(2) Sale or Saleback of Gold and Silver

All sales of gold and silver bullion shall be long, whether for customer or proprietary accounts.

Under no circumstances shall an ETP Holder release the proceeds of sale of gold or silver to a customer unless the customer's gold or silver has been assayed by an acceptable assayer (as defined above) or is in a form acceptable to such assayer. Gold or silver which is to be sold should be within an ETP Holder's control before it is sold, but in no event later than two business days after the trade date. An ETP Holder may, however, submit a plan for review by the Corporation, the effect of which would allow a customer longer than two days to deliver the bullion within the ETP Holder's control on a "buy-back" transaction, where the customer is selling bullion originally purchased from that ETP Holder.

(3) Requirements for Special Commodity Accounts

Regulation "T" requires all commodity accounts, whether cash or margin, to be separately labeled and maintained.

- (e) Cash Transactions—Purchases of gold or silver bullion in a customer's cash commodity account must be paid for as promptly as possible, but no later than the fifth business day after the date of purchase. A charge against capital will result if full payment has not been received by the seventh business day after purchase.

Although the amendment allows ETP Holders to request extensions of time for payments not received within seven business days, the Corporation does not anticipate granting any such extensions except in rare cases.

Extension requests should be submitted in letter form, giving the full particulars of the transaction, the customer's name and ID number, the reason for the request, and any other pertinent data. The letter should be signed by an authorized individual or officer. These extension requests will be handled separately from securities extensions, but will, as mentioned above, be restrictively granted.

- (f) Margin Transactions—Required margin shall be furnished within five business days after date of purchase or made within an extended or longer period of time as approved by the Corporation upon application.

Extension requests on margin transactions will be subject to the same requirements applicable to cash transactions.

(1) Initial Margin

For the purpose of effecting new transactions, the margin required shall be an amount equivalent to the requirements stated below, or such greater amount as the Corporation may from time to time require, with a minimum equity in the account of at least \$2,000, except that cash need not be deposited in excess of the cost of any new transaction.

Withdrawals of cash or spot commodities may be made, provided that after such withdrawal the equity in the account is at least the greater of \$2,000 or the amount required by the maintenance requirement stated below.

(2) Maintenance

Margin must be maintained in margin accounts of customers, including ETP Holders, Allied Persons thereof and non-ETP Holders and shall be as follows:

- (A) 25% of the market value of gold or silver spot commodities “long” in each customer’s account, or
  - (B) 10% of the market value of the gold and silver spot commodities if “hedged by futures contracts” in the same commodity. Gold or silver bullion which is carried on margin for customers must be within the control of the ETP Holder, in good deliverable form and covered by appropriate insurance.
- (g) Records—ETP Holders shall make, keep current and preserve books and records on spot commodities as are required for securities.
- (h) Conduct of Accounts—Rule 9 requires the diligent supervision of accounts. All information requirements or assessments applicable to other customers’ accounts shall apply to customers effecting transactions in gold or silver bullion.

ETP Holders should give serious consideration to securing an adequate deposit before executing any customer orders for gold. This will serve to demonstrate the customer’s ability to consummate the transaction as well as protecting the ETP Holder from potential market fluctuations in the event of customer default. Upward variations in deposit may be advisable for new customers, or when the ETP Holder anticipates unusual volatility in the price of gold.

Currently, international settlement of spot gold transactions takes place on the second business day following the order. Accordingly, ETP Holders will have to pay for or deliver gold on that second business day. In view of this fact, ETP Holders are hereby put on notice that good business practice would in most instances, require substantial cash deposits in advance of all purchases of gold or silver.

- (i) Business Plan—An ETP Holder shall file with the Corporation a detailed business plan for approval by the Corporation prior to effecting any transactions in gold or silver bullion. Such a plan shall comply with the standards enunciated herein, and the ETP Holder may utilize the below checklist in drafting its business plan.
- (j) Gold and Silver Business Plan Checklist:
  - (1) Structure and Nature

- (A) Will activities be processed through the ETP Holder, subsidiary, affiliate, holding company, or joint venture? Name the affiliate/subsidiary responsible for bullion business, if applicable.
- (B) Will the organization act on a principal or agency basis in bullion transactions for customers? Submit full explanation.
- (C) Will the organization position bullion for its own account and/or act as a Market Maker?
- (D) Will the organization effect customer and/or proprietary transactions on an (i) omnibus, (ii) fully disclosed, or (iii) self-clearing basis? If (i) or (ii), submit copy of the clearing agreement.
- (E) Identify the bullion dealer(s) with whom the organization will effect bullion transactions.
- (F) On what marketplaces(s) will bullion transactions be effected?

(2) Legal Review

- (A) Has the organization obtained an opinion of counsel advising whether or not the plan for trading and handling bullion may constitute an investment contract, thereby requiring SEC registration as a security? If not, explain why.
- (B) Has the organization requested counsel to review the plan for compliance with other federal, state or local applicable laws?
- (C) Have copies of the customer account agreements, customer statements, contracts and other customer related documentation been reviewed by counsel? (With respect to A, B and C, submit copy of pro-forma customers' confirmations and statements.)
- (D) Has counsel advised that the depository/depositories can and will maintain physical possession or control of the bullion stored for the organization's customers free of any lien or claim on such bullion other than that arising out of,

and limited to the extent of, any margin transaction or other unpaid for transaction?

(3) Selling Practices

- (A) Provide an explanation of the marketing practices to be employed by the organization which is to include, but not be limited to, the organization's policy and practices relating to the acceptance of orders on a solicited or unsolicited basis, proposed tests to assure customer suitability, advertising, etc.
- (B) Outline procedures designed to assure adequate full disclosure to customers before acceptance of an order, advising as to costs and risks involved in purchases and sales of bullion, i.e., market volatility, commission, mark-up, sales tax, delivery charges, storage, assaying, etc.
- (C) What are the organization's procedures for compliance with state and local taxes applicable to purchase or sale of bullion?

(4) Supervision

- (A) Identify the individuals, by title and responsibility, who will fulfill the principal supervisory roles in the review of bullion activity.
- (B) Provide a resume of these individuals' experience in the securities industry and industries related to gold or silver bullion trading.
- (C) Supply a brief description of the procedures which will be implemented to provide compliance with the various rules and regulations relative to bullion trading.
- (D) What are the organization's plans for recruiting and training personnel in this area? Is it the organization's intention to restrict activity in bullion to selected registered representatives? If so, what are the standards utilized in determining eligibility?

- (5) Good Deliverable Form
- (A) State the sizes (weights) and purity of gold and/or silver to be traded.
  - (B) State means by which the organization has assured itself that the gold and silver bullion sold to customers will be that the refiners and/or assayers recognize as acceptable to those organized national U.S. commodity exchanges trading in gold or silver, the London Gold Market, the London Silver Market or the London Metals Exchange.
- (6) Control Location and Insurance Coverage
- (A) Will the organization offer to store gold and silver bullion for customers? If so, at what locations? Outline security arrangements and method of identifying customer's bullion.
  - (B) Name the insurance underwriter of the organization's broker's blanket bond.
  - (C) Submit a letter from the insurance underwriter which clearly and specifically designates the extent of coverage for bullion trading and, where applicable, states that control locations for the bullion including the depository or depositories and the gold and silver bullion stored therein meets the insurance carrier's standards so as to preclude non-coverage of the bullion as an inventory loss.
  - (D) Does the organization have additional insurance coverage to provide for full coverage of bullion in excess of the amount of the broker's blanket bond? If so, please give details.
  - (E) What provisions have been made to insure bullion at full market value when in transit?
  - (F) Outline the organization's procedures to monitor the limit of the aggregate dollar value of bullion stored in a depository and in transit to the sum of the organization's insurance coverage and excess net capital.

- (7) Settlement Procedures
  - (A) Provide a detailed description of settlement procedures by type of account—cash or margin.
  - (B) Outline the organization's procedures to monitor customers' obligations to satisfy settlement within prescribed time frames.
  - (C) What action will the organization take in the event of non-payment by a customer by the settlement date?
  - (D) Outline the organization's margin policy as it will pertain to bullion transactions by customers.
  - (E) What will be the organization's policy with respect to requiring an initial deposit in a cash or margin account?
- (8) Buy-Back of Customer Bullion
  - (A) What is the organization's policy and procedure with respect to buy-back of customer bullion?
- (9) Books and Records
  - (A) Are the organization's books and records currently adequate to reflect bullion trading activities? If so, please explain; if not, please detail the nature and extent of corrective action.
  - (B) Will the necessary records be readily available for the determination of compliance with appropriate financial and reporting rules?
  - (C) Identify records to be maintained to separately identify customers' pledged gold and silver bullion subject to lien from that customers' bullion not pledged and fully paid for.
- (10) Reconciliation and Periodic Verification
  - (A) What records (confirmations, statements, etc.) and how frequent will such records be furnished to you by the bullion dealer(s) or supplier(s) and depository(ies)?

- (B) What are the organization's procedures for verifying and reconciling positions in gold and silver bullion held by depositories?

Rule 4.2. Reserved.

### **Corporate Affiliates and Subsidiaries**

Rule 4.3(a). An ETP Holder shall not form a corporate affiliate or subsidiary without the prior written approval of the Corporation. All affiliates or subsidiaries of an ETP Holder shall be subject to compliance with the Bylaws, Rules and procedures of the Corporation, or other conditions as may be established by the Corporation. ETP Holders and Allied Persons of ETP Holders shall be responsible for any fraud committed by a corporate affiliate or subsidiary organization or for any act or proceeding thereof contrary to just and equitable principles of trade or detrimental to the interest or welfare of the Corporation.

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

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

### **Changes in Stockholder Status**

Rule 4.3(b). Whenever a person owning 5% or more of any class of equity securities, directly or indirectly, of an ETP Holder ceases to be an ETP Holder, Allied Person or Approved Person, the firm shall redeem or convert such securities to fixed income securities so that such security interest is less than 5%. Provided, however, that if such redemption or conversion would cause such ETP Holder not to comply with the capital requirement of Rule 4, the ETP Holder will so notify the Corporation and the assets which the person receives upon redemption of such securities, will be loaned by the person to the ETP Holder as a loan subordinated to the claims of all customers and general creditors of the ETP Holder, or the fixed income securities which the person receives upon conversion of such securities will be subordinated to the claims of all customers and general creditors of the ETP Holder. Any such subordination shall be pursuant to an agreement approved by the Corporation.

### **Trading in Firm's Securities**

Rule 4.3(c). An ETP Holder shall not trade in (except on an unsolicited basis) or make recommendations with respect to its own securities or those of its parents or affiliates (other than registered investment companies) and any parents or affiliates of an ETP Holder shall not trade in (except on an unsolicited basis) or make recommendations with respect to its own securities or those of its affiliates, or those of the ETP Holder (other than registered investment companies).

### **Change in Capitalization**

Rule 4.3(d). No ETP Holder shall make any change in its capitalization without prior written approval of the Corporation.

### **Owners of 5% or More Equity Securities**

Rule 4.3(e). Every party who owns beneficially 5% or more of any class of equity security, either directly or indirectly, of the firm shall be an ETP Holder, Allied Person or Approved Person.

### **Conditions for Issuance of Freely Transferable Securities**

Rule 4.3(f). ETP Holders which issue freely transferable securities must maintain a ratio of not more than 50 percent of properly subordinated debt equity (including common and preferred stock) after giving the effect to any public financing, and ETP Holders or parents thereof which issue freely transferable securities must:

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

Rule 4.3(g). Reserved.

### **Voting Agreement**

Rule 4.3(h). None of the stock of a corporate ETP Holder shall at any time be held under or subject to any voting agreement whereby the voting of such stock is pooled or joined with the stock of any then ETP Holder, Allied Person, stockholder associate or Approved Person unless approved by the Board of Directors.

### **Participation in ETP Holders**

Rule 4.3(i). The Corporation hereby specifically approves the beneficial ownership of an interest in any other ETP Holder by an ETP Holder, Allied Person, or Approved Person of any ETP Holder:

- (1) If the interest owned is stock and such stock is freely transferable and is publicly held, provided that less than 5% of such stock is owned. Under appropriate circumstances the Corporation may treat as a single holding stock which is nominally held by different persons or firms;
- (2) In connection with an underwriting of such stock; or
- (3) In connection with his, her or its activity as a Market Maker in such stock, in which event the ETP Holder or Allied Person, or Approved Person thereof shall be required to be registered with the Corporation as a Market Maker in such stock.

### **Restrictions on ETP Holder Activities**

Rule 4.4. The Corporation may restrict the conduct of an ETP Holder's activities if at any time the ETP Holder appears to be approaching financial difficulties or appears to be experiencing difficulties in its daily operations.

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

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

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

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

- (4) The ETP Holder's net capital is less than \$1,000,000 and (i) its ratio of aggregate indebtedness to net capital equals or exceeds 8 to 1, or (ii) its net capital is less than 150% of the minimum required net capital.
- (5) The ETP Holder's net capital equals or exceeds \$1,000,000 and (i) its ratio of aggregate indebtedness to net capital equals or exceeds 10 to 1, or (ii) its net capital is less than 120% of the minimum required net capital.
- (6) Notwithstanding the provisions of subparagraphs (4) and (5) above, if the ETP Holder is operating pursuant to Paragraph (f) of SEC Rule 15c3-1 (Alternative Net Capital Requirement), its net capital is less than the greater of \$200,000 or 6% of its aggregate debits.
- (7) The ETP Holder has experienced a substantial change in the nature of the business conducted which, in the view of the Corporation, increases the potential risk of loss to customers and ETP Holders.
- (8) The ETP Holder's books and records are not maintained in accordance with the provisions of SEC Rules 17a-3 and 17a-4.
- (9) The ETP Holder is unable to demonstrate compliance with applicable net capital requirements.
- (10) The ETP Holder has substantial unsecured loans, advances or other similar receivables relative to its net capital position. For purposes of this provision, 15% is considered substantial.
- (11) The ETP Holder's subordinated capital equals or exceeds 40% of its debt-equity total, as defined under paragraph (d) of SEC Rule 15c3-1.
- (12) The ETP Holder is subject to undue concentration charges on proprietary positions, the aggregate market value of which equals or exceeds 25% of the total market value of all proprietary positions.
- (13) The ETP Holder is unable to clear and settle transactions promptly.
- (14) The ETP Holder is not in compliance, or is unable to demonstrate compliance, with SEC Rule 15c3-3 (Customer Protection-Reserves and Custody of Securities).
- (15) The ETP Holder is subject to the reporting provisions of SEC Rule 17a-11.

(b) If the Corporation determines that any of the conditions listed under Paragraph (a) of this Section exist, or otherwise determines that the ETP Holder is guilty of (i) conduct

inconsistent with just and equitable principles of trade, (ii) acts detrimental to the interest or welfare of the Corporation; or (iii) conduct contrary to an established practice of the Corporation, the Corporation may require that the ETP Holder take appropriate action by effecting one or more of the following or similar steps, until such time as the Corporation determines otherwise:

- (1) Promptly pay all free credit balances to customers.
- (2) Promptly effect delivery to customers of all fully paid securities in the ETP Holder's physical possession or control.
- (3) Introduce all or a portion of its business to another ETP Holder on a fully disclosed basis.
- (4) Reduce the size or modify the composition of its inventory.
- (5) Postpone the opening of new branch offices or require the closing of one or more existing branch offices.
- (6) Promptly collect outstanding unsecured loans, advances or other similar receivables, where practicable.
- (7) Accept no new customer accounts.
- (8) Undertake an immediate audit by an independent public accountant at the ETP Holder's expense.
- (9) Restrict the payment of salaries or other sums to partners, officers, directors, shareholders or affiliated persons of the ETP Holder.
- (10) Effect liquidating transactions only.
- (11) Accept unsolicited orders only.
- (12) File special financial and operating reports.

(c) The provisions contained in this Section do not limit the Corporation's authority to use other standards or to impose other restrictions, or take other action deemed appropriate under the circumstances in the public interest and for the protection of ETP Holders.

*Commentary:*

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

## **Section 2. Financial Reports**

### **Reports To Be Filed**

Rule 4.5. Unless the Corporation determines otherwise, every ETP Holder, except as otherwise provided in Rule 4.7, shall file with the Corporation the reports prescribed by this Section.

### **Monthly Reports**

Rule 4.5(a). Part I of SEC Form X-17A-5 shall be filed monthly by any ETP Holder which carries or clears accounts for customers. Such report shall be due by the tenth business day following the end of the month being reported upon.

### **Part II Quarterly Reports**

Rule 4.5(b). Two manually signed copies of Part II of SEC Form X-17A-5 shall be filed for each calendar quarter by any ETP Holder which carries or clears accounts for customers. Such report shall be due by the fifteenth calendar day following the end of the calendar quarter being reported upon.

### **Part IIA Quarterly Reports**

Rule 4.5(c). Two manually signed copies of Part IIA of SEC Form X-17A-5 shall be filed for each calendar quarter by any ETP Holder which does not carry or clear accounts for customers. Such report shall be due by the fifteenth calendar day following the end of the calendar quarter being reported upon.

### **Part II or Part IIA Filings on Other Than Calendar Quarters**

Rule 4.5(d). An ETP Holder shall file an additional Part II or Part IIA of SEC Form X-17A-5, as appropriate, within fifteen calendar days after the date selected for the annual audited financial statements of the ETP Holder, pursuant to the provisions of Rule 4.10, where such date does not coincide with the end of a calendar quarter.

### **Periodic Reports**

Rule 4.5(e). Every ETP Holder shall submit, as required by the Corporation periodic reports with respect to short positions in securities.

#### *Commentary:*

.01 *Short Positions.* ETP Holders for which the Corporation is the designated examining authority (“DEA”) are required to report “short” positions, including odd lots, in each stock or warrant listed or traded on the Corporation, and in each other stock or warrant not listed or traded on the Corporation (and not otherwise reported to another

self-regulatory organization), using such automated format and methods as prescribed by the Corporation. Such reports must include customer and proprietary positions and must be made at such times and covering such time period as may be designated by the Corporation.

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

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

“Short” positions to be reported are those resulting from “short” sales as defined in SEC Rule 3b-3, but excluding positions resulting from sales specified in clauses (1), (6), (7), (8), (9) and (10) of paragraph (e) of SEC Rule 10a-1. Also to be excluded are “short” positions carried for other ETP Holders reporting for themselves.

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

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

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

### **Accelerated Reporting**

Rule 4.6. Unless the Corporation determines otherwise, if any of the conditions described in this Section is applicable, an ETP Holder subject to the provisions of Rule 4.5 shall file with the Corporation on a monthly basis (or more frequently if the Corporation so determines) Part II or Part IIA of SEC Form X-17A-5, as appropriate, together with a schedule of proprietary securities and commodities, and related “haircuts”, and any other supplementary schedules deemed appropriate by the Corporation. Such reports shall be due by the fifteenth calendar day following the end of the month during which this Section becomes applicable to an ETP Holder and such accelerated reports shall continue to be filed each month thereafter (or more frequently if the Corporation so determines) until the ETP Holder is otherwise advised by the Corporation.

### **SIPC Referral**

Rule 4.6(a). An ETP Holder subject to the referral provisions of Section 5(a) of the Securities Investor Protection Act will be notified by the Corporation to file accelerated reports.

### **Financial or Operational Condition**

Rule 4.6(b). An ETP Holder that has exceeded or is exceeding the financial or operational parameters set forth in Rule 4.4 shall file without further notice the reports required by this Section.

### **General Conditions**

Rule 4.6(c). The Corporation requires the filing of accelerated reports for reasons relating to (i) the financial or operational condition of the ETP Holder (notwithstanding the provisions of paragraph (b) of this Section), (ii) the condition of the securities markets, or (iii) the condition of the securities industry, in which events the Corporation will notify the ETP Holder to file accelerated reports.

### **Exemptions**

Rule 4.7(a). An ETP Holder shall be exempt from the filing requirements prescribed by Rules 4.5 and 4.6 under the following conditions: Any ETP Holder which is a member of another self-regulatory organization which has been designated the examining authority for such ETP Holder by the Securities and Exchange Commission.

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

### **Report Filed upon Termination of Membership Interest**

Rule 4.8. If an ETP Holder holding any membership interest in a national securities exchange ceases to be a member in good standing of such exchange, such ETP Holder shall, within two business days after such event, file with the Securities and Exchange Commission and with the Corporation, Part II of Form X-17A-5, as of the date of such event, pursuant to the provisions of Paragraph (b) of Rule 17a-5 under the Securities Exchange Act of 1934, as amended.

## Customer Statements

Rule 4.9. Every ETP Holder shall furnish to its customers, principal stockholders and subordinated lenders, and shall file with the Securities and Exchange Commission, the Corporation, and any other self-regulatory organizations of which it is a member, certain financial statements in accordance with the provisions of Paragraph (c) of Rule 17a-5 under the Securities Exchange Act of 1934, as amended.

## Annual Filing of Audited Financial Statements

Rule 4.10. Every ETP Holder shall file annually a report which shall be audited by an independent public accountant in accordance with the provisions of paragraphs (d) through (n) of Rule 17a-5 under the Securities Exchange Act of 1934, as amended.

## Financial Reports

Rule 4.11(a). Every ETP Holder which is not a member of another national securities exchange or registered national securities association which is the Designated Examining Authority for that ETP Holder shall file with the Corporation answers to Financial Questionnaires, Reports of Income and Expenses and additional financial information in the type, form, manner and time prescribed by the Corporation.

Rule 4.11(b).

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

<b>Number of Days Late</b>	<b>Amount of Charge</b>
1—30	\$200.00
31—60	400.00
61—90	800.00

Repeated or aggravated failure to file such Report of Financial Condition or failure to file such report for more than ninety (90) days will be referred to the Business Conduct Committee for appropriate disciplinary action.

- (2) Each ETP Holder for which the Corporation is the designated collection agent must file with the Corporation such forms and assessments as are required pursuant to the Securities Investor Protection Act of 1970. Any

ETP Holder that fails to file such form or assessment in a timely manner will be subject to a late filing charge as follows:

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

- Provided however:
- (A) if an ETP Holder files its SIPC form and assessment after its receipt of SIPC's final late notice, but files within five business days after its receipt of SIPC's final late notice, such ETP Holder will be subject to a fine pursuant to Rule 10.12(i)(2); and
  - (B) if an ETP Holder fails to file its SIPC form and assessment within five business days after its receipt of SIPC's final late notice, such ETP Holder will be subject to formal disciplinary action pursuant to Rule 10.4.

*Commentary:*

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

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

**Financial Responsibility and Operational Condition**

Rule 4.11(c). The Corporation shall have the authority to examine the financial responsibility and/or operational conditions of any ETP Holder. In conducting such examinations, the Corporation may require an ETP Holder to furnish requested information. If the Corporation deems it necessary, ETP Holders shall make available their books and records as well as provide sworn or unsworn testimony. All examinations shall be conducted in a manner consistent with the rules and regulations governing the duty of the Corporation.

**Underwriting Commitments**

Rule 4.12. Each ETP Holder for which the Corporation is the designated examining authority, which enters into a security underwriting commitment, either with respect to an original or a secondary distribution of securities, whether or not admitted to dealing on the Corporation, shall notify the Corporation thereof in such manner as the Corporation shall prescribe.

## **Lawsuits**

Rule 4.13. Each ETP Holder for which the Corporation is the designated examining authority, shall give written notice to the Corporation regarding all lawsuits involving such ETP Holder or any participant therein, including a description of the nature and principal allegations of such lawsuits, and a statement of the amount of damages claimed therein. Similar notice shall be given to the Corporation regarding any claims or contingent liabilities that appear likely to result in litigation.

## **Section 3. Margins**

### **Daily Margin Record**

Rule 4.14(a). Each ETP Holder registered on the Corporation, carrying margin accounts for customers shall make and maintain a record of every case in which initial or additional margin must be obtained in a customer's account because of transactions effected in such account. This record shall show for each account the date of the transaction, the customer's name, the amount of margin required and the time when and manner in which such margin is furnished or obtained. This record shall be in a form acceptable to the Corporation and contain such additional information as the Corporation may from time to time prescribe. This record shall be preserved for at least twelve months.

### **Margin by Liquidation**

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

### **Members Other Exchanges**

Rule 4.14(c). An ETP Holder registered as a member on another national securities exchange or association which has comparable standards and which has been designated by the Securities and Exchange Commission as the primary regulator is exempt from the provisions of this Rule, unless otherwise stated.

### **Customer Defined**

Rule 4.14(d). For the purpose of this Rule, the term customer shall include any person or entity for whom securities are purchased or sold or to whom securities are sold or from whom securities are purchased whether on a regular way, when issued, delayed or future delivery basis. It will also include any person or entity for whom securities are held or carried. The term will not include a broker or dealer from whom a security has been purchased or to whom a security has been sold for the account of the ETP Holder or its customers.

### **Initial Margin**

Rule 4.14(e). Initial margin shall be required and obtained in accordance with the provisions of Regulation T of the Board of Governors of the Federal Reserve System.

### **Margin Requirements**

Rule 4.15(a). For the purpose of effecting new securities transactions and commitments, the margin required shall be an amount equivalent to the requirements of paragraph (b) of this section, or such greater amount as the Corporation may from time to time require for specific securities, with a minimum equity in the account of at least \$2,000, except that cash need not be deposited in excess of the cost of any security purchased. The foregoing minimum equity and cost of purchase provisions shall not apply to “when distributed” securities in cash accounts and the exercise of rights to subscribe.

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

### **Maintenance Margin Rule**

Rule 4.15(b). The margin which must be maintained in margin accounts of customers, whether ETP Holders, Allied Persons thereof or non-ETP Holders, shall be as follows:

- (1) 25% of the market value of all securities “long” in the account; plus
- (2) \$2.50 per share or 100% of the market value, in cash, whichever amount is greater, of each stock “short” in the account selling at less than \$5.00 per share; plus
- (3) \$5.00 per share or 30% of the market value, in cash, whichever amount is greater, of each stock “short” in the account selling at \$5.00 per share or above; plus
- (4) 5% of the principal amount or 30% of the market value, in cash, whichever amount is greater, of each bond “short” in the account.

- (5) In the case of securities listed pursuant to Rule 5.2, 100% of the market value, in cash, of each security held “long” in the account.

### **Exceptions to Rule**

Rule 4.15(c). The foregoing requirements of this Rule are subject to the following exceptions:

- (1) “Long” and “Short” Positions in Exchangeable or Convertible Securities (Excluding Options). When a security carried in a “long” position is exchangeable or convertible within a reasonable time, without restriction other than the payment of money, into a security carried in a “short” position for the same customer, the minimum margin on such positions shall be 10% of the market value of the “long” securities, plus 10% of any payment of money. In determining such margin requirement, “short” positions shall be marked to the market.
- (2) Exempted Securities.
- (A) Positions in United States Government Obligations—The minimum margin on any positions in obligations issued or unconditionally guaranteed as to principal or interest by the United States Government shall be 5% of the principal amount of such obligations.
- (B) Positions in “Exempted Securities” Other Than Obligations of the United States Government—The minimum margin on any positions in such obligations shall be 15% of the principal amount of such obligations or 25% of the market value, whichever amount is lower.
- (The term “exempted securities” has the meaning given it in section 2(g) of Regulation T of the Board of Governors of the Federal Reserve System.)
- (C) Cash Transactions With Customers—Special Provisions—When a customer purchases an issued “exempted” security from or through an ETP Holder, in a cash account, full payment shall be made promptly. If, however, delivery or payment therefore is not made promptly after the trade date, a deposit shall be required as if it were a margin transaction, unless it is a transaction with a bank, trust company, insurance company, investment trust or charitable or nonprofit educational institution.

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

- (3) Joint Accounts in Which the Carrying Firm or a Partner or Stockholder Therein Has an Interest—In the case of a joint account carried by a firm, in which such firm, or any partner, ETP Holder, Allied Person or any stockholder (other than a holder of freely transferable stock only) of such ETP Holder participate with others, the interest of each participant other than the carrying ETP Holder shall be margined by each such participant pursuant to the provisions of this Rule as if such interest were in a separate account.
- (4) Offsetting “Long” and “Short” Positions in the Same Security (Excluding OPTIONS). No margin shall be required on either position if delivery has been made by the use of the “long” securities. Otherwise, the minimum margin shall be 10% of the market value of the “long” securities. In determining such margin requirement “short” positions shall be marked to the market.
- (5) Market Maker Accounts
  - (A) The account of an ETP Holder in which are effected only transactions in securities in which he is a Market Maker may be carried upon a margin basis which is satisfactory to the Market Maker and the ETP Holder. The amount of any deficiency between the margin deposited by the Market Maker and the haircut requirements of SEC Rule 15c3-1 shall be considered as a debit item in the computation of the net capital of ETP Holders under the Corporation’s capital requirements.
  - (B) In the case of joint accounts carried by an ETP Holder for Market Makers, in which the ETP Holder participates, the margin deposited by the other participants may be in any amount which is mutually satisfactory. The amount of any deficiency between the amount deposited by the other

participant, or participants, based upon their proportionate share of the haircut requirements of SEC Rule 15c3-1, shall be considered as a debit item in the computation of the net capital of ETP Holders under the Corporation's capital requirements.

(6) Broker/Dealer Accounts

- (A) An ETP Holder may carry the proprietary account of another broker-dealer that is registered with the Securities and Exchange Commission, upon a margin basis that is satisfactory to both parties, provided the requirements of Regulation T of the Board of Governors of the Federal Reserve System are adhered to and the account is not carried in a deficit equity condition. The amount of any deficiency between the equity maintained in the account and the haircut requirements of SEC Rule 15c3-1 shall be deducted in computing the Net Capital of the ETP Holder under the Corporation's Capital Requirements.
- (B) *Joint Back Offices Arrangements.* An arrangement may be established between two or more registered broker-dealers pursuant to Regulation T, Section 220.11 to form a joint back office ("JBO") arrangement for carrying and clearing, or carrying accounts of participating broker-dealers. ETP Holders must provide written notification to the Corporation prior to establishing a JBO.
  - (i) A carrying and clearing, or clearing ETP Holder must:
    - (a) maintain a minimum Tentative Net Capital of \$25 million as computed pursuant to SEC Rule 15c3-1, except that an ETP Holder whose primary business consists of the clearance of options market-maker accounts, may carry JBO accounts provided that it does not allow its Net Capital, as computed pursuant to SEC Rule 15c3-1, to fall below \$7 million for a period in excess of three consecutive business days. In addition, the ETP Holder must include in its ratio of gross options market maker deductions to Net Capital required by the provisions of SEC Rule 15c3-1, gross deductions for JBO participant accounts. Clearance of options

market maker accounts shall be deemed to be a broker-dealer's primary business if a minimum of 60% of the aggregate deductions in the above ratio are options market maker deductions;

- (b) maintain a written risk analysis methodology for assessing the amount of credit extended to participating broker-dealers which shall be made available to the Corporation upon request; and
  - (c) deduct from Net Capital haircut requirements pursuant to SEC Rule 15c3-1 in excess of the equity maintained in the accounts of participating broker-dealers.
- (ii) A participating broker-dealer must:
- (a) be a registered broker-dealer subject to the SEC's Net Capital Rule;
  - (b) maintain an ownership interest in the carrying/clearing ETP Holder pursuant to Regulation T, Section 220.11; and
  - (c) maintain a minimum liquidating equity of \$1 million in the Joint Back Office arrangement exclusive of the ownership interest established in (b) above. When the minimum liquidating equity decreases below the \$1 million requirement, the participant must deposit an amount sufficient to eliminate this deficiency within 5 business days. If funds or securities sufficient to eliminate the deficiency are not received within 5 business days, the carrying organization must margin the account in accordance with the requirements prescribed for a customer in Regulation T.
  - (d) If at any time a clearing ETP Holder operating pursuant to subsection 6(b)(1)(a) above determines that its tentative net capital or that its net capital, respectively, has fallen below the applicable

requirements, such clearing ETP Holder must immediately notify the Corporation of such deficiency by telegraphic or facsimile notice; and such clearing ETP Holder will be subject to the prohibitions against withdrawal of equity capital set forth in SEC Rule 15c3-1(e) and to the prohibitions against reduction, prepayment, and repayment of subordination agreements set forth in paragraph (b)(1) of SEC Rule 15c3-1, as if such broker or dealer's net capital were below the minimum standards specified by each of these paragraphs.

### **Other Provisions**

#### **Rule 4.15(d). Determination of Value for Margin Purposes.**

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

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

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

warrant or stock index warrant shall be considered as a security transaction subject to paragraph (a) of this Rule 4.15.

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

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

### **Definitions**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

- (D) The margin on any put, call, currency warrant, currency index warrant or stock index warrant issued, guaranteed or carried “short” in a customer's account shall be:
- (i) In the case of puts and calls listed or traded on a registered national securities exchange or a registered securities association and issued by a registered clearing corporation, 100% of the current market value of the option plus the percentage of the current market value of the underlying security or index specified in column II of this subsection (D)(i) below.

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

I	II	III	IV
Security or Index	Initial and/or Maintenance Margin Required	Minimum Margin Required	Underlying Component Value
(1) Stock	20%	10%	The equivalent number of shares at current market prices
(2) Industry index stock group	20%	10%	The product of the current index group value and the applicable index multiplier

(3)	Broad index stock group	15%	10%	The product of the current index group value and the applicable index multiplier
(4)	U.S. Treasury Bills—95 days or less to maturity	3.5%	1/20%	The underlying principal amount
(5)	U.S. Treasury notes	3%	1/2%	The underlying principal amount
(6)	U.S. Treasury bonds	3.5%	1/2%	The underlying principal amount
(7)	Foreign Currencies:			
	Australian dollar	4%	3/4%	The product of units per foreign currency contract and the closing spot price
	British pound	4%	3/4%	
	Canadian dollars	1%	3/4%	
	German marks	4%	3/4%	
	European Currency Unit	4%	3/4%	
	French franc	4%	3/4%	
	Japanese yen	4%	3/4%	
	Swiss franc	4%	3/4%	
(8)	Stock index warrant put or call	15%	10%	The product of the current index group value and the applicable index multiplier
(9)	Currency warrant put or call			The product of the units of underlying currency per warrant and the spot price of such currency
	Australian dollar	4%	3/4%	The product of units per foreign currency contract and the closing
	British pound	4%	3/4%	
	Canadian dollars	4%	3/4%	

German marks	4%	3/4%	spot price
European Currency Unit	4%	3/4%	
French franc	4%	3/4%	
Japanese yen	4%	3/4%	
Swiss franc	4%	3/4%	

(10) Currency index warrant put or call:

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

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

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

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

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

(ii) In the case of puts and calls listed or traded on a registered national securities exchange or a registered securities association and issued by a registered clearing corporation which represents options on GNMA obligations in the principal amount of \$100,000, 130% of the current market value of the option plus \$1,500, except that the margin required need not exceed \$5,000 plus the current market value of the option.

(iii) In the case of puts and calls not traded on a registered national securities exchange and not issued by a registered clearing corporation and representing stock options or index stock group options, 100% of the option premium received plus 45% of the current market value of the equivalent number of shares of the underlying security or the product of the current index group value of the underlying index stock group and the applicable index multiplier, reduced by any excess of the exercise price over the current market value of the underlying security or the product of the current index group value of the underlying index stock group and the applicable multiplier, in the case

of a call, or any excess of the current market value of the underlying security or the product of the current index group value of the underlying index stock group and the applicable multiplier, over the exercise price, in the case of a put. In either case, the minimum margin shall not be less than 100% of the option premium received plus 10% of the current market value of the equivalent number of shares of the underlying security or the product of the current index group value of the underlying index stock group and the applicable index multiplier.

- (E) Each such put or call shall be margined separately and any difference between the market price of the underlying security and the exercise price of a put or call shall be considered to be of value only in providing the amount of margin required on that particular put or call. Substantial additional margin must be required on options issued, guaranteed or carried “short” with an unusually long period of time to expiration (generally, more than six months and ten days), or written on securities which are subject to unusually rapid or violent changes in value, or which do not have an active market, or where the securities subject to the option cannot be liquidated or acquired promptly.
- (F)
  - (1) If both a put and call specifying the same number of shares of the same underlying security, the same principal amount of the same United States Government obligation or the same index multiplier for the same index stock group are issued, guaranteed or carried “short” for a customer, the amount of margin required shall be the margin on the put or call whichever is greater, as required pursuant to (D)(i) above, plus 100% of the current market value of the other option. The minimum margin requirement, however, shall not apply to the other option.
  - (2) If both a put and call for the same GNMA obligation in the principal amount of \$100,000 are issued, guaranteed or carried “short” for a customer, the amount of margin required shall be the margin on the put or call whichever is greater, as required pursuant to (D)(ii) above, plus the current market value of the other option.
  - (3) When a “short” position in a stock index call warrant is offset by a “short” position of equivalent underlying value in a stock index put warrant or stock index put option issued by the Options Clearing Corporation on the same index, or a “short” position in a stock index put warrant is

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

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

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

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

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

- (2) Where a put that is listed or traded on a registered national securities exchange or registered securities association is

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

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

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

the “short” position, the margin required shall be the amount, if any, by which the strike price of the “short” position exceeds the strike price of the “long” position.

- (6) When a “long” position in a currency call warrant is offset by a “short” position of equivalent underlying value in a currency call warrant or a “short” currency call option issued by the Options Clearing Corporation on the same currency and the “long” position expires no earlier than the “short” position, the margin required shall be the amount, if any, by which the strike price of the “long” position exceeds the strike price of the “short” position, times the units of underlying currency per warrant. This same offset provision shall also be available to call positions in currency index warrants.
- (7) When a “long” position in a currency put warrant is offset with a “short” position of equivalent underlying value in a currency put warrant or a “short” currency put option issued by the Options Clearing Corporation on the same currency and the “long” position expires not earlier than the “short” position, the margin required shall be the amount, if any, by which the strike price of the “short” position exceeds the strike price of the “long” position times the units of underlying currency per warrant. This same offset provision shall also be available to put positions in currency index warrants.

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

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

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

(H) “Long” and “Short” Positions in Securities and Options.

(1) “Long” Stock and “Short” Call—

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

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

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

For purposes of this subparagraph (2), no offsetting value may be given to a long position in an exchangeable or convertible security if the rights of the holder thereof to effect such exchange or conversion will expire prior to the

expiration date of the related option contracts carried “short” in such account.

(3) “Specific Deposit” or “Escrow Deposit”—

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

(4) “Short” Stock and “Short” Put—

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

(5) Bank Guarantee Letters—

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

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

(7) Determining Net “Long” and Net “Short” Positions—

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

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

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

- (I) When an ETP Holder issues or guarantees an option to receive or deliver securities for a customer, such option shall be margined as if it were a put or call.
  
- (J) Option Specialists, Market Makers and Traders. Notwithstanding the other provisions of this sub-section (d)(2), an ETP Holder may clear and carry the listed option transactions of one or more registered specialists, registered market makers or registered traders in options (which registered traders are deemed specialists for all purposes under the Securities Exchange Act of 1934 pursuant to the rules of a national securities exchange) (hereafter referred to as “specialist(s)”), upon a “Good Faith” margin basis satisfactory to the concerned parties, provided the “Good Faith” margin requirement is not less than the Net Capital haircut deduction of the ETP Holder carrying the transaction pursuant to SEC Rule 15c3-1. In lieu of collecting the “Good Faith” margin requirement, a carrying ETP Holder may elect to deduct in computing its net capital the amount of any deficiency between the equity maintained in the account and the “Good Faith” margin required.

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

- (i) a short option position that is “in or at the money” and is not offset by a long or short option position for an equal or greater number of shares of the same underlying security that is “in the money”;
  
- (ii) a long option position that is “in or at the money” and is not offset by a long or short option position for an equal or greater number of shares of the same underlying security that is “in the money”;

- (iii) a short option position against which an exercise notice was tendered;
- (iv) a long option position that was exercised;
- (v) a net long position in a security (other than an option) in which a specialist makes a market;
- (vi) a net short position in a security (other than an option) in which a specialist makes a market; or
- (vii) a specified portfolio type as referred to in SEC Rule 15c3-1, including its appendices, or any applicable SEC staff interpretation or no-action position.

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

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

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

carrying organization's net capital and its overall exposure to material loss.

- (K) The Corporation may at any time impose higher margin requirements with respect to any option or warrant position(s) if it deems such higher margin requirements are appropriate.
- (L) Exclusive designation - A customer may designate at the time an option order is entered which security position held in the account is to serve in lieu of the required margin, if such service is offered by the ETP Holder; or the customer may have a standing agreement with the ETP Holder as to the method to be used for determining on any given day which security position will be used in lieu of the margin to support an option transaction. Any security held in the account that serves in lieu of the required margin for a short put or short call shall be unavailable to support any other option transaction in the account.
- (M) Cash account transactions. – An ETP Holder may make option transactions in a customer's cash account, providing:
  - (i) The transaction is permissible under Section 220.8 of Regulation T of the Board of Governors of the Federal Reserve System; and
  - (ii) The transaction is a debit put spread in listed broad-based index options with European-style exercise comprised of a long put(s) coupled with a short put(s) overlying the same broad-based index with an equivalent underlying aggregate index value and the short put(s) and long put(s) expire simultaneously, and the strike price of the long put(s) exceed the strike price of the short put(s).

(3) “When Issued” and “When Distributed” Securities—

(A) Margin Accounts

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

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

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

(B) Cash Accounts

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

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

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

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

- (i) which is the subject of a primary distribution in connection with a bona fide offering by the issuer to the general public for “cash”, or
- (ii) which is exempt by the Corporation as involving a primary distribution.

The term “when issued” as used herein also means “when distributed.”

- (4) **Guaranteed Accounts**—Any account guaranteed by another account may be consolidated with such other account and the required margin may be determined on the net position of both accounts, provided the guarantee is in writing and permits the ETP Holder carrying the account, without restriction, to use the money and securities in the guaranteeing account to carry the guaranteed account or to pay any deficit therein; and provided further that such guaranteeing account is not owned directly or indirectly by (a) a partner, ETP Holder, Allied Person thereof or any stockholder (other than a holder of freely transferable stock only) in the firm carrying such account or (b) an ETP Holder, a partner, Allied Person, or any stockholder (other than a holder of freely transferable stock only) therein having a definite arrangement for participating in the commissions earned on the guaranteed account. However, the guarantee of a limited partner or of a holder of non-voting stock, if based upon his resources other than his capital contribution to or other than his interest in an ETP Holder is not affected by the foregoing prohibition, and such a guarantee may be taken into consideration in computing margin in the guaranteed account.
- (5) **Consolidation of Accounts**—When two or more accounts are carried for any person or entity, the required margin may be determined on the net position of said accounts, provided the customer has consented that the money and securities in each of such accounts may be used to carry, or pay any deficit in, all such accounts.
- (6) **Time Within Which Margin, Deposit or “Mark to Market” Must Be Obtained**—The amount of margin, deposit or “mark to market” required by any provision of this Rule shall be obtained as promptly as possible and in any event within a reasonable time.
- (7) **Practice of Meeting Margin Calls by Liquidation Prohibited**—No ETP Holder shall permit a customer to make a practice of effecting transactions requiring margin and then either deferring the furnishing of margin beyond the time when such transactions would ordinarily be settled or cleared, or meeting such demand for margin by the liquidation of the same or other commitments in his account.
- (8) **Free Riding in Cash Accounts Prohibited**—No ETP Holder shall permit a customer (other than a broker/dealer or bank, trust company, insurance company, investment trust, or charitable or non-profit educational institution) to make a practice, directly or indirectly, of effecting transactions in a cash account where the cost of securities purchased is met by the sale of the same securities. No ETP Holder shall permit such a

customer to make a practice of selling securities which were purchased in a cash account at another broker-dealer and are not yet paid for. A customer shall not be deemed to be continuing this practice if for a period of 90 days (or less with the approval of the Corporation) no such transactions have taken place. An ETP Holder transferring an account which is under restraint to another broker-dealer shall inform the receiving broker-dealer of the restraint.

(9) BOUNDS

- (A) Except as provided below, no BOUND carried for a customer shall be considered of any value for the purpose of computing the margin required in the account of such customer.
- (B) The issuance, guarantee or opening sale (writing) for a customer of a BOUND shall be considered as a security transaction subject to paragraph (a) of this Rule 4.15.
- (C) the terms “current market value” and “current market price,” when used with reference to a BOUND, shall mean the total cost or net proceeds of the BOUND on the day it was purchased or sold and at any other time shall mean the preceding business day's closing price of that BOUND indicated by any regularly published reporting or quotation service.
- (D) Subject to the exception set forth in subparagraphs (F) through (J) of this paragraph (d)(9), the minimum margin on any BOUND issued, guaranteed or carried “short” in a customer's account shall be 100% of the BOUND price plus 20% of the market value of the BOUND, provided, however, that the maximum margin required on each such BOUND shall not exceed the strike price for such BOUND.
- (E) Except as provided below, each BOUND issued, guaranteed or carried “short” in a customer's account shall be margined separately.
- (F) When a BOUND is carried “short” for a customer's account and the account is also “long” a BOUND expiring on or before the expiration date of the “short” BOUND and written on the same number of shares of the same equity security, the minimum margin that must be maintained in respect of the “short” position shall be the lesser of (1) the margin required pursuant to subparagraph (D) of this paragraph (d)(9), or (2) the amount, if any, by which the

strike price of the “short” BOUND exceeds the strike price of the “long” BOUND.

- (G) (i) When a BOUND is issued, guaranteed or carried “short” against an existing net “long” position in the security underlying the BOUND, or in any security which meets the requirements of Rule 6.1(a)(23) of the PCX Parent relating to covered options or in any security immediately exchangeable or convertible, other than warrants without restriction including the payment of money, into the security underlying the BOUND, no margin need be required on the BOUND, provided (1) such net “long” position is adequately margined in accordance with this Rule and (2) the right to exchange or convert the net “long” position does not expire on or before the expiration date of the “short” BOUND.
- (ii) When a BOUND and a LEAP with the same expiration and strike price are issued, guaranteed or carried “short” against an existing net “long” position in the security underlying the BOUND and LEAP, or in any security that meets the requirements of Rule 6.1(a)(23) of the PCX Parent relating to covered options or in any security immediately exchangeable or convertible, other than warrants without restriction including the payment of money, into the security underlying the BOUND and LEAP, no margin need be required on either the BOUND or the LEAP provided (1) such net “long” position is adequately margined in accordance with this Rule and (2) the right to exchange or convert the net “long” position does not expire on or before the expiration date of the “short” BOUND or LEAP.
- (iii) When a BOUND is issued, guaranteed or carried “short” against an existing net “long” position in a warrant convertible into an equivalent number of shares of the same underlying equity security, margin shall be required on the same BOUND equal to the lesser of (1) the margin required pursuant to subparagraph (D) of this Paragraph (d)(9), or (2) the amount, if any, by which the conversion price of the “long” warrant exceeds the strike price of the “short” BOUND, provided such net “long” position is adequately margined in accordance with this Rule and the right to convert the net “long” position does not expire on or before the date of expiration of the “short” BOUND. Such warrants shall have no value for purposes of this Rule.

- (iv) In determining net “long” and “short” positions for purposes of subparagraphs (G)(i) and (ii) above, offsetting “long” and “short” positions in exchangeable or convertible securities (including warrants) or in the same security, as discussed in paragraphs (c)(1) and (c)(4) of this Rule, shall be deducted. In computing margin on such existing net security position carried against a “short” BOUND, the current market price to be used shall not be greater than the strike price, and the required margin shall be increased by an unrealized loss on the short security position.
- (H) Notwithstanding the other provisions of this paragraph (d)(9), the account of a person in which are effected only transactions in which such person is registered and acts as a specialist or market maker on an exchange, and the account of a registered trader containing only transactions effected by him in his capacity as a registered trader, may be cleared and carried on a margin basis which is satisfactory to the specialist, market maker or registered trader and the ETP Holder carrying the account.
- (I) The Corporation may at any time impose higher margin requirements than those set forth above in respect to any BOUND position(s) when it deems such higher margin requirements are appropriate.

*Commentary:*

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

**Notice to Corporation**

Rule 4.16. An ETP Holder commencing to carry margin accounts shall immediately notify the Corporation in writing.

**Location of Records**

Rule 4.17. An ETP Holder shall maintain at its main office the daily margin record required by Rule 4.14(a). An ETP Holder maintaining margin records at two or more offices shall maintain such records at each office for inspection.

## Determination of Margin

Rule 4.18. Margin requirements shall be determined pursuant to Rule 4.14.

### Fidelity Bonds

Rule 4.19(a). Each ETP Holder which transacts business with the public or clears transactions for other ETP Holders shall carry fidelity bonds in such form and in such amounts as the Corporation may require covering the sole proprietor ETP Holder, or, in the case of an ETP Holder organization, its general partners or officers and its employees.

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

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

- (i) Minimum basic coverage for such ETP Holder whose net capital requirement under Rule 4:
  - A. does not exceed \$670,000 shall be the greater of \$25,000 or 120% of their net capital requirement.
  - B. exceeds \$670,000 shall be determined by the schedule set forth in paragraph (d) of this Rule.
- (ii) Specific coverage for such ETP Holders shall be as follows:
  - A. Misplacement and Check Forgery—the amount of the basic bond minimum requirement.
  - B. Fraudulent Trading (not required of ETP Holders, those not associated with an ETP Holder or partnerships having no employees)—the greater of \$25,000 or 50% of the basic bond minimum requirement, up to \$500,000.
  - C. Security Forgery—the greater of \$25,000 or 25% of the basic bond minimum requirement, up to \$250,000.

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

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

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

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

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

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

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

additional coverage, the Corporation expects the ETP Holder to acquire it.

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

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

## Rule 5

### Listings

#### Section 1. General Provisions and Definitions

##### General Provisions and Definitions

RULE 5.1(a). Only such securities as shall have been approved by the Board of Directors for listing or admission to unlisted trading privileges shall be dealt in on the Corporation. For the purposes of the Securities Exchange Act of 1934, securities traded on the Corporation shall be admitted to unlisted trading privileges or listed on the PCX Parent, subject to the PCX Parent's delegation of the responsibility for the administration and enforcement of the unlisted trading privileges and listing requirements to the Corporation. Securities may be listed or admitted to unlisted trading privileges on a “when issued” or “when distributed” basis.

RULE 5.1(b). **Definitions.** The following terms used in Rules 5.2 through 5.5 shall, unless otherwise indicated, have the meanings herein specified:

- (1) The term “security” means any security as defined in Rule 3(a)(10) under the Securities Exchange Act of 1934.
- (2) The term “equity security” shall include any equity security defined as such pursuant to Rule 3a11-1 under the Securities Exchange Act of 1934.
- (3) The term “domestic issuer” shall mean an issuer that is not a “foreign private issuer” as defined in Rule 3b-4 under the Securities Exchange Act of 1934.
- (4) The term “listed” and the phrase “listed on the Corporation” mean a security that has been listed on the PCX Parent pursuant to Section 12(b) of the Securities Exchange Act of 1934. Such security shall be listed pursuant to a formal application and request for such listing filed by the issuing company.
- (5) The term “beneficial holder” means any person who, directly or indirectly through any contract, arrangement, understanding, relationship, or otherwise has or shares:
  - (i) voting power that includes the power to vote or to direct the voting of, such securities; and/or
  - (ii) investment power that includes the power to dispose, or to direct the disposition of such security.
- (6) The term “public beneficial holder” means a beneficial holder, who, with respect to the issuer, is not a director or officer or member of the immediate family

thereof or an affiliate or associate thereof, and whose ownership of an equity security is less than 5% of the total number of shares issued and outstanding.

- (7) The term “voting power outstanding” refers to the aggregate number of votes that may be cast by holders of those securities outstanding, which entitle the holders thereof to vote generally on all matters submitted to the company's security holders for a vote.
- (8) The term “independent director” means a person other than an officer or employee of the company or its subsidiaries or any other individual having a relationship that, in the opinion of the board of directors, would interfere with the exercise of independent judgment in carrying out the responsibilities of a director.
- (9) The term “net worth” means the total assets (excluding the value of goodwill) less total liabilities.
- (10) The term “net tangible assets” means the amount of funds remaining after deducting intangible assets from stockholders' equity. Intangible assets include, but are not limited to goodwill, patents, copyrights, trademarks, leaseholds, franchises, licenses, permits, research and development costs, organization costs, and similar types of property rights.
- (11) The term “publicly held shares” means the total number of shares issued and outstanding exclusive of any shares held by directors, officers, or their immediate families and other concentrated holdings of 5% or more.
- (12) The term “common stock” shall include any security of an issuer designated as common stock and any security of an issuer, however designated, which by statute or by its terms, is a common stock (e.g., a security which entitles the holders thereof to vote generally on matters submitted to the issuer's security holders for a vote).
- (13) A “unit investment trust interest” means an interest in a trust consisting of or otherwise based upon the following:
  - (i) a portfolio of stocks included in a domestic broad-based stock market index, which is of the type the Securities and Exchange Commission has previously reviewed and approved for index products; and/or
  - (ii) a portfolio of money market instruments or other debt securities that may be listed on the Corporation.
- (14) Equity Linked Notes (“ELNs”) are notes that are linked, in whole or in part, to the market performance of a common stock, non-convertible preferred stock or

sponsored American Depositary Receipts (“ADRs”) overlying such equity securities.

- (15) A Unit is a security that represents an interest in a registered investment company (“Investment Company”) that could be organized as a unit investment trust, an open-end management investment company, or a similar entity.

## **Section 2. Applications to List**

### **Applications to List**

RULE 5.2(a). All applications for admitting securities to the list shall be in the form prescribed by the Board of Directors. In order for the securities of any class to be considered for listing, the issuer shall have equal voting rights per share for shareholders in each class of common stock.

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

- (1) the voting rights of shareholders, voting arrangements and pyramiding of control, and related party transactions;
- (2) the nature and scope of the applicant's operations, including its demonstrated ability to acquire or discover and develop new products or properties, the potential or proven market for existing or future products, and the company's plans for future development and expansion of its existing resources;
- (3) the applicant's financial condition and accounting practices, its ability to service existing debt and other obligations, the availability of financing for currently committed programs and future expansion, and the size of its development expenses in relation to its equity and revenues;
- (4) the composition of the applicant's assets including its reserves, royalties, or other rights and patents;
- (5) the experience and reputation of the applicant and its management;
- (6) the nature and effect of governmental policies or restrictions on the company's products or properties and the extent of competition and economic conditions within the particular industry;
- (7) in the case of initial public offerings, the estimated proceeds to be received by the issuer from the offering, and the specific purposes for which the proceeds are to

be used by the issuer (e.g., product development, marketing and licensing, fund acquisitions of complementary businesses, repayment of debt, working capital, compensation to insiders); and

- (8) in the case of bonds and debentures, the Corporation will consider the credit rating by agencies designated as nationally recognized statistical rating organizations (e.g., Standard & Poor's and Moody's Investors Services) as an indication of the quality of the issuer.

## **Listing Requirements**

### **General**

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

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

### **Designation of Tier I Securities Initial Listing Requirements**

#### **Common Stock—Select Market Companies**

RULE 5.2(c). In the case of common stock, the following Basic or Alternate Listing Requirements must be met:

#### **Basic Listing Requirements**

- (1) At least 500,000 publicly held shares and a market value of at least \$3,000,000.
- (2) At least 800 public beneficial holders if the issuer has at least 500,000 and less than 1,000,000 shares publicly held, or a minimum of 400 public beneficial holders if the issuer has either:

- (i) at least 1,000,000 shares publicly held; or
  - (ii) at least 500,000 shares publicly held and average daily trading volume in excess of 2,000 shares for the six months preceding the date of application.
- (3) Net worth of at least \$4,000,000.
  - (4) Pre-tax income of at least \$750,000 and net income of at least \$400,000, excluding non-recurring and extraordinary items, in the last fiscal year or two of the last three fiscal years.
  - (5) The maintenance of at least \$5 per share closing bid price for a majority of business days for the most recent six-month period prior to the date of application by the issuer. To meet this price requirement, the bid closing price must be at or above \$5 per share at the time of application.

#### **Alternate Listing Requirements**

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

#### *Commentary:*

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

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

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

## Preferred Stock and Similar Issues

RULE 5.2(d). In the case of preferred stock and similar issues, the following listing requirements must be met:

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

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

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

### *Commentary:*

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

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

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

## **Bonds and Debentures**

RULE 5.2(e). In the case of bonds and debentures, the following listing requirements must be met:

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

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

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

### *Commentary:*

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

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

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

## **Warrants**

RULE 5.2(f). In the case of warrants, the following listing requirements must be met:

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

*Commentary:*

- .01 The Corporation will not list warrants containing a provision that permits the company, at its discretion, to change the exercise price other than in accordance with the terms of the company's Warrant Agreement.
- .02 The listing requirements for currency and index warrants are contained in Rule 8.

## **Contingent Value Rights (“CVRs”)**

RULE 5.2(g). In the case of CVRs, the following listing requirements must be met:

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

*Commentary:*

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

## **Unit Investment Trusts (“UITs”)**

RULE 5.2(h). In the case of unit investment trusts, the following listing requirements must be met:

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

### *Commentary:*

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

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

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

### **Limited Partnerships**

RULE 5.2(i). No security issued in a limited partnership rollup transaction (as defined by Section 14(h) of the Securities Exchange Act), shall be eligible for the listing unless: (i) the rollup transaction was conducted in accordance with procedures designed to protect the rights of limited partners as provided in Section 6(b)(9) of the Securities Exchange Act, as amended; (ii) a broker-dealer that is a member of a national securities association subject to Section 15A(b)(12) of the Securities Exchange Act participates in the rollup transaction; and (iii) the applicant provides the Corporation with an opinion of counsel that the rollup transaction was conducted in accordance with the procedures established by such association.

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

#### *Commentary:*

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

### **Other Securities**

RULE 5.2(j)(1). The Corporation will consider listing any security not otherwise covered by the requirements of Rule 5.2(c) through (h), provided the issue is suited for auction market trading. In the case of such other securities, the following listing requirements must be met:

- (A) At least 1,000,000 publicly held trading units and a principal amount/market value of at least \$20,000,000.
- (B) At least 400 public beneficial holders, or if traded in thousand dollar denominations, a minimum of 100 public beneficial holders.
- (C) Total assets of at least \$100,000,000 and net worth of at least \$10,000,000. In the case of an issuer that is unable to satisfy the earnings requirements

as set forth in Rule 5.2(c)(4) under Tier I Basic Listing Requirements, the Corporation will require the issuer to have:

- (i) total assets of at least \$200,000,000 and net worth of at least \$10,000,000 or
  - (ii) total assets of at least \$100,000,000 and net worth of at least \$20,000,000.
- (D) If the issue contains cash settlement provisions, settlement must be made in U.S. dollars.
- (E) If the issue contains redemption provisions, the redemption price must be at least \$3.00 per unit.

*Commentary:*

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

**Equity Linked Notes ("ELNs")**

RULE 5.2(j)(2). In the case of ELNs, the following listing requirements must be met:

- (A) Issuer Listing Standards
- (i) The issuer of ELNs must be an entity that:
    - (a) is listed on a national securities exchange or the Nasdaq National Market or is an affiliate of a company listed on a national securities exchange or the Nasdaq National Market; and
    - (b) has a minimum net worth of \$150 million.
  - (ii) In addition, the market value of an ELN offering, when combined with the market value of all other ELN offerings previously completed by the issuer and currently 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 issuance.
- (B) ELN Listing Standards
- (i) The issue must have:

- (a) a minimum public distribution of one million ELNs;
  - (b) a minimum of 400 holders of the ELNs (provided, however, that if the ELN is traded in \$1,000 denominations, there is no minimum number of holders);
  - (c) a minimum market value of \$4 million; and
  - (d) 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.
- (C) Minimum Standards Applicable to the Linked Security
- (i) The underlying security must have:
    - (a) a market capitalization of at least \$3 billion and trading volume in the United States of at least 2.5 million shares in the one-year period preceding the listing of the ELNs; or
    - (b) a market capitalization of at least \$1.5 billion and trading volume in the United States of at least 10 million shares in the one-year period preceding the listing of the ELNs; or
    - (c) a market capitalization of at least \$500 million and trading volume in the United States of at least 15 million shares in the one-year period preceding the listing of the ELNs.
  - (ii) The notes must be issued by a company that has a continuous reporting obligation under the Securities Exchange Act of 1934, 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; and
  - (iii) The notes must be issued by:
    - (a) a U.S. company; or
    - (b) a non-U.S. company, i.e., a company formed or incorporated outside the United States (including a

company that is traded in the United States through sponsored ADRs) if:

- (1) the Corporation has a comprehensive surveillance sharing agreement in place with the primary exchange in the country where the security is primarily traded (in the case of an ADR, the primary exchange on which the security underlying the ADR is traded); or
- (2) the combined trading volume of the non-U.S. security (a security issued by a non-U.S. company) and other related non-U.S. securities occurring in the U.S. market and in markets with which the Corporation has in place a comprehensive surveillance sharing agreement represents (on a share equivalent basis for any ADRs) at least 50% of the combined world-wide trading volume in the non-U.S. security, other related non-U.S. securities, and other classes of common stock related to the non-U.S. security over the six month period preceding the date of listing; or
- (3)(A) the combined trading volume of the non-U.S. security and other related non-U.S. securities occurring in the U.S. market represents (on a share equivalent basis) at least 20% of the combined world-wide trading volume in the non-U.S. security and in other related non-U.S. securities over the six-month period preceding the date of selection of the non-U.S. security for an ELN listing; (B) the average daily trading volume for the non-U.S. security in the U.S. markets over the six-month period preceding the date of selection of the non-U.S. security for an ELN listing is 100,000 or more shares; and (C) the trading volume for the non-U.S. security in the U.S. market is at least 60,000 shares per day for a majority of the trading days for the six-month period preceding the date of listing of the non-U.S. security for an ELN listing.
- (4) If the underlying security to which the ELN is to be linked is the stock of a non-U.S. company that is traded in the U.S. market as a sponsored ADR, ordinary shares or otherwise, then the minimum

number of holders of the underlying security shall be 2,000.

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

- (i) The issuance of ELNs relating to any underlying U.S. security may not exceed five percent of the total outstanding shares of such underlying security. In addition, the issuance of ELNs relating to any underlying non-U.S. security or sponsored ADR may not exceed:
- (a) two percent of the total shares outstanding worldwide if at least 20 percent of the worldwide trading volume in such security occurs in the U.S. market during the six-month period preceding the date of listing; or
  - (b) three percent of the total shares outstanding worldwide if at least 50 percent of the worldwide trading volume in such security occurs in the U.S. market during the six-month period preceding the date of listing; or
  - (c) five percent of the total shares outstanding worldwide if at least 70 percent of the worldwide trading volume in such security occurs in the U.S. market during the six-month period preceding the date of listing.

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

- (E) Prior to the commencement of trading of particular ELNs listing pursuant to this Rule, the Corporation will distribute a circular to ETP Holders providing guidance regarding compliance responsibilities (including suitability recommendations and account approval) when handling transactions in ELNs.

### **Investment Company Units**

Rule 5.2(j)(3). The Corporation will consider for trading, whether by listing or pursuant to unlisted trading privileges, units of trading (“Units”) that meet the criteria of this Rule. A Unit is a security that represents an interest in a registered investment company (“Investment Company”) that could be organized as a unit investment trust, an open-end management investment company, or a similar entity.

(A) *Original Unit Listing Standards*

- (i) The Investment Company must:
  - (I) hold securities comprising, or otherwise based on or representing an interest in, an index or portfolio or securities; or
  - (II) hold securities in another registered investment company that holds securities as described in (a) above.

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

- (ii) The Investment Company must issue Units in a specified aggregate number in return for a deposit (the “Deposit”) consisting of either:
  - (I) a specified number of shares of securities that comprise the index or portfolio, or are otherwise based on or represent an investment in securities comprising such index or portfolio, and/or a cash amount; or
  - (II) shares of a registered investment company, as described in subsection (A)(i)(I) above, and/or a cash amount.
- (iii) Units must be redeemable, directly or indirectly, from the Investment Company for securities and/or cash then comprising the Deposit. Units must pay holders periodic cash payments corresponding to the regular cash dividends or distributions declared with respect to the securities held by the Investment Company, less applicable expenses and charges.
- (iv) There must be at least 300,000 Units outstanding prior to the commencement of trading of a series of Units on the Corporation.

(B) *Underlying Indices and Portfolios.* The Corporation may trade, whether by listing or pursuant to unlisted trading privileges, specified series of Units, with each Series based on a specified index or portfolio of securities. The value of the index or portfolio must be calculated and disseminated to the public at least once per business day; provided that, if the securities representing at least half the value of the index or portfolio are securities of a single country other than the United States, then the value of the index or portfolio may be calculated and disseminated to the public at least once per business day in that country.

(C) *Form of Certificates.* Units may be either certified or issued in the form of a single global certificate.

## **Designation of Tier II Securities**

### **Initial Listing Requirements**

#### **Common Stock—Development Stage Companies**

RULE 5.2(k). In the case of common stock, the following Basic or Alternate Listing Requirements must be met:

#### **Basic Listing Requirements**

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

#### **Alternate Listing Requirements**

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

#### *Commentary:*

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

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

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

### **Preferred Stock and Similar Issues**

RULE 5.2(l). In the case of preferred stock and similar issues, the following listing requirements must be met:

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

#### *Commentary:*

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

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

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

### **Bonds and Debentures**

RULE 5.2(m). In the case of bonds and debentures, the following listing requirements must be met:

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

*Commentary:*

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

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

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

### **Warrants**

RULE 5.2(n). In the case of warrants, the following listing requirements must be met:

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

*Commentary:*

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

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

## **Section 3. Corporate Governance and Disclosure Policies**

### **Corporate Governance and Disclosure Policies**

RULE 5.3. The Corporation shall require that specific corporate governance and disclosure policies be established by domestic issuers of any equity security listed pursuant to Rule 5.2. The Corporation, however, will not require an issuer of such security under the Tier II designations to comply with the provision for an audit committee as set forth in this Rule 5.3(b).

### **Corporate Governance**

#### **RULE 5.3(a). Conflicts of Interest**

Applicants shall be required to eliminate material conflicts of interest between officers, directors, or principal shareholders and the applicant issuer prior to approval of the listing. Each issuer shall conduct an appropriate review of all related party transactions on an ongoing basis and shall use the company's audit committee or a comparable body to review potential conflict of interest situations where appropriate.

#### **RULE 5.3(b). Independent Directors/Audit Committee**

The Corporation shall require that each listed domestic issuer have at least two independent directors on its board of directors. Such issuer shall maintain an audit committee a majority of which shall be independent directors.

#### **RULE 5.3(c). Quorum**

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

#### **RULE 5.3(d). Shareholder Approval Policy**

Each issuer shall require shareholder approval of a plan or arrangement under subparagraph (1) below or, prior to the issuance of designated securities under subparagraphs (2) through (4) below, when:

- (1) A stock option or purchase plan is to be established or other arrangement made pursuant to which stock may be acquired by officers or directors, except for warrants or rights issued generally to security holders of the company or broadly based plans or arrangements including other employees (e.g., ESOPs).

The Corporation will generally not require shareholder's approval as a condition to listing shares reserved for the exercise of options when:

- (i) such options are issued to an individual, not previously employed by the company, as an inducement essential to the individual's entering into an employment contract with the company provided that the potential issuance of shares pursuant to such options does not exceed 5% of the company's outstanding common stock; or
  - (ii) the establishment of a plan or arrangement under which the amount of securities which may be issued does not exceed the lesser of 1% of the number of shares outstanding common stock, 1% of the voting power outstanding, or 25,000 shares and provided that all arrangements adopted without shareholder approval in any five-year period do not authorize, in the aggregate, the issuance of more than 10% of outstanding common stock or voting power outstanding. (For the purpose of calculating the percentage of stock issued in aggregate, stock to be issued pursuant to options which have expired and/or been cancelled shall not be included.)
- (2) The issuance will result in a change of control of the issuer.
- (3) The transaction is in connection with the acquisition of the stock or assets of another company in the following circumstances:
  - (i) if any director, officer, or substantial shareholder of the listed company has a 5% or greater interest (or such persons collectively have a 10% or greater interest), directly or indirectly, in the company or assets to be acquired or in the consideration to be paid in the transaction (or series of related transactions) and the present or potential issuance of common stock, or securities convertible into or exercisable for common stock, could result in an increase in outstanding common shares or voting power of 5% or more; or
  - (ii) where the present or potential issuance of common stock, or securities convertible into or exercisable for common stock (other than in a public offering for cash), could result in an increase in outstanding common shares of 20% or more or could represent 20% or more of the voting power outstanding before the issuance of such stock or securities.
- (4) In connection with a transaction other than a public offering involving:
  - (i) the sale or issuance by the company of common stock (or securities convertible into or exercisable for common stock) at a price less than the greater of book or market value, which together with sales by officers, directors or principal shareholders of the company equals 20% or more of presently outstanding common stock, or 20% or more of the presently outstanding voting power; or

- (ii) the sale or issuance by the company of common stock (or securities convertible into or exercisable for common stock) equal to 20% or more of presently outstanding stock or voting power for less than the greater of book or market value of the stock.
- (5) Exceptions may be made upon application to the Corporation when:
  - (i) the delay in securing shareholder approval would seriously jeopardize the financial viability of the enterprise; and
  - (ii) reliance by the company on this exception is expressly approved by the audit committee of the board or a comparable body.

A company relying on this exception must mail to all shareholders, no later than ten days before issuance of the securities, a letter alerting them to its omission to seek the shareholder approval that would otherwise be required and indicating that the audit committee of the board or a comparable body has expressly approved the exception.

*Commentary:*

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

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

**RULE 5.3(e). Shareholder/Annual Meetings**

A listed company is required to hold an annual meeting of shareholders to elect directors and to take action on other corporate matters in accordance with its charter, by-laws and applicable state or other laws. In the event unusual circumstances affecting the company shall preclude the holding of its annual meeting within a reasonable period after the time specified in its charter, the Corporation must be informed in writing, stating the reasons for the delay, and good faith efforts must be made to ensure that such annual meeting is held as soon as reasonably practicable in light of the circumstances causing the delay.

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

#### **RULE 5.3(f). Solicitation of Proxies and Consents**

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

#### **RULE 5.3(g). Common Voting Rights**

- (1) No Rule, stated policy, practice, or interpretation of the Corporation shall permit the listing, or the continuance of the listing, of any common stock or other equity security of a domestic issuer, if, on or after July 7, 1988, the issuer of such security issues any class of security, or takes other corporate action, with the effect of nullifying, restricting or disparately reducing the per share voting rights of holders of an outstanding class or classes of common stock of such issuer registered pursuant to Section 12 of the Securities Exchange Act of 1934.
- (2) For the purposes of this Rule 5.3(g), the following shall be presumed to have the effect of nullifying, restricting, or disparately reducing the per share voting rights of an outstanding class or classes of common stock:
  - (i) Corporate action to impose any restriction on the voting power of shares of the common stock of the issuer held by a beneficial owner or record holder based on the number and/or the length of time such shares have been held by such beneficial owner or record holder.
  - (ii) Any issuance of securities through an exchange offer by the issuer for shares of an outstanding class of common stock of the issuer, in which the securities issued have voting rights greater than or less than the per share voting rights of any outstanding class of the common stock of the issuer.
  - (iii) Any issuance of securities pursuant to a stock dividend, or any other type of distribution of stock, in which the securities issued have voting rights greater than the per share voting rights of any outstanding class of the common stock of the issuer.
- (3) For purposes of this paragraph (g) of Rule 5.3, the following, standing alone, shall be presumed not to have the effect of nullifying, restricting, or disparately reducing the per share voting rights of holders of an outstanding class or classes of common stock:
  - (i) The issuance of securities pursuant to an initial registered public offering.

- (ii) The issuance of any class of securities, through a registered public offering with voting rights not greater than the per share voting rights of any outstanding class of the common stock of the issuer.
  - (iii) The issuance of any class of securities to effect a bona fide merger or acquisition, with voting rights not greater than the per share voting rights of any outstanding class of the common stock of the issuer.
  - (iv) Corporate action taken pursuant to state law requiring a state's domestic corporation to condition the voting rights of a beneficial owner or record holder of a specified threshold percentage of the corporation's voting stock on the approval of the corporation's independent shareholders.
- (4) For purposes of this paragraph (g) of Rule 5.3, the term “security” shall include any security defined as such pursuant to Section 3(a)(10) of the Securities Exchange Act of 1934, but shall exclude any class of security having a preference or priority over the issuer's common stock as to dividends, interest payments, redemption or payments in liquidation, if the voting rights of such securities only become effective as a result of specified events, not relating to an acquisition of the common stock of the issuer, which reasonably can be expected to jeopardize the issuer's financial ability to meet its payment obligations to the holders of that class of securities.

#### **RULE 5.3(h). Preferred Voting Rights**

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

- (1) Any change in the rights, privileges or preferences of such issue without at least two-thirds favorable vote of the preferred class, voting as a class; or
- (2) The creation of an additional class of preferred stock senior to the issue to be listed or equal in preference to the issue to be listed without at least a favorable majority vote of the preferred class voting as a class.

#### **Disclosure Policies**

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

## **Financial Reports and Related Notices**

RULE 5.3(i)(1). Companies applying for listing enter into agreements with the Corporation and become subject to its Rules, regulations and policies applicable to listed companies. Pursuant to the listing agreement with the Corporation and the rules of the Securities and Exchange Commission under the Securities Exchange Act of 1934, each listed company is required to submit the following information:

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

apply to proposed issuance of rights to subscribe, closing of stock transfer books, or taking a record of shareholders for any purposes.

- (I) The Company shall notify the Corporation of any change in the form or nature of any listed security or in the rights and privileges of the holders of such security, at least twenty days in advance of such change.
  - (J) The Company shall notify the Corporation of any diminution in the supply of the security available for trading caused by deposit of the security under voting trust, tender offer or other agreements.
  - (K) The Company shall notify the Corporation of the existence of any technical default or default in interest or principal payment, cumulative dividends, sinking funds, or redemption fund requirements of the Company or any controlled corporation, whether consolidated or unconsolidated.
  - (L) The Company shall notify the Corporation within fifteen days after the close of a fiscal quarter of any securities reacquired or disposed of for the account of the Company. The Company or its transfer agent shall also notify the Corporation monthly of all issuances of securities, as well as providing the total number of shares or principal amount of debt securities issued to date.
  - (M) The Company shall provide sufficient advance application to the Corporation for the listing of additional amounts of securities.
  - (N) The Company shall provide sufficient advance application for the listing of securities in substitution for securities, the obligations, rights or privileges of which have been altered by merger, acquisition, consolidation or other corporate action, unless specifically exempted by the Corporation.
  - (O) The Company shall furnish the Corporation any other information concerning its business as the Corporation may reasonably require.
- (ii) Materials to be filed pursuant to the Securities Exchange Act of 1934:
- (A) Forms 8-K Current Report, 10-Q Quarterly Report, 10-K Annual Report, or other annual report forms for issuers using other than Form 10-K.
  - (B) Any proxy soliciting material.

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

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

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

*Commentary:*

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

.02 Each issuer that is not subject to SEC Rule 13a-13 and which is required to file with the SEC, or another federal or state regulatory authority, interim reports relating primarily to operations and financial position, shall make available to shareholders reports which reflect the information contained in those interim reports. Such reports shall be made available to shareholders either before or as soon as practicable following filing with the appropriate regulatory authority. If the form of the interim report made available to shareholders differs from that filed with the regulatory authority, both the report to shareholders and the report to regulatory authority shall be filed with the Corporation.

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

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

### **Immediate Public Disclosure of Material Information**

RULE 5.3(i)(2). Immediate disclosure should be made of information about a company's affairs or about events or conditions in the market for its securities when the information is likely to have a significant effect on the price of any of the company's securities, or such information (including, in certain cases, any necessary interpretation by securities analysts or other experts) is likely to be considered important by a reasonable investor in determining a choice of action.

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

- (i) its property, business, financial condition and prospects;
- (ii) a joint venture, tender offer, merger or acquisition;
- (iii) the material sale, transfer, exchange or other disposition of assets or securities by it or any of its subsidiary or controlled companies;
- (iv) any material changes in, or removal of, collateral deposited under a mortgage or trust indenture, under which listed securities of the Company have been issued, or change of trustee thereof;
- (v) dealings with employees, suppliers, customers and others;
- (vi) information concerning a significant change in ownership of the company's securities by insiders, principal shareholders, or control persons; and
- (vii) any significant litigation.

### **Procedure for Public Dissemination**

RULE 5.3(i)(3). A listed company is expected to make timely and adequate disclosure to its shareholders, the financial community, and investing public of any news or information that might reasonably be expected to materially affect the market for its securities. Furthermore, a company should also act promptly to dispel any unfounded rumors that result in unusual market activity or price variations.

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

(i) Consultation with the Securities Qualification Department

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

By means of such advance consultation, effective liaison between companies and the Corporation is maintained, and a company can obtain the benefit of the Securities Qualification Department's experience in the daily application of the Corporation's policies relating to corporate disclosure. Preliminary discussions between the company officials and the staff of the Corporation will be afforded the strictest confidentiality. The Securities Qualification Department will also coordinate its activity with the Corporation's Surveillance Department to monitor any unusual market conditions.

(ii) Internal Handling of Confidential Corporate Matters

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

Whenever material information is temporarily withheld, extreme care must be exercised by the company to keep the information confidential. During this

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

- (A) Immediate Release Policy—Any public disclosure of material information should be made by an announcement released simultaneously to any of the following organizations:
  - (a) the primary business and financial newswire services (Dow Jones and Reuters);
  - (b) the national services (e.g., Associated Press);
  - (c) The WALL STREET JOURNAL, NEW YORK TIMES, LOS ANGELES TIMES, SAN FRANCISCO CHRONICLE, and SAN FRANCISCO EXAMINER;
  - (d) Moody's Investors Service and Standard & Poor's Corporation; and
  - (e) a company that distributes press releases over private teletype networks may find PR Newswire and Business Wire helpful in gaining news coverage.

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

(iii) Relationships between Company Officials and Others

(A) Security Analysts, Media, and Shareholders:

The Corporation recommends that companies observe an “open door” policy in dealing with analysts, journalists, shareholders and others. However, under no circumstances should disclosure of material corporate developments be made on an individual or selective basis to analysts, shareholders or other persons unless such information has previously been fully disclosed and disseminated to the public. In the event that material information is inadvertently disclosed on the occasion of any meetings with analysts or others, it must be publicly disseminated as promptly as possible by the means described in subparagraph (ii)(A), above.

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

(B) Market Makers

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

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

### **Content and Preparation of Public Announcements**

RULE 5.3(i)(4). The content of a press release or other public announcement is as important as its timing. Each announcement should contain the following:

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

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

## **Section 4. Suspension or Issuer Withdrawal from Listing**

### **Suspension**

RULE 5.4(a). The Board of Directors may suspend dealings in or institute proceedings to remove any security from listed or unlisted trading privileges.

RULE 5.4(b). An issuer proposing to withdraw a security from listing on the Corporation shall submit a certified copy of a resolution adopted by the board of directors of the issuer authorizing withdrawal from listing and registrations, and a statement setting forth in detail the reasons for the proposed withdrawal and the facts in support thereof. The issuer may be required, under special circumstances, to submit the proposed withdrawal to the shareholders for their vote at a meeting for which proxies are solicited provided the security is not also listed on another exchange having similar requirements.

## **Section 5. Maintenance Requirements and Delisting Procedures**

### **Maintenance Requirements and Delisting Procedures**

RULE 5.5(a). The Corporation does not rate or evaluate any security dealt in on the Corporation. In making a determination concerning listing and delisting it acts normally upon information furnished it by the issuer, and it does not verify this information from independent

sources or gather independent information about the issuers whose securities are dealt in on the Corporation.

As a matter of policy, when a listed company fails to meet any of the listing maintenance requirements and has more than one class of securities listed, the Corporation will give consideration to delisting all such classes. However, the Corporation may continue the listing of one class of securities regardless of its decision to delist another class. The securities of a company will be subject to suspension and/or withdrawal from listing and registration as a listed issue if the Corporation finds that a listed company fails to meet the maintenance requirements as set forth in this Rule 5.5, or fails to comply with the Corporation's listing policies or agreements.

*Commentary:*

.01 When the issuer fails to meet any provision of the applicable maintenance requirements of this Rule 5.5, the Exchange shall determine whether to suspend dealings in the security and/or request the issuer to take action to remedy any identified deficiency. Should the issuer fail to correct any deficiency, the Exchange shall take action to delist the security.

.02 Securities listed under the Tier I designation will not be granted waivers from the Corporation's maintenance requirements. Any security that no longer meets the Tier I maintenance requirements, but meets the Tier II maintenance requirements, will be reclassified as a Tier II security. The Corporation, however, may grant a waiver for the continued listing of any security in cases where the security remains listed on either the NYSE, Amex, or Nasdaq National Market; provided, however, that the Corporation determines that there is a reasonable basis for a waiver. In such cases, the security will be included under the Tier II designation.

.03 Any security approved by the Board of Directors for listing prior to July 22, 1994 must meet one of the following:

- (a) To qualify for inclusion under the Tier I designation, a security must meet the applicable initial listing requirements as set forth in Rule 5.2 (including any index product listed pursuant to Rule 8); however, a security listed on either the NYSE, Amex, or Nasdaq National Market may be designated as a Tier I security so long as it meets the applicable Tier I maintenance requirements in this Rule 5.5; or
- (b) Any security not meeting the applicable maintenance requirements must do so within six months of July 22, 1994. Until such time, the former standards will be applied and the security will be designated as a Tier II security.

## **Tier I Securities**

### **Maintenance Requirements**

#### **Common Stock—Select Market Companies**

RULE 5.5(b). In the case of common stock, the following maintenance requirements must be met:

- (1) At least 200,000 publicly held shares and a market value of at least \$1,000,000.
- (2) At least 400 public beneficial holders, or at least 300 beneficial holders of 100 shares or more.
- (3) The issuer must have a net worth of at least:
  - (i) \$2,000,000 if the issuer has sustained losses from continuing operations and/or net losses in two of the last three fiscal years; or
  - (ii) \$4,000,000 if the issuer has sustained losses from continuing operations and/or net losses in three of the last four fiscal years.
- (4) A share bid price of at least \$3.

#### *Commentary:*

.01 Any issue that fails to meet the maintenance requirements under Tier I of this Rule 5.5(b) will be removed from trading under Tier I and, if in compliance with Tier II maintenance requirements, will be admitted to trading under Tier II.

.02 With regard to the share bid price requirements, as set forth in Rule 5.5(b), the Corporation may waive such requirements upon consideration of market conditions, the issuer's capitalization, the number of outstanding and publicly held shares, and any other factors the Corporation deems appropriate.

#### **Preferred Stock and Similar Issues**

RULE 5.5(c). In the case of preferred stock and similar issues, the following maintenance requirements must be met:

- (1) At least 100,000 publicly held shares and a market value of at least \$1,000,000.
- (2) At least 150 public beneficial holders.

- (3) The issuer must have a net worth of at least:
  - (i) \$2,000,000 if the issuer has sustained losses from continuing operations and/or net losses in two of the last three fiscal years; or
  - (ii) \$4,000,000 if the issuer has sustained losses from continuing operations and/or net losses in three of the last four fiscal years.
- (4) The issuer has not sustained losses from continuing operations and/or net losses in the five most recent fiscal years.

*Commentary:*

.01 If preferred stock is convertible into a class of common stock, such class must meet the Tier I maintenance requirements under Rule 5.5(b). Current last sale information must be available with respect to the underlying security into which the security is convertible.

### **Bonds and Debentures**

RULE 5.5(d). In the case of bonds and debentures, the following maintenance requirements must be met:

- (1) Aggregate market value and principal amount of at least \$1,000,000 each.
- (2) At least 100 public beneficial holders.
- (3) The issuer must have a net worth of at least:
  - (i) \$2,000,000 if the issuer has sustained losses from continuing operations and/or net losses in two of the last three fiscal years; or
  - (ii) \$4,000,000 if the issuer has sustained losses from continuing operations and/or net losses in three of the last four fiscal years.
- (4) The issuer has not sustained losses from continuing operations and/or net losses in the five most recent fiscal years.
- (5) **Municipal Securities.** In the case of debt securities of non-listed issuers, such security is rated as investment grade by at least one nationally recognized rating service and has a market value or principal amount outstanding of at least \$400,000.

*Commentary:*

.01 If a debt security is convertible into a class of equity security, such equity security must meet the applicable Tier I maintenance requirements under this Rule 5.5. Current last sale information must be available with respect to the underlying security into which the security is convertible.

**Warrants**

RULE 5.5(e). In the case of warrants, the following maintenance requirements must be met:

- (1) The common stock of the company or other security underlying the warrants must meet the applicable Tier I maintenance requirements under this Rule 5.5. This provision does not apply to warrants based on currency and/or market indices.

**Contingent Value Rights (“CVRs”)**

RULE 5.5(f). In the case of CVRs, the following maintenance requirements must be met:

- (1) An aggregate market value of at least \$1,000,000.
- (2) If the equity security to which the cash payment of the CVR at maturity is tied is delisted, the CVR shall be suspended or relisted.

**Unit Investment Trusts (“UITs”)**

RULE 5.5(g)(1). In the case of UITs, the following maintenance requirements must be met:

- (A) An aggregate market value of at least \$1,000,000.
- (B) If the security to which the cash payment of the UIT at term is tied is delisted, the UIT shall be suspended or delisted.
- (C) The Corporation will consider the suspension of trading in, or removal from listing of any UIT interest when, in its opinion, further dealing in such interests appear unwarranted under any of the following circumstances:
  - (i) the UIT interest has more than 60 days remaining until termination and there are less than 50 record and/or beneficial holders of shares, units, or trading components thereof for 20 or more consecutive trading days; or
  - (ii) there has been a failure on the part of the UIT and/or sponsor to comply with the Corporation’s listing policies or agreements; or

- (iii) such other event occurs or condition exists that, in the opinion of the Corporation, makes further dealings on the Corporation inadvisable.

### **Investment Company Units**

Rule 5.5(g)(2) *Continued Listing Criteria*. The Corporation will consider the suspension of trading and delisting (if applicable) of a series of Investment Company Units in any of the following circumstances:

- (A) Following the initial twelve-month period beginning upon the commencement of trading of a series of Units, there are fewer than 50 record and/or beneficial holders of Units for 30 or more consecutive trading days; or
- (B) The value of the index or portfolio of securities on which the series is based is no longer calculated or available; or
- (C) Such other event occurs or condition exists that, in the opinion of the Corporation, makes further dealings on the Corporation inadvisable.
- (D) In addition, the Corporation will remove Units from trading and listing (if applicable) upon termination of the issuing Investment Company or upon the termination of listing of the Units on their primary market, if the primary market is not the Corporation.

### **Tier II Securities**

#### **Maintenance Requirements**

##### **Common Stock—Development Stage Companies**

RULE 5.5(h). In the case of common stock, the following maintenance requirements must be met:

- (1) At least 300,000 publicly held shares and a market value of at least \$500,000.
- (2) At least 250 public beneficial holders.
- (3) Total net tangible assets of at least \$500,000, or net worth of at least \$2,000,000.
- (4) A share bid price of at least \$1.

*Commentary:*

.01 Any issue that fails to meet the maintenance requirements under Tier I of Rule 5.5(b) will be removed from trading under Tier I and, if in compliance with Tier II maintenance requirements, will be admitted to trading under Tier II.

.02 With regard to the share bid price requirements, as set forth in this Rule 5.5(h), the Corporation may waive such requirements upon consideration of market conditions, the issuer's capitalization, the number of outstanding and publicly held shares, and any other factors the Corporation deems appropriate.

### **Preferred Stock and Similar Issues**

RULE 5.5(i). In the case of preferred stock and similar issues, the following maintenance requirements must be met:

- (1) At least 250,000 shares must be publicly held by not less than 100 public beneficial holders.
- (2) The issuer must meet the net tangible asset or net worth requirements as set forth in the Tier II maintenance requirements under Rule 5.5(h).

*Commentary:*

.01 If preferred stock is convertible into a class of common stock, such class must meet the Tier II maintenance requirements under Rule 5.5(h). Current last sale information must be available with respect to the underlying security into which the security is convertible.

### **Bonds and Debentures**

RULE 5.5(j). In the case of bonds and debentures, the following maintenance requirements must be met:

- (1) Aggregate market value and principal amount of at least \$1,000,000 each, and at least 100 public beneficial holders.
- (2) The issuer must meet the net tangible asset or net worth requirements as set forth in the Tier II maintenance requirements under Rule 5.5(h).

*Commentary:*

.01 If a debt security is convertible into a class of equity security, such equity security must meet the applicable Tier II maintenance requirements under this Rule 5.5. Current

last sale information must be available with respect to the underlying security into which the security is convertible.

### **Warrants**

RULE 5.5(k). In the case of warrants, the following maintenance requirements must be met:

- (1) The common stock of the company or other security underlying the warrants must meet the applicable Tier II maintenance requirements under this Rule 5.5. This provision does not apply to warrants based on currency and/or market indices.

### **Other Reasons for Suspending or Delisting**

RULE 5.5(l). The Corporation will consider suspending dealings in, or removing from the list, securities of a company whenever any of the following are evident:

- (1) Failure to comply with the Corporation's listing policies or agreements.
- (2) The issuer's independent public accountants issue a disclaimer opinion on financial statements required to be certified.
- (3) The issuer has sustained losses which are so substantial in relation to its overall operations or its existing financial resources, or its financial condition has become so impaired that it appears questionable, in the opinion of the Corporation, as to whether such company will be able to continue operations and/or meet its obligations as they mature.
- (4) The issuer has depleted, sold or otherwise disposed of its principal operating assets to the extent that it can no longer operate as a going concern, or has discontinued a substantial portion of its operations or business for any reasons whatsoever.
- (5) Where the issuer has substantially discontinued the business that it conducted at the time it was listed or admitted to trading, and has become engaged in ventures or promotions which have not developed to a commercial stage or success of which is problematical, it shall not be considered an operating company for the purposes of continued trading and listing on the Corporation.
- (6) The liquidation of the company has been authorized. However, where such liquidation has been authorized by shareholders and the company is committed to proceed, the Corporation will normally continue trading until substantial liquidation distributions have been made.
- (7) Advice has been received, deemed by the Corporation to be authoritative, that the security is without value. In this connection, it should be noted

that the Corporation does not pass judgment upon the value of any security.

- (8) A “reverse take-over” involves a business combination (i.e., any plan of acquisition, merger or consolidation) in which the listed company is acquired by an unlisted company even though the listed company is the nominal survivor. Under such circumstances, consideration will be given to all relevant factors, including, but not limited to, the following:
- (i) the proportionate amount of the securities of the resulting company to be issued to each of the combining companies;
  - (ii) changes in ownership and management of the listed company;
  - (iii) whether the unlisted company is larger than the listed company;
  - (iv) the nature of the businesses being combined. Generally, the Corporation will not approve an application to list additional shares of a listed company that has fallen below any of the Corporation’s maintenance requirements in connection with a business combination with an unlisted company acquiring the listed company. An exception to this policy may be made if the unlisted company meets the listing requirements of the Corporation in all respects except share distribution and number of beneficial holders, and the company resulting from the combination appears to have a substantially improved financial condition as compared to the listed company; and
  - (v) whether substantive information on the affairs of the unlisted company is disseminated to the shareholders of the listed company and to the investing public in timely manner, and whether the shareholders of the listed company have the right to approve the reverse take-over.
- (9) Any other event or condition that makes further dealings on the Corporation unwarranted, including, but not limited to, the following:
- (i) registration is no longer effective;
  - (ii) payment, redemption or retirement of entire class, issue, or series; and
  - (iii) the issuer's operations are contrary to public interest.

## **Delisting Procedures**

RULE 5.5(m). Whenever the Corporation determines that it is appropriate to either suspend dealings in and/or remove securities from listing pursuant to this Rule 5.5, except for other than routine reasons (e.g., redemptions, maturities, etc.), it will follow, insofar as practicable, the following procedures:

- (1) The Corporation shall notify the issuer in writing describing the basis on which the Corporation is considering the delisting of the company's security. Such notice shall be sent by certified mail and shall include the time and place of a meeting to be held by the Corporation to hear any reasons why the issuer believes its security should not be delisted. Generally, the issuer will be notified at least three (3) weeks prior to the meeting and will be requested to submit a written response.
- (2) If, after such meeting, the Corporation determines that the security should be delisted, the Corporation shall notify the issuer by telephone (if possible, the same day of the meeting) and in writing of the delisting decision and the basis thereof. The written notice will also inform the issuer that it may appeal the decision to the Board of Directors and request a hearing.
- (3) Concurrent with the Corporation's decision to delist the issuer's security, the Corporation will prepare a press announcement, which will be disseminated to the Market Makers and the investing public no later than the opening of trading the business day following the Corporation's decision (the Securities Qualification Department will also distribute the information to the ETP Holders). Accordingly, the suspension of trading in the issuer's security will become effective at the opening of business on the day following the Corporation's decision.
- (4) If the issuer requests an appeal hearing, its request for a hearing along with an answer to the causes specified by the Corporation shall be filed with the Secretary of the Corporation no later than five (5) business days following service of notice of the proposed delisting. If the issuer does not request a hearing within the specified period of time, an application shall be submitted by the Corporation to the Securities and Exchange Commission to strike the security from list of companies listed on the Corporation. A copy of such application shall be furnished to the issuer in accordance with Section 12 of the Securities Exchange Act of 1934 and the Rules promulgated thereunder.
- (5) If a request for a hearing is made, the issuer shall be given at least fifteen (15) business days notice of the time and place of the hearing.

- (6) The hearing shall be held before the Board Appeals Committee appointed by the Board of Directors for such purpose. Only those members of the Board Appeals Committee who attend the hearing may vote with respect to any decisions the Committee may make.
- (7) Any documents or other written material the issuer wishes to consider should be submitted to the appropriate office of the Corporation at least five (5) business days prior to the date of the hearing.
- (8) At the hearing, the issuer must prove its case by presenting testimony, evidence, and argument to the Board Appeals Committee. The form and manner in which the actual hearing will be conducted will be established by the Board Appeals Committee so as to assure the orderly conduct of the proceeding. At the hearing, the Board Appeals Committee may require the issuer to furnish additional written information that has come to its attention.
- (9) After the conclusion of the proceeding, the Board Appeals Committee shall make its decision. The decision of the Board Appeals Committee shall be in writing with one copy served upon the issuer and the second copy filed with the Secretary of the Corporation. Such decision shall be final and conclusive. If the decision is that the security of the issuer is to be removed from listing, an application shall be submitted by the Corporation to the Securities and Exchange Commission to strike the security from listing and registration, and a copy of such application shall be provided to the issuer in accordance with Section 12 of the Securities Exchange Act of 1934 and the Rules promulgated thereunder. If the decision is that the security should not be removed from listing, the issuer shall receive a notice to that effect from the Corporation.

## **Rule 6 Business Conduct**

### **Adherence to Law**

Rule 6.1. The acceptance of any account, whether on a disclosed or undisclosed basis, by any ETP Holder shall at all times comply with fair and equitable principles of trade, the applicable regulations of the Securities and Exchange Commission and of the Federal Reserve Board, and the Bylaws and Rules of the Corporation.

### **Prohibited Acts**

Rule 6.2. Any ETP Holder or any associated person thereof found guilty in accordance with the Rules and procedures of the Corporation of any of the following prohibited acts shall be subject to the imposition of penalties in accordance with the Rules of the Corporation.

(a) Violations of the Bylaws, Rules and procedures of the Corporation, or any Board order, directive, or policy, required to be filed with the Securities and Exchange Commission.

(b) Conduct or proceeding inconsistent with just and equitable principles of trade, it being declared among other things, that the willful violation of any provision of the federal securities laws, the regulations of the Securities and Exchange Commission and of the Federal Reserve Board, and the Bylaws and Rules and procedures of the Corporation shall be considered conduct or proceedings inconsistent with just and equitable principles of trade.

(c) Willful misstatement of a material fact, or willful omission to state a material fact required to be stated in any application submitted to the Corporation or in any proceeding, investigation, report or questionnaire or other matter presented to or requested by the Board of Directors or any standing or special committee thereof or by the Corporation.

(d) Willful failure to carry out any contract with another ETP Holder of the Corporation.

(e) Willful action deemed to be detrimental to the welfare of investors, creditors, ETP Holders or the Corporation.

(f) Subjecting the Corporation or any Director or officer thereof to litigation seeking to restrain the lawful exercise of powers and duties under the Bylaws, Rules and procedures of the Corporation.

## **Prevention of the Misuse of Material, Nonpublic Information**

Rule 6.3. Every ETP Holder must establish, maintain and enforce written policies and procedures reasonably designed, taking into consideration the nature of such ETP Holder's business, to prevent the misuse of material, non-public information by such ETP Holder or persons associated with such ETP Holder. ETP Holders for whom the Corporation is the Designated Examining Authority (“DEA”) that are required, pursuant to Rule 4.5, to file SEC form X-17A-5 with the Corporation on an annual or more frequent basis must file contemporaneously with the submission for the calendar year end ITSFEA compliance acknowledgements stating that the procedures mandated by this Rule have been established, enforced and maintained. Any ETP Holder or associated person who becomes aware of a possible misuse of material, non-public information must promptly notify the Corporation’s Surveillance Department.

### *Commentary:*

.01 For purposes of Rule 6.3, conduct constituting the misuse of material, non-public information includes, but is not limited to, the following:

- A. Trading in any securities issued by a corporation, or in any related securities or related options or other derivative securities, while in possession of material, non-public information concerning that issuer; or
- B. Trading in a security or related options or other derivative securities, while in possession of material non-public information concerning imminent transactions in the security or related securities; or
- C. Disclosing to another person or entity any material, non-public information involving a corporation whose shares are publicly traded or an imminent transaction in an underlying security or related securities for the purpose of facilitating the possible misuse of such material, non-public information.

.02 The terms "associated person" and "person associated with an ETP Holder” mean anyone who directly is engaged in the ETP Holder’s trading-related activities, including general partners, officers, directors, managers (or any person occupying a similar status or performing similar functions), any person directly or indirectly controlling, controlled by, or under common control with an ETP Holder or any employee of the ETP Holder.

For the purposes of this Rule, the term “employee” includes every person who is compensated directly or indirectly by the ETP Holder for the solicitation or handling of business in securities, including individuals trading securities for the account of the ETP Holder, whether such securities are dealt in on an exchange or are dealt over-the-counter.

.03 Rule 6.3 provides that, at a minimum, each ETP Holder establish, maintain, and enforce the following policies and procedures:

- A. All associated persons must be advised in writing of the prohibition against the misuse of material, non-public information; and
- B. All associated persons of the ETP Holder must sign attestations affirming their awareness of, and agreement to abide by the aforementioned prohibitions. These signed attestations must be maintained for at least three years, the first two years in an easily accessible place; and
- C. Each ETP Holder must receive and retain copies of trade confirmations and monthly account statements for each account in which an associated person: has a direct or indirect financial interest or makes investment decisions. The activity in such brokerage accounts should be reviewed at least quarterly by the ETP Holder for the purpose of detecting the possible misuse of material, non-public information; and
- D. All associated persons must disclose to the ETP Holder whether they, or any person in whose account they have a direct or indirect financial interest, or make investment decisions, are an officer, director or 10% shareholder in a company whose shares are publicly traded. Any transaction in the stock (or option thereon) of such company shall be reviewed to determine whether the transaction may have involved a misuse of material non-public information.

Maintenance of the foregoing policies and procedures will not, in all cases, satisfy the requirements and intent of Rule 6.3; the adequacy of each ETP Holder's policies and procedures will depend upon the nature of such ETP Holder's business.

### **Rumors**

Rule 6.4. No ETP Holder or any participant therein shall circulate, in any manner, rumors of a character which might affect market conditions on the Corporation; provided, however, that this Rule shall not prohibit discussion of unsubstantiated information when its source and unsubstantiated nature are disclosed.

### **Manipulation**

Rule 6.5. No ETP Holder or any participant therein shall effect or induce the purchase or sale or otherwise effect transactions in any security for the purpose of creating or inducing a false, misleading or artificial appearance of activity in such security, or for the purpose of unduly or improperly influencing the market price of such security, or for the purpose of making a price which does not reflect the true state of the market in such security.

## **Front-running of Block Transactions**

Rule 6.6. An ETP Holder or associated person obtaining information of an immediate pending transaction or a transaction executed but not yet reported on any national securities exchange or association involving 5,000 shares or more of a security including an equivalent number of option contracts admitted to dealings on the Pacific Exchange, Inc., or securities underlying the options so admitted, shall not initiate or transmit an order in the security involved, or options relating to that security, through the facilities of the Corporation for any account in which he or she or his or her organization are participants until after the transaction appears on the ticker or is otherwise disclosed, in the case of orders pertaining to equities, or until two minutes after such disclosure, in the case of orders pertaining to options. Exceptions will require prior approval from the Corporation.

Rule 6.7. Reserved.

## **Excessive Trading**

Rule 6.8. No ETP Holder nor any participant therein shall effect through the facilities of the Corporation purchases or sales for any account in which such ETP Holder or participant therein is directly or indirectly interested, which purchases or sales are excessive in view of the financial resources of such ETP Holder or participant therein or in view of the market for such security.

*Commentary:*

.01 An ETP Holder who issues a commitment to trade from the Corporation through ITS or any other Application of the System shall, as a consequence thereof, be deemed to be initiating a purchase or a sale of a security through the facilities of the Corporation as referred to in this Rule.

## **Taking or Supplying Securities to Fill Customer's Order**

Rule 6.9(a). No ETP Holder who has accepted for execution, personally or through the ETP Holder or any participant therein, an order for the purchase of securities shall fill such order by selling such securities for any account in which the ETP Holder or any participant therein has a direct or indirect interest, or having so accepted an order for the sale of securities, shall fill such order by buying such securities for such an account, except as follows:

- (1) An ETP Holder who neglects to execute an order may be compelled to take for or supply from such ETP Holder's account the securities named in the order;

- (2) An ETP Holder, acting for another ETP Holder, may take or supply the securities named in the order provided the price is justified by the condition of the market and provided that the ETP Holder who gave the order shall directly, or through a broker authorized to act for him or her, after prompt notification, accept the trade;
- (3) An ETP Holder, acting as a broker, is permitted to report to his or her principals a transaction as made with himself or herself when he or she has offsetting orders from two principals to buy and to sell and not to give up;
- (4) A Market Maker in accordance with his or her duty to provide an orderly market in the securities in which he or she is registered may purchase or sell for principal account, such securities named in his or her firm's customer's order and record the transaction through the facilities of the Corporation provided that:
  - (i) the price is consistent with the market;
  - (ii) full disclosure to his or her customer is made on the confirmation of the transaction in a manner that defines the interest of the ETP Holder.
- (5) An ETP Holder may purchase or sell for principal account the securities named in his customer's order, and record the transaction through the facilities of the Corporation provided that:
  - (i) the price is consistent with the market;
  - (ii) full disclosure of the interest of the ETP Holder is made to his customer on the confirmation of the transaction.

### **ETP Holders Holding Options**

Rule 6.10(a). No ETP Holder shall initiate the purchase or sale through the facilities of the Corporation for his or her own account or for any account in which the ETP Holder or any participant therein is directly or indirectly interested, of any security admitted to dealings through the facilities of the Corporation in which he or she holds or has granted any put, call, straddle or option, or in which he or she has knowledge that the ETP Holder or any participant therein holds or has granted any put, call, straddle or option, unless such put, call, straddle, or option is issued by the Options Clearing Corporation and is immediately reported to the Corporation in accordance with such procedures as may be prescribed by the Corporation.

*Commentary:*

.01 An ETP Holder who issues a commitment to trade from the facilities of the Corporation through ITS or any other Application of the System shall, as a consequence thereof, be deemed to be initiating a purchase or a sale of a security through the facilities of the Corporation as referred to in this Rule.

(b) Each ETP Holder shall report to the Corporation such information as may be required with respect to any substantial option relating to securities admitted to dealings through the facilities of the Corporation in which such ETP Holder or any participant therein is directly or indirectly interested or of which such ETP Holder or any participant therein has knowledge by reason of transactions executed by or through such ETP Holder. The Corporation may disapprove of the connection of any ETP Holder or any participant therein with any such option which it shall determine to be contrary to the best interest or welfare of the Corporation or to be likely to create prices which will not fairly reflect market values.

### **Disclosure of Financial Arrangements**

Rule 6.11(a). An ETP Holder who enters into a financial arrangement with any other person or entity shall disclose to the Corporation the identity of such person or entity and the terms of the arrangement. For the purposes of this rule, a financial arrangement is defined as:

- (1) the direct financing of an ETP Holder's dealings upon the Corporation; or
- (2) any direct equity investment or profit sharing arrangement;
- (3) any consideration over the amount of \$5,000.00, including, but not limited to, gifts, loans, annual salaries or bonuses.

(b) ETP Holders with financial arrangements must submit to the Corporation notification of the initiation, modification or termination of such financial arrangements in a form, time and manner approved by the Corporation within ten (10) business days of the effective date of such arrangements or within such shorter period of time as the Corporation may require. Failure to disclose the terms of such financial arrangements to the Corporation may result in disciplinary action.

### **Joint Accounts**

Rule 6.12(a). No ETP Holder shall, without the prior approval of the Corporation, initiate the purchase or sale through the facilities of the Corporation of any security admitted to dealings through the facilities of the Corporation for any account in which the ETP Holder or any participant therein is directly or indirectly interested with any person other than such ETP Holder or participant therein.

The provisions of this rule shall not apply to any purchase or sale (1) by any ETP Holder for any joint account maintained solely for effecting bona fide domestic or foreign arbitrage transactions or (2) by a Market Maker for any joint account in which he or she is expressly permitted to have an interest or participation by this Rule.

*Commentary:*

.01 An ETP Holder who issues a commitment to trade through the facilities of the Corporation through ITS or any other Application of the System shall, as a consequence thereof, be deemed to be initiating a purchase or a sale of a security through the facilities of the Corporation as referred to in this Rule.

(b) *Reporting.* No ETP Holder nor any participant therein shall directly or indirectly hold any interest or participation in any substantial joint account for buying or selling any security through the facilities of the Corporation, unless such joint account is reported to and not disapproved by the Corporation. Such reports, in form prescribed by the Corporation, shall be filed with the Corporation before any transaction is completed through the facilities of the Corporation for such joint account.

The Corporation shall require weekly reports, in a form prescribed by the Corporation, to be filed with it with respect to every substantial joint account for buying or selling any specific security on the Corporation and with respect to every joint account which actively trades in any security on the Corporation in which any ETP Holder or participant therein holds any interest or participation or of which such ETP Holder or participant therein has knowledge by reason of transactions executed by or through such ETP Holder or participant therein; provided, however, that this paragraph shall not apply to joint accounts specifically permitted by this Rule.

In the event the requirements hereof should be applicable to a security also dealt in on another national securities exchange having requirements substantially equivalent hereto and an ETP Holder is a member or member firm of such other exchange and complies with such requirements of such other exchange, then such ETP Holder need not comply with the reporting provisions hereof.

### **Disciplinary Action By Other Organizations**

Rule 6.13. Every ETP Holder shall promptly notify the Corporation in writing of any disciplinary action, including the basis therefore, taken by any national securities exchange or association, clearing corporation, commodity futures market or government regulatory body against the ETP Holder or its associated persons, and shall similarly notify the Corporation of any disciplinary action taken by the ETP Holder itself against any of its associated persons involving suspension, termination, the withholding of commissions or imposition of fines in excess of \$2,500.00, or any other significant limitation on activities.

## **Officers and Employees Restricted**

Rule 6.14(a). Every salaried officer or employee of the Corporation and every salaried officer or employee of any corporation in which the Corporation owns the majority of the stock shall report promptly to the Corporation every purchase or sale for his own account or the account of others of any security which is the underlying security of any option contract admitted to dealings on the Corporation.

(b) No salaried officer or employee of the Corporation or salaried officer or employee of any corporation in which the Corporation owns the majority of the corporate stock may purchase or sell for his own account or for the account of others any option contract which entitles the purchaser to purchase or sell any security described in paragraph (a) of Rule 6.14.

## **Miscellaneous Prohibitions**

Rule 6.15. No ETP Holder or any participant therein shall:

(a) Directly or indirectly participate in or have any interest in the profits of a manipulative operation, or knowingly manage or finance a manipulative operation. For the purpose of this paragraph, (A) any pool, syndicate or joint account, whether in corporate form or otherwise, organized or used intentionally for the purpose of unfairly influencing the market price of any security, by means of options or otherwise, and for the purpose of making a profit thereby, shall be deemed to be a manipulative operation; (B) the soliciting of subscriptions to any such pool, syndicate or joint account, or the accepting of discretionary orders from any such pool, syndicate or joint account, shall be deemed to be managing a manipulative operation; and (C) the carrying on margin of either a “long” or a “short” position in securities for, or the advancing of credit through loans of money or securities to, any such pool, syndicate or joint account, shall be deemed to be financing a manipulative operation.

(b) Participate in a prearranged trade. An offer to sell coupled with an offer to buy back at the same or at an advanced price, or the reverse, is a prearranged trade and is prohibited. This provision applies both to transactions in the unit of trading and in lesser or greater amounts.

## **Trading Ahead of Customer Limit Orders**

Rule 6.16(a) No ETP Holder may accept and hold an unexecuted limit order from its customer (whether its own customer or a customer of another ETP Holder) and continue to trade on the Corporation the subject security for its own account at prices that would satisfy the customer’s limit order, without executing that limit order; provided, however, that an ETP Holder may negotiate specific terms and conditions applicable to the acceptance of limit orders only with respect to limit orders that are:

- (1) for institutional customer accounts, where such account is defined as the account of:
  - (A) a bank, savings and loan association, insurance company, or registered investment company;
  - (B) an investment adviser registered either with the Securities and Exchange Commission under Section 203 of the Investment Advisers Act of 1940 or with a state securities commission (or agency or office performing like functions); or
  - (C) any other entity (whether a natural person, corporation, partnership, trust or otherwise) with total assets of at least \$50 million; or
- (2) 10,000 shares or more, unless such orders are less than \$100,000 in value.

(b) Paragraph (a) of this Rule shall not apply to a customer limit order if the limit order is marketable at the time it is received by the ETP Holder; provided, however, if the limit order was marketable when received and then becomes non-marketable, once the limit order becomes non-marketable, it becomes subject to the prohibitions of paragraph (a) of this Rule.

(c) Nothing in this Rule requires ETP Holders to accept limit orders from customers.

(d) For the purposes of this Rule, an ETP Holder that controls or is controlled by another ETP Holder shall be considered a single entity, absent appropriate information barriers, so that if a customer's limit order is accepted by one affiliate and forwarded to another affiliate for execution, the firms are considered a single entity.