

Additions underlined  
Deletions [bracketed]

## **Rules of NYSE National, Inc.**

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### **[CHAPTER I. Adoption, Interpretation and Application of Rules, and Definitions**

#### **Rule 1.1. Adoption of Exchange Rules**

The following Exchange Rules are adopted pursuant to Section 3.1(b) and Section 8.2 of the By-Laws of the Exchange.

#### **Rule 1.2. Interpretation**

Exchange Rules shall be interpreted in such a manner to comply with the rules and requirements of the Act and to effectuate the purposes and business of the Exchange, and to require that all practices in connection with the securities business be just, reasonable and not unfairly discriminatory.

#### **Rule 1.3. Applicability**

Exchange Rules shall apply to all ETP Holders and persons associated with an ETP Holder.

#### **Rule 1.4. Effective Time**

(a) All Exchange Rules shall be effective when approved by the Commission in accordance with the Act and the rules and regulations thereunder, except for those Rules that are effective upon filing with the Commission in accordance with the Act and the rules thereunder and except as otherwise specifically provided in this Rule 1.4 or elsewhere in these Rules.

(b) Rule 11.11(c)(7)(iv), Rule 11.11(c)(8), Rule 11.15(a)(ii)(B) and Rule 11.15(b)(iv) (relating to intermarket sweep orders) shall not become effective until the compliance date for Rule 611 of Regulation NMS under the Act (“Regulation NMS”).

(c) The following Rules shall not become effective until the compliance date for the appropriate sections of Regulation NMS:

- (i) The second sentence of the lead-in to Rule 11.15 (Order Execution); and

(ii) Rule 11.22 (Locking or Crossing Quotations in NMS Stocks).

(iii) Rule 11.15(d) (Display of Automated Quotations).

### **Rule 1.5. Definitions**

Unless the context otherwise requires, for all purposes of these Exchange Rules, terms used in Exchange Rules shall have the meaning assigned in Article I of the By-Laws or as set forth below:

#### **A.**

##### **Adverse Action**

(1) The term "adverse action" shall mean any action taken by the Exchange which affects adversely the rights of any ETP Holder, applicant for an ETP, or any person associated with an ETP Holder (including the denial of an ETP and the barring of any person from becoming associated with an ETP Holder) and any prohibition or limitation by the Exchange imposed on any person with respect to access to services offered by the Exchange, or an ETP Holder thereof. This term does not include disciplinary actions for violations of any provision of the Act or the rules and regulations promulgated thereunder, or any provision of the By-Laws or Exchange Rules or any interpretation thereof or resolution or order of the Board or appropriate Exchange committee which has been filed with the Commission pursuant to Section 19(b) of the Act and has become effective thereunder. Review of disciplinary actions is provided for in Chapter VIII of the Exchange Rules.

##### **Authorized Trader**

(2) The term "Authorized Trader" or "AT" shall mean a person who may submit orders (or who supervises a routing engine that may automatically submit orders) to the Exchange's trading facilities on behalf of his or her ETP Holder or Sponsored Participant.

##### **Automatic Execution Mode**

(3) The mode of order interaction on the Exchange as described in Rule 11.13(b)(1).

**B.** Reserved.

**C.**

##### **Clearing Member**

(1) An ETP Holder that is a member of a Qualified Clearing Agency defined in section Q below.

**D.**

**Designated Self-Regulatory Organization**

(1) The term "designated self-regulatory organization" shall mean a self-regulatory organization, other than the Exchange, designated by the Commission under Section 17(d) of the Act to enforce compliance by ETP Holders with Exchange Rules.

**E.**

**ETP**

(1) The term "ETP" shall refer to an Equity Trading Permit issued by the Exchange for effecting approved securities transactions on the Exchange's trading facilities.

**ETP Holder**

(2) The term "ETP Holder" shall mean the Exchange-approved holder of an ETP.

**F.** Reserved.

**G.** Reserved.

**H.** Reserved.

**I.** Reserved.

**J.** Reserved.

**K.** Reserved.

**L.**

**Listing Exchange**

(1) The term "Listing Exchange" shall mean the national securities exchange or association on which a security is listed.

**M.**

**Market Maker**

(1) The term "Market Maker" shall mean an ETP Holder that acts as a Market Maker pursuant to Chapter XI.

**Market Maker Authorized Trader**

(2) The term "Market Maker Authorized Trader" or "MMAT" shall mean an Authorized Trader who performs market making activities pursuant to Chapter XI on behalf of a Market Maker.

**N.**

**NSX Book**

(1) The term "NSX Book" shall mean the System's electronic file of orders.

**O. Reserved.**

**P.**

**Person**

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

**Person Associated with an ETP Holder**

(2) The terms "Person Associated with an ETP Holder" or "Associated Person of an ETP Holder" shall mean any partner, officer, director, or branch manager of an ETP Holder (or any Person occupying a similar status or performing similar functions), any Person directly or indirectly controlling, controlled by, or under common control with an ETP Holder, or any employee of such ETP Holder, except that any Person Associated with an ETP Holder whose functions are solely clerical or ministerial shall not be included in the meaning of such terms.

**Principal**

(3) The term "Principal" shall mean any Person Associated with an ETP Holder actively engaged in the management of the ETP Holder's securities business, including supervision, solicitation, conduct of the ETP Holder's business, or the training of Authorized Traders and Persons Associated with an ETP Holder for any of these functions. Such Persons shall include: Sole Proprietors, Officers, Partners, and Directors

of Corporations.

### **Principal – Financial and Operations**

(4) The term “Principal - Financial and Operations” shall mean a Person Associated with an ETP Holder whose duties include: final approval and responsibility for the accuracy of financial reports submitted to any duly established securities industry regulatory body; final preparation of such reports; supervision of individuals who assist in the preparation of such reports; supervision of and responsibility for individuals who are involved in the actual maintenance of the ETP Holder’s books and records from which such reports are derived; supervision and/or performance of the ETP Holder’s responsibilities under all financial responsibility rules promulgated pursuant to the provisions of the Act; overall supervision of and responsibility for the individuals who are involved in the administration and maintenance of the ETP Holder’s back office operations; or any other matter involving the financial and operational management of the ETP Holder.

### **Protected NBBO**

(5) The term "Protected NBBO" shall mean the national best bid or offer that is a protected quotation.

### **Protected BBO**

(6) The term “Protected BBO” shall mean the better of the following:

- (a) The Protected NBBO or
- (b) The displayed Top of Book.

### **Protected Quotation**

(7) The term “protected quotation” shall mean a bid or offer in a stock that (i) is displayed by an automated trading center; (ii) is disseminated pursuant to a national market system plan approved by the Commission; and (iii) is an automated quotation that is the best bid or best offer of a national securities exchange or association.

### **Q.**

### **Qualified Clearing Agency**

(1) The term “Qualified Clearing Agency” means a clearing agency registered with the Commission pursuant to Section 17A of the Act that is deemed qualified by the Exchange.

**R.**

**Regular Trading Hours**

(1) The term “Regular Trading Hours” means the time between 9:30 a.m. and 4:00 p.m. Eastern Time.

**Routing Logic**

(2) The term “Routing Logic” means the methodology used to determine the Trading Center to which an incoming order will be directed for potential execution.

**S.**

**Securities Trader**

(1) The term “Securities Trader” means any Person engaged in the purchase or sale of securities or other similar instruments for the account of an ETP Holder with which such Person is associated, as an employee or otherwise, and who does not transact any business with the public.

**Securities Trader Principal**

(2) The term “Securities Trader Principal” means a Person who has become qualified and registered as a Securities Trader and passes the General Securities Principal qualification examination. Each Principal with responsibility over securities trading activities on the Exchange shall become qualified and registered as a Securities Trader Principal.

**Sponsored Participant**

(3) The term "Sponsored Participant" shall mean a Person which has entered into a sponsorship arrangement with a Sponsoring ETP Holder pursuant to Rule 11.9.

**Sponsoring ETP Holder**

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

**Statutory Disqualification**

(5) The term "statutory disqualification" shall mean any statutory disqualification as defined in the Act.

**System**

(6) The term “System” shall mean the electronic securities communications and trading facility designated by the Board through which orders of Users are consolidated for ranking and execution.

**T.**

**Top of Book**

(1) The term “Top of Book” shall mean the best-ranked order to buy (or sell) in the NSX Book as ranked pursuant to Rule 11.14.

**Trading Center**

(2) The term “Trading Center” shall mean other securities exchanges, facilities of securities exchanges, automated trading systems, electronic communications networks or other brokers or dealers.

**U.**

**User**

(1) The term "User" shall mean any ETP Holder or Sponsored Participant who is authorized to obtain access to the System pursuant to Rule 11.9.

**UTP Security**

(2) The term “UTP Security” shall mean any security that is not listed on the Exchange but is traded on the Exchange pursuant to unlisted trading privileges.

**V.** Reserved.

**W.** Reserved.

**X.** Reserved.

**Y.** Reserved.

**Z.** Reserved.

**CHAPTER II. ETP Holders of the Exchange**

**Rule 2.1. Rights, Privileges and Duties of ETP Holders**

Unless otherwise provided in the Exchange Rules or the By-Laws, each ETP Holder shall have the rights, privileges and duties of any other ETP Holder.

## **Rule 2.2. Obligations of ETP Holders and the Exchange**

(a) In addition to all other obligations imposed by the Exchange in its By-Laws or the Exchange Rules, all ETP Holders, as a condition of effecting approved securities transactions on the Exchange's trading facilities, shall agree to be regulated by the Exchange and shall recognize that the Exchange is obligated to undertake to enforce compliance with the provisions of the Exchange Rules, its By-Laws, its interpretations and policies and with the provisions of the Act and regulations thereunder, and that, subject to orders and rules of the Commission, the Exchange is required to discipline ETP Holders and persons associated with ETP Holders for violations of the provisions of the Exchange Rules, its By-Laws, its interpretations and policies and the Act and regulations thereunder, by expulsion, suspension, limitation of activities, functions, and operations, fines, censure, being suspended or barred from being associated with an ETP Holder, or any other fitting sanction.

(b) Each ETP Holder shall require that each Person Associated with such ETP Holder as defined in Rule 1.5P. (2) agree:

(i) to supply the Exchange with such information with respect to such Person's business relationship and dealings with the ETP Holder as may be specified by the Exchange;

(ii) to permit examination of such Person's books and records by the Exchange to verify the accuracy of any information so supplied; and

(iii) to be regulated by the Exchange and to recognize that the Exchange is obligated to enforce compliance with the provisions of the Exchange Rules, the By-Laws, the interpretations and policies of the Exchange and the provisions of the Act and the regulations thereunder.

(c) (i) An ETP Holder shall register with the Exchange as a Principal any Person who meets the definition of a "Principal" as described in Rule 1.5P(3). A "Principal" includes any individual responsible for supervising the activities of the ETP Holder's Authorized Traders, and any individual designated as a Chief Compliance Officer on Schedule A of the ETP Holder's Form BD. Each of these Principals must be registered as such through the Financial Industry Regulatory Authority's ("FINRA") Central Registration Depository System ("CRD"), and must pass the General Securities Principal (Series 24) Examination. With the exception of *Interpretation and Policy* provision .04, below, a Principal must pass the Series 7 examination or an equivalent foreign examination module as a prerequisite to taking the Series 24 examination.

(ii) Each ETP Holder, other than a sole proprietorship or a proprietary trading firm, which is an entity that only trades using the firm's capital and does not trade



on behalf of customers and has 25 or fewer Authorized Traders (“Limited Size Proprietary Firm”), is required to register at least two Principals with the Exchange. A Person registered solely as a Principal-Financial and Operations (“FINOP”) as defined in Rule 1.5P.(4) does not count toward the two-Principal requirement and shall not be qualified to function in a Principal capacity with responsibility over any area of business activity not described in Rule 1.5P.(4). A Limited Size Proprietary Firm is required to register at least one Principal with the Exchange. The Exchange may waive the provisions of subparagraph (ii) in situations that indicate conclusively that only one Person associated with an applicant for membership should be required to register as a Principal.

(iii) For purposes of this Rule 2.2, a “proprietary trading firm” shall mean an ETP Holder meeting the following characteristics: it trades its own capital, does not have customers, excluding broker-dealers, and is not a FINRA member. To qualify for this definition, the funds used by a proprietary trading firm must be exclusively firm funds, all trading must be in the firm’s accounts, and traders must be owners of, employees of, or contractors to the firm.

(d) Each ETP Holder shall designate and register with the Exchange, through the CRD System, a FINOP as defined in Rule 1.5P.(4), who shall successfully complete the Financial and Operations Principal (Series 27) qualification examination. The registered FINOP shall be responsible for performing the duties described in Exchange Rule 1.5P(4). The FINOP of an ETP Holder may be an employee of the ETP Holder or an independent contractor.

(e) Continuing Education Requirements. This Rule prescribes requirements regarding the continuing education of certain Registered Persons subsequent to their initial qualification and registration with the Exchange. For purposes of this Rule 2.2(e), the term "Registered Person" shall mean any Person registered with the Exchange as a General Securities Representative, Securities Trader, Principal, FINOP, Person Associated with an ETP Holder, Authorized Trader or Market Maker Authorized Trader pursuant to Exchange Rules. The requirements shall consist of a Regulatory Element and a Firm Element as set forth below.

(i) Regulatory Element.

(A) Requirements. No ETP Holder shall permit any Registered Person to continue to, and no Registered Person shall continue to, perform duties as a Registered Person unless such Person has complied with the requirements of this Rule 2.2(e). Each Registered Person shall complete the Regulatory Element on the occurrence of their second registration anniversary date and every three years thereafter, or as otherwise prescribed by the Exchange. On each occasion, the Regulatory Element must be completed within 120 days after the Person's registration anniversary date. A Person's initial registration date, also known as the “base date”, shall establish the cycle of anniversary dates for purposes of this Rule. The content of the Regulatory Element shall be determined by the Exchange and shall be appropriate to the status of the Person subject to this Rule.

(B) Failure to Complete. Unless otherwise determined by the Exchange, any Registered Person who has not completed the Regulatory Element within the prescribed timeframes will have their registrations deemed inactive until such time as the requirements of the program have been satisfied. Any Person whose registration has been deemed inactive under this Rule shall cease all activities as a Registered Person and is prohibited from performing any duties and functioning in any capacity requiring registration. A registration that is inactive for a period of two years will be administratively terminated. A Person whose registration is so terminated may reactivate the registration only by reapplying for registration and meeting the qualification requirements of the applicable provisions of these Rules. The Exchange may, upon application and a showing of good cause, allow for additional time for a Registered Person to satisfy the program requirements.

(C) Disciplinary Actions. Unless otherwise determined by the Exchange, a Registered Person will be required to retake the Regulatory Element and satisfy all of its requirements in the event such Person:

(1) is subject to any statutory disqualification as defined in Section 3(a)(39) of the Act;

(2) is subject to suspension or to the imposition of a fine of \$5,000 or more for violation of any provision of any securities law or regulation, or any agreement with or rule or standard of conduct of any governmental securities regulatory agency, securities industry self-regulatory organization, or as imposed by any such regulatory or self-regulatory organization in connection with a disciplinary proceeding; or

(3) is ordered as a sanction in a disciplinary action to retake the Regulatory Element by any governmental securities regulatory agency or by any self-regulatory organization.

The retaking of the Regulatory Element shall commence with participation within 120 days of the Registered Person becoming subject to the statutory disqualification, in the case of (1) above, or the disciplinary action becoming final, in the case of (2) and (3) above. The date of the disciplinary action shall be treated as such Person's new base date with the Exchange.

(D) Reassociation in a Registered Capacity. Any Registered Person who has terminated association with an ETP Holder and who has, within two years of the date of termination, become reassociated in a registered capacity with an ETP Holder shall participate in the Regulatory Element at such intervals that may apply (second anniversary and every three years thereafter) based on the initial registration anniversary date rather than based on the date of reassociation in a registered capacity.

(ii) Firm Element

(A) Persons Subject to the Firm Element. The requirements of this Rule 2.2(e)(ii) shall apply to any Person registered with an ETP Holder who has direct contact with customers in the conduct of the ETP Holder's securities sales, trading and investment banking activities and to the immediate supervisors of such Persons (collectively, "Covered Registered Persons"). "Customer" shall mean any natural person and any organization, other than another broker or dealer, executing securities transactions with or through or receiving investment banking services from an ETP Holder.

(B) Standards for the Firm Element

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

(2) Minimum Standards for Training Programs. Programs used to implement an ETP Holder's training plan must be appropriate for the business of the ETP Holder and, at a minimum must cover the following matters concerning securities products, services, and strategies offered by the ETP Holder: general investment features and associated risk factors; suitability and sales practice considerations; and applicable regulatory requirements.

(3) Administration of Continuing Education Program. An ETP Holder must administer its continuing education programs in accordance with its annual evaluation and written plan and must maintain records documenting the content of the programs and completion of the programs by Covered Registered Persons.

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

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

*Interpretations and Policies*

.01 The Exchange requires the General Securities Representative Examination (“Series 7”) or an equivalent foreign examination module approved by the Exchange in qualifying Persons seeking registration as general securities representatives.

.02 The Exchange will accept the New York Stock Exchange (“NYSE”) Chief Compliance Officer Examination (“NYSE Series 14”) as an alternative qualification to the Series 24 to register as a Principal an individual identified as the Chief Compliance Officer on ETP Holder’s Form BD.

.03 Each Person associated with an ETP Holder meeting the definition of a Securities Trader under Rule 1.5S.(1) must pass the Securities Trader Qualification examination (“Series 57”) and register as such in CRD. A Person registered as a Securities Trader shall not function in any other registration category unless he/she is also qualified in such other registration category.

.04 A Person associated with an ETP Holder who meets the definition of a Securities Trader Principal as defined in Rule 1.5S.(2) and who has supervisory responsibility for Securities Trading activity as described in NASD Rule 1032(f)(1) must become qualified and registered as a Securities Trader Principal. To qualify as a Securities Trader Principal, such Person must first qualify and register as a Securities Trader as provided in Interpretation and Policy .03, above. A Person who is qualified and registered as a Securities Trader Principal may only have supervisory responsibilities for the trading activity described in NASD Rule 1032(f)(1), unless such Person is separately qualified and registered in another appropriate principal registration category. A Person who is registered as a General Securities Principal shall not be qualified to supervise the trading activities described in NASD Rule 1032(f)(1), unless such Person has also become qualified and registered as a Securities Trader under NASD Rule 1032(f) by passing the Securities Trader qualification examination and registered as a Securities Trader Principal.

.05 The Exchange requires the Uniform Application for Securities Industry Registration or Transfer (“Form U4”) and the Uniform Termination Notice for Securities Industry Registration (“Form U5”) submitted through CRD as part of its procedure for registration of ETP Holder personnel. The Form U4 shall be amended by the ETP Holder no later than 30 days after an event that would require an amendment to Form U4.

.06 The Exchange may, in exceptional cases and where good cause is shown, waive a proficiency examination and accept other standards as evidence of an applicant’s qualifications for registration. Advanced age or physical infirmity will not individually of themselves constitute sufficient grounds to waive a qualification examination. Experience in fields ancillary to the investment banking or securities business may constitute sufficient grounds to waive a qualification examination.

.07 The Exchange may pass through the reasonable costs associated with such

examinations and qualifications to ETP Holders.

### **Rule 2.3. ETP Holder Eligibility**

An ETP may be issued to a sole proprietor, partnership, corporation, limited liability company or other organization which is a registered broker or dealer pursuant to Section 15 of the Act, and is a member of another registered national securities exchange or national securities association. Any Person may become a Person Associated with an ETP Holder.

### **Rule 2.4. Restrictions**

(a) No person may become an ETP Holder or continue as an ETP Holder in any capacity on the Exchange unless:

- (1) such person is a registered broker or dealer; and
- (2) such person is not subject to a statutory disqualification, except that a person may become an ETP Holder or continue as an ETP Holder where, pursuant to Rules 19d-1, 19d-2, 19d-3 and 19h-1 of the Act, the Commission has issued an order providing relief from such a disqualification and permitting such a person to become an ETP Holder.

(b) No natural person or registered broker or dealer shall be admitted as, or be entitled to continue as, an ETP Holder or an associated person of an ETP Holder, unless such natural person or broker or dealer meets the standards of training, experience and competence as the Exchange may prescribe. Each ETP Holder shall have the responsibility and duty to ascertain by investigation the good character, business repute, qualifications and experience of any person applying for registration with the Exchange as an associated person of an ETP Holder.

(c) No registered broker or dealer shall be admitted as, or be entitled to continue as, an ETP Holder if such broker or dealer:

- (i) fails to comply with either the financial responsibility requirements established by Rule 15c3-1 under the Act, or such other financial responsibility and operational capability requirements as may be established by the Exchange Rules; or
- (ii) fails to adhere to the Exchange Rules relating to the maintenance of books and records or those rules of other self-regulatory organizations of which such broker or dealer is or was a member; or
- (iii) is subject to any unsatisfied liens, judgments or unsubordinated creditor claims of a material nature, which, in the absence of a reasonable explanation therefor, remain outstanding for more than six months; or

- (iv) has been subject to any bankruptcy proceeding, receivership or arrangement for the benefit of creditors within the past three years; or
- (v) has engaged in an established pattern of failure to pay just debts or has defaulted, without a reasonable explanation, on an obligation to a self-regulatory organization, any ETP Holder, or any member of a self-regulatory organization.

(d) No person shall be admitted as an ETP Holder or as an associated person of an ETP Holder where it appears that such person has engaged, and there is a reasonable likelihood that such person again may engage, in acts or practices inconsistent with just and equitable principles of trade.

### **Rule 2.5. Application Procedures for an ETP Holder**

(a) Applications for an ETP shall be made to the Exchange and shall contain the following:

- (1) An agreement to abide by, comply with, and adhere to the provisions of the Exchange's Amended Certificate of Incorporation, its By-Laws, the Exchange Rules, the policies, interpretations and guidelines of the Exchange and all orders and decisions of the Exchange's Board and penalties imposed by the Board, and any duly authorized committee; provided, however, that such agreement shall not be construed as a waiver by the applicant of any right to appeal as provided in the Act.
- (2) An agreement to pay such dues, assessments, and other charges in the manner and amount as shall from time to time be fixed by the Exchange.
- (3) An agreement that the Exchange and its officers, employees and members of its Board and of any committee shall not be liable, except for willful malfeasance, to the applicant or to any other person, for any action taken by such director, officer or member in his official capacity, or by any employee of the Exchange while acting within the scope of his employment, in connection with the administration or enforcement of any of the provisions of its By-Laws, Exchange Rules, policies, interpretations or guidelines of the Exchange or any penalty imposed by the Exchange, its Board or any duly authorized committee.
- (4) An agreement to maintain and make available to the Exchange, its authorized employees and its Board or committee members such books and records as may be required to be maintained by the Commission or the Exchange Rules.
- (5) Such other reasonable information with respect to the applicant as the Exchange may require.

(b) Reserved.

(c) If the Exchange is satisfied that the applicant is qualified to hold an ETP pursuant to the provisions of this Chapter, the Exchange shall promptly notify, in writing, the applicant of such determination, and the applicant shall be issued an ETP.

(d) If the Exchange is not satisfied that the applicant is qualified to hold an ETP pursuant to the provisions of this Chapter, the Exchange shall promptly notify the applicant of the grounds for denying the ETP. The Board on its own motion may reverse the determination that the applicant is not qualified to hold an ETP. If a majority of the Board specifically determines to reverse the determination to deny the issuance of an ETP, the Board shall promptly notify Exchange staff, who shall promptly notify the applicant of the Board's decision and shall issue an ETP to the applicant. An applicant who has been denied an ETP may appeal such decision under Chapter X of the Exchange Rules governing adverse action.

(e) In considering applications for an ETP, the Exchange shall adhere to the following procedures:

- (1) Where an application is granted by the Board, the Exchange shall promptly notify the applicant.
- (2) The applicant shall be afforded an opportunity to be heard on the denial of an ETP pursuant to Chapter X of the Exchange Rules governing adverse action.

(f) Reserved.

### *Interpretations and Policies*

**.01 Expedited Process for Reinstatement as an ETP Holder:** Beginning on the date that this Interpretations and Policies .01 becomes effective and ending 90 calendar days after such date, any ETP Holder in good standing as of the close of business on May 30, 2014 may apply to reinstate its status as an ETP Holder, and register with the Exchange each Associated Person of such ETP Holder, by submitting a short form application as prescribed by the Exchange, *provided that*:

- (i) the ETP Holder is a current member of another self-regulatory organization; and
- (ii) each proposed Associated Person holds an active and recognized securities industry registration and meets the requirements of Rule 2.4(e).

Such short-form application shall include an agreement conforming with Rule 2.5(a)(1) through (a)(5). The Exchange may request further documentation, in addition to the

short-form application, in order to determine that the applicant using the expedited process meets the qualification standards set forth in Rule 2.4.

### **Rule 2.6. Revocation of an ETP or an Association with an ETP Holder**

ETP Holders or Persons Associated with ETP Holders may effect approved securities transactions on the Exchange's trading facilities only so long as they possess all the qualifications set forth in the Exchange Rules. Except where, pursuant to Section 17(d) of the Act, the Exchange has been relieved of its responsibility to monitor the continued qualifications of an ETP Holder or Person Associated with an ETP Holder, when the Exchange has reason to believe that an ETP Holder or Person Associated with an ETP Holder fails to meet such qualifications, the Exchange may act to revoke such Person's ETP or association. Such action shall be instituted under, and governed by, Chapters VII and VIII of the Exchange Rules and may be appealed under Chapter X of the Exchange Rules governing adverse action. In connection with any revocation of an ETP, the ETP shall be cancelled.

### **Rule 2.7. Voluntary Termination of Rights as an ETP Holder**

An ETP Holder may voluntarily terminate its rights as an ETP Holder only by a written resignation addressed to the Exchange or another officer designated by the Exchange. Such resignation shall not take effect until 30 days after all of the following conditions have been satisfied: (i) receipt of such written resignation; (ii) all indebtedness due the Exchange shall have been paid in full; (iii) any Exchange investigations or disciplinary action brought against the ETP Holder has reached a final disposition; and (iv) any examination of such ETP Holder in process is completed and all exceptions noted have been reasonably resolved; provided, however, that the Board may declare a resignation effective at any time. In connection with any voluntary termination of an ETP pursuant to this Rule, the ETP shall be cancelled.

### **Rule 2.8. Transfer or Sale of an ETP**

ETP Holders may not transfer or sell or encumber their ETPs or any interest therein.

### **Rule 2.9. Dues, Assessments and Other Charges**

The Exchange may prescribe such reasonable assessments, dues or other charges as it may, in its discretion, deem appropriate. Such assessments and charges shall be equitably allocated among ETP Holders, issuers and other persons using the Exchange's facilities.

### **Rule 2.10. No Affiliation between Exchange and any ETP Holder**

Without the prior approval of the Commission, the Exchange or any entity with which it is affiliated shall not, directly or indirectly, acquire or maintain an ownership interest in an ETP Holder. In addition, without the prior approval of the Commission, an ETP Holder shall not be or become an affiliate of the Exchange, or an affiliate of any affiliate of the Exchange. The term affiliate shall have the meaning specified in Rule 12b-2 under



the Act. Nothing in this Rule 2.10 shall prohibit an ETP Holder or its affiliate from acquiring or holding an equity interest in Intercontinental Exchange, Inc. that is permitted by the ownership and voting limitations contained in the Amended and Restated Certificate of Incorporation and Bylaws of Intercontinental Exchange, Inc. In addition, nothing in this Rule 2.10 shall prohibit an ETP Holder from being or becoming an affiliate of the Exchange, or an affiliate of any affiliate of the Exchange, solely by reason of such ETP Holder or any officer, director, manager, managing member, partner or affiliate of such ETP Holder being or becoming either (a) a Non-Affiliate Director (as defined in the By-Laws of the Exchange) pursuant to the By-Laws of the Exchange, or (b) a member of the Board of Directors of Intercontinental Exchange, Inc.

### **Rule 2.11. NSX Securities LLC**

(a) For so long as NSX Securities LLC (“NSX Securities” or “NSXS”) is affiliated with the Exchange and is providing outbound routing of orders from the Exchange to other Trading Centers for execution (such function of NSX Securities is referred to as the “Outbound Router”), each of the Exchange and NSX Securities shall undertake as follows:

(1) The Exchange will regulate the Outbound Router function of NSX Securities as a facility (as defined in Section 3(a)(2) of the Act), subject to Section 6 of the Act. In particular, and without limitation, under the Act, the Exchange will be responsible for filing with the Commission rule changes and fees relating to the NSX Securities Outbound Router function and NSX Securities will be subject to exchange non-discrimination requirements.

(2) The Financial Industry Regulatory Authority (“FINRA”), a self-regulatory organization unaffiliated with the Exchange or any of its affiliates, will carry out oversight and enforcement responsibilities as the designated examining authority designated by the Commission pursuant to Rule 17d-1 of the Act with the responsibility for examining NSX Securities for compliance with the applicable financial responsibility rules.

(3) An ETP Holder's use of NSX Securities to route orders to another Trading Center will be optional. Any ETP Holder that does not want to use NSX Securities may use other routers to route orders to other Trading Centers.

(4) NSX Securities will not engage in any business other than (a) its Outbound Router function and (b) any other activities it may engage in as approved by the Commission.

(5) NSX Securities and any third-party routing broker-dealer used by the Exchange to route orders to other Trading Centers (collectively, the “Routing Broker”) shall maintain an account for the purpose of addressing positions that result from a systems, technical or operational issue at the Exchange, the Routing Broker, or the destination Trading Center that affects one or more orders (“Error Positions”).

For the purposes of this paragraph (a)(5):

(i) Error Positions include any action or omission by NSX, the Routing Broker, or another Trading Center to which an order has been routed that results in an unmatched trade position due to the execution of such routed order and for which there is no corresponding order with which to pair the execution.

(ii) The Exchange or the Routing Broker shall assign all Error Positions resulting from a particular systems, technical or operational issue to the ETP Holders affected by that systems, technical or operational issue if the Routing Broker or the Exchange:

(A) determines that it has accurate and sufficient information (including valid clearing information) to assign the positions to all of the ETP Holders affected by that systems, technical or operational issue;

(B) determines that it has sufficient time pursuant to normal clearance and settlement deadlines to evaluate the information necessary to assign the positions to all of the ETP Holders affected by that systems, technical or operational issue; and

(C) has not determined to cancel all orders affected by that systems, technical or operational issue.

(iii) If the Routing Broker reasonably concludes, due to the number of erroneous executions and/or the number of ETP Holders potentially affected, that it would not be able to assign each Error Position back to such ETP Holders by the end of Regular Trading Hours on the first business day following the trade date on which the Error Position was established (“T+1”), then the Routing Broker will assume the entire amount of the Error Position in its error account.

(iv) Except as provided in Rule 2.11(a)(5)(v), the Routing Broker shall not accept any positions in such error account from an account of an ETP Holder or permit any ETP Holder to transfer any positions from the ETP Holder's account to a Routing Broker error account.

(v) If a systems, technical or operational issue results in the Exchange not having valid clearing instructions from an ETP Holder to a trade, the Routing Broker may assume that ETP Holder’s side of the trade so that the trade can be automatically processed for clearing and settlement on a locked-in basis pursuant to Rule 11.17(b).

(6) If the Exchange or the Routing Broker is unable to assign all Error Positions resulting from a particular technical, systems or operational issue to all of the affected ETP Holders in accordance with paragraph (a)(5) above, or if the Exchange or the Routing Broker determines to cancel all orders affected by the systems, technical or

operational issue in accordance with Rule 11.11(e), the Routing Broker shall liquidate any Error Positions as soon as practicable, as follows:

(i) NSX and NSXS will provide complete time and price discretion for the trading to liquidate the Error Positions to a third-party broker-dealer and shall not attempt to exercise any influence or control over the timing or methods of such trading;

(ii) NSX and NSXS shall establish, maintain and enforce written policies and procedures reasonably designed to restrict the flow of confidential and proprietary information associated with the liquidation of the Error Positions in accordance with this Rule, and prevent the use of information associated with other orders subject to the routing services when making determinations regarding the liquidation of Error Positions; and

(iii) NSX and NSXS shall make and keep records to document all determinations to treat positions as Error Positions and all determinations for the assignment of Error Positions to ETP Holders or the liquidation of Error Positions, as well as records associated with the liquidation of Error Positions through a third-party broker-dealer in accordance with Exchange Act Rule 17a-4.

(b) The books, records, premises, officers, agents, directors and employees of NSX Securities as a facility of the Exchange shall be deemed to be the books, records, premises, officers, agents, directors and employees of the Exchange for purposes of, and subject to oversight pursuant to, the Act. The books and records of NSX Securities as a facility of the Exchange shall be subject at all times to inspection and copying by the Exchange and the Commission.

Amended: 8-31-06 (SR-NSX-2006-08); 11-21-06 (SR-NSX-2006-15); 4-2-07 (SR-NSX-2007-04); 6-30-07 (SR-NSX-2007-08); 9-28-07 (SR-NSX-2007-10); 3-24-08 (SR-NSX-2008-08); 8-8-08 (SR-NSX-2008-15); 08-24-16 (SR-NSX-2016-07); 08-29-16 (SR-NSX-2016-04)

## **Rule 2.12. Back-Up Order Routing Services**

In the event the Exchange is not able to provide order routing services through Rule 2.11, the Exchange will provide all such services pursuant to this Rule 2.12. The Exchange will route orders to other trading centers under certain circumstances (“Routing Services”) as described in Chapter XI of these Rules. The Exchange will provide its Routing Services pursuant to the terms of three separate agreements: (1) an agreement between the Exchange and each ETP Holder on whose behalf orders will be routed; (2) an agreement between the Exchange and each third-party broker-dealer that will serve as a “give-up” on an away trading center when the ETP Holder on whose behalf an order is routed is not also a member or subscriber of the away trading center; and (3) an agreement between the Exchange and a third-party service provider (“Technology Provider”) pursuant to which the Exchange licenses the routing technology used by the

Exchange for its Routing Services (“Exchange-Technology Provider Agreement”). This Rule 2.12 shall be effective through September 30, 2008.

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### *Interpretations and Policies*

.01 (a) The Exchange will provide its Routing Services in compliance with these Rules, as well as other provisions of the Exchange’s By-Laws and Rules where applicable, and with the provisions of the Act and the rules thereunder, including, but not limited to, the requirements in Section 6(b)(4) and (5) of the Act that the rules of a national securities exchange provide for the equitable allocation of reasonable dues, fees, and other charges among its members and issuers and other persons using its facilities, and not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

(b) As provider of the Routing Services, the Exchange will license the necessary routing technology for use within its own systems and accordingly will control the logic that determines when, how, and where orders are routed away to other trading centers.

(c) The Exchange will establish and maintain procedures and internal controls reasonably designed to adequately restrict the flow of confidential and proprietary information between the Exchange (including its facilities) and the Technology Provider, and, to the extent the Technology Provider reasonably receives confidential and proprietary information, that adequately restrict the use of such information by the Technology Provider to legitimate business purposes necessary for the licensing of routing technology.

(d) The Exchange-Technology Provider Agreement will include terms and conditions that enable the Exchange to comply with this Interpretation and Policy .01.

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### **Rule 2.13. Mandatory Participation in Testing of Backup Systems**

a. Pursuant to Regulation SCI and with respect to the Exchange’s business continuity and disaster recovery plans, including its backup systems, the Exchange is required to establish standards for the designation of ETP Holders that the Exchange reasonably determines are, taken as a whole, the minimum necessary for the maintenance of fair and orderly markets in the event of the activation of such plans. The Exchange has established standards and will designate ETP Holders according to those standards as set forth below. All ETP Holders are permitted to connect to the Exchange’s backup systems and to participate in testing of such systems.

b. Certain ETP Holders are required to connect to the Exchange’s backup systems and participate in functional and performance testing as announced by the

Exchange, which shall occur at least once every 12 months. Specifically, ETP Holders that have been determined by the Exchange to contribute a meaningful percentage of the Exchange's overall volume must participate in mandatory testing of the Exchange's backup systems.

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*Interpretations and Policies*

.01 For purposes of identifying ETP Holders that account for a meaningful percentage of the Exchange's overall volume, the Exchange will measure volume executed on the Exchange on a quarterly basis. The percentage of volume that the Exchange considers to be meaningful for purposes of this Interpretation and Policy .01 will be determined by the Exchange and will be published in a circular distributed to ETP Holders. The Exchange will also individually notify all ETP Holders quarterly that are subject to paragraph (b) based on the prior calendar quarter's volume. If an ETP Holder has not previously been subject to the requirements of paragraph (b), such ETP Holder will have until the next calendar quarter before such requirements are applicable.

**CHAPTER III. Rules of Fair Practice**

**Rule 3.1. Business Conduct of ETP Holders**

An ETP Holder, in the conduct of his business, shall observe high standards of commercial honor and just and equitable principles of trade.

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*Interpretations and Policies*

.01 An ETP Holder may not split any order into multiple smaller orders for any purpose other than seeking the best execution for the entire order.

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**Rule 3.2. Violations Prohibited**

No ETP Holder shall engage in conduct in violation of the Act, the rules or regulations thereunder, the By-Laws, Exchange Rules or any policy or written interpretation of the By-Laws or Exchange Rules by the Board or an appropriate Exchange Committee. Every ETP Holder shall so supervise persons associated with the ETP Holder as to assure compliance with those requirements.

Amended: 10-19-04 (SR-NSX-2004-06); 6-8-06 (SR-NSX-2006-03).

### **Rule 3.3. Use of Fraudulent Devices**

No ETP Holder shall effect any transaction in, or induce the purchase or sale of, any security by means of any manipulative, deceptive or other fraudulent device or contrivance.

Amended: 6-8-06 (SR-NSX-2006-03)

### **Rule 3.4. False Statements**

No ETP Holder or applicant for an ETP shall make any false statements or misrepresentations in any application, report or other communication to the Exchange. No ETP Holder shall make any false statement or misrepresentation to any Exchange committee, officer, the Board or any designated self-regulatory organization in connection with any matter within the jurisdiction of the Exchange.

### **Rule 3.5. Advertising Practices**

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

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

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

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

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

unless such advertisement may be published under the rules of another self-regulatory organization regulating the ETP Holder under the Act.

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

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

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

### **Rule 3.6. Fair Dealing with Customers**

All ETP Holders have a fundamental responsibility for fair dealing with their customers. Practices which do not represent fair dealing include, but are not limited to, the following:

(a) Recommending speculative securities to customers without knowledge of or an attempt to obtain information concerning the customers' other securities holdings, their financial situation and other necessary data. This prohibition has particular application to high pressure telephonic sales campaigns.

(b) Excessive activity in customer accounts (churning or overtrading) in relation to the objectives and financial situation of the customer.

(c) Establishment of fictitious accounts in order to execute transactions which otherwise would be prohibited or which are against firm policy.

(d) Causing the execution of transactions which are unauthorized by customers or the sending of confirmations in order to cause customers to accept transactions not actually agreed upon;

(e) Unauthorized use or borrowing of customer funds or securities; and

(f) Recommending the purchase of securities or the continuing purchase of securities in amounts which are inconsistent with the reasonable expectation that the customer has the financial ability to meet such a commitment.

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*Interpretations and Policies*

.01 ETP Holders who handle customer orders on the Exchange shall establish and enforce fixed standards for queuing and executing customer orders.

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**Rule 3.7. Recommendations to Customers**

(a) In recommending to a customer the purchase, sale or exchange of any security, an ETP Holder shall have reasonable grounds for believing that the recommendation is suitable for such customer upon the basis of the facts disclosed by such customer, after reasonable inquiry by the ETP Holder, as to the customer's other securities holdings and as to the customer's financial situation and needs.

(b) An ETP Holder may use material referring to past recommendations if it sets forth all recommendations as to the same type, kind, grade or classification of securities made by the ETP Holder within the last year. Longer periods of years may be covered if they are consecutive and include the most recent year. Such material must also name each security recommended and give the date and nature of each recommendation (e.g., whether to buy or sell), the price at the time of the recommendation, the price at which, or the price within which, the recommendation was to be acted upon, and the fact that the period was one of generally failing or rising markets, if such was the case.

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*Interpretations and Policies*

.01 Recommendations made in connection with products listed pursuant to Rule 15.3 shall comply with the provisions of (a) above. No ETP Holder shall recommend to a customer a transaction in any such product unless the ETP Holder has a reasonable basis for believing at the time of making the recommendation that the customer has such knowledge and experience in financial matters that he may reasonably be expected to be capable of evaluating the risks of the recommended transaction and is financially able to bear the risks of the recommended position.

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**Rule 3.8. The Prompt Receipt and Delivery of Securities**

(a) Purchases. No ETP Holder may accept a customer's purchase order for any security until it has first ascertained that the customer placing the order or its agent agrees to receive securities against payment in an amount equal to any execution, even though such an execution may represent the purchase of only a part of a larger order.

(b) Sales.



(1) No ETP Holder shall execute a sale order for any customer in any security unless:

- (i) the other customer has possession of the security; or
  - (ii) the customer is long the security in his account with the ETP Holder; or
  - (iii) reasonable assurance is received by the ETP Holder from the customer that the security will be delivered to it in good deliverable form within three (3) business days of the execution of the order; or
  - (iv) the security is on deposit in good deliverable form with (A) an ETP Holder of the Exchange, (B) a member of another self-regulatory organization or (C) any organization subject to state or federal banking regulations, and instructions have been forwarded to such member or organization to deliver the securities against payment.
- (2) In order to satisfy the "requirement of reasonable assurance" contained in subparagraph (1)(iii) above, the ETP Holder, at the time it takes the order, shall make a notation on the order ticket which reflects the ETP Holder's conversation with the customer as to the present location of the securities in question, whether they are in good deliverable form and his ability to deliver them to the ETP Holder within three business days.

### **Rule 3.9. Charges for Services Performed**

An ETP Holder's charges, if any, for services performed (including miscellaneous services such as collection of moneys due for principal, dividends or interest; exchange or transfer of securities; appraisals, safekeeping or custody of securities; and other services) shall be reasonable and not unfairly discriminatory among customers.

### **Rule 3.10. Use of Information**

An ETP Holder who, in the capacity of payment agent, transfer agent, or any other similar capacity, or in any fiduciary capacity, has received information as to the ownership of securities shall not make use of such information for soliciting purchases, sales or exchanges except at the request, and on behalf, of the issuer.

### **Rule 3.11. Publication of Transactions and Quotations**

No ETP Holder shall report to the Exchange or publish or cause to be published any transaction as a purchase or sale of any security unless such ETP Holder believes that such transaction was a bona fide purchase or sale of such security, and no ETP Holder shall purport to quote the bid or asked price for any security, unless such ETP Holder believes that such quotation represents a bona fide bid for, or offer of, such security.

**Rule 3.12. Offers at Stated Prices**

No ETP Holder shall make an offer to buy from or sell to any person any security at a stated price unless such ETP Holder is prepared to purchase or sell, as the case may be, at such price and under such conditions as are stated at the time of such offer to buy or sell.

**Rule 3.13. Payment Designed to Influence Market Prices, Other than Paid Advertising**

No ETP Holders shall directly or indirectly, give, permit to be given, or offer to give anything of value to any person for the purpose of influencing or rewarding the action of such person in connection with the publication or circulation in any newspaper, investment service or similar publication of any matter which has, or is intended to have, an effect upon the market price of any security; provided, that this Rule shall not be construed to apply to a matter which is clearly identifiable as paid advertising.

**Rule 3.14. Disclosure on Confirmations**

An ETP Holder, at or before the completion of each transaction with a customer, shall give or send to such customer such written notification or confirmation of the transaction as is required by Commission Rule 10b-10.

**Rule 3.15. Disclosure of Control**

An ETP Holder controlled by, controlling, or under common control with, the issuer of any security, shall disclose to a customer the existence of such control before entering into any contract with or for such customer for the purchase or sale of such security, and if such disclosure is not made in writing, it shall be supplemented by the giving or sending of a written disclosure to the customer at or before completion of the transaction.

**Rule 3.16. Discretionary Accounts**

(a) No ETP Holder shall effect any purchase or sale transactions with, or for, any customer's account in respect of which such ETP Holder is vested with any discretionary power if such transactions are excessive in size or frequency in view of the financial resources and character of such account.

(b) No ETP Holder shall exercise any discretionary power in a customer's account unless such customer has given prior written authorization and the account has been accepted by the ETP Holder, as evidenced in writing by a person duly designated by the ETP Holder.

(c) The ETP Holder shall approve promptly in writing each discretionary order entered and shall review all discretionary accounts at frequent intervals in order to detect and prevent transactions which are excessive in size or frequency in view of the financial resources and character of the account. The ETP Holder shall designate a partner, officer

or manager in each office, including the main office, to carry out the approval and review procedures.

(d) This Rule shall not apply to an order by a customer for the purchase or sale of a definite amount of a specified security which order gives the ETP Holder discretion only over the time and price of execution.

**Rule 3.17. Customer's Securities or Funds**

No ETP Holder shall make improper use of a customer's securities or funds.

**Rule 3.18. Prohibition Against Guarantees**

No ETP Holder shall guarantee, directly or indirectly, a customer against loss in any securities account of such customer carried by the ETP Holder or in any securities transaction effected by the ETP Holder with or for such customer.

**Rule 3.19. Sharing in Accounts; Extent Permissible**

No ETP Holder shall share, directly or indirectly, in the profits or losses in any account of a customer carried by the ETP Holder or any other ETP Holder, unless authorized by the customer or ETP Holder carrying the account; and an ETP Holder shall share in the profits or losses in any account of such customer only in direct proportion to the financial contributions made to such account by the ETP Holder. Accounts of the immediate family of an ETP Holder shall be exempt from this direct proportionate share limitation. For purposes of this Rule, the term "immediate family" shall include parents, mother-in-law, father-in-law, husband or wife, children or any other relative to whose support the ETP Holder contributes directly or indirectly.

**Rule 3.20. Installment or Partial Payment Sales**

(a) No ETP Holder shall take or carry any account or make a transaction for any customer under any arrangement which contemplates or provides for the purchase of any security for the account of the customer, or for the sale of any security to the customer, where payment for the security is to be made to the ETP Holder by the customer over a period of time in installments or by a series or partial payments, unless:

- (1) in the event such ETP Holder acts as an agent or broker in such transaction, the ETP Holder promptly shall make an actual purchase of the security for the account of the customer, take possession or control of such security and maintain possession or control thereof so long as the ETP Holder remains under an obligation to deliver the security to the customer;
- (2) in the event such ETP Holder acts as a principal in such transaction, the ETP Holder shall own, at the time of such transaction, such security and shall

maintain possession or control thereof so long as he remains under an obligation to deliver the security to the customer; and

- (3) if applicable to such ETP Holder, the provisions of Regulation T of the Federal Reserve Board shall be satisfied.

(b) No ETP Holder, whether acting as principal or agent, shall make, in connection with any transaction referred to in this Rule, any agreement with his customer under which such ETP Holder shall be allowed to pledge or hypothecate any security involved in such transaction in contravention of Commission Rules 8c-1 and 15c3-3.

### **Rule 3.21 Telephone Solicitation**

(a) Telemarketing Restrictions. No ETP Holder or associated person of an ETP Holder shall make an outbound telephone call to:

- (1) any person's residence at any time other than between 8:00 a.m. and 9:00 p.m. local time at the called person's location;
- (2) any person that previously has stated that he or she does not wish to receive any outbound telephone calls made by or on behalf of the ETP Holder; or
- (3) any person who has registered his or her telephone number on the Federal Trade Commission's national do-not-call registry.

(b) Caller Disclosures. No ETP Holder or associated person of an ETP Holder shall make an outbound telephone call to any person without disclosing truthfully, promptly and in a clear and conspicuous manner to the called person the following information:

- (1) the identity of the caller and the ETP Holder;
- (2) the telephone number or address at which the caller may be contacted; and
- (3) that the purpose of the call is to solicit the purchase of securities or related services.

The telephone number provided may not be a 900 number or any other number for which charges exceed local or long-distance transmission charges.

(c) Exceptions. The prohibition of paragraph (a)(1) does not apply to outbound telephone calls by an ETP Holder or an associated person of an ETP Holder if:

- (1) the ETP Holder has received that person's express prior consent;
- (2) the ETP Holder has an established business relationship with the person; or

(3) the person called is a broker or dealer.

(d) ETP Holder's Firm-Specific Do-Not-Call List.

(1) Each ETP Holder shall make and maintain a centralized list of persons who have informed the ETP Holder or any of its associated persons of an ETP Holder that they do not wish to receive outbound telephone calls.

(2) Prior to engaging in telemarketing, an ETP Holder must institute procedures to comply with paragraphs (a) and (b). Such procedures must meet the following minimum standards:

(A) Written policy. ETP Holders must have a written policy for maintaining the do-not-call list described under paragraph (d)(1).

(B) Training of personnel engaged in telemarketing. Personnel engaged in any aspect of telemarketing must be informed and trained in the existence and use of the do-not-call list.

(C) Recording, disclosure of do-not-call requests. If an ETP Holder receives a request from a person not to receive calls from that ETP Holder, the ETP Holder must record the request and place the person's name, if provided, and telephone number on the ETP Holder's firm-specific do-not-call list at the time the request is made. ETP Holders must honor a person's do-not-call request within a reasonable time from the date such request is made. This period may not exceed 30 days from the date of such request. If such requests are recorded or maintained by a party other than the ETP Holder on whose behalf the outbound telephone call is made, the ETP Holder on whose behalf the outbound telephone call is made will be liable for any failures to honor the do-not-call request.

(D) Identification of telemarketers. An ETP Holder or associated person of an ETP Holder making an outbound telephone call must make the caller disclosures set forth in paragraph (b).

(E) Affiliated persons or entities. In the absence of a specific request by the person to the contrary, a person's do-not-call request shall apply to the ETP Holder making the call, and shall not apply to affiliated entities unless the consumer reasonably would expect them to be included given the identification of the caller and the product being advertised.

(F) Maintenance of do-not-call lists. An ETP Holder making outbound telephone calls must maintain a record of a person's request not to receive further calls.

(e) Do-Not-Call Safe Harbors.

(1) An ETP Holder or associated person of an ETP Holder making outbound telephone calls will not be liable for violating paragraph (a)(3) if:

(A) the ETP Holder has an established business relationship with the called person. A person's request to be placed on the ETP Holder's firm-specific do-not-call list terminates the established business relationship exception to the national do-not-call registry provision for that ETP Holder even if the person continues to do business with the ETP Holder;

(B) the ETP Holder has obtained the person's prior express written consent. Such consent must be clearly evidenced by a signed, written agreement (which may be obtained electronically under the E-Sign Act) between the person and the ETP Holder, which states that the person agrees to be contacted by the ETP Holder and includes the telephone number to which the calls may be placed; or

(C) the ETP Holder or associated person of an ETP Holder making the call has a personal relationship with the called person.

(2) An ETP Holder or associated person of an ETP Holder making outbound telephone calls will not be liable for violating paragraph (a)(3) if the ETP Holder or associated person of an ETP Holder demonstrates that the violation is the result of an error and that as part of the ETP Holder's routine business practice:

(A) the ETP Holder has established and implemented written procedures to comply with paragraphs (a) and (b);

(B) the ETP Holder has trained its personnel, and any entity assisting in its compliance, in the procedures established pursuant to paragraph (e)(2)(A);

(C) the ETP Holder has maintained and recorded a list of telephone numbers that it may not contact in compliance with paragraph (d); and

(D) the ETP Holder uses a process to prevent outbound telephone calls to any telephone number on the ETP Holder's firm-specific do-not-call list or the national do-not-call registry, employing a version of the national do-not-call registry obtained from the Federal Trade Commission no more than 31 days prior to the date any call is made, and maintains records documenting this process.

(f) Wireless Communications. The provisions set forth in this Rule are applicable to ETP Holders and associated persons of an ETP Holder making outbound telephone calls to wireless telephone numbers.

(g) Outsourcing Telemarketing. If an ETP Holder uses another appropriately registered or licensed entity or person to perform telemarketing services on its behalf, the ETP Holder remains responsible for ensuring compliance with all provisions contained in this Rule.

(h) Billing Information. For any telemarketing transaction, no ETP Holder or associated person of an ETP Holder shall cause billing information to be submitted for payment, directly or indirectly, without the express informed consent of the customer. Each ETP Holder or associated person of an ETP Holder must obtain the express informed consent of the person to be charged and to be charged using the identified account.

In any telemarketing transaction involving preacquired account information, the following requirements must be met to evidence express informed consent:

(1) In any telemarketing transaction involving preacquired account information and a free-to-pay conversion feature, the ETP Holder or associated person of an ETP Holder must:

(A) obtain from the customer, at a minimum, the last four digits of the account number to be charged;

(B) obtain from the customer an express agreement to be charged and to be charged using the account number pursuant to paragraph (h)(1)(A); and

(C) make and maintain an audio recording of the entire telemarketing transaction.

(2) In any other telemarketing transaction involving preacquired account information not described in paragraph (h)(1), the ETP Holder or associated person of an ETP Holder must:

(A) identify the account to be charged with sufficient specificity for the customer to understand what account will be charged; and

(B) obtain from the customer an express agreement to be charged and to be charged using the account number identified pursuant to paragraph (h)(2)(A).

(i) Caller Identification Information.

(1) Any ETP Holder that engages in telemarketing must transmit or cause to be transmitted the telephone number and, when made available by the ETP Holder's telephone carrier, the name of the ETP Holder to any caller identification service in use by a recipient of an outbound telephone call.

(2) The telephone number so provided must permit any person to make a do-not-call request during regular business hours.

(3) Any ETP Holder that engages in telemarketing is prohibited from blocking the transmission of caller identification information.

(j) Unencrypted Consumer Account Numbers. No ETP Holder or associated person of an ETP Holder shall disclose or receive, for consideration, unencrypted consumer account numbers for use in telemarketing. The term “unencrypted” means not only complete, visible account numbers, whether provided in lists or singly, but also encrypted information with a key to its decryption. This paragraph will not apply to the disclosure or receipt of a customer’s billing information to process pursuant to a telemarketing transaction.

(k) Abandoned Calls.

(1) No ETP Holder or associated person of an ETP Holder shall “abandon” any outbound telephone call. An outbound telephone call is “abandoned” if a called person answers it and the call is not connected to an ETP Holder or associated person of an ETP Holder within two seconds of the called person’s completed greeting.

(2) An ETP Holder or associated person of an ETP Holder shall not be liable for violating paragraph (k)(1) if:

(A) the ETP Holder or associated person of an ETP Holder employs technology that ensures abandonment of no more than three percent of all outbound telephone calls answered by a person, measured over the duration of a single calling campaign, if less than 30 days, or separately over each successive 30-day period or portion thereof that the campaign continues;

(B) the ETP Holder or associated person of an ETP Holder, for each outbound telephone call placed, allows the telephone to ring for at least 15 seconds or 4 rings before disconnecting an unanswered call;

(C) whenever an ETP Holder or associated person of an ETP Holder is not available to speak with the person answering the outbound telephone call within two seconds after the person’s completed greeting, the ETP Holder or associated person of an ETP Holder promptly plays a prerecorded message that states the name and telephone number of the ETP Holder or associated person of an ETP Holder on whose behalf the call was placed; and

(D) the ETP Holder or associated person of an ETP Holder retains records establishing compliance with paragraph (k)(2).



(l) Prerecorded Messages.

(1) No ETP Holder or associated person of an ETP Holder shall initiate any outbound telephone call that delivers a prerecorded message, other than a prerecorded message permitted for compliance with the call abandonment safe harbor in paragraph (k)(2)(C), unless:

(A) the ETP Holder has obtained from the called person an express agreement, in writing, that:

(i) the ETP Holder obtained only after a clear and conspicuous disclosure that the purpose of the agreement is to authorize the ETP Holder to place prerecorded calls to such person;

(ii) the ETP Holder obtained without requiring, directly or indirectly, that the agreement be executed as a condition of purchasing any good or service;

(iii) evidences the willingness of the called person to receive calls that deliver prerecorded messages by or on behalf of the ETP Holder; and

(iv) includes such person's telephone number and signature (which may be obtained electronically under the E-Sign Act);

(B) the ETP Holder allows the telephone to ring for a least 15 seconds or four rings before disconnecting an unanswered call and, within two seconds after the completed greeting of the called person, plays a prerecorded message that promptly provides the disclosures in paragraph (b), followed immediately by a disclosure of one or both of the following:

(i) in the case of a call that could be answered in person, that the called person can use an automated interactive voice and/or keypress-activated opt-out mechanism to assert a firm-specific do-not-call request pursuant to the ETP Holder's procedures instituted under paragraph (d)(2)(C) at any time during the message. The mechanism must automatically add the number called to the ETP Holder's firm-specific do-not-call list; once invoked, immediately disconnect the call; and be available for use at any time during the message; and

(ii) in the case of a call that could be answered by an answering machine or voicemail service, that the call recipient can use a toll-free telephone number to assert a firm-specific do-not-call request pursuant to the ETP Holder's procedures instituted under paragraph (d)(2)(C). The number provided must connect directly to an automated interactive voice or keypress-activated opt-out mechanism that automatically adds the number called to the ETP Holder's firm-specific do-not-call list; immediately thereafter

disconnects the call; and is accessible at any time throughout the duration of the telemarketing campaign; and

(C) the ETP Holder complies with all other requirements of this Rule and other applicable federal and state laws.

(2) Any call that complies with all applicable requirements of paragraph (1) shall not be deemed to violate paragraph (k).

(m) Credit Card Laundering. Except as expressly permitted by the applicable credit card system, no ETP Holder or associated person of an ETP Holder shall:

(1) present to or deposit into the credit card system for payment a credit card sales draft generated by a telemarketing transaction that is not the result of a telemarketing credit card transaction between the cardholder and the ETP Holder;

(2) employ, solicit, or otherwise cause a merchant, or an employee, representative or agent of the merchant, to present to or to deposit into the credit card system for payment a credit card sales draft generated by a telemarketing transaction that is not the result of a telemarketing credit card transaction between the cardholder and the merchant; or

(3) obtain access to the credit card system through the use of a business relationship or an affiliation with a merchant, when such access is not authorized by the merchant agreement or the applicable credit card system.

(n) Definitions. For purposes of this Rule:

(1) The term “account activity” includes, but is not limited to, purchases, sales, interest credits or debits, charges or credits, dividend payments, transfer activity, securities receipts or deliveries, and/or journal entries relating to securities or funds in the possession or control of the ETP Holder.

(2) The term “acquirer” means a business organization, financial institution, or an agent of a business organization or financial institution that has authority from an organization that operates or licenses a credit card system to authorize merchants to accept, transmit, or process payment by credit card through the credit card system for money, goods or services, or anything else of value.

(3) The term “billing information” means any data that enables any person to access a customer’s or donor’s account, such as a credit or debit card number, a brokerage, checking, or savings account number, or a mortgage loan account number. A “donor” means any person solicited to make a charitable contribution. A “charitable contribution” means any donation or gift of money or any other thing of value, for example a transfer to a pooled income fund.

(4) The term “broker-dealer of record” refers to the broker or dealer identified on a customer’s account application for accounts held directly at a mutual fund or variable insurance product issuer.

(5) The term “caller identification service” means a service that allows a telephone subscriber to have the telephone number and, where available, name of the calling party transmitted contemporaneously with the telephone call, and displayed on a device in or connected to the subscriber’s telephone.

(6) The term “cardholder” means a person to whom a credit card is issued or who is authorized to use a credit card on behalf of or in addition to the person to whom the credit card is issued.

(7) The term “credit” means the right granted by a creditor to a debtor to defer payment of debt or to incur debt and defer its payment.

(8) The term “credit card” means any card, plate, coupon book, or other credit device existing for the purpose of obtaining money, property, labor, or services on credit.

(9) The term “credit card sales draft” means any record or evidence of a credit card transaction.

(10) The term “credit card system” means any method or procedure used to process credit card transactions involving credit cards issued or licensed by the operator of that system.

(11) The term “customer” means any person who is or may be required to pay for goods or services through telemarketing.

(12) The term “established business relationship” means a relationship between an ETP Holder and a person if:

(A) the person has made a financial transaction or has a security position, a money balance, or account activity with the ETP Holder or at a clearing firm that provides clearing services to such ETP Holder within the 18 months immediately preceding the date of an outbound telephone call;

(B) the ETP Holder is the broker-dealer of record for an account of the person within the 18 months immediately preceding the date of an outbound telephone call; or

(C) the person has contacted the ETP Holder to inquire about a product or service offered by the ETP Holder within the three months immediately preceding the date of an outbound telephone call.

A person's established business relationship with an ETP Holder does not extend to the ETP Holder's affiliated entities unless the person would reasonably expect them to be included. Similarly, a person's established business relationship with an ETP Holder's affiliate does not extend to the ETP Holder unless the person would reasonably expect the ETP Holder to be included.

(13) The term "free-to-pay conversion" means, in an offer or agreement to sell or provide any goods or services, a provision under which a customer receives a product or service for free for an initial period and will incur an obligation to pay for the product or service if he or she does not take affirmative action to cancel before the end of that period.

(14) The term "merchant" means a person who is authorized under a written contract with an acquirer to honor or accept credit cards, or to transmit or process for payment credit card payments, for the purchase of goods or services or a charitable contribution.

(15) The term "merchant agreement" means a written contract between a merchant and an acquirer to honor or accept credit cards, or to transmit or process for payment credit card payments, for the purchase of goods or services or a charitable contribution.

(16) The term "outbound telephone call" means a telephone call initiated by a telemarketer to induce the purchase of goods or services or to solicit a charitable contribution from a donor.

(17) The term "person" means any individual, group, unincorporated association, limited or general partnership, corporation, or other business entity.

(18) The term "personal relationship" means any family member, friend, or acquaintance of the person making an outbound telephone call.

(19) The term "preacquired account information" means any information that enables an ETP Holder or associated person of an ETP Holder to cause a charge to be placed against a customer's or donor's account without obtaining the account number directly from the customer or donor during the telemarketing transaction pursuant to which the account will be charged.

(20) The term "telemarketer" means any person who, in connection with telemarketing, initiates or receives telephone calls to or from a customer or donor.

(21) The term "telemarketing" means consisting of or relating to a plan, program, or campaign involving at least one outbound telephone call, for example cold-calling. The term does not include the solicitation of sales through the mailing of written marketing materials, when the person making the solicitation does not solicit customers by telephone but only receives calls initiated by customers in response to

the marketing materials and during those calls takes orders only without further solicitation. For purposes of the previous sentence, the term “further solicitation” does not include providing the customer with information about, or attempting to sell, anything promoted in the same marketing materials that prompted the customer’s call.

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*Interpretations and Policies:*

.01 ETP Holders and associated persons of an ETP Holder that engage in telemarketing also are subject to the requirements of relevant state and federal laws and rules, including but not limited to the Telemarketing and Consumer Fraud and Abuse Prevention Act, the Telephone Consumer Protection Act, and the rules of the Federal Communications Commission (“FCC”) relating to telemarketing practices and the rights of telephone consumers.

.02 It is considered conduct inconsistent with just and equitable principles of trade and a violation of Exchange Rule 3.1 for any ETP Holder or associated person of an ETP Holder to: (1) call a person repeatedly or continuously in a manner likely to annoy or be offensive; or (2) use threats, intimidation, or profane or obscene language in calling any person.

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## **CHAPTER IV. Books and Records**

### **Rule 4.1. Requirements**

Each ETP Holder shall make and keep books, accounts, records, memoranda and correspondence in conformity with Section 17 of the Act and the rules thereunder, with all other applicable laws and the rules, regulations and statements of policy promulgated thereunder, and with Exchange Rules.

### **Rule 4.2. Furnishing of Records**

Every ETP Holder shall furnish to the Exchange, upon request and in a time and manner required by the Exchange, current copies of any financial information filed with the Commission, as well as any records, files, or financial information pertaining to transactions executed on or through the Exchange. Further, the Exchange shall be allowed access, at any time, to the books and records of the ETP Holder in order to obtain or verify information related to transactions executed on or through the Exchange or activities relating to the Exchange.

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*Interpretations and Policies*

.01 Consistent with the responsibility of the Exchange and the Commission to provide for timely regulatory investigations, the Exchange has adopted the following time parameters within which ETP Holders are required to respond to Exchange requests for trading data:

1st Request .....	10 business days
2nd Request.....	5 business days
3rd Request .....	5 business days

The third request letter will be sent to the ETP Holder's compliance officer and/or senior officer.

.02 Regulatory Data Submission Requirement. ETP Holders shall submit to the Exchange such Exchange-related order, market and transaction data as the Exchange may specify, in such form and on such schedule as the Exchange may require.

**Rule 4.3. Record of Written Complaints**

(a) Each ETP Holder shall keep and preserve for a period of not less than four years a file of all written complaints of customers and action taken by the ETP Holder in respect thereof, if any. Further, for the first two years of the four-year period, the ETP Holder shall keep such file in a place readily accessible to examination or spot checks.

(b) A "complaint" shall mean any written statement of a customer or any person acting on behalf of a customer alleging a grievance involving the activities of an ETP Holder or persons under the control of the ETP Holder in connection with (1) the solicitation or execution of any transaction conducted or contemplated to be conducted through the facilities of the Exchange or (2) the disposition of securities or funds of that customer which activities are related to such a transaction.

**Rule 4.4. Disclosure of Financial Condition**

(a) An ETP Holder shall make available for inspection by a customer, upon request, the information relative to such ETP Holder's financial condition disclosed in its most recent balance sheet prepared either in accordance with such ETP Holder's usual practice or as required by any State or Federal securities laws, or any rule or regulation thereunder. Further, an ETP Holder shall send to its customers the statements required by Commission Rule 17a-5(c).

(b) As used in paragraph (a) of this Rule, the term "customer" has the same meaning as set forth in Commission Rule 17a-5(c)(4).

## **CHAPTER V. Supervision**

### **Rule 5.1. Written Procedures**

Each ETP Holder shall establish, maintain and enforce written procedures which will enable it to supervise properly the activities of associated persons of the ETP Holder and to assure their compliance with applicable securities laws, rules, regulations and statements of policy promulgated thereunder, with the rules of the designated self-regulatory organization, where appropriate, and with Exchange Rules.

### **Rule 5.2. Responsibility of ETP Holders**

Final responsibility for proper supervision shall rest with the ETP Holder. The ETP Holder shall designate a partner, officer or manager in each office of supervisory jurisdiction, including the main office, to carry out the written supervisory procedures. A copy of such procedures shall be kept in each such office.

### **Rule 5.3. Records**

Each ETP Holder shall be responsible for making and keeping appropriate records for carrying out the ETP Holder's supervisory procedures.

### **Rule 5.4. Review of Activities and Annual Inspection**

Each ETP Holder shall review the activities of each office, which shall include the periodic examination of customer accounts to detect and prevent irregularities or abuses. Each ETP Holder shall conduct at least annually an inspection of each office of the ETP Holder.

### **Rule 5.5. Chinese Wall Procedures**

(a) An ETP Holder that trades for its own account in a security, acts as a Market Maker on the Exchange, or has a specialist operation on another market (an ETP Holder engaged in any of the foregoing is referred to in this Rule 5.5 as a "specialist") must establish a functional separation ("Chinese Wall") between the specialist operation and any associated or affiliated persons as appropriate to its operation. Further, all ETP Holders must establish, maintain and enforce written procedures reasonably designed to prevent the misuse of material, non-public information, which includes review of employee and proprietary trading, memorialization and documentation of procedures, substantive supervision of interdepartmental communications by the firm's Compliance Department and procedures concerning proprietary trading when the firm is in possession of material, non-public information. The firm must obtain the prior written approval of the Exchange that it has complied with the requirements above in establishing functional separation as appropriate to the operation and that it has established proper compliance and audit procedures to ensure the maintenance of the functional separation. A copy of these

Chinese Wall procedures, and any amendments thereto, must be filed with the Exchange's Surveillance Department.

(b) The following are the minimum procedural and maintenance requirements:

- (1) The associate or affiliated person can have no influence on specific specialist trading decisions.
- (2) Material, non-public corporate or market information obtained by the associated or affiliated person from the issuer may not be made available to the specialist.
- (3) Clearing and margin financing information regarding the specialist may be routed only to employees engaged in such work and managerial employees engaged in overseeing operation of the affiliated or associated persons and specialists entities.

(c) Information that may be made available to others:

- (1) A broker affiliated with an associated or affiliated person may make available to the specialist only the market information that he would make available to an unaffiliated specialist in the normal course of his trading and "market probing" activity.
- (2) A specialist may make known to a broker affiliated with an affiliated or associated person only the information about market conditions in specialty stocks that he would make available in the normal course of specializing to any other broker and in the same manner as it would make such information available to any other broker.
- (3) An affiliated or associated person can popularize a specialty stock provided it makes adequate disclosure about the existence of possible conflicts of interests.

(d) A specialist who becomes privy to material, non-public information must communicate that fact promptly to his firm's compliance officer or other designated official. The specialist shall seek guidance from the compliance officer or other designated official as to what procedures the specialist should follow after receipt of such information or such other action that should be taken. Appropriate records shall be maintained by the compliance officer or other designated official. The record should include a summary of the information received by the specialist and a description of the action taken by the compliance officer or other designated official.

(e) The Exchange has established the following procedures to monitor compliance with this rule:



- (1) Examination of the Chinese Wall procedures established by Exchange specialist firms.
- (2) Surveillance of proprietary trades effected by an affiliated or associated person and its affiliated or associated specialist ("designated dealer") firm.

Accordingly, the Exchange will conduct periodic examinations of the specialist firm's Chinese Wall procedures to ensure that a functional separation between the associated or affiliated person and the specialist has been created and thereafter maintained. The Exchange will also monitor the trading activities of affiliated or associated persons and affiliated or associated specialists in the specialist firms' specialty stocks in order to monitor the possible trading while in possession of material, non-public information through the periodic review of trade and comparison reports generated by the Exchange.

### **Rule 5.6. Anti-Money Laundering Compliance Program**

(a) Each ETP Holder shall develop and implement an anti-money laundering program reasonably designed to achieve and monitor compliance with the requirements of the Bank Secrecy Act (31 U.S.C. 5311, *et seq.*), and the implementing regulations promulgated thereunder by the Department of the Treasury. Each ETP Holder's anti-money laundering program must be approved, in writing, by a member of its senior management.

(b) The anti-money laundering programs required by the Rule shall, at a minimum:

- (1) establish and implement policies and procedures that can be reasonably expected to detect and cause the reporting of transactions required under 31 U.S.C. 5318(g) and the implementing regulations thereunder;
- (2) establish and implement policies and internal controls reasonably designed to achieve compliance with the Bank Secrecy Act and the implementing regulations thereunder;
- (3) provide for independent testing for compliance to be conducted by the ETP Holder's personnel or by a qualified outside party;
- (4) designate, and identify to the Exchange (by name, title, mailing address, e-mail address, telephone number, and facsimile number), a person or persons responsible for implementing and monitoring the day-to-day operations and internal controls of the program and provide prompt notification to the Exchange regarding any change in such designation(s); and
- (5) provide ongoing training for appropriate persons.

In the event that any of the provisions of this Rule 5.6 conflict with any of the provisions of another applicable self-regulatory organization's rule requiring the development and implementation of an anti-money laundering compliance program, the provisions of the rule of the ETP Holder's Designated Examining Authority shall apply.

### **Rule 5.7. Annual Certification of Compliance and Supervisory Processes**

Each ETP Holder shall have its chief executive officer (or equivalent officer) certify annually, as set forth in Interpretations and Policies .01, that the ETP Holder has in place processes to establish, maintain, review, test and modify written compliance policies and written supervisory procedures reasonably designed to achieve compliance with applicable Rules of the Exchange and federal securities laws and regulations.

#### *Interpretations and Policies*

.01 Annual Compliance and Supervision Certification. The Exchange is issuing this interpretation to Rule 5.7, which requires that the ETP Holder's chief executive officer (or equivalent officer) execute annually a certification that the ETP Holder has in place processes to establish, maintain, review, test and modify written compliance policies and written supervisory procedures reasonably designed to achieve compliance with applicable Rules of the Exchange and federal securities laws and regulations. The certification for each ensuing year shall be effected no later than on the anniversary date of the previous year's certification. The certification shall state the following:

#### *Annual Compliance and Supervision Certification*

The undersigned is the chief executive officer (or equivalent officer) of [name of ETP Holder corporation/partnership/sole proprietorship] (the "ETP Holder"). As required by Rule 5.7, the undersigned makes the following certification:

1. The ETP Holder has in place processes to:
  - (a) establish, maintain and review policies and procedures reasonably designed to achieve compliance with applicable Rules of the NYSE National, Inc. and federal securities laws and regulations;
  - (b) modify such policies and procedures as business, regulatory and legislative changes and events dictate; and
  - (c) test the effectiveness of such policies and procedures on a periodic basis, the timing and extent of which is reasonably designed to ensure continuing compliance with Rules of the NYSE National, Inc. and federal securities laws and regulations.

2. The undersigned chief executive officer (or equivalent officer) has conducted one or more meetings with the chief compliance officer in the preceding 12 months, the subject of which satisfy the obligations set forth in Interpretations and Policies .01 to Rule 5.7.
3. The ETP Holder's processes, with respect to paragraph 1 above, are evidenced in a report reviewed by the chief executive officer (or equivalent officer), chief compliance officer, and such other officers as the ETP Holder may deem necessary to make this certification. The final report has been submitted to the ETP Holder's board of directors and audit committee or will be submitted to the ETP Holder's board of directors and audit committee (or equivalent bodies) at the earlier of their next scheduled meetings or within 45 days of the date of execution of this certification.
4. The undersigned chief executive officer (or equivalent officer) has consulted with the chief compliance officer and other officers as applicable (referenced in paragraph 3 above) and such other employees, outside consultants, lawyers and accountants, to the extent deemed appropriate, in order to attest to the statements made in this certification.

The Exchange provides the following guidance in completing the Certification above. Included in the processes requirement is an obligation on the part of the ETP Holder to conduct one or more meetings annually between the chief executive officer (or equivalent officer) and the chief compliance officer to: (1) discuss and review the matters that are subject of the certification; (2) discuss and review the ETP Holder's compliance efforts as of the date of such meetings; and (3) identify and address significant compliance problems and plans for emerging business areas.

The report required in paragraph 3 of the certification must document the ETP Holder's processes for establishing, maintaining, reviewing, testing and modifying compliance policies, that are reasonably designed to achieve compliance with applicable NSX rules and federal securities laws and regulations, and any principal designated by the ETP Holder may prepare the report. The report must be produced prior to execution of the certification and be reviewed by the chief executive officer (or equivalent officer), chief compliance officer and any other officers the ETP Holder deems necessary to make the certification and must be provided to the ETP Holder's board of directors and audit committee in final form either prior to execution of the certification or at the earlier of their next scheduled meetings or within 45 days of execution of the certification. The report should include the manner and frequency in which the processes are administered, as well as the identification of officers and supervisors who have responsibility for such administration. The report need not contain any conclusions produced as a result of following the processes set forth therein. The report may be combined with any other compliance report or other similar report required by any other self-regulatory

organization provided that: (1) such report is clearly titled in a manner indicating that it is responsive to the requirements of the certification and Rule 5.7; (2) an ETP Holder that submits a report for review in response to a NSX request must submit the report in its entirety; and (3) the ETP Holder makes such report in a timely manner, i.e., annually.

## **CHAPTER VI. Extensions of Credit**

### **Rule 6.1. Prohibitions and Exemptions**

(a) An ETP Holder shall not effect a securities transaction through Exchange facilities in a manner contrary to the regulations of the Board of Governors of the Federal Reserve System.

(b) In instances where the Exchange has been designated the appropriate examining authority, the Exchange is authorized to grant extensions of time under sections 220.4(c)(3)(ii) and 220.8(d) of Regulation T adopted by the Board of Governors of the Federal Reserve System as well as under Commission Rule 15c3-3(n).

(c) The margin which must be maintained in margin accounts of customers shall be as follows:

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

### **Rule 6.2. Day Trading Margin**

(a) The term "day trading" means the purchasing and selling of the same security on the same day. A "day trader" is any customer whose trading shows a pattern of day trading.

(b) Whenever day trading occurs in a customer's margin account the margin to be maintained shall be the margin on the "long" or "short" transaction, whichever occurred first, as required pursuant to Exchange Rule 6.1(c). When day trading occurs in the account of a day trader, the margin to be maintained shall be the margin on the "long" or "short" transaction, whichever occurred first, as required for initial margin by Regulation T of the Board of Governors of the Federal Reserve System, or as required pursuant to Exchange Rule 6.1(c), whichever amount is greater.

(c) No ETP Holder shall permit a public customer to make a practice, directly or indirectly, of effecting transactions in a cash account where the cost of securities purchased is met by the sale of the same securities. No ETP Holder shall permit a public customer to make a practice of selling securities with them in a cash account which are to be received against payment from another broker- dealer where such securities were purchased and are not yet paid for.

## **CHAPTER VII. Suspension by Chairman or Chief Regulatory Officer**

### **Rule 7.1. Imposition of Suspension**

(a) An ETP Holder which fails or is unable to perform any of its contracts, or is insolvent or is unable to meet the financial responsibility requirements of the Exchange, shall immediately inform the Secretary in writing of such fact. Upon receipt of said notice, or whenever it shall appear to the Chairman of the Board or Chief Regulatory Officer, or their respective designees, (after such verification and with such opportunity for comment by the ETP Holder as the circumstances reasonably permit) that an ETP Holder has failed to perform its contracts or is insolvent or is in such financial or operational condition or is otherwise conducting its business in such financial or operational condition or is otherwise conducting its business in such a manner that it cannot be permitted to continue in business with safety to its customers, creditors and other ETP Holders of the Exchange, the Chairman of the Board or Chief Regulatory Officer, or their respective designees, may summarily suspend the ETP Holder or may impose such conditions and restrictions upon the ETP Holder as are reasonably necessary for the protection of investors, the Exchange, the creditors and the customers of such ETP Holder.

(b) An ETP Holder that does not pay any dues, fees, assessments, charges or other amounts due to the Exchange within 90 days after the same has become payable shall be reported to the Chairman, who may, after giving reasonable notice to the ETP Holder of such arrearages, suspend the ETP Holder until payment is made. Should payment not be made within six months after payment is due, the ETP may be disposed of or cancelled by the Exchange.

(c) In the event of suspension of an ETP Holder, the Exchange shall give prompt notice of such suspension to the ETP Holders of the Exchange. Unless the Chairman or the Chief Regulatory Officer, or their respective designees, shall determine that lifting the suspension without further proceedings is appropriate, such suspension shall continue until the ETP Holder is reinstated as provided in Rule 7.3. of this Chapter.

### **Rule 7.2. Investigation Following Suspension**

Every ETP Holder suspended under the provisions of this Chapter shall immediately make available every facility requested by the Exchange for the investigation of 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 security position maintained by the ETP Holder and each of its customers. The foregoing includes, without limitation, the furnishing of such of the ETP Holder's books and records and the giving of such sworn testimony as may be requested by the Exchange.

### **Rule 7.3. Reinstatement**

An ETP Holder suspended under the provisions of this Chapter may apply for reinstatement by a petition in accordance with and in the time provided for by the provisions of Chapter X of the Exchange Rules relating to adverse action.

### **Rule 7.4. Failure to be Reinstated**

An ETP Holder suspended under the provisions of this Chapter who fails to seek or obtain reinstatement in accordance with Rule 7.3 shall have its ETP cancelled or disposed of by the Exchange in accordance with Exchange Rule 2.6.

### **Rule 7.5. Termination of Rights by Suspension**

An ETP Holder suspended under the provisions of this Chapter shall be deprived during the term of its suspension of all rights and privileges conferred to it by virtue of it holding an ETP.

### **Rule 7.6. Summary Suspension of Exchange Services**

The Chairman of the Board or Chief Regulatory Officer, or their respective designees, (after such verification with such opportunity for comment as the circumstances reasonably permit) may summarily limit or prohibit: (i) any person from access to services offered by the Exchange, if such person has been and is expelled or suspended from any self-regulatory organization or barred or suspended from being associated with a member of any self-regulatory organization or is in such financial or operating difficulty that the Exchange determines that such person cannot be permitted to do business with safety to investors, creditors, Exchange ETP Holders or the Exchange; or (ii) a person who is not an ETP Holder from access to services offered by the Exchange, if such person does not meet the qualification requirements or other pre-requisites for such access and if such person cannot be permitted to continue to have access with safety to investors, creditors, ETP Holders and the Exchange. Any person aggrieved by any such summary action may seek review under the provisions of Chapter X of the Exchange Rules relating to adverse action.

### **Rule 7.7. Commission Action**

The Commission may stay any summary action taken pursuant to this Chapter on its own motion or upon application by any person aggrieved thereby made pursuant to Section 19(d) of the Act and the rules thereunder.

## **CHAPTER VIII. Discipline**

### **Rule 8.1. Disciplinary Jurisdiction**

(a) An ETP Holder or a person associated with an ETP Holder (the "Respondent") who is alleged to have violated or aided and abetted a violation of any provision of the Act or the rules and regulations promulgated thereunder, or any provision of the Certificate of Incorporation, By-Laws or Rules of the Exchange or any interpretation thereof or any resolution or order of the Board or appropriate Exchange committee 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 operation; fine; censure; suspension or bar from association with an ETP Holder or any other fitting sanction, in accordance with the provisions of this Chapter.

An individual ETP Holder, responsible party, or other person associated with an ETP Holder may be charged with any violation committed by employees under his/her/its supervision or by the ETP Holder with which he/she/it is associated, as though such violation were his/her/its own. An ETP Holder organization may be charged with any violation committed by its employees or by any other person who is associated with such ETP Holder organization, as though such violation were its own.

(b) Any ETP Holder or person associated with an ETP Holder shall continue to be subject to the disciplinary jurisdiction of the Exchange following the termination of such person's ETP or association with an ETP Holder with respect to matters that occurred prior to such termination; provided that written notice of the commencement of an inquiry into such matters is given by the Exchange to such former ETP Holder or former associated person within one year of receipt by the Exchange of the latest written notice of the termination of such person's status as an ETP Holder or person associated with an ETP Holder. The foregoing notice requirement does not apply to a person who at any time after a termination again subjects himself or herself to the disciplinary jurisdiction of the Exchange by becoming an ETP Holder or a person associated with an ETP Holder.

(c) A summary suspension or other action taken pursuant to Chapter VII of the Rules of the Exchange shall not be deemed to be disciplinary action under this Chapter, and the provisions of this chapter shall not be applicable to such action.

### **Rule 8.2. Complaint and Investigation**

#### **(a) Initiation of Investigation**

The Exchange, or the designated self-regulatory organization, when appropriate, shall investigate possible violations within the disciplinary jurisdiction of the Exchange which are brought to its attention in any manner, or upon order of the Board, the Business Conduct Committee, the President or other Exchange officials designated by the President, or upon receipt of a complaint alleging such violation.

(b) Report

In every instance where an investigation has been instituted as a result of a complaint, and in every other instance in which an investigation results in a finding that there are reasonable grounds to believe that a violation has been committed, a written report of the investigation shall be submitted to the Business Conduct Committee by the Exchange's staff or, when appropriate, by the designated self-regulatory organization.

(c) Requirement to Furnish Information and Right to Counsel

Each ETP Holder and person associated with an ETP Holder shall be obligated upon request by the Exchange to appear and testify, and to respond in writing to interrogatories and furnish documentary materials and other information requested by the Exchange in connection with (i) an investigation initiated pursuant to paragraph (a) of this Rule or (ii) a hearing or appeal conducted pursuant to this Chapter or preparation by the Exchange in anticipation of such a hearing or appeal. No ETP Holder or person associated with an ETP Holder shall impede or delay an Exchange investigation or proceeding conducted pursuant to this Chapter nor refuse to comply with a request made by the Exchange pursuant to this paragraph. An ETP Holder or person associated with an ETP Holder is entitled to be represented by counsel during any such Exchange investigation, proceeding or inquiry.

(d) Notice, Statement and Access

Prior to submitting its report, the staff shall notify the person(s) who is the subject of the report (hereinafter "Subject") of the general nature of the allegations and of the specific provisions of the Act, rules and regulations promulgated thereunder, or provisions of the Articles of Incorporation, By-Laws or Rules of the Exchange or any interpretation thereof or any resolution of the Board, that appear to have been violated. Except when the Business Conduct Committee determines that expeditious action is required, a Subject shall have 15 days from the date of the notification described above to submit a written statement to the Business Conduct Committee concerning why no disciplinary action should be taken. To assist a Subject in preparing such a written statement, he or she shall have access to any documents and other materials in the investigative file of the Exchange that were furnished by him or her or his or her agents.

(e) Failure to Furnish Information

Failure to furnish testimony, documentary evidence or other information requested by the Exchange in the course of an Exchange inquiry, investigation, hearing or appeal conducted pursuant to this Chapter or in the course of preparation by the Exchange in anticipation of such a hearing or appeal on the date or within the time period the Exchange specifies shall be deemed to be a violation of this Rule 8.2.

(f) Regulatory Cooperation



No ETP Holder or person associated with an ETP Holder or other person or entity subject to the jurisdiction of the Exchange shall refuse to appear and testify before another exchange or other self-regulatory organization in connection with a regulatory investigation, examination or disciplinary proceeding or refuse to furnish testimony, documentary materials or other information or otherwise impede or delay such investigation, examination or disciplinary proceeding if the Exchange requests such testimony, documentary materials or other information in connection with an inquiry resulting from an agreement entered into by the Exchange pursuant to subsection (g) of this Rule. The requirements of this Rule 8.2(f) shall apply when the Exchange has been notified by another self-regulatory organization of the request for testimony, documentary materials or other information and the Exchange then requests in writing that an ETP Holder, person associated with an ETP Holder or other person or entity provide such testimony, documentary materials or other information. Any person or entity required to furnish testimony, documentary materials or other information pursuant to this Rule 8.2(f) shall be afforded the same rights and procedural protections as that person or entity would have if the Exchange had initiated the request.

(g) Cooperative Agreements

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

(h) Videotaped Responses

In lieu of, or in addition to, submitting a written statement concerning why no disciplinary action should be taken as permitted by paragraph (d) of this Rule, the Subject may submit a statement in the form of a videotaped response. Except when the Business Conduct Committee determines that expeditious action is required, the Subject shall have 15 days from the date of the notification described in paragraph (d) to submit the videotaped response. The Exchange will establish standards concerning the length and format of such videotaped responses.

**Rule 8.3. Expedited Proceeding**

Upon receipt of the notification required by Rule 8.2(d), a Subject may seek to dispose of the matter through a letter of consent signed by the Subject. If a Subject desires to attempt to dispose of the matter through a letter of consent, the Subject must submit to the staff within 15 days from the date of the notification required by Rule 8.2(d) a written notice electing to proceed in an expedited manner pursuant to this Rule 8.3. The Subject must then endeavor to reach agreement with the exchange's staff upon a letter of consent which is acceptable to the staff and which sets forth a stipulation of facts and findings concerning the Subject's conduct, the violation(s) committed by the Subject and the sanction(s) therefor. The matter can only be disposed of through a letter of consent if the staff and the Subject are able to agree upon terms of a letter of consent which are

acceptable to the staff and the letter is signed by the Subject. At any point in the negotiations regarding a letter of consent, either the staff may deliver to the Subject or the Subject may deliver to the staff a written declaration of an end to the negotiations. On delivery of such a declaration the subject will then have 15 days to submit a written statement pursuant to Rule 8.2(d) and thereafter the staff may bring the matter to the Business Conduct Committee. If the letter of consent is accepted by the Business Conduct Committee, it may adopt the letter as its decision and 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. Upon rejection, the Subject will then have 15 days to submit a written statement pursuant to Rule 8.2(d) and thereafter the staff may bring the matter to 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 8.4. Charges**

##### **(a) Determination Not to Initiate Charges**

Whenever it shall appear to the Business Conduct Committee from the investigation report that no probable cause exists for finding a violation within the disciplinary jurisdiction of the Exchange, or whenever the Business Conduct Committee otherwise determines that no further proceedings are warranted, it shall issue a written statement to that effect setting forth its reasons for such finding.

##### **(b) Initiation of Charges**

Whenever it shall appear to the Business Conduct Committee that there is probable cause for finding a violation within the disciplinary jurisdiction of the Exchange and that further proceedings are warranted, the Business Conduct Committee shall direct the issuance of a statement of charges against the Respondent specifying the acts in which the Respondent is charged to have engaged and setting forth the specific provisions of the Act, rules and regulations promulgated thereunder, By-Laws, Exchange Rules, interpretations or resolutions of which such acts are in violation. A copy of the charges shall be served upon the Respondent in accordance with Rule 8.11.

#### **Rule 8.5. Answer**

The Respondent shall have 15 business days after service of the charges to file a written answer thereto. The answer shall specifically admit or deny each allegation contained in the charges, and the Respondent shall be deemed to have admitted any allegation not specifically denied. The answer may also contain any defense which the Respondent wishes to submit and may be accompanied by documents in support of his answer or defense. In the event the Respondent fails to file an answer within the time provided, the charges shall be considered to be admitted.

**Rule 8.6. Hearings**

## (a) Participants

Subject to Rule 8.6. concerning summary proceedings, a hearing on the charges shall be held before at least one member of the Business Conduct Committee and at least one senior officer of the Exchange, or a special subcommittee consisting of one or more members of the Business Conduct Committee and one or more senior Exchange officers and such other persons as the Chairman of the Exchange may appoint ("Hearing Officers"). No member of the Business Conduct Committee, no officer of the Exchange and no hearing officer shall participate by voting or otherwise in the consideration of any matter in which he is personally interested.

## (b) Notice and List of Documents

Participants shall be given at least 15 business days' notice of the time and place of the hearing and a statement of the matters to be considered therein. All documentary evidence intended to be presented in the hearing by the Respondent, the Exchange, or the designated self-regulatory authority must be received by the Hearing Officers at least eight (8) days in advance of the hearing or it may not be presented in the hearing. The parties shall furnish each other with a list of all documents submitted for the record not less than four (4) business days in advance of the hearing, and the documents themselves shall be made available to the parties for inspection and copying.

## (c) Conduct of Hearing

The Hearing Officers shall determine all questions concerning the admissibility of evidence and shall otherwise regulate the conduct of the hearing. Formal rules of evidence shall not apply. The charges shall be presented by a representative of the Exchange or the designated self-regulatory authority who, along with the Respondent, may present evidence and produce witnesses who shall testify under oath and are subject to being questioned by the Hearing Officers and opposing parties. The Respondent is 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.

**Rule 8.7. Summary Proceedings**

Notwithstanding the provisions of Rule 8.5 of this Chapter, the Business Conduct Committee may make a determination without a hearing and may impose a penalty as to violations which the Respondent has admitted or charges which the Respondent has failed to answer or which otherwise are not in dispute. Notice of such summary determination, specifying the violations and penalty, shall be served upon the Respondent, who shall have ten (10) business days from the date of service to notify the Business Conduct Committee 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 Business Conduct Committee shall constitute an admission of the violations and acceptance of the

penalty as determined by the Business Conduct Committee and a waiver of all rights of review. If the Respondent requests a hearing, the matters which are the subject of the hearing shall be handled in accordance with the hearing and review procedures of this Chapter.

### **Rule 8.8. Offers of Settlement**

#### **(a) Submission of Offer**

At any time during the course of any proceeding under this Chapter, the Respondent may submit to the Business Conduct Committee a written offer of settlement which shall contain a proposed stipulation of facts and shall consent to a specified penalty. Where the Business Conduct Committee accepts an offer of settlement, it shall issue a decision, including findings and conclusions and imposing a penalty, consistent with the terms of such offer. Where the Business Conduct Committee rejects an offer of settlement, it shall notify the Respondent and the matter shall proceed as if such offer had not been made, and the offer and all documents relating thereto shall not become part of the record. A decision of the Business Conduct Committee issued upon acceptance of an offer of settlement as well as the determination of the Committee whether to accept or reject such an offer shall become final 20 business days after such decision is issued, and the Respondent may not seek review thereof.

#### **(b) Submission of Statement**

A Respondent may submit with an offer of settlement a written statement in support of the offer. In addition, if the staff will not recommend acceptance of an offer of settlement before the Business Conduct Committee, a Respondent shall be notified and may appear before the Business Conduct Committee to make an oral statement in support of his/her offer. Finally, if the Business Conduct Committee rejects an offer that the staff supports, a Respondent may appear before that Committee to make an oral statement concerning why he/she believes the Committee should change its decision and accept his/her offer. A Respondent must make a request for such an appearance within 5 days of being notified that the offer was rejected of that the staff will not recommend acceptance.

#### **(c) Repeated Offers**

Unless the Business Conduct Committee shall otherwise order, a Respondent shall be entitled to submit to the Business Conduct Committee a maximum of two written offers of settlement in connection with the statement of charges issued to that Respondent pursuant to Rule 8.4(b).

Amended: 10-19-98 (SR-CSE-98-02)

**Rule 8.9. Decision**

Following a hearing conducted pursuant to Rule 8.5 of this Chapter, the Hearing Officers shall prepare a decision in writing, based solely on the record, determining whether the Respondent has committed a violation and imposing the penalty, if any, therefor. The decision shall include a statement of findings and conclusions, with the reasons therefor, upon all material issues presented on the record. Where a penalty is imposed, the decision shall include a statement specifying the acts or practices in which the Respondent has been found to have engaged and setting forth the specific provisions of the Act, rules and regulations promulgated thereunder, By-Law, Exchange Rules, interpretations or resolutions of which the acts are deemed to be in violation. The Respondent shall promptly be sent a copy of the decision. Where the Hearing Officers are not composed of at least a majority of the members of the Business Conduct Committee, their determination shall be automatically reviewed by a majority of the Committee, which may accept or modify the determination or remand the matter for additional findings or supplemental proceedings.

**Rule 8.10. Review****(a) Petition**

The Respondent shall have ten (10) days after service of notice of a decision made pursuant to Rule 8.8 of this Chapter to petition for review thereof. Such petition shall be in writing and shall specify the findings and conclusions to which exceptions are taken together with reasons for such exceptions. Any objections to a decision not specified by written exception shall be considered to have been abandoned.

**(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. Unless the Board shall decide to open the record for introduction of evidence or to hear argument, such review shall be based solely upon the record and the written exceptions filed by the parties. The decision of the Board shall be in writing and shall be final.

**(c) Review on Motion of Board**

The Board may on its own initiative order review of a decision made pursuant to Rule 8.6, 8.7, or 8.8 of this Chapter within 20 business days after issuance of the decision. Such review shall be conducted in accordance with the procedure set forth in paragraph (b) of this Rule.

**(d) Review of Decision Not to Initiate Charges**

Upon application made by the President or Chairman within 30 days of a decision made pursuant to Rule 8.4(a) of this Chapter, the Board may order review of such

decision. Such review shall be conducted in accordance with the procedures set forth in paragraph (b), as applicable.

Amended: 10-19-98 (SR-CSE-98-02); 10-19-04 (SR-NSX-2004-06)

### **Rule 8.11. Effective Date of Judgment**

Penalties imposed under this Chapter shall not become effective until the review process is completed or the decision otherwise becomes final. Pending effectiveness of a decision imposing a penalty on the Respondent, the Business Conduct Committee may impose such conditions and restrictions on the activities of the Respondent as the Committee considers reasonably necessary for the protection of investors, creditors and the Exchange.

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#### *Interpretations and Policies*

.01 Exchange staff shall make all necessary filings concerning formal and informal disciplinary actions required under the Act and the rules and regulations promulgated thereunder, and shall take all other actions necessary to comply with any other applicable law or regulation.

The staff shall not, as a matter of policy, issue any press release or other statement to the press concerning any formal or informal disciplinary matter; provided, however, that the Business Conduct Committee may recommend to the Executive Committee of the Exchange that the staff issue a press release or other statement to the press. If the Executive Committee determines that such a press release or other statement to the press is warranted, then the staff shall prepare and issue a press release or other statement to the press as the Executive Committee shall direct.

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### **Rule 8.12. Miscellaneous Provisions**

#### (a) Service of Notice

Any charges, notices or other documents may be served upon the Respondent either personally or by leaving the same at his place of business or by deposit in the United States post office, postage prepaid, by registered or certified mail addressed to the Respondent at his last known place of business.

#### (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 at the Exchange to whom such materials are to be submitted.

(c) Reports and Inspection of Books for Purpose of Investigating Complaints

For the purpose of any investigation or determination as to the filing of a complaint, or any hearing of any complaint against any ETP Holder of the Exchange or any person associated with an ETP Holder, the Exchange's staff, Business Conduct Committee, Board or designated self-regulatory organization shall have the right (1) to require any ETP Holder of the Exchange to report orally or in writing with regard to any matter involved in any such investigation or hearing, and (2) to investigate the books, records and accounts of any such ETP Holder with relation to any matter involved in any such investigation or hearing. No ETP Holder shall refuse to make any report as required in this Rule, or refuse to permit any inspection of books, records and accounts as may be validly called for under this Rule.

**Rule 8.13. Costs of Proceedings**

Any ETP Holder disciplined pursuant to this Chapter shall bear such part of the costs of the proceedings as the Business Conduct Committee or the Board deems fair and appropriate in the circumstances.

**Rule 8.14. Agency Review**

Actions taken by the Exchange under this Chapter shall be subject to the review and action of any appropriate regulatory agency under the Act.

**Rule 8.15. Imposition of Fines for Minor Violation(s) of Rules**

(a) In lieu of commencing a disciplinary proceeding as described in Rules 8.1 through 8.13, the Exchange may, subject to the requirements set forth in this Rule, impose a fine, not to exceed \$2,500, on any ETP Holder, associated person of an ETP Holder, or registered or non-registered employee of an ETP Holder, for any violation of a Rule of the Exchange, which violation the Exchange shall have determined is minor in nature. Any fine imposed pursuant to this Rule and not contested shall not be publicly reported, except as may be required by Rule 19d-1 under the Act or as may be required by any other regulatory authority.

(b) In any action taken by the Exchange pursuant to this Rule, the person against whom a fine is imposed shall be served (as provided in Rule 8.11) with a written statement, signed by an authorized officer of the Exchange, setting forth (i) the Rule or Rules alleged to have been violated; (ii) the act or omission constituting each such violation; (iii) the fine imposed for each such violation; and (iv) the date by which such determination becomes final and such fine becomes due and payable to the Exchange, or such determination must be contested as provided in paragraph (d) below, such date to be not less than 15 business days after the date of service of the written statement.

(c) If the person against whom a fine is imposed pursuant to this Rule pays the fine, such payment shall be deemed to be a waiver by such person of such person's right to a

disciplinary proceeding under Rules 8.1 through 8.13 and any review of the matter by an Exchange Committee (composed as described in Rule 8.9) or by the Board.

(d) Any person against whom a fine is imposed pursuant to this Rule may contest the Exchange's determination by filing with the Exchange not later than the date by which such determination must be contested, a written response meeting the requirements of an Answer as provided in Rule 8.4 at which point the matter shall become a disciplinary proceeding subject to the provisions of Rules 8.1 through 8.13. In any such disciplinary proceeding, if the Hearing Panel determines that the person charged is guilty of the rule violation(s) charged, the Panel shall (i) be free to impose any one or more disciplinary sanctions and (ii) determine whether the rule violation(s) is minor in nature. The person charged and any member of the Board of the Exchange may require a review by the Board of any determination by the Hearing Panel by proceeding in the manner described in Rules 8.8 and 8.9.

(e) The Exchange shall prepare and announce to its ETP Holders and ETP Holder organizations from time to time a listing of the Exchange Rules as to which the Exchange may impose fines as provided in this Rule. Such listing shall also indicate the specific dollar amount that may be imposed as a fine hereunder with respect to any violation of any such Rule or may indicate the minimum and maximum dollar amounts that may be imposed by the Exchange with respect to any such violation. Nothing in this Rule shall require the Exchange to impose a fine pursuant to this Rule with respect to the violation of any Rule included in any such listing.

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*Interpretations and Policies*

.01 List of Exchange Rule Violations and Fines Applicable thereto Pursuant to Rule 8.15:

(a) Rule 4.1, Rule 4.2 and Interpretations, thereunder, requiring the submission of responses to Exchange requests for trading data within specified time period.

Fine Amount	Fine Schedule	
	Individual	ETP Holder Organization
First time fined	\$100	\$500
Second time fined	300	1,000
Third time fined	500	2,500

\*Within a "rolling" 12-month period.

(b) Rule 4.2 and Interpretations thereunder related to the requirement to furnish Exchange-related order, market and transaction data, as well as financial or regulatory records and information.

(c) Rule 11.8(a)(1) related to the requirement to comply with quotation policies.



(d) Rule 12.10 and Interpretations thereunder related to the requirement to display customer limited orders.

Recommended Fine Amount

\$100 per violation

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## **CHAPTER IX. Arbitration**

### **Rule 9.1. General**

(a) Any dispute, claim or controversy between a customer or non-ETP Holder and an ETP Holder, ETP Holder organization, and/or associated person arising in connection with the business of such ETP Holder, ETP Holder organization, and/or associated person in connection with his activities as an associated person shall be arbitrated under the By-Laws and the Exchange Rules as provided by any duly executed and enforceable written agreement or upon the demand of the customer or non-ETP Holder.

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

### **Rule 9.2. Simplified Arbitration**

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

(b) The Claimant shall file with the Director of Arbitration an executed Submission Agreement and a copy of the Statement of Claim of the controversy in dispute and the required deposit, together with documents in support of the Claim. Sufficient copies of the Submission Agreement and the Statement of Claim and supporting documents shall be provided to the Director of Arbitration for each party and the arbitrator. The Statement of Claim shall specify the relevant facts, the remedies sought, and whether a hearing is demanded.

(c) The Claimant shall deposit the sum of \$15 if the amount in controversy is \$1,000 or less, \$25 if the amount in controversy is more than \$1,000 but does not exceed \$2,500, \$100 if the amount in controversy is more than \$2,500 but does not exceed \$5,000, or \$200 if the amount in controversy is more than \$5,000 but does not exceed \$10,000 upon filing the Submission Agreement. The final disposition of this sum shall be determined by the arbitrator.

(d) The Director of Arbitration shall endeavor to serve promptly by mail or otherwise on the Respondent(s) one (1) copy of the Submission Agreement and one (1) copy of the Statement of Claim. Within twenty (20) calendar days from receipt of the Statement of Claim, Respondent(s) shall serve each party with an executed Submission Agreement and a copy of Respondent's Answer. Respondent's executed Submission Agreement and Answer shall also be filed with the Director of Arbitration with sufficient copies for the arbitrator(s) along with any deposit required under the schedule of fees. The Answer shall designate all available defenses to the Claim and may set forth any related Counterclaim and/or related Third-Party Claim the Respondent(s) may have against the Claimant or any other person. If the Respondent(s) has interposed a Third-Party Claim the Respondent(s) shall serve the Third-Party Respondent with an executed Submission Agreement, a copy of the original Claim filed by the Claimant. The Third-Party Respondent shall respond in the manner herein provided for response to the Claim. If the Respondent(s) files a related Counterclaim exceeding \$10,000, the arbitrator may refer the Claim, Counterclaim, and/or Third-Party Claim, if any, to a panel of three (3) or more arbitrators in accordance with Rule 9.8 of this Code, or he may dismiss the Counterclaim and/or Third-Party Claim, without prejudice to the Counterclaimant(s) and/or Third-Party Claimant(s) pursuing the Counterclaim and/or Third-Party in a separate proceeding. The costs to the Claimant under either proceeding shall in no event exceed \$200.

(e) All parties shall serve promptly by mail or otherwise on all other parties and the Director of Arbitration, with sufficient copies for the arbitrators, a copy of the Answer, Counter-claim, Third-Party Claim, or other responsive pleading, if any. The Claimant, if a Counterclaim is asserted against him, shall within ten (10) calendar days either (i) serve on each party a reply to any Counter-claim or, (ii) if the amount of the Counterclaim exceeds the Claim, shall have the right to file a statement withdrawing the Claim. If the Claimant withdraws the Claim, the proceedings shall be discontinued without prejudice to the rights of the parties.

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

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

(h) The arbitrator shall be authorized to require the submission of further documentary evidence as he, in his sole discretion, deems advisable.

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

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

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

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

Amended: 6-8-06 (SR-NSX-2006-03)

### **Rule 9.3. Hearing Requirements - Waiver of Hearing**

(a) Any dispute, claim or controversy, except as provided in Rule 9.2, shall require a hearing unless all parties waive such hearing in writing and request that the matter be resolved solely upon the pleadings and documentary evidence.

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

### **Rule 9.4. Time Limitation upon Submission**

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

### **Rule 9.5. Dismissal of Proceedings**

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

### **Rule 9.6. Settlements**

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

### **Rule 9.7. Tolling of Time Limitation(s) for the Institution of Legal Proceedings**

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

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

### **Rule 9.8. Designation of Number of Arbitrators**

(a)(1) In all arbitration matters involving public customers and non-ETP Holders where the matter in controversy exceeds \$10,000, or where the matter in controversy does not involve or disclose a money claim, the Director of Arbitration shall appoint an arbitration panel that shall consist of no less than three (3) arbitrators, at least a majority of whom shall not be from the securities industry, unless the public customer or non-ETP Holder requests a panel consisting of at least a majority from the securities industry.

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

(i.) Is a person associated with an ETP Holder, or broker-dealer, government securities broker, government securities dealer, municipal securities dealer, or registered investment advisor, or

(ii.) Has been associated with any of the above within the past three (3) years, or

(iii.) Is retired from any of the above, or

(iv.) Is an attorney, accountant, or other professional who devoted twenty (20) percent or more of his or her professional work effort to securities industry clients within the last two years.

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

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

### **Rule 9.9. Notice of Selection of Arbitrators**

The Director of Arbitration shall inform the parties of the arbitrators' names, employment histories for the past ten (10) years, as well as information disclosed pursuant to Rule 9.11, at least eight (8) business days prior to the date fixed for the first hearing session. A party may make further inquiry of the Director of Arbitration concerning an arbitrator's background. In the event that prior to the first hearing session,

any arbitrator should become disqualified, resign, die, refuse, or otherwise be unable to perform as an arbitrator, the Director of Arbitration shall appoint a replacement arbitrator to fill the vacancy on the panel. The Director of Arbitration shall inform the parties as soon as possible of the name and employment history of the replacement arbitrator for the past ten (10) years, as well as information disclosed pursuant to Rule 9.11. A party may make further inquiry of the Director of Arbitration concerning the replacement arbitrator's background and, within the time remaining prior to the first hearing session or the five (5) day period provided under Rule 9.10, whichever is shorter, may exercise its right to challenge the replacement arbitrator as provided in Rule 9.10.

#### **Rule 9.10. Peremptory Challenge**

In any arbitration proceeding, each party shall have the right to one peremptory challenge. In arbitrations where there are multiple Claimants, Respondents, and/or Third-Part Respondents, the Claimants shall have one peremptory challenge, the Respondents shall have one peremptory challenge and the Third-Party Respondents shall have one peremptory challenge, unless the Director of Arbitration determines that the interests of justice would best be served by awarding additional peremptory challenges. Unless extended by the Director of Arbitration, a party wishing to exercise a peremptory challenge must do so by notifying the Director of Arbitration in writing within five (5) business days of notification of the persons named to the panel. There shall be unlimited challenges for cause.

#### **Rule 9.11. Disclosures Required by Arbitrators**

(a) Each arbitrator shall be required to disclose to the Director of Arbitration any circumstances which might preclude such arbitrator from rendering an objective and impartial determination. Each arbitrator shall disclose:

(1) Any direct or indirect financial or personal interest in the outcome of the arbitration.

(2) Any existing or past financial, business, professional, family or social relationships that are likely to affect impartiality or that might reasonably create an appearance of partiality or bias. Persons requested to serve as arbitrators should disclose any such relationships that they personally have with any party or its counsel, or with any individual whom they have been told will be a witness. They should also disclose any such relationship involving members of their families, or their current employers, or their partners or business associates.

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

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

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

### **Rule 9.12. Disqualification or Other Disability of Arbitrators**

In the event that any arbitrator, after the commencement of the first hearing session but prior to the rendition of the award, should become disqualified, resign, die, refuse or otherwise be unable to perform as an arbitrator, the remaining arbitrator(s) may continue with the hearing and determination of the controversy unless such continuation is objected to by any party within five (5) days of notification of the vacancy on the panel. Upon objection, the Director of Arbitration shall appoint a new member to the panel to fill the vacancy. The Director of Arbitration shall inform the parties as soon as possible of the name and employment history for the past ten (10) years of the replacement arbitrator, as well as information disclosed pursuant to Rule 9.11. A party may further ask the Director of Arbitration about the replacement arbitrator's background and, within the time remaining prior to the next scheduled hearing session or the five (5) day period provided under Rule 9.10, whichever is shorter, may exercise its right to challenge the replacement arbitrator as provided in Rule 9.10.

### **Rule 9.13. Initiation of Proceedings**

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

(a) Statement of Claim.

The Claimant shall file with the Director of Arbitration an executed Submission Agreement, a Statement of Claim together with documents in support of the claim, and the required deposit. Sufficient additional copies of the Submission Agreement and the Statement of Claim and supporting documents shall be provided to the Director of Arbitration for each party and each arbitrator. The Statement of Claim shall specify the relevant facts and the remedies sought. The Director of Arbitration shall endeavor to serve promptly by mail or otherwise on the Respondent(s) one (1) copy of the Submission Agreement and one (1) copy of the Statement of Claim.

(b) Service and Filing with the Director of Arbitration.

For purposes of the Code of Arbitration Procedure, service may be effected by mail or other means of delivery. Service and filing are accomplished on the date of mailing either by first-class postage prepaid or by means of overnight mail service or, in the case of other means of service, on the date of delivery. Filing with the Director of Arbitration shall be made on the same date as service.

(c) Answer-Defenses, Counterclaims, and/or Cross-Claims.

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

- (4) The Claimant shall serve each party with a reply to a Counterclaim within ten (10) business days of receipt of an Answer containing a Counterclaim. The replay shall also be filed with the Director of Arbitration with sufficient additional copies for the arbitrator(s).
- (5) The Director of Arbitration may extend any period in this section (whether such be denominated as a Claim, Answer, Counter-claim, Cross- Claim, Reply, or Third-Party pleading).

(d) Joining and Consolidation - Multiple Parties.

- (1) With respect to any dispute, claim, or controversy submitted to arbitration, any party or person eligible to submit a claim under this Code shall have the right to proceed in the same arbitration against any other party or person upon any claim directly related to such dispute.
- (2) For purposes of this subsection, the Director of Arbitration shall be authorized to determine preliminarily whether a claim is directly related to the matter in dispute and to join any other party to the dispute and to consolidate the matter for hearing and award purposes. In arbitrations where there are multiple Claimants, Respondents, and/or Third Party Respondents, the Director of Arbitration shall be authorized to determine preliminary whether such parties should proceed in the same or separate arbitrations.
- (3) All final determinations with respect to joining, consolidation, and multiple parties under this subsection shall be made by the arbitration panel.

**Rule 9.14. Designation of Time and Place of Hearings**

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

**Rule 9.15. Representation by Counsel**

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



**Rule 9.16. Attendance at Hearings**

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

**Rule 9.17. Failure to Appear**

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

**Rule 9.18. Adjournments**

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

(b) A party requesting an adjournment after arbitrators have been appointed, if said adjournment is granted, shall pay a fee equal to the deposit of costs but not more than \$100. The arbitrators may waive this fee or, in their awards, may direct the return of this adjournment fee. This provision shall not apply to matters filed under Rule 9.2 of this Code.

**Rule 9.19. Acknowledgement of Pleadings**

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

**Rule 9.20. General Provision Governing A Pre-Hearing Proceeding**

(a) Requests for Documents and Information.

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

(b) Document Production and Information Exchange.

(1) Any party may serve a written request for information or documents ("information request") upon another party twenty (20) business days or more after service of the Statement of Claim by the Director of Arbitration or upon filing of the Answer, whichever is earlier. The requesting party shall serve the information request on all parties and file a copy with the Director of

Arbitration. The parties shall endeavor to resolve disputes regarding an information request prior to serving any objection to the request. Such efforts shall be set forth in the objection.

- (2) Unless a greater time is allowed by the requesting party, information requests shall be satisfied or objected to within thirty (30) calendar days from the date of service. Any objection to an information request shall be served by the objecting party on all parties and filed with the Director of Arbitration.
- (3) Any response to objections to information requests shall be served on all parties and filed with the Director of Arbitration and within ten (10) calendar days of receipt of the objection.
- (4) Upon the written request of a party who does not receive the sought information the matter will be referred by the Director of Arbitration to either a pre-hearing conference under paragraph (d) of this section or to a selected arbitrator under paragraph (e) of this section.

(c) Pre-Hearing Exchange.

At least ten (10) calendar days prior to the first scheduled hearing date, all parties shall serve on each other copies of documents in their possession they intend to present at the hearing and shall identify witnesses they intend to present at the hearing. The arbitrator(s) may exclude from the arbitration any documents not exchanged or witnesses not identified at that time. This paragraph does not require service of copies of documents or identification of witnesses that parties may use for cross-examination or rebuttal.

(d) Pre-Hearing Conference.

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

(e) Decisions by Selected Arbitrator.

The Director of Arbitration may appoint a single member of the Arbitration Panel to decide all unresolved issues referred to under this section. Such arbitrator shall be authorized to act on behalf of the panel to issue subpoenas, direct appearances of witnesses and production of documents, set deadlines and issue any other ruling which will expedite the arbitration proceeding or is necessary to permit any party to develop fully its case. Decisions under this paragraph shall be made based on the papers submitted by the parties, unless the arbitrator calls a hearing. The arbitrators may elect to refer any issue under this paragraph to the full panel.

(f) Subpoenas.

The arbitrator(s) and any counsel of record to the proceeding shall have the power of the subpoena process as provided by law. All parties shall be given a copy of the subpoena upon its issuance. The parties shall produce witnesses and present proofs to the fullest extent possible without resort to the subpoena process.

(g) Power to Direct Appearance and Production of Documents.

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

**Rule 9.21. Evidence**

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

**Rule 9.22. Interpretation of the Code**

The arbitrators shall be empowered to interpret and determine the applicability of all provisions under this Code. This interpretation shall be final and binding upon the parties.

**Rule 9.23. Determinations of Arbitrators**

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

**Rule 9.24. Record of Proceedings**

A verbatim record by a stenographic reporter or tape recording of all arbitration hearings shall be kept. If a party or parties elect to have the record transcribed, the party or parties making the request shall bear the cost of such transcription unless the arbitrators direct otherwise. The arbitrators may also direct that the record be transcribed.

If the record is transcribed at the request of any party, a copy shall be provided to the arbitrators.

**Rule 9.25. Oaths of the Arbitrators and Witness**

Prior to the commencement of the first session, an oath or affirmation shall be administered to the arbitrator(s). All testimony shall be under oath or affirmation.

**Rule 9.26. Amendments**

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

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

**Rule 9.27. Reopening of Hearings**

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

**Rule 9.28. Awards**

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

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

(c) The Director of Arbitration shall endeavor to serve a copy of the award:

(i) by registered or certified mail upon all parties or their counsel, at the address of record; or

(ii) by personally serving the award upon the parties; or

(iii) by filing or delivering the award in such a manner as may be authorized by law.

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

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

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

**Rule 9.29. Miscellaneous**

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

**Rule 9.30. Schedule of Fees for Customer Disputes**

(a) At the time of filing a Claim, Counterclaim, Third-Party Claim, or Cross-Claim, a party shall deposit with the self-regulatory organization the amount indicated below unless such deposit is specifically waived by the Director of Arbitration.

Amount in Dispute.....	Deposit
(Exclusive of interest and expenses)	
\$1,000 or less .....	\$15
Above \$1,000 but not exceeding \$2,500 .....	\$25
Above \$2,500 but not exceeding \$5,000 .....	\$100
Above \$5,000 but not exceeding \$10,000 .....	\$200
Above \$10,000 but not exceeding \$50,000 .....	\$400
Above \$50,000 but not exceeding \$100,000 .....	\$500
Above \$100,000 but not exceeding \$500,000 .....	\$750
Above \$500,000.....	\$1000

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

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

(c) The arbitrators, in their awards, may determine the amount chargeable to the parties as forum fees (fees) and shall determine who shall pay such fees. Forum fees chargeable to the parties shall be assessed on a per hearing basis, and the aggregate for each hearing

session may equal but shall not exceed the amount of the largest initial hearing deposit deposited by any party.

Amounts deposited by a party shall be applied against fees, if any. If the fees are not assessed against a party who had made a deposit, the deposit will be refunded. In addition to forum fees, the arbitrator(s) may determine in his awards the amount of costs incurred pursuant to Rules 9.18, 9.20, and 9.25 and, unless applicable law directs otherwise, other costs and expenses of the parties and arbitrator(s) that are within the scope of the agreement of the parties or otherwise is permitted by law. The arbitrator(s) shall determine who shall pay such costs.

(d) If the dispute, claim, or controversy does not involve or disclose a money claim, the amount to be deposited by the Claimant shall be \$200, or such amount as the Director of Arbitration or the panel of arbitrators may require, but shall not exceed \$1,000.

(e) If a matter has been submitted and thereafter is settled or withdrawn prior to the commencement of the first hearing session, the parties shall be entitled to a refund of all but \$100 of the amount deposited with the Exchange. This section shall not apply to claims filed under Rule 9.2 of this code.

(f) Any matter submitted and thereafter settled or withdrawn subsequent to the commencement of the first hearing session may be subject to such refund of assessed deposits, if any, as the panel of arbitrators presiding may determine.

(g) The arbitrators may assess forum fees and costs incurred pursuant to Rules 9.18, 9.20, and 9.26 in any matter settled or withdrawn subsequent to the commencement of the first sessions.

(h) The fee for pre-hearing conferences shall be 75 percent of the fees contained in subsection (a).

### **Rule 9.31. Requirements When Using Pre-Dispute Arbitration Agreements with Customers**

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

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

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

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

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

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

(5) The requirements of this section shall apply only to new agreements signed by an existing or new customer of an ETP Holder or ETP Holder organization after 120 days have elapsed from the date of Commission approval of this rule.

## **CHAPTER X. Adverse Action**

### **Rule 10.1. Scope of Chapter**

This Chapter provides the procedure for persons who are or are about to be aggrieved by adverse action, including, but not limited to, those persons who have been denied an ETP, barred from becoming associated with an ETP Holder, or prohibited or limited with respect to Exchange services (e.g., denial of admission of eligible securities to listing) or the services of any Exchange ETP Holder pursuant to any contractual arrangement, the By-Laws or the Rules of the Exchange (other than disciplinary action for which review is provided in Chapter VIII and other than an arbitration award, from which there is no Exchange review), to apply for an opportunity to be heard and to have the complained of action reviewed.

### **Rule 10.2. Submission and Time Limitation on Application to Exchange**

A person who is or will be 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 with the Secretary of the Exchange within 15 business days after being notified of such action. The application shall state the action complained of and the specific reasons why the applicant takes exception to such action and the relief sought. In addition, if the applicant intends to submit any additional

documents, statements, arguments or other material in support of the application, the same should be so stated and identified.

**Rule 10.3. Procedure Following Applications for Hearing**

(a) Panel.

Applications for hearing and reviewing shall be referred promptly by the Secretary of the Exchange to the Appeals Committee which promptly shall appoint a hearing panel of no fewer than three persons, at least one of whom shall be a member of the Appeals 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 proceedings at least 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. Hearings shall be held promptly, particularly in the case of a summary suspension pursuant to Chapter VII of these Rules.

(c) Notice.

Parties to the proceeding shall be informed of the composition of the panel by the Secretary at least 72 hours prior to the scheduled hearing.



#### **Rule 10.4. Hearing and Decision**

(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 which allegedly aggrieved the applicant.

(b) Counsel.

The applicant is entitled to be accompanied, represented and advised by counsel at all stages of the proceedings.

(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 also shall 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 decision of the panel shall be made in writing and shall be sent to the parties to the proceeding. Such decisions shall contain the reasons supporting the conclusions of the panel.

#### **Rule 10.5. Review**

(a) Petition.

The decision of the panel of the Appeals Committee shall be subject to review by the Board either on its own motion within 20 business days after issuance of the decision or upon written request submitted by the applicant below, by the President of the Exchange or by the Chairman of the committee whose action was subject to the review of the Appeals Committee, within 15 business 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 committee of the Board, shall 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 (which review is subject to ratification by the Board). 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. Based upon such record, the Board may affirm, reverse or modify, in whole or in part, the decision below. The decision of the Board shall be in writing and shall be sent to the parties to the proceeding.

#### **Rule 10.6. 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, by 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 Appeals Committee, the Board or its designated committee must be submitted to the Secretary of the Exchange.

#### **Rule 10.7. Agency Review**

Actions taken by the Exchange under this Chapter shall be subject to the review and action of any appropriate regulatory agency under the Act.

### **CHAPTER XI. Trading Rules**

#### **Rule 11.1. Hours of Trading**

(a) The Exchange shall open for the transaction of business during such hours as is determined by the Board, with notice to ETP Holders. The Exchange's pre-Regular Trading Hours trading session shall be from 8:00 a.m. until 9:30 a.m. Eastern Time. The Exchange's post-Regular Trading Hours trading session shall be from 4:00 p.m. until 5:00 p.m. Eastern Time.

(b) The Exchange will be open for the transaction of business on business days. The Exchange will not be open for business on the following holidays: New Years Day, Dr. Martin Luther King Jr. Day, Presidents Day, Good Friday, Memorial Day, Independence Day, Labor Day, Thanksgiving Day or Christmas. When any holiday observed by the Exchange falls on a Saturday, the Exchange will not be open for business on the preceding Friday. When any holiday observed by the Exchange falls on a Sunday, the Exchange will not be open for business on the following Monday, unless otherwise indicated by the Exchange.

(c) Customer Disclosures Outside of Regular Trading Hours. No ETP Holder may accept an order from a non-ETP Holder for execution outside of Regular Trading Hours without disclosing to such non-ETP Holder that extended hours trading involves material trading risks, including the possibility of lower liquidity, high volatility, changing prices, unlinked markets, an exaggerated effect from news announcements, wider spreads and any other relevant risk. The absence of an updated underlying index value or intraday indicative value is an additional trading risk in extended hours for UTP Derivative Security products.

The disclosures required pursuant to this Rule 11.1(c) may take the following form or such other form as provides substantially similar information:

1. Risk of Lower Liquidity. Liquidity refers to the ability of market participants to buy and sell securities. Generally, the more orders that are available in a market, the greater the liquidity. Liquidity is important because with greater liquidity it is easier for investors to buy or sell securities, and as a result, investors are more likely to pay or receive a competitive price for securities purchased or sold. There may be lower liquidity in extended hours trading as compared to Regular Trading Hours. As a result, your order may only be partially executed, or not at all.

2. Risk of Higher Volatility. Volatility refers to the changes in price that securities undergo when trading. Generally, the higher the volatility of a security, the greater its price swings. There may be greater volatility in extended hours trading than in Regular Trading Hours. As a result, your order may only be partially executed, or not at all, or you may receive an inferior price in extended hours trading than you would during Regular Trading Hours.

3. Risk of Changing Prices. The prices of securities traded in extended hours trading may not reflect the prices either at the end of Regular Trading Hours, or upon the opening of the next morning. As a result, you may receive an inferior price in extended hours trading than you would during Regular Trading Hours.

4. Risk of Unlinked Markets. Depending on the extended hours trading system or the time of day, the prices displayed on a particular extended hours system may not reflect the prices in other concurrently operating extended hours trading systems dealing in the same securities. Accordingly, you may receive an inferior price in one extended hours trading system than you would in another extended hours trading system.

5. Risk of News Announcements. Normally, issuers make news announcements that may affect the price of their securities after Regular Trading Hours. Similarly, important financial information is frequently announced outside of Regular Trading Hours. In extended hours trading, these announcements may occur during trading, and if combined with lower liquidity and higher volatility, may cause an exaggerated and unsustainable effect on the price of a security.

6. Risk of Wider Spreads. The spread refers to the difference in price between what you can buy a security for and what you can sell it for. Lower liquidity and higher volatility in extended hours trading may result in wider than normal spreads for a particular security.

7. Risk of Lack of Calculation or Dissemination of Underlying Index Value or Intraday Indicative Value ("IIV"). For certain UTP Derivative Security products, an updated underlying index value or IIV may not be calculated or publicly disseminated in extended trading hours. Since the underlying index value and IIV are not calculated or widely disseminated outside of Regular Trading Hours, an investor who is unable to calculate implied values for certain UTP Derivative Security products in those sessions may be at a disadvantage to market professionals.

(d) Reporting of Transactions Outside of Regular Trading Hours. Trades on the Exchange executed and reported outside of Regular Trading Hours shall be designated as .T trades.

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*Interpretations and Policies*

.01 Cessation of Trading on the Exchange: The Exchange shall cease trading on the System as of February 1, 2017. All Exchange Rules will remain in full force and effect through and after February 1, 2017.

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**Rule 11.2. Units of Trading**

A normal unit of trading shall constitute one hundred (100) shares unless otherwise designated by the Exchange. A "round lot" shall mean a normal unit of trading. An "odd lot" shall mean any amount less than a round lot. A "mixed lot" shall mean any amount greater than a round lot that is not a multiple of such round lot.

**Rule 11.3. Price Variations**

(a) Bids, offers, orders or indications of interests in securities traded on the Exchange shall not be made in an increment smaller than:

(i) \$0.01 if those bids, offers, orders or indications of interests are priced equal to or greater than \$1.00 per share; or

(ii) \$0.0001 if those bids, offers, orders or indications of interests are priced less than \$1.00 per share; or

(iii) Any other increment established by the Commission for any security which has been granted an exemption from the minimum price increments requirements of SEC Rule 612(a) or 612(b).

(b) Except as provided in Rule 11.12(c) or (d), Crosses executed in accordance with Rule 11.12 must improve each side of the Top of Book by at least \$0.01 per share. No Crosses may be executed in increments smaller than those permitted by Rule 11.3(a), except for (i) Midpoint Crosses (as defined in Rule 11.12(c)), which may be executed in increments as little as one-half the minimum increment permitted by Rule 11.3(a); (ii) Clean Crosses that comply with the requirements of Rule 11.12(d); and (iii) any other Cross that complies with the requirements of Rule 11.12(b).

(c) Notwithstanding subsection (a) above, a Zero Display Reserve Order that is pegged to the midpoint of the Protected BBO in accordance with Rule 11.11(c)(2) may be executed in sub-pennies if necessary to obtain a midpoint price. For securities priced less than \$1.00 per share, if a midpoint execution would result in an execution at an impermissible trading increment, the System will round, to the nearest increment allowed in Rule 11.3(a), the execution price up for any Zero Display Reserve Order to buy and down for any Zero Display Reserve Order to sell posted to the NSX Book.

#### **Rule 11.4. Securities Eligible for Trading**

The Exchange shall designate securities for trading. Any class of securities listed or admitted to unlisted trading privileges on the Exchange pursuant to Chapter XV of these Rules shall be eligible to become designated for trading on the Exchange. All securities designated for trading are eligible for odd-lot, round-lot and mixed-lot executions, unless otherwise indicated by the Exchange or limited pursuant to these Rules.

#### **Rule 11.5. Registration of Market Makers**

(a) No ETP Holder shall act as a Market Maker in any security unless such ETP Holder is registered as a Market Maker in such security by the Exchange pursuant to this Rule and the Exchange has not suspended or cancelled such registration. Registered Market Makers are designated as dealers on the Exchange for all purposes under the Act and the rules and regulations thereunder.

(b) An applicant for registration as a Market Maker shall file an application in writing on such form as the Exchange may prescribe. Applications shall be reviewed by the Exchange, which shall consider such factors including, but not limited to capital operations, personnel, technical resources, and disciplinary history. Each Market Maker must have and maintain minimum net capital of at least the amount required under Rule 15c3-1 of the Act.

(c) An applicant's registration as a Market Maker shall become effective upon receipt by the ETP Holder of notice of an approval of registration by the Exchange.

(d) The registration of a Market Maker may be suspended or terminated by the Exchange if the Exchange determines that:

(1) The Market Maker has substantially or continually failed to engage in dealings in accordance with Rule 11.8 or elsewhere in these Rules;

(2) The Market Maker has failed to meet the minimum net capital conditions set forth under paragraph (b) above; or

(3) The Market Maker has failed to maintain fair and orderly markets.

(e) Any registered Market Maker may withdraw its registration by giving written notice to the Exchange. The Exchange may require a certain minimum prior notice period for withdrawal, and may place such other conditions on withdrawal and re-registration following withdrawal, as it deems appropriate in the interests of maintaining fair and orderly markets.

(f) Any person aggrieved by any determination under this Rule or Rules 11.6 or 11.7 below may seek review under Chapter X of Exchange Rules governing adverse action.

#### **Rule 11.6. Obligations of Market Maker Authorized Traders**

(a) General. MMATs are permitted to enter orders only for the account of the Market Maker for which they are registered.

(b) Registration of Market Maker Authorized Traders. The Exchange may, upon receiving an application in writing from a Market Maker on a form prescribed by the Exchange, register a Person as a MMAT, subject to the eligibility criteria described below.

(1) MMATs may be officers, partners, employees or other Persons Associated with ETP Holders that are registered with the Exchange as Market Makers.

(2) To be eligible for registration as a MMAT, a Person must successfully complete the Securities Trader Examination (Series 57) and such other training and/or certification programs as may be required by the Exchange and must register in CRD.

(3) The Exchange may require a Market Maker to provide any and all additional information the Exchange deems necessary to establish whether registration should be granted.

(4) The Exchange may grant a person conditional registration as a MMAT subject to any conditions it considers appropriate in the interests of maintaining a fair and orderly market.

(5) A Market Maker must ensure that a MMAT is properly qualified to perform market making activities, including but not limited to ensuring the MMAT has met the requirements set forth in paragraph (b)(2) of this Rule.

(c) Suspension or Withdrawal of Registration.

(1) The Exchange may suspend or withdraw the registration previously given to a person to be a MMAT if the Exchange determines that:

(A) the person has caused the Market Maker to fail to comply with the securities laws, rules and regulations or the By-Laws, Rules and procedures of the Exchange;

(B) the person is not properly performing the responsibilities of a MMAT;

(C) the person has failed to meet the conditions set forth under paragraph (b) above; or

(D) the MMAT has failed to maintain fair and orderly markets.

(2) If the Exchange suspends the registration of a person as a MMAT, the Market Maker must not allow the person to submit orders into the System.

(3) The registration of a MMAT will be withdrawn upon the written request of the ETP Holder for which the MMAT is registered. Such written request shall be submitted on the form prescribed by the Exchange.

#### **Rule 11.7. Registration of Market Makers in a Security**

(a) A Market Maker may become registered in a newly authorized security or in a security already admitted to dealings on the Exchange by filing a security registration form with the Exchange. Registration in the security shall become effective on the first business day following the Exchange's approval of the registration, unless otherwise provided by the Exchange. In considering the approval of the registration of the Market Maker in a security, the Exchange may consider:

(1) the financial resources available to the Market Maker;

(2) the Market Maker's experience, expertise and past performance in making markets, including the Market Maker's performance in other securities;

(3) the Market Maker's operational capability;

(4) the maintenance and enhancement of competition among Market Makers in each security in which they are registered;

(5) the existence of satisfactory arrangements for clearing the Market Maker's transactions;

(6) the character of the market for the security, e.g., price, volatility, and relative liquidity.

(b) **Voluntary Termination of Security Registration.** A Market Maker may voluntarily terminate its registration in a security by providing the Exchange with a written notice of such termination. The Exchange may require a certain minimum prior notice period for such termination, and may place such other conditions on withdrawal and re-registration following withdrawal, as it deems appropriate in the interests of maintaining fair and orderly markets. A Market Maker that fails to give advanced written notice of termination to the Exchange may be subject to formal disciplinary action pursuant to Chapter VIII of these Rules.

(c) The Exchange may suspend or terminate any registration of a Market Maker in a security or securities under this Rule whenever the Exchange determines that:

(1) The Market Maker has not met any of its obligations as set forth in these Rules;  
or

(2) The Market Maker has failed to maintain fair and orderly markets.

A Market Maker whose registration is suspended or terminated pursuant to this Rule 11.7(c) may seek review under Chapter X of Exchange Rules governing adverse action.

(d) Nothing in this Rule will limit any other power of the Exchange under the By-Laws, Rules, or procedures of the Exchange with respect to the registration of a Market Maker or in respect of any violation by a Market Maker of the provisions of this Rule.

### **Rule 11.8. Obligations of Market Makers**

(a) **General.** ETP Holders who are registered as Market Makers in one or more securities traded on the Exchange must engage in a course of dealings for their own account to assist in the maintenance, insofar as reasonably practicable, of fair and orderly markets on the Exchange in accordance with these Rules. The responsibilities and duties of a Market Maker specifically include, but are not limited to, the following:

#### (1) Quotation Requirements and Obligations

(A) **Two-Sided Quote Obligation.** For each security in which an ETP Holder is registered as a Market Maker, the ETP Holder shall be willing to buy and sell such security for its own account on a continuous basis during Regular Trading Hours and shall enter and maintain a two-sided trading interest ("Two-Sided Obligation") that is identified to the Exchange as the interest meeting the obligation and is displayed in the NSX Book at all times. Interest eligible to be considered as part of a Market Maker's



Two-Sided Obligation shall have a displayed quotation size of at least one normal unit of trading (or a larger multiple thereof); provided, however, that a Market Maker may augment its Two-Sided Obligation size to display limit orders priced at the same price as the Two-Sided Obligation. After an execution against its Two-Sided Obligation, a Market Maker must ensure that additional trading interest exists in the Exchange to satisfy its Two-Sided Obligation either by immediately entering new interest to comply with this obligation to maintain continuous two-sided quotations or by identifying existing interest on the Exchange book that will satisfy this obligation.

(B) Pricing Obligations. For NMS stocks (as defined in Rule 600 under Regulation NMS) a Market Maker shall adhere to the pricing obligations established by this Rule during Regular Trading Hours.

(i) Bid Quotations. At the time of entry of bid interest satisfying the Two-Sided Obligation, the price of the bid interest shall be not more than the Designated Percentage (as defined below) away from the then current national best bid, or if no national best bid, not more than the Designated Percentage away from the last reported sale from the responsible single plan processor. In the event that the national best bid (or if no national best bid, the last reported sale) increases to a level that would cause the bid interest of the Two-Sided Obligation to be more than the Defined Limit (as defined below) away from the national best bid (or if no national best bid, the last reported sale), or if the bid is executed or cancelled, the Market Maker shall enter new bid interest at a price not more than the Designated Percentage away from the then current national best bid (or if no national best bid, the last reported sale), or identify to the Exchange current resting interest that satisfies the Two-Sided Obligation.

(ii) Offer Quotations. At the time of entry of offer interest satisfying the Two-Sided Obligation, the price of the offer interest shall be not more than the Designated Percentage away from the then current national best offer, or if no national best offer, not more than the Designated Percentage away from the last reported sale received from the responsible single plan processor. In the event that the national best offer (or if no national best offer, the last reported sale) decreases to a level that would cause the offer interest of the Two-Sided Obligation to be more than the Defined Limit away from the national best offer (or if no national best offer, the last reported sale), or if the offer is executed or cancelled, the Market Maker shall enter new offer interest at a price not more than the Designated Percentage away from the then current national best offer (or if no national best offer, the last reported sale), or identify to the Exchange current resting interest that satisfies the Two-Sided Obligation.

(iii) National Best Bid and Offer. The national best bid and offer shall be determined by the Exchange in accordance with its procedures for determining protected quotations under Rule 600 under Regulation NMS.

(iv) “Designated Percentage”. For purposes of this Rule, the “Designated Percentage” shall be 8% for securities subject to Rule 11.20B(a)(1), 28% for securities subject to Rule 11.20B(a)(2), and 30% for securities subject to Rule 11.20B(a)(3) (or

comparable rules of another exchange), except that between 9:30 a.m. and 9:45 a.m. and between 3:35 p.m. and the close of trading, when Rule 11.20B is not in effect, the Designated Percentage shall be 20% for securities subject to Rule 11.20B(a)(1), 28% for securities subject to Rule 11.20B(a)(2), and 30% for securities subject to Rule 11.20B(a)(3).

(v) “Defined Limit”. For purposes of this Rule, the “Defined Limit” shall be 9.5% for securities subject to Rule 11.20B(a)(1), 29.5% for securities subject to Rule 11.20B(a)(2), and 31.5% for securities subject to Rule 11.20B(a)(3) (or comparable rules of another exchange), except that between 9:30 a.m. and 9:45 a.m. and between 3:35 p.m. and the close of trading, when Rule 11.20B is not in effect, the Defined Limit shall be 21.5% for securities subject to Rule 11.20B(a)(1), 29.5% for securities subject to Rule 11.20B(a)(2), and 31.5% for securities subject to Rule 11.20B(a)(3).

(vi) Nothing in this Rule shall preclude a Market Maker from quoting at price levels that are closer to the national best bid and offer than the levels required by this Rule.

(2) Remain in good standing with the Exchange and in compliance with all Exchange Rules applicable to it;

(3) Inform the Exchange of any material change in financial or operational condition or in personnel;

(4) Maintain a current list of MMATs who are permitted to enter orders on behalf of the Market Maker and provide an updated version of this list to the Exchange upon any change in MMATs; and

(5) Clear and settle transactions through the facilities of a registered clearing agency. This requirement may be satisfied by direct participation, use of direct clearing services, or by entry into a correspondent clearing arrangement with another ETP Holder that clears trades through such agency.

(b) A Market Maker must satisfy the responsibilities and duties as set forth in paragraph (a) of this Rule during trading hours on all days in which the Exchange is open for business.

(c) A Market Maker shall be responsible for the acts and omissions of its MMATs.

(d) If the Exchange finds any substantial or continued failure by a Market Maker to engage in a course of dealings as specified in paragraph (a) of this Rule, such Market Maker will be subject to disciplinary action or suspension or revocation of the registration by the Exchange in one or more of the securities in which the Market Maker is registered. Nothing in this Rule will limit any other power of the Exchange under the By-Laws, Rules, or procedures of the Exchange with respect to the registration of a Market Maker or in respect of any violation by a Market Maker of the provisions of this

Rule. Any ETP Holder aggrieved by any determination under this Rule may seek review under Chapter X of the Exchange Rules governing adverse action.

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

### **Rule 11.9. Access**

(a) *General.* The System shall be available for entry and execution of orders by Users with authorized access. To obtain authorized access to the System, each User must enter into a User Agreement with the Exchange in such form as the Exchange may provide (“User Agreement”).

(b) *Sponsored Participants.* A Sponsored Participant may obtain authorized access to the System only if such access is authorized in advance by one or more Sponsoring ETP Holders as follows:

(1) Sponsored Participants must enter into and maintain customer agreements with one or more Sponsoring ETP Holders establishing proper relationship(s) and account(s) through which the Sponsored Participant may trade on the System. Such customer agreement(s) must incorporate the Sponsorship Provisions set forth in paragraph (2) below.

(2) For a Sponsored Participant to obtain and maintain authorized access to the System, a Sponsored Participant and its Sponsoring ETP Holder must agree in writing to the following Sponsorship Provisions:

(A) Sponsored Participant and its Sponsoring ETP Holder must have entered into and maintained a User Agreement with the Exchange. The Sponsoring ETP Holder must designate the Sponsored Participant by name in its User Agreement as such.

(B) Sponsoring ETP Holder acknowledges and agrees that:

(i) All orders entered by the Sponsored Participants and any person acting on behalf of or in the name of such Sponsored Participant and any executions occurring as a result of such orders are binding in all respects on the Sponsoring ETP Holder,

(ii) Sponsoring ETP Holder is responsible for any and all actions taken by such Sponsored Participant and any person acting on behalf of or in the name of such Sponsored Participant, and

(iii) Sponsoring ETP Holder shall pay when due all amounts, if any, payable to the Exchange or any other third parties that arise from the Sponsored Participants access to and use of the System. Such amounts include, but are not limited to applicable exchange and regulatory fees.

(C) Sponsoring ETP Holder shall comply with the Exchange's Articles of Incorporation, By-Laws, Rules and procedures, and Sponsored Participant shall comply with the Exchange's Articles of Incorporation, By-Laws, Rules and procedures, as if Sponsored Participant were an ETP Holder.

(D) Sponsored Participant shall maintain, keep current and provide to the Sponsoring ETP Holder, and to the Exchange upon request, a list of Authorized Traders who may obtain access to the System on behalf of the Sponsored Participant. Sponsored Participant shall be subject to the obligations of Rule 11.10 with respect to such Authorized Traders.

(E) Sponsored Participant shall familiarize its Authorized Traders with all of the Sponsored Participant's obligations under this Rule and will assure that they receive appropriate training prior to any use or access to the System.

(F) Sponsored Participant may not permit anyone other than Authorized Traders to use or obtain access to the System.

(G) Sponsored Participant shall take reasonable security precautions to prevent unauthorized use or access to the System, including unauthorized entry of information into the System, or the information and data made available therein. Sponsored Participant understands and agrees that Sponsored Participant is responsible for any and all orders, trades and other messages and instructions entered, transmitted or received under identifiers, passwords and security codes of Authorized Traders, and for the trading and other consequences thereof.

(H) Sponsored Participant acknowledges its responsibility to establish adequate procedures and controls that permit it to effectively monitor its employees, agents and customers' use and access to the System for compliance with the terms of this agreement.

(3) The Sponsoring ETP Holder must provide the Exchange with a written statement in form and substance acceptable to the Exchange acknowledging its responsibility for the orders, executions and actions of its Sponsored Participant at issue.

#### **Rule 11.10. Authorized Traders**

(a) An ETP Holder shall maintain a list of ATs who may obtain access to the System on behalf of the ETP Holder or the ETP Holder's Sponsored Participants. The ETP Holder shall update the list of ATs as necessary. ETP Holders must provide the list of ATs to the Exchange upon request.

(b) An ETP Holder must have reasonable procedures to ensure that all ATs comply with all Exchange Rules and all other procedures related to the System.

(c) An ETP Holder must suspend or withdraw a person's status as an AT if the Exchange has determined that the person has caused the ETP Holder to fail to comply with the Rules of the Exchange and the Exchange has directed the ETP Holder to suspend or withdraw the person's status as an AT.

(d) An ETP Holder must have reasonable procedures to ensure that the ATs maintain the physical security of the equipment for accessing the facilities of the Exchange to prevent the improper use or access to the systems, including unauthorized entry of information into the systems.

(e) Each ETP Holder shall register all Authorized Traders with the Exchange in CRD. To be eligible to register as an Authorized Trader of an ETP Holder, a Person must pass the Securities Trader Examination (Series 57) and any other training and/or certification programs as may be required by the Exchange.

#### **Rule 11.11. Orders and Modifiers**

Users may enter into the System the types of orders listed in this Rule 11.11, subject to the limitations set forth in this Rule or elsewhere in these Rules.

(a) *General Order Types.*

(1) Market Order. An order to buy or sell a stated amount of a security that is to be executed at the best price obtainable when the order reaches the Exchange. A market order that is designated as "NSX Only" will be cancelled if when reaching the Exchange, it cannot be executed in accordance with Rule 11.15(a)(i) on the System. Market orders that are not designated as "NSX Only" and that cannot be executed in accordance with Rule 11.15(a)(i) on the System when reaching the Exchange will be eligible for routing away pursuant to Rule 11.15.

(2) Limit Order. An order to buy or sell a stated amount of a security at a specified price or better. A "marketable" limit order is a limit order to buy (sell) at or above (below) the Protected NBBO offer (bid) for the security.

(b) *Time-in-Force.* Limit orders must have one of the following time-in-force terms.

(1) Immediate-or-Cancel ("IOC") Order. A limit order that is to be executed in whole or in part as soon as such order is received, and the portion not so executed is to be treated as cancelled. An order designated as IOC is not eligible for routing away pursuant to Rule 11.15.

(2) Day Order. A limit order to buy or sell which, if not executed, expires at the closing of Regular Trading Hours. Any Day Order entered into the System before the

opening of business on the Exchange as determined pursuant to Rule 11.1, or after the closing of Regular Trading Hours, will be rejected.

(3) Day + Order. A limit order to buy or sell which, if not executed, expires at the closing of business on the Exchange (as determined pursuant to Rule 11.1) on the day on which it was entered. Any Day + Order entered into the System before the opening of business or after the closing of business on the Exchange as determined pursuant to Rule 11.1 will be rejected.

(4) Any limit orders entered with a “Good ‘til Cancel” (GTC) or similar time-in-force term will be automatically converted into Day Orders.

(5) Any limit orders entered with a “Good ‘til Extended Hours” (GTX) or similar time-in-force term will be automatically converted into Day + Orders.

*(c) Other Types of Orders and Order Modifiers.*

(1) Self Trade Prevention Order Modifier. Any incoming order designated with an STP modifier will be prevented from executing against a resting opposite side order also designated with an STP modifier and originating from the same FIX session identifier (“FIX ID”), party identifier (“Party ID”) or client identifier (“MPID”) (any such identifier, a “Unique Identifier”). The STP modifier on the incoming (new) order controls the interaction between two orders marked with STP modifiers.

(A) STP Reject New Order (“STPN”). An incoming (new) order marked with the “STPN” modifier will not execute against opposite side resting interest marked with any STP modifier originating from the same Unique Identifier. The incoming order marked with the STPN modifier will be rejected back to the originating User(s). The resting order marked with an STP modifier will remain on the NSX Book.

(B) STP Cancel Old (Resting) Order (“STPO”). An incoming (new) order marked with the “STPO” modifier will not execute against opposite side resting interest marked with any STP modifier originating from the same Unique Identifier. The resting order marked with the STP modifier will be cancelled back to the originating User(s). The incoming order marked with the STPO modifier will remain on the NSX Book.

(C) STP Cancel Both (“STPB”). An incoming (new) order marked with the “STPB” modifier will not execute against opposite side resting interest marked with any STP modifier originating from the same Unique Identifier. The entire size of both orders will be rejected/cancelled back to the originating User(s).

(2) Reserve Order. A limit order with a portion of the quantity displayed (“display quantity”) and with a reserve portion of the quantity (“reserve quantity”) that is not displayed.

(A) A User may enter a Reserve Order with zero display quantity, in which case the Reserve Order will be known as a “Zero Display Reserve Order.” The price of a Zero Display Reserve Order may be set (“pegged”) to track the buy-side of the Protected BBO, the sell-side of the Protected BBO, or the midpoint of the Protected BBO. A pegged Zero Display Reserve Order which tracks the inside quote of the opposite side of the market is defined as a Market Peg; a pegged Zero Display Reserve Order that tracks the midpoint is defined as a Midpoint Peg; and a pegged Zero Display Reserve Order that tracks the inside quote of the same side of the market is defined as a Primary Peg. A pegged Zero Display Reserve Order may have an optional limit price cap beyond which the order shall not be executed. Notwithstanding the above, in accordance with Rule 11.24, Market Peg, Primary Peg or Midpoint Peg Zero Display Orders that would be “pegged” to a price outside of the Price Bands disseminated by the Processor (as defined in Rule 11.24(b)), will instead be “pegged” to the upper or lower Price Band, respectively (i.e., a buy order to the upper Price Band and a sell order to the lower Price Band). Under Rule 11.24(d)(2), a User may indicate to the Exchange, on an order-by-order basis, to not peg the order to the upper or lower Price Band, respectively. In such case, the System will reject the order if it is priced outside of the Price Band.

(B) For Market Peg and Midpoint Peg Zero Display Reserve Orders, a User may enter an optional minimum transaction quantity instruction of at least a round lot for an execution (hereinafter “Minimum Execution Quantity”). Orders with the Minimum Execution Quantity instruction will not execute unless the minimum quantity can be satisfied. However, if the residual shares of a Zero Display Reserve Order with a Minimum Execution Quantity instruction is less than the Minimum Execution Quantity on the order, the order may be executed even if the resulting execution is an odd lot.

(C) A Zero Display Reserve Order, pegged or otherwise, may be designated as a Post Only Order by a User. A Zero Display Reserve Order with a Minimum Execution Quantity instruction will be deemed a Post Only Order regardless of whether the order is designated as a Post Only Order.

(D) Zero Display Reserve Orders will not be eligible for routing to away Trading Centers pursuant to Rule 11.15(a)(ii). In addition, as further specified in Rule 11.15(a)(iv)(B), Zero Display Reserve Orders will not be eligible for execution when a protected bid is priced higher than a protected offer in a NMS stock (i.e., crossed market) or if indicated by the User on an order-by order basis, when the protected bid is equal to the protected offer (i.e., a locked market). In such cases, the Zero Display Reserve Order would remain posted on the NSX Book until the protected bid is priced lower than the protected offer (i.e., uncrossed or unlocked market), or is cancelled by the User.

(E) Reserved.

(3) Odd Lot Order. An order to buy or sell an odd lot. Odd Lot Orders are only eligible to be protected quotations if aggregated to form a round lot.

(4) Mixed Lot Order. An order to buy or sell a mixed lot. Mixed Lot Orders may be entered, but the odd lot component of a Mixed Lot Order will be treated for purposes of order interaction as an Odd Lot Order. Odd lot components of Mixed Lot Orders are only eligible to be protected quotations if aggregated to form a round lot.

(5) Post Only Order. A limit order that is to be posted on the Exchange and not routed away to another trading center.

(A) A Post Only Order that is not a Zero Display Reserve Order will be rejected without execution if it is immediately marketable against round-lot orders when entered.

(B) A Post Only Order that is a Zero Display Reserve Order and which would interact immediately with a contra-side round lot order will:

(i) execute against a contra-side round lot order if the contra-side order is a Zero Display Reserve Order that is not designated as a Post Only Order. Upon execution, the contra-side Zero Display Reserve Order (which was not designated as a Post Only Order) will be deemed as taking liquidity from the Post Only Order that is a Zero Display Reserve Order and be liable for the applicable fee for taking liquidity that is set forth in the NSX Fee and Rebate Schedule even if the contra-side Zero Display Reserve Order was placed in the NSX Book prior to the Post Only Order that is a Zero Display Reserve Order;

(ii) not execute against a contra-side round lot order if (x) the contra-side order is a displayed order that is already contained in the NSX Book or (y) the contra-side order is another Post Only Order that is a Zero Display Reserve Order that is already contained in the NSX Book. The Post Only Order that is a Zero Display Reserve Order will instead be placed in the NSX Book.

(6) NSX Only Order. An order that is to be executed on the Exchange pursuant to Rule 11.15(a) or cancelled, without routing away to another trading center.

(7) Sweep Order. A limit order that instructs the System to “sweep” the market.

(i) Sweep Orders may be designated as “Protected Sweep,” “Full Sweep,” or “Destination Sweep.” Sweep Orders not carrying any such designation shall be treated as Protected Sweep Orders.

(A) A Protected Sweep Order will be converted into one or more limit orders with sizes equal to the order sizes in the NSX Book and the order sizes of protected quotations at away trading centers to be executed in accordance with Rule 11.15(b).

(B) A Full Sweep Order will be converted into one or more limit orders with sizes equal to the sizes of the best available quotations (including manual quotations) in the NSX Book and at away trading centers in accordance with Rule 11.15(b).



(C) A Destination Sweep Order will be routed to an away trading center specified by the User, after the order is exposed to the NSX Book.

(ii) When entering a Protected Sweep Order or Full Sweep Order, Users shall designate the Sweep Order as “Sweep and Post,” “Sweep and Cancel,” or a combination thereof.

(A) Any unfilled portion of a Sweep Order designated “Sweep and Post” following the market sweep described in subsection (i) above will be converted into a Post Only Order.

(B) Any unfilled portion of a Sweep Order designated “Sweep and Cancel” after the completion of the market sweep described in subsection (i) above will be cancelled.

(iii) Any order converted from a Protected Sweep Order or Full Sweep Order for routing to other trading centers or for execution against the NSX Book shall be marked as an intermarket sweep order or “ISO”.

(iv) Upon the effective date of the Regulation NMS Plan to Implement a Tick Size Pilot, described in Rule 11.26, the Exchange will reject all Sweep Orders entered into the System.

(8) Intermarket Sweep Order (“ISO”).

(i) Incoming ISO. The System will accept incoming intermarket sweep orders (as such term is defined in Regulation NMS) from other trading centers. In order to be eligible for treatment as an intermarket sweep order, the order must be marked “ISO,” and the User entering the order must simultaneously route one or more additional limit orders marked “ISO,” as necessary, to away markets to execute against the full displayed size of any protected quotation for the security with a price that is superior to the limit price of the intermarket sweep order entered in the System. Such orders, if they meet the requirements of the foregoing sentence, will be considered immediate-or-cancel (IOC) and will be executed without regard to protected quotations at away markets consistent with Regulation NMS.

(ii) Post ISO. A User may designate an ISO as a “Post ISO.” In order to be eligible for treatment as a Post ISO, the order must be marked “Post ISO,” and in submitting such an order the User entering the order represents that such User has simultaneously routed one or more additional limit orders marked “ISO,” as necessary, to away markets to execute against the full displayed size of any protected quotation for the security with a price that is superior or equal to the limit price of the Post ISO entered in the System. Such order, if it meets the requirements of the foregoing sentence and is not a Post Only Order pursuant to Rule 11.11(c)(5), will be executed without regard to protected quotations at away markets consistent with Regulation NMS by sweeping the NSX Book up to and including its limit price. A Post ISO which is designated by the

User as a Post Only Order pursuant to Rule 11.11(c)(5) will be rejected without execution if, when entered, it is immediately marketable against displayed orders in the NSX Book. Any unfilled portion of a Post ISO that meets the requirements of Rule 11.22(d)(3) will be posted at the entered limit price.

(9) Destination Specific Order. A market or limit order that instructs the System to route the order to a specified away trading center, after exposing the order to the NSX Book. Users can access markets offering bids and offers other than protected quotations (i.e., manual quotations) by entering a Destination Specific Order. A Destination Specific Order must have an order type and a time-in-force term permitted by this Rule 11.11. Upon the effective date of the Regulation NMS Plan to Implement a Tick Size Pilot, described in Rule 11.26, the Exchange will reject all Destination Specific Orders entered into the System.

(10) Reserved.

(11) Auto-Ex Order. A limit or market order that is automatically executed by the System against any marketable contra side order as in the manner described in 11.13(b)(1).

(12) Midpoint-Seeker Order. A Midpoint-Seeker Order is an IOC that will execute only against undisplayed orders on the NSX Book that are priced at or better than the midpoint between the Protected BBO. A Midpoint Seeker order may include an optional limit price cap beyond which the order shall not execute. The Midpoint-Seeker Order will be cancelled if there are no undisplayed posted orders priced at or better than the midpoint of the Protected BBO or when the Protected BBO is locked or crossed. A Midpoint-Seeker Order will never be routed to an away market. A Midpoint-Seeker Order cannot be combined with any other order type or order type modifier offered by the Exchange.

(13) Reserved.

(d) *Cancel/Replace Messages*. A User may, by appropriate entry in the System, cancel or replace an existing order entered by the User, subject to the following limitations.

(1) Orders may only be cancelled or replaced if the order has a time-in-force term other than IOC and if the order has not yet been executed.

(2) If an order has been routed to another trading center, the order will be placed in a "Cancel Pending" state until the routing process is completed. Executions that are completed when the order is in the "Cancel Pending" state will be processed normally.

(3) Only the price and quantity terms of the order may be changed by a Replace Message. If a User desires to change any other terms of an existing order the existing order must be cancelled and a new order must be entered.

(4) Notwithstanding anything to the contrary in these Exchange Rules, no cancellation or replacement of an order will be effective until the User has received written confirmation of the cancellation or replacement from the Exchange.

(e) Cancellation of Orders By NSX or NSX Securities

The Exchange, NSX Securities or a third-party routing broker may cancel orders as deemed to be necessary to maintain fair and orderly markets if and when systems, technical or operational issues occur at the Exchange, NSX Securities or a third-party routing broker, or a Trading Center. A routing broker may only cancel orders routed to another Trading Center based on NSX's standing or specific instructions or as otherwise provided in the Exchange Rules. The Exchange shall provide notice of the cancellation of orders to each affected ETP Holder via telephonic communication and/or electronic mail as soon as practicable.

*Interpretations and Policies*

.01 For purposes of clarity under Rule 11.11(d)(iii), the term “quantity term” shall include the total and display portion of a Reserve Order (as defined in Rule 11.11(c)(2)), including in cases where the aggregate size of the Reserve Order is not changed.

**Rule 11.12. Reserved**

**Rule 11.13. Proprietary and Agency Orders**

(a) Except as otherwise provided in these Rules, Users may enter proprietary orders and agency orders for the account of a customer. Proprietary orders accepted by the System from Users are subject to the same ranking and execution processes as agency orders. A User that enters a proprietary order into the System shall mark the order with the appropriate designator to identify the order as proprietary. All agency orders shall be designated as such and with each agency order, the User shall include a unique account number or other identifier that enables the User to identify the User’s customer on whose behalf the order is being entered.

(b) Reserved.

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*Interpretations and Policies*

.01 Reserved.

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**Rule 11.14. Priority of Orders**

(a) *Ranking.* Orders of Users shall be ranked and maintained in the NSX Book based on the following priority:

(1) The highest-priced order to buy (or lowest-priced order to sell) shall have priority over all other orders to buy (or orders to sell) in all cases.

(2) Where orders to buy (or sell) are made at the same price, the order clearly established as the first entered into the System at such particular price shall have precedence at that price, up to the number of shares of stock specified in the order, provided that the priority between displayed and Reserve orders is set forth in subsection (4) below. A cancel and replace of an order in accordance with Rule 11.11(d) will result in a new timestamp and change in time priority unless such modification involves a decrease in the size of the order.

(3) In the event that less than the full size of an order is executed, the unexecuted size of the order shall retain priority at the same limit price in accordance with paragraphs (1) and (2) above.

(4) The displayed quantity of a Reserve Order shall have time priority as of the time of display. If the displayed quantity of the Reserve Order is decremented such that 99 shares or fewer would be displayed, the displayed portion of the Reserve Order shall be refreshed for (i) the original displayed quantity, or (ii) the entire reserve quantity, if the remaining reserve quantity is smaller than the original displayed quantity. After the refresh, the displayed portion of the Reserve Order shall have time priority as of the time of the refresh. The reserve quantity of a Reserve Order shall have no time priority against other displayed orders at the same price until displayed. If all displayed orders and displayed portions of Reserve Orders at a given price are executed, and following such execution any marketable contra-side orders remain outstanding, then such contra-side orders shall be executed against the reserve portions of Reserve Orders at such price based on the time priority as determined by this paragraph (4). For purposes of the preceding sentence, a Zero Display Reserve Order without a Minimum Execution Quantity instruction will be deemed to have a displayed portion equal to one round lot. A Zero Display Reserve Order with a Minimum Execution Quantity instruction will be deemed to have a displayed portion equal to its Minimum Execution Quantity for the first pass, and for each additional pass, will be deemed to have a displayed portion equal to one round lot. A Zero Display Order that is not executed during a period in which the protected bid is higher than the protected offer (i.e., crossed market) or when the protected bid is equal to the protected offer (i.e., a locked market) as set forth in Rule 11.15(a)(iv)(B) shall retain the same time priority as established above. Following satisfaction of the marketable contra-side orders, the NSX Book will be refreshed.

(b) *Dissemination.* The best-ranked order(s) to buy and the best-ranked order(s) to sell in the NSX Book and the aggregate displayed size of such orders associated with

such prices shall be collected and made available to quotation vendors for dissemination pursuant to the requirements of Rule 602 of Regulation NMS.

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### *Interpretations and Policies*

.01 The use of a Replace Message pursuant to Rule 11.11(d) that modifies the quantity of a Reserve Order (as defined in Rule 11.11(c)(2)) will result in a new timestamp and the order losing time priority under Rule 11.14(a)(2) unless:

(i) both (1) the display size of the Reserve Order is decreased and (2) the total order quantity is decreased or remains the same; or

(ii) both the display size of the Reserve Order remains the same and the total order quantity is decreased.

### **Rule 11.15. Order Execution**

Orders shall be matched for execution by following this Rule. For any execution to occur during Regular Trading Hours, however, the price must be equal to or better than the Protected NBBO, unless the order is marked ISO or unless the execution falls within another exception set forth in Rule 611(b) of Regulation NMS, and the order must be executable in accordance with Rule 11.24. The Exchange intends to take advantage of the self-help provisions of Regulation NMS.

#### *(a) Orders Other than Sweep Orders.*

(i) *Execution against NSX Book.* An incoming order (other than a Sweep Order) shall first attempt to be matched for execution against orders in the NSX Book. An incoming order to buy (other than a Sweep Order) will be automatically executed to the extent that it is priced at an amount that equals or exceeds any order to sell in the NSX Book. Such order to buy shall be executed at the price(s) of the lowest order(s) to sell having priority in the NSX Book. An incoming order to sell (other than a Sweep Order) will be automatically executed to the extent that it is priced at an amount that equals or is less than any other order to buy in the NSX Book. Such order to sell shall be executed at the price(s) of the highest order(s) to buy having priority in the NSX Book.

(ii) *Routing to Away Trading Centers.* Unless the terms of the order direct otherwise, if an order (other than a Sweep Order) has not been executed in its entirety pursuant to paragraph (a)(i) of this Rule, the order shall be eligible for routing away as follows:

(A) The order will be converted into one or more limit IOC Orders, as necessary, to be matched for potential execution at the away Trading Centers designated by Routing Logic. Each such converted limit order shall be priced as follows:

(1) if the original order is a market order, the converted limit order shall be priced at the price of the protected quotation that it is to be matched for execution against; or

(2) if the original order is a limit order, the converted limit order shall be priced at

(x) in the case of a buy order, the lower of the limit price of the original order and one increment lower than the lowest offer on the NSX Book; or

(y) in the case of a sell order, the higher of the limit price of the original order and one increment higher than the highest bid on the NSX Book.

(B) Each converted limit IOC Order will be routed to the designated Trading Center for potential execution according to the Routing Logic. No orders routed away pursuant to this subsection (ii) shall be marked ISO.

(C) The Exchange reserves the right to modify the Routing Logic at any time without notice.

(iii) Following steps (i) and (ii) above, unless the terms of the order direct otherwise, any unfilled portion of the order originally entered into the System shall be ranked in the NSX Book in accordance with the terms of such order under Rule 11.14 and such order shall be eligible for execution under this Rule 11.15.

(iv) Zero Display Reserve Orders. Notwithstanding the foregoing:

(A) A Zero Display Reserve Order designated as a Post Only Order that is immediately marketable upon entry, but not executed pursuant to Rule 11.11(c)(5)(B), will be ranked in the NSX Book in accordance with Rule 11.14. Thereafter, it will be matched for execution in accordance with Rule 11.15, except that when matched for execution, if the price of such order is better (i.e. higher for a buy order and lower for a sell order) than the contra-side of the Protected BBO, such order will be deemed to be priced at the price of the contra-side of the Protected BBO.

(B) The System will not execute a Zero Display Reserve Order in an NMS stock when a protected bid is priced higher than a protected offer (i.e., crossed market), or if indicated by the User on an order-by order basis, when the protected bid is equal to the protected offer (i.e., a locked market). Zero Display Reserve Orders that are not executed during this period will retain time priority in accordance with Rule 11.14(a)(4), and a request to cancel or replace a Zero Display Order during this period will be handled pursuant to Rule 11.11(9)(d). The System will resume executing Zero Display Reserve Orders against marketable contra-side orders when the protected bid is priced lower than the protected offer.

(b) *Sweep Orders.*

(i) *Protected Sweep Orders.* A Protected Sweep Order will be matched for execution in the NSX Book in accordance with paragraph (a)(i), and will simultaneously be converted into one or more additional limit orders, as necessary, with sizes equal to the size of each protected quotation that is superior (or in the case of a Protected Sweep Order designated “Sweep and Post”, superior or equal) to the limit price of the Protected Sweep Order. Each converted limit order will be routed to the applicable trading center for execution. If a limit order that has been converted from a Protected Sweep Order cannot be executed against the protected quotation that it was routed to execute against because the protected quotation is no longer available, the limit order will be available for execution against other orders in the applicable market that are priced the same as or better than such limit order.

(ii) *Full Sweep Orders.* A Full Sweep Order will be matched for execution in the NSX Book in accordance with paragraph (a)(i), and will simultaneously be converted into one or more additional limit orders, as necessary, with sizes equal to the size of each quotation available at an away trading center that (A) is the best bid or offer of a national securities exchange or association, and (B) is superior (or, in the case of a Full Sweep Order designated “Sweep and Post”, superior or equal) to the limit price of the Full Sweep Order. Each converted limit order will be routed to the applicable trading center for execution. If a limit order that has been converted from a Full Sweep Order cannot be executed against the quotation that it was routed to execute against because the quotation is no longer available, the limit order will be available for execution against other orders in the applicable market that are priced the same as or better than such limit order.

(iii) *Destination Sweep Orders.* A Destination Sweep Order will be matched for execution in the NSX Book in accordance with paragraph (a)(i), and if it cannot be matched for execution in accordance with paragraph (a)(i), will be routed to the specified away trading center for execution.

(iv) Any order converted from a Protected Sweep Order or Full Sweep Order for routing to other trading centers or for execution against the NSX Book shall be marked as an intermarket sweep order or “ISO”.

(v) Following the steps described above, any unfilled portion of the Sweep Order will either be cancelled or ranked in the NSX Book in accordance with the terms of the Sweep Order.

(c) *Special Rules for Orders Routed to Other Trading Centers.*

(i) An order that is routed away may be executed in whole or in part subject to the applicable trading rules of the relevant trading center. While an order remains outside the System, it shall have no time standing, relative to other orders received from Users at the same price which may be executed against the NSX Book. Requests from Users to cancel their orders while the order is routed away to another trading center and remains outside the System shall be processed, subject to the applicable trading rules of the relevant trading center.

(ii) Where an order or portion of an order is routed away and is not executed either in whole or in part at the other trading center (*i.e.*, all attempts at the fill are declined or timed-out), the order shall be ranked in the NSX Book in accordance with the terms of such order under Rule 11.14 and such order shall be eligible for execution under this Rule 11.15, unless the terms of the order provide otherwise.

(d) *Display of Automated Quotations.* The System will be operated as an “automated market center” within the meaning of Regulation NMS, and in furtherance thereof, will display “automated quotations” within the meaning of Regulation NMS at all times except in the event that a systems malfunction renders the System incapable of displaying automated quotations. The Exchange shall communicate to ETP Holders its procedures concerning a change from automated to manual quotations.

(e) *Market Access.* In addition to Rule 2.11 regarding routing to away trading centers, NSX Securities has, pursuant to Rule 15c3-5 under the Act, implemented certain tests designed to manage applicable risks associated with providing ETP Holders with access to away trading centers. Where, pursuant to policies and procedures designed by NSX Securities to comply with Rule 15c3-5, in NSX Securities’ sole discretion, an order or series of orders is deemed to violate applicable pre-trade requirements under Rule 15c3-5, NSX Securities will reject such orders prior to routing and/or seek to cancel any such orders that have been routed.

#### **Rule 11.16. Trade Execution and Reporting**

(a) Executions occurring as a result of orders matched against the NSX Book shall be reported by the Exchange to an appropriate consolidated transaction reporting system to the extent required by the Act and the rules and regulations thereunder. Executions occurring as a result of orders routed away from the System shall be reported to an appropriate consolidated transaction reporting system by the relevant reporting trading center. The Exchange shall promptly notify Users of all executions of their orders as soon as such executions take place.

(b) Following the compliance date for Rule 611 of Regulation NMS, the Exchange shall identify all trades executed pursuant to an exception or exemption from Rule 611 of Regulation NMS in accordance with specifications approved by the operating committee of the relevant national market system plan for an NMS stock. If a trade is executed pursuant to both the intermarket sweep order exception of Rule 611(b)(5) or (b)(6) of Regulation NMS and the self help exception of Rule 611(b)(1) of Regulation NMS, such trade shall be identified as executed pursuant to the intermarket sweep order exception.

#### **Rule 11.17. Clearance and Settlement**

(a) Each ETP Holder must either (1) be a member of a Qualified Clearing Agency, or (2) clear transactions executed on the Exchange through another ETP Holder that is a member of a Qualified Clearing Agency. If an ETP Holder clears transactions through another ETP Holder that is a member of a Qualified Clearing Agency (“clearing



member”), such clearing member shall affirm to the Exchange in writing, through letter of authorization, letter of guarantee or other agreement acceptable to the Exchange, its agreement to assume responsibility for clearing and settling any and all trades executed by the ETP Holder designating it as its clearing firm. The rules of any such clearing agency shall govern with respect to the clearance and settlement of any transactions executed by the ETP Holder on the Exchange.

(b) Each transaction executed within the System shall be automatically processed for clearance and settlement on a locked-in basis.

(c) Except as required by any Qualified Clearing Agency, the Exchange will reveal the identity of an ETP Holder or ETP Holder's clearing firm in the following circumstances:

(1) for regulatory purposes or to comply with an order of a court or arbitrator; or

(2) when a Qualified Clearing Agency ceases to act for an ETP Holder or the ETP Holder's clearing firm, and determines not to guarantee the settlement of the ETP Holder's trades.

#### **Rule 11.18. Limitation of Liability**

(a) Neither the Exchange nor its agents, employees, contractors, officers, directors, committee members or affiliates (“Exchange Related Persons”) shall be liable to any user or ETP Holder, or successors, representatives or customers thereof, or any persons associated therewith, for any loss, damages, claim or expense:

(1) growing out of the use or enjoyment of any facility of the Exchange, including, without limitation, the System; or

(2) arising from or occasioned by any inaccuracy, error or delay in, or omission of or from the collection, calculation, compilation, maintenance, reporting or dissemination of any information derived from the System or any other facility of the Exchange, resulting either from any act or omission by the Exchange or any Exchange Related Person, or from any act condition or cause beyond the reasonable control of the Exchange or any Exchange Related Person, including, but not limited to, flood, extraordinary weather conditions, earthquake or other acts of God, fire, war, terrorism, insurrection, riot, labor dispute, accident, action of government, communications or power failure, or equipment or software malfunction.

(b) Each ETP Holder expressly agrees, in consideration of the issuance of the ETP, to release and discharge the Exchange and all Exchange Related Persons of and from all claims and damages arising from their acceptance and use of the facilities of the Exchange (including, without limitation, the System).

(c) Neither the Exchange nor any Exchange Related Person makes any express or implied warranties or conditions to users as to results that any person or party may obtain from the System for trading or for any other purpose, and all warranties of merchantability or fitness for a particular purpose or use, title, and non-infringement with respect to the System are hereby disclaimed.

(d)(1) Notwithstanding the provisions of paragraph (a) above, and subject to the express limits set forth below, whenever a valid unexecuted order is entered by an ETP Holder into the Exchange's System and the receipt of such order is acknowledged by the Exchange, the Exchange's liability for a loss sustained by an ETP Holder as a result of a failure of the Exchange's systems or facilities, as defined below, or for the negligent acts or omissions of Exchange employees in connection with such order, shall be subject to the provisions of this paragraph (d) and no assets of the Exchange shall be applied or shall be subject to such liability in excess of the limits set forth below.

(2) An Exchange system failure is defined as an actual malfunction in the physical equipment and/or programming in the Exchange's systems or facilities that results in an incorrect execution or no execution of a valid, marketable order that was received and acknowledged by Exchange systems.

(3) As to any one or more claims made by a single ETP Holder under this rule on a single trading day, the Exchange shall not be liable in excess of the greater of \$100,000 or the amount of any recovery obtained by the Exchange under any applicable insurance maintained by the Exchange.

(4) As to the aggregate of all claims made by all ETP Holders under this rule on a single trading day, the Exchange shall not be liable in excess of the greater of \$250,000 or the amount of any recovery obtained by the Exchange under any applicable insurance maintained by the Exchange.

(5) As to the aggregate of all claims made by all ETP Holders under this rule during a single calendar month, the Exchange shall not be liable in excess of the greater of \$500,000 or the amount of any recovery obtained by the Exchange under any applicable insurance maintained by the Exchange.

(6) In the event that all of the claims made under this rule cannot be fully satisfied because in the aggregate they exceed the applicable maximum limitations provided in this rule, then the maximum permitted amount will be proportionally allocated among all such claims arising during a single trading day or single calendar month based on the proportion that each such claim bears to the total amount of all such claims.

(7) All claims for compensation pursuant to this rule shall be in writing and must be submitted no later than the close of Regular Trading Hours on the next business day following the day on which the system failure or the negligent acts or omissions of the Exchange's employees gave rise to such claims.

(8) In reviewing claims made by ETP Holders pursuant to this paragraph (d), the Exchange will verify that: (i) a valid order was entered by the ETP Holder and accepted and acknowledged by the Exchange's System; (ii) an Exchange system failure or a negligent act or omission by an Exchange employee occurred during the handling or execution of that order; and (iii) that the ETP Holder's loss resulted from such system failure or negligent act or omission. The Exchange will assess the extent to which the ETP Holder's conduct may have contributed to the loss and may adjust the amount to be paid on the claim by the Exchange.

### **Rule 11.19. Clearly Erroneous Executions**

The provisions of paragraphs (c), (e)(2), (g), and (h) of this Rule, as amended on September 10, 2010, and the provisions of paragraphs (j) and (l), shall be in effect during a pilot period to coincide with the pilot period for the Limit Up-Limit Down Plan, including any extensions to the pilot period for the Plan. If the Plan is not either extended or approved as permanent, the prior versions of paragraphs (c), (e)(2), (g), and (h) shall be in effect, and the provisions of paragraph (j) through (l) shall be null and void.

(a) *Definition.* For purposes of this Rule, the terms of a transaction executed on the Exchange are "clearly erroneous" when there is an obvious error in any term, such as price, number of shares or other unit of trading, or identification of the security. A transaction made in clearly erroneous error and cancelled by both parties or determined by the Exchange to be clearly erroneous will be removed from the Consolidated Tape.

(b) *Request and Timing of Review.* An ETP Holder that receives an execution on an order that was submitted erroneously to the Exchange for its own or customer account may request that the Exchange review the transaction under this Rule. An officer or such other employee designee of the Exchange ("Officer") shall review the transaction under dispute and determine whether it is clearly erroneous, with a view toward maintaining a fair and orderly market and the protection of investors and the public interest. Such request for review shall be made in writing via e-mail or other electronic means specified from time to time by the Exchange in a circular distributed to ETP Holders.

(1) *Requests for Review.* Requests for review must be received within thirty (30) minutes of execution time and shall include information concerning the time of the transaction(s), security symbol(s), number of shares, price(s), side (bought or sold) and factual basis for believing that the trade is clearly erroneous. Upon receipt of a timely filed request that satisfies the numerical guidelines set forth in Section (c)(1) of this Rule, the counterparty to the trade shall be notified by the Exchange as soon as practicable, but generally within thirty (30) minutes after the Exchange's receipt of the request for review. An Officer may request additional supporting written information to aid in the resolution of the matter. If requested, each party to the transaction shall provide, within thirty (30) minutes of the request, any supporting written information. Either party to the disputed trade may request the supporting written information provided by the other party on the matter.

(2) *Routed Executions.* Other market centers will generally have an additional thirty (30) minutes from receipt of their participant's timely filing, but no longer than sixty (60) minutes from the time of the execution at issue, to file with the Exchange a request for review of transactions routed to the Exchange from that market center and executed on the Exchange.

(c) *Thresholds.* Determinations of whether an execution is a clearly erroneous execution will be made as follows:

(1) *Numerical Guidelines.* Subject to the provisions of paragraph (c)(3) below, a transaction executed during Regular Trading Hours or outside Regular Trading Hours shall be found to be clearly erroneous if the price of the transaction to buy (sell) that is the subject of the complaint is greater than (less than) the Reference Price by an amount that equals or exceeds the Numerical Guidelines set forth below. The execution time of the transaction under review determines whether the threshold is Regular Trading Hours or outside Regular Trading Hours. The Reference Price will be equal to the consolidated last sale immediately prior to the execution(s) under review except for: (A) Multi-Stock Events involving twenty or more securities, as described in Rule 11.19(c)(2) below; and (B) in other circumstances, such as, for example, relevant news impacting a security or securities, periods of extreme market volatility, sustained illiquidity, or widespread system issues, where use of a different Reference Price is necessary for the maintenance of a fair and orderly market and the protection of investors and the public interest.

Reference Price, Circumstance or Product:	Regular Trading Hours Numerical Guidelines (Subject transaction's % difference from the Reference Price):	Outside Regular Trading Hours Numerical Guidelines (Subject transaction's % difference from the Reference Price):
Greater than \$0.00 up to and including \$25.00	10%	20%
Greater than \$25.00 up to and including \$50.00	5%	10%
Greater than \$50.00	3%	6%
Multi-Stock Event – Filings involving five or more but less than twenty, securities whose executions occurred within a period of five minutes or less	10%	10%
Multi-Stock Event – Filings involving twenty or more securities whose executions occurred	30%, subject to the terms of 11.19(c)(2) below	30%, subject to the terms of 11.19(c)(2) below

within a period of five minutes or less		
Leveraged ETF/ETN securities	Regular Trading Hours Numerical Guidelines multiplied by the leverage multiplier (i.e., 2x)	Regular Trading Hours Numerical Guidelines multiplied by the leverage multiplier (i.e., 2x)

(2) *Multi-Stock Events Involving Twenty or More Securities.* During Multi-Stock Events involving twenty or more securities the number of affected transactions may be such that immediate finality is necessary to maintain a fair and orderly market and to protect investors and the public interest. In such circumstances, the Exchange may use a Reference Price other than consolidated last sale. To ensure consistent application across market centers when this paragraph is invoked, the Exchange will promptly coordinate with the other market centers to determine the appropriate review period, which may be greater than the period of five minutes or less that triggered application of this paragraph, as well as select one or more specific points in time prior to the transactions in question and use transaction prices at or immediately prior to the one or more specific points in time selected as the Reference Price. The Exchange will nullify as clearly erroneous all transactions that are at prices equal to or greater than 30% away from the Reference Price in each affected security during the review period selected by the Exchange and other markets consistent with this paragraph.

(3) *Additional Factors.* Except in the context of a Multi-Stock Event involving five or more securities, and individual stock trading pauses pursuant to, or with respect to securities defined in, Rule 11.20B(a)(1) as described in Rule 11.19(c)(4) below, an Officer may also consider additional factors to determine whether an execution is clearly erroneous, including but not limited to, system malfunctions or disruptions, volume and volatility for the security, derivative securities products that correspond to greater than 100% in the direction of a tracking index, news released for the security, whether trading in the security was recently halted/resumed, whether the security is an IPO, whether the security was subject to a stock-split, reorganization, or other corporate action, overall market conditions, Opening and Late Session executions, validity of the Consolidated Tape's trades and quotes, consideration of primary market indications, and executions inconsistent with the trading pattern of the security. Each additional factor shall be considered with a view toward maintaining a fair and orderly market and the protection of investors and the public interest.

(d) *Outlier Transactions.* In the case of an Outlier Transaction, an Officer may in his or her sole discretion, and on a case-by-case basis, consider requests received pursuant to subsection (b) of this Rule after thirty (30) minutes, but not longer than sixty (60) minutes, after the transaction in question, depending on the facts and circumstances surrounding such request.

(1) "Outlier Transaction" means a transaction where:

(A) the execution price of the security is greater than three times the current Numerical Guidelines set forth in subsection (c)(1) of this Rule, or

(B) the execution price of the security in question is not within the Outlier Transaction parameters set forth in subsection (d)(1)(A) of this Rule but breaches the 52-week high or 52-week low, the Exchange may consider Additional Factors as outlined in 11.19(c)(3), in determining if the transaction qualifies for further review or if the Exchange shall decline to act.

(e) *Review Procedures*

(1) *Determination by Officer.* Unless both parties (or party, in the case of a cross) to the disputed transaction agree to withdraw the initial request for review, the transaction under dispute shall be reviewed, and a determination shall be rendered by the Officer. If the Officer determines that the transaction is not clearly erroneous, the Officer shall decline to take any action in connection with the completed trade. In the event that the Officer determines that the transaction in dispute is clearly erroneous, the Officer shall declare the transaction null and void. A determination shall be made generally within thirty (30) minutes of the Exchange's receipt of the complaint, but in no case later than the start of Regular Trading Hours on the following trading day. The parties shall be promptly notified of the determination.

(2) *Appeal to CEE Panel.* If a party affected by a determination made under this Rule so requests within the time permitted below, the Clearly Erroneous Execution Panel ("CEE Panel") will review decisions made by the Officer under this Rule, including whether a clearly erroneous execution occurred and whether the correct determination was made; provided however, that the CEE Panel will not review decisions made by an Officer under subsection (g) of this Rule if such Officer also determines under subsection (g) of this Rule that the number of the affected transactions is such that immediate finality is necessary to maintain a fair and orderly market and to protect investors and the public interest and further provided that with respect to rulings made by the Exchange in conjunction with one or more additional market centers, the number of affected transactions is similarly such that immediate finality is necessary to maintain a fair and orderly market and to protect investors and the public interest and, hence, are also non-appealable.

(A) The CEE Panel will be comprised of the Exchange's Chief Regulatory Officer ("CRO"), or a designee of the CRO, and representatives from two (2) ETP Holders.

(B) The Exchange shall designate the ETP Holder representatives to be called upon to serve on the CEE Panel as needed. In no case shall a CEE 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 CEE Panel on an equally frequent basis.

(C) A request for review on appeal must be made via e-mail within thirty (30) minutes after the party making the appeal is given notification of the initial determination being appealed. The CEE Panel 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 between 3:00 ET and the close of trading in the Late Trading Session, a decision will be rendered as soon as practicable, but in no case later than the trading day following the date of the execution under review.

(D) The CEE Panel may overturn or modify an action taken by the Officer under this Rule. All determinations by the CEE Panel shall constitute final action by the Exchange on the matter at issue.

(E) If the CEE Panel votes to uphold the decision made pursuant to Rule 11.19 (e)(1), the Exchange will assess a \$500.00 fee against the ETP Holder(s) who initiated the request for appeal.

(F) Any determination by an Officer or by the CEE Panel shall be rendered without prejudice as to the rights of the parties to the transaction to submit their dispute to arbitration.

(f) *Abuse of Process.* An abuse of the process described in subsections (b) and (e)(2) above may subject the abusing User to disciplinary action under Chapter VIII.

(g) *System Disruption or Malfunctions.* In the event of any disruption or a malfunction in or operation of any electronic communications and trading facilities of the Exchange in which the nullification of transactions may be necessary for the maintenance of a fair and orderly market or the protection of investors and the public interest exist, an officer of the Exchange or other senior level employee designee, on his or her own motion, may review such transactions and declare such transactions arising out of or operation of such facilities during such period null and void. In such events, the officer of the Exchange or such other senior level employee designee will rely on the provisions of Section (c)(1)–(3) of this Rule, but in extraordinary circumstances may also use a lower Numerical Guideline if necessary to maintain a fair and orderly market, protect investors and the public interest. Absent extraordinary circumstances, any such action of the officer of the Exchange or such other senior level employee designee pursuant to this subsection (g) shall be taken within thirty (30) minutes of detection of the erroneous transaction. When extraordinary circumstances exist, any such action of the officer of the Exchange or such other senior level employee designee must be taken by no later than the start of Regular Trading Hours on the day following the date of execution(s) under review. Each ETP Holder involved in the transaction shall be notified as soon as practicable, and the ETP Holder aggrieved by the action may appeal such action in accordance with the provisions of subsection (e)(2).

(h) *Officer of the Exchange or Such Other Senior Level Employee Designee Acting On Own Motion.* An officer of the Exchange or such other senior level employee designee, acting on his/her own motion, may review potentially erroneous executions and

declare trades null and void or shall decline to take any action in connection with the completed trade(s). In such events, the officer of the Exchange or such other senior level employee designee will rely on the provisions of Section (c)(1)–(4) of this Rule. Absent extraordinary circumstances, any such action of the officer of the Exchange or such other senior level employee designee shall be taken in a timely fashion, generally within thirty (30) minutes of the detection of the erroneous transaction. When extraordinary circumstances exist, any such action of the officer of the Exchange or such other senior level employee designee must be taken by no later than the start of Regular Trading Hours on the trading day following the date of execution(s) under review. When such action is taken independently, each party involved in the transaction shall be notified as soon as practicable by the Exchange, and the party aggrieved by the action may appeal such action in accordance with the provisions of subsection (e)(2) above.

(i) *Trade Nullification for UTP Securities that are Subject of Initial Public Offerings ("IPOs")*. Pursuant to SEC Rule 12f-2, as amended, the Exchange may extend unlisted trading privileges to a security that is the subject of an initial public offering when at least one transaction in the subject security has been effected on the national securities exchange or association upon which the security is listed and the transaction has been reported pursuant to an effective transaction reporting plan. A clearly erroneous error may be deemed to have occurred in the opening transaction of the subject security if the execution price of the opening transaction on the Exchange is the lesser of \$1.00 or 10% away from the opening price on the listing exchange or association. In such circumstances, the officer of the Exchange or such other senior level employee designee shall declare the opening transaction null and void or shall decline to take action in connection with the completed trade(s). Clearly erroneous executions of subsequent transactions of the subject security will be reviewed in the same manner as the procedure set forth in (e)(1). Absent extraordinary circumstances, any such action of the officer of the Exchange or such other senior level employee designee pursuant to this subsection (i) shall be taken in a timely fashion, generally within thirty (30) minutes of the detection of the erroneous transaction. When extraordinary circumstances exist, any such action of the officer of the Exchange or such other senior level employee designee must be taken by no later than the start of Regular Trading Hours on the day following the date of execution(s) under review. Each party involved in the transaction shall be notified as soon as practicable by the Exchange, and the party aggrieved by the action may appeal such action in accordance with the provisions of subsection (e)(2) above.

(j) *Securities Subject to Limit Up-Limit Down Plan*. For purposes of this paragraph, the phrase “Limit Up-Limit Down Plan” or “Plan” shall mean the Plan to Address Extraordinary Market Volatility Pursuant to Rule 608 of Regulation NMS under the Act. The provisions of paragraphs (a) through (i) above and (k) and (l) below shall govern all Exchange transactions, including transactions in securities subject to the Plan, other than as set forth in this paragraph (j). If as a result of an Exchange technology or systems issue any transaction occurs outside of the applicable price bands disseminated pursuant to the Plan, an Officer of the Exchange or senior level employee designee, acting on his or her own motion or at the request of a third party, shall review and declare any such trades null and void. Absent extraordinary circumstances, any such action of the Officer



of the Exchange or other senior level employee designee shall be taken in a timely fashion, generally within thirty (30) minutes of the detection of the erroneous transaction. When extraordinary circumstances exist, any such action of the Officer of the Exchange or other senior level employee designee must be taken by no later than the start of Regular Trading Hours on the trading day following the date on which the execution(s) under review occurred. Each Member involved in the transaction shall be notified as soon as practicable by the Exchange, and the party aggrieved by the action may appeal such action in accordance with the provisions of paragraph (e)(2) above. In the event that a single plan processor experiences a technology or systems issue that prevents the dissemination of price bands, the Exchange will make the determination of whether to nullify transactions based on paragraphs (a) through (i) above and (k) and (l) below.

(k) *Multi-Day Event.* A series of transactions in a particular security on one or more trading days may be viewed as one event if all such transactions were effected based on the same fundamentally incorrect or grossly misinterpreted issuance information resulting in a severe valuation error for all such transactions (the “Event”). An Officer of the Exchange or senior level employee designee, acting on his or her own motion, shall take action to declare all transactions that occurred during the Event null and void not later than the start of trading on the day following the last transaction in the Event. If trading in the security is halted before the valuation error is corrected, an Officer of the Exchange or senior level employee designee shall take action to declare all transactions that occurred during the Event null and void prior to the resumption of trading. Notwithstanding the foregoing, no action can be taken pursuant to this paragraph with respect to any transactions that have reached settlement date or that result from an initial public offering of a security. To the extent transactions related to an Event occur on one or more other market centers, the Exchange will promptly coordinate with such other market center(s) to ensure consistent treatment of the transactions related to the Event, if practicable. Any action taken in connection with this paragraph will be taken without regard to the Numerical Guidelines set forth in this Rule. Each ETP Holder involved in a transaction subject to this paragraph shall be notified as soon as practicable by the Exchange, and the party aggrieved by the action may appeal such action in accordance with the provisions of paragraph (e)(2) above.

(l) *Trading Halts.* In the event of any disruption or malfunction in the operation of the electronic communications and trading facilities of the Exchange, another market center or responsible single plan processor in connection with the transmittal or receipt of a regulatory trading halt, suspension or pause, an Officer of the Exchange or senior level employee designee, acting on his or her own motion, shall nullify any transaction in a security that occurs after the primary listing market for such security declares a regulatory trading halt, suspension or pause with respect to such security and before such regulatory trading halt, suspension or pause with respect to such security has officially ended according to the primary listing market. In addition, in the event a regulatory trading halt, suspension or pause is declared, then prematurely lifted in error and is then re-instituted, an Officer of the Exchange or senior level employee designee shall nullify transactions that occur before the official, final end of the halt, suspension or pause according to the primary listing market. Any action taken in connection with this

paragraph shall be taken in a timely fashion, generally within thirty (30) minutes of the detection of the erroneous transaction and in no circumstances later than the start of Regular Trading Hours on the trading day following the date of execution(s) under review. Any action taken in connection with this paragraph will be taken without regard to the Numerical Guidelines set forth in this Rule. Each ETP Holder involved in a transaction subject to this paragraph shall be notified as soon as practicable by the Exchange, and the party aggrieved by the action may appeal such action in accordance with the provisions of paragraph (e)(2) above.

### **Rule 11.20. Trading Halts and Pauses**

#### **A. Trading Halts Marketwide Due to Extraordinary Market Volatility**

This Rule shall be in effect during a pilot period to coincide with the pilot period for the Regulation NMS Plan to Address Extraordinary Market Volatility. If the pilot is not either extended or approved permanently at the end of the pilot period, the prior version of Rule 11.20A shall be in effect.

(a) The Exchange shall halt trading in all stocks and shall not reopen for the time periods specified in this Rule if there is a Level 1, 2, or 3 Market Decline.

(1) For purposes of this Rule, a Market Decline means a decline in price of the S&P 500® Index between 9:30 a.m. and 4:00 p.m. Eastern Time on a trading day as compared to the closing price of the S&P 500® Index for the immediately preceding trading day. The Level 1, Level 2, and Level 3 Market Declines that will be applicable for the trading day will be publicly disseminated before 9:30 a.m. Eastern Time.

(2) A “Level 1 Market Decline” means a Market Decline of 7%.

(3) A “Level 2 Market Decline” means a Market Decline of 13%.

(4) A “Level 3 Market Decline” means a Market Decline of 20%.

(b) Halts in Trading.

(1) If a Level 1 Market Decline or a Level 2 Market Decline occurs after 9:30 a.m. and up to and including 3:25 p.m., Eastern Time (or, in the case of an early scheduled close, 12:25 p.m. Eastern Time), the Exchange shall halt trading in all stocks for 15 minutes after a Level 1 or Level 2 Market Decline. The Exchange shall halt trading based on a Level 1 or Level 2 Market Decline only once per trading day. The Exchange will not halt trading if a Level 1 Market Decline or a Level 2 Market Decline occurs after 3:25 p.m. Eastern Time (or, in the case of an early scheduled close, 12:25 p.m. Eastern Time).

(2) If a Level 3 Market Decline occurs at any time during the trading day, the Exchange shall halt trading in all stocks until the primary listing market opens the next trading day.

(c) Re-opening of Trading

(1) The re-opening of trading following a Level 1 or 2 trading halt shall follow the procedures set forth in Rule 11.20B(b).

(2) If the primary listing market halts trading in all stocks, the Exchange will halt trading in those stocks until trading has resumed on the primary listing market or notice has been received from the primary listing market that trading may resume. If the primary listing market does not reopen a security within 15 minutes following the end of the 15-minute halt period, the Exchange may resume trading in that security.

(d) Nothing in this Rule 11.20A should be construed to limit the ability of the Exchange to otherwise halt, suspend, or pause the trading in any stock or stocks traded on the Exchange pursuant to any other Exchange rule or policy.

B. Trading Pauses in Individual Securities Due to Extraordinary Market Volatility

(a) Trading Pause. During Phase 1 of the Plan, a Trading Pause in Tier 1 NMS Stocks subject to the requirements of the Plan, shall be subject to Plan requirements and paragraph (b) of this Rule; a Trading Pause in Tier 1 NMS Stocks not yet subject to the requirements of the Plan shall be subject to the requirements in paragraphs (a) – (f) of this Rule; and a Trading Pause in Tier 2 NMS Stocks shall be subject to the requirements set forth in paragraphs (a)(1)(B) – (f) of this Rule. Once the Plan has been fully implemented and all NMS Stocks are subject to the Plan, a Trading Pause under the Plan shall be subject to paragraph (b) of this Rule only.

(1) Between 9:45 a.m. and 3:35 p.m. Eastern Time (or in the case of an early scheduled close, 25 minutes before the close of trading), if the price of a security listed on the Exchange, other than rights or warrants moves by a percentage specified below within a five-minute period (“Threshold Move”), as calculated pursuant to paragraph (c) below, trading in that security shall immediately pause on the Exchange for a period of five minutes (a “Trading Pause”).

(A) The Threshold Move shall be 10% or more with respect to securities included in the S&P 500® Index, Russell 1000® Index, and a pilot list of Exchange Traded Products;

(B) The Threshold Move shall be 30% or more with respect to all Tier 2 NMS Stocks not subject to section (a)(1) of this Rule with a price equal to or greater than \$1; and

(C) The Threshold Move shall be 50% or more with respect to all Tier 2 NMS Stocks not subject to section (a)(1) of this Rule with a price less than \$1.

The determination that the price of a stock is equal to or greater than \$1 under paragraph (a)(1)(B) above or less than \$1 under paragraph (a)(1)(C) above shall be based on the closing price on the previous trading day, or, if no closing price exists, the last sale reported to the Consolidated Tape on the previous trading day.

(b) Re-opening of Trading following a Trading Pause. At the end of the Trading Pause, the Exchange shall re-open the security in accordance with its procedures. In the event of a significant imbalance at the end of a Trading Pause, the Exchange may delay the re-opening of such security.

(c) Calculation of Threshold Move. The Exchange shall calculate the Threshold Move by comparing the last consolidated sale price of a security (“Trigger Trade”) to a reference price every second. The reference price shall be any transaction in that security printed to the Consolidated Tape during a five-minute period before the Trigger Trade, except for Trigger Trades in the first five minutes following 9:45 a.m. Eastern Time, for which reference prices will begin at 9:45 a.m. Eastern Time. Only regular way, in-sequence transactions qualify as either a Trigger Trade or reference price. The Exchange can exclude a transaction price from use as a reference price or Trigger Trade if it concludes that the transaction price resulted from an erroneous trade.

(d) Notification of Trading Pauses. If a Trading Pause in a security is triggered under this Rule, the Exchange shall immediately notify the single plan processor responsible for consolidation of information for the security pursuant to Rule 603 of Regulation NMS under the Securities Exchange Act of 1934.

(e) Nothing in this Rule should be construed to limit the ability of the Exchange to otherwise halt or suspend the trading in any securities traded on the Exchange pursuant to any other Exchange rule or policy.

(f) If a primary listing market issues an individual stock trading pause, the Exchange will pause trading in that security until trading has resumed on the primary listing market. If, however, trading has not resumed on the primary listing market and ten minutes have passed since the individual stock trading pause message has been received from the responsible single plan processor, the Exchange may resume trading in such stock.

(g) Trading Pause during a Straddle State. The Exchange may declare a Trading Pause for a NMS Stock listed on the Exchange when (i) the National Best Bid (Offer) is below (above) the Lower (Upper) Price Band and the NMS Stock is not in a Limit State; and (ii) trading in that NMS Stock deviates from normal trading characteristics.

C. Effect of Halt or Pause. On the occurrence of any trading halt or pause pursuant to this Rule, all outstanding orders in the System will be cancelled.

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*Commentary:*

.01 Reserved.

.02 Reserved.

.03 Reserved.

.04 Reserved.

.05 The provisions of Rule 11.20B shall be in effect during a pilot to coincide with the pilot period for the Regulation NMS Plan to Address Extraordinary Market Volatility (“Plan”). During the pilot, all capitalized terms not otherwise defined in this Rule shall have the same meanings as set forth in the Plan or Exchange Rules, as applicable.

**Rule 11.21. Short Sales**

(a) Definitions: For purposes of this rule, the following terms have the following meanings:

- (1) The term “covered security” shall have the same meaning as in Rule 201(a)(1) of Regulation SHO;
- (2) The term “national best bid” shall have the same meaning as in Rule 201(a)(4) of Regulation SHO;
- (3) The term “listing market” shall have the same meaning as in Rule 201(a)(3) of Regulation SHO;

(b) Marking of Orders. An ETP Holder must mark all sell orders of any equity security as “long” “short”, or “short exempt” when entered into the System, in accordance with Rule 200(g) of Regulation SHO. The Exchange relies on the marking of an order as “short exempt” when it receives such an order, and thus, it is the entering ETP Holder’s responsibility, not the Exchange’s responsibility, to comply with the requirements of Regulation SHO relating to the marking of orders as “short exempt.”

(c) Short Sale Price Test. Except as provided in subparagraphs (1) and (2) below, the System shall not execute, display, or route a short sale order with respect to a covered security at a price that is less than or equal to the current national best bid if the price of that security decreases by 10% or more from the security’s closing price as determined by the listing market for the covered security as of the end of regular trading hours on the prior day.

(1) The System will permit the execution of a displayed short sale order in a covered security during the Short Sale Price Test, without regard to price if, at the time of the initial display of the short sale order, the order was at a price above the current national best bid. For purposes of this exemption, the initial display of the short sale order includes display through the facilities of a securities information processor or through an Exchange proprietary market data feed.

(2) The System will execute, display and route orders marked “short exempt” during the Short Sale Price Test without regard to whether the order is at a price that is less than or equal to the current national best bid.

(d) Duration of Short Sale Price Test. If the Short Sale Price Test is triggered by the listing market with respect to a covered security, the Short Sale Price Test shall remain in effect for the remainder of the trading day on which it is triggered and the following day, when a national best bid for the covered security is calculated and disseminated on a current and continuing basis by a plan processor pursuant to an effective national market system plan, as provided in Rule 201(b)(1)(ii) of Regulation SHO.

(e) When the Short Sale Price Test is in effect with respect to a covered security, the System will evaluate all incoming sell short orders in that security that are not marked “short exempt” to determine whether the order can be executed or displayed at a price above the current national best bid. A sell short order in a covered security “resting” on the NSX Book will be evaluated by the System if matched for execution during the Short Sale Price Test and, unless the order was initially displayed at a price above the current national best bid, will be canceled if at a price equal to or below the current national best bid.

(f) When the Short Sale Price Test is in effect with respect to a covered security, the System will process sell short orders of specific order types that are not marked “short exempt” as follows:

(1) Market and Limit Order. A sell short market or limit order will be matched by the System for execution at a price above the current national best bid and, if a limit order, within the limit price of the sell short order. Any remaining unfilled portion of such order will be canceled unless, in the case of a limit order, the limit price on any remaining unexecuted shares is above the current national best bid. The unfilled portion of such a limit order will remain on the NSX Book but will not execute unless at a price above the current national best bid.

(2) Odd Lot and Mixed Lot Order. A sell short odd lot order and a mixed lot order, which is an order consisting of one or more round lots combined with a number of shares constituting an odd lot, will be rejected if entered at a price equal to or below the current national best bid. Odd lot orders aggregated to form a round lot and displayed at a price above the national best bid, or a mixed lot order initially displayed at

a price above the current national best bid, will be eligible for execution at a price equal to or below the national best bid.

(3) **IOC Order.** A sell short IOC order will be matched by the System for execution at a price above the current national best bid and any remaining unfilled portion will be canceled.

(4) **Midpoint-Seeker Order.** A Midpoint-Seeker Order, which is an IOC order that executes only against undisplayed orders priced at the midpoint of the protected bid and protected offer, when marked sell short will, upon entry, be matched by the System for execution at a price above the current national best bid and any remaining unfilled portion will be canceled.

(5) **Reserve Order.** A sell short Reserve Order will be rejected by the System if it is entered at a price equal to or below the current national best bid. A sell short Reserve Order that was initially displayed at a price above the current national best bid may execute at a price equal to or below the current national best bid during a Short Sale Price Test, up to the full size of the order (including any undisplayed portion), and may also replenish the displayed portion of the order at a price equal to or below the current national best bid.

(6) **Post Only Order, NSX Only Order and Destination Specific Order.** Sell short orders in these order types will be rejected if entered at a price equal to or below the current national best bid.

(7) **Sweep Order, Destination Sweep Order, ISO and Post-ISO Order.** A sell short Sweep Order, Destination Sweep Order, ISO and Post-ISO will be rejected by the System if entered at a price equal to or below the current national best bid. If entered at a price above the current national best bid, such sell short orders will be accepted by the System and eligible for execution. If an ISO is marked "IOC," any remaining unfilled portion will be canceled. The unfilled portion of ISO orders not marked IOC, and Post-ISO orders, will be entered on the NSX Book if at a price above the current national best bid. A Post ISO order that was not initially displayed at a price above the current national best bid will be canceled if matched by the System for execution at a price equal to or below the current national best bid.

(8) **Zero Display Reserve Order.** A sell short Zero Display Reserve order, other than a Market Peg Zero Display Reserve Order will, upon entry, be matched by the System for execution at a price above the current national best bid to the extent possible and any remaining unexecuted portion will be canceled by the System if at a price at or below the current national best bid. A sell short Zero Display Reserve Order resting on the NSX Book, if matched for execution during a Short Sale Price Test will execute in whole or in part to the extent possible at a price or prices above the current national best bid; any remaining unexecuted portion will be canceled by the System if at a price at or below the current national best bid.

(i) A Market Peg Zero Display Reserve Order marked “sell short” entered during a Short Sale Price Test will be rejected by the System.

(ii) A sell short Market Peg Zero Display Reserve Order resting on the NSX Book tracks the Protected Best Bid, which is the higher of the national best bid or the best bid on the NSX Book and, if matched for execution during a Short Sale Price Test in the subject security, will be executed only to the extent that the Protected Best Bid is above the current national best bid and the sell short order can be executed, in whole or in part, at a price above the current national best bid in compliance with Rule 201 of Regulation SHO. Any such order or portion of such order will remain on the NSX Book but will not be executed if at a price equal to or below the current national best bid.

(g) **Cancel/Replacement of Orders:** When a Short Sale Price Test is in effect in a covered security, a cancel/replace request will be rejected if (i) the limit price on the replacement sell short order is equal to or below the current national best bid, or (ii) if the original limit price of the order is equal to or below the current national best bid and the cancel/replace message seeks to increase the order size.

### *Interpretations and Policies*

.01 **Sell Short Orders Routed Through NSXS:** NSXS, as the outbound routing facility of the Exchange, relies on an ETP Holder’s marking of an order as “long,” “short” or “short exempt.” NSXS will route an order received by NSX marked “short exempt” during the Short Sale Price Test without independently evaluating the correctness of the “short exempt” marking under Regulation SHO Rules 201(c) and (d).

### **Rule 11.22. Locking or Crossing Quotations in NMS Stocks**

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

(1) The terms automated quotation, effective national market system plan, intermarket sweep order, manual quotation, NMS stock, protected quotation, regular trading hours, and trading center shall have the meanings set forth in Rule 600(b) of Regulation NMS.

(2) The term crossing quotation shall mean the display of a bid for an NMS stock during regular trading hours at a price that is higher than the price of an offer for such NMS stock previously disseminated pursuant to an effective national market system plan, or the display of an offer for an NMS stock during regular trading hours at a price that is lower than the price of a bid for such NMS stock previously disseminated pursuant to an effective national market system plan.

(3) The term locking quotation shall mean the display of a bid for an NMS stock during regular trading hours at a price that equals the price of an offer for such NMS stock previously disseminated pursuant to an effective national market system plan, or the display of an offer for an NMS stock during regular trading hours at a price that



equals the price of a bid for such NMS stock previously disseminated pursuant to an effective national market system plan.

(b) Prohibition. Except for quotations that fall within the provisions of paragraph (d) of this Rule, Users shall reasonably avoid displaying, and shall not engage in a pattern or practice of displaying, any quotations that lock or cross a protected quotation, and any manual quotations that lock or cross a quotation previously disseminated pursuant to an effective national market system plan.

(c) Manual quotations. If a User displays a manual quotation that locks or crosses a quotation previously disseminated pursuant to an effective national market system plan, such User shall promptly either withdraw the manual quotation or route an intermarket sweep order to execute against the full displayed size of the locked or crossed quotation.

(d) Exceptions.

(1) The locking or crossing quotation was displayed at a time when the trading center displaying the locked or crossed quotation was experiencing a failure, material delay, or malfunction of its systems or equipment.

(2) The locking or crossing quotation was displayed at a time when a protected bid was higher than a protected offer in the NMS stock.

(3) The locking or crossing quotation was an automated quotation, and the User displaying such automated quotation simultaneously routed an intermarket sweep order to execute against the full displayed size of any locked or crossed protected quotation.

(4) The locking or crossing quotation was a manual quotation that locked or crossed another manual quotation, and the User displaying the locking or crossing manual quotation simultaneously routed an intermarket sweep order to execute against the full displayed size of the locked or crossed manual quotation.

### **Rule 11.23. Riskless Principal Transactions**

(a) A “riskless principal transaction” is defined as two offsetting principal transaction legs in which an ETP Holder, (i) after having received an order to buy a security, purchases the security as principal at the same price, exclusive of markups, markdowns, commissions and other fees, to satisfy all or a portion of the order to buy or (ii) after having received an order to sell a security, sells the security as principal at the same price, exclusive of markups, markdowns, commissions and other fees, to satisfy all or a portion of the order to sell.

(b) A last sale report for only the initial offsetting transaction leg of a riskless principal transaction shall be submitted to the respective consolidated tape in accordance with the rules and procedures of the market where that transaction leg occurred. A last sale report for the second offsetting transaction leg of a riskless principal transaction shall

not be submitted by the Exchange to the respective consolidated tape provided that the second offsetting transaction leg is submitted to the Exchange for execution and designated with a riskless principal modifier by the ETP Holder.

(c) An ETP Holder must have written policies and procedures to assure that its riskless principal transactions comply with this Rule. At a minimum these policies and procedures must require that the customer order be received prior to the offsetting transactions, and that the second offsetting transaction leg be executed within 60 seconds of the initial offsetting transaction leg. An ETP Holder must also have supervisory systems in place that produce records that enable the ETP Holder and the Exchange to accurately and readily reconstruct, in a time-sequenced manner, all orders related to each riskless principal transaction.

#### **Rule 11.24. Limit Up-Limit Down**

Operative as of April 8, 2013

The provisions of this Rule shall be in effect during a pilot to coincide with the pilot period for the Regulation NMS Plan to Address Extraordinary Market Volatility.

##### (a) Implementation

###### (1) Phase I

(A) On April 8, 2013, this Rule shall apply to select symbols from the Tier 1 NMS Stocks identified in Appendix A of the Plan; and during Regular Trading Hours, or earlier in the case of an early scheduled close.

(B) Three months after April 8, 2013, or such earlier date as may be announced by the Processor with at least 30 days notice, this Rule shall fully apply to all Tier 1 NMS Stocks identified in Appendix A of the Plan during Regular Trading Hours.

###### (2) Phase II – Full Implementation

(A) Six months after April 8, 2013, or such earlier date as may be announced by the Processor with at least 30 days notice, the Plan shall fully apply to all NMS Stocks during Regular Trading Hours.

##### (b) Definitions.

(1) “Plan” means the Plan to Address Extraordinary Market Activity submitted to the Securities and Exchange Commission pursuant to Rule 608 of Regulation NMS under the Securities Exchange Act of 1934, Exhibit A to Securities Exchange Act Release No. 67091 (May 31, 2012) 77 FR 33498 (June 6, 2012), as it may be amended from time to time.

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

(c) Exchange Participation in the Plan. The Exchange is a Participant in, and subject to the applicable requirements of, the Plan, which establishes procedures to address extraordinary market volatility in NMS Stocks.

(d) ETP Holder Compliance. ETP Holders shall comply with the applicable provisions of the Plan.

(e) Limit Up-Limit Down Mechanism. The System will not execute or display orders at prices that are outside of a specified Price Band (i.e., below the lower Price Band or above the upper Price Band) for an NMS Stock during Regular Trading Hours, unless specifically exempted from the Plan.

(f) Price Adjustments.

(1) Unless the User specifies otherwise on an order-by-order basis, any incoming limit-priced order (other than an IOC order) to buy (sell) that is priced above (below) the upper (lower) Price Band shall be repriced to the upper (lower) Price Band. Exchange systems shall also reprice resting limit-priced interest to buy (sell) to the upper (lower) Price Band if Price Bands move and the price of resting limit-priced interest to buy (sell) moves above (below) the upper (lower) Price Band.

(2) Opt Out. On an order-by-order basis, a User may indicate to the Exchange to not re-price the order to the upper or lower Price Band, respectively. In such case, the order will only execute against orders posted on the NSX Book resting within the Price Bands. Any unexecuted portion of the order will be cancelled if it would result in an execution outside of the Price Band.

(3) Where the Price Band moves so that a previously accepted limit-priced order is now priced outside of the Price Band, the order will either be repriced in accordance with Section (c)(1) of this paragraph or cancelled in accordance with paragraph (d)(2) of this paragraph.

(g) An incoming limit-priced order (other than an IOC order) to sell (buy ) that is priced below (above) the upper (lower) Price Band will be accepted by the System and eligible for inclusion in the Exchange's Protected BBO. However, such orders will not be executed until the Price Band moves in such a way that the order falls within the Price Band.

(h) IOC Orders. The System will accept IOC orders (as defined under Rule 11.11(b)(1)) that are priced, explicitly or not, outside of the Price Band. However, the IOC order will only execute against orders posted on the NSX Book within the Price

Bands. Any unexecuted portion of an IOC order will be cancelled if it would result in an execution outside of the Price Band.

(i) Market Orders. The System will execute Market Orders (as defined under Rule 11.11(a)(1)) at or better than the opposite side of the Price Band (i.e., sell orders to the lower Price Band and buy orders to the upper Price Band). Any unexecuted portion of a Market Order will be cancelled if it would result in an execution outside of the Price Band.

(j) Market Peg, Primary Peg or Midpoint Peg Zero Display Orders that would be “pegged” to a price outside of the Price Bands disseminated by the Processor, will instead be “pegged” to the upper or lower Price Band, respectively. See paragraph (c) above and Rule 11.11(d)(2)(A) for a description of how Midpoint Peg, Primary Peg and Midpoint Peg Zero Display Orders are to be “pegged”.

(k) Routing to Away Markets. The Exchange System shall route orders to an away market in accordance with Rule 11.15(a)(ii). However, the System will not route an order unless an away market is displaying a sell (buy) quote that is at or below (above) the Upper (Lower) Price Band.

#### **Rule 11.25 Use of Market Data Feeds**

- (a) The Exchange utilizes the following data feeds for the handling, execution and routing of orders, as well as for surveillance necessary to monitor compliance with applicable securities laws and Exchange rules.

Market Center	Primary Data Source	Secondary Data Source
BATS (BZX)	CQS/UQDF	N/A
BATS Y (BYX)	CQS/UQDF	N/A
Chicago Stock Exchange	CQS/UQDF	N/A
EDGA	CQS/UQDF	N/A
EDGX	CQS/UQDF	N/A
FINRA ADF	CQS/UQDF	N/A
IEX	CQS/UQDF	N/A
Nasdaq	CQS/UQDF	N/A
Nasdaq OMX BX	CQS/UQDF	N/A
Nasdaq OMX PHLX	CQS/UQDF	N/A
NYSE	CQS/UQDF	N/A
NYSE ARCA	CQS/UQDF	N/A
NYSE MKT	CQS/UQDF	N/A

- (b) The Exchange may adjust its calculation of the NBBO based on information about orders sent to other venues with protected quotations, execution reports received from those venues, and certain orders received by the Exchange.

**Rule 11.26. Compliance with Regulation NMS Plan to Implement a Tick Size Pilot**

## (a) Tick Size Pilot Program

## (1) Definitions.

(A) “Plan” means the Tick Size Pilot Plan Submitted to the Securities and Exchange Commission Pursuant to Rule 608(a)(3) of Regulation NMS under the Exchange Act.

(B) “Pilot Test Groups” means the three test groups established under the Plan, consisting of 400 Pilot Securities each, which satisfy the respective criteria established by the Plan for each such test group.

(C) Reserved.

(D) “Trade-at Intermarket Sweep Order” means a limit order for a Pilot Security that meets the following requirements:

- (i) When routed to a Trading Center, the limit order is identified as a Trade-at Intermarket Sweep Order; and
- (ii) Simultaneously with the routing of the limit order identified as a Trade-at Intermarket Sweep Order, one or more additional limit orders, as necessary, are routed to execute against the full size of any protected bid, in the case of a limit order to sell, or the full displayed size of any protected offer, in the case of a limit order to buy, for the Pilot Security with a price that is better than or equal to the limit price of the limit order identified as a Trade-at Intermarket Sweep Order. These additional routed orders also must be marked as Trade-at Intermarket Sweep Orders or Intermarket Sweep Orders.

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

- (2) Exchange Participation in the Plan. The Exchange is a Participant in, and subject to the applicable requirements of, the Plan, which establishes a Tick Size Pilot Program that will allow the Securities and Exchange Commission, market participants, and the public to study and assess the impact of increment conventions on the liquidity and trading of the common stocks of small capitalization companies.

- (3) ETP Holder Compliance. ETP Holders shall establish, maintain and enforce written policies and procedures that are reasonably designed to comply with the applicable requirements of the Plan.
- (4) Exchange Compliance with the Plan. The System will not display, quote or trade in violation of the applicable quoting and trading requirements for a Pilot Security specified in the Plan and this Rule, unless such quotation or transaction is specifically exempted under the Plan.
- (5) Pilot Securities That Drop Below \$1.00 during the Pilot Period. If the price of a Pilot Security drops below \$1.00 during Regular Trading Hours on any given business day, such Pilot Security will continue to be subject to the Plan and the requirements enumerated in (c)-(e) below and will continue to trade in accordance with such Rules as if the price of the Pilot Security had not dropped below \$1.00. However, if the Closing Price of a Pilot Security on any given business day is below \$1.00, such Pilot Security will be moved out of its respective Pilot Test Group into the Control Group, and may then be quoted and traded at any price increment that is currently permitted by Exchange rules for the remainder of the Pilot Period. Notwithstanding anything contained herein to the contrary, at all times during the Pilot Period, Pilot Securities (whether in the Control Group or any Pilot Test Group) will continue to be subject to the requirements contained in Paragraph (b) of this Rule 11.26.

(b) Compliance with Data Collection Requirements

(1) Policies and Procedures Requirement. An ETP Holder that operates a Trading Center shall establish, maintain and enforce written policies and procedures that are reasonably designed to comply with the data collection and transmission requirements of Items I and II of Appendix B of the Plan, and an ETP Holder that is a Market Maker shall establish, maintain and enforce written policies and procedures that are reasonably designed to comply with the data collection and transmission requirements of Item IV of Appendix B of the Plan and Item I of Appendix C of the Plan.

(2) The Exchange shall collect and transmit to the SEC the data described in Items I and II of Appendix B of the Plan relating to trading activity in Pre-Pilot Securities and Pilot Securities on a Trading Center operated by the Exchange. The Exchange shall transmit such data to the SEC in a pipe delimited format, on a disaggregated basis by Trading Center, within 30 calendar days following month end for:

(A) Each Pre-Pilot Data Collection Security for the period beginning six months prior to the Pilot Period through thirty-one days prior to the first day of the Pilot Period; and

(B) Each Pilot Security for the period beginning thirty days prior to the first day of the Pilot Period through six months after the end of the Pilot Period. The Exchange also shall make such data publicly available on the Exchange web

site within 120 calendar days following month end at no charge and shall not identify the ETP Holder that generated the data.

(3) Daily Market Maker Participation Statistics Requirement

(A) An ETP Holder that is a Market Maker shall collect and transmit to their DEA data relating to Item IV of Appendix B of the Plan, with respect to activity conducted on any Trading Center in Pre-Pilot Securities and Pilot Securities in furtherance of its status as a Market Maker, including a Trading Center that executes trades otherwise than on a national securities exchange, for transactions that have settled or reached settlement date. Market Makers shall transmit such data in a format required by their DEA by 12:00 p.m. EST on T+4:

(i) For transactions in each Pre-Pilot Data Collection Security for the period beginning six months prior to the Pilot Period through thirty-one days prior to the first day of the Pilot Period; and

(ii) For transactions in each Pilot Security for the period beginning thirty days prior to the first day of the Pilot Period through six months after the end of the Pilot Period.

(B) An ETP Holder that is a Market Maker whose DEA is not a Participant to the Plan shall transmit the data collected pursuant to paragraph (3)(A) above to the Financial Industry Regulatory Authority, Inc. ("FINRA"). Market Makers shall transmit such data in a format required by FINRA by 12:00 p.m. EST on T+4 in accordance with paragraphs (3)(A)(i) and (ii) above.

(C) The Exchange shall transmit the data collected by the DEA or FINRA pursuant to paragraphs (3)(A) and (B) above relating to Market Maker activity on a Trading Center operated by the Exchange to the SEC in a pipe delimited format within 30 calendar days following month end. The Exchange shall also make such data publicly available on the Exchange web site within 120 calendar days following month end at no charge and shall not identify the Trading Center that generated the data.

(4) Market Maker Profitability

(A) An ETP Holder that is a Market Maker shall collect and transmit to their DEA the data described in Item I of Appendix C of the Plan with respect to executions on any Trading Center that have settled or reached settlement date. Market Makers shall transmit such data in a format required their DEA by 12:00 p.m. EST on T+4 for executions during and outside of Regular Trading Hours in each:

(i) Pre-Pilot Data Collection Security for the period beginning six months prior to the Pilot Period through thirty-one days prior to the first day of the Pilot Period; and

(ii) Pilot Security for the period beginning thirty days prior to the first day of the Pilot Period through six months after the end of the Pilot Period.

(B) An ETP Holder that is a Market Maker whose DEA is not a Participant to the Plan shall transmit the data collected pursuant to paragraph (4)(A) above to FINRA. Market Makers shall transmit such data in a format required by FINRA by 12:00 p.m. EST on T+4 for executions during and outside of Regular Trading Hours in accordance with paragraphs (4)(A)(i) and (ii) above.

(5) Market Maker Registration Statistics. The Exchange shall collect and transmit to the SEC the data described in Item III of Appendix B of the Plan relating to daily Market Maker registration statistics in a pipe delimited format within 30 calendar days following month end for:

(A) For transactions in each Pre-Pilot Data Collection Security for the period beginning six months prior to the Pilot Period through the trading day immediately preceding the Pilot Period; and

(B) For transactions in each Pilot Security for the period beginning on the first day of the Pilot Period through six months after the end of the Pilot Period.

The Exchange also shall make such data publicly available on the Exchange web site within 120 calendar days following month end at no charge.

(c) Compliance With Quoting and Trading Restrictions

(1) Pilot Securities in Test Group One will be subject to the following requirement: No ETP Holder may display, rank, or accept from any person any displayable or non-displayable bids or offers, orders, or indications of interest in increments other than \$0.05. However, orders priced to trade at the midpoint of the national best bid and national best offer (“NBBO”) or best protected bid and best protected offer (“PBBO”) and orders entered in a Participant-operated retail liquidity program may be ranked and accepted in increments of less than \$0.05. Pilot Securities in Test Group One may continue to trade at any price increment that is currently permitted by applicable Participant, SEC and Exchange Rules.

(2) Pilot Securities in Test Group Two shall be subject to the following requirements:

(A) No ETP Holder may display, rank, or accept from any person any displayable or non-displayable bids or offers, orders, or indications of interest in increments other than \$0.05. However, orders priced to trade at the midpoint of the NBBO or PBBO and orders entered in a Participant-operated retail liquidity program may be ranked and accepted in increments of less than \$0.05.



(B) Absent any of the exceptions listed in subparagraph (C) below, no ETP Holder may execute orders in any Pilot Security in Test Group Two in price increments other than \$0.05. The \$0.05 trading increment will apply to all trades, including Brokered Cross Trades.

(C) Pilot Securities in Test Group Two may trade in increments less than \$0.05 under the following circumstances:

- (i) Trading may occur at the midpoint between the NBBO or the PBBO;
- (ii) Retail Investor Orders may be provided with price improvement that is at least \$0.005 better than the PBBO;
- (iii) Negotiated Trades may trade in increments less than \$0.05; and
- (iv) Execution of a customer order to comply with Rule 12.6 following the execution of a proprietary trade by the member organization at an increment other than \$0.05, where such proprietary trade was permissible pursuant to an exception under the Plan.

(3) Pilot Securities in Test Group Three shall be subject to the following requirements:

(A) No ETP Holder may display, rank, or accept from any person any displayable or non-displayable bids or offers, orders, or indications of interest in increments other than \$0.05. However, orders priced to trade at the midpoint of the NBBO or PBBO and orders entered in a Participant-operated retail liquidity program may be ranked and accepted in increments of less than \$0.05.

(B) Absent any of the exceptions listed in subparagraph (C) below, no ETP Holder may execute orders in any Pilot Security in Test Group Three in price increments other than \$0.05. The \$0.05 trading increment will apply to all trades, including Brokered Cross Trades.

(C) Pilot Securities in Test Group Three may trade in increments less than \$0.05 under the following circumstances:

- (i) Trading may occur at the midpoint between the NBBO or PBBO;
- (ii) Retail Investor Orders may be provided with price improvement that is at least \$0.005 better than the Best Protected Bid or the Best Protected Offer;
- (iii) Negotiated Trades may trade in increments less than \$0.05; and

- (iv) Execution of a customer order to comply with Rule 12.6 following the execution of a proprietary trade by the member organization at an increment other than \$0.05, where such proprietary trade was permissible pursuant to an exception under the Plan.
- (D) Pilot Securities in Test Group Three will be subject to the following Trade-at Prohibition:
- (i) “Trade-at Prohibition” means the prohibition against executions by a Trading Center of a sell order for a Pilot Security at the price of a Protected Bid or the execution of a buy order for a Pilot Security at the price of a Protected Offer during regular trading hours.
  - (ii) Absent any of the exceptions listed in subparagraph (D)(iii) below, no ETP Holder may execute a sell order for a Pilot Security in Test Group Three at the price of a Protected Bid or execute a buy order for a Pilot Security in Test Group Three at the price of a Protected Offer.
  - (iii) ETP Holders may execute a sell order for a Pilot Security in Test Group Three at the price of a Protected Bid or execute a buy order for a Pilot Security in Test Group Three at the price of a Protected Offer if any of the following circumstances exist:
    - a. The order is executed as agent or riskless principal by an independent trading unit, as defined under Rule 200(f) of Regulation SHO, of a Trading Center within an organization that has a displayed quotation as agent or riskless principal, via either a processor or an SRO Quotation Feed, at a price equal to the traded-at Protected Quotation, that was displayed before the order was received, but only up to the full displayed size of that independent trading unit’s previously displayed quote;
    - b. The order is executed by an independent trading unit, as defined under Rule 200(f) of Regulation SHO, of a Trading Center within a member organization that has a displayed quotation for the account of that Trading Center on a principal (excluding riskless principal) basis, via either a processor or an SRO Quotation Feed, at a price equal to the traded-at Protected Quotation, that was displayed before the order was received, but only up to the full displayed size of that independent trading unit’s previously displayed quote;
    - c. The order is of Block Size at the time of origin and may not be:
      - A. an aggregation of non-block orders; or

- B. broken into orders smaller than Block Size prior to submitting the order to a Trading Center for execution.
- d. The order is a Retail Investor Order executed with at least \$0.005 price improvement;
- e. The order is executed when the Trading Center displaying the Protected Quotation that was traded at was experiencing a failure, material delay, or malfunction of its systems or equipment;
- f. The order is executed as part of a transaction that was not a "regular way" contract;
- g. The order is executed as part of a single-priced opening, reopening, or closing transaction on the Exchange;
- h. The order is executed when a Protected Bid was priced higher than a Protected Offer in the Pilot Security;
- i. The order is identified as a Trade-at Intermarket Sweep Order;
- j. The order is executed by a Trading Center that simultaneously routed Trade-at Intermarket Sweep Orders or Intermarket Sweep Orders as defined in Rule 600(b)(30) of Regulation NMS to execute against the full displayed size of the Protected Quotation that was traded at;
- k. The order is executed as part of a Negotiated Trade;
- l. The order is executed when the Trading Center displaying the Protected Quotation that was traded at had displayed, within one second prior to execution of the transaction that constituted the Trade-at, a Best Protected Bid or Best Protected Offer, as applicable, for the Pilot Security with a price that was inferior to the price of the Trade-at transaction;
- m. The order is executed by a Trading Center which, at the time of order receipt, the Trading Center had guaranteed an execution at no worse than a specified price (a "stopped order"), where:
  - A. The stopped order was for the account of a customer;
  - B. The customer agreed to the specified price on an order-by-order basis; and

C. The price of the Trade-at transaction was, for a stopped buy order, equal to or less than the National Best Bid in the Pilot Security at the time of execution or, for a stopped sell order, equal to or greater than the National Best Offer in the Pilot Security at the time of execution, as long as such order is priced at an acceptable increment;

n. The order is for a fractional share of a Pilot Security, provided that such fractional share order was not the result of breaking an order for one or more whole shares of a Pilot Security into orders for fractional shares or was not otherwise effected to evade the requirements of the Trade-at Prohibition or any other provisions of the Plan; or

o. The order is to correct a bona fide error, which is recorded by the Trading Center in its error account. A bona fide error is defined as:

A. The inaccurate conveyance or execution of any term of an order including, but not limited to, price, number of shares or other unit of trading; identification of the security; identification of the account for which securities are purchased or sold; lost or otherwise misplaced order tickets; short sales that were instead sold long or vice versa; or the execution of an order on the wrong side of a market;

B. The unauthorized or unintended purchase, sale, or allocation of securities, or the failure to follow specific client instructions;

C. The incorrect entry of data into relevant systems, including reliance on incorrect cash positions, withdrawals, or securities positions reflected in an account; or

D. A delay, outage, or failure of a communication system used to transmit market data prices or to facilitate the delivery or execution of an order.

(iv) No ETP Holder shall break an order into smaller orders or otherwise effect or execute an order to evade the requirements of the Trade-at Prohibition of this Rule or any other provisions of the Plan.

.01 The terms used in this Rule 11.26 shall have the same meaning as provided in the Plan, unless otherwise specified.

.02 For purposes of the reporting requirement in Appendix B.II.(n), a Trading Center shall report “Y” to their DEA where it is relying upon the Retail Investor Order exception to Test Groups Two and Three, and “N” in all other instances.

.03 For purposes of Appendix B.I, the field “Affected by Limit-Up Limit-Down bands” shall be included. A Trading Center shall report a value of “Y” to its DEA when the ability of an order to execute has been affected by the Limit-Up Limit-Down (LULD) bands in effect at the time of order receipt. A Trading Center shall report a value of “N” to its DEA when the ability of an order to execute has not been affected by the LULD bands in effect at the time of order receipt. For purposes of Appendix B.I, the Participants shall classify all orders in Pilot and Pre-Pilot Securities that may trade in a foreign market as: (1) fully executed domestically or (2) fully or partially executed on a foreign market. For purposes of Appendix B.II, the Participants shall classify all orders in Pilot and Pre-Pilot Securities that may trade in a foreign market as: (1) directed to a domestic venue for execution; (2) may only be directed to a foreign venue for execution; or (3) fully or partially directed to a foreign venue at the discretion of the ETP Holder.

.04 (a) For purposes of Appendix B.I.a(14), B.I.a(15), B.I.a(21) and B.I.a(22), the time ranges shall be changed as follows:

(1) Appendix B.I.a(14A): The cumulative number of shares of orders executed from 100 microseconds to less than 1 millisecond after the time of order receipt;

(2) Appendix B.I.a(15): The cumulative number of shares of orders executed from 1 millisecond to less than 100 milliseconds after the time of order receipt;

(3) Appendix B.I.a(21A): The cumulative number of shares of orders canceled from 100 microseconds to less than 1 millisecond after the time of order receipt; and

(4) Appendix B.I.a(22): The cumulative number of shares of orders canceled from 1 millisecond to less than 100 milliseconds after the time of order receipt.

(b) For purposes of Appendix B.I.a(21) through B.I.a(27), unexecuted Immediate or Cancel orders shall be categorized separately irrespective of the duration of time after order receipt.

.05 For purposes of Appendix B.I.a(31)-(33), the relevant measurement is the time of order receipt.

.06 For purposes of Appendix B, the following order types and numbers shall be included and assigned the following numbers: “not held” orders (18); clean cross orders (19); auction orders (20); orders that cannot otherwise be classified, including orders received when the NBBO is crossed (21) and limit orders priced more than \$0.10 away from the NBBO (22). For purposes of order types 12-14 in Appendix B, such order types shall include all orders and not solely “resting” orders.

.07 An ETP Holder shall not be deemed a Trading Center for purposes of Appendix B of the Plan where that ETP Holder only executes orders otherwise than on a national securities exchange for the purpose of: (i) correcting a bona fide error related to the execution of a customer order; (ii) purchases a security from a customer at a nominal price solely for purposes of liquidating the customer’s position; or (iii) completing the fractional share portion of an order.

.08 A Trading Center shall begin the data collection required pursuant to Appendix B.I.a(1) through B.II.(y) of the Plan and Item I of Appendix C of the Plan on April 4, 2016. The requirement that the Exchange or the DEA provide information to the SEC within 30 days following month end [and make certain data publicly available on the Exchange’s or DEA’s web site] pursuant to Appendix B and C of the Plan shall commence at the beginning of the Pilot Period. Notwithstanding the provisions of paragraphs (b)(2)(B), (b)(3)(C), and (b)(5) of this Rule, with respect to data for the Pre-Pilot Period and Pilot Period, the requirement that the Exchange or the DEA make Appendix B data publicly available on the Exchange’s or the DEA’s website [pursuant to Appendix B and C to the Plan] shall commence on August 31, 2017. Notwithstanding the provisions of paragraph (b)(4) of this Rule, the Exchange or the DEA shall make Appendix C data for the Pre-Pilot Period through January 2017 publicly available on the Exchange’s or the DEA’s website [pursuant to Appendix B and C to the Plan] by February 28, 2017.

.09 For purposes of Appendix B.IV, the count of the number of Market Makers used in the calculation of share (trade) participation shall be added to each category. For purposes of Appendix B.IV(b) and (c), share participation and trade participation shall be calculated by using a total count instead of a share-weighted average or a trade-weighted average. For purposes of Appendix B, B.IV(d) (cross-quote share (trade) participation), (e) (inside-the-quote share (trade) participation), (f) (at-the-quote share (trade) participation), and (g) (outside-the-quote share (trade) participation), shall be calculated by reference to the National Best Bid or National Best Offer in effect immediately prior to the trade.

.10 For purposes of Item I of Appendix C, the Participants shall calculate daily Market Maker realized profitability statistics for each trading day on a daily last in, first out (LIFO) basis using reported trade price and shall include only trades executed on the subject trading day. The daily LIFO calculation shall not include any positions carried over from previous trading days. For purposes of Item I.c of Appendix C, the Participants shall calculate daily Market Maker unrealized profitability statistics for each trading day on an average price basis. Specifically, the Participants must calculate the

volume weighted average price of the excess (deficit) of buy volume over sell volume for the current trading day using reported trade price. The gain (loss) of the excess (deficit) of buy volume over sell volume shall be determined by using the volume weighted average price compared to the closing price of the security as reported by the primary listing exchange. In calculating unrealized trading profits, the Participant also shall report the number of excess (deficit) shares held by the Market Maker, the volume weighted average price of that excess (deficit), and the closing price of the security as reported by the primary listing exchange used in reporting unrealized profit.

.11 “Pre-Pilot Data Collection Securities” are the securities designated by the Participants for purposes of the data collection requirements described in Items I, II and IV of Appendix B and Item I of Appendix C of the Plan for the period beginning six months prior to the Pilot Period through thirty-one days prior to the Pilot Period. The Participants shall compile the list of Pre-Pilot Data Collection Securities by selecting all NMS stocks with a market capitalization of \$5 billion or less, a Consolidated Average Daily Volume (CADV) of 2 million shares or less and a closing price of \$1 per share or more. The market capitalization and the closing price thresholds shall be applied to the last day of the Pre-Pilot measurement period, and the CADV threshold shall be applied to the duration of the Pre-Pilot measurement period. The Pre-Pilot measurement period shall be the three calendar months ending on the day when the Pre-Pilot Data Collection Securities are selected. The Pre-Pilot Data Collection Securities shall be selected thirty days prior to the commencement of the six-month Pre-Pilot Period.

.12 Upon the effective date of the Tick Size Pilot, the Exchange will not support the Block Size Order Exemption under Rule 11.26(c)(3)(D)(iii)c. Any block size order entered into the System will be subject to the Trade-at prohibition under Rule 11.26(c)(3)(D), unless the order otherwise qualifies for an exemption to the Trade-at prohibition under subparagraph (c)(3)(D)(iii).

.13 This Rule shall be in effect during a pilot period to coincide with the pilot period for the Plan (including any extensions to the pilot period for the Plan).

## **CHAPTER XII. Trading Practice Rules**

### **Rule 12.1. Market Manipulation**

No ETP Holder shall execute or cause to be executed or participate in an account for which there are executed purchases of any security at successively higher prices, or sales of any security at successively lower prices, for the purpose of creating or inducing a false, misleading or artificial appearance of activity in such security on the Exchange or for the purpose of unduly or improperly influencing the market price for such security or for the purpose of establishing a price which does not reflect the true state of the market in such security.

**Rule 12.2. Fictitious Transactions**

No ETP Holder, for the purpose of creating or inducing a false or misleading appearance of activity in a security traded on the Exchange or creating or inducing a false or misleading appearance with respect to the market in such security shall:

(1) execute any transaction in such security which involves no change in the beneficial ownership thereof, or

(2) enter any order or orders for the purchase of such security with the knowledge that an order or orders of substantially the same size, and at substantially the same price, for the sale of such security, has been or will be entered by or for the same or different parties, or

(3) enter any order or orders for the sale of any such security with the knowledge that an order or orders of substantially the same size, and at substantially the same price, for the purchase of such security, has been or will be entered by or for the same or different parties.

**Rule 12.3. Excessive Sales by an ETP Holder**

No ETP Holder shall execute purchases or sales or any security traded on the Exchange for any account in which such ETP Holder is directly or indirectly interested, which purchases or sales are excessive in view of the ETP Holder's financial resources or in view of the market for such security.

**Rule 12.4. Manipulative Transactions**

(a) No ETP Holder shall participate or have any interest, directly or indirectly, in the profits of a manipulative operation or knowingly manage or finance a manipulative operation.

(b) Any pool, syndicate or joint account organized or used intentionally for the purpose of unfairly influencing the market price of a security shall be deemed to be a manipulative operation.

(c) The solicitation of subscriptions to or the acceptance of discretionary orders from any such pool, syndicate or joint account shall be deemed to be managing a manipulative operation.

(d) The carrying on margin of a position in such security or the advancing of credit through loans to any such pool, syndicate or joint account shall be deemed to be financing a manipulative operation.



**Rule 12.5. Dissemination of False Information**

No ETP Holder shall make any statement or circulate and disseminate any information concerning any security traded on the Exchange which such ETP Holder knows or has reasonable grounds for believing is false or misleading or would improperly influence the market price of such security.

**Rule 12.6. Customer Priority**

(a) No ETP Holder shall (i) personally buy or initiate the purchase of any security traded on the Exchange for its own account or for any account in which it or any associated person of the ETP Holder is directly or indirectly interested while such an ETP Holder holds or has knowledge that any person associated with it holds an unexecuted market order to buy such security in the unit of trading for a customer, or (ii) sell or initiate the sale of any such security for any such account while it personally holds or has knowledge that any person associated with it holds an unexecuted market order to sell such security in the unit of trading for a customer.

(b) No ETP Holder shall (i) buy or initiate the purchase of any such security for any account in which it or any associated person of the ETP Holder is directly or indirectly interested at or below the price at which it personally holds or has knowledge that any person associated with it holds an unexecuted limited price order to buy such security in the unit of trading for a customer or (ii) sell or initiate the sale of any such security for any such account at or above the price at which it personally holds or has knowledge that any person associated with it holds an unexecuted limited price order to sell such security in the unit of trading for a customer.

(c) The provisions of paragraphs (a) and (b) of this Rule shall not apply: (i) to any purchase or sale of any such security in an amount less than the unit of trading made by an ETP Holder to offset odd-lot orders for customers; (ii) to any purchase or sale of any such security upon terms for delivery other than those specified in such unexecuted market or limited price order; or (iii) to any unexecuted order that is subject to a condition that has not been satisfied.

(d) The provisions of paragraphs (a) and (b) of this Rule also shall not apply if an ETP Holder engages in trading activity to facilitate the execution, on a riskless principal basis, of another order from its customer (whether its own customer or the customer of another member) (the “facilitated order”), provided that the requirements of Rule 11.23 are satisfied. Any transaction handled by an ETP Holder on other than an agency basis that does not satisfy the requirements of Exchange Rule 11.23 remains a transaction that, unless otherwise exempt, is subject to the provisions of paragraphs (a) and (b) of this Rule. This exemption applies to both offsetting transaction legs of a riskless principal transaction but only to the extent of the actual number of shares that are required to satisfy the facilitated order.

(e) ETP Holders executing customer orders on the Exchange are required to implement and maintain automated systems reasonably designed to ensure compliance with this Rule. The Exchange will allow any ETP Holder to comply manually with the provisions of this Rule for a reasonably limited duration in the event that such ETP Holder's automated systems become inoperative as a result of any act, condition or cause beyond the reasonable control of the ETP Holder, including, but not limited to, an act of God, fire, flood, extraordinary weather conditions, war, insurrection, riot, strike, accident, action of government, communications or power failure, or any equipment or software malfunction. ETP Holders shall not otherwise disable or disengage their automated systems. ETP Holders shall promptly notify the Exchange of any changes in the operating status of their automated systems.

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### *Interpretations and Policies*

.01 If an ETP Holder holds for execution on the Exchange a customer buy order and a customer sell order that can be crossed, the ETP Holder's automated system shall systemically cross them without interpositioning itself as a dealer.

.02 For a pilot period lasting through June 30, 2006:

(a) An ETP Holder shall be deemed to have violated Rule 12.6 if, while holding a customer limit order (as rounded to a penny increment) representing the NBBO, the ETP Holder, for his own account, trades with an incoming market or marketable limit order at a price which is less than one penny better than the price of such customer limit order (not the quoted price) held by such ETP Holder.

(b) An ETP Holder shall be deemed to have violated Rule 12.6 if, while holding a customer limit order (as rounded to a penny increment) at a price outside the NBBO, the ETP Holder, for his own account, trades with an incoming market or marketable limit order at a price which is less than the nearest penny increment to the actual price of the customer limit order (not the quoted price) held by such ETP Holder

.03 An ETP Holder or any associated person of an ETP Holder responsible for entering orders for its own account or any account in which it is directly or indirectly interested shall be presumed to have knowledge of a particular unexecuted customer order. Such presumption can be rebutted by adequate evidence which shows, to the Exchange's satisfaction, that the ETP Holder has implemented a reasonable system of internal policies and procedures and has an adequate system of internal controls to prevent the misuse of information about customer orders by those responsible for entering such proprietary orders.

.04 A User shall not be deemed to have violated Rule 12.6 if, while holding a customer order, the User places a Zero Display Reserve Order that is pegged to the midpoint of the

Protected BBO pursuant to Rule 11.11(c)(2) for its own account and the order is ultimately executed at a price that is superior to, but less than one penny superior to, the price of such customer order.

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### **Rule 12.7. Joint Activity**

No ETP Holder, directly or indirectly, shall hold any interest or participation in any joint account for buying or selling in a security traded on the Exchange, unless such joint account is promptly reported to the Exchange. The report should contain the following information for each account:

- (1) the name of the account, with names of all participants and their respective interests in profits and losses;
- (2) a statement regarding the purpose of the account;
- (3) the name of the ETP Holder carrying and clearing the account; and
- (4) a copy of any written agreement or instrument relating to the account.

### **Rule 12.8. Influencing the Consolidated Tape**

No ETP Holder shall attempt to execute a transaction or transactions to buy or sell a security for the purpose of influencing any report appearing on the Consolidated Tape.

### **Rule 12.9. Options**

(a) No ETP Holder shall initiate the purchase or sale on the Exchange for its own account, or for any account in which it is directly or indirectly interested, of any stock of any issuer in which it holds or has granted any put, call, straddle or option; provided, however, that this prohibition shall not be applicable in respect of any option issued by The Options Clearing Corporation.

(b) No ETP Holder acting as an odd-lot dealer shall become interested directly or indirectly, in a pool dealing or trading in the stock of any issuer in which it is an odd-lot dealer, nor shall it acquire or grant directly or indirectly, any option to buy or sell, receive or deliver shares of stock of any issuer in which such ETP Holder is an odd-lot dealer, unless such option is issued by The Options Clearing Corporation.

### **Rule 12.10. Best Execution**

In executing customer orders, an ETP Holder is not a guarantor of "best execution" but must use the care of a reasonably prudent person in the light of all circumstances deemed

relevant by the ETP Holder and having regard for the ETP Holder's brokerage judgment and experience.

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### *Interpretations and Policies*

.01 As part of an ETP Holder's fiduciary obligation to provide best execution for its customer limit orders, the ETP Holder shall refer to, and comply with, Rule 11Ac1-4 promulgated under the Securities Exchange Act of 1934, as amended.

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### **Rule 12.11. Trading Suspensions**

The Chairman of the Board or the President shall have the power to suspend trading in any and all securities traded on the Exchange whenever in his opinion such suspension would be in the public interest. No such action shall continue longer than a period of two days, or as soon thereafter as a quorum of Directors can be assembled, unless the Board approves the continuation of such suspension.

### **Rule 12.12. Publication of Transactions and Changes**

(a) The Exchange shall cause to be disseminated for publication on the Consolidated Tape all last sale price reports of transactions executed through the facilities of the Exchange pursuant to the requirements of the Consolidated Tape Plan approved by the Commission.

(b) To facilitate the dissemination of such last sale price reports, each ETP Holder shall cause to be reported to the Exchange, as promptly as possible after execution, all information concerning each transaction required by the Consolidated Tape Plan.

(c) An official of the Exchange shall approve any corrections to reports transmitted over the Consolidated Tape. Any such corrections shall be made within one day after detection of the error.

## **CHAPTER XIII. Miscellaneous Provisions**

### **Rule 13.1. Comparison and Settlement Requirements**

(a) Every ETP Holder who is a member of a qualified clearing agency shall implement comparison and settlement procedures under the rules of such entity and every ETP Holder who is not such a member shall implement comparison and settlement procedures which conform to the comparison and settlement requirements of the National Association of Securities Dealers Uniform Practice Code.

(b) For purposes of this Rule, a qualified clearing agency shall mean a clearing agency (as defined in the Act) which has agreed to supply the Exchange with data reasonably

requested in order to permit the Exchange to enforce compliance by its ETP Holders and ETP Holder organizations with the provisions of the Act, the rules and regulations thereunder, and the rules of the Exchange.

(c) Anything contained in paragraph (a) to the contrary notwithstanding, the Board may extend or postpone the time of the delivery of an Exchange transaction whenever, in its opinion, such action is called for by the public interest, by just and equitable principles of trade or by the need to meet unusual conditions. In such case, delivery shall be effected at such time, place and manner as directed by the Board.

### **Rule 13.2. Failure to Deliver and Failure to Receive**

Borrowing and deliveries shall be effected in accordance with Rule 203 and Rule 204 of Regulation SHO, under the Exchange Act. The Exchange incorporates by reference Rules 200 (17 CFR 242.200), 203 (17 CFR 242.203) and 204 (17 CFR 242.204) of Regulation SHO to this Rule 13.2, as if they were fully set forth herein.

### **Rule 13.3. Proxies and other Issuer-Related Materials**

(a) No ETP Holder shall give a proxy to vote stock which is registered in its name, except as required or permitted under the provisions of paragraph (b) or (c) hereof unless such ETP Holder is the beneficial owner of such stock.

(b) Whenever a person soliciting proxies shall timely furnish to an ETP Holder:

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

(2) satisfactory assurance that he will reimburse such ETP Holder for all out-of-pocket expenses, including reasonable clerical expenses incurred by such ETP Holder in connection with such solicitation, such ETP Holder shall transmit promptly to each beneficial owner of stock of such issuer which is in its possession or control or registered in a name other than the name of the beneficial owner all such material furnished. Such material shall include a signed proxy indicating the number of shares held for such beneficial owner and bearing a symbol identifying the proxy with proxy records maintained by the ETP Holder, and a letter informing the beneficial owner of the time limit and necessity for completing the proxy form and forwarding it to the person soliciting proxies prior to the expiration of the time limit in order for the shares to be represented at the meeting. An ETP Holder shall furnish a copy of the symbols to the person soliciting the proxies and also shall retain a copy thereof pursuant to the provisions of Rule 17a-4 under the Act. Notwithstanding the provisions of this Rule, an ETP Holder may give a proxy to vote any stock pursuant to the rules of any national securities exchange or association to which the ETP Holder is also responsible provided that the records of the ETP Holder clearly indicate which procedure it is following. This section shall not apply to beneficial owners residing outside of the United States of

America though ETP Holders may voluntarily comply with the provisions hereof in respect of such persons if they so desire.

(c) An ETP Holder may give a proxy to vote any stock registered in its name if such ETP Holder holds such stock as executor, administrator, guardian, trustee, or in a similar representative or fiduciary capacity with authority to vote. An ETP Holder which has in its possession or within its control stock registered in the name of another ETP Holder and which desires to transmit signed proxies pursuant to the provisions of paragraph (b), shall obtain the requisite number of signed proxies from such holder of record.

(d) Notwithstanding the provisions of this Rule 13.3, an ETP Holder may not give a proxy to vote without instructions from beneficial owners when the matter to be voted upon authorizes the implementation of any equity compensation plan, or any material revision to the terms of any existing equity compensation plan (whether or not stockholder approval of such plan is required pursuant to Rule 15.9). However, an ETP Holder may not give or authorize a proxy to vote without instructions on a matter relating to executive compensation, even if such matter would otherwise qualify for an exception from the requirements of this Rule.

(e) Moreover, notwithstanding the provisions of Rule 13.3, an ETP Holder that is not a beneficial owner of a security registered under Section 12 of the Act is prohibited from granting a proxy to vote the security in connection with a shareholder vote on the election of a member of the board of directors of an issuer (except for a vote with respect to the uncontested election of a member of the board of directors of any investment company registered under the Investment Company Act of 1940), executive compensation, or any other significant matter, as determined by the Commission, by rule, unless the beneficial owner of the security has instructed the member to vote the proxy in accordance with the voting instructions of the beneficial owner.

#### **Rule 13.4. Forwarding of Issuer Materials**

An ETP Holder when so requested by an issuer and upon being furnished with: (1) sufficient copies of annual reports, information statements or other material required by law to be sent to stockholders periodically, and (2) satisfactory assurance that it will be reimbursed by such issuer for all out-of-pocket expenses, including reasonable clerical expenses, shall transmit promptly to each beneficial owner of securities of such issuer which are in its possession and control and registered in a name other than the name of the beneficial owner all such material furnished. This paragraph shall not apply to beneficial owners residing outside of the United States of America though ETP Holders may voluntarily comply with the provisions hereof in respect of such persons if they so desire.

**Rule 13.5. Assigning of Registered Securities in Name of an ETP Holder or ETP Holder Organization**

An ETP Holder or ETP Holder organization may authorize one or more persons who are his or its employees to assign registered securities in the name of such ETP Holder or ETP Holder organization and to guarantee assignments of registered securities with the same effect as if the name of such ETP Holder or ETP Holder organization had been signed under like circumstances by such ETP Holder or by one of the partners of the ETP Holder firm or by one of the authorized officers of the ETP Holder corporation by executing and filing with the Exchange, in a form prescribed by it, a separate Power of Attorney for each person so authorized.

**Rule 13.6. Commissions**

Nothing in the Exchange Rules, the By-Laws or the Exchange practices shall be construed to require, authorize or permit any ETP Holder, or any person associated with an ETP Holder, to agree or arrange, directly or indirectly, for the charging of fixed rates of commission for transactions effected on, or effected by the use of the facilities of, the Exchange.

**Rule 13.7. Off-Exchange Transactions**

No rule, stated policy or practice of this Exchange shall prohibit or condition, or be construed to prohibit or condition or otherwise limit, directly or indirectly, the ability of any ETP Holder to effect any transaction otherwise than on this Exchange with another person in any security listed on this Exchange or to which unlisted trading privileges on this Exchange have been extended.

**Rule 13.8. [Reserved]****Rule 13.9. [Reserved]**

**CHAPTER XIV. Consolidated Audit Trail Compliance****Rule 14.1 Consolidated Audit Trail – Definitions**

For purposes of the Rules set forth in this Chapter XIV:

(a) “Account Effective Date” means:

(1) with regard to those circumstances in which an Industry Member has established a trading relationship with an institution but has not established an account with that institution:

(A) when the trading relationship was established prior to November 15, 2018 for Industry Members other than Small Industry Members, or prior to November 15, 2019 for Small Industry Members, either

(i) the date the relationship identifier was established within the Industry Member;

(ii) the date when trading began (i.e., the date the first order was received) using the relevant relationship identifier; or

(iii) if both dates are available, the earlier date will be used to the extent that the dates differ; or

(B) when the trading relationship was established on or after November 15, 2018 for Industry Members other than Small Industry Members, or on or after November 15, 2019 for Small Industry Members, the date the Industry Member established the relationship identifier, which would be no later than the date the first order was received;

(2) where an Industry Member changes back office providers or clearing firms prior to November 15, 2018 for Industry Members other than Small Industry Members, or prior to November 15, 2019 for Small Industry Members, the date an account was established at the relevant Industry Member, either directly or via transfer;

(3) where an Industry Member acquires another Industry Member prior to November 15, 2018 for Industry Members other than Small Industry Members, or prior to November 15, 2019 for Small Industry Members, the date an account was established at the relevant Industry Member, either directly or via transfer;

(4) where there are multiple dates associated with an account established prior to November 15, 2018 for Industry Members other than Small Industry Members, or prior to November 15, 2019 for Small Industry Members, the earliest available date;

(5) with regard to Industry Member proprietary accounts established prior to November 15, 2018 for Industry Members other than Small Industry Members, or prior to November 15, 2019 for Small Industry Members:



(A) the date established for the account in the Industry Member or in a system of the Industry Member or

(B) the date when proprietary trading began in the account (i.e., the date on which the first orders were submitted from the account).

With regard to paragraphs (2) – (5), the Account Effective Date will be no later than the date trading occurs at the Industry Member or in the Industry Member's system.

(b) "Active Accounts" means an account that has had activity in Eligible Securities within the last six months.

(c) "Allocation Report" means a report made to the Central Repository by an Industry Member that identifies the Firm Designated ID for any account(s), including subaccount(s), to which executed shares are allocated and provides the security that has been allocated, the identifier of the firm reporting the allocation, the price per share of shares allocated, the side of shares allocated, the number of shares allocated to each account, and the time of the allocation; provided, for the avoidance of doubt, any such Allocation Report shall not be required to be linked to particular orders or executions.

(d) "Business Clock" means a clock used to record the date and time of any Reportable Event required to be reported under this Rule Series.

(e) "CAT" means the consolidated audit trail contemplated by SEC Rule 613.

(f) "CAT NMS Plan" means the National Market System Plan Governing the Consolidated Audit Trail, as amended from time to time.

(g) "CAT-Order-ID" means a unique order identifier or series of unique order identifiers that allows the Central Repository to efficiently and accurately link all Reportable Events for an order, and all orders that result from the aggregation or disaggregation of such order.

(h) "CAT Reporting Agent" means a Data Submitter that is a third party that enters into an agreement with an Industry Member pursuant to which the CAT Reporting Agent agrees to fulfill such Industry Member's obligations under this Rule Series.

(i) "Central Repository" means the repository responsible for the receipt, consolidation, and retention of all information reported to the CAT pursuant to SEC Rule 613 and the CAT NMS Plan.

(j) "Compliance Threshold" has the meaning set forth in Rule 14.11(d).

(k) "Customer" means:

(1) the account holder(s) of the account at an Industry Member originating the order; and

(2) any person from whom the Industry Member is authorized to accept trading instructions for such account, if different from the account holder(s).

(l) “Customer Account Information” shall include, but not be limited to, account number, account type, customer type, date account opened, and large trader identifier (if applicable); except, however, that:

(1) in those circumstances in which an Industry Member has established a trading relationship with an institution but has not established an account with that institution, the Industry Member will:

(A) provide the Account Effective Date in lieu of the “date account opened”;

(B) provide the relationship identifier in lieu of the “account number”;  
and

(C) identify the “account type” as a “relationship”;

(2) in those circumstances in which the relevant account was established prior to November 15, 2018 for Industry Members other than Small Industry Members, or prior to November 15, 2019 for Small Industry Members, and no “date account opened” is available for the account, the Industry Member will provide the Account Effective Date in the following circumstances:

(A) where an Industry Member changes back office providers or clearing firms and the date account opened is changed to the date the account was opened on the new back office/clearing firm system;

(B) where an Industry Member acquires another Industry Member and the date account opened is changed to the date the account was opened on the post-merger back office/clearing firm system;

(C) where there are multiple dates associated with an account in an Industry Member’s system, and the parameters of each date are determined by the individual Industry Member; and

(D) where the relevant account is an Industry Member proprietary account.

(m) “Customer Identifying Information” means information of sufficient detail to identify a Customer, including, but not limited to:

(1) with respect to individuals: name, address, date of birth, individual tax payer identification number (“ITIN”)/social security number (“SSN”), individual’s role in the account (*e.g.*, primary holder, joint holder, guardian, trustee, person with the power of attorney); and

(2) with respect to legal entities: name, address, Employer Identification Number (“EIN”)/Legal Entity Identifier (“LEI”) or other comparable common entity identifier, if applicable; provided, however, that an Industry Member that has an LEI for a Customer must submit the Customer’s LEI in addition to other information of sufficient detail to identify a Customer.

(n) “Data Submitter” means any person that reports data to the Central Repository, including national securities exchanges, national securities associations, broker-dealers, the SIPs for the CQS, CTA, UTP and Plan for Reporting of Consolidated Options Last Sale Reports and Quotation Information (“OPRA”) Plans, and certain other vendors or third parties that may submit data to the Central Repository on behalf of Industry Members.

(o) “Eligible Security” includes (1) all NMS Securities and (2) all OTC Equity Securities.

(p) “Error Rate” means the percentage of Reportable Events collected by the Central Repository in which the data reported does not fully and accurately reflect the order event that occurred in the market.

(q) “Firm Designated ID” means a unique identifier for each trading account designated by Industry Members for purposes of providing data to the Central Repository, where each such identifier is unique among all identifiers from any given Industry Member for each business date.

(r) “Industry Member” means a member of a national securities exchange or a member of a national securities association.

(s) “Industry Member Data” has the meaning set forth in Rule 14.3(a)(2).

(t) “Initial Plan Processor” means the first Plan Processor selected by the Operating Committee in accordance with SEC Rule 613, Section 6.1 of the CAT NMS Plan and the National Market System Plan Governing the Process for Selecting a Plan Processor and Developing a Plan for the Consolidated Audit Trail.

(u) “Listed Option” or “Option” have the meaning set forth in Rule 600(b)(35) of Regulation NMS.

(v) “Manual Order Event” means a non-electronic communication of order-related information for which Industry Members must record and report the time of the event.

(w) “Material Terms of the Order” includes: the NMS Security or OTC Equity Security symbol; security type; price (if applicable); size (displayed and non-displayed); side (buy/sell); order type; if a sell order, whether the order is long, short, short exempt; open/close indicator (except on transactions in equities); time in force (if applicable); if the order is for a Listed Option, option type (put/call), option symbol or root symbol, underlying symbol, strike price, expiration date, and open/close (except on market maker quotations); and any special handling instructions.

- (x) “NMS Security” means any security or class of securities for which transaction reports are collected, processed, and made available pursuant to an effective transaction reporting plan, or an effective national market system plan for reporting transactions in Listed Options.
- (y) “NMS Stock” means any NMS Security other than an option.
- (z) “Operating Committee” means the governing body of the CAT NMS, LLC designated as such and described in Article IV of the CAT NMS Plan.
- (aa) “Options Market Maker” means a broker-dealer registered with an exchange for the purpose of making markets in options contracts traded on the exchange.
- (bb) “Order” or “order”, with respect to Eligible Securities, shall include:
- (1) Any order received by an Industry Member from any person;
  - (2) Any order originated by an Industry Member; or
  - (3) Any bid or offer.
- (cc) “OTC Equity Security” means any equity security, other than an NMS Security, subject to prompt last sale reporting rules of a registered national securities association and reported to one of such association’s equity trade reporting facilities.
- (dd) “Participant” means each Person identified as such in Exhibit A of the CAT NMS Plan, as amended, in such Person’s capacity as a Participant in CAT NMS, LLC.
- (ee) “Person” means any individual, partnership, limited liability company, corporation, joint venture, trust, business trust, cooperative or association and any heirs, executors, administrators, legal representatives, successors and assigns of such Person where the context so permits.
- (ff) “Plan Processor” means the Initial Plan Processor or any other Person selected by the Operating Committee pursuant to SEC Rule 613 and Sections 4.3(b)(i) and 6.1 of the CAT NMS Plan, and with regard to the Initial Plan Processor, the National Market System Plan Governing the Process for Selecting a Plan Processor and Developing a Plan for the Consolidated Audit Trail, to perform the CAT processing functions required by SEC Rule 613 and set forth in the CAT NMS Plan.
- (gg) “Received Industry Member Data” has the meaning set forth in Rule 14.3(a)(2).
- (hh) “Recorded Industry Member Data” has the meaning set forth in Rule 14.3(a)(1).
- (ii) “Reportable Event” includes, but is not limited to, the original receipt or origination, modification, cancellation, routing, execution (in whole or in part) and allocation of an order, and receipt of a routed order.

(jj) “SRO” means any self-regulatory organization within the meaning of Section 3(a)(26) of the Exchange Act.

(kk) “SRO-Assigned Market Participant Identifier” means an identifier assigned to an Industry Member by an SRO or an identifier used by a Participant.

(ll) “Small Industry Member” means an Industry Member that qualifies as a small broker-dealer as defined in Rule 0-10(c) under the Securities Exchange Act of 1934, as amended.

(mm) “Trading Day” shall have the meaning as is determined by the Operating Committee. For the avoidance of doubt, the Operating Committee may establish different Trading Days for NMS Stocks (as defined in SEC Rule 600(b)(47)), Listed Options, OTC Equity Securities, and any other securities that are included as Eligible Securities from time to time.

#### **Rule 14.2. Consolidated Audit Trail - Clock Synchronization**

##### (a) Clock Synchronization

(1) Each Industry Member shall synchronize its Business Clocks, other than such Business Clocks used solely for Manual Order Events or used solely for the time of allocation on Allocation Reports, at a minimum to within a fifty (50) millisecond tolerance of the time maintained by the atomic clock of the National Institute of Standards and Technology (“NIST”), and maintain such synchronization.

(2) Each Industry Member shall synchronize (A) its Business Clocks used solely for Manual Order Events and (B) its Business Clocks used solely for the time of allocation on Allocation Reports at a minimum to within a one second tolerance of the time maintained by the NIST atomic clock, and maintain such synchronization.

(3) The tolerance for paragraphs (a)(1) and (2) of this Rule includes all of the following:

(A) The difference between the NIST atomic clock and the Industry Member’s Business Clock;

(B) The transmission delay from the source; and

(C) The amount of drift of the Industry Member’s Business Clock.

(4) Business Clocks must be synchronized every business day before market open to ensure that timestamps for Reportable Events are accurate. To maintain clock synchronization, Business Clocks must be checked against the NIST atomic clock and re-synchronized, as necessary, throughout the day.

##### (b) Documentation

Industry Members must document and maintain their synchronization procedures for Business Clocks. Industry Members must keep a log of the times when they synchronize their Business Clocks and the results of the synchronization process. This log should include notice of any time a Business Clock drifts more than the applicable tolerance specified in paragraph (a) of this Rule. Such log must include results for a period of not less than five years ending on the then current date, or for the entire period for which the Industry Member has been required to comply with this Rule if less than five years.

(c) Certification

Each Industry Member shall certify to the Exchange that its Business Clocks satisfy the synchronization requirements set forth in paragraph (a) of this Rule periodically in accordance with the certification schedule established by the Operating Committee pursuant to the CAT NMS Plan.

(d) Violation Reporting

Each Industry Member with Business Clocks must report to the Plan Processor and the Exchange violations of paragraph (a) of this Rule pursuant to the thresholds set by the Operating Committee pursuant to the CAT NMS Plan.

**Rule 14.3. Consolidated Audit Trail – Industry Member Data Reporting**

(a) Recording and Reporting Industry Member Data

(1) Subject to paragraph (3) below, each Industry Member shall record and electronically report to the Central Repository the following details for each order and each Reportable Event, as applicable (“Recorded Industry Member Data”) in the manner prescribed by the Operating Committee pursuant to the CAT NMS Plan:

- (A) for original receipt or origination of an order:
  - (i) Firm Designated ID(s) for each Customer;
  - (ii) CAT-Order-ID;
  - (iii) SRO-Assigned Market Participant Identifier of the Industry Member receiving or originating the order;
  - (iv) date of order receipt or origination;
  - (v) time of order receipt or origination (using timestamps pursuant to Rule 14.6); and
  - (vi) Material Terms of the Order;
- (B) for the routing of an order:

- (i) CAT-Order-ID;
  - (ii) date on which the order is routed;
  - (iii) time at which the order is routed (using timestamps pursuant to Rule 14.6);
  - (iv) SRO-Assigned Market Participant Identifier of the Industry Member routing the order;
  - (v) SRO-Assigned Market Participant Identifier of the Industry Member or Participant to which the order is being routed;
  - (vi) if routed internally at the Industry Member, the identity and nature of the department or desk to which the order is routed; and
  - (vii) Material Terms of the Order;
- (C) for the receipt of an order that has been routed, the following information:
- (i) CAT-Order-ID;
  - (ii) date on which the order is received;
  - (iii) time at which the order is received (using timestamps pursuant to Rule 14.6);
  - (iv) SRO-Assigned Market Participant Identifier of the Industry Member receiving the order;
  - (v) SRO-Assigned Market Participant Identifier of the Industry Member or Participant routing the order; and
  - (vi) Material Terms of the Order;
- (D) if the order is modified or cancelled:
- (i) CAT-Order-ID;
  - (ii) date the modification or cancellation is received or originated;
  - (iii) time at which the modification or cancellation is received or originated (using timestamps pursuant to Rule 14.6);
  - (iv) price and remaining size of the order, if modified;

(v) other changes in the Material Terms of the Order, if modified; and

(vi) whether the modification or cancellation instruction was given by the Customer or was initiated by the Industry Member;

(E) if the order is executed, in whole or in part:

(i) CAT-Order-ID;

(ii) date of execution;

(iii) time of execution (using timestamps pursuant to Rule 14.6);

(iv) execution capacity (principal, agency or riskless principal);

(v) execution price and size;

(vi) SRO-Assigned Market Participant Identifier of the Industry Member executing the order;

(vii) whether the execution was reported pursuant to an effective transaction reporting plan or the Plan for Reporting of Consolidated Options Last Sale Reports and Quotation Information; and

(F) other information or additional events as may be prescribed pursuant to the CAT NMS Plan.

(2) Subject to paragraph (3) below, each Industry Member shall record and report to the Central Repository the following, as applicable (“Received Industry Member Data” and collectively with the information referred to in Rule 14.3(a)(1) “Industry Member Data”) in the manner prescribed by the Operating Committee pursuant to the CAT NMS Plan:

(A) if the order is executed, in whole or in part:

(i) An Allocation Report;

(ii) SRO-Assigned Market Participant Identifier of the clearing broker or prime broker, if applicable; and

(iii) CAT-Order-ID of any contra-side order(s);

(B) if the trade is cancelled, a cancelled trade indicator; and

(C) for original receipt or origination of an order, the Firm Designated ID for the relevant Customer, and in accordance with Rule 14.4, Customer



Account Information and Customer Identifying Information for the relevant Customer.

(3) Each Industry Member that is an Options Market Maker is not required to report to the Central Repository the Industry Member Data regarding the routing, modification or cancellation of its quotes in Listed Options. Each Industry Member that is an Options Market Maker shall report to the Exchange the time at which its quote in a Listed Option is sent to the Exchange (and, if applicable, any subsequent quote modification time and/or cancellation time when such modification or cancellation is originated by the Options Market Maker).

(b) Timing of Recording and Reporting

(1) Each Industry Member shall record Recorded Industry Member Data contemporaneously with the applicable Reportable Event.

(2) Each Industry Member shall report:

(A) Recorded Industry Member Data to the Central Repository by 8:00 a.m. Eastern Time on the Trading Day following the day the Industry Member records such Recorded Industry Member Data; and

(B) Received Industry Member Data to the Central Repository by 8:00 a.m. Eastern Time on the Trading Day following the day the Industry Member receives such Received Industry Member Data.

(3) Industry Members may, but are not required to, voluntarily report Industry Member Data prior to the applicable 8:00 a.m. Eastern Time deadline.

(c) Applicable Securities

(1) Each Industry Member shall record and report to the Central Repository the Industry Member Data as set forth in paragraph (a) of this Rule for each NMS Security registered or listed for trading on such exchange or admitted to unlisted trading privileges on such exchange.

(2) Each Industry Member shall record and report to the Central Repository the Industry Member Data as set forth in this paragraph (a) of this Rule for each Eligible Security for which transaction reports are required to be submitted to FINRA.

(d) Security Symbology

(1) For each exchange-listed Eligible Security, each Industry Member shall report Industry Member Data to the Central Repository using the symbology format of the exchange listing the security.

(2) For each Eligible Security that is not exchange-listed, each Industry Member shall report Industry Member Data to the Central Repository using such

symbology format as approved by the Operating Committee pursuant to the CAT NMS Plan.

(e) Error Correction

For each Industry Member for which errors in Industry Member Data submitted to the Central Repository have been identified by the Plan Processor or otherwise, such Industry Member shall submit corrected Industry Member Data to the Central Repository by 8:00 a.m. Eastern Time on T+3.

**Rule 14.4. Consolidated Audit Trail – Customer Information Reporting**

(a) Initial Set of Customer Information

Each Industry Member shall submit to the Central Repository the Firm Designated ID, Customer Account Information and Customer Identifying Information for each of its Customers with an Active Account prior to such Industry Member's commencement of reporting to the Central Repository and in accordance with the deadlines set forth in Rule 14.9.

(b) Daily Updates to Customer Information

Each Industry Member shall submit to the Central Repository any updates, additions or other changes to the Firm Designated ID, Customer Account Information and Customer Identifying Information for each of its Customers with an Active Account on a daily basis.

(c) Periodic Updates to Complete Set of Customer Information

On a periodic basis as designated by the Plan Processor and approved by the Operating Committee, each Industry Member shall submit to the Central Repository a complete set of Firm Designated IDs, Customer Account Information and Customer Identifying Information for each of its Customers with an Active Account.

(d) Error Correction

For each Industry Member for which errors in Firm Designated ID, Customer Account Information and Customer Identifying Information for each of its Customers with an Active Account submitted to the Central Repository have been identified by the Plan Processor or otherwise, such Industry Member shall submit corrected data to the Central Repository by 5:00 p.m. on T+3.

**Rule 14.5. Consolidated Audit Trail – Industry Member Information Reporting**

Each Industry Member shall submit to the Central Repository information sufficient to identify such Industry Member, including CRD number and LEI, if such LEI has been obtained, prior to such Industry Member's commencement of reporting to the

Central Repository and in accordance with the deadlines set forth in Rule 14.9, and keep such information up to date as necessary.

**Rule 14.6. Consolidated Audit Trail - Time Stamps**

(a) Millisecond Time Stamps

(1) Subject to paragraphs (a)(2) and (b), each Industry Member shall record and report Industry Member Data to the Central Repository with time stamps in milliseconds.

(2) Subject to paragraph (b), to the extent that any Industry Member's order handling or execution systems utilize time stamps in increments finer than milliseconds, such Industry Member shall record and report Industry Member Data to the Central Repository with time stamps in such finer increment.

(b) One Second Time Stamps/Electronic Order Capture

(i) Each Industry Member may record and report Manual Order Events to the Central Repository in increments up to and including one second, provided that each Industry Member shall record and report the time when a Manual Order Event has been captured electronically in an order handling and execution system of such Industry Member ("Electronic Capture Time") in milliseconds; and

(ii) Each Industry Member may record and report the time of Allocation Reports in increments up to and including one second.

**Rule 14.7. Consolidated Audit Trail – Clock Synchronization Rule Violation**

An Industry Member that engages in a pattern or practice of reporting Reportable Events outside of the required clock synchronization time period as set forth in this Rule Series without reasonable justification or exceptional circumstances may be considered in violation of this Rule.

**Rule 14.8. Consolidated Audit Trail – Connectivity and Data Transmission**

(a) Data Transmission

Each Industry Member shall transmit data as required under the CAT NMS Plan to the Central Repository utilizing such format(s) as may be provided by the Plan Processor and approved by the Operating Committee.

(b) Connectivity

Each Industry Member shall connect to the Central Repository using a secure method(s), including but not limited to private line(s) and virtual private network connection(s).

(c) CAT Reporting Agents

(1) Any Industry Member may enter into an agreement with a CAT Reporting Agent pursuant to which the CAT Reporting Agent agrees to fulfill the reporting obligations of such Industry Member under this Chapter XIV. Any such agreement shall be evidenced in writing, which shall specify the respective functions and responsibilities of each party to the agreement that are required to effect full compliance with the requirements of this Rule Series.

(2) All written documents evidencing an agreement described in subparagraph (1) shall be maintained by each party to the agreement.

(3) Each Industry Member remains primarily responsible for compliance with the requirements of this Chapter XIV, notwithstanding the existence of an agreement described in this paragraph.

**Rule 14.9. Consolidated Audit Trail – Development and Testing**

(a) Development

(1) Connectivity and Acceptance Testing

(i) Industry Members (other than Small Industry Members) shall begin connectivity and acceptance testing with the Central Repository no later than August 15, 2018.

(ii) Small Industry Members shall begin connectivity and acceptance testing with the Central Repository no later than August 15, 2019.

(2) Reporting Customer and Industry Member Information

(i) Industry Members (other than Small Industry Members) shall begin reporting Customer and Industry Member information, as required by Rules 14.4(a) and 14.5, respectively, to the Central Repository for processing no later than October 15, 2018.

(ii) Small Industry Members shall begin reporting Customer and Industry Member information, as required by Rules 14.4(a) and 14.5, respectively, to the Central Repository for processing no later than October 15, 2019.

(3) Submission of Order Data

(i) Industry Members (other than Small Industry Members)

(A) Industry Members (other than Small Industry Members) are permitted, but not required, to submit order data for testing purposes beginning no later than May 15, 2018.

(B) Industry Members (other than Small Industry Members) shall participate in the coordinated and structured testing of order submission, which will begin no later than August 15, 2018.

(ii) Small Industry Members

(A) Small Industry Members are permitted, but not required, to submit order data for testing purposes beginning no later than May 15, 2019.

(B) Small Industry Members shall participate in the coordinated and structured testing of order submission, which will begin no later than August 15, 2019.

(4) Submission of Options Market Maker Quote. Industry Members are permitted, but not required to, submit Quote Sent Time on Options Market Maker quotes, beginning no later than October 15, 2018.

(b) Testing

Each Industry Member shall participate in testing related to the Central Repository, including any industry-wide disaster recovery testing, pursuant to the schedule established pursuant to the CAT NMS Plan.

#### **Rule 14.10. Consolidated Audit Trail - Recordkeeping**

Each Industry Member shall maintain and preserve records of the information required to be recorded under this Rule Series for the period of time and accessibility specified in SEC Rule 17a-4(b). The records required to be maintained and preserved under this Rule may be immediately produced or reproduced on “micrographic media” as defined in SEC Rule 17a-4(f)(1)(i) or by means of “electronic storage media” as defined in SEA Rule 17a-4(f)(1)(ii) that meet the conditions set forth in SEC Rule 17a-4(f) and be maintained and preserved for the required time in that form.

#### **Rule 14.11. Consolidated Audit Trail – Timely, Accurate and Complete Data**

(a) General

Industry Members are required to record and report data to the Central Repository as required by this Rule Series in a manner that ensures the timeliness, accuracy, integrity and completeness of such data.

(b) LEIs

Without limiting the requirement set forth in paragraph (a), Industry Members are required to accurately provide the LEIs in their records as required by this Rule Series

and may not knowingly submit inaccurate LEIs to the Central Repository; provided, however, that this requirement does not impose any additional due diligence obligations on Industry Members with regard to LEIs for CAT purposes.

(c) Compliance with Error Rate

If an Industry Member reports data to the Central Repository with errors such that the error percentage exceeds the maximum Error Rate established by the Operating Committee pursuant to the CAT NMS Plan, then such Industry Member would not be in compliance with the rules set forth in this Chapter XIV.

(d) Compliance Thresholds

Each Industry Member shall be required to meet a separate compliance threshold which will be an Industry Member-specific rate that may be used as the basis for further review or investigation into the Industry Member's performance with regard to the CAT (the "Compliance Thresholds"). Compliance Thresholds will compare an Industry Member's error rate to the aggregate Error Rate over a period of time to be defined by the Operating Committee. An Industry's Member's performance with respect to its Compliance Threshold will not signify, as a matter of law, that such Industry Member has violated this Rule Series.

**Rule 14.12 Consolidated Audit Trail – Compliance Dates**

(a) General

Paragraphs (b) and (c) of this Rule set forth additional details with respect to the compliance dates of the rules set forth in this Chapter XIV. Unless otherwise noted, the Rules set forth in Chapter XIV are fully effective and ETP Holders must comply with their terms.

(b) Clock Synchronization

(1) each Industry Member shall comply with Rule 14.2 with regard to Business Clocks that capture time in milliseconds commencing on or before March 15, 2017.

(2) Each Industry Member shall comply with Rule 14.2 with regard to Business Clocks that do not capture time in milliseconds commencing on or before February 19, 2018.

(c) CAT Data Reporting

(1) Each Industry Member (other than a Small Industry Member) shall record and report the Industry Member Data to the Central Repository by November 15, 2018.

(2) Each Industry Member that is a Small Industry Member shall record and report the Industry Member Data to the Central Repository by November 15, 2019.

## **CHAPTER XV. Listed Securities and Other Exchange Products**

### **Listed Securities**

#### **Rule 15.1. Applications**

All applications for listing on the Exchange will be submitted to the Exchange's Secretary on a form prescribed by the Exchange.

#### **Rule 15.2. Procedure**

The Exchange shall determine whether the applicant meets the requirements for listing. In making such determination, the Exchange shall adhere to the following procedures:

(a) If the Exchange is satisfied that the applicant is qualified for listing pursuant to the provisions of this Chapter, the Exchange shall promptly notify, in writing, the applicant of the Exchange's determination, and the applicant will be approved for listing on the Exchange.

(b) If the Exchange is not satisfied that the applicant is qualified for listing pursuant to the provisions of this Chapter, the Exchange shall promptly notify, in writing, the applicant of the grounds for denying listing. The Board may reverse the determination that the applicant is not qualified for listing. If a majority of the Board specifically determines to reverse the determination to deny listing, the Board shall promptly notify the Exchange staff, who shall promptly notify the applicant that the Board has granted the applicant's application for listing.

(c) In considering applications for listing, the Exchange shall adhere to the following procedures:

- (1) Where a listing application is granted by the Board, the Exchange shall promptly notify the applicant.
- (2) The applicant shall be afforded an opportunity to be heard on the denial of listing pursuant to Chapter X of the Exchange Rules governing adverse action.
- (3) The applicant must satisfy the requirements of this Chapter, including any portion of paragraphs (b) or (c) of Rule 10A-3 of the Act pertaining to audit committees, which cannot be exempted or otherwise waived other than as provided within the rules.

**Rule 15.3. Requirements**

No security shall be listed on the Exchange unless the issuer thereof shall meet the following requirements:

(a) In the case of common stock have:

- (1) net tangible assets of at least \$2,000,000;
- (2) at least 1000 recordholders of the issue for which trading privileges have been granted or are requested;
- (3) outstanding at least 250,000 shares for which trading privileges have been granted or are requested exclusive of the holdings of officers and directors;
- (4) demonstrated net earnings of \$200,000 annually before taxes for two prior years excluding non-recurring income; and
- (5) been actively engaged in business and have been so operating for at least three (3) consecutive years.

(b) In the case of preferred stock:

- (1) The listing of issues is considered on a case by case basis, in light of the suitability of the issue for trading on the Exchange. The Exchange, as a general rule, will not consider listing the convertible preferred stock of a company unless its common stock is also listed on the Exchange, another exchange that is registered pursuant to Section 6 of the Act or a facility of a national securities association registered pursuant to Section 15A of the Act.
- (2) An issuer applying for listing of a preferred stock is expected to meet the following criteria:
  - (i) The issuer appears to be in a financial position sufficient to satisfactorily service the dividend requirements for the preferred stock and meets the requirements set forth in paragraph (a) above.
  - (ii) In the case of an issuer whose common stock is listed on the Exchange, another exchange that is registered pursuant to Section 6 of the Act or a facility of a national securities association registered pursuant to Section 15A of the Act, the following guidelines apply:

Shares Publicly Held .....100,000  
 Aggregate Market Value/Price ..... \$2,000,000/\$10



For issuers of preferred stock not listed as noted above, the Exchange has established different guidelines to ensure adequate public interest as follows:

Preferred Shares Publicly Held .....	400,000
Public Round-Lot Holders.....	800
Aggregate Market Value/Price.....	\$4,000,000/\$10

- (iii) The Exchange will not list convertible preferred issues containing a provision which gives the company the right, at its discretion, to reduce the conversion price for periods of time or from time to time unless the company establishes a minimum period of ten business days within which such price reduction will be in effect.

(c) In the case of warrants:

- (1) at least 250,000 outstanding, exclusive of the holdings of officers and directors; and
- (2) have a class of common stock that would otherwise be eligible for listing on the Exchange or is already listed on the Exchange.

(d) In the case of bonds:

- (1) a principal amount outstanding of at least \$2,000,000;
- (2) have at least an aggregate market value of at least \$2,000,000;
- (3) have at least 250 recordholders and, in the case of convertible debt, a larger distribution may be required; and
- (4) have a class of common stock that would otherwise be eligible for listing on the Exchange or is already listed on the Exchange.

(e) In the case of the listing of any security not otherwise covered by the criteria of the foregoing subsections or in the Exchange Rules, provided the issue is otherwise suited for trading, such issues will be evaluated for listing against the following criteria;

- (1) the issuer has assets in excess of \$100 million and stockholders' equity of at least \$10 million. In the case of an issuer that is unable to satisfy the earnings criteria set forth in paragraph (a), the Exchange generally will require the issuer to have the following:
  - (i) assets in excess of \$200 million and stockholders' equity of at least \$10 million; or

- (ii) assets in excess of \$100 million and stockholders' equity of at least \$20 million;
- (2) the issue have a minimum public distribution of one million trading units including a minimum of 400 holders, or if traded in thousand dollar denominations, a minimum of 100 holders;
- (3) the issue have a principal amount/aggregate market value of not less than \$20 million;
- (4) where the instrument contains cash settlement provisions, settlement must be made in U.S. dollars; and
- (5) where the instrument contains redemption provisions, the redemption price may not be below \$3 per unit.

Prior to commencement of trading of securities admitted to listing under this subsection (e), the Exchange will evaluate the nature and complexity of the issue and, if appropriate, distribute a circular to the ETP Holders providing guidance regarding ETP Holder compliance responsibilities when handling transactions in such securities.

(f) Limited Partnerships - No security issued in a limited partnership rollup transaction (as defined by Section 14(h) of the Act), shall be eligible for listing unless:

- (1) the rollup transaction was conducted in accordance with procedures designed to protect the rights of limited partners as provided in Section 6(b)(9) of the Act, as it may from time to time be amended; and
- (2) a broker-dealer which is a member of a national securities association subject to Section 15A(b)(12) of the Act participates in the rollup transaction.

The applicant shall further provide the Exchange with an opinion of counsel that the rollup transaction was conducted in accordance with the procedures established by such association.

#### **Rule 15.4. Listing Standards Relating to Audit Committees**

(a) In addition to the requirements contained in Rule 15.3, each issuer must have an audit committee. The Exchange shall not initially list or continue listing any securities of an issuer that is not in compliance with the requirements of this Rule 15.4 or any portion of paragraphs (b) or (c) of Rule 10A-3 of the Act pertaining to audit committees. In addition to the requirements of Rule 10A-3 of the Act:

- (1) Each audit committee shall consist of at least three directors, each of whom shall be financially literate, as such qualification is interpreted by the

issuer's board of directors in its business judgment, or must become financially literate within a reasonable period of time after his or her appointment to the audit committee. At least one member of the audit committee must have accounting or related financial management expertise, as the issuer's board of directors interprets such qualification in its business judgment.

(2) The board of directors of each issuer must adopt and approve a formal written charter for its audit committee. The audit committee must review and reassess the adequacy of the audit committee charter on an annual basis. The charter must specify:

- (i) the scope of the audit committee's responsibilities and how it carries out those responsibilities, including structure, processes, and membership requirements; and
- (ii) that the audit committee is responsible for ensuring that the outside auditor submits on a periodic basis to the audit committee a formal written statement delineating all relationships between the outside auditor and the issuer and that the audit committee is responsible for actively engaging in a dialogue with the outside auditor with respect to any disclosed relationships or services that may impact the objectivity and independence of the outside auditor and for recommending that the issuer's board of directors take appropriate action in response to the outside auditor's report to satisfy itself of the outside auditor's independence.

(b) As part of the initial listing process, and with respect to any subsequent changes to the composition of the audit committee, and otherwise approximately once each year, each issuer should provide the Exchange written confirmation regarding:

- (1) any determination that the issuer has made regarding the independence of its audit committee members;
- (2) the financial literacy of the audit committee members;
- (3) the determination that at least one of the audit committee members has accounting or related financial management expertise; and
- (4) the annual review and reassessment of the adequacy of the audit committee charter.

(c) If a member of an issuer's audit committee ceases to be independent in accordance with the requirements of Rule 10A-3 for reasons outside the committee member's reasonable control, that person, with notice by the issuer to the Exchange, may remain an audit committee member of the issuer until the earlier of the next annual

shareholders meeting of the issuer or one year from the occurrence of the event that caused the committee member to be no longer independent.

(d) An issuer must notify the Exchange promptly after an executive officer or the issuer becomes aware of any material noncompliance by the issuer with the requirements of this Rule 15.4 or Rule 10A-3 of the Act.

### **Rule 15.5. Other Listing Standards**

(a) **General Application.** Companies listed on the Exchange must comply with certain standards regarding corporate governance as codified in this Rule. Consistent with requirements of the Sarbanes-Oxley Act of 2002, certain provisions of this Rule are applicable to some listed companies but not to others.

(1) **Equity Listings.** This Rule applies in full to all companies listing common equity securities, with the following exceptions:

- (a) **Controlled Companies.** A company of which more than 50% of the voting power is held by an individual, a group or another company need not comply with the requirements of Rule 15.5(d)(1), (4) or (5). A controlled company that chooses to take advantage of any or all of these exemptions must disclose that choice, that it is a controlled company and the basis for the determination in its annual proxy statement or, if the company does not file an annual proxy statement, in the company's annual report on Form 10-K filed with the Commission. Controlled companies must comply with the remaining provisions of this Rule.
- (b) **Limited Partnerships and Companies in Bankruptcy.** Due to their unique attributes, limited partnerships and companies in bankruptcy proceedings need not comply with the requirements of Rule 15.5(d)(1), (4) or (5). However, all limited partnerships (at the general partner level) and companies in bankruptcy proceedings must comply with the remaining provisions of this Rule.
- (c) **Closed-End and Open-End Funds.** The Exchange considers that many of the significantly expanded standards and requirements provided for in Rule 15.5 to be unnecessary for closed-end and open-end management investment companies that are registered under the Investment Company Act of 1940, given the pervasive federal regulation applicable to them. However, registered closed-end funds must comply with the requirements of Rule 15.5(d)(6), (7)(a) and (c), and (12). Note, however, that in view of the common practice to utilize the same directors for boards in the same fund complex, closed-end funds will not be required to comply with the disclosure requirement in the second paragraph of the Interpretations and Policies

to Rule 15.5(d)(7)(a) which calls for disclosure of the board's determination with respect to simultaneous service on more than three public company audit committees. However, the other provisions of that paragraph will apply.

Business development companies, which are a type of closed-end management investment company defined in Section 2(a)(48) of the Investment Company Act of 1940 that are not registered under that Act, are required to comply with all of the provisions of Rule 15.5 applicable to domestic issuers other than Rule 15.5(d)(2) and (7)(b). For purposes of Rule 15.5(d)(1), (3), (4), (5), and (9), a director of a business development company shall be considered to be independent if he or she is not an "interested person" of the company, as defined in Section 2(a)(19) of the Investment Company Act of 1940.

As required by Rule 10A-3 under the Act, open-end funds (which can be listed as Investment Company Units, more commonly known as Exchange Traded Funds or ETFs) are required to comply with the requirements of Rule 15.5(d)(6) and (12)(b).

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

- (d) Other Entities. Except as otherwise required by Rule 10A-3 under the Act (for example, with respect to open-end funds), Rule 15.5 does not apply to passive business organizations in the form of trusts (such as royalty trusts) or to derivatives and special purpose securities. To the extent that Rule 10A-3 applies to a passive business organization, listed derivative or special purpose security, such entities are required to comply with Rule 15.5(d)(6) and (12)(b).
- (e) Foreign Private Issuers. Listed companies that are foreign private issuers (as such term is defined in Rule 3b-4 under the Act) are permitted to follow home country practice in lieu of the provisions of this Rule 15.5, except that such companies are required to comply with the requirements of Rule 15.5(d)(6), (11) and (12)(b).

- (2) Preferred and Debt Listings. Rule 15.5 does not generally apply to companies listing only preferred or debt securities on the Exchange. To the extent required by Rule 10A-3 under the Act, all companies listing only preferred or debt securities on the Exchange are required to comply with the requirements of Rule 15.5(d)(6) and (12)(b).
- (3) Dual and Multiple Listings. At any time when an issuer has a class of securities that is listed on a national securities exchange or national securities association subject to requirements substantially similar to those set forth in this Rule 15.5, and that class of security has not been suspended from trading on that market, the issuer shall not be required to separately meet the requirements set forth in this Rule 15.5, except for the requirements of Rule 13(d)(6) and (7), below (audit committees) and with the notification requirements of Rule 15.5(d)(12)(B), as it relates to their audit committees, with respect to that class of securities or any other class of securities. Governance requirements of other markets will be considered to be substantially similar to the requirements of this Rule 15.5 if they are adopted by the New York Stock Exchange (“NYSE”) or the National Association of Securities Dealers (for the Nasdaq National Market or SmallCap Market) or if they otherwise require, subject to exceptions approved by the Commission, that the issuer maintain (a) a board of directors, a majority of whom are independent directors (50% of whom are independent directors, for a small business issuer); (2) a nominating committee or other body, a majority of whom are independent directors; (3) a compensation committee or other body, a majority of whom are independent directors; and (4) a code of business conduct and ethics that complies with the definition of a “code of ethics” set out in Section 406(c) of the Sarbanes-Oxley Act and the rules thereunder (17 C.F.R. 228.406 and 17 C.F.R. 229.406).

Similarly, when an issuer has a class of securities that is listed on a national securities exchange or national securities association subject to requirements substantially similar to those set forth in this Rule 15.5, and that class of security has not been suspended from trading on that market, a direct or indirect consolidated subsidiary of the issuer, or an at least 50% beneficially-owned subsidiary of the issuer, shall not be required to separately meet the requirements set forth in this Rule 15.5 with respect to any class of securities it issues, except classes of equity securities (other than non-convertible, non-participating preferred securities) of such subsidiary.

(b) Transition Periods. Companies listing in conjunction with their initial public offering will be permitted to phase in their independent nomination and compensation committees on the same schedule as is permitted pursuant to Rule 10A-3 under the Act for audit committees, that is one independent member at the time of listing, a majority of

independent members within 90 days of listing and fully independent committees within one year. It should be noted, however, that investment companies are not afforded these exemptions under Rule 10A-3 under the Act. Companies listing in conjunction with their initial public offering will be required to meet the majority independent board requirement within 12 months of listing. For purposes of Rule 15.5 other than Rule 15.5(d)(6) and (12)(b), a company will be considered to be listing in conjunction with an initial public offering if, immediately prior to listing, it does not have a class of common stock registered under the Act. The Exchange will also permit companies that are emerging from bankruptcy or have ceased to be controlled companies within the meaning of Rule 15.5 to phase in independent nomination and compensation committees and majority independent boards on the same schedule as companies listing in conjunction with an initial public offering. However, for purposes of Rule 15.5(d)(6) and (12)(b), a company will be considered to be listing in conjunction with an initial public offering only if it meets the conditions of Rule 10A-3(b)(1) (iv) (a) under the Act, namely, that the company was not, immediately prior to the effective date of a registration statement, required to file reports with the Commission pursuant to Section 13(a) or 15(d) of the Act.

Companies listing upon transfer from another market, or that are listing a security that is listed on another market or markets, have 12 months from the date of transfer in which to comply with any requirement to the extent the market on which they were listed did not have the same requirement. To the extent the other market has a substantially similar requirement but also had a transition period from the effective date of that market's rule, which period had not yet expired, the company will have the same transition period as would have been available to it on the other market. This transition period for companies transferring from another market or that are dually or multiply listing securities will not apply to the requirements of Rule 15.5(d)(6) unless a transition period is available pursuant to Rule 10A-3 under the Act.

#### Transition Periods for Compensation Committee Requirements

Listed companies will have until the earlier of their first annual meeting after January 15, 2014, or October 31, 2014, to comply with the new director independence standards with respect to compensation committees contained in Rule 15.5(d)(5).

(c) References to Form 10-K. There are provisions in this Rule 15.5 that call for disclosure in a company's Form 10-K under certain circumstances. If a company subject to such a provision is not a company required to file a Form 10-K, then the provision shall be interpreted to mean the annual periodic disclosure form that the company does file with the Commission. For example, for a closed-end fund, the appropriate form would be the annual Form N-CSR.

(d) Listed Company Corporate Governance Requirements.

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

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

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- (2) In order to tighten the definition of “independent director” for purposes of these standards:
    - (a) No director qualifies as “independent” unless the board of directors affirmatively determines that the director has no material relationship with the listed company (either directly or as a partner, shareholder or officer of an organization that has a relationship with the company). Companies must disclose these determinations.
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*Interpretations and Policies:* It is not possible to anticipate, or explicitly to provide for, all circumstances that might signal potential conflicts of interest, or that might bear on the materiality of a director’s relationship to a listed company (references to “company” would include any parent or subsidiary in a consolidated group with the company). Accordingly, it is best that boards making “independence” determinations broadly consider all relevant facts and circumstances. In particular, when assessing the materiality of a director’s relationship with the company, the board should consider the issue not merely from the standpoint of the director, but also from that of persons or organizations with which the director has an affiliation. Material relationships can include commercial, industrial, banking, consulting, legal, accounting, charitable and familial relationships, among others. However, as the concern is independence from management, the Exchange does not view ownership of even a significant amount of stock, by itself, as a bar to an independence finding.

The directors who have been determined to be independent must be disclosed in the company’s annual proxy statement or, if the company does not file an annual proxy statement, in the company’s annual report on Form 10-K filed with the Commission. The basis for a board determination that a relationship is not material must also be disclosed in the company’s annual proxy statement or, if the company does not file an annual proxy statement, in the company’s annual report on Form 10-K filed with the Commission. In this regard, a board may adopt and disclose categorical standards to assist it in making determinations of independence and may make a general disclosure if a director meets these standards. Any determination of independence for a director who does not meet these standards must be specifically explained. A company must disclose any standard it adopts. It may then make the general statement that the independent directors meet the standards set by the board without detailing particular aspects of the immaterial



relationships between individual directors and the company. In the event that a director with a business or other relationship that does not fit within the disclosed standards is determined to be independent, a board must disclose the basis for its determination in the manner described above. This approach provides investors with an adequate means of assessing the quality of a board's independence and its independence determinations while avoiding excessive disclosure of immaterial relationships.

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(b) In addition:

- (i) A director who is an employee, or whose immediate family member is an executive officer, of the company is not independent until three years after the end of such employment relationship.
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*Interpretations and Policies:* Employment as an interim Chairman or CEO shall not disqualify a director from being considered independent following that employment.

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- (ii) A director who receives, or whose immediate family member receives, more than \$100,000 per year in direct compensation from the listed company, other than director and committee fees and pension or other forms of deferred compensation for prior service (provided such compensation is not contingent in any way on continued service), is not independent until three years after he or she ceases to receive more than \$100,000 per year in such compensation.
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*Interpretations and Policies:* Compensation received by a director for former service as an interim Chairman or CEO need not be considered in determining independence under this test. Compensation received by an immediate family member for service as a non-executive employee of the listed company need not be considered in determining independence under this test.

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- (iii) A director who is affiliated with or employed by, or whose immediate family member is affiliated with or employed in a professional capacity by, a present or former internal or external auditor of the company is not "independent" until three years after the end of the affiliation or the employment or auditing relationship.

- (iv) A director who is employed, or whose immediate family member is employed, as an executive officer of another company where any of the listed company's present executives serve on that company's compensation committee is not "independent" until three years after the end of such service or the employment relationship.
- (v) A director who is an executive officer or an employee, or whose immediate family member is an executive officer, of a company that makes payments to, or receives payments from, the listed company for property or services in an amount which, in any single fiscal year, exceeds the greater of (A) \$200,000, (B) 5% of such other company's consolidated gross revenues, or (C), for companies whose securities are also listed on the NYSE, the amount permitted under NYSE rules, is not "independent" until three years after falling below such threshold.

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*Interpretations and Policies:* In applying the test in Rule 15.5(d)(2)(b)(v), both the payments and the consolidated gross revenues to be measured shall be those reported in the last completed fiscal year. The look-back provision for this test applies solely to the financial relationship between the listed company and the director or immediate family member's current employer; a listed company need not consider former employment of the director or immediate family member.

Charitable organizations shall not be considered "companies" for purposes of Rule 15.5(d)(2)(b)(v), provided however that a listed company shall disclose in its annual proxy statement, or if the listed company does not file an annual proxy statement, in the company's annual report on Form 10-K filed with the Commission, any charitable contributions made by the listed company to any charitable organization in which a director serves as an executive officer if, within the preceding three years, contributions in any single fiscal year exceeded the greater of (A) \$200,000, (B) 5% of such charitable organization's consolidated gross revenues, or (C), for companies whose securities are also listed on the NYSE, the amount permitted under NYSE rules. Listed company boards are reminded of their obligations to consider the materiality of any such relationship in accordance with Rule 15.5(d)(2)(a) above.

*General Interpretations and Policies to Rule 15.5(d)(2)(b):* An "immediate family member" includes a person's spouse, parents, children, siblings, mothers and fathers-in-law, sons and daughters-in-law, brothers and sisters-in-law, and anyone (other than domestic employees) who shares such person's home. When applying the look back provisions in Rule 15.5(d)(2)(b), listed companies need not consider individuals who are no longer immediate family members as a result of legal separation or divorce, or those who have died or become incapacitated. In addition, references to the "company" would include any parent or subsidiary in a consolidated group with the company.

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- (3) To empower non-management directors to serve as a more effective check on management, the non-management directors of each company must meet at regularly scheduled executive sessions without management.
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*Interpretations and Policies:* To promote open discussion among the non-management directors, companies must schedule regular executive sessions in which those directors meet without management participation. “Non-management” directors are all those who are not company officers (as that term is defined in Rule 16a-a(f) under the Securities Act of 1933), and includes such directors who are not independent by virtue of a material relationship, former status or family membership, or for any other reason.

Regular scheduling of such meetings is important not only to foster better communication among non-management directors, but also to prevent any negative inference from attaching to the calling of executive sessions. There need not be a single presiding director at all executive sessions of the non-management directors. If one director is chosen to preside at these meetings, his or her name must be disclosed in the company’s annual proxy statement or, if the company does not file an annual proxy statement, in the company’s annual report on Form 10-K filed with the Commission. Alternatively, a company may disclose the procedure by which a presiding director is selected for each executive session. For example, a company may wish to rotate the presiding position among the chairs of board committees.

In order that interested parties may be able to make their concerns known to the non-management directors, a company must disclose a method for such parties to communicate directly with the presiding director or with the non-management directors as a group. Companies may, if they wish, utilize for this purpose the same procedures they have established to comply with the requirement of Rule 10A-3 (b)(3) under the Act, as applied to listed companies through Rule 15.5(d)(6).

While this Rule 15.5(d)(3) refers to meetings of non-management directors, if that group includes directors who are not independent under this Rule 15.5, listed companies should at least once a year schedule an executive session including only independent directors.

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- (4) (a) Listed companies must have a nominating/corporate governance committee composed entirely of independent directors.
- (b) The nominating/corporate governance committee must have a written charter that addresses:

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

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

If a company is legally required by contract or otherwise to provide third parties with the ability to nominate directors (for example, preferred stock rights to elect directors upon a dividend default, shareholder agreements, and management agreements), the selection and nomination of such directors need not be subject to the nominating committee process.

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

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

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- (5) Except as provided in paragraph (a) above, the Exchange shall prohibit the initial or continued listing of any equity security of a listed company that is not in compliance with the following requirements:

- (a) Listed Companies must have a Compensation Committee as defined in paragraph (e) below. The Compensation Committee must be composed entirely of independent directors, who are also members of the listed company's board of directors. For purposes of determining the independence of a member of the Compensation Committee, in addition to determining whether the director is an independent director as defined in paragraphs 15.5(d)(2)(a)-(b), the listed companies must consider the following factors:
  - (i) the source of compensation of a member of the Compensation Committee, including any consulting, advisory or other compensatory fee paid by the listed company to such member; and
  - (ii) whether a member of the Compensation Committee is affiliated with the listed company, a subsidiary of the listed company or an affiliate of a subsidiary of the listed company.
- (b) The Compensation Committee must have a written charter that addresses:
  - (i) the Compensation Committee's purpose, responsibilities and authority which at minimum must be to have direct responsibility and authority to:
    - (A) review and approve corporate goals and objectives relevant to CEO compensation, evaluate the CEO's performance in light of those goals and objectives, and, either as a Compensation Committee or together with the other independent directors (as directed by the board), determine and approve the CEO's compensation level based on this evaluation;
    - (B) make recommendations to the board with respect to non-CEO compensation, incentive compensation plans and equity-based plans;
    - (C) produce a compensation committee report on executive compensation as required by the Commission to be included in the company's annual proxy statement or annual report on Form 10-K filed with the Commission;

- (D) retain or obtain the advice of compensation consultants, legal counsel and other compensation advisers as determined in its sole discretion;
- (E) appoint, compensate and oversee the work of any compensation consultant, legal counsel and other adviser retained by the compensation committee; and
- (F) select a compensation consultant, legal counsel or other adviser to the Compensation Committee only after considering the following relevant factors that may affect the independence of the compensation adviser:
  - (1) the provision of other services to the issuer by the person that employs the compensation consultant, legal counsel or adviser;
  - (2) the amount of fees received from the issuer by the person that employs the compensation consultant, legal counsel or other adviser, as a percentage of the employer's total revenue;
  - (3) the policies and procedures of the person that employs the compensation consultant, legal counsel or other adviser that are designed to prevent conflicts of interest;
  - (4) any business or personal relationship of the compensation consultant, legal counsel or other adviser with a member of the Compensation Committee;
  - (5) any stock of the issuer owned by the compensation consultant, legal counsel or other adviser; and
  - (6) any business or personal relationship of the compensation consultant, legal counsel, other adviser

or person employing the advisor with an executive officer of the issuer.

- (ii) an annual performance evaluation of the Compensation Committee.
- (c) Listed companies must provide for appropriate funding, as determined by the Compensation Committee, for payment of reasonable compensation to a compensation consultant, legal counsel or any other adviser retained by the Compensation Committee.
- (d) Listed companies that fail to comply with the requirements under this Section will be subject to the delisting procedures set forth in Rule 15.7 unless the deficiencies are cured within forty-five days from the date of notification by the Exchange. However, if a member of the Compensation Committee ceases to be independent for reasons outside of the member's control, that person, with notice by the listed company to the Exchange may remain a Compensation Committee member of the listed company until the earlier of the next annual shareholders' meeting of the listed company or one year from the occurrence of the event that caused the member to be no longer independent.
- (e) A Smaller Reporting Company, as defined in Rule 12b-2 under the Act, is not subject to considering the requirements regarding the source of compensation and affiliations of Rule 15.5(d)(5)(a)(i) and (ii).

#### Small Company that Ceases to Qualify as a Smaller Reporting Company

Under SEC Rule 12b-2, a company tests its status as a smaller reporting company on an annual basis at the end of its most recently completed second fiscal quarter (hereinafter, for purposes of this subsection, the "Smaller Reporting Company Determination Date"). A Smaller Reporting Company with a public float of \$75 million or more as of the last business day of its second fiscal quarter will cease to be a Smaller Reporting Company as of the beginning of the fiscal year following the Smaller Reporting Company Determination Date. The Compensation Committee of a company that has ceased to be a Smaller Reporting Company shall be required to comply with Rule 15.5(d)(5)(b)(i)(F) as of six months from the date it ceases to be a smaller reporting company and must have:

- one member of its compensation committee that meets the independence standard of Section 15.5(d)(5)(a)(i) and (ii) within six months of that date;
  - a majority of directors on its compensation committee meeting those requirements within nine months of that date; and
  - a compensation committee comprised solely of members that meet those requirements within twelve months of that date.
- (f) Definitions: For purposes of this Section the below term shall have the following meaning:

Compensation Committee. A committee that oversees executive compensation, whether or not such committee also performs other functions or is formally designated as a compensation committee.

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*Interpretations and Policies:* In determining the long-term incentive component of CEO compensation, the Committee should consider the company's performance and relative shareholder return, the value of similar incentive awards to CEOs at comparable companies, and the awards given to the listed company's CEO in past years. To avoid confusion, note that the Compensation Committee is not precluded from approving awards (with or without ratification of the board) as may be required to comply with applicable tax laws.

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

Additionally, if a compensation consultant is to assist in the evaluation of director, CEO or senior executive compensation, the Compensation Committee shall be directly responsible for appointment, compensation and oversight of the work of any compensation consultant, independent legal counsel and other adviser retained by the compensation committee.

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

Nothing in this Rule 15.5(5)(b) shall be construed to require the compensation committee to implement or act consistently with the advice or recommendations of the compensation consultant, legal counsel or other adviser to the compensation committee; or to affect the



ability or obligation of the compensation committee to exercise its own judgment in fulfillment of the duties of the compensation committee.

The compensation committee is required to conduct the independence assessment outlined in Rule 15.5(5)(b)(i)(F) with respect to any compensation consultant, legal counsel or other adviser, other than in-house legal counsel and any other in-house adviser whose role is limited to the following activities for which no disclosure would be required under Item 407(e)(3)(iii) of Regulation S-K: consulting on any broad-based plan that does not discriminate in scope, terms, or operation, in favor of executive officers or directors of the listed company, and that is available generally to all salaried employees; or providing information that either is not customized for a particular company or that is customized based on parameters that are not developed by the compensation consultant, and about which the compensation consultant does not provide advice.

Nothing in this Rule requires a compensation consultant, legal counsel or other compensation adviser to be independent, only that the compensation committee consider the enumerated independence factors before selecting or receiving advice from a compensation adviser. The compensation committee may select or receive advice from any compensation adviser they prefer including ones that are not independent, after considering the six independence factors outlined in Rule 15.5(5)(b)(i)(F)(1)-(6).

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- (6) Listed companies must have an audit committee that satisfies the requirements of Rule 10A-3 under the Act and this Chapter.
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*Interpretations and Policies:* The Exchange will apply the requirements of Rule 10A-3 in a manner consistent with the guidance provided by the Commission in Securities Exchange Act Release No. 34-47654 (April 1, 2003). Without limiting the generality of the foregoing, as provided in Rule 15.4(d), the Exchange will provide companies the opportunity to cure defects provided in Rule 10A-3(a)(3) under the Act.

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- (7) (a) In accordance with Rule 15.4(a)(1), the audit committee must have a minimum of three members.
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*Interpretations and Policies:* Each member of the audit committee must be financially literate, as such qualification is interpreted by the company's board in its business judgment, or must become financially literate within a reasonable period of time after his

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

Because of the audit committee's demanding role and responsibilities, and the time commitment attendant to committee membership, each prospective audit committee member should evaluate carefully the existing demands on his or her time before accepting this important assignment. Additionally, if an audit committee member simultaneously serves on the audit committees of more than three public companies, and the listed company does not limit the number of audit committees on which its audit committee members serve, then in each case, the board must determine that such simultaneous service would not impair the ability of such member to effectively serve on the listed company's audit committee and disclose such determination in the company's annual proxy statement or, if the company does not file an annual proxy statement, in the company's annual report on Form 10-K filed with the Commission.

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- (b) In addition to any requirement of Rule 10A-3(b)(1) of the Act, all audit committee members must satisfy the requirements for independence set out in Rule 15.5(d)(2).
  - (c) In accordance with Rule 15.4(a)(2), the audit committee must have a written charter. In addition to the requirements of Rule 15.4(a)(2), the charter must address the following:
    - (i) the committee's purpose - which, at minimum, must be to:
      - (A) assist board oversight of (1) the integrity of the company's financial statements, (2) the company's compliance with legal and regulatory requirements, (3) the independent auditor's qualifications and independence and (4) the performance of the company's internal audit function and independent auditors; and
      - (B) prepare an audit committee report as required by the Commission to be included in the company's annual proxy statement;
    - (ii) an annual performance evaluation of the audit committee; and
    - (iii) the duties and responsibilities of the audit committee - which, at a minimum must include those set out in Rule 10A-3(b)(2), (3),

(4) and (5) of the Act and in Rule 15.4, as well as include that the committee:

- (A) at least annually, obtain and review a report by the independent auditor describing: the firm's internal quality-control procedures; any material issues raised by the most recent internal quality-control review, or peer review, of the firm or by any inquiry or investigation by governmental or professional authorities, within the preceding five years, respecting one or more independent audits carried out by the firm, and any steps taken to deal with any such issues; and (to assess the auditor's independence) all relationships between the independent auditor and the company;

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

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- (B) discuss the company's annual audited financial statements and quarterly financial statements with management and the independent auditor, including the company's disclosures under "Management's Discussion and Analysis of Financial Condition and Results of Operations"
  - (C) discuss the company's earnings press releases, as well as financial information and earnings guidance provided to analysts and rating agencies;

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*Interpretations and Policies:* The audit committee's responsibility to discuss earnings releases, as well as financial information and earnings guidance, may be done generally (i.e., discussion of the types of information to be disclosed and the type of presentation to

be made). The audit committee need not discuss in advance each earnings release or each instance in which a company may provide earnings guidance.

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

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- (E) meet separately, periodically, with management, with internal auditors (or other personnel responsible for the internal audit function) and with independent auditors;
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*Interpretations and Policies:* To perform its oversight functions most effectively, the audit committee must have the benefit of separate sessions with management, the independent auditors and those responsible for the internal audit function. As noted herein, all listed companies must have an internal audit function. These separate sessions may be more productive than joint sessions in surfacing issues warranting committee attention.

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

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

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- (H) report regularly to the board of directors.
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*Interpretations and Policies:* The audit committee should review with the full board any issues that arise with respect to the quality or integrity of the company's financial statements, the company's compliance with legal or regulatory requirements, the performance and independence of the company's independent auditors, or the performance of the internal audit function.

*General Interpretations and Policies to Rule 15.5(d)(7)(c):* While the fundamental responsibility for the company's financial statements and disclosures rests with management and the independent auditor, the audit committee must review: (A) major issues regarding accounting principles and financial statement presentations, including any significant changes in the company's selection or application of accounting principles, and major issues as to the adequacy of the company's internal controls and any special audit steps adopted in the light of material control deficiencies; (B) analyses prepared by management and/or the independent auditor setting forth significant financial

reporting issues and judgments made in connection with the preparation of the financial statements, including analyses of the effects of alternative GAAP methods on the financial statements; (C) the effect of regulatory and accounting initiatives, as well as off-balance sheet structures, on the financial statements of the company; and (D) the type and presentation of information to be included in earnings press releases (paying particular attention to any use of “pro forma,” or “adjusted” non-GAAP, information), as well as review any financial information and earnings guidance provided to analysts and rating agencies.

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- (d) Each listed company must have an internal audit function.
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*Interpretations and Policies:* Listed companies must maintain an internal audit function to provide management and the audit committee with ongoing assessments of the company’s risk management process and system of internal control. A company may choose to outsource this function to a third party service provider other than its independent auditor.

*General Interpretations and Policies to Rule 15.5(d)(7):* To avoid any confusion, note that the audit committee functions specified in Rule 15.5(d)(7) are the sole responsibility of the audit committee and may not be allocated to a different committee.

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- (8) Listed companies must satisfy the requirements for shareholder approval of equity compensation plans in accordance with Exchange Rule 13.7.
- (9) Listed companies must adopt and disclose corporate governance guidelines.
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*Interpretations and Policies:* No single set of guidelines would be appropriate for every company, but certain key areas of universal importance include director qualifications and responsibilities, responsibilities of key board committees, and director compensation. Given the importance of corporate governance, each listed company’s website must include its corporate governance guidelines and the charters of its most important committees (including at least the audit, and if applicable, compensation and nominating committees). Each company’s annual report on Form 10-K filed with the Commission must state that the foregoing information is available on its website, and that the information is available in print to any shareholder who requests it. Making this information publicly available should promote better investor understanding of the company’s policies and procedures, as well as more conscientious adherence to them by directors and management.

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

(A) Director qualification standards. These standards should, at minimum, reflect the independence requirements set forth in Rule 15.5(d)(1) and (2). Companies may also address other substantive qualification requirements, including policies limiting the number of boards on which a director may sit, and director tenure, retirement and succession.

(B) Director responsibilities. These responsibilities should clearly articulate what is expected from a director, including basic duties and responsibilities with respect to attendance at board meetings and advance review of meeting materials.

(C) Director access to management and, as necessary and appropriate, independent advisors.

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

(E) Director orientation and continuing education.

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

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

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(10) Listed companies must adopt and disclose a code of business conduct and ethics for directors, officers and employees, and promptly disclose any waivers of the code for directors or executive officers.

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*Interpretations and Policies:* No code of business conduct and ethics can replace the thoughtful behavior of an ethical director, officer or employee. However, such a code

can focus the board and management on areas of ethical risk, provide guidance to personnel to help them recognize and deal with ethical issues, provide mechanisms to report unethical conduct, and help to foster a culture of honesty and accountability.

Each code of business conduct and ethics must require that any waiver of the code for executive officers or directors may be made only by the board or a board committee and must be promptly disclosed to shareholders. This disclosure requirement should inhibit casual and perhaps questionable waivers, and should help assure that, when warranted, a waiver is accompanied by appropriate controls designed to protect the company. It will also give shareholders the opportunity to evaluate the board's performance in granting waivers.

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

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

(A) Conflicts of interest. A "conflict of interest" occurs when an individual's private interest interferes in any way-or even appears to interfere-with the interests of the corporation as a whole. A conflict situation can arise when an employee, officer or director takes actions or has interests that may make it difficult to perform his or her company work objectively and effectively. Conflicts of interest also arise when an employee, officer or director, or a member of his or her family, receives improper personal benefits as a result of his or her position in the company. Loans to, or guarantees of obligations of, such persons are of special concern. The company should have a policy prohibiting such conflicts of interest, and providing a means for employees, officers and directors to communicate potential conflicts to the company.

(B) Corporate opportunities. Employees, officers and directors should be prohibited from (a) taking for themselves personally opportunities that are discovered through the use of corporate property, information or position; (b) using corporate property, information or position for personal gain; and (c) competing with the company. Employees, officers and directors owe a duty to the company to advance its legitimate interests when the opportunity to do so arises.

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



(D) Fair dealing. Each employee, officer and director should endeavor to deal fairly with the company's customers, suppliers, competitors and employees. None should take unfair advantage of anyone through manipulation, concealment, abuse of privileged information, misrepresentation of material facts, or any other unfair-dealing practice. Companies may write their codes in a manner that does not alter existing legal rights and obligations of companies and their employees, such as "at will" employment arrangements.

(E) Protection and proper use of company assets. All employees, officers and directors should protect the company's assets and ensure their efficient use. Theft, carelessness and waste have a direct impact on the company's profitability. All company assets should be used for legitimate business purposes.

(F) Compliance with laws, rules and regulations (including insider trading laws). The company should proactively promote compliance with laws, rules and regulations, including insider-trading laws. Insider trading is both unethical and illegal, and should be dealt with decisively.

(G) Encouraging the reporting of any illegal or unethical behavior. The company should proactively promote ethical behavior. The company should encourage employees to talk to supervisors, managers, or other appropriate personnel when in doubt about the best course of action in a particular situation. Additionally, employees should report violations of laws, rules, regulations or the code of business conduct to appropriate personnel. To encourage employees to report such violations, the company must ensure that employees know that the company will not allow retaliation for reports made in good faith.

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

underscores that what is required is a brief, general summary of the significant differences, not a cumbersome analysis.

Listed foreign private issuers may provide this disclosure either on their website (provided it is in the English language and accessible from the United States) and/or in their annual report as distributed to shareholders in the United States (again, in the English language). If the disclosure is only made available on the website, the annual report shall so state and provide the web address at which the information may be obtained.

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

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

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- (b) Each listed company CEO must promptly notify the Exchange in writing after any executive officer of the listed company becomes aware of any material non-compliance with any applicable provisions of this Rule 15.5.

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

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*Interpretations and Policies:* Suspending trading in or delisting a company can be harmful to the very shareholders that the Exchange listing standards seek to protect; the Exchange must therefore use these measures sparingly and judiciously. For this reason it is appropriate for the Exchange to have the ability to apply a lesser sanction to deter companies from violating its corporate governance (or other) listing standards. Accordingly, the Exchange may issue a public reprimand letter to any listed company,

regardless of type of security listed or country of incorporation, that it determines has violated an Exchange listing standard. For companies that repeatedly or flagrantly violate Exchange listing standards, suspension and delisting remain the ultimate penalties. For clarification, this lesser sanction is not intended for use in the case of companies that fall below the financial and other continued listing standards provided in this Chapter or that fail to comply with the audit committee standards set out in Rule 15.4 or Rule 15.5(d)(6). The process and procedures provided for in those provisions govern the treatment of companies falling below those standards.

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### **Rule 15.6. Shareholder Approval of Equity Compensation Plans**

Equity compensation plans can help align shareholder and management interests, and equity-based awards are often very important components of employee compensation. To provide checks and balances on the potential dilution resulting from the process of earmarking shares to be used for equity-based awards, the Exchange requires that all equity compensation plans, and any material revisions to the terms of such plans, be subject to shareholder approval, with limited exemptions identified in this rule.

(a) **Definition of Equity Compensation Plan.** An “equity compensation plan” is a plan or other arrangement that provides for the delivery of equity securities (either newly issued or treasury shares) of the listed company to any employee, director or other service provider as compensation for services. A compensatory grant of options or other equity securities that is not made under a plan is considered an “equity compensation plan” for purposes of these rules.

(b) **Exceptions to Equity Compensation Plan Definition.** The following are not equity compensation plans, even if the brokerage and other costs of the plan are paid for by the listed company:

- (1) plans that are made available to shareholders generally, such as a typical dividend reinvestment plan;
- (2) plans that merely allow employees, directors or other service providers to elect to buy shares on the open market or from the listed company for their current fair market value, regardless of whether: (i) the shares are delivered immediately or on a deferred basis; or (ii) the payments for the shares are made directly or by giving up compensation that is otherwise due (for example, through payroll deductions).

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

- (1) A material increase in the number of shares available under the plan, other

than an increase solely to reflect a reorganization, stock split, merger, spinoff or similar transaction.

- (i) If a plan contains a formula for automatic increases in the number of shares available (sometimes referred to as an “evergreen formula”) or for automatic grants pursuant to a formula, each such increase or grant will be considered a revision requiring shareholder approval unless the plan has a term of not more than ten years. Regardless of the term, this type of plan is referred to below as a “formula plan.” Examples of automatic grants pursuant to a formula are: (A) annual grants to directors of restricted stock having a certain dollar value, and (B) “matching contributions,” whereby stock is credited to a participant’s account based upon the amount of compensation the participant elects to defer.
  - (ii) If a plan contains no limit on the number of shares available and it is not a formula plan, then each grant under the plan will require separate shareholder approval regardless of whether the plan has a term of not more than ten years. This type of plan is referred to below as a “discretionary plan.” A requirement that grants be made out of treasury shares or repurchased shares will not, in itself, be considered a limit or pre-established formula so as to prevent a plan from being considered a discretionary plan.
- (2) An expansion of the types of awards available under the plan.
  - (3) A material expansion of the class of employees, directors or other service providers eligible to participate in the plan.
  - (4) A material extension of the term of the plan.
  - (5) A material change to the method of determining the strike price of options under the plan.
    - (i) A change in the method of determining “fair market value” from the closing price on the date of the grant to the average of the high and low price on the date of grant is an example of a change that the Exchange would not review as material.
  - (6) The deletion or limitation of any provision prohibiting repricing of options.

An amendment will not be considered a “material revision” if it curtails rather than expands the scope of the plan in question.

(d) Repricings. A plan that does not contain a provision that specifically permits repricing of options will be considered for purposes of this listing standard as prohibiting

repricing. Accordingly, any actual repricing of options will be considered a material revision of a plan even if the plan itself is not revised. This consideration will not apply to a repricing through an exchange offer that commenced before the date this listing standard became effective. “Repricing” means any of the following or any other action that has the same effect:

- (1) Lowering the strike price of an option after it is granted.
- (2) Any other action that is treated as a repricing under generally accepted accounting principles.
- (3) Canceling an option at a time when its strike price exceeds the fair market value of the underlying stock, in exchange for another option, restricted stock, or other equity, unless the cancellation and exchange occurs in connection with a merger, acquisition, spin-off or other similar corporate transaction.

(e) Exemptions. The listing standard does not require shareholder approval of employment inducement awards; certain grants, plans and amendments in the context of mergers and acquisitions; and certain specific types of plans, all described below. However, these exempt grants, plans and amendments may be made only with the approval of the company’s independent compensation committee or the approval of a majority of the company’s independent directors. Companies must also notify the Exchange in writing when they use one of these exemptions.

- (1) Employment Inducement Awards. An employment inducement award is a grant of options or other equity-based compensation as a material inducement to a person or persons being hired by the listed company or any of its subsidiaries, or being rehired following a bona fide period of interruption of employment. Inducement awards include grants to new employees in connection with a merger or acquisition. Promptly following a grant of any inducement award in reliance on this exemption, the listed company must disclose in a press release the material terms of the award, including the recipient(s) of the award and the number of shares involved.
- (2) Mergers and Acquisitions. Two exemptions apply in the context of corporate acquisitions and mergers. First, shareholder approval will not be required to convert, replace or adjust outstanding options or other equity compensation awards to reflect the transaction. Second, shares available under certain plans acquired in corporate acquisitions and mergers may be used for certain post-transaction grants without further shareholder approval. This exemption applies to situations where a party that is not a listed company following the transaction has shares available for grant under pre-existing plans that were previously approved by shareholders. A plan adopted in contemplation of the merger or acquisition transaction would not be considered “pre-existing” for purposes of this exemption. Shares available under such a pre-existing plan may be used for post-transaction

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

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

Any shares reserved for listing in connection with a transaction pursuant to either of these exemptions would be counted by the Exchange in determining whether the transaction involved the issuance of 20% or more of the company's outstanding common stock, and thus require shareholder approval. These merger-related exemptions will not result in any increase in the aggregate potential dilution of the combined enterprise. Further, mergers or acquisitions are not routine occurrences and are not likely to be abused. Therefore, the Exchange considers both of these exemptions to be consistent with the fundamental policy involved in this standard.

(3) Qualified Plans, Section 423 Plans and Parallel Excess Plans.

- (i) The following types of plans, and material revisions thereto, are exempt from the shareholder approval requirement: (A) plans intended to meet the requirements of Section 401(a) of the Internal Revenue Code (e.g., ESOPs); (B) plans intended to meet the requirements of Section 423 of the Internal Revenue Code; and (C) "parallel excess plans" as defined below.
- (ii) Section 401(a) plans and Section 423 plans are already regulated under the Internal Revenue Code and Treasury regulations. Section 423 plans, which are stock purchase plans under which an employee can purchase no more than \$25,000 worth of stock per year at a plan-specified discount capped at 15% are also required by the Internal Revenue Code to receive shareholder approval. While Section 401(a) plans and parallel plans are not required to be approved by shareholders, U.S. GAAP requires that the shares issued under these plans be "expensed" (i.e., treated as a compensation expense on the income statement) by the company issuing the shares. An equity compensation plan that provides non-U.S. employees with

substantially the same benefits as a comparable Section 401(a) plan, Section 423 plan or parallel excess plan that the listed company provides to its U.S. employees, but for features necessary to comply with applicable foreign tax law, are also exempt from shareholder approval under this section.

- (iii) The term “parallel excess plan” means a plan that is a “pension plan” within the meaning of the Employee Retirement Income Security Act (“ERISA”) that is designed to work in parallel with a plan intended to be qualified under Internal Revenue Code Section 401(a) to provide benefits that exceed the limits set forth in Internal Revenue Code Section 402(g)(the section that limits an employee’s annual pre-tax contributions to a 401(k) plan), Internal Revenue Code Section 401(a)(17)(the section that limits the amount of an employee’s compensation that can be taken into account for plan purposes) and/or Internal Revenue Code Section 415 (the section that limits the contributions and benefits under qualified plans) and/or any successor or similar limitations that may hereafter be enacted. A plan will not be considered a parallel excess plan unless: (A) it covers all or substantially all employees of an employer who are participants in the related qualified plan whose annual compensation is in excess of the limit of Internal Revenue Code Section 401(a)(17)(or any successor or similar limits that may hereafter be enacted); (B) its terms are substantially the same as the qualified plan that it parallels except for the elimination of the limits described in the proceeding sentence and the limitation described in clause (C); and (C) no participant receives employer equity contributions under the plan in excess of 25% of the participant’s cash compensation.

(f) Transition Rules. Except as provided below, a plan that was adopted before the date the Commission order approving this listing standard will not be subject to shareholder approval under this Rule 15.6 unless and until it is materially revised.

- (1) In the case of a discretionary plan, as defined in “Material Revisions” above, whether or not previously approved by shareholders, additional grants may be made after the effective date of this Rule 15.6 without further shareholder approval only for a limited transaction period, defined below, and then only in a manner consistent with past practice. In applying this rule, if a plan can be separated into a discretionary plan portion and a portion that is not discretionary, the non-discretionary portion of the plan can continue to be used separately, under the appropriate transition rule. For example, if a shareholder-approved plan permits both grants pursuant to a provision that makes available a specific number of shares, and grants pursuant to provision authorizing the use of treasury shares without regard to the specific share limit, the former provision (but not the latter) may continue to be used after the transition period, under the general rule above.

- (2) In the case of a formula plan, as defined in “Material Revisions” above, that either (i) has not previously been approved by shareholders or (ii) does not have a term of ten years or less, additional grants may be made after the effective date of this Rule 15.6 without further shareholder approval only for a limited transition period, defined below.
- (3) The limited transition period described in subparagraphs (f)(1) and (f)(2) above will end upon the first to occur of: (i) the listed company’s next annual meeting at which directors are elected that occurs more than 180 days after the effective date of this listing standard; (ii) the first anniversary of the effective date this Rule 15.6; and (iii) the expiration of the plan.
- (4) A shareholder-approved formula plan may continue to be used after the end of this transition period if it is amended to provide for a term of ten years or less from the date of its original adoption or, if later, the date of its most recent shareholder approval. Such an amendment may be made before or after the effective date of this Rule 15.6, and would not itself be considered a “material revision” requiring shareholder approval. In addition, a formula plan may continue to be used, without shareholder approval, if the grants after the effective date of this Rule 15.6 are made only from the shares available immediately before the effective date (i.e., based on formulaic increases that occurred prior to such effective date).

(g) **Broker Voting.** For ETP Holder proxy requirements with respect to the implementation of any equity compensation plan, or any material revisions to the terms of any existing equity compensation plan, refer to Rule 13.3.

### **Rule 15.7. Suspension and/or Delisting by Exchange**

(a) The Board may suspend dealings in any issue admitted to trading on the Exchange.

(b) Whenever the Board determines that it no longer is appropriate for a security to continue to be traded on the Exchange, it may institute proceedings to delist such security by filing the appropriate application with the Commission (the “Form 25”) to strike a class of securities from listing on the Exchange or from registration under Section 12(b) of the Act within a reasonable time after the Exchange makes the decision to suspend or delist a security. The Exchange shall provide: (1) notice to the issuer of the Exchange’s decision to delist the issuer’s securities; (2) an opportunity for the issuer to file an appeal pursuant to the Chapter X of the Exchange Rules governing adverse actions; (3) public notice, no fewer than ten days before the delisting becomes effective, of the Exchange’s final determination to delist the security via a press release and posting on the Exchange’s website (such posting to remain on the Exchange’s website until the effective date of the delisting); and (4) the prompt delivery of a copy of the Form 25 to the issuer.



(c) The securities of an issuer will be subject to suspension and/or withdrawal from listing and registration as a listed issue if any of the following conditions are found to exist:

(1) failure to comply with the listing standards and agreements; or

(2) sustained loss so that financial condition becomes so impaired that it is questionable to the Exchange whether the company can continue operations and/or meet its obligations as they mature or

(3) the entire class of securities has been called for redemption, maturity or retirement; appropriate notice thereof has been given; funds sufficient for the payment of all such securities have been deposited with an agency authorized to make such payments, and such funds have been made available to security holders; or

(4) the entire class of security has been redeemed or paid at maturity or retirement; or

(5) the instruments representing the securities comprising the entire class have come to evidence, by operation of law or otherwise, other securities in substitution therefore and represent no other right, except, if such be the fact, the right to receive an immediate cash payment (the right of dissenters to receive the appraised or fair value of their holdings shall not prevent the application of this provision); or

(6) all rights pertaining to the entire class of the security have been extinguished; provided, however, that where such an event occurs as a result of an order of a court or other governmental authority, the orders shall be final, all applicable appeals periods shall have expired and no appeals shall be pending.

Notwithstanding the foregoing, the Board may determine that the suspension or delisting of an issue is necessary for the protection of investors and the public interest.

#### **Rule 15.8. Delisting by Issuer**

A security, which in the opinion of the Board is eligible for continued listing, may be removed from listing upon the request or application of the issuer provided that the issuer submits the following to the Exchange:

(a) a certified copy of a resolution adopted by the board of directors of the issuer authorizing withdrawal from listing and registration;

(b) a statement setting forth in detail the reasons for the proposed withdrawal and the facts in support thereof;

(c) a certification of its compliance with the Exchange's Rules for delisting and applicable state and federal laws;

(d) written notifications to the Exchange:

(i) no fewer than ten days before the issuer files Form 25 with the Commission of its intent to withdraw its securities from listing and/or registration on the Exchange (such form shall set forth a description of the security involved, together with a statement of all the material facts relating to the reasons for the withdrawal);

(ii) of its filing of Form 25 with the Commission simultaneous with said filing (such notification shall include the date the issuer expects such withdrawal to become effective pursuant to the rules of the Commission); and

(iii) of the effective date of such withdrawal immediately after its withdrawal from listing becomes effective pursuant to the rules of the Commission; and

(e) a certification that the issuer has, contemporaneous with providing written notice to the Exchange, issued a public notice of the issuer's intent to delist, and/or withdraw its securities from Section 12(b) registration, via a press release and, if it has a publicly accessible web site, post such notice on such web site and has undertaken to continue such posting on its website until the effective date of the delisting.

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*Interpretations and Policies:*

**.01.** Any issuer seeking to voluntarily apply to withdraw a class of securities from listing on the Exchange pursuant to Exchange Rule 15.8 above that has received notice from the Exchange, pursuant to Exchange Rule 15.7(c) above or otherwise, that it is below the Exchange's continued listing policies and standards, or that is aware that it is below such continued listing policies and standards notwithstanding that it has not received such notice from the Exchange, must disclose that it is no longer eligible for continued listing (including the specific continued listing policies and standards that the issue is below) in: (i) its statement of all material facts (pursuant to Exchange Rule 15.8(d) above) relating to the reasons for withdrawal from listing provided to the Exchange along with written notice of its determination to withdraw from listing required by Rule 12d2-2(c)(2)(ii) under the Act and; (ii) its public press release and web site notice required by Rule 12d2-2(c)(2)(iii) under the Act.

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**Other Exchange Products**

**Rule 15.9. Unlisted Trading Privileges**

A. UTP Securities. Notwithstanding the requirements for listing set forth in these Rules, the Exchange extend unlisted trading privileges ("UTP") to any security that is listed on another national securities exchange or with respect to which unlisted trading

privileges may otherwise be extended in accordance with Section 12(f) of the Act. Any such security will be subject to all Exchange trading rules applicable to equity securities, unless otherwise noted.

B. UTP Derivative Securities. Any UTP Security that is a “new derivative securities product” as defined in Rule 19b-4(e) under the Act (a “UTP Derivative Security”) and traded pursuant to Rule 19b-4(e) under the Act shall be subject to the additional following rules:

(1) Form 19b-4(e). The Exchange shall file with the Securities and Exchange Commission a Form 19b-4(e) with respect to each UTP Derivative Security.

(2) Information Circular. The Exchange shall distribute an information circular prior to the commencement of trading in such UTP Derivative Security that generally includes the same information as contained in the information circular provided by the listing exchange, including: (a) the special risks of trading new derivative securities product; (b) the Exchange Rules that will apply to the new derivative securities product, including Rule 3.7; (c) information about the dissemination of value of the underlying assets or indexes; and (d) the risk of trading outside of Regular Trading Hours (as determined pursuant to Rule 11.1), due to the lack of calculation or dissemination of the intra-day indicative value or a similar value.

(3) Product Description.

(a) This subparagraph (3) is applicable to Exchange Traded Funds. The term Exchange Traded Funds (“ETFs”) includes unit investment trusts, portfolio depositary receipts and trust issued receipts designed to track the performance of a broad stock or bond market, stock industry sector, and U.S. Treasury and corporate bonds, among other things.

(b) Prospectus Delivery Requirements. ETP Holders are subject to the prospectus delivery requirements under the Securities Act of 1933, unless the derivative securities product is an ETF that is the subject of an order by the Securities and Exchange Commission exempting the product from certain prospectus delivery requirements under Section 24(d) of the Investment Company Act of 1940 and the product is not otherwise subject to prospectus delivery requirements under the Securities Act of 1933.

(c) Written Description of Terms and Conditions. The Exchange shall inform ETP Holders regarding the application of the provisions of this subparagraph to a particular series of ETFs by means of an information circular. The Exchange requires that ETP Holders provide all purchasers of a series of ETFs a written description of the terms and characteristics of those securities, in a form approved by the Exchange or prepared by the open-ended management company issuing such securities, not later than the time a confirmation of the first transaction in such series is delivered to such purchaser. In addition, the ETP Holders shall include a written description with any sales material relating to a series of ETFs that is provided to customers or the public. Any

other written materials provided by an ETP Holder to customers or the public making specific reference to the series of ETFs as an investment vehicle must include a statement substantially in the following form:

“A circular describing the terms and characteristics of [*the series of ETFs*] has been prepared by the [*open-ended management investment company name*] and is available from your broker. It is recommended that you obtain and review such circular before purchasing [*the series of ETFs*].”

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

(d) Customer Requests for a Prospectus. Upon request of a customer, an ETP Holder shall also provide a prospectus for the particular series of ETF.

(4) Trading Halts.

(a) If a temporary interruption occurs in the calculation or wide dissemination of the intraday indicative value (or similar value) or the value of the underlying index or instrument and the listing market halts trading in the product, the Exchange, upon notification by the listing market of such halt due to such temporary interruption, also shall immediately halt trading in that product on the Exchange. If the intraday indicative value (or similar value) or the value of the underlying index or instrument continues not to be calculated or widely available as of the commencement of trading on the Exchange on the next business day, the Exchange shall not commence trading of the product that day. If an interruption in the calculation or wide dissemination of the intraday indicative value (or similar value) or the value of the underlying index or instrument continues, the Exchange may resume trading in the product only if calculation and wide dissemination of the intraday indicative value (or similar value) or the value of the underlying index or instrument resumes or trading in such series resumes in the listing market. Nothing in this rule shall limit the power of the Exchange under the By-Laws, Rules (including without limitation Rules 11.20, 12.11 and 15.7) or procedures of the Exchange with respect to the Exchange's ability to suspend trading in any securities if such suspension is necessary for the protection of investors or in the public interest.

(b) For a UTP Derivative Security where a net asset value is disseminated, upon notification from the listing market that the net asset value is not being disseminated to all market participants at the same time, the Exchange will immediately halt trading in such security. The Exchange may resume trading in the UTP Derivative Security only when the net asset value is disseminated to all market participants at the same time or trading in the UTP Derivative Security resumes on the listing market.

(5) Surveillance. The exchange shall enter into a comprehensive surveillance sharing agreement with markets trading components of the index or portfolio on which the UTP Derivative Security is based to the same extent as the listing exchange's rules require the listing exchange to enter into a comprehensive surveillance sharing agreement with such markets.

**Rule 15.10. Portfolio Depositary Receipts**(1) Applicability. This rule is applicable only to Portfolio Depositary Receipts. Except to the extent inconsistent with this rule, or unless the context otherwise requires, the provisions of the By-Laws and all other rules and policies of the Board shall be applicable to the trading on the Exchange of such securities. Portfolio Depositary Receipts are included within the definition of "security" or "securities" as such terms are used in the By-Laws and Rules of the Exchange.

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

(a) Portfolio Depositary Receipt. The term "Portfolio Depositary Receipt" means a security (i) that is based on a unit investment trust ("Trust") which holds the securities which comprise an index or portfolio underlying a series of Portfolio Depositary Receipts; (ii) that is issued by the Trust in a specified aggregate minimum number in return for a "Portfolio Deposit" consisting of specified numbers of shares of stock plus a cash amount; (iii) that, when aggregated in the same specified minimum number, may be redeemed from the Trust which will pay to the redeeming holder the stock and cash then comprising the "Portfolio Deposit"; and (iv) that pays holders a periodic cash payment corresponding to the regular cash dividends or distributions declared with respect to the component securities of the stock index or portfolio of securities underlying the Portfolio Depositary Receipts, less certain expenses and other charges as set forth in the Trust prospectus.

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

(3) ETP Holders shall provide to all purchasers of a series of Portfolio Depositary Receipts a written description of the terms and characteristics of such securities, in a form approved by the Exchange, not later than the time a confirmation of the first transaction in such a series is delivered to such purchaser. In addition, ETP Holders shall include

such a written description with any sales material relating to a series of Portfolio Depositary Receipts that is provided to customers or the public. Any other written materials provided by an ETP Holder to customers or to the public making specific reference to a series of Portfolio Depositary Receipts as an investment vehicle must include a statement in substantially the following form: "A circular describing the terms and characteristics of [the series of Portfolio Depositary Receipts] is available from your broker. It is recommended that you obtain and review such circular before purchasing [the series of Portfolio Depositary Receipts]. In addition, upon request you may obtain from your broker a prospectus for [the series of Portfolio Depositary Receipts]."

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

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

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

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

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

(b) Continued Trading - Following the initial twelve-month period following formation of a Trust and commencement of trading on the Exchange, the Exchange will consider the suspension of trading in, removal from listing of, or termination of unlisted trading privileges for a Trust upon which a series of Portfolio Depositary Receipts is based under any of the following circumstances: (i) if the Trust has more than 60 days remaining until termination and there are fewer than 50 record and/or beneficial holders of Portfolio Depositary Receipts for 30 or more consecutive trading days; or (ii) if the value of the index or portfolio of securities on which the Trust is based is no longer

calculated or available; or (iii) if such other event shall occur or condition exists which in the opinion of the Exchange, makes future dealings on the Exchange inadvisable.

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

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

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

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

(6) Limitation of Exchange Liability. Neither the Exchange, the Reporting Authority nor any agent of the Exchange shall have any liability for damages, claims, losses or expenses caused by any errors, omissions, or delays in calculating or disseminating any current index or portfolio value, the current value of the portfolio of securities required to be deposited to the Trust; the amount of any dividend equivalent payment or cash distribution to holders of Portfolio Depositary Receipts; net asset value; or other information relating to the creation, redemption or trading of Portfolio Depositary Receipts, resulting from any negligent act or omission by the Exchange, or the Reporting Authority, or any agent of the Exchange or any act, condition or cause beyond the reasonable control of the Exchange or its agent, or the Reporting Authority, including, but not limited to, an act of God; fire; flood; extraordinary weather conditions; war; insurrection; riot; strike; accident; action of government; communications or power failure; equipment or software malfunction; or any error, omission or delay in the reports of transactions in one or more of the underlying securities. The Exchange makes no warranty, express or implied, as to the results to be obtained by any person or entity from the use of Portfolio Depositary Receipts or any underlying index or data included therein and the Exchange makes no express or implied warranties, and disclaims all warranties or merchantability or fitness for a particular purpose with respect to Portfolio Depositary Receipts or any underlying index or data included therein. This limitation of liability shall be in addition to any other limitation contained in the Exchange's Articles of Incorporation, By-Laws or Rules.

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

.02 The Exchange will trade, pursuant to unlisted trading privileges, Portfolio Depositary Receipts based on the Standard and Poor's Exchange's S&P MidCap 400 Index, known as MidCap SPDRs.

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### **Rule 15.11. Trust Issued Receipts**

(1) Applicability. This rule is applicable only to Trust Issued Receipts. Except to the extent inconsistent with this rule, or unless the context otherwise requires, the provisions of the By-Laws and all the rules and policies of the Board shall be applicable to the trading on the Exchange of such securities. Trust Issued Receipts are included within the definition of "security" or "securities" as such terms are used in the By-Laws and Rules of the Exchange. The Exchange will consider for trading, whether by listing or pursuant to unlisted trading privileges, Trust Issued Receipts that meet the criteria of this Rule.

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

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

(3) Designation. The Exchange may trade, whether by listing or pursuant to unlisted trading privileges, Trust Issued Receipts based on one or more securities. The Trust Issued Receipts based on particular securities shall be designated as a separate series and shall be identified by a unique symbol. The securities that are included in a series of Trust Issued Receipts shall be selected by the Exchange or by such other person as shall have a proprietary interest in such Trust Issued Receipts.

(4) Initial and Continued Listing. Trust Issued Receipts will be traded on the Exchange subject to application of the following criteria:

(a) Initial Listing - For each Trust, the Exchange will establish a minimum number of Trust Issued Receipts required to be outstanding at the time of commencement of trading on the Exchange.



(b) Continued Listing - Following the initial twelve-month period following formation of a Trust and commencement of trading on the Exchange, the Exchange will consider the suspension of trading in or removal from listing of a Trust upon which a series of Trust Issued Receipts is based under any of the following circumstances: (i) if the Trust has more than 60 days remaining until termination and there are fewer than 50 record and/or beneficial holders of Trust Issued Receipts for 30 or more consecutive trading days; (ii) if the Trust has more than 50,000 receipts issued and outstanding; (iii) if the market value of all receipts issued and outstanding is less than \$1,000,000; or (iv) if any other event shall occur or condition exists which, in the opinion of the Exchange, makes further dealings on the Exchange inadvisable.

Upon termination of a Trust, the Exchange requires that the Trust Issued Receipts issued in connection with such Trust be removed from Exchange listing. A Trust may terminate in accordance with the provisions of the Trust prospectus, which may provide for termination if the value of securities in the Trust falls below a specified amount.

(c) Term - The stated term of the Trust shall be as stated in the Trust prospectus; however, a Trust may be terminated under such earlier circumstances as may be specified in the Trust prospectus.

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

(e) Voting – Voting rights shall be set forth in the Trust prospectus.

(5) ETP Holder Obligations. ETP Holders shall provide to all purchasers of newly issued Trust Issued Receipts a prospectus for the series of Trust Issued Receipts.

(6) Trading Issues. Trust Issued Receipts may be acquired, held, or transferred only in round-lot amounts (or round-lot multiples) of 100 receipts. Orders for less than a round-lot multiple, will be executed to the extent of the largest round-lot multiple.

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*Interpretations And Policies*

.01 The Exchange may approve a series of Trust Issued Receipts for trading, whether by listing or pursuant to unlisted trading privileges, pursuant to Rule 19b-4(e) under the Act, provided that the following criteria are satisfied:

(a) Each security underlying the Trust Issued Receipt must be registered under Section 12 of the Act;

(b) Each company whose securities are underlying securities for the Trust Issued Receipt must have a minimum public float of at least \$150 million;

- (c) Each security underlying the Trust Issued Receipt must be listed on a national securities exchange or traded through the facilities of NASDAQ as a reported national market system security;
- (d) Each company whose securities are underlying securities for the Trust Issued Receipt must have an average daily trading volume of at least 100,000 shares during the preceding sixty-day trading period;
- (e) Each company whose securities are underlying securities for the Trust Issued Receipt must have an average daily dollar value of shares traded during the preceding sixty-day trading period of at least \$1 million; and
- (f) The most heavily weighted security in the Trust Issued Receipt cannot initially represent more than 20% of the overall value of the Trust Issued Receipt.

**Rule 15.12. Index Fund Shares**

(1) Applicability. This Chapter is applicable only to Index Fund Shares. Except to the extent inconsistent with this Chapter, or unless the context otherwise requires, the provisions of the By-Laws and all other rules and policies of the Exchange shall be applicable to the trading on the Exchange of Index Fund Shares. Index Fund Shares are included within the definition of "security" or "securities" as such terms are used in the By-Laws and Rules of the Exchange.

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

(a) Index Fund Shares means a security (a) that is issued by an open-end management investment company based on a portfolio of stocks that seeks to provide investment results that correspond generally to the price and yield performance of a specified foreign or domestic stock index; (b) that is issued by such an open-end management investment company in a specified aggregate minimum number in return for a deposit of specified numbers of shares of stock and/or a cash amount with a value equal to the next determined net asset value; and (c) that, when aggregated in the same specified minimum number, may be redeemed at a holders request by such open-end investment company which will pay to the redeeming holder the stock and/or cash with a value equal to the next determined net asset value.

(b) Reporting Authority. The term "Reporting Authority" in respect of a particular series of Index Fund Shares means the Exchange, a subsidiary of the Exchange, or an institution or reporting service designated by the Exchange or its subsidiary as the official source for calculating and reporting information to such series, including, but not limited to, any current index or portfolio value; the current value of the portfolio of any securities required to be deposited in connection with issuance of Index Fund Shares; the amount of any dividend equivalent payment or cash distribution to holders of Index Fund Shares, net asset value, or other information relating to the issuance, redemption or trading of Index Fund Shares.

Nothing in this section shall imply that an institution or reporting service that is the source for calculating and reporting information relating to Index Fund Shares must be designated by the Exchange, the term "Reporting Authority" shall not refer to an institution or reporting service not so designated.

(3) Disclosure. Upon request of a customer, ETP Holders shall provide to all purchasers of Index Fund Shares a prospectus for the series of Index Fund Shares.

(4) Designation. The trading of Index Fund Shares based on one or more securities, whether by listing or pursuant to unlisted trading privileges, shall be considered on a case-by-case basis. Each issue of Index Fund Shares shall be based on each particular stock index or portfolio and shall be designated as a separate series and shall be identified by a unique symbol. The securities that are included in a series of Index Fund Shares shall be selected by the Exchange or its agent, a wholly-owned subsidiary of the Exchange, or by such other person thereof, as shall have authorized use of such index. Such index or portfolio may be revised from time to time as may be deemed necessary or appropriate to maintain the quality and character of the index or portfolio.

(5) Initial and Continued Listing and/or Trading. Each series of Index Fund Shares will be traded on the Exchange, whether by listing or pursuant to unlisted trading privileges, subject to application of the following criteria:

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

(b) Continued Trading - Following the initial twelve-month period following commencement of trading on the Exchange of a series of Index Fund Shares, the Exchange will consider the suspension of trading, the removal from listing, or termination of unlisted trading privileges for such series under any of the following circumstances: (i) if there are fewer than 50 beneficial holders of the series of Index Fund Shares for 30 or more consecutive trading days; (ii) if the value of the index or portfolio of securities on which the series of Index Fund Shares is based is no longer calculated or available; or (iii) if such other event shall occur or condition exist which, in the opinion of the Exchange, makes further dealings on the Exchange inadvisable. Upon termination of an open-ended management investment company, the Exchange requires that Index Fund Shares issued in connection with such entity be removed from Exchange listing.

(c) Voting. Voting rights shall be as set forth in the applicable open-end management investment company prospectus.

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### *Interpretations And Policies*

.01 The Exchange may approve a series of Index Fund Shares for listing pursuant to Rule 19b-4(e) under the Act provided each of the following criteria is satisfied:

(a) Eligibility Criteria for Index Components. Upon the initial listing of a series of Index Fund Shares each component of an index or portfolio underlying a series of Index Fund Shares shall meet the following criteria as of the date of the initial deposit of securities to the fund in connection with the initial issuance of shares of such fund: (i) Component stocks that in the aggregate account for at least 90% of the weight of the index or portfolio shall have a minimum market value of at least \$75 million; (ii) The component stocks shall have a minimum monthly trading volume during each of the last six months of at least 250,000 shares for stocks representing at least 90% of the weight of the index or portfolio; (iii) The most heavily weighted component stock cannot exceed 25% of the weight of the index or portfolio, and the five most heavily weighted component stocks cannot exceed 65% of the weight of the index or portfolio; (iv) The underlying index or portfolio must include a minimum of 13 stocks; and (v) All securities in an underlying index or portfolio must be listed on a national securities exchange or The Nasdaq Stock Market (including the Nasdaq SmallCap Market).

(b) Index Methodology and Calculation. (i) The index underlying a series of Index Fund Shares will be calculated based on either the market capitalization, modified market capitalization, price, equal-dollar or modified equal-dollar weighting methodology; (ii) If the index is maintained by a broker-dealer, the broker-dealer shall erect a "fire-wall" around the personnel who have access to information concerning changes and adjustments to the index and the index shall be calculated by a third party who is not a broker-dealer; and (iii) The current index value will be disseminated every 15 seconds over the Consolidated Tape Association's Network B.

(c) Disseminated Information. The Reporting Authority will disseminate for each series of Index Fund Shares an estimate, updated every 15 seconds, of the value of a share of each series. This may be based, for example, upon current information regarding the required deposit of securities and cash amount to permit creation of new shares of the series or upon the index value.

(d) Initial Shares Outstanding. A minimum of 100,000 shares of a series of Index Fund Shares is required to be outstanding at commencement of trading.

(e) Minimal Fractional Trading Variation. The minimum fractional trading variation may vary among different series of Index Fund Shares but will be set at 1/16th, 1/32nd, or 1/64th of \$1.00.

(f) Reserved.

(g) Surveillance Procedures. The Exchange will utilize existing surveillance procedures for Index Fund Shares.

(h) Applicability of Other Rules. The provisions of the Exchange Rules and By-Laws will apply to all series of Index Fund Shares.

.02 The following paragraphs only apply to series of Index Fund Shares that are the subject of an order by the Securities and Exchange Commission exempting such series from certain prospectus delivery requirements under Section 24(d) of the Investment Company Act of 1940. The Exchange will inform ETP Holders regarding application of

these provisions to a particular series of Index Fund Shares by means of an Information Circular prior to commencement of trading in such series. The Exchange requires that ETP Holders provide to all purchasers of a series of Index Fund Shares a written description of the terms and characteristics of such securities, in a form prepared by the open-end management investment company issuing such securities, not later than the time a confirmation of the first transaction in such series is delivered to such purchaser. In addition, ETP Holders shall include such a written description with any sales material relating to a series of Index Fund Shares that is provided to customers or the public. Any other written materials provided by an ETP Holder to customers or the public making specific reference to a series of Index Fund Shares as an investment vehicle must include a statement in substantially the following form: "A circular describing the terms and characteristics of [the series of Index Fund Shares] has been prepared by the [open-end management investment company name] and is available from your broker or the Exchange. It is recommended that you obtain and review such circular before purchasing [the series of Index Fund Shares]."

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

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

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## CHAPTER XVI. Dues, Fees, Assessments and Other Charges

### Rule 16.1. Authority to Prescribe Dues, Fees, Assessments and Other Charges

(a) *Generally.* The Exchange may prescribe such reasonable dues, fees, assessments or other charges as it may, in its discretion, deem appropriate. Such dues, fees, assessments and charges may include ETP Holder dues, transaction fees, communication and technology fees, regulatory charges, listing fees, and other fees and charges as the Exchange may determine. All such dues, fees and charges shall be equitably allocated among ETP Holders, issuers and other persons using the Exchange's facilities.

(b) *Regulatory Transaction Fee.* Under Section 31 of the Act, the Exchange must pay certain fees to the Commission. To help fund the Exchange's obligations to the Commission under Section 31, this Regulatory Transaction Fee is assessed to ETP Holders. To the extent there may be any excess monies collected under this Rule, the Exchange may retain those monies to help fund its general operating expense. Each ETP Holder engaged in executing transactions on the Exchange shall pay, in such manner and at such times as the Exchange shall direct, a Regulatory Transaction Fee equal to (i) the rate determined by the Commission to be applicable to covered sales occurring on the Exchange in accordance with Section 31 of the Act multiplied by (ii) the ETP Holder's

aggregate dollar amount of covered sales occurring on the Exchange during any computational period.

(c) *Schedule of Fees.* The Exchange will provide ETP Holders with notice of all relevant dues, fees, assessments and charges of the Exchange. Such notice may be made available to ETP Holders on the Exchange's website or by any other method deemed reasonable by the Exchange.

## **Rule 16.2. Reserved**

## **Rule 16.3. Aggregation of Activity of Affiliated ETP Holders**

(a) ETP Holder Application; Exchange Verification. For purposes of applying any provision of this Chapter 16 (including without limitation the fees and rebates referenced in the schedule of fees under Rule 16.1(c)) that reflects a charge assessed, or credit or rebate provided, by the Exchange, an ETP Holder may request that the Exchange aggregate its activity with the activity of its affiliates. An ETP Holder requesting aggregation of affiliate activity shall be required to certify to the Exchange the affiliate status of entities whose activity it seeks to aggregate prior to receiving approval for aggregation, and shall be required to inform the Exchange immediately of any event that causes an entity to cease to be an affiliate. The Exchange reserves the right to request information to verify the affiliate status of an entity.

(b) Aggregation of Approved ETP Holders' Activity. For purposes of applying any provision of this Chapter 16 (including without limitation the fees and rebates referenced in the schedule of fees under Rule 16.1(c)) that reflect a charge assessed, or credit or rebate provided, by the Exchange, references to an ETP Holder shall be deemed to include the ETP Holder and its affiliates that have been approved for aggregation.

(c) Definitions. For purposes of this Chapter 16 (including without limitation the fees and rebates referenced in the schedule of fees under Rule 16.1(c)), the terms set forth below shall have the following meanings:

- (1) An "affiliate" of an ETP Holder shall mean any wholly owned subsidiary, parent, or sister of the ETP Holder that is also an ETP Holder.
- (2) A "wholly owned subsidiary" shall mean a subsidiary of an ETP Holder, 100% of whose voting stock or comparable ownership interest is owned by the ETP Holder, either directly or indirectly through other wholly owned subsidiaries.
- (3) A "parent" shall mean an entity that directly or indirectly owns 100% of the voting stock or comparable ownership interest of an ETP Holder.

- (4) A “sister” shall mean an entity, 100% of whose voting stock or comparable ownership interest is owned by a parent that also owns 100% of the voting stock or comparable ownership interest of an ETP Holder.

**Rule 16.4. Integrated Billing System**

Unless a payment method other than as described below is agreed upon by the Exchange and ETP Holder, each ETP Holder must designate a Clearing Member for the payment of the ETP Holder's Exchange invoices and vendor invoices for Exchange-related services by means of the Exchange's integrated billing system ("IBS"). The Clearing Member shall pay to the Exchange on a timely basis any amount that is not disputed by the ETP Holder. Such payments shall be drafted by the Exchange against the Clearing Member's account at the Qualified Clearing Agency. The Qualified Clearing Agency shall have no liability in connection with its forwarding to the Exchange each month a payment representing the total amount that the Exchange advises the Qualified Clearing Agency is owed to the Exchange.]