

EXHIBIT 5

The text of the proposed rule change is below. Proposed new language is underlined; proposed deletions are bracketed.

BY-LAWS OF NASDAQ ISE, LLC

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Article I DEFINITIONS

When used in these By-Laws, unless the context otherwise requires, the terms set forth below shall have the following meanings:

(a) - (m) No change

(n) "Industry member" means an Exchange Review Council member or a member of any committee appointed by the Board who (i) is or has served in the prior three years as an officer, director, or employee of a broker or dealer, excluding an outside director or a director not engaged in the day-to-day management of a broker or dealer; (ii) is an officer, director (excluding an outside director), or employee of an entity that owns more than ten percent of the equity of a broker or dealer, and the broker or dealer accounts for more than five percent of the gross revenues received by the consolidated entity; (iii) owns more than five percent of the equity securities of any broker or dealer, whose investments in brokers or dealers exceed ten percent of his or her net worth, or whose ownership interest otherwise permits him or her to be engaged in the day-to-day management of a broker or dealer; (iv) provides professional services to brokers or dealers, and such services constitute 20 percent or more of the professional revenues received by the committee member or 20 percent or more of the gross revenues received by the committee member's firm or partnership; (v) provides professional services to a director, officer, or employee of a broker, dealer, or corporation that owns 50 percent or more of the voting stock of a broker or dealer, and such services relate to the director's, officer's, or employee's professional capacity and constitute 20 percent or more of the professional revenues received by the committee member or 20 percent or more of the gross revenues received by the committee member's firm or partnership; or (vi) has a consulting or employment relationship with or provides professional services to the Company or any affiliate thereof or to FINRA (or any predecessor) or has had any such relationship or provided any such services at any time within the prior three years.

(o) – (r) No change.

(s) "Member Representative member" means an Exchange Review Council member or a member of any other committee appointed by the Board who has been elected or appointed after having been nominated by the Member Nominating Committee pursuant to these By-Laws.

(t) – (w) No change.

(x) "Non-Industry member" means an Exchange Review Council member or a member of any other committee appointed by the Board who is (i) a Public member; (ii) an officer or employee of an issuer of securities listed on the national securities exchange operated by the Company; or (iii) any other individual who would not be an Industry member.

(y) – (z) No change.

(aa) "Public member" means an Exchange Review Council member or a member of any other committee appointed by the Board who has no material business relationship with a broker or dealer, the Company or its affiliates, or FINRA.

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Article III BOARD OF DIRECTORS

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Section 6. Committees Not Composed Solely of Directors

(a) The Board shall appoint an Exchange Review Council as provided in Article VI of the By-Laws[Reserved].

(b) The Board shall appoint a Nominating Committee and a Member Nominating Committee. The Member Nominating Committee shall nominate candidates for each Member Representative Director position on the Board that is to be elected by Exchange Members or the Sole LLC Member under the terms of the LLC Agreement and these By-Laws, and shall nominate candidates for appointment by the Board for each vacant or new position on [any]the Exchange Review Council or any other committee that is to be filled with a Member Representative member under the terms of these By-Laws. The Nominating Committee shall nominate candidates for all other vacant or new Director positions on the Board, and candidates for all other vacant or new positions on the Exchange Review Council.

(i) – (v) No change.

(c) No change.

Section 7. Conflicts of Interest; Contracts and Transactions Involving Directors

(a) A Director or a committee member, including a member of the Exchange Review Council or any other committee, shall not directly or indirectly participate in any adjudication of the interests of any party if that Director or [committee]Exchange Review Council member or other committee member has a conflict of interest or bias, or if circumstances otherwise exist where his or her fairness might reasonably be questioned. In any such case, the Director or [committee]Exchange Review Council member or other committee member shall recuse himself or herself or shall be disqualified.

(b) No change.

Section 8. Compensation of Board, Council, and Committee Members

The Board may provide for reasonable compensation of the Chair of the Board, the Directors, Exchange Review Council members, and the [committee]members of other committees. The Board may also provide for reimbursement of reasonable expenses incurred by such persons in connection with the business of the Company.

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Article VI EXCHANGE REVIEW COUNCIL[RESERVED.]

Section 1. Appointment and Authority

The Board shall appoint an Exchange Review Council. The Exchange Review Council may be authorized to act for the Board in a manner consistent with these By-Laws and the Rules with respect to an appeal or review of a disciplinary proceeding, a statutory disqualification proceeding, or a membership proceeding; a review of an offer of settlement, a letter of acceptance, waiver, and consent, and a minor rule violation plan letter; the exercise of exemptive authority; and such other proceedings or actions as may be authorized by the Rules. The Exchange Review Council also may consider and make recommendations to the Board on policy and rule changes relating to business and sales practices of Exchange Members and associated persons and enforcement policies, including policies with respect to fines and other sanctions, may advise the Board on regulatory proposals and industry initiatives relating to quotations, execution, trade reporting, and trading practices and may advise the Board in its administration of programs and systems for the surveillance and enforcement of rules governing Exchange Members' conduct and trading activities in the national securities exchange operated by the Company. The Board may delegate such other powers and duties to the Exchange Review Council as the Board deems appropriate.

Section 2. Number of Members and Qualifications

The Exchange Review Council shall consist of no fewer than 8 and no more than 12 members. The Exchange Review Council shall include a number of Member Representative members that is equal to at least 20 percent of the total number of members of the Exchange Review Council. The number of Non-Industry members, including at least three Public members, shall equal or exceed the sum of the number of Industry members and Member Representative members. As soon as practicable following the appointment of members, the Exchange Review Council shall elect a Chair from among its members. The Chair shall have such powers and duties as may be determined from time to time by the Exchange Review Council. The Board, by resolution adopted by a majority of Directors then in office, may remove the Chair from such position at any time for refusal, failure, neglect, or inability to discharge the duties of Chair. No more than 50 percent of the members of the Exchange Review Council shall be engaged in market making activity or employed by an Exchange Member firm whose revenues from market making activity exceed 10 percent of its total revenues.

Section 3. Nomination Process

The Secretary of the Company shall collect from each nominee for the office of member of the Exchange Review Council such information as is reasonably necessary to serve as the basis for a determination of the nominee's qualifications and classification as an Industry, Member Representative, Non-Industry, or Public member, and the Secretary shall certify to the Nominating Committee or the Member Nominating Committee (as applicable) each nominee's qualifications and classification. After appointment to the Exchange Review Council, each member shall update such information at least annually and upon request of the Secretary, and shall report immediately to the Secretary any change in such information.

Section 4. Term of Office

(a) Except as otherwise provided in this Article, each Exchange Review Council member shall hold office for a term of three years or until a successor is duly appointed and qualified, except in the event of earlier termination from office by reason of death, resignation, removal, disqualification, or other reason.

(b) The Exchange Review Council shall be divided into three classes. The term of office of those of the first class shall expire one year after the date of their appointment, the term of office of those of the second class shall expire two years after the date of their appointment, and the term of office of those of the third class shall expire three years after the date of their appointment. After the expiration of the term of office of those in the first class, members shall be appointed for terms of three years to replace those whose terms expire.

(c) No member may serve more than two consecutive terms, except that if a member is appointed to fill a term of less than one year, such member may serve up to two consecutive three-year terms following the expiration of such member's initial term.

Section 5. Resignation

A member of the Exchange Review Council may resign at any time upon written notice to the Board. Any such resignation shall take effect at the time specified therein, or if the time is not specified, upon receipt thereof, and the acceptance of such resignation, unless required by the terms thereof, shall not be necessary to make such resignation effective.

Section 6. Removal

Any or all of the members of the Exchange Review Council may be removed from office at any time for refusal, failure, neglect, or inability to discharge the duties of such office by majority vote of the Board.

Section 7. Disqualification

Notwithstanding Article VI, Section 4, the term of office of an Exchange Review Council member shall terminate immediately upon a determination by the Board, by a majority vote, (a) that the member no longer satisfies the classification (Industry, Member Representative, Non-Industry, or Public) for which the member was elected; and (b) that the member's continued service as such would violate the compositional requirements of the Exchange Review Council set forth in Article VI, Section 2. If the term of office of an Exchange Review Council member terminates under this Section, and the remaining term of office of such member at the time of termination is not more than six months, during the period of vacancy the Exchange Review Council shall not be deemed to be in violation of Article VI, Section 2 by virtue of such vacancy.

Section 8. Filling of Vacancies

If a position on the Exchange Review Council becomes vacant, whether because of death, disability, disqualification, removal, or resignation, the Nominating Committee or the Member Nominating Committee (as applicable) shall nominate, and the Board shall appoint a person satisfying the qualifications for the position as provided in Article VI, Section 2 to fill such vacancy, except that if the remaining term of office for the vacant position is not more than six months, no replacement shall be required.

Section 9. Quorum and Voting

At all meetings of the Exchange Review Council, a quorum for the transaction of business shall consist of a majority of the Exchange Review Council, including not less than 50 percent of the Non-Industry members of the Exchange Review Council and at

least one Member Representative member of the Exchange Review Council; provided, however, that a quorum for the transaction of business with regard to an appeal of proceedings involving Exchange Rules 720, 720A, and 804 shall consist of three members of the Exchange Review Council. In the absence of a quorum, a majority of the members present may adjourn the meeting until a quorum is present.

Section 10. Meetings

The members of the Exchange Review Council may participate in a meeting through the use of a conference telephone or other communications equipment by means of which all persons participating in the meeting may hear one another, and such participation in a meeting shall constitute presence in person at such meeting for all purposes.

Section 11. Review Subcommittee

The Exchange Review Council shall appoint a Review Subcommittee to determine whether disciplinary and membership proceedings decisions should be called for review by the Exchange Review Council under the Rules and to perform any other function authorized by the Rules. The Review Subcommittee shall be composed of no fewer than two and no more than four members of the Exchange Review Council. The number of Non-Industry members of the Review Subcommittee shall equal or exceed the sum of the number of Industry members and Member Representative members of the Review Subcommittee, and the Review Subcommittee shall include at least one Member Representative member. At all meetings of the Review Subcommittee, a quorum for the transaction of business shall consist of not less than 50 percent of the members of the Review Subcommittee, including not less than 50 percent of the Non-Industry members of the Review Subcommittee and one Member Representative member of the Review Subcommittee.

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Nasdaq ISE Rules

1. Definitions

Rule 100. Definitions

- (a) The following terms, when used in these Rules, shall have the meanings specified in this Chapter 1, unless the context indicates otherwise. Any terms defined in the Limited Liability Company Agreement (the "LLC Agreement") or the By-Laws of Nasdaq ISE, LLC (the "By-Laws") and not otherwise defined in this Chapter shall have the meaning assigned in the LLC Agreement or the By-Laws.

(1) – (13) No change.

(13A) The term “Code of Procedure” means the procedural rules contained in Chapter 90.

(14) – (19) No change.

(20) The term “Exchange Act” or the “Act” means the Securities Exchange Act of 1934 and the rules and regulations thereunder, as amended from time to time.

(20A) The term “Exchange Review Council” means the committee authorized and directed to act for the Board of Directors of the Exchange in a manner consistent with the Exchange Rules with respect to (1) an appeal or review of a disciplinary proceeding; (2) a statutory disqualification decision; (3) a review of a membership proceeding; (4) a review of an offer of settlement, a letter of acceptance, waiver, and consent, and a minor rule violation plan letter; (5) the exercise of exemptive authority; (6) an appeal of proceedings involving Exchange Rules 302, 307, 720, 720A, and 804; and (7) such other proceedings or actions authorized by the Exchange Rules.

(21) - (57) No change.

(58) The terms “SEC” and “Commission” mean[s] the United States Securities and Exchange Commission.

(59) – (66) No change.

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Rule 210.

Reserved[Liability for Payment of Fees

(a) A Member that does not pay any dues, fees, assessments, charges, fines or other amounts due to the Exchange within thirty (30) days after they have become payable shall be reported to the President, who may, after giving reasonable notice to the Member of such arrearages, suspend the Member’s trading privileges until payment is made. Should payment not be made within six (6) months after payment is due, the Membership may be disposed of by the Exchange in accordance with Rule 307(b).

(b) A person associated with a Member who fails to pay any fine or other amounts due to the Exchange within thirty (30) days after such amount has become payable and after reasonable notice of such arrearages, may be suspended from association with a Member until payment is made.]

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Rule 302. Denial of and Conditions to Becoming a Member

(a) – (e) No change.

(f) If a Member or person associated with a Member that becomes subject to a statutory disqualification under the Exchange Act wants to continue as a Member of the Exchange or in association with a Member, the Member or associated person must[, within thirty (30) days of becoming subject to a statutory disqualification,] submit an application to the Exchange seeking to continue as a Member or in association with a Member notwithstanding the statutory disqualification, as set forth in Rule 9522. Failure to timely file such an application is a factor that may be taken into consideration by the Exchange in making determinations pursuant to paragraph (e) of this Rule.

(g) Review by the Exchange Review Council

Subject to Chapter [15 (Summary Suspension)]90 of the Rules, any applicant whose application to become a Member is denied[Membership] or conditioned by the Exchange's Membership Department ("the Department"), or any person whose association with a Member is denied or conditioned by the Department pursuant to paragraph (b) or (c) of this Rule, and any Member or person associated with a Member who is not permitted by the Department pursuant to paragraph (e) of this Rule to continue as a Member or to be associated with a Member or which continuance as a Member or association is conditioned by the Department, may appeal the [Exchange's] Department's decision [under Chapter 17 (Hearings and Review) of the Rules.] to the Exchange Review Council, as set forth below.

(1) Initiation of Review by Applicant

Within 25 days after service of a decision under Rule 302, an applicant ("Applicant") may file a written request for review with the Exchange Review Council. A request for review shall state with specificity why the Applicant believes that the Department's decision is inconsistent with the bases for denial set forth in Rule 302, or otherwise should be set aside, and state whether a hearing is requested. The Applicant simultaneously shall file by first-class mail a copy of the request with the Department.

(2) Transmission of Documents

Within ten days after the filing of a request for review, the Department shall:

(A) transmit to the Exchange Review Council copies of all documents that were considered in connection with the Department's decision and an index to the documents; and

(B) serve on the Applicant a copy of such documents (other than those documents originally submitted by Applicant) and a copy of the index.

(3) Membership Application Docket

The Department shall promptly record in the Exchange's membership application docket each request for review filed with the Exchange Review Council under this Rule and each material subsequent event, filing, and change in the status of a membership proceeding.

(4) Appointment of Subcommittee

The Exchange Review Council or the Review Subcommittee defined in Rule 9120 shall appoint a Subcommittee to participate in the review. The Subcommittee shall be composed of two or more persons who shall be current or past members of the Exchange Review Council or former Directors.

(5) Powers of Subcommittee

If a hearing is requested, the Subcommittee shall conduct the hearing. If a hearing is not requested, the Subcommittee may serve a notice directing that a hearing be held. If a hearing is not requested or directed, the Subcommittee shall conduct its review on the basis of the record developed before the Department and any written submissions made by the Applicant or the Department in connection with the request for review.

(6) Hearing

(A) Notice

If a hearing is requested or directed, the hearing shall be held within 45 days after the filing of the request with the Exchange Review Council or service of the notice by the Subcommittee. The Exchange Review Council shall serve written notice of the date and time of the hearing to the Applicant by facsimile or overnight courier not later than 14 days before the hearing.

(B) Counsel

The Applicant and the Department may be represented by counsel at a hearing conducted pursuant to this Rule.

(C) Evidence

Formal rules of evidence shall not apply to a hearing under this Rule. Not later than five days before the hearing, the Applicant and the Department shall exchange copies of their proposed hearing exhibits and witness lists and provide copies of the same to the Exchange Review Council. If the Applicant or the Department fails to provide copies of

its proposed hearing exhibits or witness list within such time, the Subcommittee shall exclude the evidence or witnesses from the proceeding, unless the Subcommittee determines that good cause is shown for failure to comply with the production date set forth in this subparagraph.

(D) Transcript

The hearing shall be recorded and a transcript prepared by a court reporter. A transcript of the hearing shall be available for purchase from the court reporter at prescribed rates. The Applicant, the Department, or a witness may seek to correct the transcript. A proposed correction of the transcript shall be submitted to the Subcommittee within a reasonable period of time prescribed by the Subcommittee. Upon notice to the Applicant and the Department, the Subcommittee may direct the correction to the transcript as requested or sua sponte.

(7) Additional Information, Briefs

At any time during its consideration, the Subcommittee or the Exchange Review Council may direct the Applicant or the Department to file additional information or briefs. Any additional information or brief filed shall be provided to all parties before the Exchange Review Council renders its decision.

(8) Abandonment of Request for Review

If an Applicant fails to specify the grounds for its request for review under Rule 302 (g)(1), appear at a hearing for which it has notice, or file information or briefs as directed, the Exchange Review Council or the Review Subcommittee may dismiss the request for review as abandoned, and the decision of the Department shall become the final action of the Exchange. Upon a showing of good cause, the Exchange Review Council or the Review Subcommittee may withdraw a dismissal entered pursuant to this paragraph.

(9) Subcommittee Recommendation

The Subcommittee shall present a recommended decision in writing to the Exchange Review Council within 60 days after the date of the hearing held pursuant to subparagraph (g)(6), and not later than seven days before the meeting of the Exchange Review Council at which the membership proceeding shall be considered.

(10) Decision

(A) Proposed Written Decision

After considering all matters presented in the review and the Subcommittee's recommended written decision, the Exchange Review Council may affirm, modify, or reverse the Department's decision or remand the membership proceeding with

instructions. The Exchange Review Council shall prepare a proposed written decision pursuant to subparagraph (g)(10)(B).

(B) Contents

The decision shall include:

- (i) a description of the Department's decision, including its rationale;
- (ii) a description of the principal issues raised in the review;
- (iii) a summary of the evidence on each issue; and
- (iv) a statement whether the Department's decision is affirmed, modified, or reversed, and a rationale therefor that references the bases for denial in Rule 302.

(C) Issuance of Decision After Expiration of Call for Review Periods

The Exchange Review Council shall provide its proposed written decision to the Exchange Board. The Exchange Board may call the membership proceeding for review pursuant to Rule 302(h). If the Exchange Board does not call the membership proceeding for review, the proposed written decision of the Exchange Review Council shall become final. The Exchange Review Council shall serve the Applicant with a written notice specifying the date on which the call for review period expired and stating that the final written decision will be served within 15 days after such date. The Exchange Review Council shall serve its final written decision within 15 days after the date on which the call for review period expired. The decision shall constitute the final action of the Exchange for purposes of SEC Rule 19d-3, unless the Exchange Review Council remands the membership proceeding.

(D) Failure to Issue Decision

If the Exchange Review Council fails to serve its final written decision within the time prescribed in subparagraph (g)(10)(C), the Applicant may file a written request with the Exchange Board requesting that the Exchange Board direct the Exchange Review Council to serve its decision immediately or to show good cause for an extension of time. Within seven days after the filing of such a request, the Board shall direct the Exchange Review Council to serve its written decision immediately or to show good cause for an extension of time. If the Exchange Review Council shows good cause for an extension of time, the Exchange Board may extend the 15-day time limit by not more than 15 days.

(h) Discretionary Review by the Exchange Board

(1) Call for Review by Director

A Director may call a membership proceeding for review by the Exchange Board if the call for review is made within the period prescribed in subparagraph (h)(2).

(2) 15 Day Period; Waiver

A Director shall make his or her call for review at the next meeting of the Exchange Board that is at least 15 days after the date on which the Exchange Board receives the proposed written decision of the Exchange Review Council. By unanimous vote of the Exchange Board, the Exchange Board may shorten the period to less than 15 days. By an affirmative vote of the majority of the Exchange Board then in office, the Exchange Board may, during the 15 day period, vote to extend the period to more than 15 days.

(3) Review At Next Meeting

If a Director calls a membership proceeding for review within the time prescribed in subparagraph (h)(2), the Exchange Board shall review the membership proceeding not later than the next meeting of the Exchange Board. The Exchange Board may order the Applicant and the Department to file briefs in connection with review proceedings pursuant to this paragraph.

(4) Decision of the Exchange Board, Including Remand

After review, the Exchange Board may affirm, modify, or reverse the proposed written decision of the Exchange Review Council. Alternatively, the Exchange Board may remand the membership proceeding with instructions. The Exchange Board shall prepare a written decision that includes all of the elements described in Rule 302(g)(10)(B).

(5) Issuance of Decision

The Exchange Board shall serve its written decision on the Applicant within 15 days after the meeting at which it conducted its review. The decision shall constitute the final action of the Exchange for purposes of SEC Rule 19d-3, unless the Exchange Board remands the membership proceeding.

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Rule 305. Documents Required of Applicants and Members

(a) No change.

(b) [Every Member shall file with the Exchange and keep current an address where notices may be served.]Every Member shall report to the Exchange all

contact information required by the Exchange via the FINRA Contact system. Each Member shall update its required contact information promptly, but in any event not later than 30 days following any change in such information. In addition, each Member shall review and, if necessary, update its required contact information, via such means as the Exchange may specify, within 17 business days after the end of each calendar year. Each member shall comply with any Exchange request for such information promptly, but in any event not later than 15 days following the request, or such longer period that may be agreed to by Exchange staff.

(c) No change.

(d) Reserved.[Members shall keep and maintain a current copy of the By-Laws and Rules in a readily accessible place. Members that are approved to do business with the public pursuant to Rule 600 shall make the By-Laws and Rules available for examination by customers.]

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Rule 307. Sale and Transfer of Market Maker Rights

(a) – (b) No change.

(c) Pursuant to paragraph (a) above, the Exchange’s Membership Department shall either approve or disapprove an executed transfer agreement between an owner and an approved applicant within thirty (30) days of receipt of the agreement. A transfer agreement may be disapproved under the following circumstances: (i) the contract attempts to transfer only part of the rights associated with a Market Maker Right; or (ii) the transfer would result in the transferee exceeding the ownership concentration limits contained in the Rules, or would otherwise violate the Exchange’s Rules.

(d) The owner or an approved applicant that is a party to an executed transfer agreement that is denied approval (the “Applicant”) may appeal the Membership Department’s decision to the Exchange Review Council, as set forth below.

(1) Initiation of Review by Applicant

Within 25 days after service of a decision under paragraph (c), an Applicant that is denied approval may file a written request for review with the Exchange Review Council. A request for review shall state with specificity why the Applicant believes that the Membership Department’s decision is inconsistent with the bases for denial set forth in Rule 307(c), or otherwise should be set aside, and state whether a hearing is requested. The Applicant simultaneously shall file by first-class mail a copy of the request with the Exchange.

(2) Transmission of Documents

Within ten days after the filing of a request for review, the Exchange shall:

(A) transmit to the Exchange Review Council copies of all documents that were considered in connection with the Exchange's decision and an index to the documents; and

(B) serve on the Applicant a copy of such documents (other than those documents originally submitted by the Applicant) and a copy of the index.

(3) Appointment of Subcommittee

The Exchange Review Council or the Review Subcommittee defined in Rule 9120 shall appoint a Subcommittee to participate in the review. The Subcommittee shall be composed of two or more persons who shall be current or past members of the Exchange Review Council or former Directors.

(4) Powers of Subcommittee

If a hearing is requested, the Subcommittee shall conduct the hearing. If a hearing is not requested, the Subcommittee may serve a notice directing that a hearing be held. If a hearing is not requested or directed, the Subcommittee shall conduct its review on the basis of the record developed before the Membership Department and any written submissions made by the Applicant or the Membership Department in connection with the request for review.

(5) Hearing

(A) Notice

If a hearing is requested or directed, the hearing shall be held within 45 days after the filing of the request with the Exchange Review Council or service of the notice by the Subcommittee. The Exchange Review Council shall serve written notice of the date and time of the hearing to the Applicant by facsimile or overnight courier not later than 14 days before the hearing.

(B) Counsel

The Applicant and the Membership Department may be represented by counsel at a hearing conducted pursuant to this Rule.

(C) Evidence

Formal rules of evidence shall not apply to a hearing under this Rule. Not later than five days before the hearing, the Applicant and the Membership Department shall exchange copies of their proposed hearing exhibits and witness lists and provide copies of the same

to the Exchange Review Council. If the Applicant or the Membership Department fails to provide copies of its proposed hearing exhibits or witness list within such time, the Subcommittee shall exclude the evidence or witnesses from the proceeding, unless the Subcommittee determines that good cause is shown for failure to comply with the production date set forth in this subparagraph.

(D) Transcript

The hearing shall be recorded and a transcript prepared by a court reporter. A transcript of the hearing shall be available for purchase from the court reporter at prescribed rates. The Applicant, the Membership Department, or a witness may seek to correct the transcript. A proposed correction of the transcript shall be submitted to the Subcommittee within a reasonable period of time prescribed by the Subcommittee. Upon notice to the Applicant and the Membership Department, the Subcommittee may direct the correction to the transcript as requested or sua sponte.

(6) Additional Information, Briefs

At any time during its consideration, the Subcommittee or the Exchange Review Council may direct the Applicant or the Membership Department to file additional information or briefs. Any additional information or brief filed shall be provided to all parties before the Exchange Review Council renders its decision.

(7) Abandonment of Request for Review

If an Applicant fails to specify the grounds for its request for review under Rule 307 (d)(1), appear at a hearing for which it has notice, or file information or briefs as directed, the Exchange Review Council or the Review Subcommittee may dismiss the request for review as abandoned, and the decision of the Membership Department shall become a final Exchange action. Upon a showing of good cause, the Exchange Review Council or the Review Subcommittee may withdraw a dismissal entered pursuant to this paragraph.

(8) Subcommittee Recommendation

The Subcommittee shall present a recommended decision in writing to the Exchange Review Council within 60 days after the date of the hearing held pursuant to subparagraph (d)(5), and not later than seven days before the meeting of the Exchange Review Council at which the membership proceeding shall be considered.

(9) Decision

(A) Proposed Written Decision

After considering all matters presented in the review and the Subcommittee's recommended written decision, the Exchange Review Council may affirm, modify, or

reverse the Membership Department's decision or remand the proceeding with instructions. The Exchange Review Council shall prepare a proposed written decision pursuant to subparagraph (d)(9)(B).

(B) Contents

The decision shall include:

- (i) a description of the Exchange Review Council's decision, including its rationale;
- (ii) a description of the principal issues raised in the review;
- (iii) a summary of the evidence on each issue; and
- (iv) a statement whether the Membership Department's decision is affirmed, modified, or reversed, and a rationale therefor that references the bases for denial in Rule 307(c).

(C) Issuance of Decision After Expiration of Call for Review Periods

The Exchange Review Council shall provide its proposed written decision to the Exchange Board. The Exchange Board may call the proceeding for review pursuant to Rule 307(d)(10). If the Exchange Board does not call the proceeding for review, the proposed written decision of the Exchange Review Council shall become final. The Exchange Review Council shall serve the Applicant with a written notice specifying the date on which the call for review period expired and stating that the final written decision will be served within 15 days after such date. The Exchange Review Council shall serve its final written decision within 15 days after the date on which the call for review period expired. The decision shall constitute the final action of the Exchange for purposes of SEC Rule 19d-3, unless the Exchange Review Council remands the membership proceeding.

(D) Failure to Issue Decision

If the Exchange Review Council fails to serve its final written decision within the time prescribed in subparagraph (d)(9)(C), the Applicant may file a written request with the Exchange Board requesting that the Exchange Board direct the Exchange Review Council to serve its decision immediately or to show good cause for an extension of time. Within seven days after the filing of such a request, the Board shall direct the Exchange Review Council to serve its written decision immediately or to show good cause for an extension of time. If the Exchange Review Council shows good cause for an extension of time, the Exchange Board may extend the 15-day time limit by not more than 15 days.

(10) Discretionary Review by the Exchange Board

(A) Call for Review by Director

A Director may call a proceeding for review by the Exchange Board if the call for review is made within the period prescribed in subparagraph (d)(10)(B).

(B) 15 Day Period; Waiver

A Director shall make his or her call for review at the next meeting of the Exchange Board that is at least 15 days after the date on which the Exchange Board receives the proposed written decision of the Exchange Review Council. By unanimous vote of the Exchange Board, the Exchange Board may shorten the period to less than 15 days. By an affirmative vote of the majority of the Exchange Board then in office, the Exchange Board may, during the 15 day period, vote to extend the period to more than 15 days.

(C) Review At Next Meeting

If a Director calls a proceeding for review within the time prescribed in subparagraph (d)(10)(B), the Exchange Board shall review the proceeding not later than the next meeting of the Exchange Board. The Exchange Board may order the Applicant and the Membership Department to file briefs in connection with review proceedings pursuant to this paragraph.

(D) Decision of the Exchange Board, Including Remand

After review, the Exchange Board may affirm, modify, or reverse the proposed written decision of the Exchange Review Council. Alternatively, the Exchange Board may remand the proceeding with instructions. The Exchange Board shall prepare a written decision that includes all of the elements described in subparagraph (d)(9)(B).

(5) Issuance of Decision

The Exchange Board shall serve its written decision on the Applicant within 15 days after the meeting at which it conducted its review. The decision shall constitute the final action of the Exchange for purposes of SEC Rule 19d-3, unless the Exchange Board remands the proceeding.

[Supplementary Material to Rule 307

.01 Pursuant to paragraph (a) above, the Exchange shall either approve or disapprove an executed transfer agreement between an owner and an approved applicant within thirty (30) days of receipt of the agreement. A transfer agreement may be disapproved under the following circumstances: (i) the contract attempts to transfer only part of the rights associated with a Market Maker Right; or (ii) the transfer would result in the transferee exceeding the ownership concentration limits contained in the Rules, or would otherwise violate the Exchange's Rules. The owner

or an approved applicant that is a party to an executed transfer agreement that is denied approval may appeal the Exchange's decision under Chapter 17 (Hearings and Review).]

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Rule 310. Dissolution and Liquidation of Members

Every Member shall promptly notify the Exchange in writing upon the adoption of a plan of liquidation or dissolution. Upon receipt of such notice, the Member's trading privileges may be suspended in accordance with Rule 9558[Chapter 15 (Summary Suspension) of these Rules].

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Rule 313. Registration Requirements

(a) – (e) No change.

Supplementary Material to Rule 313

.01- .04 No change.

.05 Pursuant to the Rule 9600 Series, [T]the Exchange may, in exceptional cases and where good cause is shown, waive the applicable qualification examination and accept other standards asevidence of an applicant's qualifications for registration. Advanced age or physical infirmity will not individually of themselves constitute sufficient grounds to waive a qualification examination. Experience in fields ancillary to the securities business may constitute sufficient grounds to waive a qualification examination.

.06 - .08 No change.

* * * * *

Rule 410. Other Restrictions on Members

Whenever the Exchange shall find that a Member has failed to perform on his or its contracts or is insolvent or is in such financial or operational condition or is otherwise conducting business in such a manner that it cannot be permitted to continue in business with safety to customers or creditors or the Exchange, the Exchange may summarily suspend the Member in accordance with Rule 9558[Chapter 15 (Summary Suspension)] or may impose such conditions and restrictions upon the Member as considered reasonably necessary for the protection of the Exchange and the customers of such Member.

* * * * *

Rule 413. Exemptions from Position Limits

(a) No change.

(b) *Market Maker Exemption.* The provisions set forth below apply only to market makers seeking an exemption to the standard position limits in all options traded on the Exchange for the purpose of assuring that there is sufficient depth and liquidity in the marketplace, and not to confer a right upon the market maker applying for an exemption.

(1) In light of the procedural safeguards, the purpose of this exemption process, and the prohibition against the granting of retroactive exemptions, decisions granting or denying exemptions are not subject to review[under Chapter 17 (Hearing and Review) of the Exchange Rules regarding Hearings and Review].

(2) – (7) No change.

(c) – (d) No change.

* * * * *

Rule 720. Nullification and Adjustment of Options Transactions including Obvious Errors

The Exchange may nullify a transaction or adjust the execution price of a transaction in accordance with this Rule. However, the determination as to whether a trade was executed at an erroneous price may be made by mutual agreement of the affected parties to a particular transaction. A trade may be nullified or adjusted on the terms that all parties to a particular transaction agree, provided, however, that such agreement to nullify or adjust must be conveyed to the Exchange in a manner prescribed by the Exchange prior to 8:30 a.m. Eastern Time on the first trading day following the execution. It is considered conduct inconsistent with just and equitable principles of trade for any Member to use the mutual adjustment process to circumvent any applicable Exchange rule, the Act or any of the rules and regulations thereunder.

(a) – (j) No change.

(k) *Appeals.* If a Member affected by a determination made under this Rule so requests within the time permitted below, [the Obvious Error Panel (“Obvious Error Panel”)]an Exchange Review Council panel will review decisions made by the Official under this Rule, including whether an obvious error occurred and whether the correct determination was made.

[(1)] The Obvious Error Panel will be comprised of representatives from four (4) Members. Two (2) of the representatives must be directly engaged in market making (any such representative, a “MM Representative”) and the other two (2) representatives must be employed by an Electronic Access Member (any such representative, a “Non-MM Representative”). To qualify as a representative of a Member other than a Member engaged in market making, a person must:

(A) be employed by a Member whose revenues from options market making activity do not exceed ten percent (10%) of its total revenues; or

(B) have as his or her primary responsibility the handling of Public Customer orders or supervisory responsibility over persons with such responsibility, and not have any responsibilities with respect to market making activities.]

[(2)](1) An Exchange Review Council panel will be comprised minimally of representatives of one (1) member engaged in market making and two (2) industry representatives not engaged in market making. At no time should a review panel have more than 50% members engaged in market making. [The Exchange shall designate at least ten (10) MM Representatives and at least ten (10) Non-MM Representatives to be called upon to serve on the Obvious Error Panel as needed. In no case shall an Obvious Error Panel include a person affiliated with a party to the trade in question. To the extent reasonably possible, the Exchange shall call upon the designated representatives to participate on an Obvious Error Panel on an equally frequent basis.]

[(3)](2) A request for review on appeal must be made in writing via e-mail or other electronic means specified from time to time by the Exchange in a circular distributed to Members within thirty (30) minutes after the party making the appeal is given notification of the initial determination being appealed. The [Obvious Error Panel]Exchange Review Council panel shall review the facts and render a decision as soon as practicable, but generally on the same trading day as the execution(s) under review. On requests for appeal received after 3:00 p.m. Eastern Time, a decision will be rendered as soon as practicable, but in no case later than the trading day following the date of the execution under review.

[(4)](3) The [Obvious Error Panel]Exchange Review Council panel may overturn or modify an action taken by the Official under this Rule. All determinations by the [Obvious Error Panel]Exchange Review Council panel shall constitute final action by the Exchange on the matter at issue.

[(5)](4) If the [Obvious Error Panel]Exchange Review Council panel votes to uphold the decision made pursuant to paragraph (k)[(1)] above, the Exchange will assess a \$5,000.00 fee against the Member(s) who initiated the request for appeal. In addition, in instances where the Exchange, on behalf of a Member, requests a determination by another market center that a transaction is clearly erroneous, the Exchange will pass any resulting charges through to the relevant Member.

[(6)](5) Any determination by an Official or by the [Obvious Error Panel]Exchange Review Council panel shall be rendered without prejudice as to the rights of the parties to the transaction to submit their dispute to arbitration.

Supplementary Material to Rule 720

No change.

Rule 720A. Erroneous Trades due to System Disruptions and Malfunctions

(a) No change.

(b) *Procedures for Review of Decisions Made Pursuant to Rule 720A(a).*

(1) If a party to a ruling by Market Control made pursuant to subsection (a) of this Rule requests within the time permitted below, [a Review Panel,] an Exchange Review Council panel will be utilized to review decisions made by Market Control under this Rule.

(i) An Exchange Review Council panel will be comprised minimally of representatives of one (1) member engaged in market making and two (2) industry representatives not engaged in market making. At no time should a review panel have more than 50% members engaged in market making.[The Review Panel will be comprised of representatives from four (4) Member firms. Two (2) of the representatives must be directly engaged in market making activity and two (2) of the representatives must be employed by an Electronic Access Member. To qualify as a representative of an Electronic Access Member on a Review Panel, a person must (i) be employed by a Member whose revenues from options market making activity do not exceed ten percent (10%) of its total revenues; or (ii) have as his or her primary responsibility the handling of Public Customer orders or supervisory responsibility over persons with such responsibility, and not have any responsibilities with respect to market making activities.]

[(ii) The Exchange shall designate at least five (5) market maker representatives and at least five (5) Electronic Access Member representatives to be called upon to serve on the Review

Panel as needed. In no case shall a Review Panel include a person related to a party to the trade in question. To the extent reasonably possible, the Exchange shall call upon the designated representatives to participate on a Review Panel on an equally frequent basis.]

[(iii)](ii) A request for review on appeal must be made via facsimile or e-mail within thirty (30) minutes after the party making the appeal is given notification of the initial determination being appealed. The [Review Panel]Exchange Review Council panel shall review the facts and render a decision within the time frame prescribed by the Exchange.

[(iv)](iii) The [Review Panel]Exchange Review Council panel may overturn or modify an action taken by the Exchange under this Rule. All determinations by the [Review Panel]Exchange Review Council panel shall constitute final action by the Exchange on the matter at issue.

* * * * *

Rule 804.

Market Maker Quotations

(a) – (e) No change.

(f) *Temporary Withdrawal of Quotations by Primary Market Makers.* A Primary Market Maker may apply to the Exchange to withdraw temporarily from its Primary Market Maker status in an options class. The Primary Market Maker must base its request on demonstrated legal or regulatory requirements that necessitate its temporary withdrawal, or provide the Exchange an opinion of counsel certifying that such legal or regulatory basis exists. The Exchange will act promptly on such a request, and, if the request is granted, the Exchange will temporarily reassign the options class to another Primary Market Maker.

(1) The Exchange Review Council shall have jurisdiction over proceedings brought by Primary Market Makers seeking review of the denial of an excused withdrawal pursuant to this Rule or the conditions imposed on their reentry.

(g) – (h) No change.

Supplementary Material to Rule 804

No change.

* * * * *

10. Closing Transactions**Rule 1000. Contracts of Suspended Members**

(a) When a Member, other than a Clearing Member, is suspended pursuant to [Chapter 15 (Summary Suspension)]Chapter 90, all open short positions of the suspended Member in options contracts and all open positions resulting from exercise of options contracts, other than positions that are secured in full by a specific deposit or escrow deposit in accordance with the rules of the Clearing Corporation, shall be closed without unnecessary delay by all Members carrying such positions for the account of the suspended Member; provided that the Exchange may cause the foregoing requirement to be temporarily waived for such period as it may determine if it shall deem such temporary waiver to be in the interest of the public or the other Members of the Exchange.

(b) No change.

(c) When a Clearing Member is suspended pursuant to [Chapter 15 (Summary Suspension) of these Rules]Chapter 90, the positions of such Clearing Member shall be closed out in accordance with the rules of the Clearing Corporation.

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14. Records, Reports and Audits

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Rule 1406. Regulatory Cooperation

(a) – (c) No change.

(d) Whenever information is requested by the Exchange pursuant to this Rule, the Member or person associated with a Member from whom the information is requested shall have the same rights and procedural protections in responding to such request as such Member or person would have in the case of any other request for information initiated by the Exchange pursuant to Rule [1601(b)]8210.

* * * * *

15. Reserved[Summary Suspension]**Rule 1500. Reserved[Imposition of Suspension]**

(a) A Member or person associated with a Member that has been expelled or suspended from any SRO or barred or suspended from being associated

with a member of any SRO, or a Member that is in such financial or operating difficulty that the Board or a committee or Exchange official designated by the Board determines that the Member cannot be permitted to continue to do business as a Member with safety to investors, creditors, other Members, or the Exchange, may be summarily suspended.

(b) The Board or a committee or Exchange official designated by the Board may limit or prohibit any person with respect to access to services offered by the Exchange if any of the criteria of the foregoing sentence is applicable to such person or, in the case of a person who is a Member, if the Exchange determines that such person does not meet the qualification requirements or other prerequisites for such access with safety to investors, creditors, Members or the Exchange.

(c) In the event a determination is made to take summary action pursuant to this Rule, notice thereof will be sent to the SEC.

(d) Any person aggrieved by any summary action taken under this Rule shall be promptly afforded an opportunity for a hearing by the Exchange in accordance with the provisions of Chapter 17 (Hearing and Review).

(e) A summary suspension or other action taken pursuant to this Chapter shall not be deemed to be disciplinary action under Chapter 16 (Discipline). The provisions of Chapter 16 shall be applicable regardless of any action taken pursuant to this Chapter.]

Rule 1501. Reserved[Investigation Following Suspension

(a) Every Member or person associated with a Member against which action has been taken in accordance with the provisions of this Chapter shall immediately afford every facility required by the Exchange for the investigation of his or its affairs and shall forthwith file with the Secretary a written statement covering all information requested, including a complete list of creditors and the amount owing to each and a complete list of each open long and short position in Exchange options contracts maintained by the Member and each of his or its customers.

(b) Paragraph (a) includes, without limitation, the furnishing of such books and records of the Member or person associated with a Member and the giving of such sworn testimony as may be requested by the Exchange.]

Rule 1502. Reserved[Reinstatement

(a) *General.*

(1) A Member, person associated with a Member or other person suspended or limited or prohibited with respect to access to services offered by

the Exchange under the provisions of this Chapter may apply for reinstatement within the time period set forth below.

(2) Notice of an application for reinstatement shall be given by the Secretary to the Membership and shall be posted by the Exchange at least five (5) business days prior to the consideration by the Exchange of said application.

(3) The Exchange may approve an application for reinstatement if it finds that the applicant is operationally and financially able to conduct his business with safety to investors, creditors, Members, and the Exchange.

(b) *Suspension Due to Operating Difficulty.*

(1) An applicant that, by reason of operating difficulty, has been suspended or limited or prohibited with respect to Exchange services, must file any application for reinstatement within six months from the date of such action. Such application must include a statement of all actions taken by the applicant to remedy the operational difficulty in question.

(2) If the applicant fails to receive reinstatement, or if the application is not acted upon ninety (90) days of its submission, the applicant shall be afforded an opportunity for a hearing in accordance with the provisions of Chapter 17 (Hearing and Review).

(c) *Suspension Due to Financial Difficulty.*

(1) An applicant who, by reason of financial difficulty, has been suspended or limited or prohibited with respect to Exchange services, must file any application for reinstatement within thirty (30) days of such action.

(2) Such application must include a list of all creditors of the applicant a statement of the amount originally owing and the nature of the settlement in each case, and such other information as may be requested by the Exchange.

(3) The Membership of a Member summarily suspended by reason of financial difficulty may not be disposed of by the Exchange until that Member has been afforded an opportunity for a hearing respecting such summary suspension pursuant to the provisions of Chapter 17 (Hearing and Review).]

Rule 1503.

Reserved[Failure to Obtain Reinstatement

If a Member suspended under the provisions of this Chapter fails or is unable to apply for reinstatement in accordance with Rule 1502, or fails to obtain reinstatement as therein provided, his or its Membership shall be disposed of by the Exchange in accordance with Rule 307(b), unless such Member sells or

leases such Membership.]

Rule 1504. Reserved[Termination of Rights by Suspension

A Member suspended under the provisions of this Chapter shall be deprived during the term of his or its suspension of all rights and privileges of being a Member of the Exchange.]

16. Disciplinary Jurisdiction and Minor Rule Violation Fines[Discipline]

Rule 1600. Disciplinary Jurisdiction

(a) A Member or a person associated with a Member who is alleged to have violated or aided and abetted a violation of any provision of the Exchange Act, the rules and regulations promulgated thereunder, or any provision of the By-Laws or Rules of the Exchange or any interpretation thereof or resolution of the Board of the Exchange regulating the conduct of business on the Exchange, shall be subject to the disciplinary jurisdiction of the Exchange under this Chapter, and after notice and opportunity for a hearing may be appropriately disciplined by expulsion, suspension, limitation of activities, functions, and operations, fine, censure, being suspended or barred from being associated with a Member or any other fitting sanction, in accordance with provisions of the Chapter.

(b) Persons associated with a Member may be charged with any violation committed by employees under his supervision or by the Member as though such violation were his own. A Member may be charged with any violation committed by its employees or other person who is associated with such Member, as though such violation were its own.

(c) Any Member or person associated with a Member shall continue to be subject to the disciplinary jurisdiction of the Exchange following such Member's termination or the person's termination of association with a Member 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 Exchange to such former Member or former associated person within one (1) year of receipt by the Exchange, or such other exchange or association recognized for purposes of Rule 602, of the latest written notice of the termination of such person's status as a Member or person associated with a Member. The foregoing notice requirement does not apply to a person who at any time after a termination again subjects himself to the disciplinary jurisdiction of the Exchange by becoming a Member or a person associated with a Member.

Rule 1601. Reserved[Requirement to Furnish Information

regulatory staff and the Member or person(s) who is the subject of the investigation (the "Subject") are able to agree upon terms of a letter of consent. Such letter must be signed by the Subject and must set forth a stipulation of facts and findings concerning the Member's conduct, the violation(s) committed by the Member and the sanction(s) therefor.

(b) In the event that the Subject and the regulatory staff are able to agree upon a letter of consent, the staff shall submit the letter to the Chief Regulatory Officer. If the letter of consent is acceptable to the Chief Regulatory Officer, it shall be submitted to the Business Conduct Committee. In the event that the Member and the regulatory staff are unable to agree upon a letter of consent or if a proposed letter is not acceptable to the Chief Regulatory Officer, the staff may institute an action according to the procedures contained in Rule 1604. The Chief Regulatory Officer's decision to reject a letter of consent shall be final, and a Subject may not seek review thereof.

(c) If a letter of consent is submitted to and accepted by the Business Conduct Committee, the Exchange shall take no further action against the Subject respecting the matters that are the subject of the letter. If the letter of consent is rejected by the Business Conduct Committee, the matter shall proceed as though the letter had not been submitted. The Business Conduct Committee's decision to accept or reject a letter of consent shall be final, and a Subject may not seek review thereof.]

Rule 1604.

Reserved[Charges

(a) *Initiation of Charges.* Whenever it shall appear that there is probable cause for finding a violation within the disciplinary jurisdiction of the Exchange and that further proceedings are warranted, the regulatory staff shall prepare a statement of charges against the Member or associated person alleged to have committed a violation (the "Respondent") specifying the acts in which the Respondent is charged to have engaged and setting forth the specific provisions of the Exchange Act, rules and regulations promulgated thereunder, provisions of the By-Laws or Rules of the Exchange, or interpretations or resolutions of which such acts are in violation. If the statement of charges is approved by the Chief Regulatory Officer, a copy of the charges shall be served upon the Respondent in accordance with Rule 1612. The complainant, if any, shall be notified if further proceedings are warranted.

(b) *Access to Documents.* Provided that a Respondent has made a written request for access to documents described hereunder with sixty (60) calendar days after a statement of charges has been served upon the Respondent in accordance with Rule 1612, the Respondent shall have access to all documents concerning the case that are in the investigative file of the Exchange except for regulatory staff investigation and examination reports and any other materials prepared by the Exchange staff in connection with such reports or in anticipation of a disciplinary hearing. In providing such documents, the Exchange may protect the identity of a

complainant.]

Rule 1605. **Reserved**[**Answer**

(a) The Respondent shall have twenty-five (25) calendar days after service of the charges to file with the Secretary of the Exchange 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 that the Respondent wishes to submit and may be accompanied by documents in support of his answer or defense. In the event the Respondent fails to file an answer, the charges shall be considered to be admitted.

(b) Upon review of the Respondent's answer, the Chief Regulatory Officer may modify the statement of charges, and a copy of the modified charges shall be served upon the Respondent in accordance with Rule 1612. If such modification asserts any new or materially different charges from those contained in the initial statement, Respondent shall have an additional twenty-five (25) calendar days after service of the modified statement of charges to file a written answer thereto in accordance with paragraph (a) above.]

Rule 1606. **Reserved**[**Hearing**

(a) *Appointment of Hearing Panel.* Subject to Rule 1608 (Summary Proceedings), a hearing on the charges shall be held before a professional hearing officer and two members of the Business Conduct Committee (the "Panel"). The professional hearing officer shall serve as the chairman of the Panel (the "Panel Chairman").

(1) Promptly after the Respondent files a written answer to the statement of charges, the Chairman of the Business Conduct Committee shall select from among the persons on the Business Conduct Committee two (2) persons to serve on the Panel. In making such selection, the Chairman of the Business Conduct Committee shall, to the extent practicable, choose individuals whose background, experience and training qualify them to consider and make determinations regarding the subject matter to be presented to the Panel. He shall also consider such factors as the availability of individuals, the extent of their prior service on Panels and any relationship between an individual and the Respondent that might make it inappropriate for such person to serve on the Panel.

(2) If in the opinion of the Chairman of the Business Conduct Committee, there are not a sufficient number of persons on the Business Conduct Committee from which to select persons having the appropriate background, experience and training to consider and make determinations

regarding the subject matter to be presented to that particular Panel, he shall request that the President temporarily appoint additional persons to the Business Conduct Committee from whom he may select for that Panel.

(3) If at any time a person serving on a Panel has a conflict of interest or bias or circumstances otherwise exist where his fairness might reasonably be questioned, the person must withdraw from the Panel. In the event that a person selected from the Business Conduct Committee withdraws, is incapacitated, or otherwise is unable to continue service after being selected, the Panel Chairman may, in the exercise of discretion, request that the Chairman of the Business Conduct Committee select a replacement. In the event that both persons selected from the Business Conduct Committee withdraw, are incapacitated, or otherwise are unable to continue service, the Chairman of the Business Conduct Committee shall select two replacements.

(b) *Parties.* The Exchange and the Respondent shall be the parties to the hearing. Where a Member is a party, it shall be represented at the hearing by an associated person.

(c) *Notice and List of Documents.* Parties shall be given at least twenty- eight (28) calendar days notice of the time and place of the hearing. Not less than ten (10) calendar days in advance of the scheduled hearing date, each party shall furnish to the Panel and to the other parties copies of all documentary evidence such party intends to present at the hearing. Where time and the nature of the proceeding permit, the parties shall meet with the Panel Chairman in a pre-hearing conference for the purpose of clarifying and simplifying issues and otherwise expediting the proceeding. At such pre-hearing conference, the parties shall attempt to reach agreement respecting authenticity of documents, facts not in dispute, and any other items that will serve to expedite the hearing of the matter.

(d) *Intervention.* Any person not otherwise a party may intervene as a party to the hearing upon demonstrating to the satisfaction of the Panel Chairman that he has an interest in the subject of the hearing and that the disposition of the matter may, as a practical matter, impair or impede his ability to protect that interest. Also, the Panel Chairman may in his 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 Panel Chairman a notice requesting the right to intervene, stating the grounds therefor, and setting forth the claim or defense for which intervention is sought. The Panel Chairman, in exercising his discretion concerning intervention shall take into consideration whether the intervention will unduly delay or prejudice the adjudication of the rights of the original parties.

(e) *Conduct of Hearing.* The Panel Chairman shall determine the time and place of all meetings, and shall make all determinations with regard to procedural or evidentiary matters, as well as prescribe the time within which all documents,

exhibits, briefs, stipulations, notices or other written materials must be filed where such is not specified in this Chapter. The Panel Chairman shall generally regulate the course of the hearing, and shall have the authority to, among other things, order the parties to present oral arguments, reopen a hearing prior to the issuance of a decision by the Panel, create and maintain the official record of proceeding, and draft a decision that represents the views of the majority of the Panel. Formal rules of evidence shall not apply to hearings conducted by the Panel. The charges shall be presented by a representative of the Exchange 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 Panel and the other parties. The Panel may request the production of documentary evidence and witnesses. No Member or person associated with a Member shall refuse to furnish relevant testimony, documentary materials or other information requested by the 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. Interlocutory Board review of any decision made by the Panel prior to completion of the hearing is generally prohibited. Such interlocutory review shall be permitted only if the Panel agrees to such review after determining that the issue is a controlling issue of rule or policy and that immediate Board review would materially advance the ultimate resolution of the case.

(f) *Ex Parte Communication.* No Member or person associated with a Member shall make or knowingly cause to be made an ex parte communication with any member of the Panel, Business Conduct Committee or Board concerning the merits of any matter pending under this Chapter. No member of the Panel, Business Conduct Committee or Board shall make or knowingly cause to be made an ex parte communication with any Member or any person associated with a Member concerning the merits of any matter pending under this Chapter.

(1) “Ex parte communication” means an oral or written communication made without notice to all parties, that is, regulatory staff and Subjects of investigations or Respondents in proceedings.

(2) 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 parties except those who, on adequate prior notice, declined to be present.]

Rule 1607. Reserved[Decision

(a) Following a hearing conducted pursuant to Rule 1606, the Panel shall by majority opinion, issue a decision in writing, based solely on the record, determining whether the Respondent has committed a violation and imposing the sanction, if any, therefor.

(b) The decision shall include a statement of findings and

conclusions, with the reasons therefor, upon all material issues presented on the record. Where a sanction is imposed, the decision shall include a statement specifying the acts or practices in which the Respondent has been found to have engaged and setting forth the specific provisions of the Exchange Act, rules and regulations promulgated thereunder, provisions of the By-Laws or Rules of the Exchange, interpretations or resolutions of the Exchange of which the acts are deemed to be in violation.

- (c) The Respondent shall be sent a copy of the decision promptly after it is rendered.]

Rule 1608. Reserved[Summary Proceedings

Notwithstanding the provision of Rule 1606 (Hearing), a Panel may make a determination without a hearing and may impose a penalty as to violations that the Respondent has admitted or has failed to answer or that otherwise do not appear to be in dispute.

(a) Notice of such summary determination, specifying the violations and penalty, shall be served upon the Respondent, who shall have ten (10) calendar days from the date of service to notify the Panel Chairman that he desires a hearing upon all or a portion of any charges not previously admitted or upon the penalty. Failure to so notify the Panel Chairman shall constitute admission of the violations and acceptance of the penalty as determined by the Panel and a waiver of all rights of review.

(b) If the Respondent requests a hearing, the matters that are the subject of the hearing shall be handled as if the summary determination had not been made.]

Rule 1609. Reserved[Offers of Settlement

(a) *Submission of Offer.* At any time during a period not to exceed 120 calendar days immediately following the date of service of a statement of charges upon the Respondent in accordance with Rule 1612, the Respondent may submit to the Panel, if one has been formed, a written offer of settlement, signed by him, which shall contain a proposed stipulation of facts and consent to a specified sanction. The Respondent may submit a written statement in support of the offer. If a Panel has not yet been appointed, a written offer of settlement may be submitted to the Chief Regulatory Officer.

(1) A Respondent shall be entitled to submit a maximum of two (2) written offers of settlement in connection with the statement of charges issued to that Respondent pursuant to Rule 1604, unless a Panel, in its discretion, permits a Respondent to submit additional offers of settlement.

(3) New issues may be raised by the Board, and in such event, Respondents and regulatory staff shall be given notice of an opportunity to address any such new issues.

(d) *Determination.* The Board may affirm, reverse or modify, in whole or in part, the decision of the Panel. Such modification may include an increase or decrease of the sanction. The decision of the Board shall be in writing, shall be promptly served on the Respondent, and shall be final.]

Rule 1611. Reserved[Judgment and Sanction

(a) *Sanctions.* Members and persons associated with Members shall (subject to any rule or order of the SEC) be appropriately disciplined for violations under these Rules by expulsion, suspension, limitation of activities, functions and operations, fine, censure, being suspended or barred from being associated with a Member, or any other fitting sanction.

(b) *Effective Date of Judgment.* Sanctions imposed under this Chapter shall not become effective until the Exchange review process is completed or the decision otherwise becomes final. Pending effectiveness of a decision imposing a sanction on the Respondent, the person, committee or panel issuing the decision (the “adjudicator”) may impose such conditions and restrictions on the activities of the Respondent as it considers reasonably necessary for the protection of investors and the Exchange.

(c) *Payment of Fines, Other Monetary Sanctions, or Costs; Summary Action for Failure to Pay.*

(1) *Payment to Chief Financial Officer.* All fines and other monetary sanctions shall be paid to the Chief Financial Officer of the Exchange.

(2) *Summary Suspension or Expulsion.* After seven (7) calendar days notice in writing, the Exchange may summarily suspend a Member that fails to: (i) pay promptly a fine, other monetary sanction or cost imposed pursuant to this Chapter when such fine, monetary sanction or cost becomes finally due and payable; or (ii) terminate immediately the association of a person who fails to pay promptly a fine, other monetary sanction or cost imposed pursuant to this Chapter when such fine, monetary sanction or cost becomes finally due and payable.

(d) *Costs of Proceedings.* A Member or person associated with a Member disciplined pursuant to this Chapter shall bear such costs of the proceeding as the adjudicator deems fair and appropriate under the circumstances.]

Rule 1612. Reserved[Procedural Matters

(a) *Service of Notice.* Any charges, notices or other documents may be served upon a Member or associated person either personally or by leaving the same at his place of business, by registered or certified mail or overnight commercial carrier addressed to the Member or associated person at the Member's address as it appears on the books and records of the Exchange.

(b) *Extension of Time Limits.* Any time limits imposed under this Chapter for the submission of answers, petitions or other materials may be extended by permission of the authority to whom such materials are to be submitted.]

Rule 1613. Reserved[Reporting to the Central Registration Depository

(a) With respect to formal Exchange disciplinary proceedings, the Exchange shall report to the CRD the issuance of a statement of charges pursuant to Exchange Rule 1604 and all significant changes in the status of such proceedings while such proceedings are pending.

(b) For purposes of reporting to the CRD:

(1) A formal Exchange disciplinary proceeding shall be considered to be pending from the time that a statement of charges is issued in such proceeding pursuant to Exchange Rule 1604 until the outcome of the proceeding becomes final.

(2) An Exchange disciplinary proceeding shall be considered to be a formal disciplinary proceeding if it is initiated by the Exchange pursuant to Rule 1602.

(3) Significant changes in the status of a formal Exchange disciplinary proceeding shall include, but not be limited to, the scheduling of a disciplinary hearing, the issuance of a decision by a Panel, the filing of an appeal to the Board, and the issuance of a decision by the Board.]

Rule 1614. Imposition of Fines for Minor Rule Violations

(a) *General.* In lieu of commencing a disciplinary proceeding, the Exchange may, subject to the requirements set forth herein, impose a fine, not to exceed \$5,000, on any Member, or person associated with or employed by a Member, with respect to any Rule violation listed in section ([d]b) of this Rule. Any fine imposed pursuant to this Rule that (i) does not exceed \$2,500 and (ii) is not contested, shall be reported on a periodic basis, except as may otherwise be required by Rule 19d-1 under the Exchange Act or by any other regulatory authority. The Exchange is not required to impose a fine pursuant to this Rule with respect to the

violation of any Rule included herein, and the Exchange may, whenever it determines that any violation is not minor in nature, proceed under the formal disciplinary process set forth in Chapter 90 of the Exchange's Rules[1603 or 1604], rather than under this Rule.

[(b) *Notice.* Any person against whom a fine is imposed under this Rule (the "Subject") shall be served with a written statement setting forth (i) the Rule(s) allegedly violated; (ii) the act or omission constituting each such violation; (iii) the fine imposed for each violation; and (iv) the date by which such determination becomes final and such fine must be paid or contested as provided below, which date shall be not less than thirty (30) calendar days after the date of service of such written statement.]

[(c)*Review.* A Subject may contest the Exchange's determination by filing with the Office of the Secretary of the Exchange a written answer as provided in Exchange Rule 1605 on or before the date such fine must be paid.

(1) Upon the receipt of an answer by the Exchange the matter becomes subject to review by the Business Conduct Committee, or a subcommittee thereof consisting of at least three (3) members of the Business Conduct Committee.

(2) The answer must include a request for a hearing, if a hearing is desired. Formal rules of evidence shall not apply to hearings conducted by the Business Conduct Committee under this Rule. The Business Conduct Committee shall determine the time and place of the hearing and make all determinations with regard to procedural or evidentiary matters, as well as prescribe the time within which all documents or written materials must be submitted. The regulatory staff and the Subject may present evidence and produce witnesses who shall testify under oath and are subject to being questioned by the Business Conduct Committee and the other party. No Member or person associated with a Member shall refuse to furnish relevant testimony, documentary materials or other information requested by the Business Conduct Committee during the course of the hearing. The Subject is entitled to be represented by counsel who may participate fully in the hearing.

(3) If a hearing is not requested, the review will be based on written submissions and will be conducted in a manner to be determined by the Business Conduct Committee.

(4) If, after a hearing or review based on written submissions, the Business Conduct Committee determines that the Subject is guilty of the rule violation(s) alleged, the Committee may impose any one or more of the disciplinary sanctions authorized by the Exchange's By-Laws and Rules. Unless the sole disciplinary sanction imposed by the Committee for such rule violation(s) is a fine that is less than the total fine initially

imposed by the Exchange for the subject violation(s), the person charged shall pay a forum fee in the amount of \$100 if the determination was reached without a hearing and \$300 if a hearing was conducted.

(5) The regulatory staff, the Subject or the Board on its own motion may require a review by the Board of any determination by the Business Conduct Committee under this Rule by proceeding in the manner described in Rule 1610.

(6) In the event that a fine imposed pursuant to this Rule is subsequently upheld by the Business Conduct Committee or, if applicable, on appeal to the Board, such fine, plus all interest that has accrued thereon since the fine was due and any forum fee imposed pursuant to subparagraph (4) above, shall be immediately payable.]

~~(d)~~(b) *Violations Subject to Fines.* The following is a list of the rule violations subject to, and the applicable sanctions that may be imposed by the Exchange pursuant to[, this Rule] Rule 9216:

(1) Position Limits (Rule 412)

Number of Cumulative Violations Within Any Twenty-four Month Rolling Period*	Sanction(Imposed on Exchange Members or violations occurring in all other accounts)
First Offense	\$500
Second Offense	\$1,000
Third Offense	\$2,500
Fourth and Each Subsequent Offense	\$5,000

* A violation that consists of (i) a 1 trade date overage, (ii) a consecutive string of trade date overage violations where the position does not change or where a steady reduction in the overage occurs, or (iii) a consecutive string of trade date overage violations resulting from other mitigating circumstances, may be deemed to constitute one offense, provided that the violations are inadvertent.

(2) Focus Reports (Rule 1403).Each Member shall file with the Exchange a report of financial condition on SEC Form X-17A-5 as required by Rule 17a-10 under the Exchange Act. Any Member who fails to file in a timely manner such report of financial condition pursuant to Exchange Act Rule 17a-10 shall be subject to the following fines:

Calendar Days Late	Sanction
1 to 30	\$200
31 to 60	\$400
61 to 90	\$800
Over 90	Formal Disciplinary Action

(3) Requests for Trade Data (Rule 1404). Any Member who fails to respond within ten (10) business days to a request by the Exchange for submission of trade data shall be subject to the following fines:

Business Days Late	Sanction
1 to 9	\$200
10 to 15	\$500
16 to 30	\$1,000
Over 30	Formal Disciplinary Action

Any Member who violates this Rule more than one (1) time in any calendar year shall be subject to the following fines, which fines shall be imposed in addition to any sanction imposed pursuant to the schedule above:

Number of Violations Within One Calendar Year	Sanction
2 nd Offense	\$500
3 rd Offense	\$1,000
4 th Offense	\$2,500
Subsequent Offenses	Formal Disciplinary Action

([5]4) Order Entry (Rule 717). Violations of Rule 717(d) and (e) regarding limitations on orders entered into the System by Electronic Access Members will be subject to the fines listed below.

Number of Violations Within One Calendar Year	Sanction
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1 to 5	Letter of Caution
6 to 10	\$500
11 to 15	\$1000
16 to 20	\$2000
Over 20	Formal Disciplinary Action

([6]5)(a) Pre-Opening Quotation Parameters (Rule 803). Violations of Rule 803(b)(4) regarding pre-opening quote spread parameters for market maker quotations, as well as violations of Rule 805(b)(1)(i) regarding orders entered by market makers, shall be subject to the fines listed below.

Number of Violations Within a Twenty-Four Month Rolling Period*	Sanction
First Offense	Letter of Caution
Second Offense	\$1,000
Third Offense	\$2,500
Fourth Offense	\$5,000
Fifth Offense	Formal Disciplinary Action

* Violations occurring during a calendar month are aggregated and sanctioned as a single offense.

(b) Post-Opening Quotation Parameters (Rule 803). Violations of Rule 803(b)(4) regarding post-opening quote spread parameters for market maker quotations, as well as violations of Rule 805(b)(1)(i) regarding orders entered by market makers, shall be subject to the fines listed below. For purposes of this Rule, the spread parameters in Rule 803(b)(4) will not be violated upon a change in a bid (offer) if a market maker takes immediate action to adjust its offer (bid) to comply with the maximum allowable spread. Except in unusual market conditions, immediate shall mean within ten (10) seconds of a change in the market makers bid or offer.

Number of Violations Within a Twenty-Four Month Rolling Period*	Sanction
First Offense	Letter of Caution
Second Offense	\$1,000
Third Offense	\$2,500

Fourth Offense	\$5,000
Fifth Offense	Formal Disciplinary Action

* Violations occurring during a calendar month are aggregated and sanctioned as a single offense.

([7]6) Execution of Orders in Appointed Options (Rule 805). Violations of Rule 805(b)(2) and (3) requiring market makers to execute in appointed options classes a minimum percentage of the total number of contracts executed during a quarter shall be subject to the following sanctions:

Number of Violations Within Rolling Twelve Month Period	Sanction
1 st Offense	Letter of Caution
2 nd Offense	\$500
3 rd Offense	\$1,000
4 th Offense	\$2,500
Subsequent Offenses	Formal Disciplinary Action

([8]7) Mandatory Systems Testing (Rule 419). Failure to conduct or participate in the testing of computer systems, or failure to provide required reports or maintain required documentation, shall be subject to the fines listed below.

Violations Within One Calendar Year	Sanction
First Violation	\$250
Second Violation	\$500
Third Violation	\$1000
Fourth Violation	\$2000
Fifth Violation or more	Formal Disciplinary Action

([9]8) Exercise of Options Contracts (Rule 1100). Any member who fails to submit to the Exchange in a timely manner pursuant to Rule 1100 or a Regulatory Information Circular issued pursuant to Rule 1100, "AdviceCancel", or exercise instruction relating to the exercise or non-exercise of a noncash- settled equity option shall be subject to the following fines:

Number of Cumulative Violations Within Any Twenty-Four Month Rolling Period	Individual	Member [Organization]
1 st Offense	\$500	\$1,000
2 nd Offense	\$1,000	\$2,500
Subsequent Offenses	\$2,500	\$5,000

(~~10~~9) Failure to Accurately Report Position and Account Information (Rule 415)

A fine shall be imposed upon a member who violates Rule 415. Such fines shall be imposed on the basis of the following schedule:

Number of Violations Within Any Twenty-four Month Rolling Period*	Sanction(Imposed on Exchange Members or violations occurring in all other accounts)
First Offense	\$500
Second Offense	\$1,000
Third Offense	\$2,500
Fourth and Each Subsequent Offense	\$5,000

(~~11~~10) Continuous Quotes (Rule 804(e)). A market maker must enter continuous quotations for the options classes to which it is appointed. Failure to comply shall be subject to the fines listed below.

Number of Violations (PMMs and/or CMMs) Within a Twenty-four Month Rolling Period*	Sanction
First Offense	Letter of Caution
Second Offense	\$1,000
Third Offense	\$2,500
Fourth Offense	\$5,000
Fifth Offense	Formal Disciplinary Action

* Violations occurring during a calendar month are aggregated and sanctioned as a single offense.

Rule 1615. Reserved[Disciplinary Functions

The Exchange may contract with another SRO to perform some or all of the Exchange's disciplinary functions. In that event, the Exchange shall specify to what extent the Rules in this Chapter shall govern Exchange disciplinary actions and to what extent the rules of the other SRO shall govern such actions. Notwithstanding the fact that the Exchange may contract with another SRO to perform some or all of the Exchange's disciplinary functions, the Exchange shall retain ultimate legal responsibility for and control of such functions.]

[Supplementary Material to Rule 1615

.01 The Exchange has entered into a contract with FINRA to provide professional hearing officers and to act as an agent of the Exchange with respect to the disciplinary procedures contained in this Chapter. All of the Rules in this Chapter shall govern Exchange disciplinary actions. Under Rule 1606(a), the professional hearing officer is designated as the Chairman of the Panel. Under Rule 1606(e), the Panel Chairman has the sole responsibility to determine the time and place of all meetings of the Panel, and make all determinations with regard to procedural or evidentiary matters, as well as prescribe the time within which all documents, exhibits, briefs, stipulations, notices or other written materials must be filed where such is not specified in the Rules. In the course of discharging his responsibilities hereunder, the professional hearing officer shall apply the standards contained in the FINRA's Code of Procedure, and policies, practices and interpretations thereof, so long as the Rules in this Chapter are not in conflict.]

Rule 1616. Reserved[Expedited Client Suspension Proceeding**(a) Initiation of Proceeding**

(1) *Scope of Authority.* With the prior written authorization of the Chief Regulatory Officer ("CRO") or such other senior officers as the CRO may designate, the Exchange may initiate an expedited suspension proceeding with respect to alleged violations of Rule 403 (Disruptive Quoting and Trading Activity Prohibited).

(2) *Service of Notice.* The Exchange shall initiate the proceeding by serving a notice on a Member or associated person of a Member (hereinafter "Respondent"). The Exchange shall serve the notice by personal service or overnight commercial courier. The notice shall be effective upon service.

(3) *Content of Notice.* The notice shall state whether the Exchange is requesting the Respondent to be required to take action or to refrain from taking action. The notice shall be accompanied by:

(A) a declaration of facts, signed by a person with knowledge of the facts contained therein, that specifies the acts that constitute the alleged violation; and

(B) a proposed order that contains the required elements of a suspension order (except the date and hour of the order's issuance), which are set forth in sub-paragraph (d)(2) of this Rule).

(b) Appointment of Hearing Officers and Hearing Panel

(1) As soon as practicable after the Exchange initiates a suspension proceeding, a Hearing Panel shall be assigned in accordance with paragraph (a) of Rule 1606.

(2) If at any time a Hearing Officer determines that he or she has a conflict of interest or bias or circumstances otherwise exist where his or her fairness might reasonably be questioned, or if a Party files a motion to disqualify a Hearing Officer, the recusal and disqualification proceeding shall be conducted in accordance with Rules 1606(a)(3), except that:

(A) a motion seeking disqualification of a Hearing Officer must be filed no later than 5 days after the announcement of the Hearing Panel; and

(B) the Exchange may file a brief in opposition to the Respondent's motion no later than 5 days after service thereof.

(c) Hearing

(1) *When Held.* The hearing shall be held not later than 15 days after service of the notice initiating the suspension proceeding, unless otherwise extended by the Chairman of the Hearing Panel with the consent of the Parties for good cause shown. If a Hearing Officer is recused or disqualified, the hearing shall be held not later than five days after a replacement Hearing Officer is appointed.

(2) *Service of Notice of Hearing.* A notice of date, time, and place of the hearing shall be served on the Parties not later than seven days before the hearing, unless otherwise ordered by the Chairman of the Hearing Panel. Service shall be made by personal service or overnight commercial courier. The notice shall be effective upon service.

(3) *Authority of Hearing Officers.* A Hearing Officer shall have authority to do all things necessary and appropriate to discharge his or her duties as set forth in Rule 1606.

(4) *Witnesses.* A person who is subject to the jurisdiction of the Exchange shall testify under oath or affirmation. The oath or affirmation shall be administered by a court reporter or a notary public.

(5) *Additional Information.* At any time during its consideration, the Hearing Panel may direct a Party to submit additional information. Any additional information submitted shall be provided to all Parties at least one day before the Hearing Panel renders its decision.

(6) *Transcript.* The hearing shall be recorded by a court reporter and a written transcript thereof shall be prepared. A transcript of the hearing shall be available to the Parties for purchase from the court reporter at prescribed rates. A witness may purchase a copy of the transcript of his or her own testimony from the court reporter at prescribed rates. Proposed corrections to the transcript may be submitted by affidavit to the Hearing Panel within a reasonable time determined by the Hearing Panel. Upon notice to all the Parties to the proceeding, the Hearing Panel may order corrections to the transcript as requested or sua sponte.

(7) *Record and Evidence Not Admitted.* The record shall consist of the notice initiating the proceeding, the declaration, and the proposed order described in sub-paragraph (a)(3) above; the transcript of the hearing; all evidence considered by the Hearing Panel; and any other document or item accepted into the record by the Hearing Panel. The Exchange shall be the custodian of the record. Proffered evidence that is not accepted into the record by the Hearing Panel shall be retained by the custodian of the record until the date when the Exchange's decision becomes final or, if applicable, upon the conclusion of any review by the SEC or the federal courts.

(8) *Failure to Appear at a Hearing.* If a Respondent fails to appear at a hearing for which it has notice, the allegations in the notice and accompanying declaration may be deemed admitted, and the Hearing Panel may issue a suspension order without further proceedings. If the Exchange fails to appear at a hearing for which it has notice, the Hearing Panel may order that the suspension proceeding be dismissed.

(d) Issuance of Suspension Order by Hearing Panel

(1) *Basis for Issuance.* The Hearing Panel shall issue a written decision stating whether a suspension order shall be imposed. The Hearing Panel shall issue the decision not later than ten days after receipt of the hearing transcript, unless otherwise extended by the Chairman of the Hearing Panel with the consent of the Parties for good cause shown. A suspension order shall be imposed if the Hearing Panel finds:

(A) by a preponderance of the evidence that the alleged

violation specified in the notice has occurred; and

(B) that the violative conduct or continuation thereof is likely to result in significant market disruption or other significant harm to investors.

(2) *Content, Scope, and Form of Order.* A suspension order shall:

(A) be limited to: (i) ordering a Respondent to cease and desist from violating Rule 403, and/or (ii) ordering a Respondent to cease and desist from providing access to the Exchange to a client of Respondent that is causing violations of Rule 403;

(B) set forth the alleged violation and the significant market disruption or other significant harm to investors that is likely to result without the issuance of an order;

(C) describe in reasonable detail the act or acts the Respondent is to take or refrain from taking and to suspend the Respondent unless and until such action is taken or refrained from; and

(D) include the date and hour of its issuance.

(3) *Duration of Order.* A suspension order shall remain effective and enforceable unless modified, set aside, limited, or revoked pursuant to paragraph (e), below.

(4) *Service.* The Hearing Panel's decision and any suspension order shall be served by personal service or overnight commercial courier. The suspension order shall be effective upon service.

(e) *Review by Hearing Panel.* At any time after the Respondent is served with a suspension order, a Party may apply to the Hearing Panel to have the order modified, set aside, limited, or revoked. The application shall set forth with specificity the facts that support the request. The Hearing Panel shall respond to the request in writing within ten days after receipt of the request, unless otherwise extended by the Chairman of the Hearing Panel with the consent of the Parties for good cause shown. The Hearing Panel's response shall be served on the Respondent via personal service or overnight commercial courier. The filing of an application under this Rule shall not stay the effectiveness of the suspension order.

(f) *Application to SEC for Review.* Sanctions imposed pursuant to this Rule constitute final and immediately effective disciplinary sanctions imposed by the Exchange. The right to have any action under this Rule reviewed by the SEC is governed by Section 19 of the Exchange Act. The filing of an application for review

shall not stay the effectiveness of a suspension order unless the SEC otherwise orders.]

17. Reserved[Hearings and Review]

Rule 1700. Reserved[Scope of Chapter]

This Chapter provides the procedure for persons economically aggrieved by Exchange action, including, but not limited to, those organizations whose application to become a Member have been denied, persons who have been barred from becoming associated with a Member, or organizations and persons that have been prohibited or limited with respect to Exchange services, or the services of any Exchange Member, taken pursuant to any contractual arrangement, the By-Laws or the Rules of the Exchange, to apply for an opportunity to be heard and to have the complained of action reviewed. Review of disciplinary actions and arbitrations are not subject to review under this Chapter.]

Rule 1701. Reserved[Submission of Application to Exchange]

(a) *The Application.* A person who is aggrieved by any action of the Exchange within the scope of this Chapter and who desires to have an opportunity to be heard with respect to such action shall file a written application within thirty (30) 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. The application should indicate whether the applicant intends to submit any documents, statements, arguments or other material in support of the application, and describe any such materials.

(b) *Extensions of Time to File Applications.* An application that is not filed within the time specified in paragraph (a) of this Rule shall not be considered by the Business Conduct Committee unless the applicant files his application within such extension of time as allowed by the Chairman of such Committee. In order to obtain an extension of time within which to file an appeal, the applicant must, within the time specified in paragraph (a) of this Rule, file an application for an extension of time within which to submit the application. Such an application for an extension will be ruled upon by the Chairman of the Business Conduct Committee, and his ruling will be given in writing. Rulings on applications for extensions of time are not subject to appeal.]

Rule 1702. Reserved[Procedure Following Applications for Hearing]

(a) *Panel.* Applications for hearing and review shall be referred to the Business Conduct Committee, which shall appoint a hearing panel of no less than three (3) members of such Committee. A record of the proceedings shall be kept.

(b) *Documents.* The panel so appointed will set a hearing date and shall be furnished with all material relevant to the proceeding at least seventy-two (72) hours prior to the date of the hearing. Each party shall have the right to inspect and copy the other party's material prior to the hearing.

(c) *Notice.* Parties to the proceeding shall be informed of the composition of the panel at least seventy-two (72) hours prior to the scheduled hearing.]

Rule 1703. Reserved[Hearing

(a) *Participants.* The parties to the hearing shall consist of the applicant and a representative of the Exchange who shall present the reasons for the action taken by the Exchange that allegedly aggrieved the applicant. In addition, any other person may intervene as a party in the hearing when the person claims an interest in the transaction that is the subject of the action and is 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 panel may, in its discretion, permit a person to intervene in the action as a party when the person's claim or defense and the main action have a question of law and fact in common. The applicant is entitled to be accompanied, represented and advised by counsel at all stages of the proceeding.

(b) *Procedure for Intervention.* The person seeking intervention shall serve a motion to intervene on the Secretary, which will be transmitted to the panel. The motion shall state the grounds therefor and shall set forth the claim or defense upon which the intervention is sought.

(c) *Conduct of Hearing.* The panel shall determine all questions concerning the admissibility of evidence and shall otherwise 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 panel. The panel shall also have the right to question all parties and witnesses to the proceeding and a record shall be kept. The formal rules of evidence shall not apply.

(d) *Decision.* The hearing panel's decision shall be made in writing and shall be sent to the parties to the proceedings. Such decision shall contain the reasons supporting the conclusions of the panel.]

Rule 1704. Reserved[Review

(a) *Petition.* The decision of the hearing panel shall be subject to review by the Board, either on its own motion within thirty (30) days after issuance, upon written request submitted by the applicant below, by the President of the Exchange, within fifteen (15) 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. Any objection to a decision not specified by written exception shall be considered to have been abandoned and may be disregarded. Parties may petition to submit a written argument to the Board and may request an opportunity to make an oral argument before the Board. The Board, or a committee of the Board, will have sole discretion to grant or deny either request.

(b) *Conduct of Review.* The review shall be conducted by the Board or a Committee of the Board composed of at least three (3) Directors. Any Director who participated in a matter before it was appealed to the Board shall not participate in any review action by the Board concerning that matter. The review shall be made upon the record and shall be made after such further proceedings, if any, as the Board or its designated committee may order. An applicant shall be given notice of and a chance to address any issues raised by the Board on its own initiative.

(c) *Decision.* Based upon the record, the Board or its designated Committee may affirm, reverse or modify in whole or in part, the decision of the hearing panel. The decision of the Board or its designated committee shall be in writing, shall be sent to the parties to the proceeding, and shall be final.]

Rule 1705. Reserved[Miscellaneous Provisions

(a) *Service of Notice.* Any notices or other documents may be served upon the applicant either personally or by leaving the same at his 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 last known business or residence address.

(b) *Extension of Time Limits.* Any time limits imposed under this Chapter for the submission of answers, petitions or other materials may be extended by permission of the Secretary of the Exchange. All papers and documents relating to review by the Business Conduct Committee, the Board or its designated committee must be submitted to the Secretary of the Exchange.]

Rule 1706. Reserved[Hearing and Review Functions

The Exchange may contract with another SRO to perform some or all of the functions specified in this Chapter. In that event, the Exchange shall specify to what extent the Rules in this Chapter shall govern review of Exchange actions and hearings under this Chapter and to what extent the rules of the other SRO shall govern such activities. Notwithstanding the fact that the Exchange may contract with another SRO to perform some or all these functions, the Exchange shall retain ultimate legal responsibility for and control of such functions.]

18. Arbitration

Rule 1800. Arbitration

(a) – (d) No change.

(e) *Payment of Awards.* Any Member, or person associated with a Member, who fails to honor an award of arbitrators appointed in accordance with the Rules in this Chapter 18 shall be subject to disciplinary proceedings in accordance with Rule 9554[Chapter 16 (Discipline)].

(f) No change.

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23.-79. Reserved

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80. Investigations and Sanctions

Series 8000 of the Nasdaq BX, Inc. Rules, as such rules may be in effect from time to time (the "BX Rule 8000 Series"), are hereby incorporated by reference into this Nasdaq ISE Rules Chapter 80, and are thus Nasdaq ISE Rules and thereby applicable to Nasdaq ISE Members, Associated Persons, and other persons subject to the Exchange's jurisdiction. Nasdaq ISE Members, Associated Persons, and other persons subject to the Exchange's jurisdiction shall comply with the BX Rule 8000 Series as though such rules were fully set forth herein. All defined terms, including any variations thereof, contained in the BX Rule 8000 Series shall be read to refer to the Nasdaq ISE-related meaning of such term. The defined terms "Exchange" or "Nasdaq BX" in the BX Rule 8000 Series shall be read to refer to the Nasdaq ISE Exchange; the defined terms "Rule" or "BX Rule" in the BX Rule 8000 Series shall be read to refer to the Nasdaq ISE Rules; the defined terms "Board" or "Exchange Board" in the BX Rule 8000 Series shall be read to refer to the Nasdaq ISE Board of Directors; the defined term "Member" in the BX Rule 8000 Series shall be read to refer to a Nasdaq ISE Member; the defined term "Associated Person" shall be read to refer to a Nasdaq ISE Associated Person; the defined terms "BX Regulatory Department" or "Regulation Department" shall be read to refer to the Nasdaq ISE Regulatory Department; the defined terms "BX Regulation" shall be read to refer to "Nasdaq ISE Regulation"; the defined term "Chief Regulatory Officer" shall be read to refer to the Chief Regulatory Officer of Nasdaq ISE; and "Equity Rule" shall be read to refer to a Nasdaq ISE Rule.

Additionally, references in the BX Rule 8000 Series to "Rule 0120" shall be read to refer to Nasdaq ISE Rule 100. References in the BX Rule 8000 Series to "Rule 1015" shall be read to refer to Nasdaq ISE Rule 302.

81.-89. Reserved**90. Code of Procedure**

Series 9000 of the Nasdaq BX, Inc. Rules, as such rules may be in effect from time to time (the "BX Rule 9000 Series"), are hereby incorporated by reference into this Nasdaq ISE Rules Chapter 90, and are thus Nasdaq ISE Rules and thereby applicable to Nasdaq ISE Members, Associated Persons, and other persons subject to the Exchange's jurisdiction. Nasdaq ISE Members, Associated Persons, and other persons subject to the Exchange's jurisdiction shall comply with the BX Rule 9000 Series as though such rules were fully set forth herein. All defined terms, including any variations thereof, contained in the BX Rule 9000 Series shall be read to refer to the Nasdaq ISE-related meaning of such term. Solely by way of example, and not in limitation or in exhaustion: the defined terms "Exchange" or "Nasdaq BX" in the BX Rule 9000 Series shall be read to refer to the Nasdaq ISE Exchange; the defined terms "Rule" or "BX Rule" in the BX Rule 9000 Series shall be read to refer to the Nasdaq ISE Rules; the defined terms "Board" or "Exchange Board" in the BX Rule 9000 Series shall be read to refer to the Nasdaq ISE Board of Directors; the defined term "Member" in the BX Rule 9000 Series shall be read to refer to a Nasdaq ISE Member; the defined term "Associated Person" shall be read to refer to a Nasdaq ISE Associated Person; the defined terms "BX Regulatory Department" or "Regulation Department" shall be read to refer to the Nasdaq ISE Regulatory Department; the defined terms "BX Regulation" shall be read to refer to "Nasdaq ISE Regulation"; the defined term "Chief Regulatory Officer" shall be read to refer to the Chief Regulatory Officer of Nasdaq ISE; and "Equity Rule" shall be read to refer to a Nasdaq ISE Rule.

Additionally, references in the BX Rule 9000 Series to the following rules shall be read to refer to the following Nasdaq ISE Rules: "Rule 0120" shall be read to refer to Nasdaq ISE Rule 100; "Rule 1013" shall be read to refer to Nasdaq ISE Rules 305 and 306; "Rule 1070" shall be read to refer to the Supplementary Material to Nasdaq ISE Rule 313; "Rule 1160" shall be read to refer to Nasdaq ISE Rule 305(b); "Equity Rule 2110" shall be read to refer to Nasdaq ISE Rule 400; "Equity Rule 2120" shall be read to refer to Nasdaq ISE Rule 405; "Rule 2140" shall be read to refer to Nasdaq ISE Rule 312; "Equity Rule 2150" shall be read to refer to Nasdaq ISE Chapter 6; "Rule 2170" shall be read to refer to Nasdaq ISE Rule 403; "Rule 4110A" shall be read to refer to Nasdaq ISE Chapter 13; "Rule 4120A" shall be read to refer to Nasdaq ISE Chapter 13; "Rule 10000 Series" shall be read to refer to Nasdaq ISE Rules Chapter 18; and "Chapter III, Section 16" shall be read to refer to Nasdaq ISE Rule 403.

Notwithstanding the above, IM-9216 (“Violations Appropriate for Disposition Under Plan Pursuant to SEC Rule 19d-1(c)(2)”) in the BX Rule 9000 Series shall not apply to the Nasdaq ISE Exchange or to its Members, Associated Persons, or other persons subject to the jurisdiction of the Exchange. Instead, the Nasdaq ISE Rule that governs such violations shall be Nasdaq ISE Rule 1614(b) and references in the BX Rule 9000 Series to IM-9216 shall be read to refer to Nasdaq ISE Rule 1614(b). Moreover, the procedures set forth in BX Rule 9216(b) and 9143(e)(3), which shall govern the handling of violations of Rules listed in Nasdaq ISE Rule 1614(b) that are subject to a plan approved by the Commission pursuant to SEC Rule 19d-1(c)(2) (the “Minor Rule Violation Plan” or “MRVP”) and the issuance of MRVP letters, shall also apply to the Exchange’s handling of violations of Rules listed in Nasdaq ISE Rule 1614(b) that are not subject to the MRVP (“minor rule violations”) and the issuance of minor rule violation letters, except that the Exchange shall promptly report any final disciplinary action to the Commission, in accordance with SEC Rule 19d-1(c)(1).

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