

Information Memo

NYSE Regulation, Inc

NYSE Regulation, Inc. | 20 Broad Street
New York, NY 10005
nyse.comNumber 12-10
April 12, 2012

TO: ALL MEMBERS AND MEMBER ORGANIZATIONS

SUBJECT: RULE 2 AND 304 AMENDMENTS: CHANGES TO DEFINITION OF APPROVED PERSONS AND APPLICATION PROCESS

I. Overview and Purpose

All member organizations are advised that the New York Stock Exchange, LLC ("NYSE") and NYSE Amex, LLC ("NYSE Amex") (collectively, the "Exchange") have amended NYSE and NYSE Amex Equities rules governing the definition of approved person and the application process for approved persons. In summary, the Exchange has:

- Amended the definition of "approved person" to exclude foreign affiliates;
- Replaced the AP-1 Form with a new consent form; and
- Eliminated the AD-G 2 and AD-G 3 Forms ("AD-G Form")

This rule proposal was approved by the Securities and Exchange Commission on April 2, 2012.¹ The effective date of this rule change is **April 13, 2012**. The full text of the amended rule changes is attached as Attachment A. The revised approved person consent form ("AP Form") for non-natural persons is attached as Attachment B and is also available on the Exchange's website: https://usequities.nyx.com/sites/usequities.nyx.com/files/ap_form.pdf.

As set forth in more detail below, in order to ensure that the Exchange has an accurate list of each member organization's approved persons, the Exchange is requiring all member organizations to provide the Exchange with an updated list of approved persons by **July 27, 2012**.

II. Background

The rules governing the definition of and application process for an approved person are Exchange Rules 2 and 304. Exchange Rule 2(c) previously defined the term "approved person" to include a person that is engaged in a securities or kindred business and is under common control with a member or member organization, which included foreign affiliates of the member organization that were in a securities or kindred business.

¹ See Securities Exchange Act Release Nos. 66709 (April 2, 2012), 77 FR 20870 (April 6, 2012) (SR-NYSE-2012-06) and 66710 (April 2, 2012), 77 FR 20869 (April 6, 2012) (SR-NYSEAmex-2012-12).

Exchange Rules 304 and 311(a) required, with limited exceptions, that persons that met the Exchange Rule 2(c) definition of an approved person apply for approval by the Exchange as an approved person. Exchange Rule 304 prescribed that process and applicants were required to submit a completed Form AP-1 (in the case of a non-natural person) or AD-G Form (in the case of a natural person) and other pertinent information regarding the applicant for approval. The AP-1 Form and the AD-G Form required applicants to provide information relating to, among other things, the financial background of the applicant. By executing the AP-1 Form or AD-G Form before a notary public, the approved person affirmatively consented to the Exchange's jurisdiction.

III. Amended Rule 2(c): Revised Approved Person Definition to Exclude Foreign Affiliates

The Exchange has amended Exchange Rule 2(c) to revise the definition of which persons are deemed under "common control" with a member organization. Specifically, the Exchange has amended the rule to exclude from the definition of "approved person" foreign affiliates under common control with a member organization. Amended Rule 2(c) now defines an approved person as:

a person, other than a member, principal executive or employee of a member organization, who controls a member organization, is engaged in a securities or kindred business that is controlled by a member or member organization, or is a U.S. registered broker-dealer under common control with a member organization.

As revised, the definition of approved person still includes any person that controls a member organization, which could include foreign persons, or any person that a member organization controls and that is in a securities or kindred business, which also could include a foreign person.² As amended, the only entities that now fall under the common control with a member organization category of approved persons are U.S. registered broker dealers. Accordingly, persons under common control with a member organization that are in a securities or kindred business, and that are not U.S. registered broker dealers, no longer meet the definition of approved person. Thus, foreign affiliates of a member organization are now excluded from the definition of approved person.

IV. Revised Application Process

In connection with the changes to the definition of approved person, the Exchange has also amended the rules governing the application process for approved persons. As amended, Exchange member organizations will no longer need to obtain Exchange approval for an approved person; either a person meets the definition of approved person or it does not.

Going forward, member organizations will be required to identify to the Exchange all of its approved persons, both natural and non-natural. As with the current AP-1 and AD-G Forms, such approved persons would continue to be required to consent to the Exchange's jurisdiction. However, such approved persons will no longer be required to submit financial information or obtain notarized signatures on the application form.

To reflect these changes, the Exchange is replacing the manner by which approved persons consent to Exchange jurisdiction.

- **Approved Persons that are non-natural persons:** The Exchange has eliminated the AP-1 Form. Going forward, non-natural approved persons must complete and execute the AP Form, which requires the approved person to supply identifying information,

² The Exchange has not amended the definitions of "person" (Exchange Rule 2(d)), "control" (Exchange Rule 2(e)), or "engage in a securities or kindred business" (Exchange Rule 2(f)).

identify its relationship to the member organization, disclose whether the approved person is subject to a statutory disqualification, and consent to jurisdiction of the Exchange. The AP Form must be executed by an officer duly authorized to sign on behalf of the approved person. The Exchange will accept electronic copies of the AP Form with a pdf of the signature page.

- **Approved Persons that are natural persons:** The Exchange is eliminating the AD-G Form, but will continue to require registration with Web CRD as an approved person (the “AP” registration). Accordingly, all natural approved persons must file a Form U4 for the AP registration for both NYSE and NYSE Amex. By registering with the Exchange, the approved person consents to jurisdiction.

V. Requirement to Update List of Approved Persons

To ensure that the Exchange has an accurate list of each member organization’s approved persons, the Exchange is requiring all member organizations provide the Exchange with an updated list of the names of all approved persons by **July 27, 2012**.

- The updated list of names should include all approved persons, including those that have previously been approved by the Exchange as an approved person (either via an AP-1 Form or an AD-G Form). A member organization does not need to submit a new AP Form for approved persons that have previously been approved pursuant to either an AP-1 Form or an AD-G form.
- For approved persons that are natural persons, please also include the CRD number.
- The updated list of names should exclude any persons that no longer meet the definition of approved person, i.e., any persons under common control with a member organization that are in a securities or kindred business, other than a U.S. registered broker dealer.
- If in its review, a member organization identifies persons that meet the definition of approved person, but for which an AP-1 Form or AD-G form has not previously been approved, the member organization must either submit an executed AP Form on behalf of any such non-natural approved person or register the natural approved persons as an AP on Web-CRD.

Member organizations should provide the updated list of approved persons to both the Exchange and FINRA at the following email addresses:

- crs@nyx.com
- Q&RNY@finra.org

Going forward, if a member organization has any changes to its approved person list, it should advise the above-referenced email addresses. If the member organization has any new approved persons, the member organization must either provide an executed AP Form for a non-natural approved person or register the natural approved person with Web-CRD with a Form U4 for AP status.

VI. Related Rule Changes

The Exchange also eliminated certain references to the term “allied member,” and where appropriate, replaced that term with the term “principal executive,” deleted the application process and examination requirements for allied members set forth in Exchange Rule 304 and

304A and the interpretations thereto, and conformed the member organization application requirements set forth in Exchange Rule 311 with the changes to Exchange Rule 304.

In addition, to ensure that potential conflicts of interest associated with having a foreign affiliate under common control with a member organization are addressed in rules that reference “approved persons,” the Exchange has made several amendments to its rules.

First, the Exchange amended paragraphs (3) and (4) of Exchange Rule 21 to provide that a member of the Exchange’s Board of Directors or an authorized committee who is associated with a member organization cannot participate in the deliberations concerning the listing of a security if the Director knows that an affiliate of the member organization directly or indirectly owns one percent or more of any class of stock of the issuer or has a contract, option, or privilege to purchase the security to be listed. Second, the Exchange amended Exchange Rule 22 to provide that a member of certain Exchange boards and committees may not participate in the consideration of any matter if there are certain types of indebtedness between the board or committee member and a member organization’s affiliate or other related parties. Third, the Exchange amended NYSE Rule 98A, which provides that no issuer, or partner or subsidiary thereof, may become an approved person of a Designated Market Maker (“DMM”) unit that is registered in the stock of that issuer, to provide instead that a DMM unit may not be registered in a stock of an issuer, or a partner or subsidiary thereof, if such entity is either an approved person or an affiliate of the DMM unit’s member organization. Finally, the Exchange amended Supplementary Material .30(c) of Rule 402 to provide that when securities are callable in part under the Rule, a member organization may not allocate any called securities to the account of an affiliate until all customer positions have been satisfied.

VII. Staff Contacts

Questions concerning the rule changes described in this Information Memo should be directed to:

- Clare Saperstein, Vice President, NYSE Regulation, Inc., 212.656.2355
- David De Gregorio, Chief Counsel, NYSE Regulation, Inc., 212.656.4166

Questions concerning the NYSE and NYSE Amex Equities membership application process should be directed to:

- Client Relationship Services, 212.656.2085 or crs@nyx.com
- Joseph J. Sheirer, Director & Counsel, FINRA Membership Application Program, 212.858.5132
- Maria Rabinovich, Principal Counsel, FINRA Membership Application Program, 646.315.8461

Questions concerning the submission of an updated list of approved persons should be directed to:

- Edgar Russell, Manager, FINRA Registration and Disclosure, 212.858.4103

Attachments

**Attachment A
Information Memo 12-10**

Additions underlined
deletions [bracketed].

NYSE and NYSE Amex Equities Rules

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

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

Rule 21. Disqualification of Directors on Listing of Securities

No member of the Board of Directors or of any committee authorized by the Board shall vote at any meeting of the Board or of any such committee, or participate in its deliberations (except to the extent of testifying at the request of the Board or of such committee) with respect to the admission of a security to the List or to dealings upon the Exchange or with respect to the approval of any plan for the distribution of any listed security, if he has directly or indirectly a substantial interest in such security or in such plan. Without limiting the foregoing, such a member shall be deemed to have such an interest if:

(1) Such security or any other security of the same issuer is one in the distribution of which he or his member organization is participating or to his knowledge has within six months prior thereto participated, as or on behalf of an underwriter or a member of a selling syndicate or group; or

(2) he or any member, [allied member or] principal executive, approved person in his member organization is an officer or director (or person occupying a similar status or performing similar functions) or a voting trustee of the issuer of such security or of any corporation which to his knowledge controls or is controlled by the issuer or such security; or

(3) he or his member organization or any member, [allied member or] affiliate, principal executive, or approved person [therein] of such member organization to his knowledge owns directly or indirectly more than 1% of such security or of any class of stock of the issuer, or of any corporation which to his knowledge controls the issuer of such security; or

(4) he or his member organization or any member, [allied member or] affiliate, principal executive, or approved person [therein] of such member organization to his knowledge holds

directly or indirectly any substantial contract, option, or other privilege [entitling him] to purchase such security; or to his knowledge within six months prior thereto has directly or indirectly purchased (other than through the exercise of a right to subscribe) such security from the issuer or an underwriter thereof at a price below the market price.

Rule 22. Disqualification Because of Personal Interest

(a) No member of the NYSE Euronext ("NYSE Euronext"), the Exchange LLC, NYSE Market, and NYSE Regulation boards of directors or of any committee authorized by the NYSE Euronext, the Exchange, NYSE Market, and NYSE Regulation boards of directors shall participate (except to the extent of testifying at the request of such boards or of such committee) in the investigation or consideration of any matter relating to any member, [allied member] principal executive, approved person, [or] member organization, or affiliate of such member organization with knowledge that such member, [allied member] principal executive, approved person, [or] member organization, or affiliate is indebted to such director or committee member, or to their member organization or any participant therein, or that they, their member organization or any participant therein is indebted to such member, [allied member] principal executive, approved person, [or] member organization, or affiliate, excluding, however, any indebtedness arising in the ordinary course of business out of transactions on any exchange, out of transactions in the over-the-counter markets, or out of the lending and borrowing of securities.

Rule 91. Taking or Supplying Securities Named in Order

No member, whether acting as a DMM or otherwise, who has accepted for execution, personally or through his or her member organization, an order for the purchase of securities shall fill such order by selling such securities for any account in which he, his member organization, or any [other] member, [or allied member therein has a direct or indirect interest or for any account in which an] principal executive, approved person [in such organization] or officer [thereof] of such member organization is directly or indirectly interested when the member knows or should have known that the sale is for such an account or having so accepted an order for the sale of securities shall fill such order by buying such securities for such an account, except as follows:

Rule 96. Limitation on Members' Trading Because of Options

No member while on the Floor shall initiate the purchase or sale on the Exchange for his own account or for any account in which he, his member organization, or any [other] member, [allied member or] principal executive, or approved person, [in] of such member organization is directly or indirectly interested, of any stock in which he holds or has granted any put, call, straddle or other option, or in which he has knowledge that his member organization or any of the above mentioned accounts holds or has granted any put, call, straddle or other option, except that the provisions of this rule shall not apply in the case of any such options that are listed or traded on

a national securities exchange. The Exchange may at any time, and from time to time, require reports relating to transactions in options effected by a member or member organization.

Rule 98A. Restrictions on Persons or Parties Affiliated with A DMM Unit

[No issuer, or partner or subsidiary thereof, may become an approved person of a DMM unit that is registered in a stock of that issuer.] A DMM unit may not be registered in a stock of an issuer, or a partner or subsidiary thereof, if such entity is an approved person or affiliate of the DMM unit's member organization.

Rule 112. Orders initiated "Off the Floor."

(a) All orders in stocks for the account of a member organization or any member, [allied member or] principal executive, approved person, officer, or employee of [in] such organization [or officer or employee thereof] or a discretionary account serviced by the member or member organization must be sent to the Floor through a clearing firm's order room or other facilities regularly used for transmission of public customers' orders to the Floor.

The restrictions of paragraph (a) above shall not apply to an order

(i) when a Floor Official expressly invites a member or members to participate in a difficult market situation;

(ii) to facilitate the purchase or sale of a block of stock because the market on the Floor could not readily absorb the block at a particular price or prices;

(iii) to sell stock for an account in which the member organization is directly or indirectly interested if, in facilitating the sale of a large block of stock, the member organization acquired its position on the Floor because the demand was not sufficient to absorb the block at a particular price or prices;

(iv) to effect bona fide arbitrage or to engage in the purchase and sale, or sale and purchase of securities of companies involved in publicly announced merger, acquisition, consolidation, tender, etc.; or

(v) to offset a transaction made in error.

(b) "On the Floor" or "On-Floor" means the trading Floor of the Exchange and the premises immediately adjacent thereto, such as the various entrances and lobbies of the 11 Wall Street, 18 New Street, 8 Broad Street, 12 Broad Street and 18 Broad Street Buildings, and also means the telephone facilities available in these locations.

(c) A member using a communication facility located on the Floor of the Exchange to enter an order for his own account will be deemed to be initiating an off-Floor order if such order is routed through a clearing firm's order room, where a time-stamped record of the order is maintained, before such order is re-transmitted to the Floor for execution. However, an off-Floor order for an account in which a member has an interest is to be treated as an on-Floor order if it is executed by the member who initiated it.

(d) Any order entered by a member organization for any account in which it, or any member, [allied member or] principal executive, approved person, officer, or employee of [in] such organization [or officer or employee thereof] is directly or indirectly interested, or for any discretionary account serviced by the member organization, following a conversation with a member or employee in that organization who is on the Floor, shall be deemed to be an off-Floor order, provided (i) that such order is transmitted to the Floor through an order room or other facility regularly used for the transmission of public orders to the Floor, where a time-stamped record of the order is maintained; or (ii) an exception from the order room transmission requirement is available under paragraph (a) of this Rule.

(e) No member or member organization shall execute, or cause to have executed, on the Exchange, any order for any account in which such member, member organization, or any member, [allied member or] principal executive, approved person, officer, or employee of [in] such organization [or officer or employee thereof] is directly or indirectly interested, or for any discretionary account serviced by the member or member organization, in contravention of any Exchange policy against the front-running of block transactions that the Exchange may from time to time adopt and make known to its members.

Rule 304. [Allied Members and] Approved Persons

[(a) No person shall become or remain an allied member or approved person unless such person meets and continues to meet the standards prescribed in the Rules of the Exchange.

(b) Any natural person, not a member of the Exchange, shall become an allied member of the Exchange by agreeing to abide by all rules adopted from time to time by the Exchange and by being either

(i) a general partner in a member organization or an employee who controls such member organization; or

(ii) an employee of a member organization who is:

(a) a person who controls such organization, or

(b) a principal executive officer of such organization.

Such agreement to abide by the Rules shall be made by written instrument filed with the Exchange in which the signer agrees as aforesaid. Any person registered with the Exchange in any capacity shall become an allied member upon written notice to the Exchange that such person is included in either (i) or (ii), above.

(c) When an allied member dies or is expelled, his allied membership shall terminate.

(d) When an allied member ceases or fails to be an allied member associated with a particular member organization, and does not forthwith qualify as an allied member associated with another member organization continuing the business of the first member organization, his allied membership shall terminate.

(e) Any person who controls a member organization, or who engages in a securities or kindred business and is controlled by or under common control with a member organization but is not a member or allied member or an employee of a member organization shall apply for approval by the Exchange as an approved person by furnishing the Exchange with such information with respect to such applicant, its history and business, its equity-holders, officers, partners and directors, any person controlling such applicant, and such other information as the rules of the Exchange may require. Each such applicant] A member organization must identify each approved person to the Exchange. Each approved person shall consent to the jurisdiction of the Exchange and shall agree to:

(1) [Supply the Exchange with information with respect to such applicant's relationship and dealings with the member or member organization with which it is associated as the Exchange may reasonably require to ascertain whether the applicant is in compliance with applicable provisions of Federal Securities Laws, the rules and regulations thereunder, and the rules of the Exchange; and

(2) to] supply the Exchange with information relating to the existence of any statutory disqualification to which the [applicant] approved person or any person associated with the [applicant] approved person may be subject, as defined in the Securities Exchange Act of 1934; [and]

[(3)] (2) [to] abide by such provisions of the Rules of the Exchange relating to approved persons as shall from time to time be in effect; and

[(4)] (3) [to] permit examination by the Exchange, or any person designated by it, at any time or from time to time, of its books and records to verify the accuracy of the information required to be supplied herein and by the Rules of the Exchange.

••• **Supplementary Material:** -----

.10 Notwithstanding the provisions of Rule 304[(e)(4)], no [applicant to become an approved person (the "applicant") or] approved person which is domiciled outside the United States shall be required to permit examination by the Exchange, or any person designated by it, of the [applicant's or] approved person's books and records, at its place of domicile, to verify the accuracy of information required to be supplied by the rules of the Exchange whenever such examination would, in the opinion of the independent person or government official (as hereinafter specified,) be contrary to the law to which the [applicant or] approved person is subject in its place of domicile or contrary to generally accepted custom or business practice of such place. Whenever an [applicant or an] approved person chooses to invoke the provisions of the preceding sentence of this paragraph, the [applicant or] approved person shall, at its expense, submit to the Exchange a written certification acceptable to the Exchange by a person deemed independent of the [applicant or] approved person and of its affiliated member organization, which person is recognized as an enrolled attorney or counselor at law in such place of domicile (the "independent person") or an appropriate governmental official of the place of domicile stating that the examination of the books and records of the [applicant or] approved person by the Exchange or any person designated by it at its place of domicile would be contrary to the law to which the [applicant or] approved person is subject in its place of domicile or contrary to generally accepted custom or business practice of such place. Whenever and so long as an approved person chooses to invoke the provisions of the first sentence of this

paragraph, the approved person shall, at its expense, submit to the Exchange, not less frequently than annually and upon specific request by the Exchange, a written certification acceptable to the Exchange by an independent person or a person deemed independent of the [applicant or] approved person and its affiliated member organization which person is recognized in the place of domicile of the [applicant or] approved person as an auditor stating that upon reasonable examination conducted by the said person in accordance with generally accepted practices and principles prevalent in the approved person's place of domicile, (i) in respect of any appropriately designated omnibus account carried by the affiliated member organization for the account of the approved person but not for its benefit, said independent person has no reason to believe that any of the persons on whose behalf and for whose benefit any transaction was effected therein was a person associated with the approved person or its affiliated member organization within the meaning of the Securities Exchange Act of 1934 as amended (the "Act"), or the rules thereunder, and (ii) in respect of any account carried by the affiliated member organization in the name and for the account and benefit of the approved person, which account reflects transactions effected in reliance on Section 11(a)(1)(G) of the Act, the rules thereunder and, in particular, Rule 11a1-2 thereunder, the approved person, during its preceding fiscal year, derived more than fifty percent of its gross revenues from one or more of the sources specified in Section 11(a)(1)(G)(i) of the Act.

Rule 304A. Member [and Allied Member] Examination Requirements

(a) Every applicant for membership[, or allied membership] shall pass an examination required by the Exchange unless such examination is waived by the Exchange.

(b) Every applicant for membership [or allied membership] shall agree with the Exchange that, unless the appropriate qualifying examination required by the Exchange is waived, the applicant will, within three months following six months after becoming a member [or allied member] without having passed such examination, or upon failure to pass such examination after-not more than three attempts, whichever occurs first, cease to be a member[or allied member], retire as a general partner, principal executive officer, or director and if necessary promptly dispose of sufficient voting stock as may be necessary to reduce ownership below that level which enables such applicant to exercise controlling influence over the management or policies of the member organization.

(c) No member [or allied member] shall undertake any active duties as a member [or allied member] until the appropriate examination requirement is satisfied. A member who is to be active on the floor is required to be indoctrinated under the guidance of an experienced floor member for such period of time as may be necessary to become acquainted with floor procedures before being permitted to executed orders without supervision.

••• Supplementary Material: -----

.10 The procedures for applying for these examinations are contained in study outlines which are available from the Exchange.

.20 Without the consent of the Exchange, no member qualified as a floor member shall act as an office member nor shall a member qualified as an office member act as a floor member without passing the appropriate qualifying examination required by the Exchange.

.30 Reserved. [A floor member required to retire, under paragraph (b) of this rule, who at the time of submitting the application was qualified as an allied member, may if the member and the member organization so desire, retain membership and act as an office member or dispose of the membership and continue as an allied member in the member organization.]

.40 An office member required to retire, under paragraph (b) of this rule, who at the time of submitting the application was qualified as a floor member, may, if the member and the member

organization so desire, retain membership and act as a floor member in the member organization.

.50 Any member [or allied member] whose sole duties are on the floor of another exchange will not be required to pass a New York Stock Exchange examination, if a floor examination, satisfactory to this Exchange, given by the exchange on whose floor the applicant is active, is passed.

.60 A member who applies to register as an odd-lot dealer or broker, DMM or registered trader is also required to pass an appropriate examination in these areas as prescribed by the Exchange. (See Paragraphs 2101.10, 2103.10, and 2111.)

.70 Any member [or allied member] intending to work in the office of a member organization, who lacks experience in the securities business and who proposes to service customers accounts may also be required to undergo a period of training and to pass the examination for registered representatives.

.80 Any member [or allied member] who is engaged in the solicitation or handling of business in, or the sale of, commodities futures contracts must demonstrate competency by satisfying a solicitors examination requirement of a national commodities exchange, which examination is acceptable to the New York Stock Exchange.

Rule 308. Acceptability Proceedings

(a) The Exchange may disapprove (i) the application of a prospective member or member organization; or (ii) the application for employment or association with a member or member organization, of any prospective member, [allied member, approved person] principal executive, registered representative, or other person required by the Rules of the Exchange to be approved by the Exchange; or (iii) any change in the status of any person which change requires approval of the Exchange; or (iv) the application of any non-member broker/dealer accessee, as provided for in the Exchange Rules, or in the Securities Exchange Act of 1934, as amended.

(b) – (c) No change.

(d) In any proceeding under this rule involving, as an applicant therein, a prospective member, member organization, [allied member, approved person] principal executive, or non-member broker/dealer accessee, the members of the Acceptability Board serving on the Acceptability Committee shall be members or [allied members] principal executives who, to the extent reasonably possible, are engaged in similar activities as the applicant proposes to engage in, or have knowledge of those activities. In any such proceeding relating to proposed activities on the Floor of the Exchange, all persons serving on the Acceptability Committee shall be members active on the Floor of the Exchange. In any such proceeding relating to any other proposed activities, all persons serving on the Acceptability Committee shall work in the offices of a member or member organization which engages in a business involving substantial direct contact with securities customers.

Rule 311. Formation and Approval of Member Organizations

(a) Any person who proposes to form a member organization [and any member organization which proposes to admit therein any approved person] shall notify the Exchange in writing

before any such formation [or admission], pay any applicable fee and shall submit such information as may be required by the Rules of the Exchange. No such member organization shall become or remain a member organization unless all approved persons [required to be approved are so approved and] execute [such] agreements with the Exchange as required by [the] Rule[s] 304 [of the Exchange may prescribe].

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

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

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

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

(4) [every person who engages in a securities or kindred business and is controlled by or under common control with such partnership or corporation is an approved person] every approved person of the member organization meets the requirements of Rule 304; and

(5) The Board of Directors of such corporation designates “principal executives”; and

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

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

(c) – (g) No change.

.....Supplementary Material:

.10 Rescinded effective February 15, 1979. (See Rule 351 for reporting requirements.)

.11 Application.—The papers required to be submitted prior to approval of the formation or admission of a member organization are as follows:

(1) Letter giving name and address of proposed or existing organization, date of proposed formation or admission, and names of all proposed or present officers and other parties required to be approved by the Exchange under Rule[s] 304 and] 311; and

(2) individually executed applications by all parties whose approval by the Exchange is required.

The papers required to be submitted prior to approval of the admission to an existing member organization of any party requiring the approval of the Exchange under Rule[s] 304 and] 311[,] are as follows:

(1) Letter stating name of such proposed party and proposed date of admission to member organization; and

(2) an individually executed application by such proposed party.

.12 Authorization and Statement of Understanding.—Authorization and Statement of Understanding—Each member organization, or proposed member organization, must submit the following authorization and statement of understanding executed by each natural person [requiring the approval of the Exchange under Rule 304] who is an approved person under Rule 2(c):

“In connection with my current application, I authorize the New York Stock Exchange, Inc. and any agent acting on its behalf, to conduct an investigation of my character, credit worthiness, ability, business activities, educational background, previous employment and reasons for termination thereof.

“I authorize and request any and all of my former employers, and any other person to furnish to the Exchange, and any agent acting on its behalf, any information that they may have concerning my character, credit worthiness, ability, business activities, educational background, general reputation, previous employment and reasons for termination thereof ... Moreover, I hereby release each such employer and each such other person from any and all liability of whatsoever nature by reason of furnishing such information to the Exchange and any agent acting on its behalf.

“Further, I recognize that I will be the subject of an investigative report ordered by the Exchange and acknowledge that I have been informed of my right to request information from the Exchange concerning the nature and scope of the investigation requested.”

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

.14 - .17 No change.

Rule 402. Customer Protection—Reserves and Custody of Securities

(a) General Provisions

Each member organization shall obtain custody and control of securities and maintain reserves as prescribed by Rule 15c3-3 promulgated under the Securities Exchange Act of 1934. For the purpose of this Rule the definitions contained in such Rule 15c3-3 shall apply.

(b) Agreements for Use of Customers' Securities

No member organization shall lend, either to itself as a broker-dealer or to others, securities which are held on margin for a customer and which are eligible to be pledged or loaned, unless such member organization shall first have obtained a written authorization from such customer permitting the loan of such securities by the member organization.

••• **Supplementary Material** -----

.30 Securities Callable in Part.—Member organizations which have in their possession or under their control bonds or preferred stocks of issues which are callable in part, whether specifically set aside or otherwise, shall identify each such bond or preferred stock so that their records shall clearly show for whose account it is held, except in the case of:

(a) bonds, interest upon which has not been paid for at least two interest periods;

(b) Euro-Dollar bonds deposited in a central clearing facility for Euro-Dollar bonds, provided:

(1) customers are notified before deposit that their bonds may be deposited in the facility, and

(2) the member organization on behalf of its customers has the right to withdraw uncalled bonds from the facility at any time.

(c) bonds or preferred stocks, provided:

(1) the member organization has adopted an impartial lottery system in which the probability of a customer's bonds or preferred stocks being selected as called is proportional to the holdings of all customers of such securities held in bulk by or for the member organization;

(2) the member organization will withdraw such securities from any depository for the central handling of securities prior to the first date on which such securities may be called unless said depository has adopted an impartial lottery system which is applicable to all participants whereby the called amount of the securities deposited with the depository is allocated among said participants;

(3) the systems and the manner in which such securities are held as referred to in (c)(1) and (c)(2) and the right of customers under subparagraph (C)(4) are disclosed to all customers prior to the member organization's depositing in bulk or prior to the customer purchasing such securities, such disclosure to be made in writing prior to deposit or purchase except in the case of a new account, provided notice as herein described is sent to the customer prior to settlement date; and

(4) customers have the right to withdraw uncalled fully paid securities from the firm at any time prior to a partial call, and also to withdraw excess margin securities provided that the customers' accounts are not subject to restriction under Regulation T or such withdrawals will not cause a Rule 431 undermargined condition.

In the event there is any call of such securities referred to in (b) and (c) above which is favorable to the called parties, the member organization shall not allocate any such called securities to

any account in which it or its general, limited, or special partners, officers, directors, approved persons, affiliates or employees have an interest until all other customers' positions in such securities have been satisfied.

Rule 410A. Automated Submission of Trading Data

A member or member organization shall submit such of the following trade data elements specified below in such automated format as may be prescribed by the Exchange from time to time, in regard to such transaction or transactions as may be subject of a particular request for information made by the Exchange:

(a) If the transaction was a proprietary transaction effected or caused to be effected by the member or member organization for any account in which such member or member organization, or any member, [allied member] principal executive, approved person, partner, officer, director, or employee [thereof] of such member organization, is directly or indirectly interested, such member or member organization shall submit or cause to be submitted the following information:

Rule 422. Loans of and to Directors, etc.

Without the prior consent of the Exchange LLC Board of Directors no member of the boards of directors or of any committee of, NYSE Euronext, Exchange LLC, NYSE Market, and NYSE Market Regulation and no officer or employee of NYSE Euronext, Exchange LLC, NYSE Market, and NYSE Market Regulation shall directly or indirectly make any loan of money or securities to or obtain any such loan from any member organization member, [allied member] principal executive, approved person, employee or any employee pension, retirement or similar plan of any member organization unless such loan be (a) fully secured by readily marketable collateral, or (b) made by a director or committee member to or obtained by a director or committee member from the member organization of which he is a member, [allied member] principal executive, or employee or from a member, [allied member] principal executive, or employee therein.

Rule 460. DMMs Participating in Contests

(a) No DMM member or his or her DMM unit or any other member, [allied member] principal executive, or officer or employee of such DMM unit shall participate in a proxy contest of a company if such DMM member is registered in the stock of that company.

DMMs as Directors

(b) No DMM member or his or her DMM unit or any other member, [allied member] principal executive, officer or employee of such DMM unit shall be a director of a company if such DMM member is registered in the stock of that company.

••• **Supplementary Material:** -----

.10 Control relationships—Business transactions—Finder's Fees.—

(a)(1) A DMM unit shall report the beneficial ownership of more than 5% of the outstanding shares of any equity security that is allocated to that unit. A DMM unit shall update any report if its beneficial ownership is reduced below 5% or exceeds 10% of the outstanding shares of any equity security that is allocated to that unit.

(2) The reporting obligation in (a)(1) shall not apply if the security is:

(i) a convertible or derivative security, American Depositary Receipt, Global Depositary Receipt, or similar instrument, unless the conversion or redemption of such security would directly or indirectly cause the DMM unit to have a position in any security allocated to the DMM unit that is in excess of the limits set forth in section (a)(1) of this Rule;

(ii) an investment company unit or Trust Issued Receipt, unless the conversion or redemption of such security would directly or indirectly cause the DMM unit to have a position in any security allocated to the DMM unit that is in excess of the limits set forth in section (a)(1) of this Rule; or

(iii) a security, such as a currency warrant, that trades in relationship to the value of that underlying currency, or a security, such as an index warrant, that trades in relationship to the value of that underlying index.

(3) A DMM unit may not in any event acquire directly or indirectly the beneficial ownership of more than 25% of any security allocated to that unit or any security specified in (a)(2)(i), (ii), or (iii) of this Rule. This provision applies regardless of whether the beneficial ownership is acquired for investment, trading, or any other purpose.

(b)(1) No DMM unit or any other member, [allied member] principal executive, officer or employee thereof shall engage in any business transaction (including loans, etc.) with any company in whose stock the DMM is registered, or accept a finder's fee from such company, except as provided below.

(2) Notwithstanding the provision in (b)(1) above, a DMM registered in a security issued by an investment company may purchase and redeem the listed security, or securities that can be

subdivided or converted into the listed security, from the issuer as appropriate to facilitate the maintenance of a fair and orderly market in the subject security.

(3) The provisions of (b)(1) shall not apply to the receipt of routine business services, goods, materials, or insurance, on terms that would be generally available.

.11 Definition of an Investment Company Unit.—The term "Investment Company Unit" in paragraph .10 above shall be the same as that in Section 703.16 of the Listed Company Manual.

.12 Definition of a Trust Issued Receipt.—The term "Trust Issued Receipt" in paragraph .10 above shall be the same as that in Rule 1200.

.20 The restrictions in paragraph .10 above relating to business transactions between a DMM or his or her DMM unit or any other member, [allied member] principal executive, officer or employee thereof shall not apply to Investment Company Units (as defined in paragraph 703.16 of the Exchange's Listed Company Manual), Trust Issued Receipts (defined in NYSE Rule 1200), and derivative instruments based on one or more securities, currencies or commodities (collectively referred to as Exchange-Traded Funds or "ETFs"), if the following conditions are met:

(i) the DMM or his or her DMM unit or any other member, [allied member] principal executive, officer or employee thereof only enters into the business transaction with the sponsor of the ETF and the sponsor is not involved in the day-to-day administration of the ETF; and

(ii) any fee or other compensation in connection with the business transaction paid to the DMM or his or her DMM unit or any other member, [allied member] principal executive, officer or employee thereof must not be dependent on the trading price or daily trading volume of the ETF; and

(iii) the DMM or his or her DMM unit or any other member, [allied member] principal executive, officer or employee thereof must notify and provide a full description to the Exchange of any business transaction or relationship, except those of a routine and generally available nature as described in paragraph .10 above, it may have with any sponsor of an ETF that he or it is registered as DMM in.

.30 No change

Rule 476A. Imposition of Fines for Minor Violation(s) of Rules

- Reporting rule violations (Rules 97.40, 104A.50, 107A.30, 112A.10, 304[(h)(2)], 312(a), (b) & (c), 313, 345.12, 345.17, 346(c), 351, 421, 440F, G & H, 706, 4110.01, 4521, and 4560(a))

Rule 1301. streetTRACKS® Gold Shares: Securities Accounts and Orders of DMMs

(a) The member organization acting as DMM in streetTRACKS® Gold Shares is obligated to conduct all trading in the Shares in its DMM account, subject only to the ability to have one or more investment accounts, all of which must be reported to the Exchange. (See Rules 104.12 and 104.13.) In addition, the member organization acting as DMM in streetTRACKS® Gold Shares must file with the Exchange in a manner prescribed by the Exchange and keep current a list identifying all accounts for trading physical gold, gold futures or options on gold futures, or any other gold derivatives, which the member organization acting as DMM may have or over which it may exercise investment discretion. No member organization acting as DMM in streetTRACKS® Gold Shares shall trade in physical gold, gold futures or options on gold futures, or any other gold derivatives, in an account in which a member organization acting as DMM, directly or indirectly, controls trading activities, or has a direct interest in the profits or losses thereof, which has not been reported to the Exchange as required hereby.

(b) In addition to the existing obligations under Exchange rules regarding the production of books and records (see, e.g., Rule 476(a)(11)), the member organization acting as DMM in streetTRACKS® Gold Shares shall make available to the Exchange such books, records or other information pertaining to transactions by such entity or any member, [allied member] principal executive, approved person, registered or non-registered employee affiliated with such entity for its or their own accounts in physical gold, gold futures or options on gold futures, or any other gold derivatives, as may be requested by the Exchange.

NYSE Rule Interpretations

Rule 304 [ALLIED MEMBERS AND] APPROVED PERSONS[(b) Allied Members/01 Allied Membership Eligibility

The following types of natural persons must qualify as allied members:

- a general partner of a member firm.
- an employee of a member organization who receives 25% or more of its net profits.

- an employee of a member organization who controls such partnership by virtue of having senior executive responsibility for such areas as: operations, compliance, finances and credit, sales underwriting, research, and administration.
- a principal executive officer of a member corporation or another natural person occupying a similar status or performing similar functions.
- a director of a member corporation or another natural person occupying a similar status or performing similar functions who is also an employee of that corporation.
- an employee of a member organization who owns 25% or more of its voting interest.]

(h) Approved Persons

/01 Criteria for Controlling Persons

In determining which persons controlling a member organization, above the level of the direct parent(s), are to be required to be registered with the Exchange as Approved Persons, the following criteria generally will be utilized:

- the percentage of control exerted by the “person” (see Rule 2 for rebuttable presumption of “control”);
- the nature of such person’s relationship with other persons in control of the member organization (this factor is meant to prevent the formulation of phantom controlling entities and to address the group-control issue);
- the relative relationship of the person’s interest in the member organization to such person’s overall assets and liabilities;
- the extent of such person’s dealings in securities with or through the member organization;
- whether such person is or is required to be registered with the SEC as a broker or dealer;
- the nature of the person’s business (see Rule 2 definition of “securities or kindred business”); and
- the extent of such person’s active participation in the business operations and daily management of the member organization (and of the member organization’s direct parent(s)).

N.B. Rule 346(f) prohibits a member organization from having associated with it any person who is subject to a statutory disqualification.

[Rule 304A ALLIED MEMBER EXAMINATION REQUIREMENTS

(a), (c)/01 Allied Member Examinations

An allied member applicant will generally be required to pass an examination acceptable to the Exchange which pertains to knowledge of his or her functional responsibility. The responsibilities of an allied member candidate must be disclosed at the time the application is submitted to the Exchange for approval. The Exchange will review the proposed duties of an allied member applicant and will designate an examination or examinations which must be passed before the applicant may undertake to function as an allied member with the member organization.

/02 Notification of Significant Change of Functions

Paragraph (c) of Rule 304A prohibits an allied member from undertaking any duties as such until the appropriate examination requirement is satisfied. This includes situations wherein an allied member is to assume responsibilities significantly different from those currently performed and which could subject the allied member to an additional examination requirement. Prompt notice to the Exchange must be given before any change in responsibilities is undertaken in order that a determination for this purpose may be made.

/03 Waiver of Examination Requirements

Waivers of examinations for allied members will be considered on a case by-case basis. The Exchange will consider such factors as educational and employment background, other examinations passed and the skills necessary to serve in the capacity intended.]
