

Rule 8

Trading of Certain Equity Derivatives

Section 1. Currency and Index Warrants

General

Rule 8.1. Rule 8 is applicable only to index warrants and, where stated, to currency warrants and currency index warrants. Except to the extent that specific provisions of Rule 8 govern, or unless the context otherwise requires, the provisions of the Bylaws and Rules and procedures of the Corporation shall be applicable to trading of the index warrants, currency warrants and currency index warrants on the Corporation.

Definitions

Rule 8.2(a). The term “currency index group” means a group of currencies each of whose inclusion and relative representation in the group is determined by its inclusion and relative representation in a currency index.

(b) The term “currency index warrant” means a warrant on a currency index group listed pursuant to Rule 8.3.

(c) The term “currency warrant” means a warrant on a currency index group listed pursuant to Rule 8.3. The term “cross currency” means the relationship between any two non-U.S. currencies.

(d) The term “foreign currency warrants” shall mean instruments that are direct obligations of the issuing company, either exercisable throughout their life (i.e., American style) or exercisable only on their expiration date (i.e., European style), entitling the holder thereof to a cash settlement in U.S. dollars to the extent that the value of the underlying foreign currency has declined below (in the case of a put warrant) or increased above (in the case of a call warrant) the pre-stated cash settlement value of the underlying foreign currency. The term “foreign currency warrants” shall also include cross-rate currency warrants.

(e) The term “index warrants” means instruments that are direct obligations of the issuing company, either exercisable throughout their life (i.e., American style) or exercisable only on their expiration date (i.e., European style), entitling the holder to a cash settlement in U.S. dollars to the extent that the index has declined below (for put warrant) or increased above (for a call warrant) the pre-stated cash settlement value of the index. Index warrants may be based on either foreign or domestic indexes.

(f) The term “stock index group” means a group of stocks each of whose inclusion and relative representation in the group is determined by its inclusion and relative representation in a stock index.

(g) The term “stock index warrant” means a warrant on a stock index group listed pursuant to Rule 8.3.

Listing of Currency and Index Warrants

Rule 8.3(a). The listing of currency and index warrant issues is considered on a case-by-case basis. Such warrant issues will be evaluated for listing against the following criteria:

- (1) *Size and Earnings of Warrant Issuer*—The warrant issuer will be expected to have a minimum tangible net worth in excess of \$250,000,000 and otherwise to exceed substantially the earnings requirements set forth in Rule 5.2(c) (Basic Listing Requirements). In the alternative, the warrant issuer will be expected: (A) to have a minimum tangible net worth of \$150,000,000 and otherwise to exceed substantially the earnings requirements set forth in Rule 5.2(c) (Basic Listing Requirements), and (B) not to have issued warrants where the original issue price of all the issuer's index and currency warrant offerings (combined with index and currency warrant offerings of the issuer's affiliates) listed on a national securities exchange or traded through the facilities of Nasdaq exceeds 25% of the warrant issuer's net worth.
- (2) *Term*—One to five years from date of issuance.
- (3) *Distribution/Market Value*—Minimum public distribution of 1,000,000 warrants together with a minimum of 400 public holders, and an aggregate market value of \$4,000,000.
- (4) *Cash Settlement*—The warrants will be cash settled in U.S. dollars.
- (5) *A.M. Settlement*—The terms of stock index warrants for which 25% or more of the value of the underlying index is represented by securities that are traded primarily in the United States must provide that opening prices of the stocks comprising the index will be used to determine (A) the final settlement value (i.e., the settlement value for warrants that are exercised at expiration) and (B) the settlement value for such warrants that are exercised on either of the two business days preceding the day on which the final settlement value is to be determined.
- (6) *Automatic Exercise*—All currency and index warrants must include in their terms provisions specifying: (A) the time by which all exercise notices must be submitted, and (B) that all unexercised warrants that are in the money will be automatically exercised on

their expiration date or on or promptly following the date on which such warrants are delisted by the Corporation (if such warrant issue has not been listed on another organized securities market in the United States.)

- (7) *Foreign Country Securities*—Foreign Country Securities or American Depository Receipts (“ADRs”) thereon that: (A) are not subject to a comprehensive surveillance agreement, and (B) have less than 50% of their global trading volume (in dollar value) within the United States, shall not, in the aggregate, represent more than 20% of the weight of the index, unless such index is otherwise approved for warrant or option trading.
- (8) *Changes in Number of Warrants Outstanding*—The Corporation expects that issuers of stock index warrants either will make arrangements with warrant transfer agents to advise the Corporation immediately of any change in the number of warrants outstanding due to the early exercise of such warrants or will provide this information themselves. With respect to stock index warrants for which 25% or more of the value of the underlying index is represented by securities traded primarily in the United States, such notice shall be filed with the Corporation no later than 1:30 p.m. Pacific Time, on the date when the settlement value for such warrants is determined. Such notice shall be filed in such form and manner as may be prescribed by the Corporation from time to time.

Account Approval

Rule 8.4. No ETP Holder shall accept an order from a customer to purchase or sell a stock index, currency index or currency warrant unless the customer's account has been approved for options trading pursuant to Rule 9.18(b).

Suitability

Rule 8.5. The provisions of Rule 9.18(c) shall apply to recommendations in stock index, currency index and currency warrants and the term “option” as used therein shall be deemed for purposes of this Rule to include such warrants.

Discretionary Accounts

Rule 8.6. Rule 9.6(a) shall not apply to customer accounts insofar as an ETP Holder exercises discretion to trade in stock index, currency index and currency warrants, and any such account shall instead be subject to the provisions of Rule 9.18(e) with respect to such trading. For purposes of this Rule, the term “option” as used in Rule 9.18(e) shall be deemed to include such warrants.

Supervision of Accounts

Rule 8.7. Rule 9.18(d) shall apply to all customer accounts of an ETP Holder in which transactions in stock index, currency index or currency warrants are effected. The term “option” as used in Rule 9.18(d) shall be deemed to include such warrants.

Customer Complaints

Rule 8.8. Rule 9.18(1) shall apply to all customer complaints received by an ETP Holder regarding stock index, currency index or currency warrants. The term “options” as used in Rule 9.18(1) shall be deemed to include such warrants.

Prior Approval of Certain Communications to Customers

Rule 8.9(a) No ETP Holder or person associated with an ETP Holder shall utilize any advertisement, educational material, sales literature or other communication to any customer or member of the public concerning stock index, currency index or currency warrants that:

- (1) contains any untrue statement or omission of a material fact or is otherwise false or misleading;
- (2) contains promises of specific results, exaggerated or unwarranted claims, opinions for which there is no reasonable basis or forecasts of future events that are unwarranted or that are not clearly labeled as forecasts; or
- (3) contains hedge clauses or disclaimers that are not legible, that attempt to disclaim responsibility for the content of such literature or for opinions expressed therein, or that are otherwise inconsistent with such communications.

(b) All advertisements, sales literature and educational material issued by an ETP Holder to any customer or member of the public pertaining to stock index, currency index or currency warrants shall comply with the requirements set forth in the Commentaries to Rule 9.28. For purposes of this Rule, the term “option” as used in such Commentaries shall be deemed to include such warrants, and the term “The Options Clearing Corporation” as used in such Commentaries shall be deemed to mean the issuer(s) of such warrants.

(c) All advertisements, sales literature (except completed worksheets) and educational materials issued by an ETP Holder to any customer or member of the public pertaining to stock index, currency index or currency warrants shall be approved in advance by a Compliance Registered Options Principal or designee thereof. Copies of such advertisements, literature or materials, together with the names of the persons who

prepared them, the names of the persons who approved them and, in the case of sales literature, the source of any recommendations contained therein, shall be retained by the ETP Holder and be kept in an easily accessible place for examination by the Corporation for a period of three years.

(d) In addition to the approval required by subsection (c) of this Rule, every advertisement and all educational material of an ETP Holder pertaining to stock index, currency index and currency warrants shall be submitted to the Corporation at least ten days prior to use (or such shorter time as the Corporation may allow in particular instances) for approval and, if changed or expressly disapproved by the Corporation, shall be withheld from circulation until any changes specified by the Corporation have been made or, in the event of disapproval, until such material has been resubmitted for, and has received, Corporation approval. The requirements of this paragraph shall not be applicable to:

- (1) advertisements or educational material submitted to another self-regulatory organization having comparable standards pertaining to such advertising or educational material; or
- (2) advertisements in which the only reference to stock index, currency index or currency warrants is contained in a listing of services of an ETP Holder.

(e) *Definitions.* For purposes of this Rule 8.9, the following definitions shall apply:

- (1) The term “advertisement” shall include any sales material that reaches a mass audience through public media such as newspapers, periodicals, magazines, radio, television, telephone recordings, motion pictures, audio or video devices, telecommunications devices, billboards, signs or through written sales communications to customers or the public.
- (2) The term “educational material” shall include any explanatory material distributed or made generally available to customers or the public that is limited to information describing the general nature of the stock index, currency index or currency warrant markets or one or more strategies.
- (3) The term “sales literature” shall include any written communication (not defined as an “advertisement” or as “educational material”) distributed or made generally available to customers or the public that contains any analysis, performance report, projection or recommendation with respect to stock index, currency index or currency warrants, underlying indexes or market conditions, any standard forms of worksheets, or any seminar text

that pertains to stock index, currency index or currency warrants and that is communicated to customers or the public at seminars, lectures or similar events.

Position Limits

Rule 8.10(a). Except with prior written approval of the Corporation in each instance, no ETP Holder shall effect for any account in which such ETP Holder has an interest or for the account of any partner, officer, director or employee thereof or for the account of any customer, a purchase or sale transaction (whether on the Corporation or on or through the facilities of, or otherwise subject to the rules of, another national securities exchange or national securities association) in a stock index warrant if the ETP Holder has reason to believe that as a result of such transaction the ETP Holder or partner, officer, director or employee thereof or customer would, acting alone or in concert with others, directly or indirectly, control an aggregate position in an index warrant issue, or in all warrants issued on the same stock index group, on the same side of the market, in excess of the following position limits:

- (1) As to index warrants overlying the same index with an initial offering price of \$10 or less, 15 million warrants; and
- (2) For stock index warrants with an initial issue price greater than ten dollars, positions in these warrants must be aggregated with positions in stock index warrants on the same index priced initially at or below ten dollars by dividing the original offering price of the index warrant price above ten dollars by ten and multiplying this number by the size of the index warrant position. For example, if an investor held 100,000 stock index warrants priced initially at \$20 per warrant, the size of this position for position limit purposes would be 200,000 or 100,000 times 20/10.

(b) Whenever the Corporation determines that a person or group of persons acting in concert holds or controls an aggregate position (whether long or short) in stock index warrants in excess of the applicable position limits established pursuant to paragraph (a) of this Rule 8.10, it may direct all ETP Holders carrying a position in stock index warrants for such person or persons to liquidate such position, as expeditiously as possible consistent with the maintenance of an orderly market, to the extent necessary to assure that such person or persons are in compliance with applicable position limits. Whenever such a directive is issued by the Corporation, no ETP Holder receiving notice thereof shall accept any order to purchase or sell any stock index warrants based on the same stock index for the account of the person or persons named in such directive, unless in each instance the Corporation provides its express approval therefor, or until such directive is rescinded.

Commentary:

.01 The Corporation will not approve any transaction or the carrying of any positions which would exceed the limits established pursuant to this Rule, except in highly unusual circumstances. Requests for such approval must be accompanied by a detailed statement of the facts justifying an exception to such position limits.

.02 The Corporation may establish higher position limits for Market Maker transactions than those applicable with respect to other accounts. Whenever a Market Maker reasonably anticipates that he or she may exceed such position limits in the performance of his or her Market Maker functions, he or she must consult with and obtain the prior approval of the regulatory staff.

Exercise Limits

Rule 8.11. Except with the prior approval of the Corporation in each instance, no ETP Holder shall exercise, for any account in which such ETP Holder has an interest, or for the account of any partner, officer, director or employee thereof, or, for the account of any customer, a long position in any stock index warrant dealt in on the Corporation if as a result thereof such ETP Holder or partner, officer, director or employee thereof or customer, acting alone or in concert with others, directly or indirectly, has or will have exercised within any five (5) consecutive business days aggregate long positions in the number of stock index warrants set forth in Rule 8.10. The Corporation may from time to time institute other limitations concerning the exercise of stock index warrants. All such exercise limitations are separate and distinct from any other exercise limitations imposed by the issuers of index warrants.

Trading Halts or Suspensions

Rule 8.12. Trading on the Corporation in any currency and index warrant shall be halted or suspended whenever trading in underlying securities whose weighted value represents more than 20%, in the case of a broad based index, and 10% for all other indices, of the index value is halted or is suspended. Trading in a currency or index warrant shall also be halted whenever the Corporation deems such action appropriate in the interests of a fair and orderly market or to protect investors. Among the factors that may be considered by the Corporation are the following:

- (i) all trading has been halted or suspended in the market that is the primary market for a plurality of the underlying stocks;
- (ii) the current calculation of the index derived from the current market prices of the stocks is not available; or

- (iii) other unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market are present.

Trading in currency or index warrants that have been the subject of a halt or suspension by the Corporation may resume if the Corporation determines that the conditions which led to the halt or suspension are no longer present, or that the interests of a fair and orderly market are best served by a resumption of trading.

Reporting of Warrant Positions

Rule 8.13(a). Each ETP Holder shall file with the Corporation a report with respect to each account in which the ETP Holder has an interest, each account of a partner, officer, director, or employee of such ETP Holder and each customer account, that has established an aggregate position (whether long or short) of 100,000 warrants covering the same underlying index, currency or currency index, combining for purposes of this Rule: (1) long positions in put warrants and short positions in call warrants, and (2) short positions in put warrants with long positions in call warrants. The report shall be in such form as may be prescribed by the Corporation and shall be filed no later than the close of business on the next day following the day on which the transaction or transactions requiring the filing of such report occurred. Whenever a report shall be required to be filed with respect to an account pursuant to this Rule, the ETP Holder filing the same file with the Corporation such additional periodic reports with respect to such account as the Corporation may from time to time prescribe. In computing reportable positions, warrants on a stock index shall not be aggregated with: (1) warrants on any other stock index, (2) options on any stock index or (3) options or warrants on any stock or group of stocks included in such index.

(b) In addition to the reports required by subsection (a) of this Rule, each ETP Holder shall report promptly to the Corporation any instance in which such ETP Holder has reason to believe that a person, acting alone or in concert with others, has exceeded or is attempting to exceed the position limits prescribed in Rule 8.10 or the exercise limits prescribed in Rule 8.11.

(c) All reports required by this Rule shall be filed with the Corporation in such manner and form as prescribed by the Corporation.

Section 2. Portfolio Depositary Receipts

Portfolio Depositary Receipts

Rule 8.100(a). Definitions.

- (1) *Portfolio Depositary Receipt*. The term “Portfolio Depositary Receipt” means a security (a) that is based on a unit investment trust (“Trust”) that holds the securities that comprise an index or portfolio underlying a series of Portfolio Depositary Receipts; (b)

that is issued by the Trust in a specified aggregate minimum number in return for a “Portfolio Deposit” consisting of specified numbers of shares of stock plus a cash amount; (c) that, when aggregated in the same specified minimum number, may be redeemed from the Trust which will pay to the redeeming holder the stock and cash then comprising the “Portfolio Deposit”; and (d) that pays holders a periodic cash payment corresponding to the regular cash dividends or distributions declared with respect to the component securities of the stock index or portfolio of securities underlying the Portfolio Depositary Receipts, less certain expenses and other charges as set forth in the Trust prospectus.

- (2) *Reporting Authority.* The term “Reporting Authority” in respect of a particular series of Portfolio Depositary Receipts means the Corporation, an institution (including the Trustee for a series of Portfolio Depositary Receipts), or a reporting service designated by the Corporation or by the exchange that lists a particular series of Portfolio Depositary Receipts (if the Corporation is trading such series pursuant to unlisted trading privileges) as the official source for calculating and reporting information relating to such series, including, but not limited to, any current index or portfolio value; the current value of the portfolio of securities required to be deposited to the Trust in connection with the issuance of Portfolio Depositary Receipts; the amount of any dividend equivalent payment or cash distribution to holders of Portfolio Depositary Receipts, net asset value, or other information relating to the creation, redemption or trading of Portfolio Depositary Receipts.

(b) *Applicability.* This Rule is applicable only to Portfolio Depositary Receipts. Except to the extent inconsistent with this Rule, or unless the context otherwise requires, the provisions of the Bylaws and all other Rules and policies of the Board of Directors are applicable to the trading on the Corporation of such securities. Portfolio Depositary Receipts are included within the definition of “security” or “securities” as such terms are used in the Bylaws and Rules of the Corporation.

(c) ETP Holders shall provide to all purchasers of a series of Portfolio Depositary Receipts a written description of the terms and characteristics of such securities, in a form approved by the Corporation, not later than the time a confirmation of the first transaction in such series is delivered to such purchaser. In addition, ETP Holders shall include such a written description with any sales material relating to a series of Portfolio Depositary Receipts that is provided to customers or the public. Any other written materials provided by an ETP Holder to customers or the public making specific reference to a series of Portfolio Depositary Receipts as an investment vehicle must include a statement in substantially the following form: “A circular describing the terms and characteristics of [the series of Portfolio Depositary Receipts] is available from your broker. It is recommended that you obtain and review such circular before

purchasing [the series of Portfolio Depositary Receipts]. In addition, upon request you may obtain from your broker a prospectus for [the series of Portfolio Depositary Receipts].”

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

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

(d) *Designation of an Index or Portfolio.* The trading of Portfolio Depositary Receipts based on one or more stock indexes or securities portfolios, whether by listing or pursuant to unlisted trading privileges, shall be considered on a case-by-case basis. The Portfolio Depositary Receipts based on each particular stock index or portfolio shall be designated as a separate series and shall be identified by a unique symbol. The stocks that are included in an index or portfolio on which Portfolio Depositary Receipts are based shall be selected by the Corporation or by such other person as shall have a proprietary interest in and authorized use of such index or portfolio, and may be revised from time to time as may be deemed necessary or appropriate to maintain the quality and character of the index or portfolio.

(e) *Initial and Continued Listing and/or Trading.* A Trust upon which a series of Portfolio Depositary Receipts is based will be traded on the Corporation, whether by listing or pursuant to unlisted trading privileges, subject to the following criteria:

- (1) Commencement of Trading—For each Trust, the Corporation will establish a minimum number of Portfolio Depositary Receipts required to be outstanding at the time of commencement of trading on the Corporation.
- (2) Continued Trading—Following the initial twelve-month period following formation of a Trust and commencement of trading on the Corporation, the Corporation will consider the suspension of trading in or removal from listing of or termination of unlisted trading privileges for a Trust upon which a series of Portfolio Depositary Receipts is based under any of the following circumstances:
 - (A) if the Trust has more than 60 days remaining until termination and there are fewer than 50 record and/or beneficial holders of Portfolio Depositary Receipts for 30 or more consecutive trading days; or

- (B) if the value of the index or portfolio of securities on which the Trust is based is no longer calculated or available; or
- (C) if such other event shall occur or condition exists which in the opinion of the Corporation, makes further dealings on the Corporation inadvisable.

Upon termination of a Trust, the Corporation requires that Portfolio Depositary Receipts issued in connection with such Trust be removed from Corporation listing or have their unlisted trading privileges terminated. A Trust may terminate in accordance with the provisions of the Trust prospectus, which may provide for termination if the value of securities in the Trust falls below a specified amount.

(3) Term—The stated term of the Trust shall be as stated in the Trust prospectus. However, a Trust may be terminated under such earlier circumstances as may be specified in the Trust prospectus.

(4) Trustee—The trustee must be a trust company or banking institution having substantial capital and surplus and the experience and facilities for handling corporate trust business. In cases where, for any reason, an individual has been appointed as trustee, a qualified trust company or banking institution must be appointed co-trustee.

(5) Voting—Voting rights shall be as set forth in the Trust prospectus. The trustee of a Trust may have the right to vote all of the voting securities of such Trust.

Limitation of Liability of the Corporation

Rule 8.100(f). Neither the Corporation, the Reporting Authority nor any agent of the Corporation shall have any liability for damages, claims, losses or expenses caused by any errors, omissions, or delays in calculating or disseminating any current index or portfolio value, the current value of the portfolio of securities required to be deposited to the Trust; the amount of any dividend equivalent payment or cash distribution to holders of Portfolio Depositary Receipts; net asset value; or other information relating to the creation, redemption or trading of Portfolio Depositary Receipts, resulting from any negligent act or omission by the Corporation, or the Reporting Authority, or any agent of the Corporation, or any act, condition or cause beyond the reasonable control of the Corporation or its agent, or the Reporting Authority, including, but not limited to, an act of God; fire; flood; extraordinary weather conditions; war; insurrection; riot; strike; accident; action of government; communications or power failure; equipment or software malfunction; or any error, omission or delay in the reporting of transactions in one or more underlying securities. The Corporation makes no warranty, express or implied, as to results to be obtained by any person or entity from the use of Portfolio Depositary

Receipts or any underlying index or data included therein and the Corporation makes no express or implied warranties, and disclaims all warranties of merchantability or fitness for a particular purpose with respect to Portfolio Depositary Receipts or any underlying index or data included therein. This limitation of liability shall be in addition to any other limitation contained in the Corporation's Bylaws and Rules.

Nasdaq-100 Index

Rule 8.100(g). The Nasdaq Stock Market, Inc. ("Nasdaq") has licensed the use of the Nasdaq-100 Index® for certain purposes in connection with trading in a particular series of Portfolio Depositary Receipts on the Corporation (Nasdaq-100 SharesSM). Nasdaq and their affiliates do not guarantee the accuracy and/or completeness of the Nasdaq-100 Index or any data included therein. Nasdaq, the Corporation and their affiliates make no warranty, express or implied, as to results to be obtained by any person or entity from the use of the Nasdaq-100 Index or any data included therein in connection with the rights licensed or for any other use. Nasdaq, the Corporation and their affiliates make no express or implied warranties, and disclaim all warranties of merchantability or fitness for a particular purpose with respect to the Nasdaq-100 Index or any data included therein. Without limiting any of the foregoing, in no event shall Nasdaq, the Corporation and their affiliates have any liability for any lost profits or special, punitive, incidental, indirect or consequential damages, even if notified of the possibility of such damages. In addition, Nasdaq, the Corporation and their affiliates shall have no liability for any damages, claims, losses or expenses caused by any errors or delays in calculating or disseminating the Nasdaq-100 Index.

Commentary:

.01 The Corporation will trade, pursuant to unlisted trading privileges, Portfolio Depositary Receipts based on the Standard and Poor's Corporation's S&P 500 Index, known as SPDRs.

.02 The Corporation will trade, pursuant to unlisted trading privileges, Portfolio Depositary Receipts based on the S&P MidCap 400 Index, known as MidCap SPDRs.

.03 The Corporation will trade, pursuant to unlisted trading privileges, Portfolio Depositary Receipts based on the Nasdaq-100 Index, known as Nasdaq-100.

Rule 9
Conducting Business with the Public

Section 1. Conducting Business with the Public

Register with the Corporation

Rule 9.1(a). Each office of an ETP Holder shall be registered with the Corporation.

Joint Quarters

Rule 9.1(b). ETP Holders may not occupy joint quarters with anyone other than another ETP Holder without the prior and continuing approval of the Corporation.

Office Supervision

- Rule 9.1(c)
- (1) Each office of an ETP Holder shall be under the supervision and control of such ETP Holder to assure compliance with applicable securities laws and regulations and Rules of the Corporation.
 - (2) The ETP Holders and Allied Persons thereof shall designate from among their group a person or persons to assume authority and responsibility for supervision of the firm's activities and establishment and maintenance of appropriate procedures and follow-up and review to determine that such control and supervision is maintained.

Rule 9.1(d). ETP Holders shall at all times have responsibility for the proper supervision and control of their registered employees and as provided in Rule 9.1(c) shall designate a principal of the firm to be responsible for the execution of such supervisory procedures.

Guarantees

- Rule 9.1(e)
- (1) No registered employee shall guarantee the payment of the debit balance in a customer's account to his or her employer or to any other creditor carrying such account without the prior consent of the Corporation.
 - (2) No registered employee shall represent to any customer that he or she will personally guarantee the account of such customer.
 - (3) No registered employee shall guarantee any customer against losses in his or her account, or in any way represent to any customer that he or she or his or her employer will guarantee the customer against such losses.

Sharing Profits—Losses

Rule 9.1(f). No registered employee shall directly or indirectly take or receive a share in the profits of any customer's account or share in any losses sustained in any such account.

Compensation Rebate

Rule 9.1(g). No registered employee shall directly or indirectly, rebate to any person, firm or corporation any part of the compensation he or she may receive as a registered employee; nor shall he or she pay such compensation or any part thereof, directly or indirectly, to any person, firm, or corporation, as a bonus, commission, fee or other consideration, for business sought or produced for him or her or any ETP Holder.

Registered Employee Compensation

Rule 9.1(h). No registered employee shall, directly or indirectly, take, accept or receive, from any person, firm, corporation or association, other than the ETP Holder with whom he or she is registered, compensation of any nature, as a bonus, commission fee, gratuity or other consideration, in connection with any securities transactions, unless the provisions of Rule 4.3(b) have been previously complied with.

Diligence As To Accounts

Rule 9.2(a). Every ETP Holder, through a general partner, a principal executive officer or a designated authorized person, shall use due diligence to learn the essential facts relative to every customer, every order, every account accepted or carried by such ETP Holder and every person holding power of attorney over any account accepted or carried by such ETP Holder.

Account Supervision

Rule 9.2(b). Every ETP Holder shall supervise diligently all accounts accepted or carried by such firm and shall exercise diligence in supervising the business practices of its registered persons and otherwise licensed persons. An ETP Holder shall adopt appropriate procedures for the opening and the maintaining of accounts, including the maintaining of records prescribed by the Bylaws and Rules of the Corporation and by the rules and regulations of the Securities and Exchange Commission, which shall include:

- (1) Maintaining adequate records to provide for the supervision of accounts;
- (2) Approval of all new accounts by an individual designated for such purpose;

- (3) Approving all transactions and correspondence with or for any account of the registered employee to be evidenced in writing as a permanent record of the firm;
- (4) Reviewing accounts periodically for any irregularities or abuses;
- (5) Following up and reviewing the activities of all offices, including at least an annual inspection of each office of the firm.

Customer Records

Rule 9.2(c). The ETP Holder shall keep and preserve records concerning all accounts of customers in such form and substance as to disclose at least the following information:

- (1) Name and address of customer;
- (2) If customer is a natural person:
 - (A) Occupation of customer and name of employer,
 - (B) Age of customer (or approximate age),
 - (C) Citizenship of customer;
- (3) Taxpayer ID Number;
- (4) Signature of registered employee introducing the customer;
- (5) Signature of a general partner, a principal executive officer or an authorized person who approved the opening of the account prior to or promptly after the completion of any transaction for the account of or with a customer; provided, however, that in the case of branch offices, the opening of an account for a customer may be approved by the manager of such branch office but the action of such branch office manager shall within a reasonable time be approved by a general partner, a principal executive officer or an authorized person designated as having such authority by the general partner or by the principal executive officer who has the overall authority and responsibility for account supervision and control. The general partner, principal executive officer or authorized person approving the opening of the account shall, prior to giving his or her approval, be personally informed as to the essential facts relative to the customer and to the nature of and the investment objectives of the proposed account and shall indicate his or her approval in writing.

Commentary:

.01 In the case of a margin account carried by an ETP Holder for a non-ETP corporation, definite knowledge should be had to the effect that the non-ETP corporation has the right under its charter and by-laws to engage in margin transactions for its own account and that the persons from whom orders and instructions are accepted have been duly authorized by the corporation to act on its behalf. It is advisable in each such case for the carrying firm to have in its possession a copy of the corporate charter, by-laws and authorizations. Where it is not possible to obtain such documents, an Allied Person in the ETP Holder carrying the account should prepare and sign a memorandum for its files indicating the basis upon which he or she believes that the corporation may properly engage in margin transactions and that the persons acting for the corporation have been duly authorized to do so.

In the case of a cash account carried for a non-ETP corporation, the carrying ETP Holder should assure itself through a general partner or an officer who is a holder of voting stock that persons entering orders and issuing instructions with respect to the account do so upon the proper authority.

.02 When an agency account is carried by an ETP Holder its files should contain the name of the principal for whom the agent is acting and written evidence of the agent's authority.

.03 When Estate and Trustee accounts are involved an ETP Holder should obtain counsel's advice as to the documents which should be obtained.

Employee Accounts

Rule 9.3(a). No ETP Holder shall, without the prior consent of the employer, make:

- (1) A cash or margin transaction or carry a margin account in securities or in commodities in which an employee of the Corporation, or of any ETP Holder, is directly or indirectly interested. Duplicate reports and statements shall be sent promptly to the employer.
- (2) A margin transaction or carry a margin account in securities or in commodities in which an employee of a bank, trust company, savings institution, insurance company or any individual or firm engaged in the business of dealing in securities, is directly or indirectly interested.

This Rule applies to all employees of insurance companies regardless of whether they are compensated on a salary or

commission basis. However, it is not considered applicable to independent insurance agents.

A person who is clearly designated by the charter or by-laws of a bank, trust company, insurance company, etc., as an officer of such institution is not considered an “employee” for the purpose of this Rule.

ETP Holder and Allied Person Accounts

Rule 9.3(b). No ETP Holder shall carry an account for another ETP Holder or Allied Person of another ETP Holder without the prior written consent of another person who is an ETP Holder or Allied Person of such other firm.

Duplicate reports and statements shall be sent to such general partner or an officer who is a holder of voting stock designated in such consent unless their submission is waived in writing and a permanent record of such waiver is retained by both the carrying firm and the consenting firm.

Proxies Voting

Rule 9.4. No ETP Holder shall sign or give a proxy to vote any stock registered in the name or under control of such ETP Holder unless (a) the ETP Holder is the actual owner thereof, (b) pursuant to the written instructions of such actual owner, or (c) pursuant to the rules of another national securities exchange to which he or she or his or her firm is responsible.

Solicitation Expense

Rule 9.5. Any expense incident to the securing of proxy instructions shall be charged by the ETP Holder to the party or parties requesting their solicitation.

Discretion as to Customers’ Accounts

Rule 9.6(a). No ETP Holder shall permit any person employed by such ETP Holder or by any other ETP Holder to exercise discretion in the handling of a transaction for a customer of such ETP Holder, and no ETP Holder or any participant therein shall delegate to any such employee any discretionary power vested by a customer in such ETP Holder unless in either case the prior written authorization of the customer has been received; and if such discretionary authority runs, directly or by redelegation, to an employee of another ETP Holder, the carrying ETP Holder must obtain the prior written consent of the employer of the individual authorized to exercise discretion. An ETP Holder or Allied Person of the carrying ETP Holder shall approve and initial each discretionary order entered by an employee of such ETP Holder of another ETP Holder on the day the order is entered. The provisions of this Rule shall not apply to discretion as to the price at which or the time when an order given by a customer for the purchase or sale of a definite amount of a specified security shall be executed.

Records of Discretionary Accounts

Rule 9.6(b). The ETP Holder shall keep and preserve records of all customer discretionary accounts pursuant to the provisions of this Rule which shall include the signature of the individual who may exercise discretion in handling the account. All such accounts shall be reviewed by a general partner or principal executive officer at frequent intervals.

Marking Discretionary Orders

Rule 9.6(c). Every ETP Holder shall identify each discretionary order by appropriately marking each discretionary order accordingly.

Pledging Customer Securities

Rule 9.7(a). An agreement between an ETP Holder and a customer authorizing the ETP Holder to pledge securities carried for the account of a customer or to lend such securities does not justify pledging or loaning more of such securities than is fair and reasonable in view of the indebtedness of said customer to said ETP Holder.

Use of Customer Securities

Rule 9.7(b). The improper use of customer fully-paid and excess margin securities is inconsistent with just and equitable principles of trade, and no form of general agreement between an ETP Holder and a customer shall warrant the use or lending of such securities by the ETP Holder.

Customer Protection—Reserves and Custody of Securities

Rule 9.7(c). An ETP Holder shall obtain custody and control of securities and maintain reserves as prescribed by Rule 15c3-3 promulgated under the Securities Exchange Act of 1934.

Agreements for Use of Customer Securities

Rule 9.7(d). No ETP Holder shall lend, either to itself as a broker-dealer or to others, securities which are held on margin for a customer and which are eligible to be pledged or loaned, unless such ETP Holder shall first have obtained a separate written authorization from such customer permitting the loaning of such securities by the ETP Holder.

Business Connections

Rule 9.8. No ETP Holder shall be directly or indirectly interested in or associated in business with, or have his or her office directly or indirectly connected by public or

private wire or other method or contrivance with, or transact any business directly or indirectly with or for

- (a) Any bucket shop; or
- (b) Any organization, firm or individual making a practice of dealing in market quotations; or
- (c) Any organization, firm or individual engaged in purchasing or selling securities for customers making a practice of taking the side of the market opposite to the side taken by customers.

Margin Agreements

Rule 9.9. No ETP Holder shall hypothecate or re-hypothecate customer securities unless such ETP Holder has obtained from its customer an executed margin agreement in a form satisfactory to the Corporation.

Assuming Losses

Rule 9.10. No ETP Holder shall assume for his or her own account or for the account of his or her firm, a contract made for a customer after a loss to the customer has been established or ascertained, unless the contract was made by mistake or unless approval of the Corporation has first been obtained.

Confirmations

Rule 9.11. No ETP Holder shall address confirmations, statements or other communications to a non-ETP customer in care of a person holding power of attorney over the customers' account unless either (a) the customer has instructed the ETP Holder in writing to send such confirmations, statements or other communications in care of such person, or (b) duplicate copies are sent to the customer at some other address designated in writing by him or her, or at the address of any ETP Holder, or in care of a partner or employee of any firm.

Upon written request, the Corporation may waive these requirements.

COD Orders—Partial Delivery

Rule 9.12(a). No ETP Holder shall accept an order from a customer pursuant to an arrangement whereby payment for securities purchased or delivery of securities sold is to be made to or by an agent of the customer unless all of the following procedures are complied with:

- (1) The ETP Holder shall have received from the customer prior to or at the time of accepting the order, the name and address of the

agent and the name and account number of the customer on file with the agent;

- (2) Each order accepted from the customer pursuant to such an arrangement has noted thereon the fact that it is a payment on delivery (POD) or collect on delivery (COD) transaction;
- (3) The ETP Holder delivers to the customer a confirmation, or all relevant data customarily contained in a confirmation with respect to the execution of the order, in whole or in part, not later than the close of business on the next business day after any such execution; and
- (4) The ETP Holder has obtained an agreement from the customer that the customer will furnish his or her agent instructions with respect to the receipt or delivery of the securities involved in the transaction promptly upon receipt by the customer of each confirmation, or the relevant data as to each execution, relating to such order (even though such execution represents the purchase or sale of only a part of the order), and that in any event the customer will assure that such instructions are delivered to his or her agent no later than:
 - (A) In the case of a purchase by the customer where the agent is to receive the securities against payment (COD), the close of business on the second business day after the date of execution of the trade as to which the particular confirmation relates; or
 - (B) In the case of a sale by the customer where the agent is to deliver the securities against payment (POD), the close of business on the first business day after the date of execution of the trade as to which the particular confirmation relates.
- (5) The customer or its agent shall utilize the facilities of a securities depository for the confirmation, acknowledgement, and book entry settlement of all depository eligible transactions.
 - (A) For the purpose of this Rule “securities depository” shall mean a clearing agency as defined in Section 3(a)(23) of the Securities Exchange Act of 1934 that is registered with the Securities and Exchange Commission pursuant to Section 17A(b)(2) of the Act.
 - (B) For the purpose of this Rule, “depository eligible transactions” shall mean transactions in those securities for

which confirmation, acknowledgement, and book entry settlement can be performed through the facilities of a securities depository as defined in Rule 9.12(a)(5)(A).

(b) The following transactions shall be exempt from the provisions of paragraph (a)(5) of this Rule:

- (1) Transactions that are to be settled outside of the United States;
- (2) Transactions wherein both an ETP Holder and its agent are not participants in a securities depository;
- (3) Transactions wherein both a customer and its agent are not participants in a securities depository.

Long Sales

Rule 9.13(a). For the purposes of effecting delivery within the time period required under regular settlement procedures:

- (1) Any sale of a security for a customer which is designated as a “long” sale may be effected only if:
 - (A) The customer is “long,” in good deliverable form, the security to be sold on the books of the selling ETP Holder, or
 - (B) The selling ETP Holder notes on the order ticket that
 - (i) it has received from the customer assurance that the security to be sold is placed or deposited, in good deliverable form, in such a manner as to be obtainable only by the customer by physical means other than the giving of instructions, and that the customer may be bought in with respect to the security within a time period which is reasonable in view of the circumstances, or
 - (ii) such security is on deposit, in good deliverable form, with a member of a registered securities exchange, a member of the NASD, any broker-dealer registered with the Securities and Exchange Commission or any organization subject to state or federal banking regulations and that instructions have been or are being forwarded to such depository to deliver such security against payment, or

- (2) the selling firm has available such security to lend to or has arranged to borrow such security for the customer, or
- (3) the customer presents to the selling ETP Holder, with proper instructions, a security convertible into or exchangeable for, or an option, warrant or right which entitles him or her to purchase, together with the necessary funds, prior to settlement date, the security to be sold.

Account Designation

Rule 9.14. Before any order for a customer of an ETP Holder is executed, including the case where an order is to be executed by the issuance of a commitment to trade through ITS or any other Application of the System, there shall be placed upon the order slip or other record the name or designation of the account for which such order is to be executed. No change in such account name or designation shall be made unless the change has been authorized by the ETP Holder or a partner, who shall, prior to giving his or her approval of such change, be personally informed of the essential facts relative thereto and shall indicate his or her approval of such change in writing on the order.

Statements of Account to Customers

Rule 9.15. Except with the permission of the Corporation, ETP Holders shall send their customers statements of account showing security and money positions and entries at least quarterly to all accounts having an entry, money or security position during the preceding quarter. (See also SEC Rule 15c3-2 concerning quarterly notices of free credit balances on statements.)

Statement or Notice on Interest

Rule 9.16. Each customer's statement or a separate notice enclosed with such statement shall disclose the annual rate of interest and the amount of interest charged as shown on such statement.

Books and Records

Rule 9.17. ETP Holders shall make and retain all the books and records prescribed by the Bylaws and Rules of the Corporation, the rules and regulations of the Securities and Exchange Commission and the constitution, rules and regulations of other regulatory or governmental bodies to which such ETP Holders are subject. Such books and records shall be retained for periods as prescribed and shall be made available for inspection by the Corporation.

Doing A Public Business In Options

Rule 9.18. Rule 9.18 shall be applicable to ETP Holders transacting business with the public in option contracts issued by the Options Clearing Corporation. Except to the extent that specific provisions of Rule 9.18 govern, or unless the context otherwise requires, the provisions of all other sections of this Rule shall be applicable to the conduct of accounts.

(a) Registration of Principals and Representatives.

No ETP Holder shall be approved to transact business with the public in option contracts, unless those persons associated with the ETP Holder who are designated as Options Principals or who are designated as Registered Representatives have been approved by and registered with the Corporation as such, pursuant to the provisions of Rule 9.26 and Rule 9.27, as appropriate.

(b) Opening of Accounts

No ETP Holder shall accept an order from a customer for the purchase or sale (writing) of an option contract unless the customer's account has been approved for options trading in accordance with the provisions of Rule 9.18.

- (1) Diligence in Opening Account—In approving a customer's account for options transactions, an ETP Holder shall exercise due diligence to learn the essential facts as to the customer and his or her investment objectives and financial situation, and shall make a record of such information which shall be retained in accordance with Rule 9.18(d). Based upon such information, the branch office manager or other Registered Options Principal shall approve in writing the customer's account for options transactions; provided, that if the branch office manager is not a Registered Options Principal, his or her approval shall within a reasonable time be confirmed by a Registered Options Principal.
- (2) Disclosure—At or prior to the time a customer's account is approved for options trading, the ETP Holder shall deliver to the customer a current Options Disclosure Document in accordance with the requirements of paragraph (g) of this Section.
- (3) Account Agreement—Within 15 days after a customer's account has been approved for options transactions an ETP Holder shall obtain from the customer a written agreement that (A) the customer is aware of and agrees to be bound by the Rules of the Corporation and the PCX Parent applicable to the trading of option contracts and the Rules of the Options Clearing Corporation and (B) the customer agrees not to violate, either alone or in concert

with others, the position limits or the exercise limits established by the PCX Parent.

- (4) **Verification of Customer Background and Financial Information—**The background and financial information upon which the account of every new customer that is a natural person has been approved for options trading, unless the information is included in the customer's account agreement, shall be sent to the customer for verification within fifteen (15) days after the customer's account has been approved for options transactions. A copy of the background and financial information on file with the ETP Holder shall also be sent to the customer for verification within fifteen (15) days after the ETP Holder becomes aware of any material change in the customer's financial situation.
- (5) **Options Disclosure Document to be Furnished—**At or prior to the time a customer's account is approved for options transactions, an ETP Holder shall furnish the customer with a current Options Disclosure Document in accordance with the requirements of Rule 9.18(g).
- (6) **Every ETP Holder transacting business with the public in uncovered options contracts shall develop, implement, and maintain specific written procedures governing the conduct of such business which shall include, but not be limited to, the following:**
 - (A) Specific criteria and standards to be used in evaluating the suitability of uncovered short options transactions for a particular customer;
 - (B) Specific procedures for approval of accounts engaged in writing uncovered short option contracts, including written approval of such accounts by a Registered Options Principal;
 - (C) Designation of the Senior Registered Options Principal and/or Compliance Registered Options Principal as the person responsible for approving accounts which do not meet the specific criteria and standard for writing uncovered short option transactions and for maintaining written records of the reasons for every account so approved;
 - (D) Establishment of specific minimum net equity requirements for initial approval and maintenance of customer uncovered option accounts; and

- (E) Requirements that customers approved for writing uncovered short options transactions be provided with a special written description of the risks inherent in writing uncovered short option transactions at or prior to the initial uncovered short options transaction. See Rule 9.18(g)(3).

Commentary:

.01 In fulfilling its obligations pursuant to paragraph (b)(1) of Rule 9.18 with respect to options customers that are natural persons, an ETP Holder shall seek to obtain the following information at a minimum (information shall be obtained for all participants in a joint account):

1. Investment objectives (e.g., safety of principal, income, growth, trading profits, speculation)
2. Employment status (name of employer, self-employed or retired)
3. Estimated annual income from all sources
4. Estimated net worth (exclusive of family residence)
5. Estimated liquid net worth (cash, securities, other)
6. Marital status; number of dependents
7. Age
8. Investment experience and knowledge (e.g., number of years, size, frequency and type of transaction) for options, stocks and bonds, commodities, other.

In addition, the customer's account records shall contain the following information, if applicable:

- a. Source or sources of background and financial information (including estimates) concerning the customer
- b. Discretionary trading authorization:
agreement on file
name, relationship to customer and experience of person holding trading authority
- c. Date Options Disclosure Document furnished to customer

- d. Nature and type of transaction for which account is approved (e.g., buying, covered writing, uncovered writing, spreading, discretionary transactions)
- e. Name of registered representative
- f. Name of ROP approving account; date of approval
- g. Dates of verification of currency of account information.

The ETP Holder should consider utilizing a standard account approval form so as to ensure the receipt of all the required information.

.02 Refusal of a customer to provide any of the information called for in Commentary .01 shall be so noted on the customer's records at the time the account is opened. Information provided shall be considered together with other information available in determining whether and to what extent to approve the account for options transactions.

.03 The requirement of paragraph (b)(4) of Rule 9.18 for the initial and subsequent verification of customer background and financial information may be satisfied by sending to the customer the information required in Items 1 through 6 of Commentary .01 above as contained in the ETP Holder's records and providing the customer with an opportunity to correct or complete the information. In all cases, absent from the customer to the contrary, the information will be deemed to be verified.

.04 Before approving an account of a trust, pension fund, profit sharing plan or other fiduciary for options trading, an ETP Holder shall be satisfied that the instruments under which the fiduciary is acting permit options trading.

.05 Before approving an account with respect to which trading authorization has been granted to a third person who is not an employee of the ETP Holder for options trading, the ETP Holder shall obtain written evidence of the agent's authority to act and that such authority specifically includes options trading.

.06 Before approving an account of an investment partnership or an investment club for options trading, the ETP Holder shall obtain written evidence of the authority of the person signing the agreement required by this paragraph to sign such agreement on behalf of such partnership or club, as the case may be, and that such authority specifically includes options trading. Information shall also be obtained with respect to any current long or short option positions of the respective partners or member of the partnership or investment club.

.07 For purposes of Rule 9.18(b) (Opening of Accounts), Rule 9.18(d) (Supervision of Account), and Rule 9.18(g) (Delivery of Options Disclosure Document and Prospectus), the term "writing uncovered short option positions"

shall include orders involving combinations and any transactions which involve naked writing.

(c) Suitability.

- (1) No ETP Holder or registered person thereof shall recommend to any customer any transaction for the purchase or sale (writing) of an option contract, currency warrant, or an index warrant unless such ETP Holder or registered person has reasonable grounds to believe that the entire recommended transaction is not unsuitable for such customer on the basis of information furnished by such customer after reasonable inquiry concerning the customer's investment objectives, financial situation and needs and any other information known by such ETP Holder or registered person.
- (2) No ETP Holder, Registered Options Principal or Registered Representative shall recommend to a customer an opening transaction in any option contract, currency warrant, or index warrant unless the person making the recommendation has a reasonable basis for believing at the time of making the recommendation that the customer has such knowledge and experience in financial matters that he or she may reasonably be expected to be capable of evaluating the risks of the recommended transaction, and is financially able to bear the risks of the recommended position in the option contract, currency warrant, or index warrant.

(d) Supervision of Accounts.

Every ETP Holder shall comply with the provisions of Rule 9.1(b) in exercising its supervisory responsibilities. In addition to such provisions, every ETP Holder shall comply with the following provisions as they relate to its options business.

- (1) Senior Registered Options Principal—Every ETP Holder shall develop and implement a written program for the review of the organization's non-ETP customer accounts and all orders in such accounts, insofar as such accounts and orders relate to option contracts. This program shall be under the supervision of a designated Senior Registered Options Principal (“Senior ROP”) who is an officer (in the case of a corporation) or general partner (in the case of a partnership) of the ETP Holder who is specifically identified to the Corporation as the senior ROP.
- (2) Compliance Registered Options Principal— ETP Holders shall designate and specifically identify to the Corporation a Compliance Registered Options Principal, (who may be the Senior

Registered Options Principal), who shall have no sales functions and shall be responsible to review and to propose appropriate action to secure the ETP Holder's compliance with securities laws and regulations in respect of its options business. The Compliance Registered Options Principal shall regularly furnish reports directly to the compliance officer (if the Compliance Registered Options Principal is not himself or herself the compliance officer) and to other senior management of the ETP Holder. The requirement that the Compliance Registered Options Principal shall have no sales functions does not apply to an ETP Holder that has received less than \$1,000,000 in gross commissions on options business as reflected in its FOCUS Report for either of the preceding two fiscal years or that currently has 10 or fewer Registered Options Representatives.

- (3) Maintenance of Customer Records—Background and financial information of customers who have been approved for options transactions shall be maintained at both the branch office servicing the customer's account and the principal supervisory office having jurisdiction over that branch. Copies of account statements of options customers shall be maintained at both the branch office supervising the accounts and the principal supervisory office having jurisdiction over that branch for the most recent six-month period. With respect solely to the above-noted record retention requirements applicable to principal supervisory offices, however, the customer information and account statements may be maintained at a location other than the principal supervisory office if such documents and information are readily accessible and promptly retrievable. Other records necessary to the proper supervision of accounts will be maintained at a place easily accessible both to the branch office servicing the customer's account and to the principal supervisory office having jurisdiction over that branch office.
- (4) Each ETP Holder shall maintain at the principal supervisory office having jurisdiction over the office servicing the customer's account, or have readily accessible and promptly retrievable, information to permit review of each customer's options account, on a timely basis to determine (i) the compatibility of options transactions with investment objectives and with the types of transactions for which the account was approved; (ii) the size and frequency of options transactions; (iii) commission activity in the account; (iv) profit or loss in the account; (v) undue concentration in any options class or classes, and (vi) compliance with the provisions of Regulation T of the Federal Reserve Board.

Commentary:

.01 The Senior Registered Options Principal may delegate to qualified employees the responsibility and authority for the supervision and control of customer accounts and orders required by the provisions of this paragraph, provided that the Senior Registered Options Principal shall have overall authority and responsibility for establishing appropriate procedures of supervision and control over such employees.

.02 Every ETP Holder shall establish, maintain and enforce written procedures which detail the methods used to supervise exchange options transactions. These procedures should also detail the methods used to supervise all non-ETP customer accounts including all orders in such accounts, insofar as such accounts and orders relate to option contracts.

.03 Every ETP Holder shall also develop and implement specific written procedures concerning the manner of supervision of customer accounts maintaining uncovered short (written) option positions and specifically providing for frequent supervisory review of such accounts.

(e) Discretionary Accounts

- (1) Authorization and Approval Required—No ETP Holder shall exercise any discretionary power with respect to trading in option contracts, currency warrants, or index warrants in a customer's account, or accept orders for currency warrants, index warrants or option contracts for an account from a person other than the customer, except in compliance with the provisions of Rule 9.6(a) and in addition (i) the written authorization of the customer required by Rule 9.6(a) shall specifically authorize options trading in the account; (ii) the account shall have been accepted in writing by a Registered Options Principal. The Senior Registered Options Principal shall review the acceptance of each discretionary account to determine that the Registered Options Principal accepting the account had a reasonable basis for believing that the customer was able to understand and bear the risks of the strategies or transactions proposed, and he or she shall maintain a record of the basis for his or her determination. Each discretionary order shall be approved and initialed on the day entered by the branch office manager or other Registered Options Principal, provided that if the branch office manager is not a Registered Options Principal, his or her approval shall be confirmed within a reasonable time by a Registered Options Principal. Every discretionary order shall be identified as discretionary on the order at the time of entry. Discretionary accounts shall receive frequent appropriate supervisory review by the Compliance Registered Options

Principal. The provisions of this subparagraph shall not apply to discretion as to the price at which or the time when an order given by a customer for the purchase or sale of a definite number of option contracts in a specified security shall be executed.

- (2) Prohibited Transactions—No ETP Holder having discretionary power over a customer's account shall, in the exercise of such discretion, execute or cause to be executed therein any purchases or sales of option contracts, currency warrants, or index warrants which are excessive in size or frequency in view of the financial resources in such account.
- (3) Record of Transactions—A record shall be made of every transaction in option contracts, currency warrants, or index warrants in respect to which an ETP Holder has exercised discretionary authority, clearly reflecting such fact and indicating the name of the customer, the designation and number of the option contracts, currency warrants, or index warrants the premium and the date and time when such transaction was effected.
- (4) Options Programs—Where the discretionary account utilizes options programs involving the systematic use of one or more options strategies, the customer shall be furnished with a written explanation, meeting the requirements of Rule 9.28, of the nature and risks of such strategies.

Commentary:

.01 No transactions shall be executed in a discretionary account which would result in an uncovered short position in option contracts or in the uncovering of any existing short position in option contracts unless the person for whom the account is maintained has specifically authorized, in writing, transactions of this nature and such transactions are effected with due regard to the provisions of this paragraph (e).

- (f) Confirmations.

Every ETP Holder shall promptly furnish to each customer a written confirmation of each transaction in option contracts for such customer's account. Each such confirmation shall show the type of option, the underlying stock, the expiration month, the exercise price, the number of option contracts, the premium, commissions, the transaction and settlement dates, whether the transaction was a purchase or a sale (writing) transaction, whether the transaction was an opening or a closing transaction, and whether the transaction was effected on a principal or agency basis. The confirmation shall by appropriate symbols distinguish between exchange option transactions and other transactions in option contracts and between such transactions and transactions in other options.

- (g) Delivery of Current Options Disclosure Document and Prospectus
- (1) Options Disclosure Documents. Every ETP Holder shall deliver a current Options Disclosure Document (the formal title of which is “Understanding the Risks and Uses of Listed Options”) to each customer at or prior to the time each customer's account is approved for options trading. Thereafter, each amended Options Disclosure Document shall be distributed to every customer having an account approved for options trading, or, in the alternative, shall be distributed not later than the time a confirmation of a transaction is delivered to each customer who enters into an options transaction. The term “current Options Disclosure Document” means, as to any category of underlying security, the most recent edition of such document that meets the requirements of Rule 9b-1 under the Securities Exchange Act of 1934.
 - (2) Prospectus. Every ETP Holder shall deliver a copy of the current prospectus of the Options Clearing Corporation to each customer who requests one. The Corporation will advise ETP Holders when a new prospectus is available. The term “current prospectus of the Options Clearing Corporation” means the prospectus portion of Form S-20 which then meets the delivery requirements of Rule 153(b) of the Securities Act of 1933.
 - (3) The written description of risks required by Rule 9.18(b)(6) shall be in a format prescribed by the Corporation or in a format developed by the ETP Holder, provided it contains substantially similar information as the prescribed Corporation format and has received prior written approval of the Corporation.

Commentary:

.01 Where the customer of an ETP Holder is a broker or dealer entering his or her orders with the ETP Holder in a single omnibus account, such ETP Holder shall take reasonable steps to assure that the broker or dealer is furnished reasonable quantities of current Options Disclosure Documents, as requested by him or her in order to enable him or her to comply with the requirements of this paragraph (g).

.02 Where a broker or dealer enters orders for his or her customers with, or clears transactions through, an ETP Holder on a fully disclosed basis and such ETP Holder carries the accounts of such customers, the responsibility for delivering a current Options Disclosure Document as provided herein shall rest with the carrying ETP Holder. However, such ETP Holder may rely upon the

good faith representation of the introducing broker or dealer that a current Options Disclosure Document has been delivered in compliance with this paragraph (g).

(h) Transactions with Issuers.

No ETP Holder shall accept an order for the account of any corporation which is the issuer of an underlying stock for the sale (writing) of an option contract with respect to that underlying stock.

(i) Restricted Stock.

For the purposes of: (i) covering a short position in a call option contract, or (ii) delivery pursuant to the exercise of a put option contract, or (iii) satisfying an exercise notice assigned in respect of a call option contract, no ETP Holder shall accept shares of an underlying stock, which may not be sold by the holder thereof except upon registration pursuant to the provisions of the Securities Act of 1933 or pursuant to SEC rules promulgated under the Securities Act of 1933, unless, at the time such securities are accepted and at any later time such securities are delivered, applicable provisions of the Securities Act of 1933 and the rules thereunder have been complied with by the holder of such securities.

(j) Statement of Accounts.

Every ETP Holder shall send to its customers statements of account showing security and money positions entries, interest charges and any special charges that have been assessed against such account during the period covered by the statement; provided, however, that such charges need not be specifically delineated on the statement if they are otherwise accounted for on the statement and have been itemized on transaction confirmations. With respect to options customers having a general (margin) account, such statement shall also provide the mark-to-market price and market value of each options position and other security position in the general (margin) account, the total market value of all positions in the account, the outstanding debit balance in the account, and the general (margin) account equity. The statement shall bear a legend stating that further information with respect to commissions and other charges related to the execution of listed option transactions has been included in confirmations of such transactions previously furnished to the customer, and that such information will be made available to the customer promptly upon request.

Statements of account shall be sent at least quarterly to all accounts having a money or a security position during the preceding quarter and not less frequently than once every month to each customer in whose account there has been an entry during the preceding month with respect to an option contract.

The statement shall also bear a legend requesting the customer to promptly advise the ETP Holder of any material change in the customer's investment objectives or financial situation.

Commentary:

.01 For purposes of the foregoing Section, general (margin) account equity shall be computed by subtracting the total of the “short” security values and any debit balance from the total of the “long” security values and any credit balance.

(k) Doing Business with the Public.

An sole proprietor ETP Holder may not transact business with the public, unless such Holder receives prior written approval from the Corporation. To qualify to transact business with the public, the sole proprietor ETP Holder shall demonstrate compliance with the general requirements of the Corporation as prescribed by the Bylaws, Rules and procedures of the Corporation.

(l) Customer Complaints.

- (1) Every ETP Holder conducting a non-ETP customer business shall make and keep current a separate central log, index or other file for all options-related complaints, through which these complaints can easily be identified and retrieved. The term “options-related complaint” shall mean any written statement by a customer or person acting on behalf of a customer alleging a grievance arising out of or in connection with listed options. The central file shall be located at the principal place of business of the ETP Holder or such other principal office as shall be designated by the ETP Holder. At a minimum, the central file shall include: (i) identification of complainant, (ii) date complaint was received, (iii) identification of Registered Representative servicing the account, (iv) a general description of the matter complained of, and (v) a record of what action, if any, has been taken by the ETP Holder with respect to the complaint. Each options-related complaint received by a branch office of an ETP Holder shall be forwarded to the office in which the separate, central file is located not later than thirty (30) days after receipt by the branch office. A copy of every options-related complaint shall be maintained at the branch office that is the subject of the complaint.

(m) Branch Offices of ETP Holders.

No branch office of an ETP Holder shall transact options business with the public unless the manager of such branch office has been qualified as a Registered Options Principal; provided, that this requirement shall not apply to branch offices in which not more than three Registered Representatives are located so long as the ETP Holder can demonstrate that the options activities of such branch offices are appropriately supervised by a Registered Options Principal.

Transfer of Accounts

Rule 9.19. Every ETP Holder shall, upon written request of a customer, expedite the transfer of a customer's account pursuant to such customer's instructions.

Transactions for Public Customers

Rule 9.20(a). Where an ETP Holder is doing business with the public in accordance with these Rules and is also associated with a Market Maker, such ETP Holder shall file such reports as the Corporation may require of transactions for customers in classes of option contracts to which such Market Maker has been appointed pursuant to PCX Parent Rule 6.35.

Telemarketing

Rule 9.20(b). No ETP Holder or associated person of such Holder may:

- (1) Make outbound telephone calls to the residence of any person for the purpose of soliciting the purchase of securities or related services at any time other than between 8 a.m. and 9 p.m. local time at the called person's location, without the prior consent of the person; or
- (2) Make an outbound telephone call to any person for the purpose of soliciting the purchase of securities or related services without disclosing promptly and in a clear and conspicuous manner to the called person the following information:
 - (A) the identity of the caller and the ETP Holder;
 - (B) the telephone number or address at which the caller may be contacted; and
 - (C) that the purpose of the call is to solicit the purchase of securities or related services.
- (3) The prohibitions of subsections (b)(1) and (b)(2), above, do not apply to telephone calls by any person associated with an ETP Holder or another associated person acting at the direction of such person for the purpose of maintaining and servicing an account of an existing customer of the ETP Holder under the control of or assigned to such associated person if such person places such calls:
 - (A) to an existing customer who, within the preceding twelve months, has effected a securities transaction in, or made a deposit of funds or securities into, an account that, at the

time of the transaction or deposit, was under the control of or assigned to, such associated person;

(B) to an existing customer who has previously effected a securities transaction in, or made a deposit of funds or securities into, an account that, at the time of the transaction or deposit, was under the control of or assigned to, such associated person, provided that such customer's account has earned interest or dividend income during the preceding twelve months; or

(C) to a broker or dealer.

The scope of this Rule 9.20(b) is limited to the telemarketing calls described herein. The terms of this Rule do not otherwise expressly or by implication impose on ETP Holders or participants any additional requirements with respect to the relationship between an ETP Holder or participant and a customer or between a person associated with an ETP Holder or participant organization and a customer. For the purposes of subsection (b)(3), the term “existing customer” means a customer for whom the broker or dealer, or a clearing broker or dealer on behalf of such broker or dealer, carries an account.

(c) Each ETP Holder shall make and maintain a centralized list of persons who have informed the ETP Holder or any employee thereof, that they do not wish to receive telephone solicitations, and shall refrain from engaging in telephone solicitations of persons named on that list.

(d) No ETP Holder or person associated with an ETP Holder, may obtain from a customer or submit for payment a check, draft, or other form of negotiable paper drawn on a customer's checking, savings, share, or similar account, without that person's express written authorization, which may include the customer's signature on the negotiable instrument. Each ETP Holder shall maintain the authorization required by this subsection (d) for a period of three years.

Commentary:

.01 ETP Holders that engage in telephone solicitation to market their products and services (“telemarketing” or “cold calling”) are subject to the requirements of the rules of the Federal Communications Commission and the Securities and Exchange Commission relating to telemarketing practices and the rights of telephone users. This includes, but is not limited to, the requirement to make and maintain a list of persons who do not want to receive telephone solicitations (a “do-not-call” list).

Section 2. Advertising and Sales Literature

Policy

Rule 9.21(a). It shall be considered conduct inconsistent with just and equitable principals of trade for an ETP Holder, directly or indirectly, to publish, circulate or distribute any advertisement, sales literature or market letter that the ETP Holder knows or has reason to know contains any untrue statement of a material fact or is otherwise false or misleading.

Exemptions

Rule 9.21(b). The following Rules 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.

Advertisements

Rule 9.22(a). All advertisements prior to publication shall be submitted to the Corporation for approval as to form and presentation, except such routine advertisements as (1) business cards or so-called tombstone ads, (2) announcements that specific securities are bought, sold or quoted, (3) offering literature concerning a specific security or securities, (4) announcements relating to changes in an ETP Holder, (5) inclusion of an ETP Holder's name in an underwriting advertisement, or (6) advertisements complying with any rule or regulations of the Securities and Exchange Commission under the Securities Act of 1933, or Securities Exchange Act of 1934. Copies of all ads should be retained by the ETP Holder for at least 3 years.

Refer to Pacific Exchange

Rule 9.22(b). Advertisements by ETP Holders for insertion in local papers or other media should refer to the Archipelago Exchange, a facility of PCX Equities, Inc. and the Pacific Exchange, Inc., when reference is made to membership in any securities exchange.

Sales Literature—Market Letters

Rule 9.23. Each market letter, research report and all sales literature prepared and issued by an ETP Holder for general distribution to customers or the public shall be approved in advance by a principal of the firm who has been designated such authority. Market letters, research reports and sales literature that refer to the market or to companies or securities, listed or unlisted, must be retained by the issuing ETP Holder for at least 3 years. The copies retained must contain the name of the individual approving its issuance and will be subject to delivery upon request to the Corporation and must at all times within the 3 year period be readily available. For purposes of this Rule, scripts that are

used for telemarketing calls as described in Rule 9.20(b), are deemed to be “sales literature.”

Radio, Television, Telephone and Other Reports

Rule 9.24. ETP Holders for which the Corporation is the designated examining authority (“DEA”) desiring to broadcast Corporation quotations on radio or television programs, or in public telephone market reports, or to make use of radio or television broadcasts for any business purpose, or to make use of the Internet for the purpose of providing market quotations or advertising to the general public, must first obtain the consent of the Corporation by submitting an outline of the program to the Corporation.

The text of all commercials and program material (except lists of market quotations) about securities or investing sponsored by ETP Holders on radio, television or public telephone market reports, or the Internet, or program material supplied to these media must be sent to the Corporation promptly following the program in which it is used.

Standards

Rule 9.25. The Corporation cannot be responsible for the accuracy and completeness of factual information, nor the opinions of ETP Holders in advertisements, sales literature or radio or television broadcasts. However, general policy to be followed in written communications with the public should be substantially as follows:

- (a) In making recommendations there should be a reasonable basis for the recommendation and the following facts disclosed:
- (1) The price at time of original recommendation;
 - (2) Whether or not the firm makes a market in the issue;
 - (3) If (2) applies, whether the ETP Holder intends to buy or sell the securities recommended for his or her own account;
 - (4) Ownership, if any, of options, rights or warrants to purchase any security recommended, unless extent of ownership is merely nominal;
 - (5) Offer to provide or furnish upon request available investment information supporting the recommendations;
 - (6) If material issued refers to past recommendations, all such recommendations as to the same type, kind, grade or classification of securities made by an ETP Holder within the last year should be set forth. Longer periods of years may be covered if they are

consecutive and include the most recent year. The material must name each security recommended, the date and nature of recommendation (buy or sell), the price at the time, the price range within which to act upon, and if the period was one of generally rising or falling markets;

- (7) Material that makes no recommendations, but offers to furnish a list of all recommendations made by an ETP Holder within the past year or over a longer period of consecutive years shall contain same information as stated in item (6) above.
- (b) Claims and opinions must not contain:
- (1) Promises of specific results;
 - (2) Exaggerated or unwarranted claims or unwarranted superlatives;
 - (3) Opinions with no reasonable basis;
 - (4) Forecasts of future events which are unwarranted or which are not clearly labeled as forecasts;
 - (5) References to past specific recommendations which state or imply that the recommendations were or would have been profitable and that these are indicative of the general quality of the firm's recommendations.
- (c) Testimonials must make clear:
- (1) That with respect to any advice, analysis, report or other investment or related service rendered, such experience is not necessarily indicative of future performance or results obtained by others;
 - (2) Whether any compensation has been paid to the maker directly or indirectly;
 - (3) The qualifications of the maker of the testimonial if they imply an experienced or specialized opinion.
- (d) Offers of free service:

If a statement is made that any report, analysis or other service will be furnished entirely free and without any condition or obligation, such statements must be upheld.

(e) Claims for research:

No claim or implication may be made for research or other facilities beyond those which the ETP Holder actually possesses or has reasonable capacity to provide.

(f) Hedge clauses:

No hedge clauses may be used if they could mislead the reader or are inconsistent with the content of the material.

(g) Recruiting advertising:

Advertising in connection with recruitment of sale personnel must not contain exaggerated or unwarranted claims or statements about opportunities in the investment banking or securities business.

Registration of Options Principals

Rule 9.26. No ETP Holder shall transact any business with the public in option contracts unless those persons engaged in the management of the ETP Holder's business pertaining to option contracts are registered with and approved by the Corporation as Options Principals. No individual ETP Holder shall transact any business directly with the public in option contracts unless he or she is registered with and approved by the Corporation as an Options Principal. In connection with their registration, Options Principals shall file an application with the Corporation on a form prescribed by the Corporation and shall be required to successfully complete an examination prescribed by the Corporation for the purpose of demonstrating an adequate knowledge of options trading generally, the Rules of the Corporation applicable to trading of option contracts and the Rules of the Options Clearing Corporation. In the event the employment of any Registered Options Principal is terminated or any Registered Options Principal ceases to act in such capacity, such fact shall be reported promptly to the Corporation together with a brief statement of the reason therefore.

Commentary:

.01 Each ETP Holder shall be required to designate a Registered Options Principal who is a general partner or officer as the person responsible for overall supervision and training in areas relating to transactions in option contracts.

.02 The Corporation may waive the examination prescribed by this Section if the applicant previously had passed an examination and had been approved as a Registered Options Principal by another exchange or association having standards of approval acceptable to the Corporation.

Registration of Representatives

Rule 9.27(a). *General.* No ETP Holder shall be approved to transact business with the public until those persons associated with it who are designated as Representatives have been registered with and approved by the Corporation pursuant to the provisions of Rule 2.21(a) through Rule 2.21(d). Persons who perform duties for the ETP Holder which are customarily performed by sales representatives, solicitors, customers' men or branch office managers shall be designated as Representatives.

(b) *Registered Options Representatives.* No person associated with an ETP Holder shall transact any business with the public in option contracts, unless those persons are registered with and approved by the Corporation pursuant to the provisions of paragraph (a) of this Section and are registered with and approved by the Corporation as Options Representatives. In connection with their registration as Options Representatives, such persons shall file an application with the Corporation on a form prescribed by the Corporation, shall successfully complete a training course and an examination for the purpose of demonstrating adequate knowledge in the trading of option contracts, and shall sign an agreement to abide by the Bylaws, Rules and procedures of the Corporation and the Rules of the Options Clearing Corporation; provided, however, that representatives of an ETP Holder which is a member of another national securities exchange or association which has standards of approval acceptable to the Corporation may be deemed to be registered with and approved by the Corporation, so long as such representatives are registered with and approved by such other exchange or association. An ETP Holder whose representatives are deemed registered and approved pursuant to the last clause of the preceding sentence shall inform their representatives of their obligation to adhere to the Bylaws, Rules and procedures of the Corporation and the Rules of the Options Clearing Corporation. Termination of employment or affiliation of any Registered Options Representative in such capacity shall be reported promptly to the Corporation together with a brief statement of the reason for such termination, pursuant to Rule 2.21(h).

Commentary:

.01 The Corporation considers the Uniform Registered Representative Examination, Series 7, as adequate in measuring an applicant's knowledge of the securities industry and satisfies the examination requirements prescribed under paragraphs (a) and (b) of this Section.

.02 Persons designated as representatives who had been previously registered with an exchange or association would be required to requalify with the Corporation as Registered Options Representatives, if such persons had not successfully completed the Series 7 Examination or some other examination which adequately measures an applicant's knowledge in the trading of option contracts. To qualify as a Registered Options Representative the applicant shall successfully complete a training course in options and pass a special options examination approved or prescribed by the Corporation.

.03 Registered persons who have not re-qualified with the Corporation as Registered Options Representatives shall not solicit or conduct a public business in option contracts.

Regulatory Element

Rule 9.27(c). No ETP Holder shall permit any registered person to continue to, and no registered person shall continue to, perform duties as a registered person, unless such person has complied with the continuing education requirements of this Rule 9.27(c).

Each registered person shall complete the Regulatory Element of the continuing education program on three occasions, after the occurrence of their second, fifth and tenth registration anniversary dates, or as otherwise prescribed by the Corporation. On each of these three occasions, the Regulatory Element must be completed within one hundred twenty (120) days after the person's registration anniversary date. The content of the Regulatory Element of the program shall be prescribed by the Corporation.

- (1) Registered person who have been continuously registered for more than ten years as of the effective date of this Rule shall be exempt from participation in the Regulatory Element of the continuing education program, provided such persons have not been subject to any disciplinary action within the last ten (10) years as enumerated in subsection (c)(3)(A)-(B) of this Rule. Persons who have been currently registered for ten (10) years or less as of the effective date of this Rule shall initially participate in the Regulatory Element of the continuing education program within one hundred twenty days (120) after the occurrence of the second, fifth or tenth registration anniversary date, whichever anniversary date first applies, and on the applicable registered anniversary date(s) thereafter. Such persons will have satisfied the requirements of the Regulatory Element of the program after participation on the tenth registration anniversary.

All registered persons who have satisfied the requirements of the Regulatory Element shall be exempt from further participation in the Regulatory Element of the program, subject to re-entry into the program as set forth in subsection (c)(3) of this Rule.

- (2) *Failure to Complete*—Unless otherwise determined by the Corporation, any registered persons who have not completed the Regulatory Element of the program within the prescribed time frames will have their registration deemed inactive until such time as the requirements of the program have been satisfied. Any person whose registration has been deemed inactive under this Rule shall cease all activities as a registered person and shall be prohibited

from performing any duties and functioning in any capacity requiring registration.

The Corporation may, upon application and a showing of good cause, allow for additional time for a registered person to satisfy the program requirements.

- (3) *Re-entry into Program*—Unless otherwise determined by the SRO, a registered person will be required to re-enter the Regulatory Element and satisfy all of its requirements in the event such person:
- (A) becomes subject to any statutory disqualification as defined in Section (3)(a)(39) of the Securities Exchange Act of 1934;
 - (B) becomes subject to suspension or to the imposition of a fine of \$5,000 or more for violation of any provision of any securities law or regulation, or any agreement with or rule of standard of conduct of any securities governmental agency, securities self-regulatory organization, or as imposed by any such regulatory or self-regulatory organization in connection with a disciplinary proceeding; or
 - (C) is ordered as a sanction in a disciplinary action to re-enter the continuing education program by any securities governmental agency or securities self-regulatory organization.

Re-entry shall commence with the initial participation within 120 days of the registered person becoming subject to the statutory disqualification, in the case of (A) above, or the disciplinary action becoming final, in the case of (B) or (C) above, and on three additional occasions thereafter, at intervals of two, five and ten years after re-entry, notwithstanding that such person has completed all or part of the program requirements based on length of time as a registered person or completion of ten years of participation in the program.

(d) *Firm Element*

- (1) *Persons Subject to the Firm Element*—The requirements of this Rule 9.27(d) shall apply to any registered person who has direct contact with customers in the conduct of the ETP Holder’s securities sales, trading or investment banking activities, and to the immediate supervisors of such persons (collectively, “covered registered persons”).

- (2) *Standards*
- (A) Each ETP Holder must maintain a continuing and current education program for its covered registered person to enhance their securities knowledge, skills and professionalism. At a minimum, each ETP Holder shall at least annually evaluate and prioritize its training needs and develop a written training plan. The plan must take into consideration the ETP Holder's size, organizational structure, and scope of business activities, as well as regulatory developments and the performance of covered registered persons in the Regulatory Element.
- (B) *Minimum Standards for Training Programs*—Programs used to implement an ETP Holder's training plan must be appropriate for the business of the ETP Holder and, at a minimum, must cover the following matters concerning securities products, services and strategies offered by the ETP Holder:
- (i) General investment features and associated risk factors;
 - (ii) Suitability and sales practice considerations; and
 - (iii) Applicable regulatory requirements.
- (C) *Administration of Continuing Education Program*—Each ETP Holder must administer its continuing education program in accordance with its annual evaluation and written plan and must maintain records documenting the content of the programs and completion of the programs by covered registered persons.
- (3) *Participation in the Firm Element*—Covered registered persons included in an ETP Holder's plan must take all appropriate and reasonable steps to participate in continuing education programs as required by the ETP Holder.
- (4) *Specific Training Requirements*—The Corporation may require an ETP Holder, either individually or as part of a larger group, to provide specific training to its covered registered persons in such areas that the Corporation deems appropriate. Such a requirement may stipulate the class of covered registered persons for which it is applicable, the time period in which the requirement must be satisfied and, where appropriate, the actual training content.

Commentary:

.01 For purposes of this Rule, the term “registered person” means any ETP Holder, Allied Person thereof, registered representative or other person registered or required to be registered under the Rules of the Corporation, but does not include any such person whose activities are limited solely to the transaction of business on the facilities of the Corporation with ETP Holders or registered broker-dealers.

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

.03 A registered person who has been continuously registered for more than ten (10) years as of the date of implementation of this Rule who has been subject to a disciplinary action as enumerated in subsections (c)(3)(A)-(B) of the Rule within the last ten years, will be required to satisfy the requirements of the Regulatory Element of the continuing education program by participation for the period from the date of implementation of this Rule to ten years after the occurrence of the disciplinary action.

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

.05 Any registration that is deemed inactive for a period of two calendar years pursuant to section (c)(2) of this Rule for failure of a registered person to complete the Regulatory Element, shall be terminated. A person whose registration is so terminated may become registered only by reapplying for registration and satisfying applicable registration and qualification requirements of the Corporation.

Advertisements, Market Letters and Sales Literature Relating to Options

Rule 9.28(a). General Rule. No ETP Holder or person associated therewith shall utilize any advertisement, educational material, sales literature or other communications to any customer or member of the public concerning options which:

- (1) contains any untrue statement or omission of material fact or is otherwise false or misleading;
- (2) contains promises of specific results, exaggerated or unwarranted claims, opinions for which there is no reasonable basis or forecasts of future events which are unwarranted or which are not clearly labeled as forecasts;
- (3) contains hedge clauses or disclaimers which are not legible, which attempt to disclaim responsibility for the content of such literature or for opinions expressed therein, or which are otherwise inconsistent with such communications; or
- (4) would constitute a prospectus as that term is defined in the Securities Act of 1933, unless it meets the requirements of Section 10 of said Act.

(b) Approval by Compliance Registered Option Principal. All advertisements, sales literature (except completed worksheets), and educational material issued by an ETP Holder pertaining to options shall be approved in advance by the Compliance Registered Options Principal or designee. Copies thereof, together with the names of the persons who prepared the material, the names of the persons who approved the material and, in the case of sales literature, the source of any recommendations contained therein, shall be retained by the ETP Holder and be kept at an easily accessible place for examination by the Corporation for a period of three years.

(c) Approval Required for Options Advertisements. In addition to the approval required by paragraph (b) of this Rule, every advertisement of an ETP Holder pertaining to options shall be submitted to the Corporation at least ten days prior to use (or such shorter period as the Corporation may allow in particular instances) for approval and, if changed or expressly disapproved by the Corporation, shall be withheld from circulation until any changes specified by the Corporation have been made or, in the event of disapproval, until the advertisement has been resubmitted for, and has received, Corporation approval. The requirements of this paragraph shall not be applicable to:

- (1) advertisements submitted to another self-regulatory organization having comparable standards pertaining to advertisements; and
- (2) advertisements in which the only reference to options is contained in a listing of the services of an ETP Holder.

(d) Except as otherwise provided in the Commentary hereunder, no written materials respecting options may be disseminated to any person who has not previously or contemporaneously received a current Options Disclosure Document, as defined in Rule 9.18(g).

- (e) Definitions. For purposes of this Rule, the following definitions shall apply:
- (1) The term “advertisement” shall include any sales material that reaches a mass audience through public media such as newspapers, periodicals, magazines, radio, television, telephone recording, motion picture, audio or video devices, telecommunications device, billboards, signs, or through written communications to customers or the public not required to be accompanied or preceded by a current Clearing Corporation prospectus.
 - (2) The term “sales literature” shall include any written communication (not defined as an “advertisement”) distributed or made available to customers or the public that contains any analysis, performance report, projection or recommendation with respect to options, underlying securities or market conditions, any standard forms of worksheets, or any seminar text which pertains to options which is communicated to customers or the public at seminars, lectures or similar such events, or any materials produced by the Corporation pertaining to options.

Commentary:

.01 The special risks attendant to options transactions and the complexities of certain options investment strategies shall be reflected in any advertisement, educational material or sales literature which discusses the uses or advantages of options. Such communications shall include a warning to the effect that options are not suitable for all investors. In the preparation of written communications respecting options, the following guidelines should be observed:

- A. Any statement referring to the potential opportunities or advantages presented by options shall be balanced by a statement of the corresponding risks. The risk statement shall reflect the same degree of specificity as the statement of opportunities, and broad generalities should be avoided. Thus, a statement such as “with options, an investor has an opportunity to earn profits while limiting his or her risk of loss”, should be balanced by a statement such as “of course, an options investor may lose the entire amount committed to options in a relatively short period of time.”
- B. It shall not be suggested that options are suitable for all investors.
- C. Statements that guarantee the certain availability of a secondary market for options shall not be made.

.02 Advertisements pertaining to options shall conform to the following standards:

- A. Advertisements may only be used (and copies of the advertisements may be sent to persons who have not received an Options Disclosure Document) if the material meets the requirements of Rule 134 under the Securities Act of 1933, as that Rule has been interpreted as applying to options. Under Rule 134, advertisements must be limited to general descriptions of the security being offered and of its issuer. Advertisements under this Rule shall state the name and address of the person from whom a current Options Disclosure Document may be obtained. Such advertisements may have the following characteristics:
 - (i) The text of the advertisement may contain a brief description of such options, including a statement that the issuer of every such option is the Clearing Corporation. The text may also contain a brief description of the general attributes and method of operation of the exchange or exchanges on which such options are traded and of the Clearing Corporation, including a discussion of how the price of an option is determined on the trading floor(s) of such exchange(s);
 - (ii) The advertisement may include any statement required by any state law or administrative authority;
 - (iii) Advertising designs and devices, including borders, scrolls, arrows, pointers, multiple and combined logos and unusual type faces and lettering as well as attention-getting headlines and photographs and other graphics may be used, provided such material is not misleading.
- B. The use of recommendations or of past or projected performance figures, including annualized rates of return, is not permitted in any advertisement pertaining to options.

.03 Written communications (other than advertisements) pertaining to options shall conform to the following standards:

- A. Sales literature shall state that supporting documentation for any claims (including any claims made on behalf of options programs or the options expertise of sales persons), comparisons, recommendations, statistics or other technical data will be supplied upon request.
- B. Such communications may contain projected performance figures (including projected annualized rates of return) provided that:
 - (i) no suggestion of certainty of future performance is made;

- (ii) parameters relating to such performance figures are clearly established (e.g., to indicate exercise price of option, purchase price of the underlying stock and its market price, option premium, anticipated dividends, etc.);
 - (iii) all relevant costs, including commissions and interest charges (if applicable with regard to margin transactions) are disclosed;
 - (iv) such projections are plausible and are intended as a source of reference or a comparative device to be used in the development of a recommendation;
 - (v) all material assumptions made in such calculations are clearly identified (e.g., “assume option expires”, “assume option unexercised”, “assume option exercised”, etc.);
 - (vi) the risks involved in the proposed transactions are also discussed;
 - (vii) in communications relating to annualized rates of return, that such returns are not based upon any less than a sixty-day experience; any formulas used in making calculations are clearly displayed; and a statement is included to the effect that the annualized returns cited might be achieved only if the parameters described can be duplicated and that there is no certainty of doing so.
- C. Such communications may feature records and statistics which portray the performance of past recommendations or of actual transactions, provided that:
- (i) any such portrayal is done in a balanced manner, and consists of records or statistics that are confined to a specific “universe” that can be fully isolated and circumscribed and that covers at least the most recent 12-month period;
 - (ii) such communications include the date of each initial recommendation or transaction, the price of each such recommendation or transaction as of such date, and the date and price of each recommendation or transaction at the end of the period or when liquidation was suggested or effected, whichever was earlier; provided that if the communications are limited to summarized or averaged records or statistics,

in lieu of the complete record there may be included the number of items recommended or transacted, the number that advanced and the number that declined, together with an offer to provide the complete record upon request;

- (iii) such communications disclose all relevant costs, including commissions and interest charges (if applicable with regard to margin transactions) and, whenever annualized rates of return are used, all material assumptions used in the process of annualization;
 - (iv) an indication is provided of the general market condition during the period(s) covered, and any comparison made between such records and statistics and the overall market (e.g., comparison to an index) is valid;
 - (v) such communications state that the results presented should not and cannot be viewed as an indicator of future performance; and
 - (vi) a Registered Options Principal determines that the records or statistics fairly present the status of the recommendations or transactions reported upon and so initials the report.
- D. In the case of an options program (i.e., an investment plan employing the systematic use of one or more options strategies), the cumulative history or unproven nature of the program and its underlying assumptions shall be disclosed.
- E. Options worksheets utilized by ETP Holders or associated persons must comply with the requirements applicable to sales literature.
- F. Communications that portray performance of past recommendations or actual transactions and completed worksheets shall be kept at a place easily accessible to the sales office for the accounts or customers involved.

Rule 10

Disciplinary Proceedings, Other Hearings, and Appeals

Disciplinary Jurisdiction

Rule 10.1.

(a) An ETP Holder or associated person of an ETP Holder who is alleged to have violated or aided and abetted a violation of any provision of the Securities Exchange Act of 1934, as amended, the rules and regulations promulgated thereunder, any provision of the Corporation's Bylaws or Rules or any commentary thereof, any resolution of the Board of Directors of the Corporation regulating the conduct of business of the Corporation, or any policy or procedure of the Corporation shall be subject to the disciplinary jurisdiction of the Corporation under this Rule, and after notice and opportunity for a hearing may be appropriately disciplined by cancellation of trading privileges, suspension, limitation of activities, functions, and operations, suspension or bar from association with an ETP Holder, fine, censure or any other fitting sanction, in accordance with the provisions of this Rule. An ETP Holder may be charged with any violation committed by its employees or other person who is associated with such ETP Holder, as though such violation were its own.

(b) Any ETP Holder, or associated person of an ETP Holder shall continue to be subject to the disciplinary jurisdiction of the Corporation following suspension or cancellation of ETP trading privileges or termination of association with an ETP Holder with respect to matters that occurred prior to such termination, provided that written notice of the commencement of an inquiry into such matters is given by the Corporation to such former ETP Holder or associated person of an ETP Holder within one year of receipt by the Corporation of written notice of the termination of such person's status as an ETP Holder or associated person of an ETP Holder.

Investigations and Regulatory Cooperation

Rule 10.2(a). The Corporation's Chief Regulatory Officer and his or her delegees will function independently of the commercial interests of the Corporation and the commercial interests of the ETP Holders and the Chief Regulatory Officer or his or her delegees will have the discretion to investigate, and will investigate, possible violations within the disciplinary jurisdiction of the Corporation. The Regulatory Staff may consult as necessary with the PCX Parent Regulatory Staff. No member of the Board of Directors or non-Regulatory Staff may interfere with or attempt to influence the process or resolution of any pending investigation or disciplinary proceeding.

(b) Any person, committee of the Corporation, or the Board of Directors may submit for investigation a complaint alleging possible violations. Each complaint must specify in reasonable detail the facts constituting the violation and any specific provision of the Bylaws, Rules, policies or procedures of the Corporation, or the rules, regulations and procedures promulgated under the Exchange Act allegedly violated.

(c) An ETP Holder or associated person of an ETP Holder is entitled to be represented by counsel during any investigation by the Corporation.

(d) No ETP Holder, associated person of an ETP Holder, or other person or entity over whom the Corporation has jurisdiction pursuant to Rule 10.1 may impede or delay a regulatory investigation with respect to possible violations within the disciplinary jurisdiction of the Corporation nor refuse to furnish testimony, documentary materials or other information requested by the Corporation during the course of its investigation. Failure to furnish such testimony, documentary materials, or other information requested by the Corporation pursuant to this Rule on the date or within the time period required by the Corporation will be considered obstructive of an inquiry or investigation and subject to formal disciplinary action.

(e) An ETP Holder or associated person of an ETP Holder must submit such trade data elements specified in Commentary .01 below in such automated format as may be prescribed by the Corporation from time to time, in regard to such transaction or transactions as may be the subject of a particular request for information made by the Corporation. Failure to submit such data in the required format will be considered obstructive of an inquiry or investigation and subject to formal disciplinary action.

Commentary:

.01 (A) If the transaction were a proprietary transaction effected or caused to be effected by the ETP Holder for any account in which such ETP Holder or associated person of an ETP Holder is directly or indirectly interested, such ETP Holder shall submit or cause to be submitted the following information:

- (i) Clearing house number(s), or alpha symbol(s), as used by the ETP Holder submitting the data;
- (ii) Clearing house number(s), or alpha symbol(s) as may be used from time to time, of the ETP Holder(s) on the opposite side of the transaction;
- (iii) Identifying symbol assigned to the security;
- (iv) Date transaction was executed;
- (v) Number of shares or quantity of bonds for each specific transaction and whether each transaction was a purchase, sale or short sale;
- (vi) Transaction price;
- (vii) Account number; and

(viii) Market center where transaction was executed.

(B) If the transaction were effected or caused to be effected by the ETP Holder for any customer account, such ETP Holder shall submit or cause to be submitted the following information:

- (i) Data elements (i) through (viii) as contained in paragraph (A) above; and
- (ii) Customer name, address(es), branch office number, registered representative number, whether order was solicited or unsolicited, date account opened and employer name and the tax identification number(s).
- (iii) If the transaction were effected for a customer of a broker-dealer, whether the broker-dealer was acting as principal or agent on the transaction that is the subject of the Corporation's request.

(C) In addition to the above trade data elements, an ETP Holder shall submit such other information in such automated format as may be prescribed by the Corporation, as may from time to time be required.

(D) The Corporation may grant exceptions, in such cases and for such time periods as it deems appropriate, from the requirement that the data elements prescribed in paragraphs (A) and (B) above be submitted to the Corporation in an automated format.

(f) No ETP Holder, associated person of an ETP Holder, or other person or entity over whom the Corporation has jurisdiction pursuant to Rule 10.1 may refuse to appear and testify before another exchange or self-regulatory organization in connection with a regulatory investigation, examination, or disciplinary proceeding or refuse to furnish documentary materials or other information or otherwise impede or delay such investigation, examination or disciplinary proceeding if the Corporation requests such information or testimony in connection with any inquiry resulting from an agreement entered into by the Corporation or its self-regulatory organization. The requirements of this Rule 10.2(f) will apply regardless of whether the Corporation has initiated an investigation pursuant to Rule 10.2(a) or a disciplinary proceeding pursuant to Rule 10.4.

Commentary:

.01 The terms "exchange" and "self-regulatory organization," as used in Rule 10.2(f), will include, but are not limited to, any member or affiliate member of the Intermarket Surveillance Group.

.02 Any person required to furnish information or testimony pursuant to Rule 10.2(f) will be afforded the same rights and procedural protections as that person would have if the Corporation had initiated the request for information or testimony.

Ex Parte Communications

Rule 10.3(a). Prohibited Communications. Unless on adequate notice and reasonable opportunity for all parties to participate:

- (1) No person who is a subject of a pending investigation by the Corporation ("Subject") or a Respondent in a pending disciplinary proceeding, or counsel for or a representative of the Subject or the Respondent, or any interested Corporation staff, with knowledge of a pending investigation or disciplinary proceeding, may make or knowingly cause to be made an ex parte communication, as defined below, relevant to the facts or allegations of the investigation or the disciplinary proceeding to: (a) a member of the Board of Directors; (b) a person who advises the Board of Directors; (c) any member of the Corporation's Regulatory Staff that is not participating in the resolution of the investigation or the disciplinary proceeding; (d) a member of the Business Conduct Committee or Board Appeals Committee; or (e) a member of the PCX Board of Governors.
- (2) No person who is a member of the Business Conduct Committee or Conduct Panel with knowledge of a pending investigation or disciplinary proceeding, or any interested Corporation staff, may make or knowingly cause to be made an ex parte communication, as defined below, relevant to the facts or allegations of the investigation or the disciplinary proceeding to: (a) a member of the Board of Directors; (b) a person who advises the Board of Directors; (c) any member of the Corporation's Regulatory Staff; (d) the Subject of a pending investigation by the Corporation or a Respondent in a pending disciplinary proceeding, or counsel for or a representative of the Subject or the Respondent; or (e) a member of the PCX Board of Governors.
- (3) No person who is a member of the Board of Directors, or any person who advises the Board of Directors, or any interested Corporation staff, with knowledge of a pending investigation or disciplinary proceeding, may knowingly make or cause to be made an ex parte communication, as defined below, relevant to the facts or allegations of the investigation or the disciplinary proceeding to: (a) any member of the Corporation's Regulatory Staff; (b) the Subject of a pending investigation by the Corporation or a

Respondent in a pending disciplinary proceeding, or counsel for or a representative of the Subject or the Respondent; (c) a member of the Business Conduct Committee; or (d) a member of the PCX Parent Board of Governors.

(b) Disclosure of Prohibited Communications. Any person who receives, makes or knowingly causes to be made a communication prohibited by this Rule must promptly submit to the Regulatory Staff for inclusion in the record of the investigation or disciplinary proceeding:

- (1) all such written communications;
- (2) memoranda stating the substance of all such oral communications; and
- (3) all written responses and memoranda stating the substance of any oral responses to such communications.

(c) Remedies. Any ETP Holder, or associated person of an ETP Holder who made or knowingly caused to be made an ex parte communication prohibited by subsection (a) will be subject to disciplinary action. Furthermore, the Business Conduct Committee, to the extent consistent with the interests of justice, may issue to the ETP Holder, or associated person of an ETP Holder, or interested Corporation staff, responsible for the communication or who benefited from the communication an order to show cause why the claim, defense or interest of the ETP Holder, or associated person of an ETP Holder, or interested Corporation staff, should not be adversely affected by reason of such ex parte communication, including but not limited to the entry of an adverse summary decision. All parties to a disciplinary proceeding and the Regulatory Staff will be provided with adequate notice and a reasonable opportunity to respond to any allegations or contentions contained in the prohibited communication and any responses will be included in the record of the investigation or disciplinary proceeding.

(d) Permitted Communications. Nothing in this Rule prohibits the members of a disciplinary committee or the Regulatory Staff from discussing a pending investigation or disciplinary proceeding at a meeting of the committee in connection with: (1) the adjudication of the investigation pursuant to the Minor Rule Plan; (2) the determination of whether to impose informal discipline; (3) the determination of whether to authorize a complaint or take no further action; or (4) the determination of whether to accept an offer of settlement.

(e) No member of the Business Conduct Committee or Conduct Panel, as defined in Rule 10.5(a), may participate in a matter governed by Rule 10.3(c) as to which that person has a conflict of interest or bias, or if circumstances otherwise exist where his or her fairness might reasonably be questioned. In such a case, the person shall recuse himself or herself or shall be disqualified as follows:

- (1) The Chief Regulatory Officer shall have the authority to direct the disqualification of the interested member of the Business Conduct committee or Conduct Panel.
- (2) The Chief Executive Officer shall have the authority to direct the disqualification of the Chief Regulatory Officer.

Commentary:

.01 "Ex parte communication" means an oral or written communication made without notice to all parties, i.e., the Corporation's Regulatory Staff and the Subjects of investigations or Respondents in disciplinary proceedings. A written communication is ex parte unless a copy has been previously or simultaneously delivered to all interested parties. An oral communication is ex parte unless it is made in the presence of all interested parties except those who, on adequate prior notice, declined to be present.

.02 A disciplinary proceeding will be considered to be pending from the date that a Complaint has been issued pursuant to Rule 10.4 until the proceeding, including any appeals, becomes final.

Complaints

Rule 10.4(a). The Chief Regulatory Officer and his or her delegee(s) have the authority to determine whether there is probable cause for finding that a violation within the disciplinary jurisdiction of the Corporation has occurred and if further proceedings are warranted. If the Regulatory Staff, on behalf of the Corporation, ("the Complainant") determines that further proceedings are warranted, then the Corporation will initiate a formal disciplinary action by preparing a statement of charges ("the Complaint") against any ETP Holder, or associated person of an ETP Holder alleged to have committed a violation ("the Respondent") specifying the acts in which the Respondent is alleged to have engaged in, or which the Respondent is alleged to have omitted, and alleging the specific provisions of the Bylaws, Rules, policies or procedures of the Corporation, or the rules, regulations and procedures promulgated under the Securities Exchange Act of 1934, of which such acts or omissions are alleged to be in violation.

(b) At any time prior to service of the written answer to the Complaint, the Complaint may be amended to allege new matters of fact or law. After service of the written answer, the Business Conduct Committee may allow amendment of the Complaint upon submission of a written motion by the Regulatory Staff and a showing of good cause.

The Respondent shall have fifteen (15) business days after service of the charges to file a written answer thereto. The answer shall specifically admit or deny each allegation contained in the charges, and the Respondent shall be deemed to have admitted any allegation not specifically denied. The answer may also contain any defense which the Respondent wishes to submit and may be accompanied by documents in support of

the answer or defense. In the event the Respondent fails to file an answer, the charges shall be considered to be admitted.

The time period to file any answer may be extended for such further periods as may be granted by the Regulatory Staff, if such request for extension of the filing period is received by the Regulatory Staff within five (5) business days prior to the date on which the answer is due.

(c) Summary Proceedings. Notwithstanding the provisions of Rule 10.5, the Business Conduct Committee may make a determination without a hearing and may impose a penalty as to such charges which the Respondent has admitted or has failed to answer or which otherwise do not appear to be in dispute. Notice of such summary determination, specifying the violations and penalty, shall be served upon the Respondent.

Commentary:

. 01 The term "probable cause" means that facts and circumstances establish a reasonable likelihood that the person committed the violation in issue.

Hearing

Rule 10.5.

(a) Upon Respondent's filing an answer, the Respondent may request a hearing. The Business Conduct Committee shall appoint one or more members to hear the matter (the "Conduct Panel"). Parties shall be given at least fifteen (15) calendar days notice of the time and place of the hearing and a statement of the matters to be considered therein.

(b) Prior to the hearing, the Parties shall be notified of the composition of the Conduct Panel. Any objection to the composition of the Conduct Panel must be submitted to the Hearing Administrator within five (5) business days of receipt of the notification regarding the composition of the Conduct Panel.

(c) At least five (5) business days prior to the hearing the parties shall submit to the Hearing Administrator a list of witnesses and any documentary evidence or other materials to be presented at the hearing. The Hearing Administrator shall immediately furnish such list of witnesses, documentary evidence or other materials to the other parties.

(d) At the hearing, both the Complainant and the Respondent shall be entitled to be heard in person and to present any relevant matter. Any witnesses, testimony or evidence offered by the Complainant or the Respondent shall be subject to cross-examination by the other party. The Conduct Panel shall determine all questions concerning the admissibility of evidence and shall otherwise regulate the conduct of the

hearing. Formal rules of evidence shall not apply. The charges shall be presented by the Corporation, who along with Respondent and any other party, may present evidence and produce witnesses who shall testify under oath and are subject to being questioned by the Conduct Panel and other parties. The Conduct Panel, upon its own motion or the motion of the Complainant or Respondent, may request the production of documentary materials and witnesses. No ETP Holder, or associated person of an ETP Holder shall refuse to furnish relevant testimony, documentary materials or other information requested by the Conduct Panel during the course of the hearing. The Respondent and intervening parties are entitled to be represented by counsel who may participate fully in the hearing. A transcript of the hearing shall be made and shall become part of the record.

(e) Any person not otherwise a party may intervene as a party to the hearing upon demonstrating to the satisfaction of the Conduct Panel that the party has an interest in the subject of the hearing and that the disposition of the matter may, as a practical matter, impair or impede the party's ability to protect that interest. Also, the Conduct Panel may, in its discretion, permit a person to intervene as a party to the hearing when the person's claim or defense and the main action have questions of law or fact in common. Any person wishing to intervene as a party to a hearing shall file with the Conduct Panel a notice requesting the right to intervene, stating the grounds therefor, and setting forth the claim or defense for which intervention is sought. The Conduct Panel, in exercising its discretion concerning intervention, shall take into consideration whether the intervention will unduly delay or prejudice the adjudication of the rights of the original parties.

Offers of Settlement

Rule 10.6(a). At any time prior to decision by the Conduct Panel, the Respondent may submit to the Business Conduct Committee a written offer of settlement which shall contain a proposed stipulation of facts and shall consent to a specified penalty. Where the Business Conduct Committee accepts an offer of settlement, it shall issue a decision, including findings and conclusions and impose a penalty, consistent with the terms of such offer. Where the Business Conduct Committee rejects an offer of settlement, it shall notify the Respondent and the matter shall proceed as if such offer had not been made, and the offer and all documents relating thereto shall not become part of the record. A decision of the Business Conduct Committee issued upon acceptance of an offer of settlement as well as the determination of the Business Conduct Committee whether to accept or reject such an offer shall be final, and the Respondent may not seek review thereof.

(b) If there is more than one Respondent in a proceeding and one or more of said Respondents submits an offer of settlement, the Business Conduct Committee may accept or reject such offers from any one or all of the Respondents submitting such offers. The proceedings shall be dismissed as to those Respondents whose offers have been accepted, and the proceedings shall continue as scheduled for the remaining Respondents.

Decision

Rule 10.7. Within thirty (30) calendar days after the date of a hearing conducted pursuant to Rule 10.5, the Conduct Panel shall prepare a decision in writing determining whether the Respondent has committed a violation and imposing the penalty, if any, therefor. The decision shall include a statement of findings and conclusions, with the reasons therefore upon all material issues presented on the record. Where a penalty is imposed, the decision shall include a statement specifying the acts or practices in which the Respondent has been found to have engaged, or which the Respondent has been found to have omitted, and setting forth the specific provisions of the Bylaws, Rules, policies or procedures of the Corporation, or the rules, regulations and procedures promulgated under the Securities Exchange Act of 1934, which the act or omission to act are deemed to violate. The Respondent shall be promptly sent a copy of the decision. The determination of the Conduct Panel and any penalty imposed shall become final fifteen (15) calendar days after notifying the Respondent; provided, however, that if a request for review of such determination and penalty, or both, is filed as hereinafter provided, the penalty shall be stayed pending outcome of that review.

Review

Rule 10.8(a). Either the Complainant or the Respondent may request a review of the decision pursuant to Rule 10.7 or a summary determination pursuant to Rule 10.4(c) by petitioning the Board Appeals Committee for such review within fifteen (15) calendar days after service of notice of a decision made pursuant to Rule 10.7 or Rule 10.4(c). Such petition shall be in writing and shall specify the findings and conclusions to which exceptions are taken together with reasons for such exceptions. Any objections to a decision not specified by written exception shall be considered to have been abandoned. Respondent shall submit a filing fee of five hundred dollars (\$500) with its request for review. The Board Appeals Committee may waive such filing fee upon a showing of hardship or other compelling reason. If the decision is overruled in whole, the filing fee shall be refunded. If the decision is overruled in part as a result of Respondent's request for review, refund of the filing fee, or any portion thereof, shall be in the discretion of the Board Appeals Committee.

(b) The Board Appeals Committee may appoint a Board Appeals Committee Panel ("Appeals Panel") to conduct reviews of disciplinary proceedings, or may decide to conduct review proceedings on its own. The composition of the Appeals Panel will be determined by the Board Appeals Committee in accordance with Rule 3.3. The body conducting the review, either the Board Appeals Committee itself or the Appeals Panel, is referred to herein as "the Review Board." Unless the Review Board shall decide to open the record for the introduction of new evidence or to hear argument, such review shall be based solely upon the record and the written exceptions filed by the parties. The standard of review shall be de novo. Based upon such review, the Review Board may affirm, reverse or modify in whole or in part, the decision of the Conduct Panel. Such modification may include an increase or decrease of the sanction. The decision of the Review Board shall be in writing and, shall become final fifteen (15) calendar days after

notifying the parties; provided, however, that if a request for review of such determination is filed pursuant to Rule 10.8(c) or Rule 10.8(d) below, the penalty shall be stayed pending the outcome of that review.

Each Review Board member shall be required to disclose to the Board Appeals Committee any circumstances which might preclude such Review Board member from rendering an objective and impartial determination. Prior to the commencement of the first hearing session, the Board Appeals Committee may remove a Review Board member who discloses such information. The Board Appeals Committee shall also inform the parties of any information disclosed pursuant to this section, if the Review Board member who disclosed the information is not removed.

In the event that any Review Board member, after the commencement of the Review, but prior to the rendition of the decision, should become disqualified, resign, die, refuse or be unable to perform or discharge his or her duties, the Board Appeals Committee, upon such proof as they deem satisfactory, shall either (a) appoint a new member to the Review Board to replace such member; or (b) direct that the review proceed without the substitution of a new member.

(c) Either the Complainant or the Respondent may request a review of the decision of the Review Board by the PCX Board of Governors within fifteen (15) calendar days after service of notice of a decision made pursuant to Rule 10.8(b). Such petition shall be in writing and shall specify the findings and conclusions to which exceptions are taken together with reasons for such exceptions. Any objections to a decision not specified by written exception shall be considered to have been abandoned. Respondent shall submit a filing fee of five hundred dollars (\$500) with its request for review. The PCX Board of Governors may waive such filing fee upon a showing of hardship or other compelling reason. If the decision is overruled in whole, the filing fee shall be refunded. If the decision is overruled in part as a result of Respondent's request for review, refund of the filing fee, or any portion thereof, shall be in the discretion of the PCX Board of Governors.

(d) The PCX Board of Governors may, on its own initiative, order review of a decision made by the Review Board within 30 days after notice of the decision has been served on the Respondent. If the PCX Board of Governors does not order review of a decision of the Review Board, the decision of the Review Board shall become final.

(e) Nothing contained in this Rule shall affect any right which a Respondent may have to seek review of the Corporation's decision by the Securities and Exchange Commission.

Judgment and Penalty

Rule 10.9(a). An ETP Holder, or associated person of an ETP Holder shall be subject to appropriate discipline by the Corporation for violations under this Rule including: cancellation or suspension of trading privileges, limitation of activities, functions and

operations, suspension or bar from association with an ETP Holder, fine, censure, or any other fitting sanction.

(b) Penalties imposed under this Rule shall not become effective until the Corporation review process is completed or the decision otherwise becomes final.

(c) Notwithstanding anything contained in this Rule to the contrary, the Corporation may impose such conditions and/or restrictions on the activities of the Respondent as the Corporation considers reasonably necessary for the protection of investors and of the Corporation.

Miscellaneous Provisions

Rule 10.10. Any charges, notices or other documents may be served upon the Respondent either personally or by leaving the same at Respondent's place of business or by deposit in the United States Post Office, postage prepaid via registered or certified mail addressed to the Respondent at its address as it appears on the books and records of the Corporation.

Appeal of Minor Rule Plan Sanctions

Rule 10.11(a). This Section provides the following procedures for persons aggrieved by action taken by the Corporation pursuant to the provisions of the Bylaws and Rules of the Corporation for which action an ETP Holder or associated person of an ETP Holder has been sanctioned pursuant to Rule 10.12 (the Minor Rule Plan), and applies for an opportunity to make an oral presentation or to have the matter reviewed on the papers alone. (This Section shall not apply to disciplinary action taken pursuant to Rule 10.4 herein, non-disciplinary action taken pursuant to Rule 10.13 herein, or to an action in Arbitration.)

(b) *Submission of Application to Corporation.* Any ETP Holder, or associated person of an ETP Holder who is aggrieved by any action of the Corporation within the scope of this Section and who desires the opportunity to make an oral presentation with respect to such action or to have such action reviewed on the papers alone shall file a written application with the Business Conduct Committee within five (5) business days after notification that such action has been taken. The notification submitted by the Corporation shall state the specific grounds for the action taken by the Corporation, and shall notify the party of the party's right to make an oral presentation or to have the matter reviewed on the papers alone. The application shall contain: (1) an identification of the Corporation action over which the review is being requested; (2) the reason(s) why the applicant disagrees with such action; and (3) the relief sought. In addition, the application shall indicate whether the applicant desires to make an oral presentation, in which event it shall be considered a "request for a hearing," or to proceed only upon the existing and/or any additional documents or materials, in which event it shall be considered a "request for a review on the papers." Hereinafter, the terms "hearing" and "review on the papers" shall be referred to jointly as the "Proceeding(s)."

(c) *Intervention.* Any person associated with the applicant whose interest might be affected by the Proceeding shall be entitled to participate as a party. Further, in the discretion either of the Conduct Panel appointed pursuant to paragraph (d) hereof or of the Business Conduct Committee, any other person whose interests might be affected by the Proceeding may be permitted to intervene in the Proceeding, and may be granted such rights of a party as either the Conduct Panel or the Business Conduct Committee, deems appropriate. Any determination of the Conduct Panel or the Business Conduct Committee as to participation in the Proceedings is subject to review by the Board Appeals Committee at the close of the Proceedings or, in the Board Appeals Committee's discretion, during the course of the Proceedings.

(d) *Procedure Following Application for Hearing and/or Review on the Papers.*

- (1) *Appointment of the Panel.* Applications for hearing and/or review on the papers shall be referred to the Business Conduct Committee. The Business Conduct Committee shall appoint a Conduct Panel pursuant to Rule 10.5(a). The Conduct Panel shall be furnished with all materials considered by the Regulatory Staff in connection with its initial action. Parties to the Proceedings shall be notified of the composition of the Conduct Panel. Any objection to the composition of the Conduct Panel must be submitted within five (5) business days of receipt of the notification regarding the composition.
- (2) *Additional Submissions and Notice.* Within fifteen (15) business days after receipt of the notification regarding composition of the Conduct Panel, the applicant, if the application is for a review on the papers, shall submit to the Conduct Panel any additional documents, statements, arguments or other materials. The Regulatory Staff will then have fifteen (15) business days to submit to the Conduct Panel any additional documents, statements, arguments or other materials in response to the applicant's submission. If the application is for a hearing, the parties may, at this time, request an opportunity to call witnesses to the hearing; the Conduct Panel, in its discretion, may or may not grant this request. In the event of a hearing, each party shall furnish to the Conduct Panel and to the other parties, not less than five (5) business days in advance of the scheduled hearing date, copies of all documentary evidence such party intends to present at the hearing. Parties shall be given at least fifteen (15) business days notice of the time and place of the hearing.
- (3) *Conduct of the Proceeding.* Whether the Proceeding is a hearing or a review on the papers alone, the Conduct Panel shall determine all questions concerning the admissibility of evidence and shall

otherwise regulate the conduct of the Proceeding. The formal rules of evidence shall not apply. In the event of a hearing, each of the parties shall be permitted to make an opening statement, present witnesses pursuant to paragraph (d)(2), present documentary evidence, cross-examine witnesses and present closing arguments. The Conduct Panel shall have the right to question all parties and witnesses to the Proceeding. The Conduct Panel may also request the production of documentary evidence and witnesses. No ETP Holder, or associated person of an ETP Holder shall refuse to furnish relevant testimony, documentary materials or other information requested by the Conduct Panel during the course of the Proceeding. All parties are entitled to be represented by counsel who may participate fully in the Proceeding. In the event of a hearing, a transcript of the hearing shall be made and shall become part of the record.

- (4) *The Decision of the Panel.* Within thirty (30) calendar days after the date of the hearing or the review on the papers, the Conduct Panel shall render its decision. The standard of review shall be de novo. The Conduct Panel may confirm, reverse or modify in whole or in part the decision of the Regulatory Staff, and may make any findings or conclusions which in its judgment are proper. The decision of the Conduct Panel shall be in writing, contain a concise statement setting forth the specific findings and conclusions of the Conduct Panel and the reasons in support thereof, and shall be sent to the parties to the Proceedings.
- (5) If after a hearing or review on the papers pursuant to subsection (d) of this Rule, the Conduct Panel determines that an ETP Holder, or associated person of an ETP Holder has violated one or more rules of the Corporation, as alleged, the Conduct Panel: (i) may impose any one or more of the disciplinary sanctions authorized by the Corporation's Bylaws and Rules; and (ii) shall impose a forum fee against the person charged in the amount of two hundred fifty dollars (\$250) if the determination was reached based on a review of the papers, or in the amount of five hundred dollars (\$500) if a hearing was conducted. However, notwithstanding the foregoing, in the event that the Conduct Panel determines that the ETP Holder, or associated person of an ETP Holder has violated one or more Rules of the Corporation, as alleged, and the sole disciplinary sanction imposed by the Conduct Panel for such rule violation(s) is a fine which is less than the total fine initially imposed by the Regulatory Staff for the subject violation(s), the Conduct Panel shall have the discretion to waive the imposition of a forum fee.

- (6) *Review by the Board Appeals Committee.* The decision of the Conduct Panel shall be subject to review by the Board Appeals Committee either on the Board's own motion within thirty days after issuance (or upon presentation to the Board, whichever is later), or upon written petition of any party to the Proceeding filed within fifteen (15) business days after issuance. Such review of the Proceedings shall be in accordance with paragraph (e).

(e) *Procedure Following Petition for Review by the Board Appeals Committee.*

- (1) *Additional Submissions and Appointment of the Board Appeals Committee Panel.* Petitions for review of the Proceeding pursuant to paragraph (d)(6), shall be referred to the Board Appeals Committee which shall be furnished with all material considered by the Regulatory Staff and the Conduct Panel. Parties may submit a written statement to the Board Appeals Committee and may request an opportunity to make an oral presentation before the Board Appeals Committee. The Board Appeals Committee, in its discretion, may grant or deny the request for oral presentation. In the absence of a request for such a presentation, or at any time, the Board Appeals Committee may require an oral presentation. Whether review is conducted by hearing or by review on the papers alone, the matter shall be referred to an appropriate Board Appeals Committee Panel (“Appeals Panel”) appointed by the Board Appeals Committee. A transcript shall be made of any oral presentation and shall become part of the record.
- (2) *Decision of the Appeals Panel.* Review by the Appeals Panel shall be made upon the material furnished it by the Regulatory Staff or Conduct Panel as well as by the parties, and shall be made after such further proceedings as the Appeals Panel shall order. The standard of review shall be de novo. The Appeals Panel may confirm, reverse or modify in whole or in part the decision of the Regulatory Staff or Conduct Panel and may make any findings or conclusions which in its judgment are proper. The decision of the Appeals Board shall be in writing, contain a concise statement of the findings and conclusions of the Appeals Board and the reasons in support thereof, and shall be sent to the parties to the Proceedings.

(f) Nothing contained in this Rule shall affect any right which a Respondent may have to seek review of the Corporation's decision by the Securities and Exchange Commission.

Minor Rule Plan

Rule 10.12.

(a) In lieu of initiating a formal disciplinary action or proceeding, the Corporation may, subject to the requirements set forth in this Rule, impose a fine not to exceed five thousand dollars (\$5,000) on any ETP Holder or associated person of an ETP Holder, for any violation of a Rule of the Corporation that has been determined to be minor in nature.

(b) Whenever it appears that an ETP Holder, or associated person of an ETP Holder has violated a Rule under this Minor Rule Plan, the Corporation shall serve on such person or organization a written statement setting forth (i) the Rule(s) alleged to have been violated; (ii) the act or omission constituting each such violation; and (iii) notice that such person or organization may submit a written statement to a designated committee for its consideration.

(c) The Business Conduct Committee and the Regulatory Staff designated by the Corporation shall have the authority to impose a fine pursuant to this Rule.

(d) If a person or organization that has been fined pursuant to this Rule pays the fine, such payment shall be deemed a waiver of any right to a disciplinary proceeding under Rule 10.11 and of any right to review of the matter by the Business Conduct Committee, Board Appeals Committee, or the PCX Board of Governors.

(e) Any person or organization that has been fined pursuant to this Rule may contest such fine by filing with the Corporation a written application meeting the requirements of Rule 10.11. Such written application must be submitted not more than five (5) business days after receipt of written notification that a fine has been imposed pursuant to this Rule. If a determination is contested pursuant to this subsection, the matter shall become a formal disciplinary action, and any penalty imposed by a hearing panel shall be publicly reported after such decision has become "final" pursuant to Rule 10.7. Pursuant to Securities Exchange Act Release No. 34-30958, any person or organization found in violation of a minor rule under this plan is not required to report such violation on SEC Form BD, provided that the sanction imposed consists of a fine not exceeding two thousand five hundred dollars (\$2,500) and the sanctioned person or organization has not sought an adjudication, including a hearing, or otherwise exhausted the administrative remedies available with respect to the matter. Any fine imposed in excess of two thousand five hundred dollars (\$2,500) will be subject to current rather than quarterly reporting to the Securities and Exchange Commission pursuant to Rule 19d-1 under the Securities Exchange Act of 1934.

(f) Nothing in this Rule shall require the Corporation to impose a fine for a violation of any Rule under this Minor Rule Plan. If the Corporation determines that any violation is not minor in nature, the Corporation may, at its discretion, proceed under Rule 10.4 rather than under this Rule.

The circumstances underlying the issuance of each citation shall be reviewed by the Business Conduct Committee for a determination of whether the evidence is sufficient to find a violation of any Rules of the Corporation.

(g) *Minor Rule Plan: Minor Trading Rule Violations.*

- (1) Short Sale Rules. (Rule 7.16)
- (2) Failure to follow the provisions of the rules and regulations governing the use of the Intermarket Trading System ("ITS"). (Rules 7.55 – 7.57)

(h) *Minor Rule Plan: Record Keeping and Other Minor Rule Violations.*

- (1) Failure to submit trade data to the Corporation in a timely manner. (Rule 10.2(e))
- (2) Failure to file a Securities Investor Protection Corporation form and assessment in a timely manner. (Rule 4.11(b)). Note: Failure to file a SIPC form and assessment within five (5) business days after ETP Holder's receipt of SIPC's final notice will result in formal disciplinary action.
- (3) Failure to furnish in a timely manner books, records or other requested information or testimony in connection with an examination of financial responsibility and/or operational conditions. (Rule 4.11(c))
- (4) Failure to notify the Corporation of any change of address where notices may be served. (Rule 2.16(b))
- (5) Failure to file a financial report or financial information in the type, form, manner and time prescribed by the Corporation. (Rule 4.11(a))
- (6) Delaying, impeding or failing to cooperate in an investigation by the Corporation. (Rule 10.2(d))

(i) *Minor Rule Plan: Recommended Fine Schedule.*

	<i>1st Violation</i>	<i>Fines 2nd Violation</i>	<i>3rd Violation</i>
(1) Minor Trading Rule Violations ¹			
1. Short Sale Rules. (Rule 7.16)	\$500.00	\$1,000.00	\$2,500.00
2. Failure to follow the provisions of the rules and regulations governing the use of the Intermarket Trading System (“ITS”). (Rules 7.55-7.57)	\$500.00	\$1,000.00	\$2,000.00
(2) Record Keeping and Other Minor Rule			
1. Failure to submit trade data to the Corporation in a timely manner. (Rule 10.2(e))	\$250.00	\$500.00	\$750.00
2. Failure to file a Securities Investor Protection Corporation form and assessment in a timely manner. (Rule 4.11(b))	\$500.00	\$1,000.00	\$1,500.00
3. Failure to furnish in a timely manner records or other requested information or testimony in connection with an examination of financial responsibility and/or operational conditions. (Rule 4.11(c))	\$250.00	\$500.00	\$750.00
4. Failure to notify the Corporation of a change of address where notices may be served (Rule 2.16(b))	\$250.00	\$500.00	\$750.00
5. Failure to file a financial report or financial information in the type, form, manner and time prescribed by the Corporation. (Rule 4.11(a))	\$250.00	\$500.00	\$750.00
6. Delaying, impeding or failing to cooperate in a Corporation investigation. (Rule 10.2(d))	\$500.00	\$1,000.00	\$2,000.00

¹ Fines for multiple violations of Minor Trading Rules are calculated on a running two-year basis, except that violations denoted with an asterisk are calculated on a running one-year basis.

Hearings and Review of Decisions by the Corporation

Rule 10.13.

(a) **General Provisions.** This Rule provides the procedure for persons aggrieved by any of the following actions taken by the Corporation to apply for an opportunity to be heard and to have the action reviewed. These actions are:

- (1) the denial of an ETP;
- (2) the barring of any person from becoming associated with an ETP Holder;
- (3) the suspension or cancellation of ETP trading privileges;
- (4) the prohibition or limitation with respect to access to services provided by the Corporation, or the access to services of any ETP Holder taken pursuant to the Bylaws, or Rules or procedures of the Corporation; or
- (5) actions taken by the Corporation pursuant to Rule 7.22, including the denial of the application for, or the termination or suspension of, a Market Maker's registration in a security or securities;
- (6) actions taken by the Corporation pursuant to Rule 7.23;
- (7) actions taken by the Corporation pursuant to Rule 7.25, including the denial of the application for, or the termination or suspension of, an Odd Lot Dealer's registration in a security or securities.

The provisions of this Rule shall not apply to reviews of the following:

- (A) disciplinary action, for which review is already provided within Rule 10;
- (B) actions in Arbitration; and
- (C) reviews of delisting decisions for which review is already provided within Rule 5.

For purposes of this Section, a person must be "aggrieved" in an economic sense.

(b) **Submission of Application.** A person who is aggrieved by any action of the Corporation within the scope of this Rule and who desires an opportunity to be heard

shall file a written application with the Secretary of the Corporation within thirty (30) calendar days after such action has been taken. The application shall state the action complained of and the specific reasons why the applicant takes exception to such action and the relief sought. In addition, if the applicant intends to submit any additional documents, statements, arguments, or other material in support of the application, the same should be so stated and identified.

(c) Extension of Time. An application not filed within the time specified in Rule 10.13(b) shall not be considered by the Board Appeals Committee, unless an extension of time is allowed by the Board Appeals Committee upon a showing of good cause. In order to obtain an extension of time within which to file an appeal, the applicant must, within the time specified in Rule 10.13(b) file with the Secretary of the Corporation a request for an extension of time within which to submit the application. The request for extension will be ruled upon by the Board Appeals Committee, whose ruling will be given in writing. Rulings on requests for extension of time are not subject to appeal under Rule 10.

(d) Panel. Applications for hearing or review shall be referred by the Secretary to the Board Appeals Committees which shall, if requested, appoint a hearing panel (the "Hearing Panel") of no less than three persons. A record of the proceedings shall be kept.

(e) Documents. The Hearing Panel will set a hearing date and shall be furnished with all materials relevant to the proceeding at least seventy-two (72) hours prior to the hearing. Each party shall have the right to inspect and copy the other party's materials prior to the hearing or review.

(f) Notice. Parties to the proceeding shall be informed by the Secretary of the composition of the Hearing Panel at least seventy-two (72) hours prior to the scheduled hearing or review.

(g) Participants. The parties to the hearing shall consist of the applicant and a representative of the Corporation who shall present the reasons for the action taken by the Corporation. In addition, any other person may intervene as a party in the hearing when that person claims an interest in the transaction that is the subject of the action. An intervening party must be so situated that the disposition of the action may, as a practical matter, impair or impede that person's ability to protect that interest unless it is adequately represented by existing parties. Also, the Hearing Panel may, in its discretion, permit a person to intervene in the action as a party when that person's claim or defense and the main action have questions of law and fact in common. The applicant is entitled to be represented by counsel at all stages of the proceeding.

(h) Procedure for Intervention. The person seeking intervention shall serve a motion to intervene on the Secretary which will be transmitted to the Hearing Panel. The motion shall state the grounds therefor and shall set forth the claim or defense upon which the intervention is sought. The Hearing Panel, in its discretion, shall consider

whether the intervention will unduly delay or prejudice the adjudication or the rights of the original parties.

(i) **Conduct of Hearing.** The Hearing Panel shall determine all questions concerning the admissibility of evidence and shall regulate the conduct of the hearing. Each of the parties shall be permitted to make an opening statement, present witnesses and documentary evidence, cross-examine opposing witnesses and present closing arguments, orally or in writing as determined by the Hearing Panel. The Hearing Panel shall also have the right to question all parties and witnesses to the proceeding and a record shall be kept. Formal rules of evidence shall not apply. The standard of review shall be de novo.

(j) **Decision.** The Hearing Panel's decision shall be in writing and contain the reasons supporting the conclusions of the panel.

(k) **Petition.** The decision of the Hearing Panel shall be subject to review by the PCX Board of Governors either on its own motion within thirty (30) calendar days after issuance, upon written request submitted by the applicant, by the Chief Executive Officer of the Corporation, or by the Chairperson of the committee whose action was subject to the prior review, within fifteen (15) calendar days after issuance of the decision. Such petition shall be in writing and shall specify the findings and conclusions to which exceptions are taken together with the reasons for such exceptions. Only written exceptions shall be considered. The PCX Board of Governors, or committee of the PCX Board of Governors, shall have sole discretion to allow oral argument.

(l) **Service of Notice.** Any charges, notices or other documents may be served upon the applicant either personally or by leaving the same at applicant's place of business or by deposit in the United States Post Office, postage prepaid via registered or certified mail addressed to the applicant at his or her address as it appears on the books and records of the Corporation.

(m) **Extension of Time.** Any time limits imposed under this Rule for the submission of answers, petition or other materials may be extended by permission of the Secretary of the Corporation. All papers and documents relating to review by the Board Appeals Committee, the PCX Board of Governors, or its designated committee, must be submitted to the Secretary of the Corporation.

Miscellaneous Provision

Rule 10.14. Unless otherwise stated, any time limits imposed under Rule 10 for the submission of answers, petitions or other materials may be extended only by the Corporation.

Rule 11

Cancellation, Suspension and Reinstatement

Notice of Expulsion or Suspension

Rule 11.1(a) An ETP Holder which is expelled or suspended from any self-regulatory organization, encounters financial difficulty or operating inadequacies, fails to perform contracts, or becomes insolvent shall give prompt written notification to the Corporation of any such occurrence.

(b) An ETP Holder shall give prompt written notification to the Corporation with respect to the expulsion or suspension of any associated person of such ETP Holder by any self-regulatory organization.

Procedures for Suspension

Rule 11.2(a) This Rule sets forth the procedures for certain suspensions, cancellations, bars, limitations and prohibitions on access to the Corporation's services.

- (1) *Summary Suspension.* In accordance with Section 6(d)(3) of the Exchange Act, the Board of Directors of the Corporation or a committee thereof may summarily:
 - (i) suspend the trading privileges of an ETP Holder, or associated person of an ETP Holder who has been and is expelled or suspended from any self-regulatory organization or barred or suspended from being associated with a member of any self-regulatory organization;
 - (ii) suspend the trading privileges of an ETP Holder, who is in such financial or operating difficulty that the Corporation determines and so notifies the Commission that such suspension is necessary for the protection of the investors, creditors, ETP Holders or the Corporation;
 - (iii) suspend the trading privileges of an ETP Holder, or associated person of an ETP Holder who is found in violation of any of the prohibited acts as specified in Rule 6.2(a)-(f) that are violations of Rules of the Corporation; or
 - (iv) limit or prohibit any person with respect to access to services offered by the Corporation if subparagraph (i) or (ii) is applicable to such person or, in the case of a person who is not an ETP Holder, if the Corporation determines that such person does not meet the qualification requirements or prerequisites for such access with safety to investors, creditors, ETP Holders or the Corporation.

- (2) *Non-Summary Suspension.* The Corporation also may take the following actions, after written notice, after the passage of any grace period and/or applicable cure period, and after opportunity for hearing:
- (i) cancel ETP trading privileges of an ETP Holder that becomes ineligible for ETP trading privileges, or that continues to be associated with an ineligible person, or suspend or bar a person from continuing to be associated with an ETP Holder because such person is or becomes ineligible for association under Rule 2.19(a);
 - (ii) suspend or cancel trading privileges of an ETP Holder for failure to pay any fees, charges, assessments, or fines to the Corporation under Rule 3.8; or failure to comply with an arbitration award or settlement agreement related to an arbitration or mediation under Rule 12;
 - (iii) cancel trading privileges of an ETP Holder for failure to file or submit or request any report, document, or other information required to be filed with or requested by the Corporation under Rule 10.2(d); or
 - (iv) limit or prohibit any ETP Holder or associated person of an ETP Holder or other person with respect to access to services offered by the Corporation, if the Corporation determines that such person does not meet the qualification requirements or prerequisites for such access or such person cannot be permitted to continue to have access with safety to investors, creditors, ETP Holders or the Corporation.

(b) Any person aggrieved by any summary action taken under Rule 11.2(a)(1) shall be promptly notified of the suspension and the reason therefore, and afforded an opportunity for a hearing by the Corporation in accordance with the provisions of this Rule and any other applicable Rules of the Corporation. The Corporation shall provide the suspended or affected person or organization with a written statement of, and give them an opportunity to be heard upon or defend against, the specific grounds for the suspension or disciplinary proceeding. A record of any such hearing shall be maintained. A determination by the Corporation to continue the suspension or impose a disciplinary sanction shall be supported by a statement setting forth the specific grounds for such suspension or sanction.

(c) Any action taken pursuant to Rule 11.2(a)(1) or (2) shall also be subject to the applicable provisions of Rule 10.13.

Commentary:

.01 In the event a determination is made by the Corporation to take summary action pursuant to this Rule, notice thereof will be sent to the Securities and Exchange Commission. In addition, the Securities and Exchange Commission may on its own motion order, or any person or organization aggrieved by any summary action take under this Rule may apply to the Securities and Exchange Commission for, a stay of such summary action pending the results of a hearing.

Effect of Suspension or Cancellation

Rule 11.3. When an ETP Holder, or associated person of an ETP Holder has its trading privileges suspended or canceled by the Corporation for any reason specified in Rule 11.2(a)(1) or (2), such a person or organization shall be deprived during the term of the suspension of all rights and trading privileges conferred by the ETP, except as otherwise provided in the Rules of the Corporation. The person or organization having trading privileges suspended or canceled shall remain subject to the disciplinary power of the Corporation with respect to any disciplinary action as provided by the Rules of the Corporation.

Disciplinary Measures During Suspension

Rule 11.4. An ETP Holder, or associated person of an ETP Holder whose trading privileges are suspended under the provisions of Rule 11.2(a)(1) or (2) may be disciplined pursuant to the Rules of the Corporation for any offense committed either before or after the announcement of the suspension, in all respects as if no suspension were in effect.

Investigation Following Summary Suspension

Rule 11.5. Every ETP Holder, or associated person of an ETP Holder whose trading privileges are suspended under the provisions of Rule 11.2(a)(1) shall immediately afford every facility required by the Corporation for the investigation of its affairs as required by the Board of Directors and shall, after the notification of the suspension, file with the Corporation a written statement covering all information required by the Corporation.

Grounds for Cancellation

Rule 11.6. If an ETP Holder, or associated person of an ETP Holder has had trading privileges suspended under the provisions of Rule 11.2(a)(1) and such person or organization does not request a hearing within thirty (30) calendar days to review such suspension or at such hearing it is determined that the suspension was properly imposed, and such person or organization, has not within forty-five (45) calendar days after the suspension remedied the reason for such suspension and has not applied for reinstatement, the Board may cancel the trading privileges of such person or organization. If application for reinstatement is made within forty-five (45) calendar days of suspension

as provided in this Rule, and such application is disapproved, the Board may cancel the trading privileges of such person or organization.

Reinstatement

Rule 11.7. When an ETP Holder, or associated person of an ETP Holder has had trading privileges suspended under the provisions of Rule 11.2(a)(1) or (2) applies for reinstatement, it must be demonstrated to the satisfaction of the Corporation that the problem or problems responsible for such suspension have been satisfactorily resolved. If such problem involves financial difficulty or operating inadequacies, the person or organization shall furnish to the Corporation comprehensive financial and operating reports in a form and manner to be prescribed by the Corporation. If the ETP Holder or associated person of an ETP Holder furnishes satisfactory proof of a resolution of the problem or problems responsible for such suspension, the Corporation shall notify in writing all ETP Holders of the application for reinstatement and that a meeting of the Board to consider it will be held on a designated date which shall be not less than ten (10) business days subsequent to such notice. At such meeting at which a quorum is present the ETP Holder, or associated person of an ETP Holder may be reinstated provided not less than a majority of the Directors voting approve the application.

Failure to Obtain Reinstatement

Rule 11.8. If an ETP Holder or associated person of an ETP Holder whose trading privileges have been suspended under the provisions of this Rule fails or is unable to apply for reinstatement in accordance with Rule 11.7, or fails to obtain reinstatement as therein provided, trading privileges conferred by an ETP will terminate.

Rule 12 Arbitration

Matters Subject to Arbitration

Rule 12.1. For purposes of this Rule, the following definitions apply:

(a) the terms “service” or “serve” shall mean effecting the delivery of a document to persons via first class mail, overnight delivery, hand delivery, or facsimile.

(b) the term “associated person” shall also include “affiliated” person “approved person” and “allied person”.

(c) the term “Director of Arbitration” shall mean any person appointed or designated by the Corporation’s Chief Executive Officer to direct the Corporation’s arbitration program.

Rule 12.2.

(a) Any dispute, claim or controversy between parties who are ETP Holders or associated persons arising in connection with the securities business of such parties shall, at the request of any such party, be submitted for arbitration in accordance with this Rule.

(b) Any claim which is related to employment, including sexual harassment or any discrimination claim in violation of a statute, will be eligible for submission to arbitration under this Rule only if all parties have agreed to arbitrate the claim after it has arisen.

(c) Any dispute, claim or controversy between a customer or non-ETP Holder and an ETP Holder and/or associated person arising in connection with the securities business of such ETP Holder and/or associated person shall be arbitrated under this Rule as provided by any duly executed and enforceable written agreement, or upon the request of the customer or non-ETP Holder.

(d) Claims which arise out of transactions in a readily identifiable market may, with the consent of the claimant, be referred to the arbitration forum for that market by the Corporation.

(e) Class Action Claims

(1) A claim submitted as a class action shall not be eligible for arbitration under this Rule.

(2) Any claim filed by a member or members of a putative or certified class action is also ineligible for arbitration at the Corporation if

the claim is encompassed by a putative or certified class action filed in federal or state court, or is ordered by a court to a non self-regulatory organization arbitration forum for class-wide arbitration. However, such claims shall be eligible for arbitration in accordance with this Rule or pursuant to the parties' contractual agreement, if any, if a claimant demonstrates that it has elected not to participate in the putative or certified class action or, if applicable, has complied with any conditions for withdrawing from the class prescribed by the court.

Disputes concerning whether a particular claim is encompassed by a putative or certified class action shall be referred by the Corporation's Director of Arbitration to a panel of arbitrator(s) in accordance with Rule 12.3 or Rule 12.9, as applicable. Either party may elect instead to petition the court with jurisdiction over the putative or certified class action to resolve such disputes. Any such petition to the court must be filed within ten (10) business days of receipt of notice that the Director of Arbitration is referring the dispute to a panel of arbitrator(s).

- (3) No ETP Holder or associated person shall seek to enforce any agreement to arbitrate against a customer that has initiated in court a putative class action or is a member of a putative or certified class with respect to any claims encompassed by the class action unless and until: (i) the class certification is denied; (ii) the class is decertified; (iii) the customer is excluded from the class by the court; or (iv) the customer elects not to participate in the putative or certified class action or, if applicable, has complied with any conditions for withdrawing from the class prescribed by the court.
- (4) No ETP Holder and/or associated person shall be deemed to have waived any of its rights under this Rule or under any agreement to arbitrate to which it is party except to the extent stated in this paragraph (e).

(f) The arbitration provisions of this Rule shall not constitute a prospective waiver of any right of action that may arise under the federal securities laws.

(g) Under this Rule, the Corporation shall have the right to decline the use of its arbitration facilities in any dispute, claim or controversy, where having due regard for the purposes of the Corporation and the intent of this Rule, such dispute, claim or controversy is not a proper subject matter for arbitration.

(h) It may be deemed conduct inconsistent with just and equitable principles of trade for an ETP Holder or a person associated with an ETP Holder to fail to submit to arbitration on demand under the provisions of this Rule, or to fail to appear or to provide

any document in his or her or its possession or control as directed pursuant to the provisions of this Rule or to fail to honor an award of arbitrators properly rendered pursuant to the provisions of this Rule where a timely motion has not been made to vacate or modify such award pursuant to applicable law.

(i) Where an arbitration proceeding pursuant to this Rule discloses any violation of the Corporation's Bylaws or Rules, the Corporation may take such disciplinary action as it deems appropriate.

(j) For purposes of this Rule, the terms ETP Holder, associated person and employee of an ETP Holder shall be deemed to encompass those persons who were ETP Holders, associated persons or employees thereof at the time the circumstances occurred which gave rise to the controversy.

Simplified Arbitration for Public Customers

Rule 12.3(a). Any dispute, claim or controversy arising between a public customer(s) and an ETP Holder and/or person associated with an ETP Holder required to be arbitrated under the Bylaws and Rules of the Corporation and involving a dollar amount not exceeding \$10,000, exclusive of attendant costs and interest, shall upon demand of the customer(s) or by written consent of the parties be arbitrated as hereinafter provided.

(b) The claimant shall file with the Director of Arbitration an executed Submission Agreement, a copy of the Statement of Claim of the controversy in dispute and the required deposit, together with documents in support of the claim. Sufficient additional copies of the Submission Agreement, the Statement of Claim and supporting documents shall be provided to the Director of Arbitration for each party and the arbitrator. The Statement of Claim shall specify the relevant facts, the remedies sought and whether or not a hearing is demanded.

(c) The claimant shall pay a filing fee and remit a hearing deposit as specified in Rule 12.32 upon filing of the Submission Agreement. The final disposition of the sum shall be determined by the arbitrator.

(d) The Director of Arbitration shall endeavor to serve promptly on the respondent(s) one (1) copy of the Submission Agreement and one (1) copy of the Statement of Claim. Within twenty (20) calendar days from receipt of the Statement of Claim, respondent(s) shall serve each party with an executed Submission Agreement and a copy of respondent's answer. Respondent's executed Submission Agreement and answer shall also be filed with the Director of Arbitration with sufficient additional copies for the arbitrator(s), together with any deposit required under the schedule of fees for customer disputes.

The answer shall designate all available defenses to the claim and may set forth any related counterclaim and/or related third party claim(s) the respondent(s) may have against the claimant or any other person. If respondent(s) has interposed a third party

claim, the respondent(s) shall serve the third party respondent with an executed Submission Agreement, a copy of respondent's Answer containing the third party claim and a copy of the original claim filed by the claimant. A copy of the third party claim shall be filed with the Director of Arbitration with sufficient copies for the arbitrator(s). The third party respondent shall respond in the manner herein provided for response to the claim.

If the respondent(s) files a related counterclaim exceeding \$10,000.00, the arbitrator may refer the claim, counterclaim and/or third party claim, if any, to a panel of three (3) or five (5) arbitrators in accordance with Rule 12.9, or he or she may dismiss the counterclaim and/or third party claim, without prejudice to the counterclaimant(s) and/or third party claimant(s) pursuing the counterclaim and/or third party claim in a separate proceeding. The cost to the claimant under either proceeding shall in no event exceed the total amount specified in Rule 12.32.

(e) All parties shall serve promptly on all other parties and the Director of Arbitration, with sufficient copies for the arbitrator(s), a copy of the answer, counterclaim, third party claim, amended claim or other responsive pleading, if any. The claimant, if a counterclaim is asserted against him or her, shall within ten (10) calendar days either (i) serve a reply to the counterclaim on each party and on the Director of Arbitration with sufficient additional copies for the arbitrator(s), or (ii) if the amount of the counterclaim exceeds the claim, have the right to file a statement withdrawing the claim. If the claimant withdraws the claim, the proceedings will be discontinued without prejudice to the rights of the parties.

(f) The dispute, claim or controversy shall be submitted to a single public arbitrator knowledgeable in the securities industry selected by the Director of Arbitration. Unless the public customer demands or consents to a hearing, or the arbitrator(s) calls a hearing, the arbitrator shall decide the dispute, claim or controversy solely upon the pleadings and evidence filed by the parties. If a hearing is necessary, such hearing shall be held as soon as practicable at a locale selected by the Director of Arbitration.

(g) The Director of Arbitration may grant extensions of time to file any pleading upon a showing of good cause.

(h) Document Production and Information Exchange in Simplified Proceedings

- (1) The arbitrator shall be authorized to require the submission of further documentary evidence as he or she, in his or her sole discretion, deems advisable.
- (2) If a hearing is demanded or consented to, in accordance with this Rule 12, the General Provisions Governing Pre-Hearing Proceedings under Rule 12.15 shall apply.

(3) If no hearing is demanded or consented to, all requests for document production shall be submitted in writing to the Director of Arbitration within ten (10) business days of notification of the identity of the arbitrator selected to decide the case. The requesting party shall simultaneously serve its requests for document production on all parties. Any response or objection to the requested document production shall be served on all parties and filed with the Director of Arbitration within five (5) business days of receipt of the requests for production. The selected arbitrator shall resolve all requests under this paragraph on the papers submitted.

(i) Upon the request of the arbitrator, the Director of Arbitration shall appoint two (2) additional arbitrators to a panel which shall decide the matter in controversy.

(j) In any case where there is more than one (1) arbitrator, the majority will be public arbitrators.

(k) In his or her discretion, the arbitrator may, at the request of any party, permit such party to submit additional documentation relating to the pleadings.

(l) Except as otherwise provided herein, the general arbitration rules of the Corporation shall be applicable to proceedings instituted under this Rule.

Hearing Requirements--Waiver of Hearing

Rule 12.4.

(a) Any dispute, claim or controversy, except as provided in Rule 12.3 (Simplified Arbitration for Public Customers), shall require a hearing unless all parties waive such hearing in writing and request that the matter be resolved solely upon the pleadings and documentary evidence.

(b) Notwithstanding a written waiver of a hearing by the parties, a majority of the arbitrators may call for and conduct a hearing. In addition, any arbitrator may request the submission of further evidence.

Time Limitation Upon Submission

Rule 12.5. No dispute, claim or controversy shall be eligible for submission to arbitration under this Rule in any instance where six (6) years shall have elapsed from the occurrence or event giving rise to the act or the dispute, claim or controversy. This section shall not extend to applicable statutes of limitations, nor shall it apply to any case which is directed to arbitration by a court of competent jurisdiction.

Dismissal of Proceedings

Rule 12.6. At any time during the course of an arbitration, the arbitrators may either upon their own initiative or at the request of a party, dismiss the proceedings and refer the parties to the remedies provided by law. The arbitrators shall upon the joint request of the parties dismiss the proceedings.

Settlements

Rule 12.7. All settlements upon any matter submitted shall be at the election of the parties.

Tolling of Time Limitation(s) for the Institution of Legal Proceedings

Rule 12.8.

(a) Where permitted by law, the time limitation(s) which would otherwise run or accrue for the institution of legal proceedings shall be tolled when a duly executed Submission Agreement is filed by the claimant(s). The tolling shall continue for such period as the Corporation shall retain jurisdiction upon the matter submitted.

(b) The six (6) year time limitation upon submission to arbitration shall not apply when the parties have submitted the dispute, claim or controversy to a court of competent jurisdiction. The six (6) year time limitation shall not run for such period as the court shall retain jurisdiction upon the matter submitted.

Designation of Number of Arbitrators

Rule 12.9.

(a) **Public Controversies.** (1) Except as otherwise provided in this Rule, in all arbitration matters involving public customers and where the matter in controversy does not exceed \$30,000, the Director of Arbitration shall appoint a single public arbitrator who is knowledgeable in, but who is not from the securities industry, to decide the dispute, claim or controversy. Upon the request of a party in its initial filing or at the request of the arbitrator, the Director of Arbitration shall appoint an arbitration panel which shall consist of three (3) or five (5) arbitrators, at least a majority of whom shall not be from the securities industry, unless the public customer requests a panel consisting of at least a majority from the securities industry.

(b) In arbitration matters involving public customers and where the amount in controversy exceeds \$30,000, or where the matter in controversy does not involve or disclose a money claim, the Director of Arbitration shall appoint an arbitration panel which consists of no fewer than three (3) arbitrators, nor more than five (5), at least a majority of whom shall not be from the securities industry, unless the public customer requests a panel consisting of at least a majority from the securities industry.

(c) An arbitrator will be deemed as being from the securities industry if he or she:

- (1) is a person associated with an ETP Holder, broker/dealer, government securities broker, government securities dealer, municipal securities dealer or registered investment advisor, or
- (2) has been associated with any of the above within the past three (3) years, or
- (3) is retired from any of the above, or
- (4) is an attorney, accountant or other professional who devoted twenty (20) percent or more of his or her professional work effort to securities industry clients within the last two (2) years.

(d) An arbitrator who is not from the securities industry shall be deemed a public arbitrator. A person will not be classified as a public arbitrator if he or she has a spouse or other member of the household who is a person associated with a registered broker, dealer, municipal securities dealer, government securities broker, government securities dealer or investment advisor.

(e) ETP Holder Controversies. In all arbitration matters not involving public customers, the Director of Arbitration shall assign the matter to a panel consisting of ETP Holders representatives. Such members of the arbitration panel shall not be affiliated with any of the parties to the controversy or have any interest in the matter to be heard. For controversies involving an amount of \$10,000 or less, the panel shall consist of one (1) ETP Holder representative. For all other controversies, the panel shall consist of three (3) ETP Holder representatives.

(f) Composition of Panels. The individuals who shall serve on a particular arbitration panel shall be determined by the Director of Arbitration. The Director of Arbitration may name the Chair of each panel.

(g) Pursuant to this Rule, arbitrations shall be held either in Los Angeles or San Francisco or such alternate situs mutually acceptable to the parties to the controversy and the Corporation. Where the parties have requested an alternate situs, the Corporation may either establish arbitration facilities outside the Los Angeles and San Francisco areas or refer the arbitration proceeding to another self-regulatory organization. In the event that another self-regulatory organization conducts the arbitration, such organization shall follow the procedures contained in this Rule.

Notice of Selection of Arbitrators

Rule 12.10. The Director of Arbitration shall inform the parties of the arbitrators' names and employment histories for the past ten (10) years, as well as information disclosed pursuant to Rule 12.12 at least eight (8) business days prior to the date fixed for the first hearing session. A party may make further inquiry of the Director of Arbitration concerning an arbitrator's background.

In the event that any arbitrator after appointment and prior to the first hearing session, should resign, die, withdraw, be disqualified or otherwise be unable to perform as an arbitrator, the Director of Arbitration shall appoint a replacement arbitrator to fill any vacancy. The Director of Arbitration shall inform the parties of the name and employment history of the arbitrator for the past ten (10) years, as well as information disclosed pursuant to Rule 12.12, as soon as possible.

A party may make further inquiry of the Director of Arbitration concerning the background of the replacement arbitrator and, within the time remaining prior to the first hearing session, or the five (5) day period provided under Rule 12.11, whichever is shorter, may exercise its right to challenge the replacement arbitrator as provided under Rule 12.11.

Peremptory Challenge

Rule 12.11. In any arbitration proceeding, each party shall have the right to one peremptory challenge. In arbitrations where there are multiple claimants, respondents and/or third party respondents, the claimants shall have one peremptory challenge, the respondents shall have one peremptory challenge and the third party respondents shall have one peremptory challenge, unless the Director of Arbitration determines that the interests of justice would best be served by awarding additional peremptory challenges.

Unless extended by the Director of Arbitration, a party wishing to exercise a peremptory challenge must do so by notifying the Director of Arbitration in writing within five (5) business days of notification of the identity of the persons named to the panel. There shall be unlimited challenges for cause.

Disclosures Required of Arbitrators

Rule 12.12(a). Each arbitrator shall be required to disclose to the Director of Arbitration any circumstances which might preclude such arbitrator from rendering an objective and impartial determination. Each arbitrator shall disclose: (1) any direct or indirect financial or personal interest in the outcome of the arbitration or (2) any existing or past financial, business, professional, family or social relationships that are likely to affect impartiality or that might reasonably create an appearance of partiality or bias. Persons requested to serve as arbitrators should disclose any such relationships which they personally have with any party or its counsel, or with any individual whom they have been told will be a

witness. They should also disclose any such relationship involving members of their families or their current employers, partners, or business associates.

(b) Persons who are requested to accept appointment as arbitrators should make a reasonable effort to inform themselves of any interests or relationships described in subsection (a) above.

(c) The obligation to disclose interests, relationships, or circumstances that might preclude an arbitrator from rendering an objective and impartial determination described in subsection (a) hereof is a continuing duty that requires a person who accepts appointment as an arbitrator to disclose, at any stage of the arbitration, any such interests, relationships, or circumstances that arise, or are recalled or discovered.

(d) Prior to the commencement of the first hearing session, the Director of Arbitration may remove an arbitrator based on information disclosed pursuant to this section. The Director of Arbitration shall also inform the parties of any information disclosed pursuant to this section, if the arbitrator who disclosed the information is not removed.

Disqualification or Other Disability of Arbitrators

Rule 12.13. In the event that any arbitrator, after the commencement of the first hearing session but prior to the rendition of the award should become disqualified, resign, die, withdraw or otherwise be unable to perform as an arbitrator, the remaining arbitrator(s) may continue with the hearing and determination of the controversy, unless such continuation is objected to by any party within five (5) days of notification of the vacancy on the panel. Upon objection, the Director of Arbitration shall appoint a replacement arbitrator to fill the vacancy. The Director of Arbitration shall inform the parties as soon as possible of the name and employment history of the replacement arbitrator for the past ten (10) years, as well as information disclosed pursuant to Rule 12.12. A party may make further inquiry of the Director of Arbitration concerning the replacement arbitrator's background and within the time remaining prior to the next scheduled hearing session or the five (5) day period provided under Rule 12.11, whichever is shorter, may exercise its right to challenge the replacement arbitrator as provided in Rule 12.11.

Initiation of Proceedings

Rule 12.14. Except as otherwise provided herein, an arbitration proceeding under this Rule shall be instituted as follows:

(a) Statement of Claim. The claimant shall file with the Director of Arbitration an executed Submission Agreement and a Statement of Claim of the controversy in dispute, together with the documents in support of the claim, and the required deposit. Sufficient additional copies of the Submission Agreement and the Statement of Claim and supporting documents shall be provided to the Director of Arbitration for each party and each arbitrator. The Statement of Claim should specify the relevant facts and the

remedies sought. The Director of Arbitration shall endeavor to serve promptly by mail or otherwise on the respondent(s) one (1) copy of the Submission Agreement and one (1) copy of the Statement of Claim.

- (b) Answer-Defenses, Counterclaims and/or Cross-Claims.
 - (1) Within twenty (20) business days from receipt of the Statement of Claim, the respondent(s) shall serve each party with an executed Submission Agreement and a copy of respondent's answer. An executed Submission Agreement and answer of the respondent(s) shall also be filed with the Director of Arbitration with sufficient additional copies for the arbitrator(s), along with any deposit required under the schedule of fees. The answer shall specify all available defenses and relevant facts that will be relied upon at the hearing and may set forth any related counterclaim the respondent(s) may have against the claimant, any cross-claim the respondent(s) may have against any other named respondent(s), and any third party claim against any other party or person based upon any existing dispute, claim or controversy subject to arbitration under this Rule.
 - (2)
 - (i) A respondent, responding claimant, cross-claimant, cross-respondent, or third party respondent who pleads only a general denial as an answer may, upon objection by a party in the discretion of the arbitrators, be barred from presenting any facts or defenses at the time of the hearing.
 - (ii) A respondent, responding claimant, cross-claimant or, cross-respondent, third party respondent who fails to specify all available defenses and relevant facts in such party's answer, may, upon objection by a party, in the discretion of the arbitrators, be barred from presenting the facts or defenses not included in such party's answer at the hearing.
 - (iii) A respondent, responding claimant, cross-claimant or, cross-respondent, third party respondent who fails to file an answer within twenty (20) business days from receipt of service of a Statement of Claim, unless the time to answer has been extended pursuant to paragraph (5), below, may, in the discretion of the arbitrators be barred from presenting any matter, arguments or defenses at the hearing.
 - (3) Respondent(s) shall serve each party with a copy of any third party claim. The third party claim shall also be filed with the Director of Arbitration with sufficient additional copies for the arbitrator(s),

along with any deposit required under the schedule of fees. Third party respondent(s) shall respond in the manner provided for response to the claim, as provided in paragraphs (b)(1) and (b)(2) above.

- (4) The claimant shall serve each party with a reply to a counterclaim within ten (10) business days of receipt of an answer containing a counterclaim. The reply shall also be filed with the Director of Arbitration with sufficient additional copies for the arbitrator(s).
 - (5) The Director of Arbitration may extend any time period in this section whether such be denominated as a claim, answer, counterclaim, cross-claim, reply or third party pleading.
- (c) Service and Filing with the Director of Arbitration
- (1) For purposes of this Rule, service may be effected by mail or other means of delivery. Service and filing are accomplished on the date of mailing either by first-class postage pre-paid or, by means of overnight mail service or, in the case of other means of service, on the date of delivery. Filing with the Director of Arbitration shall be made on the same date as service.
 - (2) If an ETP Holder and a person associated with the ETP Holder are named parties to an arbitration proceeding at the time of the filing of the Statement of Claim, service on the associated person may be made by service on the named ETP Holder and the ETP Holder shall then perfect service upon the associated person. If the ETP Holder does not undertake to represent the associated person, the ETP Holder shall serve the associated person with the Statement of Claim, shall advise all parties and the Director of Arbitration of that fact, and shall provide such associated person's current address.
- (d) Joining and Consolidation
- (1) Permissive Joinder. All persons may join in one action as claimants if they assert any right to relief jointly, severally, or arising out of the same transaction, occurrence or series of transactions or occurrences and if any questions of law or fact common to these claimants will arise in the action.

All persons may be joined in one action as respondents if there is asserted against them jointly or severally, any right to relief arising out of the same transaction, occurrence or series of transactions or occurrences and if any questions of law or fact common to all

respondents will arise in the action.

A claimant or respondent need not assert rights to or defend against all the relief demanded. Judgment may be given for one or more claimants according to their respective rights to relief, and against one or more respondents according to their respective liabilities.

- (2) In arbitrations where there are multiple claimants, respondents and/or third party respondents, the Director of Arbitration shall be authorized to determine preliminarily whether such parties should proceed in the same or separate arbitrations. Such determination will be considered subsequent to the filing of all responsive pleadings.
- (3) The Director of Arbitration shall be authorized to determine preliminarily whether claims filed separately are related and shall be authorized to consolidate such claims for hearing and award purposes.
- (4) All final determinations with respect to joining, consolidation and multiple parties under this subsection shall be made by the arbitration panel.

General Provisions Governing Pre-Hearing Proceedings

Rule 12.15(a). Requests for Documents and Information. The parties shall cooperate to the fullest extent practicable in the voluntary exchange of documents and information to expedite the arbitration. Any request for documents or other information shall be specific, relate to the matter in controversy, and afford the party to whom the request is made a reasonable period of time to respond without interfering with the time set for the hearing.

- (b) Document Production and Information Exchange.
 - (1) Any party may serve a written request for information or documents ("information request") upon another party twenty (20) business days or more after service of the Statement of Claim by the Director of Arbitration or upon filing of the Answer, whichever is earlier. The requesting party shall serve the information request on all parties and file a copy with the Director of Arbitration. The parties shall endeavor to resolve disputes regarding an information request prior to serving any objection to the request. Such efforts shall be set forth in the objection.
 - (2) Unless a greater time is allowed by the requesting party, information requests shall be satisfied or objected to within thirty

(30) calendar days from the date of service. Any objection to an information request shall be served by the objecting party on all parties and filed with the Director of Arbitration.

- (3) Any response to objections to information requests shall be served on all parties and filed with the Director of Arbitration within ten (10) calendar days of receipt of the objection.
- (4) Upon the written request of a party whose information request is unsatisfied, the matter will be referred by the Director of Arbitration to either a pre-hearing conference under subsection (d) of this section or to a selected arbitrator under subsection (e) of this section.

(c) **Pre-Hearing Exchange of Documents and Information.** At least twenty (20) calendar days prior to the first scheduled hearing date, all parties shall serve on each other copies of documents in their possession that they intend to present at the hearing and identify witnesses they intend to present at the hearing. The arbitrator(s) may exclude from the arbitration any documents not exchanged or witnesses not identified at that time. This paragraph does not require service of copies of documents or identification of witnesses which parties may use for cross-examination or rebuttal.

(d) **Pre-Hearing Conference**

- (1) Upon the written request of a party, an arbitrator, or at the discretion of the Director of Arbitration, a pre-hearing conference shall be scheduled. The Director of Arbitration shall set the time and place of a pre-hearing conference and appoint a person to preside. The pre-hearing conference may be held by telephone conference call. The presiding person shall seek to achieve agreement among the parties on any issue that relates to the pre-hearing process or to the hearing, including but not limited to the exchange of information, exchange or production of documents, identification of witnesses, identification and exchange of hearing documents, stipulation of facts, identification and briefing of contested issues, and any other matters which will expedite the arbitration proceedings.
- (2) Any issues raised at the pre-hearing conference that are not resolved may be referred by the Director of Arbitration to a single member of the arbitration panel for decision.

(e) **Decisions by Selected Arbitrator.** The Director of Arbitration may appoint a single member of the arbitration panel to decide all unresolved issues referred to under this section. In matters involving public customers, such single arbitrator shall be a public arbitrator, except that the arbitrator may be either public or industry when the public

customer has requested a panel consisting of a majority of arbitrators from the securities industry. Such arbitrator shall be authorized to act on behalf of the panel to issue subpoenas, direct appearances of witnesses and production of documents, set deadlines, and issue any other ruling which will expedite the arbitration proceedings, or, is necessary to permit any party to develop fully its case. Decisions under this section shall be made upon the papers submitted by the parties, unless the arbitrator calls a hearing. The arbitrator may elect to refer any issue under this section to the full panel.

Designation of Time and Place of Hearings

Rule 12.16. Unless the law directs otherwise, the time and place for the initial hearing shall be determined by the Director of Arbitration and each hearing thereafter by the arbitrators. Notice of the time and place for the initial hearing shall be given at least eight (8) business days prior to the date fixed for the hearing by personal service, registered or certified mail to each of the parties unless the parties shall, by their mutual consent, waive the notice provisions under this section. Notice for each hearing thereafter shall be given as the arbitrators may determine. Attendance at a hearing waives notice thereof.

Representation by Counsel

Rule 12.17. All parties shall have the right to representation by counsel at any stage of the proceedings.

Attendance at Hearings

Rule 12.18.

(a) The attendance or presence of all persons at hearings including witnesses shall be determined by the arbitrators. However, all parties to the arbitration and their counsel shall be entitled to attend all hearings.

(b) If any of the parties, after due notice, fails to appear at a hearing or any adjourned hearing session, the arbitrators may, in their discretion, proceed with the arbitration of the controversy. In such cases, all awards shall be rendered as if each party had entered an appearance in the matter submitted.

Adjournments

Rule 12.19.

(a) The arbitrators may, in their discretion, adjourn any hearing(s) either upon their own initiative or upon the request of any party to the arbitrators.

(b) Unless waived by the Director of Arbitration, a party requesting an adjournment after arbitrators have been appointed shall deposit a fee equal to the initial deposit of hearing session fees for the first adjournment, and twice the initial deposit of

hearing session fees, not to exceed \$1,000, for a second or subsequent adjournment requested by that party. If the adjournment is not granted, the deposit shall be refunded. If the adjournment is granted, the arbitrators may waive the deposit of this fee or in their awards may direct the return of this adjournment fee.

(c) Upon receiving a third request consented to by all parties for an adjournment, the arbitrators may dismiss the arbitration without prejudice to the claimant filing a new arbitration.

Acknowledgement of Pleadings

Rule 12.20. The arbitrators shall acknowledge to all parties present that they have read the pleadings filed by the parties.

Subpoenas

Rule 12.21. The arbitrators and any counsel of record to the proceedings shall have the power of the subpoena process as provided by law. All parties shall also be given a copy of a subpoena upon its issuance. The parties shall produce witnesses and present proofs to the fullest extent possible without resort to the subpoena process.

Power to Direct Appearances and Production of Documents

Rule 12.22. The arbitrators shall be empowered without resort to the subpoena process to direct the appearance of any person employed or associated with any ETP Holder and/or direct the production of any records in the possession or control of such persons, ETP Holders. Unless the arbitrator(s) direct otherwise, the party requesting the appearance of a person or the production of documents under this section shall bear all reasonable costs of such appearance and/or production.

Evidence

Rule 12.23. The arbitrators shall determine the materiality and relevance of any evidence offered and shall not be bound by rules governing the admissibility of evidence.

Interpretation of Rule 12 and Enforcement of Arbitrator Rulings

Rule 12.24. The arbitrators shall be empowered to interpret and determine the applicability of all provisions under this Rule and to take appropriate action to obtain compliance with any ruling by the arbitrator(s). Such interpretations and actions to obtain compliance shall be final and binding upon the parties.

Determinations of Arbitrators

Rule 12.25. All rulings and determinations of the panel shall be by a majority of the arbitrators.

Record of Proceedings

Rule 12.26. A verbatim record by stenographic reporter or tape recording of all arbitration hearings shall be kept. If a party or parties to a dispute elect to have the record transcribed, the cost of such transcription shall be borne by the party or parties making the request, unless the arbitrators direct otherwise. The arbitrators may also direct that the record be transcribed. If the record is transcribed at the request of any party, a copy shall be provided to the arbitrator(s).

Oaths of the Arbitrators and Witnesses

Rule 12.27. Prior to the commencement of the first session, an oath or affirmation shall be administered to the arbitrators. All testimony shall be under oath or affirmation.

Amendment of Pleadings and Other Filings

Rule 12.28(a). After the filing of any pleadings, if a party desires to file a new or different pleading, such change must be made in writing and filed with the Director of Arbitration. The Director of Arbitration shall endeavor to serve promptly upon all other parties a copy of said change. The other parties may, within ten (10) business days from the receipt of service, file a response with the Director of Arbitration.

(b) After a panel has been appointed, no new or different pleading may be filed except for a responsive pleading as provided for in (a) above or with the panel's consent.

Reopening of Hearings

Rule 12.29. Where permitted by law, the hearings may be reopened by the arbitrators on their own motion or in the discretion of the arbitrators upon application of a party at any time before the award is rendered.

Awards

Rule 12.30(a). All awards shall be in writing and signed by a majority of the arbitrators or in such manner as is required by law. Such awards may be entered as a judgment in any court of competent jurisdiction.

(b) Unless the law directs otherwise, all awards rendered pursuant to this Rule shall be deemed final and not subject to review or appeal.

(c) The Director of Arbitration shall endeavor to serve a copy of the award: (1) by registered or certified mail upon all parties, or their counsel, at the address of record; or (2) by personally serving the award upon the parties; or (3) by filing or delivering the award in such manner as may be authorized by law.

(d) The arbitrator(s) shall endeavor to render an award within thirty (30) business days from the date the record is closed.

(e) The award shall contain the names of the parties, a summary of the issues in controversy, the damages and/or other relief requested, the damages and/or other relief awarded, a statement of any other issues resolved, the names of the arbitrators, the date the claim was filed and the award rendered, the number and dates of hearing sessions, the location of the hearings, and the signatures of the arbitrators concurring in the award.

(f) The awards shall be made publicly available, provided however, that the name of the customer party to the arbitration will not be publicly available if he or she so requests in writing.

(g) Arbitrators may award interest as they deem appropriate.

(h) All monetary awards shall be paid within thirty (30) days of receipt unless a motion to vacate has been filed with a court of competent jurisdiction. An award shall bear interest from the date of the award: (1) if not paid within thirty (30) days of receipt, (2) if the award is the subject of a motion to vacate which is denied, or (3) as specified by the arbitrator(s) in the award. Interest shall be assessed at the legal rate, if any, then prevailing in the state where the award was rendered, or at a rate set by the arbitrator(s).

Miscellaneous

Rule 12.31. This Rule shall be deemed a part of and incorporated by reference in every duly-executed Submission Agreement which shall be binding on all parties.

Schedule of Fees

Rule 12.32(a). At the time of filing a claim, counterclaim, third party claim or cross-claim, a party shall pay a non-refundable filing fee and shall remit a hearing session deposit with the Corporation in the amounts indicated in the Schedules below unless such fee or deposit is specifically waived by the Director of Arbitration.

Where the amount in dispute is \$10,000 or less, no additional deposits shall be required despite the number of hearing sessions. Where the amount in dispute is above \$10,000 and multiple sessions are required, the arbitrator(s) may require any of the parties to make additional deposits for each additional hearing session. In no event shall the aggregate amount deposited per hearing session exceed the amount of the initial deposit as set forth in the above schedule.

(b) A hearing session is any meeting between the parties and the arbitrator(s), including a pre-hearing conference, which lasts four (4) hours or less.

(c) The arbitrators, in their awards, may determine the amount chargeable to the parties as forum fees and shall determine who shall pay such forum fees. Forum fees chargeable to the parties shall be assessed on a per hearing session basis, and the aggregate for each hearing session may equal but shall not exceed the amount of the largest initial hearing session deposit deposited by any party. Where claims have been joined subsequent to filing, the hearing session fees shall be computed as provided in paragraph (h) of this Rule. The arbitrators may determine in the award that a party shall reimburse to another party any non-refundable filing fee it has paid.

Any forum fees assessed against the customer shall be based on the hearing deposit required under the Industry/Clearing Claimant schedule for the amount of the award, and not on the amount of the industry claim. No fees shall be assessed against a customer in connection with an industry claim that is dismissed. However, in cases where there is also a customer claim, the customer may be assessed forum fees based on the amount of the customer claim. Amounts deposited by a party shall be applied against forum fees, if any. In addition to forum fees, the arbitrator(s) may determine in their awards the amount of costs incurred pursuant to Rules 12.15, 12.19, 12.21, and 12.26 and, unless applicable law directs otherwise, other costs and expenses of the parties and arbitrator(s) which are within the scope of the agreement of the parties. The arbitrator(s) shall determine by whom such costs shall be borne.

If the hearing session fees are not assessed against a party who had made a hearing deposit, the hearing deposit will be refunded, unless the arbitrators determine otherwise.

(d) In a public customer claimant or industry claimant matter, if the dispute, claim or controversy does not involve, disclose or specify a money claim, the non-refundable filing fee shall be \$250, and the hearing session deposit shall be \$600 or such greater or lesser amounts as the Director of Arbitration or the panel of arbitrators may require but shall not exceed \$1,500.

(e) If a matter has been submitted and thereafter is settled or withdrawn more than five (5) business days after the parties have received written notification of the date fixed for the initial hearing session, the Corporation shall retain the total hearing session deposits made by all parties.

(f) Any matter submitted and thereafter settled or withdrawn subsequent to the commencement of the first session, including a pre-hearing conference with an arbitrator, shall be subject to an assessment of forum fees and costs incurred pursuant to Rules 12.15, 12.19, 12.21 and 12.26. The arbitrator(s) shall determine by whom such forum fees and costs shall be borne.

(g) The forum fee for a pre-hearing conference with an arbitrator shall be the amount set forth in the schedules as a hearing session deposit for a hearing with a single arbitrator.

(h) For claims filed separately and subsequently joined or consolidated under Rule 12.14(d), the hearing session deposit and forum fees assessable per hearing session after joinder or consolidation shall be based on the cumulative amount in dispute. The arbitrator(s) shall determine by whom such forum fees shall be borne.

(i) In each industry or clearing controversy which is required to be submitted to arbitration as set forth in Rule 12.2, above, requiring expedited hearings, a non-refundable surcharge of \$2,500 shall be paid by all claimants, collectively, and a non-refundable surcharge of \$2,500 shall be paid by all respondents, collectively. These fees shall be in addition to all other fees, deposits, or costs which may be required.

(j) In an industry or clearing controversy, where the ETP Holder claim or controversy does not involve or disclose a money claim, or is unspecified, the filing fee will be \$300 and the hearing session deposit shall be \$1,000 per hearing session.

SCHEDULE OF FEES

PUBLIC CUSTOMER CLAIMANT
(e.g., public customer v. ETP Holder)

Amount in Dispute (Exclusive of Interest and Expenses)	FILING FEE	HEARING SESSION DEPOSIT <i>Documents Only -OR- Hearing w/1 Arbitrator</i>	
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\$0.01-\$1,000.00	\$15	\$15	\$15
\$1,000.01-\$2,500.00	\$25	\$25	\$25
\$2,500.01-\$5,000.00	\$50	\$75	\$100
\$5,000.01-\$10,000.00	\$75	\$75	\$200

Amount in Dispute (Exclusive of Interest and Expenses)	FILING FEE	HEARING SESSION DEPOSIT <i>One Arbitrator or Pre-Hearing Conference -OR- Three Arbitrators</i>	
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\$10,000.01-\$30,000.00	\$100	\$300	\$400
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Amount in Dispute (Exclusive of Interest and Expenses)	FILING FEE	HEARING SESSION DEPOSIT <i>Pre-Hearing Conference -OR- Three Arbitrators</i>	
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\$30,000.01-\$50,000.00	\$120	\$300*	\$400
\$50,000.01-\$100,000.00	\$150	\$300**	\$500
\$100,000.01-\$500,000.00	\$200	\$300**	\$750
\$500,000.01-\$5,000,000.00	\$250	\$300**	\$1,000
Above \$5,000,000.00	\$300	\$300**	\$1,500

INDUSTRY / CLEARING CLAIMANT
(e.g., ETP Holder v. customer)

Amount in Dispute (Exclusive of Interest and Expenses)	FILING FEE	HEARING SESSION DEPOSIT <i>Documents Only -OR- Hearing w/ Arbitrator</i>	
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\$.01-\$10,000.00	\$500	\$75	\$300
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Amount in Dispute (Exclusive of Interest and Expenses)	FILING FEE	HEARING SESSION DEPOSIT <i>One Arbitrator -OR- Three Arbitrators</i>	
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\$10,000.01-\$30,000.00	\$500	\$300*	\$600
\$30,000.01-\$100,000.00	\$500	\$300**	\$600

Amount in Dispute (Exclusive of Interest and Expenses)	FILING FEE	HEARING SESSION DEPOSIT <i>Pre-Hearing Conference -OR- Three Arbitrators</i>	
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\$100,000.01-\$500,000.00	\$500	\$300**	\$750
\$500,000.01-\$5,000,000.00	\$500	\$300**	\$1,000
Above \$5,000,000.00	\$500	\$300**	\$1,500

* This would apply to the following cases:

- (a) where parties elect to have claims between \$10,000 and \$30,000 resolved by a single arbitrator pursuant to Rule 12.9.
- (b) pre-hearing conferences with a single arbitrator in cases where a three person panel has been appointed.

** For pre-hearing conferences only.

ETP HOLDER CONTROVERSIES
(e.g., associated person v. ETP Holder)

Amount in Dispute (Exclusive of Interest and Expenses)	FILING FEE	HEARING SESSION DEPOSIT <i>One Arbitrator - OR- Three Arbitrators</i>	
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.01-\$10,000.00	\$100	\$200	---NA---
\$10,000.01-\$100,000	\$200	----NA---	\$750
\$100,000.01 or more	\$300	---NA---	\$1,000

ETP Holder Surcharge

Rule 12.33(a). Each ETP Holder or associated person who is named a party to an arbitration proceeding, whether in a claim, counterclaim, third-party claim, or cross-claim shall be assessed a non-refundable surcharge pursuant to the schedule in Rule 12.33(c)

when the Arbitration Department perfects service of the claim naming the ETP Holder or associated person on any party to the proceeding.

For each associated person who is named, the surcharge shall be assessed against the ETP Holder(s) which employed the associated person at the time of the events which gave rise to the dispute, claim or controversy.

No ETP Holder shall be assessed more than a single surcharge in any arbitration proceeding. The surcharge shall not be subject to reimbursement under Rule 12.32.

(b) For purposes of this Rule, service is perfected when the Arbitration Department properly serves the Respondent(s) to the arbitration proceeding under Rule 12.14(c).

(c) Schedule of Surcharge Rates:

Amount in Dispute	Surcharge
\$0.01 to \$10,000	\$100
\$10,000.01 to \$50,000	\$200
\$50,000.01 to \$100,000	\$300
\$100,000.01 to \$500,000	\$350
Above \$500,000	\$500

Requirements When Using Pre-Dispute Arbitration Agreements With Customers

Rule 12.34(a) Any pre-dispute arbitration clause shall be highlighted and shall be immediately preceded by the following disclosure language (printed in outline form as set forth herein) which shall also be highlighted:

- (1) Arbitration is final and binding on the parties.
- (2) The parties are waiving their right to seek remedies in court, including the right to a jury trial.
- (3) Pre-arbitration discovery is generally more limited than and different from court proceedings.

- (4) The arbitrators' award is not required to include factual findings or legal reasoning and any party's right to appeal or to seek modification of rulings by the arbitrators is strictly limited.
- (5) The Panel of Arbitrators will typically include a minority of arbitrators who were or are affiliated with the securities industry.

(b) Immediately preceding the signature line, there shall be a statement, which shall be highlighted, that the agreement contains a pre-dispute arbitration clause. The statement shall also indicate at what page and paragraph the arbitration clause is located.

(c) A copy of the agreement containing any such clause shall be given to the customer who shall acknowledge receipt thereof on the agreement or on a separate document.

(d) No agreement shall include any condition which limits or contradicts the rules of any self-regulatory organization or limits the ability of a party to file a claim in arbitration or limits the ability of the arbitrator(s) to make any award.

(e) All agreements shall include a statement that “No person shall bring a putative or certified class action to arbitration, nor seek to enforce any pre-dispute arbitration agreement against any person who has initiated in court a putative class action; who is a member of a putative class who has not opted out of the class with respect to any claims encompassed by the putative class action until: (1) the class certification is denied; or (2) the class is decertified; or (3) the customer is excluded from the class by the court. Such forbearance to enforce an agreement to arbitrate shall not constitute a waiver of any rights under this agreement except to the extent stated herein.”

Rule 13

Liability of Directors and Corporation

Liability of Directors

Rule 13.1. Any provision of the Certificate of Incorporation, Bylaws, or the Rules of the Corporation that provides or purports to provide that the members of the Board of Directors shall not be liable to the Corporation or its ETP Holders for monetary damages for breach of fiduciary duty as a Director shall not be applied in any instance in which such liability arises directly or indirectly as a result of a violation of federal securities laws.

Liability of Corporation

Rule 13.2(a). Except as otherwise expressly provided in these Rules, neither the Corporation nor its Directors, officers, committee members, employees or agents shall be liable to the ETP Holders of the Corporation or to persons associated therewith for any loss, expense, damages or claims that arise out of the use or enjoyment of the facilities or services afforded by the Corporation, any interruption in or failure or unavailability of any such facilities or services, or any action taken or omitted to be taken in respect to the business of the Corporation except to the extent such loss, expense, damages or claims are attributable to the willful misconduct, gross negligence, bad faith or fraudulent or criminal acts of the Corporation or its officers, employees or agents acting within the scope of their authority. The limitation of liability set forth in this paragraph shall not apply to violations of federal securities laws.

Without limiting the generality of the foregoing and subject to the same exception, the Corporation shall have no liability to any person for any loss, expense, damages or claims that result from any error, omission or delay in calculating or disseminating any current or closing index value, or any reports of transactions in or quotations for securities traded on the Corporation.

The Corporation makes no warranty, express or implied, as to results to be obtained by any person or entity from the use of any data transmitted or disseminated by or on behalf of the Corporation or any reporting authority designated by the Corporation, including but not limited to reports of transactions in or quotations for securities traded on the Corporation, or reports index values or related data, and the Corporation makes no express or implied warranties of merchantability or fitness for a particular purpose or use with respect to any such data. The foregoing limitations of liability and disclaimers shall be in addition to, and not in limitation of, any other provisions of the Bylaws or Rules.

(b) Whenever custody of an unexecuted order is transmitted by an ETP Holder to or through the Corporation's order routing systems, electronic book or automatic executions systems or to any other automated facility of the Corporation whereby the Corporation assumes responsibility for the transmission or execution of the order, provided that the Corporation has acknowledged receipt of such order, the

Corporation's liability for the negligent acts or omissions of its employees or for the failure of its systems or facilities shall not exceed the limits provided in this paragraph (b), and no assets of the Corporation shall be applied or shall be subject to such liability in excess of the following limits:

- (1) As to any one or more claims made by a single ETP Holder growing out of the use or enjoyment of the facilities afforded by the Corporation on a single trading day, the Corporation shall not be liable in excess of the larger of \$100,000, or the amount of any recovery obtained by the Corporation under any applicable insurance maintained by the Corporation;
- (2) As to the aggregate of all claims made by all ETP Holders growing out of the use or enjoyment of the facilities afforded by the Corporation on a single trading day, the Corporation shall not be liable in excess of the larger of \$250,000 or the amount of the recovery obtained by the Corporation under any applicable insurance maintained by the Corporation;
- (3) As to the aggregate of all claims made by all ETP Holders growing out of the use or enjoyment of the facilities afforded by the Corporation during a single calendar month, the Corporation shall not be liable in excess of the larger of \$500,000, or the amount of the recovery obtained by the Corporation under any applicable insurance maintained by the Corporation.

(c) If all of the claims arising out of the use or enjoyment of the facilities afforded by the Corporation cannot be fully satisfied because in the aggregate they exceed the applicable maximum amount of liability provided for in paragraph (b) above, then such maximum amount shall be allocated among all such claims arising on a single trading day or during a single calendar month, as applicable, written notice of which has been given to the Corporation no later than the opening of trading on the next business day following the day on which the use or enjoyment of the Corporation's facilities giving rise to the claim occurred, based on the proportion that each such claim bears to the sum of all such claims.

Legal Proceedings Against Directors, Officers, Employees or Agents

Rule 13.3. No ETP Holder or any other associated person shall institute a lawsuit or other legal proceeding against any Director, officer, employee, agent or other official of the Corporation or any subsidiary of the Corporation, for actions taken or omitted to be taken in connection with the official business of the Corporation or any subsidiary, except to the extent such actions or omissions constitute violations of federal securities laws for which a private right of action exists and except with respect to the Directors of the Corporation, to the extent inconsistent with the Certificate of Incorporation. This Rule

shall not apply to appeals of disciplinary actions or other actions by the Corporation as provided for in the Rules.

Corporation's Costs of Defending Legal Proceedings

Rule 13.4. Any ETP Holder or any other associated person who fails to prevail in a lawsuit or other legal proceeding instituted by such person against the Corporation or any of its Directors, officers, committee members, employees or agents, and related to the business of the Corporation, shall pay to the Corporation all reasonable expenses, including attorneys' fees, incurred by the Corporation in the defense of such proceeding, but only in the event that such expenses exceed Fifty Thousand Dollars (\$50,000.00). This provision shall not apply to disciplinary actions by the Corporation, to administrative appeals of actions of the Corporation or in any specific instance where the Board of Directors has granted a waiver of this Rule.

Rule 14

Plan of Delegation of Functions by the Pacific Exchange, Inc. to PCX Equities, Inc.

Pacific Exchange, Inc.

Rule 14.1. The Pacific Exchange, Inc. (“PCX”), the registered national securities exchange, is the parent company of the wholly-owned subsidiary PCX Equities Inc. (“PCX Equities). The term “Exchange” shall refer to the PCX and PCX Equities collectively.

(a) *Functions and Authority of the PCX.* The PCX shall have ultimate responsibility for the rules and regulations of the Exchange and its operation and administration. As set forth below in Rule 14.2(a), the PCX has delegated certain authority and functions to PCX Equities. Actions taken pursuant to delegated authority, however, remain subject to review, ratification or rejection by the PCX Board of Governors (“PCX Board”) in accordance with procedures established by that Board. Any function or responsibility as a registered national securities exchange under the Securities Exchange Act of 1934 (“Act”), or as set forth in the Certificate of Incorporation, the Constitution or the PCX Rules is hereby reserved, except as expressly delegated to PCX Equities. In addition, the PCX expressly retains the following authority and functions:

- (1) To exercise overall responsibility for ensuring that the Exchange’s statutory and self-regulatory obligations and functions are fulfilled.
- (2) To delegate authority to PCX Equities to take actions on behalf of the PCX.
- (3) In the PCX's role as the sole shareholder of PCX Equities, to elect the Board of Directors of the PCX Equities (“PCX Equities Board”) pursuant to a shareholder agreement.
- (4) To review the rulemaking and disciplinary decisions of PCX Equities (See Rule 14.2(b) below).
- (5) To coordinate actions of the PCX Equities Board as necessary.
- (6) To administer common overhead and technology of PCX Equities and PCX.
- (7) To manage external Exchange relations on major policy issues.

- (8) To direct PCX Equities to take action necessary to effectuate the purposes and functions of the Exchange.
- (9) To take action in an area of responsibility delegated to PCX Equities in Rule 14.2(a).

(b) *Access to and Status of Officers, Directors, Employees, Books, Records, and Premises of PCX Equities.* Notwithstanding the delegation of authority to PCX Equities, as set forth in Rule 14.2(a) below, the staff, books, records, premises, officers, directors, employees and agents of the PCX Equities are subject to the oversight of the PCX pursuant to the Act, and all officers, directors, employees, and agents of PCX Equities are officers, directors, employees, and agents of the PCX for purposes of the Act. The books and records of PCX Equities shall be subject at all times to inspection and copying by the PCX.

PCX Equities Inc. (“PCX Equities”)

Rule 14.2(a) *Delegation of Functions and Authority.*

- (1) Subject to Rule 14.1(a)(9), the PCX hereby delegates to PCX Equities and its subsidiary Pacific Clearing Corporation and PCX Equities assumes the following responsibilities and functions with respect to the equities business of the Exchange:
 - (A) To establish and interpret rules and regulations and provide exemptions for ETP Holders or associated persons including, but not limited to trading rules, fees, access to and use of system facilities and arbitration procedures.
 - (B) To determine regulatory and trading policies, including the development and adoption of necessary or appropriate rule changes, relating to the business conduct and trading activities of ETP Holders and associated persons. This includes, but is not limited to,
 - (i) arbitration of disputes among and between ETP Holders and associated persons and customers arising from transactions on the facility;
 - (ii) financial responsibility;
 - (iii) qualifications for ETP Holders and associated persons;

- (iv) clearance and settlement of securities transactions and other financial responsibility and operational matters affecting ETP Holders, and associated persons in general and securities traded on PCX Equities;
 - (v) administration, interpretation, and enforcement of PCX Equities rules; and
 - (vi) administration and enforcement of the federal securities laws, and other laws, rules and regulations that PCX Equities has the authority to administer or enforce.
- (C) To take necessary or appropriate action to assure compliance with the Rules and procedures of PCX Equities, the federal securities laws, and other laws, rules and regulations that the PCX Equities has the authority to administer or enforce, through examination, surveillance, investigation, enforcement, disciplinary, and other programs.
- (D) To administer programs and systems for the surveillance and enforcement of rules governing ETP Holders and associated persons' conduct and trading activities on PCX Equities.
- (E) To examine and investigate ETP Holders and associated persons to determine if they have violated the Rules or procedures of PCX Equities, the federal securities laws, and other laws, rules, and regulations that the Exchange has the authority to administer, interpret, or enforce.
- (F) To administer the PCX Equities' disciplinary programs, including investigations, adjudication of cases, and the imposition of fines and other sanctions.
- (G) To conduct arbitrations, mediations, and other dispute resolution programs.
- (H) To determine whether ETP Holder applicants have met the requirements established by PCX Equities for holding an ETP.

- (I) To determine whether persons seeking to register as associated persons of ETP Holders have met such qualifications for registration as may be established by PCX Equities, including whether statutorily disqualified persons will be permitted to associate with particular ETP Holders and the conditions of such association.
- (J) To place restrictions on the business activities of ETP Holders and associated persons consistent with the public interest, the protection of investors, and the federal securities laws.
- (K) To establish and assess fees and other charges on ETP Holders, associated persons, issuers and others using the products, services or facilities of PCX Equities.
- (L) To oversee the operation of the trading facilities of PCX Equities.
- (M) To provide, maintain and supervise a communications network infrastructure for the efficient processing and handling of quotations, orders, transaction reports, and comparisons of transactions.
- (N) To collect, process and consolidate the information requisite to operation of the surveillance audit trail.
- (O) To develop and adopt rule changes applicable to the collection, processing, and dissemination of quotation and transaction information for securities traded on PCX Equities.
- (P) To develop and adopt Rules, interpretations, policies, and procedures and provide exemptions to maintain and enhance the integrity, fairness, efficiency, and competitiveness of PCX Equities.
- (Q) To administer the Exchange's involvement in National Market System Plans related to PCX Equities.
- (R) To develop, adopt, administer and enforce policies and Rules of PCX Equities governing listing standards applicable to securities traded on PCX Equities and the issuers of those securities.

- (S) To manage external relations on matters related to enforcement, regulatory and other policy issues as well as on matters related to trading on, and the operation and functions of, PCX Equities with Congress, the Securities and Exchange Commission, state regulators, other self-regulatory organizations, business groups, and the public.
 - (T) To establish the annual budget and business plan for PCX Equities.
 - (U) To determine the allocation of PCX Equities resources.
- (2) All action taken pursuant to authority delegated pursuant to (1) shall be subject to the review, ratification, or rejection by the PCX Board in accordance with procedures established by the PCX Board.

(b) *Rule Filings.* The PCX Board shall review and ratify a rule change adopted by the PCX Equities Board before the rule change becomes a final action of the Exchange.

(c) *Supplemental Delegation Regarding Management and Committees.* The PCX Equities Board may designate the Chief Executive Officer, another designated officer or one or more committees and delegate to such person or committee such powers and authority, as necessary and appropriate, to act on behalf of the PCX Equities Board in carrying out the functions and authority delegated to PCX Equities by the PCX. Such delegations shall be in conformance with law and the Bylaws and Rules of PCX Equities. Any action taken by a PCX Equities officer or committee pursuant to delegated authority shall be subject to review, ratification or rejection by the PCX Equities Board in accordance with procedures established by the PCX Equities Board.

Archipelago Exchange, L.L.C., and Archipelago Holdings, L.L.C.

Rule 14.3(a) *Access to and Status of Books, Records, Premises, Officers, Directors, Agents and Employees of Archipelago Exchange, L.L.C.* The books, records, premises, officers, directors, agents and employees of Archipelago Exchange, L.L.C., shall be deemed to be the books, records, premises, officers, directors, agents and employees of PCX and PCX Equities for purposes of and subject to oversight pursuant to the Securities Exchange Act. The books and records of Archipelago Exchange, L.L.C., shall be subject at all times to inspection and copying by the PCX, PCX Equities and the SEC.

(b) *Access to and Status of Officers and Directors of Archipelago Holdings, L.L.C.* All officers and directors of Archipelago Holdings, L.L.C., shall be deemed to be officers and directors of PCX and PCX Equities for purposes of and subject to oversight pursuant to the Securities Exchange Act.

(c) Paragraphs (a) and (b) above shall not be deemed to create any rights or benefits for any person or entity other than the SEC.