

1000. MEMBERSHIP, REGISTRATION AND QUALIFICATION REQUIREMENTS

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1011. Definitions

Unless otherwise provided, terms used in the Rule 1010 Series shall have the meaning as defined in Rule 0120.

(a) "Applicant"

The term "Applicant" means a person or entity that applies for membership in the Association under Rule 1013, files an application to remove or modify a restriction under Rule 1017, or files a notice and application for continuance in membership under Rule 1018.

(b) "Associated Person"

The term "Associated Person" means a sole proprietor, partner, officer, director, branch manager, or natural person occupying a similar status or performing similar functions who will be or is anticipated to be associated with the Applicant, or any natural person engaged in the investment banking or securities business who will be or is anticipated to be directly or indirectly controlling or controlled by the Applicant, whether or not any such person is registered or exempt from registration under the NASD By-Laws or the Rules of the Association.

(c) "Department"

The term "Department" means the Department of Member Regulation of NASD Regulation.

(d) "Director"

The term "Director" means a member of the NASD Regulation Board, excluding the Chief Executive Officer of the NASD.

(e) "district"

The term "district" means a district established by the NASD Regulation Board.

(f) "district office"

The term "district office" means an office of NASD Regulation located in a district.

(g) "Governor"

The term "Governor" means a member of the NASD Board.

(h) "Interested Association Staff"

The term "Interested Association Staff" means an employee who directly participates in a decision under Rule 1014, 1017, or 1018, an employee who directly supervises an employee with respect to such decision, an employee who conducted an investigation or examination of a member that files an application under Rule 1017 or a notice and application under Rule 1018, the District Director for the relevant district, and the head of the Department.

(i) "NASD Board"

The term "NASD Board" means the Board of Governors of the NASD.

(j) "NASD Regulation Board"

The term "NASD Regulation Board" means the Board of Directors of NASD Regulation.

(k) "sales practice violations"

The term "sales practice violations" means any conduct directed at or involving a customer that would constitute a violation of any Rule in the Rule 2000 or 3000 Series, any provision of the Act, or any state statute prohibiting fraudulent conduct in connection with the offer, sale, or

purchase of a security or in connection with the rendering of investment advice.

(l) "Subcommittee"

The term "Subcommittee" means a subcommittee of the National Business Conduct Committee that is constituted pursuant to Rule 1015 to conduct a review of a Department decision issued under the Rule 1010 Series.

1012. General Provisions

(a) Service of Notices and Decisions; Filing by Applicant

A notice or a decision issued by the Association under the Rule 1010 Series with respect to an application shall be served promptly by first-class mail on the Applicant or its counsel, unless a Rule specifies a different method of service. Service by the Association or filing by an Applicant by mail shall be deemed complete upon mailing. Service by the Association or filing by an Applicant by commercial courier or facsimile shall be deemed complete on the date specified in the written confirmation of receipt.

(b) Ex Parte Communications

(1) Unless on notice and opportunity for an Applicant and Interested Association Staff to participate, or to the extent required for the disposition of ex parte matters as authorized by the Rules of the Association:

(A) an Applicant, a counsel or representative of an Applicant, or an Interested Association Staff shall not make or knowingly cause to be made an ex parte communication relevant to the merits of a membership proceeding under the Rule 1010 Series to a Governor, a Director, a member of the National Business Conduct Committee or a Subcommittee thereof, or an Association employee who is participating or advising in a decision of such a person with respect to that proceeding; and

(B) a Governor, a Director, a member of National Business Conduct Committee or a Subcommittee thereof, or an Association employee who is participating or advising in the decision of such a person with respect to a membership proceeding shall not make or knowingly cause to be made to an Applicant, a counsel or representative of the Applicant, or an Interested Association Staff an ex parte communication relevant to the merits of that proceeding.

(2) A Governor, a Director, a member of the National Business Conduct Committee or a Subcommittee thereof, or an Association employee participating or

advising in the decision of such a person, who receives, makes, or knowingly causes to be made a communication prohibited by this paragraph shall place in the record of the membership proceeding:

(A) all such written communications;

(B) memoranda stating the substance of all such oral communications; and

(C) all written responses and memoranda stating the substance of all oral responses to all such communications.

(3) The prohibitions against ex parte communications shall become effective when Association staff has knowledge that an Applicant intends to file a written request for review by the National Business Conduct Committee under Rule 1015.

(c) Recusal or Disqualification

A Governor, a Director, or a member of the National Business Conduct Committee or a Subcommittee thereof shall not participate in a matter governed by the Rule 1010 Series as to which that person has a conflict of interest or bias, or if circumstances otherwise exist where his or her fairness might reasonably be questioned. In such a case, the person shall recuse himself or shall be disqualified as follows:

(1) The Chair of the NASD Board shall have authority to direct the disqualification of a Governor, and the Vice Chair of the NASD Board shall have authority to direct the disqualification of the Chair of the NASD Board.

(2) The Chair of the NASD Regulation Board shall have authority to direct the disqualification of a Director, and the Vice Chair of the NASD Regulation Board shall have authority to direct the disqualification of the Chair of the NASD Regulation Board.

(3) The Chair of the National Business Conduct Committee shall have authority to direct the disqualification of a member of the Committee or a member of a Subcommittee appointed pursuant to Rule 1015, and the Vice Chair of the Committee shall have authority to direct the disqualification of the Chair of the National Business Conduct Committee.

(d) Separation of Review Functions

A Director shall not participate or advise in the decision of a Governor with respect to the review of a membership proceeding under the Rule 1010 Series, and a Governor shall not participate or advise in the decision of a Director with respect to the review of a membership proceeding under the Rule 1010 Series.

(e) Computation of Time

(1) Calendar Day

In the Rule 1010 Series, "day" means calendar day.

(2) Formula

In computing a period of time under the Rule 1010 Series, the day of the act, event, default, or lapse from which the period of time designated begins to run shall not be included. The last day of the period so computed shall be included unless it is a Saturday, Sunday, or Federal holiday, in which event the period runs until the end of the next day that is not a Saturday, Sunday, or Federal holiday. Intermediate Saturdays, Sundays, and Federal holidays shall be excluded from the computation when the period prescribed is ten days or less.

1013. Application and Membership Interview

(a) Filing of Application

(1) Each Applicant for Association membership shall file its application in two parts. The first part of the application shall be filed with the Membership Department and shall include the following documents:

(A) an original signed and notarized Form BD, with applicable schedules;

(B) an original signed Form U-4 for each Associated Person who is required to be registered under the Rules of the Association;

(C) an original NASD-approved fingerprint card for each Associated Person who will be subject to SEC Rule 17f-2;

(D) a new member assessment report;

(E) a new member firm contact questionnaire; and

(F) a check for the appropriate fee.

(2) The second part of the application shall be filed with the Department of Member Regulation at the district office in the district in which the Applicant intends to have its principal place of business and shall include the following information and documents:

(A) a detailed business plan, in a form prescribed by the Association, that describes all material aspects of the business that will be, or are reasonably anticipated to be, performed at and after the initiation of business operations, and includes:

(i) a trial balance, balance sheet, supporting schedules, and computation of net capital, each of which has been prepared as of a date that is within 30 days before the date of application;

(ii) a monthly projection of income and expenses, with a supporting rationale, for the first twelve months of operations;

(iii) an organizational chart;

(iv) a list of the intended locations of all offices, whether or not such offices would be required to be registered under the Rules of the Association, and the names of the persons who will be in charge of each office;

(v) a list of the types of securities to be offered and sold and the types of retail or institutional customers to be solicited;

(vi) a description of the methods and media to be employed to develop a customer base and to offer and sell products and services to customers, including the use of the Internet, telephone solicitations, seminars, or mailings;

(vii) a description of the business facilities and a copy of any proposed or final lease;

(viii) the number of markets to be made, if any, the type and volatility of the products, and the anticipated maximum inventory positions;

(ix) any plan to enter into contractual commitments, such as underwritings or other securities-related activities;

(x) any plan to distribute or maintain securities products in proprietary positions, and the risks, volatility, degree of liquidity, and speculative nature of the products; and

(xi) any other activity that the Applicant may engage in that reasonably could have a material impact on net capital within the first

twelve months of business operations;

(B) a copy of the Applicant's most recent Form BD;

(C) evidence of all registrations and licenses required by the Commission, state securities authorities, the Municipal Securities Rulemaking Board, the National Securities Clearing Corporation, and self-regulatory organizations, and a copy of any decision by a federal or state authority or self-regulatory organization taking permanent or temporary adverse action with respect to a registration or licensing determination regarding the Applicant or an Associated Person;

(D) a list of all Associated Persons, the most recent Form U-4 and Form U-5 for each Associated Person, any other document that discloses the disciplinary history of each Associated Person, and a list of any other persons or entities that will exercise control with respect to the Applicant's business;

(E) documentation of any:

(i) regulatory action against or investigation of the Applicant or an Associated Person by the Commission, the Commodity Futures Trading Commission, a federal, state, or foreign regulatory agency, or a self-regulatory organization that is pending, adjudicated, or settled;

(ii) investment-related civil action for damages or an injunction against the Applicant or an Associated Person that is pending, adjudicated, or settled;

(iii) investment-related customer complaint or arbitration involving sales practice violations, theft, misappropriation, conversion, or breach of fiduciary duty, against the Applicant or an Associated Person that is pending, settled, or has resulted in an award or judgement; and

(iv) criminal action (other than a minor traffic violation) against the Applicant or an Associated Person that is pending, adjudicated, or that has resulted in a guilty or no contest plea;

(F) a copy of any document evidencing a termination for cause or a permitted resignation after investigation of an alleged violation of a federal or state securities law, a rule or regulation thereunder, a self-regulatory organization rule, or an industry standard of conduct;

(G) a description of any remedial action, such as special training or continuing education requirements or heightened supervision, imposed on an

Associated Person by a state or federal authority or self-regulatory organization;

(H) a written acknowledgment that heightened supervisory procedures and special educational programs may be required for an Associated Person whose records reflect: (i) disciplinary actions involving sales practice violations; (ii) customer complaints; or (iii) arbitrations that were resolved adversely to the Associated Person;

(I) a copy of final or proposed contracts with banks, clearing entities, or service bureaus, and a general description of any other final or proposed contracts;

(J) a description of the nature and source of Applicant's capital, including a list of all persons or entities that have contributed or plan to contribute financing to the Applicant's business, the terms and conditions of such financing arrangements, the risk to net capital presented by the Applicant's proposed business activities, and any arrangement for additional capital should a business need arise;

(K) a description of the financial controls to be employed by the Applicant;

(L) a description of the Applicant's supervisory system and a copy of its written supervisory procedures, internal operating procedures (including operational and internal controls), internal inspections plan, written approval process, and qualifications investigations required by Rule 3010;

(M) a description of the number, experience, and qualifications of supervisors and principals and the number, experience, and qualifications of persons to be supervised by such personnel, the other responsibilities of the supervisors and principals with the Applicant, their full-time or part-time status, any business activities that the supervisors or principals may engage in outside of their association with the Applicant, the hours per week devoted to such activities, and an explanation of how a part-time supervisor or principal will be able to discharge his or her designated functions on a part-time basis;

(N) a description of Applicant's proposed recordkeeping system;

(O) a copy of the Applicant's written training plan to comply with Firm Element continuing education requirements described in Rule 1120(b), including the name of the Associated Person responsible for implementation; and

(P) a copy of the documents described in paragraph (a)(1).

(3) The Applicant shall file both parts of the application simultaneously by

commercial courier. The application shall be deemed received on the date specified in the written confirmation of receipt generated by the commercial courier for the delivery of the second part of the application to the district office.

(4) Within 30 days after the receipt of an application, the Department shall determine whether the application is complete and, if not, shall request additional information or documents. The Department may request additional information or documents at any time during the membership application process.

(5) Unless otherwise agreed by the Department and the Applicant, the Applicant shall file any additional information and documents with the Department within 60 days after the Department's initial request and 30 days after any subsequent request.

(b) Lapse of Application

(1) Absent a showing of good cause, an application for membership shall lapse if an Applicant fails to:

(A) respond fully within 60 days after an initial request for information or documents, within 30 after any subsequent request, or within such other time period agreed to by the Department and the Applicant;

(B) appear at or otherwise participate in a scheduled membership interview pursuant to paragraph (c); or

(C) return an executed membership agreement under Rule 1014(c) within 25 days after service of the agreement.

(2) The lapse of an application shall require an Applicant continuing to seek membership to submit a new application under paragraph (a).

(c) Membership Interview

(1) Requirement for Interview

Before the Department issues a decision on an application for membership in the Association, the Department shall conduct a membership interview with a representative or representatives of the Applicant.

(2) Service of Notice

At least seven days before the membership interview, the Department shall serve on the Applicant a written notice that specifies the date and time of the interview and the

representative or representatives of the Applicant who are required to participate in the interview. The Department shall serve the notice by facsimile or commercial courier. The Applicant and the Department may agree to a shorter or longer period for notice or a different method of service under this subparagraph.

(3) Time

Unless the Department directs otherwise for good cause shown, a membership interview shall be scheduled to occur within 90 days after the receipt of an application or within 60 days after the receipt of all additional information or documents requested, whichever is later.

(4) Place

Unless the Department and the Applicant otherwise agree, the membership interview shall be conducted in the district office for the district in which the Applicant has or intends to have its principal place of business.

(5) Review of Standards for Admission

During the membership interview, the Department shall review the application and the standards for admission to membership with the Applicant's representative or representatives.

(6) Information From Other Sources

During the membership interview, the Department shall provide to the Applicant's representative or representatives any information or document that the Department has obtained from the Central Registration Depository or a source other than the Applicant and upon which the Department intends to base its decision under Rule 1014. If the Department receives such information or document after the membership interview or decides to base its decision on such information after the membership interview, the Department shall promptly serve the information or document and an explanation thereof on the Applicant.

1014. Department Decision

(a) Standards for Admission

After considering the application, the membership interview, other information and documents provided by the Applicant, other information and documents obtained by the Department, and the public interest and the protection of investors, the Department shall determine whether the Applicant meets each of the following standards:

(1) The application and all supporting documents are complete and accurate.

(2) The Applicant and its Associated Persons have all licenses and registrations required by state and federal authorities and self-regulatory organizations.

(3) The Applicant and its Associated Persons are capable of complying with the federal securities laws, the rules and regulations thereunder, and the Rules of the Association, including observing high standards of commercial honor and just and equitable principles of trade. In determining whether this standard is met, the Department may take into consideration whether:

(A) a state or federal authority or self-regulatory organization has taken permanent or temporary adverse action with respect to a registration or licensing determination regarding the Applicant or an Associated Person;

(B) an Applicant's or Associated Person's records reflect: (i) disciplinary actions involving sales practice violations; (ii) customer complaints; or (iii) arbitrations that were resolved adversely to the Applicant or Associated Person;

(C) an Applicant or Associated Person is the subject of a pending, adjudicated, or settled regulatory action or investigation by the Commission, the Commodity Futures Trading Commission, a federal, state, or foreign regulatory agency, or a self-regulatory organization; a pending, adjudicated, or settled investment-related civil action for damages or an injunction; an investment-related customer complaint or arbitration alleging sales practice violations, theft, misappropriation, conversion, or breach of fiduciary duty that is pending, settled, or has resulted in an award or judgment; or a criminal action (other than a minor traffic violation) that is pending, adjudicated, or that has resulted in a guilty or no contest plea;

(D) an Associated Person was terminated for cause or permitted to resign after an investigation of an alleged violation of a federal or state securities law, a rule or regulation thereunder, a self-regulatory organization rule, or industry standard of conduct;

(E) a state or federal authority or self-regulatory organization has imposed a remedial action, such as special training or continuing education requirements or heightened supervision, on an Associated Person; and

(F) a state or federal authority or self-regulatory organization has provided information indicating that the Applicant or an Associated Person otherwise poses a threat to public investors.

(4) The Applicant has established all contractual or other arrangements and business relationships with banks, clearing corporations, service bureaus, or others necessary to: (i) initiate the operations described in the Applicant's business plan, considering the nature and scope of operations and the number of personnel; and (ii) comply with the federal securities laws, the rules and regulations thereunder, and the Rules of the Association.

(5) The Applicant has or has adequate plans to obtain facilities that are sufficient to: (i) initiate the operations described in the Applicant's business plan, considering the nature and scope of operations and the number of personnel; and (ii) comply with the federal securities laws, the rules and regulations thereunder, and the Rules of the Association.

(6) The Applicant is capable of maintaining a level of net capital in excess of the minimum net capital requirements set forth in SEC Rule 15c3-1 adequate to support the Applicant's intended business operations on a continuing basis, based on information that is current within 30 days before the membership interview. The Department may impose a reasonably determined higher net capital requirement for the initiation of operations after considering:

(A) the amount of net capital sufficient to avoid early warning level reporting requirements, such as SEC Rule 17a-11;

(B) the amount of capital necessary to meet expenses net of revenues for at least twelve months, based on reliable projections agreed to by the Applicant and the Department;

(C) any planned market making activities, the number of markets to be made, the type and volatility of products, and the anticipated maximum inventory positions;

(D) any plan to enter into other contractual commitments, such as underwritings or other securities-related activities;

(E) any plan to distribute or maintain securities products in proprietary positions, and the risks, volatility, degree of liquidity, and speculative nature of the products; and

(F) any other activity that the Applicant will engage in that reasonably

could have a material impact on net capital within the first twelve months of business operations.

(7) The Applicant has financial controls to ensure compliance with the federal securities laws, the rules and regulations thereunder, and the Rules of the Association.

(8) The Applicant has compliance, supervisory, operational, and internal control practices and standards that are consistent with practices and standards regularly employed in the investment banking or securities business, taking into account the nature and scope of Applicant's proposed business.

(9) The Applicant has a supervisory system, including written supervisory procedures, internal operating procedures (including operational and internal controls), and compliance procedures designed to prevent and detect, to the extent practicable, violations of the federal securities laws, the rules and regulations thereunder, and the Rules of the Association. In evaluating the adequacy of a supervisory system, the Department shall consider the overall nature and scope of the Applicant's intended business operations and shall consider whether:

(A) the number, location, experience, and qualifications of supervisory personnel are adequate in light of the number, location, experience, and qualifications of persons to be supervised; the disciplinary history of such persons; any criminal, civil, administrative, or arbitration actions or written customer complaints against such persons; and the number and locations of the offices that the Applicant intends to open;

(B) the Applicant has identified specific Associated Persons to supervise and discharge each of the functions in Applicant's business plan, and to supervise each of the Applicant's intended offices, whether or not such offices are required to be registered under the Rules of the Association;

(C) each Associated Person identified to discharge a supervisory function in the business plan has at least one year of direct experience or two years of related experience in the subject area;

(D) the Applicant will solicit retail or institutional business;

(E) the Applicant will recommend securities to customers;

(F) the location or part-time status of a supervisor or principal will affect such person's ability to be an effective supervisor;

(G) the records of an Associated Person reflect: (i) disciplinary actions

involving sales practice violations; (ii) customer complaints; or (iii) arbitrations that were resolved adversely to the Associated Person;

(H) any remedial action, such as special training or continuing education requirements or heightened supervision, has been imposed on an Associated Person by a state or federal authority or self-regulatory organization; and

(I) any other condition that will have a material impact on the Applicant's ability to detect and prevent violations of the federal securities laws, the rules and regulations thereunder, and the Rules of the Association.

(10) The Applicant has a recordkeeping system that enables Applicant to comply with federal, state, and self-regulatory organization recordkeeping requirements and a staff that is sufficient in qualifications and number to prepare and preserve required records.

(11) The Applicant has completed a training needs assessment and has a written training plan that complies with the continuing education requirements imposed by the federal securities laws, the rules and regulations thereunder, and the Rules of the Association.

(12) The Association does not possess any information indicating that the Applicant may circumvent, evade, or otherwise avoid compliance with the federal securities laws, the rules and regulations thereunder, or the Rules of the Association.

(13) The application and all supporting documents otherwise are consistent with the federal securities laws, the rules and regulations thereunder, and the Rules of the Association.

(b) Granting or Denying Application

(1) If the Department determines that the Applicant meets each of the standards in paragraph (a), the Department shall grant the application for membership.

(2) If the Department determines that the Applicant does not meet one or more of the standards in paragraph (a) in whole or in part, the Department may:

(A) grant the application subject to one or more restrictions reasonably designed to address a specific financial, operational, supervisory, disciplinary, investor protection, or other regulatory concern based on the standards for admission in Rule 1014(a); or

(B) deny the application.

(c) Submission of Membership Agreement

If the Department grants an application, with or without restriction, the Applicant's approval for membership shall be contingent upon the Applicant's submission of a written membership agreement, satisfactory to the Department, undertaking to:

- (1) engage only in the business set forth in the business plan and the membership agreement;
- (2) abide by any restriction specified in the Department's decision;
- (3) obtain the Department's prior approval of the removal or modification of such a restriction pursuant to Rule 1017; and
- (4) notify and obtain the Department's approval of a change in ownership or control or a material change in business operations pursuant to Rule 1018.

The Applicant shall not waive the right to file a written request for review under Rule 1015 by executing a membership agreement under this paragraph.

(d) Decision

(1) Time

The Department shall issue a written decision on the membership application within 30 days after the conclusion of the membership interview or after the submission of additional information or documents, whichever is later.

(2) Content

If the Department denies the application, the decision shall explain the reason for denial, referencing the applicable standard or standards in paragraph (a). If the Department grants the application subject to restrictions, the decision shall explain the reason for each restriction, referencing the applicable standard or standards in paragraph (a) upon which the restriction is based and identify the specific financial, operational, supervisory, disciplinary, investor protection, or other regulatory concern that the restriction is designed to address and the manner in which the restriction is reasonably designed to address the concern.

(3) Failure to Issue Decision

If the Department fails to issue a decision within 180 days after receipt of an application or such later date as the Department and the Applicant have agreed in writing,

the Applicant may file a written request with the NASD Board requesting that the NASD Board direct the Department to issue a decision. Within seven days after receipt of such a request, the NASD Board shall direct the Department to serve its written decision immediately or to show good cause for an extension of time. If the Department shows good cause for an extension of time, the NASD Board may extend the 180 day time limit by not more than 90 days.

(e) Service and Effectiveness of Decision

The Department shall serve its decision and the membership agreement on the Applicant in accordance with Rule 1012. The decision shall become effective upon service and shall remain in effect during the pendency of any review until a decision constituting final action of the Association is issued under Rule 1015 or 1016, unless otherwise directed by the National Business Conduct Committee, the NASD Regulation Board, the NASD Board, or the Commission.

(f) Effectiveness of Restriction

A restriction imposed under this Rule shall remain in effect and bind the Applicant and all successors to the ownership or control of the Applicant unless:

(1) removed or modified by the Department under Rule 1017;

(2) removed or modified by a decision constituting final action of the Association issued under Rule 1015 or 1016; or

(3) stayed by the National Business Conduct Committee, the NASD Regulation Board, the NASD Board, or the Commission.

(g) Final Action

Unless the Applicant files a written request for a review under Rule 1015, the Department's decision shall constitute final action by the Association.

1015. Review by National Business Conduct Committee

(a) Request

Within 25 days after service of a decision under Rule 1014, 1017, or 1018, an Applicant

may file a written request for review with the National Business Conduct Committee. A request for review shall state with specificity why the Applicant believes that the Department's decision is inconsistent with the membership standards set forth in Rule 1014, or otherwise should be set aside, and state whether a hearing is requested. The Applicant simultaneously shall send by first-class mail a copy of the request to the district office where the Applicant filed its membership application.

(b) Transmission of Documents

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

(1) transmit to the National Business Conduct Committee copies of all documents that were considered in connection with the Department's decision and an index to the documents; and

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

(c) Membership Application Docket

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

(d) Appointment of Subcommittee

The National Business Conduct Committee shall appoint a Subcommittee to participate in the review. The Subcommittee shall be composed of at least two members. One member shall be a current member of the National Business Conduct Committee. The remaining member or members shall be current or past Directors or past Governors.

(e) Powers of Subcommittee

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

(f) Hearing

(1) Notice

If a hearing is requested or directed, the hearing shall be held within 45 days after the receipt of the request or service of the notice by the National Business Conduct Committee. The National Business Conduct Committee shall send written notice of the date and time of the hearing to the Applicant by facsimile or commercial courier not later than 14 days before the hearing.

(2) Counsel

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

(3) Evidence

Formal rules of evidence shall not apply to a hearing under this Rule. Not later than five days before the hearing, the Applicant and the Department shall exchange copies of their proposed hearing exhibits and witness lists and provide copies of the same to the National Business Conduct Committee. If the Applicant or the Department fails to provide copies of its proposed hearing exhibits or witness list within such time, the Subcommittee shall exclude the evidence or witnesses from the proceeding, unless the Subcommittee determines that good cause is shown for failure to comply with the production date set forth in this subparagraph.

(4) Transcript

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

(5) Failure to Appear at Hearing

If an Applicant fails to appear at a hearing for which it has notice, the National Business Conduct Committee may dismiss the request for review as abandoned, and the decision of the Department shall become the final action of the Association. Upon a showing of good cause, the National Business Conduct Committee may withdraw a dismissal entered pursuant to this subparagraph.

(g) Additional Information, Briefs

At any time during its consideration, the Subcommittee or the National Business Conduct

Committee may direct the Applicant or the Department to submit additional information and to file briefs. Any additional information or brief submitted shall be provided to all parties before the National Business Conduct Committee renders its decision.

(h) Subcommittee Recommendation

The Subcommittee shall present a recommended decision in writing to the National Business Conduct Committee and all other Directors within 60 days after the date of the hearing held pursuant to paragraph (f), and not later than seven days before the meeting of the National Business Conduct Committee at which the membership proceeding shall be considered.

(i) Decision

(1) Proposed Written Decision

After considering all matters presented in the review and the Subcommittee's recommended written decision, the National Business Conduct Committee may affirm, modify, or reverse the Department's decision or remand the membership proceeding with instructions. The National Business Conduct Committee shall prepare a proposed written decision pursuant to subparagraph (2).

(2) Contents

The decision shall include:

- (A) a description of the Department's decision, including its rationale;
- (B) a description of the principal issues raised in the review;
- (C) a summary of the evidence on each issue; and
- (D) a statement whether the Department's decision is affirmed, modified, or reversed, and a rationale therefor that references the applicable standards in Rule 1014.

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

The National Business Conduct Committee shall provide its proposed written decision to the NASD Regulation Board, and, if such decision is not called for review by the NASD Regulation Board, to the NASD Board. The NASD Regulation Board may call the membership proceeding for review pursuant to Rule 1016(a). The NASD Board

may call the membership proceeding for review pursuant to Rule 1016(b). If neither the NASD Regulation Board nor the NASD Board calls the membership proceeding for review, the proposed written decision of the National Business Conduct Committee shall become final. The National Business Conduct Committee shall serve the Applicant with a written notice specifying the date on which the call for review period expired and stating that the final written decision will be served within 15 days after such date. The National Business Conduct Committee shall serve its final written decision within 15 days after the date on which the call for review period expired. The decision shall constitute the final action of the Association for purposes of SEC Rule 19d-3, unless the National Business Conduct Committee remands the membership proceeding.

(4) Failure to Issue Decision

If the National Business Conduct Committee fails to serve its final written decision within the time prescribed in subparagraph (3), the Applicant may file a written request with the NASD Board requesting that the NASD Board direct the National Business Conduct Committee to serve its decision immediately or to show good cause for an extension of time. Within seven days after receipt of such a request, the NASD Board shall direct the National Business Conduct Committee to serve its written decision immediately or to show good cause for an extension of time. If the National Business Conduct Committee shows good cause for an extension of time, the NASD Board may extend the 15 day time limit by not more than 15 days.

1016. Discretionary Review by Boards

(a) Discretionary Review by the NASD Regulation Board

(1) Call For Review By Director

A Director may call a membership proceeding for review by the NASD Regulation Board if the call for review is made within the period prescribed in paragraph (2).

(2) Seven Day Period; Waiver

After receiving the proposed written decision of the National Business Conduct Committee pursuant to Rule 1015, a Director shall have not less than seven days to determine if the membership proceeding should be called for review. A Director shall call a membership proceeding for review by notifying the General Counsel of NASD Regulation. By a unanimous vote of the NASD Regulation Board, the NASD Regulation Board may shorten the period to less than seven days. By an affirmative vote of the majority of the NASD Regulation Board then in office, the NASD Regulation Board may, during the seven day period, vote to extend the period to more than seven days.

(3) Review at Next Meeting

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

(4) Decision of NASD Regulation Board, Including Remand

After review, the NASD Regulation Board may affirm, modify, or reverse the proposed written decision of the National Business Conduct Committee. Alternatively, the NASD Regulation Board may remand the membership proceeding with instructions. The NASD Regulation Board shall prepare a proposed written decision that includes all of the elements described in Rule 1015(i)(2).

(5) Issuance of Decision After Expiration of Call for Review Period

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

(6) Failure to Issue Decision

If the NASD Regulation Board fails to serve its final written decision within the time prescribed in subparagraph (5), the Applicant may file a written request with the NASD Board requesting that the NASD Board direct the NASD Regulation Board to serve its decision immediately or to show good cause for an extension of time. Within seven days after receipt of such a request, the NASD Board shall direct the NASD Regulation Board to serve its written decision immediately or to show good cause for an extension of time. If the NASD Regulation Board shows good cause for an extension of time, the NASD Board may extend the 15 day time limit by not more than 15 days.

(b) Discretionary Review by the NASD Board

(1) Call for Review by Governor

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

(2) Seven Day Period; Waiver

(A) Membership Proceeding Called for Review by NASD Regulation Board

If the NASD Regulation Board reviewed the membership proceeding under paragraph (a), a Governor shall make his or her call for review at the next meeting of the NASD Board that is at least seven days after the date on which the NASD Board receives the proposed written decision of the NASD Regulation Board.

(B) Membership Proceeding Not Called For Review By NASD Regulation Board

If no Director of the NASD Regulation Board called the membership proceeding for review under paragraph (a), a Governor shall make his or her call for review at the next meeting of the NASD Board that is at least seven days after the date on which the NASD Board receives the proposed written decision of the National Business Conduct Committee.

(C) Waiver

By unanimous vote of the NASD Board, the NASD Board may shorten the period in subparagraph (A) or (B) to less than seven days. By an affirmative vote of the majority of the NASD Board then in office, the NASD Board may, during the seven day period in subparagraph (A) or (B), vote to extend the period in subparagraph (A) or (B) to more than seven days.

(3) Review At Next Meeting

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

(4) Decision of NASD Board, Including Remand

After review, the NASD Board may affirm, modify, or reverse: (1) the proposed

written decision of the NASD Regulation Board, or (2) if the NASD Regulation Board did not call the membership proceeding for review under paragraph (a), the proposed written decision of the National Business Conduct Committee. Alternatively, the NASD Board may remand the membership proceeding with instructions. The NASD Board shall prepare a written decision that includes all of the elements described in Rule 1015(i)(2).

(5) Issuance of Decision

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

1017. Removal or Modification of Business Restriction

(a) Application

(1) A member of the Association may seek modification or removal of a restriction on its business activities imposed pursuant to the Rule 1010 Series by filing a written application with the Department at the district office for the district in which the member's principal place of business is located. The application shall present facts showing that the circumstances that gave rise to the restriction have changed and state with specificity why the restriction should be modified or removed in light of the standards set forth in Rule 1014 and the articulated rationale for the imposition of the restriction. A copy of the decision and membership agreement pertaining to such restriction shall be appended to the application.

(b) Request for Documents

Within 30 days after the receipt of an application to remove or modify a restriction, the Department shall determine whether the application is complete and, if not, shall request any additional information or documents necessary to render a decision under paragraph (e). The Department may request additional information or documents at any time during the application process. Unless otherwise agreed to by the Department and the Applicant, the Applicant shall file such additional information or documents with the Department within 30 days after the Department's request.

(c) Lapse

(1) Absent a showing of good cause, an application to modify or remove a restriction shall lapse if an Applicant fails to:

(A) respond fully within 30 days after a request for information or

documents;

(B) appear at or otherwise participate in a scheduled membership interview pursuant to paragraph (d); or

(C) return an executed membership agreement under paragraph (e)(4) within 25 days after service of the agreement.

(2) The lapse of an application shall require the Applicant to submit a new application to modify or remove a restriction under paragraph (a).

(d) Membership Interview

(1) The Department may require the Applicant to participate in a membership interview within 30 days after the receipt of the application, or if the Department requests additional information or documents, within 30 days after the filing of the additional information or documents by the Applicant.

(2) At least seven days before the membership interview, the Department shall serve on the Applicant a written notice that specifies the date and time of the interview and the representative or representatives of the Applicant who are required to participate in the interview. The Department shall serve the notice by facsimile or commercial courier. The Applicant and the Department may agree to a shorter or longer period for notice or a different method of service.

(3) Unless the Department and the Applicant otherwise agree, the membership interview shall be conducted in the district office for the district in which the Applicant has its principal place of business.

(4) During the membership interview, the Department shall review the application and the considerations for the Department's decision set forth in paragraph (e)(1) with the Applicant's representative or representatives. The Department shall provide to the Applicant's representative or representatives any information or document that the Department has obtained from the Central Registration Depository or a source other than the Applicant and upon which the Department intends to base its decision under paragraph (e). If the Department receives such information or document after the membership interview or decides to base its decision on such information after the membership interview, the Department shall promptly serve the information or document and an explanation thereof on the Applicant.

(e) Department Decision

(1) In evaluating an application submitted under paragraph (a), the Department

shall consider whether maintenance of the restriction is appropriate in light of:

- (A) the standards set forth in Rule 1014;
- (B) the circumstances that gave rise to the imposition of the restriction;
- (C) the Applicant's operations since the restriction was imposed;
- (D) a change in ownership or control or supervisors and principals; and
- (E) any new evidence submitted in connection with the application.

(2) The Department shall issue a written decision on the application within 30 days after the membership interview or the submission of additional information or documents, whichever is later. If the Department does not require the Applicant to participate in a membership interview or request additional information or documents, the Department shall issue a written decision within 45 days after the receipt of the application under paragraph (a). The decision shall state whether the application to modify or remove the restriction is granted or denied in whole or in part, and shall provide a rationale for the Department's decision, referencing the applicable standard in Rule 1014.

(3) If the Department fails to issue a decision within 180 days after receipt of an application or such later date as the Department and the Applicant have agreed in writing, the Applicant may file a written request with the NASD Board requesting that the NASD Board direct the Department to issue a decision. Within seven days after receipt of such a request, the NASD Board shall direct the Department to issue a written decision immediately or to show good cause for an extension of time. If the Department shows good cause for an extension of time, the NASD Board may extend the time limit for issuing a decision by not more than 30 days.

(4) If the Department modifies or removes a restriction on the Applicant's business activities, the membership agreement submitted under Rule 1014 shall be modified accordingly.

(f) Service and Effectiveness of Decision

The Department shall serve its decision on the Applicant in accordance with Rule 1012. The decision shall become effective upon service and shall remain in effect during the pendency of any review until a decision constituting final action of the Association is issued under Rule 1015 or 1016, unless otherwise directed by the National Business Conduct Committee, the NASD Regulation Board, the NASD Board, or the Commission.

(g) Request for Review; Final Action

An Applicant may file a written request for review of the Department's decision with the National Business Conduct Committee pursuant to Rule 1015. The procedures set forth in Rule 1015 shall apply to such review, and the National Business Conduct Committee's decision shall be subject to discretionary review by the NASD Regulation Board and the NASD Board pursuant to Rule 1016. If the Applicant does not file a request for a review, the Department's decision shall constitute final action by the Association.

(h) Removal or Modification of Restriction on Department's Initiative

The Department shall modify or remove a restriction on its own initiative if the Department determines such action is appropriate in light of the considerations set forth in paragraph (e)(1). The Department shall notify the member in writing of the Department's determination and inform the member that it may apply for further modification or removal of a restriction by filing an application under paragraph (a).

1018. Change in Ownership, Control, or Operations

(a) Notice

At least 30 days prior to the occurrence of any of the following changes in ownership, control, or operations, a member shall file a written notice and application for continuance in membership with the Department at the district office in the district in which the member's principal place of business is located:

- (1) a merger of the member with another member;
- (2) an acquisition by the member of another member;
- (3) an acquisition of substantially all of the member's assets;
- (4) a change in the equity ownership or partnership capital of the member that results in one person or entity owning or controlling 25 percent or more of the equity or partnership capital; or
- (5) a material change in the member's business operations.

(b) Review and Imposition of Interim Restrictions

The Department shall review a change in ownership, control, or operations described in paragraph (a) prior to the change taking effect. The Department may maintain existing restrictions on the member's business activities and place new interim restrictions on the member based on the standards in Rule 1014, pending final Department action.

(c) Request for Information

Within 30 days after receipt of the notice and application under paragraph (a), the Department shall request any additional information or documents necessary to render a decision under paragraph (f). Unless otherwise agreed by the Department and the Applicant, the Applicant shall file such additional information or documents with the Department within 30 days after the Department's request. The Department may request additional information and documents at any time during the application process; unless the Applicant and the Department agree otherwise, the Applicant shall file such information or documents within 30 days after the Department's request.

(d) Lapse

(1) Absent a showing of good cause, an application for continuance in membership shall lapse if an Applicant fails to:

(A) respond fully within 30 days after a request for information or documents;

(B) appear at or otherwise participate in a scheduled membership interview pursuant to paragraph (e); or

(C) return an executed membership agreement under paragraph (g) within 25 days after service of the agreement.

(2) The lapse of an application shall require the Applicant to submit a new application under paragraph (a).

(e) Membership Interview

(1) The Department may require the Applicant to participate in a membership interview. The membership interview shall be held within 30 days after the receipt of the application, or if the Department requests additional information or documents, within 30 days after the filing of such additional information or documents by the Applicant.

(2) At least seven days before the membership interview, the Department shall serve on the Applicant a written notice that specifies the date and time of the interview and the representative or representatives of the Applicant who are required to participate in the interview. The Department shall serve the notice by facsimile or commercial courier. The Applicant and the Department may agree to a shorter or longer period for notice or a different method of service.

(3) Unless the Department and the Applicant otherwise agree, the membership interview shall be conducted in the district office for the district in which the Applicant has or intends to have its principal place of business.

(4) During the membership interview, the Department shall review the application and the considerations for the Department's decision set forth in paragraph (f). The Department shall provide to the Applicant's representative or representatives any information or document that the Department has obtained from the Central Registration Depository or a source other than the Applicant and upon which the Department intends to base its decision under paragraph (f). If the Department receives such information or document after the membership interview or decides to base its decision on such information after the membership interview, the Department shall promptly serve the information or document and an explanation thereof on the Applicant.

(f) Department Decision

(1) In evaluating an application submitted under paragraph (a), the Department shall consider whether the Applicant continues to meet the standards set forth in Rule 1014 in light of the change in ownership, control, or operations, and whether current restrictions, if any, or new restrictions are necessary for the Applicant to continue to meet such standards.

(2) The Department shall issue a written decision within 30 days after the membership interview or the submission of additional information or documents, whichever is later. If the Department does not require the Applicant to participate in a membership interview or submit additional information or documents, the Department shall issue a written decision within 45 days after receipt of an application under paragraph (a). The decision shall state the terms for continuance in NASD membership, whether current restrictions, if any, are maintained or new restrictions are imposed, and shall provide a rationale for the Department's decision, referencing the applicable standard in Rule 1014.

(3) If the Department fails to issue a decision within 180 days after receipt of an application or such later date as the Department and the Applicant have agreed in writing, the Applicant may file a written request with the NASD Board requesting that the NASD Board direct the Department to issue a decision. Within seven days after receipt of such a request, the NASD Board shall direct the Department to issue a written decision immediately or to show good cause for an extension of time. If the Department shows good cause for an extension of time, the NASD Board may extend the time limit for issuing a decision by not more than 30 days.

(g) Submission of Membership Agreement

The Department may condition approval of an application for continuance in membership on the Applicant's submission of a new written membership agreement pursuant to Rule 1014(c).

(h) Service and Effectiveness of Decision

The Department shall serve its decision on the Applicant in accordance with Rule 1012. The decision shall become effective upon service and shall remain in effect during the pendency of any review until a decision constituting final action of the Association is issued under Rule 1015 or 1016, unless otherwise directed by the National Business Conduct Committee, the NASD Regulation Board, the NASD Board, or the Commission.

(i) Request for Review; Final Action

An Applicant may file a written request for review of the Department's decision with the National Business Conduct Committee pursuant to Rule 1015. The procedures set forth in Rule 1015 shall apply to such a review, and the National Business Conduct Committee's decision shall be subject to discretionary review by the NASD Regulation Board and the NASD Board pursuant to Rule 1016. If the Applicant does not file a request for review, the Department's action shall constitute the final action of the Association.

1019. Application to Commission for Review

A person aggrieved by final action of the Association under the Rule 1010 Series may apply for review by the Commission pursuant to Section 19(d)(2) of the Act. The filing of an application for review shall not stay the effectiveness of a decision constituting final action of the Association, unless the Commission otherwise orders.