

# **MEMBERSHIP AND REGISTRATION RULES**

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## **1000. MEMBERSHIP, REGISTRATION AND QUALIFICATION REQUIREMENTS**

### **1001. Nasdaq Regulatory Contract with NASD Regulation**

Nasdaq and NASD Regulation, an affiliate of NASD, are parties to the Regulatory Contract, pursuant to which NASD Regulation has agreed to perform certain functions described in the Rule 1000 Series on behalf of Nasdaq. Nasdaq Rules that refer to the Nasdaq Regulation, Nasdaq Regulation staff, Nasdaq staff, and Nasdaq departments should be understood as also referring to NASD staff, NASD Regulation staff and NASD departments acting on behalf of Nasdaq pursuant to the Regulatory Contract.

Notwithstanding the fact that Nasdaq has entered into the Regulatory Contract with NASD Regulation to perform some of Nasdaq's functions, Nasdaq shall retain ultimate legal responsibility for, and control of, such functions. In addition, Nasdaq has incorporated by reference certain NASD rules. Nasdaq members shall comply with these rules and interpretations as if such rules and interpretations were part of Nasdaq's rules.

### **1002. Qualifications of Nasdaq Members and Associated Persons**

(a) Persons Eligible to Become Nasdaq Members and Associated Persons of Nasdaq Members.

(1) Any registered broker or dealer shall be eligible for membership in Nasdaq, except such registered brokers or dealers as are excluded under paragraph (b).

(2) Any person shall be eligible to become an associated person of a Nasdaq member, except such persons as are excluded under paragraph (b).

(b) Ineligibility of Certain Persons for Membership or Association

(1) Subject to such exceptions as may be explicitly provided elsewhere in the Nasdaq Rules, no registered broker or dealer shall be admitted to membership, and no Nasdaq member shall be continued in membership, if such broker, dealer, or Nasdaq member fails or ceases to satisfy the qualification requirements established by the Nasdaq Rules, or if such broker, dealer, or Nasdaq member is or becomes subject to a statutory disqualification, or if such broker, dealer, or Nasdaq member fails to file such forms as Nasdaq may require in accordance with such process as Nasdaq may prescribe.

(2) Subject to such exceptions as may be explicitly provided elsewhere in the Nasdaq Rules, no person shall become associated with a Nasdaq member, continue to be associated with a Nasdaq member, or transfer association to another Nasdaq member, if such person fails or ceases to satisfy the qualification requirements established by the Nasdaq Rules, or if such person is or becomes subject to a statutory disqualification; and no broker or dealer shall be admitted to

membership, and no Nasdaq member shall be continued in membership, if any person associated with it is ineligible to be an associated person under this subsection.

(c) **Payment of Fees, Dues, Assessments, and Other Charges by Members and Associated Persons**

(1) Fees, dues, assessments, and other charges shall be called and payable by members and associated persons as determined by Nasdaq from time to time

(2) Each Nasdaq member or associated person shall promptly furnish all information or reports requested by Nasdaq in connection with the determination of the amount of fees, dues, assessments, or other charges owed.

(d) **Reinstatement of Membership or Registration.** Any membership or registration suspended or canceled under the Nasdaq Rules may be reinstated by Nasdaq upon such terms and conditions as are permitted under the Act and the Nasdaq Rules; provided, however, that any applicant for reinstatement of membership or registration shall possess the qualifications required for membership or registration in Nasdaq.

(e) **Membership in a Registered Securities Association or Another Registered Exchange.** As a condition to maintaining membership in Nasdaq, members shall at all times maintain membership in a registered securities association or another registered exchange. Nasdaq members that transact business with customers shall at all times be members of the NASD.

**IM-1002-1. Filing of Misleading Information as to Membership or Registration**

The filing with Nasdaq of information with respect to membership or registration as a Registered Representative which is incomplete or inaccurate so as to be misleading, or which could in any way tend to mislead, or the failure to correct such filing after notice thereof, may be deemed to be conduct inconsistent with just and equitable principles of trade and when discovered may be sufficient cause for appropriate disciplinary action.

**IM-1002-2. Status of Sole Proprietors and Registered Representatives Serving in the Armed Forces**

Any Registered Representative of a member who volunteers or is called into the Armed Forces of the United States shall be placed, after proper notification to Nasdaq, upon inactive status and need not be re-registered by such member upon his or her return to active employment with the member.

Any member (Sole Proprietor) who temporarily closes his or her business by reason of volunteering or being called into the Armed Forces of the United States, shall be placed, after proper notification to the Executive Office, on inactive status until his or her return to active participation in the investment banking and securities business.

A Registered Representative who is placed on inactive status as set forth above shall not be included within the definition of "Personnel" for purposes of calculating any dues or assessments that must be paid by members.

Any member placed on inactive status as set forth above shall not be required to pay any dues or assessments during the pendency of such inactive status and shall not be required to pay any admission fee that is otherwise required upon return to active participation in the investment banking and securities business.

A Registered Representative who is placed on inactive status as set forth above shall not be required to complete either of the Regulatory or Firm Elements of the continuing education requirements set forth in Rule 1120 during the pendency of such inactive status.

### **IM-1002-3. Failure to Register Personnel**

The failure of any member to register an employee, who should be so registered, as a Registered Representative may be deemed to be conduct inconsistent with just and equitable principles of trade and when discovered may be sufficient cause for appropriate disciplinary action.

### **IM-1002-4. Branch Offices and Offices of Supervisory Jurisdiction**

Each member is under a duty to insure that its membership application with Nasdaq is kept current at all times by supplementary amendments to its original application and that any offices other than the main office are properly designated and registered, if required, with Nasdaq.

Each member must designate to Nasdaq those offices of supervisory jurisdiction, including the main office, and must register those offices which are deemed to be branch offices in accordance with the standards set forth in Nasdaq Rule 3010.

## **1010. Membership Proceedings**

### **1011. Definitions**

Unless otherwise provided, terms used in the Rule 1000 Series shall have the meaning as defined in Rule 0120.

#### **(a) "Applicant"**

The term "Applicant" means a person that applies for membership in Nasdaq under Rule 1013 or a member that files an application for approval of a change in ownership, control, or business operations under Rule 1017.

#### **(b) "Associated Person"**

The term "Associated Person" means any partner, officer, director, or branch manager of a Nasdaq member or Applicant (or person occupying a similar status or performing similar functions), any person directly or indirectly controlling, controlled by, or under common control with such Nasdaq member or Applicant, or any employee of such Nasdaq member or Applicant, except that any person associated with a Nasdaq member or Applicant whose functions are solely clerical or ministerial shall not be included in the meaning of such term for purposes of the Nasdaq Rules.

**(c) "Department"**

The term "Department" means the Nasdaq Membership Department located within Nasdaq Regulation.

**(d) "Director"**

The term "Director" means a member of the Nasdaq Board.

**(e) "Interested Nasdaq Staff"**

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

**(f) "investment banking or securities business"**

The term "investment banking or securities business" means the business, carried on by a broker or dealer, of underwriting or distributing issues of securities, or of purchasing securities and offering the same for sale as a dealer, or of purchasing and selling securities upon the order and for the account of others.

**(g) "material change in business operations"**

The term "material change in business operations" includes, but is not limited to:

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

**(h) "Nasdaq Board"**

The term "Nasdaq Board" means the Board of Directors of Nasdaq.

**(i) "principal place of business"**

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

**(j) "registered broker or dealer"**

The term "registered broker or dealer" means any registered broker or dealer, as defined in Section 3(a)(48) of the Act, that is registered with the Commission under the Act.

**(k) "Representative"**

The term "Representative" means an Associated Person of a registered broker or dealer, including assistant officers other than principals, who is engaged in the investment banking or securities business for the member including the functions of supervision, solicitation or conduct of business in securities or who is engaged in the training of persons associated with a broker or dealer for any of these functions are designated as representatives. As provided in Rule 1031, all Representatives of Nasdaq Members are required to be registered with Nasdaq, and Representatives that are so registered are referred to herein as "Registered Representatives."

**(k) "sales practice event"**

The term "sales practice event" means any customer complaint, arbitration, or civil litigation that has been reported to the Central Registration Depository, currently is required to be reported to the Central Registration Depository, or otherwise has been reported to Nasdaq.

**(l) "Subcommittee"**

The term "Subcommittee" means a subcommittee of the Nasdaq Review Council that is constituted pursuant to Rule 1015 to conduct a review of a Department decision issued under the Rule 1010 Series.

**(m) "statutory disqualification"**

The term "statutory disqualification" shall have the meaning set forth in Section 3(a)(39) of the Act.

**1012. General Provisions**

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

(1) An Applicant may file an application or any document or information requested under the Rule 1010 Series by first-class mail, overnight courier, or hand delivery. If the Department and the Applicant agree, the Applicant also may file a requested document or information by facsimile.

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

(3) Service by Nasdaq or filing by an Applicant shall be deemed complete as follows:

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

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

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

(D) Service or filing by facsimile shall be deemed complete on the date specified in the document and on the written confirmation of transmission.

**(b) Lapse of Application**

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

(A) respond fully within 60 days after service of an initial written request for information or documents under Rule 1013, within 30 days after service of an initial written request for information or documents under Rule 1017, within 30 days after service of a subsequent written request for information or documents under Rule 1013 or 1017, or within such other time period agreed to by the Department and the Applicant;

(B) appear at or otherwise participate in a scheduled membership interview pursuant to Rule 1013(b) or 1017(f); or

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

(2) If an Applicant wishes to continue to seek membership or approval of a change in ownership, control, or business operations, then the Applicant shall be

required to submit a new application under Rule 1013 or 1017, respectively, and any required fee. Nasdaq shall not refund any fee for a lapsed application.

**(c) Ex Parte Communications**

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

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

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

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

(3) A Director, a member of the Nasdaq Review Council or a Subcommittee thereof, or a Nasdaq employee participating or advising in the decision of such a person, who receives, makes, or knowingly causes to be made a communication prohibited by this paragraph shall place in the record of the membership proceeding:

(A) all such written communications;

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

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

**(d) Recusal or Disqualification**

A Director or a member of the Nasdaq Review Council or a Subcommittee thereof shall not participate in a matter governed by the Rule 1010 Series as to which that person has a conflict of interest or bias, or if circumstances otherwise exist where his or

her fairness might reasonably be questioned. In such a case, the person shall recuse himself or shall be disqualified as follows:

(1) The Chair of the Nasdaq Board shall have authority to direct the disqualification of a Director, and a majority of the Directors of the Nasdaq Board excluding the Chair shall have authority to direct the disqualification of the Chair of the Nasdaq Board.

(2) The Chair of the Nasdaq Review Council shall have authority to direct the disqualification of a member of the Nasdaq Review Council or a member of a Subcommittee appointed pursuant to Rule 1015, and the Vice Chair of the Nasdaq Review Council shall have authority to direct the disqualification of the Chair of the Nasdaq Review Council.

**(e) Computation of Time**

**(1) Calendar Day**

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

**(2) Formula**

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

**(f) Similarity of Membership Names**

(1) No person or firm shall be admitted to or continued in membership in Nasdaq if such person or firm has a name that is identical to the name of another Nasdaq member appearing in the membership role of Nasdaq or a name so similar to any such name as to tend to confuse or mislead.

(2) No Nasdaq member may change its name without prior approval of Nasdaq.

**(g) Resignation of Nasdaq Members**

Membership in Nasdaq may be voluntarily terminated only by formal resignation. Resignations of Nasdaq members must be filed via electronic process or such other process as Nasdaq may prescribe and addressed to Nasdaq. Any Nasdaq member may resign from Nasdaq at any time. Such resignation shall not take effect until 30 days after receipt thereof by Nasdaq and until all indebtedness due Nasdaq from such Nasdaq

member shall have been paid in full and so long as any complaint or action is pending against the Nasdaq member under the Nasdaq Rules. Nasdaq, however, may in its discretion declare a resignation effective at any time.

**(h) Retention of Jurisdiction**

A resigned Nasdaq member or a Nasdaq member that has had its membership canceled or revoked shall continue to be subject to the filing of a complaint under the Nasdaq Rules based upon conduct that commenced prior to the effective date of the Nasdaq member's resignation from Nasdaq or the cancellation or revocation of its membership. Any such complaint, however, shall be filed within six years after the effective date of resignation, cancellation, or revocation.

**(i) Transfer and Termination of Membership**

(1) Except as provided hereinafter, no member of Nasdaq may transfer its membership or any right arising therefrom; the membership of a corporation, partnership, or any other business organization that is a member of Nasdaq shall terminate upon its liquidation, dissolution, or winding up; and the membership of a sole proprietorship that is a Nasdaq member shall terminate at death, provided that all obligations of membership under the Nasdaq Rules have been fulfilled.

(2) The consolidation, reorganization, merger, change of name, or similar change in any corporate Nasdaq member shall not terminate the membership of such corporate Nasdaq member, provided that the Nasdaq member or surviving corporation, if any, shall be deemed a successor to the business of the corporate Nasdaq member, and the Nasdaq member or the surviving organization shall continue in the investment banking or securities business, and shall possess the qualifications for membership in Nasdaq. The death, change of name, withdrawal of any partner, the addition of any new partner, reorganization, consolidation, or any change in the legal structure of a partnership Nasdaq member shall not terminate the membership of such partnership Nasdaq member, provided that the Nasdaq member or surviving organization, if any, shall be deemed a successor to the business of the partnership Nasdaq member, and the Nasdaq member or surviving organization shall possess the qualifications for membership in Nasdaq. If the business of any predecessor Nasdaq member is to be carried on by an organization deemed to be a successor organization by Nasdaq, the membership of such predecessor Nasdaq member shall be extended to the successor organization subject to the notice and application requirements of the Nasdaq Rules and the right of Nasdaq to place restrictions on the successor organization pursuant to the Nasdaq Rules; otherwise, any surviving organization shall be required to satisfy all of the membership application requirements of the Nasdaq Rules.

**(j) Registration of Branch Offices.**

(1) Each branch office of a member of Nasdaq shall be registered with and listed upon the membership roll of Nasdaq, and shall pay such dues, assessments, and other charges as shall be fixed from time to time under the Nasdaq Rules.

(2) Each member of Nasdaq shall promptly advise Nasdaq via electronic process or such other process as Nasdaq may prescribe of the opening, closing, relocation, change in designated supervisor, or change in designated activities of any branch office of such Nasdaq member not later than 30 days after the effective date of such change.

### **1013. New Member Application and Interview**

#### **(a) Filing of Application**

##### **(1) Where to File**

An Applicant for Nasdaq membership shall file its application with the Department in accordance with this Rule.

##### **(2) Contents**

The application shall include:

(A) a copy of the Applicant's current Form BD;

(B) an original Nasdaq-approved fingerprint card for each Associated Person who will be subject to SEC Rule 17f-2 and for whom a fingerprint card has not been filed with another self-regulatory organization;

(C) Reserved

(D) a check for such fee as may be required under the Nasdaq Rules;

(E) business information that describes the Applicant's operations and that includes:

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

(ii) Reserved

(iii) an organizational chart;

(iv) the intended location of the Applicant's principal place

of business and all other offices, if any, whether or not such offices would be required to be registered under the Nasdaq Rules, and the names of the persons who will be in charge of each office;

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

(vi) Reserved

(vii) Reserved

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

(ix) Reserved

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

(xi) Reserved

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

(F) a copy of any decision or order by a federal or state authority or self-regulatory organization taking permanent or temporary adverse action with respect to a registration or licensing determination regarding the Applicant or an Associated Person;

(G) Reserved

(H) documentation of any of the following events, unless the event has been reported to the Central Registration Depository:

(i) a regulatory action against or investigation of the

Applicant or an Associated Person by the Commission, the Commodity Futures Trading Commission, a federal, state, or foreign regulatory agency, or a self-regulatory organization that is pending, adjudicated, or settled;

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

(iii) an investment-related customer complaint or arbitration that is required to be reported on Form U-4;

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

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

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

(J) a written acknowledgment that heightened supervisory procedures and special educational programs may be required pursuant to NASD Notice to Members 97-19 (as incorporated by reference into Nasdaq IM-3010) for an Associated Person whose record reflects disciplinary actions or sales practice events;

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

(L) a description of the nature and source of Applicant's capital with supporting documentation, the risk to net capital presented by the Applicant's proposed business activities, and any arrangement for additional capital should a business need arise;

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

(N) a description of the Applicant's supervisory system and a copy of its written supervisory procedures;

(O) a description of the number, experience, and qualifications of supervisors and principals and the number, experience, and qualifications of persons to be supervised by such personnel;

(P) Reserved

(Q) Reserved

(R) a Web CRD entitlement request form and a Member Contact Questionnaire user access request form;

(S) a copy of the Applicant's most recent "FOCUS Report" (Form X-17A-5) filed with the SEC pursuant to SEC Rule 17a-5 (the most current Parts I, II, and III, as applicable);

(T) an agreement to comply with the federal securities laws, the rules and regulations thereunder, the Nasdaq Rules, and all rulings, orders, directions, and decisions issued and sanctions imposed under the Nasdaq Rules;

(U) an agreement to pay such dues, assessments, and other charges in the manner and amount as from time to time shall be fixed pursuant to the Nasdaq Rules; and

(V) such other reasonable information with respect to the applicant as Nasdaq may require.

Each Applicant and Nasdaq member shall ensure that its membership application with Nasdaq is kept current at all times by supplementary amendments via electronic process or such other process as Nasdaq may prescribe. Such amendments to the application shall be filed with Nasdaq not later than 30 days after the applicant or Nasdaq member learns of the facts or circumstances giving rise to the amendment.

### **(3) Electronic Filings**

Upon approval of the Applicant's Web CRD entitlement request form, the Applicant shall submit its Forms U4 for each Associated Person who is required to be registered under the Rules, any amendments to its Forms BD or U4, and any Form U5 electronically via Web CRD. Upon approval of the Applicant's membership, the Applicant shall submit any amendments to its Member Contact Questionnaire electronically.

### **(4) Rejection of Application That Is Not Substantially Complete**

If the Department determines within 30 days after the filing of an application that the application is not substantially complete, the Department may reject the application and deem it not to have been filed. In such case, within the 30 day period, the Department shall serve a written notice on the Applicant of the Department's determination and the reasons therefor. Nasdaq shall refund the application fees, if any, in accordance with the provisions of the Nasdaq Rules governing such fees. If the Applicant determines to continue to seek membership, the Applicant shall submit a new application and any required fee under this Rule.

#### **(5) Request For Additional Documents Or Information**

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

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

#### **(6) Applicants That Are Members of an Association or Another Exchange**

(A) Applicants for Nasdaq membership that are also simultaneously applying for NASD membership may file one application with the NASD in compliance with the NASD Rule 1010 Series; however, Nasdaq will not take action on the application for Nasdaq membership until the applicant is an active member of the NASD.

(B) Applicants that are members of another registered national securities exchange or association must submit a complete application form containing all of the required items of information listed in Rule 1013(a)(2).

(C) An applicant that is an approved NASD member shall have the option to apply to become a Nasdaq member and to register with Nasdaq all associated persons of the firm whose registrations with the firm are approved with the NASD in categories recognized by Nasdaq rules through an expedited process by submitting a Waive-in Membership Application Form and a Nasdaq Membership Agreement.

#### **(b) Membership Interview**

##### **(1) Requirement for Interview**

Before the Department serves its decision on an application for new membership in Nasdaq, the Department shall conduct a membership interview with a representative or representatives of the Applicant.

**(2) Service of Notice**

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

**(3) Time**

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

**(4) Place**

The membership interview shall be conducted in a location specified by Nasdaq.

**(5) Updated Financial Documents**

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

**(6) Review of Standards for Admission**

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

**(7) Information From Other Sources**

During the membership interview, the Department shall provide to the Applicant's representative or representatives any information or document that the Department has obtained from the Central Registration Depository or a source

other than the Applicant and upon which the Department intends to base its decision under Rule 1014. If the Department receives such information or document after the membership interview or decides to base its decision on such information after the membership interview, the Department shall promptly serve the information or document and an explanation thereof on the Applicant.

#### **1014. Department Decision**

##### **(a) Standards for Admission**

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

- (1) The application and all supporting documents are complete and accurate.
- (2) The Applicant and its Associated Persons have all licenses and registrations required by state and federal authorities and self-regulatory organizations.
- (3) The Applicant and its Associated Persons are capable of complying with the federal securities laws, the rules and regulations thereunder, and the Nasdaq Rules, including observing high standards of commercial honor and just and equitable principles of trade. In determining whether this standard is met, the Department shall take into consideration whether:
  - (A) a state or federal authority or self-regulatory organization has taken permanent or temporary adverse action with respect to a registration or licensing determination regarding the Applicant or an Associated Person;
  - (B) an Applicant's or Associated Person's record reflects a sales practice event, a pending arbitration, or a pending private civil action;
  - (C) an Applicant or Associated Person is the subject of a pending, adjudicated, or settled regulatory action or investigation by the Commission, the Commodity Futures Trading Commission, a federal, state, or foreign regulatory agency, or a self-regulatory organization; an adjudicated, or settled investment-related private civil action for damages or an injunction; or a criminal action (other than a minor traffic violation) that is pending, adjudicated, or that has resulted in a guilty or no contest plea; or an Applicant, its control persons, principals, registered representatives, other Associated Persons, any lender of 5% or more of the Applicant's net capital, or any other member with respect to which any of these persons is or was a control person or a 5% lender of its net capital is

subject to unpaid arbitration awards, other adjudicated customer awards, or unpaid arbitration settlements;

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

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

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

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

(A) initiate the operations described in the Applicant's application, considering the nature and scope of operations and the number of personnel; and

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

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

(A) initiate the operations described in the Applicant's application, considering the nature and scope of operations and the number of personnel; and

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

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

(7) The Applicant is capable of maintaining a level of net capital in excess of the minimum net capital requirements set forth in SEC Rule 15c3-1 adequate to support the Applicant's intended business operations on a continuing basis, based on information filed under Rule 1013. The Department may impose a reasonably determined higher net capital requirement for the initiation of operations after

considering:

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

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

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

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

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

(F) any other activity that the Applicant will engage in that reasonably could have a material impact on net capital within the first twelve months of business operations.

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

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

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

(A) the number, location, experience, and qualifications of supervisory personnel are adequate in light of the number, location, experience, and qualifications of persons to be supervised; the Central Registration Depository record or other disciplinary history of supervisory personnel and persons to be supervised; and the number and locations of the offices that the Applicant intends to open and the nature and scope of

business to be conducted at each office;

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

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

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

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

(F) the Applicant will recommend securities to customers;

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

(H) the Applicant should be required to place one or more Associated Persons under heightened supervision pursuant to NASD Notice to Members 97-19 (as incorporated by reference into Nasdaq IM-3010);

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

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

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

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

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

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

(15) The Applicant is a member of another registered securities exchange or association. An Applicant that will transact business with the public must be a member of the NASD.

**(b) Granting or Denying Application**

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

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

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

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

(B) deny the application.

**(c) Decision**

**(1) Time**

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

**(2) Content**

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

### **(3) Failure to Serve Decision**

If the Department fails to serve a decision within 180 days after the filing of an application or such later date as the Department and the Applicant have agreed in writing, the Applicant may file a written request with the Nasdaq Board requesting that the Nasdaq Board direct the Department to serve a decision. Within seven days after the filing of such a request, the Nasdaq Board shall direct the Department to serve its written decision immediately or to show good cause for an extension of time. If the Department shows good cause for an extension of time, the Nasdaq Board may extend the 180-day time limit by not more than 90 days.

### **(d) Submission of Membership Agreement**

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

- (1) abide by any restriction specified in the Department's decision; and
- (2) obtain the Department's approval of a change in ownership, control, or business operations pursuant to Rule 1017, including the modification or removal of a membership agreement restriction.

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

### **(e) Service and Effectiveness of Decision**

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

### **(f) Effectiveness of Restriction**

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

(1) removed or modified by a decision constituting final action of Nasdaq issued under Rule 1015, 1016, or 1017; or

(2) stayed by the Nasdaq Review Council, the Nasdaq Board, or the Commission.

**(g) Final Action**

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

**1015. Review by Nasdaq Review Council**

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

Within 25 days after service of a decision under Rule 1014 or 1017, an Applicant may file a written request for review with the Nasdaq Review Council. A request for review shall state with specificity why the Applicant believes that the Department's decision is inconsistent with the membership standards set forth in Rule 1014, or otherwise should be set aside, and state whether a hearing is requested. The Applicant simultaneously shall file by first-class mail a copy of the request with the Department.

**(b) Transmission of Documents**

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

(1) transmit to the Nasdaq Review Council copies of all documents that were considered in connection with the Department's decision and an index to the documents; and

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

**(c) Membership Application Docket**

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

**(d) Appointment of Subcommittee**

The Nasdaq Review Council or the Review Subcommittee defined in Rule 9120 shall appoint a Subcommittee to participate in the review. The Subcommittee shall be composed of two or more persons who shall be current or past members of the Nasdaq Review Council or former Directors.

**(e) Powers of Subcommittee**

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

**(f) Hearing**

**(1) Notice**

If a hearing is requested or directed, the hearing shall be held within 45 days after the filing of the request with the Nasdaq Review Council or service of the notice by the Subcommittee. The Nasdaq Review Council shall serve written notice of the date and time of the hearing to the Applicant by facsimile or overnight courier not later than 14 days before the hearing.

**(2) Counsel**

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

**(3) Evidence**

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

**(4) Transcript**

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

Subcommittee may direct the correction to the transcript as requested or sua sponte.

**(g) Additional Information, Briefs**

At any time during its consideration, the Subcommittee or the Nasdaq Review Council may direct the Applicant or the Department to file additional information or briefs. Any additional information or brief filed shall be provided to all parties before the Nasdaq Review Council renders its decision.

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

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

**(i) Subcommittee Recommendation**

The Subcommittee shall present a recommended decision in writing to the Nasdaq Review Council within 60 days after the date of the hearing held pursuant to paragraph (f), and not later than seven days before the meeting of the Nasdaq Review Council at which the membership proceeding shall be considered.

**(j) Decision**

**(1) Proposed Written Decision**

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

**(2) Contents**

The decision shall include:

- (A) a description of the Department's decision, including its rationale;
- (B) a description of the principal issues raised in the review;
- (C) a summary of the evidence on each issue; and

(D) a statement whether the Department's decision is affirmed, modified, or reversed, and a rationale therefor that references the applicable standards in Rule 1014.

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

The Nasdaq Review Council shall provide its proposed written decision to the Nasdaq Board. The Nasdaq Board may call the membership proceeding for review pursuant to Rule 1016. If the Nasdaq Board does not call the membership proceeding for review, the proposed written decision of the Nasdaq Review Council shall become final. The Nasdaq Review Council shall serve the Applicant with a written notice specifying the date on which the call for review period expired and stating that the final written decision will be served within 15 days after such date. The Nasdaq Review Council shall serve its final written decision within 15 days after the date on which the call for review period expired. The decision shall constitute the final action of Nasdaq for purposes of SEC Rule 19d-3, unless the Nasdaq Review Council remands the membership proceeding.

**(4) Failure to Issue Decision**

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

**1016. Discretionary Review by the Nasdaq Board**

**(a) Call for Review by Director**

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

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

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

**(c) Review At Next Meeting**

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

**(d) Decision of the Nasdaq Board, Including Remand**

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

**(e) Issuance of Decision**

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

**1017. Application for Approval of Change in Ownership, Control, or Business Operations**

**(a) Events Requiring Application**

A member shall file an application for approval of any of the following changes to its ownership, control, or business operations:

- (1) a merger of the member with another member, unless both are members of the New York Stock Exchange, Inc. or the surviving entity will continue to be a member of the New York Stock Exchange, Inc.;
- (2) a direct or indirect acquisition by the member of another member, unless the acquiring member is a member of the New York Stock Exchange, Inc.;
- (3) direct or indirect acquisitions or transfers of 25% or more in the aggregate of the member's assets or any asset, business or line of operation that generates revenues comprising 25% or more in the aggregate of the member's earnings measured on a rolling 36-month basis, unless both the seller and acquirer are members of the New York Stock Exchange, Inc.;
- (4) a change in the equity ownership or partnership capital of the member that results in one person or entity directly or indirectly owning or controlling 25 percent or more of the equity or partnership capital; or
- (5) a material change in business operations as defined in Rule 1011.

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

(1) The member shall file the application with the Department.

(2) The application shall describe in detail the change in ownership, control, or business operations and include a business plan, pro forma financials, an organizational chart, and written supervisory procedures reflecting the change.

(A) If the application requests approval of a change in ownership or control, the application also shall include the names of the new owners, their percentage of ownership, and the sources of their funding for the purchase and recapitalization of the member.

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

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

(ii) state with specificity why the restriction should be modified or removed in light of the standards set forth in Rule 1014 and the articulated rationale for the imposition of the restriction.

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

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

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

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

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

**(d) Rejection Of Application That Is Not Substantially Complete**

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

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

Within 30 days after the filing of an application, the Department shall serve a request for any additional information or documents necessary to render a decision on the application. The Department may request additional information or documents at any time during the application process. Unless otherwise agreed to by the Department and the Applicant, the Applicant shall file such additional information or documents with the Department within 30 days after the Department's request.

**(f) Membership Interview**

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

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

(3) The membership interview shall be conducted in a location specified by Nasdaq.

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

**(g) Department Decision**

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

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

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

(i) the standards set forth in Rule 1014;

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

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

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

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

(2) The Department shall serve a written decision on the application within 30 days after the conclusion of the membership interview or the filing of additional information or documents, whichever is later. If the Department does not require the Applicant to participate in a membership interview or request additional information or documents, the Department shall serve a written

decision within 45 days after the filing of the application under paragraph (a). The decision shall state whether the application is granted or denied in whole or in part, and shall provide a rationale for the Department's decision, referencing the applicable standard in Rule 1014.

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

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

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

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

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

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

#### **(j) Removal or Modification of Restriction on Department's Initiative**

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

#### **(k) Lapse or Denial of Application for Approval of Change in Ownership**

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

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

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

#### **1018. RESERVED**

#### **1019. Application to Commission for Review**

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

#### **1020. Registration of Principals**

#### **1021. Registration Requirements**

##### **(a) All Principals Must Be Registered**

All persons engaged or to be engaged in the investment banking or securities business of a member who are to function as principals shall be registered as such with Nasdaq in the category of registration appropriate to the function to be performed as specified in Rule 1022. Before their registration can become effective, they shall pass a Qualification Examination for Principals appropriate to the category of registration as specified by the Nasdaq Board. A member shall not maintain a principal registration with Nasdaq for any person (1) who is no longer active in the member's investment banking or securities business, (2) who is no longer functioning as a principal, or (3) where the sole purpose is to avoid the examination requirement prescribed in paragraph (c). A member shall not make application for the registration of any person as principal where there is no intent to employ such person in the member's investment banking or securities business. A member may, however, maintain or make application for the registration as a principal of a person who performs legal, compliance, internal audit, back-office operations, or similar responsibilities for the member or a person engaged in the investment banking or securities business of a foreign securities affiliate or subsidiary

of the member.

**(b) Definition of Principal**

Persons associated with a member, enumerated in subparagraphs (1) through (5) hereafter, who are actively engaged in the management of the member's investment banking or securities business, including supervision, solicitation, conduct of business or the training of persons associated with a member for any of these functions are designated as principals. Such persons shall include:

- (1) Sole Proprietors
- (2) Officers
- (3) Partners
- (4) Managers of Offices of Supervisory Jurisdiction, and
- (5) Directors of Corporations.

**(c) Requirements for Examination on Lapse of Registration**

Any person whose registration has been revoked pursuant to Rule 8310 or whose most recent registration as a principal has been terminated for a period of two or more years immediately preceding the date of receipt by Nasdaq of a new application shall be required to pass a Qualification Examination for Principals appropriate to the category of registration as specified in Rule 1022 hereof.

**(d) Application for Principal Status**

(1) Any person associated with a member as a Registered Representative whose duties are changed by the member so as to require registration in any principal classification shall be allowed a period of 90 calendar days following the change in his or her duties during which to pass the appropriate Qualification Examination for Principals. Upon elevation, the member shall submit to Nasdaq an amended "Uniform Application for Securities Industry Registration or Transfer" and any applicable fees. In no event may a person function as a Principal beyond the initial 90 calendar day period following the change in his or her duties without having successfully passed the appropriate Qualification Examination.

(2) Any person not presently associated with a member as a Registered Representative seeking registration as a Principal shall submit the appropriate application for registration and any required registration and examination fees. Such person shall be allowed a period of 90 days after all applicable prerequisites are fulfilled to pass the appropriate Qualification Examination for Principals. In no event may a person previously unregistered in any capacity applying for principal status function as a Principal until fully qualified.

**(e) Requirement of Two Registered Principals for Members**

(1) A Nasdaq member, except a sole proprietorship, shall have at least two officers or partners who are registered as principals with respect to each aspect of the member's investment banking and securities business pursuant to the applicable provisions of Rule 1022. This requirement applies to persons seeking admission as members and existing members.

(2) Pursuant to the Rule 9600 Series, Nasdaq may waive the provisions of subparagraph (1) in situations that indicate conclusively that only one person associated with an applicant for membership should be required to register as a principal.

(3) In addition to the provisions of subparagraph (1) above, an applicant for membership, if the nature of its business so requires, shall have at least one person qualified for registration pursuant to Rule 1022(b) and (c).

## **1022. Categories of Principal Registration**

### **(a) General Securities Principal**

(1) Each person associated with a member who is included within the definition of principal in Rule 1021, and each person designated as a Chief Compliance Officer on Schedule A of Form BD, shall be required to register with Nasdaq as a General Securities Principal and shall pass an appropriate Qualification Examination before such registration may become effective unless such person's activities are so limited as to qualify such person for one or more of the limited categories of principal registration specified hereafter. A person whose activities in the investment banking or securities business are so limited is not, however, precluded from attempting to become qualified for registration as a General Securities Principal, and if qualified, may become so registered. Each person seeking to register and qualify as a General Securities Principal must, prior to or concurrent with such registration, become registered, pursuant to the Rule 1030 Series, either as a General Securities Representative or as a Limited Representative--Corporate Securities. A person who has been designated as a Chief Compliance Officer on Schedule A of Form BD for at least two years immediately prior to January 1, 2002, and who has not been subject within the last ten years to any statutory disqualification as defined in Section 3(a)(39) of the Act; a suspension; or the imposition of a fine of \$5,000 or more for violation of any provision of any securities law or regulation, or any agreement with or rule or standard of conduct of any securities governmental agency, securities self-regulatory organization, or as imposed by any such regulatory or self-regulatory organization in connection with a disciplinary proceeding shall be required to register as a General Securities Principal, but shall be exempt from the requirement to pass the appropriate Qualification Examination. A Chief Compliance Officer who is subject to the Qualification Examination requirement shall be allowed a period of 90 calendar days following [the effective date of Nasdaq's registration as a national securities exchange] within which to pass the appropriate Qualification Examination for Principals.

(2) A Limited Representative—Corporate Securities seeking registration as General Securities Principal who will have supervisory responsibility over the conduct of business in investment company products and variable contracts products must, prior to or concurrent with registration as a General Securities principal, become registered pursuant to the Rule 1030 Series hereof, as a Limited Representative—Investment Company and Variable Contracts Products.

(3) Except as provided in Rule 1021(c), a person who was registered with NASD as a Principal, shall not be required to pass a Qualification Examination for General Securities Principal and shall be qualified as a General Securities Principal.

(4) A person registered solely as a General Securities Principal shall not be qualified to function as a Limited Principal--Financial and Operations or Limited Principal--General Securities Sales Supervisor unless that person is also qualified and registered as such.

**(b) Limited Principal--Financial and Operations**

(1) Every member of Nasdaq that is operating pursuant to the provisions of SEC Rule 15c3-1(a)(1)(ii), (a)(2)(i) or (a)(8), shall designate as Limited Principal--Financial and Operations those persons associated with it, at least one of whom shall be its chief financial officer, who performs the duties described in subparagraph (2) hereof. Each person associated with a member who performs such duties shall be required to register as a Limited Principal--Financial and Operations with Nasdaq and shall pass an appropriate Qualification Examination before such registration may become effective.

(2) The term "Limited Principal--Financial and Operations" shall mean a person associated with a member whose duties include:

(A) final approval and responsibility for the accuracy of financial reports submitted to any duly established securities industry regulatory body;

(B) final preparation of such reports;

(C) supervision of individuals who assist in the preparation of such reports;

(D) supervision of and responsibility for individuals who are involved in the actual maintenance of the member's books and records from which such reports are derived;

(E) supervision and/or performance of the member's responsibilities under all financial responsibility rules promulgated

pursuant to the provisions of the Act;

(F) overall supervision of and responsibility for the individuals who are involved in the administration and maintenance of the member's back office operations; or

(G) any other matter involving the financial and operational management of the member.

(3) A person registered solely as a Limited Principal--Financial and Operations shall not be qualified to function in a principal capacity with responsibility over any area of business activity not described in subparagraph (2) hereof.

**(c) Limited Principal--Introducing Broker/Dealer Financial and Operations**

(1) Every member of Nasdaq that is subject to the requirements of SEC Rule 15c3-1, other than a member operating pursuant to SEC Rule 15c3-1(a)(1)(ii), (a)(2)(i) or (a)(8) in which case paragraph (b) shall apply, shall designate as Limited Principal--Introducing Broker/Dealer Financial and Operations those persons associated with it, at least one of whom shall be its chief financial officer, who perform the duties described in subparagraph (2) hereof. Each person associated with a member who performs such duties shall be required to register as a Limited Principal--Introducing Broker/Dealer Financial and Operations with Nasdaq and shall pass an appropriate Qualification Examination before such registration may become effective.

(2) The term "Limited Principal--Introducing Broker/Dealer Financial and Operations" shall mean a person associated with a member whose duties include:

(A) final approval and responsibilities for the accuracy of financial reports submitted to any duly established securities industry regulatory body;

(B) final preparation of such reports;

(C) supervision of individuals who assist in the preparation of such reports;

(D) supervision of and responsibility for individuals who are involved in the actual maintenance of the member's books and records from which such reports are derived;

(E) supervision and/or performance of the member's responsibilities under all financial responsibility rules promulgated pursuant to the provisions of the Act;

(F) overall supervision of and responsibility for the individuals who are involved in the administration and maintenance of the member's back office operations; or

(G) any other matter involving the financial and operational management of the member.

(3) Except as provided in Rule 1021(c), a person designated pursuant to the provisions of subparagraph (1) hereof, shall not be required to take the Limited Principal-- Introducing Broker/Dealer Financial and Operations Examination and shall be qualified for registration as a Limited Principal-- Introducing Broker/Dealer Financial and Operations if such a person is qualified to be registered or is registered as a Limited Principal--Financial and Operations as defined in paragraph (b)(2) hereof.

(4) A person registered solely as a Limited Principal--Introducing Broker/Dealer Financial and Operations shall not be qualified to function in a principal capacity with responsibility over any area of business activity not described in subparagraph (2) hereof. Such person shall not be qualified to function in a principal capacity at a member unless such member operates under subparagraph (1) hereof.

**(d) Limited Principal—Investment Company and Variable Contracts Products**

(1) Each person associated with a member who is included within the definition of principal in Rule 1021, may register with Nasdaq as a Limited Principal—Investment Company and Variable Contracts Products if:

(A) his activities in the investment banking and securities business are limited to the solicitation, purchase and/or sale of:

(i) redeemable securities of companies registered pursuant to the Investment Company Act of 1940;

(ii) securities of closed-end companies registered pursuant to the Investment Company Act of 1940 during the period of original distribution only; and

(iii) variable contracts and insurance premium funding programs and other contracts issued by an insurance company except contracts which are exempt securities pursuant to Section 3(a)(8) of the Securities Act of 1933;

(B) he is registered, pursuant to the Rule 1030 Series, as either a General Securities Representative or a Limited Representative— Investment Company and Variable Contracts Products; and

(C) he passes an appropriate Qualification Examination for Limited Principal—Investment Company and Variable Contracts Products.

(2) A person registered solely as a Limited Principal—Investment Company and Variable Contracts Products shall not be qualified to function in a principal capacity with responsibility over any area of business activity not prescribed in subparagraph (1) hereof.

**(e) Reserved**

**(f) Reserved**

**(g) Limited Principal--General Securities Sales Supervisor**

(1) Each person associated with a member who is included in the definition of principal in Rule 1021 may register with Nasdaq as a Limited Principal--General Securities Sales Supervisor if:

(A) his or her supervisory responsibilities in the investment banking and securities business are limited to the securities sales activities of a member, including the training of sales and sales supervisory personnel and the maintenance of records of original entry and/or ledger accounts of the member required to be maintained in branch offices by SEC record keeping rules;

(B) he or she is registered pursuant to the Rule 1030 series as a General Securities Representative; and

(C) he or she is qualified to be so registered by passing an appropriate examination.

(2) A person registered in this category solely on the basis of having passed the Qualification Examination for Limited Principal--General Securities Sales Supervisor shall NOT be qualified to:

(A) function in a principal capacity with responsibility over any area of business activity not described in subparagraph (1);

(B) be included for purposes of the principal numerical requirements of Rule 1021(e)(1); or

(C) perform for a member any or all of the following activities:

(i) supervision of the origination and structuring of underwritings;

(ii) supervision of market making commitments;

(iii) final approval of advertisements as these are defined in Rule 2210;

(iv) supervision of the custody of firm or customer funds and/or securities for purposes of SEC Rule 15c3-3; or

(v) supervision of overall compliance with financial responsibility rules for broker/dealers promulgated pursuant to the provisions of the Act.

**(h) Reserved**

**IM-1022-1. Reserved**

**IM-1022-2. Limited Principal--General Securities Sales Supervisor**

Limited Principal--General Securities Sales Supervisor is an alternate category of registration designed to lessen the qualification burdens on principals of general securities firms who supervise sales. Without this category of limited registration, such principals could be required to separately qualify pursuant to the rules of Nasdaq, the NASD, MSRB, NYSE and the options exchanges. While persons may continue to separately qualify with all relevant self-regulatory organizations, the Limited Principal--General Securities Sales Supervisor Examination permits qualification as a supervisor of sales of all securities by one examination. Persons registered as Limited Principals--General Securities Sales Supervisor may also qualify in any other category of principal registration. Persons who are already qualified in one or more categories of principal registration may supervise sales activities of all securities by also qualifying as Limited Principals--General Securities Sales Supervisor.

Functions that may be performed by Limited Principals--General Securities Sales Supervisors. Any person required to be registered as a principal who supervises sales activities in corporate, municipal and option securities, investment company products, variable contracts, direct participation programs, and security futures may be registered solely as a Limited Principal--General Securities Sales Supervisor. In addition to branch office managers, other persons such as regional and national sales managers may also be registered solely as Limited Principals--General Securities Sales Supervisor as long as they supervise only sales activities. Qualification as a General Securities Representative is a prerequisite for registration as a Limited Principal--General Securities Sales Supervisor.

Functions that may not be performed by Limited Principals--General Securities Sales Supervisors. Certain functions may not be performed by persons registered solely as Limited Principal--General Securities Sales Supervisor. These include supervisory responsibility for the origination and structuring of underwritings, market-making, final

approval of advertising, custody of firm or customer funds and/or securities for purposes of SEC Rule 15c3-3 and overall compliance with financial responsibility rules for broker/dealers. Persons responsible for any of these activities are still required to qualify in the appropriate categories of principal registration. Moreover, persons qualified only as Limited Principals--General Securities Sales Supervisor are not included for purposes of the two principal requirements of Rule 1021(e)(1).

### **1030. Registration of Representatives**

### **1031. Registration Requirements**

#### **(a) All Representatives Must Be Registered**

All persons engaged or to be engaged in the investment banking or securities business of a member who are to function as representatives shall be registered as such with Nasdaq in the category of registration appropriate to the function to be performed as specified in Rule 1032. Before their registration can become effective, they shall pass a Qualification Examination for Representatives appropriate to the category of registration as specified by the Nasdaq Board. A member shall not maintain a representative registration with Nasdaq for any person (1) who is no longer active in the member's investment banking or securities business, (2) who is no longer functioning as a representative, or (3) where the sole purpose is to avoid the examination requirement prescribed in paragraph (c). A member shall not make application for the registration of any person as representative where there is no intent to employ such person in the member's investment banking or securities business. A member may, however, maintain or make application for the registration as a representative of a person who performs legal, compliance, internal audit, back-office operations, or similar responsibilities for the member, or a person who performs administrative support functions for registered personnel, or a person engaged in the investment banking or securities business of a foreign securities affiliate or subsidiary of the member.

#### **(b) Requirement for Examination on Lapse of Registration**

Any person whose registration has been revoked pursuant to Rule 8310 or whose most recent registration as a representative or principal has been terminated for a period of two (2) or more years immediately preceding the date of receipt by Nasdaq of a new application shall be required to pass a Qualification Examination for Representatives appropriate to the category of registration as specified in Rule 1032.

#### **(c) Qualification Requirements**

No Nasdaq member shall permit any person associated with the Nasdaq member to engage in the investment banking or securities business unless the Nasdaq member determines that such person satisfies the qualification requirements established by the Nasdaq Board and is not subject to statutory disqualification.

#### **(d) Application for Registration**

(1) Application by any person for registration with Nasdaq, properly signed by the applicant, shall be made to Nasdaq via electronic process or such other process as Nasdaq may prescribe, on the form proscribed by Nasdaq, and shall contain:

(A) an agreement to comply with the federal securities laws, the rules and regulations thereunder, the Nasdaq Rules, and all rulings, orders, directions, and decisions issued and sanctions imposed under the Nasdaq Rules; and

(B) such other reasonable information with respect to the applicant as Nasdaq may require.

(2) Nasdaq shall not approve an application for registration of any person who is not eligible to be an associated person of a Nasdaq member under the provisions of Nasdaq Rule 1002(b).

(3) Every application for registration filed with Nasdaq shall be kept current at all times by supplementary amendments via electronic process or such other process as Nasdaq may prescribe. Such amendments to the application shall be filed with Nasdaq not later than 30 days after the applicant learns of the facts or circumstances giving rise to the amendment. If such amendment involves a statutory disqualification, such amendment shall be filed not later than ten days after such disqualification occurs.

**(e) Notification by Member to Nasdaq and Associated Person of Termination; Amendment to Notification**

(1) Following the termination of the association with a Nasdaq member of a person who is registered with it, such Nasdaq member shall, not later than 30 days after such termination, give notice of the termination of such association to Nasdaq via electronic process or such other process as Nasdaq may prescribe, on a form designated by Nasdaq, and concurrently shall provide to the person whose association has been terminated a copy of said notice as filed with Nasdaq. A Nasdaq member that does not submit such notification and provide a copy to the person whose association has been terminated, within the time period prescribed, shall be assessed any late filing fee that is specified by the Nasdaq Rules. Termination of registration of such person associated with a Nasdaq member shall not take effect so long as any complaint or action under the Nasdaq Rules is pending against a Nasdaq member and to which complaint or action such person associated with a Nasdaq member is also a respondent, or so long as any complaint or action is pending against such person individually under the Nasdaq Rules. Nasdaq, however, may in its discretion declare the termination effective at any time.

(2) The Nasdaq member shall notify Nasdaq, via electronic process or such other process as Nasdaq may prescribe, by means of an amendment to the notice filed pursuant to paragraph (1) in the event that the Nasdaq member learns of facts or circumstances causing any information set forth in said notice to become inaccurate or incomplete. Such amendment shall be filed with Nasdaq via electronic process or such other process as Nasdaq may prescribe, and a copy provided to the person whose association with the Nasdaq member has been terminated not later than 30 days after the Nasdaq member learns of the facts or circumstances giving rise to the amendment.

**(f) Retention of Jurisdiction**

A person whose association with a Nasdaq member has been terminated and who is no longer associated with any member of Nasdaq or a person whose registration has been revoked or canceled shall continue to be subject to the filing of a complaint under Nasdaq Rules based upon conduct which commenced prior to the termination, revocation, or cancellation or upon such person's failure, while subject to Nasdaq's jurisdiction as provided herein, to provide information requested by Nasdaq pursuant to the Nasdaq Rules, but any such complaint shall be filed within:

(1) six years after the effective date of termination of registration pursuant to subsection (c); provided, however, that any amendment to a notice of termination filed pursuant to paragraph (c)(2) that is filed within six years of the original notice that discloses that such person may have engaged in conduct actionable under any applicable statute, rule, or regulation shall operate to recommence the running of the six-year period under this subsection;

(2) six years after the effective date of revocation or cancellation of registration pursuant to the Nasdaq Rules; or

(3) in the case of an unregistered person, within six years after the date upon which such person ceased to be associated with the Nasdaq member.

**1032. Categories of Representative Registration**

**(a) General Securities Representative**

(1) Each person associated with a member who is included within the definition of a Representative in Rule 1031, shall be required to register with Nasdaq as a General Securities Representative and shall pass an appropriate Qualification Examination before such registration may become effective unless his or her activities are so limited as to qualify him for one or more of the limited categories of representative registration specified hereafter. A person whose activities in the investment banking or securities business are so limited is not, however, precluded from attempting to become qualified for registration as a General Securities Representative, and if qualified, may become so registered.

(2) Except as provided in Rule 1031(b):

(A) Reserved

(B) A person who is authorized or approved to conduct business in accordance with the requirements of The Financial Services Authority and having passed the Modified General Securities Representative Qualification Examination shall be qualified to be registered as a General Securities Representative except that such person's activities in the investment banking or securities business may not involve the solicitation, purchase and/or sale of municipal securities as defined in Section 3(a)(29) of the Act.

(C) A person presently registered and in good standing as a representative with any Canada stock exchange, or with a securities regulator of any Canada Province or Territory, or with the Investment Dealers Association of Canada, and who has completed the training course of the Canadian Securities Institute, and who has passed the Canada Module of the General Securities Registered Representative Examination, shall be qualified to be registered as a General Securities Representative except that such person's activities may not involve the solicitation, purchase and/or sale of municipal securities as defined in Section 3(a)(29) of the Act.

(D) A person presently registered and in good standing as a representative with any Japan stock exchange, or with any Japan Securities Dealers Association, and who has passed the Japan Module of the General Securities Registered Representative Examination, shall be qualified to be registered as a General Securities Representative except that such person's activities may not involve the solicitation, purchase and/or sale of municipal securities as defined in Section 3(a)(29) of the Act.

**(b) Limited Representative—Investment Company and Variable Contracts Products**

(1) Each person associated with a member who is included within the definition of a representative in Rule 1031 may register with Nasdaq as a Limited Representative—Investment Company and Variable Contracts Products if:

(A) his activities in the investment banking or securities business are limited solely to those activities enumerated in Rule 1022(d)(1), and

(B) he passes an appropriate Qualification Examination for Limited Representative—Investment Company and Variable Contracts Products.

(2) A person qualified solely as a Limited Representative—  
Investment Company and Variable Contracts Products shall not be qualified  
to function as a representative in any area not described in paragraph  
(b)(1)(A) hereof.

**(c) Reserved**

**(d) Reserved**

**(e) Limited Representative--Corporate Securities**

(1) Each person associated with a member who is included within the  
definition of a representative in Rule 1031 may register with Nasdaq as a Limited  
Representative--Corporate Securities if:

(A) Such person's activities in the investment banking or securities  
business involve the solicitation, purchase, and/or sale of a "security," as  
that term is defined in Section 3(a)(10) of the Act, and do not include such  
activities with respect to the following securities unless such person is  
separately qualified and registered with the NASD in the category or  
categories of registration related to these securities:

(i) Municipal securities as defined in Section 3(a)(29) of  
the Act;

(ii) Options;

(iii) Redeemable securities of companies registered  
pursuant to the Investment Company Act of 1940, except for  
money market funds;

(iv) Variable contracts of insurance companies registered  
pursuant to the Securities Act of 1933; and/or

(v) Direct Participation Programs.

(B) Such person passes an appropriate qualification examination  
for Limited Representative--Corporate Securities.

(2) A person qualified solely as a Limited Representative--Corporate  
Securities shall not be qualified to function in any area not described by  
subparagraph (1) hereof.

(3) For purposes of Rule 1032(e), the terms "option" and "direct  
participation program" shall have the meanings assigned to such terms by NASD  
Rules 2860 and 1022(e)(1)(A), respectively, and the definitions contained in such  
NASD rules shall apply to Nasdaq members as if such Rules were part of

Nasdaq's Rules.

**(f) Limited Representative - Equity Trader**

(1) Each person associated with a member who is included within the definition of a representative as defined in Rule 1031 must register with Nasdaq as a Limited Representative - Equity Trader if, with respect to transactions in equity, preferred or convertible debt securities, such person is engaged in proprietary trading, the execution of transactions on an agency basis, or the direct supervision of such activities, other than any person associated with a member whose trading activities are conducted principally on behalf of an investment company that is registered with the Commission pursuant to the Investment Company Act of 1940 and that controls, is controlled by or is under common control, with the member.

(2) Before registration as a Limited Representative - Equity Trader as defined in subparagraph (1) hereof may become effective, an applicant must:

(A) be registered pursuant to Rule 1032, either as a General Securities Representative or a Limited Representative - Corporate Securities; and

(B) pass an appropriate Qualification Examination for Limited Representative-Equity Trader.

**(g) Reserved**

**(h) Reserved**

**1040. Registration of Assistant Representatives**

**1041. Registration Requirements for Assistant Representatives**

**(a) All Assistant Representatives--Order Processing Must Be Registered**

All persons associated with a member who are to function as Assistant Representatives-- Order Processing shall be registered with Nasdaq. Before their registrations can become effective, they shall pass a Qualification Examination for Assistant Representatives--Order Processing as specified by the Nasdaq Board.

**(b) Definition of Assistant Representative--Order Processing**

Persons associated with a member who accept unsolicited customer orders for submission for execution by the member are designated as Assistant Representatives--Order Processing.

**(c) Requirement for Examination on Lapse of Registration**

Any persons whose most recent registration as an Assistant Representative--Order Processing has been terminated for a period of two (2) or more years immediately preceding the date of receipt by Nasdaq of a new application shall be required to pass a Qualification Examination for Assistant Representative--Order Processing.

#### **1042. Restrictions for Assistant Representatives**

##### **(a) Prohibited Activities**

An Assistant Representative--Order Processing may not solicit transactions or new accounts on behalf of the member, render investment advice, make recommendations to customers regarding the appropriateness of securities transactions, or effect transactions in securities markets on behalf of the member. Persons registered in this category may not be registered concurrently in any other capacity.

##### **(b) Compensation**

Members may only compensate Assistant Representatives--Order Processing on an hourly wage or salaried basis and may not in any way, directly or indirectly, relate their compensation to the number or size of transactions effected for customers. This provision shall not prohibit persons registered in this capacity from receiving bonuses or other compensation based on a member's profit sharing plan or similar arrangement.

##### **(c) Supervision**

The activities of Assistant Representatives--Order Processing may only be conducted at a business location of the member that is under the direct supervision of an appropriately registered principal.

#### **1043. Reserved**

#### **1050. Research Analysts**

A Nasdaq member that employs a research analyst or publishes or otherwise distributes a research report shall also be a member of the NASD or the New York Stock Exchange and shall comply with NASD Rules 2711, 1050, 1022, 1120 (and any other applicable NASD rules that apply to research analysts or research reports), as amended and/or New York Stock Exchange Rules 472, 344, 345A, 351 (and any other applicable New York Stock Exchange rules that apply to research analysts or research reports), as amended. For purposes of this Rule 1050, (i) "research analyst" shall mean an associated person who is primarily responsible for, and any associated person who reports directly or indirectly to such research analyst in connection with, the preparation of the substance of a research report, whether or not any such person has the job title of "research analyst," and (ii) "research report" shall mean a written or electronic communication that includes an analysis of equity securities of individual companies or industries, and that provides information reasonably sufficient upon which to base an investment decision.

## **1060. Persons Exempt from Registration**

(a) The following persons associated with a member are not required to be registered with Nasdaq:

(1) persons associated with a member whose functions are solely and exclusively clerical or ministerial;

(2) persons associated with a member who are not actively engaged in the investment banking or securities business;

(3) persons associated with a member whose functions are related solely and exclusively to the member's need for nominal corporate officers or for capital participation; and

(4) persons associated with a member whose functions are related solely and exclusively to:

(A) effecting transactions on the floor of another national securities exchange and who are registered as floor members with such exchange;

(B) transactions in municipal securities;

(C) transactions in commodities;

(D) transactions in security futures, provided that any such person is registered with the NASD or a registered futures association; or

(E) transactions in variable contracts and insurance premium funding programs and other contracts issued by an insurance company;

(F) transactions in direct participation programs;

(G) transactions in options;

(H) transactions in government securities;

(I) effecting sales as part of a primary offering of securities not involving a public offering pursuant to Section 3(b), 4(2), or 4(6) of the Securities Act of 1933 and the rules and regulations thereunder.

For purposes of Rule 1060(a)(4), the terms “option” and “direct participation program” shall have the meanings assigned to such terms by NASD Rules 2860 and 1022(e)(1)(A), respectively, and the definitions contained in such NASD rules shall apply to Nasdaq members as if such Rules were part of Nasdaq’s

## Rules.

(b) Member firms, and persons associated with a member, may pay to nonregistered foreign persons transaction-related compensation based upon the business of customers they direct to member firms if the following conditions are met:

(1) the member firm has assured itself that the nonregistered foreign person who will receive the compensation (the "finder") is not required to register in the U.S. as a broker/dealer nor is subject to a disqualification as defined in the Nasdaq Rules, and has further assured itself that the compensation arrangement does not violate applicable foreign law;

(2) the finders are foreign nationals (not U.S. citizens) or foreign entities domiciled abroad;

(3) the customers are foreign nationals (not U.S. citizens) or foreign entities domiciled abroad transacting business in either foreign or U.S. securities;

(4) customers receive a descriptive document, similar to that required by Rule 206(4)-3(b) of the Investment Advisers Act of 1940, that discloses what compensation is being paid to finders;

(5) customers provide written acknowledgment to the member firm of the existence of the compensation arrangement and that such acknowledgment is retained and made available for inspection by Nasdaq;

(6) records reflecting payments to finders are maintained on the member firm's books and actual agreements between the member firm and persons compensated are available for inspection by Nasdaq; and

(7) the confirmation of each transaction indicates that a referral or finders fee is being paid pursuant to an agreement.

### **1070. Qualification Examinations and Waiver of Requirements**

(a) Qualification Examinations specified in this Rule 1000 Series shall consist of a series of questions based upon topics contained in study outlines provided by Nasdaq, a list of which is available from the Department.

(b) Examinations shall be given at such times and places and under such conditions as shall be prescribed by the Nasdaq Board and shall be graded according to the procedure prescribed by the Board.

(c) Examination results shall be reported to member firms and may be accompanied by an analysis of the candidate's performance on the examination. Passing scores assigned to each examination series shall be determined by the Nasdaq Board, or its designee.

(d) Pursuant to the Rule 9600 Series, Nasdaq may, in exceptional cases and where good cause is shown, waive the applicable Qualification Examination and accept other standards as evidence of an applicant's qualifications for registration. Advanced age or physical infirmity will not individually of themselves constitute sufficient grounds to waive a Qualification Examination. Experience in fields ancillary to the investment banking or securities business may constitute sufficient grounds to waive a Qualification Examination.

(e) Any person associated with a member who fails to pass a qualification examination prescribed by Nasdaq shall be permitted to take the examination again after either a period of 30 calendar days has elapsed from the date of the prior examination or the next administration of an examination administered on a monthly basis, except that any person who fails to pass an examination three or more times in succession shall be prohibited from again taking such examination either until a period of 180 calendar days has elapsed from the date of such person's last attempt to pass the examination or until the sixth subsequent administration of an examination administered on a monthly basis.

#### **1080. Confidentiality of Examinations**

Nasdaq considers all of its Qualification Examinations to be highly confidential. The removal from an examination center, reproduction, disclosure, receipt from or passing to any person, or use for study purposes of any portion of such Qualification Examination, whether of a present or past series, or any other use which would compromise the effectiveness of the Examinations and the use in any manner and at any time of the questions or answers to the Examinations are prohibited and are deemed to be a violation of Rule 2110. An applicant cannot receive assistance while taking the examination. Each applicant shall certify to the Board that no assistance was given to or received by him during the examination.

#### **1090. Foreign Members**

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

- (a) prepare all such reports, and maintain a general ledger chart of account and any description thereof, in English and U.S. dollars;
  - (b) reimburse Nasdaq for any expenses incurred in connection with examinations of the member to the extent that such expenses exceed the cost of examining a member located within the continental United States in the geographic location most distant from Nasdaq;
  - (c) ensure the availability of an individual fluent in English and knowledgeable in securities and financial matters to assist representatives of Nasdaq during examinations;
- and

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

#### **1100. Foreign Associates**

(a) All persons associated with a member who are designated as Foreign Associates shall be required to be registered but shall be exempt from the requirement to pass a Qualification Examination. Persons associated with a member shall be designated as Foreign Associates if they meet the following criteria:

(1) They are not citizens, nationals, or residents of the United States or any of its territories or possessions;

(2) They will conduct all of their securities activities in areas outside the jurisdiction of the United States and they will not engage in any securities activities with or for any citizen, national or resident of the United States.

(b) Prior to the time the exemption provided for in paragraph (a) hereof may become effective, the member desiring to employ any such person must file with Nasdaq a "Uniform Application for Securities Industry Registration or Transfer" for each such person and must certify that such person meets the criteria of paragraph (a), as well as that:

(1) Such person is not subject to any of the prohibitions to registration with Nasdaq;

(2) Service of process for any proceeding instituted by Nasdaq in respect to such person may be sent to an address designated by the member.

(c) In the event of the termination of the employment of a Foreign Associate, the member must notify Nasdaq immediately by filing a notice of termination.

#### **1110. Reserved**

#### **1120. Continuing Education Requirements**

This Rule prescribes requirements regarding the continuing education of certain registered persons subsequent to their initial qualification and registration with Nasdaq. The requirements shall consist of a Regulatory Element and a Firm Element as set forth below.

##### **(a) Regulatory Element**

##### **(1) Requirements**

No member shall permit any registered person to continue to, and no registered person shall continue to, perform duties as a registered person unless such person has complied with the requirements of paragraph (a) hereof.

Each registered person shall complete the Regulatory Element on the occurrence of their second registration anniversary date and every three years thereafter, or as otherwise prescribed by Nasdaq. On each occasion, the Regulatory Element must be completed within 120 days after the person's registration anniversary date. A person's initial registration date, also known as the "base date," shall establish the cycle of anniversary dates for purposes of this Rule. The content of the Regulatory Element shall be determined by Nasdaq and shall be appropriate to either the registered representative or principal status of person subject to the Rule.

### **(2) Failure to Complete**

Unless otherwise determined by Nasdaq, any registered persons who have not completed the Regulatory Element within the prescribed time frames will have their registrations deemed inactive until such time as the requirements of the program have been satisfied. Any person whose registration has been deemed inactive under this Rule shall cease all activities as a registered person and is prohibited from performing any duties and functioning in any capacity requiring registration. A registration that is inactive for a period of two years will be administratively terminated. A person whose registration is so terminated may reactivate the registration only by reapplying for registration and meeting the qualification requirements of the applicable provisions of the Rule 1020 Series and the Rule 1030 Series. Nasdaq may, upon application and a showing of good cause, allow for additional time for a registered person to satisfy the program requirements.

### **(3) Disciplinary Actions**

Unless otherwise determined by Nasdaq, a registered person will be required to retake the Regulatory Element and satisfy all of its requirements in the event such person:

(A) is subject to any statutory disqualification as defined in Section 3(a)(39) of the Act;

(B) is subject to suspension or to the imposition of a fine of \$5,000 or more for violation of any provision of any securities law or regulation, or any agreement with or rule or standard of conduct of any securities governmental agency, securities self-regulatory organization, or as imposed by any such regulatory or self-regulatory organization in connection with a disciplinary proceeding; or

(C) is ordered as a sanction in a disciplinary action to retake the Regulatory Element by any securities governmental agency or self-regulatory organization.

The retaking of the Regulatory Element shall commence with participation within 120 days of the registered person becoming subject to the statutory disqualification, in the case of (A) above, or the disciplinary action becoming final, in the case of (B) and (C) above. The date of the disciplinary action shall be treated as such person's new base date with Nasdaq.

#### **(4) Reassociation in a Registered Capacity**

Any registered person who has terminated association with a member and who has, within two years of the date of termination, become reassociated in a registered capacity with a member shall participate in the Regulatory Element at such intervals that may apply (second anniversary and every three years thereafter) based on the initial registration anniversary date rather than based on the date of reassociation in a registered capacity.

#### **(5) Definition of Registered Person**

For purposes of this Rule, the term "registered person" means any person registered with Nasdaq as a representative, principal, or assistant representative pursuant to the Rule 1020, 1030, 1040, and 1110 Series.

#### **(6) In-Firm Delivery of the Regulatory Element**

Nasdaq Members that are also NASD members will be permitted to administer the continuing education Regulatory Element program to their registered persons by instituting an in-firm program to the extent such program has been deemed acceptable to the NASD in accordance with NASD Rule 1120(a)(6). Such a program shall be administered by persons eligible to serve as principals and proctors under NASD Rules 1043 and 1120(a)(6). Nasdaq Members that are NASD members and that institute in-firm delivery of the Regulatory Element program shall comply with NASD Rules 1120(a)(6) and 1043 as if such Rules were part of Nasdaq's Rules. Nasdaq and NASD Regulation, an affiliate of NASD, are parties to the Regulatory Contract pursuant to which NASD Regulation has agreed to perform certain functions on behalf of Nasdaq. Therefore, Nasdaq members are complying with Nasdaq Rule 1120(a)(6) by complying with NASD Rules 1120(a)(6) and 1043 as written, including, for example, filing requirements and notifications. In addition, functions performed by NASD Regulation, NASD Regulation departments, and NASD Regulation staff under Nasdaq Rule 1120(a)(6) are being performed by NASD Regulation on behalf of Nasdaq.

Nasdaq Members that are not NASD members will not be permitted to institute in-firm delivery of the Regulatory Element program.

## **(7) Regulatory Element Contact Person**

Each member shall designate and identify to Nasdaq (by name and e-mail address) an individual or individuals responsible for receiving e-mail notifications provided via the Central Registration Depository regarding when a registered person is approaching the end of his or her Regulatory Element time frame and when a registered person is deemed inactive due to failure to complete the requirements of the Regulatory Element program, and provide prompt notification to Nasdaq regarding any change in such designation(s). Each member must review and, if necessary, update the information regarding its Regulatory Element contact person(s) within 17 business days after the end of each calendar quarter to ensure the information's accuracy.

### **(b) Firm Element**

#### **(1) Persons Subject to the Firm Element**

The requirements of this subparagraph shall apply to any person registered with a member who has direct contact with customers in the conduct of the member's securities sales, trading and investment banking activities, and to the immediate supervisors of such persons (collectively, "covered registered persons"). "Customer" shall mean any natural person and any organization, other than another broker or dealer, executing securities transactions with or through or receiving investment banking services from a member.

#### **(2) Standards for the Firm Element**

(A) Each member must maintain a continuing and current education program for its covered registered persons to enhance their securities knowledge, skill, and professionalism. At a minimum, each member shall at least annually evaluate and prioritize its training needs and develop a written training plan. The plan must take into consideration the member's size, organizational structure, and scope of business activities, as well as regulatory developments and the performance of covered registered persons in the Regulatory Element. If a member's analysis establishes the need for supervisory training for persons with supervisory responsibilities, such training must be included in the member's training plan.

(B) Minimum Standards for Training Programs - Programs used to implement a member's training plan must be appropriate for the business of the member and, at a minimum must cover the following matters concerning securities products, services, and strategies offered by the member:

- (i) General investment features and associated risk factors;

(ii) Suitability and sales practice considerations; and

(iii) Applicable regulatory requirements.

(C) Administration of Continuing Education Program - A member must administer its continuing education programs in accordance with its annual evaluation and written plan and must maintain records documenting the content of the programs and completion of the programs by covered registered persons.

### **(3) Participation in the Firm Element**

Covered registered persons included in a member's plan must take all appropriate and reasonable steps to participate in continuing education programs as required by the member.

### **(4) Specific Training Requirements**

Nasdaq may require a member, individually or as part of a larger group, to provide specific training to its covered registered persons in such areas as Nasdaq deems appropriate. Such a requirement may stipulate the class of covered registered persons for which it is applicable, the time period in which the requirement must be satisfied and, where appropriate, the actual training content.

## **1130. Reliance on Current Membership List**

The Nasdaq Secretary shall keep a currently accurate and complete membership roll, containing the name and address of each Nasdaq member, and the name and address of the executive representative of each Nasdaq member. In any case where a membership has been terminated, such fact shall be recorded together with the date on which the membership ceased. The membership roll of Nasdaq shall at all times be available to all members of Nasdaq, to all governmental authorities, and to the general public. For the purpose of complying with pertinent Rules, a member shall be entitled to rely on such membership roll.

## **1140. Electronic Filing Rules**

### **(a) Filing Requirement**

Except as provided in Rule 1013(a)(2), all forms required to be filed under the Rule 1000 Series shall be filed through an electronic process or such other process as Nasdaq may prescribe to the Central Registration Depository.

### **(b) Supervisory Requirements**

(1) In order to comply with the supervisory procedures requirement in

Rule 3010, each member shall identify a Registered Principal(s) or corporate officer(s) who has a position of authority over registration functions, to be responsible for supervising the electronic filing of appropriate forms pursuant to this Rule.

(2) The Registered Principal(s) or corporate officer(s) who has or have the responsibility to review and approve the forms filed pursuant to this Rule shall be required to acknowledge, electronically, that he is filing this information on behalf of the member and the member's associated persons.

**(c) Form U4 Filing Requirements**

(1) Every initial and transfer electronic Form U4 filing shall be based on a signed Form U4 provided to the member or applicant for membership by the person on whose behalf the Form U4 is being filed. As part of the member's recordkeeping requirements, it shall retain the person's signed Form U4 and make it available promptly upon regulatory request. An applicant for membership also must retain every signed Form U4 it receives during the application process and make them available promptly upon regulatory request.

**(2) Fingerprint Cards**

Upon filing an electronic Form U4 on behalf of a person applying for registration, a member shall promptly submit a fingerprint card for that person. Nasdaq may make a registration effective pending receipt of the fingerprint card. If a member fails to submit a fingerprint card within 30 days after Nasdaq receives the electronic Form U4, the person's registration shall be deemed inactive. In such case, Nasdaq shall notify the member that the person must immediately cease all activities requiring registration and is prohibited from performing any duties and functioning in any capacity requiring registration. Nasdaq shall administratively terminate a registration that is inactive for a period of two years. A person whose registration is administratively terminated may reactivate the registration only by reapplying for registration and meeting the qualification requirements of the applicable provisions of the Rule 1020 Series and the Rule 1030 Series. Upon application and a showing of good cause, Nasdaq may extend the 30-day period.

**(d) Form U-5 Filing Requirements**

Initial filings and amendments of Form U-5 shall be submitted electronically. As part of the member's recordkeeping requirements, it shall make such records available upon regulatory request.

**(e) Third Party Filing**

A member may employ a third party to file the required forms electronically on its behalf.

### **1150. Executive Representative**

Each Nasdaq member shall appoint and certify to the Secretary of Nasdaq one “executive representative” who shall represent, vote, and act for the Nasdaq member in all the affairs of Nasdaq; provided, however, that other representatives of a Nasdaq member may also serve on the Nasdaq Board or committees of Nasdaq or otherwise take part in the affairs of Nasdaq. A Nasdaq member may change its executive representative or appoint a substitute for its executive representative upon giving notice thereof to the Nasdaq Secretary via electronic process or such other process as Nasdaq may prescribe. An executive representative of a Nasdaq member or a substitute shall be a member of senior management and registered principal of the Nasdaq member. Each executive representative shall maintain an Internet electronic mail account for communication with Nasdaq and shall update firm contact information as prescribed by Nasdaq. Each member shall review and, if necessary, update its executive representative designation and contact information within 17 business days after the end of each calendar quarter.