RULES OF THE BOARD OF GOVERNORS

Definitions

[Rule 1.]Rule 1. The terms defined in Rules 2 to [25,]22, inclusive, shall have the meanings specified in said Rules for all purposes of Rules of the Board of Governors and of rules and regulations of Standing Committees of the Exchange, unless the context of a rule or regulation requires otherwise.

Member

[Rule 2.]Rule 2. The term "member" means a [member]permit holder which has not been terminated in accordance with the by-laws and these rules of the Exchange.

Member [Firm]Organization

[Rule 3. The term "member firm" means a firm, transacting business as a broker or a dealer in securities, at least one of whose general partners is a member of the Exchange or which has the status of a member firm by virtue of permission given to it by the Committee on Admissions pursuant to the provisions of Article X, Sec. 6.]

[Member Corporation]

[Rule 4.]Rule 3. The term "member [corporation]organization" means a corporation, partnership (general or limited), limited liability partnership, limited liability company, business trust or similar organization, transacting [a]business as a broker or a dealer in securities[, at least one of whose officers is a member of the Exchange,] and which has [been registered as a member corporation of the Exchange, or which has]the status of a member [corporation]organization by virtue of (i) permission given to it by the [Committee on]Admissions Committee pursuant to the provisions of Section 10-6 of [Article X]the By-Laws or (ii) the transitional rules adopted by the Exchange pursuant to Section 12-12 of the By-Laws. References herein to officer or partner, when used in the context of a member organization, shall include any person holding a similar position in any organization other than a corporation or partnership that has the status of a member organization.

Member Organization Representative

Rule 4. The term "Member Organization Representative" shall mean the officer (or person in a similar position) of a member organization designated by such member organization as such member organization's Member Organization Representative, who shall have the sole authority, with respect to the selection or removal of Designated Nominees and the On-Floor Vice Chairman of the Board of Governors, to exercise any and all rights and to take any and all actions on behalf of such member organization and each member who has designated such member organization as his primary affiliation.

Non-member

[Rule 5.]Rule 5. The term "non-member" [means a party not a member of the Exchange. It]includes[within its meaning a partner or limited partner in a member firm], with respect to individuals, any person who is not a member[of the Exchange,] and[it also includes a holder of voting or non-voting stock in a member corporation who], with respect to entities, any organization that is not a member [of the Exchange]organization. For purposes of Rules 104, 604, 606, 607, 631, 677, 680, and 950 the term "non-member" shall not be deemed to include a foreign currency options participant or a foreign currency options participant organization.

[Member Organization]

[Rule 6. The term "member organization" includes "member firm" and "member corporation." The term "participant" when used with reference to a member organization includes general and limited partners of a member firm and holders of voting and non-voting stock in a member corporation.]

Rule 6. Reserved.

Rules 7 – 12 No change.

Foreign Currency Options Participant or Participant

[Rule 13.]Rule 13. The term "foreign currency options participant" or "participant" includes a member of the [Corporation]Exchange who has purchased a foreign currency options participation and a non-member who has been admitted to the Exchange as a foreign currency options participant by the [Committee on]Admissions Committee. Except as otherwise specifically provided therein or unless exempted therefrom by the Board of Governors, each foreign currency options participant shall be subject to the provisions of the Rules that are applicable to a member of the [Corporation]Exchange and each reference to a member of the [Corporation]Exchange in the Rules shall be deemed to pertain also to a foreign currency options participant.

[Foreign Currency Options Participant Firm]

[Rule 14. The term "foreign currency options participant firm" means a firm, transacting business as a broker or dealer in securities, at least one of whose general partners is a foreign currency options participant or which has the status of a foreign currency options participant firm by virtue of permission given to it by the Committee on Admissions pursuant to the provisions of Section 10-6 of Article X of the By-Laws. Except as otherwise specifically provided therein or unless exempted therefrom by the Board of Governors, each foreign currency options participant firm shall be subject to the provisions of the Rules that are applicable to a member firm and each reference to a member firm in the Rules shall be deemed to pertain also to a foreign currency options participant firm.]

[Foreign Currency Options Participant Corporation]

[Rule 15. The term "foreign currency options participant corporation" means a corporation, transacting business as a broker or dealer in securities, at least one of whose officers is a foreign currency options participant or which has the status of a foreign currency options participant corporation by virtue of permission given to it by the Committee on Admissions pursuant to the provisions of Sec. 10-6 of Article X of the By-Laws. Except as otherwise specifically provided therein or unless exempted therefrom by the Board of Governors, each foreign currency options participant corporation shall be subject to the provisions of the Rules that are applicable to a member corporation and each reference to a member corporation in the Rules shall be deemed to pertain also to a foreign currency options participant corporation.]

Rule 14. Reserved.

Rule 15. Reserved.

Foreign Currency Options Participant Organization

[Rule 16.]Rule 16. The term "foreign currency options participant organization" [includes]means a[foreign currency options participant firm and a foreign currency options participant] corporation[. Except], partnership (general or limited), limited liability partnership, limited liability company, business trust or similar organization, transacting business as [specifically provided therein]a broker or [unless exempted therefrom by]a dealer in securities and which has the [Board]status of [Governors, each]a foreign currency options participant organization [shall be subject]by virtue of (i) permission given to it by the Admissions Committee pursuant to the provisions of Section 10-6 of the [Rules that are applicable to a member organization and

each reference]By-Laws or (ii) the transitional rules adopted by the Exchange pursuant to [a member]Section 12-12 of the By-Laws. References herein to officer or partner, when used in the context of a foreign currency options participant organization[in], shall include any person holding a similar position in any organization other than a corporation or partnership that has the [Rules shall be deemed to pertain also to]status of a foreign currency options participant organization.

Lessor

[Rule 17.]Rule 17. The term "lessor" means a holder of equitable title to a [membership in the Corporation]foreign currency options participation, including a former [member of the Corporation]foreign currency options participant, who has leased legal title to his [membership]foreign currency options participation to a lessee and has retained equitable title to such [membership]foreign currency options participation.

Lessee

[Rule 18.]Rule 18. The term "lessee" means a [member of the Corporation]foreign currency options participant who has leased legal title to his [membership]foreign currency options participation from a lessor.

Approved Lessor

[Rule 19.]Rule 19. The term "approved lessor" means, with respect to a foreign currency options participation, a lessor approved by the [Corporation]Exchange under [its]the [By]by-[Laws]laws and the rules of the Exchange.

Person

[Rule 20.]Rule 20. The term "person" shall mean [a natural person]an individual, partnership (general or limited) joint-stock company, corporation, limited liability company[, association, joint stock company], trust or unincorporated organization, [fund]and a government or [any organized group of persons whether incorporated]agency or [not]political subdivision thereof.

Inactive Nominee

[Rule 21.]Rule 21. The term "inactive nominee" shall mean a natural person associated with and designated as such by a member organization [whom]and who has [applied for and]been approved by the Admissions Committee for such status and is registered as such with the Membership Services Department. An inactive nominee shall have no rights or privileges [of membership]under a permit unless and until said inactive nominee becomes admitted as a member of the Exchange pursuant to the [By]by-[Laws]laws and [Rules]rules of the Exchange. An inactive nominee merely stands ready to [assume legal title to]exercise rights under a [membership]permit upon notice by the member organization to the Membership Services Department[to be transferred intra-firm] on an expedited basis.

[Rule 22. Reserved.]

[Equity Trading Permits]

Permit

Rule 22. The term "permit" shall mean a permit of any class, series or kind established from time to time by the Board of Governors and denominated as such.

[Rule 23.]

[(a) *Classes of Equity Trading Permits]*

[The Exchange shall issue up to seventy-five (75) Equity Trading Permits ("ETPs") outstanding from time to time in accordance with such plan of issuance and such procedures as the Board of Governors, or, if so authorized by the Board of Governors, the Chairman and Chief Executive Officer (or his designee), shall approve from time to time. Two classes of EPTs may be issued by the Exchange to applicants pursuant to resolution of the Board of Governors for such fee as may be established from time to time by the Board. The two classes of ETPs shall be Regular ETPs and Off-Floor ETPs, which are collectively referred to as ETPs.]

[(b) *Requirements for Issuance]*

[An ETP holder must meet all qualifications that are required for membership in the Exchange. Applications must be approved by the Exchange, and applicants who are not Exchange members must be admitted by the Exchange. The admissions process for applicants who are not members of the Exchange will be the same as that required for membership applicants for admission, and the decision to grant or deny an application for admission shall be made by the Admissions Committee under its established procedures. No person whose application for an ETP has been approved by the Exchange shall be admitted to the privileges thereof until he shall have signed a pledge to abide by the By-Laws and rules of the Exchange as the same have been or shall be from time to time amended and by all rules, regulations, requirements, orders, directions or decisions adopted or made in accordance therewith and to submit to the Exchange's disciplinary jurisdiction.]

[(c) *Rights of ETP Holders]*

[Except as may be otherwise set forth in this Rule 23 or in other Rules or effective Commission filings, an ETP holder shall have the right to transact business on the Exchange to the same extent and in the same manner as a member of the Exchange without options privileges and shall be deemed to have the same rights and obligations as a member without options privileges. Except insofar as it would be, directly or indirectly, inconsistent with the Rule 23(c), any other provision of this Rule 23 or the Certificate of Incorporation, references in the Rules, the By-Laws or the Certificate of Incorporation to "members" shall include ETP holders. ETPs are not Regular or Convertible memberships of the Exchange, and ETP holders and ETP organizations shall have only such rights, privileges and obligations as are expressly provided in or pursuant to this Rule 23. An ETP holder shall not be entitled to vote in any election or on any amendment to the By-Laws or on any other matter, to petition for any meeting or other action, to call or be counted as part of a quorum at any meeting of members, to share in any distribution of the asset or funds of the Exchange in the event of any voluntary or involuntary liquidation, dissolution, or winding up of the affairs of the Exchange, or to purchase options privileges. ETP holders are deemed to be members and ETP organizations are deemed to be member organizations (i) for the purpose of eligibility requirements to serve on the Board of Governors or Committees thereof or other Exchange Committees, and (ii) for the purpose of nominating candidates for the Board of Governors, provided, however, that, notwithstanding the foregoing or any other provision of this Rule 23, ETP holders are not members of the Corporation for purposes of the Delaware General Corporation Law ("DGCL") and are not entitled to any of the rights or privileges conferred upon members of a nonstock corporation solely by the DGCL. Specialist members who elect to sell or lease their memberships in favor of Regular ETPs shall continue to be specialists in their allocated securities.]

[(d) *Limitation on Rights of Off-Floor ETP Holders]*

[An Off-Floor ETP holder may, if accompanied by a regular member, visit the Floor of the Exchange but shall not have the privilege of transacting business thereon. An Off-Floor ETP holder shall be authorized to maintain electronic or telephonic access to (i) the floor facilities of a member or member organization or a Regular ETP holder, (ii) the Philadelphia Stock Exchange Automated Communication and Execution System ("PACE"), and (iii) such other automated trading systems of the Exchange as may be made available to members of the Exchange without options privileges.]

[(e) *Obligations of ETP Holders]*

[An ETP holder shall be subject to the same obligations and duties as are imposed on Exchange members without options privileges from time to time. An ETP holder shall be subject to the Exchange's fees and other charges, as applicable, provided that an ETP holder shall not be subject to annual membership dues, technology fees or capital assessments. All provisions of the By-Laws and the rules, regulations, requirements, orders, directions

and decisions adopted or made in accordance therewith which by their terms are applicable to Exchange members and are not expressly inapplicable to ETP holders shall be deemed to also apply to ETP holders unless the application thereof shall be inconsistent with the provisions of this Rule 23. All references in such documents to "non-members" shall not be construed to apply to ETP holders.]

[(f) *Transferability of ETPs]*

[An ETP may not be transferred by lease, sale, gift, involuntary transfer, or any other means or as collateral to secure any obligation, except that an ETP may be transferred within the holder's ETP organization to (i) an individual who has applied for and been approved by the Admissions Committee as an ETP holder, or (ii) to an "inactive nominee" who is registered as such with the Exchange.]

[(g) *ETP Organizations]*

[An individual ETP holder who is associated with a broker-dealer shall qualify such broker-dealer as an ETP firm or an ETP corporation (either, an "ETP organization"). Except as may be otherwise set forth in this Rule 23 or in other Rules or effective Commission filings, an ETP organization shall be deemed to have the same rights and obligations as a member organization of the Exchange. If the ETP pursuant to which an ETP organization is thus qualified shall terminate, such organization shall cease to be an ETP organization of the Exchange. Every applicant whose fees are to be paid by such ETP organization shall file, along with his or her ETP application, an agreement between the ETP applicant and the ETP organization (an "ETP Use Agreement") which provides that the ETP organization may direct the transfer of the ETP to another qualified individual within the ETP organization and that the ETP holder may not object to such transfer.]

[(h) *Termination of ETPs]*

[(i) *By the Exchange.* An ETP holder may be suspended or expelled on the same basis as a member. The Exchange reserves the right to amend the terms of, to discontinue offering or to terminate existing ETPs of one or more classes at any time upon thirty days written notice.]

[(ii) *By the ETP Holder*. An ETP holder must provide the Exchange thirty days written notice prior to termination of the ETP. Notice of intent to terminate an ETP shall be given by the Exchange in the same manner as notice of a proposed transfer of a membership.]

[(iii) *Effect of Termination.* The ETP holder and the ETP organization shall remain liable for all obligations incurred as an ETP holder or ETP organization until they are discharged. The Exchange may draw upon any security provided pursuant to Rule 23(i) for the payment of any such obligations at any time if they remain unpaid as of the date of termination. Upon the termination of an ETP, all rights and privileges granted pursuant thereto shall terminate.]

[(i) *Security for Exchange Fees and Other Claims]*

[(i) Each ETP organization (except any ETP organization which is also a member organization holding equitable title to a membership, legal title to which is held by an associated person of such member organization) shall be required to provide security to the Exchange for the payment of any claims owed to the Exchange, to Stock Clearing Corporation of Philadelphia, and to other member firms of the Exchange, upon termination of any ETP issued to an individual affiliated with the ETP organization, as though such security were the proceeds from the transfer of a membership. The security may consist of:]

[(A) a deposit with the Exchange in the amount of $50,000 to be held, together with all other such deposits made pursuant to this rule, in a segregated account, the proceeds of which may be applied by the Exchange upon termination of any ETP issued to an individual affiliated with such ETP organization in the same manner as proceeds of membership transfers under By-Law 15-3, and which may be invested by the Exchange in United States government obligations

or any other investments which provide safety and liquidity of the principal invested, interest or income on which deposit shall be paid periodically by the Exchange to such ETP organization;]

[(B) an acceptable letter of credit from a financial institution acceptable to the Exchange, in the amount of $50,000, proceeds of which may be applied by the Exchange upon termination of any ETP issued to an individual affiliated with such ETP organization in the same manner as proceeds of membership transfers under By-Law 15-3; or]

[(C) an acceptable guaranty by a financial institution acceptable to the Exchange guaranteeing the payment by the ETP organization, upon termination of any ETP issued to any individual affiliated with such organization, of any claims listed in By-Law 15-3 up to $50,000.]

[(ii) The security required to be provided pursuant to this rule shall not be calculated based upon the number of ETPs issued to affiliates of the ETP organization, but shall be the same amount regardless of the number of such ETPs issued to its affiliates. At such time as no ETP holders remain associated with the ETP organization, the proceeds of any remaining security may be applied by the Exchange in the same manner as proceeds of membership transfers under By-Law 15-3, and upon execution by the ETP holder and the ETP organization of releases satisfactory of the Board of Governors.]

[(iii) The obligation to provide security pursuant to this rule shall not apply to ETP organizations which have been in good standing at the Exchange as member organizations, participant organizations, or ETP organizations for the previous year. Any security provided pursuant to this Rule 23(i) shall be returned at such time as the ETP organization shall have been in good standing as either a member organization, participant organization, or an ETP organization for one year.]

[(iv) The proceeds of any transfer of a membership by a member organization may be applied by the Exchange to satisfy any claims of the Exchange, Stock Clearing Corporation of Philadelphia, or other member firms of the Exchange as described in By-Law 15-3 against the member organization's ETP holders.]

Rules [24]<u>23</u>–49. Reserved.

Late Charge

[Rule 50.]<u>Rule 50.</u> There shall be imposed upon any member, member organization, participant or participant organization or an employee thereof using the facilities or services of the Exchange, or enjoying any of the privileges therein, a late charge for dues, foreign currency options users' fees, fees, other charges, fines, and/or other monetary sanctions or other monies due and owed the Exchange and not paid within thirty (30) days after date of original invoice. The late charge is set at a rate of one and one-half percent (1.5%) simple interest for each thirty-day period or fraction thereof, calculated on a daily basis, during which accounts payable to the Exchange remain outstanding. An account is not subject to a late charge until the unpaid balance remains outstanding at least thirty-one (31) days. The Finance Committee or its designee may waive the amount of the late charge, or a portion thereof, if the amount falls within guidelines established by the Board of Governors. If any member, or member organization, participant or participant organization or an employee thereof shall fail to pay such fines and/or other monetary sanctions within twenty (20) days after notice thereof has been mailed or such dues, foreign currency options users' fees, fees, charges, and/or other monetary sanctions, or other monies due and owed the Exchange, including late charges, within fifty (50) days from the date of the original invoice, the Controller shall notify the Finance Committee, which shall take such action as it deems appropriate. Should such amounts due exceed $10,000, the Finance Committee shall refer the matter to the Board of Governors which shall take such action as it or its designee deems appropriate, including, after due notice, suspending the member, member organization, participant or participant organization or employee thereof until payment of the entire outstanding account balance is made in full to the Exchange of such member's or member organization's entire outstanding account balance of all dues, fees, fines, or other charges imposed by the Exchange.[If all amounts due and owing to the Exchange, Stock Clearing Corporation of Philadelphia ("SCCP") and other member firms of the Exchange with respect to an equity trading permit ("ETP") are not paid to the Exchange, SCCP or to the relevant member firm of the Exchange, as the case may be, within 14 days following suspension of the ETP, the Board of Governors or its designee may terminate the ETP.]

Enforcement of Capital Funding [Fee]Fees

[Rule 51.]

[Notice and Late Charges]

[(a) The Exchange shall issue invoices to each owner (for purposes of this Rule, an "Obligor"]**Rule 51.** (a)[providing notice of the obligation to pay the capital funding fee within thirty days from the invoice date.] [If an Obligor fails to pay the Exchange the]All capital funding [fee]fees, including any accrued late charges applicable thereto, levied by the [due date, the]Exchange on or before the effective time of the Merger (as such term is defined in the By-Laws) and which shall [provide a written Late Notice]have not been paid to the Exchange in full as of such [failure (the "Late Notice")]effective time will continue to be owed and[, subject] to [subsection (b), impose a]accrue late [charge]charges at a monthly rate of 1.5 percent (simple interest) for each thirty[-] day period or fraction thereof, calculated on a daily basis[, commencing with] notwithstanding the [thirty-first day]termination of memberships.

Waiver of Late Charges

[(b)](b) The Finance Committee or its Designee may waive the amount of the late charge, or a portion thereof, if good cause is shown.

For purposes of this Rule, any determination of "good cause" shall be based upon the following factors: consideration of the lateness of the payment, the frequency of the late payments by a particular Obligor, the reason for the late payment, the amount outstanding, the existence and reasonableness of a payment plan proposed by the Obligor, and the financial hardship that the remedy would cause the Obligor.

[Suspension of Obligor and Rights of Lessee]

[(c) If an Obligor fails to pay any portion of the capital funding fee, including the late charge described in subsection (a) above, within 30 days after the date of the Late Notice, the Board of Governors (or, if authorized by the Board, a committee of the Board, the Chairman of the Board, or a Designee of the Board) (collectively, "the Board or its Designee"), shall suspend the right to trade or otherwise conduct business at the Exchange, and suspend the Obligor's right to lease the relevant membership, subject to the ability of the current lessee to continue leasing to the extent provided in this paragraph and paragraph (d), below.]

[The Exchange shall provide the lessee with notice of the provisions contained in subparagraphs (c)(i) and (c)(ii) and paragraph (d) below, at the same time it provides the Obligor with the Late Notice.]

[Within 25 days after the date of the Late Notice, the Obligor may request in writing that the Board or its Designee postpone suspending the Obligor's rights, and the Board or its Designee may postpone these remedies, with or without qualification, if it decides that good cause has been shown by the Obligor. The Obligor's rights shall not be deemed suspended pending consideration by the Exchange of the request.]

[The Exchange shall provide the Obligor with notice that the Board or its Designee shall take any of the above-referenced action at the same time as it provides the Obligor with the Late Notice.]

[Lessee Elects to Pay Capital Funding Fee]

[(i) For a period of up to three months from the date that the Obligor is suspended from the right to lease, the lessee may pay the capital funding fee plus any applicable late charges owed the Exchange by the Obligor in respect to that membership, and set off such amounts from the amounts due the Obligor in accordance with Rule 930(k).]

[The lessee's authority to pay the capital funding fee pursuant to this Rule is without prejudice to any right of the Obligor or lessee to terminate the lease agreement for other reasons pursuant to its terms or Rule 930(e).

Absent such termination, the existing lease agreement shall remain in effect for the months for which the capital funding fee charges are paid by the lessee pursuant to this subsection and shall then terminate unless the delinquency has been cured.]

[Lessee Does Not Elect to Pay Capital Funding Fee]

[(ii) If the lessee does not elect to pay the capital funding fee, plus any applicable late charges, the lease agreement shall terminate 30 days from the date of the Late Notice (absent earlier termination by the Obligor or lessee), notwithstanding the provisions in Rule 930(b) and (e) unless the delinquency has been fully cured. The lessee shall remit the amount of the capital funding fee plus late charges to the Exchange, up to the amount of his or her outstanding lease payment(s) due during this 30 day period, and set off such amount from the lease payment(s).]

[Temporary Trading Privileges]

[(d) The lessee may apply in writing to the Exchange no later than 10 days prior to the termination of the lease agreement pursuant to subparagraphs (c)(i) or (ii) above to continue trading under temporary trading privileges for a period of up to three months from the Obligor's suspension. The Exchange shall approve or disapprove a properly submitted application within 10 days of receiving the written application unless such approval violates Exchange rules or By-Laws or its Certificate of Incorporation.]

[(i) If a lease agreement terminates while an application for temporary trading privileges is pending, the lessee may trade as though approval had been granted, but for no more than ten days after the Exchange received the application, pending the approval or disapproval by the Exchange of the application.]

[(ii) The economic terms of the temporary trading privileges shall be at the current prevailing rate for lease agreements on the Exchange (as determined by the Board or its Designee). A lessee trading under temporary trading privileges continues the rights of a member, including the right to vote (if applicable) and the duty to continue paying to the Exchange any fees or dues otherwise applicable. While trading privileges are extended to the lessee, the Obligor shall be unable to lease the relevant membership.]

[(iii) The lessee, while trading under temporary trading privileges, shall be subject to the obligations and entitled to the rights of a member, but shall not be entitled to any rights of an owner of a membership with respect to that membership.]

[Reversion of Equitable Title]

[(e) If any portion of the capital funding fee in respect of a membership, including the late charge, is not paid (or payment of the late charge has not been waived or the obligation to pay has not been suspended as provided herein), within 30 days after the date of the Late Notice, the Obligor shall be notified by certified mail that the Board or its Designee shall authorize the reversion of equitable title for such membership to the Exchange, followed by sale of the equitable title for such membership by the Exchange, or any other action it deems appropriate if the capital funding fee, including any applicable late charges, are not received by the Exchange within 90 days after the date of the original invoice or such longer period for which a lease agreement is in effect as a result of the election by a lessee to continue paying the capital funding fee as described in (c)(i) above.]

[(i) The Obligor may request in writing at least 10 days before the 90 day deadline identified above in subparagraph (e) that the Board or its Designee suspend these remedies or impose an alternate remedy proposed by the Obligor, and the Board or its Designee may do so if it decides that good cause is shown by the Obligor.]

[(ii) If the Obligor has timely submitted a request for suspension of the sale of the Obligor's equitable title or for imposition of an alternate remedy, the Exchange shall not take steps to sell the

Obligor's equitable title until the Board or its Designee decides the request in accordance with the guidelines for demonstrating good cause and provides written notice to the Obligor of its decision.]

[(f) Any excess monies realized by the Exchange from the sale of the delinquent membership over all amounts owed to the Exchange and to others in accordance with the provisions provided in Exchange By-Law Article XV, Section 15-3 and, in the case of a membership that was subject to a lease, to the lessee (if the payments made by the lessee on behalf of the Obligor as described in paragraph (i) exceeded the monthly lease payment amounts), shall be paid to the Obligor.]

[Miscellaneous]

[(g) For purposes of this Rule, any notices, applications, or requests to the Exchange or Board or its Designee by the Obligor or lessee must be received in writing by the Secretary of the Exchange during regular business hours.]

[(h) The provisions and penalties authorized by this Rule shall be in addition to any other penalties, fines or other charges that may be assessed pursuant to Rule 50, the Exchange's By-Laws or otherwise.]

Sanctions for Breach of Regulations

[Rule 60.]

Rule 60.

[(a)][(i)](a) (i) A Floor Official may impose on members, member organizations, participants, participant organizations and their associated persons, fines for breaches of regulations that relate to administration of order, decorum, health, safety and welfare on the Exchange or two Floor Officials may refer the matter to the Business Conduct Committee where it shall proceed in accordance with Rules 960.1—960.12.

[(ii)](ii) Exchange Staff may impose on members, member organizations, participants, participant organizations and their associated persons, fines for breaches of regulations that relate to administration of order, decorum, health, safety and welfare on the Exchange, or Exchange Staff may refer the matter to the Business Conduct Committee where it shall proceed in accordance with Rules 960.1-960.12.

[(b)][(i)](b) (i) Two Floor Officials and an officer of the Exchange may exclude a member, participant, and any associated person of member organizations and participant organizations[("member")] from the trading floor for breaches of regulations that relate to administration of order, decorum, health, safety and welfare on the Exchange that occurred on the trading floor or on the premises immediately adjacent to the trading floor. Specifically, members shall be excluded if they pose an immediate threat to the safety of persons or property, are seriously disrupting Exchange operations, or are in possession of a firearm. Members so excluded are excluded for the remainder of the trading day. For purposes of this rule, "member" means any member (as defined in Rule 2), participant and any associated person of member and participant organizations.

[(ii)](ii) For purposes of this Rule, an "officer of the Exchange" shall refer to an officer who is a vice president or higher.

[(iii)](iii) For purposes of this Rule and the Regulations promulgated thereunder, the "premises immediately adjacent to the trading floor" shall include the following: (1) all premises other than the trading floor that are under Exchange control, and (2) premises in the building where the Exchange maintains its principal office and place of business, namely 1900 Market Street, Philadelphia, Pennsylvania.

[(iv)](iv) Exclusion from the floor may not be the exclusive sanction for breaches of this Rule and the regulations thereunder. In addition to exclusion, a member may also be subject to a fine or the matter may be referred to the Business Conduct Committee where it shall proceed in accordance with Rules 960.1-960.12.

• • • ***Commentary (a)***

The procedure to be followed in cases where a pre-set fine of up to $5,000.00 is summarily assessed is as follows:

.01 Notice of Fine. Notice of fine for breach of such regulations shall be given by the issuance of a written citation. Exchange Staff shall serve the written citations that are issued by the Floor Official or Exchange Staff. The cited party may accept or contest the written citation.

.02 Time and Place of Hearing. If the written citation is contested, the Exchange shall fix a mutually convenient time and place of hearing, notice of which must be given in advance and may be given orally.

.03 Record. An appropriate record shall be kept. The costs of the making of such a transcript, including, but not limited to, the costs for the court reporter, reproduction of the transcript and producing copies thereof, shall be equally borne by the Exchange and by the cited party.

.04 Procedure. The hearing shall be conducted by a Hearing Director who is a duly appointed member of the exchange committee responsible for the enforcement of the regulation at issue, in whatever manner will permit full presentation of the evidence.

.05 Finding. The finding of the Hearing Director shall be rendered at the close of the hearing.

.06 No Right of Appeal. The finding of the Hearing Director shall be final. There shall be no appeal from such finding.

.07 Report to Securities and Exchange Commission (SEC). A report in appropriate form shall be made to the SEC. However, no report shall be made in the case of citations for breaches of regulations relating to order, decorum, health, safety and welfare or administration of the Exchange if a citation is not contested and the fine is $1,000 or less.

• • • ***Commentary (b)***

The procedure to be followed when a member is to be excluded from the trading floor is as follows:

.01 Ruling. After two Floor Officials and an officer of the Exchange determine that a member shall be excluded, a member of the Exchange's security staff shall escort the member off the trading floor. The member shall remain off the trading floor for the remainder of the trading day. Exchange staff shall thereafter memorialize the exclusion in the form of a written citation.

.02 No Further Right of Appeal. The determination that a member shall be excluded is final. There shall be no appeal from such determination.

.03 Report to the SEC. A report in appropriate form shall be made to the SEC. However, no report shall be made in a case where a clerical employee is excluded for a breach of regulations relating to order, decorum, health, safety and welfare or administration of the Exchange.

RULE 60—REGULATION AND FINE SCHEDULE

(ORDER AND DECORUM CODE)

In most cases, the PHLX will enforce compliance with Order and Decorum Code pursuant to Rule 60. While ordinarily a finding of a violation will result in the appropriate pre-set fine and/or sanction, two Floor Officials or Exchange Staff may refer the matter to the Business Conduct Committee where it shall proceed in accordance with Rules 960.1-960.12.

In the case of repeat violations of a regulation by the same individual, the amount of the fine is determined by the number of such violations which have occurred within the year immediately preceding the current violation.

Emergency Committee

[Rule 98.]Rule 98. An Emergency Committee, consisting of the Chairman of the Board of Governors, the On-Floor Vice Chairman of the Exchange, the Off-Floor Vice Chairman of the Exchange, and the Chairmen of the Floor Procedure, Options and Foreign Currency Options Committees, shall be established and authorized to determine the existence of extraordinary market conditions or other emergencies. When the Committee determines that such an emergency condition exists, the Committee may take any action regarding the following: 1) operation of PACE, AUTOM, or any other Exchange quotation, transaction reporting, execution, order routing or other systems or facility; 2) operation of, and trading on, any Exchange floor; 3) trading in any securities traded on the Exchange; and 4) the operation of members' or member organizations' offices or systems. Any member of the Emergency Committee may request the Committee to determine whether an emergency condition exists. If the Committee determines that such an emergency exists and takes action, the Committee shall prepare a report of this matter and submit it promptly to the Securities and Exchange Commission and submit it to the Board of Governors at the Board's next regular meeting.

Rules 100 – 110 No change.

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Bids and Offers Binding

[Rule 111.]Rule 111. All bids made and accepted and all offers made and accepted in accordance with these Rules shall be binding; and all contracts thereby effected shall be subject to the exercise by the Board of Governors and the Standing Committees of the Exchange, of the powers in respect thereto, vested in the Board of Governors and in the Standing Committees by the [Constitution]Certificate of Incorporation and the [Exchange]By-Laws and to all provisions of the [Constitution and of the Rules]rules adopted pursuant thereto.

Rules 112 - 201 No change.

Alternate Specialists
Appointment, Assignment and Termination

Rule 201A. (a) [][(a)]i)ii)Appointment. Upon application by a member, the Allocation, Evaluation and Securities Committee may appoint such member as an alternate specialist after consultation with the Floor Procedure Committee. Applications to become an alternate specialist shall be in a form prescribed by the Allocation, Evaluation and Securities Committee and shall ensure, among other things, that approved applicants substantially

meet the same financial adequacy standards required for equity specialists, options specialists or registered options traders.

[(b)](b) Assignment. The Allocation, Evaluation and Securities Committee may assign one or more alternate specialists in a particular equity issue and may assign an alternate specialist to one or more equity issues after consultation with the Floor Procedure Committee.

[(c)](c) Termination. The appointment of an alternate specialist may be suspended or terminated by the Allocation, Evaluation and Securities Committee upon a determination of any substantial or continued failure by such alternative specialist to engage in dealings in accordance with the [Constitution]Certificate of Incorporation, by-laws or rules of the Exchange.

• • • ***Supplementary Material:***

.01 In considering the application of a member to become an alternate specialist and the assignment of equity issues to those so appointed, the Allocation, Evaluation and Securities Committee may consider the factors set forth in Rule 511(b) of the Rules of the Board of Governors.

Rules 202- 247

[Regular Commission]

[Rule 248. A member organization acting as broker for the offeror of a Special Offering shall charge and collect from such offeror the commissions as prescribed in Article XX of the Constitution, and the provisions of such Article XX with respect to clearance and give-up commissions on transactions between members and member organizations shall apply to all such transactions effected in connection with or pursuant to a Special Offering.]

[• • • Supplementary Material:]

Information Regarding Special Offerings

Rule 248. It is not the purpose of these Rules to supersede the auction market or supplant approved secondary distributions, but to provide means for the handling of blocks of securities dealt in on the Exchange, through the facilities of the Exchange, where such blocks, under current conditions, cannot readily be absorbed in the auction market within a reasonable time and at a reasonable price.

Rules 241-248 are intended primarily to provide for Special Offerings on an agency basis by members or member organizations [in]on behalf of their non-member customers. However, the Rules do not prohibit a Special Offering by a member or member organization for his or its own account.

.01 Preliminary Information Required.—The broker for the offeror will be required to furnish the following information to the Exchange prior to the announcement of the Special Offering on the tape:

(a) Name of the security and ticker symbol.

(b) Number of shares or bonds.

(c) Special Offering price.

(d) Special commission.

(e) Name of the offeror.

(f) Written assurance of the offeror, or of the broker upon advice from the offeror, that the shares or bonds contained in the Offering are all of the security which he then intends to offer within a reasonable time, as required in Rule 243 (b).

(g) Assurance of agreement of offeror to terms of Offering.

(h) Statement as to whether stabilizing operations will be engaged in to facilitate Special Offering.

(i) Statement as to whether the offeror or his agent intends, for the purpose of stabilizing, to sell shares or bonds in the Special Offering in excess of that owned and included in the original offer as permitted by Rule 243 (a).

(j) Statement that the shares or bonds covered by the application do or do not require registration under the Securities Act of 1933, together with explanation thereof.

This information should be given to the Exchange as soon as possible in advance of the time it is proposed to make the Special Offering. Announcement will not be made on the tape of the Special Offering (and the Special Offering thus cannot become effective) until the Exchange has the requisite information and has approved it.

.02 Ownership.—The offeror in a Special Offering must be the bona fide owner of the entire block of security offered, net of any short account the offeror may have in such security. Sales for the purpose of stabilizing as permitted by Rule 243 (a) are excepted.

.03 "Piecemeal."—"All or None" Offerings. "Piecemeal" or successive offerings of the same security by the same offeror, and offerings on an "all-or-none" basis, will not be permitted.

.04 Minimum Period of Offering.—Rule 243 (c) provides in part that unless otherwise specifically exempted by the Exchange, every Special Offering shall remain open for a minimum period of 15 minutes. An exemption from this minimum requirement is specifically given to any offering which has been announced on the Exchange ticker tape at least one hour before the offering becomes effective. An offering so exempted from the minimum 15 minute requirement shall not be closed without the approval of the Exchange.

.05 Other Offers by Offeror.—It should be noted that, under Rule 243 (d), an offeror may not, while his Special Offering is open, offer any shares or bonds of the same security in the regular auction market, without prior permission of the Exchange.

.06 Orders after Close.—Orders accumulated after the close shall be completed on the Floor of the Exchange at the opening of the next market session.

.07 Handling of Special Offering Transactions.—Purchases against Special Offerings must be completed on the Floor of the Exchange at the post where the security is dealt in. The handling of the Floor end of the business, on either the purchase or the offering side, may be entrusted to a Floor broker or in the same manner as in the case of regular commission orders. In reference to Rule 247 attention is directed to the fact that in connection with a Special Offering, the broker for the buyer is acting in an agency capacity and the agency obligation to buy at the most advantageous cost to the customer shall be observed.

.08 Stabilizing.—The right to sell an amount not to exceed 10 per cent of the number of shares or bonds owned and originally offered in the Special Offering, for the purpose of stabilizing and as part of a Special Offering, is subject to the prior approval of the Exchange. Stabilizing

operations in connection with Special Offerings must be discussed in advance with the staff of the Exchange.

.09 Stop Orders—Odd-lot Orders.—Transactions effected pursuant to Special Offerings shall not elect stop-orders or open odd-lot orders for execution in the regular market.

.10 Confirmations.—The information to be furnished on confirmations in conformity with Rule 247 (b) may be inserted on the face of an appropriate form of confirmation in type no smaller than other surrounding type or it may appear on the back of such confirmation in the same type, provided the face of the confirmation contains the following legend in the type illustrated as follows:

"IMPORTANT—SEE REVERSE SIDE"

The information may also be attached and made a part of an appropriate form of confirmation in type no smaller than 8 point.

.11 Reports.—The applicant shall submit to the Exchange at the close of each day a report of all transactions in the offered security effected for the account of any person having an interest, as seller or as agent, offering the block of the security on the seller's behalf, in the Special Offering. Such reports shall cover the period beginning with the date of commencement of the offering or the stabilizing, whichever is earlier, and ending with the date on which the short position has been covered or the Special Offering account has been terminated, whichever is later.

Rules 251- 326 No change.

Assignments—By Member Organizations

[Rule 327.]Rule 327. (a) [(a)]A member, member [firm, member corporation]organization or Qualified Clearing Agency or nominee thereof may (i) assign registered securities in its name and on its behalf, (ii) guarantee the signature to an assignment of registered securities, (iii) execute powers of substitution and (iv) effect other certifications and guarantees incident to the transfer, payment, exchange, purchase or delivery of registered securities, including, but not limited to, erasure guarantees, one-and-the-[sane]same guarantees and situs certificates, by applying a manually stamped or mechanically reproduced medallion or stamp adopted as provided in this Rule 327. A security registered in the name of a member, member [firm, member corporation]organization or Qualified Clearing Agency or nominee thereof shall be a delivery provided the assignment is executed by applying the medallion or stamp of such member, member [firm, member corporation]organization, Qualified Clearing Agency or nominee adopted in accordance with this Rule 327.

[(b)](b) A member, member [firm, member corporation]organization or Qualified Clearing Agency or nominee thereof may use a medallion or stamp as provided by these Rules, provided the member, member [firm, member corporation]organization or Qualified Clearing Agency or nominee thereof is a member of or participant in a "signature guarantee program" within the meaning of SEC Rule 17Ad-15 under the Securities Exchange Act of 1934.

• • • ***Supplementary Material:***

.01 Assignments by member, member organizations and others under Exchange signature programs in effect prior to October 26, 1992. The Exchange, until October 26, 1992, provided programs pursuant to which it distributed specimen signatures and machine imprinted facsimile signatures of members, member organizations and Qualified Clearing Agencies to transfer agents

and others. Registered securities with respect to which such distributed signatures effected assignments, powers of substitution, signature guarantees and other certificates and guarantees prior to October 26, 1992 are not a delivery on or after October 26, 1992. Instead, on and after October 26, 1992, the Exchange requires the use of a medallion or other stamp in accordance with Rule 327.

Rules 328 – 434 **No change.**

Access to and Communication with the Floor

Visitors

[Rule 441.]Rule 441. Visitors shall not be admitted to the Floor of the Exchange except by permission of the [President]Chairman of the Board of Governors or the Committee.

Communications

Rule 442 **No change.**

Employees

[Rule 443.]Rule 443. No employee of a member or member organization shall be admitted to the floor unless he is registered with and approved by the [Committee]Exchange, which may in its discretion require the payment of [an annual]a fee with respect to each employee so approved, and may at any time in its discretion withdraw any approval so given.

Rules 444 –455 **No change.**

[Market-Maker Membership]

[Distinct from Regular Membership]

[Rule 456. A market-maker membership, as provided for in Article XXVI of the Constitution, is distinct from a regular membership, has specifically designated privileges and obligations as set forth in the Constitution and Rules, and may not be held simultaneously with a regular membership.]

[Rights and Privileges]

[Rule 457. The exercise of the rights and privileges of a market-maker membership are subject to review by the Board of Governors at the end of each successive six months period following the admission of the holder of such a membership. Upon any such review the Board may, if it deems it to be in the best interests of the Exchange, terminate the rights and privileges of a market-maker member as well as the registration of a member organization registered by such a member.]

[Definition]

[Rule 458. A qualified market-maker is a person who in accordance with Article XXVI of the Constitution, holds a market-maker membership, is registered as an alternate odd-lot dealer-specialist in a particular security, and is making a market in such security on the floor of the Exchange.]

[Inquiry Fee]

[Rule 459. When a qualified market-maker buys or sells for his own account any security on the floor of the Exchange, he shall pay to the regular odd-lot dealer-specialist registered in a particular security an inquiry fee, the rate and amount of which shall be established by the Committee on Floor Procedure with the approval of the Board of Governors. In a security in which there is no registered regular odd-lot dealer-specialist he shall pay such inquiry fee to the floor broker executing the order.]

[• • • Supplementary Material:]

[The Board of Governors has adopted the following Directives applicable to the market-maker membership:]

[The appointment and registration of odd-lot dealer-specialists, their privileges and obligations, and the trading procedures governing their activities as dealers on the floor of the Exchange are set forth in Rules 201 through 228. Only one odd-lot dealer-specialist (hereafter called regular dealer) is allowed for each security traded on the Exchange. However, in addition to the foregoing regular dealer,]

Rule [201 provides for the appointment of an alternate odd-lot dealer-specialist (hereinafter called alternate dealer). All orders must first be shown to the regular dealer. Orders not accepted by the latter are then shown to the alternate dealer whose function is supplementary and designed to add depth to the exchange markets. There may be more than one alternate dealer registered in a particular security. Except as noted above, alternate dealers operate under the same rules and procedures as do regular dealers. The alternate dealer, as well as the regular dealer, must be shown an order before a member may be released under]**456.** Reserved.

Rule [132 to effect a transaction outside the exchange and not on another national securities exchange.]

[The holder of a market-maker membership, termed a qualified market-maker under Constitutional Article XXVI, is to function under the provisions of such article, under the provisions of Rules 456 through 459, and within the framework of the alternate dealership above described.]

[The purpose of the qualified market-maker member is to increase the depth of the exchange market in the capacity of alternate dealer by supplementing the activity of the regular dealer.]

[The obligation of the regular dealer is to make a market on the exchange at competitive prices to the best of his ability commensurate with his position and with prevailing market conditions. Communication with alternate dealers is effected through the regular dealer. An inquiry fee is payable to the regular dealer for providing a flow of information to and from a qualified market-maker. The floor broker handling an order remains responsible for its execution. When a regular dealer also acts as floor broker he must bear in mind his dual responsibilities and the obligation to seek the best possible execution for the customer.]

[In securities traded on the exchange in which there is a registered regular dealer, and in which the exchange is not the primary market, a qualified market-maker may effect a transaction outside the exchange (and otherwise than on another national securities exchange) only with non-member professional customers. A non-member professional customer shall mean a non-member of the Exchange engaged in business as a broker-dealer in securities or commodities, an insurance company, an investment company, an investment advisor, an investment manager, a bank, a trust company, a foundation, a professional trustee, a pension fund, or an activity closely related to any of the foregoing.]**457.** Reserved.

Rule 458. Reserved.

Rule 459. Reserved.

Rule 460. **No change.**

PACE Remote Specialist

[Rule 461.]Rule 461. PACE terminals and related equipment will be provided to member organizations for trading by remote specialists. The terminals will be linked to the PACE Trading System and will provide the same functionality as is available to on-floor specialists. All orders to remote specialists, including ITS commitments and administrative messages, will be processed the same as orders and ITS commitments to an on-floor specialist. Floor Broker orders will be routed to remote specialists under the same criteria by which they are routed to on-floor specialists. There will be no remote floor brokerage services. The following shall apply to remote specialists:

(a)- (m) No change.

[(n)](n) "Remote Authorization" Requirement. Access to any remote PACE terminal assigned and registered by the Exchange will require a Remote Authorization.

[(1)](1) Non-transferable Remote Authorizations may be issued by the Exchange to qualified specialists and clerks as provided in this Rule 461(n).

[(2)](2) Each remote specialist must [have at least one registered Exchange membership]be a member.

[(A)](A) A specialist unit wishing to obtain additional Remote Authorizations for qualified specialists and registered clerks to access PACE in support of the specialist unit may authorize such specialist and clerks to apply to the Exchange for the issuance of Remote Authorizations.

[(B)](B) Non-transferable Remote Authorizations may be approved for issuance by the EAES Committee after applicants have completed the following:

(i) File a Remote Authorization application with the Exchange.

(ii) Completion of the required floor-training program. On-site floor training would be waived for current floor specialists and registered clerks who transfer to remote specialist operations. The on-site floor training period could also be waived by the EAES Committee in exceptional circumstances, if other arrangements are made with and approved by the Exchange. In such exceptional circumstances, a waiver will be permitted if the Committee is assured that the person requesting the waiver has made other arrangements that ensure the person meets all of the requirements listed below. However, the on-site floor training period will not be waived for easily remedied reasons such as geographical location or inconvenience, and will include, among other things,

Questioned trade procedures

Communication procedures with Floor Brokers, PACE Desk, Surveillance, Systems Support, and ITS coordination with the floor

The remote/competing specialist program and Unlisted Trading Privilege ("UTP") applications and procedures

Allocation procedures

Book or symbol change procedures

Trading Halt procedures

Floor official rulings

Minor Rule Plan Violations policies and application

Books and Records/reports available

Explanation of the specialist performance evaluation categories and procedures

Certain other rules and policies deemed appropriate by the Exchange (e.g., Limit Order Display Rule, auto-executions, Price Improvement, etc.)

ITS Quick Reference Card

(iii) Successful completion of any applicable state requirements.

(iv) Submission of fingerprint records to the PHLX.

[(3)](3) Each remote specialist firm will be evaluated under the Exchange's specialist evaluation program.

Equity Allocation, Evaluation and Securities Committee and Options Allocation, Evaluation and Securities Committee

Rules 500-526

Regulation of Members and Member Organizations

[Addresses of Members]

Registration

[Rule 600. Every]**Rule 600.** (a) Each member [or]and member organization shall register with the Director, Membership Services Department an address where notices may be served. Subsequent changes in address must be provided to the Membership Services Department of the Exchange before the effective date thereof.

(b) Each member organization shall register with the Exchange, on such form or forms as may from time to time be required by the Admissions Committee or by the Membership Services Department. Registration forms shall include, but not be limited to, (i) the name and address of the individual member having qualified such member organization in accordance with Article XIII of the By-Laws and (ii) the name and address of the Member Organization Representative designated by such Member organization in accordance with Rule 921(b).

Office, Other Than Main Offices

[Rule 601.]Rule 601. No office of a member or member organization for which the Exchange is the Designated Examining Authority shall be established without the prior notification of the Membership Services

Department of the Exchange. Each such office must be in charge of a partner, a voting stockholder or a manager and shall be subject to such rules as the Exchange may prescribe.

[Certificate of Membership]

Status Verification

[Rule 602. The]**Rule 602.** Upon the request of any member or member organization, the Membership Services Department of the Exchange shall provide [members and]such member [organizations a Certificate of Membership. Additional Certificates]or member organization (as applicable) with reasonable written verification of [Membership shall be provided on request to]its status as a member[organizations maintaining branch offices. Such certificates shall be at all times the property of the Exchange, and every certificate shall be returned to the Exchange on the transfer of membership by the member therein designated, on the dissolution] or[insolvency of the] member organization[, the permanent closing of the office in which it is displayed, or on the demand of the Exchange].

Rules 603-604 No change.

Advertising and Market Letters

Advertisements, Market Letters, Research Reports and Sales Literature

[Rule 605.]Rule 605. (a) [(a)]No member, foreign currency [option]options participant, member organization or foreign currency [option]options participant organization shall issue any advertisement, market letter, research report, telemarketing script or sales literature unless such member, foreign currency [option]options participant or a general partner or a holder of voting stock in such organization shall have endorsed his approval prior to publication or distribution thereof on an exact copy thereof bearing the name of the person who wrote such material. Such copy so endorsed shall be made part of the permanent records of such member or foreign currency [option]options participant organization and shall be retained for three years, two years in an easily accessible location.

[(b)](b) Member or foreign currency [option]options participant organizations for which the Exchange is the designated examining authority ("DEA") desiring to broadcast Exchange quotations on radio or television programs, or in public telephone market reports, or make use of radio or television broadcasts or print advertising for any business purpose, or to make use of the Internet for the purpose of providing market quotations or advertising to the general public must first obtain the consent of the Exchange by submitting an outline of the program material to the Exchange.

[(c)](c) The text of all commercials, advertisements and program material (except lists of market quotations) about securities or investing sponsored by Exchange designated member or foreign currency [option]options participant organizations on radio, television, or public telephone reports, or on the Internet, or program material supplied to these media must be sent to the Exchange promptly following the program in which it is used.

• • • ***Supplementary Material:***

The Exchange has adopted the following policy regarding advertising, market letters, research reports, telemarketing scripts and sales literature:

The requirement for three-year retention of such material applies only to members and member organizations or foreign currency [option]options participants and foreign currency [option]options participant organizations which prepared it for distribution.

The term "advertisement" refers to any material for use in any newspaper or magazine or other public medium or by radio, telephone recording or television.

The term "market letter" refers to any publication, printed or processed, which comments on the securities market or individual securities and is prepared for general distribution to the organization's customers or to the public. It also includes material on investment subjects prepared by a member or personnel of a member organization for publication in newspapers and periodicals.

The term "research report" refers to printed or processed analysis covering individual companies or industries.

The term "sales literature" refers to printed or processed material interpreting the facilities offered by a member or foreign currency [option]options participant organization or its personnel to the public, discussing the place of investment in an individual's financial planning, or calling attention to any market letter, research report or sales literature, which is prepared for and given general distribution.

SUPPLEMENTARY INFORMATION REGARDING RULE 605

Standards for Advertising, Market Letters, Sales Literature, Research Reports, Telemarketing Scripts, Radio, Television and Writing Activities

Truthfulness and good taste are the traditional standards of the Exchange community in any form of communication with the public. Rules can never take the place of good judgment in such communications. Under some circumstances what is left out may be just as important as what is included.

Member and foreign currency [option]options participant organizations, of course, can never overlook basic characteristics of investments—that prices can go down as well as up; that dividends can be cut, omitted or increased; that there is some degree of risk in any security; that investments can not be depended upon to produce a certain return in terms of purchasing power or in dollars.

Some of the guideposts established by the Exchange for written communications with the public include:

.01 Recommendations.—A recommendation (even though not labeled as a recommendation) must have a basis which can be substantiated as reasonable.

When recommending the purchase, sale or switch of specific securities, supporting information should be provided or offered.

The market price at the time the recommendation is made must be shown.

.02 Disclosure.—When market letters, sales literature or research reports recommend the purchase or sale of a specific security, member and foreign currency [option]options participant organizations must disclose the following information, if such conditions exist:

(a) That the firm usually makes a market in the issue being recommended.

(b) That the member or foreign currency [option]options participant organization or its partners hold options in any securities of the recommended issuer.

(c) That some or all of the recommended securities are to be sold to or bought from customers on a principal basis by the member or foreign currency [option]options participant organization or its partners (unless covered by (a) above).

(d) That the member or foreign currency [option]options participant organization was manager or co-manager of the most recent public offering (within 3 years) of any securities of the recommended issuer.

It has been the experience of some firms that disclosure of directorates or other insider relationships is a good way of avoiding difficulties in this area. When such disclosure is made, however, the firm should be careful to avoid exploiting these relationships by implying that the recommendation is based directly or indirectly on privileged information.

.03 Past Recommendations.—Material promoting past records of research recommendations, in connection with purchases or sales, is acceptable if it covers all of the following:

(a) At least a 1-year period.

(b) A list of all of the issues in a specific "universe"—or clearly definable area which can be fully isolated and circumscribed—recommended during the period. The list may be given or offered.

(c) The date and price of each recommendation at the recommendation date and at the end of the period or when sale was suggested, whichever is earlier.

(d) The number of issues recommended, the number that advanced and the number that declined, in the event a list is offered but not included in the material.

It must be made clear that—

(1) There is no implication in any such published record of comparable future performance or that a customer can't lose by following the firm's recommendations.

(2) The period covered was one of a generally rising market, if such is the case.

(3) If a record is averaged, or otherwise summarized, such results would have been obtained only if each issue had been purchased when recommended and then sold at the end of the period covered or when sale was recommended. The purchase price of a given number of shares—such as a round lot—of each of the recommended securities must be shown. Commissions must be mentioned.

If such a record is started and published, and publication is subsequently discontinued for any reason, resumption will be permitted only when the intervening period is included in the published record.

A file of all the original recommendations on which the record is based must be kept by the firm and be available to the Exchange on request for three years.

A statement in a market letter, for example, that a particular security was recommended at a specific price and is now selling at a higher price is unacceptable if the intent or the effect is to show the success of a past recommendation. In such a case, all of the above qualifications would have to be met.

.04 Testimonials.—In using testimonials, the following points must be clearly stated in the body copy of the material:

(a) The testimonial may not be representative of the experience of other clients.

(b) The testimonial can not be indicative of future performance or success.

(c) If more than a nominal sum is paid, the fact that it is paid testimonial must be indicated.

(d) If the testimonial concerns a technical aspect of investing, the person making the testimonial must have adequate knowledge and experience to form valid opinion.

.05 Projections and Predictions.—Past records, charts, tables or other material can not, of course, be used to promise future profits or income from securities.

Projections and predictions should be clearly labeled as estimates. A reference to the bases of the estimates should be given or must be available on request.

.06 Periodic Investment.—In mentioning the benefit of dollar-cost-averaging, it should be made clear that periodic purchases in a fixed dollar amount must be continued through fluctuations in the market price, that such a plan does not protect against loss in a declining market, and that the price at which the shares are sold must be more than their average cost, in order to realize a profit.

If the low cost of buying securities under any periodic investment plan is emphasized, it is important to state whether there are commissions for the purchase and sale.

In showing total value of prior investments including reinvested dividends, the amount of the reinvested dividends should be stated separately. Commissions, taxes or other costs should also be mentioned.

.07 Language.—Statements which are promissory, exaggerated, flamboyant or contain unwarranted superlatives are to be avoided.

.08 Comparisons.—Any comparison of one firm's service, personnel facilities or charges with those of other firms must be factually supportable.

.09 Claims for Research.—For purposes of these standards, investment research encompasses the organized collection and analysis of information obtained in oral or written form from primary or secondary sources, which is concerned with securities, industries, the market or the economy in general and has the purpose of assisting member or foreign currency [option]<u>options</u> participant organizations and their customers in evaluating securities.

A member or foreign currency [option]<u>options</u> participant organization which advertises or promotes its research services or capabilities must have a reasonable basis for any claims it makes.

A market letter, research report or similar publication should not carry a research department by-line, or by implication give the impression of originating within a research department, unless it did originate there.

.10 Dating Reports.—All market letters, research reports and similar publications must be appropriately dated. Any significant information that is not reasonably current (usually not more than 6 months old—depending on the industry and circumstances) should be noted.

.11 Identification of Sources.—A market letter or research report not prepared under the direct supervision of the research department of the distributing firm or its correspondent member, or foreign currency [option]options participant organization should show the person (by name and appropriate title) or outside organization which prepared the material.

In distributing market letters or research reports prepared under the direct supervision of the research department of a correspondent member or foreign currency [option]options participant organization, the distributing firm should mention this fact, although it may not be necessary to identify the correspondent by name.

Releases prepared and published by or for a corporate issuer or its public relations counsel and distributed by member or foreign currency [option]options participant organizations should be clearly identified as such.

.12 Portfolio Analysis.—Portfolio Analysis is defined as the appraisal of an investor's present holdings of securities, individually and collectively, for the purpose of offering investment recommendations consistent with his stated objectives and general financial status.

Persons engaged in Portfolio Analysis should be adequately supervised and they should not undertake analysis which is not commensurate with their experience and training.

Wire and other Connections

Communications and Equipment

[Rule 606.]Rule 606. (a) [(a)]No member or member organization shall establish or maintain any private wire connection, private radio, television or wireless system, between the Exchange Trading Floor and a non-member without application to and approval by the Committee.

Every such means of communication shall be registered with the Committee. Notice of the discontinuance of any such means of communication shall be promptly given to the Committee.

[(b)][(1)] (b)(1) No member, member organization or person associated with a member organization shall establish or maintain any telephonic communication between the Options Floor and any other location, or between locations on the Options Floor, without the prior written approval of the Options Committee.

[(2)](2) No member, member organization or person associated with a member organization shall:

(i) establish or maintain any telephonic, electronic or wireless transmitting system or device, including related antennas, on the Options Floor or

(ii) operate any other equipment on the Options Floor.

that creates radio frequency (RF) or other interference with the systems of the Exchange or other members.

[(c)](c) The Exchange may remove any telephonic, electronic or wireless equipment that has not received written approval under subsection (b)(1) from any Exchange facility.

[(d)](d) The Exchange may remove any telephonic, electronic or wireless equipment that violates subsection (b)(2) from any Exchange facility.

[(e)][(1)] (e)(1) *Registration.* Members and member organizations must register, prior to use, any new telephone to be used on the Options Floor. Each phone registered with the Exchange must be registered by category of user. If there is a change in the category of any user, the phone must be re-registered with the Exchange. At the time of registration, members and member [firm]organization representatives must sign a statement that they are aware of and understand the rules and procedures governing the use of telephones on the Options Floor.

[(2)](2) *Capacity and Functionality.* No wireless telephone used on the Options Floor may have an output greater than one watt. No person on the Options Floor may use any device for the purpose of maintaining an open line of continuous communication whereby a person not located in the trading crowd may continuously monitor the activities in the trading crowd. This prohibition covers intercoms, walkie-talkies and any similar devices. Speed-dialing features are permitted on any member telephone.

[(3)](3) *Specialists and Registered Options Traders.*

(a) Specialists and Registered Options Traders ("ROTs") may use their own cellular and cordless phones to place calls to any person at any location (whether on or off the Options Floor).

(b) ROTs located off the Options Floor may not place an order by calling a Floor Broker who is present in a trading crowd. ROTs located off the Options Floor may not otherwise place an order by calling the specialist phone in the trading crowd. Any telephonic order entered from off the Options Floor must be placed with a person located in a member [firm]organization booth.

[(4)](4) *Floor Brokers.*

(a) Floor Brokers may use cellular and cordless telephones, but only to communicate with persons located on the Options Floor. These telephones may not include a call forwarding feature. Headsets are permitted for Floor Brokers, but if the Exchange determines that a Floor Broker is maintaining a continuous open line through the use of a headset, the Floor Broker will be prohibited from future use of any headset for a length of time to be determined by the Exchange.

(b) All others phoned to Floor Brokers must be received initially at the Floor Broker's booth. Floor Brokers may not receive telephonic orders while in the trading crowd except from their booth. Any telephonic order entered from off the Options Floor must be placed with a person located in a member [firm]organization booth.

[(5)](5) *Clerks.*

(a) Floor Broker clerks are subject to the same terms and conditions on telephone use as Floor Brokers.

(b) Stock Execution clerks are subject to the same terms and conditions on telephone use as Floor Brokers.

(c) The Options Committee reserves the right to prohibit clerks from using cellular or cordless phones on the floor at any time that it is necessary due to electronic interference problems or capacity problems resulting from the number of such phones then in use on the Options Floor. In such

circumstances, the Committee will first consider restricting the use of such phones by Stock Execution Clerks, and then by Floor Broker Clerks.

[(6)](6) *General Access In-House Phones.* The general access in-house telephones located outside of the trading post areas may be used by any member, clerk or floor broker to communicate with persons located on the Options Floor or within the Exchange complex.

[(7)](7) *Telephone Records*. Members must maintain their cellular or cordless telephone records, including logs of calls placed, for a period of not less than one year. The Exchange reserves the right to inspect and/or examine such telephone records.

[(8)](8) *Exchange Liability*. The Exchange assumes no liability to members or member organizations due to conflicts between telephones in use on the Options Floor or due to electronic interference problems resulting from the use of telephones on the trading floor.

• • • ***Supplementary Material:***

.01 Specialists on the Exchange's equity floor shall permit each Nasdaq System market maker telephone access, or such other access as may be established between the Exchange and the Nasdaq System, to the specialist post in any Nasdaq/NM Security for which the latter is the assigned specialist.

.02 The Exchange has established a Wireless Telephone System policy. Violations of the Wireless Telephone System policy may result in disciplinary action by the Exchange.

.03 This rule and any relevant Exchange policy are intended to apply to all communication and other electronic devices on the floor of the Exchange, including, but not limited to, wireless, wired, tethered, voice, and data.

Transaction Fee

Rules 607-610 No change.

Trading Floor Registration

[Rule 620.]Rule 620. (a) [(a)]Trading Floor Member Registration- Each Floor Broker, Specialist and Registered Options Trader on any Exchange trading floor must register as such with the Exchange by completing the appropriate form(s) (with periodic updates submitted by the [firm]member or participant organization, as determined by the Exchange) and successfully complete the appropriate floor trading examination(s), if prescribed by the Exchange, in addition to requirements imposed by other Exchange rules. The Exchange may also require periodic examinations due to changes in trading rules, products or automated systems. Following the termination of, or the initiation of a change in the trading status of any such member/participant who has been issued an Exchange access card and a trading floor badge, the appropriate Exchange form must be completed, approved and dated by a firm principal, officer, or member of the firm with authority to do so, and submitted to the appropriate Exchange department as soon as possible, but no later than 9:30 A.M. the next business day by the member/participant organization employer. Every effort should be made to obtain the person's access card and trading floor badge and to submit these to the appropriate Exchange department.

[(b)](b) Non-member/Clerk Registration-All trading floor personnel, including clerks, interns, stock execution clerks and any other associated persons, of member[/] or participant organizations not required to register pursuant to Rule 620(a) must register as such with the Exchange by completing the appropriate form(s) for non-registered persons (with periodic updates submitted by the [firm]member or participant organization, as determined by the Exchange). Further, the Exchange may require successful completion of an examination, in addition to requirements imposed by other Exchange rules. The Exchange may also require periodic examinations due to changes in trading rules, products or automated systems. Following the termination of, or the initiation of a change

in the status of any such personnel of a member/participant organization who has been issued an Exchange access card and a trading floor badge, the appropriate Exchange form must be completed, approved and dated by a [firm]member or participant organization principal, officer, or member of the [firm]member or participant organization with authority to do so, and submitted to the appropriate Exchange department as soon as possible, but no later than 9:30 A.M. the next business day by the member/participant organization employer. Every effort should be made to obtain the person's access card and trading floor badge and to submit these to the appropriate Exchange department.

Fingerprinting

[Rule 623.]Rule 623. Member and participant organizations are required to comply with Section 17(f) of the Securities Exchange Act of 1934 respecting the fingerprinting of required employees. Applicants for [membership]a permit must also be fingerprinted. Such fingerprints must be submitted to the Exchange for identification and appropriate processing prior to any employee performing the functions listed in SEC Rule 17f-2.

Rules 625-640 No change.

[Mandatory Participation in Decimalization Testing]

[Rule 650. (a)][(a) Each member and member organization shall:]

[(1) Participate in point-to-point testing of its computer and computer related systems designed to ascertain decimal pricing conversion compatibility of such systems, in a manner and frequency prescribed by the Exchange; and]

[(2) shall Provide to the Exchange reports, documents or other information related to such testing in a manner and frequency prescribed by the Exchange]

Rule 650. Reserved.

[(b) Any member or member organization that is subject to this rule and determined by the Exchange to be in violation of this rule may be subject to disciplinary action pursuant to the Exchange's rules.]

[(c) The Exchange may exempt a member or member organization from the requirements of this rule if:]

[(1) The member or member organization cannot be accommodated in the testing schedule by the organization conducting the testing;]

[(2) The member or member organization does not employ computers in its business;]

[(3) The member or member organization has an electronic interface through a service provider, the service provider conducts successful testing with the Exchange, and the Exchange agrees that further testing is not necessary; or]

[(4) For other good reasons determined by the Exchange.]

[(d) This rule will expire automatically upon full, industry-wide implementation of decimal pricing in the securities industry.]

Rule 700-702 No change.

Financial Responsibility and Reporting

[Rule 703.]Rule 703. (a) [(a)]*Financial Responsibility Standards.*—Each member organization and foreign currency [option]options participant organization effecting securities transactions shall comply with the capital requirements set forth below:

[(i)](i) each member organization and foreign currency [option]options participant organization subject to SEC Rule 15c3-1 shall at all times comply with said rule and the notification provisions of SEC Rule 17a-11;

[(ii)](ii) each member organization or foreign currency [option]options participant organization exempt from SEC Rule 15c3-1 shall, at the time of its admission to the Exchange, have a minimum of $25,000 in net liquid assets;

[(iii)](iii) each member organization or foreign currency [option]options participant organization exempt from SEC Rule 15c3-1 and whose principal business is as a registered options trader on the Exchange, shall, subject to subparagraph (iv) below, at all times maintain a minimum of $25,000 in net liquid assets;

[(iv)](iv) each member organization or foreign currency [option]options participant organization referred to in paragraph (iii) above shall at all times maintain positive net liquid assets and, in its clearing account(s), positive equity, provided that said organization has filed with the Exchange a letter of guarantee issued on its behalf by a clearing member organization of this Exchange which is also a clearing member of the Options Clearing Corporation. In said letter the clearing member organization guarantees the financial responsibilities of said organization for all transactions and balances carried and cleared in the clearing account(s). Such guarantee shall remain in effect until the Exchange receives from the clearing member organization written notice of its intent to cancel its guarantee. Written notice of such cancellation received by the Exchange at least one-half hour before the normal opening of trading shall take effect on the day of receipt; written notice received less than one-half hour before the opening of trading shall take effect on the opening of the business day following Exchange receipt.

[(v)](v) An assigned Specialist in Trust Shares, as defined in Rule 803(i), that are listed on the Exchange, shall be required to maintain a minimum of $1,000,000 in net capital. The assigned Specialist shall immediately inform the Examinations Department upon failure to be in compliance with such requirement. The Exchange may waive the financial requirements of this Rule in unusual circumstances.

[(vi)](vi) a member organization or foreign currency [option]options participant organization shall promptly notify the Exchange if it ceases to be in compliance with the net capital requirements of SEC Rule 15c3-1 and/or the provisions of paragraphs (a)(iii) and (a)(iv) above.

[(vii)](vii) Each member organization or foreign currency [option]options participant organization which maintains a joint back office ("JBO") arrangement with a clearing broker-dealer subject to the requirements of [regulation]Regulation T Section 220.7 of the Federal Reserve System shall comply with the requirements below:

[(A)](A) Each JBO participant must be registered as a broker-dealer pursuant to section 15 of the Securities Exchange Act of 1934 and subject to SEC Rule 15c3-1(b)(i).

[(B)](B) Each JBO participant must meet and maintain a minimum account equity requirements of $1,000,000 the carrying organization must issue a call for additional funds or securities which shall be obtained within five business days. If funds or securities sufficient to eliminate the deficiency are not received within five (5) business days, the carrying organization must margin the account in accordance with the requirements prescribed for a customer in Regulation T and Exchange Rule 722.

[(C)](C) Each JBO participant must meet and maintain the ownership standards.

[(D)](D) Each JBO participant must employ or have access to a qualified Series 27 principal.

[(viii)](viii) Every clearing member organization carrying JBO accounts in accordance with Regulation T, shall comply with Section 220.7 of the Federal Reserve Board.

[(A)](A) Each member organization which carried JBO accounts shall not allow its (i) tentative net to fall below $25 million or in the alternative its (ii) net capital $7 million for a period in excess of three (3) consecutive business days, provided that the broker-dealer has as its primary business the clearance of options market maker accounts and provided that at least 60% of the sum of the gross haircuts calculated for all options market makers and JBO participant accounts, without regard to related account equity or clearing firm net capital charges, is attributable to options market maker transactions. In addition, the firm operating pursuant to (ii) must include the gross deductions calculated for all JBO participant accounts in the clearing firm's ratio of gross options market maker deductions to adjusted net capital in accordance with the provisions of SEC Rule 15c3-1.

[(B)](B) Each member organization which maintains JBO accounts shall require and maintain equity of $1,000,000 for each JBO participant, over all related accounts. If equity is below $1,000,000 the carrying organization must issue a call for additional funds or securities which shall be obtained within five business days. If funds or securities sufficient to eliminate the deficiency are not received within five (5) business days, the carrying organization must margin the account in accordance with the requirements prescribed for a customer in Regulation T and Exchange Rule 722.

[(C)](C) Each member organization which maintains JBO accounts shall adjust its net worth daily by deducting any deficiency between a JBO participant's account equity and the proprietary haircut calculated pursuant to SEC Rule 15c3-1 for the positions maintained in such account.

[(D)](D) Each member organization which maintains JBO accounts shall establish and maintain written ownership standards for JBO accounts.

[(E)](E) Each member organization which maintains JBO accounts must notify its Designated Examining Authority ("DEA"), in writing of its intention to carry such accounts.

If at any time a clearing member operating pursuant to paragraphs (vi)(A)(i) or (ii) above determines that its tentative net capital or that its net capital, respectively, has fallen below the applicable requirements, such clearing member shall immediately notify the Exchange of such deficiency by telegraphic or facsimile notice; and be subject to the prohibition against withdrawal of equity capital set forth in SEC Rule 15c3-1(e) and to the prohibitions against reduction, prepayment and repayment of subordination agreements set forth in paragraph (b)(1) of the SEC Rule 15c3-1d, as if such broker or dealers' net capital were below the minimum standards specified by each of these paragraphs.

[(F)](F) Each member organization which maintains JBO accounts must develop risk analysis standards which are acceptable to the Exchange.

[(ix)](ix) a member organization or foreign currency [option]options participant organization shall promptly notify the Exchange if it ceases to be in compliance with the net capital requirements of SEC Rule 15c3-1 and/or the provisions of paragraphs (a)(iii) and (a)(iv) above.

[(b)](b) *Computation of Net Liquid Assets.*—Each member organization and foreign currency [option]options participant organization subject to this Rule shall compute net liquid assets in accordance with the following.

[(i)](i) Net Liquid Assets shall mean Total Assets less Total Liabilities less Non-Allowable Assets plus Exchange-approved Subordinated Liabilities less 2/3 of the value, as defined below, of [memberships or]foreign currency [option]options participations for which an organization owns both legal and equitable title to the extent that this

amount equals one-half of the capital maintenance requirement. Unless provided otherwise in this rule, assets, liabilities and net worth shall be computed in accordance with generally accepted accounting principles.

[(ii)](ii) Assets and Non-Allowable Assets shall have the same meaning as set forth in SEC Rule 15c3-1 except as stated in paragraph (b)(i) above;

[(iii)](iii) Exchange-approved Subordinated Liabilities shall have the same meaning as those liabilities subject to Appendix D to SEC Rule 15c3-1 and shall be executed and maintained in the same manner as defined in said Rule and SEC Rule 17a-11.

[(iv)](iv) In determining the value of a [membership or a]foreign currency [option]options participation for purposes of calculating net liquid assets, an organization shall refer to the current bid for the [membership or]participation as published weekly by the Exchange.

[(c)](c) *Reporting and Recordkeeping.*—Member organizations or foreign currency [option]options participant organizations shall make the following reports of their compliance with their pertinent financial responsibility rules:

[(i)](i) Organizations designated to the Exchange for financial responsibility pursuant to SEC Rule 17d-1 and subject to SEC Rules 15c3-1 and 17a-5 shall file those periodic and annual reports and annual certified audited statements as prescribed by SEC Rule 17a-5.

[(ii)](ii) Each organization designated to the Exchange for financial responsibility pursuant to SEC Rule 17d-1 and acting as an equity and/or option specialist shall, on forms prescribed by the Exchange, file the following reports with the Exchange:

[(A)](A) As of the last business day of each month, a statement of assets, liabilities, net worth and a computation of net capital;

[(B)](B) As of the last business day of each calendar quarter, in addition to the information required by subparagraph (c)(ii)(A), a statement of profit or loss for said calendar quarter and, where applicable, changes in retained earnings, partnership capital and subordinated liabilities; and

[(C)](C) As of the last business day of each calendar year, in addition to the information required by subparagraph (c)(ii)(A), a statement of profit or loss for said year and where applicable, changes in retained earnings, partnership capital and subordinated liabilities and any other supplemental schedule(s) as may be required by the SEC.

[(iii)](iii) Each organization designated to the Exchange for financial responsibility pursuant to SEC Rule 17d-1, exempt from SEC Rule 15c3-1 and maintaining net liquid assets in accordance with Rule 703(a)(iii), shall, on forms prescribed by the Exchange, file those reports prescribed in Rule 703(c)(ii)(A), (B), and (C).

[(iv)](iv) Each organization designated to the Exchange for financial responsibility pursuant to SEC Rule 17d-1, exempt from SEC Rule 15c3-1 and maintaining net liquid assets in accordance with Rule 703(a)(iv), shall file only those reports prescribed in Rule 703(c)(ii)(C) as well as those reports prescribed in 703(c)(iv)(A).

[(A)](A) As of the last business day of the first half of each calendar year, in addition to the information required by subparagraph (c)(ii)(A), a statement of profit or loss for said first half, and where applicable, changes in retained earnings, partnership capital and subordinated liabilities.

[(v)](v) Each organization designated to the Exchange for financial responsibility pursuant to SEC Rule 17d-1 and acting as a broker on the Exchange shall, on forms prescribed by the Exchange, file those reports described in Rule 703(c)(ii)(A), (B), and (C).

[(vi)](vi) Each organization whose principal business is as a floor broker on the Exchange and who is not self-clearing must establish and maintain an account with a clearing member organization of the Exchange, for the sole purpose of carrying positions resulting from errors made in the course of its floor brokerage business. Such an account for options transactions must be maintained with an entity which is also a clearing member of the Options Clearing Corporation. A floor broker, prior to effecting any transactions, must file with the Exchange a letter from its clearing member organization stating that this account has been established and that the clearing member organization guarantees the financial responsibilities of the floor broker with respect to all orders entrusted on the floor with the floor broker as well as all transactions and balances carried within the account. This letter shall remain in effect until the Exchange receives written notice from the clearing member organization of its intent to no longer clear or carry transactions for such floor broker. Written notice received at least one-half hour before the normal opening of trading shall take effect on the day of receipt; written notice received less than one-half hour before the opening of trading shall take effect on the opening of the business day following Exchange receipt.

[(d)](d) The Exchange may at any time or from time to time with respect to a particular member organization or foreign currency [option]options participant organization, prescribe more frequent filing of reports or greater net liquid asset requirements than those prescribed under this rule, including more stringent treatment of items in computing net liquid assets.

[(e)](e) *Due Dates; Fees for Late Filing.*—Each financial report required by Rule 703(c) shall be filed with the Exchange within seventeen business days after the conclusion of the reporting period. Reports shall be deemed to have been filed on the date which they have been postmarked; if such reports have not been postmarked, they shall be deemed to have been filed when received by the Exchange. A request for an extension of time to file any such report must be received by the Exchange no later than the business day before the due date for the required report. Unless such an extension has been granted, a member organization or foreign currency [option]options participant organization shall pay a fee of $100 for each week or any part thereof that the report has not been filed.

[(f)](f) *Filings with Examination Department.*—All letters, reports, extension requests and other items required to be filed with the Exchange by any provision of this Rule shall be filed with the Exchange's Examination Department.

• • • ***Commentary:***

.01 JBO participants shall not be considered self-clearing for any purpose other than the extension of credit under Phlx Rule 722 or under the comparable rules of another self-regulatory organization.

Assignment of Interest of Partner

[Rule 704.]Rule 704. No partner in a member [firm]organization that is a partnership shall assign or in any way encumber his interest in such [firm]partnership without the prior approval of the Committee.

Fidelity Bonds

Members Must Carry

[Rule 705.]Rule 705. Each member [firm]organization that is a partnership and is doing business with the public and each member organization that is a corporation shall carry fidelity bonds covering its general partners and employees or covering its officers and employees in such form and in such amounts as the Exchange may require. Unless the Committee directs otherwise, the provisions of this rule shall not apply to member [firms and member]organizations that are partnerships or corporations which are members of another exchange, which has comparable rules and regulations to which such [firms and corporations]member organizations are subject and with which they comply.

• • • ***Supplementary Material:***

The Committee on Business Conduct has imposed the following requirements:

Partner Coverage

.01 Each member organization that is a partnership required to maintain minimum net capital under Rule 15c3-1 must have a fidelity bond (Stockbrokers Partnership Bond) covering general partners. The form of bond developed by the insurance industry in cooperation with the Exchange is the only form which has been approved by the Exchange. Specific Exchange approval is required for any variation from the form.

.02 The required minimum coverage of the fidelity bond will vary with the type of business done by the member organization and with its minimum net capital requirement. These minimum coverages are set forth below:

(a) Member organizations operating pursuant to the provisions of subparagraph (a)(2) of Rule 15c3-1 shall maintain minimum coverage of not less than $25,000 or 50% of the coverage required by this rule, whichever is greater; provided, however, that no member organization whose business is solely that of a specialist, floor broker or registered trader is required to carry a brokers blanket bond.

(b) Member organizations which carry accounts for non-members shall maintain minimum coverage as determined by reference to the following table:

Net Capital Requirement Under Rule 703	Minimum Bond Coverage
$ 25,000 to $ 35,000	$ 50,000
35,001 to 50,000	75,000
50,001 to 75,000	100,000
75,001 to 100,000	150,000
100,001 to 150,000	200,000
150,001 to 250,000	300,000
250,001 to 500,000	400,000
500,001 to 750,000	500,000
750,001 to 1,000,000	750,000
1,000,001 to 2,000,000	1,000,000
2,000,001 to 3,000,000	1,500,000
3,000,001 to 4,000,000	2,000,000
4,000,001 to 6,000,000	3,000,000
6,000,001 to 12,000,000	4,000,000

12,000,001 and over	5,000,000

• • • ***Supplementary Material:***

Employee Blanket Bond Coverage

.03 A. *Basic Coverage.*—Member organizations subject to minimum net capital under Rule 15c3-1 are required to have Brokers Blanket Bond Coverage with respect to employees (including officers, regardless of their duties) in amounts not less than the minimums prescribed above which apply both to partner coverage and employee blanket bond coverage.

B. *Specific Coverages.*—In addition to this basic Brokers Blanket Bond Coverage, member organizations are required to include the following minimum specific coverages with respect to: MISPLACEMENT, FRAUDULENT TRADING, CHECK FORGERY and SECURITIES FORGERY, ON PREMISES AND IN TRANSIT.

1. All employee Fidelity coverage shall be on the Standard Form 14 Stock Brokers' Bond, Federal Insurance Company's Form B Bond or Lloyd's form if it is the full equivalent.

2. With respect to Misplacement, Check Forgery, On Premises and In Transit, at least the amount of the basic bond minimum requirement shall be carried.

3. With respect to Fraudulent Trading, at least $50,000 or 50% of the basic bond minimum requirement, whichever is greater, with a top minimum of $500,000 shall be carried.

4. With respect to Securities Forgery, at least $50,000 or 25% of the basic bond minimum requirement, whichever is greater, with a top minimum of $250,000 shall be carried.

General

A review for adequacy of coverage shall be made at least annually as of the anniversary date of the issuance of the bond and minimum requirements for the next twelve months shall be established by reference to the highest net capital requirement in the preceding twelve months. Each member organization will be expected to review carefully any need for coverage greater than that provided by the required minimums. Where experience or the nature of the business warrants additional coverage the Exchange expects the member organization to acquire it.

Each member and member organization required to carry the above forms of insurance shall advise the Exchange if such insurance is entirely or partially cancelled. Full details should be given in writing within 10 days of such cancellation.

A member organization which becomes eligible to elect and does elect to compute its minimum required net capital under the alternative net capital requirement set forth in paragraph (f) of Rule 15c3-1, instead of under the requirements set forth in paragraph (a) of such rule, shall determine its minimum required coverage in the same manner as specified in sections .02(b) and .03 hereof.

Each member organization may self-insure to the extent of $5,000 or 10% of its minimum insurance requirement as fixed by the Exchange, whichever is greater, for each type of coverage required by the rule. The excess of any such amount self-insured over the maximum permissable self-insurance must be deducted from the member organization's net worth in the calculation of net capital for purposes of Rule 15c3-1.

Rules 706-711 **No change.**

Independent Audit

[Rule 712.]Rule 712. Each member organization doing any business with the public shall at least once each calendar year cause to be made an audit of its affairs, conducted in accordance with applicable audit requirements of the Securities and Exchange Commission and such other requirements as deemed appropriate by the Exchange, by independent public accountants and shall have such accountants prepare an answer to the financial questionnaire of the Exchange based upon such audit.

• • • ***Supplementary Material:***

The Committee on Business Conduct has adopted the following directive:

Annual audit

While the new rule eliminates the requirement for a surprise audit it is still required that an audit be conducted. The annual audit may be done on a surprise basis but the rule also allows for the audit to be conducted on a calendar year basis, fiscal year basis or any other regular basis approved by the Exchange.

The agreement between the member organization and the accountant, required to be filed under directive of the Committee on Business Conduct, shall read substantially as follows, although additional provisions, not inconsistent with the following, may also be included in the agreement:

• • • ***Supplementary Material:***

SAMPLE COPY

(Not for filing)

To be typed on Accountants Letterhead

(Name of Member [Firm or Member Corporation]Organization)

Gentlemen:

You have selected us (me) to make an audit of your affairs and to prepare an answer to the financial questionnaire required to be filed with the Philadelphia Stock Exchange, Inc. based upon such audit.

We (I) Agree

(1) To make an audit of the affairs of your firm in accordance with the audit regulations of the Securities and Exchange Commission and the Philadelphia Stock Exchange, Inc. Such audit shall be conducted as of ....., 19 .... In the event the audit is to be conducted on a “surprise” basis, do not fill in date called for above and state that “the audit will be made without prior notice to your firm.”

(2) to notify promptly the Committee on Business Conduct that the audit has been commenced;

(3) to prepare an answer to the financial questionnaire required to be filed with the Committee on Business Conduct, based upon such audit;

(4) to submit to the Committee on Business Conduct a copy of such answer accompanied by an attestation, in the prescribed form, signed by the general partners (officers) of the [member firm (corporation)]organization and ourselves (myself);

(5) to submit to the Committee on Business Conduct a copy of our (my) report in accordance with the special instructions which appear in the financial questionnaire.

Yours very truly,

Signature of Independent
Public Accountant

Rules 713-717 **No change.**

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Margin Accounts

[Rule 722.]Rule 722. (a) [(a)]***Definitions.*** For the purpose of this Rule, the following terms shall have the meanings specified below:

1. The term "current market value" means the total cost or net proceeds of a security or an option on the day it was purchased or sold. At any other time, in the case of a security other than an option, it means the preceding business day's closing price as shown by any regularly published reporting or quotation service. At any other time, in the case of an option, it shall mean the closing price of that series on the Exchange on any day with respect to which a determination of current market value is made. If there is no closing price of an option or other security, a member organization may use a reasonable estimate of the market value of the security as of the close of business on the preceding business day.

The current spot market price of an underlying foreign currency shall be determined by finding the arithmetic mean of the spot sales prices for that currency, at or about 2:30 p.m. EST/EDT on the day with respect to which a determination of current spot market price is made, as quoted by a group of interbank market banks selected for this purpose by the Exchange.

2. The term "customer" means any person for whom securities are purchased or sold or to whom securities are purchased or sold whether on a regular way, when issued, delayed or future delivery basis. It will also include any person for whom securities are held or carried and to or for whom a member organization extends, arranges or maintains any credit. The term will not include a broker or dealer from whom a security has been purchased or to whom a security has been sold for the account of a member organization or its customers.

3. The term "designated account" means the account of a bank, trust company, insurance company, investment trust, state or political subdivision thereof, charitable or non-profit educational institution regulated under the laws of the United States or any state, or pension or profit sharing plan subject to ERISA or of an agency of the United States or a state or a political subdivision thereof.

4. The term "equity" means the customer's ownership interest in the account, computed by adding the current market value of all securities "long" and the amount of any credit balance and subtracting the current market value of all securities "short" and the amount of any debit balance.

5. The term "exempted security" or "exempted securities" has the meaning as in Section 3(a)(12) of the Securities Exchange Act of 1934.

6. The term "escrow agreement" means any agreement issued in connection with non-cash settled call or put options under which a bank holding the underlying security or required cash or cash equivalents, is obligated to deliver to the creditor (in the case of a call option) or accept from the creditor (in the case of a put option) the underlying security against payment of the exercise price upon exercise of the call or put.

7. The term "qualified stock basket" means a group of securities which includes each of the component securities of the applicable index and which meets the following conditions: (i) the quantity of each stock in the basket is proportional to its representation in the index, (ii) the total market value of the basket is equal to the underlying index value of the index options to be covered, (iii) the securities in the basket cannot be used to cover more than the number of index options represented by that value, and (iv) the securities in the basket shall be unavailable to support any other option transaction in the account.

8. The terms "currency warrant", "currency index group", "currency index warrant", "stock index group" and "stock index warrant" when used in reference to a currency, currency index or stock index warrant shall have the meaning that Rule 1000 assigns to them.

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

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

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

The term "strike price" or "exercise price" in respect of a stock index warrant means the index group value specified in the prospectus.

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

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

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

The term "unit of underlying currency" in respect of a currency warrant means a single unit of the currency covered by a warrant (e.g., one British pound, one German mark, etc.).

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

The term "strike price" or "exercise price" in respect of a currency warrant means the price per unit of the underlying currency specified in the prospectus. The term "strike price" or "exercise price" in respect of a currency index warrant means the index group value specified in the prospectus.

The term "currency call warrant" means a warrant structured as a call on the underlying foreign currency. The term "currency index call warrant" means a warrant structured as a call on the underlying currency index group. The term "currency put warrant" means a warrant structured as a put on the underlying foreign currency. The term "currency index put warrant" means a warrant structured as a put on the underlying currency index group.

The term "stock index call warrant" means a warrant structured as a call on the underlying stock index group. The term "stock index put warrant" means a warrant structured as a put on the underlying stock index group.

(b) Customer Margin Accounts—General Rules

The margin which must be maintained in margin accounts of customers, whether members, partners of members, member [firms, member corporations]organizations or stockholders therein or non-members, shall be as follows:

[(1)](1) *Long Positions*—25% of the current market value of all securities "long" in the account; plus

[(2)](2) *Short Positions*—(A) $2.50 per share or 100% of the current market value, whichever amount is greater, of each security "short" in the account selling at less than $5.00 per share; plus (B) $5.00 per share or 30% of the current market value, whichever amount is greater, of each security "short" in the account selling at $5.00 per share or above; plus

[(3)](3) *Short Bonds*—5% of the principal amount or 30% of the current market value, whichever amount is greater, of each bond "short" in the account.

(c) Margin Accounts—Exceptions

1. *Offsetting "Long" and "Short" Positions.* When a security carried in a "long" position is exchangeable or convertible within a reasonable time, without restriction other than the payment of money, into a security carried in a "short" position for the same customer, the margin to be maintained on such positions shall be 10% of the current market value of the "long" securities. When the same security is carried "long" and "short" the margin to be maintained on such positions shall be 5% of the current market value of the "long" positions. In determining such margin requirements, "short" positions shall be marked to the market.

2. *Exempted Securities and Marginable Corporate Debt Securities.*

A. *Obligations of the United States.* On net "long" or net "short" positions in obligations (including zero coupon bonds, i.e., bonds with coupons detached or non-interest bearing bonds) issued or guaranteed as to principal or interest by the United States Government or issued or guaranteed by corporations in which the United States has a direct or indirect interest as shall be designated for exemption by the Secretary of the Treasury, the margin to be maintained shall be the percentage of the current market value of such obligations as specified in the applicable category below:

[(i)](i) Less than one year to maturity, 1%

[(ii)](ii) One year but less than three years to maturity, 2%

[(iii)](iii) Three years but less than five years to maturity, 3%

[(iv)](iv) Five years but less than ten years to maturity, 4%

[(v)](v) Ten years but less than twenty years to maturity, 5% or

[(vi)](vi) Twenty years or more to maturity 6%

Notwithstanding the above, on zero coupon bonds with five years or more to maturity the margin to be maintained shall not be less than 3% of the principal amount of the obligation.

When such obligations other than United States Treasury bills are due to mature in thirty calendar days or less, a member organization, at its discretion may permit the customer to substitute another such obligation for the maturing obligation and use the margin held on the maturing obligation to reduce the margin required on the new obligation, provided the customer has given the member organization irrevocable instructions to redeem the maturing obligation.

B. *All Other Exempted Securities.* On any positions in exempted securities other than obligations of the United States, the margin to be maintained shall be 15% of the current market value or 7% of the principal amount of such obligation, whichever amount is greater.

C. *Non-Convertible Corporate Debt Securities.* On any positions in non-convertible corporate debt securities, which are listed or traded on a registered national securities exchange or qualify as an "OTC margin bond", as defined in section 220.2 of Regulation T of the Board of Governors of the Federal Reserve System, the margin to be maintained shall be 20% of the current market value or 7% of the principal amount, whichever amount is greater, except on mortgage related securities as defined in Section 3(a)(41) of the Securities Exchange Act of 1934, the margin to be maintained for an exempt account shall be 5% of the current market value.

D. *Special Provisions.* Notwithstanding the foregoing in this subsection (c), (i) A member organization may at its discretion, permit the use of accrued interest as an offset to the maintenance margin required to be maintained, and (ii) The Exchange, upon written application, may permit lower margin requirements on a case-by-case basis.

E. *Cash Transactions With Customers.* When a customer purchases an issued exempted security from or through a member organization, in a cash account, full payment shall be made promptly. If, however, delivery or payment therefor is not made promptly after the trade date, a deposit shall be required as if it were a margin transaction, unless it is a transaction with a "designated account".

In connection with any net position resulting from any transaction in issued exempted securities made for a member organization, or a non-member broker-dealer, or made for or with a "designated account" no margin need be required and such net position need not be marked to market. However, where such net position is not marked to market, an amount equal to the loss at the market in such position shall be deducted in the computation of the Net Capital of the member organization under the Exchange's capital requirements.

3. *Joint Accounts in which the Carrying Member Organization or a Partner Thereof or Stockholder Therein Has an Interest.* In the case of a joint account carried by a member organization, in which such organization or any member or partner or any stockholder (other than a holder of freely transferable stock only) of such member organization participates with others, each participant other than the carrying member organization shall maintain an equity with respect to such interest pursuant to the

margin provisions of this Rule as if such interest were in a separate account. The Exchange will consider requests for exemption from the provisions of this paragraph, provided:

A. the account is confined exclusively to transactions and positions in exempted securities as defined in Section 220.12 of Regulation T of the Board of Governors of the Federal Reserve System; or

B. the account is maintained as a Market Functions Account conforming to the conditions of Section 220.12(e) (odd-lot dealers) of Regulation T of the Board of Governors of the Federal Reserve System; or

C. the account is maintained as a Market Functions Account conforming to the conditions of Section 220.12(c) (Underwritings and distributions) of Regulation T of the Board of Governors of the Federal Reserve System and each other participant margins his share of such account on such basis as the Exchange may prescribe.

4. International Arbitrage Accounts. International arbitrage accounts for non-member foreign brokers or dealers who are members of a foreign securities exchange shall not be subject to this Rule. The amounts of any deficiency between the equity in such an account and the margin required by the other provisions of this Rule shall be deducted in computing the Net Capital of the member organization under the Exchange's Capital Requirements.

5. Broker-Dealer Accounts. A member organization may carry the proprietary account of another broker-dealer, which is registered with the Securities and Exchange Commission, upon a margin basis which is satisfactory to both parties, provided the requirements of Regulation T of the Board of Governors of the Federal Reserve System are adhered to and the account is not carried in a deficit equity condition. The amount of any deficiency between the equity maintained in the account and the haircut requirements calculated pursuant to Rule 15c3-1 of the Exchange Act, shall be deducted in computing the Net Capital of the member organization under Rule 15c3-1 of the Exchange Act and Rule 703.

6. Joint Back Office Participant Accounts. A member organization may carry accounts of joint back office participants upon a margin basis which is satisfactory to both parties, provided that the requirements of Regulation T Section 220.7 and Phlx Rule 703 are adhered to and the account has a minimum equity of not less than $1,000,000. If equity is below $1,000,000, the carrying member organization must issue a call for additional funds or securities which shall be obtained within five business days.

(d) Customer Margin Accounts—Derivative Securities

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

2. *Long Positions—Listed Options and Currency, Currency Index or Stock Index Warrants*. Except as provided below, no listed put or call option, currency warrant, currency index warrant or stock index warrant carried for a customer shall be considered of any value for the purpose of computing the margin required in the account of such customer.

3. *Short Positions—Listed Options and Currency, Currency Index or Stock Index Warrants*. Subject to the exceptions set forth below, the margin on any put or call option listed or traded on a registered national securities exchange or association and issued by a registered clearing corporation or any currency warrant, currency index warrant or stock index warrant which is issued, guaranteed or carried "short" in a customer's account shall be 100% of the current market value of the option or warrant plus the percentage of the current market value of the underlying security, foreign currency or index specified in column II below; provided however that in the case of such options on Exchange-Traded Fund Shares, margin shall be 100% of the current market value of the contract plus (A) 15% of the market value of equivalent units of the underlying security value if the Exchange-Traded Fund Share holds securities based upon a broad-based index or portfolio; or (B) 20% of the market value of equivalent units of the underlying security value if the Exchange-Traded Fund Share holds securities based upon a narrow-based index or portfolio.

Notwithstanding the margin required below, the minimum margin on any put or call or any warrant issued, guaranteed or carried "short" in a customer's account may be reduced by any "out-of-the-money-amount" (as defined below), but shall not be less than 100% of the current market value of the option or warrant plus the percentage of the current market value of the underlying security, foreign currency or index specified in column III below with the exception that the minimum margin required on each such put option contract shall not be less than the current option market value plus the minimum percentage set forth in column III of the option's aggregate exercise price amount.

	I Type of Option	II Initial/Maintenance Margin	III Minimum Margin Required	IV Underlying Component Value
[(1)](1)	Stock	20%	10%	The equivalent number of shares at current market prices
[(2)](2)	Industry Index stock group	20%	10%	The product of the current index group value and the applicable index multiplier
[(3)](3)	Broad Index stock group	15%	10%	The product of the current index group value and the applicable index multiplier
[(4)](4)	Foreign Currencies	#	¾%	The product of units per foreign currency contract and the closing spot price
[(5)](5)	Cross Rate	##	¾%	The product of Units per cross-rate contract and the closing spot price
[(6)](6)	Tier I Customized Cross-rate	4%	¾%	The product of Units per cross-rate contract and the

	currency options			closing spot price
[(7)](7)	Tier II Customized Cross-rate currency options	6%	¾%	The product of Units per cross-rate contract and the closing spot price
[(8)](8)	Tier III Customized Cross-rate currency options	7%	¾%	The product of Units per cross-rate contract and the closing spot price
[(9)](9)	Tier IV Customized Cross-rate currency options	17%	¾%	The product of Units per cross-rate contract and the closing spot price
[(10)](10)	Broad Stock Index Warrant	15%	10%	The stock index group value
[(11)](11)	Industry Stock Index Warrant	20%	10%	The stock index group value
[(12)](12)	Currency Warrant			The product of units of underlying currency per warrant and the closing spot price for each of the currencies below.
	Australian dollar	4%	¾%	
	British pound	4%	¾%	
	Canadian dollar	4%	¾%	
	German mark	4%	¾%	
	ECU	4%	¾%	
	French franc	4%	¾%	
	Japanese yen	4%	¾%	
	Swiss franc	4%	¾%	
[(13)](13)	Currency Index Warrant	**	**	The currency index group value

[#] *The margin requirement for foreign currency options will be determined pursuant to Commentary .16 of this Rule 722.*

[##] *The margin requirement for non-customized cross-rate foreign currency options will be determined pursuant to commentary .16 of this Rule 722.*

[**] *Currency Index Warrant margin will be determined on a case-by-case basis as approved by the Securities and Exchange Commission.*

For the purposes of this sub-section (d)(3), "out-of-the money amounts" are determined as follows:

Option Issue	Call	Put
Stock or Exchange-Traded Fund Share options	Any excess of the aggregate exercise price of the option over the current market value of the equivalent number of shares of the underlying security.	Any excess of the current market value of the equivalent number of shares of the underlying security over the aggregate exercise price of the option.
Index stock group option	Any excess of the aggregate exercise price of the option over the product of the current index group value and the applicable multiplier.	Any excess of the product of the current index group value and the applicable multiplier over the aggregate exercise price of the option.
Foreign currency options	Any excess of the aggregate price of the option over the product of units per currency contract and closing spot price.	Any excess of the product of units per foreign currency contract and the closing spot price over the aggregate exercise price of the option.
Stock Index Warrant	Any excess of the exercise price of the warrant over the currency index group value.	Any excess of the current index group value over the exercise price of the warrant.
Currency Warrant	Any excess of the exercise price of the warrant over the product of the units of underlying currency per warrant and the closing spot price of the currency.	Any excess of the product of the units of the underlying currency per warrant and the spot price over the exercised price of the warrant.
Currency Index Warrant	Any excess of the exercise price of the warrant over the index group value.	Any excess of the product of the index group value over the strike price of the warrant.

4. Each such put or call (whether on a security, on an index stock group or on a currency) shall be margined separately and any difference between the market value of the underlying security (in the case of an option on a security), the current group value of the underlying index stock group (in the case of an option on a stock group) or the underlying foreign currency (in the case of an option on a currency) and the exercise price of a put or call shall be considered to be of value only in providing the amount of margin required on the particular put or call. Additional margin must be required on options issued, guaranteed or carried "short" with an unusually long period of time to expiration, or written on foreign currencies which are subject to unusually rapid or violent changes value, or which do not have an active market, or where the securities or foreign currency subject to the option cannot be liquidated promptly.

5. *Related Securities Positions*

(A) Straddles/Combinations

(i) If both a put and a call for the same number of shares of the same underlying security (in the case of options on a stock), the same index multiplier for the same index group (in the case of options on an index stock group) or for the same number of the same

underlying foreign currency (in the case of options on a foreign currency) are issued, guaranteed or carried "short" for a customer, the amount required shall be the margin on the put or the call, whichever is greater, as required pursuant to subparagraph (d)(3) above, plus 100% of the current market value of the other option.

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

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

[(B)](B) *Short option offset by long option where long option expires with or after short option.* Where a call or put option that is listed or traded on a registered national securities exchange or association is carried "short" for a customer's account and the account is "long" a call or put option listed or traded on an exchange or association, expiring on or after the date of the "short" call or put option and written on the same number of shares of the same underlying security (in the case of options on a stock), the same index multiplier for the same index stock group (in the case of options on a stock group) or the same number of units of the same underlying foreign currency (in the case of options on a foreign currency), no margin is required when the exercise price of the long call option (or short put option) is less than or equal to the exercise price of the offsetting short call option (or long put option), however, the long position must be paid for in full. When the exercise price of the long call option (or short put option) is greater than the exercise price of the offsetting short call option (or long put option), the amount of margin required is the lesser of (1) the margin required, pursuant to subparagraph (d)(3) above or (2) the difference in aggregate exercise prices.

[(C)](C) *Spread Positions on Stock Index, Currency and Currency Index Warrants.*

[(i)](i) When a "long" position in a stock index call warrant is offset by a "short" position of equivalent underlying value in a stock index call warrant or a "short" stock index call option on the same index and the "long" position expires no earlier than the "short" position, the margin required shall be the amount, if any, by which the strike price of the "long" position exceeds the strike price of the "short" position.

[(ii)](ii) When a "long" position in a stock index put warrant is offset with a "short" position of equivalent underlying value in a stock index put warrant or a "short" stock index put option issued by the Options Clearing Corporation on the same index and the "long" position expires not earlier than the "short" position, the margin required shall be the amount, if any, by which the strike price of the "short" position exceeds the strike price of the "long" position.

[(iii)](iii) When a "long" position in a currency call warrant is offset by a "short" position of equivalent underlying value in a currency call warrant or a "short" currency call option issued by the Options Clearing Corporation on the same currency and the "long" position expires no earlier than the "short" position, the margin required shall be the amount, if any, by which the strike price of the "long" position exceeds the strike price of the "short" position times the units of underlying currency per warrant. This same offset provision shall also be available to call positions in currency index warrants.

[(iv)](iv) When a "long" position in a currency put warrant is offset with a "short" position of equivalent underlying value in a currency put warrant or a "short" currency put option issued by the Options Clearing Corporation on the same currency and the "long" position expires not earlier than the "short" position, the margin required shall be the amount, if any, by which the strike price of the "short" position exceeds the strike price of the "long" position times the units of underlying currency per warrant. This same offset provision shall also be available to put positions in currency index warrants.

[(D)](D) *Short Call Covered by Convertible Security.* Where a call is issued, guaranteed or carried "short" against an existing net "long" position in an equivalent number of shares of the same underlying security, in an equivalent number of units of the same foreign currency, or in any security exchangeable or convertible within a reasonable time, other than warrants, without restriction including the payment of money into an equivalent number of shares of the underlying security, no margin need be required on the call, provided (1) such net "long" position is adequately margined in accordance with this rule and (2) the right to exchange or convert the net "long" position does not expire on or before the expiration date of the "short" call.

[(E)](E) Reserved.

[(F)](F) *Short Listed Call Covered by a Warrant.* No margin is required for a call option written on an equity security when the account holds a warrant to purchase the underlying security, provided that the warrant does not expire on or before the expiration date of the short call, and provided that the amount (if any) by which the exercise price of the warrant exceeds the exercise price of the short call is deposited in the account. A warrant used in lieu of the required margin under this provision shall contribute no equity to the account.

(e) Customer Cash Accounts

(1) Short Equity Options

(A) A call option contract carried in a short position is deemed a covered position, and eligible for the cash account, provided the account contains any one of the following offsets:

[(i)](i) the underlying security, equal or greater in quantity to that specified by the option contract, is held on or purchased on the same day, and provided the option premium is held in the account until full cash payment for the underlying security is received.

[(ii)](ii) a security immediately convertible without the payment of money into an equal or greater quantity of the underlying security specified by the option contract is held in or purchased on the same day, provided that: (x) the option premium is held in the account until full cash payment for the convertible security is received, and (xx) the ability to convert does not expire before the expiration of the short call, or (xxx) an escrow agreement in lieu of the underlying security, which escrow agreement is in a form satisfactory to the Exchange, is issued by a bank, and is either held in an account at the time the put or call is written or is received in the account promptly thereafter.

In the case of a call, the escrow agreement must certify that the custodian holds for the account of the customer as security for the agreement, the underlying security (or a security immediately convertible into the underlying security without the payment of money) and that the custodian will promptly deliver to the member organization the underlying security in the event the account is assigned an exercise notice.

(B) A put option contract carried in a short position is deemed a covered position, and eligible for inclusion in the cash account, provided the account contains any one of the following offsets:

(i) cash or cash equivalents as defined in Regulation T, Section 220.2 of not less than the aggregate put exercise amount, or

(ii) an escrow agreement is used in lieu of the cash or cash equivalents, which escrow receipt is issued by a bank which is obligated to deliver the required cash in the event of assignment of the short put.

(2) Certain Short Index Put Options Offset by Long Index Put Options. Debit put spread positions in European-style, broad-based index options traded on the Exchange (hereinafter "debit put spreads") may be maintained in a cash account as defined by Federal Reserve Board Regulation T, Section 220.8 by a public customer. For purposes of this section, a debit put spread must consist of a long put option coupled with a short put option overlying the same broad-based index and having an equivalent underlying aggregate index value, where the short put(s) expires with the long put(s), and the strike price of the long put(s) exceeds the strike price of the short put(s).

(3) Certain Covered Option Transactions. No margin need be required in respect of a put or call option contract issued, guaranteed or carried "short" for a customer's account when:

(A) in the case of a call option contract the customer has delivered to the member organization carrying such customer's account an "escrow receipt" meeting the requirements of Rule 610 of the Options Clearing Corporation or an option guarantee letter in a form satisfactory to, and issued by a custodian approved by the Exchange, which certifies that the custodian issuing such "escrow receipt," or option guarantee letter holds for the account of the customer the underlying security (or security

immediately convertible into the underlying security without payment of cash) or the underlying foreign currency, as the case may be, represented by such call option contract and that such underlying security or underlying foreign currency will be delivered to the member organization (or, where applicable, to the order of the Options Clearing Corporation) against payment of the aggregate exercise price of such call option contract; or

(B) in the case of a call option contract on a foreign currency the customer has delivered to the bank account designated by the member organization carrying such customer's account the number of units of the underlying foreign currency represented by such call option contract;

(C) in the case of a call option contract on a market index stock group, the customer has delivered to the member organization with which such position is maintained, an Index Option Escrow Receipt in a form satisfactory to the Exchange, issued by a bank or trust company approved by the Exchange, which certifies that the bank or trust company issuing such receipt holds for the account of the customer 1) cash, 2) securities issued or guaranteed by the United States with one year or less maturity, 3) one or more qualified securities, or 4) a combination thereof, such that the deposit has an aggregate market value, computed as of the close of business on the day the call option contract is written, of not less than 100% of the aggregate current index value computed at the same time and that the custodian will promptly pay the member organization the exercise settlement amount in the event the account is assigned an exercise notice. A qualified security means (1) an equity security, other than a warrant, right or option, that is traded on any national securities exchange and substantially meets the original listing requirements of the American Stock Exchange for such security, or (2) any security, other than a warrant, listed in the current list of marginable Over-the-Counter stocks as published by the Board of Governors of the Federal Reserve System;

(D) in the case of a put option contract (including a put on a foreign currency or on an index stock group), the customer has delivered to the member organization carrying such customer's account an option guarantee letter or Index Option Escrow Receipt in a form satisfactory to, and issued by a custodian approved by the Exchange, which certifies that the guarantor holds for the account of the customer as security for the letter, cash or securities issued or guaranteed by the United States with one year or less to maturity, which have an aggregate market value, computed at the close of business on the day the put option contract is written, of not less than 100% of the aggregate exercise price of the put option contract and that the guarantor will promptly pay the member organization the exercise settlement amount (in the case of a put option contract on an index stock group) or the aggregate exercise price (in the case of any other put option contract) in the event the account is assigned an exercise notice.

(E) in the case of a warrant on the market index carried in a short position where the customer has delivered, promptly after the warrant has been sold short, to the Member Organization with which such position is maintained, a Market Index Warrant Escrow Receipt in a form satisfactory to the Exchange, issued by a bank or trust company pursuant to specific authorization from the customer which certifies that the issuer of the agreement holds for the account of the customer (1) cash, (2) cash equivalents, (3) one or more qualified equity securities, or (4) a combination thereof; such that the deposit has an aggregate market value, at the time the warrant is sold short, of not less than 100% of the aggregate current index value; and that the issuer will promptly pay the Member Organization the exercise settlement amount in the event the account is assigned an exercise notice.

(f) OTC Options

(1) General Rule. In the case of puts and calls not issued by a registered clearing agency, margin must be deposited and maintained equal to the percentage of the current value of the underlying component and the applicable multiplier if any, specified in column II of this subsection, plus any "in-the-money amount" (as defined below).

Notwithstanding the margin required by this subsection, the minimum margin on any put or call issued, guaranteed or carried "short" in a customer's account may be reduced by any "out-of-the-money amount", but, for each such call option shall not be less than the percentage of the current value of the underlying component and the applicable multiplier if any, specified in column III of this subsection below, and for each such put option, shall not be less than the percentage of the option's aggregate exercise price and the applicable multiplier, if any, specified in column III of this subparagraph.

	I Type of Option	II Initial and/or Maintenance Margin Required	III Minimum Margin Required	IV Underlying Component Value
[(1)]<u>(1)</u>	Stock	30%	10%	The equivalent number of shares at current market prices for stocks at the underlying principal amount for convertible corporate debt securities
[(2)]<u>(2)</u>	Narrow-based index	30%	10%	The product of the current index value and the applicable index multiplier
[(3)]<u>(3)</u>	Broad-based index	20%	10%	The product of the current index value and the applicable index multiplier
[(4)]<u>(4)</u>	U.S. Government or U.S. Government Agency debt securities other than those exempted from Rule 3a-12-7 under the Securities Exchange Act of 1934 [1]	5%	3%	The underlying principal amount
[(5)]<u>(5)</u>	Foreign Currencies	7%	2%	The product of units per foreign currency contract and the closing spot price
[(6)]<u>(6)</u>	Corporate debt securities registered on a	15%	5%	The underlying principal amount

	national securities exchange and marginable OTC corporate debt securities as defined in Regulation T 220.2 [2]			
[(7)]<u>(7)</u>	Other OTC options not covered above	45%	20%	The underlying principal amount

[1] *Option contracts under category (4) must be for a principal amount of not less than $500,000.*

[2] *Option transactions on all other OTC margin bonds as defined in Regulation T Section 220.2 are not eligible for the margin requirements contained in this provision. Margin requirements for such securities are to be computed pursuant to category (7).*

For the purposes of this subparagraph (f)(1), "in-the-money amounts" are determined as follows:

Option Issue	**Call**	**Put**
Stock options	Any excess of the aggregate current market value of the equivalent number of shares of the underlying security over the aggregate exercise price of the option.	Any excess of the aggregate exercise price of the option over the current market value of the equivalent number of shares of the underlying security.
Index Options	Any excess of the product of the current index value and the applicable multipler over the aggregate exercise price of the option.	Any excess of the aggregate exercise price of the option over the product of the current index value and the applicable multipler.
U.S. Government mortgage related or corporate debt securities options	Any excess of the current value of the underlying principal amount over the aggregate exercise price of the option.	Any excess of the aggregate exercise price of the option over the current value of the underlying principal amount.
Foreign Currency Options	Any excess of the product of the units per foreign currency contract and the closing spot price over the aggregate exercise price of the option.	Any excess of the aggregate exercise price of the option over the product of units per currency contract and the closing spot price.

(2) Related Securities Positions (OTC options)

(A) Covered Write Convertible. Where a call is issued, guaranteed or carried "short" against an existing net "long" position in any security immediately

exchangeable or convertible, other than warrants, without restriction including the payment of money into the security underlying option, no margin need be required on the call, provided (1) such net long position is adequately margined in accordance with this rule and (2) the right to exchange or convert the net "long" position does not expire on or before the date of expiration of the "short" call.

(B) Covered Calls/Covered Puts. No margin need be required in respect of an option contract carried in a short position which is covered by a long position in equivalent units of the underlying security, in the case of a call, or a short position in equivalent units of the underlying security, in the case of a put; provided, however, in computing margin on such position on the underlying security, the current market value to be used shall not be greater than the exercise price in the case of a call. In the case of a put, in computing margin on the underlying position, margin shall be the amount required by subsection (b)(2), plus the amount by which the current market value of the underlying exceeds the strike price of the put, if any. Where the short option contract is covered by an "escrow agreement" (meeting the requirements of (a)(6)) no margin need be required on the put or call.

(C) A "long" call and a "short" call or a "long" put and a "short" put are deemed to be issued by the same broker-dealer when either the broker-dealer has issued or guaranteed both options or issued or guaranteed one of the options and the other option was issued by a registered clearing agency on behalf of that broker-dealer. If the options are not issued by the same broker-dealer, then the "short" put or "short" call must be margined separately pursuant to subparagraph (f)(1) above.

(D) Short option offset by long option where long option expires with or after short option. This subparagraph applies to accounts carrying positions issued by the same broker-dealer where long call options (or long put options) are offset by positions in short call options (or short put options) for the same underlying security, provided that the expiration date of the long calls (or long puts) is the same or subsequent to the expiration date of the offsetting short calls (or short puts).

(i) When the exercise price of the long call option (or short put option) is less than or equal to the exercise price of the offsetting short call option (or long put option), no margin is required; however, the position must be paid for in full.

(ii) When the exercise price of the long call option (or short put option) is greater than the exercise price of the offsetting short call option (or long put option), the amount of the margin required is the lesser of (1) margin required, pursuant to subparagraph (f)(1) above or (2) the difference in aggregate exercise prices.

(E) Straddles. Where either or both the put and call specifying the same underlying component are not issued by a registered clearing agency and are issued, guaranteed or carried "short" for a customer by the same broker-dealer (as defined in subsection (f)(2)(C)), the amount of margin required shall be the margin on the put or call, whichever is greater, as required pursuant to subparagraph (f)(1) above, plus any unrealized loss (i.e., the "in-the-money amount") on the other option. Where either or both the put or call are not issued, guaranteed or carried by the same broker-dealer, then the put and call must be margined separately pursuant to subparagraph (f)(1) above, however, the minimum margin shall not apply to the other option.

(g) Specialist and Market Maker Accounts

(1) Definitions. For the purpose of this section (g), the following terms shall have the meanings specified below:

(A) The term "related instrument" within an option class or product group shall mean any related derivative product that meets the offset level requirements for product groups under Rule 15c3-1 of the Exchange Act, or any applicable SEC staff interpretations or no-action positions (hereinafter referred to as SEC Rule 15c3-1).

(B) The term "product group" means two or more option classes, related instruments, and qualified stock baskets for which it has been determined that a percentage of offsetting profits may be applied to losses in the determination of net capital as set forth in SEC Rule 15c3-1.

(C) The term "option class" refers to all option contracts covering the same underlying instrument.

(D) The term "underlying instrument" refers to long and short positions, as appropriate, covering the same security, other than an option contract (underlying security), or a security which is exchangeable or convertible into the underlying security within a period of 90 days. The term underlying instrument shall not be deemed to include securities options, futures contracts, options on futures contracts, qualified stock baskets, or unlisted instruments.

(E) The term "qualified stock basket" shall have the same meaning as defined in SEC Rule 15c3-1.

(F) The term "net liquidating equity" shall mean the sum of positive balances and long securities positions less negative cash balances and short securities positions held in accounts.

(2) The following positions of a member or participant organization may be carried upon a margin basis that is satisfactory to the member or participant organization and the carrying broker-dealer, positions in which the member or participant organization makes a market and permitted offset transactions as defined below. Notwithstanding the other provisions of this paragraph (g), a member or participant organization may clear and carry the market maker permitted offset positions of one or more specialists or registered options traders (all of which are deemed specialists for all purposes under the Securities Exchange Act of 1934 pursuant to the rules of a national securities exchange) (hereinafter referred to collectively as "market maker(s)") upon a margin basis satisfactory to the concerned parties. The amount of any deficiency between the equity maintained by the market maker and the haircuts specified in SEC Rule 15c3-1 shall be considered a deduction from net worth in the net capital computation of the carrying broker or dealer.

(3) In a joint account carried by a member [firm or member corporation]<u>organization</u> for a specialist/market maker, which contains only transactions in the securities in which the specialist/market maker is registered, and in which the carrying [firm or corporation]<u>member organization</u> participates, the equity maintained in the account by the specialist/market maker may be in any mutually satisfactory amount. Any deficiency between the equity maintained in the account and the specialist/market maker's proportionate share of the margin required in the account under this Rule shall be deducted in computing the net capital of the carrying firm or corporation under Rule 703.

(4) *Permitted Offset Transactions.* For purposes of this subparagraph (g)(4), a permitted offset position means, in the case of an option in which a market maker makes a market, a position in the underlying instrument or other related instrument, and in the case of other securities in which a market maker makes a market, a position in options overlying the securities in which a market maker makes a market, if the account holds the following permitted offset positions:

(i) A long position in the underlying instrument offset by a short option position which is "in-or-at-the-money";

(ii) A short position in the underlying instrument offset by a long option position which is "in-or-at-the-money";

(iii) A stock position resulting from the assignment of a market maker short option position;

(iv) A stock position resulting from the exercise of a market maker long option position;

(v) A net long position in a security (other than an option) in which a market maker makes a market;

(vi) A net short position in a security (other than an option) in which a market maker makes a market; or

(vii) An offset position as defined in SEC Rule 15c3-1, including its appendices or any applicable SEC staff interpretation or no-action position.

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

For purposes of this subparagraph (g)(4), the term "in-or-at-the-money" means the current market price of the underlying security is not more than two standard exercise intervals below (with respect to a call option) or above (with respect to a put option) the exercise price of the option; the term "in-the-money" means the current market price of the underlying instrument or index is not below (with respect to a call option) or above (with respect to a put option) the exercise price of the option; and the term "overlying option" means a put option purchased or a call option written against a long position in an underlying instrument, or a call option purchased or a put option written against a short position in an underlying instrument.

(5) On any business day on which positive equity is not maintained in the account(s), the carrying member organization must make a call to the member organization for additional equity at least equal to the deficit and must notify the Exchange of the deficit. The carrying member organization may extend no further credit in the account(s) until the account(s) maintain a positive net liquidating equity and, if the member organization's call for additional equity is not met, steps should be taken promptly to liquidate the positions in the account(s). If the deficit is not resolved by noon of the following business day, the carrying member organization must send telegraphic or facsimile notice to the Exchange as well as the regional and national offices of the Securities and Exchange Commission. However, nothing in this paragraph shall prohibit the carrying firm from effecting hedging transactions in the deficit account with the prior written approval of the carrying firm's designated examining authority.

(h) Foreign Currency Options—Letters of Credit. A customer may deposit the margin due on foreign currency option(s) or cross-rate foreign currency options(s) written and carried "short" in the customer's account in any of the forms specified in the Regulations of the Board of Governors of the Federal Reserve System or

by presentation to the member organization carrying such customer's account of a letter of credit denominated in U.S. dollars or with respect to cross-rate foreign currency options a letter of credit denominated in the base currency of the cross-rate foreign currency option contract in the form satisfactory to, and issued by a bank or trust company approved by the Exchange or approved by the Options Clearing Corporation ("OCC") pursuant to OCC Rule 604(c). Such a letter of credit (i) shall contain the unqualified commitment of the issuer to pay to the member organization a specified sum of money equal to or greater than the amount of margin due with respect to such option position(s) immediately upon demand at any time prior to the expiration of such letter of credit; (ii) shall be irrevocable; and (iii) shall expire no later than eighteen (18) months from the date of its issuance. Such a letter of credit ordinarily shall expire no earlier than the expiration of any of the options covered by the letter of credit; provided, however, that the letter of credit may expire before any of the options if, before the letter of credit expires, acceptable margin (including a satisfactory letter of credit) is deposited by the customer. Such a letter of credit may serve as margin due with respect to each such option position does not, in the aggregate, exceed the sum specified in such letter of credit.

(i) Other Provisions.

(l) *"When Issued" and "When Distributed" Securities.*

a. Margin Accounts.

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

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

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

b. Cash Accounts.

In connection with any transaction or net position resulting from contracts for a "when issued" security in an account other than that of a member [firm or member corporation]<u>organization</u>, non-member broker or dealer or a "designated account", equity may be maintained equal to the margin required were such transactions or position in a margin account.

In connection with any net position resulting from contracts for a "when issued" security made for a member [firm or member corporation]<u>organization</u> or, for or with a "designated account," no margin need be required and such net position need not be marked to the market. However, where such net position is not marked to the market, an amount equal to the loss at the market in such position shall be deducted in the computation of the net capital of the member [firm or member corporation]<u>organization</u> under Rule 703.

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

(i) which is the subject of a primary distribution in connection with a bona fide offering by the issuer to the general public for "cash", or

(ii) which is exempt by the Exchange as involving a primary distribution.

The term "when issued" as used herein also means "when distributed".

(2) *Guaranteed Accounts.* Any account guaranteed by another account may be consolidated with such other account and the margin to be maintained may be determined on the net position of both accounts, provided the guarantee is in writing and permits the member organization carrying the account, without restriction, to use the money and securities in the guaranteeing account to carry the guaranteed account or to pay any deficit therein, and provided further that such guaranteeing account is not owned directly or indirectly by (a) a member or partner of any stockholder (other than a holder of freely transferable stock only) in the organization carrying such account or (b) a member, member organization or partner thereof or any stockholder (other than a holder of freely transferable stock only) therein having a definite arrangement for participating in the commissions earned on the guaranteed account. However, the guarantee of a limited partner, if based upon his resources other than his capital contribution to a member [firm]organization that is a partnership, or the guarantee of a holder of non-voting stock if based upon his resources other than his interest in a member organization that is a corporation is not affected by the foregoing prohibition, and such a guarantee may be taken into consideration in computing margin to be maintained in the guaranteed account.

When one or more accounts are guaranteed by another account and the total margin deficiencies guaranteed by any guarantor exceeds 10% of the member organization's excess Net Capital, the amount of the margin deficiency being guaranteed in excess of 10% of excess Net Capital shall be deducted in computing the Net Capital of the member organization under Rule 703.

(3) *Consolidation of Accounts.* When two or more accounts are carried for a customer, the margin may be determined on the net position of said accounts, provided the customer has consented that the money and securities in each of such accounts may be used to carry or pay any deficit in all such accounts.

(4) *Time Within Which Margin or "Mark-to-Market" Must Be Obtained.*

(i) Except as otherwise provided herein, the amount of margin "mark-to-market" required by any provisions of this rule shall be obtained as promptly as possible and in any event within fifteen business days from the date such deficiency occurred, unless the Exchange has specifically granted an extension of time.

(ii) Except as provided in subparagraph (v) below, the amount of margin required with respect to any "short" position in a foreign currency option carried for the account of a customer shall be obtained as promptly as possible and in any event before the expiration of 5 full business days following the date on which the customer entered into such option position, in the case of the initial margin deposit required with respect to such option position, or the date with respect to which additional margin must be deposited as the result of a mark-to-market of such option position, as the case may be.

(iii) Except as provided in subparagraph (v) below, any "long" position in a foreign currency option carried for the account of a customer shall be paid for in full, in cash, within 5 full business days following the date on which the customer purchased such option.

(iv) Except as provided in subparagraph (v) below, if the margin required with respect to any "short" foreign currency option position or the full cash payment required with respect to any "long" foreign currency option position is not

obtained within the 5-day period specified in subparagraph (ii) or (iii) above, as the case may be, the member carrying such position for the customer shall promptly liquidate such position.

(v) If the Business Conduct Committee of the Exchange is satisfied that the member is acting in good faith in making the application, that the application relates to a bona fide purchase or writing transaction, as the case may be, and that exceptional circumstances warrant such action, such committee may extend the 5-day time period specified in subparagraph (ii) or (iii) above for one or more limited periods commensurate with the circumstances. Applications shall be filed and acted upon prior to the end of the 5-day period or the expiration of any subsequent extension. However, an application may be accepted as timely filed from members having no direct electronic access to the Exchange if it is postmarked no later than midnight of the last day of the 5-day period or any subsequent extension.

(5) *Practice of Meeting Regulation T Margin Calls by Liquidation Prohibited.* When a "margin call", as defined in Section 220.2(1) of Regulation T of the Board of Governors of the Federal Reserve System, is required in a customer's account, no member [firm or member corporation]organization shall permit a customer to make a practice of either deferring the deposit of cash or securities beyond the time when such transactions would ordinarily be settled or cleared, or meeting the margin required by the liquidation of the same or other commitments in his account.

This prohibition on liquidation shall only apply to those accounts that, at the time of liquidation, are not in compliance with the equity to be maintained pursuant to the provisions of this Rule.

(6) *Margin Required in Excess of Letter Credit.* No member, participant, member or participant organization shall permit a customer to effect transactions or maintain positions in foreign currency options against a letter of credit as described in paragraph (J) requiring margin greater than the amount of the letter of credit. Such customer must satisfy the additional margin requirement by depositing with the member or participant organization (i) a new or amended letter of credit pursuant to paragraph (J) in an amount equal to or greater than the additional margin required or (ii) funds in a form permissible under Regulation T of the Federal Reserve Board. If the customer fails to meet the additional margin requirement promptly, the member or participant organization shall liquidate position(s) sufficient to meet the additional margin required. If the additional margin required is $500 or less, no action need be taken by the member or participant organization.

(7) *CIPs.* The margin which must be maintained in margin accounts of customers, whether members, partners of members, member [firms, member corporations]organizations or stockholders therein or non-members, shall be as follows:

1. 25% of the market value of all "long" CIP positions in the account plus;

2. 30% of the market value, in cash, of each "short" CIP position in the account;

3. No margin need be required in respect of a CIP carried "short" in a customer's account when the customer has executed and delivered to the member organization carrying the account an escrow receipt meeting the requirements of Rule 1909 of the Options Clearing Corporation.

(8) Notwithstanding any other provision of this Rule, the Exchange may, whenever it shall determine that market conditions so warrant, prescribe:

(A) higher margin deposits for the purpose of effecting new securities transactions and commitments in margin accounts of customers with respect to specific securities traded on the Exchange,

(B) higher margin requirements which must be maintained in margin accounts of customers with respect to such securities, and

(C) such other terms and conditions as the Exchange shall deem appropriate relating to initial margin deposits and margin maintenance requirements in margin accounts of customers with respect to such securities.

• • • ***Commentary:***

.01 For purposes of this Rule, all valuations shall be based on current market prices unless the specific provisions of the Rule otherwise provide.

.02 The Business Conduct Committee shall appoint a Foreign Currency Options Margin Subcommittee, which Subcommittee shall be responsible for monitoring the utilization of letters of credit by foreign currency option writers, for monitoring the volatility of each foreign currency underlying a class of foreign currency options traded on the Exchange and for recommending to the Exchange that higher margin requirements be imposed with respect to any foreign currency option position(s) whenever such Subcommittee deems such higher margin requirements advisable. Such recommendations may include, but shall not be limited to, recommendations that the margin due on certain foreign currency option positions pursuant to subparagraph B(i) of Rule 722(c)(2) should not be reduced by all or any portion of any out-of-the-money reduction which would otherwise be permitted pursuant to that subparagraph.

.03 The Exchange may in its discretion approve a bank or trust company as an issuer of letters of credit pursuant to Rule 722(c)(2)(J) if:

(a) U.S. Institutions:

(1) it is organized under the laws of the United States or a State thereof and is regulated and examined by federal or state authorities having regulatory authority over banks or trust companies; and

(2) it has, at the time of approval and continuously thereafter, shareholders' equity of $100,000,000 or more.

(b) Non-U.S. Institutions:

(1) it is organized under the laws of a country other than the United States and has a Federal or State Branch or Agency (as defined in the International Banking Act of 1978) located in the United States;

(2) it has, at the time of approval and continuously thereafter, shareholders' equity in excess of $200,000,000 (U.S.);

(3) its principal executive office is located in a country that (a) is rated "AAA" by Moody's Investor Service and/or Standard & Poor's, or (b) has been approved by the Business Conduct Committee as a "AAA" equivalent country based on consultations with at least two entities satisfactory to the Business Conduct Committee as experienced in international banking and finance matters; and

(4)(a) it as a "P-1" rating from Moody's Investor Service and/or an "A-1" rating from Standard & Poor's on its commercial paper or other short-term obligations or

(b) in the event it has no rating on its commercial paper or other short-term obligations.

(i) any such commercial paper or short-term obligations issued by its parent or an affiliated entity has such a rating;

(ii) any such commercial paper or short-term obligations issued by non-affiliated entities and supported or guaranteed by the institution has such a rating;

(iii) the institution, its parent or any affiliated entity has an "Aaa" rating from Moody's Investor Service and/or an "AAA" rating from Standard & Poor's on its long-term obligations; or

(iv) it has been approved by the Business Conduct Committee as a "P-1" or "A-1" equivalent institution.

.04 Any letter of credit issued by a non-U.S. institution must be issued and payable at a Federal or State Branch or Agency thereof.

.05 The total amount of letters of credit issued by a U.S. or non-U.S. financial institution for the account of any one customer and outstanding at any one time shall not exceed 15% of the unimpaired capital and surplus of such institution and the total amount of letters of credit issued by a U.S. or non-U.S. financial institution naming any one member organization as beneficiary and outstanding at any one time shall not exceed 20% of the unimpaired capital and surplus of such institution.

.06 U.S. institutions:

(A) (1) must supply the Exchange at the time of application for approval with its most recent annual financial report, and, in the event such report is as of a date more than 90 days prior to the date of application, its most recent published quarterly financial statements;

(2) must supply the Exchange subsequent to approval with annual reports and quarterly financial statements as issued; and

(3) must provide the Exchange, in a form satisfactory to the Exchange, appropriate documentation as to individuals authorized to sign letters of credit on the institutions['s] behalf and the institution's legal authority to issue letters of credit.

(B) Non-U.S. institutions:

(1) must supply the Exchange at the time of application for approval with its most recent annual financial report; and, in the event such report is as of a date more than 90 days prior to the date of application, its most recent published semi-annual financial statements;

(2) must supply the Exchange subsequent to approval with annual reports and semi-annual financial statements as issued; and

(3) must provide the Exchange, in a form satisfactory to the Exchange, appropriate documentation as to individuals authorized to sign letters of credit on the institution's behalf and the institution's legal authority to issue letters of credit.

.07 Each member organization named as the beneficiary of a letter of credit issued pursuant to Rule 722(c)(2)(J) must provide the Exchange with such information regarding each such letter as the Exchange may request, including: (i) the name of the financial institution issuing the letter; (ii) the name of the customer for whose account the letter is issued; (iii) the sum of money specified in the letter; (iv) the expiration date of the letter; (v) the class and the series of each option position with respect to which such letter is intended to serve as margin; (vi) the transaction date of each such option position and (vii) customer account suitability information including, but not limited to net income, net worth, occupation or type of business enterprise, and experience in trading securities and/or commodities. The information regarding items (i), (ii), (iii), (iv) and (vii) shall be provided to the Exchange promptly upon the member organization's approval of the account and acceptance of the letter of credit. The information required by items (v) and (vi) shall be provided to the Exchange on a monthly basis and may be in the form of a copy of the customer's account statement of foreign currency option transactions for which the letter of credit applies. Each such member organization must also provide the Exchange with prompt notification of the withdrawal of any such letter of credit, of the liquidation of any option position with respect to which such letter is intended to serve as margin and of the assignment of an exercise notice to any such option position.

.08 If the customer for whose account a letter is issued pursuant to Rule 722(c)(2)(J) is itself a bank or trust company, such letter of credit shall be issued by another bank or trust company.

.09 The Exchange reserves the right in its sole discretion to refuse or revoke approval of any financial institution as an issuer of letters of credit at any time.

.10 The Exchange may, at any time, on its own initiative or at the direction of the Securities and Exchange Commission or the Board of Governors of the Federal Reserve System, suspend, terminate or otherwise modify a member organization's ability to accept a letter of credit in satisfaction of a customer's margin obligations.

.11 The Exchange approves index option escrow receipts in the form approved by The Options Clearing Corporation in accordance with OCC Rule 1801.

For the purposes of Rule 722(c)(2)(G), a bank or trust company is qualified to issue an Index Option Escrow Receipt if it is a corporation organized under the laws of the United States or a state thereof, and is regulated and examined by federal or state authorities having regulatory authority over banks or trust companies. The issuing bank or trust company must be approved by the Options Clearing Corporation if the Index Option Escrow Receipts are to be forwarded to the Options Clearing Corporation for the purposes of meeting margin requirements.

When one or more securities are substituted for securities held by the bank or trust company, the substitution should not impair the value of the collateral held by the bank or trust company at the time the substitution is made.

An Index Option Escrow Receipt is no longer deemed to be an acceptable deposit in lieu of margin required to be maintained by the broker-dealer upon notification that the collateral value is below 50% of the current aggregate index value. If the collateral value is not promptly supplemented to a level in excess of 55% of the current aggregate index value, the broker-dealer must take steps to promptly liquidate the short call(s) covered by the Index Option Escrow Receipt.

The Exchange may approve other forms from time to time upon review by the Exchange and/or approval by the Commission.

.12 For the purposes of calculating applicable margin requirements pursuant to Rule 722, no differentiation shall be made between American style and European style foreign currency options contracts.

.13 For the purpose of calculating applicable margin requirements for cross-rate foreign currency options contracts the base foreign currency for each cross-rate foreign currency option contract shall be utilized. The base foreign currency for each cross-rate foreign currency option contract is designated in the contract specifications.

.14 A member [firm or member corporation]organization must take reasonable steps to ensure that only transactions eligible for good faith margin treatment are carried in a market maker/specialist account. Reasonable steps include the adoption and implementation of procedures designed to detect any pattern of activity in contravention of this rule.

.15 For purposes of this rule, the Exchange shall designate the tier level of the customized cross-rate currency options. The Exchange shall make such determination for Tier I and Tier II options based upon the correlation between the currency pairs. Currency pairs which exhibit a correlation less than .25 over the preceding two year period shall be placed in Tier II while all other currency pairs shall be placed in Tier I. The correlations between the currency pairs shall be reviewed no less frequently than on a monthly basis. Tier III will include customized cross-rate currency options which involve either the Italian lira or Spanish peseta. Tier IV will include customized cross-rate currency options which involve the Mexican peso.

.16 The margin requirement for any foreign currency put or call option listed and traded on the Exchange and issued by a registered clearing corporation which issued, guaranteed or carried short in a customer's account, *except for customized cross-rate currency options*, shall be in the amount provided in paragraph (d)(3) of this Rule 722 and shall be calculated as follows:

(a) The Exchange will review the five day price movements comparing the base currency against the underlying curency over the most recent three-year period for each foreign currency pair underlying options traded on the Exchange and will set margin levels which would have covered the price changes over the review period at least 97.5% of the time ("confidence level").

(b) Subsequent reviews of five day price changes over the most recent three year period will be performed quarterly on the 15th of January, April, July and October of each year.

(c) If the results of subsequent reviews show that the confidence level for any currency *pair* has fallen below 97%, the Exchange will increase the margin requirement for that currency up to a 98% confidence level. If the results show a confidence level between 97% and 97.5%, the currency *pair* will be monitored monthly until the confidence level exceeds 97.5% for two consecutive months. If the results of a monthly review show that the confidence level has fallen below 97%, the margin requirement will be increased to a 98% confidence level. If the results of any review show that the confidence level has exceeded 98.5%, the margin level would be reduced to a level which would provide a 98% confidence level.

(d) The Exchange will also review each currency *pair* for large price movements outside the margin level ("extreme outlier test"). If the results of any review show a price movement, either positive or negative, of greater than two times the current margin level, the margin requirement for that currency pair will be increased to a confidence level of 99%.

(e) Pursuant to paragraph (i)(8) of this Rule 722, the Exchange may also conduct reviews of currency margins levels at any time that market conditions warrant.

Day-Trading and Prohibition on Free-Riding in Cash Accounts

[Rule 723.]Rule 723. (a) [(a)]*Day Trading*. 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.

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 Rule 722. 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 by Regulation T of the Board of Governors of the Federal Reserve System or as required pursuant to Rule 722, whichever amount is greater.

When the equity in a customer's account, after giving consideration to Rule 722, is not sufficient to meet the requirements of this Rule, additional cash or securities must be received into the account to meet any deficiency within five business days of the trade date.

The term "customer" shall be defined in accordance with Rule 722.

[(b)](b) *Free Riding in Cash Accounts Prohibited.* No member organization shall permit a customer (other than a broker/dealer or a "designated account") 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 member organization shall permit a 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. A member organization transferring an account which is subject to a Regulation T 90-day freeze to another member organization shall inform the receiving member organization of such 90-day freeze.

The provisions of Section 220.8(c) of Regulation T of the Board of Governors of the Federal Reserve System dictate the prohibitions and exceptions against customers' free riding. Member organizations may apply to the Exchange in writing for waiver of a 90-day freeze not exempted by Regulation T.

Guaranteed Accounts

[Rule 724.]Rule 724. Any account guaranteed by another account may be consolidated with such other account and the required margin may be determined on the net position of both accounts, provided the guarantee is in writing and permits the member [firm]organization carrying the account, without restriction, to use the money and securities in the guaranteeing account to carry the guaranteed account or to pay any deficit therein; and provided further that such guaranteeing account is not owned directly or indirectly by (1) a partner of the [firm]member organization that is a partnership carrying such account or (2) a member [firm]organization that is a partnership or partner thereof having a definite arrangement for participating in the commissions earned on the guaranteed account. However, the guarantee of a limited partner, if based upon his resources other than his capital contribution to a member [firm]organization that is a partnership, is not affected by the foregoing prohibition, and such a guarantee may be taken into consideration in computing margin in the guaranteed account.

Daily Record of Required Margin

[Rule 725.]Rule 725. (a) [(a)]Each member [firm]organization registered on the Exchange carrying margin accounts for customers shall make each day a record of every case in which, pursuant to the Rules of the Exchange or regulations of the Board of Governors of the Federal Reserve System, initial or additional margin must be obtained in a customer's account because of the transactions effected in such account on such day. Such record shall be preserved for at least twelve months, and shall show, for each such account, the amount of margin so required and the time when and the manner in which such margin is furnished or obtained. Such record shall be in a

form approved by the Committee, and shall contain such additional information as said Committee may from time to time prescribe. The provisions of this paragraph with respect to the form in which such record shall be kept shall not apply to member [firms]organizations who are members of another exchange, which exchange has comparable rules and regulations to which such [firms]organizations are subject and with which they comply, unless the Committee directs otherwise.

Practice of liquidation to provide margin prohibited—Exceptions

[(b)](b) No such [firm]member organization shall permit a customer to make a practice of effecting transactions requiring such initial or additional margin and then furnishing such margin by the liquidation of the same or other commitments; except that the provisions of this paragraph (b) shall not apply to any account maintained for another broker or dealer in which are carried only the commitments of the customers of such other broker or dealer exclusive of his partners, provided such other broker or dealer

[(1)](1) is a member [firm]organization of the Exchange registered thereon; or

[(2)](2) has agreed in good faith with the member [firm]organization carrying the account that he will maintain a record equivalent to that referred to in paragraph (a) of this Rule; or

[(3)](3) is not subject to the regulations of the Board of Governors of the Federal Reserve System.

[(c)](c) Each member [firm]organization shall report to the Exchange such information as may be required, with respect to each margin requirement which resulted from transactions effected in a customer's account and which was met by the liquidation of the same or other commitments.

Conduct of Accounts

Customers' Securities

[Rule 741.]Rule 741. No member organization shall make improper use of a customer's securities.

Restrictions on Pledge of Customers' Securities

[Rule 742.]Rule 742. (a) [(a)]No agreement between a member [firm or member]organization and a customer authorizing the member [firm or member]organization to pledge securities carried for the account of the customer either alone or with other securities, either for the amount due thereon or for a greater amount, or to lend such securities, shall justify the member [firm or member]organization in pledging or lending more of such securities than is fair and reasonable in view of the indebtedness of said customer to said[member firm or] member organization, except as provided in paragraph (d) of this Rule.

Agreements for use of customers' securities

[(b)](b) No member [firm or member]organization shall lend, either to itself as broker or to others, securities held on margin for a customer and which may be pledged or loaned under paragraph (a) hereof, unless such member [firm or member]organization shall first have obtained a separate written authorization from such customer permitting the lending of such securities by such[member firm or] member organization.

Restrictions on delivery of customers' securities

[(c)](c) No general agreement between a member [firm or member]organization and a customer shall justify the member [firm or member]organization in delivering securities carried for the customer on sales

made by the member [firm or member]organization for any account in which such[member firm or] member organization or any partner thereof or stockholder therein is directly or indirectly interested.

Free or excess margin securities

[(d)](d) No securities held by a member [firm or member]organization for the account of a customer, whether free or representing excess margin, may be loaned to itself as broker, or to others, or delivered on sales made by the member [firm or member]organization for any account in which the [firm or]organization or any partner or stockholder has a direct or indirect interest unless a specific written agreement designating the particular securities to be loaned is first obtained from the customer.

Rules 743-755 No change.]

Accounts of General Partners

[Rule 756.]Rules 756. No member [firm]organization that is a partnership shall carry an account for a general partner of another member [firm]organization that is a partnership without the prior written consent of another general partner of such other [firm]organization. Duplicate reports and monthly statements shall be sent to a general partner of the [firm]organization (other than the partner for whom the account is carried) designated in such consent.

All clearance transactions for a general partner of another member [firm]organization that is a partnership shall be reported by the clearing firm to a general partner of such other [firm]organization who has no interest in such transactions.

Anti-Money Laundering Compliance Program

[Rule 757.]Rules 757. Each member, member organization, participant and participant organization[("member")], for which the Exchange is the Designated Examining Authority, shall develop and implement a written anti-money laundering program reasonably designed to achieve and monitor the member's 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 member's anti-money laundering program must be approved, in writing, by a representative of its senior management staff. The anti-money laundering programs required by this Rule shall include, at a minimum a requirement to:

[(1)](1) Establish and implement policies, procedures and controls 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)](2) Establish and implement policies, procedures and internal controls reasonably designed to achieve compliance with the Bank Secrecy Act and the implementing regulations thereunder;

[(3)](3) Provide for independent testing for compliance to be conducted by [member]its personnel or by a qualified outside party;

[(4)](4) Designate an individual or individuals responsible for implementing and monitoring the day-to-day operations and controls of the program; and

[(5)](5) Provide ongoing training for appropriate personnel.

Rules 760-761 No change.

Telemarketing

[Rule 762.]**Rules 762.** (a) [(a)]No member, foreign currency [option]options participant or person associated with a member or foreign currency [option]options participant organization shall:

[(1)](1) make outbound telephone calls to the residence of any person for the purpose of soliciting the purchase of securities or related services at any time other than between 8:00 a.m. and 9:00 p.m. local time at the called person's location, without the prior consent of the person; or

[(2)](2) make an outbound telephone call to any person for the purpose of soliciting the purchase of securities or related services without disclosing promptly and in a clear and conspicuous manner to the called person the following information:

(i) the identity of the caller and the firm; and

(ii) the telephone number or address at which the caller may be contacted; and

(iii) that the purpose of the call is to solicit the purchase of securities or related services.

[(3)](3) The prohibitions of paragraphs (1) and (2) shall not apply to telephone calls by any person associated with a member or foreign currency [option]options participant organization or another associated person acting at the direction of such person for the purpose of maintaining and servicing the accounts of existing customers of the member or foreign currency [option]options participant organization under the control of or assigned to such associated person:

(i) to an existing customer who, within the preceding twelve months, has affected a securities transaction in, or made a deposit of funds or securities into, an account that, at the time of the transaction or the deposit, was under the control of or assigned to, such associated person:

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

(iii) to a broker or dealer.

For the purposes of paragraph (3), the term "existing customer" means a customer for whom the member or foreign currency [option]options participant organization, or a clearing member broker or dealer on behalf of such member or foreign currency [option]options participant organization, carries an account. The scope of this rule is limited to the telemarketing calls described herein; the terms of this rule shall not otherwise expressly or by implication impose on members or foreign currency [option]options participants any additional requirements with respect to the relationship between a member or foreign currency [option]options participant and a customer or between a person associated with a member or foreign currency [option]options participant organization and a customer.

[(b)](b) Each member or foreign currency [option]options participant organization shall make and maintain a centralized do-not-call list of persons who do not wish to receive telephone solicitations from such member or foreign currency [option]options participant organization or its associated persons.

[(c)](c) No member or foreign currency [option]options participant organization or person associated with such member or foreign currency [option]options participant organization shall obtain from a customer or submit for payment a check, draft or other form of negotiable paper drawn on a customer's checking, savings, share, or similar account, without that person's express written authorization, which may include the customer's signature on the negotiable instrument. Such written authorization shall be preserved by the member or foreign currency [option]options participant organization for a period of not less than three years. This provision shall not, however, require maintenance of copies of negotiable instruments signed by customers.

Rules 771-786 No change.

Member Organizations That Are Corporations

Net Capital of Member Corporation Requirements

[Rule 791.]Rule 791. Rescinded June 7, 1976.

Control of Voting Stock

[Rule 792.]Rule 792. The officers and directors of a member organization that is a corporation shall have working control of [the]such member [corporation]organization. They shall own at least fifty-five per cent (55%) of the voting stock, and shall have contributed at least thirty per cent (30%) of the total capital represented by all classes of stock; provided, however, that the Committee may waive these requirements in specific cases, when it appears that a majority of the officers and a majority of the directors are actively engaged in the conduct of the business of [the]such member [corporation]organization.

Affiliations—Dual or Multiple

[Rule 793.]Rule 793. No person shall at the same time be a partner, whether as a general or a limited partner, or an officer, director, stockholder, or associated person of more than one member or participant organization, nor shall he be affiliated in any manner with a non-member or non-participant organization which is engaged in the securities business, unless such affiliation has been disclosed to and approved in writing by the member and/or participant organizations and such approval has been filed with the Office of the Secretary. No member or participant shall [register]qualify more than one member or participant organization[for membership and/or participation].

The Exchange may disapprove multiple affiliations which are inconsistent with Exchange standards of financial responsibility, operational capability, or compliance responsibility.

• • • ***Commentary:***

.01 A member or participant organization filing notice of a multiple affiliation with the Office of the Secretary shall include in such filing written approval of such affiliation, an explanation of the business purpose of this arrangement and whom at said organizations shall supervise the business conduct of the person multiply affiliated for compliance with PHLX By-Laws and Rules. The filing should also include sufficient information for the Exchange to determine whether one person registers more than one organization.

Assignment of Holdings

[Rule 794.]Rule 794. No holder of ten per cent (10%) or more of the common or voting stock in a member organization that is a corporation shall sell, assign, transfer, pledge, or hypothecate his holdings of common or voting stock in [the]such member [corporation]organization, except to [the corporation]such member organization or to officers or directors thereof, without written notice to the Committee.

Member Officer or Director

[Rule 795.]Rule 795. A member of the Exchange shall not be an officer or director of, or own or control, directly or indirectly, a substantial interest in a corporation engaged in the securities business which is not a member [corporation]organization of the Exchange, except with the written permission of the Committee.

Underwriting of Securities by Member Organizations

[Rule 796.]Rule 796. Member organizations shall submit, as required by the Exchange periodic reports with respect to obligations in respect of security under writings and net positions resulting therefrom.

Loans to Officers and Directors

[Rule 797.]Rule 797. No member organization that is a corporation shall make any loans to any officer or director thereof.

COMMITTEE ON STOCK LIST

Listing of Securities

[Rule 800.]Rule 800. The Allocation, Evaluation and Securities Committee shall administer Rules 801 to 899 inclusive.

Securities Eligible for Listing or to be Admitted to Dealings

[Rule 801.]Rule 801. Only such securities as shall have been approved by the Allocation, Evaluation and Securities Committee for listing or admission pursuant to unlisted trading privileges shall be dealt in on the Exchange.

Rule 802. The Exchange will evaluate and prepare a confidential listing opinion as to the eligibility of an applicant's securities for listing upon submission of the information listed in Rule 808. The company must be a going concern or the successor to a going concern. Other factors the Exchange places great emphasis upon include but are not limited to: the nature of a company's business, the character of the market for its product, its stability and position in its industry, the reputation of its management, its history of growth and growth prospects for the future, its financial integrity and the voting rights for shareholders.

The Exchange does not rate or guarantee the quality of any security dealt in on the Exchange beyond the fact that it meets the Exchange's minimum financial criteria for listing. In making a determination concerning listing or delisting, the Exchange acts upon information furnished by the issuer which must verify the information by providing at least, independently audited financial statements and other disclosure documents.

For purposes of Rules 801-899, (i) "public shareholder" or "public holder" does not include officers, directors, controlling shareholders or other owners of family or concentrated holdings and (ii) beneficial holders rather than holders of record will be counted by the Exchange.

Criteria for Listing—Tier 1

[Rule 803.]Rule 803. Issuers should consider whether to list their securities under the Tier I or Tier II listing standards. While all listed issues will be traded pursuant to the identical Exchange auction rules, issues listed pursuant to the Tier I and Tier II standards may be distinguished with respect to blue sky exemptions, transactions reporting symbols, listing fees and maintenance standards. The Exchange will identify and distinguish at all times which securities are listed pursuant to the Exchange's Tier I and Tier II standards. An issuer seeking to list its securities pursuant to the Tier I standards must satisfy one of the two alternative Tier I quantitative criteria and an issuer seeking to list its securities pursuant to the Tier II standards must satisfy the Tier II quantitative

criteria. Issuers listing under either criteria must adhere to the policies and procedures and the corporate governance criteria provided in Rules 812 through 853.

The Exchange also places great emphasis upon the level of public interest in the securities of an issuer. Causes for concern may include a low trading volume on another Exchange, lack of dealer interest in the over-the-counter market, unusual geographical concentration of shareholders or a low rate of transfers. Under such circumstances the Exchange may implement a higher distribution standard provided it perceives a relatively low level of investor interest.

The listing criteria for Tier I Issues are as follows:

[(a)](b) In the case of Common Stock:

[(1)](1) Net Tangible Assets—Total assets (including the value of patents, copyrights and trademarks but excluding the value of goodwill) less total liabilities of at least $4,000,000.

[(2)](2) Earnings—Pretax income of $750,000 and net income of at least $400,000 in its last fiscal year.

[(3)](3) Public Distribution—at least 500,000 publicly held shares and at least 800 public shareholders if the issuer has between 500,000 and 1 million shares publicly held, or at least 400 public shareholders if the issuer has either (i) over 1 million shares publicly held or (ii) over 500,000 shares publicly held and average daily trading volume in excess of 2,000 shares per day for a six month period preceding the date of application.

[(4)](4) Stock Price/Market Value of Shares Publicly Held—$5 per share on each of the five business days prior to the application date and $3,000,000 aggregate market value.

[(5)](5) Voting Rights—See Rule 812

[(b)](b) In the case of Preferred Stock:

[(1)](1) Net Tangible Assets and Earnings—The issuer meets the net tangible assets and earnings criteria for common stock and appears to be able to service the dividend requirements of the issue.

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

Preferred Shares Publicly Held	100,000
Aggregate Market Value/Price	$2,000,000/$10
If not so listed and traded:	
Preferred Shares Publicly Held	400,000
Public Round-lot Holders	800
Aggregate Market Value/Price	$4,000,000/$10

[(3)](3) Voting Rights-See Rule 812

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

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

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

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

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

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

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

a. Aggregate market value and principal amount outstanding of at least twenty million dollars ($20,000,000);

b. At least one hundred (100) public beneficial holders of record; and

c. The security must be rated as investment grade by at least one nationally recognized rating service.

[(d)](d) In the case of Warrants:

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

[(2)](2) Public Distribution—The issuer meets the distribution criteria for equity issues. However, if the warrant issue is sold as part of a unit offering consisting of warrants and other securities, a minimum of 500,000 warrants must be publicly held by not less than 400 public holders.

[(3)](3) The common stock or other securities underlying the warrants must be listed on the Exchange (or on the American Stock Exchange or the New York Stock Exchange).

[(e)](e) In the case of Currency, Currency Index and Stock Index Warrants:

1. *Size and Earnings of Warrant Issuer*—Tangible net worth in excess of $150,000,000 and the issuer meets the earnings criteria set forth in paragraph (a)(2) above.

2. *Term*—One to five years from date of issuance.

3. *Distribution/Market Value*—Minimum public distribution of 1,000,000 warrants together with a minimum of 400 public warrant holders and an aggregate market value of $4,000,000.

4. *Issuer Standards*—Even if an issuer meets the criteria in subsection 1 above, the Exchange shall not list stock index, currency index or currency warrants of that issuer if the value of such warrants plus the aggregate value, based upon the original issuing price, of all outstanding stock index, currency index and currency warrants of the issuer and its affiliates combined that are listed for trading on a national securities exchange or traded through the facilities of NASDAQ is greater than 25% of the warrant issuer's net worth. If, however, the issuer has a tangible net worth of at least $250,000,000, this restriction will not apply.

5. Settlement Value—With respect to stock index warrants where 25% or more of the value of the underlying index is represented by securities that are traded primarily in the United States, the warrant issuer will be expected to use the U.S. market opening prices of such United States securities in determining settlement values or the closing prices for American style warrants except within 48 hours prior to expiration.

6. Automatic Exercise—All currency and index warrants must include in their terms provisions specifying: (i) the time by which all exercise notices must be submitted, (ii) that all unexercised warrants that are in the money will be automatically exercised on their expiration date or on or promptly following the date on which such warrants are delisted by the Exchange (if such warrant issues have not been listed on another organized securities market in the United States.)

7. *Foreign Securities*—Non-U.S. component securities (stocks or ADRs) that are not subject to comprehensive surveillance agreements should not in the aggregate represent more than 20% of the weight of the index. For purposes of this requirement, the term "non-U.S. component securities" means the securities of companies organized outside the United States where at least 50% of the combined worldwide trading volume in the ADR, the security underlying the ADR, other classes of common stock related to the underlying security and ADRs overlying such other stock over the prior three months occurs outside of the United States.

8. *Changes in Number of Warrants Outstanding*—The Exchange expects that issuers of stock index warrants either will make arrangements with warrant transfer agents to advise the Exchange immediately of any change in the number of warrants outstanding due to the early exercise of such warrants or will provide this information themselves. With respect to stock index warrants for which 25% or more of the value of the underlying index is represented by securities traded primarily in the United States, such notice shall be filed with the Exchange's Market Surveillance Department no later than 4:30 p.m. E.T. on the date when the settlement value for such warrants is determined. Such notice shall be filed in such form and manner as may be prescribed by the Exchange from time to time.

9. *Cash Settlement*—The warrants will be cash-settled in U.S. dollars.

[(f)](f) In the case of Other Securities, the Exchange will consider listing any security not otherwise covered by the criteria set forth in this rule, provided the

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

1. Assets/Equity—The issuer shall have total assets in excess of $100 million and shareholders' equity of at least $10 million.

2. Earnings—The issuer shall have pre-tax income of at least $750,000 in its last fiscal year or in two of its last three fiscal years. In the case where the issuer is unable to satisfy this earnings criteria, the Exchange generally will require the issuer to have the following: (i) assets in the

excess of $200 million and shareholders' equity of at least $10 million, or (ii) assets in excess of $100 million and shareholders' equity of at least $20 million.

3. Distribution—Minimum public distribution of 1 million trading units including a minimum of 400 public holders.

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

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

[(g)](g) In the case of Contingent Value Rights:

[(1)](1) Issuer must meet the financial listing criteria for common stock;

[(2)](2) Issuer total assets in excess of $100 million;

[(3)](3) Minimum public distribution of 600,000 rights with a minimum of 400 public holders of those rights;

[(4)](4) Aggregate market value of $18 million; and

[(5)](5) The rights must have a term of at least one year; or

[(6)](7) Contingent value rights have already been approved for trading on another national securities exchange.

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

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

ELNs are limited term debt securities of an issuer where the value of the debt is based in whole or in part on the value of another issuer's common stock, non-convertible preferred stock or sponsored American Depository Receipts ("ADRs") overlying such equity securities. The Exchange will consider listing or trading ELNs that meet the following criteria:

[(1)](1) Issuer Listing Standards

[(A)](A) The issuer of the ELN must be listed on a national securities exchange or the Nasdaq National Market or be an affiliate of a company listed on a national securities exchange or Nasdaq National Market;

[(B)](B) The issuer of the ELN must have a minimum tangible net worth of $150 million; and

[(C)](C) The market value of the ELN offering when combined with the market value of all the ELN offerings previously completed by the issuer and traded

on a national securities exchange or the Nasdaq National Market may not be greater than 25% of the issuer's net worth at the time of the issuance.

[(2)](2) ELN Listing Standards

[(A)](A) The issue must have a minimum public distribution of one million ELNs;

[(B)](B) There must be a minimum of 400 holders of the ELNs, provided, however, that if the ELNs are traded in $1,000 denominations, there is no minimum number of holders;

[(C)](C) The issue must have a minimum market value of $4 million; and

[(D)](D) The ELN must have a term of two to seven years, provided that if the issuer of the underlying security is a non-U.S. company, or if the underlying security is a sponsored ADR, the issue may not have a term of more than three years.

[(3)](3) *Linked Security Standards*

[(A)](A) The underlying linked security must have either: (i) a minimum market capitalization of $3 billion and during the 12 months preceding listing is shown to have traded at least 2.5 million shares in the United States, (ii) a minimum market capitalization of $1.5 billion and during the 12 months preceding listing is shown to have traded at least 20 million shares in the United States; or (iii) a minimum market capitalization of $500 million and during the 12 months preceding listing is shown to have traded at least 80 million shares in the United States. If an issuer proposes to list an ELN on an underlying linked stock that does not meet the market capitalization and trading volume standards set forth above, the Exchange, with the concurrence of the staff of the Division of Market Regulation of the Securities and Exchange Commission, may, after evaluating the trading volume, public float, and market capitalization of the stocks, as well as other relevant factors, determine on a case-by-case basis that it is appropriate to list an ELN on that security.

[(B)](B) The underlying linked security must be issued by a company that has a continuous reporting obligation under the Securities Exchange Act of 1934 ("Act"), as amended, and the security must be listed on a national securities exchange or the Nasdaq National Market and be subject to last sale reporting pursuant to Rule 11Aa3-1 under the Act; and

[(C)](C) The underlying linked security must be issued by a U.S. company, a non-U.S. company (including a company that is traded in the United States through sponsored ADRs). For purposes of this subsection, a non-U.S. company is any company formed or incorporated outside of the United States. If the issuer of the underlying linked security is a non-U.S. company; (i) the Exchange must have in place a comprehensive surveillance sharing agreement with the primary exchange on which the non-U.S. security is traded, (in the case of an ADR, the primary exchange on which the security underlying the ADR is traded); or (ii) the combined trading volume of the non-U.S. security and other related non-U.S. securities occurring in the U.S. market represents (on a share equivalent basis for any ADRs) at least 50% of the combined worldwide trading volume in the non-U.S. security, other related non-U.S. securities, and other classes of common stock related to the non-U.S. security over the six month period preceding the date of designation; and

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

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

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

If an issuer proposes to list an ELN that relates to more than the allowable percentages set forth above, the Exchange, with the concurrence of the staff of the Division of Market Regulation of the Securities and Exchange Commission, will evaluate the maximum percentage of ELNs that may be issued on a case-by-case basis.

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

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

(i) Trust Shares

(1) *Definitions.*

(i) Trust Shares. The term "Trust Share" means a security (a) that is based on a unit investment trust ("Trust") which holds the securities which comprise an index or portfolio underlying a series of Trust Shares; (b) that is issued by the Trust in a specified aggregate minimum number in return for a "Portfolio Deposit" consisting of specified numbers of shares of stock plus a cash amount; (c) that, when aggregated in the same specified minimum number, may be redeemed from the Trust which will pay to the redeeming holder the stock and cash then comprising the "Portfolio Deposit"; and (d) that pays holders a periodic cash payment corresponding to the regular cash dividends or distributions declared with respect to the component securities of the stock index or portfolio of securities underlying the Trust Shares, less certain expenses and other charges as set forth in the Trust prospectus.

(ii) Reporting Authority. The term "Reporting Authority" in respect of a particular series of Trust Shares means the Exchange, a wholly-owned subsidiary of the Exchange, an institution (including the Trustee for Trust Shares), or a reporting service designated by the Exchange or its subsidiary or by the exchange that

lists a particular series of Trust Shares (if the Exchange is trading such series pursuant to unlisted trading privileges) as the official source for calculating and reporting information relating to such series, including, but not limited to, any current index or portfolio value; the current value of the portfolio of securities required to be deposited to the Trust in connection with issuance of Trust Shares; the amount of any dividend equivalent payment or cash distribution to holders of Trust Shares, net asset value, or other information relating to the creation, redemption or trading of Trust Shares.

(2) *Applicability.* This Rule is applicable only to Trust Shares. Except to the extent inconsistent with this Rule, or unless the context otherwise requires, the provisions of the By-Laws and all other rules and policies of the Board of Governors shall be applicable to the trading on the Exchange of such securities. Trust Shares are included within the definition of "security" or "securities" as such terms are used in the By-Laws and Rules of the Exchange.

(3) *Disclosure Requirements.* Members and member organizations shall provide to all purchasers of a series of Trust Shares a written description of the terms and characteristics of such securities, in a form approved by the Exchange, not later than the time a confirmation of the first transaction in such series is delivered to such purchaser. In addition, members and member organizations shall include such a written description with any sales material relating to a series of Trust Shares that is provided to customers or the public. Any other written materials provided by a member or member organization to customers or the public making specific reference to a series of Trust Shares as an investment vehicle must include a statement in substantially the following form: "A circular describing the terms and characteristics of (the series of Trust Shares) is available from your broker. It is recommended that you obtain and review such circular before purchasing (the series of Trust Shares). In addition, upon request you may obtain from your broker a prospectus for (the series of Trust Shares)."

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

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

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

(5) *Initial and Continued Listing and/or Trading.* A Trust upon which a series of Trust Shares are based will be 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 Trust Shares required to be outstanding at the time of commencement of trading on the Exchange.

(B) Continued Trading - Following the initial twelve month period following formation of a Trust and commencement of trading on the Exchange, the Exchange will consider the suspension of trading in or removal from listing of or termination of unlisted trading privileges for a Trust upon which a series of Trust Shares are based under any of the following circumstances:

(i) if the Trust has more than 60 days remaining until termination and there are fewer than 50 record and/or beneficial holders of Trust Shares for 30 or more consecutive trading days; or

(ii) if the value of the index or portfolio of securities on which the Trust is based is no longer calculated or available; or

(iii) if such other event shall occur or condition exists which in the opinion of the Exchange, makes further dealings on the Exchange inadvisable.

(C) Termination of Trust - Upon termination of a Trust, the Exchange requires that Trust Shares issued in connection with such Trust be removed from Exchange listing or have their unlisted trading privileges terminated. A Trust may terminate in accordance with the provisions of the Trust prospectus, which may provide for termination if the value of securities in the Trust falls below a specified amount.

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

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

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

(9) *Limitation of Exchange Liability.* Neither the Exchange, the Reporting Authority nor any agent of the Exchange shall have any liability for damages, claims, losses or expenses caused by any errors, omissions, or delays in calculating or disseminating any current index or portfolio value; the current value of the portfolio of securities required to be deposited to the Trust; the amount of any dividend equivalent payment or cash distribution to holders of Trust Shares; net asset value; or other information relating to the creation, redemption or trading of Trust Shares, resulting from any negligent act or omission by the Exchange, or the Reporting Authority, or any agent of the Exchange, or any act, condition or cause beyond the reasonable control of the Exchange or its agent, or the Reporting Authority, including, but not limited to, an act of God; fire; flood; extraordinary weather conditions; war; insurrection; riot; strike; accident; action of government; communications or power failure; equipment or software

malfunction; or any error, omission or delay in the reports of transactions in one or more underlying securities. The Exchange makes no warranty, express or implied, as to results to be obtained by any person or entity from the use of Trust Shares or any underlying index or data included therein and the Exchange makes no express or implied warranties, and disclaims all warranties of merchantability or fitness for a particular purpose with respect to Trust Shares or any underlying index or data included therein. This limitation of liability shall be in addition to any other limitation contained in the Exchange's [Articles]Certificate of Incorporation or By-Laws or elsewhere in the Rules.

(10) *Listing Fees and Other Rules.* The Exchange may, in its discretion, waive listing fees for any issuer of any particular series of Trust Shares listed on the Exchange pursuant to Rule 803(i). The provisions of Rules 847, 849, 850 and 851 do not apply to unit investment trusts issuing Trust Shares listed on the Exchange pursuant to Rule 803(i), or to the trustees or the sponsors thereof. In addition, consideration of the suspension of trading in or removal from listing of any Trust Shares pursuant to Rule 810 will be made pursuant to the criteria set forth in section 5(B) of this Rule 803(i) rather than the specific criteria set forth in subsections (1) through (5) of Rule 810(a).

(11) The Exchange may approve a series of Trust Shares for trading, whether by listing or pursuant to unlisted trading privileges, pursuant to Rule 19b-4(e) under the Securities Exchange Act of 1934 provided each of the following criteria is satisfied:

(a) *Eligibility Criteria for Index Components.* Upon the initial listing of a series of Trust Shares on the Exchange, the component stocks of an index or portfolio underlying such series of Trust Shares shall meet the following criteria as of the date of the initial deposit of cash and securities into the trust:

(i) Component stocks that in the aggregate account for at least 90% of the weight of the index or portfolio shall 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 Trust Shares will be calculated based upon 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 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 Trust 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 shares of the series or upon the index valve.

(d) *Initial Shares Outstanding.* A minimum of 100,000 shares of a series of Trust Shares is required to be outstanding at start-up of trading on the Exchange.

(e) *Trading Increment.* The minimum trading increment for a series of Trust Shares shall be $0.01.

(f) *Listing Fees.* The original listing fee is $7,500 for each series of Trust Shares. The annual maintenance listing fee will be $1,250 for each series of Trust Shares.

(g) *Surveillance Procedures.* The Exchange will implement written surveillance procedures for Trust Shares.

(h) *Applicability of Other Rules.* All other provisions of Rule 803(i) will apply to all series of Trust Shares.

(j) Trust Issued Receipts.

(1) *Applicability.* Rule 803(j) is applicable only to Trust Issued Receipts. Except to the extent inconsistent with Rule 803(j) or unless the context otherwise requires, the provisions of the By-laws and all other rules and policies of the Board of Governors shall be applicable to the trading on the Exchange of such securities. Trust Issued Receipts are included within the definition of "security" or "securities" as such terms are used in the By-laws and Rules of the Exchange.

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

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

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

(3) *Prospectus.* Members and member organizations shall provide to all purchasers of newly issued Trust Issued Receipts a prospectus for the series of Trust Issued Receipts.

(4) Reserved.

(5) *Designation.* The Exchange may list and trade Trust Issued Receipts based on one or more securities. The Trust Issued Receipts based on particular securities shall be designated as a separate series and shall be identified by a unique symbol. The securities that are included in a series of Trust Issued Receipts shall be selected by the Exchange or its agent, a wholly-owned subsidiary of the Exchange, or by such other person as shall have a proprietary interest in such Trust Issued Receipts.

(6) *Initial and Continued Listing.* Trust Issued Receipts will be listed and traded on the Exchange subject to application of the following criteria:

(A) Initial Listing. For each Trust, the Exchange will establish a minimum number of Trust Issued Receipts required to be outstanding at the time of commencement of trading on the Exchange.

(B) Continued Listing. Following the initial twelve month period after formation of a Trust and commencement of trading on the Exchange, the Exchange will consider the suspension of trading in or removal from listing of a Trust upon which a series of Trust Issued Receipts is based under any of the following circumstances:

(i) if the Trust has more than 60 days remaining until termination and there are fewer than 50 record and/or beneficial holders of Trust Issued Receipts for 30 or more consecutive trading days;

(ii) if the Trust has fewer than 50,000 receipts issued and outstanding;

(iii) if the market value of all receipts issued and outstanding is less than $1,000,000; or

(iv) if such other event shall occur or condition exists which in the opinion of the Exchange, makes further dealings on the Exchange inadvisable.

(C) Upon termination of a Trust, the Exchange requires that Trust Issued Receipts issued in connection with such Trust be removed from Exchange listing. A Trust may terminate in accordance with the provisions of the Trust prospectus, which may provide for termination if the value of securities in the Trust falls below a specified amount.

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

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

(9) *Voting.* Voting rights shall be as set forth in the Trust prospectus.

(10) *Limitation of Liability.* Neither the Exchange, the Reporting Authority nor any agent of the Exchange shall have any liability for damages, claims, losses or expenses caused by any errors, omissions, or delays in calculating or disseminating any current basket or portfolio value, the current value of the portfolio of securities required to be deposited to the Trust; the amount of any dividend equivalent payment or cash distribution to holders of Trust Issued Receipts; net asset value; or other information relating to the creation, redemption or trading of Trust Issued Receipts, resulting from any negligent act or omission by the Exchange, or the Reporting Authority, or any agent of the Exchange, or any act, condition or cause beyond the reasonable control of the Exchange or its agent, or the Reporting Authority, including, but not limited to, an act of God; fire; flood; extraordinary weather conditions; war; insurrection; riot; strike; accident; action of government; communications or power failure; equipment or software malfunction; or any error, omission or delay in the reports of transactions in one or more underlying securities. The Exchange makes no warranty, express or implied, as to results to be obtained by any person or entity from the use of Trust Issued Receipts or any underlying basket or portfolio of securities or data included therein and the Exchange makes no express or implied warranties, and disclaims all warranties of merchantability or fitness for a particular purpose with respect to Trust Issued Receipts or any underlying basket or portfolio of securities or data included therein. This limitation of liability shall be in addition to any other limitation contained in the Exchange's [Articles]Certificate of Incorporation or By-laws or elsewhere in the [Rules]rules.

(11) *Listing Fees and Other Rules.* The Exchange may, in its discretion, waive listing fees for any issuer of Trust Issued Receipts listed on the Exchange pursuant to Rule 803(j). The provisions of Rules 847, 849, 850 and 851 do not apply to trusts issuing Trust Issued Receipts listed on the

Exchange pursuant to Rule 803(j), or to the trustees or the sponsors thereof. In addition, consideration of the suspension of trading in or removal from listing of any Trust Issued Receipts pursuant to Rule 810 will be made pursuant to the criteria set forth in section 6(B) of this Rule 803(j) rather than the specific criteria set forth in subsections (1) through (5) of Rule 810(a).

• • • ***Commentary:***

.01 The Exchange may approve a series of Trust Issued Receipts for listing and trading on the Exchange pursuant to Rule 19b-4(e) under the Securities Exchange Act of 1934 ("Exchange Act"), provided each of the component securities satisfies the following criteria:

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

(i) each component security must be registered under Section 12 of the Exchange Act;

(ii) each component security must have a minimum public float of at least $150 million;

(iii) each component security must be listed on a national securities exchange or traded through the facilities of Nasdaq and be a reported national market system security;

(iv) each component security must have an average daily trading volume of at least 100,000 shares during the preceding sixty-day trading period;

(v) each component security must have an average daily dollar value of shares traded during the preceding sixty-day trading period of at lease $1 million; and

(vi) the most heavily weighted component security may not initially represent more than 20% of the overall value of the Trust Issued Receipt.

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

(i) the component security must be listed on a national securities exchange or traded through facilities of Nasdaq and be a reported national market system security;

(ii) the component security must be registered under section 12 of the Exchange Act; and;

(iii) the component security must have a Standard & Poor's Sector Classification that is the same as the Standard and Poor's Sector Classification represented by component securities included in the Trust Issued Receipt at the time of the distribution or exchange.

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

Income instruments which are linked, in whole or in part, to the market performance of more than one common stock or non-convertible preferred stock will be considered for listing provided:

(1) Both the issue and the issuer of such security meet the criteria established in Rule 803(f) and the issue has a minimum term of one year.

(2) The issuer of such security will be expected to have a minimum tangible net worth in excess of $250,000,000, and to otherwise substantially exceed the earnings requirement set forth in Rule 803(a). In the alternative, the issuer will be expected: (i) to have a minimum tangible net worth of $150,000,000 and to otherwise substantially exceed the earnings requirements set forth in Rule 803(a), and (ii) not to have issued such securities where the original issue price of all the issuer's other equity and basket linked note offerings (combined with equity and basket linked note offerings of the issuer's affiliates) listed on a national securities exchange or traded through the facilities of Nasdaq exceeds 25% of the issuer's net worth.

(3) Each underlying linked stock either: (i) has a minimum market capitalization of $3 billion and during the 12 months preceding listing is shown to have traded at least 2.5 million shares, (ii) has a minimum market capitalization of $1.5 billion and during the 12 months preceding listing is shown to have traded at least 10 million shares; or (iii) has a minimum market capitalization of $500 million and during the 12 months preceding listing is shown to have traded at least 15 million shares.

(4) Each issuer of an underlying stock to which the instrument is to be linked shall be a 1934 Act reporting company which is listed on a national securities exchange or is traded through the facilities of a national securities system and is subject to last sale reporting. In addition, if any underlying security to which the instrument is to be linked is the stock of a non-U.S. company which is traded in the U.S. market as sponsored American Depository Shares ("ADS"), ordinary shares or otherwise, then for each such security the Exchange shall either: (i) have in place a comprehensive surveillance sharing agreement with the primary exchange on which each non-U.S. security is traded, (in the case of an ADS, the primary exchange on which the security underlying the ADS is traded); or (ii) the combined trading volume of each non-U.S. security and other related non-U.S. securities occurring in the U.S. market or in markets with which the Exchange has in place a comprehensive surveillance sharing agreement represents (on a share equivalent basis for any ADS) at least 50% of the combined worldwide trading volume in each non-U.S. security, other related non-U.S. securities, and other classes of common stock related to each non-U.S. security over the six month period preceding the date of listing; or (iii)(a) the combined trading volume of each non-U.S. security and other related non-U.S. securities occurring in the U.S. market represents (on a share equivalent basis) at least 20% of the combined world-wide trading volume in each non-U.S. security and in other related non-U.S. securities over the six month period preceding the date of selection of the non-U.S. security for a BLN listing, (b) the average daily trading volume for each non-U.S. security in the U.S. markets over the six months preceding the selection of each non-U.S.

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

(5) Each underlying linked stock to which the instrument relates may not exceed 5% of the total outstanding common shares of such entity, provided however, if any underlying linked stock is a non-U.S. security represented by ADSs, common shares, or otherwise, then for each such linked security the instrument may not exceed: (i) 2% of the total shares outstanding worldwide provided at least 20% of the worldwide trading volume in each non-U.S. security and related non-U.S. security during the six month period preceding the date of listing occurs in the U.S. market; (ii) 3% of the total worldwide shares outstanding provided at least 50% of the worldwide trading volume in each non-U.S. security and related non-U.S. security during the six month period preceding the date of listing occurs in the U.S. market; and (iii) 5% of the total shares outstanding worldwide provided at least 70% of the worldwide trading volume in each non-U.S. security and related non-U.S. security during the six month period preceding the date of listing occurs in the U.S. market. If any non-U.S. security and related securities has less than 20% of the worldwide trading volume occurring in the U.S. market during the six month period preceding the date of listing, then the instrument may not be linked to that non-U.S. security. If an issuer proposes to list a BLN that relates to more than the allowable percentages set forth above, the Exchange, with the concurrence of the staff of the Division of Market Regulation of the Securities and Exchange Commission, will evaluate the maximum percentage of BLNs that may be issued on a case-by-case basis.

(6) BLNs will be treated as equity instruments.

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

(l) Index Fund Shares.

(1) *Applicability.* This Rule 803(l) is applicable only to Index Fund Shares. Except to the extent inconsistent with this Rule 803(l), or unless the context otherwise requires, the provisions of the [Constitution 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 Rules of the Exchange.

(2) *Definitions.* The following terms shall have the meanings specified herein:

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

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

(B) The term "Reporting Authority" with respect to a particular series of Index Fund Shares means the Exchange, or an institution or reporting service designated by the Exchange, as the official source for calculating and reporting information relating to such series, including, but not limited to, any current index or portfolio value; the current value of the portfolio of any securities required to be deposited in connection with issuance of Index Fund Shares; the amount of any dividend equivalent payment or cash distribution to holders of Index Fund Shares, net asset value, or other information relating to the issuance, redemption or trading of Index Fund Shares. Nothing in this section shall imply that an institution or reporting service that is the source for calculating and reporting information relating to Index Fund Shares must be designated by the Exchange, the term "Reporting Authority" shall not refer to an institution or reporting service not so designated.

(3) *Disclosure.* The Exchange requires that members and member organizations provide to all purchasers of newly issued Index Fund Shares a prospectus for the series of Index Fund Shares.

(4) *Designation.* The trading of Index Fund Shares based on one or more securities, whether by listing or pursuant to unlisted trading privileges, shall be considered on a case-by-case basis. Each issue of Index Fund Shares based on each particular stock index or portfolio shall be designated as a separate series and shall be identified by a unique symbol. The securities that are included in a series of Index Fund Shares shall be selected by the Exchange or its agent, a wholly-owned subsidiary of the Exchange, or by such other person, as shall have authorized use of such index. Such index may be revised from time to time as may deemed necessary or appropriate to maintain the quality and character of the index.

(5) *Initial and Continued Listing and/or Trading.* Each series of Index Fund Shares will be 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 exists which in the opinion of the Exchange, makes further dealings on the Exchange inadvisable.

Upon termination of an open-end management investment company, the Exchange requires that Index Fund Shares issued in connection with such entity be removed from Exchange listing.

(C) Voting. Voting rights shall be as set forth in the applicable open-end management investment company prospectus.

(6) *Listing Pursuant to SEC Rule 19b-4(e).* The Exchange may approve a series of Index Fund Shares for listing pursuant to Rule 19b-4(e) under the Securities Exchange Act of 1934 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) Minimum Variation. The minimum variation may vary among different series of Index Fund Shares, but will be set at $.01 (for Index Fund Shares trading in decimals).

(F) Hours of Trading. Trading will occur between 9:30 a.m. and either 4:00 p.m. or 4:15 p.m. for each series of Index Fund Shares, as specified by the Exchange.

(G) Surveillance Procedures. The Exchange will utilize existing surveillance procedures for Index Fund Shares.

(H) Applicability of Other Rules. The provisions of Rule 803(l)(1)-(5) will apply to all series of Index Fund Shares.

(7) *Product Description.* The following paragraphs only apply to series of Index Fund Shares that are the subject of an order by the Securities and Exchange Commission exempting such series from certain prospectus delivery requirements under Section 24(d) of the Investment Company Act of 1940. The Exchange will inform members and member organizations regarding application of these provisions to a particular series of Index Fund Shares by means of an Information Circular prior to commencement of trading in such series. The Exchange requires that members and member organizations provide to all purchasers of a series of Index Fund Shares a written description of the terms and characteristics of such securities, in a form prepared by the open-end management investment company issuing such securities, not later than the time a confirmation of the first transaction in such series is delivered to such purchaser. In addition, members and member organizations shall include such a written description with any sales material relating to a series Index Fund Shares that is provided to customers or the public. Any other written materials provided by a member or member organization to customers or the public making specific reference to a series of Index Fund Shares as an investment vehicle must include a statement in substantially the following form: "A circular describing the terms and characteristics of [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]. In addition, upon request you may obtain from your broker a prospectus for [the series of Index Fund Shares]." A member or member organization carrying an omnibus account for a non-member broker-dealer is required to inform such non-member that execution of an order to purchase a series of Index Fund Shares for such omnibus account will be deemed to constitute agreement by the non-member to make such written description available to its customers on the same terms as are directly applicable to members and member organizations under this rule. Upon request of a customer, the member or member organization shall also provide a prospectus for the particular series of Index Fund Shares.

(8) *Limitation of Exchange Liability.* Neither the Exchange, the Reporting Authority, nor any agent of the Exchange shall have any liability for damages, claims, losses or expenses caused by any errors, omissions, or delays in calculating or disseminating any current index or portfolio value, the current value of the portfolio of securities required to be

deposited to the open-end management investment company in connection with issuance of Index Fund Shares; the amount of any dividend equivalent payment or cash distribution to holders of Index Fund Shares; net asset value; or other information relating to the purchase, redemption or trading of Index Fund Shares, resulting from any negligent act or omission by the Exchange, the Reporting Authority or any agent of the Exchange, or any act, condition or cause beyond the reasonable control of the Exchange, its agent, or the Reporting Authority, including, but not limited to, an act of God; fire; flood; extraordinary weather conditions; war; insurrection; riot; strike; accident; action of government; communications or power failure; equipment or software malfunction; or any error, omission or delay in the reports of transactions in one or more underlying securities.

(m) Index-Linked Exchangeable Notes

Index-Linked exchangeable notes which are exchangeable debt securities that are exchangeable at the option of the holder (subject to the requirement that the holder in most circumstances exchange a specified minimum amount of notes), on call by the issuer or at maturity for a cash amount (the "Cash Value Amount") based on the reported market prices of the Underlying Stocks of an Underlying Index will be considered for listing and trading on the Exchange pursuant to Rule 19b-4(e) under the Securities Exchange Act of 1934, provided:

(1) Both the issue and the issuer of such security meet the criteria set forth in Rule 803(f) 1-4, except that the minimum public distribution shall be 150,000 notes with a minimum of 400 public note-holders, except, if traded in thousand dollar denominations, then no minimum number of holders.

(2) The issue has a minimum term of one year.

(3) The issuer will be expected to have a minimum tangible net worth in excess of $250,000,000, and to otherwise substantially exceed the earning requirements set forth in Rule 803(f). In the alternative, the issuer will be expected:

(i) to have a minimum tangible net worth of $150,000,000 and to otherwise substantially exceed the earnings requirements set forth in Rule 803(f); and

(ii) not to have issued index-linked exchangeable notes where the original issue price of all the issuer's other index-linked exchangeable note offerings (combined with other index-linked exchangeable note offerings of the issuer's affiliates) listed on a national securities exchange or traded through the facilities of Nasdaq exceeds 25% of the issuer's net worth.

(4) The Index to which an exchangeable-note is linked shall either be (i) indices that have been created by a third party and been reviewed and have been approved for the trading of options or other derivative securities (each, a "Third-Party Index") either by the Securities and Exchange Commission under Section 19(b) (2) of the Securities Exchange Act of 1934, as amended (the "Exchange Act") and rules thereunder, by the Exchange under rules adopted pursuant to Rule 19b-4(e), or meet the procedures and criteria set forth in Rule 1009A(b)-(c), in addition, the Third-Party Index's underlying

securities shall meet Rule 803 (h) (3) (B) and the Third-Party Index shall comply with Rule 1009A(b) (12); or (ii) indices which the issuer has created and for which an Exchange will have obtained approval from either the Securities and Exchange Commission pursuant to Section 19(b) (2) and rules thereunder, or from the Exchange under rules adopted pursuant to Rule 19(b)-4(e) or meet the procedures and criteria set forth in Rule 1009A(b)-(c) (each, and "Issuer Index"). The Issuer Indices and their underlying securities must meet one of the following:

(i) the procedures and criteria set forth in Rule 1009A(b)-(c); or

(ii) the criteria set forth in Rule 803(h)(3)(A) (i)-(iii), (h)(3) (B)-(D), (h)(4) and Rule 1009A(b)(12) and the index concentration limits set forth in Rule 1009A(b)(6) and in Rule 1009A(c)(1) insofar as it relates to Rule 1009A(b)(6).

(5) Index-Linking Exchangeable Notes will be treated as equity instruments.

(6) Beginning twelve months after the initial issuance of a series of index-linked exchangeable notes, the Exchange will consider the suspension of trading in or removal from listing of that series of index-linked exchangeable notes under any of the following circumstances:

(i) if the series has fewer that 50,000 notes issued and outstanding:

(ii) if the market value of all index-linked exchangeable notes of that series issued and outstanding is less than $1,000,000; or

(iii) if such other event shall occur or such other condition exists which in the opinion of the Exchange makes further dealings on the Exchange inadvisable.

• • • ***Commentary:***

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

Rules 804-820 **No change.**

Cash in Lieu of Fractional Shares

[Rule 821.]Rule 821. Most companies prefer to pay cash in settlement of fraction share interests since this procedure is the least expensive and easiest method. The work and problems of member [firms]organizations are simplified when fractional share interests are paid in cash, since the use of order forms involves special handling. If cash is paid, the procedure is greatly simplified. For the foregoing reasons, the Exchange urges listed companies to follow the procedure of paying cash in lieu of fractional share interests.

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

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

Rules 822 –866 **No change.**

Committee on Admissions

Powers and Duties

[Rule 900.]Rule 900. The Admissions Committee shall administer Rules 901 to [949,]949 and 971 and 972, inclusive.

Denial of and Conditions to [Membership]Permits, Qualification and Registration

[Rule 901.]Rule 901. (a) [(a)]The Exchange may deny [membership to]a permit to, or condition the permit of, any [registered broker or dealer or]person [associated with a registered broker]or [dealer]may bar and deny from becoming associated, or condition any association of, any person with a registered broker or dealer, or may deny or condition the qualification or registration of any member organization, if any such person[who], registered broker or dealer or member organization is subject to a statutory disqualification, as that term is defined in the Securities Exchange Act of 1934, as amended.

[(b)](b) The Exchange may deny [membership]a permit to, or condition the [membership]permit of, any person or may bar and deny from becoming associated, or condition any association of, any person with a registered broker or dealer, or may deny or condition the qualification or registration of any member organization, if the broker or dealer or member organization (as applicable): (1) is unable satisfactorily to demonstrate its present capacity to adhere to applicable provisions of (i) Sections 15 and 17 of the Securities Exchange Act of 1934, as amended, and all rules and regulations promulgated thereunder or (ii) Exchange rules relating to the maintenance of books and records; or (2) has previously been found to have violated and there is a reasonable likelihood the broker or dealer or member organization will again engage in acts or practices violative of ([i]A) Sections 15 and 17 of the Securities Exchange Act of 1934, as amended, and all rules and regulations promulgated thereunder, or ([ii]B) rules relating to

the maintenance of books and records of the Exchange or other self-regulatory organizations of which the broker or dealer or member organization is or was a member.

[(c)](c) The Exchange may deny [membership]a permit to, or condition the [membership]permit of[a registered broker], any person or[dealer, and] may bar [a]and [person]deny from becoming [a member or]associated[with a member], or condition [the membership of a person or]any association of, [a]any person with a [member organization]registered broker or dealer, or may deny or condition the qualification, if such broker or dealer[or], person or member organization: (1) does not successfully complete such written proficiency examinations as required by the Exchange to enable it to examine and verify the applicant's qualifications to function in one or more of the capacities applied for; (2) does not meet such other standards of training, experience, and competence as may be established by the Exchange; (3) cannot demonstrate a capacity to adhere to all applicable policies, rules and regulations of the Exchange or any other self-regulatory organization, the Securities and Exchange Commission, the Board of Governors of the Federal Reserve System, the Commodity Futures Trading Commission contract market designated pursuant to Section 5 of the Commodity Exchange Act or futures association registered under Section 17 of such Act; (4) has been the subject of findings of fact rendered by any of the above mentioned entities such that the broker or dealer[or], person or member organization has engaged in acts or practices inconsistent with just and equitable principles of trade, and there is a reasonable likelihood the person will do so again; or (5) (i) is subject to any unsatisfied liens, judgments or unsubordinated creditor claims of a material nature, which remain outstanding (ii) has been or is the successor to an entity which has been subject to any bankruptcy proceeding, receivership or arrangement for the benefit of creditors within the past three years (iii) has been and/or remains associated as a general partner, principal, officer, director, stockholder, or PHLX registered trader for a member organization which has been subject to any unsatisfied liens, judgments or unsubordinated creditor claims of a material nature (iv) has engaged in a pattern of failure to pay just debts (v) would bring the Exchange into disrepute or (vi) for such other cause as the Committee on Admissions reasonably may decide.

[(d)](d) The Committee may, in exceptional cases and where good cause is shown, waive such proficiency examinations as are required by the Exchange upon written request of the applicant, and accept other standards as evidence of an applicant's qualifications. Advanced age, physical infirmity or experience in fields ancillary to the securities business will not individually of themselves constitute sufficient grounds to waive a proficiency examination.

PARTNERSHIPS

Admission to Partnership—Partnership Arrangements

[Rule 902.]Rule 902. A member who intends to form a member [firm]organization that is a partnership or to admit any person to partnership in such [firm]organization or to alter the terms of an existing member [firm]organization partnership arrangement shall notify the Committee in writing prior to taking such action, and shall submit such papers and information in connection therewith as said Committee may require. A member who intends to form a member [firm or]organization with characteristics essentially similar to a [firm]partnership, including, but not limited to, limited liability partnerships, limited liability companies or business trusts, shall submit for review the organization's "Certificate of Organization" and "Operating Agreement" and/or any other similar information to the Committee. Such formation, admission or change shall not become effective unless approved by the Committee.

Fixed Interest of Partner

[Rule 903.]Rule 903. Every partner in a member [firm]organization that is a partnership must have a fixed or determinable interest in its entire business.

Use of a [Firm]Partnership Name

[Rule 904.]Rule 904. No member shall conduct business under a partnership firm name unless he has at least one general partner, provided, however, that if by death or otherwise a member becomes the sole

general partner in a member [firm]organization that is a partnership he may continue business under the [firm]partnership name for such period as may be allowed by the Committee.

Special or Limited Partners

[Rule 905.]Rule 905. A member, who is a special or limited partner in a [firm]partnership, does not thereby confer any of the privileges of the Exchange on such [firm]partnership.

Notice of Change in Partnership

[Rule 906.]Rule 906. A member who is a partner in a member [firm]organization that is a partnership shall give or cause to be given to the Committee prompt written notice of the death or retirement of any partner therefrom or of the dissolution thereof.

Partners and Officers

Rule 907. (a) Except as otherwise permitted by the Admissions Committee, any member organization that is not a corporation shall have at all times at least one (1) constituent partner (or person in a similar position) who is a member of the Exchange.

(b) Except as otherwise permitted by the Admissions Committee, any member organization that is a corporation shall have at all times at least one (1) officer who is a member.

RIGHTS OF PERMIT HOLDERS

Rights and Privileges of Series A-1 Permits

Rule 908. (a) Without limiting the authority of the Exchange pursuant to Section 12-1 of the By-Laws to authorize the issuance of additional classes or series of permits pursuant to these rules, the Exchange is authorized to issue a series of permits, denoted as "Series A-1", and to confer on the holder thereof such rights and privileges, and impose on the holder thereof such obligations, as are provided in this Rule 908.

(b) A Series A-1 permit shall only be issued to an individual or to a corporation meeting the requirements of Section 12-4 of the By-Laws, who meets the eligibility and application requirements set forth in Article XII of the By-Laws and in these rules, including, without limitation, Rule 972, and no individual shall hold more than a single Series A-1 permit. Series A-1 permits issued in accordance with this Rule 908 shall be in such limited or unlimited number and may be issued from time to time by the Exchange, in each case as determined by the Board of Governors in its sole discretion.

(c) Any Series A-1 permit holder who is associated with a duly qualified and registered member organization (unless such holder's permit has been terminated or the rights and privileges thereof have been suspended or restricted) shall, subject to the By-Laws (including, without limitation, Section 12-6 thereof) and these rules, be:

(i) entitled to all the rights, privileges and obligations of a member of the Exchange and may enter into foreign currency options transactions on the Exchange, subject to (A) the general criteria set forth in these rules or the By-Laws with respect to testing, capital, allocation and other matters, as well as such requirements as are applicable to specific Exchange activities, and further subject to the payment of any generally applicable fees, dues and other charges, as well as those relating to the conduct of such specific activities on the floor of the Exchange, and (B) any product-specific criteria set forth in these rules or the By-Laws, and further subject to any applicable fees, dues and charges relating to trading any product of the Exchange;

(ii) required to designate a single existing or applying member organization as such permit holder's "primarily affiliated" member organization for the purpose of exercising (through such

member organization's designated Member Organization Representative) such permit holder's right to vote, as set forth in Section 3-12 of the By-Laws, provided that, if such holder designates any applying member organization, such holder will then also qualify such applying member organization for the purposes of Rule 921(a);

(iii) required to maintain a primary affiliation, as described in the foregoing clause (ii), with an eligible member organization at all times that such holder holds a permit; and

(iv) entitled to attend, as set forth in Article III of the By-Laws, meetings of members and member organizations (provided that such holder shall not be entitled to vote at any such meeting except as set forth in Article III of the By-Laws).

(d) A Series A-1 permit shall not be effective unless it has been issued by the Exchange in accordance with the By-Laws and these rules.

(e) The Series A-1 permit holder may terminate such permit at any time upon written notice to the Exchange, subject to the posting and notice requirements set forth in Section 12-5 of the By-Laws. The terminating Series A-1 permit holder and each member organization with which such holder is associated shall remain responsible for all obligations of the terminating member, including, without limitation, all applicable dues, fees, charges, fines and other obligations arising from the holding or use of such Series A-1 permit prior to the termination thereof.

(f) The Exchange may terminate any Series A-1 permit in accordance with Articles XIV, XVII and XVIII of the By-Laws and the rules enacted thereunder, and may also terminate the entire series of Series A-1 permits on no less than 60 days' notice to the permit holders; provided, however, that if within six months after any such termination of the entire series of Series A-1 permits the Exchange issues any other class or series of permit with respect to any securities product previously covered by the Series A-1 permit, any permit holder of such terminated series of Series A-1 permit, who meets the applicable eligibility requirements with respect to such new class or series of permit, shall be entitled to receive on terms no less favorable than those applicable to other persons such new class or series of permit so long as such permit holder will trade with such new class or series of permit such product in the same capacity as he had done with a Series A-1 permit prior to such termination, but only if he had continuously traded such product in such capacity for at least one year prior to such termination; provided, further, that such holder of the terminated Series A-1 permit shall make application for such new permit within 30 days of the later to occur of (i) the termination of the series of Series A-1 permit or (ii) the initial issuance of the new class or series of permit.

(g) Notwithstanding termination of a permit for any reason, the permit holder and each member organization with which such permit holder had been associated while such permit was held shall remain subject to the continuing regulatory jurisdiction of the Exchange in respect of all matters related to the holding or use of such permit and all activities involving the Exchange and trading on the Exchange or any other use of Exchange facilities, and in respect of fees, dues and other charges, prior to the termination thereof.

(h) A permit may not be transferred by lease, sale, gift, involuntary transfer, or any other means or as collateral to secure any obligation, except that a permit may be transferred within the permit holder's member organization, to an "inactive nominee" who is registered as such with the Exchange, subject to the provisions of the By-Laws and rules relating to an "inactive nominee".

Rule 909. Security for Exchange Fees and Other Claims

(a) Each member organization, and all applicants for registration as such shall, except as provided below, be required to provide (and maintain) security to the Exchange for the payment of any claims owed to the Exchange, to Stock Clearing Corporation of Philadelphia, and to Exchange members and/or other member organizations. If the member organization maintains excess net capital of at least the amount established by the Exchange and published by the Exchange from time to time (the "Excess Net Capital Test"), then no guaranty or deposit shall be required; provided that, if at the end of any calendar month a member organization has less than

such amount of excess net capital, then it shall within 30 calendar days of the end of such month deliver to the Exchange security as provided in Rule 909(a)(i) or (ii); provided, further, that any member organization relying upon the Excess Net Capital Test shall deliver to the Membership Services Department of the Exchange each quarter a FOCUS report, and shall promptly advise the Membership Services Department if such member organization's excess net capital at any time falls below such minimum established by the Exchange. If the member organization does not satisfy the Excess Net Capital Test, then the member organization shall provide security to the Exchange in one of the following forms:

(i) an acceptable guaranty by a clearing member organization acceptable to the Exchange guaranteeing the payment by such member organization of any claims; or

(ii) a deposit with the Exchange in an amount not to exceed $50,000, as established by the Exchange with prior notice, to be held, together with all other such deposits made pursuant to this rule, in a segregated account, the proceeds of which may be applied by the Exchange in the same manner as proceeds from transfers of participations under Section 15-3 of the By-Laws (as if references in such Section 15-3 to "foreign currency options participant" were to "member organization"). Such deposit may be invested by the Exchange in United States government obligations or any other investments which provide safety and liquidity of the principal invested, interest or income on which deposit shall be paid periodically by the Exchange to such member organization.

(b) The security required to be provided pursuant to this rule shall not be calculated based upon the number of permits issued to persons affiliated with the member organization, but shall be the same amount regardless of the number of such permits issued to its affiliated persons. At such time as no permit holders remain associated with the member organization and the member organization's registration is terminated: (i) in the case of a deposit referred to in Rule 909(a)(ii), the proceeds of any remaining security may be applied by the Exchange to the payment of any claims owed to the Exchange, to Stock Clearing Corporation of Philadelphia, and to other member organizations, and the then remaining balance of such security (if any) shall be returned to the member organization; and (ii) in the case of a guaranty referred to in Rule 909(a)(i), such guaranty shall be returned to the member organization.

MEMBER **[CORPORATIONS]**ORGANIZATIONS

[Registration]

Qualification; Designation of Member Organization Representative

[Rule 921.]Rule 921. (a) Each member organization, as a condition of initial and continued registration as a member organization, must be a broker or dealer duly registered with the Securities and Exchange Commission qualified by a permit holder who is associated with such organization. A member of the Exchange who proposes to [register a corporation]qualify an entity as a member [corporation]organization shall present to the Committee an application therefor, in writing, signed by the member and the [corporation]entity. Each member may qualify only a single member organization.

(b) Each member organization must, as a condition of initial and continued registration as a member organization, designate and maintain one qualified Member Organization Representative, who will be the sole person entitled to exercise such member organization's voting and designation rights set forth in Article III of the by-laws. Each member organization shall designate its Member Organization Representative in writing in such form or manner as shall be prescribed from time to time by the Exchange. Each Member Organization Representative shall evidence his acceptance of such designation in writing in such form or manner as shall be prescribed from time to time by the Exchange.

(c) In the event that the Member Organization Representative of a member organization or the permit holder who qualified a member organization dies, ceases to be associated with the member organization or otherwise is unable to serve as such, such member organization shall immediately notify the Exchange thereof in

writing and replace such Member Organization Representative or permit holder through which such member organization is qualified promptly, but in no event more than 60 days, after such death, cessation or inability, during which period any other officer or agent of the member organization may temporarily act as the Member Organization Representative or qualifying permit holder for such organization. If the member organization fails for any reason to so notify the Exchange or replace such Member Organization Representative or qualifying permit holder within such period, until such replacement is effected, such member organization may not exercise any voting rights with respect to any permits held by persons who are associated with such member organization.

[Articles]Certificate of Incorporation

[Rule 922.]Rule 922. The [articles]Certificate of [incorporation]Incorporation and [By]by-[Laws]laws of a proposed member organization that is a corporation and all amendments thereto shall be filed with the Committee and shall be subject to its approval. There shall also be filed with the Committee evidence satisfactory to it that the officers of the corporation are duly authorized to act for it in entering into contracts which are subject to [the Constitution and Rules]these rules of the Exchange.

Amendments to the [articles]Certificate of [incorporation]Incorporation and [By]by-[Laws]laws of a member organization that is a corporation, proposed subsequent to its registration, shall be subject to review by the Committee, which shall have power to approve or disapprove the same.

Member Officers

[Rule 923.]Rule 923. A member of the Exchange shall be an officer of the member organization that is a corporation. He shall own and continue to own such an interest in the voting stock of said corporation as shall be acceptable to the Committee; provided that the Committee may waive such requirement of voting stock ownership, if the voting stock ownership is otherwise satisfactory to the Committee.

Obligations of Members and Member Organizations to the Exchange

Rule 924. Member Obligations. (a) Each member and participant shall be liable for such fees, fines, dues, penalties and other amounts imposed by the Exchange in connection with his permit, foreign currency options participation or any activities conducted in connection therewith by such member or participant, whether or not any such obligation was incurred on behalf or for his account, or on behalf or for the account of his member or participant organization.

Member Organization Obligations. (b) Each member and participant organization shall be liable for all fees, fines, dues, penalties or other amounts imposed by the Exchange upon such member or participant organization, and upon-**,** any member or participant associated with such member or participant organization in connection with a permit, or a foreign currency options participation**,** or any activities conducted in connection therewith by such member or participant on behalf or for the account of such member or participant organization. Member and participant organizations may allocate responsibilities as among themselves regarding members and participants associated with more than one member or participant organization, provided that such allocation and any amendment thereto is in writing and duly executed by authorized officers or partners of such member or participant organization and submitted to the Exchange in a form prescribed by the Exchange at least 30 days prior to the effectiveness thereof or such shorter period as the Chairman of the Board of Governors or his designee shall specify.

TRANSFER OF FOREIGN CURRENCY OPTIONS PARTICIPATIONS

Lease Agreement for Foreign Currency Options participations

[Rule 930.]**Rule 930.** A fully executed copy of the lease agreement with respect to a leased foreign currency options participation or any subsequent amendment thereto shall be filed with, and approved by, the Admissions Committee in accordance with the provisions of Article [XII]XV of the [Corporation]Exchange's [By]by-[Laws]laws prior to the effectiveness of the lease agreement or any subsequent amendment thereto. A lease

agreement with respect to a leased foreign currency options participation shall contain provisions addressing the following terms:

[(a)](a) The lease agreement shall not be effective unless the transfer of [membership]the foreign currency options participation is approved under the [Corporation]Exchange's Certificate of Incorporation, By-Laws, or rules.

[(b)](b) The lease agreement shall be effective for at least one year subject to cancellation in any circumstance other than the lessee's death or incompetency upon at least 30 days prior written notice to the [Corporation]Exchange and to the lessor. Upon the lessee's death or incompetency, the lessee's legal representative shall give prompt notice of such event to the [Corporation]Exchange and the lessor.

[(c)](c) The lease agreement shall describe all financial arrangements between lessor and lessee regarding the lease of the [membership]foreign currency options participation and shall require a lessee to pay the [Corporation]Exchange or any of its affiliates all applicable dues, fees, charges, and other debts arising from the use of [membership]the foreign currency options participation;

[(d)](d) The lessee shall not be permitted to transfer, to pledge, or otherwise to encumber legal title to the [membership]foreign currency options participation during the term of the lease;

[(e)](e) Upon the death or incompetency of the lessee, the expiration of the lease agreement, or the occurrence of any other event specified in such lease agreement terminating the lease agreement, legal title to the [membership]foreign currency options participation shall be transferred to the lessor in accordance with the [Corporation]Exchange's Certificate of Incorporation, By-Laws, or rules.

[(f)](f) Upon any event specified within paragraph (e) of this Rule, the [member]foreign currency options participant or his legal representative shall not use the [membership]foreign currency options participation for any purpose without the written consent of the lessor.

[(g) The lessee shall be deemed to be a member of the Corporation for all purposes of the Corporation's Certification, By-Laws, or rules except as may be otherwise provided in the Certificate of Incorporation, By-Laws, or rules.]

[(h)](g) The lessee shall exercise all voting rights[with respect to], if any, that may be conferred upon the [membership]foreign currency options participation except as may be otherwise provided in the Certificate of Incorporation, By-Laws, or rules.

[(i)](h) Any controversies arising between the lessor and the lessee relating to the lessee's [membership]foreign currency options participation or the related lease agreement shall be submitted for arbitration as a member controversy in accordance with the [Corporation]Exchange's Certificate of Incorporation, By-Laws or rules;

[(j)](i) The [Corporation]Exchange may dispose of a [membership]foreign currency options participation subject to a lease in accordance with its By-Laws, or rules.

[(k)](j) The [Corporation]Exchange is a third party beneficiary of the lease agreement, and shall have the right to permit payment by the lessee of fees owed to the [Corporation]Exchange by the lessor, in accordance with its Certificate of Incorporation, By-Laws or rules, which fees are past due and the lessee may set off such amounts from amounts due the lessor by the lessee. Should the lessee pay such past due amounts, the lessee shall provide written notice to the lessor and the [Corporation]Exchange. Once the lessee has elected to make such payments, the lessee may continue to make such payments for a period of up to three months and set off such amounts, with notice to the [Corporation]Exchange and lessor. Notwithstanding the terms of the lease, a lessee will not be considered in default of the lease agreement solely by virtue of having elected to make such payments.

Approved Lessor

[Rule 931. (a)]

[(a) A lessor]**Rule 931.** (a) A lessor with respect to a leased foreign currency options participation shall register with the Exchange as an approved lessor. A person which obtains equitable title to a [membership]foreign currency options participation by transfer from a lessor shall also register as an approved lessor.

[(b)](b) A lessor shall not be registered as an approved lessor if it is the subject of, or a party to, a disciplinary proceeding by the Exchange or another self-regulatory organization, or an administrative or injunctive proceeding by the Securities and Exchange Commission; the lessor has not paid any dues, fines, charges, or other debts to the Exchange or any of its affiliates; the lessor has been suspended for insolvency and not reinstated pursuant to Article XVII of the Exchange's By-Laws[; or the lessor has been expelled by the Exchange, any of its affiliates, or any other self-regulatory organization]. The Exchange may waive any of these provisions under appropriate circumstances.

[(c)](c) The lessor shall not be registered as an approved lessor unless a standard form subordination and sale agreement is executed and filed with the Exchange.

[(d)](d) If the lessor is a natural person, he shall file with the Exchange a completed Form U-4 (Uniform Application for Securities Industry Registration) as well as an attestation in a form prescribed by the Exchange as to the source of funds used to purchase the [membership]foreign currency options participation. If the lessor is not a natural person, it shall file with the Exchange a statement of assets, liabilities and net worth and (1) if a partnership, an executed partnership agreement along with executed Form U-4 for all partners who are natural persons, (2) if a limited liability entity other than a corporation, an executed copy of the operating agreement along with accompanying Form U-4 for all such [members]foreign currency options participants who are natural persons or (3) if a corporation, the corporate [articles]Certificate of [incorporation]Incorporation, corporate by-laws, a listing of all officers, directors and shareholders along with accompanying Form U-4s.

[(e)](e) An approved lessor which is not a natural person shall make the following periodic reports to the Exchange in a form prescribed by the Exchange. The information required includes but is not limited to the following information:

> [(i)](i) as of the last business day of each calendar quarter, a list of all limited partners if the lessor is a limited partnership, a membership list if the lessor is a limited liability entity other than a corporation along with any new subscription agreements and shareholder list if the lessor is a corporation.
>
> [(ii)](ii) the approved lessor must notify the Exchange of any material change in its corporate or organizations structure within ten days of the change in the structure.
>
> [(iii)](iii) the Exchange may at any time or from time to time require other information not specifically required in the above subparagraphs.

[(f)](f) All reports filed pursuant to paragraphs (e)(i) and (ii) shall be submitted to the Exchange within seventeen business days after the conclusion of the reporting period.

[(g)](g) In the event that the lessor is disapproved for registration under this rule, the lessor shall have the same rights of review as those accorded an applicant for [membership]a permit under By-Law 12-[4.]5.

> **.01** Whenever information on Form U-4 submitted pursuant to Paragraph (d) of this Rule becomes inaccurate or incomplete regarding any person required to file the same, a revised Form U-4 together with appropriate amendments thereto shall be submitted to the Exchange not later than thirty (30) days after such person learns the facts or circumstances requiring the Forms to be amended, or if such amendment involves a statutory disqualification as defined in Section 3(a)39

and Section 15(b)(4) of the Securities and Exchange Act of 1934, as amended, not later than ten (10) days after such disqualification occurs.

Subordination and Sale Agreement

[Rule 932.]**Rule 932.** (a) The subordination and sale agreement shall be in a form acceptable to the [Corporation]Exchange. It shall be executed by the lessor and filed with the [Corporation]Exchange with the accompanying executed lease agreement pursuant to Rule 930.

[(a)](a) The subordination and sale agreement shall authorize the [Corporation]Exchange to sell the [membership]foreign currency options participation (i) in the event it becomes necessary to satisfy the claims of creditors of the lessee and of any [member]foreign currency options participation organization with which lessee is associated arising out of the business transacted by the lessee during the term of the lease or (ii) pursuant to the provisions of the [Corporation]Exchange's [By]by-[Laws]laws for non-payment by lessee of dues, fees, charges, or other debts. The agreement shall further incorporate the lessor's agreement that the proceeds of such sale shall be an asset of the lessee.

A-B-C AGREEMENTS FOR FOREIGN CURRENCY OPTIONS PARTICIPATIONS

Standard Terms

[Rule 940.]**Rule 940.** An A-B-C Agreement with respect to a foreign currency options participation shall comply with the following terms:

[(a)](a) The parties to an A-B-C Agreement shall be an employee, general partner, or officer and the [member]foreign currency options participant organization with which such person is associated;

[(b) The member](b) The foreign currency options participant organization shall provide all or part of the funds for the purchase of a [membership]foreign currency options participation of which the legal title thereof shall be placed in the [member]foreign currency options participant and the equitable title thereof shall be placed in the [member]foreign currency options participant organization;

[(c) The member](c) The foreign currency options participant shall contribute the use of the [membership]foreign currency options participation to the [member]foreign currency options participant organization and shall subject the [membership]foreign currency options participation to the claims of the creditors of the [member]foreign currency options participant organization in accordance with the [Corporation]Exchange's By-Laws and rules;

[(d)](d) Upon notice of the [member]foreign currency options participant organization's termination as a [member]foreign currency options participant organization of the [Corporation]Exchange, notice of the [member]foreign currency options participant's termination of his association with the [member]foreign currency options participant organization, or the [member]foreign currency options participant's death or incompetency, the [member]foreign currency options participant or his legal representative shall:

[(i)](i) retain the [membership]foreign currency options participation and pay an amount necessary to purchase another [membership]foreign currency options participation with similar privileges,

[(ii)](ii) sell the [membership]foreign currency options participation and pay the proceeds to the [member]foreign currency options participant organization,

[(iii)](iii) transfer legal title to a person associated with the [member]foreign currency options participant organization in accordance with the [Corporation]Exchange's [By]by-[Laws]laws and rules, or

[(iv)](iv) transfer legal title to a lessee in accordance with the [Corporation]Exchange's [By]by-[Laws]laws and rules;

[(e)](e) Upon notice of any event specified within Paragraph (d) of this Rule, the [member]foreign currency options participant or his legal representative shall not use the [membership]foreign currency options participation for any purpose without the written consent of the [member]foreign currency options participant organization.

[(f)](f) Any controversy between the [member]foreign currency options participant and his [membership]foreign currency options participation organization relating to the use of the [membership]foreign currency options participation or the A-B-C Agreement shall, at the instance of either party, be submitted for arbitration as a member controversy in accordance with the [Corporation]Exchange's [By]by-[Laws]laws and rules; and

[(g)](g) The A-B-C Agreement shall provide for appropriate procedures with respect to the exercise of rights, if any, thereunder[, including the exercise of voting rights].

[(h) The member](h) The foreign currency options participant and his [member]foreign currency options participant organization shall execute a sale and subordination agreement in accordance with Rule 941.

Sale and Subordination of [Membership]Foreign Currency Options participation Subject to an [ ]A-B-C Agreement

[Rule 941.]Rule 941. (a) [(a)]A [member]foreign currency options participant holding legal title to his [membership]foreign currency options participation subject to an A-B-C agreement and the [member]foreign currency options participant organization with which he is associated shall execute a sale and subordination agreement.

[(b)](b) The subordination and sale agreement under this Rule shall authorize the [Corporation]Exchange to sell the [membership]foreign currency options participation (i) in the event it becomes necessary to satisfy the claims of creditors of the [member]foreign currency options participant and of any [member]foreign currency options participant organization with which the [member]foreign currency options participant is associated arising out of the business transacted by the [member]foreign currency options participant during the term of the agreement or (ii) pursuant to the provisions of the [Corporation]Exchange's By-Laws or for non-payment by the [member]foreign currency options participant or [member]foreign currency options participant organization of dues, fees, charges, or other debts. The agreement shall further state that the proceeds of such sale shall be an asset of the [member]foreign currency options participant and the [member]foreign currency options participant organization with which he is associated.

[(c)](c) The parties subject to this Rule shall comply with this Rule (i) on or before November 30, 1982, or (ii) such subsequent date as they become subject to this Rule. The [member]foreign currency options participant shall demonstrate compliance with this Rule in such manner as the [Corporation]Exchange shall require.

Lease of **[Membership]**Foreign Currency Options participation
Subject to A-B-C Agreement

[Rule 942. A member]**Rule 942.** A foreign currency options participant may lease legal title to a [membership]foreign currency options participation subject to an A-B-C Agreement under the following conditions:

[(a)](a) The consent of the organization that is the party to the A-B-C Agreement shall be required;

[(b)](b) The transfer of [membership]foreign currency options participation shall be effected in accordance with the [Corporation]Exchange's [By]by-[Laws]laws and rules;

[(c)](c) The lease shall address the termination of the [member]foreign currency options participant organization, if applicable, the lessor's termination as an associated person of the organization, or the lessor's death or incompetency.

[(d)](d) The lease shall be consistent with Rule 930.

[(e)](e) The lessor and the organization with which he is associated shall each qualify as an approved person under Rule 931 and shall comply with Rule 932.

• • • ***Commentary***

.01 A standard form lease and sale and subordination agreement is available from the [Corporation]Exchange.

Purchase, Sale, Transfer and Posting of [Membership]
Foreign Currency Options participation Transactions

[Rule 949.]**Rule 949.** (A) Public Sales and [Membership]Foreign Currency Options Participation Market Procedures. A [membership]foreign currency options participation may be purchased by an approved applicant, an existing [member]foreign currency options participant organization or an approved lessor through the Membership Services Department of the Exchange in accordance with Exchange procedures. A bid stating the price to be paid shall be submitted in writing to the Membership Services Department by an approved applicant, [member]foreign currency options participant organization or approved lessor. Any bid shall be in increments of five hundred dollars ($500). The Membership Services Department shall file all bids according to the highest price and the earliest submission date. The highest bid with the earliest submission date shall be posted and published in the Bulletin of the Exchange.

All bids shall remain in effect for six months unless written revocation thereof is received by the Membership Services Department. When a bid filed in accordance with the provisions of this rule is matched with an offer filed in accordance with the provisions of this rule neither can be changed or withdrawn. Not later than the fourteenth day following the matching of the bid and offer, the purchaser shall deliver a certified or cashier's check to the Membership Services Department, made payable to the Exchange, covering the purchase price of the [membership]foreign currency options participation.

(B) A [membership]foreign currency options participation may be sold by the owner through the market conducted by the Membership Services Department in accordance with Exchange procedures. A written offer for sale stating the acceptable price shall be submitted to the Membership Services Department. The Membership Services Department shall file all such offers according to the lowest price and earliest submission date. The lowest offer with the earliest submission date shall be posted by the Membership Services Department and published in the Bulletin of the Exchange. All offers shall remain in effect for six months unless written revocation thereof is received by the Membership Services Department. Any offer shall be in increments of five hundred dollars ($500). When an offer filed in accordance with the provisions of this rule is matched with a bid filed in accordance with the provisions of this rule neither can be changed or withdrawn.

(C) Confirmation of Sale by the Exchange. The sale of [an Exchange membership]a foreign currency options participation shall be deemed negotiated and contracted at the time the filed bid and offer are matched in price and confirmed by the Membership Services Department of the Exchange and shall be considered consummated upon the payment by the purchaser of the purchase price of the [membership]foreign currency options participation and associated initiation and transfer fees as well as other charges including pro-rated dues. In the event that the Exchange has not received payment of the sums due on the purchase of the [membership]foreign currency options participation within fourteen days after the contracted notice of arranged sale is given by the Membership Services Department of the Exchange, the arranged sale shall be automatically canceled and the

purchaser and seller restored thereby to their respective status existing before the arranged sale. Neither the purchaser nor seller shall have, assert or maintain any rights, privileges or claims of any nature whatsoever against each other or against the Exchange, its stockholders, members, member organizations, officers and employees, arising or resulting directly or indirectly from or by such cancellation.

(D) Private Sales and Transfers. All Ex-Exchange privately negotiated sales and requests for transfer shall be posted and published in the Bulletin of the Exchange. Any or all privately negotiated sales or requests for transfer must conform to one of the following provisions:

[(1)](1) The owner of a [membership]foreign currency options participation (whether or not such [membership]foreign currency options participation is registered for a [member]foreign currency options participant organization) is transferring such [membership]foreign currency options participation to a spouse, brother, sister, parent, child, grandchild or grandparent, provided the transferee is approved for [membership]foreign currency options participation or qualifies as an approved lessor;

[(2)](2) The owner of a [membership]foreign currency options participation is transferring such [membership]foreign currency options participation to a [member]foreign currency options participant organization which has succeeded, through statutory merger, exchange of stock or acquisition of assets to the business of the transferor;

[(3)](3) The owner of a [membership]foreign currency options participation is transferring such [membership]foreign currency options participation to a [member]foreign currency options participant organization in which the transferor will maintain a substantial interest, that is, an interest at least equal in value to the cost or market price of the [membership]foreign currency options participation, whichever is lower;

[(4)](4) The owner of a [membership]foreign currency options participation is transferring such [membership]foreign currency options participation to an individual or organization which is a partner, shareholder or member of the transferor as part or all of a liquidation or distribution of the transferor; or

[(5)](5) The owner of a [membership]foreign currency options participation is transferring such [membership]foreign currency options participation to a [member]foreign currency options participant, [member]foreign currency options participant organization or approved lessor as a privately arranged sale for monetary consideration that is not less than the posted bid nor greater than the posted offer filed with the Membership Services Department of the Exchange.

Notwithstanding the foregoing, a transfer which confirms to one of the enumerated subparagraphs (D)(1) through (5) shall not become effective unless the transferor deposits with the Membership Services Department an amount equal to the last sale of a [membership]foreign currency options participation, pursuant to paragraphs (A), (B) and (C) of this rule, of the same rights and privileges as the [membership]foreign currency options participation being transferred. Said deposit shall be applied as though it were proceeds of a sale of a [membership]foreign currency options participation or its transfer for the purposes of By-Law Article XV. All other private sales shall be void.

(E) Obligations of Terminating [Members. Every member]Foreign Currency Options participations. Every foreign currency options participant who sells or transfers their [membership]foreign currency options participation pursuant to the provisions of these Rules must be current in all filings and payments of dues, fees and charges relating to that [membership]foreign currency options participation, including filing fees and charges required by the Securities and Exchange Commission and the Securities Investor Protection Corporation. If a [member]foreign currency options participant fails to make all such filings, or to pay all such dues, fees and charges, the Membership Services Department of the Exchange may, notwithstanding other applicable provisions of these Rules, withhold distribution of the proceeds of the sale of said [membership]foreign currency options

participation, or delay the effectiveness of the [membership]foreign currency options participation of the transferee, until such time as the failures have been remedied.

(F) Non-Responsibility of the Exchange. The Exchange, its stockholders and its officers, members and employees shall be subject to no liability in connection with any bid or offer of a [membership]foreign currency options participation, whether or not filed formally with the Exchange as provided herein, unless such liability results from negligence of the Exchange.

Arbitration

Rule 950.

Matters Eligible for Submission

Sec 1.- 5 No change.

MEMBER CONTROVERSIES

Required Submission

[Sec 6.]Sec 6. (a) Any dispute, claim or controversy eligible for submission under Sections 1 through 5 of these procedures between and/or among members and/or associated persons, and/or certain others, arising in connection with the business of such member(s), or in connection with the activities of such associated person(s), shall be arbitrated under these procedures at the instance of:

[(1)](1) A member against another member,

[(2)](2) A member against a person associated with a member or a person associated with a member against a member,

[(3)](3) A person associated with a member against a person associated with a member[;], and[,]

[(4)](4) A legal titleholder of a [membership]foreign currency options participation against an equitable titleholder of such membership or an equitable titleholder against a legal titleholder [of such membership]ofsuch foreign currency options participation.

Applicability of Arbitration Procedures

[Sec 7.]Sec 7. Except as otherwise provided in Sections 1 through 6 and unless the context otherwise requires, the rules and procedures applicable to public customer arbitrations as set forth hereinafter under Sections 8 through 41 shall be applicable to member controversies.

ARBITRATION PROCEDURES

Required Submission

[Sec 8.]

[(a)]**Sec 8.** (a) Any dispute, claim or controversy eligible for submission under Sections 1 through 5 of these Arbitration Procedures between a customer and a member and/or associated person arising in connection with the business of such member or in connection with the activities of such associated persons shall be arbitrated under these Arbitration Procedures, as provided by any duly executed and enforceable written agreement or upon the demand of the customer.

[(b)](b) Under these procedures, the Director of Arbitration shall have the right to decline the use of the Exchange's arbitration facilities in any dispute, claim or controversy, where, having due regard for the purposes of the Exchange and the intent of these procedures such dispute, claim or controversy is not a proper subject matter for arbitration.

• • • ***Commentary:***

.01 For purposes of Section 8(b) of this Rule, the Exchange shall not accept arbitration matters that are already subject to proceedings in other jurisdictional forms.

Simplified Arbitration

[Sec 9. (a)]

[(a)]**Sec 9.** (a) Any dispute, claim or controversy arising between a public customer(s) and an associated person and/or a member subject to arbitration under these procedures involving a dollar amount not exceeding $10,000, exclusive of attendant costs and interest, shall be arbitrated as hereinafter provided.

[(b)](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 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 the arbitrator(s). The Statement of Claim shall specify the relevant facts, the remedies sought and whether or not a hearing is demanded.

[(c)](c) The Claimant shall deposit $15 if the amount in controversy is $1,000 or less, $25 if the amount 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 of the Submission Agreement. The final disposition of this sum shall be determined by the arbitrator.

[(d)](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) business 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 Arbiration with sufficient additional copies for the arbitrator(s) along with any deposit required under the schedule of fees for customer disputes. The Answer shall designate all available defenses to the Claim and may set forth any related Counterclaim and/or related Third Party Claim the Respondent(s) may have against the Claimant or any other person. If the Respondent(s) have interposed a Third Party Claim, the Respondent(s) shall serve the Third Party Respondent with an executed Submission Agreement, a copy of Respondent's Answer containing the Third Party Claim, and a copy of the original Claim filed by the Claimant. 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 five (5) arbitrators in accordance with Section 15 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 Claim in a separate proceeding. The costs to the claimant under either proceeding shall in no event exceed $200.

[(e)](g) All parties shall serve on all other parties and the Director of Arbitration, with sufficient additional copies for the arbitrator(s), a copy of the Answer, Counterclaim, Third Party Claim, Amended Claim, or other responsive pleading, if any. The Claimant, if a Counterclaim is asserted against him, shall within ten (10) business days either (i) serve on each party and on the Director of Arbitration, with sufficient additional copies for the arbitrator(s), a Reply to any Counterclaim 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)](h) The dispute, claim or controversy shall be submitted to a single arbitrator who is not from the securities industry (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 time and locale selected by the Director of Arbitration.

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

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

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

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

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

• • • ***Commentary:***

Related counterclaim

As used in this Section 9, the term "related counterclaim" shall mean any counterclaim related to a customer's account(s) with a member.

Hearing Requirements—Waiver of Hearing

[Sec 10. (a)]

[(a)]**Sec 10.** (a) Any dispute, claim or controversy except as provided in Section 9 (Simplified Arbitration), 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)](b) Notwithstanding a written waiver of a hearing by the parties, a majority of the arbitrators may call for and conduct a hearing. In addition, any arbitrator may request the submission of further evidence.

Time Limitation Upon Submission

[Sec 11.]Sec 11. No dispute, claim, or controversy shall be eligible for submission to arbitration under these procedures where six (6) years have elapsed from the occurrence or event giving rise to the act or dispute, claim or controversy. This section shall not extend applicable statutes of limitations, nor shall it apply to any case which is directed to arbitration by a court of competent jurisdiction.

Dismissal of proceedings

[Sec 12.]Sec 12. At any time during the course of an arbitration, the arbitrators may, either upon their own initiative or at the request of a party, dismiss the proceedings and refer the parties to the remedies provided by applicable law. The arbitrators shall at the joint request of all the parties dismiss the proceedings.

Settlements

[Sec 13.]Sec 13. All settlements upon any matter shall be at the election of the parties.

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

[Sec 14. (a)]

[(a)]**Sec 14.** (a) Where permitted by applicable law, the time limitations which would otherwise run or accrue for the institution of legal proceedings shall be tolled where 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)](b) The six (6) year time limitation upon submission to arbitration shall not apply when the parties have submitted the dispute, claim or controversy to a court of competent jurisdiction. The six (6) year time limitation shall not run for such period as the court shall retain jurisdiction upon the matter submitted.

Designation of Number of Arbitrators

[Sec 15. (a)]

[(a)]**Sec 15.** (a) In all arbitration matters 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 which consists of no fewer than three (3) nor more than five (5) arbitrators, at least a majority of whom shall not be from the securities industry, unless the public customer requests a panel consisting of at least a majority from the securities industry.

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

[(1)](1) is a person associated with a member or other broker/dealer, municipal securities dealer, government securities broker, or government securities dealer, or

[(2)](2) has been associated with any of the above within the past three (3) years, or

[(3)](3) is retired from any of the above, or

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

[(c)](c) 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/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 or government securities dealer.

Composition of Panels

[Sec 16.]Sec 16. The individuals who shall serve on a particular panel shall be determined by the Director of Arbitration. The Director of Arbitration may name the chairman of the panel.

Notice of Selection of Arbitrators

[Sec 17.]Sec 17. The Director of Arbitration shall inform the parties of the arbitrators' names and employment histories for the past ten (10) years, as well as information disclosed pursuant to Section 19, at least

fifteen (15) 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 years, as well as information disclosed pursuant to Section 19. 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 Section 18, whichever is shorter, may exercise its right to challenge the replacement arbitrator as provided in Section 18.

Peremptory Challenge

[Sec 18.]<u>**Sec 18.**</u> In any arbitration proceeding, each party shall have the right to one peremptory challenge. In arbitrations where there are multiple Claimants, Respondents and/or Third-Party Respondents, the Claimants shall have one peremptory challenge, the Respondents shall have one peremptory challenge, and the Third-Party Respondents shall have one peremptory challenge, unless the Director of Arbitration determines that the interests of justice would be best served by awarding additional peremptory challenges. A party wishing to exercise a peremptory challenge must do so by notifying the Director of Arbitration in writing within five (5) business days of notification of the identity of the persons named to the panel. There shall be unlimited challenges for cause. Challenges for cause shall be decided by the Director of Arbitration.

Disclosures Required of Arbitrators

[Sec 19. (a)]

[(a)]<u>**Sec 19.** (a)</u> 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 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, partners, or business associates.

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

[(d)]<u>(d)</u> Prior to the commencement of the first hearing session of a public customer arbitration, the Director of Arbitration may remove an arbitrator based on information disclosed pursuant to this section. The Director of Arbitration shall also inform the parties of any information disclosed pursuant to this section if the arbitrator who disclosed the information is not removed.

Disqualification or Other Disability of Arbitrators

[Sec 20.]<u>**Sec 20.**</u> 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) shall continue with the hearing and determination of the controversy, unless such continuation is objected to by any party within five (5) business days of notification of the vacancy on the panel. Upon objection, the Director of Arbitration shall appoint a replacement arbitrator to fill the vacancy. The Director of Arbitration shall inform the parties as soon as possible of the name and employment

history of the replacement arbitrator for the past ten years, as well as information disclosed pursuant to Section 19. A party may make further inquiry of the Director of Arbitration concerning the replacement arbitrator's background and within the time remaining prior to the next scheduled hearing session or the five (5) day period provided under Section 18, whichever is shorter, may exercise its right to challenge the replacement arbitrator as provided in Section 18.

Initiation of Proceedings

[Sec 21.]Sec 21. Except as otherwise provided herein, an arbitration proceeding under these procedures shall be instituted as follows:

Statement of Claim

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

Answer—Defenses, Counterclaims and/or Cross-Claims

[(b)][(1)] (b)(1) Within twenty (20) business days from receipt of the Statement of Claim, Respondent(s) shall serve each party with an executed Submission Agreement and a copy of Respondent's Answer. Respondent's executed Submission Agreement and Answer shall also be filed with the Director of Arbitration with sufficient additional copies for the arbitrator(s) along with any deposit required under the schedule of fees. The Answer shall specify all available defenses and relevant facts thereto that will be relied upon at the hearing and may set forth any related Counterclaim 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 these procedures.

[(2)](2) (i) A Respondent, Responding Claimant, Cross-Claimant, Cross-Respondent, or Third-Party Respondent who pleads only a general denial as an answer may, upon objection by a party, in the discretion of the arbitrators, be barred from presenting any facts or defenses at the time of the hearing.

(ii) A Respondent, Responding Claimant, Cross-Claimant, Cross-Respondent, or Third-Party Respondent who fails to specify all available defenses and relevant facts in such party's answer may, upon object 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) below, may, in the discretion of the arbitrators, be barred from presenting any matter, arguments or defenses at the hearing.

[(3)](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 paragraphs (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 Reply shall also be filed with the Director of Arbitration with sufficient additional copies for the arbitrator(s).

[(5)]The time period to file any pleading, whether such be denominated as a Claim, Answer, Counterclaim, Cross-claim, Reply, or Third-Party pleading, may be extended for such further period as may be granted by the Director of Arbitration.

Service and Filing With the Director of Arbitration

[(c)][(1)] (c)(1) Service may be effected by mail or other means of delivery. Service and filing are accomplished on the date of mailing either by first-class postage pre-paid or by means of overnight mail service or, in the case of other means of service, on the date of delivery. Filing with the Director of Arbitration shall be made on the same date as service on a party.

[(2)](2) If a member [firm]organization that is a partnership and a person associated with [the]such member [firm]organization are named parties to an arbitration proceeding at the time of the filing of the Statement of Claim, service on the person associated with the member [firm]organization may be made on the associated person or the member [firm]organization, which shall perfect service upon the associated person. If the member [firm]organization does not undertake to represent the associated person, the member [firm]organization shall serve the associated person with the Statement of Claim, shall advise all parties and the Director of Arbitration of that fact, and shall provide such associated person's current address.

Joinder and Consolidation

[(a)][(1)] (a)(1) With respect to any dispute, claim or controversy submitted to arbitration, any party or person eligible to submit a claim under these procedures 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)](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 preliminarily whether such parties should proceed in the same or separate arbitrations.

[(3)](3) All final determinations with respect to joinder, consolidation and multiple parties under this subsection shall be made by the arbitration panel.

Sec 22.-39 No change.

Filing Fee for Members

[Sec 40.]Sec 40. A member [firm]organization shall, when filing a Statement of Claim against a nonmember, pay a non-refundable filing fee of $500. This fee shall be in addition to all other fees, deposits, or costs which may be required.

Sec 41.-44 No change.

Disciplinary Rules

Jurisdiction

Rule 960.1 (a) Any member, member organization, or any partner, officer, director or person employed by or associated with any member or member organization (the Respondent) who is alleged to have violated or aided and abetted a violation of the Securities and Exchange Act of 1934 (Exchange Act), the rules and regulations thereunder, the by-laws and rules of the Exchange or any interpretation thereof, and the rules, regulations, resolutions and stated policies of the Board of Governors or any Committee of the Exchange, shall be subject to the disciplinary jurisdiction of the Exchange, and after notice and opportunity for a hearing may be appropriately disciplined by expulsion, suspension, fine, censure, limitation or termination as to activities, functions, operations, or association with a member or member organization, or any other fitting sanction in accordance with the provisions of these disciplinary rules.

An individual member, or a partner, officer, director or person employed by or associated with a member or member organization may be charged with any violation within the disciplinary jurisdiction of the Exchange committed by employees under his supervision or by the member organization with which he is associated, as though such violations were his own. A member organization may be charged with any violation within the disciplinary jurisdiction of the Exchange committed by its officers, directors, or employees or by a member or other person who is associated with such member organization, as though such violation were its own.

Any member, or any partner, officer, director, or person employed by or associated with a member or member organization, and any member organization shall continue to be subject to the disciplinary jurisdiction of the Exchange following the termination of such person's [membership]permit or foreign currency options participation or the termination of the employment by or the association with a member or member organization of such partner, officer, director or person, or following the deregistration of a member organization from the Exchange; provided, that the Exchange serves written notice to such former member, partner, officer, director, employee, associated person or member organization within one year of receipt by the Exchange of notice of such termination or deregistration that the Exchange is making inquiry into a matter or matters which occurred prior to the termination of such person's status as a member, or as a partner, officer, director or person employed by or associated with a member or member organization, or prior to the deregistration of such member organization.

• • • ***Interpretations and Policies***

.01 The term "person associated with a member" or "associated person of a member" shall have the same meaning as in Section 3(a)(21) of the Securities Exchange Act of 1934.

.02 A summary suspension or other action taken pursuant to By-Laws Sections 8-1, 10-[8, 10-9]11(b), 14-5, 17-1, 17-2, and Rules 50, 60, or Section 6(d)(3) of the Exchange Act shall not be deemed to be disciplinary action under these disciplinary rules.

Complaint and Investigation

Investigation and Authorization of Complaint

Rule 960.2 (a) [(a)]*Initiation of Investigation.* The Exchange shall investigate possible violations within the disciplinary jurisdiction of the Exchange upon instruction of either the Board, the Business Conduct Committee, the [President]Chairman or other Exchange officials designated by the [President]Chairman or upon receipt by the Exchange of a written accusation from a member, member organization or from any person which specifies in reasonable detail the facts which are the subject of the accusation.

[(b)](b) *Cooperation with Investigation or Examination.* Each member, member organization, or person associated with a member shall promptly comply with any request of the Exchange's Market Surveillance Department, Examination Department, Enforcement Department or any officer of the Exchange for information, documents or testimony; each member, member organization or person associated with a member or member

organization shall not otherwise impede or delay an Exchange investigation into matters within its disciplinary jurisdiction.

[(c)](c) *Right to Counsel.* A member, member organization or person associated with a member shall have the right to be represented by counsel in connection with requests for documents or testimony and throughout the course of any disciplinary proceeding and the review thereof or any hearing concerning a summary action.

[(d)](d) *Report.* Whenever the staff of the Exchange has a reasonable basis to believe that a violation within the disciplinary jurisdiction of the Exchange has occurred, a written report shall be submitted to the Business Conduct Committee specifying the violations which are believed to have occurred and those facts which gave rise to these violations.

[(e)](e) *Notice and Statement.* Prior to submitting its report, the staff shall notify the person(s) who is the subject of the report ("Subject") of the general nature of the allegations and of the specific provisions of the Exchange Act, rules and regulations promulgated thereunder, or [constitutional provisions]the Certificate of Incorporation, by-laws or rules of the Exchange or any interpretation thereof or any resolution of the Board regulating the conduct of business on the Exchange, that appear to have been violated. The staff shall also inform the Subject that the report will be reviewed by the Committee. The Subject may then submit a written statement to the Committee concerning why no disciplinary action should be taken. To assist a Subject in preparing such a written statement, he shall have access to any documents and other materials in the investigative file of the Exchange that were furnished by him or his agents.

[(f)][(i)] (f) (i) *Determination to Initiate 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 disciplinary action is warranted, the Business Conduct Committee shall direct the staff of the Exchange to prepare a statement of charges. Whenever the Business Conduct Committee determines that violations within the disciplinary jurisdiction of the Exchange have not occurred or that disciplinary action is not warranted it shall so instruct the staff and its instruction not to initiate disciplinary action along with the reasons for not initiating such action shall be recorded in the minutes of the Committee.

[(ii)](i) When the number of violations under Exchange Rules is determined based upon an exception-based surveillance program, the Exchange may aggregate, or "batch," individual violations of Exchange order handling rules and consider such "batched" violations as a single offense only in accordance with the guidelines set forth in the Exchange's Numerical Criteria for Bringing Cases for Violations of Phlx Order Handling Rules. In the alternative, the Exchange may refer the matter to the Business Conduct Committee for possible disciplinary action when (i) the Exchange determines that there exists a pattern or practice of violative conduct without exceptional circumstances, or (ii) any single instance of violative conduct without exceptional circumstances is deemed to be so egregious that referral to the Business Conduct Committee for possible disciplinary action is appropriate.

CHARGES

Statement of Charges

Rule 960.3 The Statement of Charges shall set forth the specific provisions within the disciplinary jurisdiction of the Exchange alleged to have been violated, the persons or organization alleged to have committed each of the violations ("Respondents") and the specific acts which give rise to the alleged violations. A copy of the Statement of Charges shall be served upon each of the Respondents in accordance with Rule 960.11.

Answer

Rule 960.4. A Respondent shall have 15 business days after service of the Statement of Charges to file a written answer thereto. The Answer shall specifically admit or deny each allegation contained in the Statement of Charges, and a Respondent shall be deemed to have admitted any allegation contained not specifically denied. The Answer may also contain any defense which a Respondent wishes to submit and may be accompanied by

documents in support of his Answer or defense. A Respondent must state in his Answer whether he requests a hearing concerning the statement of charges. A Respondent who does not so request a hearing, shall be deemed to have waived his right to request a hearing and the Business Conduct Committee may thereafter prepare its decision in accordance with Rule 960.8. In the event a Respondent fails to file an Answer within the specified time, or has not within the specified time, requested and obtained from the Business Conduct Committee an extension of time to answer, the charges shall be considered to be admitted and the Business Conduct Committee may prepare its decision in accordance with Rule 960.8.

Hearing

Rule 960.5. (a) [(a)]*Participants and Selection of Hearing Panels.*

1. Request for a Hearing—A hearing on the Statement of Charges shall, at the request of Respondent in his Answer, or upon motion of the Business Conduct Committee, be held before a Hearing Panel composed of three persons to be appointed by the Chairman of the Business Conduct Committee or their designee. Should the hearing be at the request of the Respondent, counsel for the Exchange must provide notice to the Chairman of the Business Conduct Committee or their designee which requests the naming of a hearing panel within 10 business days of receiving Respondents request for a hearing.

2. Selection of Hearing Panel—The Chairman of the Business Conduct Committee or their designee shall name a Hearing Panel within 5 business days of either (i) receipt of notice from counsel for the Exchange which requests the naming of a Hearing Panel, or (ii) upon motion of the Business Conduct Committee for naming of a Hearing Panel. The Chairman of the Business Conduct Committee or their designee shall then promptly notify counsel for the Exchange and Respondent of the names of the members of the Hearing Panel. The presiding person of each Hearing Panel shall be a member of the Business Conduct Committee. The other two persons on the Hearing Panel shall be members of the Exchange, or general partners or officers of member organizations, or such other persons whom the Chairman of the Business Conduct Committee or their designee considers to be qualified. The Chairman of the Committee or their designee shall select these two other persons from those persons who shall have been designated by the Chairman of the Board of Governors to serve on such hearing panels. In making such selections the Chairman or their designee shall, to the extent practicable, choose individuals whose background, experience and training qualify them to consider and make determinations regarding the subject matter to be presented to the Hearing Panel. He shall also consider such factors as the availability of individual hearing officers, the extent of their prior service on Hearing Panels and any relationship between such persons and a respondent which might make it inappropriate for such person to serve on the Hearing Panel.

3. Notice—Promptly after the selection of the panelists, the Chairman of the Business Conduct Committee or their designee shall cause written notice thereof to be given to the accused. If any person involved in the disciplinary proceeding shall have knowledge of a relationship between himself and any person selected for service on the Hearing Panel which might result in such panelist being unable to render a fair and impartial decision, he shall give prompt written notice thereof to the Chairman of the Business Conduct Committee or their designee, specifying the nature of such relationship and the grounds for contesting the qualification of such person to serve on the Hearing Panel. The decision of the Chairman of the Committee or their designee shall be final and conclusive with respect to the qualification of any person to serve on the Hearing Panel.

4. Compensation of Hearing Panelists—Hearing panelists appointed by the Chairman of the Business Conduct Committee may be compensated in extraordinary cases, as determined by the Chairman of the Business Conduct Committee, in consultation with the Chairman of the Board of Governors. Factors to be considered when determining whether a case is extraordinary include, but are not limited to, the anticipated length of time of the hearing; the complexity and serious nature of the matter; and the magnitude of the potential penalty. Compensation will be paid at the same rate and on the same terms as Board of Governors members' compensation for service on a Standing Committee with the understanding

that any multiple meetings and/or hearings on the same day would be considered a single meeting for the purposes of compensation.

[(b)](b) *Notice of Hearing and Pre-Hearing Procedures.*

1. Scheduling of a Hearing Date—A hearing on the Statement of Charges shall be scheduled for no later than 120 days after the filing of a written Answer by the Respondent wherein a hearing is requested. Should the hearing be at the request of the Respondent, counsel for the Exchange must provide notice to the Chairman of the Business Conduct Committee or their designee which requests the setting of a hearing date within 10 business days of receiving Respondents request for a hearing. The request for a hearing date shall be made in writing to the Chairman of the Business Conduct Committee or their designee by (i) counsel for the Exchange, or (ii) on the motion of the Business Conduct Committee.

2. Notice—The Respondent shall be given at least 15 business days notice of the time and place of the hearing.

3. Requests for Adjournments—A request for an adjournment of the hearing date shall be in writing and will be considered for just cause. If the request is made by the Respondent, said request shall be presented to the presiding person of the Hearing Panel with a copy to counsel for the Exchange, who shall enter the request into the Respondent's file. If the request is made by counsel for the Exchange, said request shall be presented to the presiding person of the Hearing Panel, with a copy to the Respondent, and in Respondent's file. The presiding person of the Hearing Panel shall promptly consider the request for an adjournment for just cause, rule on the request and inform the parties, in writing if time permits, as to whether the request was, or was not, granted. In the event that the request for an adjournment for just cause is granted, the presiding person of the Hearing Panel shall, at that time, schedule a new hearing date and so inform the parties of the new date.

4. Exchange of Evidence—The Exchange and the Respondent shall, not less than 8 business days in advance of the scheduled hearing date, furnish to the members of the Hearing Panel and to each other (i) copies of all documentary evidence each intends to present at the hearing, and (ii) a list of witnesses, including names, addresses and telephone numbers, that each intends to call at the Hearing.

5. Pre-Hearing Conferences—Where appropriate, the presiding person of the Hearing Panel shall schedule a pre-hearing conference to be held not less than 8 business days in advance of the scheduled hearing date, to be attended by representatives of the Exchange, each of the Respondents and a member of the Hearing Panel. The pre-hearing conference shall be held for the purpose of clarifying and simplifying issues and otherwise expediting the proceeding. At such conference, and if they have not done so previously, the Exchange and the Respondents shall furnish to the Hearing Panel and to each other (i) copies of all documentary evidence such intends to present at the Hearing, and (ii) a list of witnesses, including names, addresses and telephone numbers, that each intends to call at the Hearing. The Exchange and Respondents shall also attempt to stipulate to the authenticity of documents and to facts and issues not in dispute, and any other items which will serve to expedite the hearing of the matter.

[(c)](c) *Conduct of Hearing.* The Hearing Panel shall determine all questions concerning the admissibility of evidence and shall otherwise regulate the conduct of the hearing. Formal rules of evidence shall not apply. The charges shall be presented by a representative of the Exchange who, along with Respondent, may present evidence and produce witnesses who shall testify under oath and shall be subject to cross examination and questioning by the Hearing Panel. The Hearing Panel may, on its own motion, request the production of documentary evidence and witnesses and may also question witnesses. A transcript of the hearing shall be made and shall become a part of the record. The costs of the making of such a transcript, including, but not limited to, the costs for the court reporter, reproduction of the transcript and producing copies thereof, shall be equally borne by the Exchange and by Respondent. Counsel for the Exchange shall provide a copy of the transcript of the hearing to each member of the Hearing Panel within 5 business days of receiving the transcript. The Respondent shall be issued a bill for its portion of the costs along with its copy of the transcript.

[(d)](d) *Recommendation of Hearing Panel.* Based on its review of the entire record of the proceeding, the Hearing Panel shall submit a written hearing report to the Business Conduct Committee containing: (i) proposed findings of fact concerning the allegations in the statement of charges; (ii) conclusions as to whether a violation within the disciplinary jurisdiction of the Exchange has occurred and an enumeration of such violations; and (iii) recommendations as to appropriate sanctions. The Hearing Panel shall complete such a hearing report no later than 45 days after counsel for the Exchange has served the members of the Hearing Panel with a copy of the transcript of the hearing. The hearing report shall be presented to the Business Conduct Committee at the next Business Conduct Committee meeting after the report is completed.

• • • ***Interpretations and Policies:***

.01 Intervention. Any person not otherwise a party may intervene as a party to the hearing upon demonstrating to the satisfaction of the Hearing Panel that he has an interest in the subject of the hearing and that the disposition of the matter, may, as a practical matter, impair or impede his ability to protect that interest. Also, the Hearing Panel may in its discretion permit a person to intervene as a party to the hearing when the person's claim or defense and the main action have questions of law or fact in common. Any person wishing to intervene as a party to a hearing shall file with the Hearing Panel a notice requesting the right to intervene, stating the grounds therefor, and setting forth the claim or defense for which intervention is sought.

.02 The Hearing Panel, in exercising its discretion concerning intervention, shall take into consideration whether the intervention will unduly delay or prejudice the adjudication of the rights of the original parties.

Summary Proceedings

Summary Disciplinary Proceedings

Rule 960.6. (a) [(a)]*Initiation of Summary Disciplinary Proceeding.* The Business Conduct Committee may make a summary decision in a disciplinary proceeding that violations within the disciplinary jurisdiction of the Exchange have occurred and impose sanctions upon those culpable for such conduct whenever:

[(i)](i) any member, or member organization or person associated with or employed by a member or member organization has admitted to such a violation; or

[(ii)](ii) there is no dispute concerning those material facts which give rise to such violations.

[(b)](b) *Notice to Respondent.* The Exchange shall serve notice and a copy of such a summary decision upon Respondents in accordance with Rule 960.11. Respondents may, no later than (15) fifteen business days after service, file with the Exchange a written reply to the summary decision, including documentary support, asking the Committee to set aside any of the findings made or sanctions imposed in the summary decision. Respondents may include a request for a hearing in their reply. If a reply is not filed within the specified time period, the summary decision shall become final and the Respondents shall have waived any and all rights of review. Hearings held pursuant to this section shall be governed by those procedures contained in Rule 960.5. When a Respondent has admitted to have committed a violation, any further proceeding pursuant to these disciplinary rules shall be limited to the issue of the propriety of the sanction imposed.

[(c)](c) *Further Proceeding.* The Business Conduct Committee shall set aside a decision in a summary proceeding if a Respondent establishes that an issue of material fact or law exists as to any of the findings contained or sanctions imposed in the summary decision. Should a summary decision be set aside on these grounds, a hearing will then be scheduled on the merits of the issues in dispute and the case shall proceed in accordance with Rules 960.5, 960.8 and 960.9. If the Business Conduct Committee decides that no issues of material fact or law exist with respect to the summary decision, the summary decision becomes final and may be appealed in accordance with Rule 960.9.

Offers of Settlement

Rule 960.7. At any time during a period not to exceed one hundred and twenty calendar days immediately following the date of service of a statement of charges upon a respondent in accordance with Rule 960.11, a 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 specified sanctions. Where the Business Conduct Committee accepts an offer of settlement, it shall issue a decision, including findings and conclusions and imposing sanctions consistent with the terms of such offer. Where the Business Conduct Committee rejects an offer of settlement, it shall notify the Respondent in accordance with Rule 960.11 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 its determination of the Committee whether to accept or reject such an offer shall be final, and the Respondent may not seek review thereof.

• • • ***Interpretation and Policies:***

.01 A hearing may be held during the one hundred and twenty day period, but if it was not, the hearing will be scheduled as soon as practicable thereafter. If a Respondent submits an offer of settlement after the one hundred and twenty day period, the Business Conduct Committee may consider such offer as long as its consideration does not delay the hearing in the matter.

Decision

Rule 960.8. The Business Conduct Committee shall review the entire record of the disciplinary proceeding. After this Review, the Business Conduct Committee, by a majority of the members voting, shall determine whether Respondents have committed violations and the appropriate sanctions, if any, therefor. The Business Conduct Committee shall thereafter issue a written decision in conformity with its determination, including in its decision a statement of findings and conclusions, with the reasons therefor, upon all material issues presented in the record, and whether each violation within the disciplinary jurisdiction of the Exchange alleged in the statement of charges has occurred. A copy of the Decision shall be promptly served on the Respondents in accordance with Rule 960.11.

Review

Rule 960.9. (a) [(a)]*Petition by Respondent.* A Respondent shall have 10 days after service of notice and a copy of a decision made pursuant to Rules 960.6(c) and 960.8 to appeal such decision to the Board of Governors in accordance with By-Law Article XI, Section 11-3. Such petition shall be in writing and shall specify the findings and conclusions of the Business Conduct Committee which is the subject of the petition, together with the reasons that Respondent petitions for review of these findings and conclusions. Any objections to a decision not specified in the petition for review shall be thereafter waived. Within 15 days after a Respondent's petition for review has been filed with the Secretary of the Exchange pursuant By-Law Article XI, Section 11-1(a), Enforcement staff may submit to the Secretary a written response to the petition. A copy of the response must be served upon the Respondent. A Respondent has 15 days from the service of the response to file a reply with the Secretary and Enforcement staff.

[(b)](b) *Conduct of Review*.

[(i)](i) The review shall be conducted by the Board of Governors or an Advisory Committee thereof pursuant to By-Law Article XI, Section 11-3. If an Advisory Committee is appointed to conduct the review, it shall be composed pursuant to By-Law Article XI, Section 11-2. Any Board member who participated in a matter before the Business Conduct Committee may not participate in any review of that matter by the Board of Governors or an Advisory Committee. Unless the Board of Governors or the Advisory Committee shall decide to hear oral arguments, such review shall be based solely upon the record and written exceptions filed by the parties. The review shall be heard as soon as is practicable.

[(ii)](ii) Should the Board of Governors conduct the review, then based upon such review, the Board of Governors by a majority vote of its members, shall decide to affirm, reverse or modify, in whole or in part the decision of the Business Conduct Committee. Such modification may include an increase or decrease of the sanction. The Board of Governors may not reverse, or modify, in whole or in part, the findings, conclusions and decision of the Business Conduct Committee if the factual conclusions in the decision are supported by substantial evidence and such decision is not arbitrary, capricious or an abuse of discretion. The decision of the Board shall be in writing, shall be promptly served on the Respondent in accordance with Rule 960.11, and shall be final and conclusive subject to Rule 960.9(c) and (d), as well as the provisions of the Securities Exchange Act of 1934.

[(iii)](iii) Should the review be conducted by an Advisory Committee, the Advisory Committee shall submit a written report to the Board of Governors. In such report, the Advisory Committee shall recommend to affirm, reverse or modify, in whole or in part, the decision of the Business Conduct Committee. Such modification may include an increase or decrease of the sanction. The Advisory Committee may not reverse, or modify, in whole or in part, the findings, conclusions or decision of the Business Conduct Committee if the factual conclusions in the decision are supported by substantial evidence and such decision is not arbitrary, capricious or an abuse of discretion. The Board of Governors by a majority vote of its members, shall decide to affirm, reject or modify, in whole or in part the recommendations of the Advisory Committee. Such modification may include an increase or decrease of the sanction. The Board of Governors may not reverse, or modify, in whole or in part, the findings, conclusions and decision of the Advisory Committee if the factual conclusions in the decision are supported by substantial evidence and such decision is not arbitrary, capricious or an abuse of discretion. The decision of the Board shall be in writing, shall be promptly served on the Respondent in accordance with Rule 960.11, and shall be final and conclusive subject to Rule 960.9(c) and (d), as well as to the provisions of the Securities Exchange Act of 1934.

[(c)](c) *Review on Motion of Board of Governors.* The Board of Governors may on its own initiative order review of a decision made pursuant to Rules 960.6(c) or 960.8 within 20 days after notice of the decision has been served on the Respondent. Such review shall be conducted in accordance with the procedure set forth in paragraph (b) of this Rule. Should the Board of Governors vote to disapprove this modification or reversal, the Board shall make its own findings and issue a final decision of the Exchange. An Advisory Committee appointed by the Board of Governors may conduct such a review pursuant to By-Law Article XI, Section 11-3 and in accordance with the provisions of Rule 960.9.

[(d)](d) *Petition by Enforcement Staff.* An appeal of a decision made pursuant to Rules 960.6(c) or 960.8 may also be taken by the Enforcement staff by petitioning the Board of Governors, within 10 days after service of notice and a copy of the decision, for permission to proceed with such appeal in accordance with By-Law Article XI, Section 11-3. Such petition shall be in writing and shall specify the findings and conclusions of the Business Conduct Committee which are the subject of the petition, together with the reasons that Enforcement staff petitions for review of these findings and conclusions. Any objections to a decision not specified in the petition for review shall be thereafter waived. If permission to appeal is granted, staff shall serve a copy of the petition on the Respondent within five days of permission to appeal being granted. Within 15 days Respondent may submit to the Board of Governors a written response to the petition. A copy of the response must be served upon the Exchange's Enforcement staff, who then has 15 days from the service of the response to file a reply with the Board of Governors and the Respondent.

Judgment and Sanctions

Rule 960.10. (a) [(a)]*Sanctions.*

[(1)](1) Members, member organizations and persons associated with or employed by members or member organizations shall (subject to any rules or order of the Securities and Exchange Commission) be appropriately disciplined for violations under these disciplinary rules by expulsion, suspension, fine, censure, limitations or termination as to activities, functions, operations, or association with a member or member organization, or any other fitting sanction.

[(2)](2) The Business Conduct Committee shall refer to the Exchange's "Enforcement Sanctions User's Guide" ("Sanction Guidelines") when imposing sanctions for violations of options order handling rules. The Sanction Guidelines outline factors for the Business Conduct Committee to consider when reviewing violations of options order handling rules and imposing appropriate remedial sanctions.

[(b)](b) *Effective Date of Judgment.* Sanctions imposed under these disciplinary rules shall not become effective until the Exchange review process is completed or the decision otherwise becomes final. Pending effectiveness of a decision imposing sanctions on a Respondent, the Business Conduct Committee may impose such conditions and restrictions on the activities on such Respondent which it finds to be necessary or appropriate for the protection of the investing public, members, member organizations and the Exchange and its subsidiaries.

Service of Notice and Extension of Time Limits

Rule 960.11. (a) [(a)]*Service of Notice.* Any charges, notices, or other documents may be served upon a Respondent either personally or by deposit in the United States mail, postage pre-paid via registered or certified mail or by courier service addressed to the Respondent at his address as it appears on the books and records of the Exchange. Unless otherwise stated in these disciplinary rules, all documents required by these rules to be filed with the Exchange by a Respondent must be filed with the Enforcement Department and must be received by the Exchange on the day prescribed by these rules.

[(b)](b) *Extension of Time Limits.* Any time limits imposed under these disciplinary rules for the submission of answers, petitions, requests for a hearing, or other materials may be extended by permission of the appropriate committee before whom the matter is currently pending.

Fairness and Impartiality of Board or Committee Members[Members]

Rule 960.12. (a) [(a)]*Disqualification on Own Motion.* No Board member or committee member ("member") shall in any manner participate in any disciplinary proceeding if such member cannot render a fair and impartial decision in the matter. In such case, the member shall remove himself from any consideration of the matter.

[(b)](b) *Disqualification On Order of Chairman.* Whenever any person has any reason to believe that a particular member cannot render a fair and impartial decision in a disciplinary proceeding, such person shall give prompt written notice thereof to the appropriate Chairman, specifying the grounds for contesting the qualification of such member. In such case, the decision of the Chairman shall be final and conclusive with respect to whether a member participates in the determination of such matters.

Floor Procedure Advices: Violations, Penalties, and Procedures

[Rule 970. (a)]

[(a)]**Rule 970.** (a) In lieu of commencing a "disciplinary proceeding" as that term is used in Exchange Rules 960.1-960.12, the Exchange may, subject to requirements set forth in this Rule, impose a fine, not to exceed $2,500, on any member, member organization, or any partner, officer, director or person employed by or associated with any member or member organization, for any violation of a Floor Procedure Advice 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 to the [Exchange membership]members except as may be required by Rule 19d-1 under the Securities Exchange Act of 1934, and as may be required by any other regulatory authority.

[(b)](b) In any action taken by the Exchange pursuant to this Rule, the person against whom a fine is imposed shall be served with a written statement, signed by an authorized official of the Exchange's Market Surveillance Department on behalf of the Business Conduct Committee, setting forth (i) the Floor Procedure

Advice(s) alleged to have been violated; (ii) the act or omission constituting each such violation; (iii) the fine imposed for each violation; and (iv) the date by which such determination becomes final and such fine become due and payable to the Exchange, or rather, when such determination must be contested, as provided in paragraph (d) hereunder, such date to be not less than seven business days after the date of service of the written statement.

[(c)](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 his right to a disciplinary proceeding under Exchange Rules 960.1-160.12 and any review of the matter by the Business Conduct Committee, an Exchange Hearing Panel, the Disciplinary Review Committee, or the Exchange Board of Governors.

[(d)](d) Any person against whom a fine is imposed pursuant to this Rule may contest the Exchange's determination by filing with the Department of the Exchange taking the action 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 960.4, at which point the matter shall be referred to the Business Conduct Committee for their consideration and determination.

[(e)](e) The Committee may then (a) decide that the matter be dismissed and the notice of alleged violation be rescinded; (b) decide that the notice, as issued, is valid, whereupon the alleged violator could either pay the fine or contest the matter before a hearing panel; (c) decide that the notice, as issued, should be modified to specify either a higher or lower fine than the one on the notice as issued, whereupon the alleged violator could either pay the new fine or contest the matter before a hearing panel; or (d) decide that the matter merits formal disciplinary action and authorize issuance of a Complaint, pursuant to Exchange Rule 960.2.

[(f)](f) If a disciplinary proceeding thereafter results, and the Hearing Panel determines that he has violated the Advice(s) as alleged, the Hearing Panel shall (a) be free to impose any disciplinary sanction provided for in Exchange Rules 960.1-960.12 and (b) determine whether the violation is minor in nature. If determined to be minor in nature, the violation(s) giving rise to the penalty shall not be publicly reported by the Exchange to [its]the [membership]members, except as may be required pursuant to Rule 19d-1, or as may be required by any other regulatory authority; if determined not to be minor in nature, the decision of the Hearing Panel and any penalty imposed shall be publicly reported to the [Exchange membership]members, in addition to any filing required by Rule 19d-1, or any other regulatory authority, once such decision becomes "final" under Exchange Rules 960.1-960.12.

• • • ***Commentary:***

.01 For purposes of imposing fines under the Options Floor Procedure Advices ("OFPAs"), when the number of violations under Exchange Rules is determined based upon an exception-based surveillance program the Exchange may aggregate, or "batch," individual violations of order handling OFPAs, and consider such "batched" violations as a single Occurrence only in accordance with the guidelines set forth in the Exchange's Numerical Criteria for Bringing Cases for Violations of Phlx Order Handling Rules. In the alternative, the Exchange may refer the matter to the Business Conduct Committee for possible disciplinary action when (i) the Exchange determines that there exists a pattern or practice of violative conduct without exceptional circumstances, or (ii) any single instance of violative conduct without exceptional circumstances is deemed to be so egregious that referral to the Business Conduct Committee for possible disciplinary action is appropriate.

TRANSITIONAL RULES RELATING TO DEMUTUALIZATION OF THE EXCHANGE

Rule 971. Termination of Memberships and Equity Trading Permits and Leases and A-B-C Agreements Relating to Memberships and ETP Use Agreements

All memberships, and equity trading permits and all leases of, and A-B-C Agreement with respect to, memberships and all ETP Use Agreements in existence at the time of the Merger: (a) shall terminate with immediate effect as of the close of trading on the day the Merger becomes effective (the "termination date") without

any further action on the part of any party thereto, and the Exchange shall have no liability to, and no party to any such lease, A-B-C Agreement or ETP Use Agreement shall have any right, claim or recourse against the Exchange, as a result of such termination; and (b) from and after the effective time of the Merger, shall no longer serve as or otherwise provide any means of access to trading on the Exchange's floor and/or facilities. All accrued obligations and obligations that would have survived such termination, if such termination had occurred in accordance with the respective terms of such memberships, equity trading permits, leases, A-B-C Agreements and/or ETP Use Agreements, including, without limitation, all obligations to the Exchange in respect of fees, dues or other charges, relating to such memberships, equity trading permits, leases, A-B-C Agreements and/or ETP Use Agreements shall survive the Merger and be satisfied and settled as though such memberships, equity trading permits, leases, A-B-C Agreements and ETP Use Agreements had expired in accordance with their terms on the termination date.

Rule 972. Continuation of Status After the Merger

Each member (including, without limitation, each holder of an equity trading permit), inactive nominee and member organization holding such status immediately prior to the effective time of the Merger and that, at such time, is not subject to any suspension of such status shall, from and after the Merger, maintain such status as a member, inactive nominee or member organization and in the case of members, shall be permit holders and issued a permit, provided that such member, inactive nominee and member organization shall provide to the Admissions Committee and the Exchange not later than 15 days following the Merger: the security required by Rule 909 (unless the member organization has obtained an exemption under Rule 909(c)); the form to be filed by the member organization's qualifying permit holder pursuant to Rule 921(a); and the designation of the member organization's Member Organization Representative pursuant to Rule 921(b) in the form prescribed by the Exchange.

The consequences of a failure to furnish within such period:

(a) the security required by Rule 909 (unless the member organization has obtained an exemption under Rule 909(c)) and/or the form to be filed by the member organization's qualifying permit holder pursuant to Rule 921(a) shall be the immediate suspension of the member organization's status as such; and

(b) the designation of the member organization's Member Organization Representative pursuant to Rule 921(b) shall be as provided in Rule 921(c) (as if the 30 day period specified therein shall have elapsed).

Any member or member organization of the Exchange prior to the Merger that, as of the effective date of the Merger, has been suspended shall not be issued a permit or shall not be deemed a member organization, as the case may be, automatically upon the Merger. If the member or member organization shall cure any delinquency within 30 days of the Merger, then the foregoing provisions of this Rule 972 shall apply (but as if the dates specified therein run from the date of the cure of any delinquency, rather than the date of the Merger); otherwise, such prior members and member organizations must reapply for a permit, or registration as a member organization, as the case may be, as if they were new applicants for admission or registration.

For the avoidance of doubt, foreign currency options participants and participant organizations, as well as approved lessors of foreign currency options participations holding such status prior to the Merger will continue to hold such status following the Merger.