

Rule 4000 – 4100 Series

4000. TRADING ON THE EXCHANGE

4100. General

4110. Use of the Exchange on a Test Basis

The Exchange may at any time authorize the use of its systems on a test basis for whatever studies it considers necessary and appropriate.

4120. Trading Halts

(a) Authority to Initiate Trading Halts or Pauses

In circumstances in which the Exchange deems it necessary to protect investors and the public interest, the Exchange, pursuant to the procedures set forth in paragraph (c):

(1) may halt trading on the Exchange of a security listed on the Exchange to permit the dissemination of material news; or

(2) may halt trading on the Exchange of a security listed on another national securities exchange during a trading halt imposed by such exchange to permit the dissemination of material news; or

(3) may halt trading on the Exchange: (A) in a security listed on another national securities exchange when such exchange imposes a trading halt in that security because of an order imbalance or influx ("operational trading halt"); or (B) by Equities Market Makers in a security listed on the Exchange, when the security is a derivative or component of a security listed on another national securities exchange and such exchange imposes an operational trading halt in that security. In the event that the Exchange halts trading, Exchange Participants may commence quotations and trading at any time following initiation of operational trading halts, without regard to procedures for resuming trading set forth in paragraph (c); or

(4) may halt trading in an American Depositary Receipt ("ADR") or other security listed on the Exchange, when the security listed on the Exchange or the security underlying the ADR is listed on or registered with another national or foreign securities exchange or market, and the national or foreign securities exchange or market, or regulatory authority overseeing such exchange or market, halts trading in such security for regulatory reasons; or

(5) may halt trading in a security listed on the Exchange when the Exchange requests from the issuer information relating to:

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(A) material news;

(B) the issuer's ability to meet Exchange listing qualification requirements, as set forth in the Rule 5000 Series; or

(C) any other information which is necessary to protect investors and the public interest.

(6) may halt trading in a security listed on the Exchange when

(A) extraordinary market activity in the security is occurring, such as the execution of a series of transactions for a significant dollar value at prices substantially unrelated to the current market for the security, as measured by the national best bid and offer, and

(B) the Exchange determines that such extraordinary market activity is likely to have a material effect on the market for the security; and

(C)

(i) the Exchange believes that such extraordinary market activity is caused by the misuse or malfunction of an electronic quotation, communication, reporting, or execution system operated by, or linked to, the Exchange;

(ii) After consultation with another national securities exchange trading the security on an unlisted trading privileges basis, the Exchange believes that such extraordinary market activity is caused by the misuse or malfunction of an electronic quotation, communication, reporting, or execution system operated by, or linked to, such other national securities exchange; or

(iii) After consultation with FINRA regarding a FINRA facility trading the security, the Exchange believes that such extraordinary market activity is caused by the misuse or malfunction of such FINRA facility or an electronic quotation, communication, reporting, or execution system linked to such FINRA facility.

(7) Reserved

(8) may halt trading in an index warrant on the Exchange whenever the Regulation Department shall conclude that such action is appropriate in the

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interests of a fair and orderly market and to protect investors. Among the factors that may be considered are the following:

(A) trading has been halted or suspended in underlying stocks whose weighted value represents 20% or more of the index value;

(B) the current calculation of the index derived from the current market prices of the stocks is not available;

(C) other unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market are present.

(9) may halt trading in a series of Portfolio Depository Receipts, Index Fund Shares, or Managed Fund Shares (as defined in Rule 4420) listed on the Exchange if the Intraday Indicative Value (as defined in Rule 4420) or the index value applicable to that series is not being disseminated as required, during the day in which the interruption to the dissemination of the Intraday Indicative Value or the index value occurs. If the interruption to the dissemination of the Intraday Indicative Value or the index value persists past the trading day in which it occurred, the Exchange will halt trading no later than the beginning of the trading day following the interruption. The Exchange may also exercise discretion to halt trading in a series of Portfolio Depository Receipts, Index Fund Shares, or Managed Fund Shares based on a consideration of the following factors: (A) trading in underlying securities comprising the index applicable to that series has been halted in the primary market(s), (B) the extent to which trading has ceased in securities underlying the index, or (C) the presence of other unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market.

(10) shall halt trading in Derivative Securities Products (as defined in Rule 4120(b)(4)(A)) for which a net asset value ("NAV") (and in the case of Managed Fund Shares under Rule 4420(o), a Disclosed Portfolio) is disseminated if the Exchange becomes aware that the NAV (or in the case of Managed Fund Shares, the Disclosed Portfolio) is not being disseminated to all market participants at the same time. The Exchange will maintain the trading halt until such time as the Exchange becomes aware that the NAV (or in the case of Managed Fund Shares, the Disclosed Portfolio, as applicable) is available to all market participants or, in the case of Derivative Securities Products traded on the Exchange pursuant to unlisted trading privileges, until such time trading resumes in the listing market.

(11) If a primary listing market issues an individual stock trading pause in any of the Circuit Breaker Securities, as defined in IM-4120-3, the Exchange will pause trading in that security until trading has resumed on the primary listing market. If, however, trading has not resumed on the primary listing market and ten minutes have passed since the individual stock trading pause message has

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been received from the responsible single plan processor, the Exchange may resume trading in such stock.

(12) shall halt trading on the Exchange in a security listed on the Exchange if the security fails to comply with Rule 5550(d).

(b) Trading Halts for Trading of Certain Derivative Securities Products on the Exchange Pursuant to Unlisted Trading Privileges

(1) During Pre-Market Session. If a Derivative Securities Product begins trading on the Exchange in the Pre-Market Session and subsequently a temporary interruption occurs in the calculation or wide dissemination of an applicable Required Value, the Exchange may continue to trade the Derivative Securities Product for the remainder of the Pre-Market Session.

(2) During Regular Market Session. During the Regular Market Session, if a temporary interruption occurs in the calculation or wide dissemination of an applicable Required Value, and the listing market halts trading in the Derivative Securities Product, the Exchange, upon notification by the listing market of a halt due to such temporary interruption, also shall immediately halt trading in the Derivative Securities Product on the Exchange.

(3) Post-Market Session and Next Trading Day.

(A) If an applicable Required Value continues not to be calculated or widely disseminated after the close of the Regular Market Session, the Exchange may trade the Derivative Securities Product in the Post-Market Session only if the listing market traded the Derivative Securities Product until the close of its regular trading session without a halt.

(B) If an applicable Required Value continues not to be calculated or widely disseminated as of the beginning of the Pre-Market Session on the next trading day, the Exchange shall not commence trading of the Derivative Securities Product in the Pre-Market Session that day. If an interruption in the calculation or wide dissemination of an applicable Required Value continues, the Exchange may resume trading in the Derivative Securities Product only if calculation and wide dissemination of the applicable Required Value resumes or trading in the Derivative Securities Product resumes in the listing market.

(4) Definitions. For purposes of this Rule:

(A) "Derivative Securities Product" means a series of Portfolio Depository Receipts, Index Fund Shares, Managed Fund Shares, or Trust Issued Receipts (as defined in Equity Rule 4420), a series of Commodity-

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Related Securities (as defined in Equity Rule 4630), securities representing interests in unit investment trusts or investment companies, or any other UTP Derivative Security (as defined in Rule 4421).

(B) "Pre-Market Session" means the trading session that begins at 7:00 a.m. and continues until 9:30 a.m.

(C) "Post-Market Session" means the trading session that begins at 4:00 P.M. or 4:15 p.m., and that continues until 7:00 p.m.

(D) "Regular Market Session" means the trading session from 9:30 a.m. until 4:00 p.m. or 4:15 p.m..

(E) "Required Value" shall mean (i) the value of any index or any commodity-related value underlying a Derivative Security Product, (ii) the indicative optimized portfolio value, intraday indicative value, or other comparable estimate of the value of a share of a Derivative Securities Product updated regularly during the trading day, (iii) a net asset value in the case of a Derivative Securities Product for which a net asset value is disseminated, and (iv) a "disclosed portfolio" in the case of a Derivative Securities Product that is a series of managed fund shares or actively managed exchange-traded funds for which a disclosed portfolio is disseminated.

(c) Procedure for Initiating a Trading Halt

(1) Issuers of securities listed on the Exchange are required to notify the Exchange of the release of certain material news prior to the release of such information to the public as required by Rule 5250(b)(1).

(2) Except in emergency situations, notification shall be provided directly to the Exchange's MarketWatch Department through the Exchange's electronic disclosure submission system available at a website designated by the Exchange for that purpose. In emergency situations, issuers shall instead provide notification by telephone or facsimile.

(3) Upon receipt of information, from the issuer or other source, the Exchange will promptly evaluate the information, estimate its potential impact on the market and determine whether a trading halt in the security is appropriate.

(4) Should the Exchange determine that a basis exists under Rule 4120(a) for initiating a trading halt, the commencement of the trading halt will be effective at the time specified by the Exchange in a notice posted on a publicly available website of the Exchange. In addition, the Exchange shall disseminate notice of the commencement of a trading halt through major wire services.

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(5) Trading in a halted security shall resume at the time specified by the Exchange in a notice posted on a publicly available website of the Exchange. In addition, the Exchange shall disseminate notice of the resumption of trading through major wire services.

(6)

(A) In the case of a trading halt under Rule 4120(a)(6) based on the misuse or malfunction of an electronic quotation, communication, reporting, or execution system that is not operated by the Exchange, the Exchange will promptly contact the operator of the system in question (as well as any national securities exchange or FINRA facility to which such system is linked) to ascertain information that will assist the Exchange in determining whether a misuse or malfunction has occurred, what effect the misuse or malfunction is having on trading in a security, and what steps are being taken to address the misuse or malfunction. If the operator of the system is unavailable when contacted by the Exchange, the Exchange will continue efforts to contact the operator of the system to ascertain information that will assist the Exchange in determining whether the trading halt should be terminated.

(B) A trading halt initiated under Rule 4120(a)(6) shall be terminated as soon as the Exchange determines either that the system misuse or malfunction that caused the extraordinary market activity will no longer have a material effect on the market for the security or that system misuse or malfunction is not the cause of the extraordinary market activity.

(7)

(A) A trading halt initiated under Rule 4120(a)(1), (4), (5), (6), (9), (10) or (11) or Rule 4120(b) shall be terminated when the Exchange releases the security for trading, at a time announced to market participants in advance by the Exchange.

IM-4120-1. Deleted.

IM-4120-2. Deleted.

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IM-4120-3.

The provisions of paragraph (a)(11) of this Rule shall be in effect during a pilot set to end on the earlier of August 11, 2011 or the date on which a limit up / limit down mechanism to address extraordinary market volatility, if adopted, applies. During the pilot, the term "Circuit Breaker Securities" shall mean the securities included in the S&P 500® Index, the Russell 1000 Index, as well as a pilot list of Exchange Traded Products.

4121. Market Closings

Upon SEC request (including, but not limited to, in accordance with standing SEC requests regarding market closings), the Exchange will halt all domestic trading in both securities listed on the Exchange and securities traded on the Exchange pursuant to unlisted trading privileges if other major securities markets initiate marketwide trading halts in response to extraordinary market conditions.

Rule 4200 Series

4200. Definitions

(a) For purposes of the Rule 4000 Series, unless the context requires otherwise:

(1) "SEC Rule 100," "SEC Rule 101," and "SEC Rule 104" means the rules adopted by the Commission under Regulation M, and any amendments thereto.

(2) "Stabilizing bid" means the terms "stabilizing" or to "stabilize" as defined in SEC Rule 100.

(3) "Underwriting Activity Report" is a report provided by the Corporate Financing Department of FINRA in connection with a distribution of securities subject to SEC Rule 101 pursuant to NASD Rule 2710(b)(11) and includes forms that are submitted by members to comply with their notification obligations under Rules 4614, 4619, and 4623.

(b) For purposes of Rules 4614, 4619, and 4623, the following terms shall have the meanings as defined in SEC Rule 100: "affiliated purchaser," "distribution," "distribution participant," "independent bid," "net purchases," "penalty bid," "reference security," "restricted period," "subject security," and "syndicate covering transaction."

IM-4200. Deleted.

4201. Operation of Listing Standards

The Exchange listing standards are contained in the Rule 5000 Series. The provisions of the Equity Rule 4000 Series that permit the listing of securities are maintained solely to permit the trading of securities that cannot be listed on the Exchange through unlisted trading privileges. These rules will not be operative to permit the listing of these securities unless and until the Exchange files a proposed rule change under Section 19(b)(2) under the Act to adopt listing fees for these securities and such proposed rule change is approved by the Commission.

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4300. Deleted.

IM-4300-1. Deleted.

IM-4300-2. Deleted.

4305. Deleted.

4310. Deleted.

4320. Deleted.

4330. Deleted.

4340. Deleted.

4350. Deleted.

IM-4350-1. Deleted.

IM-4350-2. Deleted.

IM-4350-3. Deleted.

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IM-4350-4. Deleted.

IM-4350-5. Deleted.

IM 4350-6. Deleted.

IM-4350-7. Deleted.

IM-4350-8. Deleted.

4351. Deleted.

IM-4351. Deleted.

4360. Deleted.

4370. Deleted.

4380. Deleted.

4390. Deleted.

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4400. Other Listing Rules

4410. Deleted.

4420. Additional Quantitative Listing Criteria

In order to be listed on the Exchange, an issuer shall be required to meet the criteria set forth in the Rule 5000 Series or one or more of the paragraphs below. The Exchange may extend unlisted trading privileges to any security that is an NMS Stock (as defined in Rule 600 of Regulation NMS) that is listed on another national securities exchange. Any such security will be subject to all Exchange trading rules applicable to NMS Stocks, unless otherwise noted, including provisions of Rules 4120, 4420, 4421, and 4630.

(a) The Exchange may list Common Stock, Preferred Stock, Ordinary Shares, Shares or Certificates of Beneficial Interest of Trust, Limited Partnership Interests, American Depositary Receipts (ADR), American Depositary Shares (ADS), Units, Rights or Warrants pursuant to the Rule 5000 Series.

(b) Reserved

(c) Reserved

(d) Index Warrants

An index warrant may be listed if it substantially meets the following criteria:

- (1) The minimum public distribution shall be at least 1 million warrants.
- (2) The minimum number of public holders shall be at least 400.
- (3) The aggregate market value of the outstanding index warrants shall be at least \$4 million.
- (4) The issuer of the index warrants must have a minimum tangible net worth in excess of \$150 million.
- (5) The term of the index warrant shall be for a period from one to five years.

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(6) Limitations on Issuance — Where an issuer has a minimum tangible net worth in excess of \$150 million but less than \$250 million, the Exchange will not list stock index warrants of the issuer if the value of such warrants plus the aggregate value, based upon the original issuing price, of all outstanding stock index, currency index and currency warrants of the issuer and its affiliates combined that are listed for trading on the Exchange or another national securities exchange exceeds 25% of the issuer's net worth.

(7) A.M. Settlement — The terms of stock index warrants for which 25% or more of the value of the underlying index is represented by securities that are traded primarily in the United States must provide that the opening prices of the stocks comprising the index will be used to determine (i) the final settlement value (i.e., the settlement value for warrants that are exercised at expiration) and (ii) the settlement value for such warrants that are valued on either of the two business days preceding the day on which the final settlement value is to be determined.

(8) Automatic Exercise — All stock index warrants and any other cash-settled warrants must include in their terms provisions specifying (i) the time by which all exercise notices must be submitted and (ii) that all unexercised warrants that are in the money (or that are in the money by a stated amount) will be automatically exercised on their expiration date or on or promptly following the date on which such warrants are delisted by the Exchange (if such warrant issue has not been listed on another national securities exchange).

(9) Foreign Country Securities — In instances where the stock index underlying a warrant is comprised in whole or in part with securities traded outside the United States, the foreign country securities or American Depositary Receipts ("ADRs") thereon that (i) are not subject to a comprehensive surveillance agreement, and (ii) have less than 50% of their global trading volume in dollar value within the United States, shall not, in the aggregate represent more than 20% of the weight of the index, unless such index is otherwise approved for warrant or option trading.

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(10) Changes in Number of Warrants Outstanding — Issuers of stock index warrants either will make arrangements with warrant transfer agents to advise the Exchange immediately of any change in the number of warrants outstanding due to the early exercise of such warrants or will provide this information themselves. With respect to stock index warrants for which 25% or more of the value of the underlying index is represented by securities traded primarily in the United States, such notice shall be filed with the Exchange no later than 4:30 p.m. Eastern Time, on the date when the settlement value for such warrants is determined. Such notice shall be filed in such form and manner as may be prescribed by the Exchange from time to time.

(11) Only eligible broad-based indexes can underlie index warrants. For purposes of this subparagraph, eligible broad-based indexes shall include those indexes approved by the Commission to underlie index warrants or index options traded on the Exchange or another national securities exchange.

Any index warrant listed pursuant to this paragraph shall not be required to meet the requirements of Rule 4450. The Exchange may apply additional or more stringent criteria as necessary to protect investors and the public interest.

(e) Reserved

(f) Other Securities

(1) The Exchange will consider listing any security not otherwise covered by the listing criteria of the Rule 4000 or 5000 Series, provided the instrument is otherwise suited to trade through the facilities of the Exchange. Such securities will be evaluated for listing against the following criteria:

(A) The issuer shall have assets in excess of \$100 million and stockholders' equity of at least \$10 million. In the case of an issuer which is unable to satisfy the income criteria set forth in the Rule 4300 Series, the Exchange generally will require the issuer to have the following: (i) assets in excess of \$200 million and stockholders' equity of at least \$10 million; or (ii) assets in excess of \$100 million and stockholders' equity of at least \$20 million.

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(B) There must be a minimum of 400 holders of the security, provided, however, that if the instrument is traded in \$1,000 denominations, there must be a minimum of 100 holders.

(C) For equity securities listed pursuant to this paragraph, there must be a minimum public distribution of 1,000,000 trading units.

(D) The aggregate market value/principal amount of the security shall be at least \$4 million.

(2) Issuers of securities listed pursuant to this paragraph (f) must also be eligible for listing on the Nasdaq Global Market or the New York Stock Exchange (NYSE) or be an affiliate of a company that is also eligible for listing on the Nasdaq Global Market or the NYSE; provided, however, that the provisions of Rule 4450 will be applied to sovereign issuers of "other" securities on a case-by-case basis.

(3) Prior to the commencement of trading of securities listed pursuant to this paragraph, the Exchange will evaluate the nature and complexity of the issue and, if appropriate, distribute a circular to the membership providing guidance regarding member firm compliance responsibilities and requirements when handling transactions in such securities.

(g) The Exchange will consider listing Selected Equity-linked Debt Securities (SEEDS), pursuant to Rule 19b-4(e) under the Act, that generally meet the criteria of this paragraph (g). SEEDS are limited-term, non-convertible debt securities of an issuer where the value of the debt is based, at least in part, on the value of up to thirty (30) other issuers' common stock or non-convertible preferred stock (or sponsored American Depositary Receipts (ADRs) overlying such equity securities).

(1) Issuer Listing Standards

(A) The issuer of a SEEDS must be an entity that:

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(i) is eligible for listing on the Nasdaq Global Market or the New York Stock Exchange (NYSE) or is an affiliate of a company eligible for listing on the Nasdaq Global Market or the NYSE; provided, however, that the provisions of Rule 4450 will be applied to sovereign issuers of SEEDS on a case-by-case basis; and

(ii) has a minimum net worth of \$150 million.

(B) In addition, the market value of a SEEDS offering, when combined with the market value of all other SEEDS offerings previously completed by the issuer and traded on the Exchange or another national securities exchange, may not be greater than 25 percent of the issuer's net worth at the time of issuance.

(2) Equity-Linked Debt Security Listing Standards

The issue must have:

(A) a minimum public distribution of one million SEEDS;

(B) a minimum of 400 holders of the SEEDS, provided, however, that if the SEEDS is traded in \$1,000 denominations, there is no minimum number of holders;

(C) a minimum market value of \$4 million; and

(D) a minimum term of one year.

(3) Minimum Standards Applicable to the Linked Security

An equity security on which the value of the SEEDS is based must:

(A)

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(i) have a market value of listed securities of at least \$3 billion and a trading volume in the United States of at least 2.5 million shares in the one-year period preceding the listing of the SEEDS;

(ii) have a market value of listed securities of at least \$1.5 billion and a trading volume in the United States of at least 10 million shares in the one-year period preceding the listing of the SEEDS; or

(iii) have a market value of listed securities of at least \$500 million and a trading volume in the United States of at least 15 million shares in the one-year period preceding the listing of the SEEDS.

(B) be issued by a company that has a continuous reporting obligation under the Act, and the security must be listed on the Exchange or another national securities exchange and be subject to last sale reporting; and

(C) be issued by:

(i) a U.S. company; or

(ii) a non-U.S. company (including a company that is traded in the United States through sponsored ADRs) (for purposes of this paragraph (g), a non-U.S. company is any company formed or incorporated outside of the United States) if:

a. the Exchange or its subsidiaries has a comprehensive surveillance sharing agreement in place with the primary exchange in the country where the security is primarily traded (in the case of an ADR, the primary exchange on which the security underlying the ADR is traded);

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b. the combined trading volume of the non-U.S. security (a security issued by a non-U.S. company) and other related non-U.S. securities occurring in the U.S. market and in markets with which the Exchange or its subsidiaries has in place a comprehensive surveillance sharing agreement represents (on a share equivalent basis for any ADRs) at least 50% of the combined world-wide trading volume in the non-U.S. security, other related non-U.S. securities, and other classes of common stock related to the non-U.S. security over the six month period preceding the date of listing; or

c.

1. the combined trading volume of the non-U.S. security and other related non-U.S. securities occurring in the U.S. market represents (on a share equivalent basis) at least 20% of the combined world-wide trading volume in the non-U.S. security and in other related non-U.S. securities over the six-month period preceding the date of selection of the non-U.S. security for a SEEDS listing.

2. the average daily trading volume for the non-U.S. security in the U.S. markets over the six-month period preceding the date of selection of the non-U.S. security for a SEEDS listing is 100,000 or more shares; and

3. the trading volume for the non-U.S. security in the U.S. market is at least 60,000 shares per day for a majority of the trading days for the six-month period preceding the date of selection of the non-U.S. security for a SEEDS listing.

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

(4) Limits on the Number of SEEDS Linked to a Particular Security

(A) The issuance of SEEDS relating to any underlying U.S. security may not exceed five percent of the total outstanding shares of such underlying security. The issuance of SEEDS relating to any underlying non-U.S. security or sponsored ADR may not exceed: (i) two percent of the total shares outstanding worldwide if at least 30 percent of the worldwide trading volume in such security occurs in the U.S. market during the six-month period preceding the date of listing;¹ (ii) three percent of the total shares outstanding worldwide if at least 50 percent of the worldwide trading volume in such security occurs in the U.S. market during the six-month period preceding the date of listing; (iii) five percent of the total shares outstanding worldwide if at least 70 percent of the worldwide trading volume in such security occurs in the U.S. market during the six-month period preceding the date of listing.¹

(B) If an issuer proposes to issue SEEDS that relate to more than the allowable percentages of the underlying security specified above, then the Exchange, with the concurrence of the staff of the Division of Trading and Markets of the Commission, will evaluate the maximum percentage of SEEDS that may be issued on a case-by-case basis.

¹ The two percent limit, based on 20 percent of the worldwide trading volume in the non-U.S. security or sponsored ADR, applies only if there is a comprehensive surveillance sharing agreement in place with the primary exchange in the country where the security is primarily traded (in the case of an ADR, the primary exchange on which the security underlying the ADR is traded). If there is no such agreement, subparagraph (3) above requires that the combined trading volume of such security and other related securities occurring in the U.S. market represents (on a share equivalent basis for any ADRs) at least 50% of the combined world-wide trading volume in such security, other related securities, and other classes of common stock related to such security over the six month period preceding the date of listing

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(5) Prior to the commencement of trading of a particular SEEDS listed pursuant to this subsection, the Exchange or its subsidiaries will distribute a circular to the membership providing guidance regarding member firm compliance responsibilities (including suitability recommendations and account approval) when handling transactions in SEEDS.

(h) Reserved

(i) Portfolio Depository Receipts

(1) Definitions. The following terms shall, unless the context otherwise requires, have the meanings herein specified:

(A) Portfolio Depository Receipt. The term "Portfolio Depository Receipt" means a security:

(i) that is based on a unit investment trust ("Trust") which holds the securities which comprise an index or portfolio underlying a series of Portfolio Depository Receipts;

(ii) that is issued by the Trust in a specified aggregate minimum number in return for a "Portfolio Deposit" consisting of specified numbers of shares of stock and/or a cash amount, a specified portfolio of fixed income securities and/or a cash amount and/or a combination of the above;

(iii) that, when aggregated in the same specified minimum number, may be redeemed from the Trust which will pay to the redeeming holder the stock and/or cash, fixed income securities and/or cash and/or a combination thereof then comprising the "Portfolio Deposit"; and

(iv) that pays holders a periodic cash payment corresponding to the regular cash dividends or distributions declared with respect to the component securities of the securities index or portfolio of securities underlying the Portfolio Depository

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Receipts, less certain expenses and other charges as set forth in the Trust prospectus.

(B) Reporting Authority. The term "Reporting Authority" in respect to a particular series of Portfolio Depository Receipts means the Exchange, an affiliate of the Exchange, an institution (including the Trustee for a series of Portfolio Depository Receipts), or a reporting service designated by the Exchange or its affiliate as the official source for calculating and reporting information relating to such series, including, but not limited to, any current index or portfolio value; the current value of the portfolio of securities required to be deposited to the Trust in connection with issuance of Portfolio Depository Receipts; the amount of any dividend equivalent payment or cash distribution to holders of Portfolio Depository Receipts, net asset value, and other information relating to the creation, redemption or trading of Portfolio Depository Receipts.

Nothing in this paragraph shall imply that an institution or reporting service that is the source for calculating and reporting information relating to Portfolio Depository Receipts must be designated by the Exchange; the term "Reporting Authority" shall not refer to an institution or reporting service not so designated.

(C) US Component Stock. The term "US Component Stock" shall mean an equity security that is registered under Sections 12(b) or 12(g) of the Act, or an American Depository Receipt, the underlying equity security of which is registered under Sections 12(b) or 12(g) of the Act.

(D) Non-US Component Stock. The term "Non-US Component Stock" shall mean an equity security that (a) is not registered under Sections 12(b) or 12(g) of the Act, (b) is issued by an entity that is not organized, domiciled or incorporated in the United States, and (c) is issued by an entity that is an operating company (including Real Estate Investment Trusts (REITs) and income trusts, but excluding investment trusts, unit trusts, mutual funds, and derivatives).

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(2) The Exchange requires that members provide to all purchasers of a series of Portfolio Depository Receipts a written description of the terms and characteristics of such securities, not later than the time a confirmation of the first transaction in such series is delivered to such purchaser. In addition, members shall include such a written description with any sales material relating to a series of Portfolio Depository Receipts that is provided to customers or the public. Any other written materials provided by a member to customers or the public making specific reference to a series of Portfolio Depository Receipts as an investment vehicle must include a statement in substantially the following form: "A circular describing the terms and characteristics of [the series of Portfolio Depository Receipts] has been prepared by [Trust name] and is available from your broker or NASDAQ OMX BX. It is recommended that you obtain and review such circular before purchasing [the series of Portfolio Depository Receipts]. In addition, upon request you may obtain from your broker a prospectus for [the series of Portfolio Depository Receipts]."

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

Upon request of a customer, a member shall also provide a prospectus for the particular series of Portfolio Depository Receipts.

(3) Equity. The Exchange may approve a series of Portfolio Depository Receipts for listing and trading pursuant to Rule 19b-4(e) under the Act, provided each of the following criteria is satisfied:

(A) Eligibility Criteria for Index Components.

(i) US Index or Portfolio. Upon the initial listing of a series of Portfolio Depository Receipts pursuant to Rule 19b-4(e) under the Act, the component stocks of an index or portfolio of US

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Component Stocks underlying such series of Portfolio Depository Receipts shall meet the following criteria:

- a. Component stocks that in the aggregate account for at least 90% of the weight of the index or portfolio each shall have a minimum market value of at least \$75 million;
- b. Component stocks that in the aggregate account for at least 90% of the weight of the index or portfolio each shall have a minimum monthly trading volume during each of the last six months of at least 250,000 shares;
- c. The most heavily weighted component stock shall not exceed 30% of the weight of the index or portfolio, and the five most heavily weighted component stocks shall not exceed 65% of the weight of the index or portfolio;
- d. The index or portfolio shall include a minimum of 13 component stocks; and
- e. All securities in the index or portfolio shall be US Component Stocks listed on the Exchange or another national securities exchange and shall be NMS Stocks as defined in Rule 600 of Regulation NMS under the Act.

(ii) International or global index or portfolio. Upon the initial listing of a series of Portfolio Depository Receipts pursuant to Rule 19b-4(e) under the Act, the components of an index or portfolio underlying a series of Portfolio Depository Receipts that consist of either only Non-US Component Stocks or both US Component Stocks and Non-US Component Stocks shall meet the following criteria:

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- a. Component stocks that in the aggregate account for at least 90% of the weight of the index or portfolio each shall have a minimum market value of at least \$100 million;
- b. Component stocks that in the aggregate account for at least 90% of the weight of the index or portfolio each shall have a minimum worldwide monthly trading volume during each of the last six months of at least 250,000 shares;
- c. The most heavily weighted component stock shall not exceed 25% of the weight of the index or portfolio, and the five most heavily weighted component stocks shall not exceed 60% of the weight of the index or portfolio;
- d. The index or portfolio shall include a minimum of 20 component stocks; and
- e. Each US Component Stock shall be listed on a national securities exchange and shall be an NMS Stock as defined in Rule 600 of Regulation NMS under the Act, and each Non-US Component Stock shall be listed and traded on an exchange that has last-sale reporting.

(iii) Index or portfolio approved in connection with derivative securities. Upon the initial listing of a series of Portfolio Depository Receipts pursuant to Rule 19b-4(e) under the Act, the index or portfolio underlying a series of Portfolio Depository Receipts shall have been reviewed and approved for trading of options, Portfolio Depository Receipts, Index Fund Shares, index-linked exchangeable notes, or index-linked securities by the Commission under Section 19(b)(2) of the Act and rules thereunder, and the conditions set forth in the Commission's

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approval order, including comprehensive surveillance sharing agreements with respect to Non-US Component Stocks and the requirements regarding dissemination of information, continue to be satisfied. Each component stock of the index or portfolio shall be either

- a. a US Component Stock that is listed on a national securities exchange and is an NMS Stock as defined in Rule 600 of Regulation NMS under the Act, or
- b. a Non-US Component Stock that is listed and traded on an exchange that has last-sale reporting.

(B) Index Methodology and Calculation.

(i) If the index is maintained by a broker-dealer or fund advisor, the broker-dealer or fund advisor shall erect a "fire wall" around the personnel who have access to information concerning changes and adjustments to the index and the index shall be calculated by a third party who is not a broker-dealer or fund advisor;

(ii) The current index value for Portfolio Depository Receipts listed pursuant to:

- a. Rule 4420(i)(3)(A)(i) will be widely disseminated by one or more major market data vendors at least every 15 seconds during the Exchange's regular market session.
- b. Rule 4420(i)(3)(A)(ii) will be widely disseminated by one or more major market data vendors at least every 60 seconds during the Exchange's regular market session; or

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c. Rule 4420(i)(3)(A)(iii) will be widely disseminated by one or more major market data vendors at least every 15 seconds with respect to indexes containing only US Component Stocks and at least every 60 seconds with respect to indexes containing Non-US Component Stocks, during the Exchange's regular market session.

If the index value does not change during some or all of the period when trading is occurring on the Exchange (for example, for indexes of Non-US Component Stocks because of time zone differences or holidays in the countries where such indexes' component stocks trade), then the last official calculated index value must remain available throughout the Exchange's trading hours; and

(iii) Any advisory committee, supervisory board, or similar entity that advises a Reporting Authority or that makes decisions on the index or portfolio composition, methodology and related matters, must implement and maintain, or be subject to, procedures designed to prevent the use and dissemination of material non-public information regarding the applicable index.

(C) Disseminated Information. The Reporting Authority will disseminate for each series of Portfolio Depository Receipts an estimate, updated at least every 15 seconds, of the value of a share of each series (the "Intraday Indicative Value") during the Exchange's regular market session. The Intraday Indicative Value may be based, for example, upon current information regarding the required deposit of securities and cash amount to permit creation of new shares of the series or upon the index value. The Intraday Indicative Value will be updated at least every 15 seconds during the Exchange's regular market session; to reflect changes in the exchange rate between the US dollar and the currency in which any component stock is denominated. If the Intraday Indicative Value does not

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change during some or all of the period when trading is occurring on the Exchange, then the last official calculated Intraday Indicative Value must remain available throughout the Exchange's trading hours.

(D) Initial Shares Outstanding. A minimum of 100,000 shares of a series of Portfolio Depository Receipts is required to be outstanding at start-up of trading.

(E) Surveillance Procedures. FINRA will implement written surveillance procedures for Portfolio Depository Receipts.

(F) Creation and redemption. For Portfolio Depository Receipts listed pursuant to Rule 4420(i)(3)(A)(ii) or (iii) above, the statutory prospectus or the application for exemption from provisions of the Investment Company Act of 1940 for the series of Portfolio Depository Receipts must state that the Trust must comply with the federal securities laws in accepting securities for deposits and satisfying redemptions with redemption securities, including that the securities accepted for deposits and the securities used to satisfy redemption requests are sold in transactions that would be exempt from registration under the Securities Act of 1933.

(4) Fixed Income. Fixed Income Securities are debt securities that are notes, bonds, debentures or evidence of indebtedness that include, but are not limited to, U.S. Department of Treasury securities ("Treasury Securities"), government-sponsored entity securities ("GSE Securities"), municipal securities, trust preferred securities, supranational debt and debt of a foreign country or subdivision thereof. The Exchange may approve a series of Portfolio Depository Receipts based on Fixed Income Securities for listing and trading pursuant to Rule 19b-4(e) under the Securities Exchange Act of 1934 provided such portfolio or index: (i) has been reviewed and approved for the trading of options, Portfolio Depository Receipts, Index Fund Shares, Index-Linked Exchangeable Notes or Index-Linked Securities by the Commission under Section 19(b)(2) of the Securities Exchange Act of 1934 and the rules thereunder and the conditions set

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forth in the Commission's approval order continue to be satisfied; or (ii) the following criteria are satisfied:

(A) Eligibility Criteria for Index Components. Upon the initial listing of a series of Portfolio Depositary Receipts pursuant to Rule 19b-4(e) under the Securities Exchange Act of 1934, each component of an index or portfolio that underlies a series of Portfolio Depositary Receipts shall meet the following criteria:

(i) The index or portfolio must consist of Fixed Income Securities;

(ii) Components that in aggregate account for at least 75% of the weight of the index or portfolio must have a minimum original principal amount outstanding of \$100 million or more;

(iii) A component may be a convertible security, however, once the convertible security component converts to an underlying equity security, the component is removed from the index or portfolio;

(iv) No component fixed-income security (excluding Treasury Securities) will represent more than 30% of the weight of the index or portfolio, and the five highest weighted component fixed-income securities do not in the aggregate account for more than 65% of the weight of the index or portfolio;

(v) An underlying index or portfolio (excluding exempted securities) must include securities from a minimum of 13 non-affiliated issuers; and

(vi) Component securities that in aggregate account for at least 90% of the weight of the index or portfolio must be either: (a) from issuers that are required to file reports pursuant to Sections 13 and 15(d) of the Exchange Act; (b) from issuers that have a

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worldwide market value of its outstanding common equity held by non-affiliates of \$700 million or more; (c) from issuers that have outstanding securities that are notes, bonds, debentures, or evidence of indebtedness having a total remaining principal amount of at least \$1 billion; (d) exempted securities as defined in section 3(a)(12) of the Securities Exchange Act of 1934; or (e) from issuers that are a government of a foreign country or a political subdivision of a foreign country.

(B) Index Methodology and Calculation.

(i) If the index is maintained by a broker-dealer or fund advisor, the broker-dealer or fund advisor shall erect a "fire wall" around the personnel who have access to information concerning changes and adjustments to the index;

(ii) The current index value will be widely disseminated by one or more major market data vendors at least once per day; and

(iii) Any advisory committee, supervisory board, or similar entity that advises a Reporting Authority or that makes decisions on the index composition, methodology and related matters, must implement and maintain, or be subject to, procedures designed to prevent the use and dissemination of material non-public information regarding the applicable index.

(5) The Exchange may approve a series of Portfolio Depositary Receipts based on a combination of indexes or an index or portfolio of component securities representing the U.S. equity market, the international equity market, and the fixed income market for listing and trading pursuant to Rule 19b-4(e) under the Securities Exchange Act of 1934 provided: (i) each index has been reviewed and approved for the trading of options, Portfolio Depositary Receipts, Index Fund Shares, Index-Linked Exchangeable Notes or Index-Linked Securities by the Commission under Section 19(b)(2) of the Securities Exchange Act of 1934 and rules thereunder and the conditions set forth in the Commission's approval

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order continue to be satisfied; or (ii) each index or portfolio of equity and fixed income component securities separately meets either the criteria set forth in Rule 4420(i)(3) or (4) above.

(A) Index Methodology and Calculation.

(i) If an index is maintained by a broker-dealer or fund advisor, the broker-dealer or fund advisor shall erect a "fire wall" around the personnel who have access to information concerning changes and adjustments to the index;

(ii) The current composite index value will be widely disseminated by one or more major market data vendors at least once every 15 seconds during the regular market session, provided however, that (a) with respect to the Non-US Component Stocks of the combination index, the impact on the index is only required to be updated at least every 60 seconds during the regular market session, and (b) with respect to the fixed income components of the combination index the impact on the index is only required to be updated at least once each day; and

(iii) Any advisory committee, supervisory board, or similar entity that advises a Reporting Authority or that makes decisions on index composition, methodology and related matters, must implement and maintain, or be subject to, procedures designed to prevent the use and dissemination of material non-public information regarding the applicable index.

(6) The following provisions shall apply to all series of Portfolio Depositary Receipts listed pursuant Rules 4420(i)(4) and (5) above:

(A) Disseminated Information. The Reporting Authority will disseminate for each series of Portfolio Depositary Receipts an estimate, updated at least every 15 seconds, of the value of a share of each series (the "Intraday Indicative Value"). The Intraday Indicative Value may be

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based, for example, upon current information regarding the required deposit of securities and cash amount to permit creation of new shares of the series or upon the index value. The Intraday Indicative Value may be calculated by the Exchange or by an independent third party throughout the day using prices obtained from independent market data providers or other independent pricing sources such as a broker-dealer or price evaluation services.

(B) Initial Shares Outstanding. A minimum of 100,000 shares of a series of Portfolio Depository Receipts is required to be outstanding at start-up of trading.

(C) Surveillance Procedures. FINRA will implement written surveillance procedures for Portfolio Depository Receipts.

(7) Regular market session trading will occur between 9:30 a.m. and either 4:00 p.m. or 4:15 p.m. for each series of Portfolio Depository Receipts, as specified by the Exchange. In addition, the Exchange may designate each series of Portfolio Depository Receipts for trading during a pre-market session beginning at 7:00 a.m. and/or a post-market session ending at 7:00 p.m.

(8) The Exchange may list and trade Portfolio Depository Receipts based on one or more indexes or portfolios. The Portfolio Depository Receipts based on each particular index or portfolio, or combination thereof, shall be designated as a separate series and shall be identified by a unique symbol. The components of an index or portfolio on which Portfolio Depository Receipts are based shall be selected by the Exchange or its agent, an affiliate of the Exchange, or by such other person as shall have a proprietary interest in and authorized use of such index or portfolio, and may be revised from time to time as may be deemed necessary or appropriate to maintain the quality and character of the index or portfolio.

(9) A Trust upon which a series of Portfolio Depository Receipts is based will be listed and traded on the Exchange subject to application of the following criteria:

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(A) Initial Listing —

(i) for each Trust, the Exchange will establish a minimum number of Portfolio Depository Receipts required to be outstanding at the time of commencement of trading on the Exchange.

(ii) the Exchange will obtain a representation from the issuer of each series of Portfolio Depository Receipts that the net asset value per share for the series will be calculated daily and will be made available to all market participants at the same time.

(B) Continued Listing —

(i) The Exchange will consider the suspension of trading in or removal from listing of a Trust upon which a series of Portfolio Depository Receipts is based under any of the following circumstances:

a. if, following the initial twelve month period after the formation of a Trust and commencement of trading on the Exchange, the Trust has more than 60 days remaining until termination and there are fewer than 50 record and/or beneficial holders of Portfolio Depository Receipts for 30 or more consecutive trading days;

b. if the value of the index or portfolio of securities on which the Trust is based is no longer calculated or available or the index or portfolio on which the Trust is based is replaced with a new index or portfolio, unless the new index or portfolio meets the requirements of this Rule 4420(i) for listing either pursuant to Rule 19b-4(e) under the Securities Exchange Act of 1934 (including the filing of a Form 19b-4(e) with the Commission) or by Commission approval of a filing

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pursuant to Section 19(b)(2) of the Securities Exchange Act of 1934; or

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

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

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

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

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

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error, omission or delay in the reports of transactions in one or more underlying securities.

(j) Index Fund Shares

(1) Definitions. The following terms shall, unless the context otherwise requires, have the meanings herein specified:

(A) Index Fund Share. The term "Index Fund Share" means a security:

(i) that is issued by an open-end management investment company based on a portfolio of stocks or fixed income securities or a combination thereof, that seeks to provide investment results that correspond generally to the price and yield performance or total return performance of a specified foreign or domestic stock index, fixed income securities index or combination thereof;

(ii) that is issued by such an open-end management investment company in a specified aggregate minimum number in return for a deposit of specified numbers of shares of stock and/or a cash amount, a specified portfolio of fixed income securities and/or a cash amount and/or a combination of the above, with a value equal to the next determined net asset value; and

(iii) that, when aggregated in the same specified minimum number, may be redeemed at a holder's request by such open-end investment company which will pay to the redeeming holder the stock and/or cash, fixed income securities and/or cash and/or a combination thereof, with a value equal to the next determined net asset value.

(B)

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(i) The term "Index Fund Share" includes a security issued by an open-end management investment company that seeks to provide investment results that either exceed the performance of a specified domestic equity, international or global equity, or fixed income index or a combination thereof by a specified multiple or that correspond to the inverse (opposite) of the performance of a specified domestic equity, international or global equity, or fixed income index or a combination thereof by a specified multiple. Such a security is issued in a specified aggregate number in return for a deposit of a specified number of shares of stock, a specified portfolio of fixed income securities or a combination of the above and/or cash with a value equal to the next determined net asset value. When aggregated in the same specified minimum number, Index Fund Shares may be redeemed at a holder's request by such open-end investment company which will pay to the redeeming holder the stock, fixed income securities or a combination thereof and/or cash with a value equal to the next determined net asset value.

(ii) In order to achieve the investment result that it seeks to provide, such an investment company may hold a combination of financial instruments, including, but not limited to, stock index futures contracts; options on futures contracts; options on securities and indices; equity caps, collars and floors; swap agreements; forward contracts; repurchase agreements and reverse repurchase agreements (the "Financial Instruments"), but only to the extent and in the amounts or percentages as set forth in the registration statement for such Index Fund Shares.

(iii) Any open-end management investment company which issues Index Fund Shares referenced in this subparagraph (1)(B) that seeks to provide investment results, before fees and expenses, in an amount that exceeds -200% of the percentage performance on a given day of a particular domestic equity,

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international or global equity or fixed income securities index or a combination thereof shall not be approved by the Exchange for listing and trading pursuant to Rule 19b-4(e) under the Securities Exchange Act of 1934.

(iv) For the initial and continued listing of a series of Index Fund Shares referenced in the provisions of this subparagraph (1)(B), the following requirements must be adhered to:

Daily public website disclosure of portfolio holdings that will form the basis for the calculation of the net asset value by the issuer of such series, including, as applicable, the following instruments:

- a. The identity and number of shares held of each specific equity security;
- b. The identity and amount held for each specific fixed income security;
- c. The specific types of Financial Instruments and characteristics of such Financial Instruments; and
- d. Cash equivalents and the amount of cash held in the portfolio.

If the Exchange becomes aware that the net asset value related to Index Fund Shares included in the provisions of this subparagraph (1)(B) is not being disseminated to all market participants at the same time or the daily public website disclosure of portfolio holdings does not occur, the Exchange shall halt trading in such series of Index Fund Share, as appropriate. The Exchange may resume trading in such Index Fund Shares only when the net asset value is disseminated to all market participants at the same time or the daily public website disclosure of portfolio holdings occurs, as appropriate.

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(C) Reporting Authority. The term "Reporting Authority" in respect of a particular series of Index Fund Shares means the Exchange, an affiliate of the Exchange, or an institution or reporting service designated by the Exchange or its affiliate as the official source for calculating and reporting information relating to such series, including, but not limited to, any current index or portfolio value; the current value of the portfolio of any securities required to be deposited in connection with issuance of Index Fund Shares; the amount of any dividend equivalent payment or cash distribution to holders of Index Fund Shares, net asset value, and other information relating to the issuance, redemption or trading of Index Fund Shares.

Nothing in this paragraph shall imply that an institution or reporting service that is the source for calculating and reporting information relating to Index Fund Shares must be designated by the Exchange; the term "Reporting Authority" shall not refer to an institution or reporting service not so designated.

(D) US Component Stock. The term "US Component Stock" shall mean an equity security that is registered under Sections 12(b) or 12(g) of the Act, or an American Depository Receipt, the underlying equity security of which is registered under Sections 12(b) or 12(g) of the Act.

(E) Non-US Component Stock. The term "Non-US Component Stock" shall mean an equity security that (a) is not registered under Sections 12(b) or 12(g) of the Act, (b) is issued by an entity that is not organized, domiciled or incorporated in the United States, and (c) is issued by an entity that is an operating company (including Real Estate Investment Trusts (REITs) and income trusts, but excluding investment trusts, unit trusts, mutual funds, and derivatives).

(2) The Exchange requires that members provide to all purchasers of a series of Index Fund Shares a written description of the terms and characteristics of such securities, in a form prepared by the open-end management investment

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company issuing such securities, not later than the time a confirmation of the first transaction in such series is delivered to such purchaser. In addition, members shall include such a written description with any sales material relating to a series of Index Fund Shares that is provided to customers or the public. Any other written materials provided by a member to customers or the public making specific reference to a series of Index Fund Shares as an investment vehicle must include a statement in substantially the following form: "A circular describing the terms and characteristics of [the series of Index Fund Shares] has been prepared by the [open-end management investment company name] and is available from your broker or NASDAQ OMX BX. It is recommended that you obtain and review such circular before purchasing [the series of Index Fund Shares]. In addition, upon request you may obtain from your broker a prospectus for [the series of Index Fund Shares]."

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

Upon request of a customer, a member shall also provide a prospectus for the particular series of Index Fund Shares.

(3) Equity. The Exchange may approve a series of Index Fund Shares for listing and trading pursuant to Rule 19b-4(e) under the Act provided each of the following criteria is satisfied:

(A) Eligibility Criteria for Index Components.

(i) US Index or Portfolio. Upon the initial listing of a series of Index Fund Shares pursuant to 19b-4(e) under the Act, the component stocks of an index or portfolio of US Component Stocks underlying a series of Index Fund Shares shall meet the following criteria:

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- a. Component stocks that in the aggregate account for at least 90% of the weight of the index or portfolio each shall have a minimum market value of at least \$75 million;
- b. Component stocks that in the aggregate account for at least 90% of the weight of the index or portfolio each shall have a minimum monthly trading volume during each of the last six months of at least 250,000 shares;
- c. The most heavily weighted component stock shall not exceed 30% of the weight of the index or portfolio, and the five most heavily weighted component stocks shall not exceed 65% of the weight of the index or portfolio;
- d. The index or portfolio shall include a minimum of 13 component stocks; and
- e. All securities in the index or portfolio shall be US Component Stocks listed on the Exchange or another national securities exchange and shall be NMS Stocks as defined in Rule 600 of Regulation NMS under the Act.

(ii) International or global index or portfolio. Upon the initial listing of a series of Index Fund Shares pursuant to Rule 19b-4(e) under the Act, the components of an index or portfolio underlying a series of Index Fund Shares that consist of either only Non-US Component Stocks or both US Component Stocks and Non-US Component Stocks shall meet the following criteria:

- a. Component stocks that in the aggregate account for at least 90% of the weight of the index or portfolio each

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shall have a minimum market value of at least \$100 million;

b. Component stocks that in the aggregate account for at least 90% of the weight of the index or portfolio each shall have a minimum worldwide monthly trading volume during each of the last six months of at least 250,000 shares;

c. The most heavily weighted component stock shall not exceed 25% of the weight of the index or portfolio, and the five most heavily weighted component stocks shall not exceed 60% of the weight of the index or portfolio;

d. The index or portfolio shall include a minimum of 20 component stocks; and

e. Each US Component Stock shall be listed on a national securities exchange and shall be an NMS Stock as defined in Rule 600 of Regulation NMS under the Act, and each Non-US Component Stock shall be listed and traded on an exchange that has last-sale reporting.

(iii) Index or portfolio approved in connection with derivative securities. Upon the initial listing of a series of Index Fund Shares pursuant to Rule 19b-4(e) under the Act, the index or portfolio underlying a series of Index Fund Shares shall have been reviewed and approved for trading of options, Portfolio Depository Receipts, Index Fund Shares, index-linked exchangeable notes, or index-linked securities by the Commission under Section 19(b)(2) of the Act and rules thereunder, and the conditions set forth in the Commission's approval order, including comprehensive surveillance sharing agreements with respect to Non-US Component Stocks and the requirements regarding dissemination

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of information, continue to be satisfied. Each component stock of the index or portfolio shall be either

- a. a US Component Stock that is listed on a national securities exchange and is an NMS Stock as defined in Rule 600 of Regulation NMS under the Act, or
- b. a Non-US Component Stock that is listed and traded on an exchange that has last-sale reporting.

(B) Index Methodology and Calculation

(i) If the index is maintained by a broker-dealer or fund advisor, the broker-dealer or fund advisor shall erect a "fire wall" around the personnel who have access to information concerning changes and adjustments to the index and the index shall be calculated by a third party who is not a broker-dealer or fund advisor;

(ii) The current index value for Index Fund Shares listed pursuant to:

- a. Rule 4420(j)(3)(A)(i) will be widely disseminated by one or more major market data vendors at least every 15 seconds during the Exchange's regular market session;
- b. Rule 4420(j)(3)(A)(ii) will be widely disseminated by one or more major market data vendors at least every 60 seconds during the Exchange's regular market session; or
- c. Rule 4420(j)(3)(A)(iii) will be widely disseminated by one or more major market data vendors at least every 15 seconds with respect to indexes containing

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only US Component Stocks and at least every 60 seconds with respect to indexes containing Non-US Component Stocks, during the Exchange's regular market session

If the index value does not change during some or all of the period when trading is occurring on the Exchange (for example, for indexes of Non-US Component Stocks because of time zone differences or holidays in the countries where such indexes' component stocks trade), then the last official calculated index value must remain available throughout the Exchange's trading hours; and

(iii) Any advisory committee, supervisory board, or similar entity that advises a Reporting Authority or that makes decisions on the index or portfolio composition, methodology and related matters, must implement and maintain, or be subject to, procedures designed to prevent the use and dissemination of material non-public information regarding the applicable index.

(C) Disseminated Information. The Reporting Authority will disseminate for each series of Index Fund Shares an estimate, updated at least every 15 seconds, of the value of a share of each series (the "Intraday Indicative Value") during the Exchange's regular market session. The Intraday Indicative Value may be based, for example, upon current information regarding the required deposit of securities and cash amount to permit creation of new shares of the series or upon the index value. The Intraday Indicative Value will be updated at least every 15 seconds during the Exchange's regular market session; to reflect changes in the exchange rate between the US dollar and the currency in which any component stock is denominated. If the Intraday Indicative Value does not change during some or all of the period when trading is occurring on the Exchange, then the last official calculated Intraday Indicative Value must remain available throughout the Exchange's trading hours.

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(D) Initial Shares Outstanding. A minimum of 100,000 shares of a series of Index Fund Shares is required to be outstanding at start-up of trading.

(E) Surveillance Procedures. FINRA will implement written surveillance procedures for Index Fund Shares.

(F) Creation and redemption. For Index Fund Shares listed pursuant to Rule 4420(j)(3)(A)(ii) or (iii) above, the statutory prospectus or the application for exemption from provisions of the Investment Company Act of 1940 for the series of Index Fund Shares must state that the series of Index Fund Shares must comply with the federal securities laws in accepting securities for deposits and satisfying redemptions with redemption securities, including that the securities accepted for deposits and the securities used to satisfy redemption requests are sold in transactions that would be exempt from registration under the Securities Act of 1933.

(4) Fixed Income. Fixed Income Securities are debt securities that are notes, bonds, debentures or evidence of indebtedness that include, but are not limited to, U.S. Department of Treasury securities ("Treasury Securities"), government-sponsored entity securities ("GSE Securities"), municipal securities, trust preferred securities, supranational debt and debt of a foreign country or subdivision thereof. The Exchange may approve a series of Index Fund Shares based on Fixed Income Securities for listing and trading pursuant to Rule 19b-4(e) under the Securities Exchange Act of 1934 provided such portfolio or index: (i) has been reviewed and approved for the trading of options, Portfolio Depository Receipts, Index Fund Shares, Index-Linked Exchangeable Notes or Index-Linked Securities by the Commission under Section 19(b)(2) of the Securities Exchange Act of 1934 and the rules thereunder and the conditions set forth in the Commission's approval order continue to be satisfied; or (ii) the following criteria are satisfied:

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(A) Eligibility Criteria for Index Components. Upon the initial listing of Index Fund Shares pursuant to Rule 19b-4(e) under the Securities Exchange Act of 1934, each component of an index or portfolio that underlies a series of Index Fund Shares shall meet the following criteria:

(i) The index or portfolio must consist of Fixed Income Securities;

(ii) Components that in aggregate account for at least 75% of the weight of the index or portfolio must have a minimum original principal amount outstanding of \$100 million or more;

(iii) A component may be a convertible security, however, once the convertible security component converts to an underlying equity security, the component is removed from the index or portfolio;

(iv) No component fixed-income security (excluding Treasury Securities) will represent more than 30% of the weight of the index or portfolio, and the five highest weighted component fixed-income securities do not in the aggregate account for more than 65% of the weight of the index or portfolio;

(v) An underlying index or portfolio (excluding exempted securities) must include securities from a minimum of 13 non-affiliated issuers; and

(vi) Component securities that in aggregate account for at least 90% of the weight of the index or portfolio must be either: (a) from issuers that are required to file reports pursuant to Sections 13 and 15(d) of the Exchange Act; (b) from issuers that have a worldwide market value of its outstanding common equity held by non-affiliates of \$700 million or more; (c) from issuers that have outstanding securities that are notes, bonds, debentures, or

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evidence of indebtedness having a total remaining principal amount of at least \$1 billion; (d) exempted securities as defined in section 3(a)(12) of the Securities Exchange Act of 1934; or (e) from issuers that are a government of a foreign country or a political subdivision of a foreign country.

(B) Index Methodology and Calculation.

(i) If the index is maintained by a broker-dealer or fund advisor, the broker-dealer or fund advisor shall erect a "fire wall" around the personnel who have access to information concerning changes and adjustments to the index;

(ii) The current index value will be widely disseminated by one or more major market data vendors at least once per day; and

(iii) Any advisory committee, supervisory board, or similar entity that advises a Reporting Authority or that makes decisions on the index composition, methodology and related matters, must implement and maintain, or be subject to, procedures designed to prevent the use and dissemination of material non-public information regarding the applicable index.

(5) The Exchange may approve a series of Index Fund Shares based on a combination of indexes or an index or portfolio of component securities representing the U.S. equity market, the international equity market, and the fixed income market for listing and trading pursuant to Rule 19b-4(e) under the Securities Exchange Act of 1934 provided: (i) such portfolio or combination of indexes has been reviewed and approved for the trading of options, Portfolio Depository Receipts, Index Fund Shares, Index-Linked Exchangeable Notes or Index-Linked Securities by the Commission under Section 19(b)(2) of the Securities Exchange Act of 1934 and rules thereunder and the conditions set forth in the Commission's approval order continue to be satisfied; or (ii) each index or portfolio of equity and fixed income component securities separately meets either the criteria set forth in Rule 4420(j)(3) or (4) above.

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(A) Index Methodology and Calculation.

(i) If an index is maintained by a broker-dealer or fund advisor, the broker-dealer or fund advisor shall erect a "fire wall" around the personnel who have access to information concerning changes and adjustments to the index;

(ii) The current composite index value will be widely disseminated by one or more major market data vendors at least once every 15 seconds during regular market session, provided however, that (a) with respect to the Non-US Component Stocks of the combination index, the impact on the index is only required to be updated at least every 60 seconds during the regular market session, and (b) with respect to the fixed income components of the combination index the impact on the index is only required to be updated at least once each day; and

(iii) Any advisory committee, supervisory board, or similar entity that advises a Reporting Authority or that makes decisions on index composition, methodology and related matters, must implement and maintain, or be subject to, procedures designed to prevent the use and dissemination of material non-public information regarding the applicable index.

(6) The following provisions shall apply to all series of Index Fund Shares listed pursuant Rules 4420(j)(4) and (5) above:

(A) Disseminated Information. The Reporting Authority will disseminate for each series of Index Fund Shares an estimate, updated at least every 15 seconds, of the value of a share of each series (the "Intraday Indicative Value"). The Intraday Indicative Value may be based, for example, upon current information regarding the required deposit of securities and cash amount to permit creation of new shares of the series or upon the index value. The Intraday Indicative Value may be calculated by the Exchange or by an independent third party throughout the day using

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prices obtained from independent market data providers or other independent pricing sources such as a broker-dealer or price evaluation services.

(B) Initial Shares Outstanding. A minimum of 100,000 shares of a series of Index Fund Shares is required to be outstanding at start-up of trading.

(C) Surveillance Procedures. FINRA will implement written surveillance procedures for Index Fund Shares.

(7) Regular market session trading will occur between 9:30 a.m. and either 4:00 p.m. or 4:15 p.m. for each series of Index Fund Shares, as specified by the Exchange. In addition, the Exchange may designate each series of Index Fund Shares for trading during a pre-market session beginning at 7:00 a.m. and/or a post-market session ending at 7:00 p.m.

(8) The Exchange may list and trade Index Fund Shares based on one or more foreign or domestic indexes or portfolios. Each issue of Index Fund Shares based on each particular index or portfolio, or combination thereof, shall be designated as a separate series and shall be identified by a unique symbol. The components that are included in an index or portfolio on which a series of Index Fund Shares are based shall be selected by such person, which may be the Exchange or an agent or wholly-owned subsidiary thereof, as shall have authorized use of such index or portfolio. Such index or portfolio may be revised from time to time as may be deemed necessary or appropriate to maintain the quality and character of the index or portfolio.

(9) Each series of Index Fund Shares will be listed and traded on the Exchange subject to application of the following criteria:

(A) Initial Listing —

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(i) for each series, the Exchange will establish a minimum number of Index Fund Shares required to be outstanding at the time of commencement of trading on the Exchange.

(ii) The Exchange will obtain a representation from the issuer of each series of Index Fund Shares that the net asset value per share for the series will be calculated daily and will be made available to all market participants at the same time.

(B) Continued Listing —

(i) The Exchange will consider the suspension of trading in or removal from listing of a series of Index Fund Shares under any of the following circumstances:

a. if, following the initial twelve month period after commencement of trading on the Exchange of a series of Index Fund Shares, there are fewer than 50 beneficial holders of the series of Index Fund Shares for 30 or more consecutive trading days;

b. if the value of the index or portfolio of securities on which the series of Index Fund Shares is based is no longer calculated or available or the index or portfolio on which the series of Index Fund Shares is based is replaced with a new index or portfolio, unless the new index or portfolio meets the requirements of this Rule 4420(j) for listing either pursuant to Rule 19b-4(e) under the Securities Exchange Act of 1934 (including the filing of a Form 19b-4(e) with the Commission) or by Commission approval of a filing pursuant to Section 19(b)(2) of the Securities Exchange Act of 1934; or

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

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

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

(10) Neither the Exchange, the Reporting Authority, nor any agent of the Exchange shall have any liability for damages, claims, losses or expenses caused by any errors, omissions, or delays in calculating or disseminating any current index or portfolio value, the current value of the portfolio of securities required to be deposited to the open-end management investment company in connection with issuance of Index Fund Shares; the amount of any dividend equivalent payment or cash distribution to holders of Index Fund Shares; net asset value; or other information relating to the purchase, redemption or trading of Index Fund Shares, resulting from any negligent act or omission by the Exchange, the Reporting Authority or any agent of the Exchange, or any act, condition or cause beyond the reasonable control of the Exchange, its agent, or the Reporting Authority, including, but not limited to, an act of God; fire; flood; extraordinary weather conditions; war; insurrection; riot; strike; accident; action of government; communications or power failure; equipment or software malfunction; or any error, omission or delay in the reports of transactions in one or more underlying securities.

(k) Reserved

(l) Trust Issued Receipts

(1) Definition. The term "Trust Issued Receipt" means a security (a) that is issued by a trust ("Trust") which holds specified securities deposited with the Trust; (b) that, when aggregated in some specified minimum number, may be

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surrendered to the trust by the beneficial owner to receive the securities; and (c) that pays beneficial owners dividends and other distributions on the deposited securities, if any are declared and paid to the trustee by an issuer of the deposited securities.

(2) The Exchange requires that members provide to all purchasers of newly issued Trust Issued Receipts a prospectus for the series of Trust Issued Receipts.

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

(A) the component security must be listed on the Exchange or another national securities exchange;

(B) the component security must be registered under Section 12 of the Act; and

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

(4) Transactions in Trust Issued Receipts may be effected until 4:00 p.m. each business day.

(5) The Exchange may list and trade Trust Issued Receipts based on one or more securities. The Trust Issued Receipts based on particular securities shall be designated as a separate series and shall be identified by a unique symbol. The securities that are included in a series of Trust Issued Receipts shall be selected by

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the Exchange or its agent, an affiliate of the Exchange, or by such other person as shall have a proprietary interest in such Trust Issued Receipts.

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

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

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

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

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

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

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

Upon termination of a Trust, the Exchange requires that Trust Issued Receipts issued in connection with such Trust be removed from listing. A Trust may terminate in accordance with the provisions of the Trust

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prospectus, which may provide for termination if the value of securities in the Trust falls below a specified amount.

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

(D) Trustee — the following requirements apply:

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

(ii) no change is to be made in the trustee of a listed issue without prior notice to and approval of the Exchange.

(E) Voting — voting rights shall be as set forth in the Trust prospectus.

(7) Unit of Trading — transactions in Trust Issued Receipts may only be made in round lots of 100 receipts or round lot multiples.

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

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

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

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(C) each component security must be listed on the Exchange or another national securities exchange;

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

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

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

**(m) Securities Linked to the Performance of Indexes and Commodities
(Including Currencies)**

The Exchange will consider for listing and trading equity index-linked securities ("Equity Index-Linked Securities) and commodity-linked securities ("Commodity-Linked Securities" and, together with Equity Index-Linked Securities, "Linked Securities") that in each case meet the applicable criteria of this Rule. Equity Index-Linked Securities are securities that provide for the payment at maturity of a cash amount based on the performance of an underlying equity index or indexes. The payment at maturity with respect to Commodity-Linked Securities is based on one or more physical Commodities or Commodity futures, options or other Commodity derivatives, Commodity-Related Securities, or a basket or index of any of the foregoing (any such basis for payment is referred to below as the "Reference Asset"). The terms "Commodity" and "Commodity-Related Security" are defined in Rule 4630.

Linked Securities may or may not provide for the repayment of the original principal investment amount. The Exchange may submit a rule filing pursuant to Section 19(b)(2) of the Securities Exchange Act of 1934 to permit the listing and trading of Linked Securities that do not otherwise meet the standards set forth below in paragraphs (1) through (12). The Exchange will consider Linked Securities for listing and trading pursuant to Rule 19b-4(e) under the Securities Exchange Act of 1934, provided:

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(1) Both the issue and the issuer of such security meet the criteria for other securities set forth in paragraph (f) of this rule, except that if the security is traded in \$1,000 denominations or is redeemable at the option of holders thereof on at least a weekly basis, then no minimum number of holders and no minimum public distribution of trading units shall be required.

(2) The issue has a term of not less than one (1) year and not greater than thirty (30) years.

(3) The issue must be the non-convertible debt of the issuer.

(4) The payment at maturity may or may not provide for a multiple of the direct or inverse performance of an underlying index, indexes or Reference Asset; however, in no event will a loss (negative payment) at maturity be accelerated by a multiple that exceeds twice the performance of an underlying index, indexes or Reference Asset.

(5) The issuer will be expected to have a minimum tangible net worth in excess of \$250,000,000 and to exceed by at least 20% the earnings requirements set forth in paragraph (a)(1) of this Rule. In the alternative, the issuer will be expected: (i) to have a minimum tangible net worth of \$150,000,000 and to exceed by at least 20% the earnings requirement set forth in paragraph (a)(1) of this Rule, and (ii) not to have issued securities where the original issue price of all the issuer's other index-linked note offerings (combined with index-linked note offerings of the issuer's affiliates) listed on a national securities exchange exceeds 25% of the issuer's net worth.

(6) The issuer is in compliance with Rule 10A-3 under the Securities Exchange Act of 1934.

(7) Equity Index Criteria—In the case of an Equity Index-Linked Security, each underlying index is required to have at least ten (10) component securities. In addition, the index or indexes to which the security is linked shall either

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(A) have been reviewed and approved for the trading of options or other derivatives by the Commission under Section 19(b)(2) of the 1934 Act and rules thereunder and the conditions set forth in the Commission's approval order, including comprehensive surveillance sharing agreements for non-U.S. stocks, continue to be satisfied, or

(B) the index or indexes meet the following criteria:

(i) Each component security has a minimum market value of at least \$75 million, except that for each of the lowest weighted component securities in the index that in the aggregate account for no more than 10% of the weight of the index, the market value can be at least \$50 million;

(ii) Each component security shall have trading volume in each of the last six months of not less than 1,000,000 shares, except that for each of the lowest weighted component securities in the index that in the aggregate account for no more than 10% of the weight of the index, the trading volume shall be at least 500,000 shares in each of the last six months;

(iii) Indexes based upon the equal-dollar or modified equal-dollar weighting method will be rebalanced at least semiannually;

(iv) In the case of a capitalization-weighted or modified capitalization-weighted index, the lesser of the five highest weighted component securities in the index or the highest weighted component securities in the index that in the aggregate represent at least 30% of the total number of component securities in the index, each have an average monthly trading volume of at least 2,000,000 shares over the previous six months;

(v) No underlying component security will represent more than 25% of the weight of the index, and the five highest weighted component securities in the index do not in the aggregate account

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for more than 50% of the weight of the index (60% for an index consisting of fewer than 25 component securities);

(vi) 90% of the index's numerical value and at least 80% of the total number of component securities will meet the then current criteria for standardized option trading on a national securities exchange or a national securities association, provided, however, that an index will not be subject to this requirement if (a) no underlying component security represents more than 10% of the dollar weight of the index and (b) the index has a minimum of 20 components;

(vii) All component securities shall be either (A) securities (other than securities of a foreign issuer and American Depositary Receipts ("ADRs")) that are (i) issued by a 1934 Act reporting company or by an investment company registered under the Investment Company Act of 1940 that, in each case, has securities listed on a national securities exchange and (ii) an "NMS stock" (as defined in Rule 600 of SEC Regulation NMS) or (B) securities of a foreign issuer or ADRs, provided that securities of a foreign issuer (including when they underlie ADRs) whose primary trading market outside the United States is not a member of the Intermarket Surveillance Group ("ISG") or a party to a comprehensive surveillance sharing agreement with the Exchange will not in the aggregate represent more than 20% of the dollar weight of the index.

(8) Reference Asset Criteria—In the case of a Commodity-Linked Security, the Reference Asset shall meet the criteria in either subparagraph (A) or subparagraph (B) below:

(A) The Reference Asset to which the security is linked shall have been reviewed and approved for the trading of Commodity-Related Securities or options or other derivatives by the Commission under

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Section 19(b)(2) of the 1934 Act and rules thereunder and the conditions set forth in the Commission's approval order, including with respect to comprehensive surveillance sharing agreements, continue to be satisfied.

(B) The pricing information for each component of a Reference Asset other than a Currency must be derived from a market which is an ISG member or affiliate or with which the Exchange has a comprehensive surveillance sharing agreement. Notwithstanding the previous sentence, pricing information for gold and silver may be derived from the London Bullion Market Association. The pricing information for each component of a Reference Asset that is a Currency must be either (1) the generally accepted spot price for the currency exchange rate in question or (2) derived from a market which (x) is an ISG member or affiliate or with which the Exchange has a comprehensive surveillance sharing agreement and (y) is the pricing source for a currency component of a Reference Asset that has previously been approved by the Commission. A Reference Asset may include components representing not more than 10% of the dollar weight of such Reference Asset for which the pricing information is derived from markets that do not meet the requirements of this subparagraph (B), provided, however, that no single component subject to this exception exceeds 7% of the dollar weight of the Reference Asset. The term "Currency," as used in this subparagraph, shall mean one or more currencies, or currency options, futures, or other currency derivatives, Commodity-Related Securities if their underlying Commodities are currencies or currency derivatives, or a basket or index of any of the foregoing.

(9) Maintenance and Dissemination—(i) If the index is maintained by a broker-dealer, the broker-dealer shall erect a "firewall" around the personnel who have access to information concerning changes and adjustments to the index and the index shall be calculated by a third party who is not a broker-dealer. (ii) Unless the Commission order applicable under clause 7(A) or 8(A) hereof provides otherwise, the current value of the index or the Reference Asset (as applicable) will be widely disseminated at least every 15 seconds during the

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Exchange's regular market session, except as provided in the next clause (iii). (iii) The values of the following indexes need not be calculated and widely disseminated at least every 15 seconds if, after the close of trading, the indicative value of the Equity Index-Linked Security based on one or more of such indexes is calculated and disseminated to provide an updated value: CBOE S&P 500 BuyWrite Index(sm), CBOE DJIA Buy Write Index(sm), CBOE Nasdaq-100 BuyWrite Index(sm). (iv) If the value of a Linked Security is based on more than one index, then the dissemination requirement of this paragraph 9 applies to the composite value of such indexes. (v) In the case of a Commodity-Linked Security that is periodically redeemable, the indicative value of the subject Commodity-Linked Security must be calculated and widely disseminated by one or more major market data vendors on at least a 15-second basis during the Exchange's regular market session.

(10) Trading Halts. In the case of Commodity-Linked Securities, if the indicative value (if required to be disseminated) or the Reference Asset value is not being disseminated as required, or, in the case of Equity Index-Linked Securities, if the value of the index is not being disseminated as required, the Exchange may halt trading during the day on which such interruption occurs. The Exchange will halt trading no later than the beginning of trading following the trading day when the interruption commenced if such interruption persists at this time.

(11) Surveillance Procedures. FINRA will implement on behalf of the Exchange written surveillance procedures for Linked Securities. The Exchange will enter into adequate comprehensive surveillance sharing agreements for non-U.S. securities, as applicable.

(12) Linked Securities will be treated as equity instruments. Furthermore, for the purpose of fee determination, Linked Securities shall be deemed and treated as Other Securities.

(n) FINRA

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The Exchange and FINRA are parties to the FINRA Regulatory Contract pursuant to which FINRA has agreed to perform certain functions described in this Rule on behalf of the Exchange. Functions performed by FINRA, FINRA departments, and FINRA staff under Rule 4420 are being performed by FINRA on behalf of the Exchange. Notwithstanding the fact that the Exchange has entered into the Regulatory Contract with FINRA to perform some of the Exchange's functions, the Exchange shall retain ultimate legal responsibility for, and control of, such functions.

(o) Managed Fund Shares

(1) The Exchange will consider for trading, whether by listing or pursuant to unlisted trading privileges, Managed Fund Shares that meet the criteria of Rule 4420(o).

(2) Applicability. Rule 4420(o) is applicable only to Managed Fund Shares. Except to the extent inconsistent with Rule 4420(o), or unless the context otherwise requires, the rules and procedures of the Board of Directors shall be applicable to the trading on the Exchange of such securities. Managed Fund Shares are included within the definition of "security" or "securities" as such terms are used in the Equity Rules.

(A) The Exchange will file separate proposals under Section 19(b) of the Act before the listing of Managed Fund Shares. Trading of Managed Fund Shares on an unlisted trading privileges basis shall be governed by 4421.

(B) Transactions in Managed Fund Shares will occur throughout the Exchange's trading hours.

(C) Minimum Price Variance. The minimum price variation for quoting and entry of orders in Managed Fund Shares is \$0.01.

(D) Surveillance Procedures. The Exchange will implement written surveillance procedures for Managed Fund Shares.

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(E) Creation and Redemption. For Managed Fund Shares based on an international or global portfolio, the statutory prospectus or the application for exemption from provisions of the Investment Company Act of 1940 for the series of Managed Fund Shares must state that such series must comply with the federal securities laws in accepting securities for deposits and satisfying redemptions with redemption securities, including that the securities accepted for deposits and the securities used to satisfy redemption requests are sold in transactions that would be exempt from registration under the Securities Act of 1933.

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

(A) Managed Fund Share. The term "Managed Fund Share" means a security that (a) represents an interest in a registered investment company ("Investment Company") organized as an open-end management investment company or similar entity, that invests in a portfolio of securities selected by the Investment Company's investment adviser consistent with the Investment Company's investment objectives and policies; (b) is issued in a specified aggregate minimum number in return for a deposit of a specified portfolio of securities and/or a cash amount with a value equal to the next determined net asset value; and (c) when aggregated in the same specified minimum number, may be redeemed at a holder's request, which holder will be paid a specified portfolio of securities and/or cash with a value equal to the next determined net asset value.

(B) Disclosed Portfolio. The term "Disclosed Portfolio" means the identities and quantities of the securities and other assets held by the Investment Company that will form the basis for the Investment Company's calculation of net asset value at the end of the business day.

(C) Intraday Indicative Value. The term "Intraday Indicative Value" is the estimated indicative value of a Managed Fund Share based

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on current information regarding the value of the securities and other assets in the Disclosed Portfolio.

(D) Reporting Authority. The term "Reporting Authority" in respect of a particular series of Managed Fund Shares means the Exchange, an institution, or a reporting service designated by the Exchange or by the exchange that lists a particular series of Managed Fund Shares (if the Exchange is trading such series pursuant to unlisted trading privileges) as the official source for calculating and reporting information relating to such series, including, but not limited to, the Intraday Indicative Value; the Disclosed Portfolio; the amount of any cash distribution to holders of Managed Fund Shares, net asset value, or other information relating to the issuance, redemption or trading of Managed Fund Shares. A series of Managed Fund Shares may have more than one Reporting Authority, each having different functions.

(4) Initial and Continued Listing — Managed Fund Shares will be listed and traded on the Exchange subject to application of the following criteria:

(A) Initial Listing — Each series of Managed Fund Shares will be listed and traded on the Exchange subject to application of the following initial listing criteria:

(i) For each series, the Exchange will establish a minimum number of Managed Fund Shares required to be outstanding at the time of commencement of trading on the Exchange.

(ii) Nasdaq will obtain a representation from the issuer of each series of Managed Fund Shares that the net asset value per share for the series will be calculated daily and that the net asset value and the Disclosed Portfolio will be made available to all market participants at the same time.

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(B) Continued Listing — Each series of Managed Fund Shares will be listed and traded on the Exchange subject to application of the following continued listing criteria:

(i) Intraday Indicative Value. The Intraday Indicative Value for Managed Fund Shares will be widely disseminated by one or more major market data vendors at least every 15 seconds during the time when the Managed Fund Shares trade on the Exchange.

(ii) Disclosed Portfolio.

(a) The Disclosed Portfolio will be disseminated at least once daily and will be made available to all market participants at the same time.

(b) The Reporting Authority that provides the Disclosed Portfolio must implement and maintain, or be subject to, procedures designed to prevent the use and dissemination of material non-public information regarding the actual components of the portfolio.

(iii) Suspension of trading or removal. The Exchange will consider the suspension of trading in or removal from listing of a series of Managed Fund Shares under any of the following circumstances:

(a) if, following the initial twelve-month period after commencement of trading on the Exchange of a series of Managed Fund Shares, there are fewer than 50 beneficial holders of the series of Managed Fund Shares for 30 or more consecutive trading days;

(b) if the value of the Intraday Indicative Value is no longer calculated or available or the Disclosed Portfolio

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is not made available to all market participants at the same time;

(c) if the Investment Company issuing the Managed Fund Shares has failed to file any filings required by the Commission or if the Exchange is aware that the Investment Company is not in compliance with the conditions of any exemptive order or no-action relief granted by the Commission to the Investment Company with respect to the series of Managed Fund Shares; or

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

(iv) Trading Halt. If the Intraday Indicative Value of a series of Managed Fund Shares is not being disseminated as required, the Exchange may halt trading during the day in which the interruption to the dissemination of the Intraday Indicative Value occurs. If the interruption to the dissemination of the Intraday Indicative Value persists past the trading day in which it occurred, the Exchange will halt trading no later than the beginning of the trading day following the interruption. If a series of Managed Fund Shares is trading on the Exchange pursuant to unlisted trading privileges, the Exchange will halt trading in that series as specified in Rules 4120 and 4121. In addition, if the Exchange becomes aware that the net asset value or the Disclosed Portfolio with respect to a series of Managed Fund Shares is not disseminated to all market participants at the same time, it will halt trading in such series until such time as the net asset value or the Disclosed Portfolio is available to all market participants.

(v) Termination. Upon termination of an Investment Company, the Exchange requires that Managed Fund Shares issued

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in connection with such entity be removed from listing on the Exchange.

(vi) Voting. Voting rights shall be as set forth in the applicable Investment Company prospectus.

(5) Limitation of Liability. Neither the Exchange, the Reporting Authority, nor any agent of the Exchange shall have any liability for damages, claims, losses or expenses caused by any errors, omissions, or delays in calculating or disseminating any current portfolio value; the current value of the portfolio of securities required to be deposited to the open-end management investment company in connection with issuance of Managed Fund Shares; the amount of any dividend equivalent payment or cash distribution to holders of Managed Fund Shares; net asset value; or other information relating to the purchase, redemption, or trading of Managed Fund Shares, resulting from any negligent act or omission by the Exchange, the Reporting Authority or any agent of the Exchange, or any act, condition, or cause beyond the reasonable control of the Exchange, its agent, or the Reporting Authority, including, but not limited to, an act of God; fire; flood; extraordinary weather conditions; war; insurrection; riot; strike; accident; action of government; communications or power failure; equipment or software malfunction; or any error, omission, or delay in the reports of transactions in one or more underlying securities.

(6) Disclosures. The provisions of this subparagraph apply only to series of Managed Fund Shares that are the subject of an order by the Securities and Exchange Commission exempting such series from certain prospectus delivery requirements under Section 24(d) of the Investment Company Act of 1940 and are not otherwise subject to prospectus delivery requirements under the Securities Act of 1933. The Exchange will inform its members regarding application of these provisions of this subparagraph to a particular series of Managed Fund Shares by means of an information circular prior to commencement of trading in such series.

The Exchange requires that members provide to all purchasers of a series of Managed Fund Shares a written description of the terms and characteristics of

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those securities, in a form prepared by the open-end management investment company issuing such securities, not later than the time a confirmation of the first transaction in such series is delivered to such purchaser. In addition, members shall include such a written description with any sales material relating to a series of Managed Fund Shares that is provided to customers or the public. Any other written materials provided by a member to customers or the public making specific reference to a series of Managed Fund Shares as an investment vehicle must include a statement in substantially the following form: "A circular describing the terms and characteristics of (the series of Managed Fund Shares) has been prepared by the (open-end management investment company name) and is available from your broker. It is recommended that you obtain and review such circular before purchasing (the series of Managed Fund Shares)"

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

Upon request of a customer, a member shall also provide a prospectus for the particular series of Managed Fund Shares.

(7) If the investment adviser to the Investment Company issuing Managed Fund Shares is affiliated with a broker-dealer, such investment adviser shall erect a "fire wall" between the investment adviser and the broker-dealer with respect to access to information concerning the composition and/or changes to such Investment Company portfolio. Personnel who make decisions on the Investment Company's portfolio composition must be subject to procedures designed to prevent the use and dissemination of material nonpublic information regarding the applicable Investment Company portfolio.

4421. Derivative Securities Traded under Unlisted Trading Privileges

(a) Any security that is a "new derivative securities product" as defined in Rule 19b-4(e) under the Exchange Act (a "UTP Derivative Security") and traded under

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unlisted trading privileges pursuant to Rule 19b-4(e) under the Act shall be subject to the additional following rules:

(1) Form 19b-4(e). The Exchange shall file with the Commission a Form 19b-4(e) with respect to each UTP Derivative Security.

(2) Information Circular. The Exchange shall distribute an information circular prior to the commencement of trading in each such UTP Derivative Security that generally includes the same information as contained in the information circular provided by the listing exchange, including: (a) the special risks of trading the new derivative securities product; (b) the Rules of the Exchange that will apply to the new derivative securities product, including Equity Rule 2310; (c) information about the dissemination of value of the underlying assets or indexes; and (d) the applicable trading hours for the UTP Derivative Security and the risks of trading during the period from 7:00 a.m. to 9:30 a.m. and from 4:00 p.m. to 7:00 p.m. due to the lack of calculation or dissemination of the underlying index value, the Intra-Day Indicative Value (as defined in Equity Rule 4420), or a similar value.

(3) Product Description.

Members are subject to the prospectus delivery requirements under the Securities Act of 1933, unless the UTP Derivative Security is the subject of an order by the Commission exempting the product from certain prospectus delivery requirements under Section 24(d) of the Investment Company Act of 1940 and the product is not otherwise subject to prospectus delivery requirements under the Securities Act of 1933.

The Exchange shall inform Members of the application of the provisions of this subparagraph to UTP Derivative Securities by means of an information circular. The Exchange requires that Members provide all purchasers of UTP Derivative Securities a written description of the terms and characteristics of those securities, in a form approved by the Exchange or prepared by the open-ended management company issuing such securities, not later than the time a confirmation of the first transaction in such series is delivered to such purchaser. In addition, Members shall include a written description with any sales material relating to UTP Derivative Securities that is provided to customers or the public. Any other written materials provided by a Member to customers or the public making specific reference to the UTP Derivative Securities as an investment vehicle must include a statement substantially in the following form:

"A circular describing the terms and characteristics of [the UTP Derivative Securities] has been prepared by the [open-ended management investment company name] and is available from your broker. It is recommended that you

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obtain and review such circular before purchasing [the UTP Derivative Securities]."

A Member carrying an omnibus account for a non-Member is required to inform such non-Member that execution of an order to purchase UTP Derivative Securities for such omnibus account will be deemed to constitute an agreement by the non-Member to make such written description available to its customers on the same terms as are directly applicable to the Member under this Rule.

Upon request of a customer, a Member shall also provide a prospectus for the particular UTP Derivative Securities.

(4) Trading Halts. Trading halts of UTP Derivative Securities shall be governed by Equity Rule 4120.

(5) Limitations on Market Makers. Market makers in a UTP Derivative Security that is a Commodity-Related Security (as defined in Equity Rule 4630) shall comply with Rule 4630.

(6) Surveillance. The Exchange shall enter into a comprehensive surveillance sharing agreement with markets trading components of the index or portfolio on which the UTP Derivative Security is based to the same extent as the listing exchange's rules require the listing exchange to enter into a comprehensive surveillance sharing agreement with such markets.

4425. Reserved

4426. Reserved

4427. Reserved

4430. Deleted.

4440. Reserved

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4450. Additional Quantitative Maintenance Criteria

After listing on the Exchange, certain securities must substantially meet the criteria set forth in the paragraphs below to continue to remain listed on the Exchange.

(a) Reserved

(b) Reserved

(c) Other Securities Listed Pursuant to Rule 4420(f) and Linked Securities

(1) The aggregate market value or principal amount of publicly-held units (except Linked Securities that were listed pursuant to Rule 4420(m)) must be at least \$1 million.

(2) Delisting or removal proceedings will be commenced (unless the Commission has approved the continued trading) with respect to any Equity Index-Linked Security that was listed pursuant to paragraph (7)(B) of Rule 4420(m) if any of the standards set forth in paragraph (7)(B) of such rule are not continuously maintained, except that:

(i) the criteria that no single component represent more than 25% of the weight of the index and the five highest weighted components in the index may not represent more than 50% (or 60% for indexes with less than 25 components) of the weight of the Index, need only be satisfied for capitalization weighted and price weighted indexes as of the first day of January and July in each year;

(ii) the total number of components in the index may not increase or decrease by more than 33-1/3% from the number of components in the index at the time of its initial listing, and in no event may be less than ten (10) components;

(iii) the trading volume of each component security in the index must be at least 500,000 shares for each of the last six months, except that for each of the lowest weighted components in the index that in the aggregate account for no more than 10% of the weight of the index, trading volume must be at least 400,000 shares for each of the last six months; and

(iv) in a capitalization-weighted or modified capitalization-weighted index, the lesser of the five highest weighted component securities in the index or the highest weighted component securities in the index that in the aggregate represent at least 30% of the total number of

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stocks in the index have had an average monthly trading volume of at least 1,000,000 shares over the previous six months.

(3) With respect to an Equity Index-Linked Security that was listed pursuant to paragraph (7)(A) of Rule 4420(m), delisting or removal proceedings will be commenced (unless the Commission has approved the continued trading of the subject security) if an underlying index or indexes fails to satisfy the maintenance standards or conditions for such index or indexes as set forth by the Commission in its order under Section 19(b)(2) of the 1934 Act approving the index or indexes for the trading of options or other derivatives.

(4) With respect to a Commodity-Linked Security that was listed pursuant to Rule 4420(m), delisting or removal proceedings will be commenced (unless the Commission has approved the continued trading of the subject security) if any of the listing requirements set forth in Rule 4420(m) that were applicable at the time of the initial listing of the security are no longer being met. Notwithstanding the foregoing, a security will not be delisted due to lack of comprehensive surveillance sharing agreements if the Reference Asset has at least 10 components and the Exchange has comprehensive surveillance sharing agreements with respect to at least 90% of the dollar weight of the Reference Asset for which such agreements are otherwise required.

(5) Delisting or removal proceedings will also be commenced with respect to any Linked Security listed pursuant to Rule 4420(m) (unless the Commission has approved the continued trading of the subject security), under any of the following circumstances:

(i) if the aggregate market value or the principal amount of the Linked Security issue publicly held is less than \$400,000;

(ii) if the value of the index, composite value of the indexes or the value of the Reference Asset (as applicable) is no longer calculated or widely disseminated as required by Rule 4420(m)(9);

(iii) with respect to a Commodity-Linked Security, if the value of the Reference Asset is no longer calculated or available and a new Reference Asset is substituted, unless the new Reference Asset meets the requirements of this Rule and Rule 4420(m); or

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

(d) Rights and Warrants

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The common stock of the issuer must continue to be listed on the Exchange.

(e) Reserved

(f) Bankruptcy and/or Liquidation

Should an issuer file under any of the sections of the Bankruptcy Act or announce that liquidation has been authorized by its board of directors and that it is committed to proceed, the Exchange may suspend or terminate the issuer's securities unless it is determined that the public interest and the protection of investors would be served by continued listing.

(g) Reserved

(h) Reserved

(i) Reserved

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4500. Reserved

4570. Custodian of Books and Records

A member who files a Form BDW shall designate on the Form BDW, as the custodian of the member's books and records, a person associated with the member at the time that the Form BDW is filed.

Rule 4600 Series

4600. Requirements for Equities Market Makers and Other Participants in the NASDAQ OMX BX Equities Market

4601. Scope

Unless otherwise specified, the rules set forth in this 4600 Series apply only to the quoting and trading of System securities via the NASDAQ OMX BX Equities Market.

4602. Reserved

4610. Registration and Other Requirements

4611. NASDAQ OMX BX Equities Market Participant Registration

(a) Participation in the NASDAQ OMX BX Equities Market as an Equities Market Maker, Equities ECN or Order Entry Firm requires current registration as such with the Exchange. Such registration shall be conditioned upon the participant's initial and continuing compliance with the following requirements:

- (1) execution of applicable agreements with the Exchange;
- (2) membership in, or access arrangement with a participant of, a clearing agency registered with the Commission which maintains facilities through which NASDAQ OMX BX Equities Market compared trades may be settled;
- (3) compliance with all applicable rules and operating procedures of the Exchange and the Commission in their use of the System;
- (4) maintenance of the physical security of the equipment located on the premises of the Equities Market Maker, Equities ECN or Order Entry Firm to prevent the improper use or access to Exchange systems, including unauthorized entry of information into the NASDAQ OMX BX Equities Market; and
- (5) acceptance and settlement of each NASDAQ OMX BX Equities Market trade that the NASDAQ OMX BX Equities Market identifies as having been effected by such participant, or if settlement is to be made through another clearing member, guarantee of the acceptance and settlement of such identified NASDAQ OMX BX Equities Market trade by the clearing member on the regularly scheduled settlement date.

A member's registration shall become effective upon receipt by the member of notice of an approval of registration by the Exchange. The registration required hereunder will apply solely to the qualification of a Participant to participate in the System. Such

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registration shall not be conditioned upon registration in any particular NASDAQ OMX BX Equities Market securities.

(b) Each Equities Market Maker, Equities ECN or Order Entry Firm shall be under a continuing obligation to inform the Exchange of noncompliance with any of the registration requirements set forth above.

(c) The Exchange may impose upon any Equities Market Maker, Equities ECN or Order Entry Firm such temporary restrictions upon the automated entry or updating of orders or Quotes/Orders as the Exchange may determine to be necessary to protect the integrity of the Exchange's systems. For example, such temporary restrictions may be necessary to address a system problem at a particular Equities Market Maker, Equities ECN or Order Entry Firm or at the Exchange, or an unexpected period of extremely high message traffic. The scope of any such restrictions shall be communicated to the affected Equities Market Maker, Equities ECN or Order Entry Firm in writing.

(d) Sponsored Participants. A Sponsored Participant may obtain authorized access to the NASDAQ OMX BX Equities Market only if such access is authorized in advance by one or more Exchange members as follows:

(1) Sponsored Participants must enter into and maintain customer agreements with one or more Sponsoring Members establishing proper relationship(s) and account(s) through which the Sponsored Participant may trade on the NASDAQ OMX BX Equities Market. Such customer agreement(s) must incorporate the Sponsorship Provisions set forth in paragraph (2) below.

(2) For a Sponsored Participant to obtain and maintain authorized access to the NASDAQ OMX BX Equities Market, a Sponsored Participant and its Sponsoring Member must agree in writing to the following Sponsorship Provisions:

(A) Sponsored Participant and its Sponsoring Member must have entered into and maintained a User Agreement with the Exchange. The Sponsoring Member must designate the Sponsored Participant by name in its User Agreement as such.

(B) Sponsoring Member acknowledges and agrees that

(i) All orders entered by the Sponsored Participants and any person acting on behalf of or in the name of such Sponsored Participant and any executions occurring as a result of such orders are binding in all respects on the Sponsoring Member and

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(ii) Sponsoring Member is responsible for any and all actions taken by such Sponsored Participant and any person acting on behalf of or in the name of such Sponsored Participant.

(C) Sponsoring Member shall comply with the Exchange's Certificate of Incorporation, Bylaws, Rules and procedures with regard to the NASDAQ OMX BX Equities Market and Sponsored Participant shall comply with the Exchange's Certificate of Incorporation, Bylaws, Rules and procedures with regard to the NASDAQ OMX BX Equities Market, as if Sponsored Participant were an Exchange Member.

(D) Sponsored Participant shall maintain, keep current and provide to the Sponsoring Member a list of individuals authorized to obtain access to the NASDAQ OMX BX Equities Market on behalf of the Sponsored Participant.

(E) Sponsored Participant shall familiarize its authorized individuals with all of the Sponsored Participant's obligations under this Rule and will assure that they receive appropriate training prior to any use or access to the NASDAQ OMX BX Equities Market.

(F) Sponsored Participant may not permit anyone other than authorized individuals to use or obtain access to the NASDAQ OMX BX Equities Market.

(G) Sponsored Participant shall take reasonable security precautions to prevent unauthorized use or access to the NASDAQ OMX BX Equities Market, including unauthorized entry of information into the NASDAQ OMX BX Equities Market, or the information and data made available therein. Sponsored Participant understands and agrees that Sponsored Participant is responsible for any and all orders, trades and other messages and instructions entered, transmitted or received under identifiers, passwords and security codes of authorized individuals, and for the trading and other consequences thereof.

(H) Sponsored Participant acknowledges its responsibility to establish adequate procedures and controls that permit it to effectively monitor its employees', agents' and customers' use and access to the NASDAQ OMX BX Equities Market for compliance with the terms of this agreement.

(I) Sponsored Participant shall pay when due all amounts, if any, payable to Sponsoring Member, the Exchange, or any other third parties that arise from the Sponsored Participant's access to and use of the

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NASDAQ OMX BX Equities Market. Such amounts include, but are not limited to applicable exchange and regulatory fees.

(3) The Sponsoring Member must provide the Exchange with a Notice of Consent acknowledging its responsibility for the orders, executions and actions of its Sponsored Participant at issue.

4612. Registration as an Equities Market Maker

(a) Quotations and quotation sizes may be entered into the NASDAQ OMX BX Equities Market only by a member registered as an Equities Market Maker or other entity approved by the Exchange to function in a market making capacity.

(b) An Equities Market Maker may become registered in an issue by entering a registration request via an Exchange-approved electronic interface with the Exchange's systems or by contacting Exchange Market Operations. Registration shall become effective on the day the registration request is entered.

(c) An Equities Market Maker's registration in an issue shall be terminated by the Exchange if the market maker fails to enter quotations in the issue within five (5) business days after the market maker's registration in the issue becomes effective.

4613. Market Maker Obligations

A member registered as an Equities Market Maker shall engage in a course of dealings for its own account to assist in the maintenance, insofar as reasonably practicable, of fair and orderly markets in accordance with this Rule.

(a) Quotation Requirements and Obligations

(1) Two-Sided Quote Obligation. For each security in which a member is registered as a Equities Market Maker, the member shall be willing to buy and sell such security for its own account on a continuous basis during regular market hours and shall enter and maintain a two-sided trading interest ("Two-Sided Obligation") that is identified to the Exchange as the interest meeting the obligation and is displayed in the Exchange's quotation montage at all times. Interest eligible to be considered as part of an Equities Market Maker's Two-Sided Obligation shall have a displayed quotation size of at least one normal unit of trading (or a larger multiple thereof); provided, however, that an Equities Market Maker may augment its Two-Sided Obligation size to display limit orders priced at the same price as the Two-Sided Obligation. Unless otherwise

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designated, a "normal unit of trading" shall be 100 shares. After an execution against its Two-Sided Obligation, Equities a Market Maker must ensure that additional trading interest exists in the Exchange to satisfy its Two-Sided Obligation either by immediately entering new interest to comply with this obligation to maintain continuous two-sided quotations or by identifying existing interest on the Exchange book that will satisfy this obligation.

(2) Pricing Obligations. For NMS stocks (as defined in Rule 600 under Regulation NMS) a Market Maker shall adhere to the pricing obligations established by this Rule during Regular Trading Hours; provided, however, that such pricing obligations (i) shall not commence during any trading day until after the first regular way transaction on the primary listing market in the security, as reported by the responsible single plan processor, and (ii) shall be suspended during a trading halt, suspension, or pause, and shall not re-commence until after the first regular way transaction on the primary listing market in the security following such halt, suspension, or pause, as reported by the responsible single plan processor.

(A) Bid Quotations. At the time of entry of bid interest satisfying the Two-Sided Obligation, the price of the bid interest shall be not more than the Designated Percentage away from the then current National Best Bid, or if no National Best Bid, not more than the Designated Percentage away from the last reported sale from the responsible single plan processor. In the event that the National Best Bid (or if no National Best Bid, the last reported sale) increases to a level that would cause the bid interest of the Two-Sided Obligation to be more than the Defined Limit away from the National Best Bid (or if no National Best Bid, the last reported sale), or if the bid is executed or cancelled, the Equities Market Maker shall enter new bid interest at a price not more than the Designated Percentage away from the then current National Best Bid (or if no National Best Bid, the last reported sale), or identify to the Exchange current resting interest that satisfies the Two-Sided Obligation.

(B) Offer Quotations. At the time of entry of offer interest satisfying the Two-Sided Obligation, the price of the offer interest shall be not more than the Designated Percentage away from the then current National Best Offer, or if no National Best Offer, not more than the Designated Percentage away from the last reported sale received from the responsible single plan processor. In the event that the National Best Offer (or if no National Best Offer, the last reported sale) decreases to a level that would cause the offer interest of the Two-Sided Obligation to be more than the Defined Limit away from the National Best Offer (or if no National Best Offer, the last reported sale), or if the offer is executed or cancelled, the Equities Market Maker shall enter new offer interest at a

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price not more than the Designated Percentage away from the then current National Best Offer (or if no National Best Offer, the last reported sale), or identify to the Exchange current resting interest that satisfies the Two-Sided Obligation.

(C) The National Best Bid and Offer shall be determined by the Exchange in accordance with its procedures for determining protected quotations under Rule 600 under Regulation NMS.

(D) For purposes of this Rule, the term "Designated Percentage" shall mean the individual stock pause trigger percentage under Rule 4120(a)(11) (or comparable rule of another exchange) less two (2) percentage points. For times during regular market hours when stock pause triggers are not in effect under Rule 4120(a)(11) (or comparable rule of another exchange), the Designated Percentage calculation will assume a trigger percentage of 22%. For NMS stocks that are not subject to such stock pause triggers the Designated Percentage will assume a trigger percentage of 32%.

(E) For purposes of this Rule, the term "Defined Limit" shall mean the individual stock pause trigger percentage under Rule 4120(a)(11) (or comparable rule of another exchange) less one-half (1/2) percentage point. For times during regular market hours when stock pause triggers are not in effect under Rule 4120(a)(11) (or comparable rule of another exchange), the Defined Limit calculation will assume a trigger percentage of 22%. For NMS stocks that are not subject to such stock pause triggers the Defined Limit calculation will assume a trigger percentage of 32%.

(F) Reserved.

(G) Reserved.

(H) Nothing in this Rule shall preclude an Equities Market Maker from quoting at price levels that are closer to the National Best Bid and Offer than the levels required by this Rule.

(I) The minimum quotation increment for quotations of \$1.00 or above in all System Securities shall be \$0.01. The minimum quotation increment in the System for quotations below \$1.00 in System Securities shall be \$0.0001.

(J) The individual Market Participant Identifier ("MPID") assigned to a member to meet its Two-Sided Obligation pursuant to subparagraph (a)(1) of this Rule, or Rule 4623, shall be referred to as the member's "Primary MPID." Equities Market Makers and ECNs may request the use

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if additional MPIDs that shall be referred to as "Supplemental MPIDs." An Equities Market Maker may request the use of Supplemental MPIDs for displaying Attributable Quotes/Orders in the Quotation Montage for any security in which it is registered and meets the obligations set forth in subparagraph (1) of this rule. An ECN may request the use of Supplemental MPIDs for displaying Attributable Quotes/Orders in the Quotation Montage for any security in which it meets the obligations set forth in Rule 4623. An Equities Market Maker or ECN that ceases to meet the obligations appurtenant to its Primary MPID in any security shall not be permitted to use a Supplemental MPID for any purpose in that security.

(K) Equities Market Makers and ECNs that are permitted the use of Supplemental MPIDs for displaying Attributable Quotes/Orders pursuant to subparagraph (2) of this rule are subject to the same rules applicable to the members' first quotation, with two exceptions: (a) the continuous two-sided quote requirement and excused withdrawal procedures described in subparagraph (1) above do not apply to Equities Market Makers' Supplemental MPIDs; and (b) Supplemental MPIDs may not be used by Equities Market Makers to engage in passive market making or to enter stabilizing bids pursuant to Rule 4614.

(b) Firm Quotations

All quotations and orders to buy and sell entered into the System by Equities Market Makers, Equities ECNs, and Order Entry firms are firm and automatically executable for their displayed and non-displayed size in the System.

(c) Impaired Ability to Enter or Update Quotations

In the event that an Equities Market Maker's ability to enter or update quotations is impaired, the market maker shall immediately contact Exchange Market Operations to request the withdrawal of its quotations.

In the event that an Equities Market Maker's ability to enter or update quotations is impaired and the market maker elects to continue quoting in the Exchange, the Equities Market Maker shall execute an offer to buy or sell received from another member at its quotations as disseminated through the NASDAQ OMX BX Equities Market.

(d) Reserved

(e) Locked and Crossed Markets

(1) Locked and Cross Markets within the System: Any quotes or orders that are entered into the System that would lock or cross another order in the System will be executed by the System. This processing, set forth in Rule 4757,

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ensures that no locked or crossed markets can exist within the System and that price improvement is allocated fairly.

(2) Inter-market Locked and Crossed Markets. The provisions of this subsection (e)(2) apply to the trading of securities governed by Regulation NMS.

(A) Definitions. For purposes of this Rule, the following definitions shall apply:

(i) The terms automated quotation, effective national market system plan, intermarket sweep order, manual quotation, NMS stock, protected quotation, regular trading hours, and trading center shall have the meanings set forth in Rule 600(b) of Regulation NMS under the Securities Exchange Act of 1934.

(ii) The term crossing quotation shall mean the display of a bid for an NMS stock during regular trading hours at a price that is higher than the price of an offer for such NMS stock previously disseminated pursuant to an effective national market system plan, or the display of an offer for an NMS stock during regular trading hours at a price that is lower than the price of a bid for such NMS stock previously disseminated pursuant to an effective national market system plan.

(iii) The term locking quotation shall mean the display of a bid for an NMS stock during regular trading hours at a price that equals the price of an offer for such NMS stock previously disseminated pursuant to an effective national market system plan, or the display of an offer for an NMS stock during regular trading hours at a price that equals the price of a bid for such NMS stock previously disseminated pursuant to an effective national market system plan.

(B) Prohibition. Except for quotations that fall within the provisions of paragraph (D) of this Rule, Exchange members shall reasonably avoid displaying, and shall not engage in a pattern or practice of displaying any quotations that lock or cross a protected quotation, and any manual quotations that lock or cross a quotation previously disseminated pursuant to an effective national market system plan.

(C) Manual quotations. If a member of the Exchange displays a manual quotation that locks or crosses a quotation previously disseminated pursuant to an effective national market system plan, such member of the Exchange shall promptly either withdraw the manual quotation or route an

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intermarket sweep order to execute against the full displayed size of the locked or crossed quotation.

(D) Exceptions.

(i) The locking or crossing quotation was displayed at a time when the trading center displaying the locked or crossed quotation was experiencing a failure, material delay, or malfunction of its systems or equipment.

(ii) The locking or crossing quotation was displayed at a time when a protected bid was higher than a protected offer in the NMS stock.

(iii) The locking or crossing quotation was an automated quotation, and the Exchange member displaying such automated quotation simultaneously routed an intermarket sweep order to execute against the full displayed size of any locked or crossed protected quotation.

(iv) The locking or crossing quotation was a manual quotation that locked or crossed another manual quotation, and the member of the Exchange displaying the locking or crossing manual quotation simultaneously routed an intermarket sweep order to execute against the full displayed size of the locked or crossed manual quotation.

4614. Stabilizing Bids

(a) Equities Market Maker Obligation/Identifier

An Equities Market Maker that intends to stabilize the price of a security that is a subject or reference security under SEC Rule 101 shall submit a request to the Exchange's MarketWatch Department for the entry of a one-sided bid that is identified on the Exchange as a stabilizing bid in compliance with the standards set forth in this Rule and SEC Rules 101 and 104.

(b) Eligibility

Only one Equities Market Maker in a security may enter a stabilizing bid.

(c) Limitations on Stabilizing Bids

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(1) A stabilizing bid shall not be entered in the NASDAQ OMX BX Equities Market unless at least one other Equities Market Maker in addition to the market maker entering the stabilizing bid is registered as an Equities Market Maker in the security and entering quotations that are considered an independent bid under SEC Rule 104.

(2) A stabilizing bid must be available for all freely tradable outstanding securities of the same class being offered.

(d) Submission of Request to the Exchange

(1) An Equities Market Maker that wishes to enter a stabilizing bid shall submit a request to the Exchange's MarketWatch Department for entry in the NASDAQ OMX BX Equities Market of a one-sided bid identified as a stabilizing bid. The Equities Market Maker shall confirm its request in writing no later than the close of business the day the stabilizing bid is entered by submitting an Underwriting Activity Report to the Exchange's MarketWatch Department that includes the information required by subparagraph (d)(2).

(2) In lieu of submitting the Underwriting Activity Report as set forth in subparagraph (d)(1), the market maker may provide written confirmation to MarketWatch that shall include:

(A) the identity of the security and its symbol;

(B) the contemplated effective date of the offering and the date when the offering will be priced;

(C) the date and time that an identifier should be included on the Exchange; and

(D) a copy of the cover page of the preliminary or final prospectus or similar offering document, unless the Exchange determines otherwise.

4615. Reserved

4616. Reports

An Equities Market Maker, Equities ECN, or Order Entry Firm shall make such reports to the Exchange as may be prescribed from time to time by the Exchange.

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4617. Normal Business Hours

The System operates from 7:00 a.m. to 7:00 p.m. Eastern Time on each business day, unless modified by the Exchange. An Equities Market Maker shall be open for business as of 9:30 a.m. Eastern Time and shall close no earlier than 4:00 p.m. Eastern Time. An Equities Market Maker may voluntarily open for business prior to 9:30 a.m. and remain open for business later than 4:00 p.m. Eastern Time. Equities Market Makers whose quotes are open prior to 9:30 a.m. Eastern Time or after 4:00 p.m. Eastern Time shall be obligated to comply, while their quotes are open, with all Rules that are not by their express terms, or by an official interpretation of the Exchange, inapplicable to any part of the 7:00 a.m. to 9:30 a.m. or 4:00 p.m. to 7:00 p.m. Eastern Time period.

4618. Clearance and Settlement

(a) All transactions through the facilities of the NASDAQ OMX BX Equities Market shall be cleared and settled through a registered clearing agency using a continuous net settlement system. This requirement may be satisfied by direct participation, use of direct clearing services, or by entry into a correspondent clearing arrangement with another member that clears trades through such an agency.

(b) Notwithstanding paragraph (a), transactions may be settled "ex-clearing" provided that both parties to the transaction agree.

4619. Withdrawal of Quotations

(a) Except as provided in paragraph (b) of this Rule, a market maker that wishes to withdraw quotations in a security shall contact the Exchange's MarketWatch Department to obtain excused withdrawal status prior to withdrawing its quotations. Withdrawals of quotations shall be granted by MarketWatch only upon satisfying one of the conditions specified in this Rule.

(b) An Equities Market Maker that wishes to obtain excused withdrawal status based on a market maker's systemic equipment problems, such as defects in an Equities Market Maker's software or hardware systems or connectivity problems associated with the circuits connecting NASDAQ OMX BX Equities Market systems with the Equities Market Maker's systems, shall contact Exchange Market Operations. Exchange Market Operations may grant excused withdrawal status based on systemic equipment problems for up to five (5) business days, unless extended by Exchange Market Operations.

(c)

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(1) For Nasdaq-listed securities, excused withdrawal status based on circumstances beyond the Equities Market Maker's control, other than systemic equipment problems, may be granted for up to five (5) business days, unless extended by the Exchange's MarketWatch Department. Excused withdrawal status based on demonstrated legal or regulatory requirements, supported by appropriate documentation and accompanied by a representation that the condition necessitating the withdrawal of quotations is not permanent in nature, may, upon notification, be granted for not more than sixty (60) days (unless such request is required to be made pursuant to paragraph (e) below). Excused withdrawal status based on religious holidays may be granted only if written notice is received by the Exchange one business day in advance and is approved by the Exchange. Excused withdrawal status based on vacation may be granted only if:

(A) The written request for withdrawal is received by the Exchange one business day in advance, and is approved by the Exchange; and

(B) The request includes a list of the securities for which withdrawal is requested.

Excused withdrawal status may be granted to an Equities Market Maker that has withdrawn from an issue prior to the public announcement of a merger or acquisition and wishes to re-register in the issue pursuant to the same-day registration procedures contained in Rule 4611 above, provided the Equities Market Maker has remained registered in one of the affected issues. The withdrawal of quotations because of pending news, a sudden influx of orders or price changes, or to effect transactions with competitors shall not constitute acceptable reasons for granting excused withdrawal status.

(2) For securities listed on the Exchange or any other exchange other than Nasdaq, an Equities Market Maker that wishes to withdraw quotations shall contact the Exchange's MarketWatch Department to obtain excused withdrawal status prior to withdrawing its quotations. Excused withdrawal status based on illness, vacations or physical circumstances beyond the Equities Market Maker's control may be granted for up to five (5) business days, unless extended by MarketWatch. Excused withdrawal status based on investment activity or advice of legal counsel, accompanied by a representation that the condition necessitating the withdrawal of quotations is not permanent in nature, may, upon written request, be granted for not more than sixty (60) days. The withdrawal of quotations because of pending news, a sudden influx of orders or price changes, or to effect transactions with competitors shall not normally constitute acceptable reasons for granting excused withdrawal status, unless the Exchange has initiated a trading halt for market makers in the security, pursuant to Rule 4120.

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(d) Excused withdrawal status may be granted to an Equities Market Maker that fails to maintain a clearing arrangement with a registered clearing agency or with a member of such an agency and is withdrawn from participation in the trade reporting service of the NASDAQ OMX BX Equities Market, thereby terminating its registration as an Equities Market Maker; provided, however, that if the Exchange finds that the Equities Market Maker's failure to maintain a clearing arrangement is voluntary, the withdrawal of quotations will be considered voluntary and unexcused pursuant to Rule 4620 and the Rule 4700 Series governing the NASDAQ OMX BX Equities Market. Equities Market Makers that fail to maintain a clearing relationship will have their NASDAQ OMX BX Equities Market system status set to "suspend" and be thereby prevented from entering, or executing against, any quotes/orders in the system.

(e) Excused withdrawal status may be granted to an Equities Market Maker that is a distribution participant (or, in the case of excused withdrawal status, an affiliated purchaser) in order to comply with SEC Rule 101 or 104 under the Act on the following conditions:

(1) A member acting as a manager (or in a similar capacity) of a distribution of a security that is a subject security or reference security under SEC Rule 101 and any member that is a distribution participant or an affiliated purchaser in such a distribution that does not have a manager shall provide written notice to the Exchange's MarketWatch Department and the Market Regulation Department of FINRA no later than the business day prior to the first entire trading session of the one-day or five-day restricted period under SEC Rule 101, unless later notification is necessary under the specific circumstances.

(A) The notice required by subparagraph (e)(1) of this Rule shall be provided by submitting a completed Underwriting Activity Report that includes a request on behalf of each Equities Market Maker that is a distribution participant or an affiliated purchaser to withdraw the Equities Market Maker's quotations and includes the contemplated date and time of the commencement of the restricted period.

(B) The managing underwriter shall advise each Equities Market Maker that it has been identified as a distribution participant or an affiliated purchaser to MarketWatch and that its quotations will be automatically withdrawn, unless a market maker that is a distribution participant (or an affiliated purchaser of a distribution participant) notifies MarketWatch as required by subparagraph (e)(2), below.

(2) An Equities Market Maker that has been identified to MarketWatch as a distribution participant (or an affiliated purchaser of a distribution participant) shall promptly notify MarketWatch and the manager of its intention not to participate in the prospective distribution in order to avoid having its quotations withdrawn.

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(3) If an Equities Market Maker that is a distribution participant withdraws its quotations in order to comply with any provision of SEC Regulation M and promptly notifies MarketWatch of its action, the withdrawal shall be deemed an excused withdrawal. Nothing in this subparagraph shall prohibit the Exchange from taking such action as is necessary under the circumstances against a member and its associated persons for failure to contact MarketWatch to obtain an excused withdrawal as required by subparagraphs (a) and (e) of this Rule.

(4) A member acting as a manager (or in a similar capacity of a distribution subject to subparagraph (e)(1)) of this Rule shall submit a request to MarketWatch and the Market Regulation Department of FINRA to rescind the excused withdrawal status of distribution participants and affiliated purchasers, which request shall include the date and time of the pricing of the offering, the offering price, and the time the offering terminated, and, if not in writing, shall be confirmed in writing no later than the close of business the day the offering terminates. The request by this subparagraph may be submitted on the Underwriting Activity Report.

(f) The Market Operations Review Committee shall have jurisdiction over proceedings brought by Equities Market Makers seeking review of the denial of an excused withdrawal pursuant to this Rule 4619, or the conditions imposed on their reentry.

4620. Voluntary Termination of Registration

(a) A market maker may voluntarily terminate its registration in a security by withdrawing its two-sided quotation from the NASDAQ OMX BX Equities Market. An Equities Market Maker that voluntarily terminates its registration in a security may not re-register as a market maker in that security for twenty (20) business days in the case of securities listed on the Exchange or for one (1) business day in the case of other securities. Withdrawal from participation as an Equities Market Maker in the NASDAQ OMX BX Equities Market shall constitute termination of registration as a market maker in that security for purposes of this Rule; provided, however, that an Equities Market Maker that fails to maintain a clearing arrangement with a registered clearing agency or with a member of such an agency and is withdrawn from participation in the NASDAQ OMX BX Equities Market and thereby terminates its registration as an Equities Market Maker may register as a market maker at any time after a clearing arrangement has been reestablished unless the Exchange finds that the Equities Market Maker's failure to maintain a clearing arrangement is voluntary, in which case the withdrawal of quotations will be considered voluntary and unexcused.

(b) Notwithstanding the above, an Equities Market Maker that accidentally withdraws as an Equities Market Maker may be reinstated if:

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- (1) the Equities Market Maker notified the Exchange's MarketWatch Department of the accidental withdrawal as soon as practicable under the circumstances, but within at least one hour of such withdrawal, and immediately thereafter provided written notification of the withdrawal and reinstatement request;
 - (2) it is clear that the withdrawal was inadvertent and the market maker was not attempting to avoid its market making obligations; and
 - (3) the Equities Market Maker's firm would not exceed the following reinstatement limitations:
 - (A) for firms that simultaneously made markets in less than 250 stocks during the previous calendar year, the firm can receive no more than two (2) reinstatements per year;
 - (B) for firms that simultaneously made markets in 250 or more but less than 500 stocks during the previous calendar year, the firm can receive no more than three (3) reinstatements per year; and
 - (C) for firms that simultaneously made markets in 500 or more stocks during the previous calendar year, the firm can receive no more than six (6) reinstatements per year.
- (c) Factors that the Exchange will consider in granting a reinstatement under paragraph (b) of this rule include, but are not limited to:
- (1) the number of accidental withdrawals by the Equities Market Maker in the past, as compared with Equities Market Makers making markets in a comparable number of stocks;
 - (2) the similarity between the symbol of the stock that the Equities Market Maker intended to withdraw from and the symbol of the stock that the Equities Market Maker actually withdrew from;
 - (3) market conditions at the time of the withdrawal;
 - (4) whether, given the market conditions at the time of the withdrawal, the withdrawal served to reduce the exposure of the member's position in the security at the time of the withdrawal to market risk; and
 - (5) the timeliness with which the Equities Market Maker notified MarketWatch of the error.
- (d) For purposes of paragraph (a) of this Rule, a market maker shall not be deemed to have voluntarily terminated its registration in a security by voluntarily

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withdrawing its two-sided quotation from the NASDAQ OMX BX Equities Market if the Equities Market Maker's two-sided quotation in the subject security is withdrawn by the Exchange's systems due to issuer corporate action related to a dividend, payment or distribution, or due to a trading halt, and one of the following conditions is satisfied:

(1) the Equities Market Maker enters a new two-sided quotation prior to the close of the regular market session on the same day when the Exchange's systems withdrew such a quotation;

(2) the Equities Market Maker enters a new two-sided quotation on the day when trading resumes following a trading halt, or, if the resumption of trading occurs when the market is not in regular session, the Equities Market Maker enters a new two-sided quotation prior to the opening of the next regular market session; or

(3) upon request from the market maker, MarketWatch authorizes the market maker to enter a new two-sided quotation, provided that MarketWatch receives the market maker's request prior to the close of the regular market session on the next regular trading day after the day on which the market maker became eligible to re-enter a quotation pursuant to subparagraph (d)(1) or (d)(2) hereof and determines that the market maker was not attempting to avoid its market making obligations by failing to re-enter such a quotation earlier.

(e) The Market Operations Review Committee shall have jurisdiction over proceedings brought by market makers seeking review of their denial of a reinstatement pursuant to paragraphs (b) or (d) of this Rule.

4621. Suspension and Termination of Quotations

The Exchange may, pursuant to the procedures set forth in the Rule 9000 Series, suspend, condition, limit, prohibit or terminate the authority of an Equities Market Maker, Equities ECN, or Order Entry Firm to enter quotations in one or more authorized securities for violations of applicable requirements or prohibitions.

4622. Termination of Exchange Service

The Exchange may, upon notice, terminate service in the event that an Equities Market Maker, Equities ECN, or Order Entry Firm fails to qualify under specified standards of eligibility or fails to pay promptly for services rendered by the Exchange.

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4623. Alternative Trading Systems

(a) The Exchange may provide a means to permit alternative trading systems ("ATSS"), as such term is defined in Regulation ATS, and electronic communications networks ("ECNs"), as such term is defined in SEC Rule 600,

(1) to comply with SEC Rule 301(b)(3);

(2) to comply with the terms of the ECN display alternative provided for in SEC Rule 602(b)(5)(ii)(A) and (B) ("ECN display alternatives"); or

(3) to provide orders to the Exchange voluntarily.

In providing any such means, the Exchange shall establish a mechanism that permits the ATS or ECN to display the best prices and sizes of orders entered into the ATS or ECN by subscribers of the ATS or ECN, if the ECN or ATS so chooses or is required by SEC Rule 301(b)(3) to display a subscriber's order in the Exchange, and allows any Exchange member the electronic ability to effect a transaction with such priced orders that is equivalent to the ability to effect a transaction with a market maker quotation in systems operated by the Exchange.

(b) An ATS or ECN that seeks to utilize the Exchange-provided means to comply with SEC Rule 301(b)(3), the ECN display alternatives, or to provide orders to the Exchange voluntarily shall:

(1) demonstrate to the Exchange that it is in compliance with Regulation ATS or that it qualifies as an ECN meeting the definition in the SEC Rule 600;

(2) be registered as an Exchange member;

(3) enter into and comply with the terms of applicable agreements with the Exchange;

(4) agree to provide for the Exchange's dissemination in the quotation data made available to quotation vendors the prices and sizes of subscriber orders of the ATS or ECN, if the ATS or ECN so chooses or is required by SEC Rule 301(b)(3) to display a subscriber's order in the Exchange, at the highest buy price and the lowest sell price for each security entered in and widely disseminated by the ATS or ECN; and prior to entering such prices and sizes, register with Exchange Market Operations as an ATS or ECN;

(5) provide an automatic execution of any quote or order entered into the System by the ATS or ECN.

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4624. Penalty Bids and Syndicate Covering Transactions

(a) An Equities Market Maker acting as a manager (or in a similar capacity) of a distribution of a security that is a subject or reference security under SEC Rule 101 shall provide written notice to the Corporate Financing Department of FINRA of its intention to impose a penalty bid on syndicate members or to conduct syndicate covering transactions pursuant to SEC Rule 104 prior to imposing the penalty bid or engaging in the first syndicate covering transaction. An Equities Market Maker that intends to impose a penalty bid on syndicate members may request that its quotation be identified as a penalty bid on the Exchange pursuant to paragraph (c) below.

(b) The notice required by paragraph (a) shall include:

- (1) the identity of the security and its symbol;
- (2) the date the member is intending to impose the penalty bid and/or conduct syndicate covering transactions.

(c) Notwithstanding paragraph (a), an Equities Market Maker may request that its quotation be identified as a penalty bid on the Exchange by providing notice to the Exchange's MarketWatch Department, which notice shall include the date and time that the penalty bid identifier should be entered on the Exchange and, if not in writing, shall be confirmed in writing no later than the close of business the day the penalty bid identifier is entered on the Exchange.

(d) The written notice required by this Rule may be submitted on the Underwriting Activity Report.

4625. Obligation to Provide Information

(a) An Equities Market Maker, Equities ECN, or Order Entry Firm operating in or participating in the NASDAQ OMX BX Equities Market or other system operated by the Exchange shall provide information orally, in writing, or electronically (if such information is, or is required to be, maintained in electronic form) to the staff of the Exchange when:

- (1) the Exchange's MarketWatch staff makes an oral, written, or electronically communicated request for information relating to a specific Exchange rule, SEC rule, or provision of a joint industry plan (e.g., UTP, CTA, and CQA) (as promulgated and amended from time-to-time) that MarketWatch is responsible for administering or to other duties and/or obligations imposed on

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MarketWatch by the Exchange; this shall include, but not be limited to, information relating to:

- (A) a locked or crossed market; or
- (B) trading activity, rumors, or information that a member may possess that may assist in determining whether there is a basis to initiate a trading halt, pursuant to Rule 4120; or
- (C) a clearly erroneous transaction, pursuant to Rule 11890; or
- (D) a request for an excused withdrawal or reinstatement, pursuant to Rules 4619 and 4620; or
- (E) trade-throughs; or
- (F) a request to submit a stabilizing bid, pursuant to Equity Rule 4614, or a request to have a quotation identified as a penalty bid on the Exchange, pursuant to Equity Rule 4624.

(2) Exchange Market Operations staff makes an oral, written, or electronically communicated request for information relating to a specific Exchange rule, SEC rule, provision of a joint industry plan (e.g., UTP, CTA, and CQA) (as promulgated and amended from time-to-time) that Exchange Market Operations is responsible for administering or to other duties and/or obligations for which Exchange Market Operations is responsible; this shall include, but not be limited to, information relating to an equipment failure.

(b) A failure to comply in a timely, truthful, and/or complete manner with a request for information made pursuant to this rule may be deemed conduct inconsistent with just and equitable principles of trade.

4626. Limitation of Liability

(a) Except as provided for in paragraph (b) below, the Exchange and its affiliates shall not be liable for any losses, damages, or other claims arising out of the NASDAQ OMX BX Equities Market, any other Exchange facility, or the use thereof. Any losses, damages, or other claims, related to a failure of the NASDAQ OMX BX Equities Market or any other Exchange facility to deliver, display, transmit, execute, compare, submit for clearance and settlement, adjust, retain priority for, or otherwise correctly process an order, Quote/Order, message, or other data entered into, or created by, the NASDAQ OMX BX Equities Market or any other Exchange facility shall be absorbed by the

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member, or the member sponsoring the customer, that entered the order, Quote/Order, message, or other data.

(b) The Exchange, subject to the express limits set forth below, may compensate users of the NASDAQ OMX BX Equities Market for losses directly resulting from the System's actual failure to correctly process an order, Quote/Order, message, or other data, provided the NASDAQ OMX BX Equities Market has acknowledged receipt of the order, Quote/Order, message, or data.

(1) For the aggregate of all claims made by all market participants related to the use of the NASDAQ OMX BX Equities Market during a single calendar month, the Exchange's liability shall not exceed the larger of \$500,000, or the amount of the recovery obtained by the Exchange under any applicable insurance policy.

(2) In the event all of the claims arising out of the use of the NASDAQ OMX BX Equities Market cannot be fully satisfied because in the aggregate they exceed the maximum amount of liability provided for in this Rule, then the maximum amount will be proportionally allocated among all such claims arising during a single calendar month.

(3) All claims for compensation pursuant to this Rule shall be in writing and must be submitted no later than 12:00 P.M. ET on the next business day following the day on which the use of the NASDAQ OMX BX Equities Market gave rise to such claims. Nothing in this rule shall obligate the Exchange to seek recovery under any applicable insurance policy.

4627. Obligation to Honor System Trades

(a) If a Participant, or clearing member acting on a Participant's behalf, is reported by the System, or shown by the activity reports generated by the System, as constituting a side of a System trade, such Participant, or clearing member acting on its behalf, shall honor such trade on the scheduled settlement date.

(b) The Exchange shall have no liability if a Participant, or a clearing member acting on the Participant's behalf, fails to satisfy the obligations in paragraph (a).

4628. Compliance with Rules and Registration Requirements

(a) Failure by a Participant to comply with any of the rules or registration requirements applicable to the NASDAQ OMX BX Equities Market identified herein

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shall subject such Participant to censure, fine, suspension or revocation of its registration as an Equities Market Maker, Order Entry Firm, and/or Equities ECN or any other fitting penalty under the Equity Rules.

(b)

(1) If a Participant fails to maintain a clearing relationship as required under paragraphs (a)(2) of Rule 4611, it shall be removed from the NASDAQ OMX BX Equities Market until such time as a clearing arrangement is reestablished.

(2) A Participant that is not in compliance with its obligations under paragraphs (a)(2) of Rule 4611 shall be notified when the Exchange exercises its authority under paragraph (b)(1) above.

(3) The authority and procedures contained in this paragraph (b) do not otherwise limit the Exchange's authority, contained in other provisions of the Rules of the Exchange, to enforce its rules or impose any fitting sanction.

4630. Trading in Commodity-Related Securities

(a) The Exchange will consider for trading pursuant to unlisted trading privileges, a Commodity-Related Security that meets the criteria of this Rule. Unless otherwise noted, a Commodity-Related Security approved for trading under this rule is eligible for trading during all market sessions if members comply with Rule 4631 when accepting Commodity-Related Security orders for execution in the pre-market session or post-market session.

(b) Applicability. This Rule is applicable only to Commodity-Related Securities. Except to the extent inconsistent with this Rule, or unless the context otherwise requires, the provisions of all other Equity Rules shall be applicable to the trading on the Exchange of such securities. Commodity-Related Securities are included within the definition of "security" or "securities" as such terms are used in the Equity Rules.

(c) Definitions. The following terms shall, unless the context otherwise requires, have the meaning herein specified:

(1) Commodity-Related Security. The term "Commodity-Related Security" means a security that is issued by a trust, partnership, commodity pool or similar entity that invests, directly or through another entity, in any combination of commodities, futures contracts, options on futures contracts, forward contracts, commodity swaps, or other related derivatives, or the value of which is determined by the value of commodities, futures contracts, options on

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futures contracts, forward contracts, commodity swaps, or other related derivatives.

(2) Commodity. The term "commodity" is defined in Section 1(a)(4) of the Commodity Exchange Act.

(d) Information Barriers. A member acting as a registered market maker in a Commodity-Related Security is obligated to establish adequate information barriers when such market maker engages in inter-departmental communications. Members should refer to NASD/NYSE Joint Memo on Chinese Wall Policies and Procedures (NASD Notice to Members 91-45) for guidance on the "minimum elements" of adequate Chinese Wall policy and procedures." For purposes of a Commodity-Related Security only, "inter-departmental communications" shall include communications to other departments within the same firm or the firm's affiliates that involve trading in commodities, futures contracts, options on futures contracts, forward contracts, commodity swaps, or other related derivatives underlying such Commodity-Related Security.

(e) Market Maker Accounts. A member acting as a registered market maker in a Commodity-Related Security must file with the Exchange's Regulation Department in a manner prescribed by such Department and keep current a list identifying all accounts for trading in commodities, futures contracts, options on futures contracts, forward contracts, commodity swaps, or other related derivatives underlying such Commodity-Related Security, in which the market maker holds an interest, over which it may exercise investment discretion, or in which it shares in the profits and losses. No market maker shall trade in, or exercise investment discretion with respect to, such underlying commodities, futures contracts, options on futures contracts, forward contracts, commodity swaps, or other related derivatives, in an account in which a market maker, directly or indirectly, controls trading activities, or has an interest in the profits or losses thereof, that has not been reported as required by this Rule. A member acting as a registered market maker in a Commodity-Related Security shall not act or register as a market maker in any commodities, futures contracts, options on futures contracts, forward contracts, commodity swaps, or other related derivatives underlying such Commodity-Related Security.

(f) The member acting as a registered market maker in a Commodity-Related Security shall make available to the Exchange's Regulation Department such books, records or other information pertaining to transactions by such entity or registered or non-registered employee affiliated with such entity for its or their own accounts for trading commodities, futures contracts, options on futures contracts, forward contracts, commodity swaps, or other related derivatives underlying such Commodity-Related Security, as may be requested by the Regulation Department.

(g) In connection with trading a Commodity-Related Security or commodities, futures contracts, options on futures contracts, forward contracts, commodity swaps, or other related derivatives underlying a Commodity-Related Security, the member acting as

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a market maker in a Commodity-Related Security shall not use any material nonpublic information received from any person associated with the member or employee of such person regarding trading by such person or employee in the commodities, futures contracts, options on futures contracts, forward contracts, commodity swaps, or other related derivatives underlying such Commodity-Related Security.

(h) The Exchange requires that members provide all purchasers of a newly issued Commodity-Related Security a prospectus for such Commodity-Related Security.

4631. Customer Disclosures

No member may accept an order from a customer for execution in the premarket session or post-market session without disclosing to such customer that extended hours trading involves material trading risks, including the possibility of lower liquidity, high volatility, changing prices, unlinked markets, an exaggerated effect from news announcements, wider spreads and any other relevant risk. The absence of an updated underlying index value or intraday indicative value is an additional trading risk in extended hours for Derivative Securities Products.

The disclosures required pursuant to this rule may take the following form or such other form as provides substantially similar information:

1. Risk of Lower Liquidity. Liquidity refers to the ability of market participants to buy and sell securities. Generally, the more orders that are available in a market, the greater the liquidity. Liquidity is important because with greater liquidity it is easier for investors to buy or sell securities, and as a result, investors are more likely to pay or receive a competitive price for securities purchased or sold. There may be lower liquidity in extended hours trading as compared to regular market hours. As a result, your order may only be partially executed, or not at all.

2. Risk of Higher Volatility. Volatility refers to the changes in price that securities undergo when trading. Generally, the higher the volatility of a security, the greater its price swings. There may be greater volatility in extended hours trading than in regular market hours. As a result, your order may only be partially executed, or not at all, or you may receive an inferior price in extended hours trading than you would during regular market hours.

3. Risk of Changing Prices. The prices of securities traded in extended hours trading may not reflect the prices either at the end of regular market hours, or upon the opening of the next morning. As a result, you may receive an inferior price in extended hours trading than you would during regular market hours.

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4. Risk of Unlinked Markets. Depending on the extended hours trading system or the time of day, the prices displayed on a particular extended hours system may not reflect the prices in other concurrently operating extended hours trading systems dealing in the same securities. Accordingly, you may receive an inferior price in one extended hours trading system than you would in another extended hours trading system.

5. Risk of News Announcements. Normally, issuers make news announcements that may affect the price of their securities after regular market hours. Similarly, important financial information is frequently announced outside of regular market hours. In extended hours trading, these announcements may occur during trading, and if combined with lower liquidity and higher volatility, may cause an exaggerated and unsustainable effect on the price of a security.

6. Risk of Wider Spreads. The spread refers to the difference in price between what you can buy a security for and what you can sell it for. Lower liquidity and higher volatility in extended hours trading may result in wider than normal spreads for a particular security.

7. Risk of Lack of Calculation or Dissemination of Underlying Index Value or Intraday Indicative Value ("IIV"). For certain Derivative Securities Products, an updated underlying index value or IIV may not be calculated or publicly disseminated in extended trading hours. Since the underlying index value and IIV are not calculated or widely disseminated during the pre-market and post-market sessions an investor who is unable to calculate implied values for certain Derivative Securities Products in those sessions may be at a disadvantage to market professionals.

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4700. The NASDAQ OMX BX Equities Market

4750. Execution Services

4751. Definitions

The following definitions apply to the Rule 4600 and 4750 Series for the trading of securities listed on the Exchange or another national securities exchange.

(a) The term "NASDAQ OMX BX Equities Market" or "System" shall mean the automated system for order execution and trade reporting owned and operated by the Exchange. The System comprises:

(1) an order execution service that enables Participants to automatically execute transactions in System Securities; and provides Participants with sufficient monitoring and updating capability to participate in an automated execution environment;

(2) a trade reporting service that submits "locked-in" trades for clearing to a registered clearing agency for clearance and settlement; transmits last-sale reports of transactions automatically to the national trade reporting system, if required, for dissemination to the public and industry; and provides participants with monitoring and risk management capabilities to facilitate participation in a "locked-in" trading environment;

(3) a data feed(s) that can be used to display with attribution to Participants' MPIDs all Quotes and displayed Orders on both the bid and offer side of the market for all price levels then within the NASDAQ OMX BX Equities Market.

(b) The term "System Securities" shall mean any NMS stock, as defined in SEC Rule 600.

(c) The term "Participant" shall mean an entity that fulfills the obligations contained in Rule 4611 regarding participation in the System, and shall include:

(1) "Equities ECNs," members that meet all of the requirements of Rule 4623, and that participates in the System with respect to one or more System Securities.

(2) "Equities Market Makers," members that are registered as Equities Market Makers for purposes of participation in the System on a fully automated basis with respect to one or more System Securities.

(3) "Order Entry Firms," members that are registered as Order Entry Firms for purposes of entering orders in System Securities into the System. This term

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shall also include any Electronic Communications Network or Alternative Trading System that fails to meet all the requirements of Rule 4623.

(d) With respect to System-provided quotation functionality:

(1) The term "Quote" shall mean a single bid or offer quotation submitted to the System and designated for display (price and size) next to the Participant's MPID by a Participant that is eligible to submit such quotations.

(2) The term "Reserve Size" shall mean the System-provided functionality that permits a Participant to display in its Displayed Quote part of the full size of a proprietary or agency order, with the remainder held in reserve on an undisplayed basis. Both the displayed and non-displayed portions are available for potential execution against incoming orders. If the Displayed Quote is reduced to less than a normal unit of trading, the System will replenish the display portion from reserve up to at least a single round-lot amount. A new timestamp is created for the replenished portion of the order each time it is replenished from reserve, while the reserve portion retains the time-stamp of its original entry.

(e) The term "Order" shall mean a single order or multiple orders at the same price submitted to the System by a Participant that is eligible to submit such orders and shall include:

(1) "Attributable Orders," orders that are designated for display (price and size) next to the Participant's MPID;

(2) "Non-Attributable Orders," orders that are entered by a Participant that are designated for display (price and size) on an anonymous basis in the order display service of the System; and

(3) "Non-Displayed Orders," a limit order that is not displayed in the System, but nevertheless remains available for potential execution against all incoming orders until executed in full or cancelled.

(f) The term "Order Type" shall mean the unique processing prescribed for designated orders that are eligible for entry into the System, and shall include:

(1) Reserved

(2) "Reserve Orders" are limit orders that have both a round-lot displayed size as well as an additional non-displayed share amount. Both the displayed and non-displayed portions of the Reserve Order are available for potential execution against incoming orders. If the round-lot displayed portion of a Reserve Order is reduced to less than a normal unit of trading, the System will replenish the display portion from reserve up to at least a single round-lot amount. A new timestamp is

Changes are approved but are *not* operative.

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created for the replenished portion of the order each time it is replenished from reserve, while the reserve portion retains the time-stamp of its original entry.

(3) "Limit Orders" are orders to buy or sell a stock at a specified price or better. A limit order is marketable when, for a limit order to buy, at the time it is entered into the System, the order is priced at the current inside offer or higher, or for a limit order to sell, at the time it is entered into the System, the order is priced at the inside bid or lower.

(4) "Pegged Orders" are orders that, after entry, have their price automatically adjusted by the System in response to changes in either the NASDAQ OMX BX Equities Market inside bid or offer or bids or offers in the national market system, as appropriate. A Pegged Order can specify that its price will equal the inside quote on the same side of the market ("Primary Peg"), the opposite side of the market ("Market Peg"), or the midpoint of the national best bid and offer ("Midpoint Peg"). A Pegged Order may have a limit price beyond which the order shall not be executed. In addition, the Primary Peg and Market Peg Orders may also establish their pricing relative to the appropriate bids or offers by the selection of one or more offset amounts that will adjust the price of the order by the offset amount selected. A Midpoint Peg Order is priced based upon the national best bid and offer, excluding the effect that the Midpoint Peg Order itself has on the inside bid or inside offer. Midpoint Pegged Orders will never be displayed. A Midpoint Pegged Order may be executed in sub-pennies if necessary to obtain a midpoint price. A new timestamp is created for the order each time it is automatically adjusted.

(5) "Minimum Quantity Orders" are orders that require that a specified minimum quantity of shares be obtained, or the order is cancelled. Minimum Quantity Orders may only be entered with a time-in-force designation of System Hours Immediate or Cancel.

(6) "Intermarket Sweep Order" or "ISO" are limit orders that are designated as ISOs in the manner prescribed by the Exchange and are executed within the System by Participants at multiple price levels without respect to Protected Quotations of other market centers within the meaning of Rule 600(b) of Regulation NMS under the Act. ISOs are immediately executable within the System pursuant to Rule 4757.

Simultaneously with the routing of an ISO to the System, one or more additional limit orders, as necessary, are routed by the entering party to execute against the full displayed size of any protected bid or offer (as defined in Rule 600(b) of Regulation NMS under the Act) in the case of a limit order to sell or buy with a price that is superior to the limit price of the limit order identified as an intermarket sweep order (as defined in Rule 600(b) of Regulation NMS under the

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Act). These additional routed orders must be identified as intermarket sweep orders.

(7) "Price to Comply Order" are orders that, if, at the time of entry, a Price to Comply Order would lock or cross the quotation of an external market, the order will be priced to the current low offer (for bids) or to the current best bid (for offers) and displayed at a price one minimum price increment lower than the offer (for bids) or higher than the bid (for offers). The displayed and undisplayed prices of a Price to Comply order may be adjusted once or multiple times depending upon the method of order entry and changes to the prevailing NBBO.

(8) "Price to Comply Post Order" are orders that, if, at the time of entry, a Price to Comply Post Order would create a violation of Rule 610(d) of Regulation NMS under the Exchange Act of 1934 by locking or crossing the protected quote of an external market or would cause an Order Protection Rule violation, the order will be re-priced and displayed by the System to one minimum price increment (i.e., \$0.01 or \$0.0001) below the current low offer (for bids) or to one penny above the current best bid (for offers).

(9) "Post-Only Orders" are orders that if, at the time of entry, would lock an order on the System, the order will be re-priced and displayed by the System to one minimum price increment (i.e., \$0.01 or \$0.0001) below the current low offer (for bids) or above the current best bid (for offers).

(10) "Unpriced Orders" are any order types permitted by the System to buy or sell shares of a security at the national best bid (best offer) ("NBBO") at the time when the order reaches the System. Any portion of an Unpriced Order that would execute on BX at a price more than \$0.25 or 5 percent worse than the NBBO at the time when the order reaches the System, whichever is greater, will be cancelled.

(g) The term "Order Size" shall mean the number of shares up to 999,999 associated with a Quote or Order and shall include:

- (1) "normal unit of trading": the round lot size for the security.
- (2) "mixed lot": an order that is for more than a normal unit of trading but not a multiple thereof.
- (3) "odd-lot": an order that is for less than a normal unit of trading.

(h) The term "Time in Force" shall mean the period of time that the System will hold an order for potential execution, and shall include:

Changes are approved but are *not* operative.

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(1) "System Hours Immediate or Cancel" or "SIOC" shall mean, for limit orders so designated, that if after entry into the System the order (or a portion thereof) is not marketable, the order (or unexecuted portion thereof) shall be canceled and returned to the entering Participant. SIOC Orders shall be available for entry and execution from 7:00 a.m. until 7:00 p.m. Eastern Time.

(2) "System Hours Day" or "SDAY" shall mean, for orders so designated, that if after entry into the System, the order is not fully executed, the order (or the unexecuted portion thereof) shall remain available for potential display and/or execution from 7:00 a.m. until 7:00 p.m. Eastern Time on the day it was submitted unless cancelled by the entering party.

(3) Reserved

(4) "System Hours Expire Time" or "SHEX" shall mean, for orders so designated, that if after entry into the System, the order is not fully executed, the order (or the unexecuted portion thereof) shall remain available for potential display and/or execution for the amount of time specified by the entering Participant unless canceled by the entering party. SHEX Orders shall be available for entry and execution from 7:00 a.m. until 7:00 p.m. Eastern Time.

(5) Reserved

(6) Reserved

(7) Reserved

(8) "Good-til-market close" or "GTMC" shall mean for orders so designated, that if after entry into the System, the order is not fully executed, the order (or unexecuted portion thereof) shall remain available for potential display and/or execution until cancelled by the entering party, or until 4:00 p.m. Eastern Time, after which it shall be returned to the entering party. GTMC orders shall be available for entry and potential execution from 7:00 a.m. until 7:00 p.m. Eastern Time. GTMC orders entered after 4:00 p.m. will be treated as SIOC orders.

(i) The term "System Book Feed" shall mean a data feed for System eligible securities.

(j) The term "MPID" shall mean a Participant's unique market participant identifier.

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4752. Opening Process; Opening and Closing Price

(a) Trading Prior To Normal Market Hours. The system shall process all eligible Quotes/Orders at 7:00 a.m.:

(1) At 7:00 a.m., the system shall add in time priority all eligible Orders in accordance with each order's defined characteristics.

(2) Quoting Market Participants must enter quotations in compliance with Rule 4613 at 9:25 a.m. until market open, and at all times thereafter during Regular Market Hours.

(3) All trades executed prior to 9:30 shall be automatically appended with the ".T" modifier.

(b) The official opening price for a security listed on the Exchange will be the price of the first trade executed at or after 9:30 a.m. and the official closing price will be the price of the last trade executed at or prior to 4:00 p.m.

4753. Reserved

4754. Reserved

4755. Order Entry Parameters

(a) System Orders—A System order is an order that is entered into the System for display and/or execution as appropriate. Such orders are executable against marketable contra-side orders in the System.

(1) All System Orders shall indicate limit price and whether they are a buy, short sale, or long sale. Systems Orders can be designated as System Hours Expire Time ("SHEX"), System Hours Day ("SDAY"), System Hours Immediate or Cancel ("SIOC"), or Good-til-Market Close "GTMC").

(2) A System order may also be designated as Reserve Order, a Pegged Order, a Non-Displayed Order, a Minimum Quantity Order, an Intermarket Sweep Order, a Price to Comply order, or a Price to Comply Post order. In addition to such other designations as may be chosen by a participant, all System orders must be entered with a Time in Force of System Hours Immediate or

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Cancel or designated as a Pegged Order, an Intermarket Sweep Order, a Price to Comply order, or a Price to Comply Post order.

(3) System Hours Pegged Orders may only be entered between 9:30 a.m. and 4:00 p.m. Eastern Time.

(b) Regulation NMS—In connection with the trading of securities governed by Regulation NMS, Intermarket Sweep Orders shall be executed exclusively within the System and the entering Participants shall be responsible for compliance with Regulation NMS Order Protection Rule and Locked and Crossed market rule with respect to such orders. All other orders must be entered with a Time in Force of System Hours Immediate or Cancel or designated as either a a Pegged Order, a Price to Comply order or a Price to Comply Post order. Orders shall be processed in compliance with Regulation NMS by being priced by the System in a manner that avoids trading through protected quotations and avoids locked and crossed markets.

4756. Entry and Display of Quotes and Orders

(a) Entry of Orders—Participants can enter orders into the System, subject to the following requirements and conditions:

(1) Participants shall be permitted to transmit to the System multiple orders at a single as well as multiple price levels. Each order shall indicate the amount of Reserve Size (if applicable).

(2) The System shall time-stamp an order which shall determine the time ranking of the order for purposes of processing the order.

(3) Orders can be entered into the System (or previously entered orders cancelled) from 7:00 a.m. until 7:00 p.m. Eastern Time.

(b) Entry or Quotes—Equities Market Makers, Order Entry Firms, and Equities ECNs can enter Quotes into the system from 7:00 a.m. to 7:00 p.m. Eastern Time. When open, Quotes will be processed as System Hours Day Orders (SDAY). Entry of Quotes will be subject to the requirements and conditions set forth in section (a) above.

(c) Display of Quotes and Orders—The System will display quotes and orders submitted to the System as follows:

(1) System Book Feed—quotes and orders resident in the System available for execution will be displayed via the System Book Feed.

(2) Best Priced Order Display—For each System Security, the aggregate size of all Quotes and Orders at the best price to buy and sell resident in the

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System will be transmitted for display to the appropriate network processor, unless the aggregate size is less than one round lot in which case the aggregate size will be displayed in the System Book Feed but not be transmitted to a network processor.

(3) Exceptions—The following exceptions shall apply to the display parameters set forth in paragraphs (1) and (2) above:

(A) Reserve Size—Reserve Size shall not be displayed in the System, but shall be accessible as described in Rule 4757.

(B) Reserved

(C) Non-Displayed Orders—Non-Displayed Orders are not displayed in the System, and have lower priority within the System than an equally priced Displayed Order, regardless of time stamp, and shall be executed pursuant to Rule 4757.

(4) In connection with the trading of securities governed by Regulation NMS, pursuant to Rule 600(b)(4) of Regulation NMS under the Act, the Exchange has implemented such systems, procedures, and rules as are necessary to render it capable of meeting the requirements for automated quotations, as defined in Rule 600(b)(3) of Regulation NMS under the Act; and immediately to identify its quotations as manual whenever it has reason to believe it is not capable of displaying automated quotations. The Exchange has adopted policies and procedures for notifying members and other trading centers that it has reason to believe it is not capable of displaying automated quotations or, once manual, that it has restored the ability to display automated quotations and is preparing to identify its quotation as automated. In addition, the Exchange has adopted policies and procedures for responding to notices that it receives from other trading centers indicating that they have elected to use the "self-help" exception of Rule 611(b)(1) of Regulation NMS under the Act.

4757. Book Processing

System orders shall be executed through the Book Process set forth below:

(a) Execution Algorithm - Price/Time — The System shall execute equally priced or better priced trading interest within the System in price/time priority in the following order:

(1) Displayed Orders; and

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(2) Non-Displayed Orders, the reserve portion of Quotes and Reserve Orders, in price/time priority among such interest.

(3) Exception: Anti-Internalization - Market participants may direct that quotes/orders entered into the System not execute against quotes/orders entered under the same MPID. In such a case, a market participant may elect from the following options;

(i) if the interacting quotes/orders from the same MPID are equivalent in size, both quotes/orders will be cancelled back to their entering parties. If the interacting quotes/orders from the same MPID are not equivalent in size, share amounts equal to size of the smaller of the two quotes/orders will be cancelled back to their originating parties with the remainder of the larger quote/order being retained by the System for potential execution; or

(ii) regardless of the size of the interacting quotes/orders, cancelling the oldest of them in full.

(b) Decrementation—Upon execution, an order shall be reduced by an amount equal to the size of that execution.

(c) Price Improvement—any potential price improvement resulting from an execution in the System shall accrue to the taker of liquidity.

Example:

Buy order resides on the Exchange book at 10.

Incoming order to sell priced at 9 comes into the System

Order executes at 10 (seller get \$1 price improvement)

4758. Reserved

4759. Reserved

Rule 4700 Series

4760. Anonymity

(a) Transactions executed in the System shall be cleared and settled anonymously. The transaction reports produced by the System will indicate the details of the transactions, and shall not reveal contra party identities.

(b) The Exchange shall reveal a Participant's identity in the following circumstances:

(1) when a registered clearing agency ceases to act for a participant, or the Participant's clearing firm, and the registered clearing agency determines not to guarantee the settlement of the Participant's trades;

(2) for regulatory purposes or to comply with an order of an arbitrator or court;

(3) if both Participants to the transaction consent;

(4) Unless otherwise instructed by a member, the Exchange will reveal to a member, no later than the end of the day on the date an anonymous trade was executed, when the member's Quote or Order has been decremented by another Quote or Order submitted by that same member.

4762 Clearly Erroneous Transactions

All matters related to clearly erroneous transactions executed in the System shall be initiated and adjudicated pursuant to Rule 11890.

4763 Short Sale Price Test Pursuant to Rule 201 of Regulation SHO

(a) Definitions. For purposes of this Rule, the terms "covered security," "listing market," and "national best bid" shall have the same meaning as in Rule 201 of Regulation SHO.

(b) Short Sale Price Test. The System (as defined in BX Rule 0120(x)) shall not execute or display a short sale order with respect to a covered security at a price that is less than or equal to the current national best bid if the price of that security decreases by 10% or more, as determined by the listing market for the security, from the security's closing price on the listing market as of the end of regular trading hours on the prior day ("Trigger Price").

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(c) Duration of Short Sale Price Test. If the Short Sale Price Test is triggered by the listing market with respect to a covered security, the Short Sale Price Test shall remain in effect until the close of trading on the next trading day, as provided for in Regulation SHO Rule 201(b)(1)(ii) (the "Short Sale Period").

(d) Re-pricing of Orders during Short Sale Period. During the Short Sale Period, short sale orders that are limited to the national best bid or lower and short sale market orders will be re-priced by the System one minimum allowable price increment above the national best bid ("Permitted Price"). To reflect declines in the national best bid, the Exchange will continue to re-price a short sale order at the lowest Permitted Price down to the order's original limit price, or if a market order, until the order is filled. Nondisplayed orders between the BX bid and offer will also be re-priced upward to a Permitted Price to correspond with a rise in the national best bid.

(1) During the Short Sale Period, immediate or cancel orders ("IOC") requiring that all or part of the order be executed immediately will be executed at a Permitted Price and higher and then cancelled, and will not be re-priced. IOC short sale orders that are inter-market sweep orders and not marked "short exempt" will be handled in the same manner as IOC orders.

(e) Execution of Permissible Orders during the Short Sale Period. During the Short Sale Period, the System will execute and display a short sale order without regard to whether the order is at a Permitted Price or higher if, at the time of initial display of the short sale order, the order was at a price above the then current national best bid. Short sale orders that are entered into the Exchange prior to the Short Sale Period but are not displayed will be re-priced as described in (d) above.

(f) Short Exempt Orders. During the Short Sale Period, the System will execute and display orders marked "short exempt" without regard to whether the order is at a Permitted Price or higher. The System will accept orders marked "short exempt" at any time when the System is open for order entry, regardless of whether the Short Sale Price Test has been triggered.

Rule 4800 Series

4800. Deleted.

IM-4800. Deleted.

4801. Deleted.

4802. Deleted.

4803. Deleted.

IM-4803. Deleted.

4804. Deleted.

4805. Deleted.

4806. Deleted.

4807. Deleted.

4808. Deleted.

4809. Deleted.

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Rule 4800 Series

4810. Deleted.

4811. Deleted.

4812. Deleted.

4813. Deleted.

4814. Deleted.

4815. Deleted.

4816. Deleted.

Rule 5000 Series

5000. BX Venture Market LISTING RULES

5001. The Qualification, Listing, and Delisting of Companies

This Rule 5000 Series (consisting of Rules 5000-5999) contains rules related to the qualification, listing and delisting of Companies on the NASDAQ OMX BX listing platform called the “BX Venture Market”. Companies listed on the BX Venture Market do not qualify, as a result of such listing, for any exemption to the application of the penny stock rules or state securities registration requirements. The Exchange will take action, pursuant to the Rule 5100 Series, to delist any Company listed on the BX Venture Market that attempts to rely on an exemption from state securities registration which may otherwise be available to Companies listed on the Exchange.

The Rule 5100 Series (consisting of Rules 5100-5199) discusses the Exchange’s general regulatory authority. The Rule 5200 Series (consisting of Rules 5200-5299) sets forth the procedures and prerequisites for gaining a listing on the Exchange, as well as the disclosure obligations of listed Companies. The Rule 5500 Series (consisting of Rules 5500-5599) contains the specific quantitative listing requirements for listing on the Exchange. The corporate governance requirements applicable to Companies listed on the Exchange are contained in the Rule 5600 Series (consisting of Rules 5600-5699). The consequences of a failure to meet the Exchange’s listing standards are contained in the Rule 5800 Series (consisting of Rules 5800-5899). Finally, Company listing fees are described in the Rule 5900 Series (consisting of Rules 5900-5999).

The Exchange exercises other authorities important to listed Companies discussed in other Rules Series in the Marketplace Rules. For example, the Exchange may close markets upon request of the SEC (see Rule 4121). It may also halt the trading of a Company’s securities under certain circumstances and pursuant to established procedures (See Rule 4120 and IM-5250-1 and IM-5810-1). These authorities are exercised primarily by the MarketWatch Department and are contained in the Rule 4000 Series.

The Exchange is a party to a regulatory contract with the Financial Industry Regulatory Authority, Inc. (“FINRA”) and a separate regulatory contract with the NASDAQ Stock Market LLC (“NASDAQ”) pursuant to which FINRA and NASDAQ have agreed to perform certain functions described in the Rules on behalf of the Exchange. Notwithstanding the fact that the Exchange has entered into these regulatory contracts to perform some of the Exchange’s functions, the Exchange shall retain ultimate legal responsibility for, and control of, such functions.

5005. Definitions

(a) The following is a list of definitions used throughout the Listing Rules. This section also lists various terms together with references to other rules where they are specifically defined. Unless otherwise specified by the Rules, these terms shall have the meanings set forth below. Defined terms are capitalized throughout the Listing Rules.

- (1) “Act” means the Securities Exchange Act of 1934.

Rule 5000 Series

- (2) “Bid Price” means the closing bid price.
- (3) “Commission” or “SEC” means the United States Securities and Exchange Commission.
- (4) “Company” means the issuer of a security listed or applying to list on the Exchange. For purposes of the Rule 5000 Series, the term “Company” includes an issuer that is not incorporated, such as, for example, a limited partnership.
- (5) “Country of Domicile” means the country under whose laws a Company is organized or incorporated.
- (6) “Direct Registration Program” means any program by a Company, directly or through its transfer agent, whereby a Shareholder may have securities registered in the Shareholder’s name on the books of the Company or its transfer agent without the need for a physical certificate to evidence ownership.
- (7) “EDGAR System” means the SEC’s Electronic Data Gathering, Analysis, and Retrieval system.
- (8) “ESOP” means employee stock option plan.
- (9) “Executive Officer” is defined in Rule 5605(a)(1).
- (10) “Filed with the Exchange” means submitted to the Exchange directly or filed with the Commission through the EDGAR System.
- (11) “Family Member” is defined in Rule 5605(a)(2).
- (12) “Foreign Private Issuer” shall have the same meaning as under Rule 3b-4 under the Act.
- (13) “Independent Director” is defined in Rule 5605(a)(2).
- (14) “Listed Securities” means securities listed on the Exchange or another national securities exchange.
- (15) “Market Value” means the consolidated closing bid price multiplied by the measure to be valued (e.g., a Company’s Market Value of Listed Securities is equal to the consolidated closing bid price multiplied by the number of the Company’s Listed Securities).
- (16) “Member” means a broker or dealer admitted to membership on the Exchange.
- (17) “Market Maker” means a dealer that, with respect to a security, holds itself out (by entering quotations in the Exchange) as being willing to buy and sell such security for its own account on a regular and continuous basis and that is registered as such.
- (18) “Other Regulatory Authority” means, in the case of a bank or savings authority identified in Section 12(i) of the Act, the agency vested with authority to enforce the provisions of Section 12 of the Act.

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Rule 5000 Series

(19) “Primary Equity Security” means a Company’s first class of Common Stock, Ordinary Shares, Shares or Certificates of Beneficial Interest of Trust, Limited Partnership Interests, American Depositary Receipts (ADR) or American Depositary Shares (ADS).

(20) “Publicly Held Shares” means shares not held directly or indirectly by an officer, director or any person who is the beneficial owner of more than 10 percent of the total shares outstanding. Determinations of beneficial ownership in calculating publicly held shares shall be made in accordance with Rule 13d-3 under the Act.

(21) “Public Holders” means holders of a Security that includes both beneficial holders and holders of record, but does not include any holder who is, either directly or indirectly, an Executive Officer, director, or the beneficial holder of more than 10% of the total shares outstanding.

(22) “Round Lot” or “Normal Unit of Trading” means 100 shares of a Security unless, with respect to a particular Security, the Exchange determines that a normal unit of trading shall constitute other than 100 shares. If a normal unit of trading is other than 100 shares, a special identifier shall be appended to the Company’s Exchange symbol.

(23) “Round Lot Holder” means a holder of a Normal Unit of Trading. The number of beneficial holders will be considered in addition to holders of record.

(24) “Sarbanes-Oxley Act” means the Sarbanes-Oxley Act of 2002 (15 U.S.C. 7212).

(25) “Security” means a Company’s Common Stock, Preferred Stock, Ordinary Shares, Shares or Certificates of Beneficial Interest of Trust, Limited Partnership Interests, American Depositary Receipts (ADR), American Depositary Shares (ADS), Units, Rights or Warrants.

(26) “Shareholder” means a record or beneficial owner of a Security listed or applying to list. For purposes of the Rule 5000 Series, the term “Shareholder” includes, for example, a limited partner, the owner of a depository receipt, or unit.

(27) “Substitution Listing Event” means: a reverse stock split, re-incorporation or a change in the Company’s place of organization, the formation of a holding company that replaces a listed Company, reclassification or exchange of a Company’s listed shares for another Security, the listing of a new class of securities in substitution for a previously-listed class of securities, or any technical change whereby the Shareholders of the original Company receive a share-for-share interest in the new Company without any change in their equity position or rights.

Rule 5100 Series

5100. The Exchange's Regulatory Authority

5101. Preamble to the Rule 5100 Series

The Exchange is entrusted with the authority to preserve and strengthen the quality of and public confidence in its market. The Exchange stands for integrity and ethical business practices in order to enhance investor confidence, thereby contributing to the financial health of the economy and supporting the capital formation process. The Exchange's Companies are publicly recognized as sharing these important objectives.

Consistent with these goals, and mindful of the smaller size and liquidity characteristics of certain of the Companies that may list on the Exchange, the Exchange will provide expert surveillance of market activity in listed companies by experienced market regulators, as described in Rule 5105. It has also adopted rules to ensure that investors may clearly distinguish BX Venture Market listed securities from those listed on NASDAQ or other national securities exchanges, as described in Rule 5106. In addition, the Exchange require that companies undergo a rigorous review process before being approved for listing, and are subject to heightened regulatory oversight thereafter. The additional listing procedures and requirements will be enforced by the highly qualified, experienced listing staff in NASDAQ's Listing Qualifications Department, as described in Rule 5102. This staff also has discretionary authority to deny listing to otherwise qualified companies where necessary to maintain the quality of and public confidence in its market, to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and to protect investors and the public interest. This authority is described in Rule 5104 and IM-5104-1- 4.

5102. Experienced Listing Qualifications Staff

The Exchange will employ the staff in NASDAQ's Listing Qualifications Department to apply and enforce its listing standards pursuant to a regulatory contract. Notwithstanding this contractual arrangement, the Exchange retains ultimate legal responsibility for and control of these functions. Staff in the NASDAQ Listing Qualifications Department have substantial experience in regulating listed companies. In addition to the review of companies seeking a listing as described in Rule 5205, the Department will monitor compliance with all listing standards on an on-going basis through the regular review of public filings, Form 8-K disclosures, press releases, market data, and closing bid price. The Department also includes within it a group dedicated to the investigation of companies and the screening for potential public interest concerns. The investigative group will be supervised by at least one individual with substantial prior regulatory experience at a national securities exchange or experience with the SEC's Enforcement Division, FINRA, or another organization with responsibilities for enforcing the federal securities laws. Oversight of the listings program will similarly include at all times at least one individual with substantial prior experience in supervising a listing program at a national securities exchange that currently has an active listing program. In addition, the

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Chief Regulatory Officer of the Exchange will be required to have substantial prior regulatory experience with a national securities exchange or equivalent experience.

5103. Automatic Bars to Listing

(a) Regulatory History. The Exchange will not approve for listing or allow the continued listing of a Company if any executive officer, director, promoter, or control person was involved in any event that occurred during the prior five years described in Item 401(f)(2) – (8) of Regulation S-K under the Act. In addition, as discussed more fully in Rule 5104 and IM-5104-1, the Exchange will ordinarily exercise its discretion to deny listing when it determines that an executive officer, director, promoter, or control person of the Company has a history of regulatory misconduct that does not implicate this automatic bar. Any determination to list or allow the continued listing of such a Company will only be made after consideration of factors set forth in IM-5104-1 and with the written approval of the Chief Regulatory Officer of the Exchange.

(b) Public Shells. The Exchange will not approve for listing or allow the continued listing of "shell" Companies. In determining whether a Company is a shell, the Exchange will look to a number of factors, including but not limited to: whether the Company is considered a "shell company" as defined in Rule 12b-2 under the Act; what percentage of the Company's assets are active versus passive; whether the Company generates revenues, and if so, whether the revenues are passively or actively generated; whether the Company's expenses are reasonably related to the revenues being generated; how many employees support the Company's revenue-generating business operations; how long the Company has been without material business operations; and whether the Company has publicly announced a plan to begin operating activities or generate revenues, including through a near-term acquisition or transaction.

(c) Impermissible Claims of Exemptions. Companies listed on the BX Venture Market do not qualify, as a result of such listing, for any exemption from the application of the penny stock rules contained in Rules 15g-1 through 15g-100 under the Act or state securities registration requirements. The Exchange will not list any Company, and will delist any listed Company, that attempts to rely on an exemption from state securities registration which otherwise may be available under state law to Companies listed on the Exchange.

5104. Discretionary Authority.

The Exchange, in addition to applying the enumerated criteria set forth in the Rule 5000 Series, has broad discretionary authority over the initial and continued listing of securities in the BX Venture Market in order to maintain the quality of and public confidence in its market, to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and to protect investors and the public interest. The Exchange may use such discretion to deny initial listing, apply additional or more stringent criteria for the initial or continued listing of particular securities, or suspend or

Rule 5100 Series

delist particular securities based on any event, condition, or circumstance that exists or occurs that makes initial or continued listing of the securities on the BX Venture Market inadvisable or unwarranted in the opinion of the Exchange, even though the securities meet all enumerated criteria for initial or continued listing on the BX Venture Market. In all circumstances where the Listing Qualifications Department (as defined in Rule 5805) exercises its discretionary authority under this Rule, the Listing Qualifications Department shall issue a Staff Delisting Determination under Rule 5810(c)(1), and in all circumstances where an Adjudicatory Body (as defined in Rule 5805) exercises such authority, the use of the authority shall be described in the written decision of the Adjudicatory Body.

Although the Exchange has broad discretion under this Rule to impose additional or more stringent criteria, the Rule does not provide a basis for the Exchange to grant exemptions or exceptions from the enumerated criteria for initial or continued listing, which may be granted solely pursuant to rules explicitly providing such authority.

IM-5104-1. Use of Discretionary Authority in the Case of a Regulatory History That Does Not Implicate the Automatic Bar

The Exchange ordinarily will use its discretionary authority to deny initial or continued listing to a Company when an individual with a history of regulatory misconduct is associated with the Company even though that history does not lead to the automatic bar described in Rule 5103(a). However, in limited circumstances, it may determine to allow the listing of such Company, provided it obtains the written approval of the Chief Regulatory Officer of the Exchange. In determining whether to list such a Company, the Exchange will consider the totality of information in its possession, including the information provided by an independent qualified third party investigator as described in Rule 5205(d), as well the following factors:

- *the nature and severity of the conduct, taken in conjunction with the length of time since the conduct occurred;*
- *whether the conduct involved fraud or dishonesty;*
- *whether the conduct was securities-related;*
- *whether the investing public was involved;*
- *whether the conduct demonstrates a propensity for financial mismanagement;*
- *how the individual has been employed since the violative conduct;*
- *whether there are continuing sanctions (either criminal or civil) against the individual;*
- *whether the individual made restitution;*
- *whether the Company has taken effective remedial action; and*

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- *the totality of the individual's relationship to the Company, giving consideration to:*
 - *the individual's current or proposed position;*
 - *the individual's current or proposed scope of authority;*
 - *the extent to which the individual has responsibility for financial accounting or reporting; and*
 - *the individual's equity interest.*

The Exchange may determine that the regulatory history rises to the level of a public interest concern, but may also consider whether remedial measures proposed by the Company, if taken, would allay that concern. Examples of such remedial measures could include any or all of the following, as appropriate:

- *the individual's resignation from officer, director or promoter positions, and/or other employment with the Company;*
- *divestiture of stock holdings;*
- *terminations of contractual arrangements between the Company and the individual; or*
- *the establishment of a voting trust surrounding the individual's shares.*

The Exchange Staff is willing to discuss with Companies, on a case-by-case basis, what remedial measures may be appropriate to address public interest concerns, and for how long such remedial measures would be required. Alternatively, the Exchange may conclude that a public interest concern is so serious that no remedial measure would be sufficient to alleviate it. In the event that the Exchange Staff denies initial or continued listing based on such public interest considerations, the Company may seek review of that determination through the procedures set forth in the Rule 5800 Series. On consideration of such appeal, a Hearings Panel comprised of persons independent of the Exchange may accept, reject or modify the Staff's recommendations by imposing conditions.

IM-5104-2. Use of Discretionary Authority Based on Financial Disclosures

The Exchange may use its discretionary authority to delist a Company when a Company files for protection under any provision of the federal bankruptcy laws or comparable foreign laws, when a Company's independent accountants issue a disclaimer opinion on financial statements required to be audited, or when financial statements do not contain a required certification.

IM-5104-3. Use of Discretionary Authority Based on Past Corporate Governance Issues

The Exchange will review the Company's past corporate governance activities. This review may include activities taking place while the Company is listed on the Exchange or an exchange that imposes corporate governance requirements, as

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well as activities taking place after a formerly listed company is no longer listed on the Exchange or such an exchange. Based on such review, and in accordance with the Rule 5800 Series, the Exchange may take any appropriate action, including placing restrictions on or additional requirements for listing, or denying listing of a Security, if the Exchange determines that there have been violations or evasions of such corporate governance standards. Such determinations will be made on a case-by-case basis as necessary to protect investors and the public interest. Whenever Staff has identified a past violation or evasion of a corporate governance standard pursuant to its review of a Company's past corporate governance activities, but decides not to exercise its discretionary authority to deny listing, the listing must be approved in writing by the Chief Regulatory Officer.

IM-5104-4 Use of Discretionary Authority Based on Publicly Held Shares or Shareholder Count

The Exchange may apply its authority described in the Rule 5100 Series to deny listing to or delist a Security that meets all applicable listing requirements if the Exchange determines that there are an insufficient number of Publicly Held Shares or Shareholders that are not subject to trading restrictions, such that denial of listing or delisting is necessary to maintain the quality of and public confidence in the market, to prevent fraudulent and manipulative acts and practices, and to protect investors and the public interest.

5105. Oversight of Market Activity.

FINRA will regulate market activity on the BX Venture Market pursuant to a regulatory contract that will be in place before the Market is operational. Notwithstanding the regulatory contract, the Exchange retains ultimate legal responsibility for and control of these functions.

A regulatory review will utilize electronic surveillance patterns calibrated to detect potential issues that may arise in low-priced, less liquid stocks. In addition, a regulatory program will include review of trading that takes place on the over-the-counter market in securities listed on the BX Venture Market; the activity of firms on the BX Venture Market; "focused exams" concentrated on sales practices and firm oversight and any other activities required to effectively regulate the Market.

Staff of the Exchange will monitor real-time trading of securities listed on the BX Venture Market. The Exchange will provide a monthly report to the Directors of the Division of Trading and Markets and the Office of Compliance, Inspections, and Examinations describing significant developments on the BX Venture Market. The Exchange's Chief Regulatory Officer will provide quarterly reports to the Directors of the

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Division of Trading and Markets and the Office of Compliance, Inspections, and Examinations describing the regulatory activities of the Exchange and FINRA during the prior quarter.

5106. Market Data Display Requirements.

To avoid any confusion on the part of the investing public, the Exchange will refer to this listing venue as the BX Venture Market and not as NASDAQ OMX BX. Its communications and marketing literature will include a prominent explanation that the BX Venture Market is separate from and not a tier of the NASDAQ Stock Market. It will include prominent information on its website describing the differences between the BX Venture Market and other national securities exchanges.

Further, the Exchange is committed to ensuring that BX Venture Market securities are clearly distinguished, and distinguishable, from securities listed on the traditional exchanges on its data products and to end-users of the data. To that end, the Exchange will require, through its distribution agreements and global market data policy documents, that market data distributors prominently identify the BX Venture Market as the listing market and, where display of text is not consistent with the display methodology and user needs of the distributor, to use the Market Center identifier “B” to prominently display the listing market with quotation and last sale information for BX Venture Market-listed securities. Every market data vendor that distributes BX Venture Market data to users must have a signed data distribution agreement that will bind the data vendor to these display requirements, backed by contractual sanctions including termination of distribution. The Exchange will have these agreements in place before the BX Venture Market begins operations, and the market center identifier will be distributed and required to be displayed upon the launch of the market. The Exchange will, in connection with the launch, review the displays of data distributors and require immediate compliance if any displays fail to meet the requirements of the market data agreements. Thereafter, the Exchange will conduct periodic audits of all market data vendors to ensure compliance. If a market data vendor does not satisfy the Exchange’s display requirements, the Exchange will take action against the vendor, up to and including terminating the vendor’s ability to receive data from the Exchange.

5110. Business Combinations with Entities not Listed on the Exchange that Result in a Change of Control

A Company will not be allowed to remain listed in connection with a transaction whereby the Company combines with an entity not listed on the Exchange, resulting in a change of control of the Company and potentially allowing the non-listed entity to obtain an Exchange listing. The new entity will be subject to all initial listing requirements, application procedures, and public interest reviews. In determining whether a change of control has occurred, the Exchange shall consider all relevant factors including, but not limited to, changes in the management, board of directors, voting power, ownership, and financial structure of the Company. The Exchange shall also consider the nature of the

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businesses and the relative size of the listed Company and the non-listed entity. The Company must submit an application for the post-transaction entity with sufficient time to allow the Exchange to complete its review before the transaction is completed. The review will include the background checks associated with the review of any initial listing application, including the potential use of third party firms, as discussed in Rule 5205(d). If the Company's application for initial listing has not been approved prior to consummation of the transaction, the Exchange will issue a Staff Delisting Determination and begin delisting proceedings pursuant to the Rule 5800 Series.

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5200. General Procedures and Prerequisites for Initial and Continued Listing on the Exchange

5205. The Applications and Qualifications Process

(a) Overview

The Exchange may approve a Company for listing after determining that it is not disqualified based on an automatic bar pursuant to Rule 5103; that it meets the Prerequisites to Listing in Rule 5210, the initial Listing Requirements in the Rule 5500 Series, and the Corporate Governance Requirements in the Rule 5600 Series; and that the public interest review has not identified any concerns that call for disapproval pursuant to the Exchange's discretionary authority as set forth in Rule 5104 and IM-5104-1 – 4. In making its determination, the Exchange will consider the totality of information in its possession, including any information provided by an independent qualified third party investigator pursuant to Rule 5205(d).

(b) Application

To apply for listing on the Exchange, a Company shall execute a Listing Agreement and submit a Listing Application on the forms designated by the Exchange providing the information required by Section 12(b) of the Act.

All forms and applications relating to listing of securities on the Exchange referenced in the Rule 5000 Series are available on www.bxventure.com. The Listing Application and process requires the applicant Company to, among other things:

(1) provide detailed descriptions and supporting documentation of all pending or prior inquiries, investigations, lawsuits, litigation, arbitration, hearings or any other legal or administrative proceedings involving current executive officers, directors, promoters, and ten percent or greater shareholders of the Company; all inquiries, investigations, lawsuits, litigation, arbitration, hearings or any other legal or administrative proceedings commenced within the past 10 years involving the Company, its predecessors and subsidiaries; any events described under Item 401(f) of Regulation S-K involving officers, directors, promoters or control persons; all bridge financings, shelf registrations, Regulation S offerings or private placements consummated in the prior six months; and copies of any blue sky memoranda;

(2) file with the Exchange all reports and other documents filed or required to be filed with the Commission or Other Regulatory Authority. This requirement is satisfied by publicly filing documents through the EDGAR System. All required reports must be filed with the Exchange on or before the date they are required to be filed with the Commission or Other Regulatory Authority. Annual reports filed with the Exchange shall contain audited financial statements. A Company's compliance with Rule 5500 Series qualifications will be based on its most recent filings and on financial statements that are either: (i) prepared in accordance with U.S. generally accepted accounting principles; (ii) reconciled to U.S. generally

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accepted accounting principles as required by the Commission's rules; or (iii) prepared in accordance with International Financial Reporting Standards, as issued by the International Accounting Standards Board, for Companies that are permitted to file financial statements using those standards consistent with the Commission's rules.

(3) provide to the Exchange any information or documentation, public or non-public, deemed necessary to make a determination regarding a Security's initial listing, including, but not limited to, any material provided to or received from the Commission or Other Regulatory Authority. A Company's Security may be denied listing if the Company fails to provide such information within a reasonable period of time or if any communication to the Exchange contains a material misrepresentation or omits material information necessary to make the communication to the Exchange not misleading.

(4) certify that all applicable listing criteria are satisfied; that it is not relying on an exemption from state registration or "blue sky" requirements for companies listed on the Boston Stock Exchange; and to the veracity of all information provided.

(c) Staff Review

(1) In considering a Company's application for listing, Staff shall review all information provided by the Company on its application and pursue additional clarifying documentation from the Company if necessary. In addition, Staff shall:

(A) review the Company's public filings, including the management's discussion and analysis, the stated risk factors, related party transactions, litigation, and the auditor's opinion;

(B) review proxy disclosures to screen for events described under Item 401(f) of Regulation S-K under the Act;

(C) conduct background checks of the Company and affiliated individuals with the use of publicly available databases and other public resources, such as Lexis-Nexis, the Web-CRD regulatory database, and web-based search engines;

(D) refer review of a Company to a qualified independent third party investigative firm in appropriate circumstances, as described below in Section 5205(d).

(2) If the Exchange identifies as a result of its internal review a regulatory issue that triggers an automatic bar under Rule 5103 or another regulatory issue that Staff determines calls for the exercise of discretionary authority to deny listing under Rule 5104 and the Interpretive Materials thereunder, the application will be disapproved.

(3) If the Exchange identifies as a result of its internal review:

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(A) a regulatory event described under Item 401(f)(2)-(8) of Regulation S-K about an officer, director, promoter, or control person that occurred more than five years prior; or

B) a history of regulatory misconduct by a person that is not an officer, director, promoter, or control person of the Company but who has significant influence on or importance to the Company;

it will ordinarily exercise its discretionary authority to deny listing. However, if the Exchange determines that the information identified may not rise to the level requiring denial of the listing, or if it identifies any issue that raises potential public interest concerns about which it seeks additional information (such as, for example, media accounts of criminal allegations or improper business practices, or indication of financial impropriety) it will refer the Company to an independent qualified third party investigative firm for review, as described in Rule 5205(d) below. A decision to list a Company that has been referred to an outside review pursuant to this paragraph must be approved in writing by the Chief Regulatory Officer of the Exchange. The CRO must also approve the listing of any Company with an officer, director, promoter, or control person that has described a bankruptcy under Item 401(f)(1) of Regulation S-K, and any Company for which Staff has identified a past violation or evasion of a corporate governance standard under IM-5104-3, but decided not to exercise its discretionary authority to deny listing.

(d) Independent Qualified Third-Party Investigative Review

The Exchange will retain an independent qualified third party investigative firm to assist in its public interest review process. Staff will make random, regular referrals to such a firm of at least 10% of applicant companies that were not previously listed on a national securities exchange. In addition, Staff will utilize a third party firm when it would be impractical to research a regulatory history occurring outside the United States. Finally, Staff will seek review of a Company when, as described in paragraph 5205(c)(3) above, the internal review has uncovered a regulatory issue or potential public interest concern that does not trigger an automatic bar and Staff has not made a determination to disapprove the application. While the scope of investigations will vary based on the reasons for review, they generally will focus on criminal history, government sanctions and watchlists, and will also include online and onsite checks of court records, searches of relevant state and country criminal databases, and searches of global risk compliance databases covering government prohibited and barred persons. In appropriate circumstances, the outside firm would be asked to make inquiries with respect to the applicant issuer's business practices, customers, suppliers, or whistle blower complaints.

(e) The procedures and determinations described in this Rule 5205 shall be followed, as applicable, whenever a listed Company names a new officer, director, promoter, or control person or makes a disclosure of an event described under Item 401(f) of

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Regulation S-K under the Act, and whenever Staff, in the course of its on-going monitoring of listed Companies, identifies a potential public interest concern.

5210. Prerequisites for Applying to List on the Exchange

All Companies applying to list on the Exchange must meet the following prerequisites:

(a) Registration under 12(b) of the Act

A Security shall be eligible for listing on the Exchange provided that it is:

- (1) registered pursuant to Section 12(b) of the Act; or
- (2) subject to an exemption issued by the Commission that permits the listing of the Security notwithstanding its failure to be registered pursuant to Section 12(b).

(b) Auditor Registration

Each Company applying for initial listing must be audited by an independent public accountant that is registered as a public accounting firm with the Public Company Accounting Oversight Board, as provided for in Section 102 of the Sarbanes-Oxley Act.

(c) Direct Registration Program

All securities initially listing on the Exchange must be eligible for a Direct Registration Program operated by a clearing agency registered under Section 17A of the Act. This provision does not extend to non-equity securities that are book-entry only. A Foreign Private Issuer may follow its home country practice in lieu of this requirement by utilizing the process described in Rule 5615(a)(3).

(d) Fees

The Company is required to pay all applicable fees as described in the Rule 5900 Series. The Exchange will not list the Security of any Company that has an outstanding balance with the Exchange or with the NASDAQ Stock Market.

(e) Good Standing

No Security shall be approved for listing that is delinquent in its filing obligation with the Commission or Other Regulatory Authority or suspended from trading by the Commission pursuant to Section 12(k) of the Act or by the appropriate regulatory authorities of the Company's Country of Domicile.

(f) Certification

Upon approval of a listing application, the Exchange shall certify to the Commission, pursuant to Section 12(d) of the Act and the rules thereunder, that it has approved the Security for listing and registration. Listing can commence only upon effectiveness of the Security's registration pursuant to Section 12(d).

(g) Security Depository

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(1) “Securities Depository” means a securities depository registered as a clearing agency under Section 17A of the Act.

(2) For initial listing, a Security shall have a CUSIP number or foreign equivalent identifying the securities included in the file of eligible issues maintained by a Securities Depository in accordance with the rules and procedures of such securities depository. This subparagraph shall not apply to a Security if the terms of the Security do not and cannot be reasonably modified to meet the criteria for depository eligibility at all Securities Depositories.

(3) A Security Depository’s inclusion of a CUSIP number or foreign equivalent identifying a security in its file of eligible issues does not render the security “depository eligible” under Rule 11310 until:

(A) in the case of any new issue distributed by an underwriting syndicate on or after the date a Securities Depository system for monitoring repurchases of distributed shares by the underwriting syndicate is available, the date of the commencement of trading in such security on the Exchange; or

(B) in the case of any new issue distributed by an underwriting syndicate prior to the date a Securities Depository system for monitoring repurchases of distributed shares by the underwriting syndicate is available where the managing underwriter elects not to deposit the securities on the date of the commencement of trading in such security on the Exchange, such later date designated by the managing underwriter in a notification submitted to the Securities Depository; but in no event more than three (3) months after the commencement of trading in such security on the Exchange.

(h) Limited Partnerships

No security issued in a limited partnership rollup transaction (as defined by Section 14(h) of the Act), shall be eligible for listing unless:

(i) the rollup transaction was conducted in accordance with procedures designed to protect the rights of limited partners as provided in Section 6(b)(9) of the Act, as it may from time to time be amended, and

(ii) a broker-dealer that is a member of a national securities association subject to Section 15A(b)(12) of the Act participates in the rollup transaction.

The Company shall further provide an opinion of counsel stating that such broker-dealer’s participation in the rollup transaction was conducted in compliance with the rules of a national securities association designed to protect the rights of limited partners, as specified in the Limited Partnership Rollup Reform Act of 1993.

In addition to any other applicable requirements, each limited partnership listed on the Exchange shall have a corporate general partner or co-general partner that satisfies the audit committee requirements set forth in the Rule 5600 Series.

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Note: The only currently existing national securities association subject to Section 15A(b)(12) of the Act is FINRA. Its rules designed to protect the rights of limited partners, pursuant to the Limited Partnership Rollup Reform Act of 1993, are specified in FINRA Rule 2310.

(i) Ineligibility of Certain Securities

No Security shall be approved for listing on the Exchange if the Security satisfies the quantitative requirements for initial listing on any tier of the NASDAQ Stock Market LLC.

(j) Ticker Symbols

The assignment of symbols for companies listed on the BX Venture Market is governed by the National Market System Plan for the Selection and Reservation of Securities Symbols, pursuant to which securities listed on the BX Venture Market are eligible to have a trading symbol of from one to five characters. Notwithstanding, Companies not previously listed on a national securities exchange must adopt a four or five character ticker symbol as a prerequisite to listing on the BX Venture Market. Companies listing on the BX Venture Market following a delisting from another national securities exchange and that traded on that exchange with a one, two, or three-character symbol will be permitted to retain the ticker symbol, provided that the Company must, prior to listing on the BX Venture Market, issue a press release announcing its delisting from the other exchange and comply with the disclosure requirements of Item 3.01 of Form 8-K.

5215. American Depositary Receipts

(a) Eligibility

American Depositary Receipts can be listed on the Exchange provided they represent shares in a non-Canadian foreign Company.

(b) Computations

In the case of American Depositary Receipts, stockholders' equity and total assets shall relate to the foreign issuer and not to any depositary or any other person deemed to be an issuer for purposes of Form S-12 under the Securities Act of 1933. The underlying security will be considered when determining Publicly Held Shares, stockholders' equity, Round Lot or Public Holders, total assets, operating history and Market Value of Listed Securities.

5225. Listing Requirements for Units

(a) All component parts of a Unit shall meet the requirements for initial and continued listing.

(b) For initial and continued listing, a unit must have at least two registered and active Market Makers.

(c) The minimum period for listing units shall be 30 days from the first day of listing, except the period may be shortened if the units are suspended or withdrawn for

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regulatory purposes. Companies and underwriters seeking to withdraw units from listing must provide the Exchange with notice of such intent at least 15 days prior to withdrawal.

(d) The issuer of units shall include in its prospectus or other offering document used in connection with any offering of securities that is required to be filed with the Commission under the federal securities law and the rules and regulations thereunder a statement regarding any intention to delist the units immediately after the minimum listing period.

5250. Obligations for Companies Listed on the Exchange

(a) Obligation to Provide Information to the Exchange

(1) The Exchange may request any additional information or documentation, public or non-public, deemed necessary to make a determination regarding a Company's continued listing, including, but not limited to, any material provided to or received from the Commission or Other Regulatory Authority. A Company may be denied continued listing if it fails to provide such information within a reasonable period of time or if any communication to the Exchange contains a material misrepresentation or omits material information necessary to make the communication to the Exchange not misleading. The Company shall provide full and prompt responses to requests by the Exchange or by FINRA acting on behalf of the Exchange for information related to unusual market activity or to events that may have a material impact on trading of its securities in the Exchange.

(2) As set forth in Rule 5625, a Company must provide the Exchange with prompt notification after an Executive Officer of the Company becomes aware of any noncompliance by the Company with the requirements of the Rule 5600 Series.

(b) Obligation to Make Public Disclosure

(1) Disclosure of Material Information

Except in unusual circumstances as described in IM-5250-1, a Company shall make prompt disclosure to the public through any Regulation FD compliant method (or combination of methods) of disclosure of any material information that would reasonably be expected to affect the value of its securities or influence investors' decisions. The Company shall, prior to the release of the information, provide notice of such disclosure to the MarketWatch Department at least ten minutes prior to public announcement if the information involves any of the events set forth in IM-5250-1 and the public release of the material information is made during market hours. If the public release of the material information is made outside of market hours, Companies must notify MarketWatch of the material information prior to 6:50 a.m. ET. As described in IM-5250-1, prior notice to the MarketWatch Department must be made through the electronic disclosure submission system available at a website designated by the Exchange for that purpose, except in emergency situations.

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(2) Disclosure of Notification of Deficiency

As set forth in Rule 5810(b), a Company that receives a notification of deficiency from the Exchange is required to make a public announcement by filing a Form 8-K, where required by SEC rules, or by issuing a press release disclosing receipt of the notification and the Rule(s) upon which the deficiency is based. However, note that in the case of a deficiency related to the requirement to file a periodic report contained in Rule 5250(c)(1) or (2), the Company is required to make the public announcement by issuing a press release. As described in Rule 5250(b)(1) and IM-5250-1, the Company must notify the Exchange's MarketWatch Department about the announcement through the electronic disclosure submission system available at a website designated by the Exchange for that purpose, except in emergency situations when notification may instead be provided by telephone or facsimile. If the public announcement is made during market hours, the Company must notify MarketWatch at least ten minutes prior to the announcement. If the public announcement is made outside of market hours, the Company must notify MarketWatch of the announcement prior to 6:50 a.m. ET.

(3) Requirement to Disseminate Press Releases over National Newswire

A Company that issues a press release in satisfaction of its disclosure obligations as described in paragraphs (1) and (2) above is required to disseminate the press release over a national newswire service acceptable to the Exchange.

(4) References to Listing on the Exchange

To avoid investor confusion, Companies listed on the Exchange must refer to themselves as being listed on the "BX Venture Market", unless otherwise required by applicable rules or regulations, and must not in any way, whether in press releases, public statements or otherwise, represent that they are listed on The NASDAQ Stock Market. A Company that represents itself as listed on the NASDAQ Stock Market or that refers to itself as a NASDAQ listed company will be subject to immediate delisting pursuant to procedures in the Rule 5800 Series.

(c) Obligation to File Periodic Financial Reports

(1) A Company shall timely file all required periodic financial reports with the Commission through the EDGAR System or with the Other Regulatory Authority. A Company that does not file through the EDGAR System shall supply to the Exchange two (2) copies of all reports required to be filed with the Other Regulatory Authority or email an electronic version of the report to the Exchange. All required reports must be filed with the Exchange on or before the date they are required to be filed with the Commission or Other Regulatory Authority. Annual reports filed with the Exchange shall contain audited financial statements.

(2) Foreign Private Issuer Interim Reports

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Each Foreign Private Issuer shall submit on a Form 6-K an interim balance sheet and income statement as of the end of its second quarter. This information, which must be presented in English, but does not have to be reconciled to U.S. GAAP, must be provided no later than six months following the end of the Company's second quarter. In the case of a Foreign Private Issuer that is a limited partnership, such information shall be distributed to limited partners if required by statute or regulation in the jurisdiction in which the limited partnership is formed or doing business or by the terms of the partnership's limited partnership agreement.

(3) Auditor Registration

Each listed Company shall be audited by an independent public accountant that is registered as a public accounting firm with the Public Company Accounting Oversight Board, as provided for in Section 102 of the Sarbanes-Oxley Act.

(d) Distribution of Annual and Interim Reports

(1) Distribution of Annual Reports

Each Company (including a limited partnership) shall make available to Shareholders an annual report containing audited financial statements of the Company and its subsidiaries (which, for example, may be on Form 10-K, 20-F, 40-F or N-CSR) within a reasonable period of time following the filing of the annual report with the Commission. A Company may comply with this requirement either:

(A) by mailing the report to Shareholders;

(B) by satisfying the requirements for furnishing an annual report contained in Rule 14a-16 under the Act; or

(C) by posting the annual report to Shareholders on or through the Company's website (or, in the case of a Company that is an investment company that does not maintain its own website, on a website that the Company is allowed to use to satisfy the website posting requirement in Rule 16a-3(k) under the Act), along with a prominent undertaking in the English language to provide Shareholders, upon request, a hard copy of the Company's annual report free of charge. A Company that chooses to satisfy this requirement pursuant to this paragraph (C) must, simultaneous with this posting, issue a press release stating that its annual report has been filed with the Commission (or Other Regulatory Authority). This press release shall also state that the annual report is available on the Company's website and include the website address and that Shareholders may receive a hard copy free of charge upon request. A Company must provide such hard copies within a reasonable period of time following the request.

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(2) Distribution of Interim Reports

Companies that distribute interim reports to Shareholders should distribute such reports to both registered and beneficial Shareholders. Companies are also encouraged to consider additional technological methods to communicate such information to Shareholders in a timely and less costly manner as such technology becomes available.

(3) Access to Quarterly Reports

(A) Each Company that is not a limited partnership (limited partnerships are governed by paragraph (B) below) and is subject to Rule 13a-13 under the Act shall make available copies of quarterly reports including statements of operating results to Shareholders either prior to or as soon as practicable following the Company's filing of its Form 10-Q with the Commission. If the form of such quarterly report differs from the Form 10-Q, the Company shall file one copy of the report with the Exchange in addition to filing its Form 10-Q pursuant to Rule 5250(c)(1). The statement of operations contained in quarterly reports shall disclose, at a minimum, any substantial items of an unusual or non-recurrent nature and net income before and after estimated federal income taxes or net income and the amount of estimated federal taxes.

(B) Each Company that is limited partnership and is subject to Rule 13a-13 under the Act shall make available copies of quarterly reports including statements of operating results to limited partners either prior to or as soon as practicable following the partnership's filing of its Form 10-Q with the Commission. Such reports shall be distributed to limited partners if required by statute or regulation in the state in which the limited partnership is formed or doing business or by the terms of the partnership's limited partnership agreement. If the form of such quarterly report differs from the Form 10-Q, the Company shall file one copy of the report with the Exchange in addition to filing its Form 10-Q pursuant to Rule 5250(c)(1). The statement of operations contained in quarterly reports shall disclose, at a minimum, any substantial items of an unusual or non-recurrent nature and net income before and after estimated federal income taxes or net income and the amount of estimated federal taxes.

(4) Access to Interim Reports

(A) Each Company that is not a limited partnership and is not subject to Rule 13a-13 under the Act and that is required to file with the Commission, or Other Regulatory Authority, interim reports relating primarily to operations and financial position, shall make available to Shareholders reports which reflect the information contained in those interim reports. Such reports shall be made available to Shareholders either before or as soon as practicable following filing with the appropriate regulatory authority. If the form of the interim report provided to Shareholders differs from that filed with the

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regulatory authority, the Company shall file one copy of the report to Shareholders with the Exchange in addition to the report to the regulatory authority that is filed with the Exchange pursuant to Rule 5250(c)(1).

(B) Each Company that is a limited partnership that is not subject to Rule 13a-13 under the Act and is required to file with the Commission, or Other Regulatory Authority, interim reports relating primarily to operations and financial position, shall make available to limited partners reports which reflect the information contained in those interim reports. Such reports shall be distributed to limited partners if required by statute or regulation in the state in which the limited partnership is formed or doing business or by the terms of the partnership's limited partnership agreement. Such reports shall be distributed to limited partners either before or as soon as practicable following filing with the appropriate regulatory authority. If the form of the interim report provided to limited partners differs from that filed with the regulatory authority, the Company shall file one copy of the report to limited partners with the Exchange in addition to the report to the regulatory authority that is filed with the Exchange pursuant to Rule 5250(c)(1).

(5) A Foreign Private Issuer may follow its home country practice in lieu of the requirements of Rule 5250(d)(1), (2), (3) or (4) by utilizing the process described in Rule 5615(a)(3).

(6) The Company shall comply with any obligation of any person regarding filing or disclosure of information material to the Company or the Security, whether such obligation arises under the securities laws of the United States or the Company's Country of Domicile, or other applicable federal or state statutes or rules.

(e) Exchange Notification Requirements

Various corporate events resulting in material changes will trigger the requirement for Companies to submit certain forms and applicable fees to the Exchange as specified below.

(1) Change in Number of Shares Outstanding

The Company shall file, on a form designated by the Exchange no later than 10 days after the occurrence, any aggregate increase or decrease of any class of securities listed on the Exchange that exceeds 5% of the amount of securities of the class outstanding.

(2) Listing of Additional Shares

A Company shall be required to notify the Exchange, except for a Company solely listing American Depositary Receipts, at least 15 calendar days prior to establishing or materially amending a stock option plan, purchase plan or other equity compensation arrangement pursuant to which stock may be acquired by officers, directors, employees, or consultants without shareholder approval. The

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Exchange recognizes that when a Company makes an equity grant to induce an individual to accept employment, as permitted by the exception contained in Rule 5635(a)(4), it may not be practical to provide the advance notice otherwise required by this Rule. Therefore, when a Company relies on that exception to make such an inducement grant without shareholder approval, it is sufficient to notify the Exchange about the grant and the use of the exception no later than the earlier of: (x) five calendar days after entering into the agreement to issue the securities; or (y) the date of the public announcement of the award required by Rule 5635(a)(4).

The notifications required by this paragraph must be made on the Notification: Listing of Additional Shares and the Exchange encourages Companies to file this form as soon as practicable, even if all of the relevant terms are not yet known. The Exchange reviews these forms to determine compliance with applicable Exchange rules, including the shareholder approval requirements. Therefore, if a Company fails to file timely the form required by this paragraph, the Exchange may issue either a Public Reprimand Letter or a Delisting Determination (pursuant to the Rule 5800 Series).

(3) Record Keeping Change

(A) The Company shall file on a form designated by the Exchange notification of any corporate name change, or other change requiring payment of a record-keeping fee, no later than 10 days after the change. The Company shall also pay the appropriate Record-Keeping Fee as referenced in the Rule 5900 Series.

(B) The Company shall also notify the Exchange promptly in writing, absent any fees, of any change in the general character or nature of its business and any change in the address of its principal executive offices.

(4) Substitution Listing

The Company shall notify the Exchange of a Substitution Listing Event (other than a re-incorporation or a change to a Company's place of organization) no later than 15 calendar days prior to the implementation of such event by filing the appropriate form as designated by the Exchange. For a re-incorporation or change to a Company's place of organization, a Company shall notify the Exchange as soon as practicable after such event has been implemented by filing the appropriate form as designated by the Exchange. The Company shall also pay the appropriate Substitution Listing Fee as referenced in the Rule 5900 Series.

(5) Transfer Agent, Registrar, ADR Bank Changes

The issuer of any class of securities listed on the Exchange, except for American Depositary Receipts, shall notify the Exchange promptly in writing of any change in the Company's transfer agent or registrar.

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(6) Dividend Action or Stock Distribution

In the case of any dividend action or action relating to a stock distribution of a listed stock the Company shall, no later than 10 calendar days prior to the record date of such action:

(i) notify the Exchange by filing the appropriate form as designated by the Exchange; and

(ii) provide public notice using a Regulation FD compliant method.

Notice to the Exchange should be given as soon as possible after declaration and, in any event, no later than simultaneously with the public notice.

(7) Securities Issuance

(i) A Company must notify the Exchange prior to any issuance of securities in a capital raising transaction and represent that it is not relying on an exemption from state registration or “blue sky” requirements for companies listed on the Boston Stock Exchange. This notice must be provided on the appropriate form as designated by the Exchange.

(ii) A Company must also provide the Exchange with copies of any “blue sky memorandum” and other documents discussing the treatment of a securities issuance under the blue-sky laws of the various states no later than five days after the issuance of the securities. These documents must be provided even where they are prepared for a third party, such as the underwriter of the securities offering.

(f) Obligation to Pay Fees

The Company is required to pay all applicable fees as described in the Rule 5900 Series.

IM-5250-1. Disclosure of Material Information

Rule 5250(b)(1) requires that, except in unusual circumstances, Companies must disclose promptly to the public through any Regulation FD compliant method (or combination of methods) of disclosure any material information that would reasonably be expected to affect the value of their securities or influence investors' decisions. Companies must notify the Exchange at least ten minutes prior to the release to the public of material information that involves any of the events set forth below when the public release of the information is made during market hours (7:00 a.m. to 8:00 p.m. ET). If the public release of the material information is made outside of market hours, Companies must notify MarketWatch of the material information prior to 6:50 a.m. ET. Under unusual circumstances Companies may not be required to make public disclosure of material

Changes are approved but are *not* operative.

Rule 5200 Series

events; for example, where it is possible to maintain confidentiality of those events and immediate public disclosure would prejudice the ability of the Company to pursue its legitimate corporate objectives. However, Companies remain obligated to disclose this information to the Exchange upon request pursuant to Rule 5250(a)(1).

Whenever unusual market activity takes place in a Company's securities, the Company normally should determine whether there is material information or news which should be disclosed. If rumors or unusual market activity indicate that information on impending developments has become known to the investing public, or if information from a source other than the Company becomes known to the investing public, a clear public announcement may be required as to the state of negotiations or development of Company plans. Such an announcement may be required, even though the Company may not have previously been advised of such information or the matter has not yet been presented to the Company's Board of Directors for consideration. In certain circumstances, it may also be appropriate to publicly deny false or inaccurate rumors, which are likely to have, or have had, an effect on the trading in its securities or would likely have an influence on investment decisions.

Notification to the MarketWatch Department

Companies must notify the MarketWatch Department prior to the distribution of certain material news at least ten minutes prior to public announcement of the news when the public release of the information is made during market hours (7:00 a.m. to 8:00 p.m. ET). If the public release of the material information is made outside of market hours, Companies must notify MarketWatch of the material information prior to 6:50 a.m. ET. Except in emergency situations, this notification must be made through the Exchange's electronic disclosure submission system available at a website designated by the Exchange for that purpose. In emergency situations, Companies may instead provide notification by telephone or facsimile. Examples of an emergency situation include: lack of computer or internet access; technical problems on either the Company or the Exchange system or an incompatibility between those systems; and a material development such that no draft disclosure document exists, but immediate notification to the MarketWatch Department is important based on the material event.

If a Company repeatedly fails to notify the Exchange at least ten minutes prior to the distribution of material news during market hours or prior to 6:50 a.m. ET for material news distributed outside of market hours, or repeatedly fails to use the electronic disclosure

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submission system when the Exchange finds no emergency situation existed, the Exchange may issue a Public Reprimand Letter (as defined in Rule 5805(j)) or, in extreme cases, a Staff Delisting Determination (as defined in Rule 5805(h)). In determining whether to issue a Public Reprimand Letter, the Exchange will consider whether the Company has demonstrated a pattern of failures, whether the Company has been contacted concerning previous violations, and whether the Company has taken steps to assure that future violations will not occur.

Trading Halts

A trading halt benefits current and potential Shareholders by halting all trading in any Exchange securities until there has been an opportunity for the information to be disseminated to the public. This decreases the possibility of some investors acting on information known only to them. A trading halt provides the public with an opportunity to evaluate the information and consider it in making investment decisions. It also alerts the marketplace to the fact that news has been released.

The MarketWatch Department monitors real time trading in all Exchange securities during the trading day for price and volume activity. In the event of certain price and volume movements, the MarketWatch Department may contact a Company and its Market Makers in order to ascertain the cause of the unusual market activity. The MarketWatch Department treats the information provided by the Company and other sources in a highly confidential manner, and uses it to assess market activity and assist in maintaining fair and orderly markets. An Exchange listing includes an obligation to disclose to the MarketWatch Department information that the Company is not otherwise disclosing to the investing public or the financial community. On, occasion, changes in market activity prior to the Company's release of material information may indicate that the information has become known to the investing public. Changes in market activity also may occur when there is a release of material information by a source other than the Company, such as when a Company is subject to an unsolicited take-over bid by another company. Depending on the nature of the event and the Company's views regarding the business advisability of disclosing the information, the Exchange's MarketWatch Department may work with the Company to accomplish a timely release of the information. Furthermore, depending on the materiality of the information and the anticipated affect of the information on the price of the Company's securities, the Exchange's MarketWatch Department may advise the Company that a temporary trading halt is appropriate to allow for full dissemination of the information and to maintain an orderly market.

Changes are approved but are *not* operative.

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The institution of a temporary trading halt pending the release of information is not a reflection on the value of the securities halted. Such trading halts are instituted, among other reasons, to insure that material information is fairly and adequately disseminated to the investing public and the marketplace, and to provide investors with the opportunity to evaluate the information in making investment decisions. A trading halt normally lasts one half hour but may last longer if a determination is made that news has not been adequately disseminated or that the original or an additional basis under Rule 4120 exists for continuing the trading halt.

The MarketWatch Department is required to keep non-public information, confidential and to use such information only for regulatory purposes.

Companies are required to notify the MarketWatch Department of the release of material information included in the following list of events at least ten minutes prior to the release of such information to the public when the public release of the information is made during market hours (7:00 a.m. to 8:00 p.m. ET). If the public release of the material information is made outside of market hours, Companies must notify MarketWatch of the material information prior to 6:50 a.m. ET. It should also be noted that every development that might be reported to the Exchange in these areas would not necessarily be deemed to warrant a trading halt. In addition to the following list of events, the Exchange encourages Companies to avail themselves of the opportunity for advance notification to the MarketWatch Department in situations where they believe, based upon their knowledge of the significance of the information, that a temporary trading halt may be necessary or appropriate.

(a) Financial-related disclosures, including quarterly or yearly earnings, earnings restatements, pre-announcements or “guidance.”

(b) Corporate reorganizations and acquisitions, including mergers, tender offers, asset transactions and bankruptcies or receiverships.

(c) New products or discoveries, or developments regarding customers or suppliers (e.g., significant developments in clinical or customer trials, and receipt or cancellation of a material contract or order).

(d) Senior management changes of a material nature or a change in control.

Rule 5200 Series

(e) Resignation or termination of independent auditors, or withdrawal of a previously issued audit report.

(f) Events regarding the Company's securities — e.g., defaults on senior securities, calls of securities for redemption, repurchase plans, stock splits or changes in dividends, changes to the rights of security holders, or public or private sales of additional securities.

(g) Significant legal or regulatory developments.

(h) Any event requiring the filing of a Form 8-K.

Use of Regulation FD Compliant Methods in the Disclosure of Material Information

Regardless of the method of disclosure that a Company chooses to use, Companies are required to notify the MarketWatch Department of the release of material information that involves any of the events set forth above at least ten minutes prior to its release to the public when the public release of the information is made during market hours (7:00 a.m. to 8:00 p.m. ET). If the public release of the material information is made outside of market hours, Companies must notify MarketWatch of the material information prior to 6:50 a.m. ET. When a Company chooses to utilize a Regulation FD compliant method for disclosure other than a press release or Form 8-K, the Company will be required to provide prior notice the MarketWatch Department of: 1) the press release announcing the logistics of the future disclosure event; and 2) a descriptive summary of the material information to be announced during the disclosure event if the press release does not contain such a summary.

Depending on the materiality of the information and the anticipated effect of the information on the price of the Company's securities, the MarketWatch Department may advise the Company that a temporary trading halt is appropriate to allow for full dissemination of the information and to maintain an orderly market. The MarketWatch Department will assess with Companies using methods of disclosure other than a press release or Form 8-K the timing within the disclosure event when the Company will cover the material information so that the halt can be commenced accordingly. Companies will be responsible for promptly alerting the MarketWatch Department of any significant changes to the previously outlined disclosure timeline. Companies are reminded that the posting of information on the Company's website may not by itself be considered a sufficient method of public disclosure under Regulation FD and SEC guidance and releases thereunder, and as a result, under the Exchange's rules.

Rule 5200 Series

5255. Direct Registration Program

(a) Except as indicated in paragraph (c) below, all securities listed on the Exchange (except securities which are book-entry only) must be eligible for a Direct Registration Program operated by a clearing agency registered under Section 17A of the Act.

(b) If a Company establishes or maintains a Direct Registration Program for its Shareholders, the Company shall, directly or through its transfer agent, participate in an electronic link with a clearing agency registered under Section 17A of the Act to facilitate the electronic transfer of securities held pursuant to such program.

(c) Exemption

A Foreign Private Issuer must be eligible to participate in a Direct Registration Program, as required by Rule 5255, unless prohibited from complying by a law or regulation in its home country. In such case, a Foreign Private Issuer may follow its home country practice in lieu of this requirement by using the process described in Rule 5615(a)(3) and IM-5615-3.

Changes are approved but are *not* operative.

Rule 5300 Series

5300. RESERVED.

Changes are approved but are *not* operative.

Rule 5400 Series

5400. RESERVED.

Rule 5500 Series

5500. Listing Requirements

5501. Preamble to the Exchange's Listing Requirements

This section contains the initial and continued listing requirements for listing a Company's Security on the Exchange.

In addition to meeting the quantitative requirements in this section, a Company must meet the requirements of the Rule 5100 Series, the disclosure obligations set forth in the Rule 5200 Series, the Corporate Governance requirements set forth in the Rule 5600 Series, and pay any applicable fees in the Rule 5900 Series. A Company's failure to meet any of the continued listing requirements will be processed in accordance with the provisions set forth in the Rule 5800 Series.

5505. Initial Listing of Securities Not Previously Listed on a National Securities Exchange

(a) In order to be listed on the Exchange, a Security, other than a Security described in Rule 5506, must meet all of the following requirements:

- (1) \$1 million of stockholders' equity or \$5 million total assets;
- (2) 200,000 Publicly Held Shares;
- (3) 200 Public Holders, at least 100 of which must be Round Lot Holders;
- (4) \$2 million Market Value of Listed Securities;
- (5) \$1.00 minimum bid price per share;
- (6) One year operating history; and
- (7) Two registered and active Market Makers.

(b) In addition to satisfying the quantitative requirements above, the Company must also demonstrate that it has a plan to maintain sufficient working capital for its planned business for at least twelve months after the first day of listing. The Company's plan may include estimates on cash-flow statements, planned and available measures for financing, descriptions of the planned business and investments, and well-founded assessments of the future prospects of the Company. It is important that the basis for all assumptions be made clear.

5506. Initial Listing of Securities Previously Listed on a National Securities Exchange

(a) In lieu of the requirements of Rule 5505, a Security may be listed on the Exchange if the Security was previously listed on a national securities exchange and meets all of the following requirements:

- (1) 200,000 Publicly Held Shares;
- (2) 200 Public Holders, at least 100 of which must be Round Lot Holders;
- (3) \$2 million Market Value of Listed Securities;

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- (4) \$0.25 minimum bid price per share; and
- (5) Two registered and active Market Makers.

(b) For purposes of this Rule 5506, a Company will be considered to have been previously listed on another national securities exchange:

- (1) if it was listed on such an exchange at any time during the three months before its listing on the Exchange; or
- (2) in the case of a Company that applies to list prior to September 30, 2011, if it was listed on another national securities exchange at any time between January 1, 2010 and September 30, 2011.

5507. Rights and Warrants

The Exchange will only initially list a right or warrant if the security underlying the right or warrant is listed on the Exchange or a covered security, as described in Section 18(b) of the Securities Act of 1933.

5550. Continued Listing of Securities

In order to remain listed on the Exchange, a Security must continue to meet all of the following requirements. Failure to meet any of the continued listing requirements will be processed in accordance with the provisions set forth in the Rule 5800 Series.

- (a) At least 200,000 Publicly Held Shares;
- (b) At least 200 Public Holders;
- (c) Market Value of Listed Securities of at least \$1 million;
- (d) Minimum bid price of at least \$0.25 per share; and
- (e) At least two registered and active Market Makers.

5551. Rights and Warrants

In order for a right or warrant to remain listed on the Exchange, the security underlying the right or warrant must remain listed on the Exchange or be a covered security, as described in Section 18(b) of the Securities Act of 1933.

Rule 5600 Series

5600. Corporate Governance Requirements

5601. Preamble to the Corporate Governance Requirements

In addition to meeting the quantitative requirements in the Rule 5200 and 5500 Series, Companies applying to list and listed on the Exchange must meet the qualitative requirements outlined in this Rule 5600 Series. These requirements include rules relating to a Company's board of directors, including audit committees and Independent Director oversight of executive officer compensation; code of conduct; shareholder meetings, including proxy solicitation and quorum; review of related party transactions; shareholder approval; and voting rights. Exemptions to these rules, including phase-in schedules, are set forth in Rule 5615.

The Exchange maintains a website that provides guidance on the applicability of the corporate governance requirements by FAQs and published summaries of anonymous versions of previously issued staff interpretative letters. Companies are encouraged to contact Listing Qualifications to discuss any complex issues or transactions. Companies can also submit a request for a written interpretation pursuant to Rule 5602.

5602. Written Interpretations of Exchange Listing Rules

- (a) A Company listed on the Exchange may request from the Exchange a written interpretation of the Rules contained in the 5000 through 5900 Series. In connection with such a request, the Company must submit to the Exchange a non-refundable fee of \$15,000.
- (b) A response to a request for a written interpretation generally will be provided within four weeks from the date the Exchange receives all information necessary to respond to the request, although if a Company requires a response by a specific date it should state the date in its request for the written interpretation and the Exchange will attempt to respond by that date.
- (c) An applicant to the Exchange that has submitted the applicable application fee under Rule 5910(a) will not also be required to submit a fee in connection with a request for a written interpretation involving the applicant's initial listing on the Exchange.
- (d) The Exchange's Board of Directors or its designee may, in its discretion, defer or waive all or any part of the written interpretation fee prescribed herein.
- (e) The Exchange shall publish on its website a summary of each interpretation within 90 days from the date such interpretation is issued.
- (f) A Company is eligible to request a written interpretation from the Exchange pursuant to paragraphs (a) or (b), subject to payment of the appropriate fee, if it has a class of securities that has been suspended or delisted from the Exchange, but the suspension or delisting decision is under review pursuant to the Rule 5800 Series.

5605. Independent Directors and Audit Committees

- (a) Definitions

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- (1) “Executive Officer” means those officers covered in Rule 16a-1(f) under the Act.
- (2) “Independent Director” means a person other than an Executive Officer or employee of the Company or any other individual having a relationship which, in the opinion of the Company’s board of directors, would interfere with the exercise of independent judgment in carrying out the responsibilities of a director. For purposes of this rule, “Family Member” means a person’s spouse, parents, children and siblings, whether by blood, marriage or adoption, or anyone residing in such person’s home. The following persons shall not be considered independent:
- (A) a director who is, or at any time during the past three years was, employed by the Company;
 - (B) a director who accepted or who has a Family Member who accepted any compensation from the Company in excess of \$120,000 during any period of twelve consecutive months within the three years preceding the determination of independence, other than the following:
 - (i) compensation for board or board committee service;
 - (ii) compensation paid to a Family Member who is an employee (other than an Executive Officer) of the Company; or
 - (iii) benefits under a tax-qualified retirement plan, or non-discretionary compensation.
- Provided, however, that in addition to the requirements contained in this paragraph (B), audit committee members are also subject to additional, more stringent requirements under Rule 5605(c)(2).
- (C) a director who is a Family Member of an individual who is, or at any time during the past three years was, employed by the Company as an Executive Officer;
 - (D) a director who is, or has a Family Member who is, a partner in, or a controlling Shareholder or an Executive Officer of, any organization to which the Company made, or from which the Company received, payments for property or services in the current or any of the past three fiscal years that exceed 5% of the recipient’s consolidated gross revenues for that year, or \$200,000, whichever is more, other than the following:
 - (i) payments arising solely from investments in the Company’s securities; or
 - (ii) payments under non-discretionary charitable contribution matching programs.
 - (E) a director of the Company who is, or has a Family Member who is, employed as an Executive Officer of another entity where at any time during

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the past three years any of the Executive Officers of the Company serve on the compensation committee of such other entity; or

(F) a director who is, or has a Family Member who is, a current partner of the Company's outside auditor, or was a partner or employee of the Company's outside auditor who worked on the Company's audit at any time during any of the past three years.

(G) in the case of an investment company, in lieu of paragraphs (A)–(F), a director who is an “interested person” of the Company as defined in Section 2(a)(19) of the Investment Company Act of 1940, other than in his or her capacity as a member of the board of directors or any board committee.

IM-5605-1. Definition of Independence — Rule 5605(a)(2)

It is important for investors to have confidence that individuals serving as Independent Directors do not have a relationship with the listed Company that would impair their independence. The board has a responsibility to make an affirmative determination that no such relationships exist through the application of Rule 5605(a)(2). Rule 5605(a)(2) also provides a list of certain relationships that preclude a board finding of independence.

These objective measures provide transparency to investors and Companies, facilitate uniform application of the rules, and ease administration. Because the Exchange does not believe that ownership of Company stock by itself would preclude a board finding of independence, it is not included in the aforementioned objective factors. It should be noted that there are additional, more stringent requirements that apply to directors serving on audit committees, as specified in Rule 5605(c).

The Rule's reference to the “Company” includes any parent or subsidiary of the Company. The term “parent or subsidiary” is intended to cover entities the Company controls and consolidates with the Company's financial statements as filed with the Commission (but not if the Company reflects such entity solely as an investment in its financial statements).

The reference to Executive Officer means those officers covered in Rule 16a-1(f) under the Act. In the context of the definition of Family Member under Rule 5605(a)(2), the reference to marriage is intended to capture relationships specified in the Rule (parents, children and siblings) that arise as a result of marriage, such as “in-law” relationships.

The three year look-back periods referenced in paragraphs (A), (C), (E) and (F) of the Rule commence on the date the relationship ceases. For example, a director employed by the Company is not independent until three years after such employment terminates.

For purposes of paragraph (A) of the Rule, employment by a director as an Executive Officer on an interim basis shall not disqualify that director from being considered independent following such employment, provided

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the interim employment did not last longer than one year. A director would not be considered independent while serving as an interim officer. Similarly, for purposes of paragraph (B) of the Rule, compensation received by a director for former service as an interim Executive Officer need not be considered as compensation in determining independence after such service, provided such interim employment did not last longer than one year. Nonetheless, the Company's board of directors still must consider whether such former employment and any compensation received would interfere with the director's exercise of independent judgment in carrying out the responsibilities of a director. In addition, if the director participated in the preparation of the Company's financial statements while serving as an interim Executive Officer, Rule 5605(c)(2)(A)(iii) would preclude service on the audit committee for three years.

Paragraph (B) of the Rule is generally intended to capture situations where a compensation is made directly to (or for the benefit of) the director or a Family Member of the director. For example, consulting or personal service contracts with a director or Family Member of the director would be analyzed under paragraph (B) of the Rule. In addition, political contributions to the campaign of a director or a Family Member of the director would be considered indirect compensation under paragraph (B). Non-preferential payments made in the ordinary course of providing business services (such as payments of interest or proceeds related to banking services or loans by a Company that is a financial institution or payment of claims on a policy by a Company that is an insurance company), payments arising solely from investments in the Company's securities and loans permitted under Section 13(k) of the Act will not preclude a finding of director independence as long as the payments are non-compensatory in nature. Depending on the circumstances, a loan or payment could be compensatory if, for example, it is not on terms generally available to the public.

Paragraph (D) of the Rule is generally intended to capture payments to an entity with which the director or Family Member of the director is affiliated by serving as a partner, controlling Shareholder or Executive Officer of such entity. Under exceptional circumstances, such as where a director has direct, significant business holdings, it may be appropriate to apply the corporate measurements in paragraph (D), rather than the individual measurements of paragraph (B). Issuers should contact the Exchange if they wish to apply the Rule in this manner. The reference to a partner in paragraph (D) is not intended to include limited partners. It should be noted that the independence requirements of paragraph (D) of the Rule are broader than Rule 10A-3(e)(8) under the Act.

Under paragraph (D), a director who is, or who has a Family Member who is, an Executive Officer of a charitable organization may not be

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considered independent if the Company makes payments to the charity in excess of the greater of 5% of the charity's revenues or \$200,000.

However, the Exchange encourages Companies to consider other situations where a director or their Family Member and the Company each have a relationship with the same charity when assessing director independence.

For purposes of determining whether a lawyer is eligible to serve on an audit committee, Rule 10A-3 under the Act generally provides that any partner in a law firm that receives payments from the issuer is ineligible to serve on that issuer's audit committee. In determining whether a director may be considered independent for purposes other than the audit committee, payments to a law firm would generally be considered under Rule 5605(a)(2), which looks to whether the payment exceeds the greater of 5% of the recipient's gross revenues or \$200,000; however, if the firm is a sole proprietorship, Rule 5605(a)(2)(B), which looks to whether the payment exceeds \$120,000, applies.

Paragraph (G) of the Rule provides a different measurement for independence for investment companies in order to harmonize with the Investment Company Act of 1940. In particular, in lieu of paragraphs (A)-(F), a director who is an "interested person" of the Company as defined in Section 2(a)(19) of the Investment Company Act of 1940, other than in his or her capacity as a member of the board of directors or any board committee, shall not be considered independent.

(b) Executive Sessions

Independent Directors must have regularly scheduled meetings at which only Independent Directors are present ("executive sessions").

IM-5605-2. Executive Sessions of Independent Directors

Regularly scheduled executive sessions encourage and enhance communication among Independent Directors. It is contemplated that executive sessions will occur at least twice a year, and perhaps more frequently, in conjunction with regularly scheduled board meetings.

(c) Audit Committee Requirements

(1) Audit Committee Charter

Each Company must certify that it has adopted a formal written audit committee charter and that the audit committee has reviewed and reassessed the adequacy of the formal written charter on an annual basis. The charter must specify:

(A) the scope of the audit committee's responsibilities, and how it carries out those responsibilities, including structure, processes, and membership requirements;

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(B) the audit committee's responsibility for ensuring its receipt from the outside auditors of a formal written statement delineating all relationships between the auditor and the Company, actively engaging in a dialogue with the auditor with respect to any disclosed relationships or services that may impact the objectivity and independence of the auditor and for taking, or recommending that the full board take, appropriate action to oversee the independence of the outside auditor; and

(C) the committee's purpose of overseeing the accounting and financial reporting processes of the Company and the audits of the financial statements of the Company;

(D) the specific audit committee responsibilities and authority set forth in Rule 5605(c)(3).

IM-5605-3. Audit Committee Charter

Each Company is required to adopt a formal written charter that specifies the scope of its responsibilities and the means by which it carries out those responsibilities; the outside auditor's accountability to the audit committee; and the audit committee's responsibility to ensure the independence of the outside auditor. Consistent with this, the charter must specify all audit committee responsibilities set forth in Rule 10A-3(b)(2), (3), (4) and (5) under the Act. Rule 10A-3(b)(3)(ii) under the Act requires that each audit committee must establish procedures for the confidential, anonymous submission by employees of the listed Company of concerns regarding questionable accounting or auditing matters. The rights and responsibilities as articulated in the audit committee charter empower the audit committee and enhance its effectiveness in carrying out its responsibilities.

Rule 5605(c)(3) imposes additional requirements for investment company audit committees that must also be set forth in audit committee charters for these Companies.

(2) Audit Committee Composition

(A) Each Company must have, and certify that it has and will continue to have, an audit committee of at least three members, each of whom must: (i) be independent as defined under Rule 5605(a)(2); (ii) meet the criteria for independence set forth in Rule 10A-3(b)(1) under the Act (subject to the exemptions provided in Rule 10A-3(c) under the Act); (iii) not have participated in the preparation of the financial statements of the Company or any current subsidiary of the Company at any time during the past three years; and (iv) be able to read and understand fundamental financial statements, including a Company's balance sheet, income statement, and cash flow statement. Additionally, each Company must certify that it has, and will continue to have, at least one member of the audit committee who has past

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employment experience in finance or accounting, requisite professional certification in accounting, or any other comparable experience or background which results in the individual's financial sophistication, including being or having been a chief executive officer, chief financial officer or other senior officer with financial oversight responsibilities.

(B) Non-Independent Director for Exceptional and Limited Circumstances

Notwithstanding paragraph (2)(A)(i), one director who: (i) is not independent as defined in Rule 5605(a)(2); (ii) meets the criteria set forth in Section 10A(m)(3) under the Act and the rules thereunder; and (iii) is not a current officer or employee or a Family Member of such officer or employee, may be appointed to the audit committee, if the board, under exceptional and limited circumstances, determines that membership on the committee by the individual is required by the best interests of the Company and its Shareholders. A Company, other than a Foreign Private Issuer, that relies on this exception must comply with the disclosure requirements set forth in Item 407(d)(2) of Regulation S-K. A Foreign Private Issuer that relies on this exception must disclose in its next annual report (e.g., Form 20-F or 40-F) the nature of the relationship that makes the individual not independent and the reasons for the board's determination. A member appointed under this exception may not serve longer than two years and may not chair the audit committee.

IM-5605-4. Audit Committee Composition

Audit committees are required to have a minimum of three members and be comprised only of Independent Directors. In addition to satisfying the Independent Director requirements under Rule 5605(a)(2), audit committee members must meet the criteria for independence set forth in Rule 10A-3(b)(1) under the Act (subject to the exemptions provided in Rule 10A-3(c) under the Act): they must not accept any consulting, advisory, or other compensatory fee from the Company other than for board service, and they must not be an affiliated person of the Company. As described in Rule 10A-3(d)(1) and (2), a Company must disclose reliance on certain exceptions from Rule 10A-3 and disclose an assessment of whether, and if so, how, such reliance would materially adversely affect the ability of the audit committee to act independently and to satisfy the other requirements of Rule 10A-3. It is recommended also that a Company disclose in its annual proxy (or, if the Company does not file a proxy, in its Form 10-K or 20-F) if any director is deemed independent but falls outside the safe harbor provisions of Rule 10A-3(e)(1)(ii) under the Act. A director who qualifies as an audit committee financial expert under Item 407(d)(5)(ii) and (iii) of Regulation S-K is presumed to qualify as

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a financially sophisticated audit committee member under Rule 5605(c)(2)(A).

(3) Audit Committee Responsibilities and Authority

The audit committee must have the specific audit committee responsibilities and authority necessary to comply with Rule 10A-3(b)(2), (3), (4) and (5) under the Act (subject to the exemptions provided in Rule 10A-3(c) under the Act), concerning responsibilities relating to: (i) registered public accounting firms, (ii) complaints relating to accounting, internal accounting controls or auditing matters, (iii) authority to engage advisors, and (iv) funding as determined by the audit committee. Audit committees for investment companies must also establish procedures for the confidential, anonymous submission of concerns regarding questionable accounting or auditing matters by employees of the investment adviser, administrator, principal underwriter, or any other provider of accounting related services for the investment company, as well as employees of the investment company.

(4) Cure Periods for Audit Committee

(A) If a Company fails to comply with the audit committee composition requirement under Rule 10A-3(b)(1) under the Act and Rule 5605(c)(2)(A) because an audit committee member ceases to be independent for reasons outside the member's reasonable control, the audit committee member may remain on the audit committee until the earlier of its next annual shareholders meeting or one year from the occurrence of the event that caused the failure to comply with this requirement. A Company relying on this provision must provide notice to the Exchange immediately upon learning of the event or circumstance that caused the noncompliance.

(B) If a Company fails to comply with the audit committee composition requirement under Rule 5605(c)(2)(A) due to one vacancy on the audit committee, and the cure period in paragraph (A) is not otherwise being relied upon for another member, the Company will have until the earlier of the next annual shareholders meeting or one year from the occurrence of the event that caused the failure to comply with this requirement; provided, however, that if the annual shareholders meeting occurs no later than 180 days following the event that caused the vacancy, the Company shall instead have 180 days from such event to regain compliance. A Company relying on this provision must provide notice to the Exchange immediately upon learning of the event or circumstance that caused the noncompliance.

(5) Exception

At any time when a Company has a class of common equity securities (or similar securities) that is listed on another national securities exchange or national securities association subject to the requirements of Rule 10A-3 under the Act, the listing of classes of securities of a direct or indirect consolidated subsidiary or an

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at least 50% beneficially owned subsidiary of the Company (except classes of equity securities, other than non-convertible, non-participating preferred securities, of such subsidiary) shall not be subject to the requirements of Rule 5605(c).

(d) Independent Director Oversight of Executive Officer Compensation

(1) Compensation of the chief executive officer of the Company must be determined, or recommended to the board for determination, either by:

(A) Independent Directors constituting a majority of the board's Independent Directors in a vote in which only Independent Directors participate; or

(B) a compensation committee comprised solely of Independent Directors.

The chief executive officer may not be present during voting or deliberations.

(2) Compensation of all other Executive Officers must be determined, or recommended to the board for determination, either by:

(A) Independent Directors constituting a majority of the board's Independent Directors in a vote in which only Independent Directors participate; or

(B) a compensation committee comprised solely of Independent Directors.

(3) Non-Independent Committee Member under Exceptional and Limited Circumstances

Notwithstanding paragraphs 5605(d)(1)(B) and 5605(d)(2)(B) above, if the compensation committee is comprised of at least three members, one director who is not independent as defined in Rule 5605(a)(2) and is not a current officer or employee or a Family Member of an officer or employee, may be appointed to the compensation committee if the board, under exceptional and limited circumstances, determines that such individual's membership on the committee is required by the best interests of the Company and its Shareholders. A Company that relies on this exception must disclose either on or through the Company's website or in the proxy statement for the next annual meeting subsequent to such determination (or, if the Company does not file a proxy, in its Form 10-K or 20-F), the nature of the relationship and the reasons for the determination. In addition, the Company must provide any disclosure required by Instruction 1 to Item 407(a) of Regulation S-K regarding its reliance on this exception. A member appointed under this exception may not serve longer than two years.

IM-5605-6. Independent Director Oversight of Executive Compensation

Independent Director oversight of executive officer compensation helps assure that appropriate incentives are in place, consistent with the board's responsibility to maximize shareholder value. The rule is intended to provide flexibility for a Company to choose an appropriate board structure and to reduce resource burdens, while ensuring Independent Director control of compensation decisions.

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5610. Code of Conduct

Each Company shall adopt a code of conduct applicable to all directors, officers and employees, which shall be publicly available. A code of conduct satisfying this rule must comply with the definition of a “code of ethics” set out in Section 406(c) of the Sarbanes-Oxley Act and any regulations promulgated thereunder by the Commission. See 17 C.F.R. 228.406 and 17 C.F.R. 229.406. In addition, the code must provide for an enforcement mechanism. Any waivers of the code for directors or Executive Officers must be approved by the Board. Companies, other than Foreign Private Issuers, shall disclose such waivers within four business days by filing a current report on Form 8-K with the Commission or, in cases where a Form 8-K is not required, by distributing a press release. Foreign Private Issuers shall disclose such waivers either by distributing a press release or including disclosure in a Form 6-K or in the next Form 20-F or 40-F. Alternatively, a Company, including a Foreign Private Issuer, may disclose waivers on the Company’s website in a manner that satisfies the requirements of Item 5.05(c) of Form 8-K.

IM-5610. Code of Conduct

Ethical behavior is required and expected of every corporate director, officer and employee whether or not a formal code of conduct exists. The requirement of a publicly available code of conduct applicable to all directors, officers and employees of a Company is intended to demonstrate to investors that the board and management of Companies have carefully considered the requirement of ethical dealing and have put in place a system to ensure that they become aware of and take prompt action against any questionable behavior. For Company personnel, a code of conduct with enforcement provisions provides assurance that reporting of questionable behavior is protected and encouraged, and fosters an atmosphere of self-awareness and prudent conduct.

Rule 5610 requires Companies to adopt a code of conduct complying with the definition of a “code of ethics” under Section 406(c) of the Sarbanes-Oxley Act and any regulations promulgated thereunder by the Commission. See 17 C.F.R. 228.406 and 17 C.F.R. 229.406. Thus, the code must include such standards as are reasonably necessary to promote the ethical handling of conflicts of interest, full and fair disclosure, and compliance with laws, rules and regulations, as specified by the Sarbanes-Oxley Act. However, the code of conduct required by Rule 5610 must apply to all directors, officers, and employees. Companies can satisfy this obligation by adopting one or more codes of conduct, such that all directors, officers and employees are subject to a code that satisfies the definition of a “code of ethics.”

As the Sarbanes-Oxley Act recognizes, investors are harmed when the real or perceived private interest of a director, officer or employee is in conflict with the interests of the Company, as when the individual receives improper personal benefits as a result of his or her position with the

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Company, or when the individual has other duties, responsibilities or obligations that run counter to his or her duty to the Company. Also, the disclosures a Company makes to the Commission are the essential source of information about the Company for regulators and investors — there can be no question about the duty to make them fairly, accurately and timely. Finally, illegal action must be dealt with swiftly and the violators reported to the appropriate authorities. Each code of conduct must require that any waiver of the code for Executive Officers or directors may be made only by the board and must be disclosed to Shareholders, along with the reasons for the waiver. All Companies, other than Foreign Private Issuers, must disclose such waivers within four business days by filing a current report on Form 8-K with the Commission, providing website disclosure that satisfies the requirements of Item 5.05(c) of Form 8-K, or, in cases where a Form 8-K is not required, by distributing a press release. Foreign Private Issuers must disclose such waivers either by providing website disclosure that satisfies the requirements of Item 5.05(c) of Form 8-K, by including disclosure in a Form 6-K or in the next Form 20-F or 40-F or by distributing a press release. This disclosure requirement provides investors the comfort that waivers are not granted except where they are truly necessary and warranted, and that they are limited and qualified so as to protect the Company and its Shareholders to the greatest extent possible.

Each code of conduct must also contain an enforcement mechanism that ensures prompt and consistent enforcement of the code, protection for persons reporting questionable behavior, clear and objective standards for compliance, and a fair process by which to determine violations.

5615. Exemptions from Certain Corporate Governance Requirements

This rule provides the exemptions from the corporate governance rules afforded to certain types of Companies, and sets forth the phase-in schedules for initial public offerings, Companies emerging from bankruptcy and Companies transferring from other markets.

(a) Exemptions to the Corporate Governance Requirements

(1) Asset-backed Issuers and Other Passive Issuers

The following are exempt from the requirements relating to Audit Committees (Rule 5605(c)), Independent Director Oversight of Executive Officer Compensation (Rule 5605(d)) and Codes of Conduct (Rule 5610):

(A) asset-backed issuers; and

(B) issuers, such as unit investment trusts, that are organized as trusts or other unincorporated associations that do not have a board of directors or persons acting in a similar capacity and whose activities are limited to passively owning or holding (as well as administering and distributing amounts in

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respect of) securities, rights, collateral or other assets on behalf of or for the benefit of the holders of the listed securities.

IM-5615-1. Asset-backed Issuers and Other Passive Issuers

Because of their unique attributes, Rules 5605(c) and 5610 do not apply to asset-backed issuers and issuers, such as unit investment trusts, that are organized as trusts or other unincorporated associations that do not have a board of directors or persons acting in a similar capacity and whose activities are limited to passively owning or holding (as well as administering and distributing amounts in respect of) securities, rights, collateral or other assets on behalf of or for the benefit of the holders of the listed securities.

(2) Reserved.

IM-5615-2. Reserved.

(3) Foreign Private Issuers

(A) A Foreign Private Issuer may follow its home country practice in lieu of the requirements of the Rule 5600 Series, the requirement to distribute annual and interim reports set forth in Rule 5250(d), and the Direct Registration Program requirement set forth in Rules 5210(c) and 5255, provided, however, that such a Company shall: comply with the Notification of Noncompliance requirement (Rule 5625), the Voting Rights requirement (Rule 5640), have an audit committee that satisfies Rule 5605(c)(3), and ensure that such audit committee's members meet the independence requirement in Rule 5605(c)(2)(A)(ii). Except as provided in this paragraph, a Foreign Private Issuer must comply with the requirements of the Rule 5000 Series, including the listing agreement requirement in Rule 5205(a).

(B) Disclosure Requirements

(i) A Foreign Private Issuer that follows a home country practice in lieu of one or more provisions of Rule 5600 and the Direct Registration Program requirement set forth in 5210(c) and 5255 shall disclose in its annual reports filed with the Commission each requirement that it does not follow and describe the home country practice followed by the issuer in lieu of such requirements. Alternatively, a Foreign Private Issuer that is not required to file its annual report with the Commission on Form 20-F may make this disclosure only on its website.

(ii) A Foreign Private Issuer making its initial public offering or first U.S. listing on the Exchange shall disclose in its registration statement or on its website each requirement that it does not follow and describe the home country practice followed by the Company in lieu of such requirements.

IM-5615-3. Foreign Private Issuers

A Foreign Private Issuer (as defined in Rule 5005) listed on the Exchange

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may follow the practice in such Company's home country (as defined in General Instruction F of Form 20-F) in lieu of the provisions of the Rule 5600 Series, Rule 5250(d), and Rules 5210(c) and 5255, subject to several important exceptions. First, such an issuer shall comply with Rule 5625 (Notification of Noncompliance). Second, such a Company shall have an audit committee that satisfies Rule 5605(c)(3). Third, members of such audit committee shall meet the criteria for independence referenced in Rule 5605(c)(2)(A)(i) (the criteria set forth in Rule 10A-3(b)(1) under the Act, subject to the exemptions provided in Rule 10A-3(c) under the Act). Fourth, a Foreign Private Issuer must comply with Rules 5210(b) and 5255 (Direct Registration Program) unless prohibited from complying by a law or regulation in its home country. Finally, a Foreign Private Issuer that elects to follow home country practice in lieu of a requirement of the Rules 5600 Series or Rules 5250(d), 5210(c) or 5255 shall submit to the Exchange a written statement from an independent counsel in such Company's home country certifying that the Company's practices are not prohibited by the home country's laws and, in the case of a Company prohibited from complying with Rules 5210(c) and 5255, certifying that a law or regulation in the home country prohibits such compliance. In the case of new listings, this certification is required at the time of listing. For existing Companies, the certification is required at the time the Company seeks to adopt its first noncompliant practice. In the interest of transparency, the rule requires a Foreign Private Issuer to make appropriate disclosures in the Company's annual filings with the Commission (typically Form 20-F or 40-F), and at the time of the Company's original listing in the United States, if that listing is on the Exchange, in its registration statement (typically Form F-1, 20-F, or 40-F); alternatively, a Company that is not required to file an annual report on Form 20-F may provide these disclosures in English on its website in addition to, or instead of, providing these disclosures on its registration statement or annual report. The Company shall disclose each requirement that it does not follow and include a brief statement of the home country practice the Company follows in lieu of these corporate governance requirement(s). If the disclosure is only available on the website, the annual report and registration statement should so state and provide the web address at which the information may be obtained. Companies that must file annual reports on Form 20-F are encouraged to provide these disclosures on their websites, in addition to the required Form 20-F disclosures, to provide maximum transparency about their practices.

(4) Limited Partnerships

A limited partnership is not subject to the requirements of the Rule 5600 Series, except as provided in this Rule 5615(a)(4). A limited partnership may request a written interpretation pursuant to Rule 5602.

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(A) No provision of this Rule shall be construed to require any foreign Company that is a partnership to do any act that is contrary to a law, rule or regulation of any public authority exercising jurisdiction over such Company or that is contrary to generally accepted business practices in the Company's Country of Domicile. The Exchange shall have the ability to provide exemptions from applicability of these provisions as may be necessary or appropriate to carry out this intent.

(B) Corporate General Partner

Each Company that is a limited partnership shall maintain a corporate general partner or co-general partner, which shall have the authority to manage the day-to-day affairs of the partnership.

(C) Independent Directors/Audit Committee

The corporate general partner or co-general partner shall maintain a sufficient number of Independent Directors on its board to satisfy the audit committee requirements set forth in Rule 5605(b).

(D) Partner Meetings

A Company that is a limited partnership shall not be required to hold an annual meeting of limited partners unless required by statute or regulation in the state in which the limited partnership is formed or doing business or by the terms of the partnership's limited partnership agreement.

(E) Quorum

In the event that a meeting of limited partners is required pursuant to paragraph (D), the quorum for such meeting shall be not less than 33-1/3 percent of the limited partnership interests outstanding.

(F) Solicitation of Proxies

In the event that a meeting of limited partners is required pursuant to paragraph (D), the Company shall provide all limited partners with proxy or information statements and if a vote is required, shall solicit proxies thereon.

(G) Review of Related Party Transactions

Each Company that is a limited partnership shall conduct an appropriate review of all related party transactions on an ongoing basis and shall utilize the Audit Committee or a comparable body of the Board of Directors for the review of potential material conflict of interest situations where appropriate.

(H) Shareholder Approval

Each Company that is a limited partnership must obtain shareholder approval when a stock option or purchase plan is to be established or materially amended or other equity compensation arrangement made or materially amended, pursuant to which stock may be acquired by officers, directors,

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employees, or consultants, as would be required under Rule 5635 and IM-5635.

(I) Auditor Registration

Each Company that is a limited partnership must be audited by an independent public accountant that is registered as a public accounting firm with the Public Company Accounting Oversight Board, as provided for in Section 102 of the Sarbanes-Oxley Act.

(J) Notification of Noncompliance.

Each Company that is a limited partnership must provide the Exchange with prompt notification after an Executive Officer of the Company, or a person performing an equivalent role, becomes aware of any noncompliance by the Company with the requirements of this Rule 5600 Series.

(5) Management Investment Companies

Management investment companies (including business development companies) are subject to all the requirements of the Rule 5600 Series, except that management investment companies registered under the Investment Company Act of 1940 are exempt from the Independent Director Oversight of Executive Officer Compensation requirement set forth in Rule 5605(d) and the Code of Conduct requirement set forth in Rule 5610.

IM-5615-4. Management Investment Companies

Management investment companies registered under the Investment Company Act of 1940 are already subject to a pervasive system of federal regulation in certain areas of corporate governance covered by 5600. In light of this, the Exchange exempts from Rule 5605(d) and 5610 management investment companies registered under the Investment Company Act of 1940. Business development companies, which are a type of closed-end management investment company defined in Section 2(a)(48) of the Investment Company Act of 1940 that are not registered under that Act, are required to comply with all of the provisions of the Rule 5600 Series.

(b) Phase-In Schedules

(1) Initial Public Offerings

(A) (i) A Company listing in connection with its initial public offering shall be permitted to phase in its compliance with the independent audit committee requirement pursuant to Rule 10A-3(b)(1)(iv)(A) under the Act as follows: (1) one independent member at the time of listing; (2) a majority of independent members within 90 days of the date of effectiveness of the Company's registration statement; and (3) all independent members within one year of the date of effectiveness of the Company's registration statement. It should be noted, however, that

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pursuant to Rule 10A-3(b)(1)(iii) under the Act investment companies are not afforded the exemptions under Rule 10A-3(b)(1)(iv) under the Act.

(ii) For purposes of this Rule 5615(b)(1)(A), a Company shall be considered to be listing in conjunction with an initial public offering only if it meets the conditions in Rule 10A-3(b)(1)(iv)(A) under the Act, namely, that the Company was not, immediately prior to the effective date of a registration statement, required to file reports with the Commission pursuant to Section 13(a) or 15(d) of the Act.

(B) (i) A Company listing in connection with its initial public offering shall be permitted to phase in its compliance with the independent compensation committee requirement set forth in Rule 5605(d) as follows: (1) one independent member at the time of listing; (2) a majority of independent members within 90 days of listing; and (3) all independent members within one year of listing. Companies may choose not to adopt a compensation committee and may instead rely upon a majority of the Independent Directors to discharge these responsibilities.

(ii) For purposes of this Rule 5615(b)(1)(B), a Company shall be considered to be listing in conjunction with an initial public offering if, immediately prior to listing, it does not have a class of common stock registered under the Act.

(2) Companies Emerging from Bankruptcy

A Company that is listing upon emerging from bankruptcy shall be permitted to phase-in the independent compensation committee requirement of Rule 5605(d) on the same schedule as a Company listing in conjunction with its initial public offering.

(3) Transfers from other Markets

(A) A Company transferring from another national securities exchange with a substantially similar requirement shall be immediately subject to the requirements of Rule 5605(c) and (d), provided that the Company will be afforded the balance of any grace period afforded by the other market. This transition period is not intended to supplant any applicable requirements of Rule 10A-3 under the Act.

(B) A Company that is not subject to a substantially similar requirement at the time of its listing on the Exchange, such as a company currently quoted solely in the over-the-counter market, must comply with the audit committee requirement of Rule 5605(c) at the time of listing, subject to any applicable phase-in period allowed by Rule 10A-3 under the Act. Such a Company shall be permitted to phase in its compliance with the independent compensation committee requirement set forth in Rule 5605(d) as follows: (1) one independent member at the time of listing; (2) a majority of independent

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members within 90 days of listing; and (3) all independent members within one year of listing. Companies may choose not to adopt a compensation committee and may instead rely upon a majority of the Independent Directors to discharge these responsibilities.

5620. Meetings of Shareholders

(a) Each Company listing common stock or voting preferred stock, and their equivalents, shall hold an annual meeting of Shareholders no later than one year after the end of the Company's fiscal year-end, unless such Company is a limited partnership that meets the requirements of Rule 5615(a)(4)(D).

IM-5620. Meetings of Shareholders or Partners

Rule 5620 requires that each Company listing common stock or voting preferred stock, and their equivalents, hold an annual meeting of Shareholders within one year of the end of each fiscal year. At each such meeting, Shareholders must be afforded the opportunity to discuss Company affairs with management and, if required by the Company's governing documents, to elect directors. A new listing that was not previously subject to a requirement to hold an annual meeting is required to hold its first meeting within one-year after its first fiscal year-end following listing. Of course, the Exchange's meeting requirement does not supplant any applicable state or federal securities laws concerning annual meetings.

(b) Proxy Solicitation

Each Company that is not a limited partnership shall solicit proxies and provide proxy statements for all meetings of Shareholders and shall provide copies of such proxy solicitation to the Exchange. Limited partnerships that are required to hold an annual meeting of partners are subject to the requirements of Rule 5615(a)(4)(F).

(c) Quorum

Each Company that is not a limited partnership shall provide for a quorum as specified in its by-laws for any meeting of the holders of common stock; provided, however, that in no case shall such quorum be less than 33 1/3 % of the outstanding shares of the Company's common voting stock. Limited partnerships that are required to hold an annual meeting of partners are subject to the requirements of Rule 5615(a)(4)(E).

5625. Notification of Noncompliance

A Company must provide the Exchange with prompt notification after an Executive Officer of the Company becomes aware of any noncompliance by the Company with the requirements of this Rule 5600 Series.

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5630. Review of Related Party Transactions

(a) Each Company that is not a limited partnership shall conduct an appropriate review and oversight of all related party transactions for potential conflict of interest situations on an ongoing basis by the Company's audit committee or another independent body of the board of directors. For purposes of this rule, the term "related party transaction" shall refer to transactions required to be disclosed pursuant to Item 404 of Regulation S-K under the Act. However, in the case of non-U.S. issuers, the term "related party transactions" shall refer to transactions required to be disclosed pursuant to Form 20-F, Item 7.B.

(b) Limited partnerships shall comply with the requirements of Rule 5615(a)(4)(G).

5635. Shareholder Approval for Equity Compensation

(a) Shareholder approval is required prior to the issuance of securities when a stock option or purchase plan is to be established or materially amended or other equity compensation arrangement made or materially amended, pursuant to which stock may be acquired by officers, directors, employees, or consultants, except for:

(1) warrants or rights issued generally to all security holders of the Company or stock purchase plans available on equal terms to all security holders of the Company (such as a typical dividend reinvestment plan);

(2) tax qualified, non-discriminatory employee benefit plans (e.g., plans that meet the requirements of Section 401(a) or 423 of the Internal Revenue Code) or parallel nonqualified plans, provided such plans are approved by the Company's independent compensation committee or a majority of the Company's Independent Directors; or plans that merely provide a convenient way to purchase shares on the open market or from the Company at Market Value;

(3) plans or arrangements relating to an acquisition or merger as permitted under IM-5635; or

(4) issuances to a person not previously an employee or director of the Company, or following a bona fide period of non-employment, as an inducement material to the individual's entering into employment with the Company, provided such issuances are approved by either the Company's independent compensation committee or a majority of the Company's Independent Directors. Promptly following an issuance of any employment inducement grant in reliance on this exception, a Company must disclose in a press release the material terms of the grant, including the recipient(s) of the grant and the number of shares involved.

(b) Exchange-listed Companies and their representatives are encouraged to use the interpretative letter process described in Rule 5602.

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IM-5635. Shareholder Approval for Stock Option Plans or Other Equity Compensation Arrangements

Employee ownership of Company stock can be an effective tool to align employee interests with those of other Shareholders. Stock option plans or other equity compensation arrangements can also assist in the recruitment and retention of employees, which is especially critical to young, growing Companies, or Companies with insufficient cash resources to attract and retain highly qualified employees. However, these plans can potentially dilute shareholder interests. Rule 5635(a) ensures that Shareholders have a voice in these situations, given this potential for dilution.

Rule 5635(a) requires shareholder approval when a plan or other equity compensation arrangement is established or materially amended. For these purposes, a material amendment would include, but not be limited to, the following:

- (1) any material increase in the number of shares to be issued under the plan (other than to reflect a reorganization, stock split, merger, spinoff or similar transaction);*
- (2) any material increase in benefits to participants, including any material change to: (i) permit a repricing (or decrease in exercise price) of outstanding options, (ii) reduce the price at which shares or options to purchase shares may be offered, or (iii) extend the duration of a plan;*
- (3) any material expansion of the class of participants eligible to participate in the plan; and*
- (4) any expansion in the types of options or awards provided under the plan.*

While general authority to amend a plan would not obviate the need for shareholder approval, if a plan permits a specific action without further shareholder approval, then no such approval would generally be required. However, if a plan contains a formula for automatic increases in the shares available (sometimes called an “evergreen formula”), or for automatic grants pursuant to a dollar-based formula (such as annual grants based on a certain dollar value, or matching contributions based upon the amount of compensation the participant elects to defer), such plans cannot have a term in excess of ten years unless shareholder approval is obtained every ten years. However, plans that do not contain a formula and do not impose a limit on the number of shares available for grant would require shareholder approval of each grant under the plan. A requirement that grants be

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made out of treasury shares or repurchased shares will not alleviate these additional shareholder approval requirements.

As a general matter, when preparing plans and presenting them for shareholder approval, Companies should strive to make plan terms easy to understand. In that regard, it is recommended that plans meant to permit repricing use explicit terminology to make this clear.

Rule 5635(a) provides an exception to the requirement for shareholder approval for warrants or rights offered generally to all Shareholders. In addition, an exception is provided for tax qualified, non-discriminatory employee benefit plans as well as parallel nonqualified plans as these plans are regulated under the Internal Revenue Code and Treasury Department regulations. An equity compensation plan that provides non-U.S. employees with substantially the same benefits as a comparable tax qualified, non-discriminatory employee benefit plan or parallel nonqualified plan that the Company provides to its U.S. employees, but for features necessary to comply with applicable foreign tax law, is also exempt from shareholder approval under this section.

Further, the rule provides an exception for inducement grants to new employees because in these cases a Company has an arm's length relationship with the new employees. Inducement grants for these purposes include grants of options or stock to new employees in connection with a merger or acquisition. The rule requires that such issuances be approved by the Company's independent compensation committee or a majority of the Company's Independent Directors. The rule further requires that promptly following an issuance of any employment inducement grant in reliance on this exception, a Company must disclose in a press release the material terms of the grant, including the recipient(s) of the grant and the number of shares involved.

In addition, plans or arrangements involving a merger or acquisition do not require shareholder approval in two situations. First, shareholder approval will not be required to convert, replace or adjust outstanding options or other equity compensation awards to reflect the transaction. Second, shares available under certain plans acquired in acquisitions and mergers may be used for certain post-transaction grants without further shareholder approval. This exception applies to situations where the party which is not a listed company following the transaction has shares available for grant under pre-existing plans that meet the requirements of this Rule 5635(a). These shares may be used for post-transaction grants of options and other equity awards by the listed Company (after appropriate adjustment of the number of

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shares to reflect the transaction), either under the pre-existing plan or arrangement or another plan or arrangement, without further shareholder approval, provided: (1) the time during which those shares are available for grants is not extended beyond the period when they would have been available under the pre-existing plan, absent the transaction, and (2) such options and other awards are not granted to individuals who were employed by the granting company or its subsidiaries at the time the merger or acquisition was consummated. The Exchange would view a plan or arrangement adopted in contemplation of the merger or acquisition transaction as not pre-existing for purposes of this exception. This exception is appropriate because it will not result in any increase in the aggregate potential dilution of the combined enterprise. In this regard, any additional shares available for issuance under a plan or arrangement acquired in connection with a merger or acquisition would be counted by the Exchange in determining whether the transaction involved the issuance of 20% or more of the Company's outstanding common stock, thus triggering the shareholder approval requirements under Rule 5635(a).

Inducement grants, tax qualified non-discriminatory benefit plans, and parallel nonqualified plans are subject to approval by either the Company's independent compensation committee or a majority of the Company's Independent Directors. It should also be noted that a Company would not be permitted to use repurchased shares to fund option plans or grants without prior shareholder approval.

For purposes of Rule 5635(a) and IM-5635, the term "parallel nonqualified plan" means a plan that is a "pension plan" within the meaning of the Employee Retirement Income Security Act ("ERISA"), 29 U.S.C. §1002 (1999), that is designed to work in parallel with a plan intended to be qualified under Internal Revenue Code Section 401(a), to provide benefits that exceed the limits set forth in Internal Revenue Code Section 402(g) (the section that limits an employee's annual pre-tax contributions to a 401(k) plan), Internal Revenue Code Section 401(a)(17) (the section that limits the amount of an employee's compensation that can be taken into account for plan purposes) and/or Internal Revenue Code Section 415 (the section that limits the contributions and benefits under qualified plans) and/or any successor or similar limitations that may thereafter be enacted. However, a plan will not be considered a parallel nonqualified plan unless: (i) it covers all or substantially all employees of an employer who are participants in the related qualified plan whose annual compensation is in excess of the limit of Code Section 401(a)(17) (or any successor or similar limitation that may hereafter be enacted); (ii) its terms are

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substantially the same as the qualified plan that it parallels except for the elimination of the limitations described in the preceding sentence; and, (iii) no participant receives employer equity contributions under the plan in excess of 25% of the participant's cash compensation.

5640. Voting Rights

Voting rights of existing Shareholders of publicly traded common stock registered under Section 12 of the Act cannot be disparately reduced or restricted through any corporate action or issuance. Examples of such corporate action or issuance include, but are not limited to, the adoption of time-phased voting plans, the adoption of capped voting rights plans, the issuance of super-voting stock, or the issuance of stock with voting rights less than the per share voting rights of the existing common stock through an exchange offer.

IM-5640. Voting Rights Policy

The following Voting Rights Policy is based upon, but more flexible than, former Rule 19c-4 under the Act. Accordingly, the Exchange will permit corporate actions or issuances by Companies that would have been permitted under former Rule 19c-4, as well as other actions or issuances that are not inconsistent with this policy. In evaluating such other actions or issuances, the Exchange will consider, among other things, the economics of such actions or issuances and the voting rights being granted. The Exchange's interpretations under the policy will be flexible, recognizing that both the capital markets and the circumstances and needs of Companies change over time. The text of the Exchange Voting Rights Policy is as follows:

Companies with Dual Class Structures

The restriction against the issuance of super voting stock is primarily intended to apply to the issuance of a new class of stock, and Companies with existing dual class capital structures would generally be permitted to issue additional shares of the existing super voting stock without conflict with this policy.

Consultation with the Exchange

Violation of the Exchange Voting Rights Policy could result in the loss of a Company's Exchange or public trading market. The policy can apply to a variety of corporate actions and securities issuances, not just super voting or so-called "time phase" voting common stock. While the policy will continue to permit actions previously permitted under former Rule 19c-4, it is extremely important that Companies communicate their intentions to their Exchange representatives as early as possible before taking any action or committing to take any action that may be inconsistent with the policy. The Exchange urges Companies listed on the

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Exchange not to assume, without first discussing the matter with the Exchange Staff, that a particular issuance of common or preferred stock or the taking of some other corporate action will necessarily be consistent with the policy. It is suggested that copies of preliminary proxy or other material concerning matters subject to the policy be furnished to the Exchange for review prior to formal filing.

Review of Past Voting Rights Activities

In reviewing an application for initial qualification for listing of a Security on the Exchange, the Exchange will review the Company's past corporate actions to determine whether another self-regulatory organization (SRO) has found any of the Company's actions to have been a violation or evasion of the SRO's voting rights policy. Based on such review, the Exchange may take any appropriate action, including the denial of the application or the placing of restrictions on such listing. The Exchange will also review whether a Company seeking initial listing of a Security in the Exchange has requested a ruling or interpretation from another SRO regarding the application of that SRO's voting rights policy with respect to a proposed transaction. If so, the Exchange will consider that fact in determining its response to any ruling or interpretation that the Company may request on the same or similar transaction.

Non-U.S. Companies

The Exchange will accept any action or issuance relating to the voting rights structure of a non-U.S. Company that is in compliance with the Exchange's requirements for domestic Companies or that is not prohibited by the Company's home country law.

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5700. Additional Requirements for Securities Listed on the Exchange Issued by NASDAQ OMX or its Affiliates

5701. Additional Requirements for Securities Listed on the Exchange Issued by NASDAQ OMX or its Affiliates

(a) For purposes of this Rule 5701, the terms below are defined as follows:

(1) "Nasdaq OMX Affiliate" means The NASDAQ OMX Group, Inc. and any entity that directly or indirectly, through one or more intermediaries, controls, is controlled by, or is under common control with The NASDAQ OMX Group, Inc., where "control" means that the one entity possesses, directly or indirectly, voting control of the other entity either through ownership of capital stock or other equity securities or through majority representation on the board of directors or other management body of such entity.

(2) "Affiliate Security" means any security issued by a Nasdaq OMX Affiliate, with the exception of Portfolio Depository Receipts as defined in Rule 4420(i)(1)(A) and Index Fund Shares as defined in Rule 4420(j)(1)(A).

(b) Upon initial and throughout continued listing of the Affiliate Security on the Exchange, the Exchange shall:

(1) file a report quarterly with the Commission detailing the Exchange's monitoring of:

(A) the Nasdaq OMX Affiliate's compliance with the listing requirements contained in the Rule 5000, 5100, 5200, 5500, and 5600 Series; and

(B) the trading of the Affiliate Security, which shall include summaries of all related surveillance alerts, complaints, regulatory referrals, trades cancelled or adjusted pursuant to Rule 11890, investigations, examinations, formal and informal disciplinary actions, exception reports and trading data of such security.

(2) engage an independent accounting firm once a year to review and prepare a report on the Affiliate Security to ensure that the Nasdaq OMX Affiliate is in compliance with the listing requirements contained in the Rule 5000, 5100, 5200, 5500 and 5600 Series and promptly forward to the Commission a copy of the report prepared by the independent accounting firm.

(c) In the event that the Exchange determines that the Nasdaq OMX Affiliate is not in compliance with any of the listing requirements contained in the Rule 5000, 5100,

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5200, 5500 and 5600 Series, the Exchange shall file a report with the Commission within five business days of providing notice to the Nasdaq OMX Affiliate of its non-compliance. The report shall identify the date of non-compliance, type of non-compliance and any other material information conveyed to the Nasdaq OMX Affiliate in the notice of non-compliance. Within five business days of receipt of a plan of compliance from the Nasdaq OMX Affiliate, the Exchange shall notify the Commission of such receipt, whether the plan of compliance was accepted by the Exchange or what other action was taken with respect to the plan and the time period provided to regain compliance with the Rule 5000, 5100, 5200, 5500 and 5600 Series, if any.

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5800. Failure to Meet Listing Standards

5801. Preamble to the Rules and Procedures When a Company Fails to Meet a Listing Standard

Securities of a Company that does not meet the listing standards set forth in the Rule 5000 Series are subject to delisting from, or denial of initial listing on the Exchange. This Section sets forth procedures for the independent review, suspension, and delisting of Companies that fail to satisfy one or more standards for initial or continued listing, and thus are “deficient” with respect to the listing standards.

The Listings Qualifications Department is responsible for identifying deficiencies that may lead to delisting or denial of a listing application; notifying the Company of the deficiency or denial; and issuing Staff Delisting Determinations and Public Reprimand Letters. Rule 5810 contains provisions regarding the Listing Qualifications Department’s process for notifying Companies of different types of deficiencies and their corresponding consequences.

The Hearings Panel, upon timely request by a Company, will review a Staff Delisting Determination, denial of a listing application, or Public Reprimand Letter at an oral or written hearing, and issue a Decision that may, among other things, grant an “exception” to the Exchange’s listing standards or affirm a delisting. Rule 5815 contains provisions relating to the hearings process.

The Listing and Hearings Review Council, upon timely appeal by a Company or on its own initiative, may review the Decisions of the Hearings Panel. Rule 5820 contains provisions relating to the Listing Council review process.

Finally, the Exchange’s Board of Directors may exercise discretion to call for review a Listing Council Decision. Rule 5825 contains provisions related to that process.

Procedures related to SEC notification of the Exchange’s final Delisting Determinations are discussed in Rule 5830. Rules applicable to Adjudicators and Advisors are provided in Rule 5835 and general information relating to the adjudicatory process is provided in Rule 5840.

A Company’s failure to maintain compliance with the applicable provisions of the Rule 5000 Series will result in the termination of the listing unless an exception is granted to the Company, as described below. The termination of the Company’s listing will become effective in accordance with the procedures set forth herein, including Rule 5830.

5805. Definitions

- (a) “Adjudicatory Body” or “Adjudicator” means the Hearings Panel, the Listing Council, the Board or a member thereof.

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- (b) “Advisor” means an individual employed by the Exchange who is advising an Adjudicatory Body with respect to a proceeding under this section.
- (c) “Hearings Department” means the Hearings Department of the Exchange’s Office of General Counsel.
- (d) The “Hearings Panel” is an independent panel made up of at least two persons who are not employees or otherwise affiliated with the Exchange or its affiliates, and who have been authorized by the Exchange’s Board of Directors.
- (e) “Listing Council” means the Exchange’s Listing and Hearing Review Council.
- (f) The “Listing Qualifications Department” is the department of the Exchange responsible for evaluating Company compliance with quantitative and qualitative listing standards and determining eligibility for initial and continued listing of a Company’s securities.
- (g) “Staff” refers to employees of the Listing Qualifications Department.
- (h) “Staff Delisting Determination” or “Delisting Determination” is a written determination by the Listing Qualifications Department to delist a listed Company’s securities for failure to meet a continued listing standard.
- (i) “Decision” means a written decision of an Adjudicatory Body.
- (j) “Public Reprimand Letter” means a letter issued by Staff or a Decision of an Adjudicatory Body in cases where the Company has violated an Exchange corporate governance or notification listing standard (other than one required by Rule 10A-3 under the Act) and Staff or the Adjudicatory Body determines that delisting is an inappropriate sanction. In determining whether to issue a Public Reprimand Letter, Staff or the Adjudicatory Body will consider whether the violation was inadvertent, whether the violation materially adversely affected shareholders’ interests, whether the violation has been cured, whether the Company reasonably relied on an independent advisor and whether the Company has demonstrated a pattern of violations.
- (k) “Office of Appeals and Review” means the Office of Appeals and Review of the Exchange’s Office of General Counsel.
- (l) “Board” or “Exchange Board” means the Board of Directors of NASDAQ OMX BX, Inc.

5810. Notification of Deficiency by the Listing Qualifications Department

When the Listing Qualifications Department determines that a Company does not meet a listing standard set forth in the Rule 5000 Series, it will immediately notify the Company of the deficiency. As explained in more detail below, deficiency notifications are of four types:

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- (1) Staff Delisting Determinations, which are notifications of deficiencies that, unless appealed, subject the Company to immediate suspension and delisting;
- (2) notifications of deficiencies for which a Company may submit a plan of compliance for Staff review;
- (3) notifications of deficiencies for which a Company is entitled to an automatic cure or compliance period; and
- (4) Public Reprimand Letters.

Notifications of deficiencies that allow for submission of a compliance plan or an automatic cure or compliance period may result, after review of the compliance plan or expiration of the cure or compliance period, in issuance of a Staff Delisting Determination or a Public Reprimand Letter.

(a) Information Contained in Deficiency Notification and Delisting Determination

Deficiency notifications and Delisting Determinations will:

- (1) inform the Company of the factual bases for Staff's determination of deficiency or delisting, and the quantitative or qualitative standard the Company has failed to satisfy;
- (2) provide the Company with instructions regarding its obligations to disclose the deficiency under the Exchange's Listing Rules; and
- (3) inform the Company:
 - (A) in the case of a Staff Delisting Determination, that the Company's securities will be suspended as of a date certain; the Company has a right to request review of the Delisting Determination by a Hearings Panel; and that a request for review within seven days (as set forth in Rule 5815(a)(1)) will stay the suspension;
 - (B) in the case of a deficiency for which the Company may submit a plan of compliance for review by Staff, the deadline by which a plan must be submitted;
 - (C) in the case of a deficiency for which the Company is entitled to an automatic cure or compliance period, the expiration date of the cure or compliance period; and
 - (D) in the case of a Public Reprimand Letter, an explanation of why Staff concluded the letter is appropriate and the Company's right to request review of the Letter by a Hearings Panel.

(b) Company Disclosure Obligations

A Company that receives a notification of deficiency, Staff Delisting Determination, or Public Reprimand Letter is required to make a public announcement through the news

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media disclosing receipt of the notification and the Rule(s) upon which the deficiency is based. A Company that receives a notification of deficiency or Staff Delisting Determination related to the requirement to file a periodic report contained in Rule 5250(c)(1) or (2) is required to make the public announcement by issuing a press release disclosing receipt of the notification and the Rule(s) upon which the deficiency is based, in addition to filing any Form 8-K required by SEC rules. In all other cases, the Company may make the public announcement either by filing a Form 8-K, where required by SEC rules, or by issuing a press release. As described in Rule 5250(b)(1) and IM-5250-1, the Company must notify the MarketWatch Department about the announcement through the electronic disclosure submission system available at a website designated by the Exchange for that purpose, except in emergency situations when notification may instead be provided by telephone or facsimile. If the public announcement is made during market hours, the Company must notify MarketWatch at least ten minutes prior to the announcement. If the public announcement is made outside of market hours, the Company must notify MarketWatch of the announcement prior to 6:50 a.m. ET. The Company should make the public announcement as promptly as possible but not more than four business days following receipt of the notification.

IM-5810-1. Disclosure of Written Notice of Staff Determination

Rule 5810(b) requires that a Company make a public announcement by filing a Form 8-K, where required by SEC rules, or by issuing a press release disclosing the receipt of (i) a notice that the Company does not meet a listing standard set forth in the Rule 5000 Series, (ii) a Staff Delisting Determination to limit or prohibit continued listing of the Company's securities under Rule 5810 as a result of the Company's failure to comply with the continued listing requirements, or (iii) a Public Reprimand Letter; provided however, that if the notification relates to a failure to meet the requirements of Rules 5250(c)(1) or (2), the Company must make the public announcement by issuing a press release. Such public announcement shall be made as promptly as possible, but not more than four business days following the receipt of the notification, Staff Delisting Determination, or Public Reprimand Letter, as applicable. If the public announcement is not made by the Company within the time allotted, trading of its securities shall be halted, even if the Company appeals the Staff Delisting Determination or Public Reprimand Letter as set forth in Rule 5815. If the Company fails to make the public announcement by the time that the Hearings Panel issues its Decision, that Decision will also determine whether to delist the Company's securities for failure to make the public announcement.

Rule 5810(b) does not relieve a Company of its disclosure obligation under the federal securities laws, nor should it be construed as providing a safe harbor under the federal securities laws. It is suggested that the

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Company consult with corporate/securities counsel in assessing its disclosure obligations under the federal securities laws.

(c) Types of Deficiencies and Notifications

The type of deficiency at issue determines whether the Company will be immediately suspended and delisted, or whether it may submit a compliance plan for review or is entitled to an automatic cure or compliance period before a Staff Delisting Determination is issued. In the case of a deficiency not specified below, Staff will issue the Company a Staff Delisting Determination or a Public Reprimand Letter.

(1) Deficiencies that Immediately Result in a Staff Delisting Determination

Staff's notice will inform the Company that its securities are immediately subject to suspension and delisting when:

- (A) a Company fails to timely solicit proxies and hold its annual shareholders' meeting;
- (B) Staff has determined, under its discretionary authority in the Rule 5100 Series, that the Company's continued listing raises a public interest concern;
- (C) the Security fails to meet the \$0.25 per share bid price requirement of Rule 5550(d). A failure to meet this requirement shall be determined to exist only if the deficiency continues for 20 consecutive business days;
- (D) the Company represents itself as listed on the NASDAQ Stock Market or refers to itself as a NASDAQ listed Company; or
- (E) the Company attempts to rely on an exemption from state securities registration which otherwise may be available under state law to Companies listed on the Exchange.

(2) Deficiencies for which a Company may Submit a Plan of Compliance for Staff Review

(A) Unless the Company is currently under review by an Adjudicatory Body for a Staff Delisting Determination, the Listing Qualifications Department may accept and review a plan to regain compliance when a Company is deficient with respect to one of the standards listed in subsections (i) through (iv) below. In accordance with Rule 5810(c)(2)(C), plans provided pursuant to subsections (i) through (iii) below must be provided generally within 30 calendar days, and in accordance with Rule 5810(c)(2)(E), plans provided pursuant to subsection (iv) must be provided generally within 45 calendar days.

- (i) all quantitative deficiencies from standards that do not provide a compliance period;

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(ii) deficiencies from the standards of Rules 5605 (Independent Directors, Audit Committees and Independent Director Oversight of Executive Officer Compensation) or 5615(a)(4)(C) (Independent Directors/Audit Committee of Limited Partnerships) where the cure period of the Rule is not applicable;

(iii) deficiencies from the standards of Rules 5620(c) (Quorum), 5630 (Review or Related Party Transactions), 5635 (Shareholder Approval), 5250(c)(3) (Auditor Registration), 5255(a) (Direct Registration Program), 5610 (Code of Conduct), 5615(a)(4)(E) (Quorum of Limited Partnerships), 5615(a)(4)(G) (Related Party Transactions of Limited Partnerships), or 5640 (Voting Rights); or

(iv) failure to file periodic reports as required by Rules 5250(c)(1) or (2).

IM-5810-2 Staff Review of Deficiencies

As provided in Rule 5810(c)(2)(A)(i), the Staff may accept a plan to regain compliance with respect to quantitative deficiencies from standards that do not themselves provide a compliance period. Such standards are included in Rules 5505 (Initial Listing of Securities) and Rule 5550 (Continued Listing of Securities).

(B) Staff Alternatives Upon Review of Plan

Staff may request such additional information from the Company as is necessary to make a determination, as described below. In cases other than filing delinquencies, which are governed by Rule 5810(c)(2)(E) below, upon review of a plan of compliance, Staff may either:

(i) grant an extension of time to regain compliance not greater than 90 calendar days from the date of Staff's initial notification, unless the Company is currently under review by an Adjudicatory Body for a Staff Delisting Determination. If Staff grants an extension, it will inform the Company in writing of the basis for granting the extension and the terms of the extension;

(ii) issue a Staff Delisting Determination letter that includes a description of the basis for denying the extension; or

(iii) issue a Public Reprimand Letter, as defined in Rule 5805(j).

(C) Timeline for Submission of Compliance Plans

Except for deficiencies from the standards of Rule 5250(c)(1) or (2), Staff's notification of deficiencies that allow for compliance plan review will inform the Company that it has 30 calendar days to submit a plan to regain compliance with the Exchange's listing standard(s). Staff may extend this deadline for up to an additional 5 calendar days upon good cause shown and

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may request such additional information from the Company as is necessary to make a determination regarding whether to grant such an extension.

(D) Failure to Meet the Terms of a Staff Extension

If the Company does not regain compliance within the time period provided by all applicable Staff extensions, Staff will immediately issue a Staff Delisting Determination indicating the date on which the Company's securities will be suspended unless it requests review by a Hearings Panel.

(E) Filing Delinquencies

In the case of deficiencies from the standards of Rule 5250(c)(1) or (2):

(i) Staff's notice shall provide the Company with 45 calendar days to submit a plan to regain compliance with the listing standard; provided, however, that the Company shall not be provided with an opportunity to submit such a plan if review under the Rule 5800 Series of a prior Staff Delisting Determination with respect to the Company is already pending. Staff may extend this deadline for up to an additional 5 calendar days upon good cause shown and may request such additional information from the Company as is necessary to make a determination regarding whether to grant such an extension.

(ii) The maximum additional time provided by all exceptions granted by Staff for a deficiency described in paragraph (i) above is 90 calendar days from the due date of the first late periodic report (as extended by Rule 12b-25 under the Act, if applicable). In determining whether to grant an exception, and the length of any such exception, Staff will consider, and the Company should address in its plan of compliance, the Company's specific circumstances, including the likelihood that the filing can be made within the exception period, the Company's past compliance history, the reasons for the late filing, corporate events that may occur within the exception period, the Company's general financial status, and the Company's disclosures to the market. This review will be based on information provided by a variety of sources, which may include the Company, its audit committee, its outside auditors, the staff of the SEC and any other regulatory body.

(3) Deficiencies for which the Rules Provide a Specified Cure or Compliance Period

With respect to deficiencies related to the standards listed in (A) – (C) below, Staff's notification will inform the Company of the applicable cure or compliance period provided by these Rules and discussed below. If the Company does not regain compliance within the specified cure or compliance period, the Listing Qualifications Department will immediately issue a Staff Delisting Determination letter.

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(A) Market Makers

A failure to meet the continued listing requirement for a number of Market Makers shall be determined to exist only if the deficiency continues for a period of 10 consecutive business days. Upon such failure, the Company shall be notified promptly and shall have a period of 30 calendar days from such notification to achieve compliance. Compliance can be achieved by meeting the applicable standard for a minimum of 10 consecutive business days during the 30 day compliance period.

(B) Market Value of Listed Securities

A failure to meet the continued listing requirements for Market Value of Listed Securities shall be determined to exist only if the deficiency continues for a period of 30 consecutive business days. Upon such failure, the Company shall be notified promptly and shall have a period of 90 calendar days from such notification to achieve compliance. Compliance can be achieved by meeting the applicable standard for a minimum of 10 consecutive business days during the 90 day compliance period.

(C) Audit Committee Rules

If a Company fails to meet the audit committee composition requirements in Rule 5605(c)(2) because an audit committee member ceases to be independent for reasons outside his/her control, the Listing Qualifications Department will promptly notify the Company and inform it that has until the earlier of its next annual shareholders meeting or one year from the occurrence of the event that caused the failure, to cure the deficiency. If the Company fails to meet the audit committee composition requirement due to one vacancy on the audit committee, and the Company is not relying upon a cure period for another member, the Listing Qualifications Department will promptly notify the Company and inform it that it has until the earlier of its next annual shareholders meeting or one year from the event that caused the failure to cure the deficiency. However, if the Company's next annual shareholders' meeting is held sooner than 180 days after the event that caused the deficiency, then the Company has 180 days from the event that caused the deficiency to cure it.

(D) Officer, Director, Promoter, or Control Person with a Regulatory History

If an executive officer, director, promoter, or control person of a Company was involved in any event that occurred during the prior five years described in Item 401(f)(2) – (8) of Regulation S-K under the Act, the Listing Qualifications Department will promptly notify the Company and inform it that it has thirty calendar days to remove the individual from that position at the Company.

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(4) Public Reprimand Letter

Staff's notification may be in the form of a Public Reprimand Letter in cases where the Company has violated an Exchange corporate governance or notification listing standard (other than one required by Rule 10A-3 under the Act) and Staff determines that delisting is an inappropriate sanction. In determining whether to issue a public reprimand letter, the Listing Qualifications Department will consider whether the violation was inadvertent, whether the violation materially adversely affected shareholders' interests, whether the violation has been cured, whether the Company reasonably relied on an independent advisor and whether the Company has demonstrated a pattern of violations.

(d) Additional Deficiencies

The Listing Qualifications Department continues to evaluate the compliance of Companies while they are under review by Adjudicatory Bodies and may identify additional deficiencies. Upon identification of an additional deficiency, Staff will issue an additional notification of deficiency to the Company and send a copy to the appropriate Adjudicatory Body.

(1) Staff's notification of the additional deficiency will conform to the requirements set forth in Rule 5810(a) if:

(A) the matter under review by an Adjudicatory Body is a Public Reprimand Letter; or

(B) the additional deficiency identified is one that has an automatic cure or compliance period.

(2) If the additional deficiency is one that would in the normal course result in immediate suspension and delisting, or one for which the Company may submit a compliance plan to Staff for review, Staff's notification will instruct the Company to address the issue to the Hearings Panel at its hearing, unless the hearing for the original deficiency has already taken place. If the hearing has already taken place, Staff's notification will instruct the Company to provide in writing, within a specified time period, a submission that addresses the deficiency to the Adjudicatory Body before which its matter is pending.

5815. Review of Staff Determinations by Hearings Panel

When a Company receives a Staff Delisting Determination or a Public Reprimand Letter issued by the Listing Qualifications Department, or when its application for initial listing is denied, it may request in writing that the Hearings Panel review the matter in a written or an oral hearing. This section sets forth the procedures for requesting a hearing before a Hearings Panel, describes the Hearings Panel and the possible outcomes of a hearing, and sets forth Hearings Panel procedures.

(a) Procedures for Requesting and Preparing for a Hearing

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(1) Timely Request Stays Delisting

(A) A Company may, within seven calendar days of the date of the Staff Delisting Determination notification, Public Reprimand Letter, or denial of a listing application, request a written or oral hearing before a Hearings Panel to review the Staff Delisting Determination. Subject to the limitations in paragraphs (B) and (C) below, a timely request for a hearing will stay the suspension and delisting action pending the issuance of a written Panel Decision. Requests for hearings should be submitted in writing to the Hearings Department.

(B) If the Staff Delisting Determination relates to deficiencies from the standards of Rule 5250(c)(1) or (2), which require a Company to timely file its periodic reports with the Commission, the delisting action will only be stayed for 15 calendar days from the deadline to request a hearing unless the Company specifically requests and the Hearings Panel grants a further stay. A request for a further stay must include an explanation of why such a stay would be appropriate and should be included in the Company's request for a hearing. Based on that submission and any recommendation provided by Staff, the Hearings Panel will determine whether to grant the Company a further stay. In determining whether to grant the stay, the Hearings Panel will consider the Company's specific circumstances, including the likelihood that the filing can be made within any exception period that could subsequently be granted, the Company's past compliance history, the reasons for the late filing, corporate events that may occur within the exception period, the Company's general financial status, and the Company's disclosures to the market. The Hearings Panel will notify the Company of its conclusion as soon as is practicable, but in no event more than 15 calendar days following the deadline to request the hearing. In the event the Hearings Panel determines not to grant the Company a stay, the Company's securities will be immediately suspended and will remain suspended unless the Panel Decision issued after the hearing determines to reinstate the securities.

(C) If the Staff Delisting Determination relates to a deficiency from the standard of Rule 5550(d), which requires a Company to maintain a minimum bid price of \$0.25 per share, a timely request for a hearing will stay delisting pending the issuance of a written Panel Decision. However, notwithstanding the request for a hearing, the security will be suspended from trading on the Exchange pursuant to Rule 4120(a)(12).

(2) Failure to Request Results in Immediate Delisting

If a Company fails to request in writing a hearing within seven calendar days, it waives its right to request review of a Delisting Determination. In that event, the Hearings Department will take action to suspend trading of the securities and follow procedures to delist the securities.

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(3) Fees

Within 15 calendar days of the date of the Staff Delisting Determination the Company must submit a hearing fee to the Exchange to cover the cost of the hearing, as follows:

- (A) when the Company has requested a written hearing, \$4,000; or
- (B) when the Company has requested an oral hearing, whether in person or by telephone, \$5,000.

(4) Scheduling of Hearings

The Hearings Department will schedule hearings to take place, to the extent practicable, within 45 days of the request for a hearing, at a location determined by the Hearings Department. The Hearings Department will send written acknowledgment of the Company's hearing request and inform the Company of the date, time, and location of the hearing, and deadlines for written submissions to the Hearings Panel. The Company will be provided at least ten calendar days notice of the hearing unless the Company waives such notice.

(5) Submissions from Company

The Company may submit to the Hearings Department a written plan of compliance and request that the Hearings Panel grant an exception to the listing standards for a limited time period, as permitted by Rule 5815(c)(1)(A) or may set forth specific grounds for the Company's contention that the issuance of a Staff Delisting Determination, Public Reprimand Letter, or denial of a listing application, was in error, and may also submit public documents or other written material in support of its position, including any information not available at the time of the Staff Determination. The Hearings Panel will review the written record, as described in Rule 5840(a), before the hearing.

(6) Presentation at Hearing

At an oral hearing, the Company may make such presentation as it deems appropriate, including the appearance by its officers, directors, accountants, counsel, investment bankers, or other persons, and the Hearings Panel may question any representative appearing at the hearing. Hearings are generally scheduled to last one hour, but the Hearings Panel may extend the time. The Hearings Department will arrange for and keep on file a transcript of oral hearings.

(b) Composition of the Hearings Panel

Each Hearing is presided over by at least two Hearings Panel members, except as provided in Rule 5815(d)(3).

(c) Scope of the Hearings Panel's Discretion

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- (1) When the Hearings Panel review is of a deficiency related to continued listing standards, the Hearings Panel may, where it deems appropriate:
- (A) grant an exception to the continued listing standards for a period not to exceed 90 days from the date of the Staff Delisting Determination with respect to the deficiency for which the exception is granted;
 - (B) Reserved;
 - (C) suspend and delist the Company's securities;
 - (D) issue a Decision that serves as a Public Reprimand Letter in cases where the Company has violated an Exchange corporate governance or notification listing standard (other than one required by Rule 10A-3 under the Act) and the Hearings Panel determines that delisting is an inappropriate sanction. In determining whether to issue a Public Reprimand Letter, the Hearings Panel will consider whether the violation was inadvertent, whether the violation materially adversely affected shareholders' interests, whether the violation has been cured, whether the Company reasonably relied on an independent advisor and whether the Company has demonstrated a pattern of violations;
 - (E) find the Company in compliance with all applicable listing standards;
 - (F) in the case of a Company that received a Staff Delisting Determination because its Security is not in compliance with the minimum price requirement of Rule 5550(d), determine that the Company has regained compliance if the Security maintains a closing bid price of \$0.25 per share or more for at least 10 consecutive trading days prior to the Panel's Decision. However, if the Company has received three or more Staff Delisting Determinations for failure to comply with minimum price requirement of Rule 5550(d) in the prior 12 months, the Panel shall only determine that the Company has regained compliance if the Security maintains a closing bid price of \$0.25 per share or more for at least 20 consecutive trading days prior to the Panel's Decision. The Panel may make a compliance determination at any time, including prior to the Hearing, but must issue its Decision no later than 90 days after the date of the Staff Delisting Determination; or
 - (G) in the case of a Company that fails to file a periodic report (e.g., Form 10-K, 10-Q, 20-F, 40-F, or N-CSR), the Hearings Panel may grant an exception for a period not to exceed 180 days from the due date of the first such late periodic report. The Company can regain compliance with the requirement by filing that periodic report and any other delinquent reports with due dates falling before the end of the exception period. In determining whether to grant an exception, and the length of any such exception, the Hearings Panel will consider the Company's specific circumstances, including the likelihood that the filing can be made within the exception period, the Company's past compliance history, the reasons for the late filing, corporate events that may occur within the exception period, the Company's general financial status, and

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the Company's disclosures to the market. This review will be based on information provided by a variety of sources, which may include the Company, its audit committee, its outside auditors, the staff of the SEC and any other regulatory body.

(2) When the Hearings Panel's review is of a Staff denial of an initial listing application, the Hearings Panel may, where it deems appropriate:

(A) affirm Staff's denial of the application;

(B) conditionally approve initial listing subject to an exception to the listing standards not to exceed 90 calendar days from the date of the Panel Decision; or

(C) approve initial listing on a finding that the Company meets all initial listing requirements.

(3) A Hearings Panel may consider any failure to meet any quantitative or qualitative standard for initial or continued listing, including failures previously not considered by Staff. The Company will be given written notice of such consideration and an opportunity to respond.

(4) Under the authority described in the Rule 5100 Series, the Hearings Panel may subject the Company to additional or more stringent criteria for the initial or continued listing of particular securities based on any event, condition, or circumstance that exists or occurs that makes initial or continued listing of the securities inadvisable or unwarranted in its opinion, even though the securities meet all enumerated criteria for initial or continued listing on the Exchange.

(d) Hearings Panel Procedures

(1) Panel Decision

After the hearing, the Hearings Department, on behalf of the Hearings Panel, will issue a Panel Decision that meets the requirements of Rule 5840(c) and has been approved by each member of the Hearings Panel. The Panel Decision shall be promptly provided to the Company, and is effective immediately upon issuance, unless it specifies to the contrary. The Panel Decision will provide notice that the Company may appeal the Panel Decision to the Listing Council within 15 calendar days of the date of the Decision and that the Decision may be called for review by the Listing Council within 45 calendar days from the date of the Decision.

(2) Form 25 Notification of Delisting

If the Panel issues a Decision to delist the Company's securities, the Hearings Department will immediately take action to suspend trading of the securities, unless the Decision specifies to the contrary. If the Company does not appeal a Decision to delist and the Listing Council does not call the decision for review or withdraws its call for review, the Exchange will follow the procedures described

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in Rule 5830 to submit an application on Form 25 to the SEC to strike the Security from listing.

(3) Hearings Panel Deadlock

If, following the hearing, the Hearings Panel cannot reach a unanimous decision, the Hearings Department will notify the Company of this circumstance. The Company will be provided an additional hearing before a Hearings Panel composed of three members who did not participate in the previous hearing. The Company may decide whether the hearing will be written or oral, in person or by telephone. The Company may submit any documents or other written material in support of its request for review, including information not available at the time of the initial hearing. There will be no fee for the new hearing. After review by a Hearings Panel convened pursuant to this paragraph, the Hearings Department on behalf of the Hearings Panel will issue a Decision that meets the requirements of Rule 5840(c) and that has been approved by at least a majority of the Hearings Panel.

(4) Procedures Applicable for Recurring Deficiencies

(A) Hearings Panel Monitor

A Hearings Panel may, after a Company regains compliance with all applicable listing standards, monitor the Company's continued compliance for up to one year after the compliance date, if the Hearings Panel concludes that there is a likelihood that the issuer will fail to maintain compliance with one or more listing standards during that period. If the Hearings Panel or the Listing Qualifications Department determines that a Company under Hearings Panel monitor fails any listing standard during the monitor period, the Staff will issue a Staff Delisting Determination and the Hearings Department will promptly schedule a new hearing, with the initial Hearings Panel or a newly convened Hearings Panel if the initial Hearings Panel is unavailable. The hearing may be oral or written, at the Company's election. Notwithstanding Rule 5810(c)(2), the Company will not be permitted to provide the Listing Qualifications Department with a plan of compliance with respect to any deficiency that arises during the monitor period, and the Listing Qualifications Department will not be permitted to grant additional time for the Company to regain compliance with respect to any deficiency. The Hearings Panel will consider the Company's compliance history when rendering its Decision.

(B) No Hearings Panel Monitor

If a Hearings Panel has not opted to monitor a Company that has regained compliance with the listing standards requiring the Company to timely file periodic reports, and within one year of the date the Company regained compliance with such listing standard, the Listing Qualifications Department finds the Company again out of compliance with that requirement, then, notwithstanding Rule 5810(c)(2), the Listing Qualifications Department will

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not allow the Company to provide it with a plan of compliance or grant additional time for the Company to regain compliance. Rather, the Listing Qualifications Department will promptly issue a Staff Delisting Determination, and the Company may request review by a Hearings Panel. The Hearings Panel will consider the Company's compliance history when rendering its Decision.

(5) Request for Hearings Panel Reconsideration

A Company may request, in writing, that the Hearings Panel reconsider a Panel Decision only upon the basis that a mistake of material fact existed at the time of the Panel Decision. The Company's request for reconsideration shall be made within seven calendar days of the date of issuance of the Panel Decision. A Company's request for reconsideration will not stay a delisting determination or suspension of trading of the Company's securities, unless the Hearings Panel, before the scheduled date for suspension, issues a written determination staying the suspension and/or reversing the determination to delist. A Company's request for reconsideration will not extend the time for the Company to initiate the Listing Council's review of the Panel Decision.

If the Hearings Panel grants a Company's reconsideration request, it will issue a modified Decision meeting the requirements of Rule 5840(c) within 15 calendar days of the date of the original Panel Decision, or lose jurisdiction over the matter. If the Listing Council calls a Panel Decision for review on the same issue that the Company has requested reconsideration by the Hearings Panel, the Listing Council may assert jurisdiction over the initial Panel Decision or permit the Hearings Panel to proceed with the reconsideration and issue a new Decision.

5820. Exchange Listing and Hearing Review Council

A Company may appeal a Panel Decision to the Listing Council. The Listing Council may also call for review a Panel Decision on its own initiative. This Rule 5820 describes the procedures applicable to appeals and calls for review.

(a) Procedure for Requesting Appeal

A Company may appeal any Panel Decision to the Listing Council by submitting a written request for appeal and a fee of \$4,000 to the Exchange's Office of Appeals and Review within 15 calendar days of the date of the Panel Decision. An appeal will not operate as a stay of the Panel Decision. Upon receipt of the appeal request and the applicable fee, the Office of Appeals and Review will acknowledge the Company's request and provide deadlines for the Company to provide written submissions.

(b) Procedures for Initiating Call for Review

The Listing Council may also call for review any Panel Decision upon the request of one or more members of the Listing Council within 45 calendar days of the date of the Panel Decision. The Office of Appeals and Review will promptly inform the

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Company of the reasons for the review and provide a deadline for written submissions. A call for review by the Listing Council will not operate as a stay of the Panel Decision, unless the call for review specifies to the contrary. The Listing Council may withdraw the call for review of a Panel Decision at any time.

(c) Composition of Listing Council

The Listing Council is a committee appointed by the Exchange Board of Directors pursuant to the Exchange By-Laws whose responsibilities include the review of Panel Decisions by a Hearings Panel.

(d) Scope of Listing Council's Discretion

(1) The Listing Council may, where it deems appropriate, affirm, modify, or reverse the Panel Decision, or remand the matter to the Listing Qualifications Department or to the Hearings Panel for further consideration. The Listing Council may grant an exception for a period not longer than 180 calendar days from the date of the Staff Delisting Determination with respect to the deficiency for which the exception is granted. The Listing Council also may issue a Decision that serves as a Public Reprimand Letter in cases where the Company has violated an Exchange corporate governance or notification listing standard (other than one required by Rule 10A-3 under the Act) and the Listing Council determines that delisting is an inappropriate sanction. In determining whether to issue a Public Reprimand Letter, the Listing Council will consider whether the violation was inadvertent, whether the violation materially adversely affected shareholders' interests, whether the violation has been cured, whether the Company reasonably relied on an independent advisor and whether the Company has demonstrated a pattern of violations.

(2) The Listing Council may consider any failure to meet any quantitative standard or qualitative consideration for initial or continued listing, including failures previously not considered by the Hearings Panel. The Listing Council may also consider any action taken by a Company during the review process that would have constituted a violation of the Exchange's corporate governance requirements had the Company's securities been trading on the Exchange at the time. The Company will be afforded written notice of such consideration and an opportunity to respond.

(3) Under the authority described in the Rule 5100 Series, the Listing Council may subject the Company to additional or more stringent criteria for the initial or continued listing of particular securities based on any event, condition, or circumstance that exists or occurs that makes initial or continued listing of the securities inadvisable or unwarranted in its opinion, even though the securities meet all enumerated criteria for initial or continued listing on the Exchange.

(4) In the case of a Company that fails to file a periodic report (e.g., Form 10-K, 10-Q, 20-F, 40-F, or N-CSR), the Listing Council may grant an exception for a period not to exceed 180 days from the due date of the first such late periodic

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report. The Company can regain compliance with the requirement by filing that periodic report and any other delinquent reports with due dates falling before the end of the exception period. In determining whether to grant an exception, and the length of any such exception, the Listing Council will consider the Company's specific circumstances, including the likelihood that the filing can be made within the exception period, the Company's past compliance history, the reasons for the late filing, corporate events that may occur within the exception period, the Company's general financial status, and the Company's disclosures to the market. This review will be based on information provided by a variety of sources, which may include the Company, its audit committee, its outside auditors, the staff of the SEC and any other regulatory body.

(5) The Listing Council may also recommend that the Exchange Board consider the matter.

(e) Listing Council Review Process

(1) Review Generally on Written Record

For each matter before the Listing Council, whether on appeal for call for review, a subcommittee consisting of at least two members of the Listing Council will review the written record, as described in Rule 5840(a). Members of the Listing Council who are not on a subcommittee will be provided with a written summary of the record prepared by an Advisor, and may, but will not be required to, review the written record. The Listing Council shall consider the written record and, at its discretion, may request additional written materials and/or hold additional hearings. If an oral hearing is scheduled, it will take place, to the extent practicable, within 45 days of the date the appeal was submitted or the call for review was initiated.

(2) Record of Proceedings Maintained

A record of the documents considered by the Listing Council will be kept by the Office of Appeals and Review.

(3) Written Decision Issued

A written Listing Council Decision meeting the requirements of Rule 5840(c) will be issued after approval by at least a majority of the Listing Council. The Listing Council Decision will be promptly provided to the Company and will take immediate effect unless it specifies to the contrary. If the Listing Council determines to delist the Company, the securities of the Company will be immediately suspended, unless the Listing Council Decision specifies to the contrary.

(4) Reconsideration of a Listing Council Decision

A Company may request, in writing, that the Listing Council reconsider a Listing Council Decision only upon the basis that a mistake of material fact existed at the time of the Listing Council Decision. The Company's request must be made

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within seven calendar days of the date of the Listing Council Decision. A Company's request for reconsideration will not stay a Listing Council Decision unless the Listing Council issues a written determination staying the Decision. If the Listing Council grants a Company's reconsideration request, the Listing Council will issue a modified Decision meeting the requirements of Rule 5840(c) within 15 calendar days of the date of the original Listing Council Decision, or lose jurisdiction over the matter.

(5) Notice of Board Right to Call

The Listing Council Decision will provide notice that the Exchange Board may call the Listing Council Decision for review pursuant to provisions in Rule 5825.

(6) Form 25 Notification of Delisting

If the Listing Council determines to delist the Company and the Exchange Board does not call the matter for review or withdraws its call for review, the Exchange will follow the procedures described in Rule 5830 to submit an application on Form 25 to the Securities and Exchange Commission to delist the Security.

5825. Discretionary Review by Exchange Board

(a) Review at Discretion of Board

A Panel Decision, in a matter where the Hearings Panel has granted the maximum exception period and the Listing Council is precluded from granting additional time under Rules 5815(c)(1)(G) and 5820(d)(4), or a Listing Council Decision may be called for review by the Exchange Board solely upon the request of one or more Board members not later than the next Board meeting that is 15 calendar days or more following the date of the Panel or Listing Council Decision. This review will be undertaken solely at the discretion of the Board and will not operate as a stay of the Panel or Listing Council Decision, unless the Board's call for review specifies to the contrary. At the sole discretion of the Board, it may withdraw its call for review of a Panel or Listing Council Decision at any time before issuance of a Decision.

(b) Scope of Discretion of Board

The Board may consider any failure to meet any quantitative standard or qualitative consideration for initial or continued listing, including failures previously not considered by the Listing Council. It may also consider any action taken by a Company during the review process that would have constituted a violation of the Exchange's corporate governance requirements had the Company's securities been trading on the Exchange at the time. The Company will be afforded written notice of such consideration and an opportunity to respond. Pursuant to the Rule 5100 Series, the Board may subject the Company to additional or more stringent criteria for the initial or continued listing of particular securities based on any event, condition, or circumstance that exists or occurs that makes initial or continued listing of the securities inadvisable or unwarranted in its opinion, even though the securities meet all enumerated criteria for initial or continued listing on the Exchange.

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(c) Review on Written Record

If the Board conducts a discretionary review, the review generally will be based on the written record considered by the Hearings Panel or Listing Council. However, the Board may, at its discretion, request and consider additional information from the Company and/or from Staff. If the Board considers additional information, a record of the documents reviewed by the Board will be kept by the Office of Appeals and Review.

(d) Board Decision

If the Board conducts a discretionary review, the Company will be provided a written Decision that meets the requirements of Rule 5840(c). The Board may affirm, modify or reverse the Panel or Listing Council Decision and may remand the matter to the Listing Council, Hearings Panel, or staff of the Listing Qualifications Department with appropriate instructions. The Board also may issue a Decision that serves as a Public Reprimand Letter in cases where the Company has violated a corporate governance or notification listing standard (other than one required by Rule 10A-3 of the Act) and the Board determines that delisting is an inappropriate sanction. In determining whether to issue a Public Reprimand Letter, the Board will consider whether the violation was inadvertent, whether the violation materially adversely affected shareholders' interests, whether the violation has been cured, whether the Company reasonably relied on an independent advisor and whether the Company has demonstrated a pattern of violations. The Decision of the Board will take immediate effect, unless it specifies to the contrary, and represents the final action of the Exchange. If the Board determines to delist the Company, the securities of the Company will be immediately suspended, unless the Board specifies to the contrary, and the Exchange will follow the procedures contained in Rule 5830 and submit an application on Form 25 to the Commission to strike the security from listing.

5830. Finality of Delisting Determination

When the Exchange has made a final determination to delist a Company's securities, it will follow procedures consistent with the Act to strike the Security from listing. The Exchange's determination to delist a Company's securities is final when, after a Delisting Determination has been issued, all available review and appeal procedures and periods available under these Rules have expired.

The Exchange will issue a press release and post a notice on its website announcing its final determination to remove a Security from listing, consistent with Rule 12d2-2 under the Act. Under Rule 12d2-2, the Exchange must disseminate this public notice not less than 10 days before the delisting becomes effective and maintain the website notice until the delisting is effective. Following the public notification, the Exchange will file an application on Form 25 with the Commission to delist the Security, and will promptly provide a copy of that Form 25 to the Company. The delisting of the Security becomes

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effective 10 days after the Form 25 is filed pursuant to Rule 12d2-2(d)(1) under the Act, unless the Commission postpones the delisting pursuant to Rule 12d2-2(d)(3).

5835. Rules Applicable to Adjudicators and Advisors

(a) Ex Parte Communications

(1) No Ex parte Communications

No member of the Staff of the Listing Qualifications Department or its counsel, and no Company representative will make or knowingly cause to be made an ex parte communication relevant to the merits of a proceeding under this Section to an Adjudicator or any Advisor.

Similarly, no Adjudicator who is participating in a Decision with respect to a proceeding under this Section, and no Advisor with respect to such a proceeding, will make or knowingly cause to be made an ex parte communication relevant to the merits of that proceeding to a Company representative, a member of the Staff of the Listing Qualifications Department or its counsel.

(2) An Adjudicator or Advisor who is participating in or advising with respect to a proceeding who receives, makes, or knowingly causes to be made an ex parte communication relevant to the merits of a proceeding will place a copy of it, or its substance if it is an oral communication, in the record of the proceeding. Staff of the Listing Qualifications Department or the Company, as applicable, will be permitted to respond to the ex parte communication, and any response will be placed in the record of the proceeding.

(b) No Communications Between Adjudicatory Bodies

(1) Members of a Hearings Panel and their Advisors who are participating in a proceeding under this Section are prohibited from making communications relevant to the merits of such proceeding to members of the Listing Council or the Board or their respective Advisors.

(2) Members of the Listing Council and their Advisors are prohibited from making communications relevant to the merits of a proceeding under this Rule 5800 Series to members of a Hearings Panel who are participating in such proceeding or their Advisors or members of the Board or their Advisors.

(3) Members of the Board and their Advisors are prohibited from making communications relevant to the merits of a proceeding under this Rule 5800 Series to members of a Hearings Panel who are participating in such proceeding or their Advisors, or members of the Listing Council or their Advisors.

(4) An Adjudicator or Advisor who is participating in or advising with respect to a proceeding who receives, makes, or knowingly causes to be made a communication prohibited by paragraphs (1) – (2) above will place a copy of it, or its substance if it is an oral communication, in the record of the proceeding. Staff of the Listing Qualifications Department and the Company will be permitted to

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respond to the communication, and any such response will be placed in the record of the proceeding.

(c) Recusal or Disqualification

No person will serve as a member of a Hearings Panel, or participate as a member of the Listing Council, the Board, the Staff of the Listing Qualifications Department or Advisor to an Adjudicator, in a matter as to which he or she has a conflict of interest or bias, or circumstances otherwise exist where his or her fairness might reasonably be questioned. In any such case, the person will recuse himself or herself, or will be disqualified.

(1) Exchange of Biographical Information

To facilitate the process for recusal and disqualification, at least five days before any proceeding under this Section, the Company will provide the Hearings Department or the Advisor to the Listing Council or the Board, as applicable, with names and biographical information of each person who will appear on behalf of the Company at the proceeding, and the Hearings Department or Advisor, as applicable, will provide the Company and the Staff with names and biographical information of the Adjudicators for the proceeding; provided, however, that with respect to proceedings before the Listing Council or the Board, the Advisor may post names and biographical information of each Adjudicator on a publicly available website in lieu of providing them directly to the Company.

(2) Disqualification Procedures

A Company or the Staff of the Listing Qualifications Department may file a request to disqualify an Adjudicator. A request to disqualify will be based upon a reasonable, good faith belief that a conflict of interest or bias exists or circumstances otherwise exist where the Adjudicator's fairness might reasonably be questioned, and will be accompanied by a statement setting forth in detail the facts alleged to constitute grounds for disqualification, and the dates on which the party learned of those facts. A request to disqualify must be filed (A) not later than two business days after the party was provided with the name and biographical information of the Adjudicator, or (B) if the name and biographical information of the Adjudicator was posted on a website, not later than two business days after the Company requested Listing Council review or received notice of discretionary review by the Listing Council or the Board. A request for disqualification of an Adjudicator will be decided by the party with authority to order disqualification of such Adjudicator, as detailed below, who will promptly investigate whether disqualification is required and issue a written response to the request.

(A) Exchange Board

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The Chair of the Board will have authority to order the disqualification of a Director, and a majority of the Board excluding the Chair of the Board will have authority to order the disqualification of the Chair.

(B) Listing Council

A Chair of the Listing Council will have authority to order the disqualification of a member of the Listing Council, and a majority of the Listing Council excluding any Chairs of the Listing Council will have authority to order the disqualification of a Chair of the Listing Council.

(C) Staff of Listing Qualifications Department; Panelist of Hearings Panel

The General Counsel of the Exchange will have authority to order the disqualification of (i) a member of the Staff of the Listing Qualifications Department reviewing the qualifications of a Company, (ii) a member of a Hearings Panel, or (iii) an Advisor to an Adjudicatory Body.

5840. Adjudicatory Process: General Information

(a) Record on Review

At each level of a proceeding under this Section, the written record may consist of the following items, as applicable: correspondence between the Exchange and the Company; the Company's public filings; information released to the public by the Company; written submissions, exhibits, or requests submitted by either the Company or the Listing Qualifications Department and responses thereto; and any additional information considered by the Adjudicatory Body as part of the review process. The written record will be supplemented by the transcript of any hearings held during the review process and all Decisions issued.

At each level of review under this Section, the Company will be informed of the contents of the written record. The Company will be provided a copy of any documents in the record that were not provided by the Company or are not publicly available, at least three calendar days before the deadline for Company submissions, unless the Company waives this production.

If additional issues arising under the Rule 5000 Series are considered, as permitted by the Rule 5800 Series, the notice of such consideration and any response to such notice shall be made a part of the record.

(b) Additional Information Requested or Considered

At each level of a proceeding under this Section, the Adjudicatory Body, as part of its review:

- (1) may request additional information from the Company or the Listing Qualifications Department; and

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(2) may consider additional information available from other sources it deems relevant. The Company and the Listing Qualifications Department will be afforded written notice and an opportunity to address the significance of any information requested or considered, and the notice, responses to the notice, and the information considered will be made part of the record.

(c) Contents of Decisions

Each Adjudicatory Body's written Decision will include:

- (1) a statement describing the procedural history of the proceeding, including investigations or reviews undertaken by the Listing Qualifications Department;
- (2) the quantitative or qualitative standard that the Company is alleged to have failed to satisfy;
- (3) a statement setting forth the findings of fact with respect to the Company;
- (4) the conclusions of the Adjudicatory Body as to whether the Company has failed to satisfy the quantitative or qualitative standards for initial or continued listing; and
- (5) a statement of the Adjudicatory Body in support of its disposition of the matter, and, if applicable, the rationale for any exception to the initial or continued listing requirements granted.

(d) Correction of Clerical Errors

The Hearings Panel and the Listing Council may correct clerical or other non-substantive errors in their respective Decisions either on their own motion or at the request of a Company. A copy of any such corrected Decision will be provided to the Company.

(e) Computation and Adjustment of Time

- (1) Except as described in paragraph (2) below, in counting any time under this Section, the day of the act, event, or default from which the period of time begins to run, is not to be included. The last day of the period is included, unless it is a Saturday, Sunday, federal holiday, or Exchange holiday in which case the period runs until the end of the next day that is not a Saturday, Sunday, federal holiday or Exchange holiday.
- (2) When Staff determines whether a deficiency has occurred with respect to bid price or market value of listed securities, the first trading day that the market value is below the required standard is included in computing the total number of consecutive trading days of default. Similarly, when Staff determines whether a Company has regained compliance with the bid price or market value of listed securities requirement, the first trading day that the market value is at or above required standard is included in computing the total number of consecutive trading days.

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(3) If the Office of General Counsel determines that notice required to be provided under this Section was not properly given or that other extenuating circumstances exist, the Hearings Department may adjust the periods of time provided by the rules for the filing of written submissions, the scheduling of hearings, or the performance of other procedural actions by the Company or an Adjudicator, as applicable, to allow the Company or the Adjudicator the time contemplated by these rules.

(4) A Company may waive any notice period specified in this Section.

(f) Delivery of Documents

Delivery of any document under this Section may be made by electronic delivery, hand delivery, facsimile, regular mail or overnight courier. Delivery will be considered timely if the electronic delivery, hand delivery, fax, or overnight courier is received on or before the relevant deadline. If a Company has not specified a facsimile number, e-mail address, or street address, delivery will be made to the last known facsimile number, e-mail address, and street address. If a Company is represented by counsel or a representative, delivery may be made to the counsel or representative.

(g) Document Retention Procedures

Any document submitted to the Exchange in connection with a proceeding under this Section will be retained in accordance with applicable record retention policies.

(h) Documentation of Decisions

The Listing Qualifications Department or the Advisor to an Adjudicatory Body, as applicable, shall document the date on which a Decision with respect to a Company is implemented.

(i) Re-Listing of a Company

A Company that has been the subject of a Decision by an Adjudicatory Body to delist such Company shall be required, prior to re-listing, to comply with the requirements for initial listing. A Company that has been suspended but that has not been the subject of such a Decision shall be required, prior to re-listing, to comply with requirements for continued listing.

(j) Voluntary Delisting

(1) A Company may voluntarily terminate its listing upon compliance with all requirements of Rule 12d2-2(c) under the Act. In part, Rule 12d2-2(c) requires that the Company may delist by filing an application on Form 25 with the Commission, provided that the Company: (i) complies with all applicable laws in effect in the state in which it is incorporated and with the applicable Exchange Rules; (ii) provides notice to the Exchange no fewer than 10 days before the Company files the Form 25 with the Commission, including a statement of the material facts relating to the reasons for delisting; and (iii) contemporaneous with

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providing notice to the Exchange, publishes notice of its intent to delist, along with its reasons therefore, via a press release and on its web site, if it has one. Any notice provided on the Company's web site pursuant to Rule 12d2-2(c) must remain available until the delisting has become effective. The Company must also provide a copy of the Form 25 to the Exchange simultaneously with its filing with the Commission. The Exchange will provide notice on its web site of the Company's intent to delist as required by Rule 12d2-2(c)(3).

(2) A Company that seeks to voluntarily delist a class of securities pursuant to Rule 5840(j)(1) that has received notice from the Exchange, pursuant to the Rule 5800 Series or otherwise, that it fails to comply with one or more requirements for continued listing, or that is aware that it is below such continued listing requirements notwithstanding that it has not received such notice from the Exchange, must disclose this fact (including the specific continued listing requirement that it is below) in: (i) its statement of all material facts relating to the reasons for withdrawal from listing provided to the Exchange along with written notice of its determination to withdraw from listing required by Rule 12d2-2(c)(2)(ii) under the Act; and (ii) its press release and web site notice required by Rule 12d2-2(c)(2)(iii) under the Act.

(k) Disclosure of Public Reprimand Letter

A Company that receives an Adjudicatory Body Decision that serves as a Public Reprimand Letter must make a public announcement by filing a Form 8-K, where required by SEC rules, or by issuing a press release disclosing the receipt of the Decision, including the Rule(s) upon which the Decision was based. As described in Rule 5250(b)(1) and IM-5250-1, the Company must notify the Exchange's MarketWatch Department about the announcement through the electronic disclosure submission system available at a website designated by the Exchange for that purpose, except in emergency situations when notification may instead be provided by telephone or facsimile. If the public announcement is made during market hours, the Company must notify MarketWatch at least ten minutes prior to the announcement. If the public announcement is made outside of market hours, the Company must notify MarketWatch of the announcement prior to 6:50 a.m. ET. The Company should make the public announcement as promptly as possible but not more than four business days following receipt of the Decision.

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5900. Company Listing Fees

5901. Preamble to the Company Listing Fees

This section sets forth the required fees for Companies both seeking listing and currently listed on the Exchange pursuant to the Rule 5000 Series. With certain exceptions, Companies seeking to list on the Exchange must pay a non-refundable application fee. Listed Companies are required to pay annual fees and fees for certain corporate changes, such as a change in name or a substitution listing. Please note that the fees related to written interpretations of the Exchange's listing rules can be found in Rule 5602.

5910. Listing Fees

(a) Application Fee

A Company that submits an application to list any class of its securities on the Exchange, shall pay to the Exchange a non-refundable application fee of \$7,500, which must be submitted with the Company's application. However, if a Company is listed on another national securities exchange and has received notice that it is subject to being delisted from that exchange for failure to comply with a quantitative listing requirement, the application fee does not have to be paid to the Exchange until the other exchange issues a final decision to delist the Company's securities or the Company is listed on the Exchange, whichever occurs first.

(b) Annual Fee

(1) Each issuer shall pay an annual fee of \$15,000 for the first class of securities listed on the Exchange and \$5,000 for each additional class of securities listed on the Exchange.

(2) The Annual Fee will be pro-rated during a Company's first year of listing on the Exchange based on the month of listing. For example, a Company initially listing in April would be charged 9/12 of the Annual Fee for the first year of listing.

(3) If a class of securities is delisted or voluntarily removed from the NASDAQ Stock Market, the Company shall receive a credit for that portion of the annual fees for such class of securities attributable to the months following the date of removal, which will be applied only to offset the Exchange's Annual fees for that calendar year. For example, a Company that is delisted from NASDAQ on April 5th and immediately lists on the Exchange will receive a credit of 8/12 of the annual fee paid to NASDAQ for the year, which will be used to offset the applicable Annual Fee owed to the Exchange for that year only. Any amounts paid to NASDAQ in excess of the Annual Fees owed to the Exchange for that year shall not be refunded nor applied against fees in future years.

(4) Mergers

(i) A Company that completes a merger with another Company listed on the Exchange during the first calendar quarter will

Changes are approved but are *not* operative.

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receive a credit or waiver, as applicable, for 75% of the Annual Fee assessed to the acquired Exchange-listed Company.

(ii) A Company not listed on the Exchange that completes a merger with a Company listed on the Exchange and that is the surviving entity will, upon listing on the Exchange, receive a credit or waiver, as applicable, of the Annual Fee previously paid by the listed Company, pro-rated for the months remaining in the calendar year. If the fee was not paid, the credit will go to the non-surviving entity.

(c) Record-Keeping Fee

A Company that makes a change such as a change to its name, the par value or title of its Security, or its symbol shall pay a fee of \$2,500 to the Exchange and submit the appropriate form as designated by the Exchange.

(d) Substitution Listing Fee

A Company that implements a Substitution Listing Event shall pay a fee of \$7,500 to the Exchange and submit the appropriate form as designated by the Exchange.

5920. Fee Waivers

The Exchange's Board of Directors or its designee may defer or waive all or any part of any of the fees prescribed herein. A deferral or waiver will only be granted in rare circumstances where in the opinion of the Exchange, charging the fee would be inequitable and the factual circumstances are unlikely to be frequently replicated. Requests for a deferral or waiver should be sent by e-mail to billing@bxventure.com, and must include the bases for the request.