

**ATTACHMENT A to *Regulatory Notice 10-01***

Below is the text of the proposed rule change. Proposed new language is underlined; proposed deletions are in brackets.

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**Text of Proposed New FINRA Rules**

(Marked to Show Changes from NASD Rules 1011, 1012, 1013, 1014, 1015, 1016, 1017, 1019; NASD Rules 1011, 1012, 1013, 1014, 1015, 1016, 1017, 1019 to be Deleted in their Entirety from the Transitional Rulebook)

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**1000. MEMBER APPLICATION AND ASSOCIATED PERSON REGISTRATION**

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**1100. MEMBER APPLICATION**

**1110. General Provisions**

**[1011]1111. Definitions**

Unless otherwise provided, terms used in the Rule 1100 [1010] Series shall have the meaning as defined in NASD Rule 0120.

**(a) “Affiliate”**

The term “Affiliate” means:

(1) a person that directly or indirectly controls an Applicant (excluding natural persons that control an Applicant solely pursuant to paragraph (d)(3) of this Rule); or

(2) an entity that is controlled by, or is under common control with, an Applicant.

**(b) “Applicant”**

The term “Applicant” means a person that applies for membership in FINRA under Rule 1121[1013] or a member that files an application for approval of a change in ownership, control, or business operations under Rule 1160[1017]. An Applicant may also be referred to as a “member” in the context of Rule 1160.

**[(b)](c) “Associated Person”**

The term “Associated Person” means:

- (1) a natural person registered under [NASD] FINRA [R]rules; [or]
- (2) a sole proprietor, or any partner, LLC managing member, officer, director, or branch manager of the Applicant, or any person occupying a similar status or performing similar functions;
- (3) any employee of the Applicant, except any person whose functions are solely clerical or ministerial;
- [(3)](4) any company, government or political subdivision or agency or instrumentality of a government controlled by or controlling the Applicant;
- [(4)] any employee of the Applicant, except any person whose functions are solely clerical or ministerial;]
- (5) any person directly or indirectly controlling the Applicant whether or not such person is registered or exempt from registration under the FINRA By-Laws or [NASD] FINRA [R]rules;
- (6) any person engaged in investment banking or securities business controlled directly or indirectly by the Applicant whether such person is registered or exempt from registration under the FINRA By-Laws or [NASD] FINRA [R]rules; or

(7) any person who will be or is anticipated to be a person described in subparagraphs (1) through (6) above.

**(d) “control”**

The term “control” means the power to direct or cause the direction of the management or policies of a person whether through ownership of securities, by contract or otherwise. A person shall be presumed to control another person if such person, directly or indirectly:

(1) has the right to vote 25 percent or more of the voting securities;

(2) is entitled to receive 25 percent or more of the net profits; or

(3) is a director, general partner or officer (or person occupying a similar status or performing similar functions) of the other person.

Any person that does not meet the provisions of subparagraph (1), (2) or (3) shall be presumed not to control such other person. Any presumption under this definition may be rebutted by evidence, but shall continue until a determination to the contrary has been made by FINRA.

**[(c)](e) “Department”**

The term “Department” means the Department of Member Regulation of FINRA.

**[(d)](f) “Director”**

The term “Director” means a member of the FINRA Regulation Board.

**[(e)](g) “district”**

The term “district” means a district established by the FINRA Regulation Board.

**[(f)](h) “district office”**

The term “district office” means an office of FINRA located in a district.

**[(g)](i) “FINRA Board”**

The term “FINRA Board” means the Board of Governors of FINRA.

**[(h)](j) “FINRA Regulation Board”**

The term “FINRA Regulation Board” means the Board of Directors of FINRA Regulation.

**[(i)](k) “Governor”**

The term “Governor” means a member of the FINRA Board.

**[(j)](l) “Interested FINRA Staff”**

The term “Interested FINRA Staff” means an employee who directly participates in a decision on applications filed under Rule [1014]1121 or [1017]1160, 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 1160[1017], the District Director for the relevant district, and the [head] Executive Vice President(s) of the Department.

**[(k) “material change in business operations”]**

[The term “material change in business operations” includes, but is not limited to:]

- [(1) removing or modifying a membership agreement restriction;]
- [(2) market making, underwriting, or acting as a dealer for the first time;]
- [(3) adding business activities that require a higher minimum net capital under SEC Rule 15c3-1;]

**[(l)](m) “principal place of business”**

The term “principal place of business” means the executive office from which the sole proprietor or the officers, partners, LLC managing members, or other managers of the Applicant direct, control, and coordinate the activities of the Applicant, unless the Department determines that the principal place of business is where: (1) the largest number of Associated Persons of the Applicant are located; or (2) the books and records necessary to provide information and data to operate the business and comply with applicable rules are located.

**[(m)](n) “sales practice event”**

The term “sales practice event” means any customer complaint, arbitration, “statutory disqualification” as defined in Section 3(a)(39) of the Exchange Act, or civil litigation that has been reported to the Central Registration Depository, currently is required to be reported to the Central Registration Depository, or otherwise has been reported to FINRA.

**[(n)](o) “Subcommittee”**

The term “Subcommittee” means a subcommittee of the National Adjudicatory Council that is constituted pursuant to Rule 1140[1015] to conduct a review of a Department decision issued under the Rule 1100[1010] Series.

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**[1012]1112. General [Provisions] Procedures**

**(a) Filing by Applicant or Service by FINRA**

(1) An Applicant for membership shall file an application in accordance with this Rule and in the manner prescribed in Rule [1013] 1121,[] including the timely submission of an application fee pursuant to Schedule A of the FINRA

By-Laws. An Applicant for approval of a change in ownership, control or business operations shall file an application in accordance with this Rule and in the manner prescribed in Rule 1160.

(2) Except where FINRA has otherwise prescribed or directed the use of a particular [an electronic or alternative] filing process, an Applicant may file an application or any document or information requested under the Rule 1100[1010] Series by first-class mail, overnight courier, [or] hand delivery, or electronic delivery (facsimile, email, or a dedicated electronic filing system) [If the Department and the Applicant agree, the Applicant also may file a requested document or information by facsimile].

(3) FINRA shall serve a notice or decision issued under the Rule 1100[1010] Series by first-class mail on the Applicant or its counsel, unless a Rule specifies a different method of service.

(4) For purposes of the Rule 1100[1010] Series, service by FINRA or filing by an Applicant shall be deemed complete as follows:

(A) Service or filing by first-class mail shall be deemed complete on the date of postmark;

(B) Service or filing by overnight courier shall be deemed complete on the date of delivery to the overnight courier as specified in the airbill;

(C) Service or filing by hand delivery shall be deemed complete on the date of receipt as evidenced by a date stamp; and

(D) Service or filing by electronic delivery [facsimile] shall be deemed complete on the date recorded by FINRA's electronic systems for such communications. [specified in the document and on the written confirmation of transmission; and]

[(E) Filing by an electronic system shall be deemed complete on the date specified on the confirmation page generated by the electronic filing system.]

**(b) Lapse of Application**

(1) Absent a showing of good cause, an application filed under Rule 1121[1013] or 1160[1017] shall lapse if an Applicant fails to:

(A) respond fully within [60] 30 days after service of an initial or subsequent written request for information or documents under Rules 1121[1013] or 1160, [within 30 days after service of an initial written request for information or documents under Rule 1017, within 30 days after service of a subsequent written request for information or documents under Rule 1013 or 1017,] 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 Rule 1121[1013](b) or 1160[1017](f); [or]

(C) file an executed membership agreement under Rule 1121(e) [1014(d)] or Rule 1160[1017](g)(4) within 25 days after service of the agreement, or within such other period agreed to by the Department and the Applicant;[.]

(D) (i) schedule, within 30 days of filing its Form NMA, all qualification examinations required of Associated Persons of the Applicant in order for the Applicant to conduct its intended business; and

(ii) ensure that such Associated Persons successfully complete their required qualification examinations within 120 days of filing; or

(E) (i) schedule, within 30 days of filing an application pursuant to Rule 1160, all qualification examinations required of Associated Persons of the Applicant in order for the Applicant to commence its proposed change in ownership, control, or business operations; and

(ii) ensure that such Associated Persons successfully complete their required qualification examinations within 120 days of filing.

(2) If an Applicant wishes again to [continue to] seek membership subsequent to the lapse of an application pursuant to Rule 1112(b)(1), [or approval of a change in ownership, control, or business operation, then] the Applicant shall be required to submit a new application and fee under Rule [1013]~~1121~~ [or 1017, respectively]. FINRA shall not refund any fee for a lapsed application. If an Applicant wishes again to seek approval of a change in ownership, control, or business operations, subsequent to the lapse of an application pursuant to Rule 1112(b)(1), the Applicant shall be required to submit a new application under Rule 1160.

**(c) Ex Parte Communications**

(1) The prohibitions against ex parte communications shall become effective when FINRA staff has knowledge that an Applicant intends to file a written request for review by the National Adjudicatory Council under Rule [1015]1140.

(2) Unless on notice and opportunity for an Applicant and Interested FINRA Staff to participate, or to the extent required for the disposition of ex parte matters as authorized by [NASD] FINRA [R]rules:

(A) an Applicant, a counsel or representative of an Applicant, or an Interested FINRA 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]1100 Series to a Governor, a member of the National Adjudicatory Council or a Subcommittee thereof, or a FINRA employee who is participating or advising in a decision of such a person with respect to that proceeding; and

(B) a Governor, a member of the National Adjudicatory Council or a Subcommittee thereof, or a FINRA 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 FINRA Staff an ex parte communication relevant to the merits of that proceeding.

(3) A Governor, a member of the National Adjudicatory Council or a Subcommittee thereof, or a FINRA 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.

**(d) Recusal or Disqualification**

A Governor or a member of the National Adjudicatory Council or a Subcommittee thereof shall not participate in a matter governed by the Rule [1010]1100 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 FINRA Board shall have authority to direct the disqualification of a Governor, and a majority of the Governors of the FINRA Board excluding the Chair shall have authority to direct the disqualification of the Chair of the FINRA Board.

(2) The Chair of the National Adjudicatory Council shall have authority to direct the disqualification of a member of the National Adjudicatory Council or a member of a Subcommittee appointed pursuant to Rule [1015]1140, and the Vice Chair of the National Adjudicatory Council shall have authority to direct the disqualification of the Chair of the National Adjudicatory Council.

**(e) Computation of Time**

**(1) Calendar Day**

In the Rule [1010]1100 Series, “day” means calendar day.

**(2) Formula**

In computing a period of time under the Rule [1010]1100 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.

**••• Supplementary Material:-----**

**.01 Applications to be Kept Current.**

Each Applicant is under a duty throughout the application process to promptly correct, amend or modify, by submitting supplementary amendments and/or documentation, any application filed with FINRA pursuant to Rules 1121 or 1160 that is or becomes inaccurate or misleading.

**1120. Member Application Process**

**[1013]1121. New Member Application, [and] Interview, and Department Decision**

**(a) Filing of Application**

**(1) [How to File] Filing Requirements**

An Applicant for FINRA membership shall file its application with the Department in the manner prescribed by FINRA [with the Department of

Member Regulation (“the Department”)]. An Applicant shall submit an application that includes:

(A) Form NMA;

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

(C) the Applicant’s establishing constituent documents, as applicable, including Corporate Resolution, Charter, By-Laws, Partnership Agreement, Operating Agreement, Certificate of LLC and any analogous documents;

~~[(C)](D)~~ an original FINRA-approved fingerprint card for each Associated Person who will be subject to SEA[C] Rule 17f-2;

~~[(D)](E)~~ a new member assessment report;

~~[(E)](F)~~ payment of the appropriate fee(s);

~~[(F)](G)~~ a detailed business plan that adequately and comprehensively 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, including future business expansion plans, if any, and includes:

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

(ii) a monthly projection of income and expenses, with a supporting rationale, for the first [twelve]12 months of operations;

(iii) an organizational chart that identifies Associated Persons (by name and CRD number) to be responsible for the supervision and management of each Applicant office, division, and business line;

(iv) an organizational chart that identifies the Applicant and all of its Affiliates, provides a brief summary of each Affiliate's principal activity, and identifies the legal relationship between the Applicant and each Affiliate;

(v) a detailed and comprehensive summary of the business relationship between the Applicant and any Affiliate:

a. whose financial information is consolidated with that of the Applicant;

b. whose liabilities or obligations have been, directly or indirectly, guaranteed by the Applicant;

c. that is the source of flow through capital to the Applicant in accordance with Appendix C of SEA Rule 15c3-1;

d. upon which the Applicant or its customers rely for operational support or services that are used in connection with the Applicant's securities, investment banking, or investment advisory business;

e. that has the authority or the ability to withdraw, or cause the withdrawal of, capital from the Applicant;

f. that has a mutually dependent financial relationship with the Applicant, including any expense sharing agreements;

g. that has a financial and/or marketing relationship with the Applicant; or

h. that provides any third-party products and/or services as part of any operation or function of the Applicant required to be supervised by the Applicant pursuant to FINRA rules;

(vi) at the discretion of the Department, evidence of, and information regarding, any business relationship disclosed pursuant to paragraph (a)(1)(G)(v) of this Rule from the books and records of the Applicant and/or the books and records of any Affiliate that is a party to such business relationship;

[(iv)](vii) the intended location of the Applicant's principal place of business and all other offices, if any, whether or not such offices would be required to be registered under [NASD] FINRA [R]rules, and the names of the persons who will be in charge of each office;

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

[(vi)](ix) 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)](x) a description of the business facilities and a copy of any proposed or final lease;

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

[(ix)](xii) any plan to enter into contractual commitments[, such as] including, but not limited to, underwriting[s] agreements, [or other securities-related activities] or other activities, such as investment advisory business, whether or not exempt from SEC registration under Section 203A of the Investment Adviser Act;

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

[(xi)](xiv) any other activity that the Applicant may engage in that reasonably could have a material impact on net

capital within the first [twelve]12 months of business operations;  
and

[(xii)](xv) a description of the communications and operational systems the Applicant will employ to conduct business with customers or other members and the plans and procedures the Applicant will employ to ensure business continuity, including: system capacity to handle the anticipated level of usage; contingency plans in the event of systems or other technological or communications problems or failures that may impede customer usage or firm order entry or execution; system redundancies; disaster recovery plans; system security; disclosures to be made to potential and existing customers who may use such systems; and supervisory or customer protection measures that may apply to customer use of, or access to, such systems;

[(G)](H) a copy of any decision or order 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;

[(H)](I) a list of all Associated Persons;

[(I)](J) documentation of any of the following events, unless the event has been reported to the Central Registration Depository:

(i) a regulatory action against or investigation of the Applicant or an Associated Person by the [Commission]SEC, the

Commodity Futures Trading Commission, a federal, state, or foreign regulatory agency, or a self-regulatory organization that is pending, adjudicated, or settled;

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

(iii) an investment-related customer complaint or arbitration that is required to be reported on Form U4;

(iv) a 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; and

(v) 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;

~~[(J)]~~(K) a description of any remedial action, such as special training, continuing education requirements, or heightened supervision, imposed on an Associated Person by a state or federal authority or self-regulatory organization;

~~[(K)]~~(L) a written acknowledgment of ~~[that]~~ any heightened supervisory procedures or ~~[and]~~ special educational programs expected to be ~~[may be]~~ required ~~[pursuant to Notice to Members 97-19]~~ for any

Associated Person whose record reflects disciplinary actions or sales practice events;

[(L)](M) 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;

[(M)](N) a description of the nature and source of the Applicant's capital with supporting documentation, 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;

[(N)](O) a description of the financial controls to be employed by the Applicant;

[(O)](P) 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 NASD Rule 3010;

[(P)](Q) 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;

[(Q)](R) a description of Applicant's proposed recordkeeping system;

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

(T) a copy of the Applicant's anti-money laundering procedures; including the name of the Associated Person(s) responsible for implementation;

[(S)](U) a FINRA Entitlement Program Agreement and Terms of Use and a FINRA Member Firm Account Administrator Entitlement Form[.]; and

(V) identification of the independent audit firm (which shall be registered with the Public Company Accounting Oversight Board or "PCAOB") to be engaged by the Applicant, identification of anticipated annual audit schedule and, if applicable, a copy of the Applicant's most recent audit report.

## **(2) Uniform Registration Forms**

Upon approval of the Applicant's FINRA Member Firm Account Administrator Entitlement Form, the Applicant shall submit its Forms U4 for each Associated Person who is required to be registered under [NASD] FINRA Rules, any amendments to its Forms BD or U4, and any Form U5 electronically via Web CRD.

**[(3) Rejection of Application That Is Not Substantially Complete]**

[If the Department determines within 30 days after the filing of an application that the application is not substantially complete, the Department may reject the application and deem it not to have been filed. In such case, within the 30 day period, the Department shall serve a written notice on the Applicant of the Department's determination and the reasons therefor. FINRA shall refund the application fee, less \$350, which shall be retained by FINRA as a processing fee. If the Applicant determines to continue to seek membership, the Applicant shall submit a new application and fee under this Rule.]

**[(4)](3) Request [F]for Additional Documents [O]or Information**

Within 30 days after the filing of an application, the Department shall serve an initial request for any additional information or documents necessary to render a decision on the application. The Department may serve subsequent requests for additional information or documents at any time during the membership application process.

Unless otherwise agreed by the Department and the Applicant, the Applicant shall file any additional information and documents with the

Department within [60] 30 days after service of the Department's initial request and 30 days after service of any subsequent request.

**(4) Rejection of Application that is not Substantially Complete**

(A) If the Department determines within 30 days after the filing of an application that the application is not substantially complete, the Department may reject the application and deem it not to have been filed. In such case, within the 30 day period, the Department shall serve a written notice on the Applicant of the Department's determination and the reasons therefore. FINRA shall refund the application fee, less \$500, which shall be retained by FINRA as a processing fee. If the Applicant determines again to seek membership, the Applicant shall submit a new application and fee (pursuant to Schedule A of FINRA's By-Laws) under this Rule.

(B) (i) If the Applicant re-files an application within 30 days of service of written notice from the Department that the application is not substantially complete, then the Applicant may re-file the application by submitting only a new Form NMA and the application fee. An Applicant may re-file an application only once pursuant to this provision.

(ii) If the Applicant re-files an application after 30 days have elapsed since the service of the written notice from the Department that the application is not substantially complete, the Applicant shall submit a new application and fee under this Rule.

**(5) Application Timing**

When applying for FINRA membership, an Applicant shall file its Form NMA no later than 180 days after the submission of its Form BD in accordance with paragraph (a)(1)(B) of this Rule; otherwise the application process will be deemed to have been abandoned. Once the application process has been deemed abandoned, any consideration of the Applicant's Form NMA will be discontinued. FINRA shall refund the application fee, less \$250, which shall be retained by FINRA as a processing fee. If the Applicant determines again to seek FINRA membership after such abandonment, the Applicant shall submit a new application and fee under this Rule.

**(b) Membership Interview**

**(1) Requirement for Interview**

Before the Department serves its decision on an application for new membership in FINRA, 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 overnight 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 filing of an application or within [60] 30 days after the filing 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) Updated Financial Documents**

On or before the date of the membership interview, the Applicant shall file an updated trial balance, balance sheet, supporting schedules, and computation of net capital. The Applicant shall prepare such documents as of a date that is within 45 days before the date of the membership interview, unless the Applicant and the Department agree on a longer period. The Applicant shall promptly notify the Department in writing of any material adverse change in its financial condition that occurs before a decision constituting final action of FINRA is served on the Applicant.

**(6) Review of Rule 1130 Standards [for Admission]**

[During the membership interview, t] The Department shall review the application and the standards set forth under FINRA Rule 1130 for admission to membership with the [Applicant's] representative or representatives identified pursuant to paragraph (b)(1) of this Rule during the membership interview. The Department may also review such standards from time to time with other

representatives of the Applicant or other persons as deemed necessary by the Department.

**(7) Information [F]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 this Rule and Rule [1014]1130. 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.

**(c) Granting or Denying Application**

(1) In reviewing an application for membership, the Department shall consider whether the Applicant and its Associated Persons meet each of the standards in Rule 1130. Where the Department determines that the Applicant or its Associated Persons are the subject of any of the events set forth in Rule 1130(a)(4)(A) and (C) through (E), a presumption exists that the application will be denied. The Applicant may overcome the presumption by demonstrating that it can meet each of the standards in paragraph (a), notwithstanding the existence of any of the events set forth in Rule 1130(a)(4)(A) and (C) through (E).

(2) If the Department determines that the Applicant meets each of the standards in Rule 1130, the Department shall grant the application for membership.

(3) If the Department determines that the Applicant does not meet one or more of the standards under Rule 1130, in whole or in part, the Department shall:

(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 1130; or

(B) deny the application.

**(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 Applicant's final filing of additional information or documents, whichever is later.

**(2) Content**

If the Department denies the application, the decision shall explain in detail the reason for denial, referencing the applicable standard or standards in Rule 1130. If the Department grants the application subject to restrictions, the decision shall explain in detail the reason for each restriction, referencing the applicable standard or standards in Rule 1130 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 Serve Decision**

If the Department fails to serve a decision within 180 days after the filing 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 FINRA Board requesting that the FINRA Board direct the Department to serve a decision. Within seven days after the filing of such a request, the FINRA 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 FINRA Board may extend the 180 day time limit by not more than 90 days.

**(e) 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 filing of an executed written membership agreement undertaking to:

- (1) abide by all provisions of the membership agreement, including any restrictions specified in the Department's decision; and
- (2) obtain the Department's approval of a change in ownership, control, or business operations pursuant to Rule 1160, including the modification or removal of a membership agreement restriction.

The Applicant shall not waive the right to file a written request for review under Rule 1140 by executing a membership agreement under this paragraph.

**(f) Service and Effectiveness of Decision**

The Department shall serve its decision and the membership agreement on the Applicant in accordance with Rule 1112. 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 FINRA is issued under Rule 1140 or 1150, unless otherwise directed by the National Adjudicatory Council, the FINRA Board, or the SEC.

**(g) 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 a decision constituting final action of FINRA issued under Rule 1140, 1150, or 1160;

(2) stayed by the National Adjudicatory Council, the FINRA Board, or the SEC.

**(h) Final Action**

Unless the Applicant files a written request for a review under Rule 1140, the Department's decision shall constitute final action by FINRA.

**••• Supplementary Material: -----**

**.01 Divisions of Member Firms.**

With respect to paragraph (a)(1)(G)(iii) of this Rule, divisions that are not separate legal entities may not be identified by the use of such words as “Company,” “Corporation” or “Incorporation,” which connote separate legal entities.

## **.02 Membership Waive-In.**

FINRA previously permitted, through an application process, a waive-in to FINRA membership for certain NYSE and NYSE Amex member organizations. The period for seeking such a waive-in has expired.

NYSE member organizations that were admitted pursuant to the waive-in process are subject to the FINRA By-Laws and Schedules to By-Laws, including Schedule A, the consolidated FINRA rules and the NYSE rules incorporated by FINRA, provided that their securities business is limited to floor brokerage on the NYSE, or routing away to other markets orders that are ancillary to their core floor business under NYSE Rule 70.40 (“permitted floor activities”). If an NYSE-only member organization admitted pursuant to the waive-in process seeks to expand its business operations to include any activities other than the permitted floor activities, such firm shall apply for and receive approval to engage in such business activity pursuant to Rule 1160. Upon approval of such business expansion, the firm shall be subject to all NASD rules, in addition to the consolidated FINRA rules and those NYSE rules incorporated by FINRA.

NYSE Amex member organizations that were admitted pursuant to the waive-in process are member organizations of both NYSE and NYSE Amex and as such are subject to the FINRA By-Laws and Schedules to By-Laws, including Schedule A, the consolidated FINRA rules and the NYSE rules incorporated by FINRA, provided that their NYSE or NYSE Amex securities business is limited to floor-based activities in either NYSE-traded or NYSE Amex-traded securities, or routing away to other markets orders that are ancillary to their core NYSE or NYSE Amex floor business under NYSE Rule 70.40 or NYSE Amex Equities Rule 70.40 (“permitted floor activities”). If a firm

admitted pursuant to the waive-in process seeks to expand its business operations to include any activities other than the permitted floor activities or makes changes to its securities business that would otherwise require FINRA membership, such firm shall apply for and receive approval to engage in such business activity pursuant to Rule 1160. Upon approval of such business expansion, the firm shall be subject to all NASD rules, in addition to the consolidated FINRA rules and those NYSE rules incorporated by FINRA.

\* \* \* \* \*

**[1014]1130. Basis for Department Decision**

**(a) Membership Standards [for Admission]**

An application submitted for review and approval pursuant to Rule 1121 or Rule 1160 shall address each standard set forth in this Rule; however, an Applicant pursuant to Rule 1160 may identify any standard(s) that it believes not to be applicable based upon the nature and scope of its application. The Applicant shall provide, in writing, the basis for any such belief. The final determination regarding the applicability of any standard will be made by the Department. After considering the application, the membership interview (for Rule 1121 Applicants) or the continuing application membership interview (for Rule 1160 Applicants), 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] satisfies each of the following standards, as applicable:

- (1) The application and all supporting documents are complete, [and] accurate and are consistent with the federal securities laws, the rules and regulations thereunder, and FINRA rules.

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

(3) The Applicant has fully disclosed and established through documentation satisfactory to FINRA all sources of its funding, and FINRA has determined that such sources of funding are not objectionable.

~~[(3)]~~(4) The Applicant and its Associated Persons are capable of complying with the federal securities laws, the rules and regulations thereunder, and [NASD] FINRA [R]rules[,] including observing high standards of commercial honor and just and equitable principles of trade. In determining whether this standard is met, the Department shall 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, or an Affiliate;

(B) [an] the Applicant's or an Associated Person's record reflects a sales practice event, a pending arbitration, or a pending private civil action;

(C) [an] the Applicant, an [or] Associated Person, or an Affiliate is the subject of a pending, adjudicated, or settled regulatory action or investigation by the [Commission]SEC, the Commodity Futures Trading Commission, a federal, state, or foreign regulatory agency, or a self-

regulatory organization; an adjudicated, or settled investment-related private civil action for damages or an injunction; 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 or an Applicant, its control persons, principals, registered representatives, other Associated Persons, any lender of 5% or more of the Applicant's net capital, and any other member with respect to which these persons were a control person or a 5% lender of its net capital is subject to unpaid arbitration awards, other adjudicated customer awards, or unpaid arbitration settlements;

(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, 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, or an Affiliate otherwise poses a threat to public investors; and

(G) any information in FINRA's possession indicates that the Applicant may seek to circumvent, evade, or otherwise avoid compliance with the federal securities laws, the rules and regulations thereunder, or FINRA rules.

[(4)](5) The Applicant has established all contractual or other arrangements and business relationships with banks, other brokers or dealers, clearing corporations, service bureaus, or others necessary to[:]

[(A)] initiate the operations described in the Applicant's business plan, considering the nature and scope of operations and the number of personnel.[:; and]

[(B)] comply with the federal securities laws, the rules and regulations thereunder, and NASD Rules.]

[(5)](6) The Applicant has or has adequate plans to obtain facilities that are sufficient to[:]

[(A)] initiate the operations described in the Applicant's business plan, considering the nature and scope of operations and the number of personnel. [;and]

[(B)] comply with the federal securities laws, the rules and regulations thereunder, and NASD Rules.]

[(6)](7) The communications and operational systems that the Applicant intends to employ for the purpose of conducting business with customers and other members are adequate and provide reasonably for business continuity pursuant to NASD Rule 3510. [in each area set forth in Rule 1013(a)(2)(E)(xii);]

[(7)](8) The Applicant has adequate financial and operational controls to comply with SEA Rules 15c3-1 and 15c3-3 and is capable of maintaining a level of net capital in excess of the minimum net capital requirements set forth in SEA[C] Rule 15c3-1 and Rule 4110, as applicable, adequate to support the

Applicant's intended business operations on a continuing basis. [, based on information filed under Rule 1013(b)(5).] 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 SEA[C] Rule 17a-11 and Rule 4120, as applicable;

(B) the amount of capital necessary to meet expenses net of revenues for at least [twelve]12 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[,]  
including, but not limited to, [such as] underwritings or other [securities-related] activities, such as investment advisory business, whether or not exempt from SEC registration under Section 203A of the Investment Adviser Act;

(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 or its Affiliates will engage in that reasonably could have a material impact on the Applicant's net capital within the first [twelve]12 months of business operations.

[(8) The Applicant has financial controls to ensure compliance with the federal securities laws, the rules and regulations thereunder, and NASD Rules.]

[(9) 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.]

[(10)](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 [NASD] FINRA [R]rules. 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 Central Registration Depository record or other disciplinary history of supervisory personnel and persons to be supervised; and the number and locations of the offices that the Applicant intends to open and the nature and scope of business to be conducted at each office;

(B) the Applicant has identified specific Associated Persons to supervise and discharge each of the functions in the 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 [NASD] FINRA [R]rules;

(C) the Applicant has identified the functions to be performed by each Associated Person and has adopted procedures to assure the registration with FINRA and applicable states of all persons whose functions are subject to such registration requirements;

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

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

(F) the Applicant will recommend securities to customers;

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

(H) the Applicant [should] will [be required to] impose appropriate remedial action, such as special training, continuing education or heightened supervision. [place] on any [one or more] Associated Person[s] [under heightened supervision] whose record reflects one or more disciplinary actions or sales practice events; [pursuant to Notice to Members 97-19;]

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

(J) any other condition is identified that [will] may 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 [NASD] FINRA [R]rules.

[(11)](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.

[(12)](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 [NASD] FINRA [R]rules.

[(13)] FINRA 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 NASD Rules.]

[(14)] The application and all supporting documents otherwise are consistent with the federal securities laws, the rules and regulations thereunder, and NASD Rules.]

**[(b) Granting or Denying Application]**

[(1) In reviewing an application for membership, the Department shall consider whether the Applicant and its Associated Persons meet each of the standards in paragraph (a). Where the Department determines that the Applicant or its Associated Persons are the subject of any of the events set forth in Rule 1014(a)(3)(A) and (C) through (E), a presumption exists that the application should be denied. The Applicant may overcome the presumption by demonstrating that it can meet each of the standards in paragraph (a), notwithstanding the existence of any of the events set forth in Rule 1014(a)(3)(A) and (C) through (E).]

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

[(3) 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 shall:]

[(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) Decision]**

**[(1) Time]**

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

**[(2) Content]**

[If the Department denies the application, the decision shall explain in detail 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 in detail 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 Serve Decision]**

[If the Department fails to serve a decision within 180 days after the filing 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 FINRA Board requesting that the FINRA Board direct the Department to serve a decision. Within seven days after the filing of such a request, the FINRA 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 FINRA Board may extend the 180 day time limit by not more than 90 days.]

**[(d) 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 filing of an executed written membership agreement, satisfactory to the Department, undertaking to:]

[(1) abide by any restriction specified in the Department's decision; and]

[(2) obtain the Department's approval of a change in ownership, control, or business operations pursuant to Rule 1017, including the modification or removal of a membership agreement restriction.]

[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.]

**[(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 FINRA is issued under Rule 1015 or 1016, unless otherwise directed by the National Adjudicatory Council, the FINRA 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 a decision constituting final action of FINRA issued under Rule 1015, 1016, or 1017;]

[(2) stayed by the National Adjudicatory Council, the FINRA 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 FINRA.]

**[1015]1140. Review by National Adjudicatory Council**

**(a) Initiation of Review by Applicant**

Within 25 days after service of a decision under Rule [1014]1121 or [1017]1160, an Applicant may file a written request for review with the National Adjudicatory Council. 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]1130, or otherwise should be set aside, and state whether a hearing is requested. The Applicant simultaneously shall file by first-class mail a copy of the request to the [district] FINRA office that issued the decision. [where the Applicant filed its application.]

**(b) Transmission of Documents**

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

(1) transmit to the National Adjudicatory Council 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 FINRA's membership application docket each request for review filed with the National Adjudicatory Council under this

Rule and each material subsequent event, filing, and change in the status of a membership proceeding.

**(d) Appointment of Subcommittee**

The National Adjudicatory Council or the Review Subcommittee defined in Rule 9120 shall appoint a Subcommittee to participate in the review. The Subcommittee shall be composed of two or more persons who shall be current or past members of the National Adjudicatory Council or former Directors or 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 filing of the request with the National Adjudicatory Council or service of the notice by the Subcommittee. The National Adjudicatory Council shall serve written notice of the date and time of the hearing to the Applicant in accordance with Rule 1112(a) [by facsimile or overnight 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 Adjudicatory Council. If the Applicant or the Department fails to provide copies of its proposed hearing exhibits or witness list within such time, the Subcommittee shall exclude the evidence or witnesses from the proceeding, unless the Subcommittee determines that good cause is shown for failure to comply with the production date set forth in this subparagraph.

**(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.

**(g) Additional Information, Briefs**

At any time during its consideration, the Subcommittee or the National Adjudicatory Council may direct the Applicant or the Department to file

additional information or briefs. Any additional information or brief filed shall be provided to all parties before the National Adjudicatory Council renders its decision.

**(h) Abandonment of Request for Review**

If an Applicant fails to specify the grounds for its request for review under paragraph (a) of this Rule [1015(a)(1)], appear at a hearing for which it has notice, or file information or briefs as directed, the National Adjudicatory Council or the Review Subcommittee may dismiss the request for review as abandoned, and the decision of the Department shall become the final action of FINRA. Upon a showing of good cause, the National Adjudicatory Council or the Review Subcommittee may withdraw a dismissal entered pursuant to this paragraph.

**(i) Subcommittee Recommendation**

The Subcommittee shall present a recommended decision in writing to the National Adjudicatory Council 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 Adjudicatory Council at which the membership proceeding shall be considered.

**(j) Decision**

**(1) Proposed Written Decision**

After considering all matters presented in the review and the Subcommittee's recommended written decision, the National Adjudicatory Council may affirm, modify, or reverse the Department's decision or remand the

membership proceeding with instructions. The National Adjudicatory Council 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 therefore that references the applicable standards in Rule [1014]1130.

**(3) Issuance of Decision [A]after Expiration of Call for Review**

**Periods**

The National Adjudicatory Council shall provide its proposed written decision to the FINRA Board. The FINRA Board may call the membership proceeding for review pursuant to Rule [1016]1150. If the FINRA Board does not call the membership proceeding for review, the proposed written decision of the National Adjudicatory Council shall become final. The National Adjudicatory Council shall serve the Applicant with a written notice specifying the date on which the call for review period expired and stating that the final written decision will be served within 15 days after such date. The National Adjudicatory Council shall serve its final written decision within 15 days after the date on which the call for review period expired. The decision shall constitute the final action of FINRA

for purposes of SEA[C] Rule 19d-3, unless the National Adjudicatory Council remands the membership proceeding.

**(4) Failure to Issue Decision**

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

**[1016]1150. Discretionary Review by FINRA Board**

**(a) Call [F]for Review [B]by Governor**

A Governor may call a membership proceeding for review by the FINRA Board if the call for review is made within the period prescribed in paragraph (b).

**(b) 15 Day Period; Waiver**

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

**(c) Review [A]at Next Meeting**

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

**(d) Decision of FINRA Board, Including Remand**

After review, the FINRA Board may affirm, modify, or reverse the proposed written decision of the National Adjudicatory Council. Alternatively, the FINRA Board may remand the membership proceeding with instructions. The FINRA Board shall prepare a written decision that includes all of the elements described in Rule [1015]1140(j)(2).

**(e) Issuance of Decision**

The FINRA 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 FINRA for purposes of SEA[C] Rule 19d-3, unless the FINRA Board remands the membership proceeding.

**[1017]1160. Continuing Membership Application for Approval of Change in Ownership, Control, or Business Operations**

**(a) Events Requiring Application**

A member shall file, pursuant to the guidelines and standards set forth in Rule 1130, an application for approval of any [of the following] change[s] to its ownership, control, or business operations set forth in paragraphs (a)(1) through (5) of this Rule.[:]

Failure to adequately address all standards pursuant to Rule 1130 will result in a determination that the application is substantially incomplete.

(1) [a] A merger of the member with another broker-dealer, whether or not such broker-dealer is a member of FINRA [member, unless both are members of the New York Stock Exchange, Inc. or the surviving entity will continue to be a member of the New York Stock Exchange, Inc.];

(2) [a] A direct or indirect acquisition (including purchases or transfers) by the member of another broker-dealer, whether or not such broker-dealer is a member of FINRA [member, unless the acquiring member is a member of the New York Stock Exchange, Inc.];

(3) [d] Direct or indirect acquisitions (including purchases or transfers) or divestitures (including sales or transfers) of 25[%] percent or more in the aggregate of the member's assets or any asset, business or line of operation that generates revenues comprising 25[%] percent or more in the aggregate of the member's earnings measured on a rolling 36-month basis[, unless both the seller and acquirer are members of the New York Stock Exchange, Inc.];

(4) [a] A change, directly or indirectly, in the equity ownership, [or] partnership capital, or other ownership interest [of] in the member that results in one person [or entity] directly or indirectly owning, [or] controlling, or holding a presently exercisable option to own or control, 25 percent or more of the equity, [or] partnership capital, or other ownership interest in the member; or

(5) [a] A material change in business operations [as defined in Rule 1011(k).] including, but not limited to:

- (A) removing or modifying a membership agreement restriction;
- (B) market making, underwriting, or acting as a dealer for the first time;
- (C) adding business activities that require a higher minimum net capital under SEA Rule 15c3-1; or
- (D) settling or clearing transactions for the Applicant's own business for the first time, settling or clearing transactions for other broker-dealers for the first time, carrying accounts of customers for the first time, or any change in exemptive status claimed under paragraph (k) of SEA Rule 15c3-3.

**(b) Filing and Content of Application**

(1) The member shall file [the] its application with the Department, in the manner prescribed by FINRA. [at the district office in the district in which the member's principal place of business is located. If the application involves a merger between members with principal places of business in two or more districts, the application shall be filed and processed by the district office wherein the surviving firm's principal place of business will be located.]

(2) The application shall describe in detail the proposed change(s) in ownership, control, or business operations and include a business plan, pro forma financials, [an organizational chart,] and written supervisory procedures reflecting [the] such change(s). The application shall also identify and update any member application information required pursuant to Rule 1121(a) (e.g., organizational charts, constituent documents, etc.) that would be rendered inaccurate or

incomplete as a result of the proposed change(s); to the extent a member has not previously submitted an item required pursuant to Rule 1121(a) to the Department, the application shall include such information where relevant to, or implicated by, the proposed change(s). Further, the application shall include a schedule and timeline for any systems changes and associated system testing.

(A) If the application requests approval of a change in ownership or control, the application [also] shall include the names of the new owners or controlling parties, their percentage of ownership or control, [and] details and supporting documentation regarding the ultimate source(s) of their funding for the purchase and recapitalization of the member[.], copies of any agreements relating to the change in ownership or control, and an indication of whether, if at all, the procedures and operations of the member will be impacted by the change.

(B) If the application requests the removal or modification of a membership agreement restriction, the application [also] shall:

(i) present facts showing that the circumstances that gave rise to the restriction have changed; and

(ii) state with specificity, [why] in response to the stated rationale for the imposition of the restriction, the basis for requesting that 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.]

(C) If the application requests approval of an increase in Associated Persons involved in sales, offices, or markets made, the application shall set forth the increases in such areas during the preceding 12 months.

(3) FINRA may waive the requirement to file an application for approval pursuant to paragraph (a)(3) of this Rule where:

(A) the member is ceasing operations as a broker and/or dealer;

(B) the member is filing a Form BDW with the SEC; and

(C) neither the member nor any of its registered persons is the subject of any claim (including, but not limited to, pending or settled arbitration or litigation actions) that could be disadvantaged by the proposed transaction. In any instance where a claim against a member or any of its registered persons is settled, such claim will not be deemed satisfied for purposes of this Rule until all payments are satisfied in full, including any payments to be made on behalf of the member by a third party, pursuant to an agreement among the parties.

(4) FINRA may waive the requirement to file an application for approval pursuant to paragraph (a)(4) of this Rule where the direct or indirect change in ownership or control does not result in any practical change in the business activities, management, supervision, assets, liabilities, or ultimate ownership or control of the member.

(5) The circumstances of a particular transaction or event that would require the filing, by two or more members, of an application under paragraph (a)

of this Rule may, at the discretion of Department staff, be satisfied through the filing of an application by one of the parties involved in the transaction so designated by the Department for that purpose, or by one filing that is adopted by all parties to the transaction.

**(c) Effecting Change and Imposition of Interim Restrictions**

(1) A member shall file an application for approval of a change in ownership or control at least 30 days prior to such change. A member may effect a change in ownership or control 30 days after the submission of a complete application and prior to the conclusion of the proceeding, but the Department may place new interim restrictions on the member based on the standards in Rule [1014]1130, pending final Department action.

(2) A member may file an application to remove or modify a membership agreement restriction at any time. An existing restriction shall remain in effect during the pendency of the proceeding.

(3) A member may file an application for approval of a material change in business operations, other than the modification or removal of a restriction, at any time, but the member may not effect such change until the conclusion of the proceeding, unless the Department and the member otherwise agree.

**(d) Request for Additional Documents and Information**

Within 30 days after the filing of a complete application, the Department shall serve a request for any additional information or documents necessary to render a decision on the application. 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.

**~~[(d)]~~(e) Rejection [O]of Application [T]that [I]is [N]not Substantially Complete**

If the Department determines within 30 days after the filing of an application that the application is not substantially complete, the Department shall reject the application and deem it not to have been filed. In such case, within the 30 day period, the Department shall serve a written notice on the Applicant of the Department's determination and the reasons therefore. If the Applicant determines again [to continue] to apply for approval of a change in ownership, control, or business operations, the Applicant shall submit a new application under this Rule.

**(e) Request for Additional Documents and Information**

[Within 30 days after the filing of an application, the Department shall serve a request for any additional information or documents necessary to render a decision on the application. 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.]

**(f) Continuing Membership Application Interview**

(1) The Department may require the Applicant to participate in a [membership]continuing membership application interview within 30 days after the filing 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 continuing membership application [i]Interview, the Department shall serve on the Applicant a written notice that specifies the date and time of the interview and persons who are required to participate in the interview. The Department shall serve the notice by facsimile or overnight 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 continuing membership application interview shall be conducted in the district office for the district in which the Applicant has its principal place of business.

(4) During the continuing membership application interview, the Department shall review the application and the considerations for the Department's decision set forth in paragraph (g)(1) of this Rule 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 (g). If the Department receives such information or document after the continuing membership application interview or decides to base its decision on such information after the continuing membership application interview, the Department shall promptly serve the information or document and an explanation thereof on the Applicant.

**(g) Department Decision**

(1) The Department shall consider the application, the nature and scope of the event or activities identified in the application, the [membership] continuing membership application interview, other information and documents provided by the Applicant or obtained by the Department, the public interest, and the protection of investors. In rendering a decision on an application submitted under [Rule 1017] paragraph (a) of this Rule, the Department shall consider whether the Applicant and its Associated Persons meet each of the applicable standards in Rule [1014(a)]1130. Where the Department determines that the Applicant or its Associated Persons are the subject of any of the events set forth in Rule [1014]1130(a)([3]4)(A) and (C) through (E), a presumption exists that the application should be denied. The Applicant may overcome the presumption by demonstrating that it can meet each of the applicable standards in Rule [1014]1130[(a)], notwithstanding the existence of any of the events set forth in Rule [1014]1130(a)([3]4)(A) and (C) through (E).

(A) In rendering a decision on an application for approval of a change in ownership or control, or an application for approval of a material change in business operations that does not involve the request to modify[ication] or remove [of] a membership agreement restriction, the Department shall determine if the Applicant would continue to meet the applicable standards in Rule [1014(a)] 1130 upon approval of the application.

(B) In rendering a decision on an application requesting the modification or removal of a membership agreement restriction, the Department shall consider whether maintenance of the restriction is appropriate in light of:

(i) the applicable standards set forth in Rule [1014] 1130;

(ii) the circumstances that gave rise to the imposition of the restriction;

(iii) the Applicant's operations since the restriction was imposed;

(iv) any change in ownership, control, supervisors, or principals; and

(v) any new evidence submitted in connection with the application.

(2) The Department shall [serve] issue a written decision on the application within [30] 45 days after the conclusion of the [membership] continuing membership application interview (the last such interview, if more than one is required) or the applicant's final filing of additional information or documents, whichever is later. If the Department does not require the Applicant to participate in a continuing membership application interview or request additional information or documents, the Department shall [serve] issue a written decision within 45 days after the filing of the application under paragraph (a) of this Rule. The decision shall state whether the application is granted or denied in whole or in part,

including whether the application is 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 1130, and shall provide a rationale for the Department's decision, referencing the applicable standards in Rule [1014]1130.

(3) If the Department fails to serve a decision within 180 days after filing 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 FINRA Board requesting that the FINRA Board direct the Department to issue a decision.

Within seven days after the filing of such a request, the FINRA 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 FINRA Board may extend the time limit for issuing a decision by not more than 30 days.

(4) If the Department approves an application under this Rule in whole or part, the Department may require an Applicant to file an executed membership agreement.

**(h) Service and Effectiveness of Decision**

The Department shall serve its decision on the Applicant in accordance with Rule [1012]1112. 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 FINRA is

issued under Rule [1015]1140 or [1016]1150, unless otherwise directed by the National Adjudicatory Council, the FINRA Board, or the [Commission]SEC.

**(i) 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 a decision constituting final action of FINRA issued under this Rule, Rule 1140, or 1150; or

(2) stayed by the National Adjudicatory Council, the FINRA Board, or the SEC.

**(i)(j) Request for Review; Final Action**

An Applicant may file a written request for review of the Department's decision with the National Adjudicatory Council pursuant to Rule [1015]1140. The procedures set forth in Rule [1015]1140 shall apply to such review, and the National Adjudicatory Council's decision shall be subject to discretionary review by the FINRA Board pursuant to Rule [1016]1150. If the Applicant does not file a request for a review, the Department's decision shall constitute final action by FINRA.

**(j)(k) 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 (g)(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).

**[(k)](l) Lapse or Denial of Application for Approval of Change in Ownership or Control**

If an application for approval of a change in ownership or control lapses, or is denied and all appeals are exhausted or waived, the member shall, no more than 60 days after the lapse or exhaustion or waiver of appeal:

- (1) submit a new application;
- (2) unwind the transaction; or
- (3) file a Form BDW.

For the protection of investors, the Department may shorten the 60-day period. For good cause shown by the member, the Department may lengthen the 60-day period. The Department shall serve written notice on the Applicant of any change in the 60-day period and the reasons therefore. During the 60-day or other imposed period, the Department may continue to place interim restrictions on the member for the protection of investors.

**••• Supplementary Material: -----**

**.01 Safe Harbor from Application in Limited Circumstances.**

(a) An application pursuant to Rule 1160 for a change in business relating to the expansion of Associated Persons involved in sales, offices, or markets made will not be required under certain circumstances. This safe harbor is not available to a member that has a membership agreement that contains a specific restriction or to any member that has disciplinary history. Nor is the safe harbor available to any member that seeks to acquire either an office (registered or unregistered) or Associated Persons involved in sales from a member firm (Target Member) where either the Target Member or its Associated

Persons to be acquired have a “disciplinary history” as defined in subparagraph (2) of this Supplementary Material.

(1) For purposes of this Supplementary Material, “Associated Persons involved in sales” includes all Associated Persons, whether or not registered, who are involved in sales activities with public customers, including sales assistants and cold callers, but excludes clerical and back office personnel who are not involved in sales activities.

(2) For purposes of this Supplementary Material, “disciplinary history” means a finding of a violation by the member or a principal of the member in the past five years by the SEC, a self-regulatory organization, or a foreign financial regulatory authority of one or more of the following provisions (or a comparable foreign provision) or rules or regulations thereunder: violations of the types enumerated in Section 15(b)(4)(E) of the Exchange Act; Section 15(c) of the Exchange Act; Section 17(a) of the Securities Act; SEA Rules 10b-5 and 15g-1 through 15g-9; Rules 2010 (only if the finding of a violation is for unauthorized trading, churning, conversion, material misrepresentations or omissions to a customer, front-running, trading ahead of research reports or excessive markups) and 2020, and NASD Rules 2310, 2330, 2440, 3010 (failure to supervise only), 3310, and 3330; and MSRB Rules G-19, G-30, and G-37(b) & (c).

(b) The types of expansions listed below are presumed, for those members for which this safe harbor is available, not to be a material change in business operations and therefore do not require a Rule 1160 application. Expansions in each area are measured on a rolling 12-month basis; members are required to keep records of increases in

personnel, offices, and markets made to determine whether they are within the safe harbor.

(1) Regarding Associated Persons involved in sales, an application pursuant to Rule 1160 is not required if:

(A) the member employs 1-10 Associated Persons involved in sales and adds no more than 10 additional persons in a one year period; or

(B) the member employs 11 or more Associated Persons involved in sales and adds 10 persons or a 30 percent increase in a one year period, whichever is greater.

(2) Regarding the number of offices, both registered and unregistered, an application pursuant to Rule 1160 is not required if:

(A) the member maintains 1-5 offices and adds no more than 3 offices in a one year period; or

(B) the member maintains 6 or more offices and adds up to 3 offices or a 30 percent increase in a one year period, whichever is greater.

(3) Regarding the number of markets made, an application pursuant to Rule 1160 is not required if:

(A) the member makes 1-10 markets and adds no more than 10 markets made in a one year period; or

(B) the member makes 11 or more markets and adds up to 10 markets or a 30 percent increase in a one year period, whichever is greater.

**[1018]1170. [Reserved]Notice of Certain Member Changes and Continuous Access to Affiliate Information**

(a) Each member shall provide FINRA with timely prior written notice of any of the following events, and subsequently provide such information as FINRA may require regarding the event(s). For purposes of this provision, “timely” means at least 30 days prior to the event except when 30 days is impracticable given the circumstances of the event, in which case the member shall provide prior written notice as soon as practicable:

(1) Direct or indirect acquisitions (including purchases or transfers) or divestitures (including sales or transfers) of 10% or more in the aggregate of the member’s assets or any asset, business or line of operation that generates revenues comprising 10% or more in the aggregate of the member’s revenues measured on a rolling 36-month basis;

(2) The direct or indirect acquisition (including purchases or transfers) or divestitures (including sales or transfers) of 10% or more of the member’s shares, partnership interests, or other ownership interests by any one person or by a control group;

(3) The addition, removal, or substantial modification of a business relationship between the member and an Affiliate requiring disclosure pursuant to Rule 1121(a)(1)(G)(v)a. through h.;

(4) A change or loss of the member’s key personnel, such as its Chief Executive Officer, Chief Financial Officer, Chief Operations Officer, Chief Compliance Officer, or any individual with similar status or functions;

(5) A change in the member’s service bureau, clearance activities (other than those required to be filed under Rule 1160(a)(5)), or method of bookkeeping

or recordkeeping (e.g., manual to automated, or utilizing an outside service provider);

(6) The expansion of business: (i) requiring an infusion of capital that is 25 percent or more of the member's net capital as calculated from the ending date of the member's previous FOCUS filing period, or (ii) requiring additional licenses, registrations, memberships, or approvals as required by a self-regulatory organization or another regulatory agency;

(7) The expansion of business adding products or services that are new in terms of the type of investments, transactions, or risks from those business products or services offered by the member since the time of the last approval of a membership application;

(8) Increasing the number of sales personnel, office locations, or markets made beyond the scope of the safe harbor provisions of Rule 1160.01;

(9) The listing of the member (on an identified or anonymous basis) on any facility or medium that is designed to solicit offers or inquiry with respect to the possible purchase of the member in whole or in part, or the transfer of some or all of the member's assets; or

(10) The discovery of any existing or impending condition(s) which the member reasonably believes could lead to capital, liquidity or operational problems or impairment of recordkeeping, clearance or control functions.

(b) Upon notice provided to FINRA pursuant to paragraph (a)(5), (6), (7), (8), or (10) of this Rule, FINRA may determine that the proposed event will substantively affect the business or resources of the member and, in the public interest, require a submission

for approval in conformity with the provisions of Rule 1160(b) in regard to the stated event.

(c) Upon request by FINRA, each member shall promptly provide to FINRA any information concerning its Affiliates that an Applicant or member would otherwise be required to provide under the Rule 1100 Series (Membership Application).

(d) The disclosure of an event pursuant to this Rule in no way obviates a member's obligation to make a continuing membership application filing under Rule 1160 should the member determine, or have a reasonable basis to believe, that the event requires such a filing.

**[1019]1180. Application to the [Commission]SEC for Review**

A person aggrieved by any final action of FINRA pursuant to Rule 1140 or 1150 [under the Rule 1010 Series] may apply for review to [by] the [Commission] SEC pursuant to Section 19(d)(2) of the Exchange Act. The filing of an application for review shall not stay the effectiveness of a decision constituting final action of FINRA, unless the [Commission] SEC otherwise orders.

\* \* \* \* \*

**Text of NASD Rules, Incorporated NYSE Rules and NYSE Rule Interpretations to be Deleted in their Entirety from the Transitional Rulebook**

\* \* \* \* \*

**NASD Rules**

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**[IM-1011-1. Safe Harbor for Business Expansions]**

[This interpretive material concerns the types of business expansions that will not require a member to submit a Rule 1017 application to obtain FINRA's approval of the

expansion. This safe harbor applies to: (1) firms that do not have a membership agreement, and (2) firms that have a membership agreement that does not contain a restriction on the factors listed below.]

[The safe harbor is not available to a member that has a membership agreement that contains a specific restriction as to one or more of the factors listed below. In that case, the agreement takes precedence because FINRA has determined that a particular restriction should apply as to one or more of the factors, and FINRA has issued a decision with a rationale for that restriction. Similarly, the safe harbor also does not apply if the member has a membership agreement that permits expansion beyond the limits set forth below (e.g., an Applicant requests and obtains approval for ten registered representatives in the first six months with an additional ten registered representatives in the next year); in such case, FINRA has specifically considered the firm's expansion plans and approved them.]

[The safe harbor is not available to any member that has disciplinary history. For purposes of this Interpretation, “disciplinary history” means a finding of a violation by the member or a principal of the member in the past five years by the Securities and Exchange Commission, a self-regulatory organization, or a foreign financial regulatory authority of one or more of the following provisions (or a comparable foreign provision) or rules or regulations thereunder: violations of the types enumerated in Section 15(b)(4)(E) of the Securities Exchange Act of 1934; Section 15(c) of the Securities Exchange Act of 1934; Section 17(a) of the Securities Act of 1933; SEC Rules 10b-5 and 15g-1 through 15g-9; NASD Rules 2110 (only if the finding of a violation is for unauthorized trading, churning, conversion, material misrepresentations or omissions to a

customer, front-running, trading ahead of research reports or excessive markups), 2120, 2310, 2330, 2440, 3010 (failure to supervise only), 3310, and 3330; and MSRB Rules G-19, G-30, and G-37(b) & (c).]

[For those firms to which the safe harbor is available, the following types of expansions are presumed not to be a material change in business operations and therefore do not require a Rule 1017 application. For any expansion beyond these limits, a member should contact its district office prior to implementing the change to determine whether the proposed expansion requires an application under Rule 1017. Expansions in each area are measured on a rolling 12-month basis; members are required to keep records of increases in personnel, offices, and markets to determine whether they are within the safe harbor.]

[“Associated Persons involved in sales” includes all Associated Persons, whether or not registered, who are involved in sales activities with public customers, including sales assistants and cold callers, but excludes clerical, back office, and trading personnel who are not involved in sales activities.]

[Number of Associated Persons Involved in Sales]	[Safe Harbor — Increase Permitted Within One Year Period Without Rule 1017 Application]
[1–10]	[10 persons]
[11 or more]	[10 persons or a 30 percent increase, whichever is greater]
[Number of Offices (registered or unregistered)]	
[1–5]	[3 offices]

[6 or more]

[3 offices or a 30 percent increase,  
whichever is greater]

*[Number of Markets Made]*

[1–10]

[10 markets]

[11 or more]

[10 markets or a 30 percent increase,  
whichever is greater]

\* \* \* \* \*

**[IM-1013-1. Membership Waive-In Process for Certain New York Stock Exchange Member Organizations]**

[This Interpretive Material sets forth a membership waive-in process for certain New York Stock Exchange (“NYSE”) member organizations to become members of FINRA as part of the consolidation of the member firm regulatory functions of NASD and NYSE Regulation, Inc. (“NYSE Regulation”). It applies to firms that, as of July 25, 2007, (1) are approved NYSE member organizations or (2) have submitted an application to become an NYSE member organization and are subsequently approved for NYSE membership (together “NYSE-only member organizations”), provided that such firms were not also NASD members as of July 30, 2007. Such firms are eligible to automatically become FINRA members and to automatically register all associated persons whose registrations are approved with NYSE in registration categories recognized by FINRA upon submission to FINRA's Member Regulation Department (“the Department”) of a signed waive-in membership application (“Waive-In Application”) with the following information:]

[(1) General company information, including Central Registration Depository (CRD<sup>®</sup>) Number and contact person.]

[(2) An attestation that all information on the applicant's CRD form, as of the date of submission of the Waive-In Application is accurate and complete and fully reflects all aspects of the applicant's current business, including, but not limited to, ownership structure, management, product lines and disclosures.]

[(3) The identity of the firm's Executive Representative.]

[(4) Completed and signed Entitlement Forms.]

[(5) A signed FINRA Membership Agreement.]

[(6) Representations that the NYSE applicant's Uniform Application for Broker-Dealer Registration (Form BD) will be amended as needed to keep current and accurate; that all individual and entity registrations with FINRA will be kept current; and that all information and statements contained in the Waive-In Application are current, true and complete.]

[The Department shall review the Waive-In Application within three (3) business days of receipt and, if complete, issue a letter notifying the applicant that it has been approved for membership. The Membership Agreement shall become effective on the date of such notification letter.]

[Firms admitted pursuant to this Interpretive Material shall be subject to the FINRA By-Laws and Schedules to By-Laws, including Schedule A, the consolidated FINRA rules and the NYSE rules incorporated by FINRA, provided that their securities business is limited to floor brokerage on the NYSE, or routing away to other markets orders that are ancillary to their core floor business under NYSE Rule 70.40 (“permitted

floor activities”). If an NYSE-only member organization admitted pursuant to this Interpretive Material seeks to expand its business operations to include any activities other than the permitted floor activities, such firm must apply for and receive approval to engage in such business activity pursuant to NASD Rule 1017. Upon approval of such business expansion, the firm shall be subject to all NASD rules, in addition to the consolidated FINRA rules and those NYSE rules incorporated by FINRA.]

[Pursuant to IM-Section 4(b)(1) and (e) to Schedule A of the FINRA By-Laws, a firm applying to waive in for membership pursuant to this Interpretive Material shall not be assessed certain registration and application fees set forth in Sections 4(b)(1) and (e) to Schedule A of the FINRA By-Laws.]

**[IM-1013-2. Membership Waive-In Process for Certain NYSE Alternext US LLC Member Organizations]**

[This Interpretive Material sets forth a membership waive-in process for certain NYSE Alternext US LLC (“NYSE Alternext”) member organizations to become members of FINRA as part of the acquisition by NYSE Euronext of the Amex Membership Corporation. It applies to any NYSE Alternext member organization that (i) holds a valid 86 Trinity Permit as of the date such firm transfers its equities operations to the NYSE Alternext Trading Systems and (ii) is not currently a FINRA member. Such firms are eligible to automatically become FINRA members and to automatically register all associated persons whose registrations are approved with NYSE Alternext in registration categories recognized by FINRA upon submission to FINRA's Member Regulation Department (“the Department”) of a signed waive-in membership application (“Waive-In Application”) with the following information:]

[(1) General company information, including Central Registration Depository (CRD<sup>®</sup>) Number and contact person;]

[(2) An attestation that all information on the applicant's<sup>®</sup> form, as of the date of submission of the Waive-In Application, is accurate and complete and fully reflects all aspects of the applicant's current business, including, but not limited to, ownership structure, management, product lines and disclosures;]

[(3) The identity of the firm's Executive Representative;]

[(4) Completed and signed Entitlement Forms (unless previously submitted);]

[(5) A signed FINRA Membership Agreement; and]

[(6) Representations that the NYSE Alternext applicant's Uniform Application for Broker-Dealer Registration (Form BD) will be amended as needed to keep current and accurate; that all individual and entity registrations with FINRA will be kept current; and that all information and statements contained in the Waive-In Application are current, true and complete.]

[The Department shall review the Waive-In Application within three (3) business days of receipt and, if complete, issue a letter notifying the applicant that it has been approved for membership. The Membership Agreement shall become effective on the date of such notification letter.]

[Firms admitted pursuant to this Interpretive Material shall be member organizations of both NYSE and NYSE Alternext and as such are subject to the consolidated FINRA rules (provided that firms admitted to FINRA membership under IM-1013-1 also are subject to the consolidated FINRA rules), the NYSE rules

incorporated by FINRA, the FINRA By-Laws and Schedules to By-Laws, including Schedule A, and the NASD Rule 8000 and Rule 9000 Series, provided that their NYSE or NYSE Alternext securities business is limited to floor-based activities in either NYSE-traded or NYSE Alternext-traded securities, or routing away to other markets orders that are ancillary to their core NYSE or NYSE Alternext floor business under NYSE Rule 70.40 or NYSE Alternext Equities Rule 70.40 (“permitted floor activities”). If a firm admitted pursuant to this Interpretive Material seeks to expand its business operations to include any activities other than the permitted floor activities or makes changes to its securities business that would otherwise require FINRA membership, such firm must apply for and receive approval to engage in such business activity pursuant to NASD Rule 1017. Upon approval of such business expansion, the firm shall be subject to all NASD rules, in addition to the consolidated FINRA rules and those NYSE rules incorporated by FINRA.]

[Pursuant to IM-Section 4(b)(1) and (e) to Schedule A of the FINRA By-Laws, a firm applying to waive in for membership pursuant to this Interpretive Material shall not be assessed certain registration and application fees set forth in Sections 4(b)(1) and (e) to Schedule A of the FINRA By-Laws.]

\* \* \* \* \*

**[3140. Approval of Change in Exempt Status Under SEC Rule 15c3-3]**

[(a) Application — For the purposes of this Rule, the term “member” shall be limited to any member of the Association who is subject to SEC Rule 15c3-3 and is not designated to another self-regulatory organization by the Commission for financial responsibility pursuant to Section 17 of the Act and SEC Rule 17d-1 promulgated

thereunder. Further, the term shall not be applicable to any member that is subject to Section 402.2(c) of the rules of the Treasury Department.]

[(b) A member operating pursuant to any exemptive provision as contained in subparagraph (k) of SEC Rule 15c3-3 under the Act (Rule 15c3-3), shall not change its method of doing business in a manner which will change its exemptive status from that governed by subparagraph (k)(1) or (k)(2)(ii) to that governed by subparagraph (k)(2)(i); or from subparagraph (k)(1), (k)(2)(i) or (k)(2)(ii) to a fully computing firm that is subject to all provisions of Rule 15c3-3; or commence operations that will disqualify it for continued exemption under Rule 15c3-3 without first having obtained the prior written approval of the Association.]

[(c) In making the determination as to whether to approve, deny in whole or in part an application made pursuant to paragraph (b), the Association staff shall consider among other things the type of business in which the member is engaged, the training, experience and qualifications of persons associated with the member, the member's procedures for safeguarding customer funds and securities, the member's overall financial and operational condition and any other information deemed relevant in the particular circumstances and the time these measures would remain in effect.]

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### **Incorporated NYSE Rules**

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### **[Rule 311. Formation and Approval of Member Organizations]**

[(a) Any person who proposes to form a member organization and any member organization which proposes to admit therein any approved person shall notify the

Exchange in writing before any such formation or admission and shall submit such information as may be required by the Rules of the Exchange. No such member organization shall become or remain a member organization unless all persons required to be approved are so approved and execute such agreements with the Exchange as the Rules of the Exchange may prescribe.]

[(b) The Board of Directors shall not approve a partnership or corporation as a member organization unless:]

[(1) each director of such corporation is a member, principal executive or an approved person; and]

[(2) every person who controls such corporation is a member, principal executive or approved person; and]

[(3) every natural person who is a general partner in such partnership is a member or principal executive and every other person who controls such partnership is a member, principal executive or approved person; and]

[(4) every person who engages in a securities or kindred business and is controlled by or under common control with such partnership or corporation is an approved person; and]

[(5) The Board of Directors of such corporation designates “principal executives”; and]

[(6) such partnership or corporation complies with such additional requirements as the rules of the Exchange may prescribe.]

[(7) every employee who is associated as a member with such member organization is designated with a title, such as vice president, consistent with his responsibilities and the usage of titles within such organization.]

[(c) In the case of existing corporations making application to become member corporations, there shall be submitted to the Exchange:]

[(1) A certified list of all holders of record of each class of stock, giving the name and address of the holder and the number of shares of each class of such stock held;]

[(2) A certified list of all persons who are to become members, principal executives, directors or approved persons,]

[(3) A certified list of all persons designated as principal executives of the corporation.]

[In the case of corporations proposed to be organized, similar information shall be submitted to the Exchange.]

[(d) The approval of a corporation as a member corporation constitutes only a revocable privilege and confers on the corporation no right or interest of any nature whatsoever to continue as a member corporation.]

[(e) No member corporation shall issue any publicly held security in the form of non-voting common stock unless the Exchange determines that the non-voting common stock has normal and appropriate preferences which entitle it to be regarded as preferred stock.]

[(f) Every member firm shall be a partnership and every member corporation shall be a corporation created or organized under the laws of, and shall maintain its principal

place of business in, the United States or any State thereof. The Exchange may, in its discretion, and on such terms and conditions as the Exchange may prescribe, approve as a member organization entities that have characteristics essentially similar to corporations, partnerships, or both. Such entities, and persons associated therewith shall, upon approval, be fully, formally and effectively subject to the jurisdiction, and to the Rules of the Exchange to the same extent and degree as are any other member organization and person associated therewith.]

[(g) Each member organization shall execute and file with the Exchange a written agreement in a form acceptable to the Exchange evidencing]

[(1) the authority of any member who is an officer or employee of such member organization to transact business on the Floor on behalf of such member organization, and]

[(2) such member organization's responsibility and obligation with respect to any contract entered into on the Floor by any such member.]

[••• **Supplementary Material:** -----]

[.10 Rescinded effective February 15, 1979. (See Rule 351 for reporting requirements.)]

[.11 Application]

[The papers required to be submitted prior to approval of the formation or admission of a member organization are as follows:]

[(1) Letter giving name and address of proposed or existing organization, date of proposed formation or admission, and names of all proposed or present officers and other parties required to be approved by the Exchange under Rules 304 and 311; and]

[(2) individually executed applications by all parties whose approval by the Exchange is required.]

[The papers required to be submitted prior to approval of the admission to an existing member organization of any party requiring the approval of the Exchange under Rules 304 and 311, are as follows:]

[(1) Letter stating name of such proposed party and proposed date of admission to member organization; and]

[(2) an individually executed application by such proposed party.]

[.12 Authorization and Statement of Understanding]

[Each member organization, or proposed member organization, must submit the following authorization and statement of understanding executed by each natural person requiring the approval of the Exchange under Rule 304:]

[“In connection with my current application, I authorize the New York Stock Exchange, Inc. and any agent acting on its behalf, to conduct an investigation of my character, credit worthiness, ability, business activities, educational background, previous employment and reasons for termination thereof.”]

[“I authorize and request any and all of my former employers, and any other person to furnish to the Exchange, and any agent acting on its behalf, any information that they may have concerning my character, credit worthiness, ability, business activities, educational background, general reputation, previous employment and reasons for termination thereof . . . Moreover, I hereby release each such employer and each such other person from any and all liability of

whatsoever nature by reason of furnishing such information to the Exchange and any agent acting on its behalf.”]

[“Further, I recognize that I will be the subject of an investigative report ordered by the Exchange and acknowledge that I have been informed of my right to request information from the Exchange concerning the nature and scope of the investigation requested.”]

[.13 Agreement with the Exchange]

[Each member corporation and each member and approved person of the corporation must agree with the Exchange that if any person required to be approved by the Exchange as a member or approved person fails or ceases to be so approved, the corporation may be deprived by the Exchange of all the privileges of a member corporation unless the corporation redeems or converts the stock held by such person as required under Rule 312.]

[.14 Partnership agreements]

[For information regarding the submission of copies of proposed partnership articles, see ¶2313.10.]

[.15 Corporate documents]

[For information regarding the submission of copies of proposed or existing corporate documents and other agreements, see ¶2313.20.]

[.16 Filing With Agent]

[Any filing or submission required under this rule which is made with a properly authorized agent acting on behalf of the Exchange shall for purposes of this rule be deemed to be a filing with the Exchange.]

[.17 The term “principal executive” shall include: an employee of a member organization designated to exercise senior principal executive responsibility over the various areas of the business of the member organization including: operations, compliance with rules and regulations of regulatory bodies, finances and credit, sales, underwriting, research and administration; and any employee of a member organization who is a functional equivalent of such person.]

\* \* \* \* \*

**[Rule 312. Changes Within Member Organizations]**

[(a) Each member organization, shall promptly give to the Exchange notice in writing on such form as may be required by the Exchange (1) on Form U-5, of the death, retirement, or other termination of any party required to be approved under the Rules of the Exchange, (2) of the dissolution of the member organization.]

[(b) In addition, in the case of a member corporation, such member corporation shall give written notice (1) of any material change in the stockholdings of any member, principal executive or approved person of such member corporation, (2) of any proposed change in the directors or officers, or (3) of any proposed change in the charter, certificate of incorporation, by-laws or other documents on file with the Exchange, or (4) of the failure to comply with all the conditions of approval specified in Rule 311.]

[(c) Each member, principal executive and approved person of a member corporation shall promptly notify his member corporation of any material acquisition or disposition of shares of stock of such corporation.]

[(d) Whenever a person who is required to be approved by the Board as a member, principal executive or approved person fails or ceases to be so approved, each

member corporation shall promptly redeem or convert to a fixed income security such of its outstanding voting stock as may be necessary to reduce such party's ownership of voting stock in the member corporation below that level which enables such party to exercise controlling influence over the management or policies of such member corporation.]

[(e) Unless permitted by the Exchange in order to protect investors and the public interest or to facilitate the administration of the Exchange, no person shall be a member or principal executive in a member organization unless all persons required to be approved by the Exchange are so approved.]

[(f) **Reserved.**]

[(g) A member corporation shall not without the prior written approval of the Exchange:]

[(1) Reduce its capital or purchase or redeem any shares of any class of its stock or in any way amend its charter, certificate of incorporation or by-laws, and the Exchange may at any time in its discretion require the corporation to restore or increase capital or surplus, or both.]

[(2) Issue any bonds, notes or other instruments evidencing funded indebtedness of the corporation except pursuant to the terms and provisions of such security or of any agreement between the member corporation and the holder of such security, which agreement has been previously filed with and approved by the Exchange.]

[(3) Amend, modify or cancel any agreement made by it or any of its stockholders relating to the management of the corporation or the issue or transfer

of securities of the corporation (other than agreements relating to ordinary securities and commodities transactions).]

[The Exchange will approve any action described in (1), (2) or (3) above unless it determines that such action will impair the financial responsibility or operational capability of the member corporation.]

**[(h) Reserved.]**

[(i) In order to ensure the continued financial responsibility and operational capability of a member corporation, the Exchange may require such member corporation to file with the Exchange a written report showing the use made by the member organization of the proceeds of any offering of any security issued by such member organization.]

[(j) No stock shall be issued by a member corporation except for cash or such other consideration as the Exchange determines will not impair the financial responsibility or operational capability of such member corporation.]

\* \* \* \* \*

**[Rule 313. Submission of Partnership Articles—Submission of Corporate Documents]**

[(a) All partnership articles and all amendments thereto shall be submitted and be acceptable to the Exchange prior to becoming effective.]

[(b) The charter or certificate of incorporation and all amendments thereto, the by-laws and all amendments thereto, forms of stock certificates and any and all agreements or other documents and amendments thereto relating to the business or affairs of the member corporation between a member corporation and any of its stockholders or

between any of the members, principal executives or approved persons of a member corporation other than agreements relating to ordinary securities and commodities transactions shall be submitted to and be acceptable to the Exchange prior to becoming effective.]

[(c) Any prospectus or other offering circular prepared by a member corporation and used in connection with the offering of any security issued by it shall, prior to such use, be submitted by such corporation to the Exchange.]

[(d) **Reserved.**]

[(e) Each member corporation shall, at such times as may be required by the Exchange, submit to the Exchange through its chief executive officer a certified list of its members, principal executives and approved persons showing to the best of his knowledge and belief the number of shares of each class of stock of such corporation held of record or beneficially or both by each such party.]

[(f) Each member corporation shall, through its chief executive officer, submit to the Exchange at such times as the Exchange may require an affidavit listing to the best of his knowledge and belief the name of each party directly or indirectly beneficially owning 1% or more of the outstanding voting stock of such member corporation and showing the percentage of such ownership.]

[••• **Supplementary Material:** -----]

[Information Regarding Partnership Articles]

[.10 Submission of partnership agreements]

[Drafts of partnership articles or of changes in partnership articles proposed to be entered into in connection with the formation of a firm or the admission of a new partner

should be submitted to Regulation & Surveillance at least one week in advance of the date on which the application will be acted upon by the Board of Directors. Drafts of other changes to be made in partnership articles should be submitted in advance of their effective date.]

[The Exchange requires that a signed, photostatic or conformed copy of all partnership articles, including any amendments and supplements thereto, as executed, be filed with the Exchange.]

[(See ¶2311 for procedure to be followed regarding approval of partners and partnerships.)]

#### [.11 Withdrawal of capital]

[The partnership articles of each member firm shall contain provisions that without the prior written approval of the Exchange the capital contribution of any partner may not be withdrawn on less than six months' written notice of withdrawal given no sooner than six months after such contribution was first made. Each member firm shall promptly notify the Exchange of the receipt of any notice of withdrawal of any part of a partner's capital contribution or if any withdrawal is not made because prohibited under the provisions of Securities and Exchange Commission Rule 15c3-1 (see 15c3-1(e)).]

#### [.12 Deceased Partner's Interest in Continuing Firm]

[I. The Exchange cannot, upon a partner's death, regard his interest as continuing to be part of the net capital of the continuing or successor firm unless the partnership articles of the firm contain specific and legally adequate provisions to the effect that the claim of the personal representative of a deceased partner to the partner's interest in the firm shall be subordinated to the claims of all present or future creditors of the continuing

firm (or any successor firm) arising out of matters occurring subsequent to the partner's death.]

[If it is the desire and intent of the partners of any firm that the interest of a deceased partner shall be considered, without interruption after his death, as a part of the capital of the continuing or successor firm for a specified period, the partnership articles should effectively provide in substance:]

[ (1) That the payment of the deceased partner's interest in the firm to his estate can be deferred for a stated period; and]

[ (2) that until such payment, the interest of the deceased partner shall remain at the risk of the business of the continuing or successor firm and shall be considered as capital of such firm in the same manner and to the same extent as capital contributed by a limited partner; and]

[ (3) that any claim of the personal representative of the deceased partner to such interest shall be subordinated in right of payment and subject to the prior payment or provision for payment in full of claims of all present and future creditors of the continuing firm (or successor firm) arising out of any matters occurring before the end of the stated period.]

[II. If it is the desire of the partners to have a deceased partner's capital continued for a stated period immediately following his death, with the option in his personal representative to continue it for a longer period under the provisions of the deceased partner's Will, it is suggested that the stated period in the partnership agreement be made sufficiently long as to permit the conditions discussed below with respect to testamentary provisions to be complied with.]

[Provisions in a deceased partner's Will (as distinguished from those in a partnership agreement) providing that the personal representative shall or may become a limited partner in the firm or subordinate the claims of the estate to decedent's interest to the claims of firm creditors who become such after the decedent's death, with respect to the Exchange's determination whether or not to allow a deceased partner's capital interest in computing the net capital of the firm will depend on the facts and circumstances of each case as they exist at the time of such determination. However, in no case will such testamentary provisions be considered as effective in connection with the Exchange's computation of net capital unless at least the following conditions are met:]

[(1) The Will must contain provisions specifically authorizing the personal representative of the deceased partner either to continue the decedent's capital interest in the firm as limited capital, or otherwise to subordinate the estate's claims against the firm to the claims of creditors of the firm.]

[(2) The Exchange must be furnished with a satisfactory opinion of counsel to the estate, to the effect that (A) the Will is valid and in full force and effect, (B) the named personal representative is duly qualified and is the executor administering the Will, (C) the personal representative is authorized by the Will to make or continue a capital contribution to the firm, (D) if the personal representative is a partner of, or otherwise interested in, the firm, said representative is authorized by the Will to deal with the estate for his own benefit, (E) all claims of present and future creditors and beneficiaries of the Estate and their successors are subordinate to the claims of all present and future creditors of the firm and its successors.]

[(3) The personal representative of the decedent must have taken appropriate action either to become a limited partner in the firm or to subordinate the capital interest of the deceased partner as indicated above.]

[III. It is recommended that member firms consult their own counsel with respect to the advisability of incorporating in their partnership articles provisions of the sort discussed in this Section. Any member firm which decides to adopt such provisions should submit the proposed provisions, in draft form, to the Exchange. Such member firm will then be advised whether, upon the adoption of such provisions and in the event of the death of a partner, the Exchange will be in a position to consider his interest in the firm as part of its net capital for the specified period following his death.]

[.20 Submission by proposed member corporations of certificate of incorporation, by-laws and other corporate documents]

[Existing corporations shall promptly submit certified copies (to the extent possible) of the documents referred to in Rule 313(b) and corporations to be formed shall submit drafts thereof, prior to the time they become effective, to Regulation & Surveillance. Upon the formation of a corporation or when an amendment to any of such documents becomes effective, a duly certified copy of the certificate of incorporation and by-laws shall be filed with Regulation & Surveillance and signed, photostatic or conformed copies of the other documents shall be so filed.]

[(See ¶2311 for procedure to be followed regarding approval of corporations.)]

[There shall also be submitted an opinion of counsel in form and substance satisfactory to the Exchange stating, among other things, that the corporation is duly organized and existing and that its stock is validly issued and outstanding and that the

restrictions and provisions required by the Exchange on the transfer, issuance, conversion and redemption of its stock have been made legally effective.]

[(See .23, below, for restrictions on corporations not incorporated under laws of the State of New York.)]

[.21 Provisions concerning disposition of stock]

[The certificate of incorporation of a member corporation may contain provisions that the corporation or its stockholders, or both, may have a prior right to purchase the stock of any stockholder upon such terms and conditions as may be specified therein.]

[The Exchange will expect a member corporation, either through its certificate of incorporation or separate agreements, to be in a position at all times to comply with the provisions of Rule 312(d).]

[Each stock certificate of a member corporation shall carry on its face a statement of any such provisions or a full summary thereof.]

[.22 Provisions concerning redemption or conversion]

[Each certificate of incorporation of a member corporation shall contain provisions authorizing the corporation to redeem or convert to a fixed income security all or any part of the outstanding shares of voting stock of such member corporation owned by any person required to be approved by the Board of Directors of the Exchange as a member or approved person who fails or ceases to be so approved as may be necessary to reduce such party's ownership of voting stock in the member corporation below that level which enables such party to exercise controlling influence over the management or policies of such member corporation.]

[If the certificate of incorporation of a member corporation subject to Rule 325 provides that a stockholder may compel the redemption of his stock such certificate must provide that without the prior written approval of the Exchange, the redemption may only be effected on a date not less than six months after receipt by the member corporation of a written request for redemption given no sooner than six months after the date of the original issuance of such shares (or any predecessor shares). Each member corporation shall promptly notify the Exchange of the receipt of any request for redemption of any stock or if any redemption is not made because prohibited under the provisions of Securities and Exchange Commission Rule 15c3-1 (See 15c3-1(e)).]

[Each stock certificate of a member corporation shall carry on its face a statement of the restrictions in SEC Rule 15c3-1(e) relating to the redemption of stock or a full summary thereof.]

[.23 Restrictions on corporations]

[Corporations not organized under the laws of the State of New York shall effectively subject themselves to the following restrictions and the opinion of counsel submitted to the Exchange at the time the corporation applies for approval as a member corporation shall set forth the extent to which the following restrictions have been made legally effective:]

[No dividend shall be declared or paid which shall impair the capital of the corporation nor shall any distribution of assets be made to any stockholder unless the value of the assets of the corporation remaining after such payment or distribution is at least equal to the aggregate of its debts and liabilities, including capital.]

\* \* \* \* \*

**[Rule 321. Formation or Acquisition of Subsidiaries]**

[No member organization may, without the prior written approval of the Exchange, form or acquire a subsidiary company. The member organization shall require such subsidiary to comply with the following provisions.]

[••• **Supplementary Material:** -----]

**[Information Regarding Subsidiary Companies of Member Organizations]**

**[.10 Definition of subsidiary]**

[For purposes of this rule, the term “subsidiary” means an entity engaged in a securities or kindred business that is controlled by a member organization within the meaning of Rule 2. However, control shall not be presumed, for purposes of this rule, merely because a member is a director or principal executive of another person.]

**[.11 Form of organization]**

[A subsidiary shall be an incorporated company or partnership.]

**[.12 Name]**

[The name of the subsidiary and the name of the member organization must be sufficiently different to prevent confusion. The mere addition of “Inc.” or “and Co.” may not be sufficient.]

**[.13 Severance of connection with subsidiary]**

[The Exchange may at any time require that the member organization and the partners or stockholders thereof sever all connections with the subsidiary including the disposition of all securities and other interests therein, or such amount thereof as determined by the Exchange. Concurrent with or at any time after directing such severance, the Exchange may require the member organization to change its name if the

Exchange finds that the name of the former subsidiary may be confused with the name of such member organization.]

**[.14 List of stockholders]**

[A list of stockholders or partners of the subsidiary shall upon request be submitted to the Exchange.]

**[.15 Reserved.]**

**[.16 Capital requirements]**

[The Exchange will not prescribe capital requirements for a subsidiary. However, the Exchange will require a pro forma balance sheet of the subsidiary to be filed with it before any action is taken on a member or member organization's application to form such a subsidiary. The Exchange may, however, require the submission of subsequent financial statements.]

**[.17 Banking commitments]**

[A subsidiary's banking and other commitments, loans and obligations shall be kept separate and distinct from those of the member or member organization with which it is affiliated.]

**[.18 Functions of a subsidiary]**

[A subsidiary may be formed to do an underwriting, agency or dealer business, or any other business acceptable to the Exchange.]

**[.19 Offices]**

[A subsidiary will be permitted, under the conditions set forth in Rule 343 to occupy the same quarters as those of the member organization.]

**[.20 Books and records]**

[A subsidiary shall keep books and records separate and distinct from those of the member or member organization with which it is affiliated and such books and records shall, upon request, be made available by the member or member organization for inspection by the Exchange. However, such books and records may be maintained by the member or member organization.]

**[.21 Transactions between members or member organizations and subsidiaries]**

[A subsidiary will not be prohibited by the Exchange from having cash or margin brokerage transactions effected for its account by the member or member organization (See Section 11(a) of the Securities Exchange Act of 1934). The rules and regulations applicable generally to customer's accounts shall be applicable to each such account.]

**[.22 Conditions to be complied with after organization of subsidiary but prior to commencement of business]**

[No subsidiary shall commence business after its organization without the prior written approval of the Exchange. Before giving such approval there shall be submitted to the Exchange an opinion of counsel, in form and substance satisfactory to the Exchange, stating (1) that the subsidiary is duly organized and existing, and (2) that the securities, if any, of the subsidiary has been duly and validly issued and is fully paid and non-assessable.]

**[.23 New issues]**

[The provisions of Section 11(d)(1) of the Securities Exchange Act of 1934, relating to the extension or maintenance of credit in connection with new issues, will apply to transactions by a member or member organization in new issues in the distribution of which its subsidiary participated with the same force and to the same

extent as if the member or member organization itself had participated in the distribution of such new issues.]

**[.24 Reserved.]**

\* \* \* \* \*

### **Rule 416. Questionnaires and Reports**

[(a) Each member and member organization shall submit to the Exchange at such times as may be designated in such form and within such time period as may be prescribed such information as the Exchange deems essential for the protection of investors and the public interest.]

**[(b) Reserved.]**

[(c) Any report filed pursuant to this Rule containing material inaccuracies shall, for purposes of this rule, be deemed not to have been filed until a corrected copy of the report has been resubmitted.]

**[• • • Supplementary Material: -----]**

[.10 Member organizations may be required to provide financial and operational reports as required by paragraph (a) of this Rule for affiliated organizations, including but not limited to, persons referred to in Rules 321 and 322.]

**[.20 Reserved.]**

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### **NYSE Rule Interpretations**

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### **[Rule 311. Formation and Approval of Member Organizations]**

**[(b)(5) OFFICERS]**

[/01 Reserved.]

[/02 Reserved.]

[/03 Reserved.]

[/06 Limitations on Principal Executives]

[Principal Executives may be part-time employees, subject to the prior approval of the member organization pursuant to Rule 346(e).]

[(f) PRINCIPAL PLACE OF BUSINESS]

[/01 Criteria]

[In order to satisfy the rule's requirement that a member organization's principal place of business be maintained within the U.S., at least the following must be located within the U.S., at a definite and manned physical location which is adequate to serve as the site for Exchange inspection of the organization:]

[a) Assets of customers who are citizens or residents of the U.S. and assets associated with transactions effected in the U.S., except for: (1) funds which are ordinarily held in branch offices or in transit, and (2) securities which are held as provided for in SEA Rule 15c3-3(c).]

[To the extent that the broker-dealer introduces customer accounts on a fully disclosed basis to a carrying firm which is located in the U. S., such customer assets may be located at the carrying firm.]

[b) Books and records customarily maintained by brokers and dealers at their principal place of business and sufficient to permit the Exchange to conduct its inspection of the member organization.]

[The utilization of a clearing broker, a bank, or a service bureau which prepares or maintains the member organizations' books and records in accordance with SEA Rules 17a-3 and 17a-4 would satisfy this criterion if such broker, bank or bureau is located in the U.S., and the records would be readily accessible to the Exchange.]

[c) Member organization capital sufficient to meet applicable capital requirements.]

[d) All allied members, qualified and authorized to perform Rule 342 functions.]

[e) Clearance, settlement and securities handling operations which pertain to securities transactions effected in the U.S., to the extent that such operations are maintained by the broker-dealer.]

[f) Operations pertaining to foreign securities transactions effected on behalf of customers who are citizens or residents of the U.S., to the extent that such operations are customarily maintained by a broker-dealer at a principal place of business.]

[(g) MINIMUM OF ACTIVE PARTNERS IN MEMBER ORGANIZATIONS  
— USE OF MEMBER ORGANIZATION NAME]

[/01 Reserved.]

[/02 Divisions of Member Organizations — Names]

[Divisions that are not separate legal entities may not be identified by the use of such words as “Company”, “Corporation” or “Incorporation”, which connote separate entities. Persons staffing such divisions should not have the title

of “President”, which indicates a separate entity. The titles, “Vice President” or “Assistant Vice President” are satisfactory when used in a context which does not convey the existence of authority on behalf of the member organization not, in fact, possessed by that individual.]

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