

## Transitional Rulebook

### Amendments to Incorporated NYSE Rules to Reduce Regulatory Duplication

Effective Date: November 11, 2008

#### Executive Summary

Effective November 11, 2008, certain NYSE rules that have been incorporated by FINRA (Incorporated NYSE Rules) have been amended to relieve those firms that are members of both NYSE and FINRA (Dual Members) of conflicting or unnecessary regulatory burdens in the interim period before the consolidated FINRA rulebook is completed.<sup>1</sup> The text of the Incorporated NYSE Rules, as amended, is set forth in Attachment A to this *Notice*.

Questions concerning this *Notice* should be directed to Gary L. Goldsholle, Vice President and Associate General Counsel, Office of General Counsel (OGC), at (202) 728-8104; or Erika L. Lazar, Senior Attorney, OGC, at (646) 315-8512.

#### Background & Discussion

The SEC recently approved amendments to certain Incorporated NYSE Rules to reduce regulatory disparities between NASD and Incorporated NYSE Rules in the Transitional Rulebook and relieve Dual Members of conflicting or unnecessary regulatory burdens in the interim period before the Consolidated FINRA Rulebook is completed.<sup>2</sup> The rule changes described in this *Notice* affect the Transitional Rulebook in its application to Dual Members only and do not necessarily reflect FINRA's intent or conclusion as to the ultimate rule text for rules that will be part of the Consolidated FINRA Rulebook.<sup>3</sup>

October 2008

#### Notice Type

- Rule Amendment

#### Suggested Routing

- Compliance
- Legal
- Operations
- Registered Representatives
- Senior Management
- Trading

#### Key Topic(s)

- Acceptability of Supervisors
- Allied Member
- Buy-In Rules
- Discretionary Power in Customers' Accounts
- Employee Registration and Approval
- Limitations – Employment and Association with Member Organizations
- Reporting Requirements
- Sharing in Accounts
- Training Periods

#### Referenced Rules & Notices

- See Attachment A to this Notice.

### Allied Member

The amendments delete the term “allied member” from the Incorporated NYSE Rules. The allied member designation is a regulatory category based on a person’s “control” of a member organization.<sup>4</sup> Allied membership, as currently administered, has no direct analogue under the FINRA membership scheme.

In instances where the term “allied member” appears in a rule to denote an individual’s status as a member organization “control person,” the newly defined category of “principal executive” is substituted for the term “allied member.”<sup>5</sup> The definition for “principal executive” is identical to the current definition of “principal executive officer” in NYSE Rule 311(b)(5) with additional language to clarify that the functional equivalents of such persons are also included in this category. As such, the rule change replaces “principal executive officer” with “principal executive.”

Unlike the allied member designation, principal executive does not require a registration process, approval by a self-regulatory organization (SRO) or a particular qualification examination. However, each principal executive is required to take and pass the qualification examination(s) necessary to perform his or her assigned functions. As a result of the elimination of this NYSE registration category, FINRA will preclude broker-dealers from requesting this registration status through the Central Registration Depository (CRD<sup>®</sup>) system beginning on November 11, 2008.<sup>6</sup>

### Buy-In Rules<sup>7</sup>

The amendments reposition NYSE Rules 283, 285, 286, 287, 288, 289 and 290 into NYSE Rule 282 so that NYSE Rule 282 now serves as a complete, central repository for all requirements and procedures related to transactions subject to the Buy-In Rules. Additionally, the rule change adds the substance of NYSE Rule 140 to NYSE Rule 282.<sup>8</sup> Lastly, the amendments harmonize the current text of NYSE Rule 282 with the NASD Rule 11000 Series by: (1) adding language to clarify that fails that are subject to the rules of a Qualified Clearing Agency must comply with the procedures or requirements of the Qualified Clearing Agency and (2) adopting certain provisions of NASD Rule 11810.

### Acceptability of Supervisors

NYSE Rule 342.13(a) currently requires that persons who are to be assigned certain prescribed supervisory responsibilities<sup>9</sup> have a creditable three-year record as a registered representative or have three years of equivalent experience before functioning as a supervisor.<sup>10</sup> Amendments to NYSE Rule 342.13(a) and its Interpretation eliminate the prescribed three-year record requirement for supervisory personnel and conform NYSE Rule 342.13(a) to the standard outlined in NASD Rule 1014(a)(10)(D) with respect to firms that are submitting an application to become

FINRA members. In such instances, supervisory candidates are required to have one year of “direct experience” or two years of “related experience” in the subject area to be supervised.

### **Prescribed Training Periods**

NYSE Rule 345 and its Interpretation<sup>11</sup> require prescribed training periods before certain exam-qualified registered persons are approved by the NYSE to perform functions requiring registration. To harmonize NYSE Rule 345 with NASD registration requirements, the amendments eliminate the prescribed training periods in NYSE Rule 345 and its Interpretation. The amendments allow member firms to determine, consistent with their overall supervisory obligations, the extent and duration of training for such registered persons before they are permitted to perform functions requiring registration.

Presently, when an individual requests a registration category that has a training period, the CRD system prevents that individual from being so registered until the requisite training period has expired. As of the effective date of this rule change, the training period requirement associated with NYSE Rule 345 registration categories will no longer be imposed by the CRD system. As such, these persons will be approved in the CRD system as of the date they pass the applicable qualification examination(s) (provided there are no other outstanding deficiencies) and member firms must determine the appropriate training for such registered persons before they are permitted to perform functions requiring registration.

### **Employee Registration and Approval**

NYSE Rule 345(a) currently prohibits member organizations from permitting any natural person to perform regularly the duties customarily performed by a registered representative, a securities lending representative, a securities trader or a direct supervisor of such persons, unless such person is registered with, qualified by and acceptable to the NYSE. FINRA has eliminated the specific registration and qualification requirements in NYSE Rule 345(a) as they pertain to registered representatives, securities traders and their direct supervisors.<sup>12</sup> Thus, the provisions in NYSE Rule 345(a) now apply only to securities lending representatives and their direct supervisors.

NYSE Rule 345(b) also prohibits any natural person, other than a member or allied member, to assume the duties of an officer with the power to legally bind such member or member organization unless such member or member organization has filed an application with and received the approval of the NYSE. The amendments delete NYSE Rule 345(b) in its entirety. There is no similar requirement in any of the NASD Rules.

## Limitations – Employment and Association with Member Organizations

NYSE Rule 346 sets forth limitations on the outside business activities of member organization employees. The amendments delete NYSE Rule 346(c), which requires that member firms give prompt written notice of control relationships to the NYSE. FINRA believes that this provision is unnecessary as it is a requirement on Form BD that each broker-dealer disclose such control relationships.<sup>13</sup>

NYSE Rule 407 provides, in part, that no employee of a member organization shall establish or maintain a securities or commodities account or enter into a private securities transaction without the prior written consent of his or her member organization. The amendments reposition the requirements pertaining to “private securities transactions” (*e.g.*, interests in oil or gas ventures, real estate syndications, tax shelters, etc.) from NYSE Rule 407<sup>14</sup> to NYSE Rule 346 since NYSE Rule 346 more directly addresses issues related to the outside activities of registered persons. Additionally, the rule change adopts definitions of the terms “private securities transactions,” “selling compensation” and “immediate family members” that are substantially identical to the corresponding definitions in the NASD Rules.<sup>15</sup>

NYSE Rule 346(e) currently requires that supervisors devote their entire time during business hours to their member organization, unless otherwise permitted by the NYSE. Amendments to NYSE Rule 346(e) and Supplementary Material section .10 eliminate the SRO approval requirement. Instead, the amended rule requires the prior written approval of the member firm, pursuant to the exercise of appropriate due diligence, for such arrangements. Member firms must obtain the identification of any entity for which the supervisory person will be performing services during business hours and a description of such services. The firm’s written approval is required to set forth the approximate amount of time the supervisory person is expected to devote to each entity, with particular attention paid to the approximate time expected to be required for the person, based upon qualifications and experience, to effectively discharge his or her supervisory responsibilities on behalf of the member. In addition, the amended rule requires documentation that the member firm has made a good faith determination that the arrangement will not compromise the protection of investors or the public interest, compromise the supervisor’s duties at the member firm or give rise to a material conflict of interest.

## Reporting Requirements

NYSE Rule 351(d) requires each member organization to report certain statistical information regarding customer complaints. The requirement currently extends to both oral and written complaints. The amendments to Rule 351 limit the definition of the term “customer complaint” to any written statement of a customer, or any person

acting on behalf of a customer, other than a broker or dealer, alleging a grievance involving the activities of those persons under the control of a member firm. This definition is substantially similar to the current definition in NASD Rule 3070(c).

### **Guarantees, Sharing in Accounts, and Loan Arrangements**

NYSE Rule 352 restricts the extent to which member organization personnel may share in customer account profits or losses. NYSE Rule 352(b) generally prohibits member firms, allied members and registered representatives from sharing profits or losses in any customer account. However, NYSE Rule 352(c) permits such sharing in proportion to financial contributions made to a joint account.

The rule change amends NYSE Rule 352(c) to exempt from the proportional contribution requirement joint accounts with immediate family members held by principal executives or registered representatives of a member organization. This amendment acknowledges that certain accounts may reasonably entail profit and loss participation on a disproportionate basis, as with joint accounts between husband and wife, while retaining coverage of the rule for other accounts. NASD Rule 2330(f)(1)(A) similarly addresses the circumstances under which a FINRA member or a person associated with a FINRA member firm may share in profits and losses with a customer. NASD Rule 2330(f)(1)(A) permits sharing that is proportionate to the financial contributions of each account holder. NASD Rule 2330(f)(1)(B) exempts from this proportionality requirement accounts shared between an associated person and a customer who is an immediate family member of such associated person. The amendments harmonize the term “immediate family” in NYSE Rule 352(c) with the standard under NASD Rule 2330(f)(1)(B).

The amendments to NYSE Rule 352(d) streamline the reference in the rule to Rule 205-3 of the Investment Advisers Act of 1940 and better align NYSE Rule 352 with NASD Rule 2330(f).

### **Discretionary Power in Customers’ Accounts**

NYSE Rule 408 provides, in part, that no employee of a member organization shall exercise discretionary power in any customer’s account or accept orders for an account from a person other than the customer without first obtaining written authorization from the customer. The amendments to NYSE Rule 408(a) require member firms to obtain the signature of any person or persons authorized to exercise discretion in such accounts, of any substitute so authorized, and the date such discretionary authority was granted. This rule change conforms NYSE Rule 408(a) to corresponding requirements in NASD Rule 3110(c)(3).

### Deleted NYSE Rules

The amendments recognize that certain rules are outdated and no longer necessary. For these reasons, the amendments delete paragraph (h) of NYSE Rule 311, which prescribes the number of partners to be named in a member organization in order for it to conduct business, and NYSE Rule 436 (Interest on Credit Balances) and its Interpretation.

The amendments also delete certain rules because they are sufficiently addressed by NASD rules. Specifically, NYSE Rule 404 (Individual Members Not to Carry Accounts) has been deleted because its requirements duplicate the FINRA Letter of Approval sent to members. NYSE Rule 412 (Customer Account Transfer Contracts) (and its Interpretation) has been deleted because it duplicates NASD Rule 11870 (Customer Account Transfer Contracts). Finally, NYSE Rule 446 (Business Continuity and Contingency Plans) has been deleted as it is nearly identical to NASD Rules 3510 (Business Continuity Plans) and 3520 (Emergency Contact Information).

## Endnotes

- 1 FINRA is in the process of developing a new consolidated rulebook (Consolidated FINRA Rulebook), which, upon completion, will consist only of FINRA Rules. The current FINRA rulebook includes, in addition to FINRA Rules, (1) NASD Rules and (2) Incorporated NYSE Rules (together, the NASD Rules and Incorporated NYSE Rules are referred to as the Transitional Rulebook). While the NASD Rules generally apply to all FINRA members, the Incorporated NYSE Rules apply only to Dual Members. For more information about the rulebook consolidation process, see *FINRA Information Notice 3/12/08* (Rulebook Consolidation Process).
- 2 See Securities Exchange Act Release No. 58533 (September 12, 2008), 73 FR 54652 (September 22, 2008) (Order Approving Proposed Rule Change Relating to Incorporated NYSE Rules; File No. SR-FINRA-2008-036). See also Securities Exchange Act Release No. 58549 (September 15, 2008), 73 FR 54444 (September 19, 2008) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change and Amendment No. 1 Thereto Conforming Certain NYSE Rules to Changes to NYSE Incorporated Rules Recently Filed by the Financial Industry Regulatory Authority, Inc.; File No. SR-NYSE-2008-80).
- 3 Please note that certain rules discussed in this *Notice* are subject to further amendments based on the following rule filings relating to the establishment of the Consolidated FINRA Rulebook: see Exchange Act Release No. 58421 (August 25, 2008), 73 FR 51032 (August 29, 2008) (Order Approving Proposed Rule Change; SR-FINRA-2008-025); Exchange Act Release No. 58461 (September 4, 2008), 73 FR 52710 (September 10, 2008) (Order Approving Proposed Rule Change; File No. SR-FINRA-2008-033); Exchange Act Release No. 58514 (September 11, 2008), 73 FR 54190 (September 18, 2008) (Order Approving Proposed Rule Change; SR-FINRA-2008-039); Exchange Act Release No. 58643 (September 25, 2008), 73 FR 57174 (October 1, 2008) (Order Approving Proposed Rule Change; File Nos. SR-FINRA-2008-021; SR-FINRA-2008-022; SR-FINRA-2008-026; SR-FINRA-2008-028 and SR-FINRA-2008-029); Exchange Act Release No. 58660 (September 26, 2008), 73 FR 57393 (October 2, 2008) (Order Approving Proposed Rule Change; File No. SR-FINRA-2008-027); Exchange Act Release No. 58661 (September 26, 2008), 73 FR 57395 (October 2, 2008) (Order Approving Proposed Rule Change; SR-FINRA-2008-030).
- 4 See NYSE Rule 304(b) (Allied Members and Approved Persons). FINRA did not incorporate NYSE Rule 304.
- 5 See NYSE Rule 311.17.

## Endnotes

- 6 In addition, on November 11, 2008, FINRA will administratively terminate all approved NYSE allied member registrations. Individuals who currently maintain an allied member registration through the American Stock Exchange (n/k/a NYSE Alternext) or ArcaEX (n/k/a NYSE Arca) will not be affected by this rule change and the allied member registration category will continue to be available through these SROs.
- 7 The SRO Operational, Clearing and Settlement Rules are collectively referred to herein as the "Buy-In Rules."
- 8 See NYSE Rule 282.15.
- 9 In this regard, NYSE Rule 342.13(a) references NYSE Rule 342(d) which requires that "[q]ualified persons acceptable to the Exchange shall be in charge of: (1) any office of a member or member organization, (2) any regional or other group of offices, (3) any sales department or activity."
- 10 NYSE Rule 342.13(a) also requires that persons assigned supervisory responsibility pursuant to NYSE Rule 342(d) must pass a qualification examination acceptable to the NYSE that demonstrates competence relevant to assigned responsibilities.
- 11 See NYSE Rule Interpretation 345.15/01 and /02.
- 12 Accordingly, FINRA will preclude broker-dealers from requesting either the Securities Trader or the Trading Supervisor NYSE registration status through the CRD system beginning November 11, 2008.
- 13 See Question 10 on Form BD.
- 14 See NYSE Rule 407(b) and section .11 in the Supplementary Material.
- 15 See changes to NYSE Rule 346 Supplementary Material.

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## ATTACHMENT A

### Referenced Rules

#### NASD Rules

NASD Rule 1014  
NASD Rule 1031  
NASD Rule 2330  
NASD Rule 2370  
NASD Rule 3070  
NASD Rule 3110  
NASD Rule 3510  
NASD Rule 3520  
NASD Rule 11810  
NASD Rule 11870

#### NYSE Rules

NYSE Rule 2  
NYSE Rule 2A  
NYSE Rule 134  
NYSE Rule 140  
NYSE Rule 282  
NYSE Rule 283  
NYSE Rule 285  
NYSE Rule 286  
NYSE Rule 287  
NYSE Rule 288  
NYSE Rule 289  
NYSE Rule 290  
NYSE Rule 304  
NYSE Rule 311 and its Interpretation  
NYSE Rule 312  
NYSE Rule 313  
NYSE Rule 321  
NYSE Rule 342 and its Interpretation  
NYSE Rule 345 and its Interpretation  
NYSE Rule 345A and its Interpretation  
NYSE Rule 346 and its Interpretation  
NYSE Rule 351  
NYSE Rule 352

NYSE Rule 353  
NYSE Rule 354  
NYSE Rule 401  
NYSE Rule 404  
NYSE Rule 405 and its Interpretation  
NYSE Rule 407  
NYSE Rule 408  
NYSE Rule 409  
NYSE Rule 410  
NYSE Rule 412 and its Interpretation  
NYSE Rule 414  
NYSE Rule 424  
NYSE Rule 431  
NYSE Rule 435  
NYSE Rule 436 and its Interpretation  
NYSE Rule 440F  
NYSE Rule 440G  
NYSE Rule 446  
NYSE Rule 477  
NYSE Rule 704  
NYSE Rule 705  
NYSE Rule 723  
NYSE Rule 724  
NYSE Rule 791

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

\* \* \* \* \*

## Rule 2. “Member,” “Membership,” “Member Firm,” etc.

**(a) – (b)** No Change.

**[(c)]** The term “allied member” means a natural person who is a general partner of a member organization or other employee of a member organization who controls, or is a principal executive officer of, such member organization and who has been approved by the Exchange as an allied member.]

**[(d)]**c The term “approved person” means a person, other than a member [or allied member], principal executive or employee of a member organization who controls a member organization or is engaged in a securities or kindred business that is controlled by, or under common control with a member or member organization who has been approved by the Exchange as an approved person.

**[(e)]**d The term “person” shall mean a natural person, corporation, limited liability company, partnership, association, joint stock company, trust, fund or any organized group of persons whether incorporated or not.

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

**(i)** has the right to vote 25 percent or more of the voting securities,

**(ii)** is entitled to receive 25 percent or more of the net profits, or

**(iii)** is a director, general partner or principal executive [officer] (or person occupying a similar status or performing similar functions) of the other person.

Any person who does not so own voting securities, participate in profits or function as a director, general partner or principal executive [officer] of another person shall be presumed not to control such other person. Any presumption may be rebutted by evidence, but shall continue until a determination to the contrary has been made by the Exchange.

**[(g)]**f No Change.

**[(h)]**g No Change.

## Rule 2A. Jurisdiction

(a) The Exchange, may, with approval of the Exchange Board of Directors and the NYSE Regulation Board of Directors, adopt, amend or repeal such rules as it may deem necessary or proper, including rules with respect to (i) the making and settling of Exchange Contracts, (ii) the access of members and member organizations and their employees to and the conduct of members, member organizations and their employees upon the floor of the Exchange and their use of Exchange facilities, (iii) insolvency of member organizations, (iv) the formation of member organizations, the continuance thereof and the interests of members, [allied members and] principal executives or other persons therein, (v) the partners, officers, directors, stockholders and employees of member organizations, (vi) the offices of members, [allied members] principal executives and member organizations, (vii) the business conduct of members, [allied members] principal executives and member organizations, (viii) the business connections of members, [allied members] principal executives and member organizations, and their association with or domination by or over corporations or other persons engaged in the securities business, (ix) capital requirements for member organizations, (x) the procedure for arbitration and dispute resolution, (xi) trading licenses and the transfers thereof, (xii) types, terms, conditions and issuance of securities by member organizations and trading in such securities, (xiii) the conduct and procedure for disciplinary hearings and reviews there from, (xiv) the location and use on the floor of the Exchange of such facilities as may be approved by the Exchange to permit members to send orders from the floor to other markets and receive orders on the floor from other markets for the purchase or sale of securities traded on the Exchange, (xv) options and other derivative trading, (xvi) matters related to non-member broker-dealers that choose to be regulated by the Exchange, and (xvii) any other matter relevant to the conduct of the business of a securities exchange and self-regulatory organization.

(b) No Change.

(c) The Exchange shall have general supervision over members, [allied members and] principal executives, member organizations, employees of member organizations and over approved persons in connection with their conduct of the business of member organizations. The Exchange shall have general supervision over other broker-dealers that choose to be regulated by the Exchange. The Exchange may examine into the business conduct and financial condition of members, [allied members,] principal executives, member organizations, employees of member organizations, approved persons and other broker-dealers that choose to be regulated by the Exchange. It shall

have supervision over partnership and corporate arrangements and over all offices of such members and member organizations, whether foreign or domestic, and over all persons employed by such members organizations, and other broker-dealers that choose to be regulated by the Exchange and may adopt such rules with respect to the employment, compensation and duties of such employees as it may deem appropriate. It shall have supervision over all matters relating to the collection, dissemination and use of quotations and of reports of prices on the Exchange. It shall have the power to approve or disapprove any connection or means of communication with the floor and may require the discontinuance of any such connection or means of communication. It may disapprove any member acting as a specialist or odd-lot dealer.

(d) The Exchange shall adopt such rules as it deems necessary or appropriate for the discipline of members, member organizations, [allied members,] principal executives, approved persons, and registered and non-registered employees of member organizations and over other broker-dealers that choose to be regulated by the Exchange for the violation of the Securities Exchange Act of 1934 (the Act), the rules of the Exchange and for such other offenses as may be set forth in the rules of the Exchange. The Exchange shall also adopt such rules as it deems necessary or appropriate governing the conduct of disciplinary proceedings including disciplinary hearings and reviews thereof. The determination and penalty, if any, of the Board after review shall be final and conclusive, subject to the provisions of the Act.

(e) The Exchange shall have jurisdiction after notice and a hearing to discipline members, member organizations, [allied members,] principal executives, approved persons in connection with their conduct of the business of a member organization, and registered or non-registered employees of member organizations and other broker-dealers that choose to be regulated by the Exchange. The Exchange may impose one or more of the following disciplinary sanctions: expulsion, suspension; limitation as to activities, functions, and operations, including the suspension or cancellation of a registration in, or assignment of, one or more stocks, fine, censure, suspension or bar from being associated with any member or member organization, or any other fitting sanction.

(f) The Exchange shall have jurisdiction over any and all other functions of its members, member organizations, [allied members,] principal executives and approved persons in connection with the conduct of the business of member organizations, and registered or non-registered employees of members or member organizations and other broker-dealers that choose to be regulated by the Exchange in order for the Exchange to comply with its statutory obligation as a Self Regulatory Organization.

\* \* \* \* \*

### Rule 134. Differences and Omissions-Cleared Transactions

("QTs")

(a) - (d) No Change.

• • • Supplementary Material: — — — — —

.10 - .40 No Change.

— — — — —

(e)

No Change.

(f)

(i) No Change.

(ii) Transactions which have been DK'd by a clearing member organization by entering the appropriate response into the System may be closed out by the questioning firm under the provisions of Rule 28[3]2 and the printed record of such response produced by the System shall constitute the notice requirement of Rule 28[3]2.

\* \* \* \* \*

### Rule 282. Buy-in Procedures

A contract in securities, except a contract where its close-out is governed by the rules of a Qualified Clearing Agency, which has not been completed by the seller in accordance with its terms, may be closed-out by the buyer (i.e., the initiating member organization) no sooner than three business days after the due date for delivery, pursuant to the following procedures:

(a) – (c) No Change.

(d) Where the buyer is a customer (i.e., other than another member organization), upon failure of a defaulting member organization to effect delivery in accordance with a "buy-in" notice, the contract may be closed-out by purchasing for "cash" in the best available market, or at the option of the initiating member organization, for guaranteed delivery for all or any part of the securities necessary to complete the contract. "Buy-ins" executed in accordance with this paragraph shall be for the account and risk of the defaulting member organization.

(e) No Change.

(f) Securities delivered by the defaulting party subsequent to the receipt of the “buy-in” notice should be considered as received pursuant to the “buy-in” notice. Delivery of the requisite number of shares, as stated in the “buy-in” notice, or execution of the “buy-in” will also operate to close-out all contracts covered under re-transmitted notices of “buy-ins” issued pursuant to the original notice of “buy-in,” pursuant to [Rule 285] section .25 of this Rule. If a re-transmitted “buy-in” is executed, it will operate to close-out all contracts covered under the re-transmitted notice. A “buy-in” may be executed by the initiating member organization from its long position and/or from customers’ accounts maintained with such member organization.

(g) Prior to the closing of a contract on which a “buy-in” notice has been given, the initiating member organization shall accept any portion of the securities called for by the contract, provided the portion remaining undelivered at the time the initiating member organization proposes to execute the “buy-in” is not an amount [which] that includes an odd-lot which was not part of the original transaction.

(h) – (j) No Change.

(k) Fails that are subject to the rules of a Qualified Clearing Agency must comply with the procedures or requirements of the Qualified Clearing Agency.

• • • **Supplementary Material** — — — — —

.10 Members and member organizations are obligated to comply with the close-out provisions of Regulation SHO, promulgated under the Securities Exchange Act of 1934. Specifically, Exchange “buy-in” rules [(i.e., Rules 282, 283, 285, 286, 287, 288, 289, 290, 291, 292, 293, and 294)] do not abrogate a member’s or a member organization’s responsibilities or obligations to comply with Regulation SHO, and the close-out provisions of Rule 203(b)(3).

.15 Closing Contracts - Conditions

A member organization may close a contract as provided in section .20 of this Rule in the event that:

(1) it has been advised that the other party to the contract does not recognize the contract; or

(2) the other party to the contract neglects or refuses to exchange written contracts pursuant to Rule 137.

**.20 Closing Contracts—Procedure**

When Rule 282 permits the closing of a contract, an original party to the contract may close it, provided that notice, either written or oral, shall have been given to the other original party at least thirty minutes before such closing. If a member organization given up by an original party to a contract has been advised that the other party to the contract does not recognize it, or if the other party to the contract neglects or refuses to exchange written contracts, it shall promptly notify the original party who acted for him or it, who may then close the contract as herein provided.

**.25 Notice of Intention to Successive Parties**

Every member organization receiving notice that a contract is to be closed for its account because of non-delivery (including a notice pursuant to the rules of a Qualified Clearing Agency, other than an obligation of the member organization to deliver securities to the Qualified Clearing Agency or under its rules is to be closed-out for its own account) shall immediately re-transmit notice thereof to any other member organization from whom the securities involved are due. Every such re-transmitted notice shall be in writing and shall be delivered at the office of the member organization to whom it is addressed; it shall state the date of the contract upon which the securities are due from such member organization, and the name of the member organization who has given the original notice to close.

**.30 Closing Portion of Contract**

When notice of intention to close a contract, or re-transmitted notice thereof, is given for less than the full amount due, it shall be for not less than one trading unit.

**.35 Liability of Succeeding Parties**

The closing of a contract shall be for the account and liability of each succeeding party with an interest in such contract, and, in case notice that such contract will be closed has been re-transmitted, as provided in this Rule, such closing shall also automatically close all contracts with respect to which such re-transmitted notice shall have been delivered prior to the closing.

**Re-establishment of Contract**

If such re-transmitted notice is sent by a member organization before the contract has been closed, but is not received until after such closing, then the member organization who sent the notice may, unless otherwise agreed, promptly re-establish, by a new sale, the contract with respect to which such notice has been sent.

#### Payment of Money Difference

Any money difference resulting from the closing of a contract, or from the re-establishment of a contract as herein provided, shall be paid not later than 3:00 p.m. ET on the following business day to the member organization entitled to receive the same.

#### **.40 Notice of Closing to Successive Parties**

When a contract other than a contract the close-out of which is governed by the rules of a Qualified Clearing Agency has been closed the member organization who closed the same, or who gave the order to close the same, shall immediately notify the member organization for whose account the contract was closed. The member organization receiving such a notification or receiving notification that a contract has been closed pursuant to the rules of a Qualified Clearing Agency shall immediately notify each succeeding party in interest and other member organizations to whom re-transmitted notice, as provided for in section .30 of this Rule, has been sent. Statements of resulting money differences, if any, shall also be rendered immediately.

#### **.45 Must Receive Delivery**

When a member organization has delivered a buy-in notice pursuant to this Rule, or has re-transmitted notice thereof as provided for in section .30 of this Rule, the initiating member organization must receive and pay for those securities subject to the buy-in notice if tendered prior to the buy-in of such contract.

If the organization that, pursuant to this Rule, is notified prior to the buy-in by a defaulting member organization that some or all of the securities (but not less than one trading unit) are in its physical possession and will be promptly delivered, then the order to buy-in shall not be executed with respect to such securities, and the initiating member organization who has given the original order to buy-in shall accept and pay for such securities, if tendered promptly.

#### Damages for Non-delivery

If such securities are not promptly tendered, the defaulting member organization who has stated that they would be promptly delivered shall be liable for any resulting damages.



#### .50 Defaulting Party May Deliver After “Buy-In” Notice

A defaulting member organization (seller) who has received a “buy-in” notice, pursuant to this Rule, or re-transmitted notice thereof, may deliver the securities to the initiating member organization (buyer) issuing such notice up to 3:00 p.m. ET. The defaulting member organization may deliver such securities after 3:00 p.m. ET on the “effective date” of the buy-in notice if: (i) agreed to by the initiating member organization, (ii) before the execution of the order and (iii) when the defaulting member organization has physical possession of the securities.

#### .55 Securities in Transit

If, prior to the closing of a contract on which a “buy-in” notice has been given, the buyer receives from the seller written or comparable electronic notice stating that the securities are: (1) in transfer; (2) in transit; (3) are being shipped that day; or (4) are due from a depository and giving the certificate numbers (except for those securities due from a depository), then the buyer must extend the execution date of the “buy-in” for a period of seven (7) calendar days from the date delivery was due under the “buy-in.” Upon request of the seller, an additional extension of seven (7) calendar days may be granted by the NYSE based upon the circumstances involved.

#### .60 “Close-Out” Under NYSE or Other National Securities Exchange Rulings

(1) When a national securities exchange makes a ruling that all open contracts with a particular member, which is also a member organization of the NYSE, should be closed-out immediately (or any similar ruling), such member organization may close-out contracts as directed by the national securities exchange.

(2) Whenever the NYSE ascertains that a court has appointed a receiver for any member organization, because of its insolvency or failure to meet its obligations, or whenever the NYSE ascertains, based upon evidence before it, that a member organization cannot meet its obligations as they become due and that such action will be in the public interest, the NYSE may, in its discretion, issue notification that all open contracts with the member organization in question may be closed-out immediately.

(3) Within the meaning of this section, to close-out immediately shall mean that: (A) “buy-ins” may be executed without prior notice of intent to “buy-in” and (B) “sell-outs” may be executed without making prior delivery of the securities called for.

(4) All close-outs executed pursuant to the provisions of this section shall be executed for the account and liability of the member organization in question. Notification of all close-outs shall immediately be sent to such member organization.

**.65 Failure to Deliver and Liability Notice Procedures**

(1)(A) If a contract is for warrants, rights, convertible securities or other securities which: (i) have been called for redemption; (ii) are due to expire by their terms; (iii) are the subject of a tender or exchange offer; or (iv) are subject to other expiring events such as a record date for the underlying security and the last day on which the securities must be delivered or surrendered (the expiration date) is the settlement date of the contract or later the receiving member organization may deliver a Liability Notice to the delivering member organization as an alternative to the close-out procedures set forth in this Rule. When the parties to a contract are both participants in a Qualified Clearing Agency that has an automated service for notifying a failing party of the liability that will be attendant to a failure to deliver, the transmission of the liability notice must be accomplished through the use of said automated notification service. When the parties to a contract are not both participants in a Qualified Clearing Agency that has an automated service for notifying a failing party of the liability that will be attendant to a failure to deliver, such notice must be issued using written or comparable electronic media having immediate receipt capabilities no later than one business day prior to the latest time and the date of the offer or other event in order to obtain the protection provided by this Rule.

(B) If the contract is for a deliverable instrument with an exercise provision and the exercise may be accomplished on a daily basis, and the settlement date of the contract to purchase the instrument is on or before the requested exercise date, the receiving member organization may deliver a Liability Notice to the delivering member organization no later than 11:00 a.m. ET on the day the exercise is to be effected. Notice may be redelivered immediately to another member organization but no later than noon on the same day. When the parties to a contract are both participants in a Qualified Clearing Agency that has an automated service for notifying a failing party of the liability that will be attendant to a failure to deliver, the transmission of the liability notice must be accomplished through use of said automated notification service. When the parties to a contract are not both participants in a Qualified Clearing Agency that has an automated service for notifying a failing party of the liability that will be attendant to a failure to deliver, such notice must be issued using written or comparable electronic media having immediate receipt capabilities. If the contract

remains undelivered at expiration, and has not been canceled by mutual consent, the receiving member organization shall notify the defaulting member organization of the exact amount of the liability on the next business day.

(C) In all cases, member organizations must be prepared to document requests for which a Liability Notice is initiated.

(2) If the delivering member organization fails to deliver the securities on the expiration date, the delivering member organization shall be liable for any damages which may accrue thereby. A Liability Notice delivered in accordance with the provisions of this Rule shall serve as notification by the receiving member organization of the existence of a claim for damages. All claims for such damages shall be made promptly.

(3) For the purposes of this Rule, the term “expiration date” shall be defined as the latest time and date on which securities must be delivered or surrendered, up to and including the last day of the protect period, if any.

(4) If the above procedures are not utilized as provided under this Rule, contracts may be “bought-in” without prior notice after normal delivery hours on the expiration date. Such buy-in execution shall be for the account and risk of the defaulting member organization.

#### **.70 Contracts Made for Cash**

Contracts made for “cash,” or made for or amended to include guaranteed delivery on a specified date may be “bought-in” without notice during the normal trading hours on the day following the date delivery is due on the contract; otherwise, the procedures set forth in this Rule shall apply. In all cases, notification of executed “buy-in” must be provided pursuant to this Rule. “Buy-ins” executed in accordance with this paragraph shall be for the account and risk of the defaulting broker/dealer.

#### **.75 “Buy-In” Desk Required**

Member organizations shall have a “buy-in” section or desk adequately staffed to process and research all “buy-ins” during normal business hours.

#### **.80 Buy-In of Accrued Securities**

Securities in the form of stock, rights or warrants which accrue to a purchaser shall be deemed due and deliverable to the purchaser on the payable date. Any such securities remaining undelivered at that time shall be subject to the “buy-in” procedures as provided under this Rule.

**[Rule 283. Members Closing Contracts—Procedure]**

Entire text deleted.

**[Rule 285. Notice of Intention to Successive Parties]**

Entire text deleted.

**[Rule 286. Closing Portion of Contract]**

Entire text deleted.

**[Rule 287. Liability of Succeeding Parties]**

Entire text deleted.

**[Rule 288. Notice of Closing to Successive Parties]**

Entire text deleted.

**[Rule 289. Must Receive Delivery]**

Entire text deleted.

**[Rule 290. Defaulting Party May Deliver After “Buy-In” Notice]**

Entire text deleted.

\* \* \* \* \*

**Rule 311. Formation and Approval of Member Organizations**

(a) Any person who proposes to form a member organization [or who proposes to become an allied member in an organization for which application is made for approval as a member organization] and any member organization which proposes to admit therein any[:

(1) allied member

(2)] approved person

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

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

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

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

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

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

(5) The Board of Directors of such corporation designates [its] “principal executives” [officers” who shall be members or allied members and shall exercise senior principal executive responsibility over the various areas of the business of such corporation in such areas as the rules of the Exchange may prescribe, including: operations, compliance with rules and regulations of regulatory bodies, finances and credit, sales, underwriting, research and administration]; and

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

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

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

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

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

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

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

(d) – (g) No Change.

[(h) Except as may be otherwise permitted by the Exchange, no member organization or allied member shall conduct business under a firm name unless there exists at least two partners in such firm, nor shall any member firm doing business with the public have less than two general partners who are active in the firm's business; provided however, that if by death or otherwise a member or allied member becomes the sole general partner in a firm, he may continue business under the firm name for such period as may be allowed by the Exchange.]

• • • **Supplementary Material:** — — — — —

.10 - .12 No Change.

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

.14 - .16 No Change.

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

\* \* \* \* \*

## **NYSE Rule Interpretation 311 FORMATION AND APPROVAL OF MEMBER ORGANIZATIONS**

### **(b)(5) OFFICERS**

#### **/01 Principal Executives [Officers]**

##### **General Qualifications**

Principal executives [officers] 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. [Any person having the status or performing the function of “principal executive officer” must qualify as an allied member. (See also Rule 304(b)).]

#### **/02 Examination Requirements for Chief Financial Officers (“CFO”) and Chief Operations Officers (“COO”)**

No Change.

#### **/03 Dual Designation of CFO and COO**

No Change.

#### **/04 Other Dual or Multi-Designations**

Any assignment of principal executive [officer] dual-designation other than an arrangement described in /03 of this Interpretation, or any multi-designation of principal executive [officer] titles, requires the prior written approval of the Exchange.

#### **/05 Co-Designation of Principal Executives [Officers]**

The prior written approval of the Exchange is required to assign more than one person to a single “principal executive [officer]” designation pursuant to Rule 311(b)(5). Member organizations seeking approval for such co-designations must submit a written request to the Exchange that sets forth the reason for the co-designation, explains how the arrangement is structured, and makes clear that each co-designee has joint and several responsibility for discharging the duties of that principal executive [officer] designation. However, the Exchange may approve a specific plan identifying the business need and other justification for an arrangement which does not provide for joint and several responsibility for principal executives [officers] other than the chief executive officer and chief financial officer. Such a plan must identify the areas and

functions subject to separate supervisory responsibility and make specific provisions for the supervisory responsibility of functions, activities and areas which can be reasonably be expected to overlap. In addition, in the case of co-CCOs, the written approval request submitted in accordance with this Interpretation shall include a representation to the Exchange, to the effect that the CEO's Annual Report and Certification required by Rule 342.30(e) will further state, in addition to the fact that each such CCO has met the qualification requirements set forth at 342.30(d)/01, that the collective authority, accountability, and responsibility of such co-equal CCOs encompasses, without exception, every aspect of the business of such member organization.

#### **/06 Limitations on Principal Executives [Officers]**

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

\* \* \* \* \*

### **Rule 312. Changes Within Member Organizations**

(a) No Change.

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

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

(d) Whenever a person who is required to be approved by the Board as a member, [allied member] principal executive or approved person fails or ceases to be so approved, each member corporation shall promptly redeem or convert to a fixed income security such of its outstanding voting stock as may be necessary to reduce such party's ownership of voting stock in the member corporation below that level which enables such party to exercise controlling influence over the management or policies of such member corporation.



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

\* \* \* \* \*

### **Rule 313. Submission of Partnership Articles—Submission of Corporate Documents**

(a) No Change.

(b) The charter or certificate of incorporation and all amendments thereto, the by-laws and all amendments thereto, forms of stock certificates and any and all agreements or other documents and amendments thereto relating to the business or affairs of the member corporation between a member corporation and any of its stockholders or between any of the members, [allied members] principal executives or approved persons of a member corporation other than agreements relating to ordinary securities and commodities transactions shall be submitted to and be acceptable to the Exchange prior to becoming effective.

(c) – (d) No Change.

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

(f) No Change.

• • • **Supplementary Material:** — — — — —

#### **Information Regarding Partnership Articles**

.10 - .21 No Change.

**.22 Provisions concerning redemption or conversion.**— Each certificate of incorporation of a member corporation shall contain provisions authorizing the corporation to redeem or convert to a fixed income security all or any part of the outstanding shares of voting stock of such member corporation owned by any person required to be approved by the Board of Directors of the Exchange as a member[, allied member] or approved

person who fails or ceases to be so approved as may be necessary to reduce such party's ownership of voting stock in the member corporation below that level which enables such party to exercise controlling influence over the management or policies of such member corporation.

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

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

\* \* \* \* \*

### **Rule 321. Formation or Acquisition of Subsidiaries**

No Change.

• • • Supplementary Material: — — — — —

#### **Information Regarding Subsidiary Companies of Member Organizations**

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

\* \* \* \* \*

### **Rule 342. Offices—Approval, Supervision and Control**

(a) No Change.

(b) The general partners or directors of each member organization shall provide for appropriate supervisory control and shall designate a general partner or principal

executive [officer] to assume overall authority and responsibility for internal supervision and control of the organization and compliance with securities' laws and regulations. This person shall:

(1) - (2) No Change.

(c) – (d) No Change.

(e) The amounts and types of credit extended by a member organization shall be supervised by members or [allied members] principal executives qualified by experience for such control in the types of business in which the member organization extends credit.

• • • **Supplementary Material:** — — — — —

**.10 Definition of Branch Office.**—A “branch office” is any location where one or more associated persons of a member or member organization regularly conduct the business of effecting any transactions in, or inducing or attempting to induce the purchase or sale of any security, or is held out as such, excluding:

(A) - (G) No Change.

Notwithstanding the exclusions in subparagraphs 342.10(A) - (G), any location that is responsible for supervising the activities of persons associated with a member or member organization at one or more non-branch locations of such member or member organization is considered to be a branch office.

For purposes of this Rule, the term “business day” shall not include any partial business day provided that the associated person spends at least four hours on such business day at his or her designated branch office during the hours that such office is normally open for business.

For purposes of this Rule, the term “associated person of a member or member organization” is defined as a member[, allied member,] or employee associated with a member or member organization.

For purposes of Rule 342.10(B)(viii), written supervisory procedures shall include criteria for on-site for cause reviews of an associated person's primary residence. Such reviews must utilize risk-based sampling or other techniques designed to assure compliance with applicable securities laws and regulations and with Exchange Rules.

For purposes of Rule 342.10(B)(viii) and (C), written supervisory procedures for such residences and other remote locations must be designed to assure compliance with applicable securities laws and regulations and with NYSE Rules.

Factors which should be considered when developing risk-based sampling techniques to determine the appropriateness of on-site for cause reviews of selected residences and other remote locations shall include, but not be limited to, the following: (i) the firm's size; (ii) the firm's organizational structure; (iii) the scope of business activities; (iv) the number and location of offices; (v) the number of associated persons assigned to a location; (vi) the nature and complexity of products and services offered; (vii) the volume of business done; (viii) whether the location has a Series 9/10-qualified person on-site; (ix) the disciplinary history of the registered persons or associated persons, including a review of such person's customer complaints and Forms U4 and U5; and (x) the nature and extent of a registered person's or associated person's outside business activities, whether or not related to the securities business.

**.11 Annual fee.**— No Change.

**.12 Foreign branch offices.**— No Change.

**.13 Acceptability of supervisors.**

**(a) Generally.**— Any member[, allied member] or employee who is a candidate for acceptability under (d)(1), (2), or (3) above must have a creditable [three year] record [as a registered representative or equivalent experience,] and must pass the General Securities Sales Supervisor Qualification Examination (Series 9/10) or another examination acceptable to the Exchange which demonstrates competency relevant to assigned responsibilities. The General Securities Principal Examination (Series 24) is an acceptable alternative for persons whose duties do not include the supervision of options or municipal securities sales activity. The examination requirement may be waived at the discretion of the Exchange. In the case of a firm that is applying for registered broker-dealer status, such supervisory candidates, in addition to the requirements outlined above, must also have at least one year of direct experience or two years of related experience in the subject area to be supervised.

**(b) Compliance supervisors.**— No Change.

**.14 - .20** No Change.

**.21 Trade review and investigation.**— In order to help assure its compliance with the provisions of the Securities Exchange Act of 1934, the rules under that act and the rules of the Exchange prohibiting insider trading and manipulative and deceptive devices, each member not associated with a member organization and each member organization, in addition to carrying out such other supervisory procedures as may be necessary to discharge its supervisory responsibilities as to compliance with Federal Securities laws and rules and Exchange rules generally shall:

**(a)** Subject trades in NYSE listed securities and in related financial instruments which are effected for the account of the member or member organization or for the accounts of members[, allied members] or employees of the member or member organization and their family members (including trades reported by other members or member organizations pursuant to Rule 407) to review procedures that the member or member organization determines to be reasonably designed to identify trades that may violate the provisions of the Securities Exchange Act of 1934, the rules under that act or the rules of the Exchange prohibiting insider trading and manipulative and deceptive devices, and

**(b)** No Change.

The Exchange, at its discretion, may exclude from these review and investigation requirements particular classes of persons, trades, securities and related financial instruments.

**.22 - .26** No Change.

**.30 Annual Report and Certification.**— No Change.

**(a) - (c)** No Change.

**(i) - (viii)** No Change.

**(d)** For each member organization, the designation of a general partner or principal executive [officer] as Chief Compliance Officer (which designation shall be updated on Schedule A of Form BD).

\* \* \* \* \*

## **NYSE Rule Interpretation 342 OFFICES – APPROVAL, SUPERVISION AND CONTROL**

### **(a)(b)**

/01 - /03 No Change.

### **(b) BRANCH OFFICES**

#### **/01 Approval**

No Change.

#### **/02 Acquisition, Merger or Consolidation**

No Change.

### **(e) SUPERVISION: EXTENSION OF CREDIT AND CONCENTRATIONS OF RISK**

#### **/01 Application**

The Exchange expects all member organizations to have in place a system whereby the concentrations of risk in proprietary, customer and other accounts and extension of credit to customers and others are under the formal supervision, evaluation and control of one or more general partners or principal executives [officers]. These responsibilities and authority may be delegated to other qualified principals or employees. The general partner or principal executive [officer] shall establish a separate system of follow-up and review to determine whether the delegated authority and responsibility is being properly exercised. **Such systems shall be in place for each product line or risk activity**, however, one person may be delegated responsibility for more than one product line or risk activity.

Each member organization should maintain a listing at its principal office each registered branch office and each non-registered location of those individuals designated responsibility for each business activity and product line for review by Exchange examiners.

The types of product lines and risk activities that should be specifically included in the delegation and review of responsibilities should include, but not be limited to, the following:

- Trading limits – should be established and reviewed for each trader, department and the organization as a whole;

- Concentrations – parameters should be established to detect, monitor and evaluate risks of accumulations of large positions in introduced accounts as well as customers, non-customers (e.g. partners and principal [officers] executives), trading brokers and employees;
- Credit – Procedures should be established to:
  - (i) monitor limits and types of credit extended in customers' and noncustomers' and other credit accounts
  - (ii) formulate house margin requirements
  - (iii) review the need for additional margin, mark-to-market and collateral deposits for all accounts;
- Compliance – systems should be in place to review compliance with applicable regulatory and in-house requirements;
- Risk – should include procedures to review risk potential individually and collectively in all types of commitments; and
- to review risk in all open or unpaid transactions, general ledger accounts and contractual and contingent commitments.

The above review should include but not be limited to: cleared and uncleared regular way and open contractual commitments including delayed delivery, "DVP", underwriting, when issued/when distributed, repurchase, standbys, commodity spot (cash), futures and forward contracts.

Supervisory and review procedures shall be maintained in writing, copies of which shall be maintained at the organization's principal office and at each branch office in accordance with existing Exchange interpretations of Rule 342. (See Rule 342.16/02)

Reports must be made to the Exchange when concentrations in securities or commodities positions, commitments or other contingencies could reasonably be expected to result in a significant loss, capital or liquidity problem.

See also Rule 401/05 – Early Reporting of Developing Problems.

#### **.10 REGISTERED REPRESENTATIVE OPERATING FROM RESIDENCE**

##### **/01 Special Supervision**

No Change.

**.13 ACCEPTABILITY OF SUPERVISORS****/01 Qualifications**

Every branch office or sales manager must have [at least three years experience as a registered representative or substantial experience in a related sales or managerial position] a credible record and must pass the General Securities Sales Supervisor Qualification Examination (“Series 9/10”). [Under this interpretation, a related sales or managerial position would include, for example:

- A mutual fund salesman or an investment advisor;
- A position of fiduciary responsibility as in the Trust Department of a bank or an attorney practicing securities law;
- President of an established company in the financial, real estate or insurance industries.

In order to qualify as a supervisory person, an allied member should have at least three years experience as a registered representative unless granted an exception based upon experience over a period of years in a position of trust and responsibility.]

\* \* \* \* \*

**Rule 345. Employees—Registration, Approval, Records**

**(a)** No member or member organization shall permit any natural person to perform regularly the duties customarily performed by [(i) a registered representative, (ii)] a securities lending representative[, (iii) a securities trader] or [(iv)] a direct supervisor of [(i), (ii) or (iii) above] such, unless such person [shall have been] is registered with, qualified by and is acceptable to the Exchange.

**[(b)** No member or member organization shall permit any natural person, other than a member or allied member, to assume the duties of an officer with the power to legally bind such member or member organization unless such member or member organization has filed an application with and received the approval of the Exchange. *(See also Rules 304 ( ¶2304) and 311 ( ¶2311).)*]

*[(See Rule 346(f) ( ¶2346(f)) which prohibits association with any natural person or entity subject to a “statutory disqualification”).]*

• • • **Supplementary Material:** — — — — —



### Registration of Employees

**.10 Employees required to be registered or approved.**—See definitions of “branch office manager”, “registered representative” and “registered options representative” contained in Rules 9 (§2009) and 10 (§2010) and Rule 700(b)(49) (§2700) and Rule 342 (§2342) for qualification requirements for supervisors.

A “securities lending representative” is defined as any person who has discretion to commit his member or member organization employer to any contract or agreement (written or oral) involving securities lending or borrowing activities with any other person.

[A “securities trader” is defined as any person engaged in the purchase or sale of securities or other similar instruments for the account of his employer and who does not transact any business with the public.]

### .11 Investigation and Records

**(a)** Members and member organizations shall thoroughly investigate the previous record of persons whom they contemplate employing including, (1) persons required to be registered with the Exchange, (2) persons who regularly handle or process securities or monies or maintain the books and records relating to securities or monies and (3) persons having direct supervisory responsibility over persons engaged in the activities referred to in (1) and (2) above who are not otherwise required to be registered.

Investigatory requirements for persons required to be registered with the Exchange (referred to in (a)(1) above) shall be satisfied when the member or member organization fulfills its obligation to verify the information contained in the Uniform Application for Securities Industry Registration or Transfer (Form U-4) and reviews the most recent Form U-5, as described below, if applicable.

In addition, a member or member organization shall obtain from an applicant, if applicable, a copy of his or her Uniform Termination Notice of Securities Industry Registration (Form U-5) and any amendments filed thereto, by the most recent employer. A member or member organization shall request said Form U-5 from any person who was previously registered with the Exchange or other self-regulatory organization that requires its members to provide a copy of Form U-5 to its terminated registered persons. (See also Rule 345.17.)

The member or member organization shall obtain said Form U-5 no later than sixty (60) days following the filing of the application for registration or demonstrate to the Exchange that it has made reasonable efforts to comply with the requirement. A member or member organization receiving a Form U-5 pursuant to this provision shall review the Form U-5 and any amendment thereto as part of its investigatory process and shall take such action as may be deemed appropriate.

Investigatory requirements pertaining to persons specified in (a)(2) and (3) above shall be satisfied if a member or member organization verifies the information obtained pursuant to paragraph (c) below. Notwithstanding the above, further inquiry shall be made where appropriate in light of background information developed, the position for which the person is being considered or other circumstances. Investigation and verification shall be done by a member[, allied member] or person designated under the provisions of Rule 342(b)(1).

**(b) – (c) No Change.**

**.12 Applications:** No Change.

**.13 Agreements.**—Prior to the Exchange’s consideration of the application, each candidate for registration, other than a member [or allied member] of the Exchange shall sign an agreement(s), on a form(s) prescribed by the Exchange, which includes a pledge that the registered person will abide by the Rules adopted pursuant thereto as these now exist and as from time to time amended.

**.14 Payment of fees.**— No Change.

**.15 Qualifications**

**(1)**

**(a) Candidates for registration.**—Candidates for registration, shall qualify by [meeting the training requirement and by] passing a qualification examinations, as applicable, which is acceptable to the Exchange.

**(b) [Training and] Examination waivers.**—Where good cause is shown, the [training and/or] examination requirement for a candidate for registration may be waived at the discretion of the Exchange. Consideration may be given to previous related employment and to training and/or examination requirements of other self-regulatory organizations. In such cases, the Exchange must be satisfied that the candidate is qualified for registration.

**(2) Registered representatives.**—[The training requirement for registered representative candidates is four months.] Such candidates shall pass a qualifying examination acceptable to the Exchange.

**(3) Limited registration.**—Applications as limited purpose registered representative candidates will be considered by the Exchange for those duly qualified persons whose activities are limited solely to the solicitation or handling of the sale or purchase of: investment company securities and variable contracts, insurance premium funding program, direct participation programs, and municipal securities, among other limited registration categories. Limited purpose registered representative candidates shall qualify by [satisfying a two-month training requirement and] passing a qualification examination acceptable to the Exchange.

**(4) Registered options representative.**—Each registered representative who transacts any business with the public in option contracts shall qualify as a “Registered Options Representative” by [satisfying the four month training requirement and] passing a qualification examination acceptable to the Exchange. (*See Rule 700(b)(49).*)

**[(5) Securities traders and their direct supervisors.**—Securities traders candidates shall pass a qualification examination acceptable to the Exchange.]

**[(6) Commodities solicitors.**—Individuals who are engaged in the solicitation or handling of business in, or the sale of, commodities futures contracts shall demonstrate their competency by satisfying a solicitor’s examination requirement of a national commodities exchange, which examination is acceptable to the Exchange.

\* \* \* \* \*

## **NYSE Rule Interpretation 345 EMPLOYEES – REGISTRATION, APPROVAL, RECORDS**

### **(a) REGISTRATION**

#### **/01 Exceptions**

No Change.

#### **/02 “Independent Contractors”**

The establishment of “independent contractor” status between a natural person registered with and qualified by the Exchange and a member organization is permitted only if it does not in any way compromise such person’s characterization and treatment

as an “employee” of their associated member organization for purposes of the Rules of the Exchange. Though not an exhaustive list, the following regulatory requirements must be fulfilled by a member organization that enters into an arrangement with any person asserting independent contractor status:

1. No Change.

2. The member organizations must obtain the written concurrence of each individual asserting independent contractor status that he or she will be subject to the direct, detailed supervision, control and discipline of the member organization, and will be bound by the relevant rules, standards and guidelines of the member organization. Further, the prospective independent contractor must attest that he or she will be deemed an employee of the member organization and, as such, will be fully subject to the jurisdiction of the Exchange. The Exchange is a third-party beneficiary of any such attestation. The “Consent to Jurisdiction” form, included below, must be used for this purpose.

“Consent to Jurisdiction” forms executed pursuant to this Interpretation are not required to be submitted to, or approved by, the Exchange. However, all such forms must be maintained together with the corresponding executed independent contractor agreement and must be promptly provided to the Exchange upon request.

This Interpretation does not permit the incorporation of registered representatives nor does it permit the assertion of independent contractor status by any principal executive [officer] of a member organization.

#### CONSENT TO JURISDICTION

No Change.

#### **/03 Registered Persons Who Volunteer or Are Called to Active Military Duty**

No Change.

#### **(a)(i) COMPENSATION**

/01 - /03 No Change.

#### **(b) OFFICERS**

/01 - /04 No Change.

#### **.11 INVESTIGATION AND RECORDS**

/01 - /02 No Change.

**.12 APPLICATIONS****/01 Updating Form U4**

No Change.

**.15 QUALIFICATIONS****/01 Examination [and Training] Waivers**

Where good cause is shown, the [training and/or] examination requirement for a candidate for registration may be waived at the discretion of the Exchange. The Exchange will review requests for waivers in light of several factors including length and type of previous employment and the requirements of other self-regulatory organizations.

In addition, registered representative candidates who meet one of the following conditions may request a waiver of the [training and] examination requirements.

- A former NYSE registered representative who terminated his or her association as such within the last two years, from the date of termination.
- A former NYSE registered representative who within the last ten years has been continuously employed full-time in a general securities business.

**/02 Categories of Registration**

**Registered representative** candidates may sit for the Series 7 exam at the first available examination session after they have become employed. [Candidates successfully completing the examination will not, however, receive approval prior to completion of the full four-month training period.] Member organizations are reminded that trainees may not perform the functions of a registered representative until approved by the Exchange. (Also see Rule 345(a)/01, page 3450.)

**Limited registration** candidates are those whose activities are limited solely to the solicitation or handling of the sale or purchase of instruments such as investment company securities and variable contracts, insurance premium funding programs, direct participation programs and municipal securities. Limited purpose registered representative candidates must qualify by [satisfying a two-month training requirement and by] passing a qualification examination acceptable to the Exchange.

**Limited registration for floor members and floor clerks** would permit floor members and floor clerks who have successfully completed the Series 7A examination module to conduct a public business which is limited to accepting orders directly from professional customers for execution on the trading floor. The Floor Member (“Series 15”) Examination and the Trading Assistant (“Series 25”) Examination are prerequisites for the Series 7A Examination for floor members and floor clerks, respectively.

A professional customer includes a bank, trust company, insurance company, investment trust, state or political subdivision thereof, charitable or nonprofit educational institution regulated under the laws of the United States, or any state, or pension or profit sharing plan subject to ERISA or of an agency of the United States or of a state or political subdivision thereof or any person who has a net worth of at least \$45 million of which \$40 million are financial assets.

For purposes of the definition of professional customer, the term “person” shall mean the same as that term is defined in Rule 2, except that it shall not include natural persons.

**Registered options representative:** Each registered representative who transacts any business with the public in options contracts shall qualify as a “Registered Options Representative” by [satisfying the four-month training requirement and] passing the Series 7 examination.

[**Securities traders and their direct supervisors** must pass the Series 7 examination. There is no training requirement imposed by the Exchange.]

**Securities lending representatives and their direct supervisors** are not subject to training or examination requirements. Securities lending representatives and their direct supervisors must, however, file a Form U4 and sign a code of ethics agreement (addendum to Form U4).

See Rule 345.10 for definitions of the term[s “securities trader” and] “securities lending representative.”

\* \* \* \* \*

## **Rule 345A. Continuing Education For Registered Persons**

(a) – (b) No Change.

••• Supplementary Material: —————

.10 For purposes of this Rule, the term “registered person” means any member, [allied member,] principal executive, registered representative, or other person registered or required to be registered under Exchange rules, but does not include any such person whose activities are limited solely to the transaction of business on the Floor with members or registered broker-dealers.

\* \* \* \* \*

## **NYSE Rule Interpretation 345A CONTINUING EDUCATION FOR REGISTERED PERSONS**

### **(a) REGULATORY ELEMENT**

#### **/01 Registration Date**

No Change.

#### **/02 Application**

The requirements of the Regulatory Element apply to all persons registered or required to be registered under Exchange rules, even if such persons are not required to be qualified by taking and passing an examination *e.g.*, certain [allied members] principal executives and securities lending representatives.

\* \* \* \* \*

## **Rule 346. Limitations—Employment and Association with Members and Member Organizations**

(a) Every member not associated with a member organization must be a registered broker or dealer unless exempted by the Securities Exchange Act of 1934.

(b) Without making a written request and receiving the prior written consent of his member or member organization employer, no member[, allied member] or employee of a member or member organization shall at any time be engaged in any other business; or be employed or compensated by any other person; or serve as an officer, director, partner or employee of another business organization; or own any stock or have, directly or indirectly, any financial interest in any other organization engaged in any securities, financial or kindred business; provided however, that such written request and consent shall not be required with regard to stock ownership or other financial interest in any securities, financial or kindred business which is publicly owned unless a control relationship exists.

(See also requirements of Rules 311, [and] 350 and 407.)

[(c) Prompt written notice shall be given the Exchange whenever any member or member organization knows, or in the exercise of reasonable care should know, that any person, other than a member, allied member or employee, directly or indirectly, controls, is controlled by or is under common control with such member or member organization. (See also Rule 321.)]

(c) Where a member organization approves an employee's participation in private securities transactions in which regard the employee has or may receive selling compensation, the transaction shall be recorded on the books and records of the member organization, which shall supervise such participation as if the transaction were executed on its behalf.

(d) No member shall qualify more than one member organization for membership.

(e) [Unless otherwise permitted by the Exchange] [e]Every [member, allied member, registered representative and officer] employee of a member organization who is assigned or delegated any responsibility or authority pursuant to Rule 342 shall devote his entire time during business hours to the business of such [member or] member organization unless an alternate arrangement has been approved in writing by the member organization.

The written approval of such arrangements must identify any entity for which the supervisory person will be performing services during business hours and must specifically describe the nature of such services. The approval must also set forth the approximate amount of time the supervisory person is expected to devote to each entity, with particular attention paid to the approximate time expected to be required for the person, based upon such person's qualifications and experience, to effectively discharge his or her supervisory responsibilities on behalf of any associated person of a member organization.

In addition, the approval letter must document that the member organization has made a good faith determination that the arrangement will in no way compromise the protection of investors or the public interest; compromise the supervisor's duties at the member organization; or give rise to a material conflict of interest.

(f) Except as otherwise permitted by the Exchange, no member, member organization, [allied member,] approved person, employee or any person directly or indirectly controlling, controlled by or under common control with a member or member



organization shall have associated with him or it any person who is known, or in the exercise of reasonable care should be known, to be subject to any “statutory disqualification” defined in Section 3(a)(39) of the Securities Exchange Act of 1934. Any member organization seeking permission to have such a person continue to be or become associated with it shall pay a fee in an amount to be determined by the Exchange.

• • • **Supplementary Material:** — — — — —

[.10 In connection with paragraph (e) above, the Exchange will permit a member, allied member, registered representative or officer of a member or member organization who is assigned or delegated any responsibility or authority pursuant to Rule 342 to devote less than his entire time during business hours to the business of the member or member organization in instances where such permission will not impair the protection of investors or the public interest.]

.11 For the purpose of this rule, control is defined in Rule 2.

.12 For the purposes of this rule, the term associated with a member or member organization shall have the same meaning as the term “associated with a member” is defined in Section 3(a)(21) of the Securities Exchange Act of 1934.

.20 Under the appropriate circumstances the Exchange may, in determining control, treat as a single holding stock which is nominally held by different persons or organizations.

.30 For the purposes of this rule, the term “private securities transaction” shall mean any securities transaction outside the regular course or scope of an associated person’s employment with a member organization, including, though not limited to, new offerings of securities which are not registered with the Commission, provided however that transactions subject to the notification requirements of Rule 407, transactions among immediate family members for which no associated person receives any selling compensation, and personal transactions in investment company and variable annuity securities, shall be excluded. The term “immediate family members” means a person’s parents, mother-in-law or father-in-law, spouse, brother or sister, brother-in-law or sister-in-law, son-in-law or daughter-in-law, and children, and any other individual to whom the person provides material support.

.40 For the purposes of this rule, the term “selling compensation” shall mean any compensation paid directly or indirectly from any source in connection with or as a result of the purchase or sale of a security, including, though not limited to, commissions; finder’s fees; securities or rights to acquire securities; rights of participation in profits, tax benefits, or dissolution proceeds, as a general partner or otherwise; or expense reimbursements.

\* \* \* \* \*

### **NYSE Rule Interpretation 346 LIMITATIONS – EMPLOYMENT AND ASSOCIATION WITH MEMBER ORGANIZATIONS**

/01 - /02 No Change.

#### **[/03 Outside Connections – Supervisory Persons]**

[In unusual circumstances the Exchange will permit member organization personnel who are delegated supervisory responsibilities under Rule 342 to devote a portion of their time to activities outside the member organization, including serving as officers, directors or employees of a secondary affiliation. The Exchange will consider such approvals on a case-by-case basis and will consider, among other factors: whether less than full time activity in the member organization is consistent with the protection of investors or the public interest; the precise nature of the supervisory position in the member organization and the time required to perform it effectively; the degree of control between the member organization and the other entity.]

#### **/0[4]3 Outside Connections – Legal Limitations**

No Change.

\* \* \* \* \*

### **Rule 351. Reporting Requirements**

(a) Each member not associated with a member organization and each member organization shall promptly report to the Exchange whenever such member or member organization, or any member[, allied member] or registered or non-registered employee associated with such member or member organization:

(1) – (10) No Change.

(b) Each member associated with a member organization and each [allied member or] registered or non-registered employee of a member or member organization shall

promptly report the existence of any of the conditions set forth in paragraph (a) of this rule to the member or member organization with which such person is associated.

(c) Each approved person shall promptly report to the member organization with which such approved person is associated, whenever such approved person becomes subject to a statutory disqualification as defined in Section 3(a)(39) of the Securities Exchange Act of 1934; and upon being so notified, or otherwise learning such fact, the member or member organization shall promptly so advise the Exchange in writing, giving the name of the person subject to the statutory disqualification and details concerning the disqualification.

(d) No Change.

(e) Each member not associated with a member organization and a [senior officer or partner] principal executive of each member organization shall take one or both of the following two actions in relation to the trades that are subject to the review procedures required by Rule 342.21(a):

(i) – (ii) No Change.

(A) – (C) No Change.

The statement that subparagraph (i) requires shall read substantially as follows:

(1) - (3) No Change.

When a statement pertains to one or more trades that have been the subject of an internal investigation pursuant to Rule 342.21(b) but as to which no internal disciplinary action has been taken and no referral of the matter to the Exchange, to another self-regulatory organization or to a Federal agency has been made, the statement that subparagraph (ii) (C) requires shall be as above, except that it shall refer to the particular trade(s) (rather than to the trades of a particular calendar quarter) and shall omit the clause excepting trades reported as the subject of an investigation. [For the purpose of this paragraph (e), a “senior officer or partner” means (i) the chief executive officer or managing partner or

(ii) either (A) any other officer or partner who is a member of the member organization’s executive or management committee or its equivalent committee or group or (B) if the member organization has no such committee or group, any officer or partner having senior executive or management responsibility who reports directly to the Chief Executive Officer or managing partner. If, in the case of a member

organization, its chief executive officer or managing partner does not sign the statement, a copy of the statement shall be provided to the chief executive officer or managing partner.]

(f) Each member and member organization that prepares, issues or distributes research reports or whose research analysts make public appearances is required to submit to the member's or member organization's Designated Examining Authority, annually, a letter of attestation signed by a [senior officer or partner] principal executive that the member or member organization has established and implemented procedures reasonably designed to comply with the provisions of Rule 472. The attestation must also specifically certify that each research analyst's compensation was reviewed and approved in accordance with the requirements of Rule 472(h)(2) and that the basis for such approval has been documented.

• • • **Supplementary Material:** — — — — —

.10 - .12 No Change.

.13 The term "customer complaint" shall mean any written statement of a customer, or any person acting on behalf of a customer, other than a broker or dealer, alleging a grievance involving the activities of those persons under the control of a member organization.

## **Rule 352. Guarantees, Sharing in Accounts, and Loan Arrangements**

### **Prohibitions Against Guarantees**

(a) No member organization shall guarantee or in any way represent that it will guarantee any customer against loss in any account or on any transaction; and no member, [allied member,] principal executive, registered representative or officer shall guarantee or in any way represent that either he or she, or his or her employer, will guarantee any customer against loss in any customer account or on any customer transaction. The prohibitions in this paragraph extend to the payment, in whole or in part, of a debit balance.

### **Prohibition Against Sharing in Profits and Losses**

(b) Except as otherwise provided by this Rule, no member, member organization, [allied member,] principal executive, officer, or any other person acting in the capacity of a registered representative shall, directly or indirectly, (i) take or receive or agree to take or

receive a share in the profits, or (ii) share or agree to share in any losses, in any customer's account or of any transaction effected therein.

#### **Joint Accounts and Order Errors**

(c) Subject to compliance with paragraph (a), [P]paragraph (b) of this Rule shall not preclude a member not associated with a member organization, or a member organization or, with the prior written authorization of the member organization[ consent], a member associated with such member organization, a[n allied member,] principal executive or other person acting in the capacity of a registered representative, from participating with a customer in a joint account and sharing in the profits or losses therein in direct proportion to financial contributions made to such account. Accounts of immediate family members of such persons are exempt from the direct proportionate share limitation. (See Rule 93 for reporting and approval requirements concerning participation in joint accounts by members[,] and member organizations [and allied members].) Nor shall it preclude a member not associated with a member organization or a member organization from sharing or agreeing to share any losses in a customer account if it has been established that the loss was caused in whole or in part by an error resulting from the action or inaction of such member, [allied member,] member organization, or person associated therewith (See also Rule 134).

For purposes of this section (c), the term "immediate family" shall include parents, mother-in-law or father-in-law, husband or wife, children or any relative to whose support the principal executive or persons acting in the capacity of a registered representative otherwise contributes directly or indirectly.

#### **Certain Investment Advisory Arrangements**

(d)

[(1) Section 205 of the Investment Advisers Act of 1940 (the "Advisers Act") and the rules thereunder set forth provisions relating to advisory compensation arrangements applicable to investment advisers registered with the Securities and Exchange Commission ("SEC") unless exempt pursuant to Section 203(b) of the Adviser's Act. Under certain circumstances, such arrangements may provide for the adviser to receive a performance-based fee, e.g., sharing in capital gains or losses of the assets under management. Where a participatory compensation arrangement is entered into by a member organization that itself is registered with the SEC as an investment adviser, and such arrangement complies with Section 205 of the Advisers Act and the rules

thereunder, the arrangement will not violate Rule 352(b) if the arrangement arises in the context of such member organization's investment advisory relationship with the customer. Member organizations may not have such participatory compensation arrangements if they are only acting as a broker for the customer.] Notwithstanding the prohibition of paragraph (b), a person acting as an investment adviser (whether or not registered as such) may receive compensation based on a share of profits or gains in an account if all the of the conditions in Rule 205-3 of the Investment Advisers act of 1940 (as may be amended from time to time) are satisfied. All advisory compensation arrangements should be reviewed by member organizations and their counsel in light of applicable State and Federal law (e.g., ERISA).

[(2) To the extent that any of the above described conditions of paragraph (d)(1) are not fully satisfied, the general Rule 352(b) prohibition will apply. All advisory compensation arrangements should be reviewed by member organizations and their counsel in light of applicable State and Federal law (e.g., ERISA).]

#### **Limitations on Borrowing From or Lending to Customers**

(e) – (f) No Change.

(g) For purposes of this Rule, other than in section (c), the term "immediate family" shall include parents, grandparents, mother-in-law or father-in-law, husband or wife, brother or sister, brother-in-law or sister-in-law, son-in law or daughter-in-law, children, grandchildren, cousin, aunt or uncle, or niece or nephew, and shall also include any other person whom the registered person supports, directly or indirectly, to a material extent.

#### **Rule 353. Rebates and Compensation**

(a) No member, [allied member,] principal executive, registered representative or officer shall, directly or indirectly, rebate to any person, firm or corporation any part of the compensation he receives for the solicitation of orders for the purchase or sale of securities or other similar instruments for the accounts of customers of his member organization employer, or pay such compensation, or any part thereof, as a bonus, commission, fee or other consideration for business sought or procured for him or for any member or member organization of the Exchange.

(b) No member, [allied member,] principal executive, registered representative or officer shall be compensated for business done by or through his employer after the termination of his employment except as may be permitted by the Exchange.

### Rule 354. Reports to Control Persons

(a) No Change.

(b) For the purpose of paragraph (a), “control person” means a person who controls the member organization within the meaning of Rule 2 otherwise than solely by virtue of being a director, general partner or principal executive [officer] (or person occupying a similar status or performing similar functions) of the member organization.

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### Rule 401. Business Conduct

(a) Every member, [allied member] principal executive and member organization shall at all times adhere to the principles of good business practice in the conduct of his or its business affairs.

\* \* \* \* \*

### [Rule 404. Individual Members Not to Carry Accounts]

Entire text deleted.

### Rule 405. Diligence as to Accounts

Every member organization is required through a [general partner, a] principal executive [officer] or a person or persons designated under the provisions of Rule 342(b)(1) [¶2342] to

(1) No Change.

#### (2) Supervision of Accounts

No Change.

#### (3) Approval of Accounts

Specifically approve the opening of an account prior to or promptly after the completion of any transaction for the account of or with a customer, provided, however, that in the case of branch offices, the opening of an account for a customer may be approved by the manager of such branch office but the action of such branch office manager shall within a reasonable time be approved by a [general partner, a] principal executive [officer] or a person or persons designated under the provisions of Rule 342(b)(1) [¶2342]. The member, [general partner, officer] principal executive or other

designated person approving the opening of the account shall, prior to giving his approval, be personally informed as to the essential facts relative to the customer and to the nature of the proposed account and shall indicate his approval in writing on a document which is a part of the permanent records of his office or organization.

#### (4) Common Sales Accounts

No Change.

a) - e) No Change.

• • • **Supplementary Material:** — — — — —

**.10 Application of Rule 405(1) and (3) [¶2405].**— In the case of a margin account carried by a member organization for a non-member corporation, definite knowledge should be had to the effect that the non-member corporation has the right under its charter and by-laws to engage in margin transactions for its own account and that the persons from whom orders and instructions are accepted have been duly authorized by the corporation to act on its behalf. It is advisable in each such case for the carrying organization to have in its possession a copy of the corporate Charter, By-laws and authorizations. Where it is not possible to obtain such documents, a member or [allied member] principal executive in the member organization carrying the account should prepare and sign a memorandum for its files indicating the basis upon which he believes that the corporation may properly engage in margin transactions and that the persons acting for the corporation have been duly authorized to do so.

In the case of a cash account carried for a non-member corporation, the carrying member organization should assure itself through a general partner or an officer who is a holder of voting stock that persons entering orders and issuing instructions with respect to the account do so upon the proper authority.

When an agency account is carried by a member organization its files should contain the name of the principal for whom the agent is acting and written evidence of the agent's authority.

When Estate and Trustee accounts are involved a member organization should obtain counsel's advice as to the documents which should be obtained.

Information as to the country of which a customer is a citizen is deemed to be an essential fact.

\* \* \* \* \*



## NYSE Rule Interpretation 405 DILIGENCE AS TO ACCOUNTS

### /01 Credit Reference – Business Background

No Change.

### /02 Approval of New Accounts/Branch Offices

Rule 405(3) provides that a Branch Office Manager may approve the opening of new customer accounts but that such action, within a reasonable period of time, must be approved by a [general partner, a] principal executive [officer] or a person or person(s) designated under the provisions of Rule 342(b)(1). Branch Office Managers may be among the parties designated with authority to make final firm determinations as to the opening of new accounts, at the discretion of the member organization acting on an individual basis.

It is important to note that Rule 342 requires a separate system of follow-up and review to determine that all delegated authority is being properly exercised.

\* \* \* \* \*

## Rule 407. Transactions - Employees of Members, Member Organizations and the Exchange

(a) No member or member organization shall, without the prior written consent of the employer, open a securities or commodities account or execute any transaction in which a member[, allied member] or employee associated with another member or member organization or an employee of the Exchange is directly or indirectly interested.

In connection with accounts or transactions of members[, allied members] and employees associated with another member or member organization, duplicate confirmations and account statements shall be sent promptly to the employer.

(b) No member (associated with a member or member organization)[, allied member] or employee associated with a member or member organization shall establish or maintain any securities or commodities account or enter into any [private] securities transaction with respect to which such person has any financial interest or the power, directly or indirectly, to make investment decisions, at another member or member organization, or a domestic or foreign non-member broker-dealer, investment adviser, bank, other financial institution, or otherwise without the prior written consent of

another person designated by the member or member organization under Rule 342(b)(1) to sign such consents and review such accounts.

Persons having accounts or transactions referred to above shall arrange for duplicate confirmations and statements (or their equivalents) relating to the foregoing to be sent to another person designated by the member or member organization under Rule 342(b)(1) to review such accounts and transactions. All such accounts and transactions periodically shall be reviewed by the member or member organization employer (see also Rule 342.21).

The Exchange may, upon written request, and where good cause is shown, waive any requirements of this Rule.

• • • **Supplementary Material:** — — — — —

.10 No Change.

.11 [The “private securities transactions” referred to in Rule 407(b) shall include all transactions in the securities of issuing entities which are not public, whether or not such transactions are negotiated directly with the issuer. They shall include, but not be limited to: interests in oil or gas ventures, and in real estate syndications, participants in tax shelters and in other investment vehicles, and shares issued prior to a public distribution by such issuing entities.]

The term “securities or commodities accounts” as used in the rule 407(b) shall include, but not be limited to, limited or general partnership interests in investment partnerships.

Members and member organizations must develop and maintain written procedures for reviewing these accounts and transactions and shall assure that their associated persons are not improperly recommending or marketing these securities or products to others through members or member organizations[, or privately,].

.12 No Change.

.13 [f]For the purposes of this Rule, the term “other financial institution” includes, but is not limited to, insurance companies, trust companies, credit unions and investment companies.

\* \* \* \* \*

### Rule 408. Discretionary Power in Customers' Accounts

(a) No member[, allied member] or employee of a member organization shall exercise any discretionary power in any customer's account or accept orders for an account from a person other than the customer without first obtaining written authorization of the customer[.], the signature of the person or persons authorized to exercise discretion in the account (and of any substitute so authorized), and the date such discretionary authority was granted.

(b) No member[, allied member] or employee of a member organization shall exercise any discretionary power in any customer's account, without first notifying and obtaining the approval of another person delegated under Rule 342(b)(1) with authority to approve the handling of such accounts. Every order entered on a discretionary basis by a member[, allied member] or employee of a member organization must be identified as discretionary on the order at the time of entry. Such discretionary accounts shall receive frequent appropriate supervisory review by a person delegated such responsibility under Rule 342(b)(1), who is not exercising the discretionary authority. A written statement of the supervisory procedures governing such accounts must be maintained.

(c) No member or [allied member or] employee of a member organization exercising discretionary power in any customer's account shall (and no member organization shall permit any member[, allied member,] or employee thereof exercising discretionary power in any customer's account to) effect purchases or sales of securities which are excessive in size or frequency in view of the financial resources of such customer.

\* \* \* \* \*

### Rule 409. Statements of Accounts to Customers

(a) - (g) No Change.

• • • Supplementary Material: — — — — —

.10 No Change.

(1) - (6) No Change.

(7) Upon the written instructions of a customer and with the written approval of a member or [allied member,] supervisor of a member organization, a member organization may hold mail for a customer who will not be at his usual address for the period of his absence, but (a) not to exceed two months if the organization is advised that such customer will be on vacation or travelling or (b) not to exceed three months if the customer is going abroad.

\*\*\*\*\*

**Rule 410. Records of Orders**

(a) No Change.

(1) – (3) No Change.

**Changes In Account Name or Designation**

Before any order covered by (1) or (2) above is executed, there must be placed upon the order slip or other similar record of the member or member organization the name or designation of the account for which such order is to be executed. No change in such account name (including related accounts) or designation (including error accounts) shall be made unless the change has been authorized by a member, [allied member,] principal executive or a person or persons designated under the provisions of Rule 342(b)(1). Such person must, prior to giving his or her approval of the account designation change, be personally informed of the essential facts relative thereto and indicate his or her approval of such change in writing on the order or other similar record of the member or member organization. The essential facts relied upon by the person approving the change must be documented in writing and maintained with the order or other similar record for at least three years, the first two in an easily accessible place as that term is used in Securities Exchange Act Rule 17a-4.

**Exceptions**

Under exceptional circumstances, the Exchange may upon written request waive the requirements contained in (1), (2) and (3) above.

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**[Rule 412. Customer Account Transfer Contracts]**

Entire text deleted.

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**[NYSE Rule Interpretation 412 CUSTOMER ACCOUNT TRANSFER CONTRACTS]**

Entire text deleted.

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## **Rule 414. Index and Currency Warrants**

**(a) – (b)** No Change.

### **Position Limits and Reports**

#### **(c) Position Limits Generally**

**(i)** Except with the prior approval of the Exchange in each instance, no member or member organization shall effect, for any account in which such member or member organization has an interest, for the account of any member[, allied member] or employee of such member or member organization, or for the account of any customer, a transaction (whether on the Exchange or on or through the facilities of, or otherwise subject to the rules of, another national securities exchange or national securities association) in a stock index warrant if the member or member organization has reason to believe that, as a result of such transaction, the member or member organization, the member[, allied member] or employee of such member or member organization, or the customer would, acting alone or in concert with others, directly or indirectly, control any aggregate position in a stock index warrant issue, or in all warrants issued on the same stock index, on the same side of the market, in excess of the position limits specified in subparagraphs (ii) through (iv) of this paragraph (c).

**(ii) - (vi)** No Change.

**(A) – (C)** No Change.

#### **(d) Exercise Limits**

Except with the prior approval of the Exchange in each instance, no member or member organization shall exercise, for any account in which such member or member organization has an interest or for the account of any member[, allied member] or employee of such member or member organization or for the account of any customer, a long position in any stock index warrant dealt in on the Exchange if as a result thereof such member or member organization, or member[, allied member] or employee of such member or member organization or customer, acting alone or in concert with others, directly or indirectly, has or will have exercised within any five consecutive business days aggregate long positions in excess of the number of stock index warrants specified in or pursuant to paragraph (c) of this Rule 414 as the position limit for the stock index warrant. The Exchange may from time to time institute other limitations concerning the exercise of stock index warrants. All such exercise limitations are

separate and distinct from any other exercise limitations the issuers of stock index warrants may impose.

(e) – (h) No Change.

**(i) Discretionary Accounts**

Rule 724 (Discretionary Accounts) (and not Rule 408 (Discretionary Power in Customers' Account)) shall apply insofar as a member[, allied member] or employee of a member organization exercises discretion to trade in currency warrants, currency index warrants and/or stock index warrants for customer accounts.

\* \* \* \* \*

**Rule 424. Reports of Options**

Each member and member organization shall report to the Exchange such information as may be required with respect to any substantial option relating to listed securities in which such member, member organization or [allied member] principal executive therein is directly or indirectly interested or of which such member, member organization or [allied member] principal executive has knowledge by reason of transactions executed by or through such member or organization.

The Exchange may disapprove of the connection of any member, member organization or [allied member] principal executive therein with any such option which it shall determine to be contrary to the best interest or welfare of the Exchange or to be likely to create prices which will not fairly reflect market values.

\* \* \* \* \*

**Rule 431. Margin Requirements**

(a) – (d) No Change.

**(e) Exceptions to Rule**

No Change.

(1) – (2) No Change.

**(3) Joint Accounts in Which the Carrying Organization or a Partner or Stockholder Therein Has an Interest.**—In the case of a joint account carried by a member organization, in which such organization, or any partner, member, [allied member] principal executive or any stockholder (other than a holder of freely transferable stock

only) of such member organization participates with others, each participant other than the carrying member organization shall maintain an equity with respect to such interest pursuant to the margin provisions of the Rule as if such interest were in a separate account.

**(4) - (8)** No Change.

**(f) Other Provisions**

**(1) – (3)** No Change.

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

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

\* \* \* \* \*

**Rule 435. Miscellaneous Prohibitions**

No member[, ] or member organization[, ] or allied member therein] shall:

**(1) - (7)** No Change.

**[Rule 436. Interest on Credit Balances]**

Entire text deleted.

\* \* \* \* \*

**[NYSE Rule Interpretation 436 INTEREST ON CREDIT BALANCE]**

Entire text deleted.

\* \* \* \* \*

**Rule 440F. Public Short Sale Transactions Effected on the Exchange**

••• Supplementary Material: —————

**Reports on Form SS20**

**.10 Requirements for filing.**—Every ROUND-LOT short sale transaction in stocks (or certificates therefor) or warrants effected on the floor of the Exchange for the accounts of PUBLIC customers is required to be reported on Form SS20. Reports are to be filed by the member organization through which the transaction is cleared/settled.

Public customers are all customers OTHER THAN NYSE members[, allied members] or member organizations. Included as public are limited/special partners and non-voting stockholders who are not also NYSE members [or allied members]. Also included are employees of member organizations.

\* \* \* \* \*

**Rule 440G. Transactions in Stocks and Warrants for the Accounts of Members, [Allied Members] Principal Executives and Member Organizations**

••• Supplementary Material: —————

**Reports on Form 121**

**.10 Requirements for filing.**—Any ROUND-LOT purchase or sale of stock (or certificates therefor) or warrant effected on the floor of the New York Stock Exchange for the accounts of:

- a) NYSE members;
- b) [NYSE Allied members] principal executives; or



c) NYSE member organizations,

must be reported on Form 121 regardless of where the order originated or by whom it was executed.

**Instructions.—**

**(1)** An account is defined as any account in which the member, [allied member or] member organization or principal executive thereof has a direct or indirect beneficial interest. It is not confined only to an account actually in the respondent's name. Generally, a person should include transactions in securities held in the name of a spouse, minor children or other relatives who share the same home as the reporting person, as being beneficially owned by such person. In addition, a person may be regarded as the beneficial owner of securities held in the name of another person, if by reason of any contract, understanding, relationship, agreement or other arrangement he obtains benefits substantially equivalent to those of ownership. This does not, however, include trusts or estates if the person has no power to make investment decisions. In other cases, if special circumstances exist indicating that a member or principal executive does not have a beneficial interest in transactions in an account in the name of members of his family, or if he wishes guidance as to whether he should report transactions in securities held by family members as being beneficially owned by him, he should contact the Member Firm Regulation Division for clarification.

**(2)** No Change.

**(a)** No Change.

**(b)** If the "joint account" consists solely of NYSE members, [allied members or] member organizations or principal executives thereof, it is permissible for one respondent to include in their/his report the full amount of any transactions for the "joint account". In this event, the report should include a notation to that effect, and the other participants should not include such transactions in their/his report.

**(3) – (5)** No Change.

**(6)** Transactions made in error or to rectify an error:

**(a)** are reportable if the original order on which the error was made is reportable (*i.e.* it was for an NYSE member, [allied member or] member organization or principal executive thereof);

**(b)** No Change.

(7) No Change.

(a) - (c) No Change.

(d) for customers other than NYSE members or [allied members] principal executives of the reporting organization;

\* \* \* \* \*

### **[Rule 446. Business Continuity and Contingency Plans]**

Entire text deleted.

\* \* \* \* \*

### **Rule 477. Retention of Jurisdiction—Failure to Cooperate**

(a) If, prior to termination, or during the period of one year immediately following the receipt by the Exchange of written notice of the termination, of a person's status as a member, member organization, [allied member,] principal executive, approved person, or registered or non-registered employee of a member or member organization, the Exchange serves (as provided in paragraph (d) of Rule 476) written notice on such person that it is making inquiry into, or serves a Charge Memorandum on such person with respect to any matter or matters occurring prior to the termination of such person's status as a member, member organization, [allied member,] principal executive, approved person, or registered or non-registered employee of a member or member organization, the Exchange may thereafter require such person to comply with any requests of the Exchange to appear, testify, submit books, records, papers, or tangible objects, respond to written requests and attend hearings in every respect in conformance with the Rules of the Exchange in the same manner and to the same extent as if such person had remained a member, member organization, [allied member,] principal executive, approved person, or registered or non-registered employee of a member or member organization.

(b) Prior to termination, or during the period of one year immediately following the receipt by the Exchange of written notice of the termination of a person's status as a member, member organization, [allied member,] principal executive, approved person, or registered or non-registered employee of a member or member organization, the Exchange may, through the exercise of its jurisdiction, as described in (a) above, require such person to comply with any requests of an organization or association included in Rule 476(a)(11) to appear, testify, submit books, records, papers, or tangible objects,

respond to written requests and attend hearings in every respect in conformance with the Rules of the Exchange in the same manner and to the same extent as if such person had remained a member, member organization, [allied member,] principal executive, approved person, or registered or non-registered employee of a member or member organization with respect to any matter or matters occurring prior to the termination of such person's status as a member, member organization, [allied member,] principal executive, approved person, or registered or non-registered employee of a member or member organization.

(c) If such former member, member organization, [allied member,] principal executive, approved person, or registered or non-registered employee of a member or member organization, provided such notice or Charge Memorandum is or has been served, is adjudged guilty in a proceeding under Rule 476 of having refused or failed to comply with any such requirement, such person may be barred from being a member, member organization, [allied member,] principal executive, approved person, or registered or non-registered employee of a member or member organization permanently, or for such period of time as may be determined, or until such time as the Exchange has completed its investigation into the matter or matters specified in such notice or Charge Memorandum, has determined a penalty, if any, to be imposed, and until the penalty, if any, has been carried out.

(d) Following the termination of such person's status as a member, member organization, [allied member,] principal executive, approved person, or registered or non-registered employee of a member or member organization, provided such notice or Charge Memorandum is or has been served, such person may also be charged with having committed, prior to termination, any other offense with which such person might have been charged had such status not been terminated. Any such charges shall be brought and determined in accordance with the provisions set forth in Rule 476.

\* \* \* \* \*

## **Rule 704. Position Limits**

### **(a) Generally**

Except with the prior written approval of the Exchange in each instance, no member or member organization shall effect, for any account in which such member or member organization has an interest or for the account of any member[, allied member] or employee of such member or member organization or for the account of any customer,

an opening transaction (whether on the Exchange or on or through the facilities of, or otherwise subject to the rules of, another Participating Exchange or Association) in an option of any class if the member or member organization has reason to believe that as a result of such transaction the member or member organization or member[, allied member] or employee of such member or member organization or customer would, acting alone or in concert with others, directly or indirectly, control any aggregate position in options (whether long or short) of puts and calls on the same side of the market covering the same underlying stock or underlying stock group that is in excess of;

\* \* \* \* \*

### **Rule 705. Exercise Limits**

Except with the prior approval of the Exchange in each instance, no member or member organization shall exercise, for any account in which such member or member organization has an interest or for the account of any member[, allied member] or employee of such member or member organization or for the account of any customer, a long position in any option of a class if as a result thereof such member or member organization, or member[, allied member] or employee of such member or member organization or customer, acting alone or in concert with others, directly or indirectly,

\* \* \* \* \*

### **Rule 723. Suitability**

No member organization or member[, allied member] or employee of such member organization shall recommend to a customer an opening transaction in any option contract unless the person making the recommendation has a reasonable basis for believing, at the time of making the recommendation, that the customer has such knowledge and experience in financial matters that he may reasonably be expected to be capable of evaluating the risks of the recommended transaction, and is financially able to bear the risks of the recommended position in the option contract.

### **Rule 724. Discretionary Accounts**

#### **(a) Authorization and Approval Required**

No member[, or allied member] or employee of a member organization shall exercise any discretionary power with respect to trading in option contracts in a customer's account unless such customer has given prior written authorization and the account

has been accepted in writing by a Registered Options Principal. The Senior Registered Options Principal shall review the acceptance of each discretionary account to determine that the Registered Options Principal accepting the account had a reasonable basis for believing that the customer was able to understand and bear the risks of the strategies or transactions proposed, and he shall maintain a record of the basis for his determination. Each discretionary order shall be approved and initialed on the day entered by the branch office manager or other Registered Options Principal, provided that if the branch office manager is not a Registered Options Principal, his approval shall be confirmed within a reasonable time by a Registered Options Principal. Every discretionary order shall be identified as discretionary on the order at the time of entry. Discretionary accounts shall receive frequent appropriate supervisory review by the Compliance Registered Options Principal. The provisions of this paragraph shall not apply to discretion as to the price at which or the time when an order given by a customer for the purchase or sale of a definite number of option contracts in a specified security shall be executed.

**(b) Options Programs**

No Change.

**(c) Prohibited Transactions**

No member [or allied member] or employee of a member organization having discretionary power over a customer's account shall, in the exercise of such discretion, execute or cause to be executed therein any purchases or sales of option contracts which are excessive in size or frequency in view of the financial resources in such account.

**(d) Record of Transactions**

A record shall be made of every transaction in option contracts in respect to which a member [or allied member] or employee of a member organization has exercised discretionary authority, clearly reflecting such fact and indicating the name of the customer, the designation and number of the option contracts, the premium and the date and time when such transaction was effected.

\* \* \* \* \*

**Rule 791. Communications to Customers****(a) General Rule**

No member organization or member[, allied member] or employee of such member organization shall utilize any advertisement, educational material, sales literature or other communication to any customer or member of the public concerning options which:

\* \* \* \* \*