

Attachment A to *Regulatory Notice 13-29*

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, 1090; NASD Rules 1011, 1012, 1013, 1014, 1015, 1016, 1017, 1019, 1090 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

[1010]1110. General Provisions [Proceedings]

[1011]1111. Definitions

Unless otherwise provided, terms used in the Rule 1100[1010] Series shall have the meaning as defined in Rule [0120]0160.

(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 a relationship described in paragraph (d)(1) 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”

(1) The term “Associated Person” means:

[(1)A] a natural person registered under [NASD] FINRA [R]rules; [or]

[(2)B] a sole proprietor, or any partner, LLC member, officer, director, or branch manager of the Applicant, or any person occupying a similar status or performing similar functions;

(C) any employee of the Applicant, except any person whose functions are solely clerical or ministerial;

[(3)](D) 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)E] 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]F) 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]G) any person who will be or is anticipated to be a person described in subparagraphs (1) through (6) above.

(2) The term “Associated Person” in paragraph (c)(1) does not include any person with a de minimis ownership interest (i.e., less than 10 percent) in an LLC, partnership, or other type of legitimate business organization, unless that person is entitled under the business organization’s constituent documents to 10 percent or more of the business organization’s profits or distributions or otherwise controls the Applicant.

(d) “control”

The term “control” means the power, directly or indirectly, to direct the management or policies of a person, whether through ownership of securities, by contract, or otherwise. Any person that

(1) is a director, general partner, LLC managing member, or officer exercising executive responsibility (or having similar status or functions);

(2) directly or indirectly has the right to vote 25 percent or more of a class of voting security or has the power to sell or direct the sale of 25 percent or more of a class of voting securities; or

(3) in the case of a partnership or LLC, has the right to receive upon dissolution, or has contributed, 25 percent or more of the capital;
is presumed to control that person.

[(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 to the FINRA By-Laws.

(2) An Applicant [seeking] for approval of a change of ownership, control, or business operations shall file an application in accordance with this Rule and in the manner prescribed in Rule [1017]1160, including the timely submission of an application fee pursuant to Schedule A to the FINRA By-Laws.

(3) 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 (e.g., 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.]

(4) FINRA shall serve a notice or decision issued under the Rule 1100[1010] Series by first-class mail, overnight courier, hand delivery, or electronic delivery (e.g., facsimile, email, or a dedicated electronic filing system) on the Applicant or its counsel[, unless a Rule specifies a different method of service].

(5) 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 or by other means of verification

prescribed by FINRA. [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 days after service of an initial written request for information or documents under Rule 1121[1013], within 30 days after service of an initial written request for information or documents under Rule 1160[1017], within 30 days after service of a subsequent written request for information or documents under Rule [1013]1121 or 1160[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), or Rule 1160(g)(5) within 25 days after service of the agreement, or within such other period agreed to by the Department and the Applicant.

(2) If an Applicant wishes again to [continue to] seek membership or approval of a change in ownership, control, or business operation 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 in the manner prescribed in Rule [1013]1121 or [1017]1160, respectively, including the timely submission of an application fee pursuant to Schedule A to the FINRA By-Laws. FINRA shall not refund any fee for a lapsed application.

(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 any application filed with FINRA pursuant to Rule 1121 or 1160 that is or becomes inaccurate or misleading, by submitting supplementary amendments and documentation.

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 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;

(F) 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;

(iv) an organizational chart that identifies the Applicant and any Affiliate that controls the Applicant, is controlled by the Applicant, or has a business relationship requiring disclosure pursuant to paragraph (a)(1)(F)(v) of this Rule;

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

Affiliate:

a. with which the Applicant consolidates financial statements for purposes of SEA Rule 15c3-1;

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; or

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

(vi) at the discretion of the Department, evidence of, and information regarding, any business relationship disclosed pursuant to paragraph (a)(1)(F)(v) of this Rule, such evidence and information to be provided by the Applicant;

[(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 underwritings or other securities-related activities;

[(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) 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) a list of all Associated Persons;

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

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

(R) a copy of the Applicant's written training plan to comply with Firm Element continuing education requirements described in Rule[1120]1250(b), including the name of the Associated Person(s) responsible for implementation; [and]

(S) a copy of the Applicant's anti-money laundering procedures; including the name of the Associated Person(s) responsible for implementation; and

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

(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 [R]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 \$500, 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 under this Rule and fee pursuant to Schedule A to the FINRA By-Laws.]

[(4)](3) Request [F]for Additional Documents [O]r 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 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

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 instance, 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 \$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 to the FINRA By-Laws) 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 (pursuant to Schedule A to the FINRA By-Laws) 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 one or more [a] membership interviewsu with a representative or representatives of the Applicant.

(2) Service of Notice

At least seven days before [the] a 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 in a manner consistent with Rule 1112 [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] a 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) and (2) 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]rom 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(d)(1) and (d)(3) through (d)(5), 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 Rule 1130, notwithstanding the existence of any of the events set forth in Rule 1130(d)(1) and (d)(3) through (d)(5).

(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 (the last such interview, if more than one is required) 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 time for issuing a decision by not more than 90 days from the Board's good cause determination.

(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; or

(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)(F)(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 MKT 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 or makes changes to its securities business that would otherwise require FINRA membership, such firm shall execute a membership agreement prior to expanding its business operations. If such business expansion would be considered a material change in business operations, as that term is defined in Rule 1160, such firm also shall apply for and must receive approval prior to engaging 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 MKT member organizations that were admitted pursuant to the waive-in process are member organizations of both NYSE and NYSE MKT 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 MKT securities business is limited to floor-based activities in either NYSE-traded or NYSE MKT-traded securities, or routing away to other markets orders that are ancillary to their core NYSE or NYSE MKT floor business under NYSE Rule 70.40 or NYSE MKT 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 execute a membership agreement prior to expanding its business operations. If such business expansion would be considered a material change in business operations, as that term is defined in Rule 1160, such firm also shall apply for

and must receive approval prior to engaging 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.

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[1014]1130. Basis for Department Decision

[(a) 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(s) (for Rule 1121 Applicants) or the continuing application membership interview(s) (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]a) 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]b) 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.

(c) The Applicant has fully disclosed and established through documentation satisfactory to FINRA all direct and indirect sources of its funding, and FINRA has determined that such sources of funding are otherwise consistent with the standards set forth in this Rule.

[(3)d) 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)](1) 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 that controls the Applicant, is controlled by the Applicant, or has a business relationship requiring disclosure pursuant to Rule 1121(a)(1)(F)(v);

[(B)](2) [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)](3) [an] the Applicant, an [or] Associated Person, or an Affiliate that controls the Applicant, is controlled by the Applicant, or has a business relationship requiring disclosure pursuant to Rule 1121(a)(1)(F)(v), 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[]percent 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[]percent lender of its net capital is subject to unpaid arbitration awards, other adjudicated customer awards, or unpaid arbitration settlements;

[(D)](4) 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)](5) 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)](6) a state or federal authority or self-regulatory organization has provided information indicating that the Applicant, [or] an Associated Person, or an Affiliate that controls the Applicant, is controlled by the Applicant, or has a business relationship requiring disclosure pursuant to Rule 1121(a)(1)(F)(v), otherwise poses a threat to public investors[.]; and

(7) 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)](e) 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] application, 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)](f) 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] application, 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)](g) 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 Rule 4370. [in each area set forth in Rule 1013(a)(2)(E)(xii);]

[(7)](h) 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)](1) 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)](2) 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)](3) 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)](4) any plan to enter into other contractual commitments, such as underwritings or other securities-related activities;

[(E)](5) 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)](6) any other activity that the Applicant or an Affiliate that controls the Applicant, is controlled by the Applicant, or has a business relationship requiring disclosure pursuant to Rule 1121(a)(1)(F)(v), 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)](i) 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)](1) 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)](2) 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)](3) 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)](4) each Associated Person identified in the [business plan] application 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)](5) the Applicant will solicit retail or institutional business;

[(F)](6) the Applicant will recommend transactions or investment strategies involving a security or securities to customers;

[(G)](7) the location or part-time status of a supervisor or principal will affect such person's ability to be an effective supervisor;

[(H)](8) the Applicant [should be required to place one or more] will impose appropriate remedial action, such as special training, continuing education or heightened supervision, on any 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)](9) 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)](10) 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)](i) 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)](k) 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 30[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 15[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)](c) 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)](d) 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)](e) 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)](f) 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)](g) 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)](h) 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](e), and not later than seven days before the meeting of the National Adjudicatory Council at which the membership proceeding shall be considered.

[(j)](i) 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 therefor 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 time limit for issuing a decision[15 day time limit] by not more than 15 days from the Board's good cause determination.

[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(j)(2)]1140(i)(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. Application for Approval of Change in Ownership, Control, or Business Operations Pursuant to a Continuation of or Withdrawal from Membership

(a) Events Requiring Application

A member shall file, pursuant to the 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 (6) of this Rule. Failure to adequately address all standards pursuant to Rule 1130 will result in a determination that the application is not substantially complete.

(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 (including, but not limited to, cash, securities, notes, real estate ownership interests, inventories, and accounts receivable) or any asset, business or line of operation (including customer accounts) that generates revenues [comprising]composing 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, LLC membership interest, 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, LLC membership interest, or other ownership interest in the member; [or]

(5) A change, directly or indirectly, of control person(s) of the member, other than the appointment or election of a natural person as an officer or director of the member conducted as part of the normal course of its business, regardless of whether such change occurred as a result of a change, directly or indirectly, in the equity ownership, partnership capital, LLC membership interest, or other ownership interest in the member; or

[(5)](6) [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) adding business activities that require a higher minimum net capital under SEA Rule 15c3-1;

(C) engaging, for the first time, in: (i) market making, (ii) underwriting, (iii) acting as a dealer, (iv) settling or clearing transactions for the Applicant's own business, (v) settling or clearing transactions for other broker-dealers, (vi) carrying accounts of customers, (vii) retail foreign currency exchange activities, or (viii) variable life settlement sales to retail customers; or

(D) 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 in the manner prescribed by FINRA with the Department [of Member Regulation (“the Department”)].

(2) An Applicant shall submit an application that includes a Form CMA including a detailed description of the proposed change(s) in ownership, control, or business operations.

(A) 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.

(B) 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 and nature 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](C) 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].

(D)(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 and identify the reason for which the Applicant seeks the expansion.

(3) Upon receipt of a member's written request, the Department 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-dealer;

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

(C) neither the member nor any of its associated 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 associated 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) Upon receipt of a member's written request, the Department may waive the requirement to file an application for approval pursuant to paragraph (a)(4) or (5) of this Rule where the direct or indirect change in ownership or control does not result in any day-to-day change in the business activities, management, supervision, assets, or liabilities of the Applicant.

(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 prior to the conclusion of the

proceeding, but the Department may place new interim restrictions on the member based on the standards set forth 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. The Department may, pursuant to the standards set forth in Rule 1130, impose restrictions on the member as a condition of such agreement, pending final Department action.

(d) Request for Additional Documents and Information

Within 30 days after the filing of a complete application, the Department may serve a request for any additional information or documents necessary to render a decision on the application. The Department may also 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]f Application [T]hat [I]s [N]ot 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] instance, 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 \$500, which shall be retained by FINRA as a processing fee. 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] and fee (pursuant to Schedule A to the FINRA By-Laws) 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] one or more continuing membership application interviews 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] a continuing membership application 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 in a manner consistent with Rule 1112 [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] any continuing membership application interview or decides to base its

decision on such information after [the] any 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 continuing membership application interview(s), 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(a)] 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(a)(3)(A)]1130(d)(1) and [(C)](d)(3) through [(E)](d)(5), 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(a)]1130, notwithstanding the existence of any of the events set forth in Rule [1014(a)(3)(A)]1130(d)(1) and [(C)](d)(3) through [(E)](d)(5).

(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

[modification or removal of] the request to modify or remove 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, [or] control, [or] supervisors, or [and] 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 days after the conclusion of the 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] issue 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 from the Board's good cause determination.

(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.

(5) Any application submitted pursuant to paragraph (a) of this Rule, made by an Applicant that does not have an existing membership agreement at the time of the application, and where such Applicant is not filing a Form BDW in connection with the application, will require the Applicant to execute a membership agreement at the conclusion of the application review.

(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 Rule 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, Control, or Business Operations

If an application for approval of a change in ownership, control, or business operations [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 under this Rule and fee pursuant to Schedule A to the FINRA By-Laws] cease the activities that required the 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 for a change of business in a type of expansion listed below where the member has a membership agreement containing a restriction directly related to that type of expansion; however the member may rely upon the safe harbor for those types of expansions from which it is not restricted. The safe harbor is not available 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 the Associated Persons to be acquired have a disciplinary history.

(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; NASD Rule 2110 (Standards of Commercial Honor and Principles of Trade) or FINRA Rule 2010 (Standards of Commercial Honor and Principles of Trade) (only if the finding of a violation of NASD Rule 2110 or FINRA Rule 2010 is for unauthorized trading, churning, conversion, material misrepresentations or omissions to a customer, front-running, trading ahead of research reports or excessive markups), FINRA Rule 5280 (Trading Ahead of Research Reports), NASD Rule 2120 (Use of Manipulative, Deceptive or Other Fraudulent Devices) or FINRA Rule 2020 (Use of Manipulative, Deceptive

or Other Fraudulent Devices), NASD Rule 2310 (Recommendations to Customers (Suitability)) or FINRA Rule 2111 (Suitability), NASD Rule 2330 (Customers' Securities or Funds) or FINRA Rule 2150 (Improper Use of Customers' Securities or Funds; Prohibition Against Guarantees and Sharing in Accounts), NASD Rule 2440 (Fair Prices and Commissions), NASD Rule 3010 (Supervision) (failure to supervise only), NASD Rule 3310 (Publication of Transactions and Quotations) or FINRA Rule 5210 (Publication of Transactions and Quotations), and NASD Rule 3330 (Payment Designed to Influence Market Prices, Other than Paid Advertising) or FINRA Rule 5230 (Payments Involving Publications that Influence the Market Price of a Security); 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, to not constitute 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 changes 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.

.02 Waiver Request.

A member seeking a waiver pursuant to paragraphs (b)(3) or (b)(4) of this Rule must submit a written request with the Department in the manner prescribed in FINRA Rule 1112(a)(3).

The Department generally will consider granting a waiver pursuant to paragraph (b)(4) where the member is only proposing a change in the: (1)

member's legal structure (e.g., changing from a corporation to an LLC); (2) equity ownership, partnership capital, LLC membership interest, or other ownership interest in an Applicant held by a corporate legal structure that is due solely to a reorganization of ownership or control of the Applicant within the corporate legal structure (e.g., reorganizing only to add a holding company to the corporate legal structure's ownership or control chain of the Applicant); or (3) percentage of ownership interest, LLC membership interest, or partnership capital of an Applicant's existing owners or partners resulting in an existing owner or partner owning or controlling 25 percent or more of the ownership interest or partnership and that owner or partner has no disclosure or disciplinary issues in the preceding five years.

[1018]1170. [Reserved] Notice of Certain Member Changes

(a) Each member shall provide the Department with timely prior written notice of any of the following events, and subsequently provide such information as the Department may require regarding such 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) A direct or indirect acquisition (including purchases or transfers) or divestitures (including sales or transfers) of 10 percent or more in the aggregate of the member's assets (including, but not limited to, cash, securities, notes, real estate ownership interests, inventories, and accounts receivable) or any asset, business or line of operation (including

customer accounts) that generates revenues composing 10 percent or more in the aggregate of the member's earnings measured on a rolling 36-month basis; or

(2) A change, directly or indirectly, in the equity ownership, partnership capital, LLC membership interest, or other ownership interest in the member that results in one person directly or indirectly owning, controlling, or holding a presently exercisable option to own or control, 10 percent or more of the equity, partnership capital, LLC membership interest, or other ownership interest in the member.

(b) 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 Exchange Act Section 19(d)(2)[of the Act]. The filing of an application for review shall not stay the effectiveness of a decision constituting final action of FINRA, unless the [Commission] SEC otherwise orders.

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[1090]1190. Foreign Members

A member [which]that does not maintain an office in the United States responsible for preparing and maintaining financial and other reports required to be filed with the [Commission]SEC and [the Association]FINRA must:

(a) prepare all such reports, and maintain a general ledger chart of account and any description thereof, in English and U.S. dollars;

(b) reimburse [the Association]FINRA for any expenses incurred in connection with examinations of the member to the extent that such expenses exceed the cost of examining a member located within the continental United States in the geographic location most distant from the District Office of appropriate jurisdiction; and

(c) ensure the availability of an individual fluent in English and knowledgeable in securities and financial matters to assist representatives of [the Association]FINRA during examinations. [; and]

[(d) utilize, either directly or indirectly, the services of a broker/dealer registered with the Commission, a bank or a clearing agency registered with the Commission located in the United States in clearing all transactions involving members of the Association, except where both parties to a transaction agree otherwise.]

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Text of Incorporated NYSE Rule and Incorporated NYSE Rule Interpretation to Remain in the Transitional Rulebook

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Incorporated NYSE Rules

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

[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] Reserved.

[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] Reserved.

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

.12 [Name] Reserved.

[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] Reserved.

[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] Reserved.

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

.15 Employees

No Change.

.16 [Capital requirements] Reserved.

[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] Reserved.

[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] Reserved.

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

.19 [Offices] Reserved.

[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] Reserved.

[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] Reserved.

[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] Reserved.

[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] Reserved.

[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.

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Incorporated NYSE Rule Interpretations

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Rule 311 Formation and Approval of Member Organizations

(b)

(5) OFFICERS

/01 Principal Executives

General Qualifications

Principal executives must satisfy any and all examination requirements necessary to perform their assigned functions. Candidates for such positions must also have work experience and background commensurate with their responsibilities. The Exchange may request information with respect to the experience of anyone appointed or elected to such positions.

/02 Examination Requirements for Chief Financial Officers ("CFO") and Chief Operations Officers ("COO")

A person designated CFO or COO pursuant to /01 of this Interpretation must pass the Financial and Operations Principal Qualification Examination ("Series 27") unless designated CFO or COO of an introducing member organization, in which case such person must pass either the Series 27 Examination or the Introducing Broker/Dealer Financial and Operations Principal Qualification Examination ("Series 28").

/03 Dual Designation of CFO and COO

If a member organization's activities are limited to introducing customers' accounts and such organization does not hold funds or securities, an individual, who must be either Series 27 or Series 28 qualified, may be designated as both CFO and COO. Member organizations must use due diligence to reasonably assess the supervisory adequacy of such arrangements pursuant to Rule 342. The Exchange must be notified promptly of any such dual designations.

/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 Carrying Accounts

To carry customer accounts a member firm must have at least two general partners who are natural persons actively engaged in the organization's business.

The purpose of this requirement is to avert a situation in which the death or disassociation of a sole general partner could result in a

delay in servicing customers' accounts, in the street-side settlement of open contractual commitments or otherwise interfere in the conduct of the firm's business to the detriment of the public interest and investor confidence.

[/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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Rule 401. Business Conduct

/01-/02 No Change.

[/03 Conversions, Acquisitions and Changes in Business Activities

Member organizations are expected to notify the Exchange when planning important organizational or operational changes, such as mergers with or acquisitions of other broker/dealers or the acquisition of a significant electronic data processing system conversion or a change in business activity involving the addition of new product lines such as municipal bonds, government securities, options or commodities, etc. By discussing these proposals with the Exchange

well in advance of implementation, member organizations will have the benefit of the Exchange's insight and experience which may serve to aid in avoiding financial and operational problems.]

/04 No Change.

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

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NASD Rules

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

Entire text deleted.

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

Entire text deleted.

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

Entire text deleted.

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

Entire text deleted.

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Incorporated NYSE Rules

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[Rule 311. Formation and Approval of Member Organizations]

Entire text deleted.

[Rule 312. Changes Within Member Organizations]

Entire text deleted.

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

Entire text deleted.

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[Rule 416. Questionnaires and Reports]

Entire text deleted.

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