## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–43608; File No. SR–PCX–00–25]**

## Self-Regulatory Organizations; Notice of Filing of a Proposed Rule Change by the Pacific Exchange, Inc. and Amendment No. 1 Thereto Relating to the Archipelago Exchange

November 21, 2000.

Pursuant to Section 19(b)(1) under the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on July 31, 2000, the Pacific Exchange, Inc. (''PCX'' or ''Exchange''), through its subsidiary PCX Equities, Inc. (''PCXE'' or ''Corporation'') pursuant to delegated authority, filed with the Securities and Exchange Commission (''Commission'' or ''SEC'') the proposed rule change as described in Items I, II and III below, which Items have been prepared by the PCXE. On November 9, 2000, the Exchange filed Amendment No. 1 to the proposal.[3] The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The PCX, through its wholly-owned subsidiary PCXE, proposes to create a new electronic trading facility of the PCXE, called the Archipelago Exchange (''Arca''). The text of the proposed rule change has been posted to the Commission's web site, www.sec.gov, and is attached here (in blacklined version) as Appendix A.

### II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the PCXE included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The PCXE has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] This notice represents Amendment No. 1 and replaces the proposed rule change, as originally filed, in its entirety. *See* letter from Cherie Macauley, Counsel for the Exchange, Wilmer, Cutler, & Pickering, to John Polise, Senior Special Counsel, Division of Market Regulation, dated November 9, 2000 (''Amendment No. 1'').

*A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

The PCXE proposes to establish rules for Arca, a new exchange facility, as that term is defined in Section 3(a)(2) of the Act.[4] Arca, which is to be operated by Archipelago Exchange, L.L.C., would be an electronic securities communications and trading facility intended for the use of Equity Trading Permit (''ETP'') Holders and their customers.[5] Arca would provide automatic order execution capabilities in the equity securities listed or traded on the PCXE. It is the PCXE's intent to operate the Arca facility in the place of the PCXE's traditional floor trading environment and thus PCXE also proposes to eliminate the existing PCXE Rules related to floor trading.

1. Relationship of Archipelago Exchange, L.L.C., to PCX Equities, Inc.

The PCX and PCXE have entered into various agreements with Archipelago Holdings, L.L.C., under which Archipelago Exchange, L.L.C., a subsidiary of Archipelago Holdings, L.L.C., would operate Arca as a facility of the PCXE. Pursuant to these agreements, PCX and PCXE would maintain responsibility for all regulatory functions related to the facility and Archipelago Exchange, L.L.C., would be responsible for the business of the facility to the extent those activities are not inconsistent with the regulatory and oversight functions of PCX and PCXE.

The relationship between the PCX, PCXE, and the Archipelago entities is explained further in proposed PCXE Rule 14.3.[6] Under proposed PCXE Rule 14.3(a), the books, records, premises, officers, directors, agents and employees of Archipelago Exchange, L.L.C., would be deemed to be the books, records, premises, officers, directors, agents and employees of PCX and PCXE for purposes of, and subject to, oversight pursuant to the Act. The books and records of Archipelago Exchange, L.L.C., would be subject at all times to inspection and copying by the PCX, PCX Equities, and the SEC. In addition, proposed PCXE Rule 14.3(b) states that ''[a]ll officers and directors of Archipelago Holdings, L.L.C., shall be deemed to be officers and directors of PCX and PCXE for purposes of and subject to oversight pursuant to the Securities Exchange Act.'' As set forth in proposed PCXE Rule 14.3(c), however, paragraphs (a) and (b) of proposed PCXE Rule 14.3 would not be deemed to create any rights or benefits for any person or entity other than the SEC.

2. Archipelago Exchange

The PCXE describes Arca, the proposed electronic trading venue, as a limit order book, characterized by price-time priority that would provide execution enhancements such as additional order types. Under the proposal, market makers would participate electronically in Arca to enhance liquidity in the book and could interact with order flow subject to automatic price improvement requirements. In addition, orders could be crossed on Arca subject to price improvement where the price and time priority of the limit order book is protected.

Arca is described in more detail in the following subsections. Specifically, subsection (a) describes who may access Arca. Subsection (b) discusses the registration requirements as well as the trading obligations of market makers and Odd Lot Dealers. Subsection (c) describes trading on Arca in detail, including a description of how orders are executed during Arca's three trading sessions. Finally, subsections (d) through (g) discusses the proposed rules regarding trade execution and reporting, clearance and settlement, Arca's interaction with OptiMark, and the limitation of liability with regard to Arca, respectively.

a. *Access to the Archipelago Exchange.* The PCXE would authorize any ETP Holder or Sponsored Participant (collectively, ''Users'')[7] who meet certain enumerated requirements to obtain access to Arca. A ''Sponsored Participant'' is a person, such as an institutional investor, who has entered into a sponsorship arrangement with an

[4] Under the Act the ''term ''facility'' when used with respect to an exchange includes its premises, tangible or intangible property whether on the premises or not, any right to the use of such premises or property or any service thereof for the purpose of effecting or reporting a transaction on an exchange (including, among other things, any system of communication to or from the exchange, by ticker or otherwise, maintained by or with the consent of the exchange), and any right of the exchange to the use of any property or service.'' *See* 15 U.S.C. 78c(a)(2).

[5] *See* proposed PCXE Rule 1.1(e) (definition of ''Archipelago Exchange'').

[6] In addition to proposed PCXE Rule 14.3, the PCXE proposes to clarify the Delegation Plan by adding the following language to proposed PCXE Rule 14.1(b): ''and all officers, directors, employees, and agents of PCX Equities are officers, directors, employees, and agents of the PCX for purposes of the Act. The books and records of PCX Equities would be subject at all times to inspection and copying by the PCX.''

[7] *See* proposed PCXE Rule 1.1(oo) (definition of ''User'').

ETP Holder.[8] The requirements for access are as follows: First, all Users—both ETP Holders and Sponsored Participants—would have to enter into a User Agreement[9] with Archipelago Exchange, L.L.C., the operator of the Arca facility.[10] Second, Sponsored Participants would have to enter into a sponsorship arrangement with a ''Sponsoring ETP Holder,'' which is defined as an ETP Holder that has been designated by a Sponsored Participant to execute, clear and settle transactions on Arca.[11] The sponsorship arrangement consists of three separate components. First, the Sponsored Participant would have to enter into and maintain a customer agreement with its Sponsoring ETP Holder, establishing a proper relationship and account through which the Participant may trade on Arca.[12]

Second, the Sponsored Participant and its Sponsoring ETP Holder would have to enter into a written agreement which incorporates the Sponsorship Provisions,[13] which include the following:

(1) The Sponsoring ETP Holder acknowledges and agrees that: (i) All orders entered by its Sponsored Participant and any person acting on behalf of or in the name of such Sponsored Participant and any executions occurring as a result of such orders are binding in all respects on the Sponsoring ETP Holder and (ii) the Sponsoring ETP Holder is responsible for any and all actions taken by such Sponsored Participant and any person acting on behalf of or in the name of such Sponsored Participant.

(2) The Sponsored Participant agrees that it will comply with the PCXE Certificate of Incorporation, Bylaws, Rules and procedures with regard to its activity on Arca, as if the Sponsored Participant were an ETP Holder.

(3) The Sponsored Participant agrees that it will maintain, keep current and provide to the Sponsoring ETP Holder a list of its Authorized Traders who may obtain access to Arca on behalf of the Sponsored Participant(s).

(4) The Sponsored Participant agrees that it will familiarize its Authorized Traders with all of the Sponsored Participant's obligations under its Arca-related agreements and the PCXE Rules and will assure that they receive appropriate training prior to any use or access to Arca.

(5) The Sponsored Participant agrees that it will not permit anyone other than Authorized Traders to use or obtain access to Arca.

(6) The Sponsored Participant agrees that it will take reasonable security precautions to prevent unauthorized use or access to Arca, including unauthorized entry of information into Arca, or the information and data made available therein. The Sponsored Participant understands and agrees that it is responsible for any and all orders, trades and other messages and instructions entered, transmitted or received under identifiers, passwords and security codes of Authorized Traders, and for the trading and other consequences thereof.

(7) The Sponsored Participant acknowledges its responsibility for establishing adequate procedures and controls that permit it to effectively monitor its employees, agents and customers' use of and access to Arca for compliance with the terms of the Sponsorship Provisions.

(8) The Sponsored Participant agrees that it will pay when due all amounts, if any, payable to the Sponsoring ETP Holder, Archipelago Exchange, L.L.C., PCXE, or any other third parties that arise from the Sponsored Participant's access to and use of Arca. Such amounts include, but are not limited to, applicable exchange and regulatory fees.[14]

Finally, the Sponsoring ETP Holder would have to provide PCXE with a ''Notice of Consent,[15] which acknowledges the Sponsoring ETP Holder's its responsibility for the orders, executions and actions of its Sponsored Participant.[16]

As a further condition to access to Arca, each ETP Holder would have to maintain an up-to-date list of persons who could obtain access to Arca on behalf of the ETP Holder or the ETP Holder's Sponsored Participants, *i.e.,* Authorized Traders,[17]) and provide the list to the PCXE upon request. In addition, each ETP Holder would have to have have reasonable procedures to ensure that all of its Authorized Traders maintain the physical security of Arca and otherwise comply with the PCXE Rules. If the PCXE determines that an Authorized Trader has caused an ETP Holder to violate the PCXE Rules, the PCXE may could direct the ETP Holder to suspend or withdraw the person's status as an Authorized Trader.[18]

b. *Market Makers.* The PCXE intends to replace its traditional floor specialists with makers [19] trading on Arca. Based on this change, the PCXE proposes to delete all existing PCXE Rules related to specialists and substitute rules related to market makers, as discussed in more detail below.[20] The registered market makers would be designated as dealer-specialists on the PCXE for all purposes under the Act.[21]

i. *Registration of Market Makers.* To act as a market maker on Arca, an ETP Holder would have to register as a market maker by filing a written application with the PCXE.[22] In determining whether to approve a market maker application, the PCXE will would consider, among other things, the ETP Holder's capital operations, personnel, technical resources, and disciplinary history.[23] The applicant's registration would become effective upon receipt by the ETP Holder of notice of the PCXE's approval of the registration. If the application is disapproved, the applicant would have the opportunity to be heard upon the specific grounds of the denial under the provisions of Rule 10.13.[24]

A market maker's registration could be suspended or terminated by the PCXE upon a determination of any substantial or continued failure by the market maker to engage in dealings in accordance with the market maker's obligations under proposed PCXE Rule 7.23, as discussed below.[25] In addition, a registered market maker could withdraw its registration by giving written notice to the PCXE. The withdrawal would become effective on the tenth business day following the PCXE's receipt of the notice. A market maker who fails to give a ten-day notice of withdrawal could be subject to formal disciplinary action pursuant to PCXE Rule 10. After a withdrawal, the ETP Holder shall would not be permitted to re-register as a market maker for a period of six months.[26]

In addition to registering as a market maker generally, a market maker also would have to register in each security in which it wishes to make a market on Arca. To become registered in a security, a market maker would have to

[8] *See* proposed PCXE Rule 1.1(jj) (definition of ''Sponsored Participant'').

[9] *See* proposed PCXE Rule 1.1(pp) (definition of ''User Agreement'').

[10] *See* proposed PCXE Rule 7.29(a).

[11] *See* proposed PCXE Rule 1.1(kk) (definition of ''Sponsoring ETP Holder''). A Sponsoring ETP Holder must be either (i) a clearing firm with membership in a clearing agency registered with the Commission that maintains facilities through which transactions may be cleared or (ii) a correspondent firm with a clearing arrangement with any such clearing firm. *Id.*

[12] *See* proposed PCXE Rule 7.29(b)(1).

[13] *See* proposed PCXE Rule 1.1(ll) (definition of ''Sponsorship Provisions'').

[14] *See* proposed PCXE Rule 7.29(b)(2).

[15] *See* proposed PCXE Rule 1.1(y) (definition of ''Notice of Consent'').

[16] *See* proposed PCXE Rule 7.29(b)(3).

[17] *See* proposed PCXE Rule 1.1(g) (definition of ''Authorized Trader'').

[18] *See* proposed PCXE Rule 7.30 (''Authorized Traders'').

[19] *See* proposed PCXE Rule 1.1(u) (definition of ''Market Maker'').

[20] The Commission notes that the proposal does not require that a market be assigned to every PCXE security traded through Arca, and thus it is possible that PCXE trades on Arca could occur without the benefit of a market maker.

[21] *See* proposed PCXE Rule 7.20(a).

[22] *See* proposed PCXE Rule 7.20(a) and& (b).

[23] *See* proposed PCXE Rule 7.20(b).

[24] *See* proposed PCXE Rule 7.20(c).

[25] *See* proposed PCXE Rule 7.20(d).

[26] *See* proposed PCXE Rule 7.20(e).

file a security registration application form with the PCXE. In determining whether to approve or disapprove the market maker's registration in a security, the PCXE may could consider: (1) The financial resources available to the market maker; (2) the market maker's experience, expertise and past performances in making markets, including the market maker's performance in other securities; (3) the market maker's operational capability; (4) the maintenance and enhancement of competition among market makers in each security in which it is registered; (5) the existence of satisfactory arrangements for clearing the market maker's transactions; and (6) the character of the market for the security (*e.g.,* price, volatility, and relative liquidity). Registration in a security will would become effective on the first business day following the PCXE's approval of the registration.[27]

Under the proposal, PCXE could terminate a market maker's registration in a security if the market maker fails to enter quotations in the security within five business days after the market maker's registration in the security becomes effective.[28] Furthermore, PCXE could suspend or terminate the market maker's registration in a security or securities whenever, in the PCXE's judgment, the interests of a fair and orderly market are best served by such action.[29]

In addition, a market maker could voluntarily terminate its registration in a security by providing PCXE with a one-day written notice. A market maker that failed to give advanced written notice of such termination could be subject to formal disciplinary action pursuant to PCXE Rule 10.[30] Finally, an ETP Holder could seek review of any action taken by the PCXE pursuant to proposed PCXE Rule 7.22 governing a market maker's registration in a security, including the denial of the application for, or the termination or suspension of, a market maker's registration in a security or securities, in accordance with PCXE Rule 10.[31]

ii. *Market Maker Authorized Traders.* Each market maker would have to apply in writing to the PCXE to register a ''Market Maker Authorized Trader'' or ''MMAT,'' [32] which is an Authorized Trader that performs market making activities on behalf of his or her market maker. An MMAT would have to be an officer, partner, employee or another associated person of a market maker, who is properly qualified to perform market making activities and has been trained and certified in the use of Arca.[33] Once registered, an MMAT could only submit orders for the account of its own market maker.[34] The PCXE may suspend or withdraw an MMAT's registration if the PCXE determines that: (1) The person has caused the market maker to fail to comply with the securities laws, rules and regulations or the Bylaws, Rules or procedures of the PCXE; (2) the person is not properly performing the responsibilities of an MMAT; (3) the person has failed to pass the Series 7 or to acquire the requisite certification and/or training, as necessary; or (4) PCXE believes it is in the interest of maintaining fair and orderly markets. If the PCXE suspended the registration of a person as an MMAT, the market maker could not allow the person to submit orders to Arca. In addition, PCXE would withdraw the registration of an MMAT upon the written request of the MMAT's market maker.[35]

iii. *Obligations of Market Makers.* Market makers electronically engage in a course of dealings for their own account to enhance liquidity available to Arca and to assist in the maintenance, insofar as reasonably practicable, of fair and orderly markets. In addition, market makers may interact with directed order flow, subject to price improvement requirements and certain obligations and duties.

Specifically, market makers would have to satisfy the following responsibilities and duties during Core Trading Hours: [36] (1) maintain continuous, two-sided Q Orders, which are limit orders submitted to Arca by a market maker, in those securities in which the market maker is registered to trade; [37]; (2) maintain adequate minimum capital in accordance with PCXE Rule 4.1; (3) remain in Good Standing [38] with the PCXE; (4) inform PCXE of any material change in financial or operational condition or in personnel; (5) clear and settle transactions through the facilities of a registered clearing agency; and (6) enter and maintain a Cleanup Order in each security in which the market maker is registered as such for each Market Order Auction.[39] If the PCXE found any substantial or continued failure by a market maker to meet the above responsibilities and duties, the PCXE could subject the market maker to disciplinary action or suspension or revoke the market maker's registration in one or more securities. In accordance with PCXE Rule 10, an ETP Holder could seek review of actions taken by the PCXE pursuant to this Rule 7.23.[40]

The market maker could apply to the PCXE to withdraw temporarily from its market maker status. This request would have to be based on a demonstrated legal or regulatory requirement that necessitates its temporary withdrawal. The PCXE would act promptly on the request and, if the request is granted, the PCXE could temporarily reassign the securities to another market maker.[41]

iv. *Odd Lot Dealers.* In addition to the market maker obligations discussed above, a market maker would have to become an Odd Lot Dealer [42] for each security in which it is registered as a market maker.[43] Furthermore, a market maker could apply to register as an Odd Lot Dealer in any other security.

Any market maker could become registered as an Odd Lot Dealer in any security by filing an odd lot registration form with the PCXE. Registration as an Odd Lot Dealer becomes effective on the first business day following the PCXE's approval of the registration. In considering the approval of the registration of the market maker as an Odd Lot Dealer in a security, the PCXE would consider such factors as financial resources, capital operations, personnel, technical resources and disciplinary history. If the PCXE denies an application to become an Odd Lot Dealer in a security or securities, the

[27] *See* proposed PCXE Rule 7.22(a).

[28] *See* proposed PCXE Rule 7.22(b).

[29] *See* proposed PCXE Rule 7.22(d).

[30] *See* proposed PCXE Rule 7.22(c).

[31] *See* proposed PCXE Rule 7.22(e). *See also* proposed PCXE Rule 10.13(a)(5).

[32] *See* proposed PCXE Rule 1.1(v) (definition of ''MMAT'').

[33] *See* proposed PCXE Rule 7.21(b). Proposed Rule PCXE 7.21(b)(2) states that, ''[t]o be eligible for registration as a MMAT, a person must successfully complete the General Securities Representative Examination (Series 7) and complete a training and certification program sponsored by the Corporation; provided, however, the requirement to complete the Series 7 Examination may be waived by the Corporation if the applicant MMAT has served as a dealer-specialist or market maker on a registered national securities exchange or association for at least two consecutive years within three years of the date of application.'' *See also* proposed PCXE Rule 7.21(b)(5) and proposed PCXE Rule 2.4(b)(10)(A).

[34] *See* proposed PCXE Rule 7.21(a).

[35] *See* proposed PCXE Rule 7.21(c).

[36] *See* proposed PCXE Rule 1.1(j) (''Core Trading Hours'' mean the hours of 6:30 a.m. through 1:00 p.m. (Pacific Time) or such other hours as may be determined by the PCXE from time to time).

[37] *See* proposed PCXE Rule 7.31(k) (definition of ''Q Order''). A Q Order may not be a Working Order.

[38] *See* proposed PCXE Rule 1.1(p) (definition of ''Good Standing'').

[39] *See* proposed PCXE Rule 7.23(a) and & (b).

[40] *See* proposed PCXE Rule 7.23(c). *See also* proposed PCXE Rule 10.13(a)(6).

[41] *See* proposed PCXE Rule 7.23(d).

[42] *See* proposed PCXE Rule 1.1(aa) (definition of ''Odd Lot Dealer'').

[43] *See* proposed PCXE Rule 7.25(b).

applicant could seek review of the decision in accordance with PCXE Rule 10.13.[44]

Once registered, an Odd Lot Dealer is obligated to: (1) Maintain an Odd Lot Tracking Order, as described in proposed PCXE Rule 7.31(g), during each day in which the PCXE is open for business for each security in which the Odd Lot Dealer is registered as such;[45] and (2) register and maintain registration as an Odd Lot Dealer in a minimum of 100 securities if the Odd Lot Dealer registers as such in any security for which it is not registered as a market maker.[46]

Under proposed PCXE Rule 7.25(d) an Odd Lot Dealer's registration in a security or securities could be suspended or terminated if: (1) The PCXE determines that the Odd Lot Dealer has substantially or continually failed to engage in dealings as required of an Odd Lot Dealer; or (2) if, in the PCXE's judgment, the interests of a fair and orderly market are best served by such action. An ETP Holder could seek review of any such termination or suspension in accordance with proposed PCXE Rule 10.[47]

Finally, an Odd Lot Dealer could voluntarily terminate its registration as such in a security or securities by providing the PCXE with a one-day written notice of such termination. An Odd Lot Dealer that fails to give advance notice of termination to the PCXE could be subject to formal disciplinary action pursuant to proposed PCXE Rule 10.[48]

v. *Limitations on Dealings.* Under the proposed rules, a market maker could: (1) Conduct an investment banking or public securities business; (2) function as a General Authorized Trader (''GAT''), *i.e.*, an Authorized Trader who performs only non-market making activities on behalf of an ETP Holder;[49] or (3) make markets in the options overlying the security in which it makes markets; (collectively, ''Other Business Activities'') or it could be affiliated with a broker-dealer that engages in Other Business Activities only if there is an Information Barrier (also commonly referred to as a Chinese Wall) between the market making activities and the Other Business Activities.[50]

An Information Barrier is an organizational structure in which the market making functions are conducted in a physical location separate from the locations in which the Other Business Activities are conducted in a manner that impedes the free flow of communications between MMATs and persons conducting the Other Business Activities. However, upon request and not on his or her own initiative, an MMAT performing the function of a market maker could furnish to persons at the same firm or an affiliated firm (''affiliated persons'') the same sort of market information that the MMAT would make available to any other person in the normal course of its market making activity. The MMAT would have to provide such information to affiliated persons in the same manner that he or she would make such information available to a non-affiliated person.[51]

Procedures would have to be implemented to prevent the use of material non-public corporate or market information in the possession of persons on one side of the barrier from influencing the conduct of persons on the other side of the barrier. The procedures, at a minimum, would have to provide that (1) The MMAT performing the function of a market maker does not take advantage of knowledge of pending transactions, order flow information, corporate information, or recommendations arising from Other Business Activities; and (2) all information pertaining to the market maker's positions and trading activities is kept confidential and not made available to persons on the other side of the Information Barrier.[52]

Although persons on one side of the barrier could not exercise influence or control over persons on the other side of the barrier, the following could occur: (1) The market making function and the Other Business Activities could be under common management as long as any general management oversight does not conflict with or compromise the market maker's responsibilities; (2) the same person or persons (the ''Supervisor'') could be responsible for the supervision of the market making and the GAT functions of the same firm or affiliated firms in order to monitor the overall risk exposure of the firm or affiliate firms. While the Supervisor could establish general trading parameters with respect to both market making and other proprietary trading other than on an order-specific basis, the Supervisor could not (1) act as either an MMAT or GAT; (2) provide to any GAT any information relating to market making activity beyond the information that an MMAT would normally provide to any other person in the course of its market making activity; or (3) provide an MMAT with specific information regarding the firm's pending transactions or order flow arising out of its GAT activities.[53]

An ETP Holder that intends to implement an Information Barrier would have to submit to the PCXE a written statement setting forth the following:

(1) The manner in which it intends to comply with the requirements of an Information Barrier (as discussed above) and the compliance and audit procedures it will implement to maintain the Barrier;

(2) The names and titles of the person(s) responsible for the maintenance and surveillance of the procedures;

(3) A commitment to provide the PCXE with such information and reports as the PCXE could request relating to its transactions;

(4) A commitment to take appropriate remedial action against any person violating this Rule or the ETP Holder's internal compliance and audit procedures and that it recognizes that the PCXE could take appropriate remedial action in the event of such a violation;

(5) Whether the ETP Holder or an affiliate intends to clear its proprietary trades, and, if so, the procedures established to ensure that information with respect to such clearing activities will not be used to compromise the Information Barrier (which procedures, at a minimum, would have to be the same as those used by the ETP Holder or the affiliate to clear for unaffiliated third parties). These procedures would have to provide that any information pertaining to market maker securities positions and trading activities, and information derived from any clearing and margin financing arrangements, could be made available only to those employees specifically authorized to have access to such information or to other employees in senior management positions who are involved in exercising general managerial oversight with respect to market making activity. Furthermore, any margin financing arrangements would have to be sufficiently flexible so as not to limit the ability of any market maker to meet market making or other obligations under the PCXE Rules; and

(6) That it recognizes that any trading by a person while in possession of material, non-public information received as a result of the breach of the internal controls could be a violation of the Act, or the rules thereunder, or PCXE Rules.[54]

After the submission of the written statement detailing the internal controls and compliance and audit procedures to PCXE, if the PCXE determines that the structure and procedures are acceptable, PCXE will inform the ETP Holder in writing of their acceptability. Absent a

[44] *See* proposed PCXE Rule 7.25(a).

[45] For a discussion of Odd Lot Tracking Orders and the execution thereof, see Section (2)(c)(iv).

[46] *See* proposed PCXE Rule 7.25(c).

[47] *See* proposed PCXE Rule 7.25(d).

[48] *See* proposed PCXE Rule 7.25(e). *See also* proposed PCXE Rule 10.13(a)(7).

[49] *See* proposed PCXE Rule 1.1(o) (definition of ''General Authorized Trader'').

[50] *See* proposed PCXE Rule 7.26(a).

[51] *See* proposed PCXE Rule 7.26(b)(1).

[52] *See* proposed PCXE Rule 7.26(b)(2).

[53] *See* proposed PCXE Rule 7.26(b)(3).

[54] *See* proposed PCXE Rule 7.26(c).

finding that an ETP Holder's Information Barrier procedures are acceptable, a market maker could not conduct Other Business Activities.[55]

Finally, an ETP Holder or an affiliate of the ETP Holder could clear the ETP Holder's market maker transactions if it establishes procedures to ensure that information with respect to clearing activities would not be used to compromise the Information Barrier. In this regard, the procedures would have to provide that any information pertaining to market maker securities positions and trading activities, and information derived from any clearing and margin financing arrangements, could be made available only to those employees (other than employees actually performing clearing and margin functions) specifically authorized to have access to such information or to other employees in senior management positions who are involved in exercising general managerial oversight with respect to the market making activity. Furthermore, any margin financing arrangements would have to be sufficiently flexible so as not to limit the ability of any market maker to meet market making or other obligations under the PCXE Rules.[56]

c. *Trading on the Archipelago Exchange.* i. *Order Entry*—Users would enter into Arca the following standard types of orders: Market orders, limit orders, Day Orders, Good-Til-Canceled (GTC) Orders, Immediate-or-Cancel Orders, Stop Orders, Stop Limit Orders, Do Not Reduce, Do Not Increase, and Timed Orders.[57]

In addition, Users could utilize Working Orders, which are defined to include ''any order with a conditional or undisplayed price and/or size designated as a 'Working Order,' '' including All-or-None, Discretionary, and Reserve Orders.[58] An All-or-None Order is a limit order which is to be executed in its entirety or not at all.[59] A Discretionary Order is an order to buy or sell a stated amount of a security at a specified, undisplayed price (the ''discretionary price''), in addition to at a specified, displayed price (''displayed price'').[60] For example, a User could submit a Discretionary Order to buy 5000 shares of XYZ at 20, with discretion to 20.25. In that case, the User represents a displayed price of 20, but the User is willing to buy the 5000 shares at a price up to the discretionary price of 20.25. A Reserve Order is a limit order with a portion of the size displayed and with a reserve portion of the size (''reserve size'') that is not displayed on the Arca book.[61] For example, a User could submit a Reserve Order to buy 5000 shares of XYZ at 20 with a request that 1000 shares be displayed. Therefore, the 1000 shares are displayed and 4000 shares, as the reserve size, are not displayed.

Arca would also accept NOW Orders.[62] A NOW Order is a Limited Price Order[63] that is to be executed in whole or in part on Arca, and the portion not so executed would be routed pursuant to Rule 7.37(d) only to one or more NOW Recipients for immediate execution as soon as the order is received by the NOW Recipient. Any portion not immediately executed by the NOW Recipient would be cancelled. If a NOW Order is not marketable when it is submitted to the PCXE, it would be cancelled. NOW Orders cannot be Directed Orders.[64] For the purposes of a NOW Order, a NOW Recipient means any exchange, ECN, or other broker-dealer (1) with which Arca maintains an electronic linkage, which includes ITS, and (2) which provides instantaneous responses to NOW Orders routed from Arca. The PCXE would designate from time to time those exchanges, ECNs, or other broker-dealers that qualify as NOW Recipients.[66] An Auction-Only Limit Order, which is a limit order that could be executed only during the Market Order Auction, would also be submitted to Arca.[67] In addition, Users could submit Primary Only Orders (''PO Orders'') which are market orders, for exchange-listed securities only, that are to be routed as a market-on-open order to the primary market for participation in the primary market opening process. A PO Order would have to be entered before 6:28 a.m. (Pacific Time) and it would not be included in the Market Order Auction.

Furthermore, as discussed in more detail in other sections, Users could submit Tracking Orders, Odd Lot Tracking Orders, Directed Orders, Directed Fills, Q Orders, Fill-or-Return Orders, Fill-or-Return Plus Orders, PNP Orders, Cross Orders and Cleanup Orders as well.[68]

Finally, as a general matter, consistent with proposed PCXE Rules, ETP Holder Users of Arca could enter both proprietary orders and agency orders for the account of a customer. Proprietary orders entered into Arca are subject to the same display and execution processes as agency orders. An ETP Holder User that enters a proprietary order into Arca would mark the order with the appropriate designator to identify the order as proprietary.[69]

ii. *Order Ranking and Display.* Arca would maintain an electronic file of orders, called the Arca Book, which contains all the User's orders in the four components, called Processes, of the Arca Book.[70] Specifically, the Arca Book contains the Directed Order, Display Order, Working Order, and Tracking Order Processes.[71] Limited Price Orders of Users submitted to Arca (other than such orders as Directed Fills and Tracking Orders) would be ranked and maintained in the Display Order Process and/or Working Order Process of the Arca Book according to price-time priority, such that within each price level, all orders would be organized by the time of entry, as discussed in more detail below.

The displayed portion of orders are ranked in the Display Order Process. One category of orders—limit orders, with no other conditions—would be ranked in the Display Order Process based on the specified limit price and the time of original order entry. With regard to Reserve Orders, the displayed portion of Reserve Orders (not the reserve size) would be ranked in the Display Order Process at the specified limit price and the time of order entry. If the displayed portion of the Reserve Order is decremented in its entirety, the displayed portion of the Reserve Order would be refreshed for the displayed amount from the reserve portion and would be submitted and ranked at the specified limit price and the new time that the displayed portion of the order was refreshed. Finally, Discretionary Orders would be ranked in the Display Order Process based on the displayed price (not the discretionary price) and the time of order entry. If a Discretionary Order is decremented, it remains ranked based on the displayed price and the time of original order entry.

[55] *See* proposed PCXE Rule 7.26(d).

[56] *See* proposed PCXE Rule 7.26(e).

[57] *See generally* proposed PCXE Rule 7.31.

[58] *See* proposed PCXE Rule 7.31(h).

[59] *See* proposed PCXE Rule 7.31(h)(1).

[60] *See* proposed PCXE Rule 7.31(h)(2).

[61] *See* proposed PCXE Rule 7.31(h)(3).

[62] *See* proposed PCXE Rule 7.31(v).

[63] *See* proposed PCXE Rule 1.1(s) (''Limited Price Order'' is defined as any order with a specified price or prices (*e.g.,* limit orders and Working Orders), other than Stop Orders).

[64] *See* proposed Rule 7.31(i) (definition of ''Directed Order'').

[66] *See* proposed PCXE Rule 1.1(z) (definition of ''NOW Recipient'').

[67] *See* proposed PCXE Rule 7.31(t). *See* Section 2(c)(vii) for a discussion of the Auction-Only Limit Orders role in the Market Order Auction.

[68] *See generally* proposed PCXE Rule 7.31.

[69] *See* proposed PCXE Rule 7.33.

[70] *See* proposed PCXE Rule 1.1(a) (definition of ''Arca Book'').

[71] See proposed PCXE Rule 1.1(a) (definition of ''Arca Book'').

Only All-or-None Orders and the undisplayed portion of Reserve Orders and Discretionary Orders are ranked in the Working Order Process. The reserve portion of Reserve Orders would be ranked in the Working Order Process based on the specified limit price and the time of original order entry. After the displayed portion of a Reserve Order is refreshed from the reserve portion, the reserve portion remains ranked based on the original time of order entry, while the displayed portion is sent to the Display Order Process with a new time-stamp. Discretionary Orders would be ranked in the Working Order Process based on the displayed price and the time of original order entry. After a Discretionary Order is decremented, it remains ranked as described above. All-or-None Orders would be ranked in the Working Order Process based on the specified limit price and the time of order entry.

PCXE offers the following example to clarify how orders are ranked in the Display and Working Order Processes. Suppose that the following orders are submitted to Arca by Users:

10:00 a.m.—Order A—Limit order to buy 1000 XYZ at 20
10:01 a.m.—Order B—Reserve Order to buy 5000 XYZ at 20 (show 1000)
10:02 a.m.—Order C—Limit order to buy 500 XYZ at 20
10:03 a.m.—Order D—Discretionary Order to buy 5000 XYZ at 20 (discretion to 20.25)
10:04 a.m.—Order E—All-or-None to buy 1500 XYZ at 20
10:05 a.m.—Order F—Q Order to buy 1000 XYZ at 20
10:06 a.m.—Order G—Limit order to buy 700 XYZ at 20
10:07 a.m.—Order H—Q Order to buy 500 XYZ at 20
10:08 a.m.—Order I—Discretionary Order to buy 10,000 XYZ at 20 (discretion to 20.25)

Orders A–H would be ranked in the Arca Book as follows: In the Display Order Process, the orders would be ranked in the following order: (1) Order A; (2) Order B1 (the displayed 1000 shares of Order B); (3) Order C; (4) Order D1 (the displayed price of 20 for Order D); (5) Order F; (6) Order G; (7) Order H; and (8) Order I1 (the displayed price of 20 for Order I). In the Working Order Process, the orders would be ranked in the following order: (1) Order B2 (4000 shares of the reserve portion of Order B); (2) Order D2 (the discretionary price up to 20.25 for Order D); (3) Order E; and (4) Order I2 (the discretionary price up to 20.25 for Order I).

iii. *Order Display and Dissemination.* Arca would operate the Arca Book on an open basis. All orders at all price levels in the Display Order Process of the Arca Book would be displayed to all Users on an anonymous basis. In addition, the same information would be made available to other interested parties.[72] Furthermore, the best-ranked displayed order(s) to buy and sell in the Arca Book and the corresponding aggregate size of such orders associated with such prices would be collected and made available to quotation vendors for dissemination pursuant to the requirements of Rule 11Ac1–1[73] under the Act.[74]

iv. *Order Execution.* Subject to the restrictions on short sales under Rule 10a-1 under the Exchange Act,[75] like-priced orders, bids and offers would be matched for execution by following Steps 1 through 5, as described below; provided, however, that for an execution to occur in any Order Process the price would have to be equal to or better than the NBBO,[76] unless Arca has routed orders to all away markets at the NBBO:

*Step 1: Directed Order Process.* The first step of the Arca execution algorithm is the Directed Order Process. Through this process, Users could direct an order to a market maker with whom they have a relationship and the market maker would execute the order. To access this process, the User would have to submit a Directed Order, which is a market or limit order to buy or sell which has been directed to a particular market maker by the User.[77] Any type of order other than a Directed Order would skip the Directed Order Process and immediately enter Step 2, the Display Order Process. The Directed Order Process is available only during Core Trading Hours.[78]

In the Directed Order Process, the User's Directed Order would be executed against a Directed Fill, which is the order of the User's designated market maker. Specifically, any market maker could submit a standing instruction to Arca for the parameters of a Directed Fill, including, but not limited to, the size of the order, the Users that could send such market maker a Directed Order, the price improvement algorithm, and the period of time the instruction is effective. The market maker's Directed Fill described in the instruction would be generated only in response to a Directed Order directed to such market maker. The Directed Fill is a limit order with a size that is equal to or less than the size of the Directed Order and a price that improves the BBO[79] by an automatically preset amount, which would have to be equal to or greater than the Minimum Price Improvement Increment,[80] pursuant to a price improvement algorithm; provided, however, that the Directed Fill would not be generated if the price is not equal to or better than the NBBO. In other words, a market maker may not execute against a Directed Order without improving the best price on the Arca Book. A market maker may modify the parameters of the instruction for a Directed Fill from time to time, as the PCXE permits.[81]

If a User submits a marketable[82] Directed Order to Arca and the User's designated market maker has a standing instruction for a Directed Fill, the Directed Order would be executed against the Directed Fill of the designated market maker. If a User submits a marketable Directed Order and the User's designated market maker has not submitted an instruction for a Directed Fill, or if a User submits any order other than a marketable Directed Order, the Directed Order would enter the Display Order Process without interacting with any Directed Fills.[83]

*Step 2: Display Order Process.* If an incoming marketable order has not been executed in its entirety in the Directed Order Process, any remaining part of the order would be routed to the Display Order Process, Step 2 of the execution algorithm.[84] In the Display Order Process, Arca would match an incoming marketable order against orders in the Display Order Process at the display price of the resident order for the total size available at that price or for the size of the incoming order, whichever is smaller. For the purposes of the Display Order Process, the size of an incoming Reserve Order includes the displayed and reserve size and the size of the portion of the Reserve Order resident in the Display Order Process is equal to its displayed size. If the incoming marketable order has not been executed in its entirety, the remaining part of the

[72] See proposed PCXE Rule 7.36(b).

[73] 17 CFR 240.11Ac1–1.

[74] See proposed PCXE Rule 7.36(c).

[75] 17 CFR 240.10a–1.

[76] *See* proposed PCXE Rule 1.1(x) (the term ''NBBO'' refers to the national best bid or offer).

[77] *See* proposed PCXE Rule 7.31(i) (definition of ''Directed Order'').

[78] *See* proposed PCXE Rule 7.37(a).

[79] *See* proposed PCXE Rule 1.1(h) (the term ''BBO'' refers to the best bid or offer on Arca).

[80] *See* proposed PCXE Rule 7.6, Commentary .06.

[81] *See* proposed PCXE Rule 7.31(j) (definition of ''Directed Fill'').

[82] *See* proposed PCXE Rule 1.1(t) (''Marketable'' means, for a Limited Price Order, the matches or price crosses the NBBO on the other side of the market. Market orders are always considered marketable.).

[83] *See* proposed PCXE Rule 7.37(a).

[84] *See* proposed PCXE Rule 7.37(b).

order would be routed to the Working Order Process.[85]

An incoming order that is not marketable would skip the Display Order Process and enter the Working Order Process to be executed against any Discretionary Orders at or better than the NBBO.[86]

*Step 3: Working Order Process.* An incoming marketable order would be matched for execution against orders in the Working Order Process in the following manner: An incoming marketable order would be matched against orders within the Working Order Process in the order of their ranking, at the price of the displayed portion (or in the case of an All-or-None Order, at the limit price), for the total amount of stock available at that price or for the size of the incoming order, whichever is smaller. If the BBO is outside the NBBO and any Discretionary Orders within the Working Order Process have a discretionary price equal to or better than the NBBO, the incoming order would execute against such Discretionary Order(s) at the NBBO up to the size of the smaller of the two orders. If an incoming marketable order is a Discretionary Order or a Reserve Order and its prices overlap with the prices of a Discretionary Order(s) in the Working Order Process, then the orders would be executed at the display price of the order that was entered first up to the size of the smaller of the two orders. For the purposes of this subsection, the size of the incoming Reserve Order includes the displayed and reserve size. If the incoming marketable order has not been executed in its entirety, the remaining part of the order would be routed to the Tracking Order Process.[87]

An incoming order that is not marketable would be matched for execution against orders in the Working Order Process in the following manner: The incoming order would be matched against any Discretionary Orders in the Working Order Process that have discretionary prices that would satisfy an otherwise displayable incoming Limited Price Order. The execution would occur at the limited price of the incoming order. If the incoming order is a Discretionary Order and its prices overlap with the prices of a Discretionary Order in the Working Order Process, then the orders would be executed at the discretionary price of the incoming order that would be the best price available for the order entered first. If any change in the NBBO or other available away trading interest would cause a potential match between the away order and an order in the Working Order Process, a commitment to trade would be sent to that market center or market participant[88] pursuant to Step 5 below.[89]

*Step 4: Tracking Order Process.* During Core Trading Hours only, the fourth step of the execution algorithm is the Tracking Order Process. If an order has not been executed in its entirety in the Directed, Display, or Working Order Processes, Arca then would match and execute any remaining part of the order in the Tracking Order Process, unless the order or portion thereof was received from another market center or market participant, in which case it would be cancelled immediately.[90]

If the unfilled order or portion of an order that enters the Tracking Order Process is a mixed lot or round lot order, Arca would match the order against any Tracking Orders.[91] Any User could submit an instruction to Arca for the parameters of a Tracking Order at any time during the day, where such parameters include: (1) the maximum aggregate size, which is the aggregate size of all partial orders generated in the Tracking Order Process for a particular security that the User is willing to trade on that day; (2) the maximum tradeable size, which is the maximum size of any partial order generated in response to an order entering the Tracking Order Process that the User is willing to trade on that day; (3) the price in relation to the NBBO; and (4) the relevant security. Once a User has submitted an instruction for the parameters of the Tracking Order, the instruction would remain in effect until closing or until the User has traded its maximum aggregate size for that day, whichever comes first.[92]

Users who have submitted an instruction for the parameters of a Tracking Order would be assigned trades on a price/time rotating basis, such that within each price level, trades would be assigned by the time the Users' instructions are received by Arca. Within each price level, the first User to send an instruction for a Tracking Order would be the first User to be assigned a trade in the rotation process. For each order that enters the Tracking Order Process, the Tracking Order Process would rotate once through the Users in the rotation pattern. In each rotation, the User would be responsible for one trade up to the User's maximum tradeable size.

The order described in the User's Tracking Order instruction would be generated only if an unfilled round or mixed lot order enters the Tracking Order Process and it is such User's turn as determined by the Tracking Order Process rotation pattern.

Each partial order generated in a rotation is a limit order in which (1) the price is set at or better than the NBBO at the time the unfilled order enters the Tracking Order Process, based on the User's parameters; and (2) the size is (i) equal to the User's maximum tradeable size if the unfilled order is equal to or larger than the maximum tradeable size; or (ii) equal to the size of the unfilled order if the unfilled order is smaller than the maximum tradeable size. A User could modify the parameters of the instruction for the Tracking Order from time to time, as the PCXE permits.

After the order has been matched against any Tracking Orders, if the order has not been executed in its entirety and the remaining part of the order is an odd lot, the odd lot order would be executed in the Odd Lot Tracking Order Process, as described below. Otherwise the order would be routed pursuant to the final step of the execution algorithm.

If the unfilled order or portion of an order that enters the Tracking Order Process is an odd lot, Arca would match the order against any Odd Lot Tracking Orders[93] (''OLTOs''), using the same rotation process described above with regard to Tracking Orders.[94] An OLTO, which could only be submitted to Arca by a registered Odd Lot Dealer, is a Tracking Order in which: (1) the maximum aggregate size is unlimited; (2) the maximum tradeable size is 99 shares; (3) the price is set at the NBBO; (4) the security is one in which the Odd Lot Dealer is registered as such; and (5) the instruction would have to be in effect for the duration of Core Trading Hours. The order described in the instruction would be generated only if an unfilled odd lot market order enters the Odd Lot Tracking Order Process or an odd lot limit order causes a locked market as described in proposed PCXE Rule 7.56.

Whenever in the judgment of the PCXE, because of an influx of orders, a system malfunction, or other unusual conditions or circumstances, the interests of a fair and orderly market so

[85] *See* proposed PCXE Rule 7.37(b)(1).

[86] *See* proposed PCXE Rule 7.37(b)(2).

[87] *See* proposed PCXE Rule 7.37(b)(2)(A).

[88] *See* proposed PCXE Rule 1.1(w) (''Market Participant'' includes ECNs, dealer-specialists registered with a national securities exchange and market makers registered with a national securities association).

[89] *See* proposed PCXE Rule 7.37(b)(2)(B).

[90] *See* proposed PCXE Rule 7.37(c).

[91] *See* proposed PCXE Rule 7.37(c)(1).

[92] *See* proposed PCXE Rule 7.31(f) (definition of ''Tracking Order'').

[93] *See* proposed PCXE Rule 7.31(g) (definition of ''OLTO'').

[94] *See* proposed PCXE Rule 7.37(c)(2).

require, the PCXE could suspend the Tracking Order Process. If the PCXE suspends the Tracking Order Process, the Process would become operational again when the PCXE determines that the conditions supporting the suspension no longer exist.[95]

*Step 5: Routing.* The fifth step of the Arca execution algorithm, which involves routing orders away to other market centers or market participants, is available only to those ETP Holders who have entered into a Routing Agreement. A Routing Agreement is an agreement between an ETP Holder and a broker-dealer affiliate of Archipelago Exchange, L.L.C., under which the broker-dealer affiliate agrees to act as agent for routing orders of the ETP Holder and the ETP Holder's Sponsored Participants to other market centers or broker-dealers for execution, whenever routing is required.[96]

For those ETP Holders that are parties to a Routing Agreement and indicate that they wish the order to be routed away, if necessary, if the order has not been executed in its entirety pursuant to the other Order Processes, the order would be routed to another market center or market participant as follows:[97] Arca would route the order to another market center or market participant as a limit order priced at the quote published by the market center or market participant. Arca would attempt to match the part of the order that has not been routed away against then available trading interest in the Arca Book for an internal fill by following Steps 1 through 4 again.

Orders routed to other market centers or market participants would remain outside Arca for a prescribed time period during which such orders could be executed (in whole or in part) or declined. While an order remains outside Arca, it would have no time standing relative to other orders received from Users at the same price which could be executed against the Arca Book. Requests from Users to cancel their orders while the order is routed away to another market center or market participant and remains outside Arca would be processed, subject to applicable trading rules of the relevant market center or market participant.

In the event that a marketable order routed from Arca to another market center or market participant is not executed in its entirety at the other market center or market participant's quote (*i.e.*, all attempts to fill the order are declined or timed-out), Arca would attempt to match the residual or declined market order against then available trading interest in the Arca Book for an internal fill by following Steps 1 through 4 above. Any remaining unmatched trading interest would be re-routed to another market center or market participant at the next available displayed price level.

When routing an order away to another market center, the PCXE would utilize such electronic intermarket linkages and order delivery facilities as could be approved by the Board of Directors from time to time, subject to such applicable requirements as could be agreed to with the relevant market center.

Under the proposal, if an ETP Holder has not entered into a Routing Agreement, the ETP Holder and its Sponsored Participants could submit to Arca only Fill-or-Return, Fill-or-Return Plus, or PNP Orders, which are orders that could not be routed outside of Arca.[98] Specifically, a Fill-or-Return Order is an order to buy or sell that is to be executed in whole or in part on the PCXE, and any portion not executed on the PCXE is to be cancelled, without routing the order to another market center or market participant.[99] Similarly, a Fill-or-Return Plus Order is a Fill-or-Return Order, except, in the event any portion of the order is not executed on the PCXE and would have to be cancelled, Arca, after canceling the unexecuted portion of the order, would send an administrative message to an ETP Holder designated by the order entry ETP Holder informing the designated ETP Holder that a portion of the order was cancelled.[100] A Post No Preference (''PNP'') Order is a limit order to buy or sell that is to be executed in whole or in part on the PCXE, and the portion not so executed is to be ranked in the Arca Book, without routing any portion of the order to another market center. However, the PCXE would cancel a PNP Order that would lock or cross the NBBO.[101] Therefore, if an order has not been executed in its entirety pursuant to the other Order Processes and it has been designated as a Fill-or-Return, Fill-or-Return Plus Order, or a PNP Order, the order would be cancelled at the routing step, without routing the order away from Arca.[102]

Finally, if an order has not been executed in its entirety after following Steps 1—5, the order would be ranked in the Arca Book pursuant to Rule 7.36.[103]

*Examples.* The following examples clarify the order execution process for the Arca Book. Assuming PCXE has the orders in the Arca Book as specified in the ranking example above (*see* Section 2(c)(ii)), suppose an incoming order, which is not a Directed Order and therefore bypasses the Directed Order Process, enters Arca:

Example 1. Suppose the incoming order is a market order to sell 1000 shares of XYZ. The market order would execute against Order A, filling both Order A and the incoming order for 1000 shares at the price of 20.

Example 2. Suppose the incoming order is a market order to sell 5000 shares of XYZ.

(1) The incoming order would execute against Order A, filling Order A and executing 1000 shares of the incoming order at 20.

(2) Next, 1000 shares of the incoming order would execute against the 1000 displayed shares of Order B1 at 20, without affecting the 4000 undisplayed shares of Order B2 in the Working Order Process.

(3) Third, the incoming order would execute against Order C, filling both Order C and executing 500 shares of the incoming order at 20.

(4) Finally, the remaining 2500 shares of the incoming order would execute against 2500 shares of D1 at 20, completing the incoming order.

Example 3. Suppose the incoming order is a market order to sell 25,200 shares of XYZ.

(1) The incoming order would execute against Orders A, B1, and C in the same manner as in Example 3.

(2) Then, the incoming order would execute against Order D1 for 5000 shares at 20, filling Order D.

(3) Next, the incoming order would execute against Order F for 1000 shares at 20, thereby filling Order F.

(4) The incoming order then would execute against Order G for 700 shares at 20, thereby filling Order G.

(5) Then, the incoming order would execute against Order H for 5000 shares at 20, thereby filling Order H.

(6) Then, the incoming order would execute against Order I1 for 10,000 shares at 20, thereby filling Order I.

(7) Then, because the incoming order has exhausted orders in the Display Order Process and has not been filled in its entirety, it enters the Working Order Process. First, the incoming order is

[95] *See* proposed PCXE Rule 7.31(f)(7).

[96] *See* proposed PCXE Rule 1.1(gg) (definition of ''Routing Agreement'').

[97] *See* proposed PCXE Rule 7.37(d)(2).

[98] *See* proposed PCXE Rule 7.32.

[99] *See* proposed PCXE Rule 7.31(p) (definition of ''Fill-or-Return'').

[100] *See* proposed PCXE Rule 7.31(r) (definition of ''Fill-or-Return Plus'').

[101] *See* proposed PCXE 7.31(w).

[102] *See* proposed PCXE Rule 7.37(d)(1).

[103] *See* proposed PCXE Rule 7.37(e).

executed against the 4000 shares of reserve size for Order B2. This fills the balance of Order B.

(8) The incoming order does not interact with Order D2 in the Working Order Process because Order D was filled in the Display Order Process.

(9) The incoming order then executes against the 1500 shares of Order E at 20, thereby filling both Order E and the incoming order.

Example 4. Suppose the incoming order is a market order to sell 25,300 shares of XYZ. The order would be executed as described in Example 3, paragraphs (1)–(9). The remaining 100 shares would be routed to the Tracking Order Process, where they would be executed against Tracking Order(s), if any.

Example 5. Suppose the incoming order is a market order to sell 25,250 shares of XYZ. The order would be executed as described in Example 3, paragraphs (1)–(9). The remaining 50 shares would be routed to the Tracking Order Process, where they would be executed against Odd Lot Tracking Order(s), if any.

v. *Crosses.* Arca permits the execution of a Cross Order, which is defined as a two-sided order with instructions to match the identified buy-side with the identified sell-side at a specified price (the ''cross price''), subject to price improvement requirements described below.[104] A Cross Order would be executed as follows; provided, however, no Cross Orders would be matched at the cross price without interacting with any orders in the Arca Book unless the cross price improves the BBO by the Minimum Price Improvement Increment.[105]

(1) If the cross price is equal to or better than the NBBO and is between the BBO, the orders could be crossed without interacting with any other orders.

(2) If the cross price is equal to or better than the NBBO and is at the BBO, the remainder of the Cross Order could be crossed, after any relevant portion is matched against any displayed orders with priority in the Arca Book.

(3) If the cross price is outside the NBBO and is between the BBO, the remainder of the Cross Order could be crossed, after the relevant portion is routed away to other markets for execution.

(4) If the cross price is outside the NBBO and is at the BBO, the remainder of the Cross Order could be crossed, after any relevant portion is first routed away to other markets for execution and then any relevant portion is matched against any displayed orders with priority in the Arca Book.

(5) If the cross price is outside the NBBO and the BBO and the NBBO is better than the BBO, the relevant portion of the order first would be routed away to other markets for execution. Then, the Cross Order would be matched at the displayed price (if the Cross Order is smaller than block size[106]) or at the cross price (if the Cross Order is of block size) against displayed orders with priority in the Arca Book. Then, the Cross Order would be matched at the price at which the Working Order is represented in the Book against all Working Orders with priority. Finally, any remainder of the Cross Order would be matched at the cross price.

(6) If the cross price is outside the NBBO and the BBO and the NBBO equals the BBO, then the Cross Order first would be matched at the displayed price (if the Cross Order is smaller than block size) or at the cross price (if the Cross Order is of block size) against displayed orders with priority in the Arca Book. Then, the Cross Order would be matched at the price at which the Working Order is represented in the Book against all Working Orders with priority. Then, the relevant portion of the order would be routed away to other markets for execution. Finally, any remainder of the Cross Order would be matched at the cross price.

vi. *Trading Sessions.* Arca would have three trading sessions each day the PCXE is open for business: the Opening Session, the Core Trading Session and the Late Trading Session. The Opening Session begins at 5:00 a.m. (Pacific Time) and concludes at the commencement of the Core Trading Session. The Opening Auction and the Market Order Auction[107] would occur during the Opening Session. The Core Trading Session begins for each security at 6:30 a.m. (Pacific Time) or at the conclusion of the Market Order Auction, whichever comes later, and concludes at 1:00 p.m. (Pacific Time). Finally, the Late Trading Session begins after the conclusion of the Core Trading Session and concludes at 5:00 p.m. (Pacific Time).[108]

During the Core Trading Session, market makers would be obligated to enter Q Orders in securities in which they are registered by the time Core Trading Hours begin. During the Opening Session and the Late Trading Session, market makers are not obligated to enter Q Orders in securities in which they are registered. Market makers are required to enter at least one Cleanup Order for all securities in which they are registered for each Market Order Auction.[109]

Any Day Order entered into Arca could remain in effect for one or more consecutive trading sessions on a particular day. For each Day Order entered into Arca, the User would have to designate for which trading session(s) the order would remain in effect. Any GTC Order entered into Arca would remain in effect only during Core Trading Sessions, unless the User indicates that the GTC Order would remain in effect for the Opening and/or Late Trading Sessions.[110]

For each trading session, some order types are eligible to be executed and others are not eligible to be executed. During the Opening Session, orders eligible for the Display Order Process (other than Q Orders) and for the Working Order Process that have been designated as available for the Opening Session are eligible for entry into and execution on Arca. Stop Orders are not eligible for execution during the Opening Session. Users could enter market and Auction Only Limit Orders for inclusion in the Market Order Auction. Market orders and Auction Only Limit Orders are not eligible for execution during the Opening Session, except during the Market Order Auction. Neither the Directed Order Process nor the Tracking Order Process is available during the Opening Session. For the purposes of the Opening Session, market Directed Orders are eligible for execution in the Market Order Auction. NOW Orders are eligible for execution during the Opening Session; however, NOW Orders are not eligible for the Opening Auction or the Market Order Auction. PNP Orders are eligible for execution during the Opening Session.[111]

During the Core Trading Session, market orders, Stop Orders, NOW Orders, PNP Orders and orders eligible for the Directed Order, Display Order, Working Order, and Tracking Order Processes are eligible for entry into and execution on Arca.[112]

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[104] *See* proposed PCXE Rule 7.31(s) (definition of a ''Cross Order'').

[105] For a description of the Minimum Price Improvement Increment, *see* proposed PCXE Rule 7.6(a), Commentary .06.

[106] For the purposes of a Cross Order, an order of block size would have the same meaning as set forth in proposed PCXE Rule 7.57 regarding ITS. *See* proposed PCXE Rule 7.31(s).

[107] For a discussion of the Opening Auction and the Market Order Auction, *see Section 2(c)(vii).*

[108] *See* proposed PCXE Rule 7.34(a).

[109] *See* proposed PCXE Rule 7.34(b).

[110] *See* proposed PCXE Rule 7.34(c).

[111] *See* proposed PCXE Rule 7.34(d)(1).

[112] *See* proposed PCXE Rule 7.34(d)(2).

During the Late Trading Session, orders eligible for the Display Order Process (other than Q Orders) and for the Working Order Process, including NOW Orders and PNP Orders, that have been designated as available for the Late Trading Session are eligible for entry into and execution on Arca. Market orders and Stop Orders are not eligible for execution during the Late Trading Session. The Directed Order Process and Tracking Order Process are not available during the Late Trading Session.[113]

Because Arca would operate the Opening and Late Trading Sessions outside of traditional trading hours, the PCXE requires certain customer disclosures.[114] In particular, no ETP Holder could accept an order from a non-ETP Holder for execution in the Opening or Late Trading Session without disclosing to such non-ETP Holder that:

(1) Except for market orders eligible for execution during the Market Order Auction, Limited Price Orders are the only orders that are eligible for execution during the Opening and Late Trading Sessions;

(2) An order would have to be designated specifically for trading in the Opening and/or Late Trading Session to be eligible for trading in the Opening and/or Late Trading Session; and

(3) Extended hours trading involves material trading risks, including the possibility of lower liquidity, high volatility, changing prices, unlinked markets, an exaggerated effect from news announcements, wider spreads and any other relevant risk. The disclosures required pursuant to this paragraph could take the following form or such other form as provides substantially similar information:

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

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

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

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

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

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

Finally, trades on Arca executed and reported outside of the Core Trading Session would have to be designated as .T trades.[115]

vii. *Opening Session Auctions. Definitions.* Arca would operate two auctions during its Opening Session—the Opening Auction and the Market Order Auction. In preparation for a description of these two auctions, PCXE would define several new terms applicable to the auctions.

First, for the purposes of the Opening Auction and the Market Order Auction, PCXE proposes to define the term ''Indicative Match Price'' to mean ''for each security'' (1) the price at which the maximum volume of orders are executable; or (2) if there are two or more prices at which the maximum volume of orders are executable, the price that is closest to the closing price of the previous trading day's normal market hours, as determined by the Consolidated Tape.'' [116]

In addition, the PCXE defines the term ''Imbalance'' as the number of buy or sell shares orders that can not be matched with other orders at the Indicative Match Price at any given time.[117]

Finally, the PCXE introduces the Cleanup Order for the Market Order Auction.[118] Cleanup Orders (1) could be submitted only by Market makers; (2) would have to be submitted to Arca before 6:15 a.m. (Pacific Time) and remain in effect until the conclusion of the Market Order Auction; (3) would have to be 2500 shares in size; (4) would have to be entered as both buy or sell orders, provided, however, the Cleanup Order could be executed only on the side of the market opposite the Imbalance; (5) would be executed at the Indicative Match Price as of the time of the Market Order Auction; and (6) would be executed only if: (i) there was an Imbalance of eligible orders at the conclusion of the Market Order Auction, as provided in proposed PCXE Rule 7.35; and (ii) the Imbalance is less than or equal to aggregate size of all Cleanup Orders in the relevant security. If there is an Imbalance and Cleanup Orders would be executed, the market orders which make up the Imbalance would be divided equally among, and allocated to, all Market makers registered in the relevant security and executed against such market makers' Cleanup Orders. If no Imbalance exists at the time of the Market Order Auction, all Cleanup Orders would be cancelled at that time.

*Order Entry and Cancellation Before the Opening Auction.*[119] Users could submit any orders to Arca beginning at 4:30 a.m. (Pacific Time). Any such Limited Price Orders designated for the Opening Session would be queued until 5:00 a.m. (Pacific Time) at which time they would be eligible to be executed pursuant to the Opening Auction. Any such market orders would be queued until the Market Order Auction at which time they would be executed pursuant to the Market Order Auction.

Only Limited Priced Orders designated for the Opening Session would be eligible for the Opening Auction. Market orders entered before the Opening Auction would participate

[113] *See* proposed PCXE Rule 7.34(d)(3).

[114] *See* proposed PCXE Rule 7.34(e).

[115] *See* proposed PCXE Rule 7.34(f).

[116] *See* proposed PCXE Rule 1.1(r) (definition of ''Indicative Match Price'').

[117] *See* proposed PCXE Rule 1.1(q) (definition of ''Imbalance'').

[118] *See* proposed PCXE Rule 7.31(u) (definition of ''Cleanup Order'').

[119] *See* proposed PCXE Rule 7.35(a).

in the Market Order Auction. Limited Price Orders not designated for the Opening Session would become eligible for execution pursuant to Rule 7.37 at the commencement of the Core Trading Session.

Beginning at 4:30 a.m. (Pacific Time), and various times thereafter as determined from time to time by the PCXE, the Indicative Match Price of the Opening Auction, and any Imbalance associated therewith, would be published via electronic means as determined from time to time by the PCXE. Orders that are eligible for the Opening Auction could not be cancelled between 4:58 a.m. (Pacific Time) and the conclusion of the Opening Auction.

*Opening Auction.* At 5:00 a.m. (Pacific Time), Limited Price Orders designated for the Opening Session are matched and executed in the Opening Auction. The orders in the Opening Auction would be executed at the Indicative Match Price as of the time of the Opening Auction. Orders that are eligible for, but not executed in, the Opening Auction would become eligible for the Opening Session immediately upon conclusion of the Opening Auction.[120]

For example, if the last .T sale is 50, Arca has a limit order to buy 1000 shares at 50.5 and a limit order to sell 1000 shares at 50.2, the opening execution would occur at 50.2 for 1000 shares. As another example, suppose the last .T sale is at 50 and Arca has (1) a limit order to buy 1500 shares at 50.5; (2) a limit order to sell 1000 shares at 50.25; and (3) a limit order to sell 300 at 50.5. The opening execution would occur at 50.5 for 1300 shares. The remaining 200 shares would be bid at 50.5 in the Opening Session.

Market Order Auction.[121] Beginning at 5:00 a.m. (Pacific Time), and various times thereafter as determined from time to time by the PCXE, the Indicative Match Price of the Market Order Auction and the volume available to trade at such price, would be published via electronic means as determined from time to time by the PCXE. If such a price does not exist (*i.e.*, there is an Imbalance of market orders), Arca would indicate via electronic means that an Indicative Match Price does not exist. In addition, beginning at 5:00 a.m. (Pacific Time), and various times thereafter as determined from time to time by the PCXE, the market order Imbalance associated with the Market Order Auction, if any, would be published via electronic means as determined from time to time by the PCXE. If the difference between the Indicative Match Price and the closing price of the previous trading day's normal market hours, as determined by the Consolidated Tape, is equal to or greater than a pre-determined amount, as determined from time to time by the PCXE, Arca would assign a ''SIG'' designator to such Indicative Match Price and publish such designator via electronic means as determined from time to time by the PCXE.

For example, suppose Arca has the following orders: (1) market order to buy 5000 shares; (2) Auction-Only Limit Order to sell 1000 at 50; (3) limit order to sell 1000 at 50.50; and (4) limit order to sell 500 at 50.75. Arca would publish an Indicative Match Price of 50.75, a volume of 2500 shares and a buy Imbalance of 2500 shares.

As another example, suppose Arca has the following orders: (1) market order to buy 3000 shares; (2) market order to sell 1000; (3) limit order to sell 1000 at 41.00; and (4) limit order to sell 1000 at 41.25. Arca would publish an Indicative Match Price of 41.25 and a volume of 3000 shares and would not publish an Imbalance.[122]

Any Imbalance in the Market Order Auction could be reduced by new orders, entered on the side of the market opposite the Imbalance, pursuant to the following priority: (1) Market orders; (2) Limited Price Orders eligible for the Opening Session; (3) Limited Price Orders entered before 6:28 a.m. (Pacific Time); (4) Auction-Only Limit Orders; and (5) Cleanup Orders. Between 6:28 a.m. (Pacific Time) and the conclusion of the Market Order Auction, Limited Price Orders eligible for the Opening Session or the Core Trading Session could be cancelled, but market orders, Auction-Only Limit Orders and Cleanup Orders could not be cancelled. In addition, between 6:28 a.m. (Pacific Time) and the conclusion of the Market Order Auction, market orders and Auction-Only Limit Orders could not be entered on the same side as the Imbalance. Market orders and Auction-Only Limit Orders may could be entered on the opposite side of the Imbalance, however, any time before the Market Order Auction.[123]

Arca would determine the price of the Market Order Auction as follows: If there is no Imbalance, orders would be executed in the Market Order Auction at the Indicative Match Price as of 6:30 a.m. (Pacific Time). If an Imbalance exists, or if an equilibrium exists between buy market orders and sell market orders, as many buy market orders and sell market orders as possible would be matched, on a time priority basis, (1) at the midpoint of the NBBO at 6:30 a.m. (Pacific Time), in the case of exchange-listed securities for which the PCXE is not the primary market; or (2) at the midpoint of the NBBO at 6:30 a.m. (Pacific Time), in the case of Nasdaq securities, provided that the NBBO is not crossed; (3) at the midpoint of the first uncrossed NBBO after 6:30 a.m. (Pacific Time), in the case of Nasdaq securities in which the NBBO is crossed but the BBO is not crossed by the NBBO; (4) at the bid (offer) of the BBO that was crossed prior to 6:30 a.m. (Pacific Time), in the case of Nasdaq securities in which the BBO is crossed by a market participant; or (5) at the Indicative Match Price as of 6:30 a.m. (Pacific Time) in the case of those issues for which the PCXE is the primary market; if an equilibrium exists between buy and sell market orders, the match price would be the last Corporation sale price in the security regardless of the trading session, provided that, if the last Corporation sale price is inferior to the BBO, the match price would be the Corporation bid (offer). Such executions would be designated with a modifier to identify them as Market Order Auction trades. The market orders that are eligible for, but not executed in the Market Order Auction, would become eligible for execution in the Core Trading Session immediately upon conclusion of the Market Order Auction.[124]

The following examples clarify how the Market Order Auction works:

Example 1. Suppose Arca has the following orders: (1) Market order to buy 5000; (2) Opening Session active limit order to buy 1000 at 50; (3) Opening Session active limit order to sell 1000 at 50.5; (4) Core Session limit order to sell 500 at 50.25; (5) Auction Only Limit order to sell 3000 at 50.5 and; (6) One Market maker Cleanup Order for 2500 shares. The Market Order Auction would occur at 50.5 with the market order being executed against orders in the following manner: (1) 1000 executed against the Opening Session Limit sell order; (2) 500 executed against the Core Session limit order; (3) 3000 executed against the Auction Only Limit Order; and (4) 500 executed against the Cleanup Order.

Example 2. Suppose Arca has the following orders: (1) Market order to buy 5000; (2) Market order to sell 5000; and (3) NBBO at 6:30 is 50 to 50.5. The Market Order Auction would occur at 50.25 with the market buy order being

[120] *See* proposed PCXE Rule 7.35(b).

[121] *See* proposed PCXE Rule 7.35(c).

[122] *See* proposed PCXE Rule 7.35(c)(1).

[123] *See* proposed PCXE Rule 7.35(c)(2).

[124] *See* proposed PCXE Rule 7.35(c)(3).

executed against the market sell order at the mid-point of the spread.

Example 3. Suppose Arca has the following orders: (1) Market order to buy 5000; (2) Market order to sell 5000; and (3) NBBO at 6:30: 50.6 bid quoted at 6:29 and 50.5 offer quoted at 6:15. The Market Order Auction would occur at 50.55 with the market buy order being executed against the market sell order at the price of the most recent quote.

Example 4. Suppose Arca has the following orders for Nasdaq securities: (1) Market order to buy 5000; (2) Market order to sell 5000; (3) Opening Session active limit order to sell 1000 at 50.5; and (4) NBBO at 6:30: 50.6 bid quoted at 6:29 and 50.5 offer quoted at 6:15 (Arca). The Market Order Auction would occur at 50.5 with the market buy order being executed against the market sell order at the price of the Arca quote that has been locked crossed.

*Transition to Core Trading Session.* Limited Price Orders entered before 6:28 a.m. (Pacific Time) would participate in the Market Order Auction. Limited Price Orders designated for the Core Trading Session entered after 6:28 a.m. (Pacific Time) would become eligible for execution at 6:30 a.m. (Pacific Time) or at the conclusion of the Market Order Auction, whichever is later. Market orders entered after 6:28 a.m. (Pacific Time) and before 6:30 a.m. (Pacific Time), which are eligible for either the Market Order Auction or the Core Trading Session, would become eligible for execution at 6:30 a.m. (Pacific Time) or at the conclusion of the Market Order Auction, whichever is later, unless otherwise provided in proposed Rule 7.350(c)(2)(C). Stop Orders entered before or during the Opening Session become eligible for execution at 6:30 a.m. (Pacific Time) or at the conclusion of the Market Order Auction, whichever is later.[125]

viii. *Odd and Mixed Lots.* In addition to round lots, Users could also submit odd and mixed lots to Arca and, therefore, proposed PCXE Rule 7.38 describes the treatment of odd and mixed lots on Arca. All odd lot orders submitted by Users to Arca would have to be market orders or limit orders, where such orders are subject to no additional conditions. In other words, odd lot orders could not be Working Orders, Directed Orders, Directed Fills, Tracking Orders, or other similar orders. As an exception to this prohibition on conditional odd lot orders, Odd Lot Dealers could submit Odd Lot Tracking Orders. Mixed lot orders could be any order type supported by Arca.[126]

Round lot, mixed lot, and odd lot orders are treated in the same manner in Arca, except in the Tracking Order Process. The Tracking Order Process treats odd lot orders in a different manner from mixed lot and round lot orders, as discussed above.[127]

Finally, proposed PCXE Rule 7.38(c) states that the following actions related to odd lot orders would be considered conduct inconsistent with just and equitable principles: (1) combining odd lot orders given by different customers into a round lot order or orders unless specifically requested to do so by the customers giving the orders; (2) unbundling round lots for the purpose of entering odd lot limit orders in comparable amounts; (3) failing to aggregate odd lot orders into round lots when such orders are for the same account or for various accounts in which there is a common monetary interest; and (4) entering both buy and sell odd lot limit orders in the same stock before one of the orders is executed for the purpose of capturing the spread in the stock.[128]

ix. *Miscellaneous Trading Rules.* A. *Trading Units and Differentials.* The PCXE proposes to reduce the unit of trading in stocks from the current 100 shares to 1 share.[129] The PCXE also proposes to establish the minimum price variation for equity securities traded on Arca as 1/64 of $1.00 for those securities that are quoted in fractions and $0.01 for those equity securities that are quoted in decimals. However, at all times, the minimum price variation must would have to be consistent with the Decimalization Implementation Plan.[130] In addition, the PCXE proposes to make the Minimum Price Improvement Increment on Arca equal to $0.01 or 10% of the spread, whichever is more.[131]

B. *Firm Orders and Quotes.* The proposed rules require that ETP Holders submit firm quotes and orders to Arca. Proposed PCXE Rule 7.17(a) states no ETP Holder could submit to the PCXE an order (including Q Orders) to buy from or sell to any person any security at a stated price and/or size unless such ETP Holder is prepared to, and, upon submission of an appropriate contra-side order, does, purchase or sell, as the case may be, at such price and/or size and under such conditions as are stated at the time of submission of such order to buy or sell. Additionally, proposed PCXE Rule 7.17(b) requires that all bids and all offers be made in accordance with the provisions of Rule 11Ac1–1 under the Act,[132] governing the dissemination of quotations for reported securities.

C. *Trading Halts and Suspensions.* The PCXE guidelines for trading halts and suspensions are set forth in proposed PCXE Rules 7.12 and 7.13. PCXE proposes to keep current PCXE Rule 7.47, entitled ''Trading Halts Due to Extraordinary Market Volatility,'' renumbered as proposed PCXE Rule 7.12. In addition, proposed PCXE Rule 7.13 regarding trading suspensions states that, except as otherwise stated in the proposed rules, the Chair of the Board or the President, or the officer designee of the Chair or the President, would have the power to suspend trading in any and all securities traded on the PCXE whenever in his or her opinion such suspension would be in the public interest. No such action would continue longer than a period of two days, or as soon thereafter as a quorum of Directors can be assembled, unless the Board approves the continuation of such suspension.[133]

D. *Clearly Erroneous Policy.* Given the change from a manual to an electronic trading environment, the PCXE proposes to adopt a rule regarding clearly erroneous submissions to Arca.[134] Proposed PCXE Rule 7.11 would allow an ETP Holder that receives an execution on an order that was submitted erroneously to the PCXE for its own or customer account to request that the PCXE review the transaction. Such a request for review could be made via telephone and in writing via facsimile or e-mail. The telephonic request should be submitted immediately and the written request should be submitted within fifteen (15) minutes of the time the trade in question was executed. Once the request has been received, an officer of the PCXE designated by the President would review the transaction under dispute and determine whether it is clearly erroneous, with a view toward maintaining a fair and orderly market and the protection of investors and the public interest. For the purposes of proposed PCXE Rule 7.11, the terms of a transaction executed on the PCXE are ''clearly erroneous'' when there is an obvious error in any term, such as price,

[125] *See* proposed PCXE Rule 7.35(e).

[126] *See* proposed PCXE Rule 7.38(a).

[127] *See* proposed PCXE Rule 7.38(b). For a discussion of the Tracking Order Process, *see* Section 2(c)(iv).

[128] *See* proposed PCXE Rule 7.38(c).

[129] *See* proposed PCXE Rule 7.5.

[130] *See* proposed PCXE Rule 7.6(a), Commentary .05.

[131] *See* proposed PCXE Rule 7.6(a), Commentary .06.

[132] 17 CFR 240.11Ac1–1.

[133] Proposed PCXE Rule 7.13 would replace existing PCXE Rule 7.46, entitled ''Trading Halts and Suspensions.''

[134] *See* proposed PCXE Rule 7.11.

number of shares or other unit of trading, or identification of the security. Each party to the transaction would provide, on a timely basis, any supporting written information as could be reasonably requested by the designated officer to aid resolution of the matter.

Unless both parties (or party, in the case of a cross) to the disputed transaction agree to withdraw the initial written request for review, the transaction under dispute would be reviewed, and a determination would be rendered by the designated PCXE officer. If the officer determines that the transaction is not clearly erroneous, the officer would decline to take any action in connection with the completed trade. In the event that the officer determines that the transaction in dispute is clearly erroneous, the officer would declare the transaction null and void or modify one or more of the terms of the transaction to achieve an equitable rectification of the error that would place the parties in the same position, or as close as possible to the same position that they would have been in, had the error not occurred. The officer would promptly notify the parties of the determination reached and would issue a written resolution of the matter. The ETP Holder aggrieved by the officer's determination could appeal such determination in accordance with the provisions of proposed PCXE Rule 10.13.

In the event of any disruption or a malfunction in the use or operation of any electronic communications and trading facilities of the PCXE, the Chief Executive Officer or the President could declare a transaction arising out of the use or operation of such facilities during the period of such disruption or malfunction null and void or modify the terms of these transactions. Absent extraordinary circumstances, any such action of the Chief Executive Officer or President would be taken within thirty (30) minutes of detection of the erroneous transaction. Each ETP Holder involved in the transaction would be notified as soon as practicable, and the ETP Holder aggrieved by the action could appeal such action in accordance with the provisions of proposed PCXE Rule 10.13.

E. *Trading Ahead of Customer Limit Orders.* PCXE proposes to adopt a rule prohibiting ETP Holders from trading ahead of customer limit orders.[135] Proposed PCXE Rule 6.16 states that:

No ETP Holder may accept and hold an unexecuted limit order from its customer (whether its own customer or a customer of another ETP Holder) and continue to trade on the Corporation the subject security for its own account at prices that would satisfy the customer's limit order, without executing that limit order; provided, however, that an ETP Holder may negotiate specific terms and conditions applicable to the acceptance of limit orders only with respect to limit orders that are:

(1) For institutional customer accounts, where such account is defined as the account of:

(A) A bank, savings and loan association, insurance company, or registered investment company;

(B) An investment adviser registered either with the Securities and Exchange Commission under Section 203 of the Investment Advisers Act of 1940[136] or with a state securities commission (or agency or office performing like functions); or

(C) Any other entity (whether a natural person, corporation, partnership, trust or otherwise) with total assets of at least $50 million; or

(2) 10,000 shares or more, unless such orders are less than $100,000 in value.

Proposed PCXE Rule 6.16 would not apply to a customer limit order if the limit order is marketable at the time it is received by the ETP Holder; provided, however, if the limit order were marketable when received and then becomes non-marketable, the limit order would be subject to the Rule's prohibitions. Nothing in proposed PCXE Rule 6.16 would require ETP Holders to accept limit orders from customers. For the purposes of proposed PCXE Rule 6.16 an ETP Holder that controls or is controlled by another ETP Holder would be considered a single entity, absent appropriate information barriers. Thus, if a customer's limit order is accepted by one affiliate and forwarded to another affiliate for execution, the firms would be considered a single entity.

d. *Trade Execution and Reporting.* Under the proposal, executions occurring as a result of orders matched against the Arca Book would be reported by the PCXE to an appropriate consolidated transaction reporting system. Executions occurring as a result of orders routed away from Arca would be reported to an appropriate consolidated transaction reporting system by the relevant reporting market center. Arca would promptly notify Users of all executions of their orders as soon as the executions take place.[137]

e. *Clearance and Settlement* Under the proposed rule for clearance and settlement, each ETP Holder would have to be a clearing firm, clear transactions on the PCXE through a clearing firm, or clear transactions through an entity duly authorized by the PCXE.[138] Pursuant to proposed PCXE Rule 7.14, an ETP Holder would have to must give up the name of the clearing firm through whom each transaction on the PCXE would be cleared. If the identity of the clearing firm subsequently changed, the ETP Holder would have to report such change to the PCXE at least five (5) business days in advance.[139]

Pursuant to proposed PCXE Rule 7.14, each clearing firm must would have to be admitted to the PCXE as an ETP Holder, by meeting the qualification requirements for becoming an ETP Holder. However, if a clearing firm becomes an ETP Holder for the sole purpose of acting as a clearing firm on the PCXE, the clearing firm would not have to pay the regular ETP Holder fee. As a general matter, the clearing firm would be responsible for the clearance of the transactions effected by each ETP Holder which gives up such clearing firm's name pursuant to a letter of authorization, letter of guarantee or other authorization given by such clearing firm to such ETP Holder, which authorization would be submitted to the PCXE.[140]

Notwithstanding any other provisions contained in proposed PCXE the Rule 7.14 to the contrary, the Board could extend or postpone the time of the delivery of a transaction on the PCXE whenever, in its opinion, such action is called for by the public interest, by just and equitable principles of trade or by the need to meet unusual conditions. In such case, delivery would be effected at such time, place and manner as directed by the Board of Directors.[141]

The details of each transaction executed within Arca would be automatically processed for clearance and settlement on a locked-in basis. ETP Holders would not have to separately report their transactions to the PCXE for trade comparison purposes. All transactions effected by a Sponsored Participant would be cleared and settled, using the relevant Sponsoring ETP Holder's mnemonic or its clearing firm's mnemonic, as applicable.[142]

f. *Interaction with PCXE Application of the OptiMark System.* The PCXE Application of the OptiMark System would continue to operate as it does now. In addition, however, the

[135] *See* proposed PCXE Rule 6.16, which would replace current PCXE Rule 6.7.

[136] 15 U.S.C. 80b–3.

[137] *See* proposed PCXE Rule 7.40.

[138] *See* proposed PCXE Rule 7.14(a).

[139] *See* proposed PCXE Rule 7.14(b).

[140] *See* proposed PCXE Rule 7.14(c).

[141] *See* proposed PCXE Rule 7.14(d).

[142] *See* proposed PCXE Rule 7.41.

information from the Arca Book, but not the orders themselves, would be submitted to OptiMark at relevant times during Core Trading Hours in the form of Arca Profiles.[143] Arca Profiles are defined as ''the satisfaction profile generated by the OptiMark System from processing the Arca Book.''[144] Any Order generated from a Cycle representing matches involving Arca Profiles would be routed as an Immediate-or-Cancel Order to Arca for execution against the relevant Arca limit order. If the relevant limit order is no longer available on Arca, the Order generated from the Cycle would be automatically cancelled.[145]

g. *Limitation of Liability.* The PCXE proposes to limit the liability of the PCXE, Archipelago Exchange, L.L.C., and their respective affiliates with regard to Arca.[146] Specifically, proposed PCXE Rule 7.42 states that:

Neither the PCXE, any affiliate of the PCXE, Archipelago Exchange, L.L.C., nor any affiliate of the Archipelago Exchange, L.L.C., would be liable to Users for any loss, damages, claim or expense:

(1) growing out of the use or enjoyment of Arca; or

(2) arising from or occasioned by any inaccuracy, error or delay in, or omission of or from the collection, calculation, compilation, maintenance, reporting or dissemination of any information derived from Arca, resulting either from any act or omission by the PCXE, any affiliate of the PCXE, Archipelago Exchange, L.L.C., or any affiliate of Archipelago Exchange, L.L.C., or from any act, condition or cause beyond the reasonable control of the PCXE, any affiliate of the PCXE, Archipelago Exchange, L.L.C., or any affiliate of Archipelago Exchange, L.L.C., including, but not limited to, flood, extraordinary weather conditions, earthquake or other acts of God, fire, war, insurrection, riot, labor dispute, accident, action of government, communications or power failure, or equipment or software malfunction.

In addition, proposed PCXE Rule 7.42(b) provides that ''[e]ach ETP Holder expressly agrees, in consideration of the issuance of the ETP, to release and discharge the Corporation, any affiliate of the Corporation, Archipelago Exchange, L.L.C., and any affiliate of the Archipelago Exchange, L.L.C., and any officers, directors, employees and agents thereof, of and from all claims and damages arising from their acceptance and use of Archipelago Exchange.''

Furthermore, proposed PCXE Rule 7.42(c) states that ''[n]either the Corporation, any affiliate of the Corporation, Archipelago Exchange, L.L.C., nor any affiliate of the Archipelago Exchange, L.L.C., makes any express or implied warranties or conditions to Users as to results that any person or party may obtain from Archipelago Exchange for trading or for any other purpose, and all warranties of merchantability or fitness for a particular purpose or use, title, and non-infringement with respect to Arca are hereby disclaimed.''

3. *PCXE Membership Structure: Equity Trading Permits.* With the introduction of Arca, the PCXE intends to simplify its membership rules to reflect more accurately the change from a traditional floor trading environment. The PCXE would only have one category of members, as that term is defined in the Section 3 of the Act:[147] ETP Holders.[148] Any registered broker-dealer who wishes to be a member once Arca begins operation would have to must become an ETP Holder by purchasing an Equity Trading Permit (''ETP'')[149] from the PCXE.[150] By becoming an ETP Holder, the registered broker-dealer may effect approved securities transactions on the PCXE's two trading facilities, Arca and the PCXE Application of OptiMark. As is the case under the current PCXE Rules, an ETP Holder: (1) Must agree to be bound by the Certificate of Incorporation, Bylaws and Rules of the PCXE, and by all applicable rules and regulations of the SEC; (2) haves no ownership or distribution rights in the PCXE; and (3) have limited voting rights to nominate two Directors to the PCXE's Board of Directors and one Governor to the Board of Governors of the PCX Parent.

With the elimination of the trading floor and the introduction of remote electronic trading on the PCXE, two aspects of the current PCXE Rules relating to memberships become obsolete. First, under the existing PCXE Rules, an ETP Firm must have a natural person, a Nominee, to act as its representative on the PCXE. Because an ETP Firm no longer needs a natural person to act on its behalf on the floor, the concept of a Nominee of the ETP Firm has been eliminated.[151] Therefore, an ETP Firm would be re-designated as an ETP Holder.[152] In addition, the definition of an ETP Holder would no longer be defined as a ''natural person'' or ''Nominee,'' but rather a ''sole proprietorship, partnership, corporation, limited liability company or other organization'' that has been issued an ETP.[153]

Second, an important difference between an Equity Automated Systems Access Permits (''ASAP'') and an ETP today is that an ETP allows its holder to transact business on the floor of the PCXE, whereas the Equity ASAP does not.[154] Because the PCXE proposes to eliminate the floor, there will no longer be a need for two separate membership categories. Therefore, Equity ASAP Holders would be re-designated as ETP Holders and the rules related to Equity ASAP Holders would be deleted.[155]

4. *Applicability of Existing PCXE Rules.* In addition to the new proposed rules set forth above, the PCXE proposes to delete the following existing PCXE Rules, which relate primarily to floor trading and specialists or are otherwise inapplicable to the new trading environment: PCXE Rule 1.1(g) (Floor Trader); PCXE Rule 1.1(o) (Non-Resident Organization); PCXE Rule 2.12(a); PCXE Rule 2.24 (Trading Floor Employees of ETP Firms); PCXE Rule 4.1(b–c) (Minimum Net Capital for Specialist Firms); PCXE Rule 4.2 (Specialist Post Capital); PCXE Rule 6.8 (Discretionary Transactions); PCXE Rule 6.16(b) (Miscellaneous Prohibitions); PCXE Rule 7.1(a)(6) (Freely Transferable Security); PCXE Rule 7.1(a)(8) (Local Security); PCXE Rule 7.1(a)(9) (Dually

[143] *See* proposed PCXE Rules 7.39(a) and 7.47(b). Proposed PCXE Rule 7.47(b) replaces PCXE Rule 7.73(b) which described a specialist's obligations regarding the OptiMark System.

[144] *See* proposed PCXE Rule 7.45(a)(6).

[145] *See* proposed PCXE Rules 7.39(b), 7.45(a)(5) and 7.48(b).

[146] *See* proposed PCXE Rule 7.42.

[147] 15 U.S.C. 78c.

[148] *See* proposed PCXE Rule 1.1(n) (definition of ''ETP Holder'').

[149] *See* proposed PCXE Rule 1.1(m) (definition of ''ETP'').

[150] *See* proposed PCXE Rule 2.100 (Any PCX member, as defined in the PCX Parent Rule 1.1, or Equity ASAP Holder that wishes to continue to effect securities transactions without interruption on the PCXE's Trading Facilities must obtain an ETP prior to the first day Arca becomes operational. If the PCX member or Equity ASAP Holder fails to obtain an ETP prior to that date, the PCX member or Equity ASAP Holder will not be permitted to effect securities transactions on the PCXE's Trading Facilities until such time as it does obtain an ETP).

[151] PCXE proposes to delete the following Nominee-related PCXE Rules or sections thereof: PCXE Rule 1.1(n) (definition of ''Nominee''); PCXE Rule 2.1(b)(2) (''Securities Business''); PCXE Rule 2.2 (''Qualifications and Application of Individual Applicants''); PCXE Rule 2.3(b)–(d) (''Qualifications of Firm Applicants''); PCXE Rule 2.11(b)–(c) (''Sole Proprietors''); PCXE Rule 2.21(c) (''Termination of Trading Privileges''); and PCXE Rule 2.22(c) (''Limited Transferability'').

[152] PCXE proposes to delete PCXE Rule 1.1(m) (''ETP Firm'').

[153] *Compare* PCXE Rule 1.1(l) (''ETP Holder'') with proposed PCXE Rule 1.1(n) (''ETP Holder'').

[154] *Compare* PCXE Rule 1.1(i) (''Equity ASAP'') with proposed PCXE Rule 1.1(m) (''ETP'').

[155] PCXE proposes to delete the following Equity ASAP-related: PCXE Rule 1.1(i) (definition of ''Equity ASAP''); PCXE Rule 1.1(j) (definition of ''Equity ASAP Holder'') and Rule 2.16 (Terms and Conditions Relating to Equity ASAPs).

Traded Security); PCXE Rule 7.2, Comm. 01; PCXE Rule 7.4 (Types of Orders); PCXE Rule 7.5 (Authority of Trading Officials); PCXE Rule 7.8 (Trading Floor Standards); PCXE Rule 7.12 (Recognized Quotations); PCXE Rule 7.14 (Trading in ''When Issued/Distributed'' Securities); PCXE Rule 7.17 (Manner of Bidding and Offering); PCXE Rule 7.18 (Types of Bids or Offers); PCXE Rule 7.19 (Priority and Precedence of Bids and Offers); PCXE Rule 7.20 (Cabinet Dealings); PCXE Rule 7.21 (Error Accounts); PCXE Rule 7, Section 5 (ETP Holders Acting as Specialists); PCXE Rule 7, Section 6 (Specialists Acting as Odd-lot Dealers); PCXE Rule 7, Section 7 (Trading Practices and Procedures) (except for Rule 7.40—Short Sales, Rule 7.45—Stock Option Transactions and Rule 7.47—Trading Halts Due to Extraordinary Market Volatility); PCXE Rule 7, Section 8 (Contracts in Securities) (except for Rules 7.50 & 7.51—Definitions and General Provisions and Rule 7.53—Delivery of Securities); PCXE Rule 7.69 (Liability of Corporation Relating to Operation of ITS); PCXE Rule 7.70 (Pacific Computerized Order Access System (''P/COAST'')); PCXE Rule 10.12(g) (Floor Citations); PCXE Rule 10.13 (Summary Sanction Procedures); and PCXE Rule 12.1(a); PCXE Equity Floor Procedure Advices.

Furthermore, minor conforming changes have been made throughout the existing PCXE Rules to conform the proposed rules to the new terminology associated with Arca. For example, PCXE we have deleted references to, among other things, Equity ASAP Holders, ETP Firms and the trading floor throughout the PCXE Rules. Finally, any other existing PCXE rules which have not been deleted or amended as specified remain in effect as they are currently.

The Exchange believes the proposed rule change is consistent with Section 6(b) of the Act,[156] in general, and furthers the objectives of Section 6(b)(5),[157] in particular, in that it is designed to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and to remove impediments and perfect the mechanisms of a free and open market and to protect investors and the public interest.

[156] 15 U.S.C. 78f(b).

[157] 15 U.S.C. 78f(b)(5).

**B. Self-Regulatory Organization's Statement on Burden on Competition**

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. In fact, PCX and PCXE believe that the introduction of a fully electronic trading venue will serve to enhance competition.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

Written comments on the proposed rule change were neither solicited nor received.

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding, or (ii) as to which the self-regulatory organization consents, the Commission will—

(A) by order approve such proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

**IV. SEC's Solicitation of Comments**

The PCX proposes that Arca become a facility of PCXE that would replace the PCX's traditional floor-based auction market for equity securities. The PCX's proposal presents several novel issues with respect to the operation of a national securities exchange. In addition to requesting comments concerning the overall proposal, the Commission requests comments addressed to the following specific items: (1) Discretionary Orders, (2) the minimum price improvement level, (3) customer order priority, and (4) the opening and late trading sessions.

First, the PCX's proposal would enable users to submit ''Discretionary Orders'' for execution on Arca. Proposed PCXE Rule 7.31(h)(2) defines a Discretionary Order as ''an order to buy or sell a stated amount of a security at a specified, undisplayed price (the 'discretionary price'), in addition to at a specified, displayed price.'' For example, an incoming marketable limit order may be matched for execution against the displayed price of a Discretionary Order. An otherwise non-marketable incoming limit order, however, may trigger an execution against a Discretionary Order at a price within the undisplayed, discretionary price range of the Discretionary Order. The PCX believes that Discretionary Orders will help replicate the dynamic of a traditional floor-based auction market, in particular the trading discretion of a floor broker.[158]

The Commission notes that, pursuant to Rule 11Ac1–1 under the Act [159] (the ''Quote Rule''), each responsible broker or dealer is required promptly to communicate to its exchange or association, pursuant to the procedures established by that exchange or association, its best bids, offers, and quotation sizes for any subject security. The Commission seeks general comments on the proposed availability of Discretionary Orders on Arca in the light of the Quote Rule. In addition, the Commission seeks specific comments on the following:

- What are the potential advantages or disadvantages of Discretionary Orders with regard to:
  (a) price discovery;
  (b) market transparency; and
  (c) transaction costs for investors?
- Should a distinction be made between Discretionary Orders placed on behalf of public customers and Discretionary Orders placed by PCXE market makers trading for their own accounts?

Second, proposed PCXE Rule 7.6(a), Commentary .06, would establish a minimum price improvement increment of $.01 or 10% of the spread, whichever is greater, with regard to the execution of Directed Orders [160] and Cross Orders.[161] Accordingly, under the PCX's proposal, the minimum price improvement increment for Directed Orders and Cross Orders would not be less than $.01. The Commission notes that, under the PCX's proposal, the minimum price variation for equity securities traded on Arca would be 1/64 of $1.00 for securities that are quoted in fractions, and $.01 for equity securities that are quoted in decimals.[162] The Commission seeks comment on whether the PCX's proposed minimum price

[158] Telephone conversation between Peter Bloom, Director of Regulatory Projects, PCX, and Patrick Joyce, Special Counsel, Commission, November 16, 2000.

[159] 17 CFR 240.11Ac1–1.

[160] *See* proposed PCXE Rules 7.31(i) (definition of ''Directed Order'') and (j) (definition of ''Directed Fill''). The Commission notes that only executions of Directed Orders against Directed Fills would be subject to the minimum price improvement increment. *See* proposed PCXE Rule 7.37.

[161] *See* proposed PCXE Rule 7.31(s) (definition of ''Cross Order'').

[162] The proposed rule further specifies that the minimum price variation shall be consistent with the Decimal Implementation Plan. *See* proposed PCXE Rule 7.6(a), Commentary .05.

improvement interval that may be greater than the minimum price variation for internalized or otherwise preferenced orders is appropriate.[163]

Third, historically, securities exchanges have adopted rules that give priority to the agency orders of public customers over the proprietary trades of member firms, in recognition that traders on the floor of an exchange generally possess an informational advantage over public customers. Because the PCX seeks to establish Arca as a purely electronic facility that would not employ a trading floor, the PCX does not believe that its users would possess any informational advantage over public customers who submit agency orders for execution on the Arca Book. Accordingly, the Arca Book would not give precedence to agency orders over principal orders, but rather would rank orders based upon price/time priority.[164] The Commission seeks comment on the order execution priority of the Arca Book, including whether market makers' orders should have priority equal to orders of the same type placed by public customers.

Fourth, and finally, the PCX proposes to operate three distinct trading sessions: an opening session, a core trading session, and a late trading session. The opening session, which would begin at 5:00 a.m. (Pacific Time) and run until the start of the core trading session, would include an Opening Auction at the start of the opening session and a Market Order Auction that would begin at 6:30 a.m. (Pacific Time). The core trading session for each security would begin immediately after conclusion of the Market Order Auction for such security. The Commission seeks comments about the opening session, particularly the opening procedures and the transition from the opening session to the core trading session.

The PCX also proposes to operate a late trading session that would begin when the core trading session ends and conclude at 5:00 p.m. (Pacific Time), contingent upon arrangements with the Consolidated Tape Association. Currently, after-hours trading sessions for listed securities end at 3:30 p.m. (Pacific Time). The Commission invites comments about the PCX's proposed late trading session, including the possible extension of the late trading session to 5:00 p.m. (Pacific Time).

The Commission invites interested persons to submit written data, views, and arguments concerning the proposed rule change, including whether it is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the PCX. All submissions should refer to File No. SR–PCX–00–25 and should be submitted by January 5, 2001.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[165]

**Margaret H. McFarland,**

*Deputy Secretary.*

## Appendix A—Rules of PCX Equities, Inc.

**Rule 1**

**Definitions**

Rule 1.1 Whenever and wherever used herein, unless the context requires otherwise, the following terms shall be deemed to have the meanings indicated:

*Arca Book*

*(a) The term ''Arca Book'' shall refer to the Archipelago Exchange's electronic file of orders, which contains all the User's orders in each of the Directed Order, Display Order, Working Order and Tracking Order Processes.*

Affiliate

*(b)*[(a)] An ''affiliate'' of, or person ''affiliated['']*''* with*''* a specific person, is a person that directly, or indirectly through one or more intermediaries, controls or is controlled by, or is under common control with, the person specified.

Allied Person

*(c)*[(b)]The term ''Allied Person'' shall refer to an individual, who is:

(1) an employee of an ETP [Firm or Equity ASAP] Holder who controls such firm, or

(2) an employee of an ETP [Firm or Equity ASAP] Holder corporation who is a director or a principal executive officer of such corporation, or

(3) an employee of an ETP [Firm or Equity ASAP] Holder limited liability company who is a manager or a principal executive officer of such limited liability company, or

(4) a general partner in an ETP [Firm or Equity ASAP] Holder partnership; and who has been approved by the Corporation as an Allied Person.

Approved Person

*(d)*[(c)]The term ''Approved Person'' shall refer to a person who is not an ETP Holder, nor an employee or an Allied Person of an [ETP Firm or Equity ASAP] Holder, and who:

(1) is a director of an ETP [Firm or Equity ASAP] Holder, or

(2) controls an ETP [Firm or Equity ASAP] Holder, or

(3) beneficially owns, directly or indirectly, 5% or more of the outstanding equity securities of an ETP [Firm or Equity ASAP] Holder, or

(4) has contributed 5% or more of the partnership capital, and who has been approved by the Corporation as an Approved Person.

*Archipelago Exchange*

*(e) The term ''Archipelago Exchange'' shall mean the electronic securities communications and trading facility designated by the Board of Directors through which orders of Users are consolidated for execution and/or display.*

Associated Person

*(f)*[(d)]The term ''Associated Person'' shall refer to a person who is a partner, officer, director, member of a limited liability company, trustee of a business trust, employee of an ETP [Firm or Equity ASAP] Holder or any person directly or indirectly controlling, controlled by or under common control with an ETP [Firm or Equity ASAP] Holder.

*Authorized Trader*

*(g) The term ''Authorized Trader'' or ''AT'' shall mean a person who may submit orders to the Corporation's Trading Facilities on behalf of his or her ETP Holder or Sponsored Participant.*

*BBO*

*(h)* The term ''BBO'' shall refer to the best bid or offer on the Archipelago Exchange.

Control

*(i)*[(e)]—No change.

*Core Trading Hours*

*(j)* The term ''Core Trading Hours'' shall mean the hours of 6:30 am through 1:00 pm (Pacific Time) or such other hours as may be determined by the Corporation from time to time.

Corporation

*(k)*[(f)] The term ''Corporation'' shall mean PCX Equities, Inc., as described in the *PCX Equities, Inc.'s* [Corporation's] Certificate of Incorporation and [the PCX Equities, Inc.] Bylaws.

*Eligible Security*

*(l)* The term ''Eligible Security'' shall mean any equity security (i) either listed on the

[163] The Commission notes that no other registered national securities exchange has such a requirement, but that the NASD requires a registered Nasdaq market maker to improve the price of a customer order that it holds by at least 1/16 or one-half of the spread, whichever *is less.*

[164] The Commission notes that proposed PCXE Rule 6.16 would prohibit a market maker from trading for its proprietary account on Arca ahead of its own customer's limit order at the same price.

[165] 17 CFR 200.30–3(a)(12).

Corporation or traded on the Corporation pursuant to a grant of unlisted trading privileges under Section 12(f) of the Exchange Act and (ii) specified by the Corporation to be traded on the Archipelago Exchange, PCXE Application or other facility, as the case may be.

[Floor Trader]

[(g)—Deleted.]

[Equity ASAP]

[(i)—Deleted.]

[Equity ASAP Holder]

[(j)—Deleted.]

ETP

*(m)*[(k)]—No change.

ETP Holder

*(n)*[(1)] The term ''ETP Holder'' shall refer to a [natural person, in good standing, who] *sole proprietorship, partnership, corporation, limited liability company or other organization in good standing that* has been issued an ETP[, or has been named as a Nominee]. An ETP Holder must be a registered broker or dealer pursuant to Section 15 of the Securities Exchange Act of 1934[, or a nominee or an associated person of a registered broker or dealer that has been approved by the Corporation to conduct business on the Corporation's trading facilities]. An ETP Holder shall agree to be bound by the Certificate of Incorporation, Bylaws and Rules of the Corporation, and by all applicable rules and regulations of the Securities and Exchange Commission.

An ETP Holder shall not have ownership or distribution rights in the Corporation. An ETP Holder will have limited voting rights to nominate two *Directors* [members] to the Corporation's Board of Directors and one *Governor* [member] to the Board of Governors of the PCX Parent. An ETP Holder will have status as a ''member'' of the PCX Parent as that term is defined in Section 3 of the Securities Exchange Act of 1934, as amended.

[ETP Firm]

[(m)—Deleted.]

*General Authorized Trader*

*(o) The term ''General Authorized Trader'' or ''GAT'' shall mean an authorized trader who performs only non-market making activities on behalf of an ETP Holder.*

Good Standing

*(p)*[(h)] The term ''good standing'' shall refer to an ETP Holder[, Equity ASAP Holder or ETP Firm] who is not in violation of any of its agreements with the Corporation or any of the provisions of the Rules or Bylaws of the Corporation, and who has maintained all of the conditions for approval of the ETP.

*Imbalance*

*(q) For the purposes of the Opening Auction and the Market Order Auction, as the case may be, the term ''Imbalance'' shall mean the number of buy or sell orders that can not be matched with other orders at the Indicative Match Price at any given time.*

*Indicative Match Price*

*(r) For the purposes of the Opening Auction or the Market Order Auction, as the case may be, the term ''Indicative Match Price'' shall mean for each security (1) the price at which the maximum volume of orders are executable; or (2) if there are two or more prices at which the maximum volume of orders are executable, the price that is closest to the closing price of the previous trading day's normal market hours, as determined by the Consolidated Tape.*

*Limited Price Order*

*(s) The term ''Limited Price Order'' shall mean any order with a specified price or prices (e.g., limit orders and Working Orders), other than Stop Orders.*

*Marketable*

*(t) The term ''Marketable'' shall mean, for a Limited Price Order, the price matches or crosses the NBBO on the other side of the market. Market orders are always considered marketable.*

*Market Maker*

*(u) The term ''Market Maker'' shall refer to an ETP Holder that acts as a Market Maker pursuant to Rule 7.*

*Market Maker Authorized Trader*

*(v) The term ''Market Maker Authorized Trader'' or ''MMAT'' shall mean an authorized trader who performs market making activities pursuant to Rule 7 on behalf of a Market Maker.*

*Market Participant*

*(w) For the purposes of Rule 7, the term ''Market Participant'' shall include electronic communications networks (''ECN''), dealer-specialists registered with a national securities exchange, and market makers registered with a national securities association.*

*NBBO*

*(x) The term ''NBBO'' shall refer to the national best bid or offer.*

[Nominee]

[(n)—Deleted.]

[Non-Resident Organization]

[(o)—Deleted.]

*Notice of Consent*

*(y) The term ''Notice of Consent'' shall mean a written statement provided to the Corporation by a Sponsoring ETP Holder by which the Sponsoring ETP Holder acknowledges responsibility for the orders, executions and actions of its Sponsored Participant(s).*

*NOW Recipient*

*(z) The term ''NOW Recipient'' shall mean any exchange, ECN or other broker-dealer (1) with which the Archipelago Exchange maintains an electronic linkage, which includes ITS, and (2) which provides instantaneous responses to NOW Orders routed from the Archipelago Exchange. The Corporation shall designate from time to time those exchanges, ECNs or other broker-dealers that qualify as NOW Recipients.*

*Odd Lot Dealer*

*(aa) The term ''Odd Lot Dealer'' shall refer to a Market Maker that is registered as an Odd Lot Dealer as described in Rule 7.25.*

Parent

*(bb)* [(p)]—A ''parent'' of a specified person or organization is an affiliate controlling such person or organization directly[,] or indirectly through one or more intermediaries.

*Participant*

*(cc) The term ''Participant'' shall mean any ETP Holder, Allied Person, partner, approved person, stockholder associate, registered employee or other full-fime employee of an ETP Holder.*

PCX Parent

*(dd)* [(q)] The term ''PCX Parent'' shall refer to the Pacific Exchange, Inc., a Delaware corporation and national securities exchange as the term is defined *in* [by] Section 6 of the Securities Exchange Act of 1934, as amended. The Pacific Exchange, Inc. is the sole shareholder of the Corporation.

Person

*(ee)* [(r)]—No change.

*Registered Employee*

*(ff) The term ''Registered Employee'' shall mean any person soliciting or conducting business in securities on behalf of an ETP Holder.*

*Routing Agreement*

*(gg) The term ''Routing Agreement'' shall mean the form of Agreement between an ETP Holder and the broker-dealer affiliate of Archipelago Exchange, L.L.C., under which the broker-dealer affiliate of Archipelago Exchange, L.L.C., agrees to act as agent for routing orders of the ETP Holder and the ETP Holder's Sponsored Participants entered into the Archipelago Exchange to other market centers or broker-dealers for execution, whenever such routing is required.*

*Security*

*(hh) The terms ''security'' and ''securities'' mean any security as defined in Rule 3(a)(10) under the Securities Exchange Act of 1934.*

Self-Regulatory Organization (''SRO'')

*(ii)* [(s)]—No change.

*Sponsored Participant*

*(jj) The term ''Sponsored Participant'' shall mean a person which has entered into a sponsorship arrangement with a Sponsoring ETP Holder pursuant to Rule 7.29.*

*Sponsoring ETP Holder*

*(kk) The term ''Sponsoring ETP Holder'' shall mean a broker-dealer that has been issued an ETP by the Corporation who has been designated by a Sponsored Participant to execute, clear and settle transactions resulting from the Archipelago Exchange. The Sponsoring ETP Holder shall be either (i) a clearing firm with membership in a clearing agency registered with the Commission that maintains facilities through which transactions may be cleared or (ii) a correspondent firm with a clearing arrangement with any such clearing firm.*

*Sponsorship Provisions*

*(ll) The term ''Sponsorship Provisions'' shall mean the provisions sent forth in Rule 7.29(b)(2). For a Sponsored Participant to obtain authorized access to the Archipelago Exchange, the Sponsored Participant and its Sponsoring ETP Holder must enter into an agreement which incorporates the Sponsorship Provisions.*

*Stockholder Associate*

*(mm) The term ''Stockholder Associate'' means a person who is the employee of an ETP Holder, who is actively engaged in its business and devotes the major portion of his or her time thereto, who is not an ETP Holder or Allied Person, and who, as a holder of equity securities, has been approved by the Corporation as a stockholder associate.*

Trading Facilities

*(nn)* [(t)] The term ''Trading Facilities'' *or ''Facilities''* shall refer to [the Corporation's Los Angeles and San Francisco trading floors, office space] *any and all electronic or automatic trading systems* provided by the Corporation to ETP Holders [and ETP Firms in connection with their floor trading activities, and any and all electronic or automatic systems access programs provided by the Corporation to ETP Holders, ETP Firms and Equity ASAP Holders].

*User*

*(oo) The term ''User'' shall mean any ETP Holder or Sponsored Participant who is authorized to obtain access to the Archipelago Exchange pursuant to Rule 7.29.*

*User Agreement*

*(pp) The term ''User Agreement'' shall mean an appropriate subscription agreement entered into by the User with Archipelago Exchange, L.L.C.*

Wholly Owned Subsidiary

*(qq)* [(u)] The term ''wholly owned subsidiary'' *shall* mean[s] a subsidiary substantially all of whose outstanding voting securities are owned by its parent and/or the parent's other wholly owned subsidiaries.

**Rule 2**

**Equity Trading Permits [and Equity ASAPs]**

Securities Business

Rule 2.1(a) Every ETP Holder[, ETP Firm and Equity ASAP Holder] shall have as its principal purpose the conduct of a securities business.

(b) An ETP Holder[, ETP Firm and Equity ASAP Holder] shall be deemed to have such a purpose if and so long as[:]

[(1)] the ETP Holder[, ETP Firm or Equity ASAP Holder, as the case may be,] has qualified and acts in respect of its business in an approved capacity pursuant to the Certificate of Incorporation, Bylaws, Rules and procedures of the Corporation; and all transactions are in compliance with Section 11(a) of the Securities Exchange Act of 1934 as amended and the Rules and regulations adopted thereunder[; or]

[(2) the ETP Holder is a general partner, executive officer or nominee of an ETP Firm who has conferred ETP trading privileges upon that ETP Firm].

(c) No ETP Holder[, ETP Firm or Equity ASAP Holder] shall utilize any scheme, device, arrangement, agreement or understanding designed to circumvent or avoid, by reciprocal means or in any other manner, the provisions of this Rule 2.1.

Qualifications [and Application of Individual Applicants] *of Applicants*

[Rule 2.2—Deleted.]

[Qualifications of Firm Applicants]

Rule [2.3.] *2.2*

[(a)] An ETP [or Equity ASAP] may be held by an entity which is a registered broker or dealer pursuant to Section 15 of the Securities Exchange Act of 1934, as amended, including sole proprietors, partnerships, limited liability partnerships, corporations, and limited liability companies. A corporation, limited liability company, or limited liability partnership must be organized under the laws of one of the states of the United States or under other laws as the Corporation's Board *of* Directors shall approve.

[(b)–(d)—Deleted.]

Application Procedures

Rule [2.4.] *2.3*

(a) Every [individual] *person* applying to become an ETP Holder[, every individual applying to become the Nominee of an ETP Firm, every entity upon whom an ETP Holder will confer trading privileges, and every entity applying to become an Equity ASAP Holder] shall complete an application on a form prescribed by the Corporation and shall file it with the Corporation. The application shall be filed with such application fees and such documents as may be required by the Corporation. Application fees are not transferable and not refundable.

(b) Within a reasonable period of time following receipt of an application for an ETP [or Equity ASAP], the name of the applicant[, and in the case of an entity, the individual in whose name the permit will be held,] shall be distributed to all ETP Holders and [Equity ASAP Holders and] shall be posted by the Corporation by publishing the name of each applicant in the Corporation's Weekly Bulletin for at least ten (10) calendar days prior to the approval or rejection of the application by the Corporation.

(c) Every [individual] applicant and[, in the case of applicant entities,] all persons associated with the [entity,] *applicant* may be investigated by the Corporation. The applicant shall file with the Corporation such additional documents as may be requested by the Corporation.

(d) Upon completion of the application process, the Corporation shall consider and then approve or reject the application, unless there is just cause for delay. [Individual] *Sole proprietor* applicants and persons associated with applicant entities may be required to appear in person before the Corporation. The Corporation may also require any ETP Holder[, Equity ASAP Holder] or person associated with an ETP [Firm or Equity ASAP] Holder who may possess information relevant to the applicant's suitability for holding an ETP [or Equity ASAP] to provide information or testimony.

(e) The Corporation shall approve an application if it finds that the applicant meets all of the qualifications for holding an ETP [or Equity ASAP]. The Corporation shall reject an application if it does not make such a finding or if it finds that, if the application were approved, the permit holder would be subject to suspension or expulsion under the provisions of the Bylaws, Rules or procedures of the Corporation or the rules, regulations and procedures promulgated under the Securities Exchange Act of 1934, as amended.

(f)—No change.

(g) In the event that an application is rejected by the Corporation, the applicant shall have an opportunity to be heard upon the specific grounds for the rejection, in accordance with the provisions of Rule 10. An applicant denied an ETP [or Equity ASAP] may challenge the denial by filing with the Corporate Secretary, a petition for review of the denial by the Corporation's Board Appeals Committee. Such petition shall be filed within thirty (30) calendar days of the date upon which the Corporation's decision was mailed to the applicant and shall be filed in accordance with the provisions of Rule [10.14] *10.13.*

Denial of or Conditions to ETPs [or Equity ASAPs]

Rule [2.5.] *2.4*(a) The Corporation may deny (or may condition) trading privileges under an ETP or [Equity ASAP or] may bar a natural person from becoming associated (or may condition an association) with an ETP [Firm or Equity ASAP] Holder for the same reasons that the Securities and Exchange Commission may deny or revoke a broker or dealer registration and for those reasons required or allowed under the Securities Exchange Act of 1934, as amended.

(b) The Corporation may deny or may condition trading privileges under an ETP [or Equity ASAP], or may prevent a natural person from becoming associated (or may condition an association) with an ETP [Firm or Equity ASAP] Holder when the applicant directly or indirectly:

(1) is unable to satisfactorily demonstrate its present capacity to adhere to all applicable Corporation and Securities and Exchange Commission policies, [Rules] *rules* and regulations, including, without limitation, those concerning record-keeping, reporting, finance and trading procedures;

(2) has previously violated, and there is a reasonable likelihood such applicant will again engage in acts or practices violative of, any applicable Corporation or Securities and Exchange Commission policies, [Rules] *rules* and regulations, including, without limitation, those concerning record-keeping, reporting, finance and trading procedures or those [Rules] *rules* of other self-regulatory organizations of which such applicant is or was a member[:]

(3)–(5)—No change.

(6) owes an undisputed debt to an ETP Holder[, ETP Firm or Equity ASAP Holder] arising out of the securities business, in which case the Corporation may take such action as it deems appropriate, including, without limitation, denying the application or conditioning the issuance of the ETP [or Equity ASAP] upon the execution of an agreement regarding repayment of the debt;

(7) allegedly owes a debt to an ETP Holder[, ETP Firm or Equity ASAP Holder] arising out of the securities business, in which case the Corporation may take such action as it deems appropriate, including, without limitation, denying the application or conditioning the issuance of the ETP [or Equity ASAP] upon the debt being submitted to arbitration pursuant to Rule 12 at the request of the ETP [Holder, ETP Firm or Equity ASAP] Holder to whom the debt is allegedly owed;

(8)–(10)—No change.

Series 7 Requirement [for Off-Floor Traders]

(A) Traders of ETP [Firms and Equity ASAP] Holders for which the Corporation is the Designated Examining Authority (''DEA'') must successfully complete the General Securities Registered Representative Examination (Test Series 7), if the primary business of the ETP [Firm or Equity ASAP] Holder involves the trading of securities that is unrelated to the performance of the functions of a registered [specialist or registered floor broker] *Market Maker. Unless required to complete the Series 7 under Rule 7.21(b)(2), the* [The] following are exempt from the requirement to successfully complete the Series 7 Examination: ETP Holders who are performing the function of a registered [specialist or registered floor broker] *Market Maker* (pursuant to Rule [7.22(a))] *7*).

For purposes of this Rule:

(i) The term ''trader'' means a person (a) who is directly or indirectly compensated by an ETP [Firm or Equity ASAP] Holder, or who is any other associated person of an ETP [Firm or Equity ASAP] Holder and (b) who trades, makes trading decisions with respect to, or otherwise engages in the proprietary or agency trading of securities; and

(ii) The term ''primary business'' means greater than 50% of the ETP [Firm's or Equity ASAP] Holder's business.

(B) Each ETP [Firm and Equity ASAP] Holder for which the Corporation is the DEA must complete, on an annual basis, and on a form prescribed by the Corporation, a written attestation as to whether the ETP [Firm's or Equity ASAP] Holder's primary business is conducted in the performance of the function of a registered [specialist or a registered floor broker] *Market Maker* (pursuant to Rule [7.22(a))] *7*).

(C) The requirement to complete the Series 7 Examination will apply to current traders of ETP [Firms and to Equity ASAP] Holders that meet the criteria of subsection (A), above, as well as to future traders of ETP [Firms or Equity ASAP] Holders that meet the criteria of subsection (A), above, at a later date. Traders of ETP [Firms or Equity ASAP] Holders that meet the criteria of subsection (A), above, at the time of SEC approval of this Rule, must successfully complete the Series 7 Examination within six months of notification by the Corporation.

(11)–(13)—No change.

(c) The Corporation may waive or modify a required examination for any applicant if, within two years of the date such applicant applied to the Corporation for an ETP [or Equity ASAP], such applicant has successfully completed a comparable examination administered by a self-regulatory organization or the Securities and Exchange Commission.

(d) The Corporation shall regard the failure by any applicant to carry out any contract or honor any financial commitment with an ETP Holder[, ETP Firm or Equity ASAP Holder] as a violation of just and equitable principles of trade, and an indication of a broker or dealer applicant's inability to meet such standards of financial responsibility as may be set by the Corporation.

(e) No change.

(f) The Corporation's Business Conduct Committee may take action against an ETP Holder[, ETP Firm or Equity ASAP Holder] under Rule 10 when any of the above reasons for denying or conditioning the issuance of an ETP [or Equity ASAP, as the case may be,] come into existence after an application has been approved and an ETP [or Equity ASAP] has been issued.

Publication of Approved ETP [and Equity ASAP] Applications

Rule [2.6] *2.5* With respect to each ETP [and Equity ASAP] that is issued, the Corporation shall promptly distribute a notice thereof to all ETP Holders[, ETP Firms or Equity ASAP Holders] by publishing the name of each new ETP Holder[, ETP Firm and Equity ASAP Holder] in the Corporation's Weekly Bulletin.

Requirements of Holding an ETP [or Equity ASAP]

Requirements Applicable Generally

Revocable Privilege

Rule [2.7] *2.6.* The issuance of an ETP [or an Equity ASAP] constitutes only a revocable privilege and confers on its holder no right or interest of any nature to continue as an ETP Holder[, ETP Firm or Equity ASAP Holder, as the case may be].

No Liability for Using Trading Facilities

Rule [2.8] *2.7.* The Corporation shall not be liable for any damages sustained by an ETP Holder[, ETP Firm or Equity ASAP Holder] growing out of the use or [employment] *enjoyment* by such ETP [Holder, ETP Firm or Equity ASAP] Holder of the facilities afforded by the Corporation in the conduct of [their] *its* business. Each ETP Holder[, ETP Firm and Equity ASAP Holder] expressly [agree] *agrees,* in consideration of the issuance of the ETP [or Equity ASAP, as the case may be], to release and discharge the Corporation, its officers, directors, employees and agents, of and from claims or damages arising from their acceptance and use of such ETP [or Equity ASAP] and their agreement to be bound by the Certificate of Incorporation, Bylaws and Rules of the Corporation.

Corporation Not Bound By ETP Holder[, ETP Firm or Equity ASAP Holder] Agreements

Rule [2.9] *2.8.* Nothing contained in any partnership agreement, limited partnership agreement, articles of incorporation, resolutions, by-laws or any other organizational documents, or amendment thereto, of an ETP [Firm or Equity ASAP] Holder, not any other agreements between any ETP [Holder, ETP Firm and/or Equity ASAP] Holder and a third party, or any amendment thereto, even though submitted to or filed with the Corporation, shall obligate or be binding upon the Corporation.

Only ETP [Firms and Equity ASAP Holders To Trade Under Firm Name] *Holder Organizations May Carry Customer Accounts*

[Rule 2.10.] *Rule 2.9.* [Only Equity ASAP] *Only ETP* Holders [and ETP Firms] which are partnerships, limited liability partnerships, corporations or limited liability companies shall carry accounts for customers or conduct business under a firm name[, except that if by death or otherwise, an ETP Firm is reduced to the ETP Holder, such ETP Firm may continue business in the firm name for such a period only as may be allowed by the Corporation].

Sole Proprietors [and Individual ETP Holders]

[Rule 2.11] *Rule 2.10(a)* A sole proprietor *ETP Holder* may not carry public customer accounts.

[(b)–(c)—Deleted.]

[(d)]*(b) Sole proprietor* ETP Holders shall comply with such additional requirements as the Corporation may from time to time prescribe.

ETP [Firms and Equity ASAP Holders] *Holder Organizations*

[Rule 2.12] *Rule 2.11*[(a)—Deleted.]

[(b)] *(a)* Each ETP [Firm and Equity ASAP] Holder shall maintain at the Corporation at all times a record of the name and address of the individual duly authorized by such [Firm or] *ETP* Holder to receive and accept legal or other notices on its behalf.

[(c)] *(b)* An ETP [Firm or Equity ASAP] Holder shall adopt such restrictions on the conduct of its affairs as may be prescribed by the Corporation, including, without limitation, restrictions to the payment of dividends and loans to officers, directors, stockholders, partners or members.

Rule [2.13] *2.12.* An ETP [Firm or Equity ASAP] Holder that intends to admit any person to partnership, or to elect or appoint any person as an officer or director, or to enter into a partnership agreement, or to form a corporation or limited liability company or other entity, or to alter the terms of an existing partnership agreement or articles of incorporation or limited liability company agreement or other similar operating agreement shall notify the Corporation in writing of such proposed admission, arrangement, or alteration before said becomes effective and shall submit such papers and information and comply with such requirements in connection therewith as the Corporation may prescribe.

Rule [2.14] *2.13*

(a) Allied Persons and Approved Persons, as defined in Rule 1, shall be subject to approval by the Corporation. An ETP [Firm or Equity ASAP] Holder which proposes to admit an Allied Person or an Approved Person shall notify the Corporation in writing, shall pay any applicable fees and shall submit such information as may be reasonably required by the Corporation.

(b) In order to maintain its trading privileges, each ETP [Firm and Equity ASAP] Holder shall obtain approval from the Corporation for all persons required to be approved, and each such ETP [Firm and

Equity ASAP] Holder shall maintain continuous compliance with all standards prescribed by the Bylaws and Rules of the Corporation.

(c) Each ETP [Firm and Equity ASAP] Holder shall promptly give the Corporation written notice on such form as may be required by the Corporation of the death, retirement, or other termination of any ETP Holder, [Equity ASAP Holder,] Allied Person, Approved Person and of the dissolution of the ETP [Firm or Equity ASAP] Holder.

(d) Each ETP [Firm and Equity ASAP] Holder shall designate ''principal executive officers'' of such corporation who must[, in the case of ETP Firms,] be [ETP Holders or] Allied Persons, and who[, in either case,] must exercise supervision and control over the various areas of the business of such [Firm or] *ETP* Holder in such areas as the Rules of the Corporation may prescribe.

(e) Each ETP [Firm and Equity ASAP] Holder shall include in its name an appropriate identifier of its corporate or business association status, in English (e.g., Incorporated, Corporation, Limited Liability Company, Limited Liability Partnership, or an appropriate abbreviation thereof).

(f) The Corporation may require each applicant becoming a general partner, officer, voting stockholder, limited liability company member, or director of any ETP [Firm or Equity ASAP] Holder to pass an examination to demonstrate that they have adequate experience and knowledge of the securities business before undertaking any active duties with the firm. Compliance with this requirement may be waived if the principal is a member of an ETP [Firm or Equity ASAP] Holder belonging to another national securities exchange having comparable requirements.

(g) Each ETP [Firm] *Holder* shall be liable for all [of the] liabilities to the Corporation of [the ETP Holders, as the case may be, conferring his or her on their ETP trading privileges on the firm] *authorized traders,* which shall include, without limitation, the payment of all [Corporation] fees and charges as well as meeting all obligations accruing in the course of [the firm's (or its respective ETP Holders')] *an ETP Holder's or AT's* business with the Corporation.

(h) Each [ETP Holder, Equity ASAP Holder,] Approved Person, Allied Person, Affiliate, and Associated Person shall be liable to the same discipline and penalties for the acts and omissions of his or her ETP [Firm or Equity ASAP] Holder[, as the case may be,] as for their own acts.

(i) Claims of [ETP Holders, Equity ASAP Holders,] Affiliates, Allied Persons, directors, officers, and Associated Persons of an ETP [Firm or Equity ASAP] Holder shall be subordinate in right of payment to payment or provision for payment of all claims of customers of such ETP Holder[, ETP Firm or Equity ASAP Holder].

(j) Each ETP [Firm and Equity ASAP] Holder shall submit to the Corporation, at such times as the Corporation may require, an affidavit listing, to the best of its knowledge and belief, the name of each party directly or indirectly beneficially owning 1% or more of its outstanding voting stock and showing the percentage of such ownership.

(k) No parent or person controlling any parent of an ETP [Firm or Equity ASAP] Holder may engage in any transaction or action for the purpose of circumventing any Rule of the Corporation governing the activities of an ETP [Firm or Equity ASAP Holder, as the case may be.] *Holder.*

(l) ETP [Firms and Equity ASAP] Holders shall comply wit such additional requirements as the Corporation may from time to time prescribe.

Rule [2.15] *2.14.*

(a) Each ETP [Firm and Equity ASAP] Holder that is a partnership (whether general or limited) and which has only one general partner shall provide in its partnership agreement that:

(1)–(2)—No change.

(b) Upon the death or withdrawal of any partner, if the partnership business is continued by the surviving partners, the continuing partnership will not be recognized as an ETP [Firm or Equity ASAP] Holder[, as the case may be,] if the unsubordinated claim of the deceased or withdrawing partner to a return of such deceased or withdrawing partner's capital contribution would result in a net capital impairment of the continuing partnership. The continuing partnership will ordinarily be recognized as an ETP [Firm or Equity ASAP] Holder[, as the case may be,] during the period of subordination of such claim if subordination provisions substantially as follows are included in the partnership agreement:

Upon the death of a withdrawal of any partner, if the surviving partners desire to continue to the partnership business, the capital contribution of such deceased or withdrawing partner shall remain at the risk of the business and shall be considered capital of such continuing firm for a period of fifteen (15) calendar days to the extent necessary to comply with the net capital requirements of the Corporation. Any claim of the withdrawing partner or of the personal representative of the deceased partner to the repayment of such deceased or withdrawing partner's capital contribution during such period shall be subordinated to the payment in full of such claims of all present and future creditors of the continuing partnership arising out of any matters occurring before the end of such period.

[Terms and Conditions Relating to Equity ASAPs]

[Rule 2.16.—Deleted]

Responsibilities of Non-resident Firms

Rule [2.17.] *2.15*(a) An ETP [Firm or Equity ASAP] Holder that does not maintain an office in the United States responsible for preparing and maintaining financial and other reports required to be filed with the Securities and Exchange Commission and the Corporation must:

(1)—No change.

(2) Reimburse the Corporation for any expenses incurred in connection with examinations of the ETP Holder[, ETP Firm or Equity ASAP] Holder to the extent that such expenses exceed the cost of examining an ETP [Holder, ETP Firm or Equity ASAP] Holder located within the continental United States in the geographic location most distant from the principal office of the Corporation or, in such other amount as the Corporation may deem to be an equitable allocation of such expenses,

(3)—No change.

(4) Utilize, either directly or indirectly, the services of a broker/dealer registered with the Securities and Exchange Commission, a bank or a clearing agency registered with the Securities and Exchange Commission located in the United States in clearing all transactions involving persons affiliated with the ETP Holder [, ETP Firm or Equity ASAP Holder,] except where both parties to a transaction agree otherwise.

Amendments to ETP [Firm and Equity ASAP] Holder Documents

Rule [2.18.] *2.16*(a) All formation documents for ETP [Firms and Equity ASAP] Holders, such as articles of incorporation, by-laws, partnership agreements, limited liability company agreements, and all amendments thereto, now in effect or adopted in the future, shall be filed with the Corporation and shall be subject to approval by the Corporation.

(b) Each ETP [Holder, ETP Firm and Equity ASAP] Holder must submit to the Corporation any amendment to any document submitted as part of their application, including but not limited to amendments to documents required by Rule[ 4] *2.3,* amendments to the [permit holder's] *ETP Holder's* Form BD, and changes to the [permit holder's] *ETP Holder's* home or business address, within fifteen (15) business days of such amendment or change.

ETP Charges

Rule [2.19.] *2.17*(a) Securities and Exchange Commission Registration Fee: Section 31 of the Securities Exchange Act of 1934 imposes upon every national securities exchange the payment of a fee of 1/300th of 1 percentum of the aggregate dollar amount of the sales of securities transacted on the exchange, subject to some limitations. There shall be paid to the Corporation by each ETP Holder[, ETP Firm or Equity ASAP Holder] in such manner and at such times as the Corporation shall direct, Section 31 fees equal to the sum of one cent for each $300 or fraction thereof of the aggregate dollar amount of the sales of securities transacted by it through the Corporation, except in respect of transactions in securities which are direct obligations of or guaranteed as to principal or interest by the Untied States, or such securities issued, or obligations guaranteed by corporations in which the United States has a direct or indirect interest as may be designated for exemption therefrom by the Secretary of the Treasury. Such sum shall be paid by the selling ETP Holder[, ETP Firm or Equity ASAP Holder] as appearing on the comparison ticket of each transaction effected. The selling ETP [Holder, ETP Firm or Equity ASAP] Holder shall charge and collect such sum from the persons for whom he, she or it was acting in making the transaction. [Specialists] *Market Makers* shall pay such sum of both odd lots and round lots that they sell.

(b) Other Charges: In addition to transaction fees and the Securities and exchange Commission registration fee, the

Corporation may from the time fix and impose other charges or fees to be paid by ETP Holders[, ETP Firms and Equity ASAP Holders] for the use of equipment or facilities or for services or privileges granted.

Exemption from Registration Requirements

Rule [2.20.] *2.18.* An ETP [Firm or Equity ASAP] Holder shall be exempt from such registration requirements as the Corporation may designate if it is a member organization of another self-regulatory organization, which is the appointed Designated Examining Authority (''DEA'') for such organization by the Securities and Exchange Commission.

Termination of [Trading Privileges] ETP

[Rule 2.21] *Rule 2.19*(a) [Trading privileges conferred by an] An ETP [or Equity ASAP] will terminate upon the occurrence of any one of the following conditions:

(1) the expulsion of the ETP Holder[, ETP Firm or Equity ASAP Holder] from the Corporation's Trading Facilities;

(2) the suspension of the ETP Holder[,] *where such* ETP [Firm or Equity ASAP] Holder [where such Holder or Firm] failed to be reinstated at the expiration of the period of suspension, including any extension of such period which may have been granted by the Corporation;

(3) the formal or informal dissolution or winding up of an ETP [Firm or Equity ASAP] Holder;

(4)–(5)—No change.

(b) Obligations of Terminating ETP Holders[, ETP Firms and Equity ASAP Holders]: Every ETP [Firm, and Equity ASAP] Holder, and any successor-in-interest thereto, and each ETP [Holder and Equity ASAP] Holder whose trading privileges are terminated due to expulsion, suspension without reinstatement, death, declaration of incompetency, dissolution, winding up, or other cessation of business, must be current in all filings and payments of dues, fees and charges relating to that ETP [or Equity ASAP, as the case may be], including, without limitation, filing fees and charges required by the Securities and Exchange Commission and the Securities Investor Protection Corporation. if any ETP Holder, [ETP Firm, or Equity ASAP Holder,] or any successor-in-interest thereto, fails to make all such filings, or to pay all such dues, fees and charges, the Secretary of the Corporation shall retain such jurisdiction over such former ETP Holder[, ETP Firm or Equity ASAP] Holder to require such filings and collect such outstanding dues fines and charges until such time as they have been filed and/or paid.

[(c)—Deleted.]

Limited Transferability

Rule [2.22] *2.20*(a) Transfer by Purchase, Sale or Lease Prohibited. ETPs [and Equity ASAPs] may not be purchased (other than from the Corporation), sold or leased. Any purported purchase (other than from the Corporation), sale or lease of an ETP [or Equity ASAP] shall be void abe inition within further action by the Corporation.

(b) Private Transfer Void: An ETP [Holder, ETP Firm or Equity ASAP] Holder which attempts to transfer an ETP [or Equity ASAP] by private sale or lease, or otherwise, may be adjudged guilty of conduct detrimental to the interest and welfare of the Corporation, and any purported transfer shall be void ab initio without further action by the Corporation and will confer no rights upon the purported transferee.

[(c)—Deleted.]

Employees of ETP [Firms and Equity ASAP] Holders Registration

Rule [2.23] *2.21*(a) Every employee, including *any* branch office [*managers*] *manager*, of an ETP [Firm or Equity ASAP] Holder who is compensated directly or indirectly for the solicitation or handling of business in securities, including trading in securities for the account of the organization, whether such securities are those dealt in on the Corporation or those dealt in over-the-counter, must be registered with an approved by the Corporation.

The Corporation may waive compliance with the requirements of Rule [2.23(a)] 2.21(a) in the event the ETP [Firm or Equity ASAP] Holder is also a member organization of another national securities exchange having comparable requirements.

(b)–(c)—No change.

(d) A registered employee may not be engaged in any other business or be employed by another employer in any capacity or receive compensation, without the prior written and continuing approval of his or her ETP Holder[, ETP Firm or Equity ASAP Holder, as the case may be,] and such registered employee shall devote a substantial portion of the business day to the activities of his or her [Firm or] *ETP* Holder.

(e) No ETP [Holder, ETP Firm or Equity ASAP] Holder may employee any employee of the Corporation during the hours of regular employment by the Corporation. No ETP [Holder, ETP Firm or Equity ASAP] Holder may employ any employee of the Corporation outside the hours of regular employment by the Corporation without having obtained the prior, written approval therefore of the Corporation and registering therewith the name of said employee, the nature of the services rendered and the amount of said compensation.

(f) No ETP [Holder, ETP Firm or Equity ASAP] Holder shall give any compensation or gratuity in any one calendar year in excess of $100 to any employee of any other ETP Holder, [ETP Firm or Equity ASAP Holder,] to ro any employee of a broker or dealer, bank or institution that is not an ETP Holder, [ETP Firm or Equity ASAP Holder,] without the prior consent of the employee's employer.

(g) No ETP [Holder, ETP Firm or Equity ASAP] Holder shall give any compensation to any officer, director, employee or other agent of the Corporation without the prior written consent of the Corporation. No ETP [Holder, ETP Firm or Equity ASAP] Holder shall give any gratuity or gift in any one calendar year in excess of $100 to any officer, director, employee or other agent of the Corporation without the prior written consent of the Corporation. All requests for such consent should contain the following information.

(1)–(5)—No change.

(h) Termination of the employment of a registered employee shall be reported to the Corporation, and the Corporation shall be notified in writing of the specific grounds for termination immediately when the employment of any persion is terminated by an ETP Holder[, ETP Firm or Equity ASAP Holder] under circumstances involving misconduct, fraud or unethical practices.

[Trading Floor Employees of ETP Firms]

[Rule 2.24—Deleted.]

Managatory Decimal Pricing Testing

Rule [2.25] *2.22*(a)[(1)]. *Point-to-Point Testing.* Each ETP Holder[, Equity ASAP Holder or ETP Firm] that has an electronic interface with the Corporation must participate in point-to-point testing with the Corporation of its computer systems designed to ascertain decimal pricing conversion compatibility of those computer systems, in a manner and frequency as prescribed by the Corporation. An ETP Holder[, Equity ASAP Holder or ETP Firm) that has its electronic interface through a service provider need not participate in point-to-point testing if, by a time designated by the Corporation.

[(A)] *(1)* The service provider conducts successful tests with the Corporation on behalf of the firms it serves.

[(B)] *(2)* The ETP Holder[, Equity ASAP Holder or ETP Firm] conducts successful point-to-point testing with the service provider and

[(C)] *(3)* The Corporation agrees that further testing is not necessary.

[(2)] *(b) Industry Wide Testing.*The Corporation may require certain of its ETP Holders[, Equity ASAP Holders or ETP Firms] to participate in industry wide testing of computer systems for decimal pricing conversion. The Corporation may require any ETP Holder[, Equity ASAP Holder or ETP Firm] who will participate in industry wide testing to also participate in any tests necessary to ensure preparedness to participate in industry wide testing.

[(3)] *(c) Reports.* ETP Holders[, Equity ASAP Holders or ETP Firms] participating in point-to-point testing (whether between the firm and the Corporation, between the firm and its service provider, or between the ETP Holder's[, Equity ASAP Holder's or ETP Firm's] service provider and the Corporation) or industry wide testing must file reports with the Corporation concerning the required tests in the manner and frequency required by the Corporation.

[(4)] *(d)* Documentation. ETP Holders[, Equity ASAP Holders or ETP Firms] must maintain adequate documentation of tests required by this Rule and the results of such testing for examination by the Corporation.

Commentary

.01 This rule will expire automatically upon the full implementation fo decimal pricing.

*Transition*

*Rule 2.100. Any PCX member, as defined in the PCX Parent Rule 1.1, or Equity ASAP Holder that wishes to continue to effect securities transactions without interruption of the Corporation's Trading Facilities must obtain an ETP prior to the first day the Archipelago Exchange becomes operational. If the PCX members or equity ASAP Holder fails to obtain an ETP prior to the first day*

*the Archipelago Exchange becomes operational, the PCX member or equity ASAP holder will not be permitted to effect securities transactions on the Corporation's Trading Facilities until such PCX member of Equity ASAP Holder obtains an ETP.*

**Rule 3**

**Organization and Administration**

**Part I—Committees of the Corporation**

Overview

Rule 3.1(a).—No change.

Equity Committees

Rule 3.2.

(a) General Provisions:

(1)–(7)—No change.

(8) Eligibility for and Appointment to Equities Committees. Any ETP [Holder and Equity ASAP] Holder of the Corporation in good standing or allied person of an ETP [Firm or Equity ASAP] Holder, or any person from the public is eligible for appointment or election to Equity Committees. Only one person affiliated with the same ETP [Firm or Equity ASAP] Holder shall be eligible for service on the same Equity Committee. Except as otherwise set forth in these Rules, the Chief Executive Officer of the Corporation shall appoint eligible ETP Holders [, Equity ASAP Holders] and persons from the public to the positions so allocated on Equity Committees for terms of one (1) year.

(9) Alternate Members. The Chief Executive Officer of the Corporation may designate one or more ETP Holders, [Equity ASAP Holders,] an allied person of an ETP [Firm or Equity ASAP] Holder, and persons from the public as alternate members of any Equity Committee, who may replace any absent or disqualified member at any meeting of such committee.

(10)–(11)—No change.

(b) Equity Committees. As set forth below, the Board of Directors has delegated certain authority and functions to its committees. Action taken pursuant to delegated authority, however, is subject to review, ratification or rejection by the Board of Directors.

(1) Business Conduct Committee.

(A) Composition. In addition to any members of the public on the Business Conduct Committee, the Business Conduct Committee shall have [proportional representation of all (i) ETP Holders and ETP Firms and (ii) Equity ASAP Holders, with] a minimum of one ETP Holder or allied person of an ETP [Firm and one Equity ASAP] Holder [or allied person of an Equity ASAP Holder].

(B) Functions and Authority. The Business Conduct Committee shall, in accordance with the Bylaws, Rules and procedures of the Corporation, have the following functions and authority:

(i) Examine the business conduct and financial condition of ETP Holders [, ETP Firms, Equity ASAP Holders,] and associated persons;

(ii)–(iii)—No change.

(iv) Require the production of detailed financial reports of an ETP Holder[, ETP Firm, or ASAP Holder] and such other operational reports as it may deem relevant.

(C) This Committee shall have authority, whenever it appears that an ETP [Firm, ETP Holder, or Equity ASAP] Holder is in violation of Rule 4, to direct a representative of such ETP [Firm, ETP Holder, or Equity ASAP] Holder to appear before the Committee for examination upon 48 hours notice, either orally or in writing. After such examination, the Committee shall have authority to suspend such ETP [Firm, ETP Holder, or Equity ASAP] Holder until the requirements of Rule 4 are fully met. Any such suspension directed by the Committee shall be subject to review by the Board. Such review shall not operate as a stay of the suspension unless specifically allowed by the Board. In the event of a reversal of the suspension imposed by the Committee, an ETP [Firm, ETP Holder, Equity ASAP] Holder or officer, partner, director, stockholder, or representative thereof shall be prohibited from instituting a lawsuit in any forum against the Corporation or the members of the Committee, based in whole or in part upon the suspension imposed by the Committee.

(D)—No change.

(2) Nominating Committee.

(A) Composition. The Nominating Committee shall have seven members consisting of six ETP Holders [and/or Equity ASAP Holders] and one person from the public. [The six ETP Holders and/or Equity ASAP Holders on the Nominating Committee shall represent proportionally all (i) ETP Holders and ETP Firms and (ii) Equity ASAP Holders, with a minimum of one ETP Holder or allied person of an ETP Firm and one Equity ASAP Holder or allied person of an Equity ASAP Holder.]

(B) Nomination, Appointment and Election.

(i) Nomination. Sixty-five days prior to the expiration of the term of its members, the Nominating Committee shall publish a slate of six eligible nominees to fill the positions during the next annual term of the Nominating Committee. ETP [Holders and Equity ASAP] Holders in good standing may submit a petition to the Corporation in writing to nominate additional eligible candidates to fill [ETP/Equity ASAP] *ETP* positions during the next annual term, and upon written petition of at least 10 percent of ETP Holders [and Equity ASAP Holders, considered as one group,] in good standing on or before the forty-fifth day preceding the expiration of the existing term such person(s) shall also be nominated by the Nominating Committee.

(ii)—No change.

(iii) Election. In the event that ETP Holders [or Equity ASAP Holders], or allied persons of an ETP [firm or Equity ASAP] Holders, are nominated by the Nominating Committee pursuant to petition by the ETP Holders [and/or Equity ASAP Holders], and there are more than six nominees to fill the [ETP/Equity ASAP] *ETP* Holders positions on the Nominating Committee, the Nominating Committee shall submit the nominees to the ETP Holders [and the Equity ASAP Holders], collectively for election. Each ETP [Holder and Equity ASAP] Holder in good standing shall be permitted to vote for up to six nominees and the six nominees receiving the most votes shall fill the [ETP/Equity ASAP] *ETP* positions as members during the next annual term of the Nominating Committee. Tie votes shall be decided by the Board of Directors at its first meeting following the election.

(iv) Acclamation of Slate. In the event there are only six nominees to fill the [ETP/Equity-ASAP] *ETP* positions on the Nominating Committee on or after the forty-fifth day prior to the expiration of the terms of the outgoing Nominating Committee, those six nominees shall be deemed elected to the next annual term of the Nominating Committee.

(C) Representatives to the Board of Directors of the Corporation and the Board of Governors of the Pacific Exchange, Inc.

(i) Nomination. Sixty-five days prior to the expiration of the term of its Directors, the Nominating Committee shall publish the names of two (2) ETP Holders, [Equity ASAP Holders,] or persons affiliated with such Holders (in any combination) as its nominees for the Board of Directors of the Corporation and one ETP Holder, [Equity ASAP Holder,] or allied [persons] *person* of an ETP [Firm or Equity ASAP] Holder, as nominee for the Board of Governors of the Pacific Exchange, Inc. The nominee for the Board of Governors may be a person nominated to the Board of Directors. ETP [Holders and Equity ASAP] Holders in good standing may submit a petition to the Corporation in writing to nominate additional eligible candidates to fill [ETP/Equity ASAP] *ETP* positions during the next term, and upon written petition of at least 10 percent of ETP Holders [and Equity ASAP Holders, considered as one group,] in good standing on or before the forty-fifth day preceding the expiration of the existing term such person(s) shall also be nominated by the Nominating Committee.

(ii) Selection of Nominees. In the event that [ETP/Equity ASAP] *ETP* positions are nominated by the Nominating Committee pursuant to petition by the ETP Holders [and Equity ASAP Holders], and there are three or more nominees for the Board of Directors or two or more nominees for the Board of Governors, the Nominating Committee shall submit the contested nomination(s) to the ETP Holders [and Equity ASAP Holders, considered as one group,] for selection. Each ETP [Holder and Equity ASAP] Holder in good standing may select two nominees for contested seats on the Board of Directors and one nominee for contested seats on the Board of Governors. With respect to contested positions, the two nominees for the Board of Directors and the nominee for the Board of Governors selected by the most ETP Holders [and Equity ASAP Holders, considered as one group,] shall be submitted by the Nominating Committee to the Board of Directors of the Corporation or the Board of Governors of the Pacific Exchange, Inc., as the case may be. Similarly, the Nominating Committee shall submit uncontested nominees to the Board of Directors of the Corporation or the Board of Governors of the Pacific Exchange, Inc., as the case may be. Tie votes shall be decided by the respective Board at its first meeting following the election.

(3)—No change.

(c)—No change.

Board Committees

Rule 3.3(a). Board Committees.

(1) Board Appeals Committee.

(A) Composition. The Board of Directors may appoint one or more Appeals Committees to conduct reviews of matters subject to the applicable provisions of Rule 3.2b(b)(1)(C), 5 or 10. The Board of Directors will determine the size of any Appeals Committee that it appoints. Each Appeals Committee will contain at least one public director and at least one director that is an ETP Holder[,] *or* allied person of an ETP [Firm, Equity ASAP] Holder [or allied person of an Equity ASAP Holder].

(B)—No change.

**Part II—Regulation**

Self-Regulatory Responsibilities

Rule 3.4. The Pacific Exchange, Inc. (''PCX Parent''), as a self-regulatory organization registered with the Securities and Exchange Commission pursuant to Section 6 of the Exchange Act, shall have ultimate responsibility in the administration and enforcement of rules governing the operation of its subsidiary, PCX Equities, Inc. (''Corporation''). Notwithstanding the delegation of authority to the subsidiary, as set forth below in Rule 3.5, the PCX Parent shall review and ratify any rule change adopted by *the* Board of Directors of the Corporation before such rule change becomes the final action.

Delegation of Authority

Rule 3.5(a). Except as otherwise provided in the Bylaws, Rules and procedures of the Corporation, the Chief Regulatory Officer or such other designated officer of the Corporation shall have the following delegated authority.

(1) To establish and interpret rules and regulations for ETP Holders[, Equity ASAP Holders, ETP Firms,] or associated persons including, but not limited to trading rules, fees, access to and use of system facilities, and arbitration procedures.

(2) To determine regulatory and trading policies, including the development and adoption of necessary or appropriate rule changes, relating to the business conduct and trading activities of ETP Holders[, Equity ASAP Holders, ETP Firms,] and associated persons. This includes, but is not limited to, the following:

(A) Arbitration of disputes between ETP Holders[, Equity ASAP Holders, ETP Firms,] or associated persons arising from transactions on the facility;

(B) Financial responsibility;

(C) Clearance and settlement of securities transactions and other financial responsibility and operational matters affecting ETP Holders[, Equity ASAP Holders, ETP Firms,] or associated persons in general; and

(D) Qualification requirements for ETP Holders[, Equity ASAP Holders, ETP Firms,] and associated persons.

(3)—No change.

(4) To administer programs and systems for the surveillance and enforcement of rules governing the conduct and trading activities of ETP Holders[, Equity ASAP Holders, ETP Firms,] and associated persons.

(5)—No change.

(6) To examine and investigate ETP Holders[, Equity ASAP Holders, ETP Firms,] and associated persons to determine if they have violated the Rules and procedures of the Corporation, the federal securities laws, and other laws, rules, and regulations that the Corporation has the authority to administer, interpret, or enforce.

(7) To place restrictions on the business activities of ETP Holders[, Equity ASAP Holders, ETP Firms,] and associated persons consistent with the public interest, the protection of investors, and the federal securities laws.

(8)—No change.

(9) To appoint [Trading Officials] *staff, as necessary,* that shall be responsible for the general supervision of the conduct and dealings of ETP Holders[, Equity ASAP Holders, ETP Firms,] and associated persons on the trading [facility] *facilities.* These duties include, but are not limited to, the following:

(A) Arbitrate differences between ETP Holders[, Equity ASAP Holders, ETP Firms,] or associated persons arising from transactions on the trading [facility] *facilities*;

(B) Supervise all connections or means of communication with the trading [facility] *facilities,* which may require the discontinuance of any such connection or means of communication that is deemed contrary to the welfare or interest of the Corporation;

(C) Issue a [Floor Citation] *citation* when it appears that a Minor Rule Plan violation has occurred as specified in Rule 10;

(D) Declare a ''fast [market'' or] *market,''* invoke a trading halt in a security due to an influx of orders or other unusual market conditions or circumstances[. Take]*, or take* such other actions as are deemed necessary in the interest of maintaining a fair and orderly market; and

(E) Supervise and regulate the operation of ITS, or any other application of the system during active openings, heavy trading and unusual situations.

(10) To administer or enforce policies and Rules of the Corporation [(including] (*as well as* federal and state regulations) governing the initial and continued listing or trading of securities on the Corporation.

Surveillance Agreements

Rule 3.6.—No change.

**Part III—Dues, Fees and Fines**

Dues, Fees and Charges

Rule 3.7. ETP Holders[, ETP Firms, and Equity ASAP Holders] of the Corporation, whether or not in good standing, shall pay to the Corporation such dues, fees and charges as the Board of Directors shall prescribe.

Liability for Payment

Rule 3.8. An ETP Firm or Equity ASAP Holder] failing to pay any dues, fees, charges or fines to the Corporation for thirty days after the same shall become payable, may be suspended by the Board of Directors or the Chief Executive Officer of the Corporation in accordance with Rule 11.2.

Fines

Rule 3.9.—No change.

**Rule 4**

**Capital Requirements, Financial Reports, Margins**

**Section 1. Capital Requirements**

Minimum Net Capital

Rule 4.1[(a). To the extent applicable, every ETP Holder, ETP Firm and Equity ASAP Holder]. *ETP Holders that are subject to Rule 15c3 under the Securities Exchange Act of 1934 (''Exchange Act''), as amended,* shall maintain a minimum net capital in accordance with the provisions of Rule 15c3–1 under the [Securities] Exchange Act [of 1934 (''Exchange Act''), as amended. For]. *Each* ETP [Holders and ETP Firms, this requirement is in addition to the requirements of Rule 4.2 (Specialist Post Capital). Each ETP Holder, ETP Firm and Equity ASAP] Holder shall promptly notify the Corporation and, pursuant to the provisions of Rule 17a–11 under the Exchange Act, the Securities and Exchange Commission if such ETP [Holder, ETP Firm or Equity ASAP] Holder's net capital does not equal or exceed the appropriate minimum required by Rule 15c3–1 or if notice is otherwise required by Rule 17a–11.

[(b)–(c)—Deleted.]

[(d)] Each [specialist firm] *Market Maker* shall report its net capital to the Corporation in a form and manner prescribed by the Corporation.

Commentary

.01 ETP [Firms] *Holders* Who Do Not Carry Customers' Accounts

An ETP Holder[, Equity ASAP Holder or ETP Firm] operating under paragraph (a)(2) of SEC Rule 15c3–1 shall file a written application with the Corporation for approval on a form prescribed by the Corporation.

.02 Trading in Gold and Silver Bullion:

(a) Where gold or silver bullion, which upon payment to the seller is within the ETP [Firm's] *Holder's* control in good deliverable form and covered by appropriate insurance, is purchased by customers under agreements wherein full payment is required and is made within seven business days after the date of purchase, or full payment is required and made within an extended or longer period of time as approved by the Corporation upon application, such purchases may be considered bona fide cash transactions which require no deduction from net worth in computing net capital. In all other purchases by customers of such gold or silver bullion, which liquidate to an equity, cash required, if any, to provide margin equal to 25% (10% if hedged by futures contracts in the same commodity) of the market value of the gold or silver bullion in each such customer's account in equity shall be deducted from net worth in computing net capital.

(b) If upon payment to the seller, gold or silver bullion purchased by customers and paid for by them is not within the ETP [Firm's] *Holder's* control in good deliverable form and covered by appropriate insurance, the market value of such gold or silver bullion shall be deducted from net worth in computing net capital so long as the ETP [Firm] *Holder* is accountable therefore. If upon payment to the seller, gold or silver bullion purchased for a proprietary account

is not within the ETP [Firm's] *Holder's* control in good deliverable form and covered by appropriate insurance, such gold or silver bullion shall be considered to have no market value for purposes of net capital.

(c) Definitions:

(1) ''Within the ETP [Firm's] *Holder's* Control''

Gold or silver in bullion form, identified by serial number or otherwise, and subject to immediate disposition at the direction of the [member firm] *ETP Holder.*

Storage arrangements acceptable to insurance carriers will satisfy the Corporation provided the coverage complies with the ''appropriate insurance'' requirement discussed below. While the Corporation will not specify acceptable bullion depositories to [ETPs] *ETP Holders,* certain custodial requirements must be satisfied whenever gold or silver bullion is stored in outside depositories. The ETP [Firm] *Holder* shall satisfy itself that the depository will maintain physical possession or control of the bullion stored for its customers free of any lien or claim on such bullion other than that arising out of, and limited to the extent of, any margin transaction or other unpaid for transaction. Records shall be maintained to separately identify customer pledged gold and silver bullion subject to lien from that customer bullion not pledged and fully paid for. The ETP [Firm] *Holder* shall include as part of a written agreement with the depository such other protections as may be deemed necessary. ETP [Firms] *Holders* considering the utilization of foreign depositories are cautioned to familiarize themselves with foreign laws on banking and bankruptcy to insure compliance with this paragraph, since these laws may differ significantly from those of the United States.

(2)—No change.

(3) ''Appropriate Insurance''

All gold or silver under the control of an ETP [Firm] *Holder,* whether stored in a depository, in its own custody, in transit, or in any other location, within the ETP [Firm's] *Holder's* control, shall be covered by insurance of the ETP [Firm] *Holder.*

''Appropriate insurance'' is defined to mean inclusion of gold and silver bullion as covered property under a broker's blanket bond as required by Rule 2, subject to the following additional criteria which specifically apply to gold and silver bullion wherever stored:

(A) That gold and silver stored meets the ETP [Firm's] *Holder's* insurance carrier's standards including specific identification so as to preclude non-coverage as an inventory loss;

(B) that gold and silver bullion be insured at full market value when in transit;

(C) that no dollar amount of gold and silver bullion stored in depository exceed the sum of the ETP [Firm's (a)] *Holder's (i)* insurance coverage and [(b)] *(ii)* excess net capital; and

(D) that the value of any bullion stored in a depository and in transit in excess of the sum of [(iii)(a)] (C)(i) and [(b)] (ii) is charged to net capital. (The ETP [Firm] *Holder* may, should it wish, avoid this capital charge by acquiring separate insurance to fully cover bullion exceeding the amount in the broker's blanket bond.) ETP [Firms] *Holders* shall file with the Corporation copies of letters from its insurance underwriters setting forth the extent of its coverage for bullion stored in its depositories.

(d) Further Customer Protections—To further ensure protection of customers of [member organizations, the Exchange] *ETP Holders, the Corporation* has established the following guidelines:

(1) Disclosure to Customer

The ETP [Firm] *Holder* shall fully disclose to its customer all relevant information pertaining to a transaction, including, but not limited to, names and locations of depositories, insurance coverage, charges incidental to storage, requirements and costs related to taking physical delivery of the bullion (e.g., possible need for assay), and applicable [Federal] *federal,* state or local laws or regulations (e.g., sales tax implications of the purchase). Communications to the public with regard to gold and silver shall state that SIPC coverage is not available. Due to the varying degrees of fineness, and the need for the customer to be informed as to the quality of bullion being purchased and its attendant variation in price, the fineness, weight, price per ounce, and any markup, commissions, fees, taxes or other costs shall be disclosed to the customer. Salesmen must convey to each customer the special risks and expenses involved in investing in gold and silver bullion. In particular, the customer must be given the opportunity to take delivery of the gold or silver and be informed whether or not the [member organization] *ETP Holder* will buy it back at a later date, and if so, on what basis.

(2) Sale or Saleback of Gold and Silver

All sales of gold and silver bullion shall be long, whether for customer or proprietary accounts.

Under no circumstances shall [a member organization] *an ETP Holder* release the proceeds of sale of gold or silver to a customer unless the customer's gold or silver has been assayed by an acceptable assayer (as defined above) or is in a form acceptable to such assayer. Gold or silver which is to be sold should be within an ETP [Firm's] *Holder's* control before it is sold, but in no event later than two business days after the trade date. An ETP [Firm] *Holder* may, however, submit a plan for review by the Corporation, the effect of which would allow a customer longer than two days to deliver the bullion within the ETP [Firm's] *Holder's* control on a ''buy-back'' transaction, where the customer is selling bullion originally purchased from that ETP [Firm] *Holder.*

(3)—No change.

(e) Cash Transactions—Purchases of gold or silver bullion in a customer's cash commodity account must be paid for as promptly as possible, but no later than the fifth business day after the date of purchase. A charge against capital will result if full payment has not been received by the seventh business day after purchase.

Although the amendment allows ETP [Firms] *Holders* to request extensions of time for payments not received within seven business days, the Corporation does not anticipate granting any such extension except in rare cases.

Extension requests should be submitted in letter form, giving the full particulars of the transaction, the customer's name and ID number, the reason for the request, and any other pertinent data. The letter should be signed by an authorized individual or officer. These extension requests will be handled separately from securities extensions, but will, as mentioned above, be restrictly granted.

(f) Margin Transactions—Required margin shall be furnished within five business days after date of purchase or made within an extended or longer period of time as approved by the Corporation upon application.

Extension requests on margin transactions will be subject to the same requirements applicable to cash transactions.

(1) Initial Margin

For the [purchase] *purpose* of effecting new transactions, the margin required shall be an amount equivalent to the requirements stated below, or such greater amounts as the Corporation may from time to time require, with an minimum equity in the account of at least $2,000, except that cash need not be deposited in excess of the cost of any new transaction.

Withdrawals of cash or spot commodities may be made, provided that after such withdrawal the equity in the account is at least the greater of $2,000 or the amount required by the maintenance requirement stated below.

(2) Maintenance

Margin must be maintained in margin accounts of customers, including [members, Allied members, organization or nonmembers] *ETP Holders, Allied Persons thereof and non-ETP Holders* and shall be as follows:

(A) 25% of the market value of gold or silver spot commodities ''long'' in each customer's account, or

(B) 10% of the market value of the gold and silver spot commodities if ''hedged by futures contracts'' in the same commodity. Gold or silver bullion which is carried on margin for customers must be within the control of the [member organization] *ETP Holder,* in good deliverable form and covered by appropriate insurance.

(g) Records—ETP [Firms] *Holders* shall make, keep current and preserve books and records on spot commodities as are required for securities.

(h) Conduct of Accounts—Rule 9 requires the diligent supervision of accounts. All information requirements or assessments applicable to other customers' accounts shall apply to customers effecting transactions in gold or silver bullion.

ETP [Firms] *Holders* should give serious consideration to securing an adequate deposit before executing any customer orders for gold. This will serve to demonstrate the customer's ability to consummate the transaction as well as protecting the [member organization] *ETP Holder* from potential market fluctuations in the event of customer default. Upward variations in deposit may be advisable for new customers, or when the ETP [Firm] *Holder* anticipates unusual volatility in the price of gold.

Currently, international settlement of spot gold transactions take place on the second

business day following the order. Accordingly, ETP [Firms] *Holders* will have to pay for or deliver gold on that second business day. In view of this fact, ETP [Firms] *Holders* are hereby put on notice that good business practice would in most instances, require substantial cash deposits in advance of all purchases of gold or silver.

(i) Business Plan—An ETP [Firm] *Holder* shall file with the Corporation a detailed business plan for approval by the Corporation prior to effecting any transactions in gold or silver bullion. Such a plan shall comply with the standards enunciated herein, and the ETP [Firm] *Holder* may utilize the below checklist in drafting its business plan.

(j) Gold and Silver Business Plan Checklist:

(1) Structure and Nature

(A) Will activities be processed through the ETP [Firm] *Holder* subsidiary, affiliate, holding company, or joint venture? Name the affiliate/subsidiary responsible for bullion business, if applicable.

(B)—No change.

(C) Will the organization position bullion for its own account and/or act as a [market maker] *Market Maker?*

(D)–(F)—No change.

(2) Legal Review

(A)—No change.

(B) Has the organization requested counsel to review the plan for compliance with other [Federal] *federal,* state or local applicable laws?

(C)–(10)—No change.

(3)–(10)—No change.

[.03—Deleted.]

[Specialist Post Capital]

[Rule 4.2—Deleted.]

*Rule 4.2. Reserved.*

Corporate Affiliates and Subsidiaries

Rule 4.3(a). An ETP [Firm or Equity ASAP] Holder shall not a corporate affiliate or subsidiary without the prior written approval of the Corporation. All affiliates or subsidiaries of an ETP [Firm or Equity ASAP] Holder shall be subject to compliance with the Bylaws, Rules and procedures of the Corporation, or other conditions as may be established by the Corporation. ETP Holders[, Equity ASAP Holders,] and Allied Persons of ETP [Firms or Equity ASAP] Holders shall be responsible for any fraud committed by a corporation affiliate or subsidiary organization or for any act or proceeding thereof contrary to just equitable principles of trade or detrimental to the interest or welfare of the Corporation.

An ETP [Firm or Equity ASAP] Holder proposing to organize an affiliate or subsidiary corporation shall submit full details to the Corporation.

[The above] Rule *4.3* shall apply to all ETP [Firms or Equity ASAP] Holders of the Corporation unless the ETP [Firm or Equity ASAP] Holder is subject to the jurisdiction of another national securities exchange or association designated by the Board of Directors as having comparable standards, or it is subject to the jurisdiction of another national securities exchange or association designated by the Securities and Exchange Commission as the primary regulatory body.

Changes in Stockholder Status

Rule 4.3(b). Whenever a person owning 5% or more of any class of equity securities, directly or indirectly, of an ETP [Firm or an Equity ASAP] Holder ceases to be an ETP Holder, [Equity ASAP Holder,] Allied Person or Approved Person, the firm shall redeem or convert such securities to fixed income securities so that such security interest is less than 5%. Provided, however, that if such redemption or conversion would cause such ETP [Firm or Equity ASAP] Holder not to comply with the capital requirement of Rule 4, the ETP [Firm or Equity ASAP] Holder will so notify the Corporation and the assets which the person receives upon redemption of such securities, will be loaned by the person to the ETP [Firm or Equity ASAP] Holder as a loan subordinated to the claims of all customers and general creditors of the ETP [Firm or Equity ASAP] Holder, or the fixed income securities which the person receives upon conversion of such securities will be subordinated to the claims of all customers and general creditors of the ETP [Firm or Equity ASAP] Holder. Any such subordination shall be pursuant to an agreement approved by the Corporation.

Trading in Firm's Securities

Rule 4.3(c). An ETP [Firm or Equity ASAP] Holder shall not trade in (except on an unsolicited basis) or make recommendations with respect to its own securities or those of its parents or affiliates (other than registered investment companies) and any parents or affiliates of an ETP [Firm or Equity ASAP] Holder shall not trade in (except on an unsolicited basis) or make recommendations with respect to its own securities or those of its affiliates, or those of the ETP [Firm or Equity ASAP] Holder (other than registered investment companies).

Change in Capitalization

Rule 4.3(d). No ETP [Firm or Equity ASAP] Holder shall make any change in its capitalization without prior written approval of the Corporation.

Owners of 5% or More Equity Securities

Rule 4.3(e). Every party who owns beneficially 5% or more of any class of equity security, either directly or indirectly, of the firm shall be an ETP [Firm or Equity ASAP] Holder,] Allied Person or Approved Person.

Conditions for Issuance of Freely Transferable Securities

Rule 4.3(f). ETP [Firm or Equity ASAP] Holders which issue freely transferable securities must maintain a ratio of not more than 50 percent of property subordinated debt equity (including common and preferred stock) after giving the effect to any public financing, and ETP [Firm or Equity ASAP] Holders or parents thereof which issue freely transferable securities must:

(1)—No change.

(2) Have two years of operations by the ETP [Firm or Equity ASAP] Holder as a bona fide broker-dealer.

(3)—No change.

(4) Pay a filing fee for approval by the Corporation of the ETP [Firm's or Equity ASAP] Holder's issuance of freely transferable securities.

Rule 4.3(g). Reserved.

Voting Agreement

Rule 4.3(h). None of the stock of a corporate ETP [Firm or Equity ASAP] Holder shall at any time be held under or subject to any voting agreement whereby the voting of such stock is pooled or joined with the stock of any then ETP Holder, [ETP Firm Equity ASAP Holder,] Allied Person, stockholder associate or Approved Person unless approved by the Board of Directors.

Participation in ETP [Firms] *Holders*

Rule 4.3(i). The Corporation hereby specifically approves the beneficial ownership of an interest in any other ETP [Firm or Equity ASAP] Holder by an ETP Holder, [Equity ASAP Holder,] Allied Person, or Approved Person of any ETP [Firm or Equity ASAP] Holder.

(1)–(2)—No change.

(3) In connection with his, her or its activity as a [market maker] *Market Maker* in such stock, in which event the ETP Holder[, ETP Firm or Equity ASAP Holder] or Allied Person, or Approved Person thereof shall be required to be registered with the Corporation as a [market maker] *Market Maker* in such stock.

Restrictions on ETP [and Equity ASAP] *Holder* Activities

Rule 4.4 The Corporation may restrict the conduct of an ETP [Holder's, ETP Firm's or Equity ASAP] Holder's activities if at any time the ETP [Firm or Equity ASAP] Holder appears to be approaching financial difficulties or appears to be experiencing difficulties in its daily operations.

(a) The Corporation may implement the provisions of Paragraph (b) of this Section if it determines the existence of one or more of the following conditions:

(1) The ETP [Holder, ETP Firm or Equity ASAP] Holder fails to maintain net capital, above requirements of Rule 4, equivalent to the greater of (i) one-half of the losses of an ETP [Holder, ETP Firm or Equity ASAP] Holder in the twelve-month period immediately preceding the date of such computation, or (ii) the loss experienced by the ETP [Holder, ETP Firm or Equity ASAP] Holder in the six-month period immediately preceding such computation.

In determining profit or loss, the ETP [Holder, ETP Firm or Equity ASAP] Holder shall mark its trading accounts to the market, and, its expenses shall reflect, among other things, all partners' drawings and salaries, and appropriate amounts for assets doubtful of collection.

(2) The ETP [Holder, ETP Firm or Equity ASAP] Holder has subordinated capital which will mature within the next 180 days, and which, if not renewed, would cause (i) the ratio of aggregate indebtedness to net capital to exceed 12 to 1, or, in the case of an ETP [Holder, ETP Firm or Equity ASAP] Holder which is operating pursuant to paragraph (f) of SEC Rule 15c3–1 (Alternative Net Capital Requirement), net capital to be less than 6% of the aggregate debits; (ii) a reduction in excess of net capital below the standard set forth in subparagraph (1) of this Section, or (iii) a reduction in net capital below 120% of the minimum required net capital.

(3) The ETP [Holder, ETP Firm or Equity ASAP] Holder has experienced a reduction in net capital of 15% in the preceding month or 30% in the three-month period immediately preceding such computation, other than as a result of increased capital haircuts on firm proprietary securities positions.

(4) The ETP [Holder's, ETP Firm's or Equity ASAP] Holder's net capital is less than $1,000,000 and (i) its ratio of aggregate indebtedness to net capital equals or exceeds 8 to 1, or (ii) its net capital is less than 150% of the minimum required net capital.

(5) The ETP [Holder's, ETP Firm's or Equity ASAP] Holder's net capital equals or exceeds $1,000,000 and (i) its ratio of aggregate indebtedness to net capital equals or exceeds 10 to 1, or (ii) its net capital is less than 120% of the minimum required net capital.

(6) Notwithstanding the provisions of subparagraphs (4) and (5) above, if the ETP [Holder, ETP Firm or Equity ASAP] Holder is operating pursuant to Paragraph (f) of SEC Rule 15c3–1 (Alternative Net Capital Requirement), its net capital is less than the greater of $200,000 or 6% of its aggregate debits.

(7) The ETP [Holder, ETP Firm or Equity ASAP] Holder has experienced a substantial change in the nature of the business conducted which, in the view of the Corporation, increases the potential risk of loss to customers[,] *and* ETP [Holders, ETP Firms and Equity ASAP] Holders.

(8) The ETP [Holders, ETP Firms or Equity ASAP] Holder's books and records are not maintained in accordance with the provisions of SEC Rules 17a–3 and 17a–4.

(9) The ETP [Holder, ETP Firm or Equity ASAP] Holder is unable to demonstrate compliance with applicable net capital requirements.

(10) The ETP [Holder, ETP Firm or Equity ASAP] Holder has substantial unsecured loans, advances or other similar receivables relative to its net capital position. For purposes of this provision, 15% is considered substantial.

(11) The ETP [Holders, ETP Firms or Equity ASAP] Holder's subordinated capital equals or exceeds 40% of its debt-equity total, as defined under paragraph (d) of SEC Rule 15c1–1.

(12) The ETP [Holder, ETP Firm or Equity ASAP] Holder is subject to undue concentration charges on proprietary positions, the aggregate market value of which equals or exceeds 15% of the total market value of all proprietary positions.

(13) The ETP [Holder, ETP Firm or Equity ASAP] Holder is unable to clear and settle transactions promptly.

(14) The ETP [Holder, ETP Firm or Equity ASAP] Holder is not in compliance, or is unable to demonstrate compliance, with SEC Rule 15c3–3 (Customer Protection-Reserves and Custody of Securities).

(15) The ETP [Holder, ETP Firm or Equity ASAP] Holder is subject to the reporting provisions of SEC Rule 17a–11.

(b) If the Corporation determines that any of the conditions listed under Paragraph (a) of this Section exist, or otherwise determines that the ETP [Holder, ETP Firm or Equity ASAP] Holder is guilty of (i) conduct inconsistent with just and equitable principles of trade, (ii) acts detrimental to the interest or welfare of the Corporation; or (iii) conduct contrary to an established practice of the Corporation, the Corporation may require that the ETP [Holder, ETP Firm or Equity ASAP] Holder take appropriate action by effecting one or more of the following or similar steps, until such time as the Corporation determines otherwise:

(1)—No change.

(2) Promptly effect delivery to customers of all fully paid securities in the ETP [Holder's, ETP Firm's or Equity ASAP] Holder's physical possession or control.

(3) Introduce all or a portion of its business to another ETP [Holder, ETP Firm or Equity ASAP] Holder on a fully disclosed basis.

(4)–(7)—No change.

(8) Undertake an immediate audit by an independent public accountant at the ETP [Holder's, ETP Firm's or Equity ASAP] Holder's expense.

(9) Restrict the payment of salaries or other sums to partners, officers, directors, shareholders or affiliated persons of the ETP [Holder, ETP Firm or Equity ASAP] Holder.

(10)–(12)—No change.

(c) The provisions contained in this Section do not limit the Corporation's authority to use other standards or to impose other restrictions, or take other action deemed appropriate under the circumstances in the public interest and for the protection of ETP Holders[, Equity ASAP Holders, and ETP Firms].

Commentary

.01.—No change.

**Section 2. Financial Reports**

Reports To Be Filed

Rule 4.5 Unless the Corporation determines otherwise, every ETP Holder, [ETP Firm and Equity ASAP Holder,] except as otherwise provided in Rule 4.7, shall file with the Corporation the reports prescribed by this Section.

Monthly Reports

Rule 4.5(a). Part I of SEC Form X–17A–5 shall be filed monthly by any ETP Holder[, ETP Firm or Equity ASAP Holder] which carries or clears accounts for customers. Such report shall be due by the tenth business day following the end of the month being reported upon.

Part II Quarterly Reports

Rule 4.5(b). Two manually signed copies of Part II of SEC Form X–17A–5 shall be filed for each calendar quarter by any ETP Holder[, ETP Firm or Equity ASAP Holder] which carries or clears accounts for customers. Such report shall be due by the fifteenth calendar day following the end of the calendar quarter being reported upon.

Part IIA Quarterly Reports

Rule 4.5(c). Two manually signed copies of Part IIA of SEC Form X–17A–5 shall be filed for each calendar quarter by any ETP Holder[, ETP Firm or Equity ASAP Holder] which does not carry or clear accounts for customers. Such report shall be due by the fifteenth calendar day following the end of the calendar quarter being reported upon.

Part II or Part IIA Filings on Other Than Calendar Quarters

Rule 4.5(d). An ETP Holder[, ETP Firm or Equity ASAP Holder] shall file an additional Part II or Part IIA of SEC Form X–17A–5, as appropriate, within fifteen calendar days after the date selected for the annual audited financial statements of the ETP Holder, [ETP Firm or Equity ASAP Holder,] pursuant to the provisions of Rule 4.10, where such date does not coincide with the end of a calendar quarter.

Periodic Reports

Rule 4.5(e). Every ETP Holders[, Equity ASAP Holders, and ETP Firm] shall submit, as required by the Corporation periodic reports with respect to short positions in securities.

Commentary

01. Short Positions. ETP Holders[, Equity ASAP Holders, and ETP Firm] for which the Corporation is the designated examining authority (''DEA'') are required to report ''short'' positions, including odd lots, in each stock or warrant listed or traded on the Corporation, and in each other stock or warrant not listed or traded on the Corporation (and not otherwise reported to another self-regulatory organization), using such automated format and methods as prescribed by the Corporation. Such reports must include customer and proprietary positions and must be made at such times and covering such time period as may be designated by the Corporation.

Every ETP Holder[, Equity ASAP Holder, and ETP Firm] for which the Corporation is not the DEA must report ''short'' positions to the self-regulatory organization that is the DEA for such ETP Holder[, Equity ASAP Holder or ETP Firm] if such DEA has a requirement for such reports. If the DEA does not have such a reporting requirement, then such ETP Holder[, Equity ASAP Holder or ETP Firm] must comply with the provisions of this Rule 4.5(e).

ETP [Holders, ETP Firms or Equity ASAP] Holders whose short positions have been properly reported to, and are carried by, a non-ETP [or non-Equity ASAP] clearing organization will be in compliance with this Rule 4.5(e) if adequate arrangements have been made for such clearing organization to report such positions to the Corporation or to another self-regulatory organization.

''Short'' positions to be reported are those resulting from ''short'' sales as defined in SEC Rule 3b–3, but excluding positions resulting from sales specified in clauses (1), (6), (7), (8), (9) and (10) of paragraph (e) of SEC Rule 10a–1. Also to be excluded are ''short'' positions carried for other ETP Holders[, Equity ASAP Holders, and ETP Firms] reporting for themselves.

Only one report should be made for each stock or warrant in which there is a short position. If more than one account has a short position in the same stock or warrant, the combined aggregate should be reported.

The term ''designated examining authority'' means the self-regulatory organization that has been assigned responsibility for examining an ETP Holder[, Equity ASAP Holder, or ETP Firm] for

compliance with applicable financial responsibility rules.

.02 ETP Holders[, Equity ASAP Holders, and ETP Firms] for which the Corporation is the DEA need not report ''short'' positions to the Corporation as provided in Commentary .01 if such ETP Holder[, Equity ASAP Holder, or ETP Firm] has made arrangements, satisfactory to the Corporation, to report such positions to another self-regulatory organization.

Accelerated Reporting

Rule 4.6. Unless the Corporation determines otherwise, if any of the conditions described in this Section is applicable, an ETP Holder[, Equity ASAP Holder or ETP Firm] subject to the provisions of Rule 4.5 shall file with the Corporation on a monthly basis (or more frequently if the Corporation so determines) Part II or Part IIA of SEC Form X–17A–5, as appropriate, together with a schedule of proprietary securities and commodities, and related ''haircuts'', and any other supplementary schedules deemed appropriate by the Corporation. Such reports shall be due by the fifteenth calendar day following the end of the month during which this Section becomes applicable to [a] *an* ETP Holder[, Equity ASAP Holder, or ETP Firm,] and such accelerated reports shall continue to be filed each month thereafter (or more frequently is the Corporation so determines) until the ETP Holder[, Equity ASAP Holder, or ETP Firm] is otherwise advised by the Corporation[:].

SIPC Referral

Rule 4.6(a). An ETP Holder[, Equity ASAP Holder or ETP Firm] subject to the referral provisions of Section 59a) of the Securities Investor Protection Act will be notified by the Corporation to file accelerated reports.

Financial or Operational Condition

Rule 4.6(b). An ETP Holder[, Equity ASAP Holder, or ETP Firm] that has exceeded or is exceeding the financial or operational parameters set forth in Rule 4.4 shall file without further notice the reports required by this Section.

General Conditions

Rule 4.6(c). The Corporation requires the filing of accelerated reports for reasons relating to (i) the financial or operational condition of the ETP Holder[, Equity ASAP Holder, or ETP Firm] (notwithstanding the provisions of paragraph (b) of this Section), (ii) the condition of the securities markets, or (iii) the condition of the securities industry, in which events the Corporation will notify the ETP Holder[, Equity ASAP Holder, or ETP Firm] to file accelerated reports.

Exemptions

Rule 4.7(a). An ETP Holder[, Equity ASAP Holder, or ETP Firm] shall be exempt from the filing requirements prescribed by Rules 4.5 and 4.6 under the following conditions:

[(1)] Any ETP Holder[, Equity ASAP Holder or ETP Firm] which is a member of another self-regulatory organization which has been designated the examining authority for such ETP Holder[, Equity ASAP Holder or ETP Firm] by the Securities and Exchange Commission.

(b) An ETP Holder[, Equity ASAP Holder or ETP Firm] qualifying for an exemption pursuant to this Paragraph shall file with the Corporation a copy of Notice and Part II of SEC Form X–17A–5, including such supplementary schedules as may be required, pursuant to the provisions of Rule 17a–11 under the Securities Exchange Act of 1934, as amended, at such time and at such frequency as prescribed by such other designated examining authority or by any applicable rule.

Report Filed Upon Termination of Membership Interest

Rule 4.8. If an ETP Holder[, Equity ASAP Holder or ETP Firm] holding any membership interest in a national securities exchange ceases to be a member in good standing of such exchange, such ETP Holder[, Equity ASAP Holder or ETP Firm] shall, within two business days after such event, file with the Securities and Exchange Commission and with the Corporation, Part II of Form X–17A–5, as of the date of such event, pursuant to the provisions of Paragraph (b) of Rule 17a–5 under the Securities Exchange Act of 1934, as amended.

Customer Statements

Rule 4.9. Every ETP Holder[, Equity ASAP Holder or ETP Firm] shall furnish to its customers, principal stockholders and subordinated lenders, and shall file with the Securities and Exchange Commission, the Corporation, and any other self-regulatory organizations of which it is a member, certain financial statements in accordance with the provisions of Paragraph (c) of Rule 17a–5 under the Securities Exchange Act of 1934, as amended.

Annual Filing of Audited Financial Statements

Rule 4.10. Every ETP Holder[, Equity ASAP Holder or ETP Firm] shall file annually a report which shall be audited by an independent public accountant in accordance with the provisions of paragraphs (d) through (n) of Rule 17a–5 under the Securities Exchange Act of 1934, as amended.

Financial Reports

Rule 4.11(a). Every ETP Holder[, Equity ASAP Holder or ETP Firm] which is not a member of another national securities exchange or registered national securities association which is the Designated Examining Authority for that ETP Holder[, Equity ASAP Holder or ETP Firm] shall file with the Corporation answers to Financial Questionnaires, Reports of Income and Expenses and additional financial information in the type, form, manner and time prescribed by the Corporation.

Rule 4.11(b).

(1) Each ETP Holder[, Equity ASAP Holder, or ETP Firm] shall file with the Corporation a Report of Financial Condition on SEC Form X–17A–5 as required by Securities and Exchange Commission Rules 17a–5 and 17a–10. Any ETP Holder[, Equity ASAP Holder or ETP Firm] who fails to file such Report of Financial Condition in a timely manner shall be subject to late filing charges as follows:

| Number of Days Late | Amount of Charge |
|---|---|
| 1–30 | $20.00 |
| 31–60 | 400.00 |
| 61–90 | 800.00 |

Repeated or aggravated failure to file such Report of Financial Condition or failure to file such report for more than ninety (90) days will be referred to the Business Conduct Committee for appropriate disciplinary action.

(2) Each ETP Holder[, Equity ASAP Holder or ETP Firm] for which the Corporation is the designated collection agent must file with the Corporation such forms and assessments as are required pursuant to the Securities Investor Protection Act of 1970. Any ETP Holder[, Equity ASAP Holder or ETP Firm] that fails to file such form or assessment in a timely manner will be subject to a late filing charge as follows:

| Number of days late | Amount of charge |
|---|---|
| 1–30 | $100.00 |
| 31–60 | 200.00 |
| 61–90 | 300.00 |

Provided however:

(A) if an ETP Holder[, Equity ASAP Holder or ETP Firm] files its SIPC form and assessment after its receipt of SIPC's final late notice, but files within five business days after its receipt of SIPC's final late notice, such ETP Holder[, Equity ASAP Holder or ETP Firm] will be subject to a fine pursuant to Rule 10.12(i)(2); and

(B) if an ETP [Firm] *Holder* fails to file its SIPC form and assessment within five business days after its receipt of SIPC's final late notice, such ETP [Firm] *Holder* will be subject to formal disciplinary action pursuant to Rule 10.4.

Commentary

.01 An ETP Holder[, Equity ASAP Holder or ETP Firm] that files its SIPC form and assessment more than 90 days late but before its receipt of SIPC's final late notice will be subject to a late charge of $800.

.02—No change.

Financial Responsibility and Operational Condition

Rule 4.11(c). The Corporation shall have the authority to examine the financial responsibility and/or operational conditions of any ETP Holder[, Equity ASAP Holder, or ETP Firm]. In conducting such examinations, the Corporation may require an ETP Holder[, Equity ASAP Holder, or ETP Firm] to furnish requested information. If the Corporation deems it necessary, ETP Holders[, Equity ASAP Holders or ETP Firms] shall make available their books and records as well as provide sworn or unsworn testimony. All examinations shall be conducted in a manner consistent with the rules and regulations governing the duty of the Corporation.

Underwriting Commitments

Rule 4.12. Each ETP Holder[, Equity ASAP Holder or ETP Firm,] for which the Corporation is the designated examining

authority, which enters into a security underwriting commitment, either with respect to an original or a secondary distribution of securities, whether or not admitted to dealing on the Corporation, shall notify the Corporation thereof in such manner as the Corporation shall prescribe.

Lawsuits

Rule 4.13. Each ETP Holder[, Equity ASAP Holder or ETP Firm] for which the Corporation is the designated examining authority, shall give written notice to the Corporation regarding all lawsuits involving such ETP Holder[, Equity ASAP Holder or ETP Firm] or any participant therein, including a description of the nature and principal allegations of such lawsuits, and a statement of the amount of damages claimed therein. Similar notice shall be given to the Corporation regarding any claims or contingent liabilities that appear likely to result in litigation.

**Section 3. Margins**

Daily Margin Record

Rule 4.14(a). Each ETP Holder[, Equity ASAP Holder, or ETP Firm] registered on the Corporation, carrying margin accounts for customers shall make and maintain a record of every case in which initial or additional margin must be obtained in a customer's account because of transactions effected in such account. This record shall show for each account the date of the transaction, the customer's name, the amount of margin required and the time when and manner in which such margin is furnished or obtained. This record shall be in a form acceptable to the Corporation and contain such additional information as the Corporation may from time to time prescribe. This record shall be preserved for at least twelve months.

Margin by Liquidation

Rule 4.14(b). No ETP Holder[, Equity ASAP Holder, or ETP Firm] registered on the Corporation shall permit a customer to make a practice of effecting transactions requiring initial or additional margin pursuant to rules of the Corporation or regulations of the Board of Governors of the Federal Reserve System and then furnishing such margin by the liquidation of the same or other commitments; except that the provisions of this section shall not apply to any account maintained for another broker or dealer in which are carried only the commitments of the customers of such other broker or dealer exclusive of his partners, provided such other broker or dealer (i) is an ETP Holder[, or Equity ASAP Holder] of the Corporation[, or an ETP Firm registered thereon]; or (ii) has agreed in good faith with the ETP Holder[, Equity ASAP Holder, or ETP Firm] carrying the account that [he] *it* will maintain a record equivalent to that referred to in Rule 4.14(a); or (iii) is not subject to the regulations of the Board of Governors of the Federal Reserve System.

Members Other Exchanges

Rule 4.14(c). An ETP Holder[, Equity ASAP Holder, or ETP Firm] registered as a member on another national securities exchange or association which has comparable standards and which has been designated by the Securities and Exchange Commission as the primary regulator is exempt from the provisions of this [rule] *Rule,* unless otherwise stated.

Customer Defined

Rule 4.14(d). For the purpose of this [rule] *Rule,* the term customer shall include any person or entity for whom securities are purchased or sold or to whom securities are sold or from whom securities are purchased whether on a regular way, when issued, delayed or future delivery basis. It will also include any person or entity for whom securities are held or carried. The term will not include a broker or dealer from whom a security has been purchased or to whom a security has been sold for the account of the ETP Holder[, Equity ASAP Holder or ETP Firm] or its customers.

Initial Margin

Rule 4.14(e)—No change.

Margin Requirements

Rule 4.15(a). For the purpose of effecting new securities transactions and commitments, the margin required shall be an amount equivalent to the requirements of paragraph (b) of this section, or such greater amount as the Corporation may from time to time require for specific securities, with a minimum equity in the account of at least $2,000, except that cash need not be deposited in excess of the cost of any security purchased. The foregoing minimum equity and cost of purchase provisions shall not apply to ''when distributed'' securities in cash accounts and the exercise of rights to subscribe.

Withdrawals of cash or securities may be made from any account, provided that after such withdrawal the equity in the account is at least the greater of $2,000 or the amount required by the maintenance requirement of this [rule] *Rule*.

Maintenance Margin Rule

Rule 4.15(b). The margin which must be maintained in margin accounts of customers, whether ETP Holder, [Equity ASAP Holders, ETP Firms,] Allied Persons thereof or non-ETP [or non-Equity ASAP Firms] *Holders,* shall be as follows:

(1)–(5)—No change.

Exceptions to Rule

Rule 4.15(c). The foregoing requirements of this Rule are subject to the following exceptions:

(1)—No change.

(2) Exempted Securities.

(A)–(B)—No change.

(C) Cash Transactions With Customers—Special Provisions—When a customer purchases an issued ''exempted'' security from or through an ETP Holder, [Equity ASAP Holder, or ETP Firm,] in a cash account, full payment shall be made promptly. If, however, delivery or payment therefore is not made promptly after the trade date, a deposit shall be required as if it were a margin transaction, unless it is a transaction with a bank, trust company, insurance company, investment trust or charitable or nonprofit educational institution.

In connection with any net position resulting from any transaction in issued ''exempted'' securities made for an ETP Holder[, Equity ASAP Holder or ETP Firm,] or a non-ETP [or non-Equity ASAP] broker-dealer, or made for or with a bank, trust company, insurance company, investment trust or charitable or non-profit educational institution, no margin need be required and such net position need not be marked to market. However, where such net position is not marked to the market, an amount equal to the loss at the market in such position shall be considered as cash required to provide margin in the computation of the net capital of the ETP Holder[, Equity ASAP Holder or ETP Firm] under the Corporation's capital requirements.

(3) Joint Accounts in Which the Carrying Firm or a Partner or Stockholder Therein Has an Interest—in the case of a joint account carried by a firm, in which such firm, or any partner, ETP [Holder, Equity ASAP] Holder, Allied Person or stockholder (other than a holder of freely transferable stock only) of such ETP [Firm] *Holder* participate with others, the interest of each participant other than the carrying ETP [Firm] *Holder* shall be margined by each such participant pursuant to the provisions of this [rule] *Rule* as if such interest were in a separate account.

(4)—No change.

(5) [Specialists' and] Market Maker['s] Accounts

(A) The account of an ETP Holder[, Equity ASAP Holder or ETP Firm] in which are effected only transactions in securities in which he is [registered and acts as a specialist] *a Market Maker* may be carried upon a margin basis which is satisfactory to the [specialist] *Market Maker* and the ETP Holder[, Equity ASAP Holder or ETP Firm]. The amount of any deficiency between the margin deposited by the [specialist] *Market Maker* and the haircut requirements of SEC Rule 15c3–1 shall be considered as a debit item in the computation of the net capital of ETP [Holder, Equity ASAP Holder or ETP Firm] *Holders* under the Corporation's capital requirements.

(A) In the case of joint accounts carried by an ETP Holder[, Equity ASAP Holder or ETP Firm for specialists] for *Market Makers,* in which the ETP Holder[, Equity ASAP Holder or ETP Firm] participates, the margin deposited by the other participants may be in any amount which is mutually satisfactory. The amount of any deficiency between the amount deposited by the other participant, or participants, based upon their proportionate share of the haircut requirements of SEC Rule 15c3–1, shall be considered as a debit item in the computation of the net capital of ETP [Holder, Equity ASAP Holder or ETP Firm] *Holders* under the Corporation's capital requirements.

(6) Broker/Dealer Accounts

(A) An ETP Holder[, Equity ASAP Holder or ETP Firm] may carry the proprietary account of another broker-dealer that is registered with the Securities and Exchange Commission, upon a margin basis that is satisfactory to both parties, provided the requirements of Regulation T of the Board of Governors of the Federal Reserve System are adhered to and the account is not carried in a deficit equity condition. The amount of any deficiency between the equity maintained in

the account and the haircut requirements of SEC Rule 15c3–1 shall be deducted in computing the Net Capital of the ETP Holder[, Equity ASAP Holder or ETP Firm] under the Corporation's Capital Requirements.

(B) Joint Back Offices Arrangements. An arrangement may be established between two or more registered broker-dealers pursuant to Regulation T, Section 220.11 to form a joint back office (''JBO'') arrangement for carrying and clearing, or carrying accounts of participating broker-dealers. ETP Holders[, Equity ASAP Holders or ETP Firms] must provide written notification to the Corporation prior to establishing a JBO.

(i) A carrying and clearing, or clearing ETP Holder[, Equity ASAP Holder or ETP Firm] must:

(a) maintain a minimum Tentative Net Capital of $25 million as computed pursuant to SEC Rule 15c3–1, except that an ETP Holder[, Equity ASAP Holder or ETP Firm] whose primary business consists of the clearance of options market-maker accounts, may carry JBO accounts provided that it does not allow its Net Capital, as computed pursuant to SEC Rule 15c3–1, to fall below $7 million for a period in excess of three consecutive business days. In addition, the ETP Holder[, Equity ASAP Holder or ETP Firm] must include in its ratio of gross options market maker deductions to Net Capital required by the provisions of SEC Rule 15c3–1, gross deductions for JBO participant accounts. Clearance of options market maker accounts shall be deemed to be a broker-dealer's primary business if a minimum of 60% of the aggregate deductions in the above ration are options market maker deductions;

(b) maintain a written risk analysis methodology for assessing the amount of credit extended to participating broker-dealers which shall be made available to the Corporation upon request; and

(c) deduct from Net Capital haircut requirements pursuant to SEC Rule 15c3–1 in excess of the equity maintained in the amounts of participating broker-dealers.

(ii) A participating broker-dealer must:

(a) be a registered broker-dealer subject to the SEC's Net Capital Rule;

(b) maintain an ownership interest in the carrying/clearing ETP Holder[, Equity ASAP Holder or ETP Firm] pursuant to Regulation T, Section 220.11; and

(c) maintain a minimum liquidating equity of $1 million in the Joint Back Office arrangement exclusive of the ownership interest established in (b) above. When the minimum liquidating equity decreases below the $1 million requirement, the participant must deposit an amount sufficient to eliminate this deficiency within 5 business days. If funds or securities sufficient to eliminate the deficiency are not received within 5 business days, the carrying organization must margin the account in accordance with the requirements prescribed for a customer in Regulation T.

(d) If at any time a clearing ETP Holder[, Equity ASAP Holder or ETP Firm] operating pursuant to subsection 6(b)(1)(a) above determines that its tentative net capital or that its net capital, respectively, has fallen below the applicable requirements, such clearing ETP Holder[, Equity ASAP Holder or ETP Firm] must immediately notify the Corporation of such deficiency by telegraphic or facsimile notice; and such clearing ETP Holder[, Equity ASAP Holder or ETP Firm] will be subject to the prohibitions against withdrawal of equity capital set forth in SEC Rule 15c3–1(e) and to the prohibitions against reduction, prepayment, and repayment of subordination agreements set forth in paragraph (b)(1) of SEC Rule 15c3–1, as if such broker or dealer's net capital were below the minimum standards specified by each of these paragraphs.

Other Provisions

Rule 4.15(d). Determination of Value for Margin Purposes.

(1) Active securities dealt in on a recognized exchange shall, for margin purposes, be valued at current market prices. Other securities shall be valued conservatively in the light of current market prices and the amount which might be realized upon liquidation. Substantial additional margin must be required in all cases where the securities carried are subject to unusually rapid or violent change sin value, or do not have an active market on a recognized exchange, or where the amount carried is such that it cannot be liquidated promptly.

To qualify for margin value, securities shall be in negotiable form and, except for bearer securities, shall be registered in street name (firm name, or firm agent, or firm nominee or in process of being transferred to such) after constructive receipt thereof. A cash margin deficiency shall be treated as a debit item in the computation of [Net Capital] *net capital.*

(2) Puts, Calls Other Options, Currency Warrants, Currency Index Warrants and Stock Index Warrants.

(A)—No change.

(B) The issuance, guarantee or sale (other than a ''long'' sale) for a customer of a put or a call shall be considered as a security transaction subject to Rule 4.15(a). The short sale for a customer of a currency warrant, currency index warrant or stock index warrant shall be considered as a security transaction subject to paragraph (a) of this Rule 4.15[(d)].

(C)—No change.

(D) The margin on any put, call, currency warrant, currency index warrant or stock index warrant issued, guaranteed or carried ''short'' in a customer's account shall be:

(i)—No change.

(ii) In the case of puts and calls listed or traded on a registered national securities exchange or a registered securities association and issued by a registered clearing corporation which [represent] *represents* options on GNMA obligations in the principal amount of $100,000, 130% of the current market value of the option plus $1,500, except that the margin required need not exceed $5,000 plus the current market value of the option.

(iii)—No change.

(E)—No change.

(F) (1)–(3)—No change.

*(4)*—No change.

(G)—No change.

(H) ''Long'' and ''Short'' Positions in Securities and Options. (1)–(4)—No change.

(5) Bank Guarantee Letters—

No margin need be required in respect of a put option contract carried in a ''short'' position where the customer has delivered to the ETP Holder[, Equity ASAP Holder or ETP Firm] with which such position is maintained a letter of guarantee issued by a bank approved to issue escrow receipts under Rule 610 of the Rules of the Options Clearing Corporation, in form satisfactory to the Corporation, which certifies that such bank holds on deposit for the account of the customer cash in the full amount of the aggregate exercise price of such put option contract, and that such amount will be paid to the ETP Holder[, Equity ASAP Holder or ETP Firm] against delivery of the underlying security covered by such put option contract.

(6) No margin is required in respect of a warrant on a market index carried in a short position where the customer has delivered, promptly after the warrant has been sold short, to the ETP Holder[, Equity ASAP Holder or ETP Firm] with which such position is maintained, a Market Index Warrant Escrow Receipt in a form satisfactory to the Corporation, issued by a bank or trust company pursuant to specific authorization from the customer certifying that the issuer of the agreement holds for the account of the customer: (1) cash, (2) cash equivalents, (3) one or more qualified equity securities, or (4) a combination thereof; that such deposit has an aggregate market value, at the time the warrant has been sold short, or not less than 100% of the aggregate currency index value; and that the issuer will promptly pay the ETP Holder[, Equity ASAP Holder or ETP Firm] the exercise settlement amount in the event the account is assigned an exercise notice.

(7)—No change.

(I) When an ETP Holder[, Equity ASAP Holder or ETP Firm] issues or guarantees an option to receive or deliver securities for a customer, such option shall be margined as if it were a put or call.

(J) Option Specialists, Market Makers and Traders. Notwithstanding the other provisions of this sub-section (d)(2), an ETP Holder[, Equity ASAP Holder or ETP Firm] may clear and carry the listed option transactions of one or more registered specialists, registered market makers or registered traders in options (which registered traders are deemed specialists for all purposes under the Securities Exchange Act of 1934 pursuant to the rules of a national securities exchange) (hereafter referred to as ''specialists(s)''), upon a ''Good Faith'' margin basis satisfactory to the concerned parties, provided the ''Good Faith'' margin requirement is not less that the Net Capital haircut deduction of the ETP Holder[, Equity ASAP Holder or ETP Firm] carrying the transaction pursuant to SEC Rule 15c3–1. In lieu of collecting the ''Good Faith'' margin requirement, a carrying ETP Holder[, Equity ASAP Holder or ETP Firm] may elect to deduct in computing its net capital the amount of any deficiency between the equity maintained in the account and the ''Good Faith'' margin required.

For purposes of the subsection (d)(2)(J), a permitted offset position means, in the case

of an option in which a specialist makes a market, a position in the underlying asset or other related assets, and in the case of other securities in which a specialist makes a market, a position in options overlying the securities in which a specialist makes a market. Accordingly, a specialist in options may establish, on a share-for-share basis, a long or short position in the securities underlying the options in which the specialist makes a market, and a specialist in securities other than options may purchase or write options overlying the securities in which the specialist makes a market, if the account holds the following permitted offset positions:

(i)–(ii)—No change.

*(iii)*—No change.

(iv)–(vi)—No change.

(vii) a specified portfolio type as referred to in SEC Rule 15c3–1, including its appendices, or any applicable SEC staff interpretation or no-action position.

Permitted offset transactions must be effected for market making purposes such as hedging, risk reduction, rebalancing of positions, liquidation, or accommodation of customer orders, or other similar market making purposes.

For purposes of this paragraph (d)(2)(J), the term ''in or at the money'' means the current market price of the underlying security is not more than two standard exercise intervals below (with respect to a call option) or above (with respect to a put option) the exercise price of the option; [the term ''in the money'' means the current market price of the underlying asset or index is not below (with respect to a call option) or above (with respect to a put option) the exercise price of the option;] and, the term ''overlying option'' means a put option purchased or a call option written against a long position in an underlying asset; or a call option purchased or a put option written against a short position in an underlying asset.

Securities, including options, in such accounts shall be valued conservatively in the light of current market prices and the amount that might be realized upon liquidation. Substantial additional margin must be required or excess net capital maintained in all cases were the securities carried: (i) are subject to unusually rapid or violent [chances] *changes* in value including volatility in the expiration months of options, (ii) do not have an active market, or (iii) in one or more or all accounts, including proprietary accounts combined, are such that they cannot be liquidated promptly or represent undue concentration of risk in view of the carrying organization's net capital and its overall exposure to material loss.

(K)—No change.

(L) Exclusive designation—A customer may designate at the time an option order is entered which security position held in the account is to serve in lieu of the required margin, if such service is offered by the ETP Holder[, Equity ASAP Holder or ETP Firm]; or the customer may have a standing agreement with the ETP Holder[, Equity ASAP Holder or ETP Firm] as to the method to be used for determining on any given day which security position will be used in lieu of the margin to support an option transaction. Any security held in the account that serves in lieu of the required margin for a short put or short call shall be unavailable to support any other option transaction in the account.

(M) Cash account transactions.—An ETP Holder[, Equity ASAP Holder or ETP Firm] may make option transactions in a customer's cash account, providing:

(i)–(ii)—No change.

(3) ''When Issued'' and ''When Distributed'' Securities—

(A)—No change.

(B) Cash Accounts

In connection with any transactions or net position resulting from contracts for a ''when issued'' security in an account other than that of an ETP Holder, [Equity ASAP Holder or ETP Firm,] non-ETP [or non-Equity ASAP] broker or dealer, bank, trust company, insurance company, investment trust, or charitable or non-profit educational institution, deposits shall be required equal to the margin required were such transaction or position in a margin account.

In connection with any net position resulting from contracts for a ''when issued'' security made for or with a non-ETP [or non-Equity ASAP] broker or dealer, no margin need be required, but such net position must be marked to the market.

In connection with any net position resulting from contracts for a ''when issued'' security made for an ETP Holder[, Equity ASAP Holder or ETP Firm] or for or with a bank, trust company, insurance company, investment trust, or charitable or non-profit educational institution, no margin need be required and such net position need not be marked to the market. However, where such net position is not marked to the market, an amount equal to the loss at the market in such position shall be considered as cash required to provide margin in the computation of the net capital of the ETP Holder[, Equity ASAP Holder or ETP Firm] under the Corporation's capital requirements.

The provisions of this subparagraph shall not apply to any position resulting from contracts on a ''when issued'' basis in a security

(i)–(ii)—No change.

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

(5)–(6)—No change.

(7) Practice of Meeting Margin Calls by Liquidation Prohibited—No ETP Holder[, Equity ASAP Holder, or ETP Firm] shall permit a customer to make a practice of effecting transactions requiring margin and then either deferring the furnishing of margin beyond the time when such transactions would ordinarily be settled or cleared, or meeting such demand for margin by the liquidation of the same or other commitments in his account.

(8) Free Riding in Cash Accounts Prohibited—No ETP Holder[, Equity ASAP Holder, or ETP Firm] shall permit a customer (other than a broker/dealer or bank, trust company, insurance company, investment trust, or charitable or non-profit educational institution) to make a practice, directly or indirectly, of effecting transactions in a cash account where the cost of securities purchased is met by the sale of the same securities. No ETP Holder[, Equity ASAP Holder or ETP Firm] shall permit such a customer to make a practice of selling securities which were purchased in a cash account at another broker-dealer and are not yet paid for. A customer shall not be deemed to be continuing this practice if for a period of 90 days (or less with the approval of the Corporation) no such transactions have taken place. An ETP Holder[, Equity ASAP Holder or ETP Firm] transferring an account which is under restraint to another broker-dealer shall inform the receiving broker-dealer of the restraint.

(9) BOUNDs

(A)–(F)—No change.

(G)(i)—No change.

(ii) When a BOUND and a LEAP with the same expiration and strike price are issued, guaranteed or carried ''short'' against an existing net ''long'' position in the security underlying the BOUND and LEAP, or in any security that meets the requirements of Rule [6.1(1)(23)] *6.1(a)(23)* of the PCX Parent relating to covered options or in any security immediately exchangeable or convertible, other than warrants without restriction including the payment of money, into the security underlying the BOUND and LEAP, no margin need be required on either the BOUND or the LEAP provided (1) such net ''long'' position is adequately margined in accordance with this Rule and (2) the right to exchange or convert the net ''long'' position does not expire on or before the expiration date of the ''short'' BOUND or LEAP.

(iii)–(iv)—No change.

(H) Notwithstanding the other provisions of this paragraph (d)(9), the account of a person in which are effected only transaction in which such person is registered and acts as a specialist or market maker on an exchange, and the account of a registered trader containing only transactions effected

by him in his capacity as a registered trader, may be cleared and carried on a margin basis which is satisfactory to the specialist, market maker or registered trader and the ETP Holder[, Equity ASAP Holder or ETP Firm] carrying the account.

(I)—No change.

Commentary

.01—No change.

Notice to Corporation

Rule 4.16. An ETP Holder[, Equity ASAP Holder, or ETP Firm] commencing to carry margin accounts shall immediately notify the Corporation in writing.

Location of Records

Rule 4.17. An ETP Holder[, Equity ASAP Holder, or ETP Firm] shall maintain at its main office the daily margin record required by Rule [4(a)] *4.14(a).* An ETP Holder[, Equity ASAP Holder, or ETP Firm] maintaining margin records at two or more offices shall maintain such records at each office for inspection.

Determination of Margin

Rule 4.18—No change.

Fidelity Bonds

Rule 4.19(a). Each ETP Holder[, Equity ASAP Holder or ETP Firm] which transacts business with the public or clears transactions for other ETP Holders[, Equity ASAP Holders, or ETP Firms] shall carry fidelity bonds in such form and in such amounts as the Corporation may require covering the [individual] *sole proprietor* ETP [Holder, Equity-ASAP] Holder, or, in the case of an [Equity ASAP] *ETP* Holder [or ETP Firm] *organization,* its general partners or officers and its employees.

(b) ETP Holders[, Equity ASAP Holders or ETP Firms] subject to this Rule are required to maintain basis and specific coverages in amounts not less than those prescribed in this Rule. Where applicable such coverage must also extend to limited partners as employees, and outside organizations providing electronic data processing services and the handling of U.S. Government securities in bearer form.

(c) Each ETP Holder[, Equity ASAP Holder or ETP Firm] that introduces customers' accounts on a fully disclosed basis must maintain coverage as follows:

(i) Minimum basis coverage for such ETP Holder[, Equity ASAP Holder or ETP Firm] whose net capital requirement under Rule 4:

A.–B—No change.

(ii) Specific coverage for such ETP Holders[, Equity ASAP Holders or ETP Firms] shall be as follows:

A—No change.

B. Fraudulent Trading (not required of ETP Holders, [Equity ASAP Holders,] those not associated with an ETP [Firm] *Holder* or partnerships having no employees)—the greater of $25,000 or 50% of the basis bond minimum requirement, up to $500,000.

C.—No change.

(d) Each ETP Holder[, Equity ASAP Holder on ETP Firm] which carries customers' accounts or clears transactions for other ETP Holders[, Equity-ASAP Holders, ETP Firms] must maintain coverage as follows:

(i) Minimum basis coverage for such ETP Holder[, Equity ASAP Holder or ETP Firm] shall be based on their net capital requirement under Rule 4 as follows:

| Net capital requirement under rule 4 | Basis minimum coverage |
|---|---|
| $25,000–$50,000 | $200,000 |
| $50,001–$100,000 | 300,000 |
| $100,001–$200,000 | 500,000 |
| $200,001–$300,000 | 600,000 |
| 300,001–$500,000 | 700,000 |
| $500,001–$1,000,000 | 800,000 |
| $1,000,001–$2,000,000 | 1,000,000 |
| $2,000,001–$3,000,000 | 1,500,000 |
| $3,000,001–$4,000,000 | 2,000,000 |
| $4,000,001–$6,000,000 | 3,000,000 |
| $6,000,001–$12,000,000 | 4,000,000 |
| $12,000,001 and higher | 5,000,000 |

(ii) Specific coverages for such ETP Holder[, Equity ASAP Holder or ETP Firm] shall be as follows:

A.–C. No change.

(iii) Misplacement, Fraudulent Trading, Check Forgery and Securities Forgery.

A. Each ETP Holder[, Equity ASAP Holder or ETP Firm] shall be expected to review carefully any need for coverage greater than that provided by the required minimums. Where experience or the nature of the business warrants additional coverage, the Corporation expects the ETP Holder[, Equity ASAP or ETP Firm] to acquire it.

B. ETP Holder[, Equity ASAP Holders, and ETP Firms] required to carry the above form(s) of insurance shall advise the Corporation in writing if such insurance is entirely or partially canceled.

(e)—No change.

**Rule 5**

**Listings**

**Section 1. General Provisions and Definitions**

General Provisions and Definitions

RULE 5.1(a)—No change.

RULE 5.1(b). Definitions. The following terms used in Rules 5.2 through 5.5 shall, unless otherwise indicated, have the meanings herein specified:

(1)–(3)—No change.

(4) The term ''listed''; and the phrase ''listed'' on the Corporation [means] *mean* a security that has been listed on the PCX Parent pursuant to Section 12(b) of the Securities Exchange Act of 1934. Such security shall be listed pursuant to a formal application and request for such listing filed by the issuing company.

(5)–(15)—No change.

**Section 2. Applications to List**

RULE 5.2(a)–5.2(f)—No change.

Contingent Value Rights (''CVRs'')

RULE 5.2(g)—No change.

Commentary

.01 Prior to the commencement of trading of securities admitted to listing under this Rule 5.2(g), the Corporation will distribute a circular to its membership explaining the specific risks associated with CVRs and providing guidance regarding [member firm] *ETP Holder* compliance responsibilities when handling transactions in such securities.

Unit Investment Trusts (''UITs'')

RULE 5.2(h)—No change.

Commentary

.01 Customers must be provided with a prospectus and an explanation of any special characteristics and risks attendant to trading MIT interests. Before [a] *an* ETP Holder, [ETP Firm, or Equity ASAP Holder,] or an officer, partner, or employee of such [a] *an* ETP [Firm, or Equity ASAP] Holder, undertakes to recommend a transaction in the UIT interest or in the component securities, such officer, partner or employee should make a determination that such UIT interests, components or units are not unsuitable for such customer, and the person making the recommendation should have a reasonable basis for believing at the time of making the recommendation, that the customer has such knowledge and experience in financial matters that he may reasonably be expected to be capable of evaluating the risks and the special characteristics of the recommended transaction and is financially able to bear the risks of the recommended transaction and constituent interest.

.02 An ETP Holder[, Equity ASAP Holder or ETP Firm] must provide a prospectus to an investor in connection with each transaction in a UIT interest, unless such ETP [Holder, ETP Firm, or Equity ASAP] Holder has in place a procedure by which to verify previous receipt of a current prospectus. The investor must receive such prospectus prior to or concurrently with the transaction confirmation.

.03—No change.

RULE 5.2(i)—No change.

Other Securities

RULE 5.2(j)(1)—No change.

Commentary

.01 Prior to commencement of trading of securities admitted to listing pursuant to this Rule 5.2(j)(1), the Corporation will evaluate the nature and complexity of the issue and, if appropriate, distribute a circular to the ETP Holders[, ETP Firms and Equity ASAP] Holders providing guidance regarding the [Firm or] Holder's compliance responsibilities when handling transactions in such securities.

Equity Linked Notes (''ELNs'')

RULE 5.2(j)(2). In the case of ELNs, the following listing requirements must be met:

(A) Issuer Listing Standards

(i) The issuer of ELNs must be an entity that:

(*a*) is listed on a national securities exchange or the Nasdaq National Market or is an affiliate of a company listed on a national securities exchange or the Nasdaq National Market; and

(b)— has a minimum net worth of $150 million.

(ii)—No change.

(B)–(D)—No change.

(E) Prior to the commencement of trading of particular ELNs listing pursuant to this Rule, the Corporation will distribute a circular to ETP [Firms and Equity ASAP] Holders providing guidance regarding

compliance responsibilities (including suitability recommendations and account approval) when handling transactions in ELNs.

RULE 5.2(j)(3)—No change.

RULE 5.2(k)–(n)—No change.

**Section 3. Corporate Governance and Disclosure Policies**

RULE 5.3(a)–(i)—No change.

Financial Reports and Related Notices

RULE 5.3(i)(1). Companies applying for listing enter into agreements with the Corporation and become subject to its [Rules] *rules*, regulations and policies applicable to listed companies. Pursuant to the listing agreement with the Corporation and the Rules of the Securities and Exchange Commission under the Securities Exchange Act of 1934, each listed company is required to submit the following information:

(i)–(ii)—No change.

Commentary

.01–.04—No change.

RULE 5.3(i)(2)—No change.

Procedure for Public Dissemination

RULE 5.3(i)(3). A listed company is expected to make timely and adequate disclosure to its shareholders, the financial community, and investing public of any news or information that might reasonably be expected to materially affect the market for its securities. Furthermore, a company should also act promptly to dispel any unfounded rumors that result in unusual market activity or price variations.

The following information will provide guidance to a listed company in making appropriate public disclosure and, therefore, ensure the maintenance of a fair and orderly marketplace to all participants:

(1)–(ii)—No change.

(iii) Relationships between Company Officials and Others

(A)—No change.

(B) [Specialists:] *Market Makers*

[The Specialist is] *Market Makers are* obligated to contribute, insofar as reasonably practical, to the maintenance of a fair and orderly market pursuant to the Rules and procedures of the Corporation. In fulfilling this responsibility, it is desirable for the [Specialist] *Market Makers* to have appropriate liaison with one or more corporate officials. Such liaison, properly conducted, provides opportunity for communication in the event of particular questions or problems encountered by either the [Specialist] *Market Makers* or the company. Company officials should be informed of any unusual market problems if deemed appropriate and would be free to call the Securities Qualification Department or Surveillance Department [(not the Specialist)] for information if a question arises about the market in the security.

There is a point beyond which it is improper for the company to go in providing information to [the Specialist] *Market Makers*. Therefore, for the company to give advance earnings, dividend, stock split, or merger information to a [Specialist] *Market Maker* or anyone else would be inappropriate. Alternatively, it is entirely appropriate for company officials to discuss matters such as the trend of business with [the Specialist] *a Market Maker*, much as they would with shareholders, security analysts, or anyone having a legitimate interest in the company. In this way, [the Specialist] *a Market Maker* may be better able to maintain a market beneficial to the company and its present and prospective shareholders.

Content and Preparation of Public Announcements

RULE 5.3(i)(4)—No change.

**Section 4. Suspension or Issuer Withdrawal from Listing**

Suspension

RULE 5.4(a)–(b)—No change.

**Section 5. Maintenance Requirements and Delisting Procedures**

RULE 5.5(a)—No change.

Tier I Securities

Maintenance Requirements

Common Stock—Select Market Companies

RULE 5.5(b). In the case of common stock, the following maintenance requirements must be met:

(1)–(4)—No change.

Commentary

.01—No change.

.02 With regard to the share bid price requirements, as set forth *in* Rule 5.5(b), the Corporation may waive such requirements upon consideration of market conditions, the issuer's capitalization, the number of outstanding and publicly held shares, and any other factors the Corporation deems appropriate.

RULE 5.5(c)–(1)—No change.

Delisting Procedures

RULE 5.5(m). Whenever the Corporation determines that it is appropriate to either suspend dealings in and/or remove securities from listing pursuant to this Rule 5.5, except for other than routine reasons (e.g., redemptions, maturities, etc.), it will follow, insofar as practicable, the following procedures:

(1)–(2)—No change.

(3) Concurrent with the Corporation's decision to delist the issuer's security, the Corporation will prepare a press announcement, which will be disseminated to the [specialist] *Market Makers* and the investing public no later than the opening of trading the business day following the Corporation's decision (the Securities Qualification Department will also distribute [a floor bulletin] *the information* to the ETP [Holders, ETP Firms and Equity ASAP] Holders). Accordingly, the suspension of trading in the issuer's security will become effective at the opening of business on the day following the Corporation's decision.

4–(6)—No change.

(7) Any documents or other written material the issuer wishes to consider should be submitted to the appropriate office of the Corporation at least five (*5*) business days prior to the date of the hearing.

(8)–(9)—No change.

**Rule 6**

**Business Conduct**

Adherence to Law

Rule 6.1. The acceptance of any account, whether on a disclosed or undisclosed basis, by an ETP Holder[, Equity ASAP Holder or ETP Firm] shall at all times comply with fair and equitable principles of trade, the applicable regulations of the Securities and Exchange Commission and of the Federal Reserve Board, *and* the Bylaws and Rules of the Corporation.

Prohibited Acts

Rule 6.2. Any ETP Holder[, Equity ASAP Holder, ETP Firm] or any [other] associated person *thereof* found guilty in accordance with the Rules and procedures of the Corporation of any of the following prohibited acts shall be subject to the imposition of penalties in accordance with the Rules of the Corporation.

(a)—No change.

(b) Conduct or proceeding inconsistent with just and equitable principles of trade, it being declared among other things, that the willful violation of any provision of the federal securities laws, the regulations of the Securities and Exchange Commission and of the Federal Reserve Board, *and* the Bylaws and Rules and procedures of the Corporation shall be considered conduct or proceedings inconsistent with just and equitable principles of trade.

(c)—No change.

(d) Willful failure to carry out any contract with another ETP Holder[, Equity ASAP Holder, or ETP Firm] of the Corporation.

(e) Willful action deemed to be detrimental to the welfare of investors, creditors, ETP [Holders, ETP Firms, Equity ASAP] Holders or the Corporation.

(f) Subjecting the Corporation or any Director or officer thereof to litigation seeking to restrain the lawful exercise of powers and duties under the Bylaws [and], Rules and procedures of the Corporation.

Prevention of the Misuse of Material, Nonpublic Information

Rule 6.3. Every ETP Holder], Equity ASAP Holder or ETP Firm] must establish, maintain and enforce written policies and procedures reasonably designed, taking into consideration the nature of such ETP Holder's[, Equity ASAP Holder's or ETP Firm's] business, to prevent the misuse of material, non-public information by such ETP Holder[, Equity ASAP Holder or ETP Firm] or persons associated with such ETP Holder[, Equity ASAP Holder or ETP Firm]. ETP Holders for whom the Corporation is the Designated Examining Authority (''DEA'') that are required, pursuant to Rule [6.7] 4.5, to file SEC form X–17A–5 with the Corporation on an annual or more frequent basis must file contemporaneously with the submission for the calendar year end ITSFEA compliance acknowledgments stating that the procedures mandated by this Rule have been established, enforced and maintained. Any ETP Holder[, Equity ASAP Holder or ETP Firm] or associated person who becomes aware of a possible misuse of material, non-public information must promptly notify the Corporation's Surveillance Department.

*Commentary:*

.01—No change.

.02 The terms ''associated person'' and ''person associated with an ETP Holder[, Equity ASAP Holder or ETP Firm]'' mean anyone who directly is engaged in the ETP Holder's[, Equity ASAP Holder's or ETP Firm's] trading-related activities, including general partners, officers, directors, managers (or any person occupying a similar status or performing similar functions), any person directly or indirectly controlling, controlled by, or under common control with an ETP Holder[, Equity ASAP Holder or ETP Firm] or any employee of the ETP Holder[, Equity ASAP Holder or ETP Firm].

For the purposes of this Rule, the term ''employee'' includes every person who is compensated directly or indirectly by the ETP Holder[, Equity ASAP Holder or ETP Firm] for the solicitation or handling of business in securities, including individuals trading securities for the account of the ETP Holder[, Equity ASAP Holder or ETP Firm], whether such securities are dealt in on an exchange or are dealt over-the-counter.

.03 Rule 6.3 provides that, at a minimum, each ETP Holder, [Equity ASAP Holder or ETP Firm] establish, maintain, and enforce the following policies and procedures:

A. All associated persons must be advised in writing of the prohibition against the misuse of material, non-public information; and

B. All associated persons of the ETP Holder[, Equity ASAP Holder or ETP Firm] must sign attestations affirming their awareness of, and agreement to abide by the aforementioned prohibitions. These signed attestations must be maintained for at least three years, the first two years in an easily accessible place; and

C. Each ETP Holder[, Equity ASAP Holder or ETP Firm] must receive and retain copies of trade confirmations and monthly account statements for each account in which an associated person: has a direct or indirect financial interest or makes investment decisions. The activity in such brokerage accounts should be reviewed at least quarterly by the ETP Holder[, Equity ASAP Holder or ETP Firm] for the purpose of detecting the possible misuse of material, non-public information; and

D. All associated persons must disclose to the ETP Holder[, Equity ASAP Holder or ETP Firm] whether they, or any person in whose account they have a direct or indirect financial interest, or make investment decisions, are an officer, director or 10% shareholder in a company whose shares are publicly traded. Any transaction in the stock (or option thereon) of such company shall be reviewed to determine whether the transaction may have involved a misuse of material non-public information.

Maintenance of the foregoing policies and procedures will not, in all cases, satisfy the requirements and intent of Rule 6.3; the adequacy of each ETP Holder's[, Equity ASAP Holder's or ETP Firm's] policies and procedures will depend upon the nature of such ETP Holder's[, Equity ASAP Holder's or ETP Firm's] business.

Rumors

Rule 6.4. No ETP Holder[, Equity ASAP Holder or ETP Firm] or any participant therein shall circulate, in any manner, rumors of a character which might affect market conditions on the Corporation; provided, however, that this rule shall not prohibit discussion of unsubstantiated information when its source and unsubstantiated nature are disclosed.

Manipulation

Rule 6.5. No ETP Holder[, Equity ASAP Holder or ETP Firm] or any participant therein shall effect or induce the purchase or sale or otherwise effect transactions in any security for the purpose of creating or inducing a false, misleading or artificial appearance of activity in such security, or for the purpose of unduly or improperly influencing the market price of such security, or for the purpose of making a price which does not reflect the true state of the market in such security.

Front-Running of Block Transactions

6.6. An ETP Holder[, Equity ASAP Holder or ETP Firm] or associated person obtaining information of an immediate pending transaction or a transaction executed but not yet reported on any national securities exchange or association involving 5,000 shares or more of a security including an equivalent number of option contracts admitted to dealings on the Pacific Exchange, *Inc.*, or securities, underlying *the* options so admitted, shall not initiate or transmit an order in the security involved, or options relating to that security, [on] through the facilities of the Corporation for any account in which he or *she or* his *or her* organization are participants until after the transaction appears on the ticker or is otherwise disclosed, in the case of orders pertaining to equities, or until two minutes after such disclosure, in the case of orders pertaining to options. Exceptions will require prior approval from the Corporation.

[Limitations on Trading Because of Customers' Orders]

[Rule 6.7—Deleted.]

[Discretionary Transactions]

[Rule 6.8—Deleted.]

Excessive Trading

Rule [6.9] *6.8.* No ETP Holder[, Equity ASAP Holder, ETP Firm,] nor any participant therein shall effect [on] through the facilities of the Corporation purchases or sales for any account in which such ETP Holder[, Equity ASAP Holder, ETP Firm] or participant therein is directly or indirectly interested, which purchases or sales are excessive in view of the financial resources of such ETP Holder[, Equity ASAP Holder, ETP Firm] or participant therein or in view of the market for such security.

Commentary

.01 An ETP Holder[, Equity ASAP Holder or ETP Firm] who issues a commitment to trade from the Corporation through ITS or any other Application of the System shall, as a consequence thereof, be deemed to be initiating a purchase or a sale of a security [on] through the facilities of the Corporation as referred to in this Rule.

Taking or Supplying Securities to Fill Customer's Order

Rule [6.10] *6.9*(a). No ETP Holder[, Equity ASAP Holder or ETP Firm] who has accepted for execution, personally or through the ETP [Firm or Equity ASAP] Holder or any participant therein, an order for the purchase of securities shall fill such order by selling such securities for any account in which the ETP Holder[, Equity ASAP Holder, ETP Firm] or any participant therein has a direct or indirect interest, or having so accepted an order for the sale of securities, shall fill such order by buying such securities for such an account, except as follows:

(1) An ETP Holder[, Equity ASAP Holder or ETP Firm] who neglects to execute an order may be compelled to take for or supply from such ETP [Holder, Equity ASAP Holder or ETP Firm's] *Holder's* account [or] the securities named in the order;

(2) An ETP Holder[, Equity ASAP Holder or ETP Firm,] acting for another ETP Holder, [Equity ASAP Holder or ETP Firm,] may take or supply the securities named in the order provided the price is justified by the condition of the market and provided that the ETP Holder[, Equity ASAP Holder or ETP Firm] who gave the order shall directly, or through a broker authorized to act for him *or her*, after prompt notification, accept the trade;

(3) An ETP Holder, [Equity ASAP Holder or ETP Firm,] acting as a broker, is permitted to report to his *or her* principals a transaction as made with himself *or herself* when he *or she* has offsetting orders from two principals to buy and to sell and not to give up;

(4) A [specialist] *Market Maker* in accordance with his *or her* duty to provide an orderly market in the securities in which he *or she* is registered may purchase or sell for principal account, such securities named in his *or her* firm's customer's order and record the transaction [on] through the facilities of the Corporation provided that:

(i) the price is consistent with the market;

(ii) full disclosure to his *or her* customer is made on the confirmation of the transaction in a manner that defines the interest of the ETP Holder[, Equity ASAP Holder or ETP Firm].

(5) An ETP Holder[, Equity ASAP Holder or ETP Firm] may purchase or sell for principal account the securities named in his customer's order, and record the transaction [on] through the facilities of the Corporation provided that:

(i) the price is consistent with the market;

(ii) full disclosure of the interest of the ETP Holder[, Equity ASAP Holder or ETP Firm] is made to his customer on the confirmation of the transaction[,].

ETP Holders Holding Options

Rule [6.11] *6.10*(a). No ETP Holder [or ETP Firm while on the Floor] shall initiate the purchase or sale [on] through the facilities of the Corporation for his *or her* own account or for any account in which the ETP Holder [or ETP Firm] or any participant therein is directly or indirectly interested, of any security admitted to dealings [on] through the facilities of the Corporation in which he *or she* holds or has granted any put, call, straddle or option, or in which he *or she* has

knowledge that the ETP [Firm] *Holder* or any participant therein holds or has granted any put, call, straddle or option, unless such put, call, straddle, or option is issued by the Options Clearing Corporation and is immediately reported to the Corporation in accordance with such procedures as may be prescribed by the Corporation.

Commentary

.01 An ETP Holder [or ETP Firm] who issues a commitment to trade from the facilities of the Corporation through ITS or any other Application of the System shall, as a consequence thereof, be deemed to be initiating a purchase or a sale or a security [on] through the facilities of the Corporation as referred to in this Rule.

(b) Each ETP Holder [or ETP Firm] shall report to the Corporation such information as may be required with respect to any substantial option relating to securities admitted to dealings [on] through the facilities of the Corporation in which such ETP Holder [or ETP Firm] or any participant therein is directly or indirectly interested or of which such ETP Holder [or ETP Firm] or any participant therein has knowledge by reason of transactions executed by or through such ETP Holder [or ETP Firm]. The Corporation may disapprove of the connection of any ETP Holder [or ETP Firm] or any participant therein with any such option which it shall determine to be contrary to the best interest or welfare of the Corporation or to be likely to create prices which will not fairly reflect market values.

Disclosure of Financial Arrangements

Rule [6.12] *6.11*(a). An ETP Holder[, Equity ASAP Holder, or ETP Firm] who enters into a financial arrangement with any other person or entity shall disclose to the Corporation the identity of such person or entity and the terms of the arrangement. For the purposes of this rule, a financial arrangement is defined as:

(1) the direct financing of an ETP Holder's[, ETP Firm's or Equity ASAP Holder's] dealings upon the Corporation; or

(2)–(3)—No change.

(b) ETP Holders[, Equity ASAP Holders and ETP Firms] with financial arrangements must submit to the Corporation notification of the initiation, modification or termination of such financial arrangements in a form, time and manner approved by the Corporation within ten (10) business days of the effective date of such arrangements or within such shorter period of time as the Corporation may require. Failure to disclose the terms of such financial arrangements to the Corporation may result in disciplinary action.

Joint Accounts

Rule [6.13] *6.12*(a). No ETP Holder [or ETP firm while on the Floor,] shall, without the prior approval of the Corporation, initiate the purchase or sale [on] through the facilities of the Corporation of any security admitted to dealings [on] through the facilities of the Corporation for any account in which the ETP Holder[, ETP Firm] or any participant therein is directly or indirectly interested with any person other than such ETP [Firm] *Holder* or participant therein.

The provisions of this rule shall not apply to any purchase or sale (1) by any ETP Holder [or ETP Firm] for any joint account maintained solely for effecting bona fide domestic or foreign arbitrage transactions or (2) by a [specialist] *Market Maker* for any joint account in which he *or she* is expressly permitted to have an interest or participation by this Rule.

Commentary

.01 An ETP Holder [or ETP Firm] who issues a commitment to trade [on] through the facilities of the Corporation through ITS or any other Application of the System shall, as a consequence thereof, be deemed to be initiating a purchase or a sale of a security [on] through the facilities of the Corporation as referred to in this Rule.

(b) Reporting. No ETP Holder[, Equity ASAP Holder or ETP Firm,] nor any participant therein shall directly or indirectly hold any interest or participation in any substantial joint account for buying or selling any security [on] through the facilities of the Corporation, unless such joint account is reported to and not disapproved by the Corporation. Such reports, in form prescribed by the Corporation, shall be filed with the Corporation before any transaction is completed [on] through the facilities of the Corporation for such joint account.

The Corporation shall require weekly reports, in *a* form prescribed by the Corporation, to be filed with it with respect to every substantial joint account for buying or selling any specific security on the Corporation and with respect to every joint account which actively trades in any security on the Corporation in which any ETP Holder[, Equity ASAP Holder, or ETP Firm] or participant therein holds any interest or participation or of which such ETP Holder[, Equity ASAP Holder or ETP Firm] or participant therein has knowledge by reason of transactions executed by or through such ETP Holder[, Equity ASAP Holder, ETP Firm] or participant therein; provided, however, that this paragraph shall not apply to joint accounts specifically permitted by this Rule.

In the event the requirements hereof should be applicable to a security also dealt in on another national securities exchange having requirements substantially equivalent hereto and an ETP Holder[, Equity ASAP Holder or ETP Firm] is a member or member firm of such other exchange and complies with such requirements of such other exchange, then such ETP Holder[, Equity ASAP Holder or ETP Firm] need not comply with the reporting provisions hereof.

Disciplinary Action By Other Organizations

Rule [6.14] *6.13*. Every ETP Holder[, Equity ASAP Holder or ETP Firm] shall promptly notify the Corporation in writing of any disciplinary action, including the basis therefore, taken by any national securities exchange or association, clearing corporation, commodity futures market or government regulatory body against the ETP Holder[, Equity ASAP Holder or ETP Firm] or its associated persons, and shall similarly notify the Corporation of any disciplinary action taken by the ETP Holder[, Equity ASAP Holder or ETP Firm] itself against any of its associated persons involving suspension, termination, the withholding of commissions or imposition of fines in excess of $2,500.00, or any other significant limitation on activities.

Officers and Employees Restricted

Rule [6.15] *6.14*(a)—No change.

(b) No salaried officer or employee of the Corporation or salaried officer or employee of any corporation in which the Corporation owns the majority of the corporate stock may purchase or sell for his own account or for the account of others any option contract which entitles the purchaser to purchase or sell any security described in paragraph (a) of Rule [6.15] *6.14*.

Miscellaneous Prohibitions

Rule [6.16] *6.15*. No ETP Holder[, Equity ASAP Holder, ETP Firm] or any participant therein shall:

(a)—No change.

[(b)—Deleted.]

[(c)] (*b*)—No change.

[Rule 6.17—Deleted.]

Trading Ahead of Customer Limit Orders

*Rule 6.16(a) No ETP Holder may accept and hold an unexecuted limit order from its customer (whether its own customer or a customer of another ETP Holder) and continue to trade on the Corporation the subject security for its own account at prices that would satisfy the customer's limit order, without executing that limit order; provided, however, that an ETP Holder may negotiate specific terms and conditions applicable to the acceptance of limit orders only with respect to limit orders that are:*

*(1) for institutional customer accounts, where such account is defined as the account of:*

*(A) a bank, savings and loan association, insurance company, or registered investment company;*

*(B) an investment adviser registered either with the Securities and Exchange Commission under Section 203 of the Investment Advisers Act of 1940 or with a state securities commission (or agency or office performing like functions); or*

*(C) any other entity (whether a natural person, corporation, partnership, trust or otherwise) with total assets of at least 450 million; or*

*(2) 10,000 shares or more, unless such orders are less than $100,000 in value.*

*(b) Paragraph (a) of this Rule shall not apply to a customer limit order if the limit order is marketable at the time it is received by the ETP Holder; provided, however, if the limit order was marketable when received and then becomes non-marketable, once the limit order becomes non-marketable, it becomes subject to the prohibitions of paragraph (a) of this Rule.*

*(c) Nothing in this Rule requires ETP Holders to accept limit orders from customers.*

*(d) For the purposes of this Rule, an ETP Holder that controls or is controlled by another ETP Holder shall be considered a single entity, absent appropriate information barriers, so that if a customer's limit order is accepted by one affiliate and forwarded to another affiliate for execution, the firms are considered a single entity.*

**Rule 7**

**Equities Trading**

**Section 1. [Definitions and] General Provisions**

[Rule 7.1—Deleted.]

Hours of Business

Rule *7.1* [7.2]. Unless otherwise ruled by the Board of Directors, the Corporation shall be open for the transaction of business daily except on Saturdays and Sundays. The hours at which trading sessions shall open and close shall be established by the Board.

Dealings upon the Corporation shall be limited to the hours during which the Corporation is open for the transaction of business. No ETP Holder[, Equity ASAP Holder or ETP Firm] shall make any bid, offer or transaction [on] through the facilities of the Corporation, or issue a commitment to trade through ITS [on] through the facilities of the Corporation before or after those hours, except that a *Market Maker* [specialist] may issue and receive pre-opening notifications and pre-opening responses, pursuant to the provisions of the Plan relating to the Pre-Opening Application of the Systems, before the official opening of the Corporation and loans of securities may be made after those hours.

[Commentary:]

[.01—Deleted.]

Holidays

Rule *7.2*[7.3].—No change.

[Rule 7.4–7.5—Deleted.]

Commissions

Rule *7.3*[7.6] (a). Fixed Rates. Nothing contained in the *Rules* [rules] of the Corporation or its practices shall be construed to require or authorize its ETP Holders[, Equity ASAP Holders, ETP Firms,] or any associated person, to agree or arrange, directly or indirectly, for the charging of fixed rates of commission for transactions effected on, or effected by the use of, the facilities of the Corporation.

(b) Acting as Broker. In all transactions in which an ETP Holder[, Equity ASAP Holder or ETP Firm] acts solely as a broker, the bills and confirmations rendered must so indicate, and all commissions charged, if any, shall be appropriately identified.

(c) Acting as Principal. In all transactions in which an ETP Holder[, Equity ASAP Holder or ETP Firm] acts as principal or in which the ETP Holder[, Equity ASAP Holder ETP Firm] or any of its [nominees,] Allied Persons, partners, approved persons or stockholder associates have an interest as principal in any manner, the bills and confirmations rendered must so indicate.

Ex-Dividend or Ex-Right Dates

Rule *7.4*[7.7]. Transactions in stocks, traded ''regular'' shall be ''ex-dividend'' or ''ex-rights'' as the case may be, on the second business day preceding the record date fixed by the company or the date of the closing of transfer books, except when the Board of Directors rules otherwise. Should such record date or such closing of transfer books occur upon a day other than a business day this *Rule* [rule] shall apply for the third preceding business day.

**[Section 2. Admission to and Conduct on the Trading Floor]**

[Rule 7.8—Deleted.]

**[Section 3. Units of Trading, Bids, Offers and Quotations]**

Trading Units

Rule *7.5*[7.9]. The unit of trading in stocks shall be *1* [100] share[s] and the unit of trading in bonds shall be $1,000 in par value thereof unless otherwise designated by the Corporation. *For stocks, 100 shares shall constitute a ''round lot,'' any amount less than 100 shares shall constitute an ''odd lot,'' and any amount greater than 100 shares that is not a multiple of a round lot shall constitute a ''mixed lot.'' For bonds, a* [A] designated unit of trading shall constitute a ''round lot[.]'' *and any* [Any] lesser amount shall constitute an ''odd lot.''

Trading Differentials

Rule *7.6*[7.10](a). The Corporation shall determine the trading differentials for equity securities traded on the Corporation.

Commentary

.01—No change.

.02 Notwithstanding Commentary .01, [an ETP Holder may trade on the Floor at increments of 1/32 or 1/64] *the Corporation may allow trading at smaller increments* in order to match bids and offers displayed by other markets for the purpose of preventing Intermarket Trading System trade-throughs.

.03—No change.

.04 The minimum price variation for orders generated from Profiles designated for the midpoint pricing service by the OptiMark System will be the variation of the midpoint price between the highest published bid and the lowest published offer displayed on the Consolidated Quotation System. Any executions resulting from processing Profiles designated for midpoint pricing will be priced and reported in increments as small as 1/64th or, upon conversion to decimals, one-half of the minimum price variation.

*.05 The minimum price variation (''MPV'') for equity securities traded on the Archipelago Exchange shall be 1/64 of $1.00 for those securities that are quoted in fractions and $0.01 for those equity securities that are quoted in decimals; provided, however, at all times the MPV shall be consistent with the Decimalization Implementation Plan.*

*.06 The minimum price improvement increment (''MPII'') on the Archipelago Exchange shall be equal to $0.01 or 10% of the spread, whichever is more.*

(b) Bonds. Bids or offers in bonds shall not be made at a less*er* variation than 1/8 of 1% of the principal amount, except that the Corporation may fix a lesser variation in specific issues.

Transmission of Bids or Offers

Rule *7.7*[7.11](a). The names of ETP Holders [or ETP Firms] bidding for or offering securities [on] through the use of the facilities of the Corporation shall not be transmitted from the facilities of the Corporation to a non-holder of an ETP. No ETP Holder having the right to trade [on] through the facilities of the Corporation and who has been a party to or has knowledge of an execution shall be under obligation to divulge the name of the buying or selling firm in any transaction.

(b) Except as *otherwise permitted by these Rules* [stated in Rule 7.12(b)], no ETP Holder [or ETP Firm] shall transmit [on] through the facilities of the Corporation any information regarding a bid, offer or other indication of an order to a non-holder of an ETP until such bid, offer or other indication of an order has been disclosed and permission to transmit such information has been obtained from the originating ETP Holder [or ETP Firm].

[Rule 7.12—Deleted.]

Bid or Offer Deemed Regular Way

Rule *7.8* [7.13]—No change.

[Rule 7.14—Deleted.]

Execution Price Binding

Rule *7.9* [7.15]. *Notwithstanding Rules 7.10 and 7.11, the* [The] price at which an order is executed shall be binding notwithstanding the fact that an erroneous report in respect thereto may have been rendered. [A report shall not be binding if an order was not actually executed but was in error reported to have been executed; however, an order which was executed, but in error reported as not executed, shall be binding. No ETP Holder, Equity ASAP Holder or ETP Firm shall assume or pay any part of the difference between the price at which an order is executed and the price at which it may have been erroneously reported.]

Cancellation of Revisions in Transactions

Rule *7.10* 7.16. A sale made in *demonstrable* error and canceled by both parties *may be removed, if the parties do not object, subject to the approval of the Corporation* [is subject to removal, if there is no objection.]

[Commentary:]

[.01 Specialists and floor brokers are responsible for the satisfactory execution of orders accepted by them and] *Disagreements* [disagreements] with respect thereto shall be referred to the appropriate trading authority of the Corporation.

A dispute arising on bids, offers or sales if not settled by agreements between the parties interested, shall be settled by the Corporation.

*Clearly Erroneous Policy*

*Rule 7.11(a). Definition. For the purposes of this Rule, the terms of a transaction executed on the Corporation are ''clearly erroneous'' when there is an obvious error in any term, such as price, number of shares or other unit of trading, or identification of the security.*

*(b) Request for Corporation Review. An ETP Holder that receives an execution on an order that was submitted erroneously to the Corporation for its own or customer account may request that the Corporation review the transaction under this Rule. Such request for review shall be made via telephone and in writing via facsimile or e-mail. The telephone request should be submitted immediately and the written request should be submitted within fifteen (15) minutes of the time the trade in question was executed. Once the request has been received, an officer of the Corporation designated by the President shall*

*review the transaction under dispute and determine whether it is clearly erroneous, with a view toward maintaining a fair and orderly market and the protection of investors and the public interest. Each party to the transaction shall provide, on a timely basis, any supporting written information as may be reasonably requested by the designated officer to aid resolution of the matter.*

*(c) Review Procedures. Unless both parties (or party, in the case of a cross) to the disputed transaction agree to withdraw the initial written request for review, the transaction under dispute shall be reviewed, and a determination shall be rendered by the designated Corporation officer. If the officer determines that the transaction is not clearly erroneous, the officer shall decline to take any action in connection with the completed trade. In the event that the officer determines that the transaction in dispute is clearly erroneous, the officer shall declare the transaction null and void or modify one or more of the terms of the transaction to achieve an equitable rectification of the error that would place the parties in the same position, or as close as possible to the same position that they would have been in, had the error not occurred. The officer shall promptly notify the parties of the determination reached and shall issue a written resolution of the matter. The ETP Holder aggrieved by the officer's determination may appeal such determination in accordance with the provisions of Rule 10.13.*

*(d) System Disruption and Malfunctions. In the event of any disruption or a malfunction in the use or operation of any electronic communications and trading facilities of the Corporation, the Chief Executive Officer or the President may declare a transaction arising out of the use or operation of such facilities during the period of such disruption or malfunction null and void or modify the terms of these transactions. Absent extraordinary circumstances, any such action of the Chief Executive Officer or President pursuant to this subsection (d) shall be taken within thirty (30) minutes of detection of the erroneous transaction. Each ETP Holder involved in the transaction shall be notified as soon as practicable, and the ETP Holder aggrieved by the action may appeal such action in accordance with the provisions of Rule 10.13.*

[Rules 7.17–7.39—Deleted.]

[Rules 7.41–7.44—Deleted.]

[Rule 7.46—Deleted.]

Trading Halts Due to Extraordinary Market Volatility

Rule *7.12* [7.47] (a)–(c)—No change.

Commentary

.01–.02—No change.

.03 The reopening of trading following a trading halt under this Rule will be conducted pursuant to procedures adopted by the Corporation and communicated by notice to its ETP Holders[, Equity ASAP Holders, and ETP Firms].

.04 Nothing in this Rule should be construed to limit the ability of the Corporation to otherwise halt or suspend the trading in any stock or stocks traded on the Corporation pursuant to any other Corporation *Rule* [rule] or policy.

*Trading Suspensions*

*Rule 7.13.* Except as otherwise stated in Rule 5.5, the Chair of the Board or the President, or the officer designee of the Chair or the President, shall have the power to suspend trading in any and all securities traded on the Corporation whenever in his or her opinion such suspension would be in the public interest. No such action shall continue longer than a period of two days, or as soon thereafter as a quorum of Directors can be assembled, unless the Board approves the continuation of such suspension.

*Clearance and Settlement*

*Rule 7.14(a). Each ETP Holder shall either:*

*(1) Be a clearing firm;*

*(2) clear transactions on the Corporation through a clearing firm; or*

*(3) clear transactions through an entity duly authorized by the Corporation.*

*(b) An ETP Holder must give up the name of the clearing firm through which each transaction on the Corporation will be cleared. If there is a subsequent change in identity of the clearing firm through which the transaction on the Corporation will be cleared, the ETP Holder shall report such change to the Corporation at least five (5) business days in advance.*

*(c) Each clearing firm must be admitted to the Corporation as an ETP Holder by meeting the qualification requirements set forth above in Rule 2; provided, however, if the clearing firm has become an ETP Holder for the sole purpose of acting as a clearing firm on the Corporation, such clearing firm need not pay the regular ETP Holder fee. The clearing firm shall be responsible for the clearance of the transactions effected by each ETP Holder which gives up such clearing firm's name pursuant to a letter of authorization, letter of guarantee or other authorization given by such clearing firm to such ETP Holder, which authorization shall be submitted to the Corporation.*

*(d) Notwithstanding any other provisions contained in the Rule to the contrary, the Board may extend or postpone the time of the delivery of a transaction on the Corporation whenever in its opinion, such action is called for by the public interest, by just and equitable principles of trade or by the need to meet unusual conditions. In such case, delivery shall be effected at such time, place and manner as directed by the Board of Directors.*

Stock Option Transactions

Rule *7.15*[7.45](a). No *Market Maker* [specialist] nor his *or her* firm, nor any participant therein, shall, directly or indirectly, be interested in a pool dealing or trading in any security in which he *or she* is registered as *a Market Maker* [specialist].

(b) No *Market Maker* [specialist], nor his *or her* firm, nor any participant therein shall acquire, hold or grant, directly or indirectly, any interest in any option to buy or to sell or to receive or to deliver shares of any security in which he *or she* is registered as *a Market Maker* [specialist], unless such option is issued by the Options Clearing Corporation and is immediately reported to the Corporation in accordance with such procedures as may be prescribed by the Corporation.

Short Sales

Rule *7.16* [7.40](a) (1) Except as provided in subsection (d) hereof, no ETP Holder[, Equity ASAP Holder, or ETP Firm] shall for his, *her* or its own account or for the account of any other person, effect [on] through the facilities of the Corporation a short sale of any security for which trades are reported pursuant to a consolidated transaction reporting system operated in accordance with a plan declared effective under the Securities Exchange Act Rule *11Aa3–1* [17a–15] (a ''consolidated system'') (A) below the price at which the last sale thereof, regular way, was reported in such consolidated system, or (B) at such price unless such price is above the next preceding different price at which a sale of such security, regular way, was reported in such consolidated system.

(2) Except as provided in subsection (d) hereof, no ETP Holder[, Equity ASAP Holder, or ETP Firm] shall for his, *her* or its own account, or for the account of any other person, effect [on] through the facilities of the Corporation a short sale of any security not covered by paragraph (1) of this subsection (A) below the price at which the last sale of such security, regular way, was effected [on] through the facilities of the Corporation, or (B) at such price unless such price is above the next preceding different price at which a sale of such security, regular way, was effected [on] through the facilities of the Corporation.

(3) Notwithstanding paragraph (1) of this subsection (a), the Board of Directors of the Corporation, in its discretion, may determine that it is necessary or appropriate in the public interest or for the protection of investors that short sales in any security for which trades are reported in a consolidated system be subject to the *Rule* [rule] set forth in paragraph (2) hereof. Following any such designation of any such security by the Board of Directors, compliance with the terms of paragraph (2) shall constitute compliance with this subsection (a).

(b) Order Identification. No ETP Holder[, Equity ASAP Holder, or ETP Firm] of the Corporation shall, by the use of any facility of the Corporation, execute any sell order unless such order is indicated as either ''long'' or ''short''.

(c) Marking Orders. No ETP Holder[, Equity ASAP Holder, or ETP Firm] of the Corporation shall mark a sell order ''long'' unless (1) the security to be delivered after sale is carried in the account for which the sale is to be effected, or (2) such ETP Holder[, Equity ASAP Holder, or ETP Firm] is informed that the seller owns the security ordered to be sold, and as soon as is possible without undue inconvenience or expense, will deliver the security owned to the account for which the sale is to be effected.

(d) Exceptions. The provisions of subsection (a) hereof shall not apply to:

(1) Any sale by any person, for an account in which he *or she* has an interest, if such person owns the security sold and intends to deliver such security as soon as possible without undue inconvenience or expense;

(2) Any ETP Holder[, Equity ASAP Holder, or ETP Firm] in respect of a sale, for an account in which it has no interest, pursuant to an order to sell which is marked ''long'';

(3) Any sale of a security for which trades are reported in a consolidated system (except a sale to a stabilizing bid complying with Securities Exchange Act Rule *104* [10b–7]) by a registered *market maker* [specialist] in such security for its own account (i) effected at a price equal to or above the last sale, regular way, reported for such security pursuant to an effective transaction reporting plan; or (ii) effected at a price equal to the most recent offer communicated for the security by such registered specialist pursuant to the Securities Exchange Act Rule 11Ac1–1 if such offer, when communicated, was equal to or above the last sale, regular way, reported for such security pursuant to an effective transaction reporting plan. This exemption shall not be available for a short sale of any security not covered by paragraph (a)(1) of this Rule *7.16* [7.40];

(4) Any sale by *an odd lot dealer registered with the Corporation for such security* [a specialist] to offset odd lot orders of customers;

(5) Any sale by *an odd lot dealer registered with the Corporation for such security* [a specialist] to liquidate a long position which is less than a round lot, provided such sale does not change the position of such *Market Maker* [specialist] by more than the unit of trading;

(6) Any sale of a security for which trades are not reported in a consolidated system (except a sale to a stabilizing bid complying with Securities Exchange Act Rule *104* [10b–7]) effected with the approval of the Corporation which is necessary to equalize the price of such security on the Corporation with the current price of such security on another national securities exchange which is the principal exchange market for such security;

(7) Any sale of a security for a special arbitrage account by a person who then owns another security by virtue of which he *or she* is, or presently will be, entitled to acquire an equivalent number of securities of the same class as the securities sold, provided such sale, or the purchase which such sale offsets, is effected for the bona fide purpose of profiting from a current difference between the price of the security sold and the security owned and that such right of acquisition was originally attached to or represented by another security or was issued to all the holders of any class of securities of the issuer;

(8) Any sales of a security on the Corporation effected for a special international arbitrage account for the bona fide purpose of profiting from a current difference between the price of such security on a securities market not within or subject to the jurisdiction of the United States and on the Corporation, provided the seller at the time of such sale knows or, by virtue of information currently received, has reasonable grounds to believe that an offer enabling him *or her* to cover such sale is then available to him in such foreign securities market and intends to accept such offer immediately;

[(9) Any sale of a security effected in accordance with a special offering plan declared effective by the Securities and Exchange Commission pursuant to paragraph (d) of Securities Exchange Act Rule 10b–2; or]

(*9*)[(10)] Any sale by an underwriter, or any member of a syndicate or group participating in the distribution of a security, in connection with an over-allotment of securities, or any lay-off sale by such a person in connection with a distribution of securities through rights [pursuant to Securities and Exchange Act Rule 10b–8] or a standby underwriting commitment.

(11) Any sale of a security for which trades are reported in a consolidated system (except a sale to a stabilizing bid complying with the Securities and Exchange Act Rule *104* [10b–7]) by any broker or dealer, for his *or her* own account or for the account of any other person, effected at a price equal to the most recent offer communicated by such broker or dealer pursuant to the Securities and Exchange Act Rule 11Ac1–1 in an amount less than or equal to the quotation size associated with such offer, if such offer, when communicated, was (A) above the price at which the last sale, regular way, for such security was reported pursuant to an effective transaction reporting plan; or (B) at such last sale price, if such last sale price is above the next preceding different price at which a sale of such security, regular way, was reported pursuant to an effective transaction reporting plan. This exemption shall not be available for a short sale of any security not covered by paragraph (a)(1) of this Rule *7.16* 7.40.

For the purpose of paragraph (8) of this subsection (d) a depository receipt for a security shall be deemed to be the same security as the security represented by such receipt.

(e) Short Sales After ''Ex'' Date. In determining the price at which a short sale may be effected after a security goes ex-dividend, ex-rights or ex-any other distribution, all sales prices prior to ''ex'' date may be reduced by the value of such distribution.

(f) Covering Short Sales. No ETP Holder[, Equity ASAP Holder, or ETP Firm] of the Corporation shall lend, or arrange for the loan of any security for delivery to the broker for the purchaser after sale, or shall fail to deliver a security on the date delivery is due, if such ETP Holder[, Equity ASAP Holder, or ETP Firm] knows or has reasonable grounds to believe that the sale was effected, or will be effected, pursuant to an order marked ''long'' unless such ETP Holder[, Equity ASAP Holder, or ETP Firm] knows, or has been informed by the seller (i) that the security sold has been forwarded to the account for which the sale was effected, or (ii) that the seller owns the security sold, that it is then impracticable to deliver such security to such account and that delivery will be made as soon as is possible without undue inconvenience or expense. The provisions of this subsection (f) shall not apply to:

(1) The lending of a security by *an* [a] ETP Holder[, Equity ASAP Holder, or ETP Firm] through the medium of a loan to another ETP Holder[, Equity ASAP Holder, or ETP Firm]; or

(2) Any loan, or arrangement for the loan, of any security, or any failure to deliver any security if, prior to such loan, arrangement, or failure to deliver, the Corporation finds (A) that such sale resulted from a mistake made in good faith; (B) either that the condition of the market at the time the mistake was discovered was such that undue hardship would result from covering the transaction by a ''purchase for cash'' or that the mistake was made by the seller's broker and the sale was at a price permissible for a short sale under Rule *7.16* [7.40]; and (C) that due diligence was used to ascertain that the circumstances specified in clause (1) of Rule *7.16(c)* [7.40(c)] existed or to obtain the information specified in clause (2) thereof.

*Firm Orders and Quotes*

*Rule 7.17(a) Orders at Stated Prices and Sizes. No ETP Holder shall submit to the Corporation an order (including Q Orders) to buy from or sell to any person any security at a stated price and/or size unless such ETP Holder is prepared to, and, upon submission of an appropriate contra-side order, does, purchase or sell, as the case may be, at such price and/or size and under such conditions as are stated at the time of submission of such order to buy or sell.*

*(b) Firm Quotes. All bids made and all offers made shall be in accordance with the provisions of Rule 11Ac1–1 under the Securities Exchange Act of 1934, governing the dissemination of quotations for reported securities.*

*[Rule 7.18. Reserved.*

*[Rule 7.19. Reserved.*

[Rules 7.48–7.49—Deleted.]

[Rule 7.52—Deleted.]

[Rules 7.54–7.65—Deleted.]

*Section 2. Market Makers*

*Registration of Market Makers*

*Rule 7.20(a). No ETP Holder shall act as a Market Maker in any security unless such ETP Holder is registered as a Market Maker in such security by the Corporation pursuant to this Rule and the Corporation has not suspended or canceled such registration. Registered Market Makers are designated as dealers on the Corporation for all purposes under the Securities Exchange Act of 1934 and the rules and regulations thereunder.*

*(b) As applicant for registration as a Market Maker shall file an application in writing on such form as the Corporation may prescribe. Applications shall be reviewed by the Corporation, which shall consider such factors including, but no limited to capital operations, personnel, technical resources, and disciplinary history.*

*(c) An applicant's registration as a Market Maker Shall become effective upon receipt by the ETP Holder of notice of an approval of registration by the Corporation. In the event that an application is disapproved by the Corporation, the applicant shall have an opportunity to be heard upon the specific grounds for the denial, in accordance with the provisions of Rule 10.13.*

*(d) The registration of a Market Maker may be suspended or terminated by the Corporation upon a determination of any substantial or continued failure by such Market Maker to engage in dealings in accordance with Rule 7.23.*

*(e) Any registered Market Maker may withdraw its registration by giving written notice to the Corporation. Such withdrawal of registration shall become effective on the tenth business day following the Corporation's receipt of the notice. A Market Maker who fails to give a ten-day written notice of withdrawal, the ETP Holder shall not be permitted to re-register as a Market Maker for a period of six months.*

*Obligations of Market Maker Authorized Traders*

*Rule 7.21(a). General. MMATs are permitted to enter orders only for the account of the Market Maker for which they are registered.*

*(b) Registration of Market Maker Authorized Traders. The Corporation may, upon receiving an application in writing from a Market Maker on a form prescribed by the Corporation, register a person as a MMAT.*

*(1) MMAT's may be officers, partners, employees or other associated persons of ETP Holders that are registered with the Corporation as Market Maker.*

*(2) To be eligible for registration as a MMAT, a person must be successfully complete the General Securities Representative Examination (Series 7) and complete a training and certification program sponsored by the Corporation; provided, however, the requirement to complete the Series 7 Examination may be waived by the Corporation if the applicant MMAT has served as a dealer-specialist or market maker on a registered national securities exchange or association for at least two consecutive years within three years of the date of application.*

*(3) The Corporation may require a Market Maker to provide additional information the Corporation considers necessary to establish whether registration should be granted.*

*(4) The Corporation may grant a person conditional registration as a MMAT subject to any conditions it considers appropriate in the interests of maintaining a fair and orderly market.*

*(5) A Market Maker must ensure that a MMAT is properly qualified to perform market making activities, including but not limited to ensuring the MMAT has met the requirements set forth in paragraph (b)(2) of this Rule.*

*(c) Suspension or Withdrawal of Registration.*

*(1) The Corporation may suspend or withdraw the registration previously given to a person to be a MMAT if the Corporation determines that:*

*(A) the person has caused the Market Maker to fail to comply with the securities laws, rules and regulations or the Bylaws, Rules and procedures of the Corporation;*

*(B) the person is not properly performing the responsibilities of a MMAT.*

*(C) the person has failed to meet the conditions set forth under paragraphs (b) above; or*

*(D) the Corporation believes it is in the interest of maintaining fair and orderly markets.*

*(2) If the Corporation suspends the registration of a person as a MMAT, the Market Maker must not allow the person to submit orders into the Archipelago Exchange.*

*(3) The registration of a MMAT will be withdrawn upon the written request of the ETP Holder for which the MMAT is registered. Such written request shall be submitted on the form prescribed by the Corporation.*

*Registration of Market Makers in a Security*

*Rule 7.22(a). A Market Maker may become registered in a newly authorized security or in a security already admitted on the Corporation by filing a security registration form with the Corporation. Registration in the security shall become effective on the first business day following the Corporation's approval of the registration. In considering the approval of the registration of the Market Maker in a security, the Corporation may consider;*

*(1) the financial resources available to the Market maker;*

*(2) the Market Maker's experience, expertise and past performance in making markets, including the Market Maker's performance in other securities;*

*(3) the Market Maker's operational capability;*

*(4) the maintenance and enhancement of competition among Market Makers in each security in which they are registered;*

*(5) the existence of satisfactory arrangements for clearing the Market Maker's transactions;*

*(6) the character of the market for the security, e.g., price, volatility, and relative liquidity.*

*(b) A Market Maker's registration in a security may be terminated by the Corporation if the Market Maker fails to enter quotations in the security within five (5) business days after the Market Maker's registration in the security becomes effective.*

*(c) Voluntary Termination of Security Registration. A Market Maker may voluntarily terminate its registration in a security by providing the Corporation with a one-day written notice of such termination. A Market Maker that fails to give advanced written notice of termination to the Corporation may be subject to formal disciplinary action pursuant to Rule 10.*

*(d) The Corporation may suspend or terminate any registration of a Market Maker in a security or securities under this Rule whenever, in the Corporation's judgment, the interests of a fair and orderly market are best served by such action.*

*(e) An ETP Holder may seek review of any action taken by the Corporation pursuant to this Rule, including the denial of the application for, or the termination or suspension of, a Market Maker's registration in a security or securities, in accordance with Rule 10.13.*

*Obligations of Market Makers*

*Rule 7.23(a). General. ETP Holders who are registered as Market Makers in one or more securities traded on the Corporation must engage in a course of dealings for their own account to assist in the maintenance, insofar as reasonably practicable, of fair and orderly markets on the Corporation in accordance with this Rule. The responsibilities and duties of a Market Maker specifically include, but are not limited to, the following:*

*(1) Maintain continuous, two-sided Q Orders in those securities in which the Market Maker is registered to trade;*

*(2) Maintain adequate minimum capital in accordance with Rule 4.1;*

*(3) Remain in Good Standing with the Corporation;*

*(4) Inform the Corporation of any material change in financial or operational condition or in personnel.*

*(5) Clear and settle transaction through the facilities of a registered clearing agency. This requirement may be satisfied by direct participation, use of direct clearing services, or by entry into a correspondent clearing arrangement with another ETP Holder that clears trades through such agency.*

*(6) Enter and maintain a Cleanup Order in each security in which the Market Maker is registered as such for each Market Order Auction.*

*(b) A Market Maker must satisfy the responsibilities and duties as set forth in paragraph (a) of this Rule during the Core Trading Hours on all days in which the Corporation is open for business.*

*(c) If the Corporation finds any substantial or continued failure by a Market Maker to engage in a course of dealings as specified in paragraph (a) of this Rule, such Market Maker will be subject to disciplinary action or suspension or revocation of the registration by the Corporation in one or more of the securities in which the Market Maker is registered. Nothing in this Rule will limit any other power of the Board of Directors under the Bylaws, Rules, or procedures of the Corporation with respect to the registration of a Market Maker or in respect of any violation by a Market Maker of the provisions of this Rule. In accordance with Rule 10, an ETP Holder may seek review of actions taken by the Corporation pursuant to this Rule.*

*(d) Temporary Withdrawal. A Market Maker may apply to the Corporation to withdraw temporarily from its Market Maker status in the securities in which it is registered. The Market Maker must base its request on demonstrated legal or regulatory requirements that necessitate its temporary withdrawal, or provide the Corporation an opinion of counsel certifying that such legal or regulatory basis exists. The Corporation will act promptly on such request and, if the request is granted, the Corporation may temporarily reassign the securities to another Market Maker.*

*Rule 7.24. Reserved.*

*Registration of Odd Lot Dealers*

*Rule 7.25(a). Eligibility. Any Market Maker may become registered as an Odd Lot Dealer in any security by filing an odd lot registration form with the Corporation. Registration as an Odd Lot Dealers shall become effective on the first business day following the Corporation's approval of the registration. In considering the approval of the registration of the Market Maker as an Odd Lot Dealer in a security, the Corporation shall consider such factors including, but not limited to, financial resources, capital operations, personnel, technical resources and disciplinary history. If the Corporation denies an application to become an Odd Lot*

*Dealer in a security or securities, the applicant may seek review of the decision in accordance with Rule 10.13.*

*(b) Market Makers Registered in a Security. For each security in which a Market Maker is registered, the Market Maker must become an Odd Lot Dealer in that security.*

*(c) Obligations of Odd Lot Dealers. An Odd Lot Dealer must:*

*(1) Maintain an OLTO, as described in Rule 7.31(g), during each day in which the Corporation is open for business for each security in which the Odd Lot Dealer is registered as such; and*

*(2) Register and maintain registration as an Odd Lot Dealer in a minimum of 100 securities if the Odd Lot Dealer registers as such in any security for which it is not registered as a Market Maker.*

*(d) Termination of Odd Lot Dealer Registration. The Corporation may suspend or terminate an Odd Lot Dealer's registration in a security or securities:*

*(1) If the Corporation determines that the Odd Lot Dealer has substantially or continually failed to engage in dealings in accordance with paragraph (c); or*

*(2) If, in the Corporation's judgment, the interest of a fair and orderly market are best served by such action.*

*An ETP Holder may seek review of any such termination or suspension in accordance with Rule 10.*

*(e) Voluntary Termination of Registration. An Odd Lot Dealer may voluntarily terminate its registration as such in a security or securities by providing the Corporation with a one-day written notice of such termination. An Odd Lot Dealer that fails to give advance notice of termination to the Corporation may be subject to formal disciplinary action pursuant to Rule 10.*

*Limitations on Dealings*

*Rule 7.26(a) General. A Market Maker on the Corporation may engage in Other Business Activities, or it may be affiliated with a broker-dealer that engages in Other Business Activities, only if there is an Information Barrier (also commonly referred to as ''Chinese Wall'') between the market making activities and the Other Business Activities. ''Other Business Activities'' mean:*

*(1) conducting an investment banking or public securities business;*

*(2) making markets in the options overlying the security in which it makes markets; or*

*(3) functioning as a GAT.*

*(b) Information Barrier. For the purposes of this rule, an Information Barrier is an organizational structure in which:*

*(1) The market making functions are conducted in a physical location separate from the locations in which the Other Business Activities are conducted, in a manner that effectively impedes the free flow of communications between MMATs, and persons conducting the Other Business Activities. However, upon request and not on his/her own initiative, a MMAT performing the function of a Market Maker may furnish to persons at the same firm or an affiliated firm (''affiliated persons''), the same sort of market information that the MMAT would make available in the normal course of its market making activity to any other person. The MMAT must provide such information to affiliated persons in the same manner that he/she would make such information available to a non-affiliated person.*

*(2) There are procedures implemented to prevent the use of material non-public corporate or market information in the possession of persons on one side of the barrier from influencing the conduct of persons on the other side of the barrier. These procedures, at a minimum, must provide that:*

*(A) the MMAT performing the function of a Market Maker does not take advantage of knowledge of pending transactions, order flow information, corporate information or recommendations arising from the Other Business Activities; and*

*(B) all information pertaining to the Market Maker's positions and trading activities is kept confidential and not made available to persons on the other side of the Information Barrier.*

*(3) Persons on one side of the barrier may not exercise influence or control over persons on the other side of the barrier, provided that:*

*(A) the market making function and the Other Business Activities may be under common management as long as any general management oversight does not conflict with or compromise the Market Maker's responsibilities under the Rules of the Corporation; and*

*(B) the same person or persons (the ''Supervisor'') may be responsible for the supervision of the market making and the GAT functions of the same firm or affiliated firms in order to monitor the overall risk exposure of the firm or affiliated firms. While the Supervisor may establish general trading parameters with respect to both market making and other proprietary trading other than on an order-specific basis, the Supervisor may not:*

*(i) actually perform the function either of MMAT or GAT;*

*(ii) provide to any person performing the function of a GAT any information relating to market making activity beyond the information that a MMAT performing the function of a Market Maker may provide under subparagraph (b)(1), above; nor*

*(iii) provide a MMAT performing the function of Market Maker with specific information regarding the firm's pending transactions or order flow arising out of its GAT activities.*

*(c) Documenting and Reporting of Information Barrier Procedures. An ETP Holder implementing an Information Barrier pursuant to this Rule shall submit to the Corporation a written statement setting forth:*

*(1) The manner in which it intends to satisfy the conditions in paragraph (b) of this Rule, and the compliance and audit procedures it proposes to implement to ensure that the Information Barrier is maintained;*

*(2) The names and titles of the person or persons responsible for maintenance and surveillance of the procedures;*

*(3) A commitment to provide the Corporation with such information and reports as the Corporation may request relating to its transactions;*

*(4) A commitment to take appropriate remedial action against any person violating this Rule or the ETP Holder's internal compliance and audit procedures adopted pursuant to subparagraph (c)(1) of this Rule, and that it recognizes that the Corporation may take appropriate remedial action, including (without limitation) reallocation of securities in which it serves as a Market Maker, in the event of such a violation;*

*(5) Whether the ETP Holder or an affiliate intends to clear its proprietary trades and, if so, the procedures established to ensure that information with respect to such clearing activities will not be used to compromise the ETP Holder's Information Barrier, which procedures, at a minimum, must be the same as those used by the ETP Holder or the affiliate to clear for unaffiliated third parties; and*

*(6) That it recognizes that any trading by a person while in possession of material, non-public information received as a result of the breach of the internal controls required under this Rule may be a violation of Rules 10b–5 and 14e–3 under the Exchange Act or on or more other provisions of the Exchange Act, the rules thereunder or the Rules of the Corporation, and that the Corporation intends to review carefully any such trading of which it becomes aware to determine whether a violation has occurred.*

*(d) Approval of Information Barrier Procedures. The written statement required by paragraph (c) of this Rule must detail the internal controls that the ETP Holder will implement to satisfy each of the conditions stated in that Rule, and the compliance and audit procedures proposed to implement and ensure that the controls are maintained. If the Corporation determines that the organizational structure and the compliance and audit procedures proposed by the ETP Holder are acceptable under this Rule, the Corporation shall so inform the ETP Holder, in writing. Absent the Corporation finding an ETP Holder's Information Barrier procedures acceptable, a Market Maker may not conduct Other Business Activities.*

*(e) Clearing Arrangements. Subparagraph (c)(5) permits an ETP Holder or an affiliate of the ETP Holder to clear the ETP Holder's Market Maker transactions if it establishes procedures to ensure that information with respect to such clearing activities will not be used to compromise the Information Barrier. In this regard:*

*(1) The procedures must provide that any information pertaining to Market Maker securities positions and trading activities, and information derived from any clearing and margin financing arrangements, may be made available only to those employees (other than employees actually performing clearing and margin functions) specifically authorized under this Rule to have access to such information or to other employees in senior management positions who are involved in exercising general managerial oversight with respect to the market making activity.*

*(2) Any margin financing arrangements must be sufficiently flexible so as not to limit the ability of any Market Maker to meet market making or other obligations under the Corporation's Rules.*

*Rule 7.27. Reserved.*

*Rule 7.28. Reserved.*

*Section 3. Archipelago Exchange*

*Access*

*Rule 7.29(a). General.* The Archipelago Exchange shall be available for entry and execution of orders by Users with authorized access. To obtain authorized access to the Archipelago Exchange, each User must enter into a User Agreement.

*(b) Sponsored Participants. A Sponsored Participant may obtain authorized access to the Archipelago Exchange only if such access is authorized in advance by one or more Sponsoring ETP Holders as follows:*

*(1) Sponsored Participants must enter into and maintain customer agreements with one or more Sponsoring ETP Holders establishing proper relationship(s) and account(s) through which the Sponsored Participant may trade on the Archipelago Exchange. Such customer agreement(s) must incorporate the Sponsorship Provisions set forth in paragraph (2) below.*

*(2) For a Sponsored Participant to obtain and maintain authorized access to the Archipelago Exchange, a Sponsored Participant and its Sponsoring ETP Holder must agree in writing to the following Sponsorship Provisions:*

*(A) Sponsored Participant and its Sponsoring ETP Holder must have entered into and maintained a User Agreement with Archipelago Exchange, L.L.C. The Sponsoring ETP Holder must designate the Sponsored Participant by name in its User Agreement as such.*

*(B)* Sponsoring ETP Holder acknowledges and agrees that

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

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

*(C) Sponsored ETP Holder shall comply with the PCXE Certificate of Incorporation, Bylaws, Rules and procedures with regard to the Archipelago Exchange and Sponsored Participant shall comply with PCXE Certificate of Incorporation, Bylaws, Rules and procedures with regard to the Archipelago Exchange, as if Sponsored Participant were an ETP Holder.*

*(D) Sponsored Participant shall maintain, keep current and provide to the Sponsoring ETP Holder a list of Authorized Traders who may obtain access to the Archipelago Exchange on behalf of the Sponsored Participant.*

*(E) Sponsored Participant shall familiarize its Authorized Traders with all of the Sponsored Participant's obligations under this Rule and will assure that they receive appropriate training prior to any use or access to the Archipelago Exchange.*

*(F) Sponsored Participant may not permit anyone other than Authorized Traders to use or obtain access to the Archipelago Exchange.*

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

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

*(I) Sponsored Participant shall pay when due all amounts, if any, payable to Sponsoring ETP Holder, Archipelago Exchange, L.L.C., PCXE or any other third parties that arise from the Sponsored Participants access to and use of the Archipelago Exchange. Such amounts include, but are not limited to applicable exchange and regulatory fees.*

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

*Authorized Traders*

*Rule 7.30(a). An ETP Holder shall maintain a list of ATs who may obtain access to the Archipelago Exchange on behalf of the ETP Holder or the ETP Holder's Sponsored Participants. The ETP Holder shall update the list of ATs as necessary. ETP Holders must provide the list of ATs to the Corporation upon request.*

*(b) An ETP Holder must have reasonable procedures to ensure that all ATs comply with the trading Rules and procedures related to the Archipelago Exchange and all other Rules of the Corporation.*

*(c) An ETP Holder must suspend or withdraw a person's status as an AT if the Corporation has determined that the person has caused the ETP Holder to fail to comply with the Rules of the Corporation and the Corporation has directed the ETP Holder to suspend or withdraw the person's status as an AT.*

*(d) An ETP Holder must have reasonable procedures to ensure that the ATs maintain the physical security of the equipment for accessing the facilities of the Corporation to prevent the improper use of access to the systems, including unauthorized entry of information into the systems.*

*Orders and Modifiers*

Rule 7.31.

*(a) Market Order. An order to buy or sell a stated amount of a security that is to be executed at the best price obtainable when the order reaches the Corporation.*

*(b) Limit Order. An order to buy or sell a stated amount of a security at a specified price or better. A ''marketable'' limit order is a limit order to buy (sell) at or above (below) the consolidated best offer (bid) for the security.*

*(c) Day Order. An order to buy or sell which, if not executed, expires at the end of the day on which it was entered.*

*(d) Good-Till-Canceled (''GTC'') Order. An order to buy or sell which remains in effect until it is executed or canceled. The Corporation will modify GTC Orders as appropriate in light of stock events (e.g., stock split or reverse split).*

*(e) Immediate-or-Cancel Order. A market or limit order that is to be executed in whole or in part as soon as such order is received, and the portion not so executed is to be treated as canceled.*

*(f) Tracking Order.*

*(1) Any User may submit an instruction to the Archipelago Exchange for the parameters of a Tracking Order at any time during the day. The parameters shall include:*

*(A) the maximum aggregate size, which is the aggregate size of all partial orders generated in the Tracking Order Process for a particular security that the User is willing to trade on that day;*

*(B) the maximum tradeable size, which is the maximum size of any partial order generated in response to an order entering the Tracking Order Process that the User is wiling to trade on that day;*

*(C) the price in relation to the NBBO; and*

*(D) the relevant security.*

*(2) Once a User has submitted an instruction for the parameters of the Tracking Order, the instruction will remain in effect until closing or until the User has traded its maximum aggregate size for that day, whichever comes first.*

*(3) The Tracking Order Process rotation is as follows: Users who have submitted an instruction for the parameters of a Tracking Order will be assigned trades on a price/time rotating basis, such that within each price level, trades shall be assigned by the time the Users' instructions are received by the Archipelago Exchange. Within each price level, the first User to send an instruction for a Tracking Order will be the first User to be assigned a trade in the rotation process. For each order that enters the Tracking Order Process, the Tracking Order Process will rotate once through the Users in the rotation pattern. In each rotation, the User will be responsible for one trade up to the User's maximum tradeable size.*

*(4) The order described in the User's Tracking Order instruction will only be generated if:*

*(A) an unfilled round or mixed lot order enters the Tracking Order Process and*

*(B) it is such User's turn as determined by the Tracking Order Process rotation pattern.*

*(5) Each partial order generated in a rotation is a limit order in which:*

*(A) the price is set or better than the NBBO at the time the unfilled order enters the Tracking Order Process, based on the User's parameters; and*

*(B) the size is (i) equal to the User's maximum tradeable size if the unfilled order is equal to or larger than the maximum tradeable size; or (ii) equal to the size of the unfilled order if the unfilled order is smaller than the maximum tradeable size.*

*(6) A User may modify the parameters of the instruction for the Tracking Order from time to time, as the Corporation permits.*

*(7) Whenever in the judgment of the Corporation, because of an influx of orders, a system malfunction or other unusual conditions or circumstances, the interests of a fair and orderly market so require, the Corporation may suspend the Tracking Order Process. The Tracking Order Process shall resume when the Corporation determines that the conditions supporting the suspension no longer exist.*

*(g) Odd Lot Tracking Order.*

*(1) Only Odd Lot Dealers may submit an Odd Lot Tracking Order or ''OLTO'' to the Archipelago Exchange.*

*(2) An OLTO is a Tracking Order, as described in paragraph (f), in which:*

*(A) the maximum aggregate size is unlimited;*

*(B) the maximum tradeable size is 99 shares;*

*(C) the price is set at the NBBO; and*

*(D) the security is one in which the ODD Lot Dealer is registered as such; and*

*(E) the instruction must be in effect for the duration of Core Trading Hours;*

*provided, however, the order described in the OLTO instruction will only be generated if*

*(1) an unfilled odd lot market order enters the Odd Lot Tracking Order Process pursuant to Rule 7.37(c); or*

*(2) an odd lot limit order causes a locked market as described in Rule 7.56.*

*(h) Working Order. Any order with a conditional or undisplayed price and/or size designated as a ''Working Order'' by the Corporation, including, without limitation:*

*(1) All-or-None Order. A limit order which is to be executed in its entirety or not at all.*

*(2) Discretionary Order. An order to buy or sell a stated amount of a security at a specified, undisplayed price (the ''discretionary price''), in addition to at a specified, displayed price (''displayed price.'')*

*(3) Reserve Order. A limit order with a portion of the size displayed and with a reserve portion of the size (''reserve size'') that is not displayed on the Corporation.*

*(i) Directed Order. Any market or limit order to buy or sell which has been directed to a particular Market Maker by the User.*

*(j) Directed Fill. Any Market Maker may submit a standing instruction to the Archipelago Exchange for the parameters of a Directed Fill, including, but not limited to, the size of the order, the Users that may send such Market Maker a Directed Order, the price improvement algorithm and the period of time the instruction is effective. The Market Maker's Directed Fill described in the instruction will only be generated in response to a Directed Order directed to such Marker Maker. The Directed Fill is a limit order with (1) a size that is equal to or less than the size of the Directed Order and (2) a price that improves the BBO by an automatically preset amount, which must be equal to or greater than the MPII, pursuant to a price improvement algorithm; provided, however, the Directed Fill will not be generated if the price is not equal to or better than the NBBO. A Marker Maker may modify the parameters of the instruction for a Directed Fill from time to time, as the Corporation permits.*

*(k) Q Order. A limit order submitted to the Archipelago Exchange by a Market Maker. A Q Order may not be a Working Order.*

*(l) Stop Order. A Stop Order to buy becomes a market order when a transaction in the security occurs on the Corporation or on another national securities exchange or association at or above the stop price. A Stop Order to sell becomes a market order when a transaction in the security occurs on the Corporation or on another national securities exchange or association at or below the ''stop'' price. Stop Orders shall not have standing in any Order Process in the Arca Book and shall not be displayed.*

*(m) Stop Limit Order. A Stop Limit Order to buy becomes a limit order when a transaction in the security occurs on the Corporation or on another national securities exchange or association at or above the stop price. A Stop Limit Order to sell becomes a limit order when a transaction in the security occurs on the Corporation or on another national securities exchange of association at or below the stop price.*

(n) Do Not Reduce. A limit order to buy, a Stop Order to sell or a Stop Limit Order to sell which is not to be reduced by the amount of an ordinary cash dividend on the ex-dividend date. A Do Not Reduce Order applies only to ordinary cash dividends; it should be reduced for other distributions such as when a stock goes ''ex'' a stock dividend or ex rights.

(o) Do Not Increase. A limit order to buy, a Stop Order to sell or a Stop Limit Order to sell which is not to be increased in shares on the ex-date as a result of a stock dividend or stock distribution.

(p) Fill-or-Return. An order to buy or sell that is to be executed in whole or in part on the Corporation, and the portion not so executed is to be cancelled, without routing the order to another market center or market participant.

(q) Timed Order. An order to buy or sell which is to remain in effect from and/or until a specified time, after which such order or the portion thereof not executed is to be treated as cancelled.

(r) FIll-or-Return Plus. An order to buy or sell that is to be executed in whole or in part on the Corporation, and the portion not so executed is to be cancelled, without routing the order to another market center or market participant. In the event any portion of the order is not executed on the Corporation and must be cancelled, the Archipelago Exchange, after canceling the unexecuted portion of the order, shall send an administrative message to an ETP Holder designated by the order entry ETP Holder informing the designated ETP Holder that portion of the order was cancelled.

(s) Cross Order. A two-sided order with instructions to match the identified buy-side with the identified sell-side at a specified price (the ''cross price''). For the purposes of this Rule 7.31(s), an order of block size shall have the same meaning as set forth in Rule 7.57. A Cross Order will be executed as follows; provided, however, no Cross Orders shall be matched at the cross price without interacting with any orders in the Arca Book unless the cross price improves the BBO by the MPII:

(l) If the cross price is equal to or better than the NBBO.

(A) and the cross price is between the BBO, the Cross Order shall be matched at the cross price without interacting with any orders in the Arca Book.

(B) and the cross price is at the BBO.

(i) first, the Cross Order shall be matched at the displayed price, against all pre-existing displayed orders in the Display Order Process of the Arca Book with priority according to Rule 7.36; and

(ii) then, any remainder of the Cross Order shall be matched at the cross price.

(2) If the cross price is outside the NBBO,

(A) and the cross price is between the BBO,

(i) first, the portion of the Cross Order that may be executed in another market shall be routed away for execution pursuant to Section 5 of Rule 7; and

(ii) then, the remainder of the Cross Order shall be matched at the cross price without interacting with any orders in the Arca Book.

(B) and the cross price is at the BBO,

(i) first, the portion of the Cross Order that may be executed in another market shall be routed away for execution pursaunt to Section 5 of Rule 7;

(ii) then, the Cross Order shall be matched, at the displayed price, against all pre-existing displayed orders in the Display Order Process of the Arca Book with priority according to Rule 7.36; and

(iii) then, any remainder of the Cross Order shall be matched at the cross price.

(C) and the cross price is outside the BBO,

(i) and the NBBO is better than the BBO,

(l) first, the portion of the Cross Order that may be executed in another market shall be routed away for execution pursuant to Section 5 of Rule 7;

(2) then, the Cross Order shall be matched,

(a) at the displayed price (if the Cross Order is smaller than block size) or at the cross price (if the Cross Order is of block size), against all pre-existing orders in the Display Order Process of the Arca Book with priority according to Rule 7.36; and

(b) at the price at which the Working Order is represented in the Arca Book, against all pre-existing orders in the Working Order Process of the Arca Book with priority according to Rule 7.36.

The Cross Order shall be matched against any displayed and/or Working Order at a better price level before being matched to any displayed and/or Working Order at the next best price level.

*(2) then, the portion of the Cross Order that may be executed in another market shall be routed away for execution pursuant to Section 5 of Rule 7;*

(3) then, any remainder of the Cross Order shall be matched at the cross price.

*(t) Auction-Only Limit Order. A limit order that is to be executed only during the Market Order Auction.*

*(u) Cleanup Order.*

*(1) Only Market Makers may submit Cleanup Orders to the Archipelago Exchange.*

*(2) Cleanup Orders must be submitted to the Archipelago Exchange before 6:15 a.m. (Pacific Time) and remain in effect until the conclusion of the Market Order Auction.*

*(3) Cleanup Orders must be 2500 shares in size.*

*(4) Cleanup Orders must be entered as both buy or sell orders, provided, however, the Cleanup Order may only be executed on the side of the market opposite the Imbalance.*

*(5) Cleanup Orders will be executed at the Indicative Match Price as of the time of the Market Order Auction.*

*(6) Cleanup Orders will only be executed if:*

*(A) There is an Imbalance of Market Orders at the conclusion of the Market Order Auction, as provided in Rule 7.35; and*

*(B) The Imbalance is less than or equal to aggregate size of all Cleanup Orders in the relevant security.*

*(7) If there is an Imbalance and Cleanup Orders will be executed based on the criteria in paragraph (6), the market orders which make up the Imbalance will be divided equally among, and allocated to, all Market Makers registered in the relevant security and executed against such Market Makers' Cleanup Orders.*

*(8) If no Imbalance exists at the time of the Market Order Auction, all Cleanup Orders shall be cancelled at that time.*

*(v) NOW Order. A Limited Price Order that is to be executed in whole or in part on the Corporation, and the portion not so executed shall be routed pursuant to Rule 7.37(d) only to one or more NOW Recipients for immediate execution as soon as the order is received by the NOW Recipient. Any portion not immediately executed by the NOW Recipient shall be cancelled. If a NOW Order is not marketable when it is submitted to the Corporation, it shall be cancelled. NOW Orders may not be Directed Orders.*

*(w) PNP Order (Post No Preference). A limit order to buy or sell that is to be executed in whole or in part on the Corporation, and the portion not so executed is to be ranked in the Arca Book, without routing any portion of the order to another market center; provided, however, the Corporation shall cancel a PNP Order that would lock or cross the NBBO.*

*(x) Primary Only Order (PO Order). For exchange-listed securities only, a market order that is to be routed as a market-on-open order to the primary market for participation in the primary market opening process. A PO Order must be entered before 6:28 a.m. (Pacific Time) and it will not be included in the Market Order Auction.*

*Order Entry*

*Rule 7.32. Users may enter into the Archipelago Exchange the types of orders listed in Rule 7.31; provided, however, no User may enter an order other than a Fill-or-Return, Fill-or-Return Plus or PNP Order unless the User or the User's Sponsoring ETP Holder has entered into a Routing Agreement.*

*ETP Holder Users*

*Rule 7.33. Consistent with Rules of the Corporation, ETP Holder Users of the Archipelago Exchange may enter proprietary orders and agency orders for the account of a customer. Proprietary orders accepted by the Archipelago Exchange from ETP Holder Users are subject to the same display and execution processes as agency orders. An ETP Holder User that enters a proprietary order into the Archipelago Exchange shall mark the order with the appropriate designator to identify the order as proprietary.*

*Trading Sessions*

*Rule 7.34(a) Sessions. The Archipelago Exchange shall have three trading sessions each day the Corporation is open for business:*

*(1) Opening Session. The Opening Session shall begin at 5:00:00 a.m. (Pacific Time) and conclude at the commencement of the Core Trading Session. The Opening Auction and the Market Order Auction shall occur during the Opening Session.*

*(2) Core Trading Session. The Core Trading Session shall begin for each security at 6:30:00 a.m. (Pacific Time) or at the conclusion of the Market Order Auction, whichever comes later, and conclude at 1:00:00 p.m. (Pacific Time).*

*(3) Late Trading Session. The Late Trading Session shall begin following the conclusion of the Core Trading Session and conclude at 5:00:00 p.m. (Pacific Time).*

*(b) Market Maker Obligations. During the Core Trading Session, Market Makers will be obligated to enter Q Orders in securities in which they are registered in accordance with Rule 7.23 by the time Core Trading Hours begin. During the Opening Session and the Late Trading Session, Market Makers are not obligated to enter Q Orders in securities in which they are registered. Market Makers are required to enter at least one Cleanup Order for all securities in which they are registered for each Market Order Auction.*

*(c) Order Designation. Any Day Order entered into the Archipelago Exchange may remain in effect for one or more consecutive trading sessions on a particular day. For each Day Order entered into the Archipelago Exchange, the User must designate for which trading session(s) the order will remain in effect. Any GTC Order entered into the Archipelago Exchange will remain in effect only during Core Trading Sessions, unless the User indicates that the GTC Order will remain in effect for the Opening and/or Late Trading Sessions.*

*(d) Orders Permitted in Each Session.*

*(1) During the Opening Session:*

*(A) Orders eligible for the Display Order Process (other than Q Orders) and for the Working Order Process that have been designated as available for the Opening Session are eligible for entry into and execution on the Archipelago Exchange.*

*(B) Stop Orders are not eligible for execution during the Opening Session.*

*(C) Users may enter market and Auction-Only Limit Orders for inclusion in the Market Order Auction. Market orders and Auction-Only Limit Orders are not eligible for execution during the Opening Session, except during the Market Order Auction.*

*(D) Neither the Directed Order Process nor the Tracking Order Process is available during the Opening Session. For the purposes of the Opening Session, market Directed Orders are included in the Market Order Auction.*

*(E) NOW Orders are eligible for execution during the Opening Session, provided, however, NOW Orders are not eligible for the Opening Auction or the Market Order Auction.*

*(F) PNP Orders are eligible for execution during the Opening Session.*

*(2) During the Core Trading Session, market orders, Stop Orders, NOW Orders, PNP Orders and orders eligible for the Directed Order, Display Order, Working Order and Tracking Order Processes are eligible for entry into and execution on the Archipelago Exchange.*

*(3) During the Late Trading Session:*

*(A) Orders eligible for the Display Order Process (other than Q Orders) and for the Working Order Process, including NOW Orders and PNP Orders, than have been designated as available for the Late Trading Session are eligible for entry into and execution on the Archipelago Exchange.*

*(B) Market orders and Stop Orders are not eligible for execution during the Late Trading Session.*

*(C) The Directed Order and Tracking Order Processes are not available during the Late Trading Session.*

*(e) Customer Disclosures. No ETP Holder may accept an order from a non-ETP Holder for execution in the Opening or Late Trading Session without disclosing to such non-ETP Holder that:*

*(1) except for market orders eligible for execution during the Market Order Auction, Limited Price Orders are the only orders that are eligible for execution during the Opening and Late Trading Sessions;*

*(2) an order must be designated specifically for trading in the Opening and/or Late Trading Session to be eligible for trading in the Opening and/or Late Trading Session; and*

*(3) extended hours trading involves material trading risks, including the possibility of lower liquidity, high volatility, changing prices, unlinked markets, an exaggerated effect from news announcements, wider spreads and any other relevant risk.*

*The disclosures required pursuant to this subparagraph (e)(3) may take the following form or such other form as provides substantially similar information:*

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

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

*3. Risk of Changing Prices. The prices of securities traded in extended hours trading may not reflect the prices either at the end*

*of regular market hours, or upon the opening of the next morning. As a result, you may receive an inferior price in extended hours trading than you would during regular market hours.*

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

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

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

*(f) Trades on the Archipelago Exchange executed and reported outside of the Core Trading Session shall be designated as .T trades.*

*Opening Session Auctions*

*Rule 7.35(a) Order Entry and Cancellation Before Opening Auction*

*(1) Users may submit any orders to the Archipelago Exchange beginnings at 4:30 am (Pacific Timer). Any such Limited Price Orders designated for the Opening Session will be queued until 5:00 am (Pacific Time) at which time they will be eligible to be executed pursuant to paragraph (b) of this Rule. Any such market orders will be queued until the Market Order Auction at which time they will be executed pursuant to paragraph (c) of this Rule.*

*(2) Only limited priced orders designated for the Opening Session will be eligible for the Opening Auction. Market orders entered before the Opening Auction will participate in the Market Order Auction. Limited Price Orders not designated for the Opening Session will become eligible for execution pursuant to Rule 7.37 at the commencement of the Core Trading Session.*

*(3) Beginning at 4:30 am (Pacific Time), and various times thereafter as determined from time to time by the Corporation, the Indicative Match Price of the Opening Auction, and any Imbalance associated therewith, shall be published via electronic means as determined from time to time by the Corporation.*

*(4) Orders that are eligible for the Opening Auction may not be cancelled between 4:58 am (Pacific Time) and the conclusion of the Opening Auction.*

*(b) Opening Auction.*

*(1) At 5:00 am (Pacific Time), Limited Price Orders designated for the Opening Session are matched and executed in the Opening Auction.*

*(2) The orders in the Opening Auction shall be executed at the Indicative Match Price as of the time of the Opening Auction.*

*(3) Orders that are eligible for, but not executed in, the Opening Match shall become eligible for the Opening Session immediately upon conclusion of the Opening Auction.*

*(c) Market Order Auction.*

*(1) Publication of Indicative Match Price and Imbalances*

*(A) Beginning at 5:00 am (Pacific Time), and various times thereafter as determined from time to time by the Corporation, the Indicative Match Price of the Market Order Auction and the volume available to trade at such price, shall be published via electronic means as determined from time to time by the Corporation. If such a price does not exist (i.e., there is an Imbalance of market orders), the Archipelago Exchange shall indicate via electronic means that an Indicative Match Price does not exist.*

*(B) Beginning at 5:00 am (Pacific Time), and various times thereafter as determined from time to time by the Corporation, the market order Imbalance associated with the Market Order Auction, if any, shall be published via electronic means as determined from time to time by the Corporation.*

*(C) If the difference between the Indicative Match Price and the closing price of the price of the previous trading day's normal market hours, as determined by the Consolidated Tape, is equal to or greater than a pre-determined amount, as determined from time to time by the Corporation, the Archipelago Exchange will assign a ''SIG'' designator to such Indicative Match Price and publish such designator via electronic means as determined from time to time by the Corporation.*

*Example: (1) Market order to buy 5000 shares;*

*(2) Auction-Only Limit Order to sell 1000 at 50;*

*(3) Limit order to sell 1000 at 50.50; and*

*(4) Limit order to sell 500 at 50.75.*

*The Archipelago Exchange will publish an Indicative Match Price of 50.75, a volume of 2500 shares and a buy Imbalance of 2500 shares.*

*Example: (1) Market order to buy 3000 shares;*

*(2) Market order to sell 1000;*

*(3) Limit order to sell 1000 at 41.00; and*

*(4) Limit order to sell 1000 at 41.25.*

*The Archipelago Exchange will publish an Indicative Match price of 41.25 and a volume of 3000 shares and will not publish an Imbalance.*

*(2) Reduction of Imbalances*

*(A) Any Imbalance in the Market Order Auction may be reduced by new orders, entered on the side of the market opposite the Imbalance, pursuant to the following priority:*

*(i) Market orders;*

*(ii) Limited Price Orders eligible for the Opening Session;*

*(iii) Limited Price Orders entered before 6:28 am (Pacific Time);*

*(iv) Auction-Only Limit Orders; and*

*(v) Cleanup Orders.*

*(B) Between 6:28 am (Pacific Time) and the conclusion of the Market Order Auction, Limited Price Orders eligible for the Opening Session or the Core Trading Session may be cancelled, but market orders, Auction-Only Limit Orders and Cleanup Orders may not be cancelled.*

*(C) Between 6:28 am (Pacific Time) and the conclusion of the Market Order Auction, market orders and Auction-Only Limit Orders may not be entered on the same side as the Imbalance. Market orders and Auction-Only Limit Orders may be entered on the opposite side of the Imbalance, however, any time before the Market Order Auction.*

*(3) Determination of Market Order Auction Price*

*(A) If there is no Imbalance, orders will be executed in the Market Order Auction at the Indicative Match Price as of 6:30 am (Pacific Time).*

*(B) If an Imbalance exists, or if an equilibrium exists between buy market orders and sell market orders, as many buy market orders and sell market orders as possible shall be matched, on a time priority basis,*

*(i) at the midpoint of the NBBO at 6:30 am (Pacific Time), in the case of exchange-listed securities for which the Corporation is not the primary market; or*

*(ii) at the midpoint of the NBBO at 6:30 am (Pacific Time), in the case of Nasdaq-listed securities, provided that the NBBO is not crossed; or*

*(iii) at the midpoint of the first uncrossed NBBO after 6:30 am (Pacific Time), in the case of Nasdaq securities in which the NBBO is crossed but the BBO is not crossed by the NBBO; or*

*(iv) at the bid (offer) of the BBO that was crossed prior to 6:30 am (Pacific Time), in the case of Nasdaq securities in which the BBO is crossed by a market participant; or*

*(v) at the indicative Match Price as of 6:30 am (Pacific Time) in the case of those issues for which the Corporation is the primary market. If equilibrium exists between buy and sell market orders, the match price shall be the last Corporation sale price in the security regardless of the trading session, provided that, if the last Corporation sale price is inferior to the BBO, the match price shall be the Corporation bid (offer).*

*Such executions shall be designated with a modifier to identify them as Market Order Auction trades. The market orders that are eligible for, but not executed in the Market Order Auction, shall become eligible for execution in the Core Trading Session immediately upon conclusion of the Market Order Auction.*

*(d) Reserved.*

*(e) Transition to Core Trading Session.*

*(1) Limited Price Orders entered before 6:28 am (Pacific Time) shall participate in the Market Order Auction. Limited Price Orders designated for the Core Trading Session entered after 6:28 am (Pacific Time) shall become eligible for execution at 6:30 am (Pacific Time) or at the conclusion of the Market Order Auction, whichever is later.*

*(2) Market orders entered after 6:28 am (Pacific Time) and before 6:30 am (Pacific Time), which are eligible for either the Market Order Auction or the Core Trading*

*Session, shall become eligible for execution at 6:30 am (Pacific Time) or at the conclusion of the Market Order Auction, whichever is later, unless otherwise provided in Rule 7.30(c)(2)(C).*

*(3) Stop Orders entered before or during the Opening Session become eligible for execution at 6:30 am (Pacific Time) or at the conclusion of the Market Order Auction, whichever is later.*

*Order Ranking and Display*

*Rule 7.36. The Archipelago Exchange shall display to Users and other market participants all non-marketable limit orders in the Display Order Process. The Archipelago Exchange will also disseminate current consolidated quotations/last sale information, and such other market information as may be made available from time to time pursuant to agreement between the Corporation and other market centers.*

*(a) Ranking. Orders of Users shall be ranked and maintained in the Display Order Process and/or Working Order Process of the Arca Book according to price-time priority, such that within each price level, all orders shall be organized by the time of entry in the following manner.*

*(1) Display Order Process. Within the Display Order Process:*

*(A) Limit orders, with no other conditions, shall be ranked based on the specified limit price and the time of original order entry.*

*(B) The displayed portion of Reserve Orders (not the reserve size) shall be ranked at the specified limit price and the time of order entry. If the displayed portion of the Reserve Order is decremented in its entirety, the displayed portion of the Reserve Order shall be refreshed for the displayed amount from the reserve portion and shall be submitted and ranked at the specified limit price and the new time that the displayed portion of the order was refreshed.*

*(C) Discretionary Orders shall be ranked based on the displayed price (not the discretionary price) and the time of order entry. If a Discretionary Order is decremented, it remains ranked based on the displayed price and the time of original order entry.*

*(2) Working Order Process. Within the Working Order Process:*

*(A) The reserve portion of Reserve Orders shall be ranked based on the specified limit price and the time of original order entry. After the displayed portion of a Reserve Order is refreshed from the reserve portion, the reserve portion remains ranked based on the original time of order entry, while the displayed portion is sent to the Display Order Process with a new time-stamp.*

*(B) Discretionary Orders shall be ranked based on the displayed price and the time of original order entry. After a Discretionary Order is decremented, it remains ranked as described above.*

*(C) All-or-None Orders shall be ranked based on the specified limit price and the time of order entry.*

*(b) Display. All Orders at all price levels in the Display Order Process of the Arca Book shall be displayed to all Users and other market participants on an anonymous basis.*

*(c) Dissemination. The best-ranked displayed order(s) to buy and the best ranked displayed order(s) to sell in the Arca Book and the aggregate displayed size of such orders associated with such prices shall be collected and made available to quotation vendors for dissemination pursuant to the requirements of Rule 11Ac1–1 under the Exchange Act.*

*Order Execution*

*Rule 7.37. Subject to the restrictions on short sales under Rule 10a–1 under the Exchange Act, like-priced orders, bids and offers shall be matched for execution by following Steps 1 through 5 in this Rule; provided, however, for an execution to occur on any Order Process, the price must be equal to or better than the NBBO, unless the Archipelago Exchange has routed orders to all away markets at the NBBO.*

*(a) Step 1: Directed Order Process. During Core Trading Hours only, orders may be matched and executed in the Directed Order Process as follows:*

*(1) If a User submits a marketable Directed Order to the Archipelago Exchange and the User's designated Market Maker has a standing instruction for a Directed Fill to the Archipelago Exchange, the Directed Order shall be executed against the Directed Fill of the designated Market Maker.*

*(2) If a User submits a marketable Directed Order to the Archipelago Exchange and the User's designated Market Maker has not submitted an instruction for a Directed Fill, the Directed Order shall enter the Display Order Process, as described in subsection (b) of this Rule.*

*(3) If a User submits any order other than a marketable Directed Order to the Archipelago Exchange, the User's order immediately shall enter the Display Order Process, as described in subsection (b) of this Rule, without interacting with any Directed Fills.*

*(b) If an incoming marketable order has not been executed in its entirety pursuant to paragraph (a) of this Rule, any remaining part of the order shall be routed to the Display Order Process.*

*(1) Step 2: Display Order Process.*

*(A) An incoming marketable order shall first attempt to be matched for execution against orders the Display Order Process at the display price of the resident order for the total amount of stock available at that price or for the size of the incoming order, whichever is smaller. For the purposes of this subsection, the size of an incoming Reserve Order includes the displayed and reserve size and the size of the portion of the Reserve Order resident in the Display Order Process is equal to its displayed size. If the incoming marketable order has not been executed in its entirety, the remaining part of the order shall be routed to the Working Order Process.*

*(B) An incoming order that is not marketable shall enter the Working Order Process to be executed against any Discretionary Orders at or better than the NBBO.*

(2)*Step 3: Working Order Process.*

*(A) An incoming marketable order shall be matched for execution against orders in the Working Order Process in the following manner:*

*(i) An incoming marketable order shall be matched against orders within the Working Order Process in the order of their ranking, at the price of the displayed portion (or in the case of an All-or-None Order, at the limit price), for the total amount of stock available at that price or for the size of the incoming order, whichever is smaller.*

*(ii) If the BBO is outside the NBBO and any Discretionary Order(s) within the Working Order Process have a discretionary price equal to or better than the NBBO, the incoming order shall execute against such Discretionary Order(s) at the NBBO up to the size of the smaller of the two orders.*

*(iii) If an incoming marketable order is a Discretionary Order or a Reserve Order and its prices overlap with the prices of a Discretionary Orders in the Working Order Process, then the orders will be executed at the display price of the order that was entered first up to the size of the smaller of the two orders. For the purposes of this subsection, the size of the incoming Reserved order includes the displayed and reserve size.*

*(iv) If the incoming marketable order has not been executed in its entirety, the remaining part of the order shall be routed to the Tracking Order Process.*

*(B) An incoming order is not marketable shall be matched for execution against orders in the Working Order Process in the following manner:*

*(i) The incoming order shall be matched against any Discretionary Orders in the Working Order Process that have discretionary prices that would satisfy an otherwise displayable incoming Limited Price Order. The execution shall occur at the limited price of the incoming order.*

*(ii) If the incoming order is a Discretionary Order and its prices overlap with the prices of a Discretionary Order in the Working Order Process, then the orders will be executed at the discretionary price of the incoming order that would be the best price available for the order entered first.*

*(C) If any change in the NBBO or other available away trading interest would cause a potential match between the away order and an order in the Working Order Process, a commitment to trade shall be sent to that market center or market participant pursuant to Step 5 below.*

*(c) Step 4: Tracking Order Process. During Core Trading Hours only, orders may be matched and executed in the Tracking Order Process as follows: If an order has not been executed in its entirety pursuant to paragraphs (a) and (b) of this Rule, the Archipelago Exchange shall match and execute any remaining part of the order in the Tracking Order Process in the following manner; provided, however, any portion of an order received from another market center or market participant shall be cancelled immediately:*

*(1) If the unfilled order is a mixed lot or round lot order, the order shall be matched against any Tracking Orders pursuant to the rotation pattern described in Rule 7.31(f)(3) for immediate execution thereafter. After the order has been matched against any Tracking Orders, if the order has not been executed in its entirety and the remaining part of the order is an odd lot, the odd lot order shall been executed in the Odd Lot Tracking Order Process, as described in paragraph (2).*

*(2)* If the unfilled order is an odd lot, the order shall be matched in the Odd Lot Tracking Order Process against any OLTOs pursuant to the rotation pattern described in Rule 7.31(f)(3) for immediate execution thereafter.

*(d) Step 5: Routing Away.*

*(1) If an order has not been executed in its entirety pursuant to paragraphs (a) through (c) of this Rule and it has been designated as a Fill-or-Return, Fill-or-Return Plus Order or PNP Order, the Order shall be cancelled, without routing the order to another market center or market participant.*

*(2) If an order has not been executed in its entirety pursuant to paragraphs (a) through (c) of this Rule and it has not been designated as a Fill-or-Return, Fill-or-Return Plus Order or PNP Order, the order shall be routed for execution as follows:*

*(A) The order shall be routed, either in its entirety or as component orders, to another market center or market participant as a limit order priced at the quote published by the market center or market participant.*

*(B) the Archipelago Exchange shall attempt to match the part of the order that has not been routed away against then available trading interest in the Archipelago Exchange for an internal fill by following Steps 1 through 4 as set forth in paragraphs (a) through (c) above.*

*(C) Orders routed to other market centers or market participants shall remain outside the Archipelago Exchange for a prescribed time period during which they may be executed (in whole or in part) or declined. While an order remains outside the Archipelago Exchange, it shall have no time standing, relative to other orders received from Users at the same price which may be executed against the Arca Book. Requests from Users to cancel their orders while the order is routed away to another market center or market participant and remains outside the Archipelago Exchange shall be processed, subject to the applicable trading rules of the relevant market center or market participant.*

*(D)* In the event that a marketable order routed from the Archipelago Exchange to another market center or market participant is not executed in its entirety at the other market center or market participant's quote (*i.e.*, all attempts at the fill are declined or timed-out), the Archipelago Exchange shall attempt to match the residual or declined market order against then available trading interest in the Archipelago Exchange for an internal fill by following Steps 1 through 4 as set forth in paragraphs (a) through (c) above. Any remaining unmatched trading interest shall be rerouted to another market center or market participant at the next available displayed price level pursuant to this paragraph (d)(2) above.

*(E) When routing an order in an Eligible Security away to another market center, the Corporation shall utilize such electronic intermarket linkages and order delivery facilities as may be approved by the Board of Directors from time to time, subject to such applicable requirements as may be agreed to with the relevant market center.*

*(e) If an order has not been executed in its entirety after following Steps 1–5, the order shall be ranked in the Arca Book pursuant to Rule 7.36.*

*Odd and Mixed Lots*

*Rule 7.38(a) Order Types.*

*(1) Odd Lots. All odd lot orders submitted by Users to the Archipelago Exchange must be market orders or limit orders, where such orders are subject to no additional conditions (e.g., odd lot orders may not be Working Orders, Directed Orders, Directed Fills, Tracking Orders, etc.), provided, however, Odd Lot Dealers may submit OLTOs.*

*(2) Mixed Lots. Mixed lot orders submitted by Users to the Archipelago Exchange may be any order type supported by the Archipelago Exchange.*

*(b) Ranking and Execution. Round lot, mixed lot and odd lot orders are treated in the same manner in the Archipelago Exchange; provided, however, the Tracking Order Process treats odd lot orders in a different manner from mixed lot and round lot orders.*

*(c) Prohibitions. It shall be considered conduct inconsistent with just equitable principle for ETP Holders to engage in the following actions:*

*(1) Combining odd lot orders given by different customers into a round lot order or orders unless specifically requested to do so by the customers giving the orders;*

*(2) Unbundling round lots for the purpose of entering odd lot limit orders in comparable amounts;*

*(3) Failing to aggregate odd lot orders into round lots when such orders are for the same account or for various accounts in which there is a common monetary interest; and*

*(4) Entering both buy and sell odd lot limit orders in the same stock before one of the orders is executed for the purpose of capturing the spread in the stock.*

*Interaction with PCXE Application of the OptiMark System*

*Rule 7.39(a) The information from the Arca Book (including Working Orders), but not the orders themselves, shall be submitted to the PCXE Application at all relevant times during Core Trading Hours, as set forth in Rule 7.47.*

*(b) The Archipelago Exchange may receive Immediate-or-Cancel Orders from the PCXE Application as set forth in Rule 7.48. Such Immediate-or-Cancel Orders shall be treated as a User order once submitted to the Archipelago Exchange.*

*Trade Execution and Reporting*

*Rule 7.40. Executions occurring as a result of orders matched against the Arca Book shall be reported by the Corporation to an appropriate consolidate transaction reporting system. Executions occurring as a result of orders routed away from the Archipelago Exchange shall be reported to an appropriate consolidated transaction reporting system by the relevant reporting market center. The Archipelago Exchange shall promptly notify Users of all executions of their orders as soon as executions take place.*

*Clearance and Settlement*

*Rule 7.41. The details of each transaction executed within the Archipelago Exchange shall be automatically processed for clearance and settlement on a locked-in basis. ETP Holders need not separately report their transactions to the Corporation for trade comparison purposes. All transactions effected by a Sponsored Participant shall be cleared and settle, using the relevant Sponsoring ETP Holder's mnemonic (or its clearing firm's mnemonic as applicable).*

*Limitation of Liability*

*Rule 7.42(a). Neither the Corporation, any affiliate of the Corporation, Archipelago Exchange, L.L.C., nor any affiliate of the Archipelago Exchange, L.L.C., shall be liable to Users for any loss, damages, claim or expense:*

*(1) growing out of the use or enjoyment of the Archipelago Exchange; or*

*(2) arising from or occasioned by any inaccuracy, error or delay in, or omission of or from the collection, calculation, compilation, maintenance, reporting or dissemination of any information derived from the Archipelago Exchange, resulting either from any act or omission by the Corporation, any affiliate of the Corporation, Archipelago Exchange, L.L.C., or any affiliate of Archipelago Exchange, L.L.C., or from any act condition or cause beyond the reasonable control of the Corporation, any affiliate of the Corporation, Archipelago Exchange, L.L.C., or any affiliate of Archipelago Exchange, L.L.C., including, but not limited to, flood, extraordinary weather conditions, earthquake or other acts of God, fire, war, insurrection, labor dispute, accident, action of government, communications or power failure, or equipment or software malfunction.*

*(b) Each ETP Holder expressly agrees, in consideration of the issuance of the ETP, to release and discharge the Corporation, any affiliate of the Corporation, Archipelago Exchange, L.L.C., and any affiliate of the Archipelago Exchange, L.L.C., and any officers, directors, employees and agents thereof, of and from all claims and damages arising from their acceptance and use of the Archipelago Exchange.*

*(c) Neither the Corporation, any affiliate of the Corporation, Archipelago Exchange, L.L.C., nor any affiliate of the Archipelago Exchange, L.L.C., makes any express or implied warranties or conditions to Users as to results that any person or party may obtain from the Archipelago Exchange for trading or for any other purpose, and all warranties of merchantability or fitness for a particular purpose or use, title, and non-infringement with respect to the Archipelago Exchange are hereby disclaimed.*

*Rule 7.43. Reserved.*

*Rule 7.44. Reserved.*

**Section *4* [10]. *PCXE Application of the OptiMark System* [Automatic Execution Systems]**

[Rule 7.70—Deleted.]

PCX Equities, Inc. Application of the OptiMark System

Definitions

Rule *7.45*[7.71](a). Definitions. Whenever and wherever used herein, unless the context requires otherwise, the following terms shall be deemed to have the meanings indicated:

(1)—No change.

(2) The term ''Designated Broker'' shall mean a broker-dealer that has been issued an ETP [or Equity ASAP] by the Corporation who has been designated by a non-ETP [or non-Equity ASAP] User to execute, clear and settle transactions resulting from the Application.

[(3) The term ''Eligible Securities'' shall mean the equity securities currently listed or traded on the Corporation.]

*(3)*[4] The term ''Supplemental Account Agreement'' shall mean the form of Agreement between a non-ETP [or non-Equity ASAP] User and a Designated Broker under which Orders of the non-ETP [or non-Equity ASAP] User and resulting transactions will be executed, cleared and settled, using the Designated Broker's mnemonic (or its clearing broker's mnemonic as applicable).

*(4)* [(5)]—No change.

*(5)* [(6)] The term ''Orders'' shall mean one or more orders generated from a Cycle at specific prices and sizes at which execution immediately may occur; *provided, however, an Order to be matched against a limit order from the Arca Book shall be routed to the Archipelago Exchange as an Immediate-or-Cancel Order.* Orders in Eligible Securities for execution on the Corporation or other ITS participating market centers shall be in round lots equal to or greater than 1,000 shares, except for Orders resulting from processing COS Profiles (as defined below) and those Profiles created from the *Arca Book* [PCX Specialist's book] that may be in any round lot size, and in price increments conforming to the requirements of the Corporation's [rules] *Rules* and policies applicable to all orders executed on the *Archipelago Exchange* [Floor]; provided, however, that Orders may be generated from central processing of the Profiles designated for the midpoint service by the OptiMark System in conformance with the trading differential in Rule [7.10] *7.6*(a), Commentary .04. Such orders shall be considered ''immediate or *cancel* [Cancel]'' orders within the meaning of the Corporation's Rule *7.31* [7.4] and shall include the following information:

(A) the stock ticker symbol;

(B) a designation as ''buy,'' ''sell long,'' or ''sell short''; and

(C) such other information as may be required by the Board

*(6)* [(7)] The term ''Profile'' shall mean the expression of trading interest received by the OptiMark System in the form of a satisfaction profile that shows the User's degree of satisfaction (expressed as a number between zero and one) to trade at each coordinate of the price/size grid. The term ''COS Profile'' means the satisfaction profile generated by the OptiMark system from processing quotations of other market centers from the COS that can be accessed by ITS/CAES. *The term ''Arca Profile'' means the satisfaction profile generated by the OptiMark System from processing the Arca Book.*

*(7)* [(8)] the term ''PCX*E* Application'' (or ''Application'') shall mean the Corporation's trading service facility consisting of certain electronic communications and information services of the OptiMark System provided on a non-exclusive basis through the necessary communications interfaces (''PCX Interfaces'') between the OptiMark System and the Corporation's computerized order system and other facilities to permit execution of Orders in Eligible Securities and to receive executions and reports in respect thereof, all in accordance with these Rules and other applicable Rules and policies of the Corporation.

*(8)* [(9)]—No change.

*(9)* [(10)]—No change.

Access

Rule *7.46* [7.72]. The PCX*E* Application shall be available for all interested ETP Holders[, Equity ASAP Holders, and ETP Firms] that decide to become Users. [The Corporation will assure that each PCX Specialist is provided with appropriate access to the PCX Application for the purpose of submitting Profiles from the Specialist's Post.] A non-ETP *Holder* User may obtain access to the PCX*E* Application only if such access is authorized in advance by one or more Designated Brokers in accordance with the terms of the applicable Supplemental Account Agreement and the Designated Broker Consent Agreement. Both agreements shall be in force before a non-ETP [or non-Equity ASAP] User may be given the authorization to obtain access to the PCX*E* Application. At a minimum, the Supplemental Account Agreement and the Designated Broker Consent Agreement shall include any applicable credit limits imposed by the Designated Broker on the non-ETP *Holder* User; the Designated Broker's undertaking that it is responsible for that non-ETP *Holder* [or non-/Equity ASAP] User's Orders and resulting transactions; and such other terms and conditions that may be agreed to from time to time. The Corporation shall be provided with a written statement from the Designated Broker acknowledging its responsibility for such Orders and resulting transactions.

Entry of Profiles and Generation of Orders

Rule *7.47* [7.73] (a)—No change.

(b) *Interaction with the Archipelago Exchange. The information from the Arca Book (including Working Orders) shall be submitted to the PCXE Application at all relevant times during Core Trading Hours in the form of Arca Profiles.* [Specialist Obligations. Specialists must ensure that at all relevant times during regular trading hours, their best bids and offers (whether reflecting limit orders or the Specialist's own interest) will be included in the OptiMark System as Profiles.]

(c)—No change.

Commentary

.01. For the purpose of this *Rule* [rule], a profile for the proprietary account of an ETP Holder[, Equity ASAP Holder, or ETP Firm] (other than for a *Market Maker* [specialist or floor broker]) will be deemed ''principle exempt'' and therefore receive the priority treatment of agency profiles but only when such person does not hold or have knowledge that his *or her* firm or any participant therein holds or has knowledge of a customer's profile or order at the same price or better. If the ETP Holder[, ETP Firm or Equity ASAP Holder] holds or has knowledge of such customer profile or order, the ETP Holder[, ETP Firm or Equity ASAP Holder] will be deemed non-exempt and must designate any proprietary profile as ''principal non-exempt.''

.02. After screening for price and standing, the matching algorithm will rank the following categories of profiles and order types for time priority purposes:

(1) *Arca Profiles* [PCX Book—limit orders from the PCX limit order book];

(2) Agency—other public customer profiles, non-ETP [or non-Equity ASAP] profiles, and ''principal-exempt'' proprietary profiles entered directly into OptiMark;

(3) Principal—proprietary profiles submitted by *Market Makers* [specialists and floor brokers], and ''non-exempt'' ETP Holders[, Equity ASAP Holders, and ETP Firms] ([all three] considered ''principal non-exempt''); and

(4) [Consolidated Quote System ('']CQS[''] profiles.

(d) Frequency. Cycles respecting an Eligible Security shall be scheduled at one or more specified times throughout the trading day after the opening of the market in that security and prior to the closing of the market. The maximum frequency with which Cycles may take place throughout the trading day shall be 90 seconds, while the minimum shall be once a day. The exact frequency of Cycles as to any given *Corporation* [PCX] Security shall be determined by OptiMark Services, Inc., based on the general characteristics of the security, the robustness of the associated Profile flow over a period and the current level of interest expressed by Users, and may be subsequently altered in response to subsequent developments in the above-stated market circumstances. Any change in the frequency of Cycles will be effective upon three days' notice to the User in advance; provided, however, that at all relevant times, the Corporation finds any such scheduling of Cycles to be commensurate with the demand for the PCX*E* Application among ETP Holders[, Equity ASAP Holders or ETP Firms] and their customers and also consistent with the safeguards in place to ensure system capacity and integrity.

Order Execution and Reporting

Rule *7.48(a)* [7.74]—No change.

*(b) Notwithstanding paragraph (a) of this Rule, any Order generated from a Cycle representing matches involving Arca Profiles shall be routed to the Archipelago Exchange for execution against the relevant the Archipelago Exchange limit order as an Immediate-or-Cancel Order. If the relevant Archipelago Exchange limit order is no longer available, the Order generated from the Cycle shall be automatically canceled.*

Hours of Operation

Rule *7.49* [7.75]. The PCX*E* Application will be available for execution of Orders and routing of ITS commitments during the regular trading hours.

Errors

Rule *7.50* [7.76]. Whenever a User discovers an error in a transaction resulting from the PCX*E* Application, such error may be corrected in accordance with the rules of the applicable market center and clearing

arrangement through which the transaction is executed and settled.

Trading Suspension and Halts

Rule *7.51* [7.77]. In the event of a suspension in trading of an Eligible Security pursuant to Rule *7.12* [7.46(b)], the Corporation shall suspend the related trading activities respecting that security through the PCX*E* Application. In addition, the trading activities through the PCX*E* Application respecting all Eligible Securities shall halt whenever the President or, in the President's absence, Chief Operating Officer or other PCX*E* Officer(s) as the President may designate, determines that market conditions warrant such a halt. The Corporation may suspend the trading activities through the PCX*E* Application relating to one or more Eligible Securities at any other time upon consultation with OptiMark Technologies, Inc., if deemed necessary and proper to preserve system capacity and integrity.

Limitation of Liability

Rule *7.52* [7.78](a). Limitation of Liability. Neither the Corporation, any affiliate, nor any operator, licensor or administrator of the OptiMark System shall have any liability to Users or Designated Brokers for any loss, damages, claim or expense arising from or occasioned by any inaccuracy, error or delay in, or omission of or from:

(1) the PCX*E* Application of the OptiMark System or

(2) the collection, calculation, compilation, maintenance, reporting or dissemination of any information derived from the PCX*E* Application or the OptiMark System, resulting either from any act or omission by the Corporation or any affiliate, or any operator, licensor or administrator of the OptiMark System or from any act, condition or cause beyond the reasonable control of the Corporation or any affiliate, or any operator, licensor or administrator of the OptiMark System, including, but not limited to, flood, extraordinary weather conditions, earthquake or other acts of God, fire, war, insurrection, riot, labor dispute, accident, action of government, communications or power failure, or equipment of software malfunction.

(b) Neither the Corporation, any affiliate, nor any operator, licensor or administrator of the OptiMark System makes any express or implied warranties or conditions to Users or Designated Brokers as to results that any person or party may obtain from the PCX*E* Application for trading or for any other purpose, and all warranties of merchantability or fitness for a particular purpose or use, title, and non-infringement with respect to the PCX*E* Application are hereby disclaimed.

*Rule 7.53. Reserved.*

*Rule 7.54. Reserved.*

**Section 5 [9]. Intermarket Trading System Plan**

Definitions

Rule *7.55* [7.66](a). Definitions. Whenever and wherever used herein, unless the context requires otherwise, the following terms shall be deemed to have the meanings indicated:

(1)–(4)—No change.

(5) The term ''Pre-Opening Application'' shall mean the application of the System which permits a market maker in one participating market, who wishes to open his *or her* market in an Eligible Listed Security, to obtain from other market makers registered in that security in other participating markets, any pre-opening interests such other market makers might decide to disclose as set forth in the Plan.

(6)–(10)—No change.

[(11)—Deleted.]

Intermarket Trading System Application

(b) Provisions of the Plan. The Corporation has agreed to comply to the best of its ability, and, absent reasonable justification or excuse, to enforce compliance by its ETP Holders, [Equality ASAP Holders and ETP Firms,] with the provisions of the Plan. In this connection, the following shall apply:

Intermarket Trading System (ITS)

(1) All transactions effected through ITS shall be on a ''regular way'' basis. Each transaction effected through ITS shall be cleared and settled through a clearing agency registered with the Securities and Exchange Commission which maintains facilities through which ITS transactions may be compared and settled and which agrees to supply each participating market center with data reasonably requested in order to permit such market center to enforce compliance by its *members* [ETP Holders, Equity ASAP Holders and ETP Firms] with the provisions of the Act, the rules and regulations thereunder, and the rules of such market center.

(2) Any ''commitment to trade'', which is transmitted by an ETP Holder [or ETP Firm], *via the facilities of the Corporation,* to another participating market center through ITS, shall be firm and irrevocable for the period of time applicable to such commitment. All such commitments to trade shall:

(A) specify the security which is the subject of the commitment*;* [,]

(B) designate the commitment as either a commitment to buy or a commitment to sell*;* [,]

(C) specify the amount of the security to be bought or sold, which amount shall be for one unit of trading or any multiple thereof*;* [,]

(D) specify the price at or below which the security is to be bought or the price at or above which the security is to be sold, or specify that the commitment is a commitment to trade ''at the market;*''* [,'']

(E) designate the commitment ''short'' or ''short exempt'' whenever it is a commitment to sell which, if it should result in an execution in the market of the receiving market center, would result in a short sale to which the provisions of paragraph (a) of Rule 10a–1 under the Act would apply*; and* [,]

(F)—No change.

(3) No change.

(4) The ETP Holder [or ETP Firm on the Floor] who made the bid or offer which is sought by a commitment to trade received [on the Floor] through ITS shall accept such commitment to trade*, via the facilities of the Corporation,* up to the amount of the bid or offer if the bid or offer is still available [on the Floor] when the commitment to trade is received by such ETP Holder [or ETP Firm], *via the facilities of the Corporation,* unless acceptance is precluded by the *Rules* [rules] of the Corporation. In the event that the bid or offer which is sought by a commitment to trade is no longer available *through the facilities of the Corporation* [on the Floor] when the commitment is received, but a new bid or offer is available *through the facilities of the Corporation* [on the Floor] which would enable the commitment to trade to be executed at a price which is more favorable than the price specified in such commitment, then the ETP Holder [or ETP firm] who [has] made *the* [such new] bid or offer shall accept*, via the facilities of the Corporation,* such commitment at the price, and up to the amount of, *the new* [his] bid or offer, unless acceptance is precluded by the *Rules* [rules] of the Corporation.

(5) Any ETP Holder [or ETP Firm] who receives*, via the facilities of the Corporation,* a commitment to trade through ITS from another market center and who intends to reject that commitment shall notify*, via the facilities of the Corporation,* the market center from which the commitment was sent of such rejection as promptly as possible.

(6) Any commitment to trade received [on the Floor] through ITS and any execution thereof and any commitment to trade issued by an ETP Holder [or ETP Firm]*, via the facilities of the Corporation,* through ITS shall be subject to such *Rules* [rules] as the Corporation may from time to time determine.

Pre-Opening Application

(7) The provisions of subparagraph (1) above shall also be applicable to any transaction effected through the Pre-Opening Application. The Pre-Opening Application applies in two instances. First, it applies whenever a market maker in any Participant *market* [Market], in arranging an opening transaction in his *or her* market in a System security, anticipates that the opening transaction will be at a price that represents a change from the security's ''previous day's consolidated closing price'' at more than the ''applicable price change.'' Second, it applies whenever an ''indication of interest'' (i.e., an anticipated opening price range) is sent to the CTA Plan Processor as required or permitted by the CTA Plan or a Participant market's rules.

(8) Openings

*(A)* [(i)] Notification Requirements

*(i)* [(A)] Applicable Price Change

(1) Initial Notification—Whenever a *Market Maker* [specialist], in arranging an opening transaction *through the facilities of* [on] the Corporation in any Eligible Listed Security, anticipates that the opening transaction [on] through the facilities of the Corporation will be at a price that represents a change from the security's previous day's consolidated closing price of more than the ''applicable price change'' (as defined below), he *or she, via the facilities of the Corporation,* shall notify the other Participant markets of the situation by sending a ''pre-opening notification'' through the System. Thereafter, the *Market Maker* [specialist] shall not open the security in his *or her* market until not less than three minutes after *the* [his]

transmission of the pre-opening notification.
The ''applicable price changes'' are:

| Security | Consolidated closing price | Applicable price change (more than) |
|---|---|---|
| Network A | Under $15 | .10 or ⅛ point |
| | $15 or over* | .25 or ¼ point |
| Network B | Under $5 | .10 or ⅛ point |
| | $5 or over* | .25 or ¼ point |

—A pre-opening notification shall:
(A) be designated as a pre-opening notification (''IND'');
(B) identify the participant market (''P''), the *Market Maker* [specialist] and the security (''XYZ''); and
(C) indicate the ''applicable price range'' by being formatted as a standardized pre-opening administrative message as follows:

IND P/XYZ (RANGE)

The price range shall not exceed the ''applicable price range'' shown below:

| | | |
|---|---|---|
| Network A | Under $50 | .50 or ½ point |
| | $50 or over* | 1 point or, for stocks trading in decimals, 1.00 |
| Network B | Under $10 | .50 or ½ point |
| | $10 or over* | 1 point or, for stocks trading in decimals, 1.00 |

The price range also shall not straddle the previous day's consolidated closing price, although it may include it as an endpoint (*e.g.,* a.10–.60 or ⅛–⅝ price range would be permissible if the previous day's consolidated closing price were .10 or .60 or ⅛ or ⅝, but not if the closing price were .25, or .40 or .50 or ¼, or ⅜ or ½).

*If the previous day's consolidated closing price of a Network A Eligible Security exceeded $100 and the security does not underlie an individual stock option contract listed and currently trading on a national securities exchange, the ''applicable price range'' is two dollars.

*If the previous day's consolidated closing price of a Network B Eligible Security exceeded $75 and the security is not a Portfolio Depository Receipt, Index Fund Share, or Trust Issued Receipt, or does not underlie an individual stock option contract listed and currently trading on a national securities exchange, the ''applicable price range'' is two dollars.

(2) Subsequent Notifications—If, after sending a pre-opening notification, the situation in a *Market Maker's* [specialist's] market changes, he *or she* may have to issue, *via the facilities of the Corporation,* a subsequent pre-opening notification. The three situations requiring subsequent pre-opening notifications are described below. Subsequent pre-opening notifications shall be standardized pre-opening administrative messages. After sending a subsequent notification, the *Market Maker* [specialist] shall wait either (A) one minute or (B) until the balance of the original three-minute waiting period expires whichever is longer, before opening his *or her* market (*i.e.,* if more than one minute of the initial waiting period has not yet expired at the time the subsequent notification is sent, the *Market Maker* [specialist] must wait for the rest of the period to pass before opening his *or her* market).

(I) Increase or Decrease in Applicable Price Range—Where, prior to the *Market Maker's* [specialist's] opening of his *or her* market in the security, his *or her* anticipated opening price shifts so that it (1) is outside of the price range specified in his *or her* pre-opening notification but (2) still represents a change from the previous day's consolidated closing price of more than the applicable price change, he *or she* shall issue, *via the facilities of the Corporation,* a replacement preopening notification (an ''additional'' notification) through the System before opening his *or her* market in the security. An additional notification contains the same kind of information as is required in an original preopening notification.

*(II)* [II.] Shift to Within Applicable Price Change Parameter—

(a) The *Market Maker* [specialist] shall, by issuing, *via the facilities of the Corporation,* a ''cancellation'' notification through the System, notify the Participant market(s) of the receiving market maker(s) prior to opening the security if the price at which he *or she* anticipates opening his *or her* market shifts so that it (1) is outside of the price range specified in his *or her* pre-opening notification but (2) does not represent a change from the previous day's consolidated closing price of more than the applicable price change.

(b) Notwithstanding the preceding sentence, in situations where the price range in an initial or additional notification includes price variations equal to or less than the applicable price change parameters, the ''cancellation'' notification signifies that the anticipated opening price: (1) may or may not be outside of the price range specified in the pre-opening notification and (2) does not represent a change from the previous day's consolidated closing price of more than the applicable price change.***

(III) Participation as Principal Precluded (''Second Look'')—If a responding market maker who has shown in his *or her* pre-opening response interest as principal at a price better than the anticipated opening price would be precluded from participation as principal in the opening transaction (*e.g.,* his *or her* responding principal interest is to sell at a price ⅛ or more below the opening price established by paired agency orders), the *Market Maker* [specialist] shall send, *via the facilities of the Corporation,* a ''second look'' notification through the System notifying such responding market maker of the price and size at which he *or she* could participate as principal (*i.e.,* in the parenthetical example above, the total amount of the security that he *or she* would have to sell at the ⅛ better price to permit the opening transaction to occur at that price).

*(ii)*[(B)] Tape Indications—If the CTA Plan or the Corporation's *Rules* [rules] require or permit that an ''indication of interest'' (i.e., an anticipated opening price range) in a security be furnished to the consolidated last sale reporting system prior to the opening of trading, or reopening of trading following a halt or suspension in trading in one or more Eligible Listed Securities, then the furnishing of an indication of interest, in such situations shall, without any other additional action required of the *Market Maker* [specialist], (1) initiate the Pre-Opening process, and, (2) if applicable, substitute for and satisfy the requirements of paragraphs *(8)(A)(i)(1), (8)(A)(i)(2)(I) and (8)(A)(i)(2)(II)* [(8)(i)(A)(1), (8)(i)(A)(2)(I) and (8)(i)(A)(2)(II)]. (While the furnishing of an indication of interest to the consolidated last sale reporting system satisfies the notification requirements of this *Rule* [rule], *a Market Maker* [a specialist] should also transmit, *via the facilities of the Corporation,* the indication through the System in the format of a standardized pre-opening administrative message.) In any such situation the *Market Maker* [specialist] shall not open or reopen the security until not less than three minutes after *the* [his] transmission of the opening or reopening indication of interest. For the purpose of paragraphs *(8)(B)(i), (8)(B)(iii), (8)(A)(i)(2)(III), (8)(B)(iv), (8)(B)(v), (8)(C) and (8)(A)(ii)* [8(ii)(A), 8(ii)(C), 8(i)(A)(2)(III), 8(i)(D), 8(ii)(E), 8(iii) and 8(i)(B)] ''pre-opening

***Example: CTA close at 30. Pre-Opening Notification sent with any one of the following price ranges 30—½; 30⅛—⅝; or 30¼—¾. It is then determined that the stock will open at 29¾ or ⅞. Under paragraph (II)(a), the *Market Maker* [specialist] ''shall'' send, *via the facilities of the Corporation,* cancellation notification. If it is subsequently determined that stock will open at 30, 30⅛, or 30¼, the *Market Maker* [specialist] need not reindicate stock, *via the facilities of the Corporation,* pursuant to paragraph (II)(b).

notification'' includes an indication of interest furnished to the consolidated last sale reporting service.

*(B)*[(ii)] Pre-Opening Responses

*(i)* [Decision on Opening Transaction—Subject to paragraph *8(B)(ii)* [(8)(ii)(B)]. If a *Market Maker* [specialist] who has issued*, via the facilities of the Corporation,* a pre-opening notification receives*, via the facilities of the Corporation,* ''pre-opening responses'' through the System containing ''obligation to trade'' from market makers in other Participant markets (''responding market makers''), he *or she* shall combine those obligations with orders he *or she* already holds in the security and, on the basis of this aggregated information, decide upon the opening transaction in the security. If the *Market Maker* [specialist] has received*, via the facilities of the Corporation,* more than one-pre-opening response from a Participant market, he *or she* shall include in such combination only those obligations to trade from such Participant market as are specified in the most recent response whether or not the most recent response expressly cancels the preceding response(s). An original or revised response*, via the facilities,* received after the *Market Maker* [specialist] has affected his *or her* opening transaction shall be to no effect.

*(ii)*[(B)] Pre-Opening Responses from Open Markets—A *Market Maker, via the facilities of the Corporation,* [specialist] must accept only those pre-opening responses sent to the Corporation by market makers in other Participant markets prior to the opening of the[ir] market[s] for trading in the security.[1] Following a halt or suspension in trading on the Corporation, a *Market Maker, via the facilities of the Corporation,* [specialist] must accept only those pre-opening responses sent by market makers to the Corporation from other Participant markets that halted trading in the security contemporaneously with the Corporation and that had not resumed trading in the security at the time the pre-opening response is sent.

In the event that one or more market makers from Participant markets that have already opened trading in a security or, with respect to a halt or suspension in trading, either did not halt trading in a security contemporaneously with the Corporation, or has already resumed trading in a security, respond to a pre-opening notification in that security, the *Market Maker* [specialist] need not, but may in his *or her* discretion, accept*, via the facilities of the Corporation,* such responses for the purpose of inclusion in the opening or reopening transaction. In the event that a Participant market opens or with respect to a halt or suspension in trading, resumes trading in a security subsequent to a market maker in that Participant market sending a pre-opening response but prior to the opening or reopening transaction on the Corporation, the market maker who sent the pre-opening response to the Corporation must confirm the pre-opening response by sending an administrative message through the System stating that the response remains valid: if the market maker fails to so confirm the pre-opening response, the *Market Maker* [specialist] need not, but may in his *or her* discretion, accept*, via the facilities of the Corporation,* the original response for the purpose of inclusion in the opening or reopening transaction.

*(iii)*[(C)] Allocation of Imbalances—Whenever pre-opening responses from one or more responding market makers include obligations to take or supply as principal more than 50 percent of the opening imbalance, the *Market Maker* [specialist] may take or supply as principal 50 percent of the imbalance at the opening price, rounded up or down as may be necessary to avoid the allocation of odd lots. In any such case, where the pre-opening response is from more than one responding market maker, the *Market Maker* [specialist] shall allocate the remaining imbalance (which may be greater than 50 percent if the *Market Maker* [specialist] elects to take or supply less than 50 percent of the imbalance) among them in proportion to the amount each obligated himself *or herself* to take or supply as principal at the opening price in his *or her* pre-opening response, rounded up or down as may be necessary to avoid the allocation of odd lots. For the purpose of this paragraph *8(B)(iii)* [(8)(ii)(C)], multiple responding market makers in the same Eligible Listed Security in the same Participant market shall be deemed to be a single responding market maker.

*(iv)*[(D)] Treatment of Obligations to Trade—In receiving a pre-opening response *via the facilities of the Corporation,* a *Market Maker* [specialist]*, via the facilities of the Corporation,* shall accord to any obligation to trade as agent included in the response the same treatment as he *or she* would to an order entrusted to him *or her* as agent on the *Corporation* [Exchange] at the same time such obligation was received.

*(v)*[(E)] Responses Increasing the Imbalance—A *Market Maker* [specialist] shall not reject*, via the facilities of the Corporation,* a pre-opening response that has the effect of further increasing the existing imbalance for that reason alone.

*(C)*[(iii)] Reports of Participation—Promptly following the opening in any security as to which a *Market Maker, via the facilities of the Corporation,* [an Exchange specialist] issued pre-opening notification, the *Market Maker, via the facilities of the Corporation,* [specialist] shall report to each Participant responsible for a market in which one or more responding market makers are located (A) the amount of the security purchased and/or sold, if any, by the responding market maker(s) in the opening transaction and the price thereof or (B) if the responding market maker's response(s) included agency or principal interest at the opening price that did not participate in the opening transaction, the fact that such interest did not so participate.

(9) Opening in Other Participating Markets

*(A)*[(i)] Pre-Opening Responses—Subject to paragraph *(9)(B)* [(9)(ii)], whenever a *Market Maker, via the facilities of the Corporation,* [specialist] who has received a pre-opening notification as provided in the ITS Plan in any Eligible Listed Security as to which he *or she* is registered as a *Market Maker* [specialist] wishes to participate in the opening of that security in the Participant market from which the pre-opening notification was issued, he *or she* may do so by sending*, via the facilities of the Corporation,* obligations to trade through the System to such Participant market in a pre-opening response. A pre-opening response shall:

*(i)*[(A)] be designated as a pre-opening response (''RES'')

*(ii)*[(B)] Identify the Participant market P, the *Market Maker* [specialist] and the security (''XYZ''), and

*(iii)* [(C)] Show the *Market Maker's* [specialist's] interest (if any), both as principal for his *or her* own account (''P'') and as agent for orders left with him *or her* (''A''), at each price level within the price-range indicated in the pre-opening notification (e.g., 40⅜, reflected on a netted share basis by being formatted as a standardized pre-opening administrative message as follow: RES/P/XYZ BUY A—P 40⅜

The response may also show market orders separately.

*(B)*[(ii)] Response When the Corporation is Open—Notwithstanding paragraph *(9)(A)* [(9)(i)], a *Market Maker* [specialist] who has received *via the facilities of the Corporation,* a pre-opening notification in any Eligible Listed Security in which he *or she* is registered as a *Market Maker* [specialist] should not send*, via the facilities of the Corporation,* a pre-opening response to the originator of such notification if *(i)* [(A)] the market for trading in the security is open on the Corporation or *(ii)* [(B)] the Participant market from which the notification emanated had declared a halt or suspension in trading in such security, and the Corporation either had not halted trading in the security reasonably contemporaneously with the Participant Market or had resumed trading during the halt or suspension in trading.

*(C)* [(iii)] Revised Responses—a *Market Maker* [specialist] may cancel or modify his *or her* pre-opening response by sending through the System, *via the facilities of the Corporation,* a revised response that cancels the obligations to trade contained in this original responses and, if a modification is desired, that substitutes new obligations to trade stating the *Market Maker's* [specialist's] aggregate interest (*i.e.*, his *or her* interest reflected in the original response plus any additional interest and/or minus any withdrawn interest) at each price level. Each succeeding response, even if it fails to expressly cancel its predecessor response, shall supersede the predecessor response in its entirety. Any revised response shall be to no effect if received in the Participant market from which the pre-opening notification was issued after the security has opened in such Participant market.

*(D)*[iv] Sole Means of Pre-Opening Routing—Once a pre-opening notification as to any security is received *through the facilities of* [on] the Corporation, the one or more *Market Makers* [specialists] in such security shall submit*, via the facilities of the*

[1] For purposes of this section, the market in a security is opened (or reopened) with either a trade or a quotation, if trades are being reported to the Consolidated Tape and quotes are being disseminated on the Consolidated Quotation System.

*Corporation,* any obligations to trade that security as principal for his, *her* or their own accounts to the Participant market from which the pre-opening notification was issued only through the Pre-Opening Application and shall not send orders to trade that security for his, *her* or their own accounts to such Participant market for participation at the opening in that market by any other means. The foregoing sentence shall have no application to orders sent to that market by the *Market Makers, via the facilities of the Corporation,* [specialists(s)] prior to the issuance of a pre-opening notification.

*(E)* Use of System before Opening or Reopening—No ETP Holder[, Equity ASAP Holder or ETP Firm] where acting as principal or agent, shall send*, via the facilities of the Corporation,* an obligation to trade, commitment to trade or order in any security in the Participant market (or prior to the resumption of trading in the security in the Participant market following the initiation of a halt or suspension in trading in the security until a pre-opening notification in the security has been issued from the other Participant market, or, if no pre-opening notification is required, until the market in the security has opened in such other Participant market.

*(F)*[(iv)] Duration of Obligations to Trade—Responses to pre-opening notifications shall be voluntary, but each obligation to trade that at a *Market Maker* [specialist] includes*, via the facilities of the Corporation,* in any pre-opening response, or in any modification of a pre-opening reponse, shall remain binding on him *or her,* and on any person for whom he *or she* is acting, until the security has opened in the Participant market from which the pre-opening notification was issued or until a cancellation or modification of such obligation has been received in such *Participant* [participant] market, and any such modification shall itself be binding on the *Market Maker* [specialist] or such person until a subsequent cancellation or modification thereof has been received in such Participant market. The preceding sentence applies to obligations to trade even if included in pre-opening responses contravening paragraph *(8)(B)* [(8)(ii)].

Commentary

01. No ETP Holder[, Equity ASAP Holder or ETP Firm] shall buy against a commitment to sell designated as ''short'' which is received *through* [on] the facilities of the Corporation if the resulting transaction would violate the short selling rules.

02. Any purchase or sale against a commitment to trade received *through* [on] the facilities of the Corporation shall be effected in accordance with the *Rules* [rules] applicable to the making of bids, offers and transactions on the *facilities of the Corporation* [facility].

03. For the purposes of this *Rule* [rule], the market in a security is opened (or reopened) with either a trade or quotation, if trades are being reported to the Consolidated Tape and quotes are being disseminated to the Consolidated Quotation System.

[.04—Deleted.]

ITS ''Trade-Throughs'' and ''Locked Markets''

Rule *7.56* [7.67](a). Definitions.

(1) A*n* ''*Exchange* trade-through,'' as that term is used in this Rule, occurs whenever an ETP Holder [or ETP Firm] initiates the purchase of an Eligible Listed Security *through the facilities of* [on] the Corporation at a price which is higher than the price at which the security is being offered (or initiates the sale of such a security *through the facilities of* [on] the Corporation at a price which is lower than the price at which the security is being bid for) at the time of the purchase (or sale) in another ITS participating market center as reflected by the bid (offer) then being displayed [on the Floor] from such other market center. The ETP Holder [or ETP Firm] described in the foregoing sentence is referred to in this Rule as the ETP Holder [or ETP Firm ] who initiated a trade-through.

(2)—No change.

(3) A ''third participating market center trade-through,'' as that term is used in this Rule, occurs whenever an ETP Holder [or ETP Firm on the Corporation] initiates the purchase of an Eligible Listed Security by sending a commitment*, via the facilities of the Corporation,* to trade through the System and such commitment results in an execution at a price which is higher than the price at which the security is being offered (or initiates the sale of such a security by sending, *via the facilities of the Corporation,* a commitment to trade through the System and such commitment results in an execution at a price which is lower than the price at which the security is being bid for) at the time of purchase (or sale) in another ITS participating market center, as reflected by the offer (bid) then being displayed through the facilities of the Corporation. The *ETP Holder* [member] described in the foregoing sentence is referred to in this Rule as the ''ETP Holder [or ETP Firm] who initiated a third participating market center trade-through.''

(4) A ''trade-through,'' as that term is used in this Rule, means either a*n Exchange* trade-through [on the facilities of the Corporation] or a third participating market center trade-through.

(b) Trade Throughs.

When purchasing or selling, either as principal or agent, any Eligible Listed Security *through the facilities of* [on] the Corporation or by issuing, via the facilities of the Corporation, a commitment to trade through the System, ETP Holders[, Equity ASAP Holder or ETP Firms] should avoid initiated a trade-through unless the provisions of paragraphs (b)(3) below are applicable.

(2)(A) Except as provided in paragraph (b)(3) below, if a trade-through occurs and a complaint thereof is received by the Corporation through the System from the party whose bid or offer was traded-through (''the aggrieved party'', then:

(i) In the case of a*n Exchange* trade-through [on through the facilities of the Corporation] only, if the ETP Holder[or ETP Firm] who initiated the trade-through and the party on the contra side of the transaction each initiated the transaction [while on] through the facilities of the Corporation for his or *or her* own account or any account in which he *or she* has an interest, the transaction shall be deemed void and a cancellation therefore shall be reported through the consolidated last sale reporting system;

(ii) Except as provided in paragraph (b)(2)(A)(i) above, (a) the ETP Holder [or ETP Firm] who initiated the trade-through shall satisfy, or cause to be satisfied the bid or offer traded-through in its entirely either at the price of such bid or offer, or, at the price that caused the trade-through (as determined in accordance with paragraph (b)(2)(B) below) or, (b) if he *or she* elects not to do so (and, in the case of an third participating market center trade-through he *or she* obtains the agreement of the contra party within the ITS participating market center that received the commitment that caused that trade-through), then the price of the transaction which constituted the trade-through shall be corrected to a price at which a trade-through would not have occurred and the price correction shall be reported through the consolidated last sale reporting system.

(B) The price at which the bid or offer traded-through shall be satisfied pursuant to clause (a) of paragraph (b)(2)(A)(ii) shall be the price of such bid or offer except if:

(i) the transaction that constituted the trade-through was of ''block size'' but did not constitute a ''block trade'' (as those terms are defined in Rule *7.57* [7.68]); and

(ii) the ETP Holder [or ETP Firm] who initiated the trade-through did not make every reasonable effort to satisfy or cause to be satisfied, through the System, the bid or offer traded-through at its price and in its entirety within two (2) minutes from the time the report of this transaction that constituted the trade-through was disseminated over the high speed line of the consolidated last sale report system. In the case of such exception, the price at which the bid or offer traded-through shall be satisfied shall be the price that caused the trade-through.

Whenever paragraph (b)(2)(A)(ii) applies, if the ETP Holder [or ETP Firm] who initiated the trade-through, or the party (or the broker/dealer within another ITS participating market center) on the contra side of the transaction was, of if both such parties were executing (in whole or in part) orders that originated from off *the facilities of the Corporation or off the Floor of the other* [their] respective *market centers* [Floor], each such order to portion thereof that was executed in the transaction that constituted the trade-through (whether such order or portion thereof was executed by the party who initiated the trade-through or by the member or a broker/dealer within another ITS participating market center on the contra side of the transaction) shall receive the price that caused the trade-through or the price at which the bid or offer traded-through was satisfied, if it was satisfied, pursuant to clause (a) of paragraph (b)(2)(A)(ii) or the adjusted price, if there was an adjustment, pursuant to clause (b) of paragraph (b)(2)(A)(ii), whichever price is most beneficial to the order or portion. Resulting money differences shall be the liability of the party who initiated the trade through.

(3) The provisions of paragraph (b)(2) above shall not apply under the following conditions:

(A)–(C)—No change.

(D) the trade-through occurred during a period when, with respect to the Eligible Listed Security which was the subject of the trade-through, ETP Holders [and ETP Firms of the Corporation] were relieved of their obligations under paragraph (c)(2) of Rule 11 Ac1–1 pursuant to the ''unusual market'' exception of paragraph (b)(3) of Rule 11Ac1–1; provided, however, that, unless the provisions of this paragraph (b)(3) (other than those of this proviso) apply, during any such period ETP Holders [and ETP Firms] shall make every reasonable effort to avoid trading-through any bid or offer displayed on the Floor from another ITS participating market center whose members are not relieved of their obligations under said paragraph (c)(2) with respect to such bid or offer;

(E)–(G)—No change.

(c) Complaints and Responses to Complaints.

(1) When a trade-through complaint is received by the Corporation, it shall be the duty of the ETP Holder [or ETP Firm] who initiated the trade-through to respond as promptly as practicable to the aggrieved party. Such a response shall notify the aggrieved party either:

(A)–(B)—No change.

(2)—No change.

(A)—No change.

(B) the loss proximately caused by the trade-through that would have been suffered by the aggrieved party had he *or she* purchased or sold the security subject to the trade-through so as to mitigate his *or her* loss and had such purchase or sale been effected at the ''loss basis price.''

For purposes of this paragraph, the ''loss basis price'' shall be the price of the next transaction, as reported by the high speed line of the consolidated last sale reporting system, in the security in question, after one hour has lapsed from the time the complaint is received by the Corporation (or, if the complaint is so received within the last hour of trading on the Corporation on any day, then the price of the opening transaction in such security being displayed through the facilities of [on] the Corporation on the next day on which the Corporation trades that security).

(3) Any ETP Holder [or ETP Firm] who is an aggrieved party may at any time, at his *or her* discretion, take steps to establish and mitigate any loss he *or she* might incur as a result of the trade-through. He *or she* shall give prompt notice to the other *market* [exchange] center of any such action.

(4) If a complaint of a purported trade-through is received by the Corporation and the complained-of transaction resulted from an ETP Holder's [or ETP Firm's] execution [on] through the facilities of the Corporation of a commitment to trade received from another ITS participating market center, the ETP Holder [or ETP Firm] should, if circumstances permit, make reasonable efforts to notify the complaining party as promptly as practicable following receipt of the complaint, (A) that the transaction was not initiated [on] through the facilities of the Corporation and (B) of the identity of the ITS participating market center that originated the commitment. Neither compliance nor non-compliance with the preceding sentence shall be the basis for any liability of the ETP Holder [or ETP Firm] for any loss associated with the complained-of transaction.

(5) If a transaction that resulted from *the* [an] ETP Holder's [or ETP Firm's] execution [on] through the facilities of the Corporation of a commitment to trade constitutes a trade-through under the rules of the originating ITS participating market center, then:

(A) if the broker/dealer on such market center who initiated the transaction requests that the ETP Holder [or ETP Firm] correct the price of such transaction in accordance with the counterpart in such market center's trade-through rule to paragraph (b)(2)(A)(ii)(b) of this Rule, the ETP Holder [or ETP Firm] may, but need not, acquiesce and so correct the price; and

(B) paragraph (b)(2)(C) of this *Rule* [rule] shall apply as if the ETP Holder [or ETP Firm] were a contra party within the meaning of that paragraph.

(d) *Locked Markets.*

(1) Except as provided in paragraph (d)(2) below, an ETP Holder [or ETP Firm] who makes a bid for an Eligible Listed Security [on] through the facilities of the Corporation and, in so doing, causes a locked market with another ITS participating market center, and the Corporation receives a complaint through the *System* [system] from the market center whose offer was locked, the ETP Holder [or ETP Firm] responsible for the locking shall, as specified in the complaint, either promptly (A) send, *via the facilities of the Corporation,* a commitment to trade to such other market center seeking the offer he *or she* has equaled or exceeded, which commitment shall be for either the number of shares he *or she* has bid for or the number of shares offered on the other market center, whichever is less; or (B) ''unlock'' (i.e., adjust his *or her* locking bid so as not to cause a locked market). If the complaint specifies ''unlock'', he *or she* may nevertheless ship instead. The same principle shall apply to an ETP Holder [or ETP Firm] who makes an offer for an Eligible Listed Security *through the facilities of* [on] the Corporation and causes a locked market with another ITS participating market center.

(2) The provisions of paragraph (d)(1) above shall not apply when:

(A)—No change.

(B) the ETP Holder [for ETP Firm] who caused a locked market makes every reasonable effort to comply with paragraph (d)(1) above, but is unable to comply because of a system/equipment failure or malfunction;

(C)—No change.

(D) the locked market occurred at a time when, with respect to the Eligible Listed Security which was the subject of the locked market, ETP Holders [or ETP Firms either] on [through the facilities of] the Corporation or *members* in the ITS participating market center in which the aggrieved member is located were relieved of their obligations under paragraph (c)(2) of Rule 11Ac1–1 pursuant to the ''unusual market'' exception of paragraph (b)(3) of Rule 11Ac1–1; or

(E)—No change.

(F) the locking bid or offer no longer prevails [on the Floor] at the time the complaint is received [on the Floor]. This exemption is not intended to discourage a locking member from electing to send a commitment if the complaint requests him *or her* to do so.

Commentary

.01 The provisions of this Rule shall not apply to (1) purchases and sales effected by members participating in the opening (or reopening) transaction in an Eligible Listed Security, or (2) any ''block trade'' as defined in Rule *7.57* [7.68].

[.02—Deleted.]

*.02* [.03] A *Market Maker* [Specialist] utilizing an automatic quotation system for quotation changes cannot quote a size greater than one round lot bid and offer.

*.03* [.04]—No change.

Block Trade Policy

Rule *7.57*[7.68](a). Definitions.

(1) A ''block trade,'' as that term is used in this Rule, means a trade *executed* [on] through the facilities of the Corporation that:

(A)–(B)—No change.

(C) involves either:

(i) a cross of block size (where the *ETP Holder* [member] represents all of one side of the transaction and all or a portion of the other side); or

(ii) any other transaction of block size (i.e., in which the ETP Holder [or ETP Firm] represents an order of block size on one side of the transaction only) that is not the result of an execution at the current bid or offer on the Corporation.

Contemporaneous transactions at the same price filling an order or orders then or theretofore represented *through the facilities of* [on] the Corporation by an ETP Holder [or ETP Firm] (including transactions resulting from commitments to trade sent*, via the facilities of the Corporation,* by the ETP Holder [or ETP Firm] pursuant to paragraph (b) below) shall be deemed to constitute a single transaction for the purpose of this definition.

(2) A ''current bid or offer on the Corporation,'' as that term is used in paragraph (a)(1)(c)(ii) above, means the price of the current quotation on the facilities of the Corporation established independently of the order to buy or sell that is represented by the ETP Holder [or ETP Firm].

(3) A ''bid or offer displayed from another ITS participating market center'' (or any derivative phrase), as that term is used in this Rule, means the current quotation from another ITS participating market center displayed *through the facilities* [on the Floor] of the Corporation as required by the ITS Plan, and does not include ''away-from-the-market'' limit orders or other interests that may be represented in such other ITS participating market center.

(b) Obligation to Send Commitments. Unless one or more of the conditions described in paragraph (c) below exist, *the* ETP Holder [or ETP Firm] representing the block-size order(s) shall at the time of execution of a block trade send, or cause to be sent, *via the facilities of the Corporation,* through ITS to each other ITS participating

market center displaying a bid (offer) superior to the execution price, a commitment to trade at the execution price and for the number of shares displayed with that market center's better-priced bid (offer).

(c) Inapplicability. Paragraph (b) above shall not apply under the following conditions:

(1)—No change.

(2) the ETP Holder [or ETP Firm] representing the block-size order(s) made every reasonable effort to satisfy through ITS a better-priced bid or offer displayed by another ITS participating market center but was unable to because of a systems/equipment failure or malfunction;

(3)—No change.

(4) the block was executed during a period when, with respect to the Eligible Listed Security that was the subject of the block trade, ETP Holders [on of the Corporation] were relieved of their obligations under paragraph (c)(2) of Rule 11Ac1–1 pursuant to the ''unusual market'' exception of paragraph (b)(3) of Rule 11Ac1–1; provided, however, that, unless one of the conditions of this paragraph (c) (other than that of this subparagraph (4)) applies, *an* ETP Holder [or ETP Firms] shall nevertheless make every reasonable effort during any such period to satisfy through ITS*, via the facilities of the Corporation,* any better-priced bid or offer displayed *through the facilities of* [on] the Corporation from another ITS participating market center whose members are not so relieved of their obligations with respect to such bid or offer under paragraph (c)(2) of Rule 11Ac1–1;

(5)—No change.

(6) the better-priced bid or offer had caused a ''locked marked,'' as that term is defined in Rule *7.56*[7.67], in the Eligible Listed Security that was the subject of the block trade.

Commentary

.01 A transaction not subject to this Rule may be subject to the trade-through provisions of Rule *7.56*[7.67]. An ETP Holder or ETP Firm who makes a bid or offer *through the facilities of* [on] the Corporation otherwise than in connection with a block trade may be subject to the locked market provisions of Rule *7.56*[7.67].

[Rule 7.69—Deleted.]

Rule *7.58*[7.45]—No change.

*Rule 7.59. Reserved.*

**Section 6[8]. Contracts in Securities**

Definitions and General Provisions

Rule *7.60*[7.50]—No change.

Rule *7.61*[7.51](a). ETP [or Equity ASAP] Contracts. All contracts in the ordinary course of business of an ETP Holder[, Equity ASAP Holder, or ETP Firm of the Corporation] with any other ETP Holder[, Equity ASAP Holder, or ETP Firm of the Corporation] for the purchase, sale, borrowing, loaning or hypothecating of securities, or for the borrowing, loaning or payment of money, whether occurring *through the facilities* [upon the Floors] of the Corporation or elsewhere, are ETP [or Equity ASAP] contracts of the Corporation unless made subject to the *rules* [Rules] of another exchange.

(b) Provisions Included in ETP [or Equity ASAP] Contracts. All bids made and accepted, and all offers made and accepted in accordance with the Bylaws, Rules, and procedures of the Corporation shall be binding. The applicable provisions of the Bylaws, Rules, and procedures of the Corporation and all other regulations adopted pursuant thereto, shall be part of the terms and conditions of all ETP *contracts* [or Equity ASAP Contracts] and all contracts thereby effected, and shall be subject to said provisions and to the exercise by the Board of Directors of the Corporation of the powers in respect thereto vested in them.

(c) Extend or Postpone Time, Prescribe Special Terms. Notwithstanding the foregoing subparagraphs (a) and (b) of this Rule or any other provisions of the Bylaws or Rules of the Corporation to the contrary, the Board of Directors may extend or postpone the time or prescribe special terms and conditions for the performance or settlement of ETP *contracts* [or Equity ASAP Contracts] whenever such action is called for by the public interest or by just and equitable principles of trade.

Delivery of Securities

Rule *7.62* [7.53](a). Depository Eligibility.

(1)—No change.

(2) A security depository's inclusion of the CUSIP number identifying a security in its file of eligible issues does not render a security ''depository eligible'' within the meaning of Rule *7.60(a)(2)* [7.50(a)(2)] until:

(A)–(B)—No change.

(3)—No change.

(b) Book Entry Settlement of Transactions.

(1) An ETP Holder[, Equity ASAP Holder, ETP Firm] shall use the facilities of a securities depository for the book-entry settlement of all transactions in depository eligible securities with another financial intermediary or a member of a national securities exchange or a registered securities association.

(2) An ETP Holder[, Equity ASAP Holder, ETP Firm] shall not effect a delivery-versus-payment or receipt-versus-payment transaction in a depository eligible security with a customer unless the transaction is settled by book-entry using the facilities of a securities depository.

(3) This *Rule* [rule] shall not apply to transactions that are settled outside of the United States.

(4) The requirements of this *Rule* [rule] shall supersede any inconsistent requirements under the Bylaws and Rules of the Corporation.

(5) This *Rule* [rule] shall not apply to any transaction where the securities to be delivered in settlement of the transaction are not on deposit at a securities depository and

(A)–(B)—No change.

**Section 7. Special Offerings**

Approval

Rule *7.63E*[7.79](a). The Corporation may, subject to the following conditions and provisions, permit a ''Special Offering'' as defined hereinafter, to be made through the facilities of the Corporation, provided that the Corporation shall have determined that the regular market on the *facilities* [Floor] of the Corporation cannot, within a reasonable time and at a reasonable price or prices, absorb the particular block of stock which is to be the subject of such Special Offering. In making such determination the following factors may be taken into consideration:

(1) Price range and the volume of transactions in such stock on the *facilities* [Floor] of the Corporation during the preceding month;

(2) Attempts which have been made to dispose of the stock in the regular market on the *facilities* [Floor] of the Corporation;

(3) The existing condition of the *Arca Book* [specialist's book] with respect to such stock;

(4) The apparent past and current interest in such stock in such regular market on the *facilities of the Corporation* [Floor]; and

(5)—No change.

Except in special circumstances a ''Special Offering'' will not be permitted unless the offering involves at least 1,000 shares of stock or shares having an aggregate market value of $25,000, whichever is greater.

Definition—Price—Special Commission

(b) A Special Offering is defined as an offering (designated as a fixed price offering) by one or more ETP Holders[, Equity ASAP Holders, or ETP Firms] acting for his*, her* or their own account or for the account of one or more other persons, for the sale of a block of stock dealt in on the Corporation, through the facilities of the Corporation, at a price not in excess of the last sale of such stock or the current offer of such stock, in the regular market on the *facilities* [Floor] of the Corporation, whichever is the lower; but not lower than the current bid for such stock in such market, unless otherwise specifically permitted by the Corporation, whereby the offeror may agree to pay a special commission to such ETP Holders[, Equity ASAP Holders, or ETP Firms] as may accept all or any part of such Offering for the account of his*, her* or their customers.

(c) Conditions. No Special Offering, as provided by this *Rule* [rule], shall be made unless all of the following conditions are satisfied:

(1) Stabilizing. The person for whose account such Special offering is to be made shall at the time of such offering be the owner of the entire block of stock so to be offered, except that, for the purpose of stabilizing, there also may be sold for such person's account, or for the account of any ETP Holder[, Equity ASAP Holder or ETP Firm] offering the block of stock on his *or her* behalf as part of the Special Offering, an amount not to exceed 10% of the shares owned and originally offered in the Special Offering by such person.

(2) All to be Offered within Reasonable Time. The person for whose account such Special Offering is to be made shall include within the Offering all of the security which he *or her* then intends to offer within a reasonable time; and there shall be furnished to the Corporation before the Offering is made a written statement by the offeror to that effect, or a written statement by his *or her* broker stating that the broker has been so advised by the offeror.

(3)—No change.

(4) Agreement by Offeror. The person for whose account such Special Offering is made

shall agree that during the period such offering is open he *or her* will not offer in the regular market on the *facilities* [floor] of the Corporation any shares of the stock which is the subject of such Special Offering, unless the prior permission of the Corporation is first obtained.

(5) No Special Commission Member, Etc. No ETP Holder[, Equity ASAP Holder, or ETP Firm] shall directly or indirectly receive any pat of the special commission referred to in Section 1(b) in connection with any purchase for his*, her* or its own account or the account of any participant therein or for the account of any other ETP Holder[, Equity ASAP Holder, or ETP Firm] or any participant therein, made pursuant to a Special Offering, except that an ETP Holder[, Equity ASAP Holder, or ETP Firm] may accept and retain such special commission for his*, her* or its own account in respect of securities purchased as principal for the bona fide purpose of distribution, even though such firm has been unable to distribute the securities.

(6)–(7)—No change.,

(8) Allotments. The offeror may, at the time of the announcement of a Special Offering, allot on a firm basis to ETP Holder[, Equity ASAP Holder, or ETP Firms] engaged in the distributing business not more than 50% of the securities involved in the offering. When buying orders in a Special Offering exceed the amount of the offering, the remainder of the offered securities will be allocated in reasonably proportionate amounts.

(d)—No change.

(e) Information on Tape. The terms of a Special Offering shall be printed on the tape before it is effective, with statement, if such be the fact, that stabilizing transaction have been effected or are contemplated and that it is intended to over allot shares as permitted by Rule *7.63(c)(1)* [7.79(c)(1)]. Transactions effected pursuant to a Special Offering shall when feasible be printed currently on the tape, and the tape shall show the gross price and the special commission in a legend such as ''SPOFF 100 XYZ 40 COM .50 or ½,'' as well as the number of orders involved in such transaction where more than one order is involved; and after the close of the market, any unprinted remainder of such transactions executed during the day shall be so printed. When the offering is terminated, an announcement to that effect shall be printed on the tape; and when the intention to stabilize is terminated, such fact shall be announced on the tape together with a statement that stabilizing transactions have been effected, if such be the fact.

(f)–(g)—No change.

(h)(1) Confirmations. An ETP Holder[, Equity ASAP Holder, or ETP Firm] effecting for the account of a customer, a purchase pursuant to a Special Offering, shall confirm such transaction to such customer at the offering price and shall not charge to or collect from such customer any commission on account of such transaction.

The confirmation by an ETP Holder[, Equity ASAP Holder, or ETP Firm] to a buyer or seller in a Special Offering shall state in full the terms and conditions of the Special Offering. The confirmation to a buyer shall state at least:

(A)–(B)—No change.

(C) That the seller is to pay a special commission to the ETP Holder[, Equity ASAP Holder, or ETP Firm], if such be the fact;

(D)–(E)—No change.

(F) The nature of the ETP Holder[, Equity ASAP Holder, or ETP Firm] interest in the special offering, if any, other than its interest as a recipient of the special commission.

(2) Soliciting Orders. An ETP Holder[, Equity ASAP Holder, or ETP Firm] soliciting purchase orders for execution pursuant to a Special Offering shall advise the person so solicited of the terms and conditions of such Offering before effecting any transaction for such person pursuant thereto. Such disclosure shall include at least the items described in paragraphs *(A) to (F) of Rule 7.63(h)(1)* [(a) to (f) of Rule 7.79(h)(1)].

(3) More Advantageous Price. An ETP Holder[, Equity ASAP Holder, or ETP Firm]

(A)–(B)—No change.

(C) Proposing, pursuant to discretionary authority from a customer, to effect a purchase of stock which is the subject of a Special Offering then in effect, shall, before executing any such order or effecting any such purchase pursuant to such Special Offering make a bona fide attempt to execute such order or to effect such purchase in the regular market on the *facilities* [Floor] of the Corporation at a price more advantageous to the customer than the gross offering price under the Special Offering.

(i) Size of Offering. Rule *7.63(a)* [7.79(a)] places a general limitation on the size of Special Offerings, except in special circumstances. Such an exception might be a Special Offering of a stock designated as an ''inactive'' stock.

(j) Preliminary Information Required. The broker for the offeror will be required to furnish the following information to the Corporation, prior to the announcement of the Special Offering on the tape:

(1)–(7)—No change.

(8) Description of efforts to dispose of the security *through the facilities* [in the auction market on the Floor] of the Corporation.

(9) Written assurance of the offeror, or the broker upon advice from the offeror, that the shares contained in the Offering are all of the security which he *or she* then intends to offer within a reasonable time, as required in Rule *7.63(c)(2)* [7.79(c)(2)]

(10)–(11)—No change.

(12) Statement as to whether the offeror or his *or her* agent intends, for the purpose of stabilizing, to sell stock in the Special Offering in excess of that owned and included in the original offer as permitted to Rule *7.63(c)(1)* [7.79(c)(1)].

(13)—No change.

The foregoing information should be given to the Corporation as soon as possible in advance of the time it is proposed to make the Special Offering. Announcement will not be made on the tape of the Special Offering (and the Special Offering thus cannot become effective) until the Corporation has the requisite information and has approved it.

(k) Ownership. The offeror in a Special Offering must be the owner of the entire block of stock offered for sale, except for the purpose of stabilizing as permitted by Rule *7.63(c)(1)* [7.79(c)(1)].

(l)—No change.

(m) Other Offers. It should be noted that under Rule *7.63(c)(4)* [7.79(c)(4)], an offeror may not, while his *or her* Special Offering is open, offer any shares of the same stock in the regular *trading through the facilities* [auction market] without prior permission of the Corporation.

(n) Orders After Close. Orders accumulated after the close shall be completed on the *facilities* [Floor] of the Corporation at the opening of the next market session.

(o) Special Offering Transactions. [Purchases in Special Offerings shall be completed on the Floor of the Corporation at the Post or Posts where the stock is traded.] The handling of the order on either the purchase or the offering side may be entrusted to a *Market Maker* [Floor broker or specialist] in the same manner as in the case of regular orders. In connection with a special Offering, the broker for the buyer is acting in an agency capacity and the agency obligation to buy at the most advantageous price to the customer shall be observed.

(p)—No change.

(q) Odd Lot Stop Orders. Transactions effected pursuant to Special Offerings shall not elect Stop Orders or open odd lot orders for execution in the regular [auction] market.

(r) Confirmations. Confirmation need not be on a specially prepared form but must show clearly in type no smaller than 8-point that the purchase was part of a Special Offering; that no commission is to be charged to the customer; that the seller is to pay a special commission to the ETP Holder[, Equity ASAP Holder, or ETP Firm], if such be the fact; the amount of such special commission; the information printed on the tape regarding stabilizing transactions or the intention to stabilize; and the nature of ETP Holder's[, Equity ASAP Holder's, or ETP Firm's] interest in the Special Offering, if any, other than its interest as a recipient of the special commission.

Confirmations used by the broker for the seller similarly need not be on a specially prepared form, but must show clearly in type no smaller than 8-point that the sale is part of a Special Offering of * * * shares of * * * stock at * * * per share less * * * special commission, and, separately, the selling commission charged by the broker for the seller.

(s)—No change.

**Section *8* [12]. Exchange Distributions**

Rule *7.64* [7.80](a). Definition. An important feature of an Exchange Distribution is that an ETP Holder[, Equity ASAP Holder, or ETP Firm] may now pay compensation to its registered representatives for soliciting others to purchase *through the facilities* [in the regular auction market on the Floor] of the Corporation a security admitted to dealing which is the subject of an approved Exchange Distribution. Or it may on its own behalf or on behalf of a customer make an arrangement to pay a special commission, as mutually agreed, for distributing the security to one or more *ETP Holders* [members firms], who may in turn give special compensation to their registered representatives for purchases they have solicited in connection with the distribution.

Under an Exchange Distribution, purchase orders may be grouped from time to time, as they are received, and sent to the *facilities of the Corporation* [Floor] together with an order to sell an equal amount and ''crossed'' under the rules of the Corporation.

(b) Similar to Special Offering. An Exchange Distribution is somewhat similar to a Special Offering in the following respects:

(1)—No change.

(2) Approval will be given only when it is determined that the regular market on the *facilities* [Floor] could not, within a reasonable time and at a reasonable price or prices, otherwise absorb the block of securities;

(3)—No change.

(4) All transactions will take place on the facilities of the Corporation [(but unlike a Special Offering, will be done in the regular auction market)];

(5) Only ETP Holders[, Equity ASAP Holders, or ETP Firms] are eligible for participation in the solicitation of purchase orders and in the special commission, if any, paid by the offeror on purchases resulting from such solicitation;

(6) The person for whose account the distribution is to be made shall, at the time of the distribution, be the owner of the entire block of the security to be so distributed, and shall include within the distribution all of the security which he *or she* then intends to offer within a reasonable time;

(7) Each ETP Holder[, Equity ASAP Holder, or ETP Firm] soliciting purchase orders in connection with an Exchange Distribution must advise the person being solicited, before effecting any transaction for such person pursuant thereto, that the securities being offered are part of a specified number of shares being offered in an Exchange Distribution and that he *or she* is receiving a special commission from the seller or his *or her* broker, if that is the case.

(c) Differences from Special Offering. An Exchange Distribution differs from a Special Offering in that:

(1) It is effected in the regular [auction] market and not at a fixed price;

(2)–(3)—No change.

(4) During the period when the distribution is being made, neither the person for whose account the distribution is being made nor the ETP Holders, [Equity ASAP Holders, or ETP Firms] who are parties to the distribution, shall bid for or purchase any of the securities for an account in which the ETP Holder, [, Equity ASAP Holder, or the ETP Firm] has a direct or indirect interest;

(5) No ETP Holder[, Equity ASAP Holder, or ETP Firm] who is connected in any way with an Exchange Distribution may, with respect to such distribution, (A) effect stabilizing transactions, (B) effect short sales, (C) make firm allotments, (D) accept over-subscriptions.

(d) Procedure. To effect an ''Exchange Distribution'' of a block of a security admitted to dealing on the Corporation, an ETP Holder[, Equity ASAP Holder, or ETP Firm] for his*, her* or its own account, or the account of a customer, may

(1) Make an arrangement with one or more other ETP Holders[, Equity ASAP Holders, or ETP Firms] under which

(A) The ETP Holders[, Equity ASAP Holders, or ETP Firms], with whom the arrangement is made, solicit others to purchase such security;

(B) The selling ETP Holder[, Equity ASAP Holder, or ETP Firm] may pay to the ETP Holders[, Equity ASAP Holders, or ETP Firms], whom the arrangement is made, a special commission which is mutually agreeable; and

(C) ETP Holders[, Equity ASAP Holders, or ETP Firms], with whom the arrangement is made, may pay a special commission to their registered representatives; and/or

(2) Pay a special commission to his*, her* or its registered representatives for soliciting others to purchase such security.

(E) Approval Required. An ''Exchange Distribution'' may be made only with the prior approval of the Corporation. Such a Distribution shall not be approved unless the Corporation shall have determined that the regular market on the *facilities* [Floor] of the Corporation cannot, within a reasonable time and at a reasonable price or prices, otherwise absorb the block of securities which is to be the subject of the ''Exchange Distribution.'' In making such determination, the following factors may be taken into consideration:

(1) Price range and the volume of transactions in such security on the *facilities* [Floor] of the Corporation during the preceding month;

(2) Attempts which have been made to dispose of the security on the *facilities* [Floor] of the Corporation;

(3) The existing conditions of the *Arca Book* [specialist's book and Floor quotations] with respect to such security;

(4) The apparent past and current interest in such security on the *facilities* [Floor]; and

(5)—No change.

(f) Conditions. No ''Exchange Distribution'' shall be made unless all of the following conditions are satisfied:

(1)—No change.

(2) The person for whose account the Distribution is to be made shall include within the Distribution all of the security which he *or she* then intends to offer within a reasonable time; and there shall be furnished to the Corporation, before the Distribution is made, a written statement by the offeror to the effect or a written statement by his *or her* broker stating that the broker has been so advised by the offeror;

(3) The person for whose account the Distribution is made shall agree that during the period the Distribution is being made he *or she* will not bid for or purchase any of the security for any account in which he *or she* has a direct or indirect interest;

(4) The ETP Holders[, Equity ASAP Holders, or ETP Firms] who are parties to the arrangement for the Distribution shall not, during the period the Distribution is being made, bid for or purchase any of the security for an account in which they have a direct or indirect interest;

(5) No ETP Holder[, Equity ASAP Holder, or ETP Firm] shall be granted approval to effect an ''Exchange Distribution'' of a block of a security for an account in which he *or she* has a direct or indirect interest if he *or she* is registered as a *Market Maker* [specialist] in such security, unless the Corporation has determined that such *Market Maker* [specialist] has been unable, within a reasonable period of time, to dispose of the block of the security in the ordinary course of his *or her* dealings as a *Market Maker* [specialist]. Such approval shall stipulate that the *Market Maker* [specialist] may not deal directly with the public but must make an arrangement with one or more other ETP Holders[, Equity ASAP Holders, or ETP Firms] to solicit others to purchase the security, and pay, if any, a special commission to such other ETP Holders[, Equity ASAP Holders, or ETP Firm] as provided under Section 1(a) of this *Rule* [rule];

(6) Each ETP Holder[, Equity ASAP Holder, or ETP Firm] soliciting purchase orders for execution in the Distribution shall advise the person so solicited, before effecting any transaction for such person pursuant thereto, that the securities being offered are part of a specified number of shares or bonds being offered in an ''Exchange Distribution,'' and that he *or she* or it

(A) is acting for the seller and will receive a special commission from the seller or his *or her* broker if that is the case, or is acting as a principal; and

(B) is charging the buying customer a commission, if any, or is making the sale at a net amount, whichever the case may be.

(7) No ''short'' sale may be made in connection with the Distribution except that securities may be borrowed to make delivery where the person owns the securities sold and intends to deliver such securities as soon as possible without undue inconvenience or expense.

The conditions set forth in (2)(3) and (4) above shall not apply

(A) To transactions effected on the Corporation, for the purpose of maintaining a fair and orderly market, by *an ETP Holder* [a member] in a security in which he *or she* is registered as a *Market Maker* [specialist] and which is the subject of an Exchange Distribution for an account in which he *or she* has an interest, except that, when such Distribution is in effect, he *or she* shall not bid for or purchase such stock [on] through the facilities of the Corporation for an account in which he *or she* has an interest:

(i) at a price above the preceding sale, or

(ii) at a price above the next preceding sale, or

(B) To transactions effected by an ETP Holder[, Equity ASAP Holder or ETP Firm] on the Corporation in less than the unit of trading for the purpose of purchasing odd lots offered to him *or her* in a security in which he *or she* is registered as a *Market Maker* [specialist] and which is the subject of an Exchange Distribution in which he *or she* has an interest.

The conditions set forth in (3) and (4) above shall not apply to purchases necessitated solely in connection with ''crossing'' orders pursuant to the Distribution.

(g) Execution. In effecting an ''Exchange Distribution'' the orders for the purchase of the securities being distributed must be sent to the *facilities of the Corporation* [Floor] together with an order to sell an equal amount to be ''crossed'' in accordance with

the *Rules* [rules] applicable to the crossing of orders on the *facilities* [Floor], and such transactions shall be printed on the ticker tape.

(h) Reports. The ETP Holder[, Equity ASAP Holder, or ETP Firm] selling securities in an ''Exchange Distribution'' shall report to the Corporation all transactions in such securities effected by him, *her* or it for any account in which the seller had a director indirect interest, commencing with the time arrangements for the Distribution were made and ending with the time the Distribution was completed.

**Rule 8**

**Trading of Certain Equity Derivatives**

**Section 1. Currency and Index Warrants**

Rule 8.1–8.3—No change.

Account Approval

Rule 8.4. No ETP Holder[, Equity ASAP Holder, or ETP Firm] shall accept and order from a customer to purchase or sell a stock index, currency index or currency warrant unless the customer's account has been approved for options trading pursuant to Rule 9.18(b).

Rule 8.5—No change.

Discretionary Accounts

Rule 8.6. Rule 9.6(a) shall not apply to customer accounts insofar as an ETP Holder[, Equity ASAP Holder, or ETP Firm] exercises discretion to trade in stock index, currency index and currency warrants, and any such account shall instead be subject to the provisions of Rule 9.18(e) with respect to such trading. For purposes of this Rule, the term ''option'' as used in Rule 9.18(e) shall be deemed to include such warrants.

Supervision of Accounts

Rule 8.7. Rule 9.18(d) shall not apply to all customer accounts of an ETP Holder[, Equity ASAP Holder, or ETP Firm] in which transactions in stock index, currency index or currency warrants are effected. The term ''option'' as used in Rule 9.18(d) shall be deemed to include such warrants.

Customer Complaints

Rule 8.8 Rule 9.18(1) shall apply to all customer complaints received by an ETP Holder[, Equity ASAP Holder or ETP Firm] regarding stock index, currency index or currency warrants. The term ''options'' as used in Rule 9.18(1) shall be deemed to include such warrants.

Prior Approval of Certain Communications to Customers

Rule 8.9(a) No ETP Holder[, Equity ASAP Holder, or ETP Firm] or person associated with an ETP Holder[, Equity ASAP Holder, or ETP Firm] shall utilize any advertisement, educational material, sales literature or other communication to any customer or member of the public concerning stock index, currency index or currency warrants that:

(1)–(3)—No change.

(b) All advertisements, sales literature and educational material issued by an ETP Holder[, Equity ASAP Holder or ETP Firm] to any customer or member of the public pertaining to stock index, currency index or currency warrants shall comply with the requirements set forth in the Commentaries to Rule 9.28. For purposes or this Rule, the term ''option'' as used in such Commentaries shall be deemed to include such warrants, and the term ''The Options Clearing Corporation'' as used in such Commentaries shall be deemed to mean the issuer(s) of such warrants.

(c) All advertisements, sales literature (except completed worksheets) and educational materials issued by an ETP Holder[, Equity ASAP Holder or ETP Firm] to any customer or member of the public pertaining to stock index, currency index or currency warrants shall be approved in advance by a Compliance Registered Options Principal or designee thereof. Copies of such advertisements, literature or materials, together with the names of the persons who prepared them, the names of the persons who approved them and, in the case of sales literature, the source of any recommendations contained therein, shall be retained by the ETP Holder[, Equity ASAP Holder or ETP Firm] and be kept in an easily accessible place for examination by the Corporation for a period of three years.

(d) In addition to the approval required by subsection (c) of this Rule, every advertisement and all educational material of an ETP Holder[, Equity ASAP Holder or ETP Firm] pertaining to stock index, currency index and currency warrants shall be submitted to the Corporation at least ten days prior to use (or such shorter time as the Corporation may allow in particular instances) for approval and, if changed or expressly disapproved by the Corporation, shall be withheld from circulation until any changes specified by the Corporation have been made or, in the event of disapproval, until such material has been resubmitted for, and has received, Corporation approval. The requirements of this paragraph shall not be applicable to:

(1)—No change.

(2) advertisements in which the only reference to stock index, currency index or currency warrants is contained in a listing of services of an ETP Holder[, Equity ASAP Holder or ETP Firm].

(e)—No change.

Position Limits

Rule 8.10(a). Except with prior written approval of the Corporation in each instance, no ETP Holder[, Equity ASAP Holder, or ETP Firm] shall effect for any account in which such ETP Holder[, Equity ASAP Holder, or ETP Firm] has an interest or for the account of any partner, officer, director or employee thereof or for the account of any customer, a purchase or sale transaction (whether on the Corporation or on or through the facilities of, or otherwise subject to the rules of, another national securities exchange or national securities association) in a stock index warrant if the ETP Holder[, Equity ASAP Holder, or ETP Firm] has reason to believe that as a result of such transaction the ETP Holder[, Equity ASAP Holder, or ETP Firm] or partner, officer, director or employee thereof or customer would, acting alone or in concert with others, directly or indirectly, control an aggregate position in an index warrant issue, or in all warrants issued on the same stock index group, on the same side of the market, in excess of the following position limits:

(1)–(2)—No change.

(b) Whenever the Corporation determines that a person or group of persons acting in concert holds or controls an aggregate position (whether long or short) in stock index warrants in excess of the applicable position limits established pursuant to paragraph (a) of this Rule 8.10, it may direct all ETP Holders[, Equity ASAP Holders, or ETP Firms] carrying a position in stock index warrants for such person or persons to liquidate such position, as expeditiously as possible consistent with the maintenance of an orderly market, to the extent necessary to assure that such person or persons are in compliance with applicable position limits. Whenever such a directive is issued by the Corporation, no ETP Holder[, Equity ASAP Holder, or ETP Firm] receiving notice thereof shall accept any order to purchase or sell any stock index warrants based on the same stock index for the account of the person or persons named in such directive, unless in each instance the Corporation provides its express approval therefor, or until such directive is rescinded.

Commentary

.01—No change.

.02 The Corporation may establish higher position limits for [specialists'] *Market Maker* transactions than those applicable with respect to other accounts. Whenever a [specialist] *Market Maker* reasonably anticipates that he *or she* may exceed such position limits in the performance of his [specialist] *or her Market Maker* functions, he *or she* must consult with and obtain the prior approval of [a Trading Official] *the regulatory staff.*

Exercise Limits

Rule 8.11. Except with the prior approval of the Corporation in each instance, no ETP Holder[, Equity ASAP Holder, or ETP Firm] shall exercise, for any account in which such ETP Holder[, Equity ASAP Holder, or ETP Firm] has an interest, or for the account of any partner, officer, director or employee thereof, or, for the account of any customer, a long position in any stock index warrant dealt in on the Corporation if as a result thereof such ETP Holder[, Equity ASAP Holder, or ETP Firm] or partner, officer, director or employee thereof or customer, acting alone or in concert with others, directly or indirectly, has or will have exercised within any five (5) consecutive business days aggregate long positions in the number of stock index warrants set forth in Rule 8.10. The Corporation may from time to time institute other limitations concerning the exercise of stock index warrants. All such exercise limitations are separate and distinct from any other exercise limitations imposed by the issuers of index warrants.

Trading Halts or Suspensions

Rule 8.12—No change.

Reporting of Warrant Positions

Rule 8.13(a). Each ETP Holder[, Equity ASAP Holder, and ETP Firm] shall file with the Corporation a report with respect to each account in which the ETP Holder[, Equity ASAP Holder, or ETP Firm] has an interest,

each account of a partner, officer, director, or employee of such ETP [Firms or Equity ASAP] Holder and each customer account, that has established an aggregate position (whether long or short) of 100,000 warrants covering the same underlying index, currency or currency index, combining for purposes of this [rule] *Rule*: (1) long positions in put warrants and short positions in call warrants, and (2) short positions in put warrants with long positions in call warrants. The report shall be in such form as may be prescribed by the Corporation and shall be filed no later than the close of business on the next day following the day on which the transaction or transactions requiring the filing of such report occurred. Whenever a report shall be required to be filed with respect to an account pursuant to this Rule, the ETP Holder[, Equity ASAP Holder, or ETP Firm] filing the same file with the Corporation such additional periodic reports with respect to such account as the Corporation may from time to time prescribe. In computing reportable positions, warrants on a stock index shall not be aggregated with: (1) warrants on any other stock index, (2) options on any stock index or (3) options or warrants on any stock or group of stocks included in such index.

(b) In addition to the reports required by subsection (a) of this rule, each ETP Holder[, Equity ASAP Holder, or ETP Firm] shall report promptly to the Corporation any instance in which such ETP Holder[, Equity ASAP Holder, or ETP Firm] has reason to believe that a person, acting alone or in concert with others, has exceeded or is attempting to exceed the position limits prescribed in Rule 8.10 or the exercise limits prescribed in Rule 8.11.

(c)—No change.

**Section 2. Portfolio Depository Receipts**

Portfolio Depositary Receipts

Rule 8.100(a)–(b)—No change.

(c) ETP Holders[, Equity ASAP Holders, or ETP Firms] shall provide to all purchasers of a series of Portfolio Depositary Receipts a written description of the terms and characteristics of such securities, in a form approved by the Corporation, not later than the time a confirmation of the first transaction in such series is delivered to such purchaser. In addition, ETP Holders[, Equity ASAP Holders, and ETP Firms] shall include such a written description with any sales material relating to a series of Portfolio Depositary Receipts that is provided to customers or the public. Any other written materials provided by [a] *an* ETP Holders[, Equity ASAP Holder, or ETP Firms] to customers or the public making specific reference to a series of Portfolio Depositary Receipts as an investment vehicle must include a statement in substantially the following form: ''A circular describing the terms and characteristics of [the series of Portfolio Depositary Receipts] is available from your broker. It is recommended that you obtain and review such circular before purchasing [the series of Portfolio Depositary Receipts]. In addition, upon request you may obtain from your broker a prospectus for [the series of Portfolio Depositary Receipts].''

An ETP Holder[, Equity ASAP Holder, or ETP Firm] carrying an omnibus account for a non-ETP Holder [or non-Equity ASAP Holder] broker-dealer is required to inform such non-ETP Holder [or non-Equity ASAP Holder] that execution of an order to purchase a series of Portfolio Depositary Receipts for such omnibus account will be deemed to constitute agreement by the non-ETP Holder [or non-equity ASAP Holders] to make such written description available to its customers on the same terms as are directly applicable ETP Holders[, Equity ASAP Holders and ETP Firms] under this [rule] *Rule*.

Upon request of a customer, and ETP Holders[, Equity ASAP Holder, or ETP Firm] shall also provide a prospectus for the particular series of Portfolio Depositary Receipts.

(d)–(e)—No change.

Rule 8.100(f)–(g)—No change.

**Rule 9**

**Conducting Business with the Public**

**Section 1. Conducting Business with the Public**

Register with the Corporation

Rule 9.1(a). Each office of an [Equity ASAP] *ETP* Holder [or ETP Firm] shall be registered with the Corporation.

Joint Quarters

Rule 9.1(b). ETP Holders[, Equity ASAP Holders, and ETP Firms] may not occupy joint quarters with anyone other than another ETP Holder[, Equity ASAP Holder, or ETP Firm] without the prior and continuing approval of the Corporation.

Office Supervision

Rule 9.1(c) (1) Each office of an [Equity ASAP] *ETP* Holder [or ETP Firm] shall be under the supervision and control of such [Equity ASAP] *ETP* Holder [or ETP Firm] to assure compliance with applicable securities laws and regulations and rules of the Corporation.

(2) The ETP Holders[, Equity ASAP Holders, ETP Firms] and Allied Persons thereof shall designate from among their group a person or persons to assume authority and responsibility for supervision of the firm's activities and establishment and maintenance of appropriate procedures and follow-up and review to determine that such control and supervision is maintained.

Rule 9.1(d). ETP Holders[, Equity ASAP Holders, and ETP Firms] shall at all times have responsibility for the proper supervision and control of their registered employees and as provided in Rule 9.1(c) shall designate a principal of the firm to be responsible for the execution of such supervisory procedures.

Guarantees

Rule 9.1(e) (1) No registered employee shall guarantee the payment of the debit balance in a customer's account to his *or her* employer or to any other creditor carrying such account without the prior consent of the Corporation.

(2) No registered employee shall represent to any customer that he *or she* will personally guarantee the account of such customer.

(3) No registered employee shall guarantee any customer against losses in his *or her* account, or in any way represent to any customer that he or *she or* his *or her* employer will guarantee the customer against such losses.

Rule 9.1(f).—No change.

Compensation Rebate

Rule 9.1(g). No registered employee shall directly or indirectly, rebate to any person, firm or corporation any part of the compensation he *or she* may receive as a registered employee; nor shall he *or she* pay such compensation or any part thereof, directly or indirectly, to any person, firm, or corporation, as a bonus, commission, fee or other consideration, for business sought or produced for him *or her* or any ETP Holder[, Equity ASAP Holder, or ETP Firm].

Registered Employee Compensation

Rule 9.1(h). No registered employee shall, directly or indirectly, take, accept or receive, from any person, firm, corporation or association, other than the ETP Holder[, Equity ASAP Holder, or ETP Firm] with whom he *or she* is registered, compensation of any nature, as a bonus, commission fee, gratuity or other consideration, in connection with any securities transactions, unless the provisions of Rule 4.3(b) have been previously complied with.

Diligence As To Accounts

Rule 9.2(a). Every ETP Holder, [Equity ASAP Holder or ETP Firm,] through a general partner, a principal executive officer or a designated authorized person, shall use due diligence to learn the essential facts relative to every customer, every order, every account accepted or carried by such ETP Holder[, Equity ASAP Holder or ETP Firm] and every person holding power of attorney over any account accepted or carried by such ETP Holder[, Equity ASAP Holder or ETP Firm].

Account Supervision

Rule 9.2(b). Every ETP Holder[, Equity ASAP Holder or ETP Firm] shall supervise diligently all accounts accepted or carried by such firm and shall exercise diligence in supervising the business practices of its registered persons and otherwise licensed persons. An ETP Holder[, Equity ASAP Holder or ETP Firm] shall adopt appropriate procedures for the opening and the maintaining of accounts, including the maintaining of records prescribed by the Bylaws and Rules of the Corporation and by the rules and regulations of the Securities and Exchange Commission, which shall include:

(1)–(5)—No change.

Customer Records

Rule 9.2(c). The ETP Holder[, Equity ASAP Holder or ETP Firm] shall keep and preserve records concerning all accounts of customers in such form and substance as to disclose at least the following information:

(1)–(4)—No change.

(5) Signature of a general partner, a principal executive officer or an authorized person who approved the opening of the account prior to or promptly after the completion of any transaction for the account of or with a customer; provided, however, that in the case of branch offices, the opening of an account for a customer may be

approved by the manager of such branch office but the action of such branch office manager shall within a reasonable time be approved by a general partner, a principal executive officer or an authorized person designated as having such authority by the general partner or by the principal executive officer who has the overall authority and responsibility for account supervision and control. The general partner, principal executive officer or authorized person approving the opening of the account shall, prior to giving his *or her* approval, be personally informed as to the essential facts relative to the customer and to the nature of and the investment objectives of the proposed account and shall indicate his *or her* approval in writing.

Commentary

.01 In the case of a margin account carried by an ETP Holder[, Equity ASAP Holder or ETP Firm] for a non-ETP [or non-Equity ASAP] corporation, definite knowledge should be had to the effect that the non-ETP [or non-Equity ASAP] corporation has the right under its charter and by-laws to engage in margin transactions for its own account and that the persons from whom orders and instructions are accepted have been duly authorized by the corporation to act on its behalf. It is advisable in each such case for the carrying firm to have in its possession a copy of the corporate charter, by-laws and authorizations. Where it is not possible to obtain such documents, an Allied Person in the ETP [Firm or Equity ASAP] Holder carrying the account should prepare and sign a memorandum for its files indicating the basis upon which he *or she* believes that the corporation may properly engage in margin transactions and that the persons acting for the corporation have been duly authorized to do so.

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

.02 When an agency account is carried by an ETP [Firm or Equity ASAP] Holder its files should contain the name of the principal for whom the agent is acting and written evidence of the agent's authority.

.03 When Estate and Trustee accounts are involved an ETP [Firm or Equity ASAP] Holder should obtain counsel's advice as to the documents which should be obtained.

Employee Accounts

Rule 9.3(a). No ETP Holder[, Equity ASAP Holder, or ETP Firm] shall, without the prior consent of the employer, make:

(1) A cash or margin transaction or carry a margin account in securities or in commodities in which an employee of the Corporation, or of any ETP Holder, [Equity ASAP Holder, or ETP Firm,] is directly or indirectly interested. Duplicate reports and statements shall be sent promptly to the employer.

(2) A margin transaction or carry a margin account in securities or in commodities in which an employee of a bank, trust company, savings institution, insurance company or any individual or firm engaged in the business of dealing in securities, is directly or indirectly interested.

This [rule] *Rule* applies to all employees of insurance companies regardless of whether they are compensated on a salary or commission basis. However, it is not considered applicable to independent insurance agents.

A person who is clearly designated by the charter or by-laws of a bank, trust company, insurance company, etc., as an officer of such institution is not considered an ''employee'' for the purpose of this Rule.

ETP Holder and Allied Person Accounts

Rule 9.3(b). No ETP Holder[, Equity ASAP Holder or ETP Firm] shall carry an account for [an] another ETP Holder[, Equity ASAP Holder,] or Allied Person of another ETP Holder[, Equity ASAP Holder or ETP Firm] without the prior written consent of another person who is an ETP Holder[, Equity ASAP Holder,] or Allied Person of such other firm.

Duplicate reports and statements shall be sent to such general partner or an officer who is a holder of voting stock designated in such consent unless their submission is waived in writing and a permanent record of such waiver is retained by both the carrying firm and the consenting firm.

Proxies Voting

Rule 9.4. No ETP Holder[, Equity ASAP Holder, or ETP Firm] shall sign or give a proxy to vote any stock registered in the name or under control of such ETP Holder[, Equity ASAP Holder, or ETP Firm] unless (a) the ETP Holder[, Equity ASAP Holder, or firm] is the actual owner thereof, (b) pursuant to the written instructions of such actual owner, or (c) pursuant to the rules of another national securities exchange to which he or *she or* his *or her* firm is responsible.

Solicitation Expense

Rule 9.5. Any expense incident to the securing of proxy instructions shall be charged by the ETP Holder[, Equity ASAP Holder, or ETP Firm] to the party or parties requesting their solicitation.

Discretion as to Customers' Accounts

Rule 9.6(a). No ETP Holder[, Equity ASAP Holder, or ETP Firm] shall permit any person employed by such ETP Holder[, Equity ASAP Holder, or ETP Firm] or by any other ETP Holder[, Equity ASAP Holder, or ETP Firm] to exercise discretion in the handling of a transaction for a customer of such ETP Holder[, Equity ASAP Holder, or ETP Firm], and no ETP Holder[, Equity ASAP Holder, or ETP Firm] or any participant therein shall delegate to any such employee any discretionary power vested by a customer in such ETP Holder[, Equity ASAP Holder, or ETP Firm] unless in either case the prior written authorization of the customer has been received; and if such discretionary authority runs, directly or by redelegation, to an employee of another ETP Holder[, Equity ASAP Holder, or ETP Firm,] the carrying ETP Holder[, Equity ASAP Holder, or ETP Firm] must obtain the prior written consent of the employer of the individual authorized to exercise discretion. An ETP Holder[, Equity ASAP Holder, or ETP Firm] or Allied Person of the carrying ETP [Firm or Equity ASAP] Holder shall approve and initial each discretionary order entered by an employee of such ETP [Firm or Equity ASAP] Holder of another ETP [Firm or Equity ASAP] Holder on the day the order is entered. The provisions of this Rule shall not apply to discretion as to the price at which or the time when an order given by a customer for the purchase or sale of a definite amount of a specified security shall be executed.

Records of Discretionary Accounts

Rule 9.6(b). The ETP Holder[, Equity ASAP Holder, or ETP Firm] shall keep and preserve records of all customer discretionary accounts pursuant to the provisions of this [rule] *Rule* which shall include the signature of the individual who may exercise discretion in handling the account. All such accounts shall be reviewed by a general partner or principal executive officer at frequent intervals.

Marking Discretionary Orders

Rule 9.6(c). Every ETP Holder[, Equity ASAP Holder, or ETP Firm] shall identify each discretionary order by appropriately marking each discretionary order accordingly.

Pledging Customer Securities

Rule 9.7(a). An agreement between an ETP Holder[, Equity ASAP Holder, or ETP Firm] and a customer authorizing the ETP Holder[, Equity ASAP Holder, or ETP Firm] to pledge securities carried for the account of a customer or to lend such securities does not justify pledging or loaning more of such securities than is fair and reasonable in view of the indebtedness of said customer to said ETP Holder[, Equity ASAP Holder, or ETP Firm].

Use of Customer Securities

Rule 9.7(b). The improper use of customer fully-paid and excess margin securities is inconsistent with just and equitable principles of trade, and no form of general agreement between an ETP Holder[, Equity ASAP Holder, or ETP Firm] and a customer shall warrant the use or lending of such securities by the ETP Holder[, Equity ASAP Holder, or ETP Firm].

Customer Protection—Reserves and Custody of Securities

Rule 9.7(c). An ETP Holder[, Equity ASAP Holder, or ETP Firm] shall obtain custody and control of securities and maintain reserves as prescribed by Rule 15c3–3 promulgated under the Securities Exchange Act of 1934.

Agreements for Use of Customer Securities

Rule 9.7(d). No ETP Holder[, Equity ASAP Holder, or ETP Firm] shall lend, either to itself as a broker-dealer or to others, securities which are held on margin for a customer and which are eligible to be pledged or loaned, unless such ETP Holder[, Equity ASAP Holder, or ETP Firm] shall first have obtained a separate written authorization from such customer permitting the loaning of such securities by the ETP Holder[, Equity ASAP Holder, or ETP Firm].

Business Connections

Rule 9.8. No ETP Holder[, Equity ASAP Holder, or ETP Firm] shall be directly or indirectly interested in or associated in business with, or have his *or her* office directly or indirectly connected by public or private wire or other method or contrivance with, or transact any business directly or indirectly with or for

(a)–(c)—No change.

Margin Agreements

Rule 9.9. No ETP Holder[, Equity ASAP Holder, or ETP Firm] shall hypothecate or rehypothecate customer securities unless such ETP Holder[, Equity ASAP Holder, or ETP Firm] has obtained from its customer an executed margin agreement in a form satisfactory to the Corporation.

Assuming Losses

Rule 9.10. No ETP Holder[, Equity ASAP Holder or ETP Firm] shall assume for his *or her* own account of his *or her* firm, a contract made for a customer after a loss to the customer has been established or ascertained, unless the contract was made by mistake or unless approval of the Corporation has first been obtained.

Confirmations

Rule 9.11. No ETP Holder[, Equity ASAP Holder or ETP Firm] shall address confirmations, statements or other communications to a non-ETP [or non-Equity ASAP] customer in care of a person holding power of attorney over the customers' account unless either (a) the customer has instructed the ETP Holder[, Equity ASAP Holder or ETP Firm] in writing to send such confirmations, statements or other communications in care of such person, or (b) duplicate copies are sent to the customer at some other address designated in writing by him *or her*, or at the address of any ETP Holder[, Equity ASAP Holder or ETP Firm,] or in care of a partner or employee of any firm.

Upon written request, the Corporation may waive these requirements.

COD Orders—Partial Delivery

Rule 9.12(a). No ETP Holder[, Equity ASAP Holder or ETP Firm] shall accept an order from a customer pursuant to an arrangement whereby payment for securities purchased or delivery of securities sold is to be made to or by an agent of the customer unless all of the following procedures are complied with:

(1) The ETP Holder[, Equity ASAP Holder or ETP Firm] shall have received from the customer prior to or at the time of accepting the order, the name and address of the agent and the name and account number of the customer on file with the agent;

(2)—No change.

(3) The ETP Holder[, Equity ASAP Holder or ETP Firm] delivers to the customer a confirmation, or all relevant data customarily contained in a confirmation with respect to the execution of the order, in whole or in part, not later than the close of business on the next business day after any such execution; and

(4) The ETP Holder[, Equity ASAP Holder or ETP Firm] has obtained an agreement from the customer that the customer will furnish his *or her* agent instructions with respect to the receipt or delivery of the securities involved in the transaction promptly upon receipt by the customer of each confirmation, or the relevant data as to each execution, relating to such order (even though such execution represents the purchase or sale of only a part of the order), and that in any event the customer will assure that such instructions are delivered to his *or her* agent no later than:

(A)–(B)—No change.

(5) The customer or its agent shall utilize the facilities of a securities depository for the confirmation, acknowledgement, and book entry settlement of all depository eligible transactions.

(A) For the purpose of this [rule] *Rule* ''securities depository'' shall mean a clearing agency as defined in Section 3(a)(23) of the Securities Exchange Act of 1934 that is registered with the Securities and Exchange Commission pursuant to Section 17A(b)(2) of the Act.

(B) For the purpose of this [rule *Rule,* ''depository eligible transactions'' shall mean transactions in those securities for which confirmation, acknowledgement, and book entry settlement can be performed through the facilities of a securities depository as defined in Rule 9.12(a)(5)(A).

(b) The following transaction shall be exempt from the provisions of paragraph (a)(5) of this [rule] *Rule*:

(1)—No change.

(2) Transactions wherein both an ETP Holder[, Equity ASAP Holder or ETP Firm] and its agent are not participants in a securities depository;

(3)—No change.

Long Sales

Rule 9.13(a). For the purposes of effecting delivery within the time period required under regular settlement procedures:

(1) Any sale of a security for a customer which is designated as a ''long'' sale may be effected only if:

(A) The customer is ''long,'' in good deliverable form, the security to be sold on the books [on] *of* the selling ETP Holder, [Equity ASAP Holder or ETP Firm,] or

(B) The selling ETP Holder[, Equity ASAP Holder or ETP Firm] notes on he order ticket that

(i)–(ii)—No change.

(2)—No change.

(3) the customer presents to the selling ETP Holder, [Equity ASAP Holder or ETP Firm,] with proper instructions, a security convertible into or exchangeable for, or an option, warrant or right which entitles him *or her* to purchase, together with the necessary funds, prior to settlement date, the security to be sold.

Account Designation

Rule 9.14. Before any order for a customer of an ETP Holder[, Equity ASAP Holder or ETP Firm] is executed, including the case where an order is to be executed by the issuance [from the Floor] of a commitment to trade through ITS or any other Application of the System, there shall be placed upon the order slip or other record the name or designation of the account for which such order is to be executed. No change in such account name or designation shall be made unless the change has been authorized by the ETP Holder[, Equity ASAP Holder or ETP Firm] or a partner, who shall, prior to giving his *or her* approval of such change, be personally informed of the essential facts relative thereto and shall indicate his *or her* approval of such change in writing on the order.

Statements of Account to Customers

Rule 9.15. Except with the permission of the Corporation, ETP Holders[, Equity ASAP Holders or ETP Firms] shall send their customers statements of account showing security and money positions and entries at least quarterly to all accounts having an entry, money or security position during the preceding quarter. (See also SEC Rule 15c3–2 concerning quarterly notices of free credit balances on statements.)

Statement or Notice on Interest

Rule 9.16—No change.

Books and Records

Rule 9.17. ETP Holders[, Equity ASAP Holder or ETP Firms] shall make and retain all the books and records prescribed by the Bylaws and Rules of the Corporation, the rules and regulations of the Securities and Exchange Commission and the constitution, rules and regulations of other regulatory or governmental bodies to which such ETP Holders[, Equity ASAP Holders or ETP Firms] are subject. Such books and records shall be retained for periods as prescribed and shall be made available for inspection by the Corporation.

Doing a Public Business in Options

Rule 9.18. Rule 9.18 shall be applicable to ETP Holder[, Equity ASAP Holders, or ETP Firms] transacting business with the public in option contracts issued by the Options Clearing Corporation. Except to the extent that specific provisions of Rule 9.18 govern, or unless the context otherwise requires, the provisions of all other sections of this [rule] *Rule* shall be applicable to the conduct of accounts.

(a) Registration of Principals and Representatives.

No ETP Holder[, Equity ASAP Holder, or ETP Firm] shall be approved to transact business with the public in option contracts, unless those persons associated with the ETP Holder[, Equity ASAP Holder, or ETP Firm] who are designated as Options Principals or who are designated as Registered Representatives have been approved by and registered with the Corporation as such, pursuant to the provisions of Rule 9.26 and Rule 9.27, as appropriate.

(b) Opening of Accounts

No ETP Holder[, Equity ASAP Holder, or ETP Firm] shall accept an order from a customer for the purchase or sale (writing) of an option contract unless the customer's account has been approved for options trading in accordance with the provisions of Rule 9.18.

(1) Diligence in Opening Account—In approving a customer's account for options transactions, and ETP Holder[, Equity ASAP Holder, or ETP Firm] shall exercise due diligence to learn the essential facts as to the customer and his *or her* investment

objectives and financial situation, and shall make a record of such information which shall be retained in accordance with Rule 9.18(d). Based upon such information, the branch office manager or other Registered Options Principal shall approve in writing the customer's account for options transactions; provided, that if the branch office manager is not a Registered Options Principal, his *or her* approval shall within a reasonable time be confirmed by a Registered Options Principal.

(2) Disclosure—At or prior to the time a customer's account is approved for options trading, the ETP Holder[, Equity ASAP Holder or ETP Firm] shall deliver to the customer a current Options Disclosure Document in accordance with the requirements of paragraph (g) of this Section.

(3) Account Agreement—Within 15 days after a customer's account has been approved for options transactions an ETP Holder[, Equity ASAP Holder or ETP Firm] shall obtain from the customer a written agreement that (A) the customer is aware of and agrees to be bound by the Rules of the Corporation and the PCX Parent applicable to the trading of option contracts and the Rules of the Options Clearing Corporation and (B) the customer agrees not to violate, either alone or in concert with others, the position limits or the exercise limits established by the PCX Parent.

(4) Verification of Customer Background and Financial Information—The background and financial information upon which the account of every new customer that is a natural person has been approved for options trading, unless the information is included in the customer's account agreement, shall be sent to the customer for verification within fifteen (15) days after the customer's account has been approved for options transactions. A copy of the background and financial information on file with the ETP Holder[, Equity ASAP Holder or ETP Firm] shall also be sent to the customer for verification within fifteen (15) days after the ETP Holder[, Equity ASAP Holder or ETP Firm] becomes aware of any material change in the customer's financial situation.

(5) Options Disclosure document to be Furnished—At or prior to the time a customer's account is approved for options transactions, an ETP Holder[, Equity ASAP Holder or ETP Firm] shall furnish the customer with a current Options Disclosure Document in accordance with the requirements of Rule 9.18(g).

(6) Every ETP Holder[, Equity ASAP Holder or ETP Firm] transacting business with the public in uncovered options contracts shall develop, implement, and maintain specific written procedures governing the conduct of such business which shall include, but not be limited to, the following:

(A)–(E)—No change.

Commentary

.01 In fulfilling its obligations pursuant to paragraph (b)(1) of Rule 9.18 with respect to options customers that are natural persons, an ETP Holder[, Equity ASAP Holder or ETP Firm] shall seek to obtain the following information at a minimum (information shall be obtained for all participants in a joint account):

1.–8.—No change.

In addition, the customer's account records shall contain the following information, if applicable:

a.–g.—No change.

The ETP Holder[, Equity ASAP Holder, or ETP Firm] should consider utilizing a standard account approval form so as to ensure the receipt of all the required information.

.02—No change.

.03 The requirement of paragraph (b)(4) of Rule 9.18 for the initial and subsequent verification of customer background and financial information may be satisfied by sending to the customer the information required in Items 1 through 6 of Commentary .01 above as contained in the ETP [Holder, Equity ASAP Holder or ETP Firm's] *Holder's* records and providing the customer with an opportunity to correct or complete the information. In all cases, absent from the customer to the contrary, the information will be deemed to be verified.

.04 Before approving an account of a trust, pension fund, profit sharing plan or other fiduciary for options trading, an ETP Holder[, Equity ASAP Holder or ETP Firm] shall be satisfied that the instruments under which the fiduciary is acting permit options trading.

.05 Before approving an account with respect to which trading authorization has been granted to a third person who is not an employee of the ETP Holder[, Equity ASAP Holder or ETP Firm] for options trading, the ETP Holder[, Equity ASAP Holder or ETP Firm] shall obtain written evidence of the agent's authority to act and that such authority specifically includes options trading.

.06 Before approving an account of an investment partnership or an investment club for options trading, the ETP Holder[, Equity ASAP Holder or ETP Firm] shall obtain written evidence of the authority of the person signing the agreement required by this paragraph to sign such agreement on behalf of such partnership or club, as the case may be, and that such authority specifically includes options trading. Information shall also be obtained with respect to any current long or short option positions of the respective partners or member of the partnership or investment club.

.07—No change.

(c) Suitability.

(1) No ETP Holder[, Equity ASAP Holder or ETP Firm] or registered person thereof shall recommend to any customer any transaction for the purchase or sale (writing) of an option contract, currency warrant, or an index warrant unless such ETP Holder[, Equity ASAP Holder or ETP Firm] or registered person has reasonable grounds to believe that the entire recommended transaction is not unsuitable for such customer on the basis of information furnished by such customer after reasonable inquiry concerning the customer's investment objectives, financial situation and needs and any other information known by such ETP Holder[, Equity ASAP Holder or ETP Firm] or registered person.

(2) No ETP Holder[, Equity ASAP Holder or ETP Firm,] Registered Options Principal or Registered Representative shall recommend to a customer an opening transaction in any option contract, currency warrant, or index warrant unless the person making the recommendation has a reasonable basis for believing at the time of making the recommendation that the customer has such knowledge and experience in financial matters that he *or she* may reasonably be expected to be capable of evaluating the risks of the recommended transaction, and is financially able to bear the risks of the recommended position in the option contract, currency warrant, or index warrant.

(d) Supervision of Accounts.

Every ETP Holder[, Equity ASAP Holder or ETP Firm] shall comply with the provisions of rule 9.1(b) in exercising its supervisory responsibilities. In addition to such provisions, every ETP Holder[, Equity ASAP Holder or ETP Firm] shall comply with the following provisions as they relate to its options business.

(1) Senior Registered Options Principal—Every ETP Holder[, Equity ASAP Holder or ETP Firm] shall develop and implement a written program for the review of the organization's non-ETP [or non-Equity ASAP] customer accounts and all orders in such accounts, insofar as such accounts and orders relate to option contracts. This program shall be under the supervision of a designated Senior Registered Options Principal (''Senior ROP'') who is an officer (in the case of a corporation) or general partner (in the case of a partnership) of the ETP Holder[, Equity ASAP Holder or ETP Firm] who is specifically identified to the Corporation as the senior ROP.

(2) Compliance Registered Options Principal—ETP [Holder, Equity ASAP Holder or ETP Firm] *Holders* shall designate and specifically identify to the Corporation a Compliance Registered Options Principal, (who may be the Senior Registered Options Principal), who shall have no sales functions and shall be responsible to review and to propose appropriate action to secure the ETP [Holder, Equity ASAP Holder or ETP Firm's] *Holder's* compliance with securities laws and regulations in respect of its options business. The Compliance Registered Options Principal shall regularly furnish reports directly to the compliance officer (if the Compliance Registered Options Principal is not himself *or herself* the compliance officer) and to other senior management of the ETP Holder[, Equity ASAP Holder or ETP Firm]. The requirement that the Compliance Registered Options Principal shall have no sales functions does not apply to an ETP Holder[, Equity ASAP Holder or ETP Firm] that has received less than $1,000,000 in gross commissions on options business as reflected in its FOCUS Report for either of the preceding two fiscal years or that currently has 10 or fewer Registered Options Representatives.

(3)—No change.

(4) Each ETP Holder[, Equity ASAP Holder or ETP Firm] shall maintain at the principal supervisory office having jurisdiction over the office servicing the customer's account, or have readily accessible and promptly

retrievable, information to permit review of each customer's options account, on a timely basis to determine (i) the compatibility of options transactions with investment objectives and with the types of transactions for which the account was approved; (ii) the size and frequency of options transactions; (iii) commission activity in the account; (iv) profit or loss in the account; (v) undue concentration in any options class or classes, and (vi) compliance with the provisions of Regulation T of the Federal Reserve Board.

Commentary

.01—No change.

.02 Every ETP Holder[, Equity ASAP Holder or ETP Firm] shall establish, maintain and enforce written procedures which detail the methods used to supervise exchange options transactions. These procedures should also detail the methods used to supervise all non-ETP [or non-Equity ASAP] customer accounts including all orders in such accounts, insofar as such accounts and orders relate to option contracts.

.02 Every ETP Holder[, Equity ASAP Holder or ETP Firm] shall also develop and implement specific written procedures concerning the manner of supervision of customer accounts maintaining uncovered short (written) option positions and specifically providing for frequent supervisory review of such accounts.

(e) Discretionary Accounts

(1) Authorization and Approval Required—No ETP Holder[, Equity ASAP Holder or ETP Firm] shall exercise any discretionary power with respect to trading in option contracts, currency warrants, or index warrants in a customer's account, or accept orders for currency warrants, index warrants or option contracts for an account from a person other than the customer, except in compliance with the provisions of Rule 9.6(a) and in addition (i) the written authorization of the customer required by Rule 9.6(a) shall specifically authorize options trading in the account; (ii) the account shall have been accepted in writing by a Registered Options Principal. The Senior Registered Options Principal shall review the acceptance of each discretionary account to determine that the Registered Options Principal accepting the account has a reasonable basis for believing that the customer was able to understand and bear the risks of the strategies or transactions proposed, and he *or she* shall maintain a record of the basis for his *or her* determination. Each discretionary order shall be approved and initiated on the day entered by the branch office manager or other Registered Options Principal, provided that if the branch office manager is not a Registered Options Principal, his *or her* approval shall be confirmed within a reasonable time by a Registered Options Principal. Every discretionary order shall be identified as discretionary on the order at the time of entry. Discretionary accounts shall receive frequent appropriate supervisory review by the Compliance Registered Options Principal. The provisions of this subparagraph shall not apply to discretion as to the price at which or the time when an order given by a customer for the purchase or sale of a definite number of option contracts in a specified security shall be executed.

(2) Prohibited Transactions—No ETP Holder[, Equity ASAP Holder or ETP Firm] having discretionary power over a customer's account shall, in the exercise of such discretion, execute or cause to be executed therein any purchases or sales of option contracts, currency warrants, or index warrants which are excessive in size or frequency in view of the financial resources in such account.

(3) Record of Transactions—A record shall be made of every transaction in option contracts, currency warrants, or index warrants in respect to which an ETP Holder[, Equity ASAP Holder or ETP Firm] has exercised discretionary authority, clearly reflecting such fact and indicating the name of the customer, the designation and number of the option contracts, currency warrants, or index warrants the premium and the date and time when such transaction was effected.

(4)—No change.

Commentary

.01—No change.

(f) Confirmations.

Every ETP Holder[, Equity ASAP Holder or ETP Firm] shall promptly furnish to each customer a written confirmation of each transaction in option contracts for such customer's account. Each such confirmation shall show the type of option, the underlying stock, the expiration month, the exercise price, the number of option contracts, the premium, commissions, the transaction and settlement dates, whether the transaction was a purchase or a sale (writting) transaction, whether the transaction was an opening or a closing transaction, and whether the transaction was effected on a principal or agency basis. The confirmation shall by appropriate symbols distinguish between exchange option transactions and other transactions in option contracts and between such transactions and transactions in other options.

(g) Delivery of Current Options Disclosure Document and Prospectus

(1) Options Disclosure Documents. Every ETP Holder[, Equity ASAP Holder or ETP Firm] shall deliver a current Options Disclosure Document (the formal title of which is ''Understanding the Risks and Uses of Listed Options'') to each customer at or prior to the time each customer's account is approved for options trading. Thereafter, each amended Options Disclosure Document shall be distributed to every customer having an account approved for options trading, or, in the alternative, shall be distributed not later than the time a confirmation of a transaction is delivered to each customer who enters into an options transaction. The term ''current Options Disclosure Document'' means, as to any category of underlying security, the most recent edition of such document that meets the requirements of Rule 9b–1 under the Securities Exchange Act of 1934.

(2) Prospectus. Every ETP Holder[, Equity ASAP Holder or ETP Firm] shall deliver a copy of the current prospectus of the Options Clearing Corporation to each customer who requests one. The Corporation will advise ETP Holder[, Equity ASAP Holder or ETP Firm] when a new prospectus is available. The term ''current prospectus of the Options Clearing Corporation'' means the prospectus portion of Form S–20 which then meets the delivery requirements of Rule 153(b) of the Securities Act of 1933.

(3) The written description of risks required by Rule 9.18(b)(6) shall be in a format prescribed by the Corporation or in a format developed by the ETP Holder[, Equity ASAP Holder or ETP Firm,] provided it contains substantially similar information as the prescribed Corporation format and has received prior written approval of the Corporation.

Commentary

.01 Where the customer of an ETP Holder[, Equity ASAP Holder or ETP Firm] is a broker or dealer entering his *or her* orders with the ETP Holder[, Equity ASAP Holder or ETP Firm] in a single omnibus account, such ETP Holder[, Equity ASAP Holder or ETP Firm] shall take reasonable steps to assure that the broker or dealer is furnished reasonable quantities of current Options Disclosure Documents, as requested by him *or her* in order to enable him *or her* to comply with the requirements of this paragraph (g).

.02 Where a broker or dealer enters orders for his *or her* customers with, or clears transactions through, an ETP Holder[, Equity ASAP Holder or ETP Firm] on a fully disclosed basis and such ETP Holder[, Equity ASAP Holder or ETP Firm] carries the accounts of such customers, the responsibility for delivering a current Options Disclosure Document as provided herein shall rest with the carrying ETP Holder[, Equity ASAP Holder or ETP Firm]. However, such ETP Holder[, Equity ASAP Holder or ETP Firm] may rely upon the good faith representation of the introducing broker or dealer that a current Options Disclosure Document has been delivered in compliance with this paragraph (g).

(h) Transactions with Issuers.

No ETP Holder[, Equity ASAP Holder or ETP Firm] shall accept an order for the account of any corporation which is the issuer of an underlying stock for the sale (writing) of an option contract with respect to that underlying stock.

(i) Restricted Stock.

For the purposes of: (i) Covering a short position in a call option contract, or (ii) delivery pursuant to the exercise of a put option contract, or (iii) satisfying an exercise notice assigned in respect of a call option contract, no ETP Holder[, Equity ASAP Holder or ETP Firm] shall accept shares of an underlying stock, which may not be sold by the holder thereof except upon registration pursuant to the provisions of the Securities Act of 1933 or pursuant to SEC rules promulgated under the Securities Act of 1933, unless, at the time such securities are accepted and at any later time such securities are delivered, applicable provisions of the Securities Act of 1933 and the rules thereunder have been complied with by the holder of such securities.

(j) Statement of Accounts.

Every ETP Holder[, Equity ASAP Holder or ETP Firm] shall send to its customers statements of account showing security and money positions entries, interest charges and any special charges that have been assessed

against such account during the period covered by the statement; provided, however, that such charges need not be specifically delineated on the statement if they are otherwise accounted for on the statement and have been itemized on transaction confirmations. With respect to options customers having a general (margin) account, such statement shall also provide the mark-to-market price and market value of each options position and other security position in the general (margin) account, the total market value of all positions in the account, the outstanding debit balance in the account, and the general (margin) account equity. The statement shall bear a legend stating that further information with respect to commissions and other charges related to the execution of listed option transactions has been included in confirmations of such transactions previously furnished to the customer, and that such information will be made available to the customer promptly upon request.

Statements of account shall be sent at least quarterly to all accounts having a money or a security position during the preceding quarter and not less frequently than once every month to each customer in whose account there has been an entry during the preceding month with respect to an option contract.

The statement shall also bear a legend requesting the customer to promptly advise the ETP Holder[, Equity ASAP Holder or ETP Firm] of any material change in the customer's investment objectives or financial situation.

Commentary

.01 For purposes of the foregoing Section, general (margin) account equity shall be computed by subtracting the total of the ''short'' security values and any debit balance from the total of the ''long'' security values and any credit balance.

(k) Doing Business with the Public.

An [individual] *sole proprietor* ETP [Holder or Equity ASAP Holder] may not transact business with the public, unless such Holder receives prior written approval from the Corporation. To qualify to transact business with the public, the [individual] *sole proprietor* ETP [Holder or Equity ASAP] Holder shall demonstrate compliance with the general requirements of the Corporation as prescribed by the Bylaws, Rules and procedures of the Corporation.

(l) Customer Complaints.

(1) Every ETP Holder[, Equity ASAP Holder or ETP Firm] conducting a non-ETP [or non-Equity ASAP] customer business shall make and keep current a separate central log, index or other file for all options-related complaints, through which these complaints can easily be identified and retrieved. The term ''options-related complaint'' shall mean any written statement by a customer or person acting on behalf of a customer alleging a grievance arising out of or in connection with listed options. The central file shall be located at the principal place of business of the ETP Holder[, Equity ASAP Holder or ETP Firm] or such other principal office as shall be designated by the ETP Holder[, Equity ASAP Holder or ETP Firm]. At a minimum, the central file shall include: (i) Identification of complainant, (ii) date complaint was received, (iii) identification of Registered Representative servicing the account, (iv) a general description of the matter complained of, and (v) a record of what action, if any, has been taken by the ETP Holder[, Equity ASAP Holder or ETP Firm] with respect to the complaint. Each options-related complaint received by a branch office of an [Equity ASAP] *ETP* Holder [or ETP Firm] shall be forwarded to the office in which the separate, central file is located not later than thirty (30) days after receipt by the branch office. A copy of every options-related complaint shall be maintained at the branch office that is the subject of the complaint.

(m) Branch Offices of [Equity ASAP] *ETP* Holders [or ETP Firms].

No branch office of an [Equity ASAP] *ETP* Holder [or ETP Firm] shall transact options business with the public unless the manager of such branch office has been qualified as a Registered Options Principal; provided, that this requirement shall not apply to branch offices in which not more than three Registered Representatives are located so long as the [Equity ASAP] *ETP* Holder [or ETP Firm] can demonstrate that the options activities of such branch offices are appropriately supervised by a Registered Options Principal.

Transfer of Accounts

Rule 9.19. Every ETP Holder[, Equity ASAP Holder or ETP Firm] shall, upon written request of a customer, expedite the transfer of a customer's account pursuant to such customer's instructions.

Transactions for Public Customers

Rule 9.20(a). Where an ETP Holder[, Equity ASAP Holder or ETP Firm] is doing business with the public in accordance with these Rules and is also associated with a Market Maker, such ETP Holder[, Equity ASAP Holder or ETP Firm] shall file such reports as the Corporation may require of transactions for customers in classes of option contracts to which such Market Maker has been appointed pursuant to *PCX Parent* Rule 6.35.

Telemarketing

Rule 9.20(b). No ETP Holder[, Equity ASAP Holder or ETP Firm] or associated person of such Holder [or Firm] may:

(1)—No change.

(2) Make an outbound telephone call to any person for the purpose of soliciting the purchase of securities or related services without disclosing promptly and in a clear and conspicuous manner to the called person the following information:

(A) the identity of the caller and the ETP Holder[, Equity ASAP Holder or ETP Firm];

(B)–(C)—No change.

(3) The prohibitions of subsections (b)(1) and (b)(2), above, do not apply to telephone calls by any person associated with an ETP Holder[, Equity ASAP Holder or ETP Firm,] or another associated person acting at the direction of such person for the purpose of maintaining and servicing an account of an existing customer of the ETP Holder[, Equity ASAP Holder or ETP Firm] under the control of or assigned to such associated person if such person places such calls:

(A)–(C)—No change.

The scope of this Rule 9.20(b) is limited to the telemarketing calls described herein. The terms of this Rule do not otherwise expressly or by implication impose on ETP Holders[, Equity ASAP Holders or ETP Firms] or participants any additional requirements with respect to the relationship between at ETP Holder[, Equity ASAP Holder or ETP Firm] or participant and a customer or between a person associated with an ETP Holder[, Equity ASAP Holder or ETP Firm] or participant organization and a customer. For the purposes of subsection (b)(3), the term ''existing customer'' means a customer for whom the broker or dealer, or a clearing broker or dealer on behalf of such broker or dealer, carries an account.

(c) Each ETP Holder[, Equity ASAP Holder or ETP Firm] shall make and maintain a centralized list of persons who have informed the ETP Holder[, Equity ASAP Holder or ETP Firm] or any employee thereof, that they do not wish to receive telephone solicitations, and shall refrain from engaging in telephone solicitations of persons named on that list.

(d) No ETP Holder[, Equity ASAP Holder or ETP Firm] or person associated with an ETP Holder, [Equity ASAP Holder or ETP Firm,] may obtain from a customer or submit for payment a check, draft, or other form of negotiable paper drawn on a customer's checking, savings, share, or similar account, without that person's express written authorization, which may include the customer's signature on the negotiable instrument. Each ETP Holder[, Equity ASAP Holder or ETP Firm] shall maintain the authorization required by this subsection (d) for a period of three years.

Commentary

.01 ETP Holders[, Equity ASAP Holders or ETP Firms] that engage in telephone solicitation to market their products and services (''telemarketing'' or ''cold calling'') are subject to the requirements of the rules of the Federal Communications Commission and the Securities and Exchange Commission relating to telemarketing practices and the rights of telephone users. This includes, but is not limited to, the requirement to make and maintain a list of persons who do not want to receive telephone solicitation (a ''do-not-call'' list).

**Section 2. Advertising and Sales Literature**

Policy

Rule 9.21(a). It shall be considered conduct inconsistent with just and equitable principals of trade for an ETP Holder, [Equity ASAP Holder or ETP Firm,] directly or indirectly, to publish, circulate or distribute any advertisement, sales literature or market letter that the ETP Holder[, Equity ASAP Holder or ETP Firm] knows or has reason to know contains any untrue statement of a material fact or is otherwise false or misleading.

Exemptions

Rule 9.21(b). The following [rules] *Rules* shall apply to all ETP Holders[, Equity ASAP Holders or ETP Firms] of the Corporation unless the ETP Holder[, Equity ASAP Holder or ETP Firm] is subject to the jurisdiction of

another national securities exchange or association designated by the Board of Directors as having comparable standards.

Advertisements

Rule 9.22(a). All advertisements prior to publication shall be submitted to the Corporation for approval as to form and presentation, except such routine advertisements as (1) Business cards or so-called tombstone ads, (2) announcements that specific securities are bought, sold or quoted, (3) offering literature concerning a specific security or securities, (4) announcements relating to changes in an ETP Holder, [Equity ASAP Holder or ETP Firm,] (5) inclusion of an ETP [Holder, Equity ASAP Holder or ETP Firm's] *Holder's* name in an underwriting advertisement, or (6) advertisements complying with any rule or regulations of the Securities and Exchange Commission under the Securities Act of 1933, or Securities Exchange Act of 1934. Copies of all ads should be retained by the ETP Holder[, Equity ASAP Holder or ETP Firm] for at least 3 years.

Refer to Pacific Exchange

Rule 9.22(b). Advertisements by ETP Holders[, Equity ASAP Holders or ETP Firms] for insertion in local papers or other media should refer to the *Archipelago Exchange, a facility of PCX Equities, Inc. and the* Pacific Exchange, Inc.*,* when a reference is made to membership in any securities exchange.

Sales Literature—Market Letters

Rule 9.23. Each market letter, research report and all sales literature prepared and issued by an ETP Holder[, Equity ASAP Holder or ETP Firm] for general distribution to customers or the public shall be approved in advance by a principal of the firm who has been designated such authority. Market letters, research reports and sales literature that refer to the market or to companies or securities, listed or unlisted, must be retained by the issuing ETP Holder[, Equity ASAP Holder or ETP Firm] for at least 3 years. The copies retained must contain the name of the individual approving its issuance and will be subject to delivery upon request to the Corporation and must at all times within the 3 year period be readily available. For purposes of this Rule, scripts that are used for telemarketing calls as described in Rule 9.20(b), are deemed to be ''sales literature.''

Radio, Television, Telephone and Other Reports

Rule 9.24. ETP Holders[, Equity ASAP Holders, or ETP Firms] for which the Corporation is the designated examining authority (''DEA'') desiring to broadcast Corporation quotations on radio or television programs, or in public telephone market reports, or to make use of radio or television broadcasts for any business purpose, or to make use of the Internet for the purpose of providing market quotations or advertising to the general public, must first obtain the consent of the Corporation by submitting an outline of the program to the Corporation.

The text of all commercials and program material (except lists of market quotations) about securities or investing sponsored by ETP Holders[, Equity ASAP Holders, or ETP Firms] on radio, television or public telephone market reports, or the Internet, or program material supplied to these media must be sent to the Corporation promptly following the program in which it is used.

Standards

Rule 9.25. The Corporation cannot be responsible for the accuracy and completeness of factual information, nor the opinions of ETP Holders[, Equity ASAP Holders, or ETP Firms] in advertisements, sales literature or radio or television broadcasts. However, general policy to be followed in written communications with the public should be substantially as follows:

(a) In making recommendations there should be a reasonable basis for the recommendation and the following facts disclosed:

(1)–(2)—No change.

(3) If (2) applies, whether the ETP Holder[, Equity ASAP Holder, or ETP Firm] intends to buy or sell the securities recommended for his *or her* own account;

(4)–(5)—No change.

(6) If material issued refers to past recommendations, all such recommendations as to the same type, kind, grade or classification of securities made by an ETP Holder[, Equity ASAP Holder, or ETP Firm] within the last year should be set forth. Longer periods of years may be covered if they are consecutive and include the most recent year. The material must name each security recommended, the date and nature of recommendation (buy or sell), the price at the time, the price range within which to act upon, and if the period was one of generally rising or falling markets;

(7) Material that makes no recommendations, but offers to furnish a list of all recommendations made by an ETP Holder[, Equity ASAP Holder, or ETP Firm] within the past year or over a longer period of consecutive years shall contain same information as stated in item (6) above.

(b)–(d)—No change.

(e) Claims for research:

No claim or implication may be made for research or other facilities beyond those which the ETP Holder[, Equity ASAP Holder, or ETP Firm] actually posses or has reasonable capacity to provide.

(f)–(g)—No change.

Registration of Options Principals

Rule 9.26. No ETP Holder[, Equity ASAP Holder, or ETP Firm] shall transact any business with the public in option contracts unless those persons engaged in the management of the ETP [Holder, Equity ASAP Holder, or ETP Firm's] *Holder's* business pertaining to option contracts are registered with and approved by the Corporation as Options Principals. No individual ETP Holder [or Equity ASAP Holder] shall transact any business directly with the public in option contracts unless he *or she* is registered with and approved by the Corporation as an Options Principal. In connection with their registration, Options Principals shall file an application with the Corporation on a form prescribed by the Corporation and shall be required to successfully complete an examination prescribed by the Corporation for the purpose of demonstrating an adequate knowledge of options trading generally, the Rules of the Corporation applicable to trading of option contracts and theRules of the Options Clearing Corporation. In the event the employment of any Registered Options Principal is terminated or any Registered Options Principal ceases to act in such capacity, such fact shall be reported promptly to the Corporation together with a brief statement of the reason therefore.

Commentary

.01 Each ETP Holder[, Equity ASAP Holder, or ETP Firm] shall be required to designate a Registered Options Principal who is a general partner or officer as the person responsible for overall supervision and training in areas relating to transactions in option contracts.

.02—No change.

Registration of Representatives

Rule 9.27(a). *General.* No ETP Holder[, Equity ASAP Holder, or ETP Firm] shall be approved to transact business with the public until those persons associated with it who are designated as Representatives have been registered with and approved by the Corporation pursuant to the provisions of Rule [2.23(a)] *2.21(a)* through Rule [2.23(d)] *2.21(d).* Persons who perform duties for the ETP Holder[, Equity ASAP Holder, or ETP Firm] which are customarily performed by sales representatives, solicitors, customers' men or branch office managers shall be designated as Representatives.

(b) *Registered Options Representatives.* No person associated with an ETP Holder[, Equity ASAP Holder, or ETP Firm] shall transact any business with the public in option contracts, unless those persons are registered with and approved by the Corporation pursuant to the provisions of paragraph (a) of this Section and are registered with and approved by the Corporation as Options Representatives. In connection with their registration as Options Representatives, such persons shall file an application with the Corporation on a form prescribed by the Corporation, shall successfully complete a training course and an examination for the purpose of demonstrating adequate knowledge in the trading of option contracts, and shall sign an agreement to abide by the Bylaws, Rules and procedures of the Corporation and the Rules of the Options Clearing Corporation; provided, however, that representatives of an ETP Holder[, Equity ASAP Holder, or ETP Firm] which is a member of another national securities exchange or association which has standards of approval acceptable to the Corporation may be deemed to be registered with and approved by the Corporation, so long as such representatives are registered with and approved by the Corporation, so long as such representatives are registered with and approved by such other exchange or association. An ETP Holder[, Equity ASAP Holder, or ETP Firm] whose representatives are deemed registered and approved pursuant to the last clause of the preceding sentence shall inform their representatives of their obligation to adhere to the Bylaws, Rules and procedures of the Corporation and the Rules of the Options Clearing

Corporation. Termination of employment or affiliation of any Registered Options Representative in such capacity shall be reported promptly to the Corporation together with a brief statement of the reason for such termination, pursuant to Rule [2.23(h)] *2.21(h).*

Commentary

.01–.03—No change.

Regulatory Element

Rule 9.27(c). No ETP Holder[, Equity ASAP Holder or ETP Firm] 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 continuing education requirements of this Rule 9.27(c).

Each registered person shall complete the Regulatory element of the continuing education program on three occasions, after the occurrence of their second, fifth and tenth registration anniversary dates, or as otherwise prescribed by the Corporation. On each of these three occasions, the Regulatory Element must be completed within one hundred twenty (120) days after the person's registration anniversary date. The content of the Regulatory Element of the program shall be prescribed by the Corporation.

(1) Registered person who have been continuously registered for more than ten years as of the effective date of this Rule shall be exempt from participation in the Regulatory Element of the continuing education program, provided such persons have not been subject to any disciplinary action within the last ten (10) years as enumerated in subsection [(c)(3)(i)–(ii)]*(c)(3)(A)–(B)* of this Rule. Persons who have been currently registered for ten (10) years or less as of the effective date of this Rule shall initially participate in the Regulatory Element of the continuing education program within one hundred twenty days (120) after the occurrence of the second, fifth or tenth registration anniversary date, whichever anniversary date first applies, and on the applicable registered anniversary date(s) thereafter. Such persons will have satisfied the requirements of the Regulatory Element of the program after participation on the tenth registration anniversary.

All registered persons who have satisfied the requirements of the Regulatory Element shall be exempt from further participation in the Regulatory Element of the program, subject to re-entry into the program as set forth in subsection (c)(3) of this Rule.

(2)–(3)—No change.

Re-entry shall commence with the initial participation within 120 days of the registered person becoming subject to the statutory disqualification, in the case of [(i)] *(A)* above, or the disciplinary action becoming final, in the case of [(ii) *(B)* or [(iii)] *(C)* above, and on three additional occasions thereafter, at intervals of two, five and ten years after re-entry, notwithstanding that such person has completed all or part of the program requirements based on length of time as a registered person or completion of ten years of participation in the program.

(d) Firm Element

(1) Persons Subject to the Firm Element—The requirements of this Rule 9.27(d) shall apply to any registered person who has direct contact with customers in the conduct of the ETP [Holder, Equity ASAP Holder or ETP Firm's] *Holder's* securities sales, trading or investment banking activities, and to the immediate supervisors of such persons (collectively, ''covered registered persons'').

(2) Standards.

(A) Each ETP Holder[, Equity ASAP Holder or ETP Firm] must maintain a continuing and current education program for its covered registered person to enhance their securities knowledge, skills and professionalism. At a minimum, each ETP Holder[, Equity ASAP Holder or ETP Firm] shall at least annually evaluate and prioritize its training needs and develop a written training plan. The plan must take into consideration the ETP [Holder, Equity ASAP Holder or ETP Firm's] *Holder'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.

(B) Minimum Standards for Training Programs—Programs used to implement an ETP [Holder, Equity ASAP Holder or ETP Firm's] *Holder's* training plan must be appropriate for the business of the ETP Holder[, Equity ASAP Holder or ETP Firm] and, at a minimum, must cover the following matters concerning securities products, services and strategies offered by the ETP Holder[, Equity ASAP Holder or ETP Firm]:

(i)–(iii)—No change.

(C) Administration of Continuing Education Program—Each ETP Holder[, Equity ASAP Holder or ETP Firm] must administer its continuing education program 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 an ETP [Holder, Equity ASAP Holder or ETP Firm's] *Holder's* plan must take all appropriate and reasonable steps to participate in continuing education programs as required by the ETP Holder[, Equity ASAP Holder or ETP Firm].

(4) Specific Training Requirements—The Corporation may require an ETP Holder[, Equity ASAP Holder or ETP Firm,] either individually or as part of a larger group, to provide specific training to its covered registered persons in such areas that the Corporation 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.

Commentary

.01 For purposes of this Rule, the term ''registered person'' means any ETP Holder, [Equity ASAP Holder or ETP Firm,] Allied Person thereof, registered representative or other person registered or required to be registered under the Rules of the Corporation, but does not include any such person whose activities are limited solely to the transaction of business on the facilities of the Corporation with ETP Holders[, Equity ASAP Holders, ETP Firms] or registered broker-dealers.

.02 For purposes of this Rule, the term ''customer'' means any natural person or any organization, other than a registered broker or dealer, executing transactions in securities or other similar instruments with or through, or receiving investment banking services from, an ETP Holder[, Equity ASAP Holder or ETP Firm].

.03 A registered person who has been continuously registered for more than ten (10) years as of the date of implementation of this Rule who has been subject to a disciplinary action as enumerated in subsections [(c)(3)(i)–(ii)] *(c)(3)(A)–(B)* of the Rule within the last ten years, will be required to satisfy the requirements of the Regulatory Element of the continuing education program by participation for the period from the date of implementation of this Rule to ten years after the occurrence of the disciplinary action.

.04–.05—No change.

Advertisements, Market Letters and Sales Literature Relating to Options

Rule 9.28(a). General Rule. No ETP Holder[, Equity ASAP Holder or ETP Firm] or person associated therewith shall utilize any advertisement, educational material, sales literature or other communications to any customer or member of the public concerning options which:

(1)–(4)—No change.

(b) Approval by Compliance Registered Option Principal. All advertisements, sales literature (except completed worksheets), and educational material issued by an ETP Holder[, Equity ASAP Holder or ETP Firm] pertaining to options shall be approved in advance by the Compliance Registered Options Principal or designee. Copies thereof, together with the names of the persons who prepared the material, the names of the persons who approved the material and, in the case of sales literature, the source of any recommendations contained therein, shall be retained by the ETP Holder[, Equity ASAP Holder or ETP Firm] and be kept at an easily accessible place for examination by the Corporation for a period of three years.

(c) Approval Required for Options Advertisements. In addition to the approval required by paragraph (b) of this Rule, every advertisement of an ETP Holder[, Equity ASAP Holder or ETP Firm] pertaining to options shall be submitted to the Corporation at least ten days prior to use (or such shorter period as the Corporation may allow in particular instances) for approval and, if changed or expressly disapproved by the Corporation, shall be withheld from circulation until any changes specified by the Corporation have been made or, in the event of disapproval, until the advertisement has been resubmitted for, and has received, Corporation approval. The requirements of this paragraph shall not be applicable to:

(1)—No change.

(2) advertisements in which the only reference to options is contained in a listing of the services of an ETP Holder[, Equity ASAP Holder or ETP Firm].

(d)–(e)—No change.

Commentary

.01 The special risks attendant to options transactions and the complexities of certain options investment strategies shall be reflected in any advertisement, educational material or sales literature which discusses the uses or advantages of options. Such communications shall include a warning to the effect that options are not suitable for all investors. In the preparation of written communications respecting options, the following guidelines should be observed:

A. Any statement referring to the potential opportunities or advantages presented by options shall be balanced by a statement of the corresponding risks. The risk statement shall reflect the same degree of specificity as the statement of opportunities, and broad generalities should be avoided. Thus, a statement such as ''with options, an investor has an opportunity to earn profits while limiting his *or her* risk of loss'', should be balanced by a statement such as ''of course, an options investor may lose the entire amount committed to options in a relatively short period of time.''

B.–C.—No change.

.02—No change.

.03 Written communications (other than advertisements) pertaining to options shall conform to the following standards:

A.–D.—No change.

E. Options worksheets utilized by ETP Holders, [Equity ASAP Holders or ETP Firms,] or associated persons must comply with the requirements applicable to sales literature.

F.—No change.

**Rule 10**

**Disciplinary Proceedings, Other Hearings, and Appeals**

Disciplinary Jurisdiction

Rule 10.1.

(a) An ETP Holder[, ETP Firm, Equity ASAP Holder,] or associated person of an ETP [Firm or Equity ASAP] Holder who is alleged to have violated or aided and abetted a violation of any provision of the Securities Exchange Act of 1934, as amended, the rules and regulations promulgated thereunder, any provision of the Corporation's Bylaws or Rules or any commentary thereof, any resolution of the Board of Directors of the Corporation regulating the conduct of business of the Corporation, or any policy or procedure of the Corporation shall be subject to the disciplinary jurisdiction of the Corporation under this Rule, and after notice and opportunity for a hearing may be appropriately disciplined by cancellation of trading privileges, suspension, limitation of activities, functions, and operations, suspension or bar from association with an ETP [Firm or Equity ASAP] Holder, fine, censure or any other fitting sanction, in accordance with the provisions of this Rule. An ETP [Firm or Equity ASAP] Holder may be charged with any violation committed by its employees or [its ETP Holder or] other person who is associated with such ETP [Firm or Equity ASAP] Holder, as though such violation were its own.

(b) Any ETP Holder, [ETP Firm, Equity ASAP Holder,] or associated person of an ETP [Firm or Equity ASAP] Holder shall continue to be subject to the disciplinary jurisdiction of the Corporation following suspension or cancellation of ETP [or Equity ASAP] trading privileges or termination of association with an ETP [Firm or Equity ASAP] Holder with respect to matters that occurred prior to such termination, provided that written notice of the commencement of an inquiry into such matters is given by the Corporation to such former ETP Holder[, ETP Firm, Equity ASAP Holder,] or associated person of an ETP [Firm or Equity ASAP] Holder within one year of receipt by the Corporation of written notice of the termination of such person's status as an ETP Holder[, ETP Firm, Equity ASAP Holder,] or associated person of an ETP [Firm or Equity ASAP] Holder.

Investigations and Regulatory Cooperation

Rule 10.2(a). The Corporation's Chief Regulatory Officer and his or her delegees will function independently of the commercial interest of the Corporation and the commercial interests of the ETP Holders[, ETP Firms and Equity ASAP Holders] and the Chief Regulatory Officer or his or her delegees will have the discretion to investigate, and will investigate, possible violations within the disciplinary jurisdiction of the Corporation. The Regulatory Staff may consult as necessary with the PCX Parent Regulatory Staff. No member of the Board of Directors or non-Regulatory Staff may interfere with or attempt to influence the process or resolution of any pending investigation or disciplinary proceeding.

(b)—No change.

(c) An ETP Holder[, ETP Firm, Equity ASAP Holder,] or associated person of an ETP Firm or Equity ASAP Holder is entitled to be represented by counsel during any investigation by the Corporation.

(d) No ETP Holder, [ETP Firm, Equity ASAP Holder,] associated person of an ETP [Firm or Equity ASAP] Holder, or other person or entity over whom the Corporation has jurisdiction pursuant to Rule 10.1 may impede or delay a regulatory investigation with respect to possible violations within the disciplinary jurisdiction of the Corporation nor refuse to furnish testimony, documentary materials or other information requested by the Corporation during the course of its investigation. Failure to furnish such testimony, documentary materials, or other information requested by the Corporation pursuant to this Rule on the date or within the time period required by the Corporation will be considered obstructive of an inquiry or investigation and subject to formal disciplinary action.

(e) An ETP Holder[, ETP Firm, Equity ASAP Holder,] or associated person of an ETP [Firm or Equity ASAP] Holder must submit such trade data elements specified in Commentary .01 below in such automated format as may be prescribed by the Corporation from time to time, in regard to such transactions or transactions as may be the subject of a particular request for information made by the Corporation. Failure to submit such data in the required format will be considered obstructive of an inquiry or investigation and subject to formal disciplinary action.

Commentary

.01(A) If the transaction [was] *were* a proprietary transaction effected or caused to be effected by the ETP Holder[, ETP Firm or Equity ASAP Holder] for any account in which such ETP [Holder, ETP Firm, Equity ASAP] Holder or associated person of an ETP [Firm or Equity ASAP] Holder is directly or indirectly interested, such ETP [Holder, ETP Firm, or Equity ASAP] Holder shall submit or cause to be submitted the following information:

(i) Clearing house number(s), or alpha symbol(s), as used by the ETP Holder[, ETP Firm, or Equity ASAP Holder] submitting the data;

(ii) Clearing house number(s), or alpha symbol(s) as may be used from time to time, of the ETP Holder(s)[, ETP Firm(s), or Equity ASAP Holder(s)] on the opposite side of the transaction;

(iii)–(viii)—No change.

(B) If the transaction [was] *were* effected or caused to be effected by the ETP [Holder, ETP Firm, or Equity ASAP] Holder for any customer account, such ETP [Holder, ETP Firm, or Equity ASAP] Holder shall submit or cause to be submitted the following information:

(i)–(ii)—No change.

(iii) If the transaction [was] *were* effected for a customer of a broker-dealer, whether the broker-dealer was acting as principal or agent on the transaction that is the subject of the Corporation's request.

(C) In addition to the above trade data elements, an ETP [Holder, ETP Firm, or Equity ASAP] Holder shall submit such other information in such automated format as may be prescribed by the Corporation, as may from time to time be required.

(D)—No change.

(f) No ETP Holder, [ETP Firm, Equity ASAP Holder,] associated person of an ETP [Firm or Equity ASAP] Holder, or other person or entity over whom the Corporation has jurisdiction pursuant to Rule 10.1 may refuse to appear and testify before another exchange or self-regulatory organization in connection with a regulatory investigation, examination, or disciplinary proceeding or refuse to furnish documentary materials or other information or otherwise impede or delay such investigation, examination or disciplinary proceeding if the Corporation requests such information or testimony in connection with any inquiry resulting from an agreement entered into by the Corporation or its self-regulatory organization. The requirements of this Rule 10.2(f) will apply regardless of whether the Corporation has initiated an investigation pursuant to Rule 10.2(a) or a disciplinary proceeding pursuant to Rule 10.4.

Commentary

.01–.02—No change.

Ex Parte Communications

Rule 10.3(a). Prohibited Communications. Unless on adequate notice and reasonable opportunity for all parties to participate:

(1) No person who is a subject of a pending investigation by the Corporation (''Subject'')

or a Respondent in a pending disciplinary proceeding, or counsel for a representative of the Subject or the Respondent, or any interested Corporation staff, with knowledge of a pending investigation or disciplinary proceeding, may make or knowingly cause to be made an ex parte communication, as defined below, relevant to the facts or allegations of the investigation or the disciplinary proceeding to: (a) a member of the Board of Directors; (b) a person who advises the Board of Directors; (c) any member of the Corporation's Regulatory Staff that is not participating in the resolution of the investigation or the disciplinary proceeding; (d) a member of the Business Conduct Committee or Board Appeals Committee; or (e) a member of the PCX Board of Governors.

(2) No person who is a member of the Business Conduct Committee or Conduct Panel with knowledge of a pending investigation or disciplinary proceeding, or *any* interested Corporation staff, may make or knowingly cause to be made an ex parte communication, as defined below, relevant to the facts or allegations of the investigation or the disciplinary proceeding to: (a) a member of the Board of Directors; (b) a person who advises the Board of Directors; (c) any member of the Corporation's Regulatory Staff; (d) the Subject of a pending investigation by the Corporation or a Respondent in a pending disciplinary proceeding, or counsel for or a representative of the Subject or the Respondent; or (e) a member of the PCX Board of Governors.

(3) No person who is a member of the Board of Directors, or any person who advises the Board of Directors, or any interested Corporation staff, with knowledge of a pending investigation or disciplinary proceeding, may knowingly make or cause to be made an ex parte communication, as defined below, relevant to the facts or allegations of the investigation or the disciplinary proceeding to: (a) any member of the Corporation's Regulatory Staff; (b) the Subject to a pending investigation by the Corporation or a Respondent in a pending disciplinary proceeding, or counsel for or a representative of the Subject or the Respondent; (c) a member of the Business Conduct Committee; or (d) a member of the PCX Parent Board of Governors.

(b) Disclosure of Prohibited Communications. Any person who receives, makes or knowingly causes to be made a communication prohibited by this Rule must promptly submit to the Regulatory Staff for inclusion in the record of the investigation or disciplinary proceeding:

(1) all such written communications;

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

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

(c) Remedies. Any ETP Holder, [ETP Firm, Equity ASAP Holder,] or associated person of an ETP [Firm or Equity ASAP] Holder who made or knowingly caused to be made [a] *an ex parte* communication prohibited by subsection (a) will be subject to disciplinary action. Furthermore, the Business Conduct Committee, to the extent consistent with the interests of justice, may issue to the ETP Holder, [ETP Firm, Equity ASAP Holder,] or associated person of an ETP [Firm or Equity ASAP] Holder, or interested Corporation staff, responsible for the communication or who benefited from the communication an order to show cause why the claim, defense or interest of the ETP Holder, [ETP Firm, Equity ASAP Holders,] or associated person of an ETP [Firm or Equity ASAP] Holder, or interested Corporation staff, should not be adversely affected by reason of such ex parte communication, including but not limited to the entry of an adverse summary decision. All parties to a disciplinary proceeding and the Regulatory Staff will be provided with adequate notice and a reasonable opportunity to respond to any allegations or contentions contained in the prohibited communication and any responses will be included in the record of the investigation or disciplinary proceeding.

(d) Permitted Communications. Nothing in this Rule prohibits the members of a disciplinary committee or the Regulatory Staff from discussing a pending investigation or disciplinary proceeding at a meeting of the committee in connection with: (1) the adjudication of the investigation pursuant to the Minor Rule Plan; (2) the determination of whether to impose informal discipline; (3) the determination of whether to authorize a complaint or take no further action; or (4) the determination of whether to accept an offer of settlement.

(e) No member of the Business Conduct Committee or Conduct Panel*, as defined in Rule 10.5(a),* may participate in a matter governed by Rule 10.3(c) 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 *herself or* shall be disqualified as follows:

(1) The Chief Regulatory Officer shall have the authority to direct the disqualification of the interested member of the Business Conduct committee or Conduct Panel.

(2) The Chief Executive Officer shall have the authority to direct the disqualification of the Chief Regulatory Officer.

Commentary

.01 ''Ex parte communication'' means an oral or written communication made without notice to all parties, i.e., the Corporation's Regulatory Staff and the Subjects of investigations or Respondents in disciplinary proceedings. A written communication is ex parte unless a copy has been previously or simultaneously delivered to all interested parties. An oral communication is ex parte unless it is made in the presence of all interested parties except those who, on adequate prior notice, declined to be present.

.02 A disciplinary proceeding will be considered to be pending from the date that a Complaint has been issued pursuant to Rule 10.4 until the proceeding, including any appeals, becomes final.

Complaints

Rule 10.4(a). The Chief Regulatory Officer and his or her delegee(s) have the authority to determine whether there is probable cause for finding that a violation within the disciplinary jurisdiction of the Corporation has occurred and if further proceedings are warranted. If the Regulatory Staff, on behalf of the Corporation, (''the Complainant'' ) determines that further proceedings are warranted, [the] *then* the Corporation will initiate a formal disciplinary action by preparing a statement of charges (''the Complaint'') against any ETP Holder, [ETP Firm, Equity ASAP Holder,] or associated person of an ETP [Firm or Equity ASAP] Holder alleged to have committed a violation (''the Respondent'') specifying the acts in which the Respondent is alleged to have engaged in, or which the Respondent is alleged to have omitted, and alleging the specific provisions of the Bylaws, Rules, policies or procedures of the Corporation, or the rules, regulations and procedures promulgated under the Securities Exchange Act of 1934, of which such acts or omissions are alleged to be in violation.

(b)–(c)—No change.

Commentary

.01—No change.

Hearing

Rule 10.5

(a)–(c)—No change.

(d) At the hearing, both the Complainant and the Respondent shall be entitled to be heard in person and to present any relevant matter. Any witnesses, testimony or evidence offered by the Complainant or the Respondent shall be subject to cross-examination by the other party. The Conduct Panel shall determine all questions concerning the admissibility of evidence and shall otherwise regulate the conduct of the hearing. Formal rules of evidence shall not apply. The charges shall be presented by the Corporation, who along with Respondent and any other party, may present evidence and produce witnesses who shall testify under oath and are subject to being questioned by the Conduct Panel and other parties. The Conduct Panel, upon its own motion or the motion of the Complainant or Respondent, may request the production of documentary materials and witnesses. No ETP Holder, [ETP Firm, Equity ASAP Holder,] or associated person of an ETP [Firm or Equity ASAP] Holder shall refuse to furnish relevant testimony, documentary materials or other information requested by the Conduct Panel during the course of the hearing. The Respondent and intervening parties are entitled to be represented by counsel who may participate fully in the hearing. A transcript of the hearing shall be made and shall become part of the record.

(e)—No change.

Rule 10.6–10.7—No change.

Review

Rule 10.8(a)—No change.

(b) The Board Appeals Committee may appoint a Board Appeals Committee Panel (''Appeals Panel'') to conduct reviews of disciplinary proceedings, or may decide to conduct review proceedings on its own. The composition of the Appeals Panel will be determined by the Board Appeals Committee in accordance with Rule 3.3. The body conducting the review, either the Board Appeals Committee itself or the Appeals

Panel, is referred to herein as ''the Review Board.'' Unless the Review Board shall decide to open the record for the introduction of new evidence or to hear argument, such review shall be based solely upon the record and the written exceptions filed by the parties. The standard of review shall be de novo. Based upon such review, the Review Board may affirm, reverse or modify in whole or in part, the decision of the Conduct Panel. Such modification may include an increase or decrease of the sanction. The decision of the Review Board shall be in writing and, shall become fifteen (15) calendar days after notifying the parties; provided, however, that if a request for review of such determination is filed pursuant to Rule 10.8(c) or Rule 10.8(d) below, the penalty shall be stayed pending the outcome of that review.

Each Review Board member shall be required to disclose to the Board Appeals Committee any circumstances which might preclude such Review Board member from rendering an objective and impartial determination. Prior to the commencement of the first hearing session, the Board Appeals Committee may remove a Review Board member who discloses such information. The Board Appeals Committee shall also inform the parties of any information disclosed pursuant to this section, if the Review Board member who disclosed the information is not removed.

In the event that any Review Board member, after the commencement of the Review, but prior to the rendition of the decision, should become disqualified, resign, die, refuse or be unable to perform or discharge his *or her* duties, the Board Appeals Committee, upon such proof as they deem satisfactory, shall either (a) appoint a new member to the Review Board to replace such member; or (b) direct that the review proceed without the substitution of a new member.

(c)–(e)—No change.

Judgment and Penalty

Rule 10.9(a). An ETP Holder, [ETP Firm, Equity ASAP Holder,] or associated person of an ETP [Firm or Equity ASAP] Holder shall be subject to appropriate discipline by the Corporation for violations under this Rule including: cancellation or suspension of trading privileges, limitation of activities, functions and operations, suspension or bar from association with an ETP Holder, [ETP Firm or Equity ASAP Holder,] fine, censure, or any other fitting sanction.

(b)–(c)—No change.

Miscellaneous Provisions

Rule 10.10—No change.

Appeal of [Floor Citations and] Minor Rule Plan Sanctions

Rule 10.11(a). This Section provides the following procedures for persons aggrieved by action taken by the Corporation pursuant to the provisions of the Bylaws and Rules of the Corporation for which action an ETP Holder, [ETP Firm, Equity ASAP Holder,] or associated person of an ETP [Firm or Equity ASAP] Holder has been sanctioned [via floor citation or] pursuant to Rule 10.12 (the Minor Rule Plan), and applies for an opportunity to make an oral presentation or to have the matter reviewed on the papers alone. (This Section shall not apply to disciplinary action taken pursuant to Rule 10.4 herein, non-disciplinary action taken pursuant to Rule [10.14] *10.13* herein, or to an action in Arbitration.)

(b) Submission of Application to Corporation. Any ETP Holder, [ETP Firm, Equity ASAP Holder,] or associated person of an ETP [Firm or Equity ASAP] Holder who is aggrieved by any action of the Corporation within the scope of this Section and who desires the opportunity to make an oral presentation with respect to such action or to have such action reviewed on the papers alone shall file a written application with the Business Conduct Committee within five (5) business days after notification that such action has been taken. The notification submitted by the Corporation shall state the specific grounds for the action taken by the Corporation, and shall notify the party of the party's right to make an oral presentation or to have the matter reviewed on the papers alone. The application shall contain: (1) An identification of the Corporation action over which the review is being requested; (2) the reason(s) why the applicant disagrees with such action; and (3) the relief sought. In addition, the application shall indicate whether the applicant desires to make an oral presentation, in which event it shall be considered a ''request for a hearing,'' or to proceed only upon the existing and/or any additional documents or materials, in which event it shall be considered a ''request for a review on the papers.'' Hereinafter, the terms ''hearing'' and ''review on the papers'' shall be referred to jointly as the ''Proceeding(s).''

(c)—No change.

(d) Procedure Following Application for Hearing and/or Review on the Papers.

(1)–(2)—No change.

(3) Conduct of the Proceeding. Whether the Proceeding is a hearing or a review on the papers alone, the Conduct Panel shall determine all questions concerning the admissibility of evidence and shall otherwise regulate the conduct of the Proceeding. The formal rules of evidence shall not apply. In the event of a hearing, each of the parties shall be permitted to make an opening statement, present witnesses pursuant to paragraph (d)(2), present documentary evidence, cross-examine witnesses and present closing arguments. The Conduct Panel shall have the right to question all parties and witnesses to the Proceeding. The Conduct Panel may also request the production of documentary evidence and witnesses. No ETP Holder, [ETP Firm, Equity ASAP Holder,] or associated person of an ETP [Firm or Equity ASAP] Holder shall refuse to furnish relevant testimony, documentary materials or other information requested by the Conduct Panel during the course of the Proceeding. All parties are entitled to be represented by counsel who may participate fully in the Proceeding. In the event of a hearing, a transcript of the hearing shall be made and shall become part of the record.

(4)—No change.

(5) If after a hearing or review on the papers pursuant to subsection (d) of this Rule, the Conduct Panel determines that an ETP Holder, [ETP Firm, Equity ASAP Holder,] or associated person of a ETP [Firm or Equity ASAP] Holder has violated one or more rules of the Corporation, as alleged, the Conduct Panel: (i) may impose any one or more of the disciplinary sanctions authorized by the Corporation's Bylaws and Rules; and (ii) shall impose a forum fee against the person charged in the amount of two hundred fifty dollars ($250) if the determination was reached based on a review of the papers, or in the amount of five hundred dollars ($500) if a hearing was conducted. However, notwithstanding the foregoing, in the event that the Conduct Panel determines that the ETP Holder, [ETP Firm, Equity ASAP Holder,] or associated person of an ETP [Firm or Equity ASAP] Holder has violated one or more Rules of the Corporation, as alleged, and the sole disciplinary sanction imposed by the Conduct Panel for such rule violation(s) is a fine which is less than the total fine initially imposed by the Regulatory Staff for the subject violation(s), the Conduct Panel shall have the discretion to waive the imposition of a forum fee.

(6)—No change.

(e)–(f)—No change.

Minor Rule Plan

Rule 10.12.

(a) In lieu of initiating a formal disciplinary action or proceeding, the Corporation may, subject to the requirements set forth in this Rule, impose a fine not to exceed five thousand dollars ($5,000) on any ETP Holder[, ETP Firm, Equity ASAP Holder,] or associated person of an ETP [Firm or Equity ASAP] Holder, for any violation of a Rule of the Corporation that has been determined to be minor in nature.

(b) Whenever it appears that an ETP Holder, [ETP Firm, Equity ASAP Holder,] or associated person of an ETP [Firm or Equity ASAP] Holder has violated a [rule] *Rule* under this Minor Rule Plan, the Corporation shall serve on such person or organization a written statement setting forth (i) the Rule(s) alleged to have been violated; (ii) the act or omission constituting each such violation; and (iii) notice that such person or organization may submit a written statement to a designated committee for its consideration.

(c)–(e)—No change.

(f) Nothing in this Rule shall require the Corporation to impose a fine for a violation of any [rule] *Rule* under this Minor Rule Plan. If the Corporation determines that any violation is not minor in nature, the Corporation may, at its discretion, proceed under Rule 10.4 rather than under this Rule.

[(g) Floor Citations. A Trading Official may issue a Floor Citation to any ETP Holder, ETP Firm, or associated person of an ETP Firm, when it appears to such Official(s) that a Minor Rule Plan violation specified in subsection (h) or (i) of this Rule has occurred. In issuing a Floor Citation, the Trading Official shall:

(1) Apprise the person cited of the alleged violation;

(2) Ask the person cited to indicate by signature on the citation acknowledgement of receipt of the citation; provided that the

requested signature is for receipt purposes only and a failure or unwillingness to sign is not to be considered as invalidating the issuance of the citation;

(3) Give the top copy of the citation to the person alleged to have committed the violation; and

(4) Give the remaining copies of the citation to the appropriate staff person, who will then forward such copies of the Regulatory Staff for processing.]

[Except as provided in Rule 10.13 (the Summary Sanction Procedure), the] *The* circumstances underlying the issuance of each [floor] citation shall be reviewed by the Business Conduct Committee for a determination of whether the evidence is sufficient to find a violation of any Rules of the Corporation.

[(h)] *(g)* Minor Rule Plan: [Floor Decorum and] Minor Trading Rule Violations.

[(1)–(8)—Deleted.]

[(9)] *(1)* Short Sale Rules. (Rule [7.40] *7.16)*

[(10) Dissemination of Quotations in Local Issues. (EFPA 2–B)]

[(11)] *(2)* Failure to follow the provisions of the rules and regulations governing the use of the Intermarket Trading System (''ITS''). (Rules [7.67–7.69)] *7.55–7.57)*

[(12) failure to Clear the Post Properly. (EFPA 1–B)]

[(i)] *(h)* Minor Rule Plan: Record Keeping and Other Minor rule Violations.

(1)–(3)—No change.

(4) Failure to notify the Corporation of any change of address where notices may be served. (Rule [2.18(b))] *2.16(b)*)

(5)–(6)—No change.

[(j)] *(i)* Minor Rule Plan: Recommended Fine Schedule.

| | Fines | | |
|---|---|---|---|
| | 1st violation | 2nd violation | 3rd violation |
| (1) [Floor Decorum and] Minor Trading Rule Violations [1] | | | |
| [1.–.8—Deleted.] | | | |
| [9] *1.* Short Sale Rules. (Rule [7.40)] *7.16*) | $500.00 | $1,000.00 | $2,500.00 |
| [10. Dissemination of Quotations in Local Issues (EFPA 2–B))] | ..... | ..... | $100.00 |
| [11] *2.* Failure to follow the provisions of *the rules* and regulations governing the use of the Intermarket Trading System (''ITS''). (Rules *7.55–7.57)* [7.67–7.69)] | $500.00 | $1,000.00 | $2,000.00 |
| [12. Failure to Clear the Post Properly. (EFPA 1–B)) | Official Warning] | $250.00 | $500.00 |
| (2) Record Keeping and Other Minor Rule | | | |
| 1. Failure to submit trade data to the [Exchange] *Corporation* in a timely manner. (Rule 10.2(e)) | $250.00 | $500.00 | $750.00 |
| 2. Failure to file a Securities Investor Protection Corporation form and assessment in a timely manner. (Rule 4.11(b)) | $500.00 | $1,000.00 | $1,500.00 |
| 3. Failure to furnish in a timely manner [books,] records or other requested information or testimony in connection with an examination of financial responsibility and/or operational conditions. (Rule 4.11(c)) | $250.00 | $500.00 | $750.00 |
| 4. Failure to notify the Corporation of a change of address where notices may be served. (Rule [2.18(b))] *2.16(b)*) | $250.00 | $500.00 | $750.00 |
| 5. Failure to file a financial report or financial information in the type, form, manner and time prescribed by the [Exchange] *Corporation.* (Rule 4.11(a)) | $250.00 | $500.00 | $750.00 |
| 6. Delaying, impeding or failing to cooperate in [an Exchange] *a Corporation* investigation. (Rule 10.2(d)) | $500.00 | $1,000.00 | $2,000.00 |

[1] Fines for multiple violations of [Equity Floor Decorums and] Minor Trading Rules are calculated on a running two-year basis, except that violations denoted with an asterisk are calculated on a running one-year basis.

[Summary Sanction Procedure]

[Rule 10.13—Deleted.]

Hearings and Review of Decisions by the Corporation

Rule [10.14] *10.13.*

(a) General Provisions. This Rule provides the procedure for persons aggrieved by any of the following actions taken by the Corporation to apply for an opportunity to be heard and to have the action reviewed. These actions are:

(1) the denial of an ETP [or Equity ASAP];

(2) the barring of any person from becoming associated with an ETP [Firm or Equity ASAP] Holder;

(3) the suspension or cancellation of ETP trading privileges [or Equity ASAP trading privileges];

(4) the prohibition or limitation with respect to access to services provided by the Corporation, or the access to services of any ETP [Firm or Equity ASAP] Holder taken pursuant to the Bylaws, or Rules or procedures of the Corporation; or

*(5) actions taken by the Corporation pursuant to Rule 7.22, including the denial of the application for, or the termination or suspension of, a Market Maker's registration in a security or securities;*

[(5)] (*6*) actions taken *by the Corporation* pursuant to [rule 7.22] *Rule 7.23* [and 7.29];

[(6)] *(7) actions taken by the Corporation pursuant to Rule 7.25, including the denial of the application for, or the termination or suspension of, an Odd Lot Dealer's registration in a security or securities.* [denial of an applicant specialist for the appointment as a registered specialist].

The provisions of this Rule shall not apply to reviews of the following:

(A)–(C)—No change.

For purposes of this Section, a person must be ''aggrieved'' in an economic sense.

(b)—No change.

(c) Extension of Time. An application not filed within the time specified in Rule [10.14(b)] *10.13(b)* shall not be considered by the Board Appeals Committee, unless an extension of time is allowed by the Board Appeals Committee upon a showing of good cause. In order to obtain an extension of time within which to file an appeal, the applicant must, within the time specified in Rule [10.14(b)] *10.13(b)* file with the Secretary of the Corporation a request for an extension of time within which to submit the application. The request for extension will be ruled upon by the Board Appeals Committee, whose ruling will be given in writing. Rulings on requests for extension of time are not subject to appeal under Rule 10.

(d)–(m)—No change.

Miscellaneous Provision

Rule [10.15] *10.14.*—No change.

**Rule 11**

**Cancellation, Suspension and Reinstatement**

Notice of Expulsion or Suspension

Rule 11.1(a) An ETP Holder[, ETP Firm, or Equity ASAP Holder] which is expelled or suspended from any self-regulatory organization, encounters financial difficulty or operating inadequacies, fails to perform contracts, or become insolvent shall give prompt written notification to the Corporation of any such occurrence.

(b) An ETP [Firm or Equity ASAP] Holder shall give prompt written notification to the Corporation with respect to the expulsion or suspension of any [nominee or any other] associated person of such ETP [Firm or Equity ASAP] Holder by any self-regulatory organization.

Procedures for Suspension

Rule 11.2(a) This Rule sets forth the procedures for certain suspensions, cancellations, bars, limitations and

prohibitions on access to the Corporation's services.

(1) Summary Suspension. In accordance with Section 6(d)(3) of the Exchange Act, the Board of Directors of the Corporation or a committee thereof may summarily:

(i) suspend the trading privileges of an ETP Holder, [ETP Firm, Equity ASAP Holder,] or associated person of an ETP [Firm or Equity ASAP] Holder who has been and is expelled or suspended from any self-regulatory organization or barred or suspended from being associated with a member of any self-regulatory organization;

(ii) suspend the trading privileges of an ETP Holder, [ETP Firm, Equity ASAP Holder,] who is in such financial or operating difficulty that the Corporation determines and so notifies the Commission that such suspension is necessary for the protection of the investors, creditors, ETP [Holders, ETP Firms, Equity ASAP] Holders or the Corporation;

(iii) suspend the trading privileges of an ETP Holder, [ETP Firm, Equity ASAP Holder,] or associated person of an ETP [Firm or Equity ASAP] Holder who is found in violation of any of the prohibited acts as specified in Rule 6.2(a)–(f) that are violations of Rules of the Corporation; or

(iv) limit or prohibit any person with respect to access to services offered by the Corporation if subparagraph (i) or (ii) is applicable to such person or, in the case of a person who is not an ETP Holder, [ETP Firm or Equity ASAP Holder,] if the Corporation determines that such person does not meet the qualification requirements or prerequisites for such access with safety to investors, creditors, ETP [Holders, ETP Firms, Equity ASAP] Holders or the Corporation.

(2) Non-Summary Suspension. The Corporation also may take the following actions, after written notice, after the passage of any grace period and/or applicable cure period, and after opportunity for hearing:

(i) cancel ETP trading privileges of an ETP Holder [or ETP Firm] that becomes ineligible for ETP trading privileges, or that continues to be associated with an ineligible person, or suspend or bar a person from continuing to be associated with an ETP Holder [or ETP Firm] because such person is or becomes ineligible for association under Rule [2.21(a)] *2.19(a);*

[(ii)—Deleted.]

[(iii)]*(ii)* suspend or cancel trading privileges of an ETP [Holder, ETP Firm or Equity ASAP] Holder for failure to pay any fees, charges, assessments, or fines to the Corporation under Rule 3.8; or failure to comply with an arbitration award or settlement agreement related to an arbitration or mediation under Rule 12;

[(iv)]*(iii)* cancel trading privileges of an ETP [Holder, ETP Firm, or Equity ASAP] Holder for failure to file or submit or request any report, document, or other information required to be filed with or requested by the Corporation under Rule 10.2(d); or

[(v)]*(iv)* limited or prohibit any ETP [Holder, ETP Firm, Equity ASAP] Holder, or associated person of an ETP [Firm or Equity ASAP] Holder or other person with respect to access to services offered by the Corporation, if the Corporation determines that such person does not meet the qualification requirements or prerequisites for such access or such person cannot be permitted to continue to have access with safety to investors, creditors, ETP [Holders, ETP Firms, Equity ASAP] Holders or the Corporation.

(b)—No change.

(c) Any action taken pursuant to Rule 11.2(a)(1) or (2) shall also be subject to the applicable provisions of Rule [10.14]*10.13.*

Commentary

.01—No change.

Effect of Suspension or Cancellation

Rule 11.3. When an ETP Holder, [ETP Firm, Equity ASAP Holder,] or associated person of an ETP [Firm or Equity ASAP] Holder has its trading privileges suspended or canceled by the Corporation for any reason specified in Rule 11.2(a)(1) or (2), such a person or organization shall be deprived during the term of the suspension of all rights and trading privileges conferred by the ETP [or Equity ASAP], except as otherwise provided in the Rules of the Corporation. The person or organization having trading privileges suspended or canceled shall remain subject to the disciplinary power of the Corporation with respect to any disciplinary action as provided by the Rules of the Corporation.

Disciplinary Measures During Suspension

Rule 11.4. An ETP Holder, [ETP Firm, Equity ASAP Holder,] or associated person of an ETP [Firm or Equity ASAP] Holder whose trading privileges are suspended under the provisions of Rule 11.2(a)(1) or (2) may be disciplined pursuant to the Rules of the Corporation for any offense committed either before or after the announcement of the suspension, in all respects as if no suspension were in effect.

Investigation Following Summary Suspension

Rule 11.5. Every ETP Holder, [ETP Firm, Equity ASAP Holder,] or associated person of an ETP [Firm or Equity ASAP] Holder whose trading privileges are suspended under the provisions of Rule 11.2(a)(1) shall immediately afford every facility required by the Corporation for the investigation of its affairs as required by the Board of Directors and shall, after the notification of the suspension, file with the Corporation a written statement covering all information required by the Corporation.

Grounds for Cancellation

Rule 11.6. If an ETP Holder, [ETP Firm, Equity ASAP Holder,] or associated person of an ETP [Firm or Equity ASAP] Holder has had privileges suspended under the provisions of Rule 11.2(a)(1) and such person or organization does not request a hearing within thirty (30) calendar days to review such suspension or at such hearing it is determined that the suspension was properly imposed, and such person or organization, has not within forty-five (45) calendar days after the suspension remedied the reason for such suspension and has not applied for reinstatement, the Board may cancel the trading privileges of such person or organization. If application for reinstatement is made within forty-five (45) calendar days of suspension as provided in this Rule, and such application is disapproved, the Board may cancel the trading privileges of such [the] person or organization.

Reinstatement

Rule 11.7. When an ETP Holder, [ETP Firm, Equity ASAP Holder,] or associated person of an ETP [Firm or Equity ASAP] Holder has had trading privileges suspended under the provisions of Rule 11.2(a)(1) or (2) applies for reinstatement, it must be demonstrated to the satisfaction of the Corporation that the problem or problems responsible for such suspension have been satisfactorily resolved. If such problem involves financial difficulty or operating inadequacies, the person or organization shall furnish to the Corporation comprehensive financial and operating reports in a form and manner to be prescribed by the Corporation. If the ETP Holder[, ETP Firm, Equity ASAP] Holder, or associated person of an ETP [Firm or Equity ASAP] Holder furnishes satisfactory proof of a resolution of the problem or problems responsible for such suspension, the Corporation shall notify in writing all ETP [Holders, ETP Firms, and Equity ASAP] Holders of the application for reinstatement and that a meeting of the Board to consider it will be held on a designated date which shall be not less than ten (10) business days subsequent to such notice. At such meeting at which a quorum is present the ETP Holder, [ETP Firm, Equity ASAP Holder,] or associated person of an ETP [Firm or Equity ASAP] Holder may be reinstated provided not less than a majority of the Directors voting approve the application.

Failure To Obtain Reinstatement

Rule 11.8. If an ETP Holder[, ETP Firm, Equity ASAP Holder,] or associated person of an ETP [Firm or Equity ASAP] Holder whose trading privileges have been suspended under the provisions of this Rule fails or is unable to apply for reinstatement in accordance with Rule 11.7, or fails to obtain reinstatement as therein provided, trading privileges conferred by an ETP [or Equity ASAP] will terminate.

**Rule 12**

**Arbitration**

Matters Subject to Arbitration

Rule 12.1. For purposes of this Rule, the following definitions apply:

(a) [the term ''ETP'' shall mean both ETP and Equity ASAP permits.]

[(b)] the terms ''service'' or ''serve'' shall mean effecting the delivery of a document to persons via first class mail, overnight delivery, hand delivery, or facsimile.

[(c)] *(b)* the term ''associated person'' shall also include ''affiliated'' person ''approved person'' and ''allied person''.

[(d)] *(c)* the term ''Director of Arbitration'' shall mean any person appointed or designated by the Corporation's Chief Executive Officer to direct the Corportion's arbitration program.

Rule 12.2.

(a) Any dispute, claim or controversy between parties who are ETP Holders [,ETP

Firms] or associated persons arising in connection with the securities business of such parties shall, at the request of any such party, be submitted for arbitration in accordance with this Rule.

(b)—No change.

(c) Any dispute, claim or controversy between a customer or non-ETP Holder and an ETP Holder[, ETP Firm] and/or associated person arising in connection with the securities business of such ETP Holder[, ETP Firm] and/or associated person shall be arbitrated under this Rule as provided by any duly executed and enforceable written agreement, or upon the request of the customer or non-ETP Holder.

(d)—No change.

(e) Class Action Claims

(1)–(2)—No change.

(3) No ETP Holder[, ETP Firm] or associated person shall seek to enforce any agreement to arbitrate against a customer that has initiated in court a putative class action or is a member of a putative or certified class with respect to any claims encompassed by the class action unless and until: (i) the class certification is denied; (ii) the class is decertified; (iii) the customer is excluded from the class by the court; or (iv) the customer elects not to participate in the putative or certified class action or, if applicable, has complied with any conditions for withdrawing from the class prescribed by the court.

(4) No ETP Holder[, ETP Firm] and/or associated person shall be deemed to have waived any of its rights under this Rule or under any agreement to arbitrate to which it is party except to the extent stated in this paragraph (e).

(f)–(g)—No change.

(h) It may be deemed conduct inconsistent with just and equitable principles of trade for an EPT Holder or [an ETP Firm, or] a person associated with an ETP Holder [or an ETP Firm] to fail to submit to arbitration on demand under the provisions of this Rule, or to fail to appear or to provide any document in his or her or its possession or control as directed pursuant to the provisions of this Rule or to fail to honor an award of arbitrators properly rendered pursuant to the provisions of this Rule where a timely motion has not been made to vacate or modify such award pursuant to applicable law.

(i)—No change.

(j) For purposes of this Rule, the terms ETP Holder, [ETP Firm,] associated person and employee of an ETP Holder [or ETP Firm] shall be deemed to encompass those persons who were ETP Holders, [ETP Firms] or associated persons or employees thereof at the time the circumstances occurred which gave rise to the controversy.

Simplified Arbitration for Public Customers

Rule 12.3(a). Any dispute, claim or controversy arising between a public customer(s) and an ETP Holder[, an ETP Firm] and/or person associated with an ETP Holder [or an ETP Firm] required to be arbitrated under the Bylaws and Rules of the Corporation and involving a dollar amount not exceeding $10,000, exclusive of attendant costs and interest, shall upon demand of the customer(s) or by written consent of the parties be arbitrated as hereinafter provided.

(b)–(1)—No change.

Rule 12.4–12.8—No change.

Designation of Number of Arbitrators

Rule 12.9.

(a)—No change.

(b In arbitration matters involving public customers and where the amount in controversy exceeds $30,000, or where the matter in controversy does not involve or disclose a money claim, the Director of Arbitration shall appoint an arbitration panel which [consist] *consists* of no fewer than three (3) arbitrators, nor more than five (5), at least a majority of whom shall not be from the securities industry, unless the public customer requests a panel consisting of at least a majority from the securities industry.

(c) An arbitrator will be deemed as being from the securities industry if he or she:

(1) is a person associated with an ETP Holder, [ETP Firm,] broker/dealer, government securities broker, government securities dealer, municipal securities dealer or registered investment advisor, or

(2)–(4)—No change.

(d)—No change.

(e) ETP Holder Controversies. In all arbitration matters not involving public customers, the Director of Arbitration shall assign the matter to a panel consisting of ETP Holders [or ETP Firm] representatives. Such members of the arbitration panel shall not be affiliated with any of the parties to the controversy or have any interest in the matter to be heard. For controversies involving an amount of $10,000 or less, the panel shall consist of one (1) ETP Holder [or ETP Firm] representative. For all other controversies, the panel shall consist of three (3) ETP [Holders or ETP Firm] *Holder* representatives.

(f)–(g)—No change.

Rule 12.10–12.13—No change.

Initiation of Proceedings

Rule 12.14. Except as otherwise provided herein, an arbitration proceeding under this Rule shall be instituted as follows:

(a)–(b)—No change.

(c) Service and Filing with the Director of Arbitration

(1)—No change.

(2) If an ETP [Firm] *Holder* and a person associated with the ETP [Firm] *Holder* are named parties to an arbitration proceeding at the time of the filing of the Statement of Claim, service on the associated person may be made by service on the named ETP [Firm] *Holder* and the ETP [Firm] *Holder* shall then perfect service upon the associated person. If the ETP [Firm] *Holder* does not undertake to represent the associated person, the ETP [Firm] *Holder* shall serve the associated person with the Statement of Claim, shall advise all parties and the Director of Arbitration of that fact, and shall provide such associated person's current address.

(d) Joining and Consolidation

(1) Permissive Joinder. All persons may join in one action as claimants if they assert any right to relief jointly, severally, or arising out of the same transaction, occurrence or series of transactions or occurrences and if any questions of law or fact common to these claimants will arise in the action.

All persons may be joined in one action as respondents if there is asserted against them jointly or severally, any right to relief arising out of the same transaction, occurrence or series [or] *of* transactions or occurrences and if any questions of law or fact common to all respondents will arise in the action.

A claimant or respondent need not assert rights to or defend against all the relief demanded. Judgment may be given for one or more claimants according to their respective rights to relief, and against one or more respondents according to their respective liabilities.

(2)–(4)—No change.

Rule 12.15–12.21—No change.

Power To Direct Appearances and Production of Documents

Rule 12.22. The arbitrators shall be empowered without resort to the subpoena process to direct the appearance of any person employed or associated with any ETP Holder [or ETP Firm] and/or direct the production of any records in the possession or control of such persons, ETP Holders [or ETP Firms]. Unless the arbitrator(s) direct otherwise, the party requesting the appearance of a person or the production of documents under this section shall bear all reasonable costs of such appearance and/or production.

Rule 12.23–12.31—No change.

Schedule of Fees

Rule 12.32(a)–(i)—No change.

(j) In an industry or clearing controversy, where the ETP Holder [or ETP Firm] claim or controversy does not involve or disclose a money claim, or is unspecified, the filing fee will be $300 and the hearing session deposit shall be $1,000 per hearing session.

**Schedule of Fees**

PUBLIC CUSTOMER CLAIMANT

(E.g., public customer v. ETP [Firm and/or ETP] Holder)

| Amount in dispute (exclusive of interest and expenses) | Filing fee | Hearing session deposit | |
|---|---|---|---|
| | | *Documents only* | *Hearing w/1 arbitrator* |
| $.01–$1,000.00 | $15 | $15 | $15 |

PUBLIC CUSTOMER CLAIMANT—Continued

(E.g., public customer v. ETP [Firm and/or ETP] Holder)

| Amount in dispute (exclusive of interest and expenses) | Filing fee | Hearing session deposit | |
|---|---|---|---|
| | | *Documents only* | *Hearing w/1 arbitrator* |
| $1,000.01–$2,500.00 | 25 | 25 | 25 |
| $2,500.01–$5,000.00 | 50 | 75 | 100 |
| $5,000.01–$10,000.00 | 75 | 75 | 200 |

| Amount in dispute (exclusive of interest and expenses) | Filing fee | Hearing session deposit | |
|---|---|---|---|
| | | One arbitrator or pre-hearing conference | Three arbitrators |
| $10,000.01–$30,000.00 | $100 | $300 | $400 |

| Amount in dispute (exclusive of interest and expenses) | Filing fee | Hearing session deposit | |
|---|---|---|---|
| | | Pre-hearing conference | Three arbitrators |
| $30,000.01–$50,000.00 | 120 | *$300 | 400 |
| $50,000.01–$100,000.00 | 150 | **300 | 500 |
| $100,000.01–$500,000.00 | 200 | **300 | 750 |
| $500,000.01–$5,000,000.00 | 250 | **300 | 1,000 |
| Above $5,000.00 | 300 | **300 | 1,500 |

INDUSTRY/CLEARING CLAIMANT

(E.g., ETP Holder [or Firm] v. customer

| Amount in dispute (exclusive of interest and expenses) | Filing fee | Hearing session deposit | |
|---|---|---|---|
| | | *Documents only* | *Hearing w/1 arbitrator* |
| $01–$10,000.00 | $500 | $75 | $300 |

| Amount in dispute (exclusive of interest and expenses) | Filing fee | Hearing session deposit | |
|---|---|---|---|
| | | *One arbitrator* | *Three arbitrators* |
| $10,000.01–$30,000.00 | $500 | *$300 | $600 |
| $30,000.01–$100,000.00 | 500 | **300 | 600 |

| Amount in dispute (exclusive of interest and expenses) | Filing fee | Hearing session deposit | |
|---|---|---|---|
| | | Pre-hearing conference | Three arbitrators |
| $100,000.01–$500,000.00 | $500 | **$300 | $750 |
| $500,000.01–$5,000,000.00 | 500 | **300 | 1,000 |
| Above $5,000,000.00 | 500 | **300 | 1,500 |

* This would apply to the following cases:
(a) where parties elect to have claims between $10,000 and $30,000 resolved by a single arbitrator pursuant to Rule 12.9.
(f) pre-hearing conferences with a single arbitrator in cases where a three person panel has been appointed.
** For pre-hearing conferences only.

ETP HOLDER [OR ETP FIRM] CONTROVERSIES

(E.g., associated person v. ETP Holder [ or Firm])

| Amount in dispute (exclusive of interest and expenses) | Filing fee | Hearing session deposit | |
|---|---|---|---|
| | | *One arbitrator* | *Three arbitrators* |
| $.01–$10,000.00 | $100 | $200 | –NA– |
| $10,000.01–$100,000 | 200 | –NA– | $750 |
| $100,000.01 or more | 300 | –NA– | 1,000 |

ETP Holder Surcharge

Rule 12.33(a). Each ETP Holder[, ETP Firm] or associated person who is named a party to an arbitration proceeding, whether in a claim, counterclaim, third-party claim, or cross-claim shall be assessed a non-refundable surcharge pursuant to the schedule in Rule 12.33(c) when the Arbitration Department perfects service of the claim naming the ETP Holder[, ETP Firm] or associated person on any party to the proceeding.

For each associated person who is named, the surcharge shall be assessed against the ETP Holder(s) [or ETP firm(s)] which employed the associated person at the time of the events which gave rise to the dispute, claim or controversy.

No ETP Holder [or ETP Firm] shall be assessed more than a single surcharge in any arbitration proceeding. The surcharge shall not be subject to reimbursement under rule 12.32.

(b) For purposes of this Rule, service is perfected when the Arbitration Department properly serves the Respondent(s) to the arbitration proceeding under Rule 12.14(c).

(c) Schedule of Surcharge Rates:

| Amount in dispute | Surcharge |
|---|---|
| $0.01 to $10,000 | $100 |
| $10,000.01 to $50,000 | 200 |
| $50,000.01 to $100,000 | 300 |
| $100,000.01 to $500,000 | 350 |
| About $500,000 | 500 |

Requirements when Using Pre-Dispute Arbitration Agreements With Customers

Rule 12.34—No change.

**Rule 13**

**Liability of Directors and Corporation**

Liability of Directors

Rule 13.1. Any provision of the [Articles] *Certificate* of Incorporation, Bylaws, or the Rules of the Corporation that provides or purports to provide that the members of the Board of Directors shall not be liable to the Corporation or its ETP Holders[, Equity ASAP Holders, and ETP Firms] for monetary damages for breach of fiduciary duty as a Director shall not be applied in any instance in which such liability arises directly or indirectly as a result of a violation of federal securities laws.

Liability of Corporation

Rule 13.2(a). Except as otherwise expressly provided in these [rules] *Rules*, neither the Corporation nor its Directors, officers, committee members, employees or agents shall be liable to the ETP Holders[, Equity ASAP Holders, and ETP Firms] of the Corporation or to persons associated therewith for any loss, expense, damages or claims that arise out of the use or enjoyment of the facilities or services afforded by the Corporation, any interruption in or failure or unavailability of any such facilities or services, or any action taken or omitted to be taken in respect to the business of the Corporation except to the extent such loss, expense, damages or claims are attributable to the willful misconduct, gross negligence, bad faith or fraudulent or criminal acts of the Corporation or its officers, employees or agents acting within the scope of their authority. The limitation of liability set forth in this paragraph shall not apply to violations of federal securities laws.

Without limiting the generality of the foregoing and subject to the same exception, the Corporation shall have no liability to any person for any loss, expense, damages or claims that result from any error, omission or delay in calculating or disseminating any current or closing index value, or any reports of transactions in or quotations for securities traded on the Corporation.

The Corporation makes no warranty, express or implied, as to results to be obtained by any person or entity from the use of any data transmitted or disseminated by or on behalf of the Corporation or any reporting authority designated by the Corporation, including but not limited to reports of transactions in or quotations for securities traded on the Corporation, or reports index values or related data, and the Corporation makes no express or implied warranties of merchantability or fitness for a particular purpose or use with respect to any such data. The foregoing limitations of liability and disclaimers shall be in addition to, and not in limitation of, any other provisions of the Bylaws or Rules.

(b) Whenever custody of an unexecuted order is transmitted by an ETP Holder[, Equity ASAP Holder, or ETP Firm] to or through the Corporation's order routing systems, electronic book or automatic executions systems or to any other automated facility of the Corporation whereby the Corporation assumes responsibility for the transmission or execution of the order, provided that the Corporation has acknowledged receipt of such order, the Corporation's liability for the negligent acts or omissions of its employees or for the failure of its systems or facilities shall not exceed the limits provided in this paragraph (b), and no assets of the Corporation shall be applied or shall be subject to such liability in excess of the following limits:

(1) As to any one or more claims made by a single ETP Holder[, Equity ASAP Holder, or ETP Firm] growing out of the use or [employment] *enjoyment* of the facilities afforded by the Corporation on a single trading day, the Corporation shall not be liable in excess of the larger of $100,000, or the amount of any recovery obtained by the Corporation under any applicable insurance maintained by the Corporation;

(2) As to the aggregate of all claims made by all ETP Holders[, Equity ASAP Holders, and ETP Firms] growing out of the use or [employment] *enjoyment* of the facilities afforded by the Corporation on a single trading day, the Corporation shall not be liable in excess of the larger of $250,000 or the amount of the recovery obtained by the Corporation under any applicable insurance maintained by the Corporation.

(3) As to the aggregate of all claims made by all ETP Holders[, Equity ASAP Holders, and ETP Firms] growing out of the use or enjoyment of the facilities afforded by the Corporation during a single calendar month, the Corporation shall not liable in excess of the larger of $500,000, or the amount of the recovery obtained by the Corporation under any applicable insurance maintained by the Corporation.

(c)—No change.

Legal Proceedings Against Directors, Officers, Employees or Agents

Rule 13.3. No ETP Holder[, Equity ASAP Holder, ETP Firm], or any other associated person shall institute a lawsuit or other legal proceeding against any Director, officer, employee, agent or other official of the Corporation or any subsidiary of the Corporation, for actions taken or omitted to be taken in connection with the official business of the Corporation or any subsidiary, except to the extent such actions or omissions constitute violations of federal securities laws for which a private right of action exists and except with respect to the Directors of the Corporation, to the extent inconsistent with the [Articles] *Certificate* of Incorporation. This Rule shall not apply to appeals of disciplinary actions or other actions by the Corporation as provided for in the Rules.

Corporation's Costs of Defending Legal Proceedings

Rule 13.4. Any ETP Holder[, Equity ASAP Holder, ETP Firm,] or any other associated person who fails to prevail in a lawsuit or other legal proceeding instituted by such person against the Corporation or any of its Directors, officers, committee members, employees or agents, and related to the business of the Corporation, shall pay to the Corporation all reasonable expenses, including attorney's fees, incurred by the Corporation in the defense of such proceeding, but only in the event that such expenses exceed Fifty Thousand Dollars ($50,000.00). This provision shall not apply to disciplinary actions by the Corporation, to administrative appeals of actions of the Corporation or in any specific instance where the Board of Directors has granted a waiver of this Rule.

**Rule 14**

**Plan of Delegation of Functions by the Pacific Exchange, Inc. to PCX Equities, Inc.**

Pacific Exchange, Inc.

Rule 14.1. The Pacific Exchange, Inc. (''PCX''), the registered national securities exchange, is the parent company of the wholly-owned subsidiary PCX Equities Inc. (''PCX Equities). The term ''Exchange'' shall refer to the PCX and PCX Equities collectively.

(a) Functions and Authority of the PCX. The PCX shall have ultimate responsibility for the rules and regulations of the Exchange and its operation and administration. As set forth below in Rule 14.2(a), the PCX has delegated certain authority and functions to PCX Equities. Actions taken pursuant to delegated authority, however, remain subject to review, ratification or rejection by the PCX Board of Governors (''PCX Board'') in accordance with procedures established by that Board. Any function or responsibility as a registered national securities exchange under the Securities Exchange Act of 1934 (''Act''), or as set forth in the [Certification]

*Certificate* of Incorporation, the Constitution or the PCX Rules is hereby reserved, except as expressly delegated to PCX Equities. In addition, the PCX expressly retains the following authority and functions:

(1)–(9)—No change.

(b) Access to and Status of Officers, Directors, Employees, Books, Records, and Premises of PCX Equities. Notwithstanding the delegation of authority to PCX Equities, as set forth in Rule 14.2(a) below, the staff, books, records, premises, officers, directors, employees and agents of the PCX Equities are subject to the oversight of the PCX pursuant to the Act*, and all officers, directors, employees, and agents of PCX Equities are officers, directors, employees, and agents of the PCX for purposes of the Act.* The books and records of PCX Equities shall be subject at all times to inspection and copying by the PCX.

PCX Equities Inc. (''PCX Equities'')

Rule 14.2(a) Delegation of Functions and Authority.

(1) Subject to Rule 14.1(a)(9), the PCX hereby delegates to PCX Equities and its subsidiary Pacific Clearing Corporation and PCX Equities assumes the following responsibilities and functions with respect to the equities business of the Exchange:

(A) To establish and interpret rules and regulations and provide exemptions for ETP Holders[, ETP Firms, Equity ASAP Holders] or associated persons including, but not limited to trading rules, fees, access to and use of system facilities and arbitration procedures.

(B) To determine regulatory and trading policies, including the development and adoption of necessary or appropriate rule changes, relating to the business conduct and trading activities of ETP Holders[, ETP Firms, Equity ASAP Holders] and associated persons. This includes, but is not limited to,

(i) arbitration of disputes among and between ETP Holders[, ETP Firms, Equity ASAP Holders] *and* associated persons and customers arising from transactions on the facility;

(ii)—No change.

(iii) qualifications for ETP Holders[, ETP Firms, Equity ASAP Holders] and associated persons;

(iv) clearance and settlement of securities transactions and other financial responsibility and operational matters affecting ETP Holders[, ETP Firms, Equity ASAP Holders] and associated persons in general and securities traded on PCX Equities;

(v)–(vi)—No change.

(C) To take necessary or appropriate action to assure compliance with the [rules] *Rules* and procedures of PCX Equities, the federal securities laws, and other laws, rules and regulations that the PCX Equities has the authority to administer or enforce, through examination, surveillance, investigation, enforcement, disciplinary, and other programs.

(D) To administer programs and systems for the surveillance and enforcement of rules governing ETP Holders[, ETP Firms, Equity ASAP Holders] and associated persons' conduct and trading activities on PCX Equities.

(E) To examine and investigate ETP Holders[, ETP Firms, Equity ASAP Holders] and associated persons to determine if they have violated the [rules] *Rules* or procedures of PCX Equities, the federal securities laws, and other laws, rules, and regulations that the Exchange has the authority to administer, interpret, or enforce.

(F)–(G)—No change.

(H) To determine whether ETP Holder [and Equity ASAP Holder] applicants have met the requirements established by PCX Equities for holding an ETP [or Equity ASAP].

(I) To determine whether persons seeking to register as associated persons of ETP Holders[, ETP Firms or Equity ASAP Holders] have met such qualifications for registration as may be established by PCX Equities, including whether statutorily disqualified persons will be permitted to associate with particular ETP Holders[, ETP Firms or Equity ASAP Holders] and the conditions of such association.

(J) To place restrictions on the business activities of ETP [Holders, ETP Firms, Equity ASAP] Holders and associated persons consistent with the public interest, the protection of investors, and the federal securities laws.

(K) To establish and assess fees and other charges on ETP Holders, [ETP Firms, Equity ASAP Holders,] associated persons, issuers and others using the products, services or facilities of PCX Equities.

(L)–(O)—No change.

(P) To develop and adopt [rules] *Rules,* interpretations, policies, and procedures and provide exemptions to maintain and enhance the integrity, fairness, efficiency, and competitiveness of PCX Equities.

(Q)—No change.

(R) To develop, adopt, administer and enforce policies and [rules] *Rules* of PCX Equities governing listing standards applicable to securities traded on PCX Equities and the issuers of those securities.

(S)–(U)—No change.

(2)–(c)—No change.

***Archipelago Exchange, L.L.C., and Archipelago Holdings, L.L.C.***

*Rule 14.3(a) Access to and Status of Books, Records, Premises, Officers, Directors, Agents and Employees of Archipelago Exchange, L.L.C. The books, records, premises, officers, directors, agents and employees of Archipelago Exchange, L.L.C., shall be deemed to be the books, records, premises, officers, directors, agents and employees of PCX and PCX Equities for purposes of and subject to oversight pursuant to the Securities Exchange Act. The books and records of Archipelago Exchange, L.L.C., shall be subject at all times to inspection and copying by the PCX, PCX Equities and the SEC.*

*(b) Access to and Status of Officers and Directors of Archipelago Holdings, L.L.C. All officers and directors of Archipelago Holdings, L.L.C., shall be deemed to be officers and directors of PCX and PCX Equities for purposes of and subject to oversight pursuant to the Securities Exchange Act.*

*(c) Paragraphs (a) and (b) above shall not be deemed to create any rights or benefits for any person or entity other than the SEC.*

**[PCX Equities, Inc.]**

**[Equity Floor Procedure Advices]**

[1–A—3–A—Deleted.]

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