

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

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Text of Proposed FINRA Rules

(Marked to Show Changes from NASD Rules 1011, IM-1011-1, 1012, 1013, IM-1013-1, IM-1013-2, 1014, 1015, 1016, 1017, 1019, 1090; NASD Rules 1011, IM-1011-1, 1012, 1013, IM-1013-1, IM-1013-2, 1014, 1015, 1016, 1017, 1019, 1090 to be Deleted in their Entirety from the Transitional Rulebook

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1000. MEMBER APPLICATION AND ASSOCIATED PERSON REGISTRATION

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1100. NEW AND CONTINUING MEMBERSHIP [APPLICATION]

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1110. General Provisions

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[1010. Membership Proceedings]

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[1011]1111. Definitions

Unless otherwise provided, terms used in the Rule [1010]1100 Series shall have the meaning as defined in Rules [0120]0160 and 9120. References within the Rule 1100 Series to FINRA offices or departments refer to offices so designated by FINRA or FINRA Regulation.

(a) "Applicant"

The term "Applicant" means a person that applies for approval of new FINRA membership [in FINRA] under Rule [1013]1123 or a member that [files]applies for approval of a[n] continuing membership application [for approval of a change in ownership, control, or business operations] under Rule [1017]1131. An Applicant may also be referred to as a "member" in the context of the Rule 1100 Series.

(b) "Application"

The term "Application" means a new membership application (or Form NMA) filed under Rule 1123, or a continuing membership application (or Form CMA) filed under the Rule 1130 Series, as applicable, including all information and documents requested therein and as otherwise specified in the Rule 1100 Series.

[(b)](c) "Associated Person"

(1) The term "Associated Person" means:

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

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

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

[(3)](D) any company, government or political subdivision or agency or instrumentality of a government controlling or controlled by [or controlling] the Applicant;

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

[(5)](E) any person directly or indirectly controlling the Applicant whether or not such person is registered or exempt from registration under the FINRA By-Laws or [NASD]FINRA [R]rules;

[(6)](F) any person engaged in investment banking or securities business controlled directly or indirectly by the Applicant whether such person is registered or exempt from registration under the FINRA By-Laws or [NASD]FINRA [R]rules;
or

[(7)](G) any person who will be or is anticipated to be a person described in subparagraphs (A) through (F) above.

(2) The term "Associated Person" in this paragraph excludes any person with a de minimis ownership interest of less than 10 percent in a partnership, corporation, association or other legal entity, unless that person is entitled under the legal entity's constituent documents to 10 percent or more of the legal entity's profits or distributions or otherwise controls the Applicant.

[IM-1011-1](d) "Associated Person Involved in Sales"

The term "Associated Person involved in sales" includes [all]any Associated Person[s], [whether or not] registered or unregistered, who [are]is involved in sales activities with public customers, including functioning as a sales assistant[s] and cold caller[s], but [excludes]excluding an Associated Person whose function is solely clerical [back office,] or ministerial, and [trading] other personnel who are not involved in sales activities.

(e) "Control"

(1) The term "control" (including the terms "controlling" or "controlled by") means the possession, direct or indirect, of the power or ability to direct or cause the direction of the management or policies of a person, whether through ownership of voting securities, by contract, or otherwise.

(2) A person shall be presumed to control another person if such person, directly or indirectly (ownership interest of less than 25 percent will not preclude aggregation):

(A) is a director, general partner, managing member, officer or principal exercising executive responsibility (or person occupying a similar status or performing similar functions) of the other person;

(B) has the right to vote 25 percent or more of a class of voting securities;

(C) has the power to sell or direct the sale of 25 percent or more of a class of voting securities;

(D) is entitled to receive 25 percent or more of the profits; or

(E) in the case of a partnership or limited liability company, has the right to receive upon dissolution, or has contributed, 25 percent or more of the capital.

(3) Control, presumed by one or more of the above powers, abilities or circumstances may be rebutted by proving that the factor does not exist or by showing other factors that negate the presumption of control. The presumption of control shall not apply where such person holds voting securities of the Applicant, in good faith, as an agent, bank, broker, nominee, custodian or trustee for one or more owners who do not individually or as a group have control of such entity.

[1012(e)](f) [Computation of Time]"Day"

[(1) Calendar Day]

[In the Rule 1010 Series,]The term "day" means calendar day.

[(2) Formula]

In [computing] calculating a period of time under the Rule [1010]1100 Series, the day of the act[,] [event, default, or lapse] from which the period of time designated begins to run shall not be included[.]; provided, however, that where [T]the last day of the period so [computed]calculated [shall be included unless it] is a Saturday, Sunday[,] or [Federal holiday, in which event the period runs until the end of the next day that is not a Saturday, Sunday, or Federal holiday. Intermediate Saturdays, Sundays, and Federal holidays shall be excluded from the computation when the period prescribed is ten days or less]a day on which FINRA is otherwise closed, the period shall run until the end of the next business day.

[(c)](g) "Department"

The term "Department" means the Department of Member Regulation of FINRA.

[(d)](h) "Director"

The term "Director" means a member of the FINRA Regulation Board.

(i) "Disciplinary History"

The [safe harbor is not available to any member that has disciplinary history. For purposes of this Interpretation,] term "disciplinary history" means a finding of a violation by the member or a principal of the member within the past five years by the [Securities and Exchange Commission]SEC, a self-regulatory organization, or a foreign financial regulatory authority [of] involving one or more of the following provisions (or [a] comparable foreign provisions) or rules or regulations thereunder:

(1) [v]Violations of the types enumerated in: Sections 15(b)(4)(E) and [Section] 15(c) of the [Securities] Exchange Act [of 1934]; Section 17(a) of the Securities Act [of 1933]; SE[C]A Rules 10b-5 and 15g-1 through 15g-9;

(2) Violations of the following [NASD]FINRA [R]rules and all predecessor NASD rules to such FINRA rules:

(A) Rule [2110]2010 (Standards of Commercial Honor and Principles of Trade) (only if the finding of a violation is for unauthorized trading, churning, conversion, material misrepresentations or omissions to a customer, front[-] running, trading ahead of research reports or excessive markups)[,];

(B) Rule [2120]2020 (Use of Manipulative, Deceptive or Other Fraudulent Devices)[,];

(C) Rule [2310]2110 (Suitability)[,];

(D) Rule 2121 (Fair Prices and Commissions);

(E) Rules [2330]2150 (Improper Use of Customers' Securities or Funds; Prohibition Against Guarantees and Sharing in Accounts) and 4330 (Customer Protection — Permissible Use of Customers' Securities)[,] [2440,];

(F) Rule [3010]3110 (Supervision) (only if the finding of a violation is for failure to supervise [only])[,];

(G) Rule [3310]5210 (Publication of Transactions and Quotations)[,]; [and]

(H) Rule [3330]5230 (Payments Involving Publications that Influence the Market Price of a Security);

(I) Rule 5280 (Trading Ahead of Research Reports); and

(3) Violations of MSRB Rules G-19 (Suitability of Recommendations and Transactions), G-30 (Prices and Commissions), and paragraphs (b) and (c) under G-37[(b)] (Political Contributions and Prohibitions on Municipal Securities Business and Municipal Advisory Business) [(c)].

[(e)](j) "[d]District"

The term "district" means a district established by the FINRA Regulation Board.

[(f)](k) "[d]District [o]Office"

The term "district office" means an office of FINRA located in a district.

[(g)](l) "FINRA Board"

The term "FINRA Board" means the Board of Governors of FINRA.

[(h)](m) "FINRA Regulation Board"

The term "FINRA Regulation Board" means the Board of Directors of FINRA Regulation.

[(i)](n) "Governor"

The term "Governor" means a member of the FINRA Board.

[(j)](o) "Interested FINRA Staff"

The term "Interested FINRA Staff" means:

(1) The Executive Vice President of the Department;

(2) [a]An employee of the Department who directly participates in a decision under the Rule [1014 or 1017]1150 Series[.];

(3) [a]An employee of the Department who directly supervises an employee with respect to such decision[.];

(4) [a]An employee of the Department who conducted an examination or investigation [or examination of a member that files an application under Rule 1017,] of an Applicant; and

(5) [t]The District Director for the relevant district [,] [and the head of the Department].

[(k) "material change in business operations" redesignated to paragraph (b) under proposed Rule 1131]

[(l)](p) "[p]Principal [p]Place of [b]Business"

The term "principal place of business" means the executive office from which the sole proprietor or the officers, partners, managing members, or other managers of the Applicant direct, control, and coordinate the activities of the Applicant, unless the Department determines that the principal place of business is where:

- (1) the largest number of Associated Persons of the Applicant are located; or
- (2) the books and records necessary to provide information and data to operate the business and comply with applicable rules are located.

[(m)](q) "[s]Sales [p]Practice [e]Event"

The term "sales practice event" means any customer complaint, arbitration, "statutory disqualification" as defined in Section 3(a)(39) of the Exchange Act, or civil litigation that has been reported to the Central Registration Depository, currently is required to be reported to the Central Registration Depository, or otherwise has been reported to FINRA.

[(n)](r) "Subcommittee"

The term "Subcommittee" means [a subcommittee of] an Adjudicator (as that term is defined in Rule 9120) that is appointed by the National Adjudicatory Council [that is constituted pursuant to Rule 1015] to [conduct] participate in [a review] an appeal of a Department decision issued under the Rule [1010] 1100 Series. A Subcommittee shall be composed of two or more

persons who shall be current or former members of the National Adjudicatory Council or former
Directors or Governors.

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

[This interpretive material concerns the types of business expansions that will not require a member to submit a Rule 1017 application to obtain FINRA's approval of the expansion. This safe harbor applies to: (1) firms that do not have a membership agreement, and (2) firms that have a membership agreement that does not contain a restriction on the factors listed below.]

[The safe harbor is not available to a member that has a membership agreement that contains a specific restriction as to one or more of the factors listed below. In that case, the agreement takes precedence because FINRA has determined that a particular restriction should apply as to one or more of the factors, and FINRA has issued a decision with a rationale for that restriction. Similarly, the safe harbor also does not apply if the member has a membership agreement that permits expansion beyond the limits set forth below (e.g., an Applicant requests and obtains approval for ten registered representatives in the first six months with an additional ten registered representatives in the next year); in such case, FINRA has specifically considered the firm's expansion plans and approved them.]

[The term "disciplinary history" redesignated as paragraph (i) under proposed Rule 1111]

[For those firms to which the safe harbor is available, the following types of expansions are presumed not to be a material change in business operations and therefore do not require a Rule 1017 application. For any expansion beyond these limits, a member should contact its district office prior to implementing the change to determine whether the proposed expansion requires an application under Rule 1017. Expansions in each area are measured on a rolling 12-month basis; members are required to keep records of increases in personnel, offices, and markets to determine whether they are within the safe harbor.]

[The term "Associated Persons involved in sales" redesignated as paragraph (d) under proposed Rule 1111]

<i>Number of Associated Persons Involved in Sales</i>		<i>Safe Harbor – Increase Permitted Within One Year Period Without Rule 1017 Application</i>
1–10		10 persons
11 or more		10 persons or a 30 percent increase, whichever is greater
<i>Number of Offices (registered or unregistered)</i>		
1–5		3 offices
6 or more		3 offices or a 30 percent increase, whichever is greater
<i>Number of Markets Made</i>		
1–10		10 markets
11 or more		10 markets or a 30 percent increase, whichever is greater

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[1012]1112. General [Provisions]Procedures

[(a) Filing by Applicant or Service by FINRA]

[(1) An Applicant for membership shall file an application in the manner prescribed in Rule 1013, including the timely submission of an application fee pursuant to Schedule A to the FINRA By-Laws.]

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

[(3) Except where FINRA has otherwise prescribed an electronic or alternative filing process, an Applicant may file an application or any document or information requested under the Rule 1010 Series by first-class mail, overnight courier, or hand delivery. If the Department and the Applicant agree, the Applicant also may file a requested document or information by facsimile.]

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

[(5) For purposes of the Rule 1010 Series, service by FINRA or filing by an Applicant shall be deemed complete as follows:]

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

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

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

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

[(E) Filing by an electronic system shall be deemed complete on the date specified on the confirmation page generated by the electronic filing system.]

(a) Filing and Service; Timing

(1) An Applicant shall file an Application and submit any other correspondence with the Department via electronic process or such other process as FINRA may prescribe. FINRA shall serve a notice or decision, or any other correspondence, by electronic delivery. For purposes of the Rule 1100 Series, filing by an Applicant or service by FINRA shall be deemed complete on the date recorded by FINRA's electronic systems for electronic communications or such other process as FINRA may prescribe.

(2) The date on which the Department decision is due under the Rule 1150 Series shall be calculated from the date the Department accepts the Application. An Application will be accepted and deemed filed for purposes of calculating the date on which the Department decision is due under the Rule 1150 Series when the Department provides written notification to the Applicant that the Department has completed the initial assessment of the Application and determined that the Application includes the documents or information necessary for the Department to commence a meaningful review ("Application Filed Date"). The date on which the Application is submitted in accordance with this paragraph ("Application Submission Date") shall not be used to calculate the date on which the Department decision is due under the Rule 1150 Series.

(3) The timeframes specified in the Rule 1100 Series may be extended or shortened upon the mutual written consent of the Department and the Applicant.

(b) Rejection of Application Following Department's Initial Assessment

(1) Within 15 days of the Application Submission Date, the Department shall conduct an initial assessment to determine whether it includes the documents or information necessary for the Department to commence a meaningful review. Where the Department has completed its initial assessment of the Application and determined that

the Application omits the documents or information necessary to commence a meaningful review, the Department shall notify the Applicant, in writing, that such Application is incomplete and describe the deficiency. The Applicant shall have five business days after the date on which the Department has issued the written notification of deficiency to cure the deficiency described therein. Upon the Applicant's failure to timely cure the deficiency, the Department shall reject the Application. FINRA shall refund the Application fee, less \$500, which FINRA shall retain as a processing fee. An Application that has been rejected does not constitute final action by FINRA for purposes of the Rule 1160 Series.

(2) If the Applicant determines again to apply for approval of a new or continuing membership application subsequent to its rejection, the Applicant shall submit a new Application, including the timely submission of the appropriate fee pursuant to Schedule A to the FINRA By-Laws.

[1017(e)](c) Request for Additional Documents [and]or Information

Within 30 days after the [filing of an application]Application Filed Date, the Department shall serve an initial request for any additional documents or information [or documents] necessary to render a decision on the [a]Application, and the Applicant shall file any additional information or documents with the Department within 30 days after service of the Department's initial request. The Department may also request additional documents or information [or documents] at any time during the [a]Application review process. [Unless otherwise agreed to by the Department and the Applicant,] [t]The Applicant shall file such additional documents or information [or documents] with the Department within [30]15 days after the Department's request, or within such other time period agreed to by the Department and the Applicant.

[1012(b)](d) Lapse of Application

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

(A) respond fully within [60]30 days after service of any initial written request for information or documents under paragraph (c) of this Rule [1013, within 30 days after service of an initial written request for information or documents under Rule 1017], within [30]15 days after service of any [subsequent]additional written request for information or documents under paragraph (c) of this Rule [1013 or 1017], or within such other time period agreed to by the Department and the Applicant;

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

(C) file an executed membership agreement under Rule [1014(d) or Rule 1017(g)(4) within [25]15 days after service of the agreement, or within such other period agreed to by the Department and the Applicant]1154.

(2) The Department may, in its discretion, lapse the Application if the Applicant makes substantial changes to the Application that materially impacts the Department's review of the Application. Where the Department has determined that the Application has materially changed from the initial submission, the Department shall notify the Applicant, in writing, that such Application may lapse and describe the reasons therefor. The Applicant shall have five business days after the date on which the Department has issued the written notification of the pending lapse to remedy the Application. Failure to timely remedy the Application shall result in its lapse.

[(2)](3) If an Application has lapsed within 30 days after the Application Filed Date, FINRA shall refund the Application fee, less \$500, which FINRA shall retain as a processing fee. If an Applicant [wishes to continue]determines again to [seek]apply for approval of a new or continuing membership [or approval of a change in ownership, control, or business operations]application subsequent to its lapse, [then] the Applicant shall [be required to] submit a new [a]Application [in the manner prescribed in Rule 1013

or 1017, respectively], including the timely submission of [an application]the appropriate fee pursuant to Schedule A to the FINRA By-Laws. FINRA shall not refund [any]the Application fee for an Application that has lapsed [application] after 30 days of the Application Filed Date. An Application that has lapsed does not constitute final action by FINRA for purposes of the Rule 1160 Series.

[(c) Ex Parte Communications redesignated as proposed Rule 1161]

[(d) Recusal or Disqualification redesignated as paragraph (c) under proposed Rule 1163]

[(e) Computation of Time redesignated as paragraph (f) under proposed Rule 1111]

[1013(a)(5)](e) Withdrawal of Application

If an Applicant withdraws [an]the [a]Application after the Application Submission Date, but not later than [within] 30 days after [filing the application]the Application Filed Date, FINRA shall refund the [a]Application fee, less \$500, which FINRA shall [be] retain[ed by FINRA] as a processing fee. If the Applicant determines to again [to seek]apply for approval of a new or continuing membership application subsequent to the withdrawal, the Applicant shall submit a new [a]Application [under this Rule and], including the timely submission of the appropriate fee pursuant to Schedule A to the FINRA By-Laws. FINRA shall not refund the fee for an Application that the Applicant has withdrawn under this subparagraph after 30 days of the Application Filed Date. An Application that has been withdrawn under this paragraph does not constitute final action by FINRA for purposes of the Rule 1160 Series.

[1013(b)](f) Membership Interview

[1013(b)(1)](1) [Requirement for]New Membership Interview Mandatory

Before the Department serves its decision pursuant to the Rule 1150 Series on [an application for new membership in FINRA] a Form NMA, the Department shall conduct [a]one or more membership interviews at any time

during the new membership application review process with a representative or representatives of the Applicant.

[1017(g)](2) Continuing Membership Interview Discretionary

[(1)] Before [T]the Department serves its decision pursuant to the Rule 1150 Series on a Form CMA, the Department may, in its discretion, [require the Applicant to participate in]conduct [a]one or more continuing membership interviews [within 30 days after the filing of the application, or if the Department requests additional information or documents, within 30 days after the filing of the additional information or documents by the Applicant]at any time during the continuing membership application review process with a representative or representatives of the Applicant.

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

[(3)] Unless the Department and the Applicant otherwise agree, the membership interview shall be conducted in the district office for the district in which the Applicant has its principal place of business.]

[(4)] During the membership interview, the Department shall review the application and the considerations for the Department's decision set forth in paragraph (g)(1) with the Applicant's representative or representatives. The Department shall provide to the Applicant's representative or representatives any information or document that the Department has obtained from the Central Registration Depository or a source other than the Applicant and upon which the

Department intends to base its decision under paragraph (g). If the Department receives such information or document after the membership interview or decides to base its decision on such information after the membership interview, the Department shall promptly serve the information or document and an explanation thereof on the Applicant.]

[1013(b)(2)](3) Service of Notice of Membership Interview; Where Held

(A) Service of Notice of Membership Interview

At least seven days before [the]a scheduled membership interview, the Department shall serve on the Applicant a written notice that specifies the date and time of the interview and the representative(s) [or representatives] of the Applicant who are required to participate in the interview. The Department shall serve the notice [by facsimile or overnight courier]in a manner consistent with Rule 1112. The Applicant and the Department may agree to a [shorter or longer]different period for notice or [a different]method of service under this [sub]paragraph.

(B) Where Held

The membership interview(s) shall be conducted in the district office for the district in which the Applicant has its principal place of business or at an agreed upon location provided, however, that the Department and the Applicant may agree to conduct the membership interview by video conference or by other means.

••• Supplementary Material: -----

.01 Initial Assessment by Department. Under Rule 1112(a), the Department shall conduct an initial assessment of an Application to determine, at a minimum, whether the documents or information included with the Application are correctly identified and contain the information they purport to address and whether the Application may be eligible for expedited review. As part of

the initial assessment, the Department may also review several aspects of the Application including, but not limited to, the disciplinary history of the Applicant and its Associated Persons, and scale and scope of the proposed activities of the Applicant, the history of sales practice events, disciplinary history, licenses and registrations, and experience of the relevant principals and registered persons of the Applicant, and the written supervisory procedures.

.02 Department Decision to Expedite Review. As a part of the initial assessment, the Department may, in its discretion, determine that the Application is eligible for expedited review and shall notify the Applicant of such eligibility.

.03 Membership Interview. A membership interview is a meeting between the Department (and may include other Interested FINRA Staff), and the Applicant's counsel or representative(s), including the persons who own, control, or manage the Applicant. The Applicant and its counsel or representative(s) must be prepared to discuss topics that may include, among others, the nature and scope of the business, the Applicant's ability to satisfy the standards set forth in Rule 1142 that are applicable to such Applicant in accordance with Rule 1141, the rules applicable to the Applicant's intended business, financial condition, source of funds, the supervisory structure, the background and experience of the Applicant's principals and representative(s), documents or information that the Department obtained from CRD or a source other than the applicant and upon which the Department intends to based its decision, and plans for future direction and business expansion.

.04 Waiver of Two-Principal Requirement. An Applicant may apply, in the manner prescribed in Rule 9610, and Form NMA or Form CMA, as applicable, for a waiver of the two-principal requirement of Rule 1210.01 based on the Applicant's limited scope of activities or the Applicant having only one person associated with the Applicant.

The Applicant shall submit, in writing, the basis on which the Applicant believes it has demonstrated that only one person associated with the Applicant should be required to be

registered as a principal, along with any supporting documentation for the waiver request to the Department as part of the Application.

(a) Department Review

The Department shall assess factors that include, but are not limited to:

(1) the regulatory history of the Applicant and its Associated Persons;

(2) the type of business the Applicant conducts or for which it is approved to conduct; and

(3) the number, location and experience of Associated Persons, and their designated offices and locations.

(b) Department Decision

The decision to grant a request for a waiver rests solely with the Department. Where a waiver request is granted, FINRA may require the registration of the specified number of principals at some future date if changes occur that alter the factors on which the waiver decision was based. Where a request for a waiver is denied prior to the issuance of a Department decision under the Rule 1150 Series, the Applicant may file an appeal pursuant to the Rule 9600 Series. The Application review process may be held in abeyance pending the outcome of the appeal.

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1113. Restriction Pertaining to New Member Applications

No Change.

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[1122]1114. Filing of Misleading Information as to Membership or Registration

No Change.

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1115. Reserved

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1116. Reserved

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1117. Reserved

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1118. Reserved

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1119. Reserved

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1120. NEW MEMBERSHIP [APPLICATION PROCESS]

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1121. Membership Waive-In

FINRA previously permitted, through an application process, a waive-in to FINRA membership for certain New York Stock Exchange ("NYSE") and NYSE American LLC ("NYSE American") member organizations. The period for seeking such a waive-in has expired.

NYSE member organizations that were admitted pursuant to the waive-in process are subject to the FINRA By-Laws and Schedules to By-Laws, including Schedule A, the consolidated FINRA rules and the NYSE rules incorporated by FINRA, provided that their securities business is limited to floor brokerage on the NYSE, or routing away to other markets orders that are ancillary to their core floor business under NYSE Rule 70.40 ("permitted floor activities"). If an NYSE-only member organization admitted pursuant to the waive-in process seeks to expand its business operations to include any activities other than the permitted floor activities or makes changes to its securities business that would otherwise require FINRA membership, such firm shall execute a membership agreement prior to expanding its business operations. If such business expansion would be considered a material change in business operations, as that term is described in Rule 1131(b), such firm also shall apply for and must receive approval prior to engaging in such business activity pursuant to Rule 1131. Upon approval of such business expansion, the firm shall be subject to all NASD rules, in addition to the consolidated FINRA rules and those NYSE rules incorporated by FINRA.

NYSE American member organizations that were admitted pursuant to the waive-in process are member organizations of both NYSE and NYSE American and as such are subject to the FINRA By-Laws and Schedules to By-Laws, including Schedule A, the consolidated FINRA rules and the NYSE rules incorporated by FINRA, provided that their NYSE or NYSE American securities business is limited to floor-based activities in either NYSE-traded or NYSE American-traded securities, or routing away to other markets orders that are ancillary to their

core NYSE or NYSE MKT floor business under NYSE Rule 70.40 or NYSE American Equities Rule 70.40 ("permitted floor activities"). If a firm admitted pursuant to the waive-in process seeks to expand its business operations to include any activities other than the permitted floor activities or makes changes to its securities business that would otherwise require FINRA membership, such firm shall execute a membership agreement prior to expanding its business operations. If such business expansion would be considered a material change in business operations, as that term is described in Rule 1131(b), such firm also shall apply for and must receive approval prior to engaging in such business activity pursuant to Rule 1131. Upon approval of such business expansion, the firm shall be subject to all NASD rules, in addition to the consolidated FINRA rules and those NYSE rules incorporated by FINRA.

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[1090]1122. Foreign Members

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

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

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

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

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

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[1013]1123. New Membership Application [and Interview]Process

(a) [Filing of Application]General

Before applying for new FINRA membership, a prospective Applicant must undertake, as FINRA may prescribe, requisite actions which include, but are not limited to filing Form BD with the SEC pursuant to Section 15(b) of the Exchange Act, reserving a firm name in accordance with Article IV, Section 2 of the FINRA By-Laws, completing the necessary forms to access FINRA systems, submitting fingerprints for each Associated Person, and paying the appropriate fee pursuant to Schedule A to the FINRA By-Laws.

[(1)](b) [How to File]New Membership Application (Form NMA)

A[n] prospective Applicant for new FINRA membership shall [file its application in the manner prescribed by FINRA]file Form NMA, including all documents and information requested therein, with the Department [of Member Regulation ("the Department")]in accordance with Rule 1112, and submit the appropriate fee pursuant to Schedule A to the FINRA By-Laws. [An Applicant shall submit an application that includes:]

[(A) Form NMA;]

[(B) an original signed and notarized paper Form BD, with applicable schedules;]

[(C) an original FINRA-approved fingerprint card for each Associated Person who will be subject to SEC Rule 17f-2;]

[(D) a new member assessment report;]

[(E) a detailed business plan that adequately and comprehensively describes all material aspects of the business that will be, or are reasonably anticipated to be, performed at and after the initiation of business operations, including future business expansion plans, if any, and includes:]

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

[(ii) a monthly projection of income and expenses, with a supporting rationale, for the first twelve months of operations;]

[(iii) an organizational chart;]

[(iv) the intended location of the Applicant's principal place of business and all other offices, if any, whether or not such offices would be required to be registered under NASD Rules, and the names of the persons who will be in charge of each office;]

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

[(vi) a description of the methods and media to be employed to develop a customer base and to offer and sell products and services to customers, including the use of the Internet, telephone solicitations, seminars, or mailings;]

[(vii) a description of the business facilities and a copy of any proposed or final lease;]

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

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

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

[(xi) any other activity that the Applicant may engage in that reasonably could have a material impact on net capital within the first twelve months of business operations; and]

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

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

[(G) a list of all Associated Persons;]

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

[(i) a regulatory action against or investigation of the Applicant or an Associated Person by the Commission, the Commodity Futures Trading Commission, a federal, state, or foreign regulatory agency, or a self-regulatory organization that is pending, adjudicated, or settled;]

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

[(iii) an investment-related customer complaint or arbitration that is required to be reported on Form U4;]

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

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

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

[(J) a written acknowledgment that heightened supervisory procedures and special educational programs may be required [pursuant to Notice to Members 97-19 for an Associated Person whose record reflects disciplinary actions or sales practice events;]

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

[(L) a description of the nature and source of Applicant's capital with supporting documentation, including a list of all persons or entities that have contributed or plan to contribute financing to the Applicant's business, the terms and conditions of such financing arrangements, the risk to net capital presented

by the Applicant's proposed business activities, and any arrangement for additional capital should a business need arise;]

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

[(N) a description of the Applicant's supervisory system and a copy of its written supervisory procedures, internal operating procedures (including operational and internal controls), internal inspections plan, written approval process, and qualifications investigations required by Rule 3010;]

[(O) a description of the number, experience, and qualifications of supervisors and principals and the number, experience, and qualifications of persons to be supervised by such personnel, the other responsibilities of the supervisors and principals with the Applicant, their full-time or part-time status, any business activities that the supervisors or principals may engage in outside of their association with the Applicant, the hours per week devoted to such activities, and an explanation of how a part-time supervisor or principal will be able to discharge his or her designated functions on a part-time basis;]

[(P) a description of Applicant's proposed recordkeeping system;]

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

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

[(2) Uniform Registration Forms]

[Upon approval of the Applicant's FINRA Member Firm Account Administrator Entitlement Form, the Applicant shall submit its Forms U4 for each Associated Person

who is required to be registered under NASD Rules, any amendments to its Forms BD or U4, and any Form U5 electronically via Web CRD.]

[(3) Rejection of Application that is Not Substantially Complete]

[If the Department determines within 30 days after the filing of an application that the application is not substantially complete, the Department may reject the application and deem it not to have been filed. In such case, within the 30 day period, the Department shall serve a written notice on the Applicant of the Department's determination and the reasons therefor. FINRA shall refund the application fee, less \$500, which shall be retained by FINRA as a processing fee. If the Applicant determines to continue to seek membership, the Applicant shall submit a new application under this Rule and fee pursuant to Schedule A to the FINRA By-Laws.]

[(4) Request For Additional Documents Or Information]

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

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

[(5) Withdrawal of Application redesignated as paragraph (e) under proposed Rule 1112]

[(b) Membership Interview redesignated as paragraph (f) under proposed Rule 1112]

[(1) Requirement for Interview redesignated as paragraph (f) under proposed Rule 1112]

[(2) Service of Notice redesignated as paragraph (f) under proposed Rule 1112]

[(3) Time]

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

[(4) Place]

[Unless the Department and the Applicant otherwise agree, the membership interview shall be conducted in the district office for the district in which the Applicant has or intends to have its principal place of business.]

[(5) Updated Financial Documents]

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

[(6) Review of Standards for Admission]

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

[(7) Information From Other Sources]

[During the membership interview, the Department shall provide to the Applicant's representative or representatives any information or document that the

Department has obtained from the Central Registration Depository or a source other than the Applicant and upon which the Department intends to base its decision under Rule 1014. If the Department receives such information or document after the membership interview or decides to base its decision on such information after the membership interview, the Department shall promptly serve the information or document and an explanation thereof on the Applicant.]

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1124. Reserved

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1125. Reserved

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1126. Reserved

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1127. Reserved

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1128. Reserved

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1129. Reserved

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

[This Interpretive Material sets forth a membership waive-in process for certain New York Stock Exchange ("NYSE") member organizations to become members of FINRA as part of the consolidation of the member firm regulatory functions of NASD and NYSE Regulation, Inc. ("NYSE Regulation"). It applies to firms that, as of July 25, 2007, (1) are approved NYSE member organizations or (2) have submitted an application to become an NYSE member organization and are subsequently approved for NYSE membership (together "NYSE-only member organizations"), provided that such firms were not also NASD members as of July 30, 2007. Such firms are eligible to automatically become FINRA members and to automatically register all associated persons whose registrations are approved with NYSE in registration categories recognized by FINRA upon submission to FINRA's Member Regulation Department ("the Department") of a signed waive-in membership application ("Waive-In Application") with the following information:]

[(1) General company information, including Central Registration Depository (CRD®) Number and contact person.]

[(2) An attestation that all information on the applicant's CRD form, as of the date of submission of the Waive-In Application is accurate and complete and fully reflects all aspects of the applicant's current business, including, but not limited to, ownership structure, management, product lines and disclosures.]

[(3) The identity of the firm's Executive Representative.]

[(4) Completed and signed Entitlement Forms.]

[(5) A signed FINRA Membership Agreement.]

[(6) Representations that the NYSE applicant's Uniform Application for Broker-Dealer Registration (Form BD) will be amended as needed to keep current and accurate; that all

individual and entity registrations with FINRA will be kept current; and that all information and statements contained in the Waive-In Application are current, true and complete.]

[The Department shall review the Waive-In Application within three (3) business days of receipt and, if complete, issue a letter notifying the applicant that it has been approved for membership. The Membership Agreement shall become effective on the date of such notification letter.]

[Firms admitted pursuant to this Interpretive Material shall be subject to the FINRA By-Laws and Schedules to By-Laws, including Schedule A, the consolidated FINRA rules and the NYSE rules incorporated by FINRA, provided that their securities business is limited to floor brokerage on the NYSE, or routing away to other markets orders that are ancillary to their core floor business under NYSE Rule 70.40 ("permitted floor activities"). If an NYSE-only member organization admitted pursuant to this Interpretive Material seeks to expand its business operations to include any activities other than the permitted floor activities, such firm must apply for and receive approval to engage in such business activity pursuant to NASD Rule 1017. Upon approval of such business expansion, the firm shall be subject to all NASD rules, in addition to the consolidated FINRA rules and those NYSE rules incorporated by FINRA.]

[Pursuant to IM-Section 4(b)(1) and (e) to Schedule A of the FINRA By-Laws, a firm applying to waive in for membership pursuant to this Interpretive Material shall not be assessed certain registration and application fees set forth in Sections 4(b)(1) and (e) to Schedule A of the FINRA By-Laws.]

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

[This Interpretive Material sets forth a membership waive-in process for certain NYSE Alternext US LLC ("NYSE Alternext") member organizations to become members of FINRA as part of the acquisition by NYSE Euronext of the Amex Membership Corporation. It applies to any NYSE Alternext member organization that (i) holds a valid 86 Trinity Permit as of the date such firm transfers its equities operations to the NYSE Alternext Trading Systems and (ii) is not currently a FINRA member. Such firms are eligible to automatically become FINRA members and to automatically register all associated persons whose registrations are approved with NYSE Alternext in registration categories recognized by FINRA upon submission to FINRA's Member Regulation Department ("the Department") of a signed waive-in membership application ("Waive-In Application") with the following information:]

[(1) General company information, including Central Registration Depository (CRD®) Number and contact person;]

[(2) An attestation that all information on the applicant's form, as of the date of submission of the Waive-In Application, is accurate and complete and fully reflects all aspects of the applicant's current business, including, but not limited to, ownership structure, management, product lines and disclosures;]

[(3) The identity of the firm's Executive Representative;]

[(4) Completed and signed Entitlement Forms (unless previously submitted);]

[(5) A signed FINRA Membership Agreement; and]

[(6) Representations that the NYSE Alternext applicant's Uniform Application for Broker-Dealer Registration (Form BD) will be amended as needed to keep current and accurate; that all individual and entity registrations with FINRA will be kept current; and that all information and statements contained in the Waive-In Application are current, true and complete.]

[The Department shall review the Waive-In Application within three (3) business days of receipt and, if complete, issue a letter notifying the applicant that it has been approved for membership. The Membership Agreement shall become effective on the date of such notification letter.]

[Firms admitted pursuant to this Interpretive Material shall be member organizations of both NYSE and NYSE Alternext and as such are subject to the consolidated FINRA rules (provided that firms admitted to FINRA membership under IM-1013-1 also are subject to the consolidated FINRA rules), the NYSE rules incorporated by FINRA, the FINRA By-Laws and Schedules to By-Laws, including Schedule A, and the NASD Rule 8000 and Rule 9000 Series, provided that their NYSE or NYSE Alternext securities business is limited to floor-based activities in either NYSE-traded or NYSE Alternext-traded securities, or routing away to other markets orders that are ancillary to their core NYSE or NYSE Alternext floor business under NYSE Rule 70.40 or NYSE Alternext Equities Rule 70.40 ("permitted floor activities"). If a firm admitted pursuant to this Interpretive Material seeks to expand its business operations to include any activities other than the permitted floor activities or makes changes to its securities business that would otherwise require FINRA membership, such firm must apply for and receive approval to engage in such business activity pursuant to NASD Rule 1017. Upon approval of such business expansion, the firm shall be subject to all NASD rules, in addition to the consolidated FINRA rules and those NYSE rules incorporated by FINRA.]

[Pursuant to IM-Section 4(b)(1) and (e) to Schedule A of the FINRA By-Laws, a firm applying to waive in for membership pursuant to this Interpretive Material shall not be assessed certain registration and application fees set forth in Sections 4(b)(1) and (e) to Schedule A of the FINRA By-Laws.]

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[1014. Department Decision redesignated to proposed Rule 1150]

[(a) Standards for Admission redesignated to proposed Rule 1142]

[(b) Granting or Denying Application redesignated as paragraphs (a) and (c) under proposed Rule 1152]

[(c) Decision redesignated as proposed Rules 1151 and 1153]

[(1) Time]

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

[(2) Content redesignated as paragraphs (b) and (c) under proposed Rule 1153]

[(3) Failure to Serve Decision redesignated as paragraph (a) under proposed Rule 1151]

[(d) Submission of Membership Agreement redesignated as proposed Rule 1154]

[(e) Service and Effectiveness of Decision as paragraph (a) under proposed Rule 1155]

[(f) Effectiveness of Restriction redesignated as paragraph (b) under proposed Rule 1152]

[(g) Final Action redesignated as paragraph (b) under proposed Rule 1155]

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[1015. Review by National Adjudicatory Council redesignated to the proposed Rule 1160
Series]

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[1016. Discretionary Review by FINRA Board redesignated as proposed Rule 1167]

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1130. CONTINUING MEMBERSHIP

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[1017]1131. [Application for Approval of Change in Ownership, Control, or Business Operations]Continuing Membership Application Process

(a) Continuing Membership Application (Form CMA)

(1) An Applicant for continuing FINRA membership shall file Form CMA, including all documents and information requested therein and as otherwise specified in this Rule, with the Department in accordance with Rule 1112, and submit the appropriate fee pursuant to Schedule A to the FINRA By-Laws.

(2) The circumstances of a particular transaction or event that would require the filing by two or more members, of an application under paragraph (a) of this Rule may, at the discretion of the Department, be satisfied through the filing of an Application by one of the parties involved in the transaction so designated by the Department for that purpose, or by one filing that is adopted by all parties to the transaction.

[a](b) Events Requiring [Application]Form CMA and Department Approval

Prior to effectuating any change set forth in this Rule, [A member] an Applicant shall file [an application]Form CMA [for] and obtain approval [of any of the following changes to its ownership, control, or business operations]thereon from the Department:

(1) Merger

[a]A merger of the member with another [member, unless both are members of the New York Stock Exchange, Inc. or the surviving entity will continue to be a member of the New York Stock Exchange, Inc.]broker-dealer, whether or not such broker-dealer is a member of FINRA;

(2) Acquisition

(A) a member's direct or indirect acquisition [by the member] of another [member, unless the acquiring member is a member of the New York Stock Exchange, Inc.]broker-dealer, whether or not such broker-dealer is a member of FINRA;

(B) a direct or indirect acquisition of 25 percent or more in the aggregate of the member's assets or any asset, business, or line of business that generates revenues composing 25 percent or more in the aggregate of the member's earnings measured on a calendar-year basis for the three years immediately preceding the proposed event;

(3) Divestiture or Transfer

[a]A direct or indirect [acquisitions] divestiture or transfer[s] of 25[%] percent or more in the aggregate of the member's assets or any asset, business, or line of [operation]business that generates revenues [comprising]composing 25[%] percent or more in the aggregate of the member's earnings measured on a [rolling 36-month]calendar-year basis for the three years immediately preceding the proposed event[, unless both the seller and acquirer are members of the New York Stock Exchange, Inc.];

(4) Change in Capital Structure

[a]A change in the [equity ownership or partnership] capital structure of the member that results in one person or entity, directly or indirectly, owning or controlling 25 percent or more of the [equity or partnership capital; or]member (or holding a presently exercisable option to own or control the member).

[(5) a material change in business operations as defined in Rule 1011(k).]

(5) Change in Control Person

A direct or indirect change of the member's control person(s), other than the appointment or election of a natural person as a partner, officer, director, principal of the

member, or any person occupying a similar status or performing similar function, in the normal course of business and regardless of paragraph (b)(4).

[1017(b)(2)(C)](6) Business Expansion

[If the application requests approval of an increase in]Except as provided in Rule 1133, a member that seeks to expand its business by increasing the number of: (A) Associated Persons involved in sales[.]; (B) offices (registered or unregistered)[.]; or (C) markets made[.], the application shall set forth the increases in such areas during the preceding 12 months].

(7) Material Change in Business Operations

[The term]A ["material change in business operations"] includes, but is not limited to, a member:

[(1) removing or modifying a membership agreement restriction;]

[(2)](A) engaging, for the first time, in:

(i) market making[.];

(ii) underwriting[.]; [or]

(iii) acting as a dealer [for the first time]; [and]

(iv) settling or clearing transactions for the member's own

business;

(v) settling or clearing transactions for other broker-dealers; or

(vi) carrying accounts of customers;

[(3)](B) adding business activities that require a higher minimum net capital under SE[C]A Rule 15c3-1; or

(C) changing an exemptive status claimed under SEA Rule 15c3-3(k).

(8) Removal or Modification of Restriction in Membership Agreement

[1017(b)(2)(B)](A) Applicant's Initiative

[If the application requests the removal] A member that seeks to remove
or [modification of] modify any restriction in its membership agreement [restriction,
the application also] shall include with Form CMA, and all information and
supporting documents requested therein, a detailed description of[:]

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

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

[1017(k)](B) [Removal or Modification of Restriction on]

Department's Initiative

The Department shall modify or remove an existing restriction on its own
initiative if the Department determines such action is appropriate in light of [the
considerations set forth in paragraph (g)(1)] Form CMA and Rule 1142, and any
information elicited during a membership interview, if held. The Department shall
notify the member in writing of the Department's determination and inform the
member that it may apply for further modification or removal of a restriction by
filing an application [under paragraph (a)] in the manner prescribed in this Rule.

[(b) Filing and Content of Application]

[(1) The member shall file the application in the manner prescribed by FINRA
with the Department of Member Regulation ("the Department").]

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

[(A) If the application requests approval of a change in ownership or
control, the application also shall include the names of the new owners, their

percentage of ownership, and the sources of their funding for the purchase and recapitalization of the member.]

[(B) redesignated to paragraph (b) under proposed Rule 1131]

[(C) redesignated to paragraph (b) under proposed Rule 1131]

[(c) Effecting Change and Imposition of Interim Restrictions]

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

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

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

[(d) Rejection Of Application That Is Not Substantially Complete]

[If the Department determines within 30 days after the filing of an application that the application is not substantially complete, the Department shall reject the application and deem it not to have been filed. In such case, within the 30 day period, the Department shall serve a written notice on the Applicant of the Department's determination and the reasons therefor. FINRA shall refund the application fee, less \$500, which shall be retained by FINRA as a processing fee. If the Applicant determines to continue to apply for approval of a change in ownership, control, or business operations, the Applicant shall submit a new application under this Rule and fee pursuant to Schedule A to the FINRA By-Laws.]

[(e) Request for Additional Documents and Information redesignated as paragraph (c) under proposed Rule 1112]

[(f) Withdrawal of Application]

[If an Applicant withdraws an application within 30 days after filing the application, FINRA shall refund the application fee, less \$500, which shall be retained by FINRA as a processing fee. If the Applicant determines to again apply for approval of a change in ownership, control, or business operations, the Applicant shall submit a new application under this Rule and fee pursuant to Schedule A to the FINRA By-Laws.]

[(g) Membership Interview redesignated as paragraph (f) under proposed Rule 1112]

[(h) Department Decision]

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

[(A) In rendering a decision on an application for approval of a change in ownership or control, or an application for approval of a material change in business operations that does not involve modification or removal of a membership agreement restriction, the Department shall determine if the

Applicant would continue to meet the standards in Rule 1014(a) upon approval of the application.]

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

[(i) the standards set forth in Rule 1014;]

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

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

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

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

[(2) The Department shall serve a written decision on the application within 30 days after the conclusion of the membership interview or the filing of additional information or documents, whichever is later. If the Department does not require the Applicant to participate in a membership interview or request additional information or documents, the Department shall serve a written decision within 45 days after the filing of the application under paragraph (a). The decision shall state whether the application is granted or denied in whole or in part, and shall provide a rationale for the Department's decision, referencing the applicable standard in Rule 1014.]

[(3) If the Department fails to serve a decision within 180 days after filing of an application or such later date as the Department and the Applicant have agreed in writing, the Applicant may file a written request with the FINRA Board requesting that the FINRA Board direct the Department to issue a decision. Within seven days after the filing of such a request, the FINRA Board shall direct the Department to issue a written

decision immediately or to show good cause for an extension of time. If the Department shows good cause for an extension of time, the FINRA Board may extend the time limit for issuing a decision by not more than 30 days.]

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

[(i) Service and Effectiveness of Decision]

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

[(j) Request for Review; Final Action]

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

[(k) Removal or Modification of Restriction on Department's Initiative redesignated to paragraph (b) under proposed Rule 1131]

[(l) Lapse or Denial of Application for Approval of Change in Ownership]

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

[(1) submit a new application under this Rule and fee pursuant to Schedule A to the FINRA By-Laws;]

[(2) unwind the transaction; or]

[(3) file a Form BDW.]

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

* * * * *

••• Supplementary Material: -----

.01 Permissible Events for Form CMA Waiver. A member may seek, in the manner prescribed by Rule 1132, a waiver of the requirement to file Form CMA in the following circumstances:

(a) Under Rule 1131(b)(2)(B) and Rule 1131(b)(3) where:

(1) the member is ceasing operations as a broker-dealer;

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

(3) neither the member nor any of its Associated Persons is the subject of any claim (including, but not limited to, arbitration awards, or pending or settled arbitration claims, or litigation actions) that could be disadvantaged by the proposed transaction. In any instance where a claim against a member or any of its Associated Persons is awarded or settled, such claim will not be deemed satisfied for purposes of this Rule until all payments are satisfied in full, including any payments to be made on behalf of the member by a third party, pursuant to an agreement among the parties.

(b) Under Rule 1131(b)(4) or Rule 1131(b)(5) where:

(1) the events described therein do not make any material changes in the Applicant's business activities, management, supervision, assets, or liabilities; and

(2) the Applicant is proposing a change only in the:

(i) member's legal structure (e.g., changing from a corporation to an limited liability company); or

(ii) equity ownership, partnership capital, or other ownership interest in an Applicant held by a corporate legal structure that is due solely to a reorganization of ownership or control of the Applicant within the corporate legal structure (e.g., reorganizing only to add a holding company to the corporate legal structure's ownership or control chain of the Applicant).

* * * * *

1132. Materiality Consultation

(a) When Voluntary

A member may seek guidance from the Department to determine whether the member's contemplated change in business operations or activities would require the submission of a Form CMA by submitting a written letter to the Department in accordance with Rule 1112.

(b) When Mandatory

A materiality consultation is mandatory under the following circumstances:

(1) When an applicant seeks a waiver of filing Form CMA for contemplated events described under Rule 1131.01; or

(2) When an applicant seeks to engage in, for the first time:

(A) retail foreign currency exchange activities;

(B) variable life settlement sales to retail customers;

(C) options activities; or

(D) municipal securities activities.

(c) Content of Request for Materiality Consultation

There is no fee associated with a materiality consultation. A member's written request for a materiality consultation for a contemplated change in business operations or activities must include a detailed description of:

(1) The nature and scope of the contemplated activity;

(2) The member's rationale for determining that the contemplated change in activity, business operations or product is similar in scope or nature to its existing business;

(3) The anticipated impact the contemplated change will have to the member's supervisory structure;

(4) Any impact the contemplated change will have to the member's capital or liquidity;

- (5) The nature and scope of updates required to the member's written supervisory procedures, systems and operations;
- (6) Any recent disciplinary matters that relate to the proposed activities;
- (7) How the member's overall regulatory history may impact the ability of the member to effectively conduct the activity; and
- (8) Any other relevant documentation or information to support the contemplated change.

(d) Department Review

- (1) The Department shall assess factors that include, but are not limited to:
 - (A) the nature and scope of the contemplated activity;
 - (B) the history of sales practice events and disciplinary history of the member and its Associated Persons, if applicable; and
 - (C) the impact of the contemplated activity on the member's supervisory and compliance structure, personnel, and finances; and
 - (D) any other impact on investor protection raised by the contemplated activity.
- (2) The Department shall consider the letter and other documents or information, and determine in the public interest and the protection of investors that either (A) the member is not required to file Form CMA in accordance with Rule 1131 and may effect the contemplated activity; or (B) the member is required to file Form CMA in accordance with Rule 1131 and the member may not effect the contemplated activity, unless the Department approves Form CMA. Upon completion of the review of the materiality consultation, the Department shall provide the member a written response as to the materiality of the contemplated activity. If the Department determines that the member's contemplated activity would be subject to Rule 1131, the member must submit Form CMA, and all the information and supporting documents requested therein, before the

member effects such change. If, however, the Department deems that the contemplated change is not material in nature that would require the submission of Form CMA, the member may implement such change without having to engage in the CMA process under Rule 1131.

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[IM-1011-1]1133. Safe Harbor from the CMA Process

(a) General

For the types of events listed in this Rule, a member will not be required to submit Form CMA and obtain Department approval of the change before effecting such change. An expansion in each enumerated category as set forth in paragraph (b) below shall be measured on a 12-month period preceding the event. A member that elects to avail itself of the Safe Harbor shall make and preserve the records reflecting the underlying rationale for the business expansion made for any of the events listed herein.

(b) Permissible Events for Safe Harbor

A member that seeks to expand in the categories listed herein are presumed not to constitute a type of event that would require such member to submit Form CMA. The safe harbor is available to a member that seeks to expand in the following categories:

(1) Number of Associated Persons Involved in Sales

(A) A member with up to 10 Associated Persons involved in sales, and adds not more than 10 Associated Persons involved in sales; or

(B) A member with 11 or more Associated Persons involved in sales, and adds the greater of 10 Associated Persons or 30 percent;

(2) Number of Offices or Locations (Registered or Unregistered)

(A) A member maintains up to five offices or locations, and adds not more than three offices or locations; or

(B) A member maintains six or more offices or locations, and adds the greater of three offices or locations, or 30 percent.

(3) Number of Markets Made

(A) A member makes up to 10 markets, and adds not more than 10 markets; or

(B) A member makes 11 or more markets, and adds the greater of 10 markets or the number of markets that reflects a 30 percent increase.

(c) Exclusions from Safe Harbor

The safe harbor is not available to a member under the following circumstances:

(1) A member is subject to a membership agreement that contains a restriction directly related to one or more of the enumerated categories listed in paragraph (b) of this Rule; or

(2) A member has disciplinary history.

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[1018. Reserved]

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[1019. Application to Commission for Review redesignated as proposed Rule 1168]

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[1014]1140. [Department Decision]STANDARDS FOR APPROVAL OF APPLICATION

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1141. General Provisions

(a) An Applicant that seeks approval of an Application shall satisfy the standards set forth in Rule 1142 subject to paragraph (b) below.

(b) An Applicant may identify any standard that it believes is not applicable to the Department's review of the Application by providing a detailed written description of its rationale to the Department in the manner prescribed in Rule 1112. The Department shall make the final determination of the applicability of any standard, and the Applicant shall comply with the Department's determination. Such determination does not represent final action on the Application for purposes of the Rule 1160 Series.

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[1014(a)]1142. Standards [for Admission]

After considering the [a]Application, the membership interview, if held, other information and documents provided by the Applicant, other documents and information [and documents] obtained by the Department and the public interest and the protection of investors, the Department shall determine whether the Applicant [meets]satisfies each of the following standards that are applicable to such Applicant in accordance with Rule 1141:

[(1)](a) Complete and Accurate Application

The [a]Application and all supporting documents and information requested therein are complete, [and] accurate, and consistent with applicable securities laws and regulations, and with applicable FINRA rules.

[(2)](b) Licenses and Registrations, and Continuing Education

(1) The Applicant and its Associated Persons have all licenses and registrations required by state and federal authorities and self-regulatory organizations and have paid all applicable fees[.]; and

(2) The Applicant has completed a training needs evaluation and has a written training plan that complies with the continuing education requirements imposed by applicable securities laws and regulations, and with applicable FINRA rules.

(c) Source of Funding

The Applicant has fully disclosed and established through documentation all direct and indirect sources of funding.

[(3)](d) Compliance with Securities Laws, and Just and Equitable Principles of Trade

The Applicant and its Associated Persons are capable of complying with [the federal]applicable securities laws[, the rules] and regulations [thereunder], and with applicable [NASD]FINRA [R]rules, including observing high standards of commercial

honor and just and equitable principles of trade. In determining whether this standard is met, the Department shall take into consideration all documents and information in its possession, including whether:

[(A)](1) a state or federal authority or self-regulatory organization has taken permanent or temporary adverse action with respect to a registration or licensing determination regarding the Applicant or an Associated Person;

[(B)](2) an Applicant's or Associated Person's record reflects a sales practice event, a pending arbitration, or a pending private civil action;

[(C)](3) [an]the Applicant or an Associated Person is the subject of:

(A) a pending, adjudicated, or settled regulatory action or investigation by the [Commission]SEC, the Commodity Futures Trading Commission, a federal[,] or state regulatory agency, [or]a foreign financial regulatory [agency]authority, or a self-regulatory organization;

(B) an adjudicated[,] or settled investment-related private civil action for damages, or an injunction; or

(C) a criminal action (other than a minor traffic violation) that is pending, adjudicated, or that has resulted in a guilty or no contest plea;

[or]

(4) an Applicant, its control persons, principals, registered representatives, other Associated Persons, any lender of 5[%]percent or more of the Applicant's net capital, and any other member with respect to which these persons were a control person or a 5[%]percent lender of its net capital is subject to unpaid arbitration awards, other adjudicated customer awards, or unpaid arbitration settlements;

[(D)](5) an Associated Person was terminated for cause or permitted to resign after an investigation of an alleged violation of a federal or state securities

law, a rule or regulation thereunder, a self-regulatory organization rule, or industry standard of conduct;

[(E)](6) a state or federal authority or self-regulatory organization has imposed a remedial action, such as special training, continuing education requirements, or heightened supervision, on an Associated Person; and

[(F)](7) a state or federal authority or self-regulatory organization has provided information indicating that the Applicant, [or] an Associated Person otherwise poses a threat to public investors.

[(4)](e) Contractual and Business Relationships

The Applicant has established all contractual or other arrangements and business relationships with banks, other brokers or dealers, clearing corporations, service bureaus, or others necessary to[:]

[(A)] initiate the operations described in the Applicant's [business plan]Application, considering the nature and scope of operations and the number of personnel[; and].

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

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

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

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

[(6)](f) Communications and Operational Systems

The communications and operational systems that the Applicant intends to employ for the purpose of conducting business with customers and other members are adequate and provide reasonably for business continuity pursuant to Rule 4370 [in each area set forth in Rule 1013(a)(2)(E)(xii);].

[(7)](g) Financial and Operational Controls; Capital

(1) The Applicant has adequate financial and operational controls to comply with SEA Rules 15c3-1 and 15c3-3 and is capable of maintaining a level of net capital in excess of the minimum net capital requirements set forth in SE[C]A Rule 15c3-1 and Rule 4110, as applicable, and adequate to support the Applicant's intended business operations on a continuing basis[, based on information filed under Rule 1013(b)(5)].

(2) The Department may impose a reasonably determined higher [net] capital requirement for the initiation of operations after considering:

(A) the amount of net capital sufficient to avoid early warning level reporting requirements, such as SE[C]A Rule 17a-11 and Rule 4120, as applicable;

(B) the amount of capital necessary to meet expenses [net of revenues] for at least [twelve]12 months, based on reliable projections of revenue agreed to by the Applicant and the Department;

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

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

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

(F) any other activity that the Applicant will engage in that reasonably could have a material impact on the Applicant's net capital within the first [twelve]12 months of business operations.

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

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

[(10)]**(h) Supervisory System**

The Applicant has a supervisory system, including written supervisory procedures, internal operating procedures (including operational and internal controls), and compliance procedures to supervise the activities of each Associated Person that is reasonably designed to [prevent and detect, to the extent practicable, violations of the]achieve compliance with applicable [federal] securities laws[, the rules] and regulations [thereunder], and with applicable [NASD]FINRA [R]rules. In evaluating the adequacy of a supervisory system, the Department shall consider the overall nature and scope of the Applicant's intended business operations and shall consider [whether]:

[(A)](1) the adequacy of the number, location, experience, and qualifications of supervisory personnel [are adequate] in light of the number, location, experience, and qualifications of persons to be supervised;

(2) the Central Registration Depository record or other disciplinary history of supervisory personnel and persons to be supervised; [and]

(3) the number and locations of the offices that the Applicant intends to open and the nature and scope of business to be conducted at each office;

[(B)](4) the Applicant's [has identified]identification of specific Associated Persons to:

(A) supervise and discharge each of the functions specified in the Applicant's [business plan]Application[,]; and

(B) [to] supervise each of the Applicant's intended offices and locations, whether or not such offices or locations are required to be registered under [NASD]FINRA [R]rules;

[(C)](5) the Applicant's [has identified]identification of the functions to be performed by each Associated Person and [has adopted]adoption of procedures to assure the registration with FINRA and applicable states of all persons whose functions are subject to such registration requirements;

[(D)](6) the Applicant's identification of each Associated Person [identified] in the [business plan]Application to discharge a supervisory function [has at least one year of direct experience or two years of related experience in the subject area to be supervised]is qualified, either by virtue of experience or training, to carry out his or her assigned responsibilities;

[(E)](7) whether the Applicant will solicit retail or institutional business;

[(F)](8) whether the Applicant will recommend transactions or investment strategies involving a security or securities to customers;

[(G)](9) whether the location or part-time status of a supervisor or principal will affect such person's ability to be an effective supervisor;

[(H)](10) whether the Applicant [should be required to place one or more]will implement heightened supervisory procedures on any Associated

Person[s] [under heightened supervision pursuant to Notice to Members 97-19]whose record reflects a history of industry or regulatory-related incidents, including one or more disciplinary actions or sales practice events;

[(I)](11) any remedial action, such as special training or continuing education requirements or heightened supervision, that has heretofore been imposed on an Associated Person by a state or federal authority or self-regulatory organization; and

[(J)](12) any other condition that is identified that [will]may have a material impact on the Applicant's ability to detect and prevent violations of [the federal]applicable securities laws[, the rules] and regulations [thereunder], and applicable [NASD]FINRA [R]rules.

[(11)](i) **Recordkeeping System**

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

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

[(13)](i) **Other Information Possessed by FINRA**

FINRA does not possess any information indicating that the Applicant may circumvent, evade, or otherwise avoid compliance with [the federal]applicable securities laws[, the rules] and regulations [thereunder], or with applicable [NASD]FINRA [R]rules.

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

••• Supplementary Material: -----

.01 Pending Qualifications for Associated Persons. The Department may, in its discretion, approve an application for continuing membership where one or more of the Applicant's Associated Persons have applied for, but not acquired, all licenses and registrations required by federal and state authorities, and self-regulatory organizations, subject to the following conditions:

(a) All Associated Persons must acquire all required licenses and registrations within 90 days of the date of the approval of the application;

(b) The Applicant shall promptly notify the Department when such licenses and registrations are acquired;

(c) The Applicant shall not engage in business activities that require a license or registration that has not been acquired; and

(d) If all required licenses and registrations are not acquired within 90 days of the date of approval of the application, the Applicant must cease business operations until all such licenses and registrations have been acquired.

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[1014]1150. DEPARTMENT DECISION

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[1014(c)(3)]1151. [Failure to Serve] Timing of Decision

(a) [If t]The Department [fails to]shall serve a written decision on the Applicant within [180]150 days [after]of the [filing of an application]Application Filed Date or such [later]other date as the Department and the Applicant have agreed to in writing[.]. The Department shall serve its decision on the Applicant in accordance with Rule 1112.

(b) If the Department fails to serve a written decision within the requisite timeframe under paragraph (a), the Applicant may file a written request with the FINRA Board requesting that the FINRA Board direct the Department to serve a decision. Within seven days after the filing of such a request, the FINRA Board shall direct the Department to serve its written decision immediately or to show good cause for an extension of time. If the Department shows good cause for an extension of time, the FINRA Board may extend the [180 day] time [limit]within which the Department must issue a decision by not more than 90 days from the FINRA Board's good cause determination.

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[1014(b)]1152. [Granting or Denying] Department Decision on the Application

[(1)] In reviewing [an]the [a]Application [for membership], the Department shall consider whether the Applicant and its Associated Persons [meet each of]satisfy the standards in [paragraph (a)]Rule 1142 that are applicable to such Applicant in accordance with Rule 1141. [Where the Department determines that the Applicant or its Associated Persons are the subject of any of the events set forth in Rule 1014(a)(3)(A) and (C) through (E), a presumption exists that the application should be denied. The Applicant may overcome the presumption by demonstrating that it can meet each of the standards in paragraph (a), notwithstanding the existence of any of the events set forth in Rule 1014(a)(3)(A) and (C) through (E)].

[(2)](a) Granting or Denying the Application

(1) If the Department determines that the Applicant [meets each of]satisfies the applicable standards [in paragraph (a)]set forth under Rule 1142, the Department shall grant the [a]Application [for membership].

[(3)](2) If the Department determines that the Applicant does not [meet]satisfy one or more of the applicable standards [in paragraph (a)]set forth under Rule 1142 in whole or in part, the Department shall:

(A) grant the application subject to one or more restrictions reasonably designed to address a specific financial, operational, supervisory, disciplinary, investor protection, or other regulatory concern based on the applicable standards [for admission in]under Rule [1014(a)]1142; or

(B) deny the application.

(3) Contingent upon Rule 1154, the decision shall become effective upon service and shall remain in effect during the pendency of any review pursuant to the Rule 1160 Series until a decision constituting final action of FINRA is issued under the Rule 1160 Series unless otherwise directed by the National Adjudicatory Council, the FINRA Board or the SEC.

[1014(f)](b) Effectiveness of Restriction

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

[(1)]it is removed or modified by a decision constituting final action of FINRA issued under this Rule or Rules [1015]1166, [1016]1167, or [1017;]

[(2)] stayed by the National Adjudicatory Council, the FINRA Board, or the [Commission]SEC.

[1014(b)(1)](c) Presumption to Deny the Application

[In reviewing an application for membership, the Department shall consider whether the Applicant and its Associated Persons meet each of the standards in paragraph (a). Where the Department determines that the Applicant or its Associated Persons are the subject of any of the events set forth in Rule 1014(a)(3)(A) and (C) through (E),] [a]A presumption exists that the [a]Application should be denied if the Applicant or its Associated Persons are the subject of any of the events set forth in Rule 1142(d)(1), and Rule 1142(d)(3) through (d)(6). The Applicant may overcome the presumption to deny the Application by demonstrating that it can [meet]satisfy [each of] the applicable standards in [paragraph (a)]Rule 1142, notwithstanding the existence of any of the events set forth in [Rule 1014(a)(3)(A) and (C) through E]the aforementioned subparagraphs of Rule 1142(d).

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[1014(c)]1153. Content of Decision

(a) If the Department grants the Application, the Department shall provide written notification to the Applicant.

[1014(c)(2)](b) [If the Department denies the application, the decision shall explain in detail the reason for denial, referencing the applicable standard or standards in paragraph (a).] If the Department grants the [a]Application subject to one or more restrictions under this paragraph, the written decision shall explain, in detail, the reason for each restriction, referencing the applicable standard(s) [or standards] in [paragraph (a)]Rule 1142 upon which the restriction is based, and identify the specific financial, operational, supervisory, disciplinary, investor protection, or other regulatory concern that the restriction is designed to address and the manner in which the restriction is reasonably designed to address the concern.

[1014(c)(2)](c) If the Department denies the [a]Application, the written decision shall explain, in detail, the reason for denial, referencing the applicable standard [or standards] in [paragraph (a)]Rule 1142 upon which the denial is based. [If the Department grants the application subject to restrictions, the decision shall explain in detail the reason for each restriction, referencing the applicable standard or standards in paragraph (a) upon which the restriction is based and identify the specific financial, operational, supervisory, disciplinary, investor protection, or other regulatory concern that the restriction is designed to address and the manner in which the restriction is reasonably designed to address the concern.]

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[1014(d)]1154. Submission of Executed Written Membership Agreement

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

(a) The Department's grant of the Application under Rule 1152 shall be contingent upon the Applicant's submission of an executed written membership agreement to the Department. Within 15 days after the Department's service of the membership agreement on the Applicant, or within such other period agreed to by the Department and the Applicant, the Applicant shall submit an executed written membership agreement to the Department in the manner consistent with Rule 1112. The terms of such agreement shall reflect that, at a minimum, the Applicant agrees to:

(1) abide by all provisions of the membership agreement, including any restriction(s) specified in the Department's decision; and

(2) [obtain the Department's approval of a change in ownership, control, or business operations pursuant to Rule 1017, including the modification or removal of a membership agreement restriction]comply with the Rule 1130 Series.

(b) Upon submission of the membership agreement, the Applicant may begin operating subject to the terms of such agreement. The Applicant shall not waive the right to file a written [request for review]notice of appeal under Rule [1015]1162 by executing a written membership agreement under this paragraph.

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[1014(e)]1155. Service and Effectiveness of Decision; Final Action

(a) Service and Effectiveness of Decision

The Department shall serve its decision [and the membership agreement] on the Applicant in accordance with Rule [1012]1112. The decision shall become effective upon service and shall remain in effect during the pendency of any review until a decision constituting final action of FINRA is issued under the Rule [1015 or 1016]1160 Series, unless otherwise directed by the National Adjudicatory Council, the FINRA Board, or the [Commission]SEC.

[1014(g)](b) Final Action

[Unless the]An Applicant may file[s] a written [request for a review]notice of appeal of the Department's decision with the National Adjudicatory Council [under]pursuant to Rule [1015]1162[.]. The procedures set forth in the Rule [1015]1160 Series shall apply to such review, and the National Adjudicatory Council's decision shall be subject to discretionary review by the FINRA Board pursuant to Rule [1016]1167. If the Applicant does not file a [request for a review]notice of appeal, the Department's decision shall constitute final action by FINRA for purposes of SEA Rule 19d-3.

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1160. REVIEW OF DEPARTMENT DECISION

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[1012(c)]1161. Ex Parte Communications

[(1)] The prohibitions against ex parte communications shall become effective when FINRA staff has knowledge that an Applicant intends to file a written [request for review by] notice of appeal with the National Adjudicatory Council under Rule [1015]1162.

(a) Prohibited Communications

[(2)] Unless on notice and opportunity for an Applicant and Interested FINRA Staff to participate, or to the extent required for the disposition of ex parte matters as authorized by [NASD]FINRA [R]rules:

[(A)](1) No [an] Applicant, [a]or counsel to or representative of an Applicant, or [an] Interested FINRA Staff shall [not] make or knowingly cause to be made an ex parte communication relevant to the merits of a membership proceeding under the Rule [1010]1100 Series to a Governor, a member of the National Adjudicatory Council or a Subcommittee thereof, or a FINRA employee who is participating or advising in a decision of such a person with respect to that proceeding; and

[(B)](2) No [a] Governor, [a] member of the National Adjudicatory Council or a Subcommittee thereof, or [a] FINRA employee who is participating or advising in the decision of such a person with respect to a membership proceeding shall [not] make or knowingly cause to be made to an Applicant, [a] counsel to or representative of the Applicant, or [an] Interested FINRA Staff an ex parte communication relevant to the merits of that proceeding.

(b) Disclosure of Prohibited Communications

[(3)] A Governor, a member of the National Adjudicatory Council or a Subcommittee thereof, or a FINRA employee participating or advising in the decision of such a person, who

receives, makes, or knowingly causes to be made a communication prohibited by this

[paragraph]Rule shall place in the record of the membership proceeding:

[(A)](1) [a]All such written communications;

[(B)](2) [m]Memoranda stating the substance of all such oral communications;

and

[(C)](3) [a]All written responses and memoranda stating the substance of all oral responses to all such communications.

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[1015]1162. [Review by] Appeal to the National Adjudicatory Council

(a) [Initiation of Review by Applicant]Time to File Notice of Appeal

An Applicant may file a written notice of appeal with the National Adjudicatory Council
[W]within 25 days after service of a decision issued under the Rule [1014 or 1017]1150 Series],
an Applicant may file a written request for review with the National Adjudicatory Council. A
request for review shall state with specificity why the Applicant believes that the Department's
decision is inconsistent with the membership standards set forth in Rule 1014, or otherwise
should be set aside, and state whether a hearing is requested. The Applicant simultaneously
shall file by first-class mail a copy of the request to the district office where the Applicant filed its
application].

**[(b) Transmission of Documents redesignated as paragraph (a) under proposed
Rule 1164]**

(b) Where to File Notice of Appeal; Methods of Service

The Applicant shall file the notice of appeal with FINRA's Office of General Counsel and
simultaneously shall serve a copy of the notice of appeal with the Department. The Applicant is
permitted to file and serve the notice of appeal by personal service, by first class mail, first class
certified mail, first class registered mail, or express mail through the U.S. Postal Service, by
courier, or via electronic process or such other process as FINRA may prescribe.

Filing or service by personal service or courier are complete upon delivery. Filing or
service by mail is complete upon mailing. Filing or service is complete on the date recorded by
FINRA's electronic systems for electronic communications or such other process as FINRA may
prescribe.

[(c) Membership Application Docket]

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

(c) Effect

An appeal to the National Adjudicatory Council of a Department decision issued under the Rule 1150 Series shall not operate as a stay of that decision pending a decision from the National Adjudicatory Council issued under Rule 1166(b).

[(d) Appointment of Subcommittee redesignated as paragraph (a) under proposed Rule 1163]

[1015(a)](d) [Initiation of Review by Applicant]Content of Notice of Appeal

[Within 25 days after service of a decision under Rule 1014 or 1017, an Applicant may file a written request for review with the National Adjudicatory Council. A request for review shall]The notice of appeal must:

(1) Be accompanied by the Department's written decision issued under the Rule 1150 Series;

(2) [s]State with specificity why the Applicant believes that the Department's decision is inconsistent with the [membership]applicable standards set forth in Rule [1014]1142, or otherwise should be set aside[,]; and

(3) [s]State whether a hearing is requested. [The Applicant simultaneously shall file by first-class mail a copy of the request to the district office where the Applicant filed its application.]

[(e) Powers of Subcommittee redesignated as paragraph (b) under proposed Rule 1163]

(e) Withdrawal of Notice of Appeal

An Applicant may withdraw its notice of appeal at any time by filing a written notice of withdrawal of appeal with the National Adjudicatory Council and serving notice thereof on the Department.

[(f) Hearing redesignated as proposed Rule 1165]

[(1) Notice redesignated as paragraph (a) under proposed Rule 1165]

[(2) Counsel redesignated as paragraph (b) under proposed Rule 1165]

[(3) Evidence redesignated in part as paragraph (b) under proposed Rule 1164 and paragraph (c) under proposed Rule 1165]

[(4) Transcript redesignated as paragraph (e) under proposed Rule 1165]

[(g) Additional Information, Briefs redesignated as paragraph (b) under proposed Rule 1163]

[(h)](f) Abandonment of [Request for Review]Appeal

The National Adjudicatory Council or Subcommittee may dismiss the appeal as abandoned, and the decision of the Department shall become the final action of FINRA under any of the following circumstances:

(1) [If]When an Applicant fails to:

(A) [fails to] specify the grounds for its [request for review]appeal under this Rule [1015(a)(1),];

(B) appear at a hearing for which it has notice[,]; or

(C) file information or briefs as [directed,]ordered; or

(2) When an Applicant:

(A) files Form BDW;

(B) becomes expelled from FINRA membership; or

(C) enters into liquidation proceedings under the Securities Investor

Protection Act of 1970.

[the National Adjudicatory Council or the Review Subcommittee may dismiss the request for review as abandoned, and the decision of the Department shall become the final action of FINRA.] Upon a showing of good cause, the National Adjudicatory Council or [the Review] Subcommittee may withdraw a dismissal entered pursuant to this paragraph.

**[(i) Subcommittee Recommendation redesignated as paragraph (a) under
proposed Rule 1166]**

[(j) Decision redesignated as paragraph (b) under proposed Rule 1166]

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1163. Appointment and Powers of Subcommittee; Recusal and Disqualification, or

Withdrawal

[1015(d)](a) Appointment of Subcommittee by National Adjudicatory Council

Following the filing of a notice of appeal pursuant to Rule 1162, [T]the National Adjudicatory Council or the Review Subcommittee (as defined in Rule 9120) shall appoint a Subcommittee to participate in the [review]appeal. [The Subcommittee shall be composed of two or more persons who shall be current or past members of the National Adjudicatory Council or former Directors or Governors.]

[1015(e)](b) Powers of Subcommittee

(1) General

(A) For good cause shown, or with the consent of all of the parties to a proceeding, the Subcommittee may extend or shorten any time limits set forth in the Rule 1160 Series.

(B) The Subcommittee shall have the authority to do all things necessary and appropriate to regulate the course of a proceeding under the Rule 1160 Series, including but not limited to, resolving any and all procedural and evidentiary matters.

(2) Scheduling Conference

Within 10 days following the filing of a written notice of appeal or within such other time prescribed by the Subcommittee, the Applicant and the Department shall participate in a scheduling conference. Subject to approval from the Subcommittee, the Applicant and the Department may agree to a hearing date and the date for the Subcommittee to present a recommended decision to the National Adjudicatory Council.

(3) Function

(A) If the Applicant requests a hearing [is requested], the Subcommittee shall conduct the hearing. If the Applicant does not request a hearing [is not

requested], the Subcommittee may [serve a notice directing]order that a hearing be held.

(B) If the Applicant does not request a hearing [is not requested] or [directed] the Subcommittee does not order that a hearing be held, the Subcommittee shall conduct its review of the appeal on the basis of the record developed before the Department and any written submissions made by the Applicant or the Department in connection with the [request for review]appeal.

(C) The Subcommittee may cancel in writing a previously scheduled hearing for good cause shown due to abandonment or other similar unreasonable availability of the Applicant.

[1015(g)](4) Additional Information, Briefs

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

[1012(d)](c) Recusal [or]and Disqualification, or Withdrawal

(1) Recusal and Disqualification

No [A] Governor, [or a] member of the National Adjudicatory Council or a Subcommittee thereof shall [not] participate in a matter governed by the Rule [1010]1100 Series as to which that person has a conflict of interest or bias, or [if] circumstances otherwise exist where his or her fairness might reasonably be questioned. In any such [a] case, the person shall recuse himself or herself or shall be disqualified as follows:

(A) FINRA Board

[(1)] The Chair of the FINRA Board shall have authority to [direct]order the disqualification of a Governor, and a majority of [the Governors of] the FINRA

Board excluding the Chair of the FINRA Board, shall have authority to
[direct]order the disqualification of the Chair of the FINRA Board.

(B) National Adjudicatory Council

[(2)] The Chair of the National Adjudicatory Council shall have authority to
[direct]order the disqualification of a member of the National Adjudicatory Council
or a [member of a] Subcommittee thereof appointed pursuant to this Rule [1015],
and the Vice Chair of the National Adjudicatory Council shall have authority to
[direct]order the disqualification of the Chair of the National Adjudicatory Council,
and decide on a motion for disqualification. If a member of a Subcommittee is
disqualified, the Chair or the Vice Chair of the National Adjudicatory Council shall
appoint a replacement of such member.

(C) Motion for Disqualification

An Applicant or the Department may move for the disqualification of a
member of the National Adjudicatory Council or a Subcommittee thereof
appointed pursuant to this Rule. A motion shall be based upon a reasonable,
good faith belief that a conflict of interest or bias exists or circumstances
otherwise exist where the fairness of the member of the National Adjudicatory
Council or a Subcommittee thereof might reasonably be questioned, and shall be
accompanied by an affidavit setting forth in detail the facts alleged to constitute
grounds for disqualification, and the dates on which the Applicant or Department
learned of those facts. Such motion shall be filed not later than 15 days after the
later of:

(i) when the Applicant or Department learned of the facts believed
to constitute the disqualification; or

(ii) when the Applicant or Department was notified of the
assignment of the members of the Subcommittee.

(2) Withdrawal

If at any time a member of the National Adjudicatory Council or a Subcommittee thereof has a conflict of interest or bias or circumstances otherwise exist where the fairness of the member of the National Adjudicatory Council or a Subcommittee thereof might reasonably be questioned, such member shall notify the Chair or the Vice Chair of the National Adjudicatory Council, and the Chair or the Vice Chair of the National Adjudicatory Council shall issue and serve on the Applicant and Department a notice stating that the member of the National Adjudicatory Council or a Subcommittee thereof has withdrawn from the matter. In the event that such member withdraws, is incapacitated, or is otherwise unable to continue service after a hearing has been convened, the Chair or Vice Chair of the National Adjudicatory Council shall appoint a replacement member.

* * * * *

1164. Transmission of Record, Exhibit and Witness Lists; Withheld Documents

[1015(b)](a) Transmission of [Documents]Record

Except as provided in paragraph (c) of this Rule, [W]within [ten]21 days after the filing of a [request for review]written notice of appeal or at such other time as the Subcommittee or National Adjudicatory Council may designate, the Department shall:

(1) Assemble and prepare an index of the documents that were considered in connection with the Department's decision;

[(1)](2) [t]Transmit the documents and index to [the National Adjudicatory Council] FINRA's Office of General Counsel [copies of all documents that were considered in connection with the Department's decision and an index to the documents]; [and]

[(2)](3) [s]Serve on the Applicant a copy of such documents (other than those documents originally submitted by Applicant) and a copy of the index[.]; and

(4) Serve the record on the Applicant electronically or in any other manner FINRA may prescribe.

[1015(f)(3)](b) [Evidence]Exhibit and Witness Lists

(1) [Formal rules of evidence shall not apply to a hearing under this Rule.] Not later than [five]21 days before the hearing, the Applicant and the Department shall exchange copies of their proposed hearing exhibits and witness lists, and provide copies of the same to the Subcommittee or National Adjudicatory Council. If the Applicant or the Department fails to provide copies of its proposed hearing exhibits or witness list within such time, the Subcommittee or National Adjudicatory Council shall exclude the evidence or witnesses from the proceeding, unless the Subcommittee or National Adjudicatory Council determines that good cause is shown for failure to comply with the production date set forth in this [subparagraph]Rule.

(2) At any time prior to the hearing, the Subcommittee or National Adjudicatory Council, in the exercise of its discretion, may order the Applicant and Department to disclose any expert witness and information related to the expert, including a statement of the expert's qualifications, a listing of other proceedings in which the expert has given expert testimony, a list of the expert's publications, and copies of those publications.

(c) Withheld Documents

(1) The Department may withhold a document if:

(A) the document is privileged or constitutes attorney work product;

(B) the document is an examination or investigative report, an internal memorandum, or other note or writing prepared by a FINRA employee that shall not be offered in evidence;

(C) the document would disclose:

(i) an examination, investigatory or enforcement technique or guideline of FINRA, a federal, state, or foreign regulatory authority, or a self-regulatory organization;

(ii) the identity of a source, including a federal, state, or foreign regulatory authority or a self-regulatory organization that furnished information or was furnished information on a confidential basis regarding an investigation, an examination, an enforcement proceeding, or any other type of civil or criminal enforcement action; or

(iii) an examination, an investigation, an enforcement proceeding, or any other type of civil or criminal enforcement action under consideration by, or initiated by, FINRA, a federal, state, or foreign regulatory authority, or a self-regulatory organization; or

(D) the Subcommittee or National Adjudicatory Council grants leave to withhold a document or category of documents as not relevant to the subject matter of the proceeding, or for other good cause shown.

(2) The Department shall withhold a document if the document is prohibited from disclosure by federal law.

(3) Nothing in paragraph (c)(1) authorizes the Department to withhold a document, or a part thereof, that contains material exculpatory evidence.

(d) Withheld Document List

The Subcommittee or National Adjudicatory Council may require the Department to submit to the Subcommittee or National Adjudicatory Council a list of documents withheld pursuant to paragraph (c) or to submit to the Subcommittee or National Adjudicatory Council any document withheld. Upon review, the Subcommittee or National Adjudicatory Council may order the Department to make the list or any document withheld available to the other parties for inspection and copying unless federal law prohibits disclosure of the document or its existence. A motion to require the Department to produce a list of documents withheld pursuant to paragraph (c) shall be based upon some reason to believe that a document is being withheld in violation of this Rule.

* * * * *

[1015(f)]1165. Hearing

[1015(f)(1)](a) When Held; Notice

If a hearing is requested by the Applicant or [directed]ordered by the Subcommittee or National Adjudicatory Council, the hearing shall be held within [45]90 days after the filing of the [request]notice of appeal with the National Adjudicatory Council or service of the notice by the Subcommittee or National Adjudicatory Council. Not later than 14 days before the hearing. [T]the Subcommittee or National Adjudicatory Council shall serve written notice of the date and time of the hearing to the Applicant [by facsimile or overnight courier] electronically or in any other manner FINRA may prescribe [not later than 14 days before the hearing].

[1015(f)(2)](b) Counsel

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

[1015(f)(3)](c) Evidence

The [F]formal rules of evidence shall not apply to a hearing under this Rule Series. [Not later than five days before the hearing, the Applicant and the Department shall exchange copies of their proposed hearing exhibits and witness lists and provide copies of the same to the National Adjudicatory Council. If the Applicant or the Department fails to provide copies of its proposed hearing exhibits or witness list within such time, the Subcommittee shall exclude the evidence or witnesses from the proceeding, unless the Subcommittee determines that good cause is shown for failure to comply with the production date set forth in this subparagraph.] The Subcommittee or National Adjudicatory Council may exclude all evidence that is irrelevant, immaterial, unduly repetitious or prejudicial.

(1) The review of the Subcommittee or the National Adjudicatory Council shall be limited to consideration of:

(A) all documents and information the Department considered in connection with the Department's decision under the Rule 1150 Series;

(B) admitted exhibits submitted by the Department or the Applicant in accordance with Rule 1164;

(C) witness testimony; and

(D) any additional information or briefs the Department or Applicant has filed in accordance with Rule 1163(b)(4).

(2) Other than the information specified in paragraph (c)(1) of this Rule, any other evidence is presumptively irrelevant. Upon a showing of good cause by the parties to the appeal, the Subcommittee or National Adjudicatory Council may admit other evidence presented by the parties to the appeal.

(d) Testimony

The Applicant and its representative, and any other person who are subject to the jurisdiction of FINRA shall testify under oath or affirmation. The oath or affirmation shall be administered by a court reporter or a notary public.

[1015(f)(4)](e) Transcript

The hearing shall be recorded and a transcript prepared by a court reporter. A transcript of the hearing shall be available for purchase from the court reporter at prescribed rates. The Applicant, the Department, or a witness may seek to correct the transcript. A proposed correction of the transcript shall be submitted to the Subcommittee or National Adjudicatory Council within a reasonable period of time prescribed by the Subcommittee or National Adjudicatory Council. Upon notice to the Applicant and the Department, the Subcommittee or National Adjudicatory Council may [direct]order the correction to the transcript as requested or sua sponte.

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1166. Recommended Decision of Subcommittee and Decision of National Adjudicatory

Council

[1015(i)](a) Recommended Decision of Subcommittee [Recommendation]

The Subcommittee shall present [a]its written recommended decision [in writing] to the National Adjudicatory Council within [60]75 days after the [date]conclusion of the hearing held pursuant to [paragraph (f)]Rule 1165, and not later than seven days before the meeting of the National Adjudicatory Council at which the membership proceeding shall be considered.

[1015(j)](b) Decision of the National Adjudicatory Council

(1) [Proposed Written] Decision

After considering all matters presented [in the review]on appeal and the Subcommittee's written recommended [written] decision, the National Adjudicatory Council may affirm, modify, or reverse the Department's decision or remand the membership proceeding with instructions. The National Adjudicatory Council shall prepare a proposed written decision pursuant to [sub]paragraph (b)(2) of this Rule.

(2) Contents of Decision

The decision shall include:

- (A) a description of the Department's decision, including its rationale;
- (B) a description of the principal issues raised in the [review]proceeding;
- (C) a summary of the evidence on each issue; and
- (D) a statement whether the Department's decision is affirmed, modified, [or] reversed, or remanded, and a rationale therefor that references the applicable standards in Rule [1014]1142.

(3) Issuance of Decision After Expiration of Call for Review Period[s]

The National Adjudicatory Council shall provide its proposed written decision to the FINRA Board. The FINRA Board may call the membership proceeding for review pursuant to Rule [1016]1167. If the FINRA Board does not call the membership

proceeding for review, the proposed written decision of the National Adjudicatory Council shall become final. [The National Adjudicatory Council shall serve the Applicant with a written notice specifying the date on which the call for review period expired and stating that the final written decision will be served within 15 days after such date.] The National Adjudicatory Council shall serve its final written decision within 15 days after the date on which the call for review period expired. The written decision shall constitute the final action of FINRA for purposes of SE[C]A Rule 19d-3, unless the National Adjudicatory Council remands the membership proceeding.

(4) Failure to Issue Decision

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

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[1016]1167. Discretionary Review by FINRA Board

(a) Call [F]for Review [B]by Governor

A Governor may call a membership proceeding for review by the FINRA Board if the call for review is made within the period prescribed in paragraph (b) of this Rule.

(b) 15-Day Period; Waiver

(1) A Governor shall make his or her call for review at the next meeting of the FINRA Board that is at least 15 days after the date on which the FINRA Board receives the proposed written decision of the National Adjudicatory Council.

(2) By unanimous vote of the FINRA Board, the FINRA Board may shorten the period to less than 15 days. By an affirmative vote of the majority of the FINRA Board then in office, the FINRA Board may, during the 15-day period, vote to extend the period to more than 15 days.

(c) Review [A]at Next Meeting

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

(d) Decision of FINRA Board, Including Remand

After review, the FINRA Board may affirm, modify, or reverse the proposed written decision of the National Adjudicatory Council. Alternatively, the FINRA Board may remand the membership proceeding with instructions. The FINRA Board shall prepare a written decision that includes all of the elements described in Rule [1015]1166(b).

(e) Issuance of Decision

The FINRA Board shall serve its written decision on the Applicant within 15 days after the meeting at which it conducted its review. The decision shall constitute the final action

of FINRA for purposes of SE[C]A Rule 19d-3, unless the FINRA Board remands the
[membership] proceeding.

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[1019]1168. Application to the [Commission]SEC for Review

A person aggrieved by final action of FINRA under the Rule [1010]1100 Series may apply for review by the [Commission]SEC pursuant to Section 19(d)(2) of the Exchange Act. The filing with the SEC of an application for review [by the SEC] shall not stay the effectiveness of a decision constituting final action of FINRA, unless the [Commission]SEC orders otherwise [orders].

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1169. Reserved

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Text of Proposed Changes to Section 4 of Schedule A to the FINRA By-Laws

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SCHEDULE A TO THE BY-LAWS OF THE CORPORATION

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Section 4 – Fees

(a) through (h) No Change.

(i)(1) through (2) No Change.

[(3) FINRA shall waive the fee assessed pursuant to paragraph (i)(1) for a continuing membership application where FINRA determines that such application is proposing less significant changes that do not require substantial staff review. For example, a continuing membership application may qualify for a fee waiver under this paragraph (i)(3) where the proposed change:]

[(A) does not make any day-to-day changes in the applicant's business activities, management, supervision, assets, or liabilities, and the applicant is only proposing a change in the:]

[(i) applicant's legal structure (e.g., changing from a corporation to an LLC);]

[(ii) equity ownership, partnership capital, or other ownership interest in an applicant held by a corporate legal structure that is due solely to a reorganization of ownership or control of the applicant within the corporate legal structure (e.g., reorganizing only to add a holding company to the corporate legal structure's ownership or control chain of the applicant); or]

[(iii) percentage of ownership interest or partnership capital of an applicant's existing owners or partners resulting in an owner or partner owning or controlling 25 percent or more of the ownership interest or

partnership and that owner or partner has no disclosure or disciplinary issues in the preceding five years; or]

[(B) is filed in connection with a direct or indirect acquisition or transfer of 25 percent or more in the aggregate of the applicant's assets or any asset, business, or line of operation that generates revenues composing 25 percent or more in the aggregate of the applicant's earnings, measured on a rolling 36-month basis, where the applicant also is ceasing operations as a broker or dealer (including filing a Form BDW with the SEC); and there are either:]

[(i) no pending or unpaid settled customer related claims (including, but not limited to, pending or unpaid settled arbitration or litigation actions) against the applicant or any of its associated persons; or]

[(ii) pending or unpaid settled customer related claims (including, but not limited to, pending or unpaid settled arbitration or litigation actions) against the applicant or its associated persons, but the applicant demonstrates in the continuing membership application its ability to satisfy in full any unpaid customer related claim (e.g., sufficient capital or escrow funds, proof of adequate insurance for customer related claims).]

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

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NASD Rules

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

Entire text deleted.

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Incorporated NYSE Rules

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[Rule 311. Formation and Approval of Member Organizations]

Entire text deleted.

[Rule 312. Changes Within Member Organizations]

Entire text deleted.

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

Entire text deleted.

[Rule 321. Formation or Acquisition of Subsidiaries]

Entire text deleted.

* * * * *

Incorporated NYSE Rule Interpretations

* * * * *

[Rule 311 Formation and Approval of Member Organizations]¹

[(b)]

¹ This version also reflects changes that becomes effective on October 1, 2018. See Securities Exchange Act Release No. 81098 (July 7, 2017), 82 FR 32419 (July 13, 2017) (Order Approving File No. SR-FINRA 2017-007).

[(5) OFFICERS]

[/01Reserved.]

[/02 Reserved.]

[/03 Reserved.]

[/06 Limitations on Principal Executives]

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

[(f) PRINCIPAL PLACE OF BUSINESS]

[/01 Criteria]

[In order to satisfy the rule's requirement that a member organization's principal place of business be maintained within the U.S., at least the following must be located within the U.S., at a definite and manned physical location which is adequate to serve as the site for Exchange inspection of the organization:]

[a) Assets of customers who are citizens or residents of the U.S. and assets associated with transactions effected in the U.S., except for:

- (1) funds which are ordinarily held in branch offices or in transit, and
- (2) securities which are held as provided for in SEA Rule 15c3-3(c).]

[To the extent that the broker-dealer introduces customer accounts on a fully disclosed basis to a carrying firm which is located in the U. S., such customer assets may be located at the carrying firm.]

[b) Books and records customarily maintained by brokers and dealers at their principal place of business and sufficient to permit the Exchange to conduct its inspection of the member organization.]

[The utilization of a clearing broker, a bank, or a service bureau which prepares or maintains the member organizations' books and records in accordance with SEA Rules 17a-3 and 17a-4 would satisfy this

criterion if such broker, bank or bureau is located in the U.S., and the records would be readily accessible to the Exchange.]

[c) Member organization capital sufficient to meet applicable capital requirements.]

[d) All allied members, qualified and authorized to perform Rule 342 functions.]

[e) Clearance, settlement and securities handling operations which pertain to securities transactions effected in the U.S., to the extent that such operations are maintained by the broker-dealer.]

[f) Operations pertaining to foreign securities transactions effected on behalf of customers who are citizens or residents of the U.S., to the extent that such operations are customarily maintained by a broker-dealer at a principal place of business.]

[(g) MINIMUM OF ACTIVE PARTNERS IN MEMBER ORGANIZATIONS — USE OF MEMBER ORGANIZATION NAME]

[/01 Reserved.]

[/02 Divisions of Member Organizations — Names]

[Divisions that are not separate legal entities may not be identified by the use of such words as "Company", "Corporation" or "Incorporation", which connote separate entities. Persons staffing such divisions should not have the title of "President", which indicates a separate entity. The titles, "Vice President" or "Assistant Vice President" are satisfactory when used in a context which does not convey the existence of authority on behalf of the member organization not, in fact, possessed by that individual.]