

**EXHIBIT 5A**

\*All text set forth in this Exhibit 5A would be added to the Exchange's rules and therefore underlining of the text is omitted to improve readability.

## **BSTX Rulebook**

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**17000 – GENERAL PROVISIONS OF BSTX****17000. Definitions**

(a) With respect to the Rules contained in Rule 17000 Series to Rule 29000 Series below, relating to the listing and trading of Securities on the Exchange, the following terms shall have the meanings specified in this Rule. A term defined elsewhere in the Exchange Rules shall have the same meaning with respect to this Rule 17000 Series, unless otherwise defined below.

- (1) The term “**Act**” or “**Exchange Act**” means the Securities Exchange Act of 1934, as amended.
- (2) The term “**adverse action**” means any action taken by the Exchange which affects adversely the rights of any Participant, applicant for membership, or any person associated with a Participant (including the denial of membership and the barring of any person from becoming associated with a Participant) and any prohibition or limitation by the Exchange imposed on any person with respect to access to services offered by the Exchange, or a Participant thereof. This term does not include disciplinary actions for violations of any provision of the Act or the rules and regulations promulgated thereunder, or any provision of the By-Laws or Exchange Rules or any interpretation thereof or resolution or order of the Board or appropriate Exchange committee which has been filed with the Commission pursuant to Section 19(b) of the Act and has become effective thereunder. Review of disciplinary actions is provided for in the Rule 12000 Series of the Exchange Rules.
- (3) The term “**Affiliate**” means, with respect to any Person, any other Person controlling, controlled by or under common control with, such Person. As used in this definition, the term “control” means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a Person, whether through the ownership of voting securities, by contract or otherwise with respect to such Person. A Person is presumed to control any other Person, if that Person: (i) is a director, general partner, or officer exercising executive responsibility (or having similar status or performing similar functions); (ii) directly or indirectly has the right to vote 25 percent or more of a class of voting security or has the power to sell or direct the sale of 25 percent or more of a class of voting securities of the Person; or (iii) in the case of a partnership, has contributed, or has the right to receive upon dissolution, 25 percent or more of the capital of the partnership.
- (4) The term “**approved person**” means a person (excluding a member, principal executive or employee of a Participant, or governmental entity) who controls a Participant, is engaged in a securities or kindred business that is controlled by a Participant or a Participant’s affiliates, or is a U.S. registered broker-dealer under common control with a Participant. “Governmental entity” means a sovereign nation, state, or territory, or other political subdivision, agency, or instrumentality

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thereof.

- (5) The term “**associated person**” or “**person associated with a Participant**” or “**person associated with a BSTX Participant**” means any partner, officer, director, or branch manager of such Participant (or any person occupying a similar status or performing similar functions), any person directly or indirectly controlling, controlled by, or under common control with such Participant or any employee of such Participant, except that any person associated with a Participant whose functions are solely clerical or ministerial shall not be included in the meaning of such term for purposes of these Rules.
- (6) The term “**bid**” means a limit order to buy one or more Securities.
- (7) The term “**broker**” shall have the same meaning as in Section 3(a)(4) of the Act.
- (8) The term “**BSTX**” means the facility of the Exchange for executing transactions in Securities
- (9) The term “**BSTX Market Data Blockchain**” means the private, permissioned blockchain network through which a BSTX Participant may access certain order and transaction data related to trading activity on BSTX.
- (10) The term “**BSTX Book**” means the electronic book of orders on each Security maintained by the BSTX System.
- (11) The term “**BSTX Operations Center**” refers to the provider of market support for Participants trading on BSTX during the trading day.
- (12) The term “**BSTX Participant**” is a Participant or Options Participant (as defined in the Rule 100 Series) that is authorized to trade Securities on the Exchange.
- (13) The term “**BSTX Participation Agreement**” means the agreement to be executed by BSTX Participants to qualify to participate in trading on the BSTX System.
- (14) The term “**BSTX Regulation Center**” means the Exchange’s based facilities in which, pursuant to procedures established by the Board, Exchange Officials and personnel shall monitor, conduct surveillance of, and regulate the conduct of Security business on BSTX, in order to ensure the maintenance of a fair and orderly market.
- (15) The term “**BSTX System**” means the automated trading system used by BSTX for the trading of Securities.
- (16) The term “**Commission**” means the Securities and Exchange Commission.
- (17) The term “**customer**” shall not include a broker or dealer.
- (18) The term “**dealer**” shall have the same meaning as in Section 3(a)(5) of the Act.
- (19) The term “**designated self-regulatory organization**” means a self-regulatory organization, other than the Exchange, designated by the Commission under

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Section 17(d) of the Act to enforce compliance by BSTX Participants with Exchange Rules.

- (20) The term “**Designated Market Maker**” or “**DMM**” refers to a BSTX Participant registered as a DMM pursuant to the Rule 25200 Series.
- (21) The term “**Exchange**” or “**BOX**” means BOX Exchange LLC and its facilities.
- (22) The terms “**FINRA**” or “**NASD**” mean, collectively, Financial Industry Regulatory Authority and its subsidiaries.
- (23) The term “**Market Maker**” means a BSTX Participant that acts as a Market Maker pursuant to Rule 25200 Series.
- (24) NBB, NBO, and NBBO: The term “**NBB**” shall mean the national best bid, the term “**NBO**” shall mean the national best offer, and the term “**NBBO**” shall mean the national best bid or offer, as set forth in Rule 600(b) of Regulation NMS under the Exchange Act.
- (25) The term “**offer**” means a limit order to sell one or more Securities.
- (26) The term “**order**” means a firm commitment to buy or sell a Security.
- (27) The term “**person**” means any natural person, company, government, or political subdivision, agency, or instrumentality of a government.
- (28) The term “**Pre-Opening Phase**” means the time between 8:30 a.m. and 9:30 a.m. Eastern Time.
- (29) The term “**Regular Trading Hours**” means the time between 9:30 a.m. and 4:00 p.m. Eastern Time.
- (30) The term “**Rules**” means the Exchange By-Laws, the Exchange LLC Agreement, and these Rules of the Exchange, including the Rule 100 to Rule 16000 Series.
- (31) The term “**Security**” means a NMS stock, as defined in Rule 600(b)(47) of the Exchange Act, trading on the BSTX System. References to a “security” or “securities” in the Rules may include Securities, as the context requires.
- (32) The term “**Thinly Traded Security**” has the meaning set forth in Rule 25150.

**17010 Applicability**

- (a) The Rules contained in Rule 17000 Series to Rule 29000 Series herein are the Exchange Rules applicable to the trading of Securities by BSTX Participants approved for such trading, the listing of Securities, and other matters relating to trading Securities.
- (b) Except to the extent that specific Rules relating to Securities govern or unless the context otherwise requires, the provisions of the Exchange Rules shall be applicable to BSTX Participants and to the trading of Securities on the BSTX System and, for purposes of their application with respect to BSTX Participants and Security trading shall be

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interpreted in light of the nature of equities trading and the BSTX System, and the fact that Securities on the BSTX System shall be traded electronically. To the extent that the provisions of the Rules relating to the trading of Securities contained in Rule 17000 Series to Rule 29000 Series are inconsistent with any other provisions of the Exchange Rules, the Rules relating to Security trading shall control.

**17020. BSTX Market Data Blockchain**

- (a) *General.* The Exchange will make certain market data related to trading activity occurring on BSTX available to BSTX Participants through the use of a private, permissioned blockchain.
- (b) *BSTX Market Data Blockchain Addresses.* The Exchange will assign each BSTX Participant a BSTX Blockchain Market Data address that corresponds to the BSTX Participant's trading activity. The Exchange will also issue login credentials to each BSTX Participant through which the BSTX Participant may access the BSTX Market Data Blockchain.
- (c) *BSTX Market Data Blockchain Information.* The BSTX Market Data Blockchain will allow a BSTX Participant to observe the market data described below related to trading activity on BSTX.
  - (1) Market Data Specific to a BSTX Participant's Trading Activity. A BSTX Participant may see the following with respect to all orders and messages submitted by the BSTX Participant and any executions of such orders (as applicable):
    - i. Symbol, side (buy/sell), limit price, quantity, time-in-force
    - ii. Order type (e.g., limit order, ISO)
    - iii. Order capacity (principal/agent)
    - iv. Short/long sale order marking
    - v. Message type (e.g., order, modification, cancellation)
    - vi. A unique identification number attributable to each order, execution, or other message (e.g., cancellation or modification)
    - vii. Such other information regarding a BSTX Participant's trading activity on BSTX as the Exchange may determine and set forth via Regulatory Circular.
  - (2) Anonymized Market Data Relating to All Trading Activity on BSTX. A BSTX Participant may see the following with respect to all trading activity occurring on BSTX:
    - i. All orders, modifications, cancellations, and executions occurring on BSTX in an anonymized format.

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- ii. Administrative data and other information from the Exchange.
  - iii. Such other anonymized trading activity or general information as the Exchange may determine and set forth via Regulatory Circular.
- (3) The information available on the BSTX Market Data Blockchain does not act as a substitute for any recordkeeping obligations of a BSTX Participant.
- (d) *Periodic Audit of the BSTX Market Data Blockchain.* The Exchange shall audit the BSTX Market Data Blockchain periodically, but in no case less than bi-annually, to ensure that that the BSTX Market Data Blockchain accurately captures order and transaction data on BSTX.

**18000 – PARTICIPATION ON BSTX****18000 BSTX Participation**

- (a) These Rules establish a new category of Exchange member participation called “BSTX Participant.” Only BSTX Participants may transact business on the BSTX System. BSTX Participants may trade Securities for their own proprietary accounts or, if authorized to do so under applicable law, and consistent with these Rules and with applicable law and SEC rules and regulations, may conduct business on behalf of customers.
- (b) A prospective BSTX Participant must:
- (1) Complete a BSTX Participant Application, BSTX Participant Agreement, and BSTX User Agreement in the form prescribed by the Exchange;
  - (2) Be an existing Participant or Options Participant or become a Participant or Options Participant of the Exchange, pursuant to the Rule 2000 Series, and continue to abide by all applicable requirements of the Rule 2000 Series;
  - (3) Provide such other information as required by the Exchange.
- (c) Upon completion of the application, the Exchange, or person(s) designated by the Exchange (“designee”) shall consider whether to approve the application, unless there is just cause for delay. In its consideration process, the Exchange may conduct such investigation as it deems appropriate and may take such steps as it deems necessary to confirm the information provided by the applicant. Within thirty (30) days after the Exchange or its designee has completed its consideration of an application, it shall provide written notice of the action of the Exchange, specifying in the case of disapproval of an application the grounds therefore.
- (d) BSTX Participant status cannot be leased or transferred except in the event of a change in control or corporate reorganization involving a BSTX Participant. In such a case, BSTX Participant status may be transferred to a qualified affiliate or successor upon written notice to the Exchange or its designee.

**18010. Requirements for BSTX Participants**

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- (a) *Organization.* BSTX Participants may be corporations, partnerships, limited liability companies or sole proprietorships organized under the laws of a jurisdiction of the United States, or such other jurisdictions as the Exchange may approve.
- (b) *General Requirements.* No registered broker or dealer shall be admitted as, or be entitled to continue as, a BSTX Participant if such broker or dealer:
- (1) fails to comply with either the financial responsibility requirements established by Rule 15c3-1 under the Act, or such other financial responsibility and operational capability requirements as may be established by the Rules;
  - (2) fails to adhere to Rules relating to the maintenance of books and records or those rules of other self-regulatory organizations of which such broker or dealer is or was a member/participant;
  - (3) fails to demonstrate to the Exchange adequate systems capability, capacity, integrity, and security necessary to conduct business on the Exchange;
  - (4) is not a member/participant of a registered clearing agency, or does not clear Security transactions executed on the Exchange through another BSTX Participant that is a member/participant of a registered clearing agency;
  - (5) is subject to any unsatisfied liens, judgments, or unsubordinated creditor claims of a material nature, which, in the absence of a reasonable explanation therefor, remain outstanding for more than six months;
  - (6) has been subject to any bankruptcy proceeding, receivership, or arrangement for the benefit of creditors within the past three years; or
  - (7) has engaged in an established pattern of failure to pay just debts or has defaulted, without a reasonable explanation, on an obligation to a self-regulatory organization, or any member/participant of a self-regulatory organization

**18020. Persons Associated with BSTX Participants**

Associated persons of a BSTX Participant shall be bound by the Exchange Rules. The Exchange may discipline, suspend or terminate the registration with the Exchange of any person associated with a BSTX Participant for violation of the Rules of the Exchange.

**19000 – BUSINESS CONDUCT FOR BSTX PARTICIPANTS****19000. Just and Equitable Principles of Trade**

No BSTX Participant shall engage in acts or practices inconsistent with just and equitable principles of trade. Persons associated with Participants shall have the same duties and obligations as Participants under this Rule 19000 Series.

**19010. Adherence to Law**



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No BSTX Participant shall engage in conduct in violation of the Rules, the Exchange Act or the rules or regulations thereunder, or any policy or written interpretation of the Rules by the Board or an appropriate Board committee. Every BSTX Participant shall so supervise persons associated with the BSTX Participant as to assure compliance with those requirements.

**19020. Use of Fraudulent Devices**

No BSTX Participant shall effect any transaction in, or induce the purchase or sale of, any security by means of any manipulative, deceptive, or other fraudulent device or contrivance.

**19030. False Statements**

No BSTX Participant or applicant for membership, or person associated with a BSTX Participant or applicant for membership, shall make any false statements or misrepresentations in any application, report or other communication to the Exchange. No BSTX Participant or person associated with a BSTX Participant shall make any false statement or misrepresentation to any Exchange committee, officer, the Board or the BSTX Participant's designated examining authority pursuant to Section 17(d) of the Exchange Act in connection with any matter within the jurisdiction of the Exchange.

**19040. Know Your Customer**

BSTX Participants shall comply with FINRA Rule 2090 as if such rule were part of the Exchange Rules.

**19050. Fair Dealing with Customers**

All BSTX Participants have a fundamental responsibility for fair dealing with their customers. BSTX Participants who handle customer orders on the Exchange shall establish and enforce objective standards to ensure queuing and executing of customer orders in a fair and equitable manner. Practices that do not represent fair dealing include, but are not limited to, the following:

- (a) Recommending speculative securities to customers without knowledge of or an attempt to obtain information concerning the customers' other securities holdings, their financial situation, and other necessary data. This prohibition has particular application to high pressure telephonic sales campaigns;
- (b) Excessive activity in customer accounts (churning or overtrading) in relation to the objectives and financial situation of the customer;
- (c) Establishment of fictitious accounts in order to execute transactions which otherwise would be prohibited or which are contrary to the BSTX Participant's policies;
- (d) Causing the execution of transactions which are unauthorized by customers or the sending of confirmations in order to cause customers to accept transactions not actually agreed upon;

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- (e) Unauthorized use or borrowing of customer funds or securities; and
- (f) Recommending the purchase of securities or the continuing purchase of securities in amounts which are inconsistent with the reasonable expectation that the customer has the financial ability to meet such a commitment.

**19060. Suitability**

- (a) BSTX Participants and associated persons of BSTX Participants shall comply with FINRA Rule 2111 as if such rule were part of the Exchange Rules.
- (b) For purposes of this Exchange Rule:
  - (1) References to FINRA Rules 2111 and 4512 shall be construed as references to Exchange Rules 19060 and 20040, respectively;
  - (2) References to “FINRA’s rules” shall be construed as references to “Exchange Rules”;
  - (3) References to FINRA Rule 2214 shall be disregarded, and no comparable Exchange Rule shall apply to activities of BSTX Participants in connection with investment analysis tools.

**19070. The Prompt Receipt and Delivery of Securities**

No BSTX Participant may accept a customer’s purchase order for any security until it has first ascertained that the customer placing the order or its agent agrees to receive securities against payment in an amount equal to any execution, even though such an execution may represent the purchase of only a part of a larger order.

**19080. Charges for Services Performed**

Charges, if any, for services performed, including, but not limited to, miscellaneous services such as collection of monies due for principal, dividends, or interest; exchange or transfer of securities; appraisals, safe-keeping or custody of securities, and other services shall be reasonable and not unfairly discriminatory among customers.

**19090. Use of Information Obtained in Fiduciary Capacity**

A BSTX Participant who, in the capacity of paying agent, transfer agent, trustee, or in any other similar capacity, has received information as to the ownership of securities, shall under no circumstances make use of such information for the purpose of soliciting purchases, sales or exchanges except at the request and on behalf of the issuer.

**19100. Publication of Transactions and Quotations**

No BSTX Participant shall publish or circulate, or cause to be published or circulated, any notice, circular, advertisement, newspaper article, investment service, or

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communication of any kind which purports to report any transaction as a purchase or sale of any security unless such BSTX Participant believes that such transaction was a bona fide purchase or sale of such security; or which purports to quote the bid price or asked price for any security, unless such BSTX Participant believes that such quotation represents a bona fide bid for, or offer of, such security.

**19110. Offers at Stated Prices**

No BSTX Participant shall make an offer to buy from or sell to any person any security at a stated price unless such BSTX Participant is prepared to purchase or sell, as the case may be, at such price and under such conditions as are stated at the time of such offer to buy or sell.

**19120. Payments Involving Publications that Influence the Market Price of a Security**

- (a) Except as provided in paragraph (b), no BSTX Participant shall directly or indirectly, give, permit to be given, or offer to give anything of value to any person, or intimidate any person for the purpose of influencing or rewarding the action of such person in connection with the publication or circulation in any electronic or other public media, including any investment service or similar publication, website, newspaper, magazine or other periodical, radio, or television program of any matter which has, or is intended to have, an effect upon the market price of any security;
- (b) The prohibitions in paragraph (a) shall not apply to compensation paid to a person in connection with the publication or circulation of:
  - (1) a communication that is clearly distinguishable as paid advertising;
  - (2) a communication that discloses the receipt of compensation and the amount thereof in accordance with Section 17(b) of the Securities Act; or
  - (3) a research report, as that term is defined in FINRA Rule 2241.

**19130. Customer Confirmations**

A BSTX Participant, at or before the completion of each transaction with a customer, shall give or send to such customer such written notification or confirmation of the transaction as is required by Exchange Act Rule 10b-10.

**19140. Disclosure of Control Relationship with Issuer**

A BSTX Participant controlled by, controlling, or under common control with, the issuer of any security, shall, before entering into any contract with or for a customer for the purchase or sale of such security, disclose to such customer the existence of such control, and if such disclosure is not made in writing, it shall be supplemented by the giving or sending of written disclosure at or before the completion of the transaction.

**19150. Discretionary Accounts**

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- (a) Excessive Transactions. No BSTX Participant shall effect with or for any customer's account in respect to which such BSTX Participant or its agent or employee is vested with any discretionary power any transactions of purchase or sale which are excessive in size or frequency in view of the financial resources and character of such account.
- (b) Authorization and Acceptance of Account. No BSTX Participant or associated person of a BSTX Participant shall exercise any discretionary power in a customer's account unless such customer has given prior written authorization to a stated individual or individuals and the account has been accepted by the BSTX Participant, as evidenced in writing by the BSTX Participant or the partner, officer or manager, duly designated by the BSTX Participant.
- (c) Approval and Review of Transactions. The BSTX Participant, or the person duly designated, shall approve promptly in writing each discretionary order entered and shall review all discretionary accounts at frequent intervals in order to detect and prevent transactions which are excessive in size or frequency in view of the financial resources and character of the account.
- (d) Exception. This Rule shall not apply to an order by a customer for the purchase or sale of a definite amount of a specified security which order gives the BSTX Participant discretion only over the time and price of execution.

**19160. Improper Use of Customers' Securities or Funds and Prohibition against Guarantees and Sharing in Accounts**

- (a) Improper Use. No BSTX Participant or person associated with a BSTX Participant shall make improper use of a customer's securities or funds.
- (b) Prohibition against Guarantees. No BSTX Participant or person associated with a BSTX Participant shall guarantee a customer against loss in connection with any securities transaction or in any securities account of such customer.

**19170. Sharing in Accounts; Extent Permissible**

- (a) Except as provided in paragraph (c), no BSTX Participant or person associated with a BSTX Participant shall share directly or indirectly in the profits or losses in any account of a customer carried by the BSTX Participant or any other BSTX Participant; provided, however, that a BSTX Participant or person associated with a BSTX Participant may share in the profits or losses in such an account if:
  - (1) such person associated with a BSTX Participant obtains prior written authorization from the BSTX Participant employing the associated person;
  - (2) such BSTX Participant or person associated with a BSTX Participant obtains prior written authorization from the customer; and
  - (3) such BSTX Participant or person associated with a BSTX Participant shares in the profits or losses in any account of such customer only in direct proportion to the financial contributions made to such account by either the BSTX Participant or

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person associated with a BSTX Participant.

- (b) Exempt from the direct proportionate share limitation of paragraph (a)(3) are accounts of the immediate family of such BSTX Participant or person associated with a BSTX Participant. For purposes of this Rule, the term "immediate family" shall include parents, mother-in-law or father-in-law, husband or wife, children or any relative to whose support the Participant or person associated with a BSTX Participant otherwise contributes directly or indirectly.
- (c) Notwithstanding the prohibition of paragraph (a), a BSTX Participant or person associated with a BSTX Participant that is acting as an investment adviser may receive compensation based on a share in profits or gains in an account if:
  - (1) such person associated with a BSTX Participant seeking such compensation obtains prior written authorization from the BSTX Participant employing the associated person;
  - (2) such BSTX Participant or person associated with a Participant seeking such compensation obtains prior written authorization from the customer; and
  - (3) all of the conditions in Rule 205-3 of the Investment Advisers Act of 1940 (as the same may be amended from time to time) are satisfied.

**19180. Communications with Customers and the Public**

BSTX Participants and persons associated with a BSTX Participant shall comply with FINRA Rule 2210 (except FINRA Rule 2210(c)) as if such FINRA Rule were part of the Exchange Rules. The Exchange and FINRA are parties to an agreement the pursuant to which FINRA has agreed to perform certain functions on behalf of the Exchange. Therefore, BSTX Participants are complying with this Exchange Rule 19180 by complying with FINRA Rule 2210 as written. In addition, functions performed by FINRA, FINRA departments, and FINRA staff under this Exchange Rule 19180 are being performed by FINRA on the Exchange's behalf.

**19190. Gratuities**

BSTX Participants shall comply with the requirements of Exchange Rule 3060 (Gratuities).

**19200. Telemarketing**

BSTX Participants and persons associated with a BSTX Participant shall comply with FINRA Rule 3230 as if such rule were part of the Exchange's Rules.

**19210. Mandatory Systems Testing**

BSTX Participants shall comply with Exchange Rule 3180 (Mandatory Systems Testing).

**EXHIBIT 5A****20000 – FINANCIAL AND OPERATIONAL RULES FOR BSTX PARTICIPANTS****20000. Maintenance, Retention and Furnishing of Books, Records and Other Information**

- (a) BSTX Participants shall comply with the requirements of Exchange Rule 10000 (Maintenance, Retention and Furnishing of Books, Records, and Other Information).
- (b) BSTX Participants shall submit to the Exchange such Exchange-related order, market and transaction data as the Exchange by Information Circular may specify, in such form and on such schedule as the Exchange may require.

**20010. Financial Reports**

BSTX Participants shall comply with the requirements of Exchange Rule 10020 (Financial Reports).

**20020. Capital Compliance**

Each BSTX Participant subject to Rule 15c3-1 under the Exchange Act shall comply with the capital requirements prescribed therein and with the additional requirements of this Rule 20000 Series.

**20030. “Early Warning” Notification Requirements**

Every BSTX Participant subject to the reporting or notification requirements of Rule 17a-11 under the Exchange Act or the “early warning” reporting, business restriction or business reduction requirements of another national securities exchange, registered securities association or registered securities clearing organization shall promptly notify the Exchange in writing and shall thereafter file with the Exchange such reports and financial statements as may be required by the Exchange.

**20040. Power of CRO to Impose Restrictions**

Whenever it shall appear to the Chief Regulatory Officer of the Exchange that a BSTX Participant obligated to give notice to the Exchange under Rule 20030 is unable within a reasonable period to reduce the ratio of its aggregate indebtedness to net capital, or to increase its net capital, to a point where it is no longer subject to such notification obligations, or that such BSTX Participant is engaging in any activity which casts doubt upon its continued compliance with the net capital requirements, the Chief Regulatory Officer may impose such conditions and restrictions upon the operations, business and expansion of such BSTX Participant and may require the submission of, and adherence to, such plan or program for the correction of such situation as he determines to be necessary or appropriate for the protection of investors, other BSTX Participants and the Exchange.

**EXHIBIT 5A****20050. Margin**

- (a) A BSTX Participant shall not effect a securities transaction through the Exchange in a manner contrary to the regulations of the Board of Governors of the Federal Reserve System.
- (b) The margin which must be maintained in margin accounts of customers shall be as follows:
  - (1) 25% of the current market value of all securities “long” in the account; plus
  - (2) \$2.50 per share or 100% of the current market value, whichever amount is greater, of each security or Security “short” in the account selling at less than \$5.00 per share; plus
  - (3) \$5.00 per share or 30% of the current market value, whichever amount is greater, of each security or Security “short” in the account selling at \$5.00 per share or above; plus
  - (4) 5% of the principal amount or 30% of the current market value, whichever amount is greater, of each bond “short” in the account.

**20060. Day Trading Margin**

- (a) The term “day trading” means the purchasing and selling of the same security on the same day. A “day trader” is any customer whose trading shows a pattern of day trading.
- (b) Whenever day trading occurs in a customer’s margin account the margin to be maintained shall be the margin on the “long” or “short” transaction, whichever occurred first, as required pursuant to Exchange Rule 20050. When day trading occurs in the account of a day trader, the margin to be maintained shall be the margin on the “long” or “short” transaction, whichever occurred first, as required for initial margin by Regulation T of the Board of Governors of the Federal Reserve System, or as required pursuant to Exchange Rule 20050, whichever amount is greater.
- (c) No BSTX Participant shall permit a public customer to make a practice, directly or indirectly, of effecting transactions in a cash account where the cost of securities purchased is met by the sale of the same securities. No BSTX Participant shall permit a public customer to make a practice of selling securities with them in a cash account which are to be received against payment from another registered broker or dealer where such securities were purchased and are not yet paid for.

**20070. Customer Account Information**

BSTX Participants and persons associated with a BSTX Participant shall comply with FINRA Rule 4512 as if such rule were part of the Exchange’s Rules.

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(a) For purposes of this Exchange Rule:

- (1) References to NASD 2510 (or any successor FINRA rule) shall be construed as references to Exchange Rule 19150;
- (2) References to FINRA Rules 2070, 2090, and 4512 shall be construed as references to Exchange Rules 22030, 19040, and 20070, respectively;
- (3) References to “a prior FINRA rule” shall be construed as references to “a FINRA rule in effect prior to the effectiveness of FINRA Rule 4512”;
- (4) The Exchange and FINRA are parties to an agreement pursuant to which FINRA has agreed to perform certain functions on behalf of the Exchange. Therefore, BSTX Participants are complying with Exchange Rule 20070 by complying with FINRA Rule 4512 as written, including, for example, providing information required by FINRA staff. In addition, functions performed by FINRA, FINRA departments, and FINRA staff under Exchange Rule 20070 are being performed by FINRA on behalf of the Exchange.

**20080. Record of Written Customer Complaints**

BSTX Participants and persons associated with a BSTX Participant shall comply with FINRA Rule 4513 as if such rule were part of the Exchange’s Rules.

**20090. Disclosure of Financial Condition**

- (a) A BSTX Participant shall make available to inspection by any bona fide regular customer, upon request, the information relative to such BSTX Participant’s financial condition as disclosed in its most recent balance sheet prepared either in accordance with such BSTX Participant’s usual practice or as required by any state or federal securities laws, or any rule or regulation thereunder. In lieu of making such balance sheet available to inspection, a BSTX Participant may deliver the balance sheet to the requesting bona fide regular customer in paper or electronic form; provided that, with respect to electronic delivery, the customer must consent to receive the balance sheet in electronic form.
- (b) Any BSTX Participant who is a party to an open transaction or who has on deposit cash or securities of another BSTX Participant shall deliver upon written request of the other BSTX Participant, in paper or electronic form, a statement of its financial condition as disclosed in its most recent balance sheet prepared either in accordance with such BSTX Participant’s usual practice or as required by any state or federal securities laws, or any rule or regulation thereunder.
- (c) As used in paragraph (a) of this Exchange Rule 20090, the term “customer” means any person who, in the regular course of such BSTX Participant’s business, has cash or securities in the possession of such BSTX Participant.



**EXHIBIT 5A****21000 – SUPERVISION****21000. Written Procedures**

Each BSTX Participant shall establish, maintain and enforce written procedures which will enable it to supervise properly the activities of associated persons of the BSTX Participant and to assure their compliance with applicable securities laws, rules, regulations and statements of policy promulgated thereunder, with the rules of the designated self-regulatory organization, where appropriate, and with Exchange Rules.

**21010. Responsibility of BSTX Participants**

Final responsibility for proper supervision shall rest with the BSTX Participant. The BSTX Participant shall designate a partner, officer or manager in each office of supervisory jurisdiction, including the main office, to carry out the written supervisory procedures. A copy of such procedures shall be kept in each such office.

**21020. Records**

Each BSTX Participant shall be responsible for making and keeping appropriate records for carrying out the BSTX Participant's supervisory procedures.

**21030. Review of Activities**

Each BSTX Participant shall review the activities of each office, which shall include the periodic examination of customer accounts to detect and prevent irregularities or abuses.

**21040. Prevention of the Misuse of Material, Non-Public Information**

- (a) Each BSTX Participant must establish, maintain and enforce written procedures reasonably designed, taking into consideration the nature of such BSTX Participant's business, to prevent the misuse of material, nonpublic information by such BSTX Participant or persons associated with such BSTX Participant. BSTX Participants for whom the Exchange is the Designated Examining Authority ("DEA") that are required to file SEC form X-17A-5 with the Exchange on an annual or more frequent basis must file contemporaneously with the submission for the calendar year end Insider Trading and Securities Fraud Enforcement Act of 1988 ("ITSFEA") compliance acknowledgements stating that the procedures mandated by this Rule have been established, enforced and maintained. Any BSTX Participant or associated person of a BSTX Participant who becomes aware of a possible misuse of material, non-public information must notify the Exchange's Surveillance Department.
- (b) For purposes of this Rule, conduct constituting the misuse of material, non-public information includes, but is not limited to, the following:

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- (1) Trading in any securities issued by a corporation, or in any related securities or related options or other derivative securities, while in possession of material, non-public information concerning that issuer; or
  - (2) Trading in a security or related options or other derivative securities, while in possession of material non-public information concerning imminent transactions in the security or related securities; or
  - (3) Disclosing to another person or entity any material, non-public information involving a corporation whose shares are publicly traded or an imminent transaction in an underlying security or related securities for the purpose of facilitating the possible misuse of such material, non-public information.
- (c) This Rule provides that, at a minimum, each BSTX Participant establish, maintain, and enforce the following policies and procedures:
- (1) All associated persons of the BSTX Participant must be advised in writing of the prohibition against the misuse of material, non-public information;
  - (2) All associated persons of the BSTX Participant must sign attestations affirming their awareness of, and agreement to abide by the aforementioned prohibitions. These signed attestations must be maintained for at least three years, the first two years in an easily accessible place;
  - (3) Each BSTX Participant must receive and retain copies of trade confirmations and monthly account statements for each account in which an associated person has a direct or indirect financial interest or makes investment decisions. The activity in such brokerage accounts should be reviewed at least quarterly by the BSTX Participant for the purpose of detecting the possible misuse of material, non-public information; and
  - (4) All associated persons must disclose to the BSTX Participant whether they, or any person in whose account they have a direct or indirect financial interest, or make investment decisions, are an officer, director or 10% shareholder in a company whose shares are publicly traded. Any transaction in the stock (or option thereon) of such company shall be reviewed to determine whether the transaction may have involved a misuse of material non-public information.

Maintenance of the foregoing policies and procedures will not, in all cases, satisfy the requirements and intent of this Rule; the adequacy of each BSTX Participant's policies and procedures will depend upon the nature of such BSTX Participant's business.

**21050. Anti-Money Laundering Compliance Program**

BSTX Participants shall comply with the requirements of Exchange Rule 10070 (Anti-Money Laundering Compliance Program).

**EXHIBIT 5A****22000 – MISCELLANEOUS PROVISIONS****22000. Comparison and Settlement Requirements**

- (a) Every BSTX Participant who is a member of a registered clearing agency shall implement comparison and settlement procedures as may be required under the rules of such entity.
- (b) For purposes of this Rule, a registered clearing agency shall mean a clearing agency (as defined in the Exchange Act) which has agreed to supply the Exchange with data reasonably requested in order to permit the Exchange to enforce compliance by BSTX Participants with the provisions of the Exchange Act, the rules and regulations thereunder, and the rules of the Exchange.
- (c) Anything contained in paragraph (a) to the contrary notwithstanding, the Board may extend or postpone the time of the delivery of a BSTX transaction whenever, in its opinion, such action is called for by the public interest, by just and equitable principles of trade or by the need to meet unusual conditions. In such case, delivery shall be effected at such time, place and manner as directed by the Board.

**22010. Failure to Deliver and Failure to Receive**

- (a) Borrowing and deliveries shall be effected in accordance with Rule 203 of Regulation SHO, under the Exchange Act. The Exchange incorporates by reference Rules 200 and 203 of Regulation SHO, to this Rule 22020, as if they were fully set forth herein

**22020. Forwarding of Proxy and Other Issuer-Related Materials; Proxy Voting**

- (a) A BSTX Participant when so requested by an issuer and upon being furnished with: (1) sufficient copies of proxy material, annual reports, information statements or other material required by law to be sent to security holders periodically, and (2) satisfactory assurance that it will be reimbursed by such issuer for all out-of-pocket expenses, including reasonable clerical expenses, shall transmit promptly to each beneficial owner of securities (or the beneficial owner's designated investment adviser) of such issuer which are in its possession and control and registered in a name other than the name of the beneficial owner all such material furnished. In the event of a proxy solicitation, such material shall include a signed proxy indicating the number of shares held for such beneficial owner and bearing a symbol identifying the proxy with proxy records maintained by the BSTX Participant, and a letter informing the beneficial owner (or the beneficial owner's designated investment adviser) of the time limit and necessity for completing the proxy form and forwarding it to the person soliciting proxies prior to the expiration of the time limit in order for the shares to be represented at the meeting. A BSTX Participant shall furnish a copy of the symbols to the person soliciting the proxies and shall also retain a copy thereof pursuant to the provisions of Exchange Act Rule 17a-4. This paragraph shall not apply to beneficial owners residing outside of the United

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States of America though BSTX Participants may voluntarily comply with the provisions hereof in respect of such persons if they so desire.

- (b) No BSTX Participant shall give a proxy to vote stock that is registered in its name, unless: (i) such BSTX Participant is the beneficial owner of such stock; (ii) such proxy is given pursuant to the written instructions of the beneficial owner; or (iii) such proxy is given pursuant to the rules of any national securities exchange or association of which it is a member provided that the records of the BSTX Participant clearly indicate the procedure it is following.
- (c) Notwithstanding the foregoing, a BSTX Participant that is not the beneficial owner of a security registered under Section 12 of the Exchange Act is prohibited from granting a proxy to vote the security in connection with a shareholder vote on the election of a member of the board of directors of an issuer (except for a vote with respect to uncontested election of a member of the board of directors of any investment company registered under the Investment Company Act of 1940), executive compensation, or any other significant matter, as determined by the Commission, by rule, unless the beneficial owner of the security has instructed the BSTX Participant to vote the proxy in accordance with the voting instructions of the beneficial owner.
- (d) Notwithstanding the foregoing, a BSTX Participant may give a proxy to vote any stock registered in its name if such BSTX Participant holds such stock as executor, administrator, guardian, trustee, or in a similar representative or fiduciary capacity with authority to vote. A BSTX Participant that has in its possession or within its control stock registered in the name of another BSTX Participant and that desires to transmit signed proxies pursuant to the provisions of paragraph (a) of this Rule, shall obtain the requisite number of signed proxies from such holder of record. Notwithstanding the foregoing: (1) any BSTX Participant designated by a named Employee Retirement Income Security Act of 1974 (as amended) (“ERISA”) Plan fiduciary as the investment manager of stock held as assets of the ERISA Plan may vote the proxies in accordance with the ERISA Plan fiduciary responsibilities if the ERISA Plan expressly grants discretion to the investment manager to manage, acquire, or dispose of any plan asset and has not expressly reserved the proxy voting right for the named ERISA Plan fiduciary; and (2) any designated investment adviser may vote such proxies.
- (e) For purposes of this Rule, the term “designated investment adviser” is a person registered under the Investment Advisers Act of 1940, or registered as an investment adviser under the laws of a state, who exercises investment discretion pursuant to an advisory contract for the beneficial owner and is designated in writing by the beneficial owner to receive proxy and related materials and vote the proxy, and to receive annual reports and other material sent to security holders.
- (f) For purposes of this Rule, the term “state” shall have the meaning given to such term in Section 202(a)(19) of the Investment Advisers Act of 1940 (as the same may be amended from time to time).

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- (g) The written designation must be signed by the beneficial owner; be addressed to the BSTX Participant; and include the name of the designated investment adviser.
- (h) BSTX Participants that receive such a written designation from a beneficial owner must ensure that the designated investment adviser is registered with the SEC pursuant to the Investment Advisers Act, or with a state as an investment adviser under the laws of such state, and that the investment adviser is exercising investment discretion over the customer's account pursuant to an advisory contract to vote proxies and/or to receive proxy soliciting material, annual reports and other material. BSTX Participants must keep records substantiating this information.
- (i) Beneficial owners have an unqualified right at any time to rescind designation of the investment adviser to receive materials and to vote proxies. The rescission must be in writing and submitted to the BSTX Participant.

**22030. Commissions**

Nothing in the Exchange Rules or the Exchange practices shall be construed to require, authorize or permit any BSTX Participant, or any person associated with a BSTX Participant, to agree or arrange, directly or indirectly, for the charging of fixed rates of commission for transactions effected on, or effected by the use of the facilities of, the Exchange.

**22040. Regulatory Services Agreements**

The Exchange may enter into one or more agreements with another self-regulatory organization to provide regulatory services to the Exchange to assist the Exchange in discharging its obligations under Section 6 and Section 19(g) of the Exchange Act. Any action taken by another self-regulatory organization, or its employees or authorized agents, acting on behalf of the Exchange pursuant to a regulatory services agreement shall be deemed to be an action taken by the Exchange; provided, however, that nothing in this provision shall affect the oversight of such other self-regulatory organization by the Commission. Notwithstanding the fact that the Exchange may enter into one or more regulatory services agreements, the Exchange shall retain ultimate legal responsibility for, and control of, its self-regulatory responsibilities, and any such regulatory services agreement shall so provide.

**22050. Transactions Involving Exchange Employees**

- (a) When a BSTX Participant has actual notice that an Exchange employee has a financial interest in, or controls trading in, an account, the BSTX Participant shall promptly obtain and implement an instruction from the employee directing that duplicate account statements be provided by the BSTX Participant to the Exchange.
- (b) No BSTX Participant shall directly or indirectly make any loan of money or securities to any Exchange employee. Provided, however, that this prohibition does not apply to loans

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made in the context of disclosed, routine banking and brokerage agreements, or loans that are clearly motivated by a personal or family relationship.

- (c) Notwithstanding the annual dollar limitation set forth in Rule 19200, no BSTX Participant shall directly or indirectly give, or permit to be given, anything of more than nominal value to any BOX employee who has responsibility for a regulatory matter that involves the BSTX Participant. For purposes of this subsection, the term “regulatory matter” includes, but is not limited to, examinations, disciplinary proceedings, membership applications, listing applications, delisting proceedings, and dispute-resolution proceedings that involve the BSTX Participant.

**23000 – TRADING PRACTICE RULES****23000. Market Manipulation**

No BSTX Participant shall execute or cause to be executed or participate in an account for which there are executed purchases of any security at successively higher prices, or sales of any security at successively lower prices, or otherwise engage in activity, for the purpose of creating or inducing a false, misleading or artificial appearance of activity in such security on the Exchange or for the purpose of unduly or improperly influencing the market price for such security or for the purpose of establishing a price which does not reflect the true state of the market in such security.

**23010. Fictitious Transactions**

No BSTX Participant, for the purpose of creating or inducing a false or misleading appearance of activity in a security traded on the Exchange or creating or inducing a false or misleading appearance with respect to the market in such security shall:

- (1) execute any transaction in such security which involves no change in the beneficial ownership thereof, or
- (2) enter any order or orders for the purchase of such security with the knowledge that an order or orders of substantially the same size, and at substantially the same price, for the sale of such security, has been or will be entered by or for the same or different parties, or
- (3) enter any order or orders for the sale of any such security with the knowledge that an order or orders of substantially the same size, and at substantially the same price, for the purchase of such security, has been or will be entered by or for the same or different parties.

**23020. Excessive Sales by a BSTX Participant**

No BSTX Participant shall execute purchases or sales in any security traded on the Exchange for any account in which such BSTX Participant is directly or indirectly

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interested, which purchases or sales are excessive in view of the BSTX Participant's financial resources or in view of the market for such security.

**23030. Manipulative Transactions**

- (a) No BSTX Participant shall participate or have any interest, directly or indirectly, in the profits of a manipulative operation or knowingly manage or finance a manipulative operation.
- (b) Any pool, syndicate or joint account organized or used intentionally for the purpose of unfairly influencing the market price of a security shall be deemed to be a manipulative operation.
- (c) The solicitation of subscriptions to or the acceptance of discretionary orders from any such pool, syndicate or joint account shall be deemed to be managing a manipulative operation.
- (d) The carrying on margin of a position in such security or the advancing of credit through loans to any such pool, syndicate or joint account shall be deemed to be financing a manipulative operation.

**23040. Dissemination of False Information**

Consistent with Exchange Rule 3080 (Rumors), no BSTX Participant shall make any statement or circulate and disseminate any information concerning any security traded on the Exchange which such BSTX Participant knows or has reasonable grounds for believing is false or misleading or would improperly influence the market price of such security.

**23050. Prohibition against Trading Ahead of Customer Orders**

- (a) Except as provided herein, a BSTX Participant that accepts and holds an order in an security from its own customer or a customer of another broker-dealer without immediately executing the order is prohibited from trading that security on the same side of the market for its own account at a price that would satisfy the customer order, unless it immediately thereafter executes the customer order up to the size and at the same or better price at which it traded for its own account.
- (b) A BSTX Participant must have a written methodology in place governing the execution and priority of all pending orders that is consistent with the requirements of this Rule. A BSTX Participant also must ensure that this methodology is consistently applied.
- (c) *Large Orders and Institutional Account Exceptions.* With respect to orders for customer accounts that meet the definition of an "institutional account" or for orders of 10,000 Securities or more (unless such orders are less than \$100,000 in value), a BSTX Participant is permitted to trade a security on the same side of the market for its own

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account at a price that would satisfy such customer order, provided that the BSTX Participant has provided clear and comprehensive written disclosure to such customer at account opening and annually thereafter that:

- (1) discloses that the BSTX Participant may trade proprietarily at prices that would satisfy the customer order, and
- (2) provides the customer with a meaningful opportunity to opt in to the Rule 23050 protections with respect to all or any portion of its order.

If the customer does not opt in to the Rule 23050 protections with respect to all or any portion of its order, the BSTX Participant may reasonably conclude that such customer has consented to the BSTX Participant trading a security on the same side of the market for its own account at a price that would satisfy the customer's order.

In lieu of providing written disclosure to customers at account opening and annually thereafter, a BSTX Participant may provide clear and comprehensive oral disclosure to and obtain consent from the customer on an order-by-order basis, provided that the BSTX Participant documents who provided such consent and such consent evidences the customer's understanding of the terms and conditions of the order.

For purposes of this Rule, "institutional account" shall mean the account of:

- i. a bank savings and loan association, insurance company or registered investment company;
- ii. an investment adviser registered either with the SEC under Section 203 of the Investment Advisers Act or with a state securities commission (or any agency or office performing like functions); or
- iii. any other person (whether a natural person, corporation, partnership, trust or otherwise) with total assets of at least \$50 million

(d) *No-Knowledge Exception.*

- (1) With respect to NMS stocks (as defined in Rule 600 under of the Securities and Exchange Commission's Regulation NMS), if a BSTX Participant implements and utilizes an effective system of internal controls, such as appropriate information barriers, that operate to prevent one trading unit from obtaining knowledge of customer orders held by a separate trading unit, those other trading units trading in a proprietary capacity may continue to trade at prices that would satisfy the customer orders held by the separate trading unit. A BSTX Participant that structures its order handling practices in NMS stocks to permit its proprietary and/or market-making desk to trade at prices that would satisfy customer orders held by a separate trading unit must disclose in writing to its customers, at account opening and annually thereafter, a description of the manner in which



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customer orders are handled by the BSTX Participant and the circumstances under which the BSTX Participant may trade proprietarily at its proprietary and/or market-making desk at prices that would satisfy the customer order.

- (2) If a BSTX Participant implements and utilizes appropriate information barriers in reliance on this exception, the BSTX Participant must uniquely identify such information barriers in place at the department within the BSTX Participant where the order was received or originated. Appropriate information barriers must, at minimum, comply with the requirements set forth in Rule 21040.
  - (3) BSTX Participants must maintain records that indicate which orders rely on the No Knowledge Exception and submit these records to the Exchange upon request.
- (e) *Riskless Principal Exception.* The obligations under this Rule shall not apply to a BSTX Participant's proprietary trade if such proprietary trade is for the purposes of facilitating the execution, on a riskless principal basis, of an order from a customer (whether its own customer or the customer of another broker-dealer) (the "facilitated order"), provided that the BSTX Participant:
- (1) submits a report, contemporaneously with the execution of the facilitated order, identifying the trade as riskless principal to the Exchange (or another self-regulatory organization if not required under Exchange rules); and
  - (2) has written policies and procedures to ensure that riskless principal transactions for which the BSTX Participant is relying upon this exception comply with applicable Exchange rules. At a minimum these policies and procedures must require that the customer order was received prior to the offsetting principal transaction, and that the offsetting principal transaction is at the same price as the customer order exclusive of any markup or markdown, commission equivalent or other fee and is allocated to a riskless principal or customer account in a consistent manner and within 60 seconds of execution. A BSTX Participant must have supervisory systems in place that produce records that enable the BSTX Participant and the Exchange to reconstruct accurately, readily, and in a time-sequenced manner all facilitated orders for which the BSTX Participant relies on this exception.
- (f) *ISO Exception.* A BSTX Participant shall be exempt from the obligation to execute a customer order in a manner consistent with this Rule with regard to trading for its own account that is the result of an Inter-market Sweep Order ("ISO") routed in compliance with Rule 600(b)(31) of Regulation NMS where the customer order is received after the BSTX Participant routed the ISO. Where a BSTX Participant routes an ISO to facilitate a customer order and that customer has consented to not receiving the better prices obtained by the ISO, the BSTX Participant also shall be exempt with respect to any trading for its account that is the result of the ISO with respect to the consenting customer's order.

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- (g) *Bona Fide Error Transaction Exceptions.* The obligations under this Rule shall not apply to a BSTX Participant's proprietary trade that is to correct a bona fide error. BSTX Participants are required to demonstrate and document the basis upon which a transaction meets the bona fide error exception. For purposes of this Rule, a bona fide error is:
- (1) the inaccurate conveyance or execution of any term of an order, including, but not limited to, price, number of shares or other unit of trading; identification of the security; identification of the account for which securities are purchased or sold; lost or otherwise misplaced order tickets; short sales that were instead sold long or vice versa; or the execution of an order on the wrong side of a market;
  - (2) the unauthorized or unintended purchase, sale, or allocation of securities or the failure to follow specific client instructions;
  - (3) the incorrect entry of data into relevant systems, including reliance on incorrect cash positions, withdrawals, or securities positions reflected in an account; or
  - (4) a delay, outage, or failure of a communication system used to transmit market data prices or to facilitate the delivery or execution of an order.
- (h) *Minimum Price Improvement Standards.* The minimum amount of price improvement necessary for a BSTX Participant to execute an order on a proprietary basis when holding an unexecuted limit order in that same security, and not be required to execute the held limit order, is \$0.01 for all securities traded on the BSTX System. In addition, if the minimum price improvement standards above would trigger the protection of a pending customer limit order, any better-priced customer limit order(s) must also be protected under this Rule, even if those better-priced limit orders would not be directly triggered under the minimum price improvement standards above.
- (i) *Order Handling Procedures.* A BSTX Participant must make every effort to execute a marketable customer order that it receives fully and promptly. A BSTX Participant that is holding a customer order that is marketable and has not been immediately executed must make every effort to cross such order with any other order received by the BSTX Participant on the other side of the market up to the size of such order at a price that is no less than the best bid and no greater than the best offer at the time that the subsequent order is received by the BSTX Participant and that is consistent with the terms of the orders. In the event that a BSTX Participant is holding multiple orders on both sides of the market that have not been executed, the BSTX Participant must make every effort to cross or otherwise execute such orders in a manner that is reasonable and consistent with the objectives of this Rule and with the terms of the orders. A BSTX Participant can satisfy the crossing requirement by contemporaneously buying from the seller and selling to the buyer at the same price.

**23060. Joint Activity**

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No BSTX Participant, directly or indirectly, shall hold any interest or participation in any joint account for buying or selling a security traded on the Exchange, unless such joint account is promptly reported to the Exchange. The report should contain the following information for each account:

- (1) the name of the account, with names of all participants and their respective interests in profits and losses;
- (2) a statement regarding the purpose of the account;
- (3) the name of the BSTX Participant carrying and clearing the account; and
- (4) a copy of any written agreement or instrument relating to the account.

**23070. Influencing Data Feeds**

No BSTX Participant shall attempt to execute a transaction or transactions to buy or sell a security for the purpose of influencing any report appearing on any data feed providing information with respect to such security.

**23080. Trade Shredding**

No BSTX Participant or associated person of a BSTX Participant may engage in “trade shredding.” Trade shredding is conduct that has the intent or effect of splitting any order into multiple smaller orders for execution or any execution into multiple smaller executions for the primary purpose of maximizing a monetary or in-kind amount to be received by a BSTX Participant or associated person of a BSTX Participant as a result of the execution of such orders or the transaction reporting of such executions. For purposes of this Rule 23080, “monetary or in-kind amount” shall be defined to include, but not be limited to, any credits, commissions, gratuities, payments for or rebates of fees, or any other payments of value to a BSTX Participant or associated person of a BSTX Participant.

**23090. Best Execution**

In executing customer orders, a BSTX Participant is not a guarantor of “best execution” but must use the care of a reasonably prudent person in the light of all circumstances deemed relevant by the BSTX Participant and having regard for the BSTX Participant’s brokerage judgment and experience.

**23100. Publication of Transactions and Changes**

- (a) The Exchange shall cause to be disseminated for publication on the data feed(s) relating to the effective transaction reporting plan for Securities all last sale price reports of transactions executed through the facilities of the Exchange pursuant to the requirements of an effective transaction reporting plan approved by the Commission.

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- (b) To facilitate the dissemination of such last sale price reports, each BSTX Participant shall cause to be reported to the Exchange, as promptly as possible after execution, all information concerning each transaction required by the effective transaction reporting plan for Securities.
- (c) An official of the Exchange shall approve any corrections to reports transmitted over the data feed(s) relating to the effective transaction reporting plan for Securities. Any such corrections shall be made within one day after detection of the error.

**23110. Trading Ahead of Research Reports**

- (a) No BSTX Participant shall establish, increase, decrease or liquidate an inventory position in a security or a derivative of such security based on non-public advance knowledge of the content or timing of a research report in that security.
- (b) BSTX Participant must establish, maintain and enforce policies and procedures reasonably designed to restrict or limit the information flow between research department personnel, or other persons with knowledge of the content or timing of a research report, and trading department personnel, so as to prevent trading department personnel from utilizing non-public advance knowledge of the issuance or content of a research report for the benefit of the BSTX Participant or any other person.

**23120. Front Running of Block Transactions**

- (a) BSTX Participants and persons associated with BSTX Participants shall comply with FINRA Rule 5270 as if such rule were part of the Exchange's Rules.
- (b) Front Running of Non-Block Transactions. Although the prohibitions in FINRA Rule 5270 are limited to imminent block transactions, the front running of other types of orders that place the financial interests of a BSTX Participant or persons associated with a BSTX Participant ahead of those of its customers or the misuse of knowledge of an imminent customer order may violate other Exchange rules, including Rule 19000 and Rule 23050, and/or provisions of the federal securities laws.

**23130. Disruptive Quoting and Trading Activity Prohibited**

BSTX Participants shall comply with the requirements of Exchange Rule 3220 (Disruptive Quoting and Trading Activity Prohibited).

**24000 – DISCIPLINE AND SUMMARY SUSPENSION****24000. Suspensions**

The provisions of the Rule 11000 Series (Summary Suspension), 12000 Series (Discipline), 13000 Series (Review of Certain Exchange Actions), and 14000 Series

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(Arbitration) of the Exchange Rules shall be applicable to BSTX Participants and trading on the BSTX System.

**24010. Penalty for Minor Rule Violations**

The following BSTX Rule and policy violations may be determined by the Exchange to be minor in nature. If so, the Exchange may, with respect to any such violation, proceed under Rule 12140 (Imposition of Fines for Minor Violations) and impose the fine set forth below. The Exchange is not required to proceed under said Rules as to any rule violation and may, whenever such action is deemed appropriate, commence a disciplinary proceeding under the Rule 12000 Series as to any such violation. A subsequent violation is calculated on the basis of a rolling 24-month period (“Period”).

(a) Fine schedule pursuant to Rule 24010:

Occurrence (within a rolling 1	Individual	BSTX Participant
First Offense	\$100	\$500
Second Offense	\$300	\$1,000
Third Offense	\$500	\$2,5000

(b) Violations Appropriate for Dispositions under Rule 24010:

- (1) Rule 20000 – Maintenance, Retention and Furnishing of Records
- (2) Rule 25070 – Audit Trail
- (3) Rule 25210(a)(1) – BSTX Market Maker Two-Sided Quote Obligation
- (4) Rule 25120 – Short Sales.

**25000 – TRADING RULES****25000. Access to and Conduct on the BSTX Marketplace**

- (a) *Access to BSTX.* Unless otherwise provided in the Rules, no one but a BSTX Participant approved for trading on the BSTX System or a person associated with such a BSTX Participant shall effect any transactions on the BSTX System.
- (b) *Authorized Traders.* A BSTX Participant shall maintain a list of authorized traders who may obtain access to the BSTX System on behalf of the BSTX Participant. The BSTX Participant shall update the list of authorized traders as necessary. BSTX Participants must

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provide the list of authorized traders to the Exchange upon request.

- (1) BSTX Participants must have procedures in place that are reasonably designed to ensure that all authorized traders comply with all Exchange Rules and all other procedures related to the BSTX System.
  - (2) A BSTX Participant must suspend or withdraw a person's status as an authorized trader if the Exchange has determined that the person caused the BSTX Participant to fail to comply with the Rules of the Exchange and the Exchange has directed the BSTX Participant to suspend or withdraw the person's status as an authorized trader.
  - (3) A BSTX Participant must have reasonable procedures to ensure that authorized traders maintain the physical security of the equipment for accessing the facilities of the Exchange to prevent the improper use or access to the systems, including unauthorized entry of information into the systems.
  - (4) To be eligible to become an authorized trader of a BSTX Participant, a person must register as an associated person of the BSTX Participant pursuant to Exchange Rule 2050.
- (c) *Exchange Conduct.* BSTX Participants and persons employed by or associated with any BSTX Participant, while using the facilities of the Exchange, including BSTX, shall not engage in conduct:
- (1) inconsistent with the maintenance of a fair and orderly market;
  - (2) likely to impair public confidence in the operations of the Exchange; or
  - (3) inconsistent with the ordinary and efficient conduct of business.
- (d) Activities that shall violate the provisions of paragraph (b) include, but are not limited to, the following:
- (1) failure of a BSTX Market Maker to comply with the requirements in Rule 25200 Series;
  - (2) failure of a BSTX Participant to adequately supervise a person employed by or associated with such BSTX Participant to ensure that person's compliance with paragraph (c).
  - (3) failure to maintain adequate procedures and controls that permit the BSTX Participant to effectively monitor and supervise the entry of orders by users to prevent the prohibited practices set forth in paragraph (c) and the Rule 23000 Series;
  - (4) failure to abide by a determination of the Exchange;
  - (5) effecting transactions that are manipulative as provided in the Rule 23000 Series and any Exchange policy;

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- (6) refusal to provide information requested by the Exchange (See Rules 10000 and 12010); and
  - (7) failure to abide by the provisions of the Rule 23000 Series related to limitations on orders.
- (e) Subject to the Rules, the Exchange will provide access to the BSTX System to Participants in good standing that wish to conduct business on BSTX.
- (f) Pursuant to the Rules, the Exchange may:
- (1) suspend a Participant's access to the BSTX System following a warning which may be made in writing or verbally (and subsequently confirmed in writing); or
  - (2) terminate a Participant's access to the BSTX System by notice in writing.

**25010. Days and Hours of Business**

- (a) The Board shall determine the days BSTX shall be open for business (referred to as "business days") and the hours of such days during which transactions may be made on BSTX. No Participant shall make any bid, offer, or transaction on BSTX before or after such hours, except as provided in Rule 25040.
- (b) The Exchange shall not be open for business on the following holidays: New Year's Day, Martin Luther King, Jr. Day, Presidents' Day, Good Friday, Memorial Day, Independence Day, Labor Day, Thanksgiving Day, and Christmas Day. When any holiday observed by the Exchange falls on a Saturday, the Exchange will not be open for business on the preceding Friday. When any holiday observed by the Exchange falls on a Sunday, the Exchange will not be open for business on the following Monday, unless unusual business conditions exist at the time.
- (c) Orders may be executed on the BSTX System between 9:30 a.m. and 4:00 p.m. Eastern Time.
- (d) The Chief Executive Officer, President, or Chief Regulatory Officer of the Exchange, or his designee, who must be a senior officer of the Exchange, shall have the power to halt, suspend trading in any and all Securities traded on BSTX, to close some or all BSTX facilities, and to determine the duration of any such halt, suspension, or closing, when he deems such action necessary for the maintenance of fair and orderly markets, the protection of investors, or otherwise in the public interest including special circumstances such as (1) actual or threatened physical danger, severe climatic conditions, civil unrest, terrorism, acts of war, or loss or interruption of facilities utilized by BSTX, (2) a request by a governmental agency or official, or (3) a period of mourning or recognition for a person or event. No such action shall continue longer than a period of two days, or as soon thereafter as a quorum of Directors can be assembled, unless the Board approves the continuation of such suspension.

**25020. Units of Trading**

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The minimum unit of trading on the BSTX System shall be one Security.

**25030. Minimum Price Variant (“MPV”)**

Bids, offers, orders, or indications of interest in securities traded on BSTX shall not be made in an increment smaller than \$0.01.

**25040. Opening the Market***(a) Opening the Market for BSTX-Listed Securities.*

- (1) *Pre-Opening Phase.* Starting at 8:30 a.m. Eastern Time, the BSTX System will accept orders. During this period, known as the Pre-Opening Phase, orders are placed on the BSTX Book but do not generate trade executions. Orders may be canceled but not modified.
- (2) *Calculation of Theoretical Opening Price.* From the time that the BSTX System commences accepting orders at the start of the Pre-Opening Phase, the BSTX System will calculate and provide the Theoretical Opening Price (“TOP”) for the current resting orders on the BSTX Book during the Pre-Opening Phase. The TOP is that price at which the opening match would occur at the current time, if that time were the opening, according to the opening match procedures described in paragraph (4) below. The quantity that would trade at this price is also calculated.

A TOP can only be calculated if an opening trade is possible. An opening trade is possible if the BSTX Book is crossed (highest bid is higher than the lowest offer) or locked (highest bid equals lowest offer).

- (3) *Broadcast Information During Pre-Opening Phase.* The BSTX System will disseminate certain information to all BSTX Participants about any orders sent in before the Opening Match. This broadcast will include (“Broadcast Information”):
  - i. The TOP;
  - ii. The “Paired Securities,” which is the quantity of Securities that would execute at the TOP;
  - iii. The “Imbalance Quantity,” which is the number of Securities that may not be matched with other orders at the TOP at the time of dissemination;
  - iv. The “Imbalance Side,” which is the buy/sell direction of any imbalance at the time of dissemination.

Any orders which are at a price better (*i.e.*, bid higher or offer lower) than the TOP will be shown only as a total quantity on the BSTX Book at a price equal to the TOP.

- (4) *Timing of Dissemination of Broadcast Information.* Broadcast Information is recalculated and disseminated every time a new order is received or cancelled and where such event causes the TOP or Paired Securities to change.



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- (5) *Collar Price Range.* The term “Collar Price Range” shall mean the range from a set percentage below the Collar Midpoint (as defined below) to above the Collar Midpoint, such set percentage being dependent on the value of the Collar Midpoint at the time of the opening match, as described below. Specifically, the Collar Price Range will be determined as follows: where the Collar Midpoint is \$25.00 or less, the Collar Price Range shall be the range from 10% below the Collar Midpoint to 10% above the Collar Midpoint; where the Collar Midpoint is greater than \$25.00 but less than or equal to \$50.00, the Collar Price Range shall be the range from 5% below the Collar Midpoint to 5% above the Collar Midpoint; and where the Collar Midpoint is greater than \$50.00, the Collar Price Range shall be the range from 3% below the Collar Midpoint to 3% above the Collar Midpoint.
- i. For all applicable auctions other than an Initial Security Offering in an ETP, the Collar Midpoint will be the midpoint of the NBBO for a particular Security where the NBBO is a “Valid NBBO.” A NBBO is a Valid NBBO where: (i) there is both a NBB and NBO for the security; (ii) the NBBO is not crossed; and (iii) the midpoint of the NBBO is less than the “Maximum Percentage” away from both the NBB and the NBO. The Maximum Percentage will be determined by the Exchange and will be published in a circular distributed to BSTX Participants with reasonable advance notice prior to initial implementation and any change thereto. Where the NBBO is not a Valid NBBO, the price of the Final Last Sale Eligible Trade will be used. In the case of Initial Security Offering, the Collar Midpoint is the Initial Security Offering Reference Price, defined below.
    1. For an Initial Security Offering in an ETP, the Collar Midpoint shall be the issue price of the ETP.
  - ii. The “Final Last Eligible Trade” shall mean the last trade occurring during Regular Trading Hours on the Exchange or, for Halt Auctions, trading in the security being halted. If there is no such qualifying trade for the current day, the closing price on BSTX from the previous trading day will be used, which is the final print for the Security.
- (6) *Opening Match.*
- i. The BSTX System will establish the opening price at the time of the opening match at 9:30 a.m. Eastern Time. The opening price is the TOP at the moment of the opening match that is within the Collar Price Range. The TOP/opening price is the “market clearing” price which will leave bids and offers which cannot trade with each other. In determining the priority of orders to be filled, the BSTX System will give priority to Limit Orders whose price is better than the opening price first. Consistent with Rule 25080, among multiple orders at the same price, execution priority during the opening match is determined based on the time the order was

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received by the BSTX System.

- ii. The BSTX System will determine a single price at which a particular Security will be opened that is within the Collar Price Range. BSTX will calculate the optimum number of Securities that could be matched at a price, taking into consideration all the orders on the BSTX Book.
  1. The opening match price is the price which will result in the matching of the highest number of Securities.
  2. Should two or more prices satisfy the maximum quantity criteria, the price which will leave the fewest resting Securities in the BSTX Book will be selected as the opening price.
  3. Should there still be two or more prices which meet both criteria in subparagraphs (1) and (2) above, the price which is closest to the previous day's closing price will be selected as the opening match price. For Initial Security Offerings, BSTX will utilize the price assigned to the Security by the underwriter for the offering ("Initial Security Offering Reference Price").

(7) *Transition to Normal Trading.* As the opening price is determined, the BSTX System will proceed to move the Security from the Pre-Opening Phase to the continuous or regular trading phase and disseminate the opening trade price, if any. At this point, the BSTX system is open for trading and all orders are accepted and processed according to these Rules. Any orders that remain unexecuted in the opening match, including any remaining portion of a partially executed order, shall be moved onto the BSTX Order Book for the regular trading phase and shall retain their price/time priority consistent with Rule 25080. When the BSTX System cannot determine an opening price, the Security will nevertheless move from Pre-Opening Phase to the continuous trading phase with all orders received during the Pre-Opening Phase being moved to the BSTX Book for regular hours trading.

(8) Orders marked IOC submitted during the Pre-Opening Phase are rejected.

(b) *Auctions for the Initial Public Offering of a Security.* An initial public offering of a Security ("Initial Security Offering") will follow the same general process described above in paragraph (a) subject to the following:

- (1) *Quote-Only Period.* In advance of an auction related to an Initial Security Offering ("Initial Security Offering Auction"), the Exchange shall announce a "Quote-Only Period" that shall be between fifteen (15) and thirty (30) plus a short random period prior to the Initial Security Offering Auction. Limit orders with time-in-force of DAY submitted during the Quote Only Period shall be eligible to participate in the Initial Security Offering Auction. Orders may not be submitted to participate in an Initial Security Offering until the beginning of the Quote-Only

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Period. During the Quote Only Period, orders may be canceled, but not modified. Orders marked IOC submitted during the Quote-Only Period are rejected.

- (2) *Extending the Quote Only Period.* The Quote-Only Period may be extended where:
  - i. There is no TOP;
  - ii. The underwriter requests an extension;
  - iii. The TOP moves the greater of 10% or fifty (50) cents in the fifteen (15) seconds prior to the initial cross; or
  - iv. In the event of a technical or systems issue at the Exchange that may impair the ability of BSTX Participants to participate in the Initial Security Offering or of the Exchange to complete the Initial Security Offering.
- (3) *Broadcast Information.* The Exchange will disseminate Broadcast Information as described in paragraph (a)(3) above beginning at the commencement of the Quote Only Period. Broadcast Information is re-calculated and disseminated every time a new order is received or cancelled and where such event causes the TOP price or Paired Securities to change.
- (4) *Notification of Extensions of the Quote-Only Period and Trading Pauses.* In the event of any extension to the Quote-Only Period as set forth in paragraph (b)(2) above, the Exchange will notify market participants regarding the circumstances and length of the extension. If a trading pause is triggered by the Exchange or if the Exchange is unable to reopen trading at the end of the trading pause due to a systems or technology issue, the Exchange will immediately notify the single plan processor responsible for consolidation of information for the security pursuant to Rule 603 of Regulation NMS under the Securities Exchange Act of 1934.
- (5) *Determination of Initial Security Offering Price and Transition to Normal Trading.* Orders will be matched and executed pursuant to paragraph (a)(6) above at the conclusion of the Quote-Only Period, rather than at 9:30 a.m. Eastern Time. Following the initial cross at the end of the Quote-Only Period, the Exchange will transition to normal trading pursuant to paragraph (a)(7) above.
- (6) Orders marked IOC submitted during the Pre-Opening Phase of an Initial Security Offering Auction are rejected.
- (c) *Halt Auctions in BSTX-Listed Securities.* “Halt Auctions” are used to re-open trading in a BSTX-listed Security following a trading pause or a LULD trading halt pursuant to Rule 25050.
  - (1) *Quote-Only Period.* In advance of reopening after a trading halt, the Exchange shall announce a “Quote-Only Period” that shall be five (5) minutes prior to the

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Halt Auction. Limit orders with time-in-force of DAY submitted during the Quote Only period shall be eligible to participate in Halt Auction. Orders may not be submitted to participate in a Halt Auction until the beginning of the Quote-Only Period. During the Quote-Only Period, orders may be canceled, but not modified. Orders marked IOC submitted during the Quote-Only Period are rejected.

- (2) *Incremental Quote Period Extensions for Halt Auctions Following a Regulatory Halt.* The Quote-Only Period with respect to a Halt Auction shall commence five (5) minutes prior to such Halt Auction. The Quote-Only Period shall be extended for an additional five (5) minutes should a Halt Auction be unable to be performed due to the absence of a TOP, before being adjusted for Halt Auction Collars, is outside the applicable Halt Auction Collars set forth in subparagraphs (i) and (ii) below (an “Impermissible Price”) (“Initial Extension Period”). After the Initial Extension Period, the Quote-Only Period shall be extended for additional five (5) minute periods should a Halt Auction be unable to be performed due to absence of a TOP (“Additional Extension Period”) until a Halt Auction occurs. The Exchange shall attempt to conduct a Halt Auction during the course of each Additional Extension Period.
- i. For Halt Auctions following a Trading Pause, the Halt Auction Reference Price shall equal the price of the Upper or Lower Price Band that triggered the halt. If the Halt Auction Reference Price is the Lower (Upper) Price Band, the initial lower (upper) Halt Auction Collar shall be five (5) percent less (greater) than the Halt Auction Reference Price, rounded to the nearest minimum price variation and the upper (lower) Halt Auction Collar shall be the Upper (Lower) Price Band. For securities with a Halt Auction Reference Price of \$3.00 or less, the initial lower (upper) Halt Auction Collar shall be \$0.15 less (greater) than the Halt Auction Reference Price, rounded to the nearest minimum price variation and the upper (lower) Halt Auction Collar shall be the Upper (Lower) Price Band. For Halt Auctions following Non-LULD Regulatory Halts, the Halt Auction Reference Price shall equal the price of the Final Last Sale Eligible Trade. The initial lower (upper) Halt Auction Collar shall be five (5) percent less (greater) than the Halt Auction Reference Price, rounded to the nearest minimum price variation. For securities with a Halt Auction Reference Price of \$3.00 or less, the initial lower (upper) Halt Auction Collar shall be \$0.15 less (greater) than the Halt Auction Reference Price, rounded to the nearest minimum price variation.
  - ii. At the beginning of the Initial Extension Period the upper (lower) Halt Auction Collar shall be increased (decreased) by five (5) percent in the direction of the Impermissible Price, rounded to the nearest minimum price variation. For securities with a Halt Auction Reference Price of \$3.00 or less, the Halt Auction Collar shall be increased (decreased) in \$0.15 increments in the direction of the Impermissible Price. At the

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beginning of each Additional Extension Period, the Halt Auction Collar shall be widened in accordance with this paragraph by the same amount as the Initial Extension Period.

- (3) *Broadcast Information.* The Exchange will disseminate Broadcast Information for a Halt Auction as described in paragraph (a)(3) above beginning at the commencement of the Quote Only Period. Broadcast Information is re-calculated and disseminated every time a new order is received or cancelled and where such event causes the TOP price or quantity to change.
  - (4) *Notification of Extensions of the Quote-Only Period and Trading Pauses.* In the event of any extension to the Quote-Only Period as set forth in paragraph (c)(2) above, the Exchange will notify market participants regarding the circumstances and length of the extension. If a trading pause is triggered by the Exchange or if the Exchange is unable to reopen trading at the end of the trading pause due to a systems or technology issue, the Exchange will immediately notify the single plan processor responsible for consolidation of information for the security pursuant to Rule 603 of Regulation NMS under the Securities Exchange Act of 1934.
  - (5) *Determination of Halt Auction Price and Transition to Normal Trading.* Orders will be matched and executed pursuant to paragraph (a)(6) above at the conclusion of the Quote-Only Period for the Halt Auction. Following the initial cross at the end of the Quote-Only Period, the Exchange will transition to normal trading pursuant to paragraph (a)(7) above.
- (d) *Contingency Procedures.* When a disruption occurs that prevents the execution of an Initial Security Offering or Halt Auction, including any extensions thereof, as set forth above, the Exchange shall apply the following “Contingency Procedures”:
- (1) For an Initial Security Offering Auction, the Exchange will publicly announce that the Quote-Only Period for the Initial Security Offering Auction will reset for the subject Security. The Exchange will then cancel all orders on the BSTX Book and disseminate a new scheduled time for the Quote-Only Period and opening match.
  - (2) For a Halt Auction, the Exchange will publicly announce that no Halt Auction will occur. All orders in the halted Security on the BSTX Book will be canceled, and the Exchange will open the Security for trading without an auction.
- (e) *Opening the Market for Non-BSTX-Listed Securities.*
- (1) *Order Entry and Cancellation before the Opening Process.* Prior to the beginning of Regular Trading Hours, BSTX Participants who wish to participate in the opening process may enter orders to buy or sell. The Exchange will accept orders and quotes for inclusion in the BSTX Book but such orders and quotes cannot execute until the termination of the Pre-Opening Phase (“Opening Process”). Orders cancelled before the Opening Process will not participate in the Opening Process.

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- i. The Exchange will open by attempting to execute all orders eligible for the Opening Process.
- (2) *Performing the Opening Process.* The Exchange will attempt to perform the Opening Process and will match buy and sell orders that are executable at the midpoint of the NBBO as described in paragraph (3) below. All orders eligible to trade at the midpoint will be processed in time sequence, beginning with the order with the oldest time stamp. Matches will occur until there is no remaining volume or there is an imbalance of orders (the “Opening Match”). An imbalance of orders on the buy side or sell side may result in orders that are not executed in whole or in part. Such orders may, in whole or in part, be placed on the BSTX Book, cancelled, or executed. If no matches can be made, the Opening Process will conclude with all orders that participated in the Opening Process being placed in the BSTX Book, cancelled, or executed.
  - (3) *Determining the price of the Opening Process.* The price of the Opening Process will be at the midpoint of the: (i) first NBBO subsequent to the first two-sided quotation published by the listing exchange after 9:30:00 a.m. Eastern Time; or (ii) then prevailing NBBO when the first two-sided quotation is published by the listing exchange after 9:30:00 a.m. Eastern Time, but before 9:45:00 a.m. Eastern Time if no first trade is reported by the listing exchange within one second of publication of the first two-sided quotation by the listing exchange.
  - (4) *Contingent Open.* If the conditions to establish the price of the Opening Process set forth above do not occur by 9:45:00 a.m. Eastern Time, orders will be handled in time sequence, beginning with the order with the oldest time stamp, and will be placed on the BSTX Book, cancelled, or executed in accordance with the terms of the order.
  - (5) *Re-Opening After a Halt.* While a non-BSTX-listed security is subject to a halt, suspension, or pause in trading, the Exchange rejects orders until there is a resumption of trading in the security for participation in the re-opening process. Once the trading halt, suspension, or pause is lifted, BSTX Participants may resume submitting order to BSTX.
- (f) Whenever, in the judgment of the Exchange, the interests of a fair and orderly market so require, the Exchange may adjust the timing of or suspend the auctions set forth in this Rule with prior notice to BSTX Participants.
  - (g) For purposes of Rule 611(b)(3) of Regulation NMS, orders executed pursuant to the Opening Auction, Initial Security Offering Auction, and Halt Auction may trade through any other trading center’s manual or protected quotations if the transaction that constituted the trade-through was a single-priced opening, reopening, or closing transaction by the trading center.

**25050. Limit Up-Limit Down Plan and Trading Halts**

- (a) This rule shall be in effect during a pilot period to coincide with the pilot period for the

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Regulation NMS Plan to Address Extraordinary Market Volatility. If the pilot is not either extended or approved permanently at the end of the pilot period, the Exchange will amend this rule. The Exchange shall halt trading in all Securities and shall not reopen for the time periods specified in this Rule 25050 if there is a Level 1, 2, or 3 Market Decline.

- (1) For purposes of this Rule, a Market Decline means a decline in price of the S&P 500® Index between 9:30 a.m. and 4:00 p.m. Eastern Time on a trading day as compared to the closing price of the S&P 500® Index for the immediately preceding trading day. The Level 1, Level 2, and Level 3 Market Declines that will be applicable for the trading day will be publicly disseminated before 9:30 a.m. Eastern Time.
  - (2) A “Level 1 Market Decline” means a Market Decline of 7%.
  - (3) A “Level 2 Market Decline” means a Market Decline of 13%.
  - (4) A “Level 3 Market Decline” means a Market Decline of 20%.
- (b) *Halts in Trading.*
- (1) If a Level 1 Market Decline or a Level 2 Market Decline occurs after 9:30 a.m. Eastern Time and up to and including 3:25 p.m., or in the case of an early scheduled close, 12:25 p.m., the Exchange shall halt trading in all Securities for 15 minutes after a Level 1 or Level 2 Market Decline. The Exchange shall halt trading based on a Level 1 or Level 2 Market Decline only once per trading day. The Exchange will not halt trading if a Level 1 Market Decline or a Level 2 Market Decline occurs after 3:25 p.m. or, in the case of an early scheduled close, after 12:25 p.m.
  - (2) If a Level 3 Market Decline occurs at any time during the trading day, the Exchange shall halt trading in all Securities until the primary listing market opens the next trading day.
- (c) If a primary listing market halts trading in all Securities, the Exchange will halt trading in all Securities until trading has resumed on the primary listing market or notice has been received from the primary listing market that trading may resume. If the primary listing market does not reopen a Security within 15 minutes following the end of the 15-minute halt period, the Exchange may resume trading in that Security.
- (d) *Acceptance of Orders.* BSTX does not accept any orders in a non-BSTX-listed security subject to a trading halt for the duration of the trading halt. Any order submitted during a halt in a non-BSTX-listed security will be rejected by the BSTX System. All orders and trading interest resting on the BSTX book during any trading halt, including both non-BSTX listed securities and BSTX listed Securities will be canceled. Orders may be accepted by BSTX only following a broadcast message to BSTX Participants indicating a forthcoming re-opening of trading, as described in paragraph (e) below.
- (e) *Re-opening of Trading.* The re-opening of trading following a Level 1 or 2 trading halt in a BSTX-Listed Security shall follow the procedures set forth in Rule 25040(c). The re-

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opening of trading following a Level 1 or 2 trading halt in a non-BSTX-Listed security shall follow the procedures set forth in Rule 25040(e)(5).

- (f) Nothing in this Rule should be construed to limit the ability of the Exchange to otherwise halt, suspend, or pause the trading in any Security or Securities traded on the Exchange in circumstances in which the Exchange deems it necessary to protect investors and the public interest, or pursuant to any other Exchange rule or policy.
- (g) Limit Up-Limit Down Mechanism
  - (1) Definitions.
    - i. The term “Plan” or “Limit Up-Limit Down Plan” or “LULD” means the Plan to Address Extraordinary Market Volatility Pursuant to Rule 608 of Regulation NMS under the Act, as amended from time to time.
    - ii. All capitalized terms not otherwise defined in this paragraph (e) shall have the meanings set forth in the Plan or Exchange rules, as applicable.
  - (2) Exchange Participation in the Plan. As of the time trading commences on BSTX, the Exchange is a Participant in, and subject to the applicable requirements of, the Plan, which establishes procedures to address extraordinary volatility in NMS Stocks.
  - (3) Participant Compliance. BSTX Participants shall comply with the applicable provisions of the Plan.
  - (4) Exchange Compliance with the Plan. The BSTX System shall not display or execute buy (sell) interest above (below) the Upper (Lower) Price Bands, unless such interest is specifically exempted under the Plan.
  - (5) Re-pricing and Cancellation of Interest. The BSTX System does not reprice orders. An orders that could be executed above (below) the Upper (lower) Price Band shall be canceled back to the BSTX Participant that submitted the order.
  - (6) Trading Pause during a Straddle State. The Exchange may declare a trading pause in accordance with Section VII of the Limit Up-Limit Down Plan (“Trading Pause”) for a Security listed on the Exchange when (i) the National Best Bid (Offer) is below (above) the Lower (Upper) Price Band and the Security is not in a Limit State; and (ii) trading in that Security deviates from normal trading characteristics.
  - (7) Re-opening of Trading following a Trading Pause. At the end of the Trading Pause, the Exchange shall re-open the security pursuant to the procedures set forth in Rule 25040(c).
- (h) All times referenced in this Rule 25050 shall be Eastern Time.

**25060. Order Entry**



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- (a) Orders can be submitted to the BSTX System from commencement of pre-opening until market close. Submitted orders, once validated by the BSTX System, are time-stamped to within one millisecond.
- (b) On BSTX:
- (1) a bid is represented as an order to buy (“buy order”);
  - (2) an offer is represented as an order to sell (“sell order”); and
  - (3) an execution, or trade, is defined as the matching of a buy order and sell order in the BSTX Book.
- (c) The following types of orders may be submitted to the BSTX System:
- (1) *Limit Order*. Limit Orders entered into the BSTX Book are executed at the price stated or better. Any residual volume left after part of a Limit Order has traded is retained in the BSTX Book until it is withdrawn by the BSTX Participant or the BSTX System at the end of the trading day, or traded (unless a designation described in paragraph (d) below is added which prevents the untraded part of a limit order from being retained). All Limit Orders are automatically withdrawn by the BSTX System at market close. If a BSTX Participant fails to specify a limit price with respect to its limit order, such order shall be rejected.
  - (2) *Inter-market Sweep Orders*. The System will accept incoming Intermarket Sweep Orders (“ISO”) (as such term is defined in Regulation NMS). Incoming ISOs are immediately executable against orders in the BSTX System to which they are marketable. In order to be eligible for treatment as an Inter-market Sweep Order, the limit order must be marked “ISO” and the individual entering the order must simultaneously route one or more additional limit orders marked “ISO,” as necessary, to away markets to execute against the full displayed size of any protected quotation for the security with a price that is superior to the limit price of the ISO entered. Such orders, if they meet the requirements of the foregoing sentence, may be executed at one or multiple price levels in the BSTX System without regard to protected quotations at away markets consistent with Regulation NMS (i.e., may trade through such quotations). The Exchange relies on the marking of an order as an ISO when handling such order, and thus, the BSTX Participant entering the order, not the Exchange, has the responsibility to comply with the requirements of Regulation NMS relating to Intermarket Sweep Orders. An ISO:
    - i. Must be a limit order.
    - ii. Must have a time-in-force of IOC.
    - iii. Is not eligible for routing.
    - iv. Must be submitted with a limit price.
    - v. May be submitted during Regular Trading Hours.

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- (d) Where no order type is specified, the BSTX System will reject the order.
- (1) All orders, including those submitted during the Pre-Opening Phase, have a default time-in-force of “DAY.” DAY orders may queue during the Pre-Opening Phase or before the resumption of trading following a trading halt. DAY orders are only available for trading during Regular Trading Hours. Any DAY orders remaining unexecuted at the time of the BSTX close (4:00 p.m. Eastern Time) are canceled.
  - (2) The following optional designations can be added to the order types referred to in paragraph (c) above:
    - i. Immediate-or-cancel (“IOC”). Orders entered into the BSTX System marked IOC are executed on BSTX in whole or in part, as soon as such order is received, and the portion not so executed is canceled. Orders marked IOC are never posted to the BSTX Book. Orders marked IOC are not accepted during the Pre-Opening Phase. Marking an order as IOC overrides the default time-in-force of DAY.
- (e) The identity of BSTX Participants who submit orders to the BSTX System will remain anonymous to market participants at all times, except during error resolution or through the normal settlement process.
- (f) Orders can be cancelled but not modified once they are held in the BSTX Book. The cancellation and submission of a new order will result in a time stamp being associated with the order for purposes of BSTX Book priority.
- (g) All orders will be canceled at market close.
- (h) A BSTX Participant may submit an order with a preference for same day (T+0) settlement (“Order with a T+0 Preference”) or next trading day (T+1) settlement (“Order with a T+1 Preference”).
- (1) An Order with a T+0 Preference will execute against any order against which it is marketable with settlement occurring on a standard settlement cycle (T+2) except where:
    - i. The Order with a T+0 Preference executes against another Order with a T+0 Preference, in which case settlement shall occur on the trade date; or
    - ii. The Order with a T+0 Preference executes against an Order with a T+1 Preference, in which case settlement shall occur the next trading day after the trade date (i.e., T+1).
  - (2) An Order with a T+1 Preference will execute against any order against which it is marketable with settlement occurring on a standard settlement cycle (T+2) except where:
    - i. The Order with a T+1 Preference executes against another Order with a T+1 Preference or an Order with a T+0 Preference, in which case

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settlement occurs on the next trading day after the trade date (i.e., T+1).

**25070. Audit Trail**

- (a) *Order Identification.* When entering orders on the BSTX System, each BSTX Participant shall submit order information in such form as may be prescribed by the Exchange in order to allow BSTX to properly prioritize and match orders pursuant to Rule 25080 and report resulting transactions. A BSTX Participant must ensure that each order received from a Customer for execution on BSTX is recorded and time-stamped immediately. The order must be time-stamped again upon execution and also at the time of any modification or cancellation of the order by the Customer.
- (b) Order tickets relating to orders submitted to the BSTX System must contain the following information at a minimum:
- (1) a unique order identification;
  - (2) the Security;
  - (3) Participant identification;
  - (4) Participant capacity;
  - (5) customer identification;
  - (6) buy/sell;
  - (7) quantity;
  - (8) price or price limit;
  - (9) special instructions; and
  - (10) such other information as may be required by the Exchange.
- (c) A BSTX Participant that employs an electronic system for order routing or order management which complies with Exchange requirements will be deemed to be complying with the requirements of this Rule if the required information is recorded in electronic form rather than in written form.
- (d) In addition to any related requirement under applicable securities laws, information recorded pursuant to this Rule must be retained by Participants for a period of no less than three (3) years after the date of the transaction.
- (e) While the identity of the individual/terminal completing the order ticket and the customer identification (the specific customer or account number) are not submitted in the order entry system, this type of specific information should be maintained as part of the BSTX Participant's books and records requirements, and if requested, must be provided to the Exchange.

**25080. Execution and Price/Time Priority**

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Subject to the restrictions under these Exchange Rules or the Act and the rules and regulations thereunder, orders shall be matched for execution in accordance with this Rule.

- (a) *Ranking.* Orders of BSTX Participants shall be ranked and maintained in the BSTX Book according to price-time priority, such that within each price level, all orders shall be organized by the time of entry.
- (b) *Execution Against the BSTX Book.* For purposes of this Rule any order falling within the parameters of this paragraph shall be referred to as “executable.” An order will be canceled back to the BSTX Participant if, based on the market conditions, BSTX Participant instructions, applicable Exchange Rules and/or the Act and the rules and regulations thereunder, such order is not executable and cannot be posted to the BSTX Book.
  - (1) *Compliance with Regulation SHO.* For any execution of a short sale order to occur on the Exchange when a short sale price test restriction is in effect, the price must be better than the NBB, unless the sell order was initially displayed by the System at a price above the then current NBB or is marked “short exempt” pursuant to Regulation SHO.
  - (2) *Compliance with Regulation NMS and Trade-Through Protection.* The BSTX System will ensure that any execution that occurs during the Regular Trading Hours, the price must be equal to or better than the Protected NBBO, unless the order is marked ISO or unless the execution falls within another exception set forth in Rule 611(b) of Regulation NMS.
  - (3) *Compliance with the Limit Up-Limit Down Plan.* For any executions to occur during Regular Trading Hours, such executions must comply with the Limit Up-Limit Down Plan, as set forth in Rule 25050.
  - (4) *Execution Against the BSTX Book.* An incoming order will attempt to be matched for execution against orders in the BSTX Book, as described below.
    - i. *Buy Orders.* An incoming order to buy will be automatically executed to the extent that it is priced at an amount that equals or exceeds the resting price of any order to sell in the BSTX Book and is executable, as defined above. Such order to buy shall be executed at the price(s) of the lowest priced order(s) to sell having priority in the BSTX Book.
    - ii. *Sell Orders.* An incoming order to sell will be automatically executed to the extent that it is priced at an amount that equals or is less than the resting price of any other order to buy in the BSTX Book and is executable, as defined above. Such order to sell shall be executed at the price(s) of the highest priced order(s) to buy having priority in the BSTX Book.

**EXHIBIT 5A****25090. BSTX Risk Controls**

- (a) *Maximum Order Size.* The BSTX System will prevent orders from executing or being placed on the BSTX Book if the size of the order exceeds the size protection designated by the BSTX Participant. The Exchange may provide default values and mandatory minimum levels for this size protection.
- (b) *Cancel-on-Disconnect.* BSTX Participants may elect for the BSTX System to cancel all resting orders of a BSTX Participant if the BSTX Participant disconnects from the BSTX System.
- (c) *Price Protection for Limit Orders.* Price Protection for Limit Orders is a feature that prevents incoming Limit Orders from being accepted if the order price is more than a specific amount or percentage outside the National Best Bid or Offer in the marketplace. The specific amount and percentage is provided by the BSTX Participant, and the Exchange may provide default values and mandatory minimum levels.
- (d) *Maximum Order Rate.* The Maximum Order Rate will reject an incoming order if the rate of orders received by the BSTX System from a BSTX Participant exceeds the BSTX Participant-provided maximum order rate. The Exchange may provide default values and mandatory minimum levels

**25100. Trade Execution, Reporting, and Dissemination of Quotations**

- (a) *Dissemination of Last Sale Information.* Executions occurring as a result of orders matched against the BSTX Book, pursuant to Rule 25080, shall be collected and disseminated.
- (b) The Exchange shall identify all trades executed pursuant to an exception or exemption from Rule 611 of Regulation NMS in accordance with specifications approved by the operating committee of the relevant national market system plan for an NMS stock. If a trade is executed pursuant to both the inter-market sweep order exception of Rule 611(b)(5) of Regulation NMS and the self-help exception of Rule 611(b)(1) of Regulation NMS, such trade shall be identified as executed pursuant to the inter-market sweep order exception
- (c) *Display and Quotation Dissemination.* The BSTX System will operate as an “automated market center” within the meaning of Regulation NMS, and in furtherance thereof, will display “automated quotations” within the meaning of Regulation NMS at all times except in the event that a systems malfunction renders the BSTX System incapable of displaying automated quotations. All non-marketable Limit Orders are eligible to be displayed.
  - (1) The aggregate of the best-ranked non-marketable Limit Order(s), pursuant to Rule 25080, to buy and the best-ranked non-marketable Limit Order(s) to sell in the BSTX Book shall be collected and made available to quotation vendors for dissemination pursuant to the requirements of Rule 602 of Regulation NMS. The Exchange will maintain connectivity and access to the Consolidated Tape

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Association (“CTA”) Plan and Unlisted Trading Privileges (“UTP”) Plan (collectively, “the SIPs”) for dissemination of quotation information.

- (d) *Trade Execution and Settlements*. Executions occurring as a result of orders matched against the BSTX Book, pursuant to Rule 25080, shall clear and settle pursuant to the rules, policies and procedures of a registered clearing agency.
- (e) *Obligation to Honor System Trades*.
- (1) If a BSTX Participant, or clearing member/participant acting on a BSTX Participant’s behalf, is reported by the BSTX System, or shown by the activity reports generated by the BSTX System, as constituting a side of a BSTX System trade, such BSTX Participant, or clearing member/participant acting on its behalf, shall honor such trade on the scheduled settlement date.
  - (2) The Exchange shall have no liability if a BSTX Participant, or a clearing member acting on the BSTX Participant’s behalf, fails to satisfy the obligations in paragraph (1).

**25110. Clearly Erroneous Executions**

- (a) *Definition*. For purposes of this Rule, the terms of a transaction executed on the BSTX System are “clearly erroneous” when there is an obvious error in any term, such as price, number of Securities or other unit of trading, or identification of the Security. A transaction made in clearly erroneous error and canceled by both parties or determined by the Exchange to be clearly erroneous will be removed from the Consolidated Tape.
- (b) *Request and Timing of Review*. A BSTX Participant that receives an execution on an order that was submitted erroneously to the Exchange for its own or customer account may request that the Exchange review the transaction under this Rule. An officer of BSTX or such other employee designee of BSTX (“Official”) shall review the transaction under dispute and determine whether it is clearly erroneous, with a view toward maintaining a fair and orderly market and the protection of investors and the public interest. Such request for review shall be made in writing via e-mail or other electronic means specified from time to time by the Exchange in a circular distributed to BSTX Participants.
- (1) *Requests for Review*. Requests for review must be received by the Exchange within thirty (30) minutes of execution time and shall include information concerning the time of the transaction(s), security symbol(s), number of Securities, price(s), side (bought or sold), and factual basis for believing that the trade is clearly erroneous. Upon receipt of a timely filed request that satisfies the numerical guidelines set forth in paragraph (c)(1) of this Rule, the counterparty to the trade, if any, shall be notified by the Exchange as soon as practicable, but generally within thirty (30) minutes. An Official may request additional supporting written information to aid in the resolution of the matter. If requested, each party to the transaction shall provide any supporting written information as may be reasonably requested by the Official to aid resolution of the matter within

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thirty (30) minutes of the Official's request. Either party to the disputed trade may request supporting written information provided by the other party on the matter.

(c) *Thresholds*. Determinations of whether an execution is clearly erroneous will be made as follows:

- (1) Subject to the provisions of paragraph (c)(3) below, a transaction executed during Regular Trading Hours shall be found to be clearly erroneous if the price of the transaction to buy (sell) that is the subject of the complaint is greater than (less than) the Reference Price by an amount that equals or exceeds the Numerical Guidelines set forth below. The Reference Price will be equal to the consolidated last sale immediately prior to the execution(s) under review except for in circumstances, such as, for example, relevant news impacting a security or securities, periods of extreme market volatility, sustained illiquidity, or widespread system issues, where use of a different Reference Price is necessary for the maintenance of a fair and orderly market and the protection of investors and the public interest.

<b>Reference Price, Circumstance or Product</b>	<b>Regular Trading Hours Numerical Guidelines (Subject transaction's % difference from the Reference Price):</b>
Greater than \$0.00 up to and including \$25.00	10%
Greater than \$25.00 up to and including \$50.00	5%
Greater than \$50.00	3%
Multi-Stock Event Filings involving five or more, but less than twenty, securities whose executions occurred within a period of five minutes or less.	10%
Multi-Stock Event Filings involving twenty or more securities whose executions occurred within a period of five minutes or less.	30% subject to the terms of paragraph (c)(2) below
Leveraged ETP Securities	Regular Trading Hours Numerical Guidelines multiplied by the leverage multiplier (e.g., 2x)

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- (2) **Multi-Stock Events Involving Twenty or More Securities.** During Multi-Stock Events involving twenty or more securities the number of affected transactions may be such that immediate finality is necessary to maintain a fair and orderly market and to protect investors and the public interest. In such circumstances, the Exchange may use a Reference Price other than consolidated last sale. To ensure consistent application across trading centers when this paragraph is invoked, the Exchange will promptly coordinate with the away trading centers to determine the appropriate review period, which may be greater than the period of five minutes or less that triggered application of this paragraph, as well as select one or more specific points in time prior to the transactions in question and use transaction prices at or immediately prior to the one or more specific points in time selected as the Reference Price. The Exchange will nullify as clearly erroneous all transactions that are at prices equal to or greater than 30% away from the Reference Price in each affected security during the review period selected by the Exchange and other markets consistent with this paragraph.
- (3) *Additional Factors.* An Official may also consider additional factors to determine whether an execution is clearly erroneous, including but not limited to, system malfunctions or disruptions, volume and volatility for the security, derivative securities products that correspond to greater than 100% in the direction of a tracking index, news released for the security, whether trading in the security was recently halted/resumed, whether the security is an initial public offering, whether the security was subject to a stock-split, reorganization, or other corporate action, overall market conditions, validity of the reported trades and quotes, consideration of primary market indications, and executions inconsistent with the trading pattern in the stock. Each additional factor shall be considered with a view toward maintaining a fair and orderly market and the protection of investors and the public interest.
- (d) *Outlier Transactions.* In the case of an Outlier Transaction, an Official may, in his or her sole discretion, and on a case-by-case basis, consider requests received pursuant to paragraph (b) of this Rule after thirty (30) minutes, but not longer than sixty (60) minutes after the transaction in question, depending on the facts and circumstances surrounding such request.
- (1) An “Outlier Transaction” means a transaction where the execution price of the security is greater than three times the current Numerical Guidelines set forth in paragraph (c)(1) of this Rule.
  - (2) If the execution price of the security in question is not within the Outlier Transaction parameters set forth in paragraph (d)(1) of this Rule but breaches the 52-week high or 52-week low, the Exchange may consider Additional Factors as outlined in paragraph (c)(2), in determining if the transaction qualifies for further review or if the Exchange shall decline to act.
- (e) *Review Procedures*



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- (1) *Determination by Official.* Unless both parties to the disputed transaction agree to withdraw the initial request for review, the transaction under dispute shall be reviewed, and a determination shall be rendered by the Official. If the Official determines that the transaction is not clearly erroneous, the Official shall decline to take any action in connection with the completed trade. In the event that the Official determines that the transaction in dispute is clearly erroneous, the Official shall declare the transaction null and void. A determination shall be made generally within thirty (30) minutes of receipt of the complaint, but in no case later than the start of Regular Trading Hours on the following trading day. The parties shall be promptly notified of the determination.
- (2) *Appeals.* If a BSTX Participant affected by a determination made under this Rule so requests within the time permitted below, the Chief Regulatory Officer of BSTX will review decisions made by the Official under this Rule, including whether a clearly erroneous execution occurred and whether the correct determination was made; provided however that the Chief Regulator Officer of BSTX will not review decisions made by an Officer under paragraph (f) of this Rule if such Officer also determines under paragraph (f) of this Rule that the number of the affected transactions is such that immediate finality is necessary to maintain a fair and orderly market and to protect investors and the public interest.
  - i. A request for review on appeal must be made in writing via e-mail or other electronic means specified from time to time by BSTX in a circular distributed to BSTX Participant within thirty (30) minutes after the party making the appeal is given notification of the initial determination being appealed. The Chief Regulatory Officer of BSTX shall review the facts and render a decision as soon as practicable, but generally on the same trading day as the execution(s) under review.
  - ii. The Chief Regulatory Officer of BSTX may overturn or modify an action taken by the Official under this Rule. All determinations by the Chief Regulatory Officer of BSTX shall constitute final action by the Exchange on the matter at issue.
  - iii. Any determination by an Official or by the Chief Regulatory Officer shall be rendered without prejudice as to the rights of the parties to the transaction to submit their dispute to arbitration.
- (f) *System Disruption or Malfunctions.* In the event of any disruption or a malfunction in the operation of any electronic communications and trading facilities of BSTX in which the nullification of transactions may be necessary for the maintenance of a fair and orderly market or the protection of investors and the public interest exist, an Officer of BSTX or other senior level employee designee, on his or her own motion, may review such transactions and declare such transactions arising out of the operation of such facilities during such period null and void. In such events, the Officer of BSTX or such other senior level employee designee will rely on the provisions of paragraph (c) of this Rule, but in extraordinary circumstances may also use a lower Numerical Guideline if

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necessary to maintain a fair and orderly market, protect investors and the public interest. Absent extraordinary circumstances, any such action of the Officer of BSTX or other senior level employee designee pursuant to this paragraph (f) shall be taken within thirty (30) minutes of detection of the erroneous transaction. When extraordinary circumstances exist, any such action of the Officer of BSTX or senior level employee designee must be taken by no later than the start of Regular Trading Hours on the trading day following the date of execution(s) under review. Each BSTX Participant involved in the transaction shall be notified as soon as practicable by BSTX, and the party aggrieved by the action may appeal such action in accordance with the provisions of paragraph (e)(2) above.

- (g) *Officer Acting on Own Motion.* An Officer of BSTX or senior level employee designee, acting on his or her own motion, may review potentially erroneous executions and declare trades null and void or shall decline to take any action in connection with the completed trade(s). In such events, the Officer of BSTX or such other senior level employee designee will rely on the provisions of paragraph (c) of this Rule. Absent extraordinary circumstances, any such action of the Officer of BSTX or other senior level employee designee shall be taken in a timely fashion, generally within thirty (30) minutes of the detection of the erroneous transaction. When extraordinary circumstances exist, any such action of the Officer of BSTX or other senior level employee designee must be taken by no later than the start of Regular Trading Hours on the trading day following the date of execution(s) under review. When such action is taken independently, each party involved in the transaction shall be notified as soon as practicable by BSTX, and the party aggrieved by the action may appeal such action in accordance with the provisions of paragraph (e)(2) above.
- (h) *Securities Subject to Limit Up-Limit Down Plan.* For purposes of this paragraph, the phrase “Limit Up-Limit Down Plan” shall mean the Plan to Address Extraordinary Market Volatility Pursuant to Rule 608 of Regulation NMS under the Act. The provisions of paragraphs (a) through (g) above and (i) through (j) below shall govern all Exchange transactions, including transactions in securities subject to the Plan, other than as set forth in this paragraph (h). If as a result of an Exchange technology or systems issue any transaction occurs outside of the applicable price bands disseminated pursuant to the Plan, an Officer of the Exchange or senior level employee designee, acting on his or her own motion or at the request of a third party, shall review and declare any such trades null and void. Absent extraordinary circumstances, any such action of the Officer of the Exchange or other senior level employee designee shall be taken in a timely fashion, generally within thirty (30) minutes of the detection of the erroneous transaction. When extraordinary circumstances exist, any such action of the Officer of the Exchange or other senior level employee designee must be taken by no later than the start of Regular Market Hours on the trading day following the date on which the execution(s) under review occurred. Each BSTX Participant involved in the transaction shall be notified as soon as practicable by the Exchange, and the party aggrieved by the action may appeal such action in accordance with the provisions of paragraph (e)(2) above. In the event that a single plan processor experiences a technology or systems issue that prevents the dissemination of price bands, the Exchange will make the determination of whether to nullify transactions based on paragraphs (a) through (g) above and (i) through (j) below.

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- (i) *Multi-Day Event.* A series of transactions in a particular Security on one or more trading days may be viewed as one event if all such transactions were effected based on the same fundamentally incorrect or grossly misinterpreted issuance information resulting in a severe valuation error for all such transactions (the “Event”). An Officer of BSTX or senior level employee designee, acting on his or her own motion, shall take action to declare all transactions that occurred during the Event null and void not later than the start of trading on the day following the last transaction in the Event. If trading in the Security is halted before the valuation error is corrected, an Officer of BSTX or senior level employee designee shall take action to declare all transactions that occurred during the Event null and void prior to the resumption of trading. Notwithstanding the foregoing, no action can be taken pursuant to this paragraph with respect to any transactions that have reached settlement date or that result from an initial public offering of a Security. Any action taken in connection with this paragraph will be taken without regard to the Numerical Guidelines set forth in this Rule. Each BSTX Participant involved in a transaction subject to this paragraph shall be notified as soon as practicable by the Exchange, and the party aggrieved by the action may appeal such action in accordance with the provisions of paragraph (e)(2) above.
- (j) *Trading Halts.* In the event of any disruption or malfunction in the operation of the electronic communications and trading facilities of BSTX or the responsible single plan processor in connection with the transmittal or receipt of a regulatory trading halt, suspension or pause, an Officer of BSTX or senior level employee designee, acting on his or her own motion, shall nullify any transaction in a security that occurs after the primary listing market for such security declares a regulatory trading halt, suspension or pause with respect to such security and before such regulatory trading halt, suspension or pause with respect to such security has officially ended according to the primary listing market. In addition, in the event a regulatory trading halt, suspension or pause is declared, then prematurely lifted in error and is then re-instituted, an Officer of BSTX or senior level employee designee shall nullify transactions that occur before the official, final end of the halt, suspension or pause according to the primary listing market. Any action taken in connection with this paragraph shall be taken in a timely fashion, generally within thirty (30) minutes of the detection of the erroneous transaction and in no circumstances later than the start of Regular Trading Hours on the trading day following the date of execution(s) under review. Any action taken in connection with this paragraph will be taken without regard to the Numerical Guidelines set forth in this Rule. Each BSTX Participant involved in a transaction subject to this paragraph shall be notified as soon as practicable by the Exchange, and the party aggrieved by the action may appeal such action in accordance with the provisions of paragraph (e)(2) above.

**25120. Short Sales**

- (a) *Marking.* All sell orders entered into the Exchange must be marked long, short, or short exempt.
- (b) *Definitions.* For purposes of this Rule, the terms “covered security,” “listing market,” and “national best bid” shall have the same meaning as in Rule 201 of Regulation SHO.

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- (c) *Short Sale Price Test.* The BSTX System shall not execute or display a short sale order not marked short exempt with respect to a covered security at a price that is less than or equal to the current national best bid if the price of that security decreases by 10% or more, as determined by the listing market for the covered security, from the covered security's closing price on the listing market as of the end of Regular Trading Hours on the prior day (the "Trigger Price").
- (d) *Determination of Trigger Price.* For covered securities, the BSTX System shall determine whether a transaction in a covered security has occurred at a Trigger Price and shall immediately notify the responsible single plan processor.
- (1) If a covered security did not trade on BSTX on the prior trading day (due to a trading halt, trading suspension, or otherwise), BSTX's determination of the Trigger Price shall be based on the last sale price on the BSTX System for that Security on the most recent day on which the Security traded.
- (e) *Duration of Short Sale Price Test.* If the Short Sale Price Test is triggered by the listing market with respect to a covered security, the Short Sale Price Test shall remain in effect until the close of trading on the next trading day, as provided for in Regulation SHO Rule 201(b)(1)(ii) (the "Short Sale Period").
- (1) If the Exchange determines pursuant to Rule 25110 that the Short Sale Price Test for a covered security was triggered because of a clearly erroneous execution, the Exchange may lift the Short Sale Price Test before the Short Sale Period ends for the Securities for which the Exchange is the listing market or, for Securities listed on another market, notify the other market of the Exchange's determination that the triggering transaction was a clearly erroneous execution. The Exchange may also lift the Short Sale Price Test before the Short Sale Period ends, for a covered security for which the Exchange is the listing market, if the Exchange has been informed by another exchange or a self-regulatory organization ("SRO") that a transaction in the covered security that occurred at the Trigger Price was a clearly erroneous execution, as determined by the rules of that exchange or SRO.
  - (2) If the Exchange determines that the prior day's closing price for a listed Security is incorrect in the System and resulted in an incorrect determination of the Trigger Price, the Exchange may correct the prior day's closing price and lift the Short Sale Price Test before the Short Sale Period ends.

**25130. Locking or Crossing Quotations in NMS Stocks**

- (a) *Definitions.* For purposes of this Rule 25130, the following definitions shall apply:
- (1) The terms automated quotation, effective national market system plan, intermarket sweep order, manual quotation, NMS stock, protected quotation, regular trading hours, and trading center shall have the meanings set forth in Rule 600(b) of Regulation NMS.
  - (2) The term crossing quotation shall mean the display of a bid for an NMS stock

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during regular trading hours at a price that is higher than the price of an offer for such NMS stock previously disseminated pursuant to an effective national market system plan, or the display of an offer for an NMS stock during regular trading hours at a price that is lower than the price of a bid for such NMS stock previously disseminated pursuant to an effective national market system plan.

- (3) The term locking quotation shall mean the display of a bid for an NMS stock during regular trading hours at a price that equals the price of an offer for such NMS stock previously disseminated pursuant to an effective national market system plan, or the display of an offer for an NMS stock during regular trading hours at a price that equals the price of a bid for such NMS stock previously disseminated pursuant to an effective national market system plan.
- (b) Prohibition. Except for quotations that fall within the provisions of paragraph (d) of this Rule, the BSTX System shall not make available for dissemination, and BSTX Participants shall reasonably avoid displaying, and shall not engage in a pattern or practice of displaying, any quotations that lock or cross a protected quotation, and any manual quotations that lock or cross a quotation previously disseminated pursuant to an effective national market system plan.
- (c) Exceptions.
- (1) The locking or crossing quotation was displayed at a time when the trading center displaying the locked or crossed quotation was experiencing a failure, material delay, or malfunction of its systems or equipment.
  - (2) The locking or crossing quotation was displayed at a time when a protected bid was higher than a protected offer in the NMS stock.
  - (3) The locking or crossing quotation was an automated quotation, and the BSTX Participant displaying such automated quotation simultaneously routed an intermarket sweep order to execute against the full displayed size of any locked or crossed protected quotation.
- (d) The BSTX System will reject any order or quotation that would lock or cross a protected quotation of another exchange at the time of entry.

**25140. Clearance and Settlement, Anonymity**

- (a) Each BSTX Participant must either (i) be a member of a registered clearing agency that uses a continuous net settlement (“CNS”) system, or (ii) clear transactions executed on the Exchange through another Participant that is a member of such a registered clearing agency. The Exchange will maintain connectivity and access to the Universal Trade Capture (“UTC”) of the National Securities Clearing Corporation (“NSCC”), a subsidiary of the Depository Trust & Clearing Corporation (“DTCC”), for transmission of executed

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transactions. If a BSTX Participant clears transactions through another BSTX Participant that is a member of a registered clearing agency (“clearing member”), such clearing member shall affirm to the Exchange in writing, through letter of authorization, letter of guarantee or other agreement acceptable to the Exchange, its agreement to assume responsibility for clearing and settling any and all trades executed by the BSTX Participant designating it as its clearing firm. The rules of any such clearing agency shall govern with respect to the clearance and settlement of any transactions executed by the BSTX Participant on the Exchange.

- (1) Solely at the discretion of the Exchange, a BSTX Participant may clear transactions executed on the Exchange through a non-BSTX Participant that is a member of a foreign clearing agency with which a registered clearing agency has an agreement of mutual recognition, and is permitted to clear transactions of the BSTX Participant in the registered clearing agency’s CNS system.
- (2) Each transaction executed within the BSTX System is executed on a locked-in basis and shall be automatically processed for clearance and settlement.
- (3) The transaction reports produced by the BSTX System will indicate the details of transactions executed in the BSTX System but shall not reveal contra party identities. Except as set forth in paragraph (4) below, transactions executed in the BSTX System will also be cleared and settled anonymously.
- (4) Except as required by any registered clearing agency, the Exchange will reveal the identity of a BSTX Participant or Participant’s clearing firm in the following circumstances:
  - i. For regulatory purposes or to comply with an order of a court or arbitrator;  
or
  - ii. When a registered clearing agency ceases to act for a BSTX Participant or BSTX Participant’s clearing firm, and determines no to guarantee the settlement of the BSTX Participant’s trades.

**25150. Thinly Traded Securities and Suspension of Unlisted Trading Privileges**

- (a) **Criteria for a Thinly Traded Security.** A “Thinly Traded Security” means a Security of an operating company that meets the conditions of (a)(1) or (a)(2) of this Rule.
  1. **Ongoing Eligibility Criteria.** For a Security that has been publicly traded for at least six months, a Security shall be considered a Thinly Traded Security if the Security has:
    - i. A market capitalization of less than \$1 billion; and

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- ii. An average daily volume of trading of 100,000 shares or less during at least four (4) of the preceding six (6) calendar months.
  2. Initial Eligibility Criteria. For a Security that has not been publicly traded for at least six months, a Security shall be considered a Thinly Traded Security if during the first three (3) months of public trading the Security has:
    - i. A market capitalization of less than \$1 billion;
    - ii. An average daily volume of trading of 100,000 shares or less.
  3. A Security that meets the Initial Eligibility Criteria shall be considered a Thinly Traded Security until it has been publicly traded for six months, at which time the Security becomes subject to the Ongoing Eligibility Criteria requirements.
  4. Market capitalization shall be determined as follows:
    - i. For ongoing eligibility criteria, the product of (a) the number of outstanding shares of the Security as reported in the most recent quarterly or annual report of the company; and (b) the average closing price of the Security over the preceding six (6) full calendar months.
    - ii. For initial eligibility criteria, the product of (a) the number of outstanding shares of the Security as reported in the most recent quarterly or annual report of the company; and (b) the average closing price of the Security over the first three months during which the Security has been publicly traded.
- (b) Suspension of Unlisted Trading Privileges (UTP). A Thinly Traded Security is eligible to trade exclusively on BSTX among national securities exchanges at the election of the Issuer confirmed in writing.
1. Upon a determination by the Exchange that a Security qualifies as a Thinly Traded Security under paragraph (a) of this Rule and the issuer of such Security electing to suspend UTP, the Exchange shall submit an immediately effective rule filing to the Commission pursuant to Section 19(b)(3)(A) of the Exchange Act providing notice that UTP shall be suspended for the Thinly Traded Security at least 30 calendar days after the publication of such rule filing in the Federal Register.
  2. Upon a determination by the Exchange that a Thinly Traded Security no longer qualifies as a Thinly Traded Security under Rule 25150(a), the Exchange shall within 14 calendar days of such determination submit an immediately effective rule filing to the Commission pursuant to Section 19(b)(3)(A) of the Exchange Act providing notice that the suspension of UTP with respect to the Security shall cease effective upon publication of such rule filing in the Federal Register.

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3. Nothing in this Rule shall be construed to limit the ability of a Thinly Traded Security to trade over-the-counter (*i.e.*, otherwise than on a national securities exchange other than BSTX).

**25200 - Market Making on BSTX****25200. Registration as a BSTX Market Maker**

Quotations and quotation sizes may be entered into the BSTX System only by a Participant registered as a BSTX Market Maker or other entity approved by the Exchange to function in a market-making capacity on the BSTX System.

- (a) A BSTX Market Maker may become registered in a Security by entering a registration request via an Exchange-approved electronic interface with the BSTX System or by contacting the BSTX Operations Center. Registration shall become effective on the next trading day after the registration is entered. The Exchange may, in its discretion, provide for a registration to become effective on the day the registration is entered and will provide notice to the prospective BSTX Market Maker in such event.
- (b) A BSTX Market Maker's registration in an issue shall be terminated by the Exchange if the Market Maker fails to enter quotations in the issue within five (5) business days after the Market Maker's registration in the issue becomes effective.

**25210. Market Maker Obligations**

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

- (a) *Quotation Requirements and Obligations*
  - (1) A Market Maker shall maintain continuous, two-sided trading interest in those Securities in which the Market Maker is registered to trade ("Two-Sided Obligation").
    - i. Two-Sided Quote Obligation. For each Security in which a Participant is registered as a BSTX Market Maker, the Participant shall be willing to buy and sell such Security for its own account on a continuous basis during Regular Trading Hours and shall enter and maintain a two-sided trading interest ("Two-Sided Obligation") that is identified to the Exchange as the interest meeting the obligation and is displayed on the BSTX System at all times. Interest eligible to be considered as part of a Market Maker's Two-Sided Obligation shall have a displayed quotation size of at least one normal unit of trading; provided, however, that a BSTX Market Maker may augment its Two-Sided Obligation size to display limit orders priced at the same price as the Two-Sided Obligation. A "normal



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unit of trading” shall be one Security. After an execution against its Two-Sided Obligation, a BSTX Market Maker must ensure that additional trading interest exists on the BSTX Book to satisfy its Two-Sided Obligation either by immediately entering new interest to comply with this obligation to maintain continuous two-sided quotations or identifying to BSTX current resting interest that satisfies the Two-Sided Obligation.

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

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

- B. For purposes of this Rule, the “Designated Percentage” shall be 30%.

- C. For purposes of this Rule, the “Defined Limit” shall be 31.5%.

- D. The minimum quotation increment for quotations shall be \$0.01.

- iii. Nothing in this Rule shall preclude a BSTX Market Maker from entering trading interest at price levels that are closer to the National Best Bid (Offer) in the marketplace than the levels required by this Rule.

- (2) A Market Maker shall maintain adequate minimum capital in accordance with the provisions of Rule 15c3-1 under the Securities Exchange Act of 1934;

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- (3) A Market Maker shall remain in Good Standing with the Exchange;
  - (4) A Market Maker shall inform the Exchange of any material change in financial or operational condition or in personnel.
  - (5) A Market Maker shall clear and settle transactions through the facilities of a registered clearing agency. This requirement may be satisfied by direct participation, use of direct clearing services, or by entry into a correspondent clearing arrangement with another BSTX Participant that clears trades through such agency.
  - (6) *Firm Quotations.* All interests to buy and sell entered into the BSTX System by BSTX Market Makers are firm and automatically executable for their size in the BSTX System by all BSTX Participants.
- (b) A Market Maker must satisfy the responsibilities and duties as set forth in paragraph (a) of this Rule during the Core Trading Hours on all days in which the Exchange is open for business.
- (c) If the Exchange finds any substantial or continued failure by a BSTX Market Maker to engage in a course of dealings as specified in paragraph (a) of this Rule, such BSTX Market Maker will be subject to disciplinary action or suspension or revocation of the registration by the Exchange in one or more of the Securities in which the BSTX Market Maker is registered. Nothing in this Rule will limit any other power of the Board of Directors under the Bylaws, Rules, or procedures of the Exchange with respect to the registration of a BSTX Market Maker or in respect to any violation by a BSTX Market Maker of the provisions of this Rule. In accordance with the Rule 13000 Series, a BSTX Participant may seek review of actions taken by the Exchange pursuant to this Rule.
- (d) *Temporary Withdrawal.* A BSTX Market Maker, other than a DMM, may apply to the Exchange to withdraw temporarily from its BSTX Market Maker status in the Security in which it is registered. The BSTX Market Maker must base its request on demonstrated legal or regulatory requirements that necessitate its temporary withdrawal, or provide the Exchange an opinion of counsel certifying that such legal or regulatory basis exists. The Exchange will act promptly on such request and, if the request is granted, the Exchange may temporarily reassign the Security to another BSTX Market Maker.

**25220. Registration and Obligations of Designated Market Makers**

- (a) *General.* BSTX-listed Securities may be assigned to a Designated Market Maker (“DMM”) and there will be no more than one DMM per BSTX-listed Security.
- (b) *Registration.* A Participant must be registered as a Market Maker and approved as a DMM to be eligible to receive an allocation as a DMM under Rule 25230.
  - (1) Reserved.
  - (2) BSTX Market Makers must file an application in writing in such form as required by the Exchange to be considered eligible to receive an allocation as

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a DMM. In reviewing an application, the Exchange may consider the BSTX Market Maker's market making ability, capital available for market making, and such other factors as the Exchange deems appropriate, including those set forth in Rules 25230(f) and 25240. After reviewing the application, the Exchange will either approve or disapprove the applicant BSTX Market Maker's registration as a DMM.

- (3) A BSTX Participant registered as a DMM in a Security may also be registered as a Market Maker in such Security pursuant to Rule 25200 only if such BSTX Participant maintains information barriers between the trading unit operating as a DMM and the trading unit operating as a BSTX Market Maker in the same Security.
- (4) A DMM may apply to withdraw temporarily from its DMM status in one or more assigned Securities. The DMM must base its request on demonstrated legal or regulatory requirements that necessitate its temporary withdrawal, or provide the Exchange an opinion of counsel certifying that such legal or regulatory basis exists. The Exchange will act promptly on such request and, if the request is granted, the Exchange may temporarily reassign the Security or Securities to another DMM. The DMM temporarily assigned such Security or Securities will be subject to the obligations set forth in paragraph (c) of this Rule when acting as a temporary DMM in such Security or Securities. The Exchange is not required to assign a DMM if the Security has an adequate number of BSTX Market Makers assigned to such Security.
- (5) A DMM may not be registered in a Security of an issuer, or a partner or subsidiary thereof, if such entity is an approved person or affiliate of the DMM.

(c) *DMM Obligations.* In addition to meeting the obligations set forth in Rule 25210 DMMs must maintain a bid or an offer at the National Best Bid and National Best and Offer ("inside") at least 25% of the day as measured across all BSTX-listed Securities that have been assigned to the DMM. Time at the inside is calculated as the average of the percentage of time the DMM unit has a bid or offer at the inside.

**25230. DMM Security Allocation and Reallocation**

(a) *Eligibility for Security Allocation and Reallocation.*

- (1) Reserved.
- (2) A Security may be allocated to a DMM when such Security:
  - i. is initially listed on BSTX;
  - ii. must be reassigned under this Rule; or
  - iii. when a Security is currently listed without a DMM assigned.

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- (3) A DMM's eligibility to participate in the allocation process is determined at the time the interview is scheduled by the Exchange.
  - (4) A DMM is eligible to participate in the allocation process of a listed Security if the DMM meets the quoting requirements specified in Rule 25220(c) ("DMM obligations").
    - i. If a DMM fails to meet the DMM obligations for a one-month period, the Exchange will issue an initial warning to the DMM advising it of the poor performance. The DMM must provide a written explanation and articulation of corrective action.
    - ii. If the DMM fails to meet the DMM obligations for a second consecutive month, the DMM will be ineligible to participate in the allocation process for a minimum of two months following the second consecutive month of its failure to meet its quoting requirement ("Penalty Period"). The DMM must satisfy the DMM obligations for the two consecutive months of the Penalty Period.
    - iii. If a DMM fails to meet the DMM obligations for the two consecutive months of the Penalty Period, the DMM will remain ineligible to participate in the allocation process until it has met DMM obligations for a consecutive two-calendar month period.
    - iv. The Exchange will review each DMM's trading on a monthly basis to determine whether the DMM has satisfied its DMM obligations.
- (b) *Allocation Process.* The issuer may select its DMM directly, delegate the authority to the Exchange to select its DMM, or opt to proceed with listing without a DMM, in which case a minimum of three non-DMM Market Makers must be assigned to its Security consistent with Rule 26106. After the Exchange provides written notice to DMMs that the issuer is listing on BSTX, no individual associated with a DMM may contact such issuer, or the Exchange if applicable, until the allocation is made, except as otherwise provided below.
- (l) Issuer Selection of DMM Unit by Interview
    - i. The issuer may select multiple DMMs to interview from the pool of DMMs eligible to participate in the allocation process.
    - ii. Interview Between the Issuer and DMMs
      - A. DMMs selected for an interview may provide material to the Exchange, which will be given to the issuer prior to the scheduled interview. Such material may include a corporate overview of the DMM. DMMs are prohibited from giving issuers information about other DMMs or any additional market performance data.
      - B. Within five business days after the issuer selects the eligible

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DMMs to be interviewed (unless the Exchange has determined to permit a longer time period in a particular case), the issuer will meet with representatives of each of the DMMs. At least one representative of the listing company must be a senior official of the rank of Corporate Secretary or above of that company, or a designee of such senior official. In the case of the listing of a structured product, a senior officer of the issuer may be present in lieu of the Corporate Secretary. Representatives of each eligible DMM must participate in the meeting. Meetings will normally be held at the Exchange, unless the Exchange has agreed that they may be held elsewhere.

- C. Teleconference meetings will be permitted at the request of issuers in compelling circumstances.
- D. Following its interview, a DMM may not have any contact with an issuer. If an issuer has a follow-up question regarding any DMM(s) it interviewed, it must be conveyed to the Exchange. The Exchange will contact the DMM(s) to which the question pertains and will provide any available information received from the DMM(s) to the listing company.
- E. Within two business days of the issuer's interviews with the DMMs, the issuer will select its DMM in writing, signed by a senior official of the rank of Corporate Secretary or higher, or in the case of a structured product listing, a senior officer of the issuer, duly authorized to so act on behalf of the company. The Exchange will then confirm the allocation of the Security to that DMM, at which time the Security will be deemed to have been so allocated. An issuer may request an extension from the Exchange if the issuer is unable to complete its selection within the specified period.

(2) Exchange Selection of DMM by Delegation

- i. If the issuer delegates authority to the Exchange to select its DMM, an Exchange Selection Panel ("ESP") will be convened to select a DMM. The ESP will consist of three Exchange employees designated by the CEO of the Exchange. Such issuer may choose to submit a letter to the ESP indicating its preference and supporting justification for a particular DMM. The ESP may consider such letter in performing its duty to select a DMM for the issuer. The ESP may also interview one or more individuals associated with a DMM.
- ii. The ESP will select the DMM and inform the issuer of its selection.

(3) The DMM selected to receive the Security allocation will be required to remain the assigned DMM for one year from the date that the issuer begins trading on

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BSTX. The Exchange may shorten such period upon compelling circumstances.

- (4) *Spin-Off or Related Company.* If a listing company is a spin-off of or a company related to a listed company, the listing company may remain with the DMM registered in the related listed company or be allocated through the allocation process under paragraph (b) of this Rule. The Exchange will honor a request by a spin-off company or company related to a listed company to have its DMM selected by the Exchange under paragraph (b)(2) of this Rule instead of being allocated to the DMM that is its listed company's DMM. A DMM that is ineligible to receive a new allocation due to its failure to meet the DMM obligations will remain eligible to receive the spin-off and listing of related companies.
- (5) *Warrants.* A warrant issued by a listed company and traded on BSTX is allocated to the DMM registered in the underlying Security of the listed company. Upon request by the issuer, the warrant may be allocated through the allocation process under paragraph (b) of this Rule.
- (6) *Rights.* Rights traded on BSTX are not subject to the provisions of this Rule and are assigned, when issued, to a DMM by the Exchange.
- (7) *Relistings.* Relistings are treated as new listings and may be allocated through the allocation process under paragraph (b) of this Rule. If the relisting chooses to have its DMM selected by the Exchange under paragraph (b)(2) of this Rule and requests not to be allocated to its former DMM, such request will be honored. A DMM that is ineligible to receive a new allocation due to its failure to meet the DMM obligations will remain eligible to receive an allocation under this paragraph.
- (8) *Equity Security listing after Preferred Security.* When a company applies to list an issue of equity Securities after having listed a preferred issue, the equity Security is referred for allocation through the allocation process under paragraph (b) of this Rule. A DMM that is ineligible to receive a new allocation due to its failure to meet the DMM obligations will remain eligible to receive an allocation under this paragraph.
- (9) *Listed Company Mergers.* When two Exchange-listed companies merge, the merged company may select one of the DMMs trading the merging companies without the Security being referred for reallocation, or it may request that the matter be referred for allocation through the allocation process under paragraph (b) of this Rule. A DMM that is ineligible to receive a new allocation due to its failure to meet the DMM obligations will remain eligible to be selected pursuant to this paragraph in its capacity as the DMM for one of the two pre-merger companies, but will not be eligible to participate in the allocation process if the post-merger listed company requests that the matter be referred for allocation through the allocation process under paragraph (b) of this Rule.
  - i. If the merging company chooses to have its DMM selected by the

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Exchange under paragraph (b)(2) of this Rule, the company may not request that the Exchange not allocate the Security to one of the DMMs trading the merging company. A DMM that is ineligible to receive a new allocation due to its failure to meet the DMM obligations will remain eligible to receive an allocation under this paragraph.

- ii. In situations involving the merger of a listed company and an unlisted company, the merged company may choose to remain registered with the DMM that had traded the listed company entity in the merger, or it may request that the matter be referred for allocation through the allocation process under paragraph (b) of this Rule. A DMM that is ineligible to receive a new allocation due to its failure to meet the DMM obligations will remain eligible to be selected pursuant to this paragraph in its capacity as the DMM for the pre-merger listed company, but will not be eligible to participate in the allocation process if the post-merger listed company requests that the matter be referred for allocation through the allocation process pursuant to paragraph (b) of this Rule.
- iii. If the unlisted company chooses to have its DMM selected by the Exchange pursuant to paragraph (b)(2) of this Rule, the company may not request that the Exchange exclude from consideration the DMM that had traded the listed company. A DMM that is ineligible to receive a new allocation due to its failure to meet the DMM obligations will remain eligible to receive an allocation under this paragraph.

(10) *Target Security.*

- i. If a tracking (“target”) Security (or Securities) is issued by a listed company, the listed company may choose to have its newly-issued tracking Security (or Securities) stay with the DMM registered in the listed company that issued the tracking Security (or Securities) or be referred for allocation through the allocation process under paragraph (b) of this Rule. A DMM that is ineligible to receive a new allocation due to its failure to meet the DMM obligations will remain eligible to receive an allocation under this paragraph.
- ii. If the listed company chooses to have the DMM of the tracking Security (or Securities) selected by the Exchange pursuant to paragraph (b)(2) of this rule, the DMM registered in such Security prior to a separate listing will remain registered in such Security after its separate listing, unless the listing company requests that the matter be referred for allocation through the allocation process under paragraph (b) of this Rule. In such a case, the Exchange will honor the company’s request not to be allocated to the DMM that had traded the target Security. A DMM that is ineligible to receive a new allocation due to its failure to meet the DMM obligations will remain eligible to receive an allocation under this paragraph.

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- (11) *Closed-End Management Investment Companies (“Funds”)*. Funds listing on BSTX will be subject to the allocation process under paragraph (b) of this Rule. If the issuer of an initial Fund lists additional funds within nine months from the date of its initial listing, the issuer may choose to maintain the same DMM for those subsequently listed funds or it may select a different DMM from the group of eligible DMMs that the issuer interviewed or reviewed in the allocation process for its initial fund. The fund may also delegate the selection of its DMM to the Exchange if it so chooses under paragraph (b)(2) of this Rule.
- i. If a DMM is ineligible from participating in an allocation at the time of a subsequent new Fund listing (within the designated nine-month period), that DMM will not be included for consideration for subsequent listings.
  - ii. In any case where all the Funds in a group of closed-end management investment companies are being listed concurrently with a common investment adviser or investment advisers who are “affiliated persons” pursuant to the alternate criteria in Rule 26000 Series of the BSTX Listing Guide (for groups where one or more Funds do not meet the ordinary requirement for public market value of \$16,000,000), the entire group should be allocated to one DMM, unless there are factors, such as the number of funds in the group, the types of funds, or the relative values of the funds, that the Exchange believes make allocation to more than one DMM appropriate.
- (c) *Reallocation Process*.
- (1) A listed company may file with the Corporate Secretary of the Exchange a written notice (the “Issuer Notice”), signed by the company’s chief executive officer, that it wishes to request a change of DMM. The Issuer Notice will indicate the specific issues prompting this request. The Corporate Secretary will provide copies of the Issuer Notice to the DMM currently registered in the Security and the Exchange’s staff.
    - i. Exchange staff will review the Issuer Notice and any DMM response and may request a review of the matter by the Exchange’s Regulatory Oversight Committee. No change of DMM may occur until Exchange staff makes a final determination that it is appropriate to permit such change. In making such determination, Exchange staff may consider all relevant regulatory issues, including without limitation whether the requested change appears to be in aid or furtherance of conduct that is illegal or violates Exchange rules, or in retaliation for a refusal by a DMM to engage in conduct that is illegal or violates Exchange rules. Notwithstanding Exchange staff review of any matter raised during the process described herein, the Exchange may at any time take any regulatory action that it may determine to be warranted.
    - ii. At the completion of the Exchange staff review, the Security will be put



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up for allocation under paragraph (b) of this Rule.

- iii. No negative inference for allocation or regulatory purposes is to be made against a subject DMM in the event that a DMM is changed under paragraph (c) of this Rule. Similarly, the DMM will not be afforded preferential treatment in subsequent allocations as a result of a change pursuant to such provision.

- (2) In any instance where a DMM's performance in a particular market situation was, in the judgment of the Exchange, so egregiously deficient as to call into question the Exchange's integrity or impair the Exchange's reputation for maintaining an efficient, fair, and orderly market, the CEO or his or her designee may immediately initiate a reallocation proceeding upon written notice to the DMM and the issuer specifying the reasons for the initiation of the proceeding.

- i. Following this decision, if the CEO or his or her designee makes a final determination that a Security should be referred for reallocation, the CEO or his or her designee will, in his or her expert business judgment, be responsible for reallocating the Security to one of the remaining DMMs eligible for allocation.
- ii. The CEO or his or her designee will then make a final determination as to which one or more of the DMM's Security (or Securities) will be referred for reallocation. All determinations made by the CEO or his or her designee will be communicated in writing to the DMM, with a statement of the reasons for such determinations.
- iii. A decision by the Exchange that one or more Securities should be reallocated will be final, subject to the DMM's right to have such decision reviewed by the Exchange's Board of Directors.
- iv. In the event that a DMM asserts its right to review, no reallocation may occur until the Board of Directors completes its review.

(d) *Allocation Freeze Policy*. If a DMM:

- (1) loses its registration as a DMM in a Security as a result of proceedings under the Rule 12000 or 13000 Series as applicable;
- (2) or voluntarily withdraws its registration in a Security assigned to it as a result of possible proceedings under those rules, the DMM will be ineligible to apply for future allocations for the six month period immediately following the reassignment of the Security ("Allocation Prohibition").
  - i. Following the Allocation Prohibition, a second six-month period will begin during which a DMM may participate in the allocation process under Rule 25230(b), if Exchange staff determines that such DMM may participate in such allocation process. In making this determination, Exchange staff will consider the DMM's particular situation and may

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consider whether the DMM has taken one or more steps:

- A. supplying additional manpower/experience;
  - B. making changes in professional staff;
  - C. attaining appropriate dealer participation;
  - D. enhancing back-office staff; and
  - E. implementing more stringent supervision/new procedures.
- (e) *Allocation Sunset Policy*. Allocation decisions will remain effective with respect to any initial public offering listing company that lists on BSTX within 18 months of such decision. In situations in which the selected DMM merges or is involved in a combination within the 18-month period, the company may choose whether to stay with the selected DMM, or be referred to allocation. If a listing company does not list within 18 months, the matter will be referred for allocation through the allocation process under paragraph (b) of this Rule.
- (f) Criteria for applicants that are not currently DMMs to be eligible to be allocated a Security as a DMM.
- (l) Since an entity seeking to enter the DMM business does not have a history directly comparable to that of existing DMMs, the Exchange considers the following criteria with respect to such Participants.
    - i. The proposed DMM must demonstrate that it understands the DMM business, including the needs of issuers.
    - ii. The proposed DMM must demonstrate an ability and willingness to trade as necessary to maintain fair and orderly markets. If the proposed DMM or any of its participants is currently a DMM or market maker on any exchange, performance during the prior 12 months, as evidenced by available data maintained by such exchange that evaluates the quality of performance of the unit or its participants as a DMM or market maker on such exchange, will be considered by the Exchange.
    - iii. Other factors that will be considered by the Exchange include any action taken or warning issued within the past 12 months by any regulatory or self-regulatory organization against the unit or any of its participants with respect to any capital or operational problem, or any regulatory or disciplinary matter.

**25240. DMM Combination Review Policy**

- (a) No DMM will complete a “proposed combination” (as defined below in paragraph (b) of this rule) with one or more other DMMs unless the combination has been approved by the Exchange.

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(b) For purposes of this rule, a “proposed combination” means:

- (1) a transaction in which two or more DMMs agree to merge or otherwise combine their businesses, with the result that the total number of existing independent DMMs will be reduced;
- (2) two or more DMMs agree to combine their businesses with the result that the existing number of DMMs will not be reduced, but one or more of the surviving units is substantially reduced in size; or
- (3) a DMM merges or otherwise combines with a non-DMM business resulting in a change of control of the existing DMM.

(c) Proponents of a DMM combination must make a written submission to the Office of the Corporate Secretary of the Exchange, discussing all the factors for review pursuant to subparagraph (d) below. The written submission should also address and discuss:

- (1) performance in any securities, including Securities, received through previous combinations or transfers of registrations during the preceding two years;
- (2) whether the proposed combined DMM will have a real-time surveillance system that monitors DMM trading and uses exception alerts to detect unusual trades or trading patterns;
- (3) whether the proposed combined DMM will have disaster recovery facilities for its computer network and software; and
- (4) whether the combined DMM will designate a senior staff member to be responsible for reviewing DMM performance data, with specific procedures for correcting any deficiencies identified.

(d) The Exchange will consider the following criteria in its review of a proposed combination:

- (1) the ability of the DMM resulting from the transaction to comply with Exchange rules, including Rules 25210 and 25220;
- (2) whether the proposed combination minimizes both the potential for financial failure and the negative consequences of any such failure on the DMM system as a whole;
- (3) whether the proposed combination maintains or increases operational efficiencies;
- (4) the surviving DMM’s commitment to the BSTX market, including but not limited to whether the constituent DMM:
  - i. works to support, strengthen and advance BSTX, its market and its competitiveness in relation to other markets;
  - ii. participates upon request in BSTX’s marketing seminars, sales calls and other marketing initiatives seeking to attract order flow and new listings;

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- iii. accepts innovations in order-routing and other trade-support systems and willingness to make optimal use of the systems once they become fully operational;
  - iv. engages in efforts to streamline the efficiency of its own operations and its competitive posture;
  - v. The effect of the proposed combination on overall concentration of DMMs; and
- (e) Where a proposed combination involves an organization that is not a DMM, consideration will entail an assessment of whether the organization will work to support, strengthen and advance BSTX, and its competitiveness in relation to other markets.
- (f) The Exchange will approve or disapprove a proposed combination within 10 business days based on its assessment of the criteria pursuant to subparagraph (d) above and, in the case of a proposed combination involving a non-DMM, its assessment of the additional criterion pursuant to subparagraph (e) above. The Exchange reserves the right to extend its review process if the information submitted by the proponents of the DMM combination is inadequate or requires additional time to review to enable the Exchange to reach a decision.
- (l) The Exchange will approve a proposed combination if the proposed combination satisfies the criteria set forth in paragraph (d) of this Rule, and if the Exchange determines that the proposed combination would:
    - i. not create or foster concentration in the DMM business detrimental to the Exchange and its markets;
    - ii. foster competition among DMMs; and
    - iii. enhance the performance of the constituent DMM and the quality of the markets in the Securities involved.
- (g) The Exchange may condition its approval upon compliance by the resulting DMM with any steps the Exchange may specify to address any concerns it may have in regard to considerations of the above criteria.
- (h) In any instance where the Exchange does not approve a proposed DMM combination, the proponents of such proposed combination have a right to have such decision reviewed by the Exchange's Board of Directors.

## **26000 – BSTX Listing Rules Other Than for Exchange Traded Products**

### **26000. Definitions**

- (a) With respect to these BSTX Listing Standards, the following terms shall have the meanings specified in this Rule 26000. A term defined elsewhere in these Rules shall

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have the same meaning with respect to this Rule 26000 Series, unless otherwise defined below.

- (1) The term “BSTX Listing Standards” or “BSTX Listing Requirements” refer to the Exchange’s Rules, policies, and any supplemental material governing the listing of Securities on BSTX.
- (2) The term “Covered Security” means a security described in Section 18(b) of the Securities Act of 1933.
- (3) The term “Initial Security Offering” means the public offering of a company’s equity Security where such security being the company’s Primary Equity Security.
- (4) The terms “public distribution” and “public Security holders” as used herein include both shareholders of record and beneficial holders, but are exclusive of the holdings of officers, directors, controlling shareholders and other concentrated (i.e. 10% or greater), affiliated or family holdings.
- (5) The term “Primary Equity Security” means a company’s first class of common stock, equity Securities, Ordinary Shares, Shares or Certifications of Beneficial Interest of Trust, Limited Partnership Interests, or American Depositary Receipts (“ADRs”) or Shares (“ADRs”).
- (6) The term “Round Lot” means 100 Securities of a particular issuer.
- (7) The term “shareholder” means a record or beneficial owner of a security, including a Security.

**26101. General**

The approval of an application for the listing of a Security for trading on BSTX is a matter solely within the discretion of the Exchange. The Exchange has established certain minimum numerical standards, set forth below. The fact that an applicant may meet the Exchange’s numerical standards does not necessarily mean that its application will be approved. Other factors which will also be considered include, but are not limited to, the nature of an issuer’s business, the market for its products, its regulatory history, its past corporate governance activities, the reputation of its management, its historical record and pattern of growth, its financial integrity (including, but not limited to, any filing for protection under any provision of the federal bankruptcy laws or comparable foreign laws, the issuance by an issuer’s independent accountants of a disclaimer opinion on financial statements required to be audited, or failure to provide a required certification along with financial statements), its demonstrated earning power and its future outlook.

For an Initial Security Offering on BSTX, a company’s Security must meet the following requirements:

**(a) Initial Listing Standard 1**

- (1) Size—Security holder’s equity of at least \$4,000,000.
- (2) Income—Pre-tax income from continuing operations of at least \$750,000 in its

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last fiscal year (with operating history of at least one year), or in two of its last three fiscal years.

- (3) Distribution— Meet the standard in Rule 26102(a).
- (4) Aggregate Market Value of Publicly Held Securities – \$3,000,000.
- (5) Security Price/Market Value of Securities Publicly Held—See Rule 26102(b).

**(b) Initial Listing Standard 2**

- (1) History of Operations—Two years of operations.
- (2) Size—Security holder’s equity of at least \$5,000,000.
- (3) Distribution— Meet the standard in Rule 26102(a).
- (4) Aggregate Market Value of Publicly Held Securities—\$15,000,000.
- (5) Security Price/Market Value of Securities Publicly Held—See Rule 26102(b).

**(c) Initial Listing Standard 3**

- (1) Size—Security holder’s equity of at least \$4,000,000.
- (2) Total Value of Market Capitalization—\$50,000,000.
- (3) Aggregate Market Value of Publicly Held Securities—\$15,000,000.
- (4) Distribution— Meet the standard in Rule 26102(a).
- (5) Security Price/Market Value of Securities Publicly Held—See Rule 26102(b).

**(d) Initial Listing Standard 4**

- (1) Total Value of Market Capitalization—\$75,000,000; or Total assets and total revenue—\$75,000,000 each in its last fiscal year, or in two of its last three fiscal years.
- (2) Aggregate Market Value of Publicly Held Securities—\$20,000,000.
- (3) Distribution— Meet the standard in Rule 26102(a).
- (4) Security Price/Market Value of Securities Publicly Held—See Rule 26102(b).

- (e) For purposes of this Rule 26101(e), a “Reverse Merger” means any transaction whereby an operating company becomes an Exchange Act reporting company by combining directly or indirectly with a shell company which is an Exchange Act reporting company, whether through a reverse merger, exchange offer, or otherwise. However, a Reverse Merger does not include the acquisition of an operating company by a listed company which qualified for initial listing under Rule 26119. In determining whether a company is a shell company, the Exchange will consider, among other factors: whether the Company is considered a “shell company” as defined in Rule 12b-2 under the Exchange Act; what percentage of the company’s assets are active versus passive; whether the company generates revenues, and if so, whether the revenues are passively or actively generated; whether the company’s expenses are reasonably related to the revenues being generated; how many employees work in the company’s revenue-generating business operations;

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how long the company has been without material business operations; and whether the company has publicly announced a plan to begin operating activities or generate revenues, including through a near-term acquisition or transaction. In order to qualify for initial listing, a company that is formed by a Reverse Merger (a “Reverse Merger Company”) must comply with one of the initial listing standards set forth in Rules 26101 (a)—(d) and the applicable requirements of Rule 26102. In addition to satisfying all of the Exchange’s other initial listing requirements, a Reverse Merger Company shall be eligible to submit an application for initial listing only if the combined entity has, immediately preceding the filing of the initial listing application:

- (1) traded for at least one year in the U.S. over-the-counter market, on another national securities exchange or on a regulated foreign exchange following the consummation of the Reverse Merger and (i) in the case of a domestic issuer, has filed with the Commission a Form 8-K containing all of the information required by Item 2.01(f) of Form 8-K, including all required audited financial statements, after the consummation of the Reverse Merger, or (ii) in the case of a foreign private issuer, has filed all of the information described in (i) above on Form 20-F;
- (2) maintained a closing price equal to the Security price requirement applicable to the initial listing standard under which the Reverse Merger Company is qualifying to list for a sustained period of time, but in no event for less than 30 of the most recent 60 trading days prior to the filing of the initial listing application; and
- (3) filed with the Commission all required reports since the consummation of the Reverse Merger, including the filing of at least one annual report containing all required audited financial statements for a full fiscal year commencing on a date after the date of filing with the Commission of the filing described in (1) above.

In addition, in order to qualify for listing, a Reverse Merger Company must have timely filed all required reports for the most recent 12-month period prior to the listing date.

In addition, a Reverse Merger Company will be required to maintain a closing price equal to the Security price requirement applicable to the initial listing standard under which the Reverse Merger Company is qualifying to list for a sustained period of time, but in no event for less than 30 of the most recent 60 trading days prior to the date of the Reverse Merger Company’s listing.

The Exchange may in its discretion impose more stringent requirements than those set forth above if the Exchange believes it is warranted in the case of a particular Reverse Merger Company based on, among other things, an inactive trading market in the Reverse Merger Company’s securities, the existence of a low number of publicly held shares that are not subject to transfer restrictions, if the Reverse Merger Company has not had a Securities Act registration statement or other filing subjected to a comprehensive review by the Commission, or if the Reverse Merger Company has disclosed that it has material weaknesses in its internal controls which have been identified by management and/or the Reverse Merger Company’s independent auditor and has not yet implemented an appropriate corrective action plan.

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A Reverse Merger Company will not be subject to the requirements of this Rule 26101(e) if it is listing in connection with a firm commitment underwritten public offering where the proceeds to the Reverse Merger Company will be at least \$40,000,000 and the offering is occurring subsequent to or concurrently with the Reverse Merger. In addition, a Reverse Merger Company will not be subject to the requirement of this Rule 26101(e) that it must maintain a closing price equal to the Security price requirement applicable to the initial listing standard under which the Reverse Merger Company is qualifying to list for at least 30 of the most recent 60 days prior to each of the filing of the initial listing application and the date of the Reverse Merger Company's listing, if it has satisfied the one-year trading requirement contained in paragraph (1) above and has filed at least four annual reports with the Commission which each contain all required audited financial statements for a full fiscal year commencing after filing the information described in paragraph (1) above. However, such companies will be required to (i) comply with the applicable price requirement of Rule 26102(b) at the time of each of the filing of the initial listing application and the date of the Reverse Merger Company's listing and (ii) not be delinquent in their filing obligations with the Commission. In either of the cases described in this paragraph, the Reverse Merger Company will only need to meet the requirements of one of the financial initial listing standards in Rule 26101(a) in addition to all other applicable non-financial listing standard requirements, including, without limitation, the requirements of Rules 26102(a) and 26102(b) and the applicable corporate governance requirements of the Rule 26800 Series.

(f) Reserved.

(g) Closed-End Management Investment Companies—The Exchange will generally authorize the listing of a closed-end management investment company registered under the Investment Company Act of 1940 (a “Closed-End Fund”) that meets the following criteria:

- (1) Size—market value of publicly held Securities or net assets of at least \$20,000,000; or
- (2) A Closed-End Fund which is part of a group of Closed-End Funds which are or will be listed on BSTX, and which are managed by a common investment adviser or investment advisers who are “affiliated persons” as defined in Section 2(a)(3) of the Investment Company Act of 1940 as amended (the “Group”), is subject to the following criteria:
  - i. The Group has a total market value of publicly held Securities or net assets of at least \$75,000,000;
  - ii. The Closed-End Funds in the Group have an average market value of publicly held Securities or net assets of at least \$15,000,000; and
  - iii. Each Closed-End Fund in the Group has a market value of publicly held Securities or net assets of at least \$10,000,000.
- (3) Distribution—See Rule 26102(a).

(h) Additional criteria applicable to various classes of Securities and issuers are set forth below. Applicants should also consider the policies regarding conflicts of interest,



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independent directors and voting rights described in Rules 26120-26125.

(i) Initial Listing Requirements for Secondary Classes.

- (1) When the Primary Equity Security is listed on BSTX or is a Covered Security, a company's secondary class as an equity Security must meet all of the requirements in Rules (i) through (iv) below in order to be listed.
  - i. Minimum bid price of at least \$4 per Security;
  - ii. At least 100 Round Lot holders;
  - iii. At least 200,000 publicly held Securities; and
  - iv. Market value of publicly held Securities of at least \$3.5 million.
- (2) In the event the company's Primary Equity Security is not listed on BSTX or is not a Covered Security, the secondary class as an equity Security may be listed on BSTX so long as it satisfies the initial listing criteria for Securities set forth in the initial listing standards outlined above in Rule 26101.
- (3) The listing requirements for preferred Securities can be found in Rule 26103.
- (4) For the avoidance of doubt, the provisions of Rule 26102 shall not apply to this paragraph (i) of Rule 26101.

**IM-26101-01 Corporate Governance Standards**

In addition to the numerical listing standards, the Exchange has adopted certain corporate governance listing standards, which are set forth in Rule 26800 Series.

**IM-26101-02**

Reserved

**26102. Equity Issues**

- (a) Distribution— meet a least one of the following standards:
  - (1) minimum public distribution of 1,000,000 Securities together with a minimum of 400 public Security holders.
- (b) Stock Price/Market Value of Securities Publicly Held—The Exchange requires a minimum market price of \$4 per Security for applicants seeking to qualify for listing pursuant to Rule 26101.
- (c) Voting Rights—See Rule 26122.

**26103. Preferred Securities**

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The listing of preferred issues is considered on a case by case basis, in light of the suitability of the issue for trading on BSTX.

The Exchange, as a general rule, will not consider listing the convertible preferred Securities of a company unless current last sale information is available with respect to the underlying common stock or equity Security into which the preferred Security is convertible.

Companies applying for listing of a preferred Security are expected to meet the following criteria:

- (a) Size and Earnings—The company appears to be in a financial position sufficient to satisfactorily service the dividend requirements for the preferred Security and meets the size and earnings criteria set forth in Rule 26101 above.
- (b) Distribution—In the case of an issuer whose Primary Equity Security is listed on BSTX or is a Covered Security, the preferred Security must satisfy one of the following standards:

- (1) Preferred Security Distribution Standard 1.

Publicly Held Securities	100,000
Aggregate Public Market Value/Price	\$2,000,000/\$10

- (2) Preferred Security Distribution Standard 2.

- i. Minimum bid price of at least \$4 per Security;
- ii. At least 100 Round Lot holders;
- iii. At least 200,000 Publicly Held Securities; and
- iv. Market Value of Publicly Held Securities of at least \$3.5 million.

To ensure adequate public interest in the preferred Security of non-listed issuers, the Exchange has established the following standards, which shall apply to all subsections of this paragraph (b):

Preferred Securities Publicly Held	400,000
Public Round-Lot Security Holders	800
Aggregate Public Market Value/ Minimum Bid Price	\$4,000,000/\$10

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Alternatively, in the event the Company's Primary Equity Security is not listed on BSTX or is not a Covered Security, the preferred Security may be listed on BSTX so long as it satisfies the initial listing criteria for Securities set forth in the initial listing standards outlined above in Rule 26101.

- (c) Voting Rights—See Rule 26124.
- (d) Conversion Provisions—The Exchange will not list convertible preferred Securities containing a provision which gives the company the right, at its discretion, to reduce the conversion price for periods of time or from time to time unless the company establishes a minimum period of ten business days within which such price reduction will be in effect.

**26104. Reserved****26105. Warrant Securities**

The listing of warrant Securities is considered on a case by case basis. The Exchange will not consider listing the warrant Security of a company unless the equity Security or other class of Securities underlying the warrants are listed and in good standing on BSTX and there are at least 200,000 warrant Securities publicly held by not less than 100 public warrant holders; provided such standards are met, the Exchange may also consider the listing of warrant Securities of a company if the security underlying the warrants is a Covered Security and in good standing on their primary market. In addition, to be listed, warrant Securities issues are expected to meet the following criteria:

- (a) Exercise Provisions—The Exchange will not list warrant Securities containing provisions which give the company the right, at its discretion, to reduce the exercise price of the warrants for periods of time, or from time to time, during the life of the warrants unless
  - (i) the company undertakes to comply with any applicable tender offer regulatory provisions under the federal securities laws, including a minimum period of 20 business days within which such price reduction will be in effect (or such longer period as may be required under the SEC's tender offer rules) and
  - (ii) the company promptly gives public notice of the reduction in exercise price in a manner consistent with the Exchange's immediate release policy set forth in Rule 26401 and 26402 hereof. The Exchange will apply the requirements in the preceding sentence to the taking of any other action that has the same economic effect as a reduction in the exercise price of a listed warrant. This policy will not preclude the listing of warrant Securities for which regularly scheduled and specified changes in the exercise price have been previously established at the time of issuance of the warrants.
- (b) Warrant issuers are advised that the Exchange requires advance notice of any extension of the Expiration Date of the Security warrants. It is suggested that warrant issuers provide at least two months notice in this regard, but in no event less than 20 days. (See Rule 26920.)

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- (c) Whenever a company having warrants listed on BSTX effects a split of 3 for 2 or greater in the underlying Security or security, the Exchange requires that a corresponding split be made in the warrants.

**26106. Market Maker Requirement**

- (a) Unless otherwise provided, all Securities listed pursuant to the BSTX Listing Standards must meet one of the following requirements:
- (1) DMM Requirement: a DMM must be assigned to the Security; or
  - (2) Active Market Maker Requirement:
    - i. For initial inclusion the Security must have at least three registered and active Market Makers; and
    - ii. For continued listing, a Security must have at least two registered and active Market Makers, one of which may be a Market Maker entering a stabilizing bid.

**26107. Reserved****26108. Assessable Securities**

The Exchange will not accept applications to list assessable securities.

**26109. Canadian Companies**

The financial criteria for listing Securities of Canadian companies are the same as for United States companies (see Rule 26101). With respect to public distribution (Rule 26102), consideration will be given to the total number of Security holders and publicly held Securities in Canada and the United States. Current U.S. market interest will also be considered in evaluating the suitability of the issue for trading BSTX.

**26110. Reserved****26111. One Product/One Customer Complaints**

As indicated in Rule 26101, the character of the market for an applicant's products is an important element in considering original listing applications. Thus, even though a particular company meets all BSTX's numerical criteria, it may not be eligible for listing if it:

- (a) produces a single product or line of products or engages in a single service; and/or
- (b) sells such product or products to, or performs such service for, only one or a limited number of customers.

**26112 - 26116 Reserved****26117. Paired Securities**

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The Exchange may consider the listing of paired Securities (that is, Securities which may be transferred and traded only in combination with one another as a single economic unit) based on the ability of the combined entity to satisfy the size and earnings criteria set forth in Rule 26101.

In the event the pairing agreement is terminated, the entity which initially met the original listing standards need only satisfy the Exchange's continued listing standards in order to remain on BSTX. The other entity, however, which at the time of listing did not by itself qualify under Rule 26101, must, at the time of termination, meet both the financial (Rule 26101) and distribution (Rule 26102) standards in order to remain listed on BSTX.

**26118. Reserved****26119. Listing of Companies Whose Business Plan Is to Complete One or More Acquisitions**

Generally, the Exchange will not permit the initial or continued listing of a company that has no specific business plan or that has indicated that its business plan is to engage in a merger or acquisition with an unidentified company or companies.

However, in the case of a company whose business plan is to complete an initial public offering and engage in a merger or acquisition with one or more unidentified companies within a specific period of time, the Exchange will permit the listing if the company meets all applicable initial listing requirements, as well as the conditions described below.

- (a) At least 90% of the gross proceeds from the initial public offering and any concurrent sale by the company of equity Securities must be deposited in a trust account maintained by an independent trustee, an escrow account maintained by an "insured depository institution", as that term is defined in Section 3(c)(2) of the Federal Deposit Insurance Act, or in a separate bank account established by a registered broker or dealer (collectively, a "deposit account").
- (b) Within 36 months of the effectiveness of its initial public offering registration statement, or such shorter period that the company specifies in its registration statement, the company must complete one or more business combinations having an aggregate fair market value of at least 80% of the value of the deposit account (excluding any deferred underwriter's fees and taxes payable on the income earned on the deposit account) at the time of the agreement to enter into the initial combination.
- (c) Until the company has satisfied the condition in paragraph (b) above, each business combination must be approved by a majority of the company's independent directors.
- (d) Until the company has satisfied the condition in paragraph (b) above, if the company holds a shareholder vote on a business combination for which the company must file and furnish a proxy or information statement subject to Regulation 14A or 14C under the Securities Exchange Act of 1934 in advance of the shareholder meeting, the business combination must be approved by a majority of the Securities voting at the meeting at which the combination is being considered. If a shareholder vote on the business

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combination is held, public Security holders voting against a business combination must have the right to convert their Securities into a pro rata share of the aggregate amount then in the deposit account (net of taxes payable and amounts distributed to management for working capital purposes) if the business combination is approved and consummated. A company may establish a limit (set no lower than 10% of the Securities sold in the initial public offering) as to the maximum number of Securities with respect to which any shareholder, together with any affiliate of such shareholder or any person with whom such shareholder is acting as a “group” (as such term is used in Sections 13(d) and 14(d) of the Securities Exchange Act of 1934), may exercise such conversion rights. For purposes of this paragraph (d), public shareholder excludes officers and directors of the company, the company’s sponsor, the founding shareholders of the company, any family member or affiliate of any of the foregoing persons, and other concentrated holdings of 10% or more. For purposes of this Rule, “family member” means a person’s spouse, parents, children and siblings, whether by blood, marriage or adoption, or anyone residing in such person’s home.

(e) Until the company has satisfied the condition in paragraph (b) above, if a shareholder vote on the business combination is not held for which the company must file and furnish a proxy or information statement subject to Regulation 14A or 14C under the Securities Exchange Act of 1934, the company must provide all shareholders with the opportunity to redeem all their Securities for cash equal to their pro rata share of the aggregate amount then in the deposit account (net of taxes payable and amounts distributed to management for working capital purposes), pursuant to Rule 13e-4 and Regulation 14E under the Securities Exchange Act of 1934, which regulate issuer tender offers. The company must file tender offer documents with the Securities and Exchange Commission containing substantially the same financial and other information about the business combination and the redemption rights as would be required under Regulation 14A of the Securities Exchange Act of 1934, which regulates the solicitation of proxies.

(f) Until the company completes a business combination where all conditions in paragraph (b) above are met, the company must notify the Exchange on the appropriate form about each proposed business combination. Following each business combination, the combined company must meet the requirements for initial listing. If the company does not meet the requirements for initial listing following a business combination or does not comply with one of the requirements set forth above, the Exchange shall commence delisting proceedings under Rule 27010 to delist the company’s Securities. The company shall not be eligible to follow the procedures to cure deficiencies outlined in Rule 27009.

**26120. Certain Relationships and Transactions**

Related party transactions must be subject to appropriate review and oversight by the company’s Audit Committee or a comparable body of the Board of Directors.

**26121. Corporate Governance**

Each listed issuer must satisfy the Corporate Governance requirements of the Rule 26800 Series.

**EXHIBIT 5A****26122. Voting Rights**

The following voting rights policy is based upon, but more flexible than, former SEC Rule 19c-4. Accordingly, the Exchange will permit corporate actions or issuances by listed companies that would have been permitted under Rule 19c-4, as well as other actions or issuances that are not inconsistent with the new Policy. In evaluating such other actions or issuances, the Exchange will consider, among other things, the economics of such actions or issuances and the voting rights being granted. The Exchange's interpretations under the Policy will be flexible, recognizing that both the capital markets and the circumstances and needs of listed companies change over time. The text of the Exchange's Voting Rights Policy is as follows:

Voting rights of existing shareholders of publicly traded common stock or equity Securities registered under Section 12 of the Exchange Act cannot be disparately reduced or restricted through any corporate action or issuance. Examples of such corporate action or issuance include, but are not limited to, the adoption of time-phased voting plans, the adoption of capped voting rights plans, the issuance of super voting Securities or stock, or the issuance of Securities or stock with voting rights less than the per share voting rights of the existing equity Securities or common stock through an exchange offer.

**IM-26122-1 Companies with Dual Class Structures**

The above restriction against the issuance of super voting stock or Securities is primarily intended to apply to the issuance of a new class of Security or stock, and companies with existing dual class capital structures would generally be permitted to issue additional Securities or shares of the existing super voting stock or Securities without conflict with this policy.

**IM-26122-2 Consultation with the Exchange**

Violation of the Exchange's Voting Rights Policy could result in the loss of an issuer's exchange market or public trading market. The Policy can apply to a variety of corporate actions and securities issuances, not just super voting or so-called "time phase" voting. While the Policy will continue to permit actions previously permitted under Rule 19c-4, it is extremely important that listed companies communicate their intentions to their Exchange representatives as early as possible before taking any action or committing to take any action that may be inconsistent with the Policy. The Exchange urges listed companies not to assume, without first discussing the matter with the Exchange, that a particular issuance of equity or preferred Securities, or the taking of some other corporate action will necessarily be consistent with the Policy. It is suggested that copies of preliminary proxy or other material concerning matters subject to the Policy be furnished to the Exchange for review prior to formal filing.

**IM-26122-3 Review of Past Voting Rights Activities**

In reviewing an application for initial listing on the Exchange, the Exchange will review the issuer's past corporate actions to determine whether another SRO has found any of the issuer's

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actions to have been a violation or evasion of the SRO's voting rights policy. Based on such review, the Exchange may take any appropriate action, including the denial of the listing or the placing of restrictions on such listing. The Exchange will also review whether an issuer seeking initial listing on the Exchange has requested a ruling or interpretation from another SRO regarding the application of that SRO's voting rights policy with respect to a proposed transaction. If so, the Exchange will consider that fact in determining its response to any ruling or interpretation that the issuer may request on the same or similar transaction.

**IM-26122-4 Non-U.S. Companies**

The Exchange will accept any action or issuance relating to the voting rights structure of a non-U.S. company that is in compliance with the Exchange's requirements for domestic companies or that is not prohibited by the Company's home country law.

**26123. Quorum**

The Exchange expects that an appropriate quorum of the Securities issued and outstanding and entitled to vote will be provided for by the by-laws of companies applying for the original listing of voting Securities. The Exchange recommends a quorum of at least 33 1/3%. If less is specified, the Exchange should be consulted before filing the original listing application.

**26124. Preferred Voting Rights**

- (a) Upon default—To be eligible for listing, the holders of a preferred Security should acquire the right, voting as a class, to elect at least two members of the company's board of directors no later than two years after an incurred default in the payment of fixed dividends.
- (b) In all cases—The Exchange may decline to list a preferred Security, unless preferred Security holders have the right, voting as a class, to vote on:
  - (1) Alteration of Existing Provisions:
    - i. Approval by the holders of at least two-thirds of the outstanding preferred Securities should be required for adoption of any charter or by-law amendment that would materially affect existing terms of the preferred Security.
    - ii. If all series of a class of preferred Security are not equally affected by a proposed change to the existing terms of the preferred Security, a two-thirds approval of the class and a two-thirds approval of the series that will have a diminished status should be required to authorize such change.
    - iii. The charter should not hinder the preferred Security holders' right to alter the terms of a preferred Security by limiting modification to specific items, e.g., interest rate, redemption price.
  - (2) Creation of a Senior Issue:





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The Exchange may use its authority under the BSTX Listing Standards to deny initial or continued listing to an issuer when the issuer and/or an individual associated with the issuer has a history of regulatory misconduct. Such individuals are typically an officer, director, substantial security holder (as defined in IM-26127-1 below) or consultant to the issuer. In making this determination, the Exchange shall consider a variety of factors, including the severity of the violation; whether it involved fraud or dishonesty; whether it was securities-related; whether the investing public was involved; when the violation occurred; how the individual has been employed since the violation; whether there are continuing sanctions against the individual; whether the individual made restitution; whether the issuer has taken effective remedial action; and the totality of the individual's relationship to the issuer.

Based on this review, the Exchange may determine that the regulatory history rises to the level of a public interest concern, but may also consider whether remedial measures proposed by the issuer, if taken, would allay that concern. Examples of such remedial measures could include the individual's resignation from officer and director positions; divestiture of holdings; terminations of contractual arrangements between the issuer and the individual; or the establishment of a voting trust surrounding the individual's shares or Securities. Alternatively, the Exchange may conclude that a public interest concern is so serious that no remedial measure would be sufficient to alleviate it. In the event that the Exchange makes such a determination, the issuer may seek review of that determination through the procedures set forth in the Rule 27200 Series.

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

In addition, pursuant to its discretionary authority, the Exchange shall review an issuer's past corporate governance activities. This review may include activities taking place while the issuer is listed on the Exchange or another marketplace that imposes corporate governance requirements, as well as activities taking place after a formerly listed issuer is no longer listed on the Exchange or such marketplace. Based on such review, and in accordance with Exchange listing requirements, the Exchange may take any appropriate action, including placing restrictions on or adding requirements for listing, or denying listing of a Security if the Exchange determines that there have been violations or evasions of corporate governance standards. Such determinations shall be made on a case-by-case basis as necessary to protect investors and the public interest.

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

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An interest consisting of more than either 5% of the number of shares of common stock plus any Securities representing common equity or 5% of the voting power outstanding of an issuer or party shall be considered a substantial interest and cause the holder of such an interest to be regarded as a substantial security holder.

**26128. Reserved****26129. Reserved****26130. Original Listing Applications**

Applicants must register the Security to be listed under Section 12(b) of the Exchange Act (Rule 26210) and submit an original listing application (Rule 26211).

In addition, the applicant must provide a legal opinion that the applicant's Security is a security under applicable United States securities laws.

**26131. Additional Listings; Cancellation of Listing Authority**

Following listing, companies and their registrars are not permitted to issue or countersign any Securities in excess of those authorized for listing, until the Exchange has approved an additional listing application covering the additional Securities as described in Rules 26301-26306. Listing authority for a particular purpose may be cancelled as described in Rule 26350. In addition, where any unlisted company acquires a listed company, the criteria for original listing may be applicable as specified in Rule 26341.

**26132. Listing Agreements**

In addition to meeting the foregoing criteria, companies applying for listing enter into agreements with the Exchange and become subject to its rules, regulations and policies applicable to listed companies.

Among other things, listed companies are required to:

- (a) Timely Disclosure and Related Notices—Comply with the Exchange's timely disclosure policies and related notice requirements (Rules 26401-26404, 26920-26924);
- (b) Dividends, Splits and Distributions—Comply with the Exchange's regulations governing these transactions (Rules 26304, 26501-26507);
- (c) Accounting, Annual and Quarterly Reports—Furnish Security holders with annual reports and release quarterly sales and earnings (Rules 26603-26624). (Companies not having common stock or equity Securities listed on the Exchange are required to send annual *and* quarterly reports to Security holders.);
- (d) Shareholders' Meetings, Approval and Voting—Hold annual shareholders' meetings and submit certain proposed option plans and acquisitions to shareholders for approval (Rules 26701-26713); and

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(e) Additional Information—The Exchange may request any additional information or documentation, public or non-public, deemed necessary to make a determination regarding a Security’s continued listing, including but not limited to, any material provided to or received from the SEC or other appropriate regulatory authority. A listed company may be delisted if it fails to provide such information within a reasonable period of time or if any communication (including communications made in connection with an initial listing application (See Rule 26211(e)) to the Exchange contains a material misrepresentation or omits material information necessary to make the communication to the Exchange not misleading.

**26133. Delisting**

Listed companies are subject to the Exchange’s delisting rules, policies, and procedures (Rules 27001-27011 and 27201-27211).

**26134. Filing Requirements**

The Exchange’s filing, notice and submission requirements to the Exchange are set forth in Rule 27101.

**26135. Uniform Book-Entry Settlement**

- (a) Each BSTX Participant shall use the facilities of a securities depository for the book-entry settlement of all transactions in depository eligible securities with another BSTX Participant or a member of a national securities exchange or a registered securities association.
- (b) Each BSTX Participant shall not effect a delivery-versus-payment or receipt-versus-payment transaction in a depository eligible security with a customer unless the transaction is settled by book-entry using the facilities of a securities depository.
- (c) For purposes of this rule, the term “securities depository” shall mean a securities depository registered as a clearing agency under Section 17A of the Securities Exchange Act of 1934.
- (d) The term “depository eligible securities” shall mean securities that (i) are part of an issue (securities identified by a single CUSIP number) of securities that is eligible for deposit at a securities depository and (ii) with respect to a particular transaction, are eligible for book-entry transfer at the depository at the time of settlement of the transaction.
- (e) This rule shall not apply to transactions that are settled outside of the United States.
- (f) The requirements of this rule shall supersede any inconsistent requirements under other Exchange rules.
- (g) This rule shall not apply to any transaction where the securities to be delivered in settlement of the transaction are not on deposit at a securities depository and:

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- (1) if the transaction is for same-day settlement, the deliverer cannot by reasonable efforts deposit the securities in a securities depository prior to the cut-off time established by the depository for same-day crediting of deposited securities, or
- (2) the deliverer cannot by reasonable efforts deposit the securities in a depository prior to a cut-off date established by the depository for that issue of securities.

**26136. Direct Registration System Participation**

All securities initially listing on BSTX, except securities which are book-entry only, must be eligible for a Direct Registration Program operated by a clearing agency registered under Section 17A of the Act. A foreign issuer, as defined under Rule 3b-4 under the Act, including a Foreign Private Issuer, shall not be subject to this requirement if it submits to the Exchange a written statement from an independent counsel in such Company's home country certifying that a law or regulation in the home country prohibits compliance.

**26137. Depository Eligibility**

Before any issue of Securities of an issuer is listed on the Exchange, the Exchange shall have received a representation from the issuer that a CUSIP number identifying the Securities has been included in the file of eligible issues maintained by a securities depository registered as a clearing agency under Section 17A of the Securities Exchange Act of 1934 ("securities depository" or "securities depositories"), except that this Rule shall not apply to a security if the terms of the security do not and cannot be reasonably modified to meet the criteria for depository eligibility at all securities depositories.

**26138. Reserved****26139. Issuer Conversion**

The Exchange is aware that an issuer may have a current security traded as a non-Security. As such, if the issuer intends to transition the security to trading on BSTX as a Security, the Exchange will evaluate trading in the current security to determine whether it satisfies the BSTX Listing Standards. For example, when the Exchange examines the public distribution requirements that require a minimum level of publicly held Securities, the Exchange will instead consider how many shares are currently traded in the issuer's non-Security issue.

**26140. Additional Requirements for BSTX-Listed Securities Issued by the Exchange or its Affiliates**

- (a) For purposes of this Rule 26140, the terms below are defined as follows:
  - (1) "Exchange Affiliate" means the Exchange and any entity that directly or indirectly, through one or more intermediaries, controls, is controlled by, or is under common control with the Exchange, where "control" means that the one entity possesses, directly or indirectly, voting control of the other entity either through ownership of capital stock or other equity securities or through majority representation on the board of directors or other management body of such entity.

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- (2) “Affiliate Security” means any security or Security issued by an Exchange Affiliate or any Exchange-listed option on any such security.
- (b) Upon initial and throughout continued listing of the Affiliate Security on the Exchange, the Exchange shall:
- (1) file a report quarterly with the Commission detailing the Exchange’s monitoring of :
    - i. the Exchange Affiliate's compliance with the BSTX Listing Requirements; and
    - ii. the trading of the Affiliate Security, which shall include summaries of all related surveillance alerts, complaints, regulatory referrals, trades canceled or adjusted, investigations, examinations, formal and informal disciplinary actions, exception reports and trading data of such security.
  - (2) engage an independent accounting firm once a year to review and prepare a report on the Affiliate Security to ensure that the Exchange Affiliate is in compliance with the BSTX Listing Requirements and promptly forward to the Commission a copy of the report prepared by the independent accounting firm.

In the event that the Exchange determines that the Exchange Affiliate is not in compliance with any of the BSTX listing requirements, the Exchange shall file a report with the Commission within five business days of providing notice to the Exchange Affiliate of its non-compliance. The report shall identify the date of non-compliance, type of non-compliance and any other material information conveyed to the Exchange Affiliate in the notice of non-compliance. Within five business days of receipt of a plan of compliance from the Exchange Affiliate, the Exchange shall notify the Commission of such receipt, whether the plan of compliance was accepted by the Exchange or what other action was taken with respect to the plan and the time period provided to regain compliance with the BSTX Listing Requirements, if any.

## **26200 – Original Listing Procedures**

### **26201. Confidential Pre-Application Review of Eligibility**

A company seeking to list its Securities for trading on BSTX must participate in a confidential pre-application eligibility review by the Exchange in order to determine whether it meets the Exchange’s listing criteria. Once a company has cleared such review, it may file an original listing application pursuant to Rule 26202 seeking Exchange listing approval of its Securities.

Preliminary discussions with the Exchange on important matters in connection with the confidential pre-application eligibility review may be undertaken by company officials interested in listing with the assurance that careful security measures have been adopted by the Exchange to avoid revealing any confidential information which the company may disclose.

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The information needed for the purpose of conducting a confidential pre-application eligibility review is set forth in Rule 26210 through Rule 26222.

**26202. Original Listing Steps**

There are normally seven steps in the original listing process following successful completion of the confidential pre-application eligibility review described in Rule 26201:

- (a) company files original listing application and supporting papers with Exchange;
- (b) company files Exchange Act registration statement and exhibits with SEC;
- (c) Exchange reserves ticker symbol;
- (d) Exchange approves listing;
- (e) Exchange allocates Security to a DMM (if applicable);
- (f) SEC Exchange Act registration statement becomes effective; and
- (g) Security is admitted to dealings.

**26203. Reserved****26204. Ticker Symbol**

Applicants may request a particular trading symbol. Although every effort will be made to reserve the symbol requested, there is no assurance that it will be available. Request for a particular symbol should be made as early in the listing process as possible.

**26205. Policy Regarding Allocation of Securities to DMMs**

A company may choose either to be assigned a DMM by the Exchange, or to select its own DMM. Alternatively, a company may elect, or the Exchange may determine, that in lieu of a DMM a minimum of three (3) market makers will be assigned to the Security upon initial listing and may be reduced in a manner consistent with Rule 26106.

The Exchange makes every effort to see that each Security is allocated in the best interests of the company and its shareholders, as well as that of the public and the Exchange. For information regarding the DMM Allocation Procedure, please contact the Exchange.

**26206 – 26209. Reserved****26210. Registration under the Exchange Act**

- (a) SEC Forms—A Security approved for listing by the Exchange must be registered under Section 12(b) of the Securities Exchange Act of 1934 before it may be admitted to trading on BSTX. Exchange Act registration is required even though the applicant may have previously registered all or part of the Securities under the Securities Act. However,

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a Security which has already been registered under Section 12(g) of the Exchange Act, or has recently been the subject of a public offering registered under the Securities Act, may normally be registered under Section 12(b) of the Exchange Act for Exchange trading on SEC Form 8-A. In addition, Securities of an issuer which has another class or series of securities registered on another national securities exchange may also use SEC Form 8-A. If an applicant does not have a class of securities registered under Exchange Act Section 12(g) or another class of securities registered on a national securities exchange, SEC Form 10 may be required.

The Exchange will furnish a sample SEC Form 8-A with instructions. Applicants should prepare and file the SEC registration statement and exhibits concurrently with the Exchange listing application and exhibits.

- (b) **Effective Date**—Registration under Section 12(b) of the Exchange Act cannot become effective until after the issue has been approved for listing by the Exchange. Upon such approval, the Exchange is required to certify to the SEC that it has received its copy of the registration statement and has approved the particular Securities for listing and registration. Registration of a class of Securities on Form 8-A becomes effective automatically upon the later of the filing of the Form 8-A with the SEC, the SEC's receipt of certification from the Exchange, or (if the class of Securities is concurrently being registered under the Securities Act) the effectiveness of the related Securities Act registration statement. Registration other than on Form 8-A becomes effective automatically 30 days after receipt by the SEC of the Exchange's certification, but may become effective within a shorter period, by order of the SEC, on request for acceleration of the effective date made by the company to the SEC.
- (c) **Copies**—One manually signed copy of the Exchange Act registration statement, including exhibits, must be filed with the listing application.

**26211. Original Listing Application – General**

- (a) **Form**—A typewritten listing application (signed by an executive officer of the applicant), together with all appropriate attachments, as outlined below, and one copy only of each of the required exhibits, should be filed with the Exchange for examination. If any deficiencies are noted, or any changes are considered necessary in the form or contents of the application and exhibits, the applicant will be notified.
- (b) **Incorporation by Reference**—A copy of the following documents should be attached to each original listing application submitted and the information contained therein may be incorporated by reference (see Rule 26212):
  - (l) latest Form 10-K Annual Report, Form 10-Q Quarterly Report(s) and Form 8-K Current Report(s) for periods subsequent to the latest Form 10-K (or comparable periodic reports filed with the appropriate regulatory agency of the applicant pursuant to the Securities Exchange Act of 1934), and latest proxy statement for annual meeting of shareholders; or



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- (2) a prospectus declared effective by the SEC which contains the latest audited financial statements of the applicant, Form 10-Q Quarterly Report(s) and Form 8-K Current Report(s) (or comparable periodic reports filed with the appropriate regulatory agency of the applicant pursuant to the Securities Exchange Act of 1934), for periods subsequent to the effective date of the prospectus, and latest available proxy statement for meeting of shareholders. In the event a Form 10-Q Quarterly Report (or comparable periodic report) for a quarter ended more than 45 days before the date of the listing application is not required to be filed with the SEC (or other appropriate regulatory agency), financial information comparable to that which would have been included in the Form 10-Q Quarterly Report shall be filed with the Exchange as part of the listing application; and
  - (3) latest annual report distributed to shareholders; and
  - (4) such other information, documents or materials as may be deemed appropriate by the Exchange for inclusion in the applicant's listing application.
- (c) Listing Fee—A check should accompany the submission. (See the Exchange's fee schedule for computation of amount.)
- (d) Accounting Review—A company's financial statements may be submitted to the Exchange's consulting accountants for review as to compliance with Exchange requirements and generally accepted accounting principles ("GAAP").
- (e) The Exchange may request any additional information or documentation, public or non-public, deemed necessary to make a determination regarding a Security's initial listing eligibility, including, but not limited to, any material provided to or received from the SEC or other appropriate regulatory authority. An issuer may be denied initial listing if it fails to provide such information within a reasonable period of time or if any communication to the Exchange contains a material misrepresentation or omits material information necessary to make a communication to the Exchange not misleading.

**26212. Content of Original Listing Application—Securities**

Each company must submit an application for original listing, in the form prescribed by the Exchange, together with supporting exhibits specified in Rule 26306 (See sample application in BSTX Listing Supplement).

**26213. Exhibits to Be Filed with Original Listing Application—Securities**

In support of the original listing application, a company must file one copy of the Listing Agreement, executed by an executive officer of the applicant, on a listing form supplied by the Exchange. In addition, the Exchange may request copies of such other documents as are necessary to complete its review of an issuer's eligibility for listing.

**26214. Oil and Gas and Mining Companies—Additional Papers to Be Filed**

**EXHIBIT 5A**

**Oil and Gas Companies**—In addition to the exhibits required of all applicants, companies which have an interest in oil and gas properties as a material part of their business must submit the following:

**Engineer's Reserve Report.** Report of recent date, of qualified engineer, including estimate of proven reserves. The report shall be accompanied by a signed statement of the engineer's qualifications. The Exchange recommends and may, in fact, require the submission of the report of a qualified independent engineer not in the regular employ of the company.

**Mining Companies**—In addition to the exhibits required of all applicants, companies which own or operate mines as a material part of their business must submit the following:

**Table of Lands.** A tabular list of mineral and other lands (separate lists for producing and non-producing properties), each property designated by number or claim name. If any property is held under lease, specify terms. Submit separate lists for properties held directly and those held through subsidiaries.

**Engineer's Mining and Reserve Report.** Report, of recent date, of qualified engineer. The report shall be accompanied by a signed statement of the engineer's qualifications. (In certain cases, the Exchange may require the submission of the report of a qualified independent engineer not in the regular employ of the applicant.)

In the case of mines which are developing, the engineer's report must contain:

- (a) recommendations regarding the development program;
- (b) estimate as to amount of additional funds which will be required to complete the development program as outlined; and
- (c) estimate of length of time required to complete such development program.

**26215. Reserved**

**26216. Reserved**

**26217. Content of Original Listing Application – Security Warrants**

Generally, an original listing application for a Security warrant issue will follow the format for all other Securities, as set forth in Rules 26211-26212.

**26218 - 26229. Reserved**

**26300 – Additional Listings**

**EXHIBIT 5A****26301. Agreement to List Additional Securities**

A listed company is not permitted to issue, or to authorize its transfer agent or registrar to issue or register, additional Securities of a listed class until it has filed an application for the listing of such additional Securities and received notification from the Exchange that the Securities have been approved for listing.

The Exchange's approval is contingent upon the Securities being issued for the purpose, and under the terms and conditions, authorized by the company's Board of Directors and as specified in the listing application. If, after approval of listing by the Exchange, the company desires to make a change in the specified purpose of the issuance, or in the specified terms and conditions of the issuance, the Exchange may require an amendment to the prior application or cancel the previous listing approval and require a further listing application.

Registration of listed Securities with the SEC or removal of transfer restrictions do not constitute changes pursuant to this rule and therefore would not require an amended application.

**26302. Purpose of Agreement**

The Exchange regards the agreement to list additional Securities as an essential safeguard for shareholders of listed companies.

An additional listing application supplies the Exchange pertinent information concerning the purpose for which the Securities are being issued, and updates information concerning the applicant.

The Exchange also reviews each additional application to determine if shareholder approval will be required as a condition to approval (see Rules 26711-26713). It is important to note that treasury Securities may not be reissued, without first obtaining shareholders approval, for any purpose where the rules or policies of the Exchange would require such approval had the Securities to be issued been previously authorized but unissued.

**26303. Steps in the Additional Listing Process**

There are normally four steps in the additional listing process. They are:

- (a) company decides to issue additional amounts of a listed Security for any purpose whatsoever;
- (b) company submits an additional listing application, in the form prescribed by the Exchange, signed by an officer of the issuer, one to two weeks in advance of the date on which Exchange approval is necessary, together with supporting exhibits specified in Rule 26306 (See sample application in the BSTX Supplemental Listing Materials);
- (c) the Exchange reviews and, if necessary, comments on the additional listing application; and

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(d) the Exchange approves the application.

**26304. Listing of Securities Pursuant to a Dividend or Forward Split**

Securities to be issued in a forward split or dividend must be listed prior to the distribution date of such action. A company must complete the Reconciliation Sheet provided in the Exchange's form of application, as of the record date of the scheduled distribution.

**26305. Listing of Securities Pursuant to a Reverse Split/Substitution Listing**

A substitution listing application is necessary whenever a company engages in a reverse split, re-incorporates, proposes to list a new class of Securities in substitution for a previously listed class of Securities or otherwise engages in a transaction which would require it to file a new Form 8-A with the SEC in regard to a previously listed security.

**26306. Exhibits to Be Filed with Additional Listing Applications**

The following is a list of exhibits to be filed with additional listing applications.

**(1) Contract.** A copy of each executed contract, plan or agreement pursuant to which the additional Securities applied for are to be issued.

**(2) Financial Statements of Acquired Company.** If the Securities to be listed are to be issued in connection with the acquisition of a controlling interest in, or of substantially all of the assets subject to the liabilities of, another company, the most recent audited financial statements, supplemented by the latest interim statements. In cases where independently audited financial statements are not available, a manually signed statement certified by the chief accounting officer of such other company must be submitted.

**(3) Engineering Report.** If the Securities applied for are to be issued in acquisition of a stock interest in another company, or properties or other assets, furnish one copy of any engineering, geological or appraisal report which may have been obtained in connection with the proposed acquisition.

**(4) Listing Agreement.** A company must execute a new listing agreement in support of every substitution listing except in the case of a reverse split.

**26307 – 26330 Reserved****26331. Time Schedule**

The Exchange considers additional listing applications as promptly as practicable after receipt (normally within 5 to 10 business days). The listing application must be approved by the Exchange prior to issuance of the additional amount, or the effective date of the change or modification, of the previously listed Security. Accordingly, applications should be filed at least one to two weeks in advance of the date by which the applicant wishes action taken. In the case of a proposed charter amendment under which a previously listed Security is to be changed into a

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new Security (“substitution listing”), the time schedule should be so arranged that the substitution of the new Security for the old Security may be effected without any interruption in trading.

When it is essential that the Securities be fully qualified for admission to trading by a certain date, the Exchange should be consulted at the earliest possible moment in order that a satisfactory time schedule may be arranged. This is particularly important in the case of rights or exchange offerings.

**26332. Fees for Listing Additional Securities**

Upon receipt of the listing application in relation to any application for the listing of additional Securities, the Exchange will send the listed company an invoice for the applicable listing fees (see the Exchange’s fee schedule for computation of amount). The listed company is required to promptly submit the applicable fee in the manner specified by the Exchange’s invoice.

**26333. Registration with the Securities and Exchange Commission**

- (a) Securities Act of 1933—If required under the Securities Act, registration must be effective prior to the admission of the Security to dealings on the Exchange. If such registration covers additional Securities or amounts of a previously listed Security, the listing application should be filed with the Exchange while the Securities Act registration is pending, so that the additional amount may be authorized for listing in advance of, and subject to, the effectiveness of such registration.
- (b) Securities Exchange Act of 1934—No application for registration under the Exchange Act on Form 8-A, or otherwise, is required to be filed with the SEC for additional Securities or amounts of a previously listed and registered security. If the application covers a substitution listing, a registration statement (usually on Form 8-B) must be filed with the SEC and the Exchange.

**26334 – 26339. Reserved****26340. Subscription Rights**

A listed company must promptly disclose any action taken by it with respect to the allotment of rights to subscribe or rights or benefits pertaining to the ownership of its Securities. It is further required to give prompt notice of any such action to the Exchange to afford the holders of such Securities a proper period within which to record their interests and exercise their rights. These requirements are further explained in paragraphs (a) through (h) below.

The Exchange will not admit subscription rights to dealings unless the underlying Security is or will be listed on BSTX.

- (a) Steps—Following is the sequence of steps to be taken in connection with the admission of subscription rights to dealings:
  - (1) submit timetable including:

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- i. date of filing with SEC of registration statement under Securities Act;
  - ii. date on which listing application will be filed with the Exchange;
  - iii. effective date of registration statement or offering circular;
  - iv. record date of Security holders entitled to receive subscription rights;
  - v. mailing date of subscription rights to Security holders, and name of bank which will mail rights; and
  - vi. expiration date of subscription offering, and name of bank which will act as subscription agent.
- (2) send two copies of preliminary prospectus or offering circular, and printer's proof copy of subscription rights to the Exchange;
  - (3) submit listing application covering listing of additional Securities issuable upon exercise of subscription rights;
  - (4) notify Exchange as soon as Securities Act registration statement becomes effective.
- (b) Establishment of Record, Mailing, and Expiration Dates—The record date should be no earlier than one day prior to the time the registration statement or offering circular becomes effective.

The mailing of the subscription rights to Security holders should occur as soon after the record date as possible. Most companies have their transfer agents mail the rights on the same date as the record date or, at the latest, on the business day following the record date.

The subscription period should be for at least 14 calendar days following the mailing date. (See Rules 26511-26522 for further explanation of "ex-rights" rule.)

- (c) Form of Subscription Rights and Issuance of Securities—The subscription rights should specify the number of rights represented by the warrant certificate rather than the number of Securities to which the holder is entitled to subscribe. This eliminates the use of two separate types of warrants—one for full Securities and the other for fractional Securities.

Provision should be made for the issuance of certificates for Securities subscribed for promptly upon exercise of the subscription privilege, and the subscription rights should contain a statement to that effect. Where, in addition to the usual subscription privilege, there is available an over-subscription privilege (subject to allotment) the issuance of the additional Securities against exercise of the over-subscription privilege can be made promptly after the expiration date of the offering.

- (d) Dividend Declaration—No dividend should be declared having a record date during the subscription period. Otherwise, complications will develop in dealings in the rights. The record date for any dividend which otherwise would be a date during the subscription

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period should be either (i) the same date as the date of record of shareholders entitled to receive the subscription rights or a date prior to such subscription offering record date, or (ii) a date no earlier than the tenth day following the expiration date of the subscription offering. The record date specified in (i) would be established if the company does not wish to pay the current dividend on the Securities offered for subscription. The record date specified in (ii) would be established if the company wishes to pay the dividend on the Securities offered for subscription as well as on the Securities previously outstanding.

- (e) Dealings in Rights—No application is required to be filed with the Exchange for the listing of subscription rights or with the SEC for their registration under the Exchange Act. Under SEC Rule 12a-4, subscription rights are exempt from registration under the Exchange Act.

Transferable rights may be admitted to dealings on the Exchange as soon as notice is received that the company's Securities Act registration statement or offering circular has become effective. The normal procedure is to admit the rights to dealings at 10:00 a.m. on the day following the day the registration statement or offering circular has become effective. Accordingly, the company should arrange to have the registration statement or offering circular declared effective as of 4:00 p.m. on the date preceding the anticipated trading date. The company or its attorneys should notify the Exchange by telephone as soon as they learn of SEC clearance.

Trading in rights on the Exchange will cease at the close of business on the business day preceding the expiration date thereof. This facilitates open contracts to be settled and rights to be exercised on the final day.

- (f) Ex-Rights Date—As specified at Rule 26513(a), in general, Securities are quoted “ex-rights” the day following the date on which the rights are admitted to dealings. This arrangement allows one full day's trading to take place in the rights to establish their market value for “ex-rights” purposes. Purchasers of the Security beginning the fourth business day preceding the record date for and to and including the day before the “ex-rights” date for the Security have been paying prices for their Security which include the value of the rights. Since it may not be possible for such purchasers to become holders of record on the books of the company by the record date for the offering, the Exchange rules that the purchasers in such transactions (having paid a “rights on” price for their Security, i.e., a price including the value of the rights) are entitled to the rights and are, therefore, entitled to receive a due bill for the rights from the sellers of the Security. Such due bills are redeemed by the sellers when they receive their rights from the company. This arrangement is between the brokers for the purchasers and the sellers of the Securities, and does not involve the company. For a further explanation, see the Rule 26500 Series.
- (g) Application for Listing Additional Securities Issuable Against Exercise of Subscription Rights—A company is required to file with the Exchange an application for the listing of the additional Securities issuable upon exercise of the rights. The Securities Act prospectus or offering circular relating to the subscription offering may be incorporated

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by reference. The listing application (see Rule 26303) should be filed with the Exchange as soon as possible after the company has filed its registration statement or offering circular with the SEC. The Exchange must have time to act on the application sufficiently prior to the date of the offering, so that appropriate listing authority will be in effect with respect to the Securities issuable when and as subscription rights are exercised.

- (h) **Oversubscription Privilege**—Where a subscription offering to Securities contains an oversubscription privilege, the number of Securities allocated to Security holders upon exercise of the oversubscription privilege should be in proportion to the number of Securities subscribed for by each Security holder on the original subscription offering, and should not be based on the number requested under the oversubscription privilege.

**26341. Acquisition of a Listed Issuer by an Unlisted Entity**

If a listed issuer engages in a Reverse Merger (as defined below), it will be eligible for continued listing on BSTX only if the post-transaction entity meets the standards for initial listing. The Exchange will refuse to list additional Securities of a listed issuer in connection with a Reverse Merger unless the post-transaction entity meets the standards for initial listing and the listed issuer obtains shareholder approval of the issuance of such Securities as required by Rule 26713(b). The applicable fees for additional listings and Reverse Mergers can be found in the Exchange's fee schedule.

The Exchange should be consulted whenever a listed issuer is contemplating a transaction or series of transactions that could constitute a Reverse Merger. If the Exchange determines that a transaction or series of transactions constitute a Reverse Merger, the listed issuer must submit an initial listing application for the post-transaction entity with sufficient time to allow the Exchange to complete its review before the effective date of the Reverse Merger. If the initial listing application has not been approved prior to the effective date of the Reverse Merger, the Exchange will issue an Exchange Determination Letter as set forth in Rule 27202 and begin delisting proceedings pursuant to the Rule 27200 Series.

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For the purposes of this provision, a "Reverse Merger" is a transaction or series of transactions whereby a listed issuer combines with, or into, an entity not listed on BSTX, resulting in a change of control of the listed issuer and potentially allowing such unlisted entity to obtain a BSTX listing. In determining whether a change of control constitutes a Reverse Merger, the Exchange will consider all relevant factors, including, but not limited to, changes in the management, board of directors, voting power, ownership, and financial structure of the listed issuer. The Exchange will also consider the nature of the businesses and the relative size of both the listed issuer and the unlisted entity.

**26342. Paired Securities**



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Companies whose Securities are “paired” may file a single additional listing application covering the Securities to be issued by both companies. (See the Exchange fee schedule for computation of the fee.)

**26343 – 26349. Reserved****26350. Cancellation Notice**

A company which has received authority to list Securities, upon official notice of issuance, for a particular purpose, and which no longer intends to issue all or a portion of such Securities for that purpose, should cancel the listing authority by notifying the Exchange by letter (see sample letter in the BSTX Listing Supplement). The letter should specify the amount of Securities to be cancelled and the reason for such request. An example of such cancellation letter can be found in the BSTX Listing Supplement on the Exchange’s website.

**26400 – Disclosure Policies****26401. Outline of Exchange Disclosure Policies**

The Exchange considers that the conduct of a fair and orderly market requires every listed company to make available to the public information necessary for informed investing and to take reasonable steps to ensure that all who invest in its Securities enjoy equal access to such information. In applying this fundamental principle, the Exchange has adopted the following eight specific policies concerning disclosure, each of which is more fully discussed (in a Question and Answer format) in the BSTX Supplemental Listing Information:

- (a) Immediate Public Disclosure of Material Information—A listed company is required to make immediate public disclosure of all material information concerning its affairs, except in unusual circumstances (referred to as the Exchange’s “immediate release policy”). When such disclosure is to be made between 7:00 A.M. and 4:00 P.M., Eastern Time, it is essential that the Exchange be notified at least ten minutes prior to the announcement.
- (b) Thorough Public Dissemination—A listed company is required to release material information to the public by means of any Regulation FD compliant method (or combination of methods).
- (c) Clarification or Confirmation of Rumors and Reports—Whenever a listed company becomes aware of a rumor or report, true or false, that contains information that is likely to have, or has had, an effect on the trading in its Securities, or would be likely to have a bearing on investment decisions, the company is required to publicly clarify the rumor or report as promptly as possible.
- (d) Response to Unusual Market Action—Whenever unusual market action takes place in a listed company’s Securities, the company is expected to make inquiry to determine whether rumors or other conditions requiring corrective action exist, and, if so, to take whatever action is appropriate. If, after this review, the unusual market action remains unexplained, it may be appropriate for the company to issue a “no news” release—i.e.,

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announce that there has been no material development in its business and affairs not previously disclosed or, to its knowledge, any other reason to account for the unusual market action.

- (e) Unwarranted Promotional Disclosure—A listed company should refrain from promotional disclosure activity which exceeds that necessary to enable the public to make informed investment decisions. Such activity includes inappropriately worded news releases, public announcements not justified by actual developments in a company’s affairs, exaggerated reports or predictions, flamboyant wording and other forms of overstated or over-zealous disclosure activity which may mislead investors and cause unwarranted price movements and activity in a company’s Securities.
- (f) Insider Trading—Insiders should not trade on the basis of material information which is not known to the investing public. Moreover, insiders should refrain from trading, even after material information has been released to the press and other media, for a period sufficient to permit thorough public dissemination and evaluation of the information.
- (g) Receipt of Written Delisting Notice—A company is required to publicly disclose that it has received a written notice indicating that the Exchange has determined to remove the company’s Securities from listing (or unlisted trading) as a result of non-compliance with the continued listing requirements. (See Rule 27009)
- (h) Receipt of Audit Opinion with Going Concern Qualification - A company is required to publicly disclose that it has received an audit opinion that contains a going concern qualification. (See Rule 26610(b))
- (i) Reserved
- (j) Receipt of Written Notice of Noncompliance with a Continued Listing Requirement—A company is required to publicly disclose that it has received a written notice indicating that the Exchange has determined that the company is noncompliant and/or has failed to satisfy one or more continued listing requirements. (See IM-26402-02 to Rule 26402 and Rule 27009).

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Listed companies must comply with the notification procedures in Rule 26401(a) and (b) with respect to all announcements relating to a dividend, stock distribution, or Security distribution when such disclosure is to be made between 7:00 A.M. and 4:00 P.M., Eastern Time. (Listed companies must also comply with the notification requirements of Rule 26501 with respect to all such announcements, including outside of the hours of operation of the immediate release policy.)

**26402. Explanation of Exchange Disclosure Policies****(a) Immediate Public Disclosure of Material Information**

Q. What standard should be employed to determine whether disclosure should be made?

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A. Immediate disclosure should be made of information about a company's affairs or about events or conditions in the market for its Securities when either of the following standards are met:

- (i) where the information is likely to have a significant effect on the price of any of the company's Securities; or
- (ii) where such information (including, in certain cases, any necessary interpretation by securities analysts or other experts) is likely to be considered important by a reasonable investor in determining a choice of action.

Q. What kinds of information about a company's affairs should be disclosed?

A. Any material information of a factual nature that bears on the value of a company's Securities or on decisions as to whether or not to invest or trade in such Securities should be disclosed. Included is information known to the company concerning:

- (i) its property, business, financial condition and prospects;
- (ii) mergers and acquisitions;
- (iii) dealings with employees, suppliers, customers and others; and
- (iv) information concerning a significant change in ownership of the company's Securities by insiders, principal shareholders, or control persons.

In those instances where a company deems it appropriate to disclose internal estimates or projections of its earnings or of other data relating to its affairs, such estimates or projections should be prepared carefully, with a reasonable factual basis, and should be stated realistically, with appropriate qualifications. Moreover, if such estimates or projections subsequently appear to have been mistaken, they should be promptly and publicly corrected.

Q. What kinds of events and conditions in the market for a company's Securities may require disclosure?

A. The price of a company's Securities (as well as a reasonable investor's decision whether to buy or sell those Securities) may be affected as much by factors directly concerning the market for the Securities as by factors concerning the company's business. Factors directly concerning the market for a company's Securities may include such matters as the acquisition or disposition by a company of a significant amount of its own Securities, an event affecting the present or potential dilution of the rights or interests of a company's Securities, or events materially affecting the size of the "public float" of its Securities.

While, as noted above, a company is expected to make appropriate disclosure about significant changes in insider ownership of its Securities, the company should not indiscriminately disclose publicly any knowledge it has of the trading activities of outsiders, such as trading by mutual

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funds or other institutions, for such outsiders normally have a legitimate interest in preserving the confidentiality of their Security transactions.

Q. What are some specific examples of a company's affairs or market conditions typically requiring disclosure?

A. The following events, while not comprising a complete list of all the situations which may require disclosure, are particularly likely to require prompt announcements:

- a joint venture, merger or acquisition;
- the declaration or omission of dividends or the determination of earnings;
- a stock split or stock dividend;
- the acquisition or loss of a significant contract;
- a significant new product or discovery;
- a change in control or a significant change in management;
- a call of Securities for redemption;
- the borrowing of a significant amount of funds;
- the public or private sale of a significant amount of additional Securities;
- significant litigation;
- the purchase or sale of a significant asset;
- a significant change in capital investment plans;
- a significant labor dispute or disputes with subcontractors or suppliers;
- an event requiring the filing of a current report under the Securities Exchange Act;
- establishment of a program to make purchases of the company's own shares;
- a tender offer for another company's securities;
- an event of technical default or default on interest and/or principal payments;
- board changes and vacancies; and
- receipt of an audit opinion that contains a going concern qualification (see also Section 610(b)).

Q. When may a company properly withhold material information?

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A. Occasionally, circumstances such as those discussed below may arise in which— provided that complete confidentiality is maintained—a company may temporarily refrain from publicly disclosing material information. These situations, however, are limited and constitute an infrequent exception to the normal requirement of immediate public disclosure. Thus, in cases of doubt, the presumption must always be in favor of disclosure.

(i) When immediate disclosure would prejudice the ability of the company to pursue its corporate objectives.

Although public disclosure is generally necessary to protect the interests of investors, circumstances may occasionally arise where disclosure would prejudice a company's ability to achieve a valid corporate objective. Public disclosure of a plan to acquire certain real estate, for example, could result in an increase in the company's cost of the desired acquisition or could prevent the company from carrying out the plan at all. In such circumstances, if the unfavorable result to the company outweighs the undesirable consequences of non-disclosure, an announcement may properly be deferred to a more appropriate time.

(ii) When the facts are in a state of flux and a more appropriate moment for disclosure is imminent.

Occasionally, corporate developments give rise to information which, although material, is subject to rapid change. If the situation is about to stabilize or resolve itself in the near future, it may be proper to withhold public disclosure until a firm announcement can be made, since successive public statements concerning the same subject (but based on changing facts) may confuse or mislead the public rather than enlighten it.

For example, in the course of a successful negotiation for the acquisition of another company, the only information known to each party at the outset may be the willingness of the other to hold discussions. Shortly thereafter, it may become apparent to the parties that it is likely an agreement can be reached. Finally, agreement in principle may be reached on specific terms. In such circumstances (and assuming the maintenance of strict confidentiality), a company need not issue a public announcement at each stage of the negotiations, describing the current state of constantly changing facts, but may await agreement in principle on specific terms. If, on the other hand, progress in the negotiations should stabilize at some other point, disclosure should then be made if the information is material.

Whenever material information is being temporarily withheld, the strictest confidentiality must be maintained, and the company should be prepared to make an immediate public announcement, if necessary. During this period, the market activity of the company's Securities should be closely watched, since unusual market activity frequently signifies that a "leak" may have occurred. This is one reason why it is important to keep the Exchange fully apprised of material corporate developments.

NOTE: Federal securities laws may restrict the extent of permissible disclosure before or during a public offering of securities or a solicitation of proxies. In such circumstances (as more fully discussed below), a company should discuss the disclosure of material information in advance

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with the Exchange and the Securities and Exchange Commission. It is the Exchange's experience that the requirements of both the securities laws and regulations and the Exchange's disclosure policy can be met even in those instances where their thrust appears to be different.

Q. What action is required if rumors occur while material information is being temporarily withheld?

A. If rumors concerning such information should develop, immediate public disclosure becomes necessary. (See also "Clarification or Confirmation of Rumors and Reports", Rule 26402(c).)

Q. What action is required if insider trading occurs while material information is being temporarily withheld?

A. Immediate public disclosure of the information in question must be effected if the company should learn that insider trading, as defined in Rule 26402(f) has taken or is taking place. In unusual cases, where the trading is insignificant and does not have any influence on the market, and where measures sufficient to halt insider trading and prevent its recurrence are taken, exemptions might be made following discussions with the Exchange. The Exchange can provide current information regarding market activity in the company's Securities and help assess the significance of such trading.

Q. How can confidentiality best be maintained?

A. Information that is to be kept confidential should be confined, to the extent possible, to the highest possible echelons of management and should be disclosed to officers, employees and others on a "need to know" basis only. Distribution of paperwork and other data should be held to a minimum. When the information must be disclosed more broadly to company personnel or others, their attention should be drawn to its confidential nature and to the restrictions that apply to its use, including the prohibition on insider trading. It may be appropriate to require each person who gains access to the information to report any transaction which he effects in the company's Securities to the company. If counsel, accountants, financial or public relations advisers or other outsiders are consulted, steps should be taken to ensure that they maintain similar precautions within their respective organizations to maintain confidentiality.

In general, it is recommended that a listed company remind its employees on a regular basis of its policies on confidentiality.

(b) Thorough Public Dissemination

Q. What specific disclosure techniques should a company employ?

A. The steps required are as follows:

(i) Prior to Public Disclosure. The Exchange expects a company to call the Exchange at least ten minutes in advance of public disclosure of information which is non-routine or is expected to have an impact on the market for its Securities and such disclosure is to be made between 7:00

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A.M. and 4:00 P.M., Eastern Time. The purpose of this communication is to inform the Exchange of the substance of the announcement and the Regulation FD-compliant method by which the company intends to comply with the immediate release policy and to provide the Exchange with the information necessary to locate the news upon publication. When the announcement is in written form, the company must also provide the text of such announcement to the Exchange at least ten minutes prior to release of the announcement via e-mail or web-based system as specified on the Exchange's website, except in emergency situations, when notification may instead be provided by telephone and confirmed by facsimile as specified by the Exchange on its website (and the Exchange shall promptly update and prominently display the applicable information on its website in the event that it ever changes). For purposes of this Rule 26402(b)(i), an emergency situation includes lack of computer or internet access; a technical problem on the systems of either the listed company or the Exchange; or an incompatibility between the systems of the listed company and the Exchange. The Exchange, with the benefit of all the facts provided by the company, will be able to consider whether a temporary halt in trading, pending an announcement, would be desirable. A temporary halt in trading is not a reflection on the company or its Securities, but provides an opportunity for disseminating and evaluating the information released. Such a step frequently helps avoid rumors and market instability, as well as the unfairness to investors that may arise when material information has reached part, but not yet all, of the investing community. Thus, in appropriate circumstances, the Exchange can often provide a valuable service to investors and listed companies by arranging for such a halt.

\* During the period prior to the opening of trading on the Exchange, the Exchange will institute a trading halt for dissemination of material news only at the request of the issuer. Notwithstanding the foregoing, however, if it appears that the dissemination of material news will not be complete prior to the opening of trading on the Exchange, the Exchange may temporarily halt trading in order to facilitate an orderly opening process. See IM-26402-2 for additional information about Exchange policies in relation to news-related trading halts.

(ii) At Time of Public Disclosure. Any public disclosure of material information should be made by means of any Regulation FD compliant method (or combination of methods). While not requiring them to do so, the Exchange encourages listed companies to comply with the immediate release policy by issuing press releases. To ensure adequate coverage, where a listed company is satisfying the Exchange's immediate release policy by issuing a press release, that press release should be given to Dow Jones & Company, Inc., Reuters Economic Services and Bloomberg Business News. While foreign private issuers are not required to comply with Regulation FD, foreign private issuers must comply with the Exchange's immediate public disclosure policy and may do so by any method (or combination of methods) that would constitute compliance with Regulation FD for a domestic U.S. issuer.

Companies may also wish to broaden their distribution to other news or broadcast media, such as those in the location of the company's plants or offices, and to trade publications. The information in question should always be given to the media in such a way as to promote publication by them as promptly as possible, i.e., by telephone, telecopy, or in writing (by hand delivery), on an "immediate release" basis. Companies are cautioned that some of these media

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may refuse to publish information given by telephone until it has been confirmed in writing or may require written confirmation after its publication.

Whenever difficulty is encountered or anticipated in having an announcement about a material development published, a company should contact the Exchange, which may be able to provide assistance. Finally, if despite all reasonable efforts, the announcement has not been published by one of the national news-wire services or one of the above-mentioned media, the company should attempt to have the announcement disseminated through other media, such as trade, industry or business publications, or local newspapers (especially those in the area where the company's principal offices or plants are located or where its stockholders are concentrated). In cases where the announcement is of particular importance, or where unusual difficulty in dissemination is encountered, the company should consider the use of paid advertisements, a letter to stockholders, or both.

Companies may also disseminate information on their website, as well as via social media, provided however that a company disseminating information on its website or via social media must comply with the SEC's guidelines applicable to Regulation FD communication via websites and social media.

Q. How does the policy on thorough public dissemination apply to meetings with securities analysts, journalists, stockholders and others?

A. The Exchange recommends that companies observe an "open door" policy in dealing with analysts, journalists, stockholders and others. However, under no circumstances should disclosure of material corporate developments be made on an individual or selective basis to analysts, stockholders or other persons unless such information has previously been fully disclosed and disseminated to the public. In the event that material information is inadvertently disclosed on the occasion of any meetings with analysts or others, it must be publicly disseminated as promptly as possible by the means described above.

The Exchange also believes that even any appearance of preference or partiality in the release or explanation of information should be avoided. Thus, at meetings with analysts or other special groups, where the procedure of the group sponsoring the meeting permits, representatives of the news-wire services, the press, and other media should be permitted to attend.

(c) Clarification or Confirmation of Rumors and Reports

Q. What "rumors and reports" must be clarified or confirmed?

A. The public circulation by any means, whether by an article published in a newspaper, by a broker's market letter, or by word-of-mouth, of information, either correct or false, which has not been substantiated by the company and which is likely to have, or has had, an effect on the price of the company's Securities or would be likely to have a bearing on investment decisions, must be clarified or confirmed.



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If a false rumor or report is circulated among only a small number of persons and has not affected, and is not likely to affect, the market for the company's Securities, public circulation would not be deemed to have taken place and clarification would not be necessary. However, as pointed out in Rule 26402(a), if the rumor or report concerns material information which is correct and has not been disclosed by the company and thoroughly disseminated, clarification and confirmation is necessary regardless of the extent of the public circulation of the rumor or report.

Q. What response should be made to rumors or reports?

A. In the case of a material rumor or report containing erroneous information which has been circulated, the company should prepare an announcement denying the rumor or report and setting forth facts sufficient to clarify any misleading aspects of the rumor. In the case of a material rumor or report containing information that is correct, an announcement setting forth the facts should be prepared for public release. In both cases, the announcement should then be publicly disseminated in accordance with the guidelines discussed above. In addition, in the case of a false report, a reasonable effort should be made to bring the announcement to the attention of the particular group that initially distributed it. In the case of an erroneous newspaper article, for example, by sending a copy of the announcement to the newspaper's financial editor, or in the case of an erroneous market letter by sending a copy to the broker responsible for the letter.

In the case of a report predicting future sales, earnings or other data, no response from the company is ordinarily required. However, if such a report is based on erroneous information, or is wrongly attributed to a company source, the company should respond promptly to the supposedly factual elements of the report. Moreover, if a report contains a prediction that is clearly erroneous, the company should issue an announcement to the effect that the company itself has made no such prediction and currently knows of no facts that would justify making such prediction.

(d) Response to Unusual Market Activity

Q. What is the significance of unusual market activity from the standpoint of disclosure?

A. Where unusual market activity (in price movement, trading activity, or both) occurs without any apparent publicly available information which would account for the activity, it may signify trading by persons who are acting either on unannounced material information or on a rumor or report, whether true or false, about the company. Most often, of course, unusual market activity may not be traceable either to insider trading or to a rumor or report. Nevertheless, the market activity itself may be misleading to investors, who are likely to assume that a sudden and appreciable change in the price of a company's stock must reflect a parallel change in its business or prospects. Similarly, unusual trading volume, even when not accompanied by a significant change in price, tends to encourage rumors and give rise to speculative trading activity which may be unrelated to actual developments in the company's affairs.

Generally, unusual market activity will first be detected by either the Designated Market Maker in the company's Securities or by the Exchange, which in turn, will contact company officials to

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apprise them of the activity. Where unusual activity or rumors may occur, the Exchange may contact the company to inquire about any company developments that have not been publicly announced, but that could be responsible for the activity. Where the market appears to reflect undisclosed information, the Exchange will normally ask the company to make the information public immediately.

Q. What response is required of a company when unusual market action in its Securities takes place?

A. First, the company should attempt to determine the reason for the market action, by considering in particular: (i) whether any information about its affairs which would account for the action has recently been publicly disclosed; (ii) whether there is any information of this type that has not been publicly disclosed (in which case the unusual market action may signify that a "leak" has occurred); and (iii) whether the company is the subject of a rumor or report.

If the company determines that the market action results from material information that has already been publicly disseminated, generally no further announcement is required. If, however, the market action indicates that such information may have been misinterpreted, it may be helpful, after discussion with the Exchange, to issue a clarifying announcement.

If the market action results from the "leak" of previously undisclosed information, the information in question must be promptly disseminated to the public. If the market action results from a false rumor or report, the Exchange policy on correction of such rumors and reports (discussed in Rule 26402(c)) should be complied with. Finally, if the company is unable to determine the cause of the market action, the Exchange may suggest that the company issue a "no news" release, i.e., a public announcement to the effect that there have been no undisclosed recent developments affecting the company or its affairs which would account for the unusual market activity.

(e) Unwarranted Promotional Disclosure

Q. What is "unwarranted promotional disclosure" activity?

A. Disclosure activity beyond that necessary to inform investors and explicable essentially as an attempt to influence Security prices is considered to be unwarranted and promotional. Although the distinction between legitimate public relations activities and such promotional activity is one that must necessarily be drawn from the facts of a particular case, the following are frequently indicators of promotional activity:

(i) a series of public announcements unrelated in volume or frequency to the materiality of actual developments in a company's business and affairs;

(ii) premature announcement of products still in the development stage with unproven commercial prospects;

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(iii) promotions and expense-paid trips, or the seeking out of meetings or interviews with analysts and financial writers, which could have the effect of unduly influencing the market activity in the company's Securities and are not justified in frequency or scope by the need to disseminate information about actual developments in the company's business and affairs;

(iv) press releases or other public announcements of a one-sided or unbalanced nature; or

(v) company or product advertisements which, in effect, promote the company's Securities.

(f) Insider Trading

Q. Who are "insiders"?

A. All persons who come into possession of material inside information, before its public release, are considered insiders for purposes of the Exchange's disclosure policies. Such persons include control stockholders, directors, officers and employees, and frequently also include outside attorneys, accountants, investment bankers, public relations advisors, advertising agencies, consultants, and other independent contractors. The husbands, wives, immediate families and those under the control of insiders may also be regarded as insiders. Where acquisition or other negotiations are concerned, the above relationships apply to the other parties to the negotiations as well. Finally, for purposes of the Exchange's disclosure policy, the term insiders also includes "tippees" who come into possession of material inside information.

The company itself is also an insider and, while in possession of material inside information, is prohibited from buying its Securities from, or selling such Securities to, the public in the same manner as other insiders.

Q. What is "inside information"?

A. For purposes of these guidelines, "inside information" is any information or development which may have a material effect on the company or on the market for its Securities and which has not been publicly disclosed.

Q. What is "insider trading"?

A. "Insider trading" refers not only to the purchase or sale of a company's Securities, but also to the purchase or sale of puts, calls, or other options with respect to such Securities. Such trading is deemed to be done by an insider whenever he has any beneficial interest, direct or indirect, in such Securities, regardless of whether they are actually held in his name.

Included in the concept of "insider trading" is "tipping", or revealing inside information to outside individuals to enable such individuals to trade in the company's Securities on the basis of undisclosed information.

Q. How soon after the release of material information may insiders begin to trade?

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A. This depends both on how thoroughly and how quickly after its release the information is published by the news-wire services and the press. In addition, following dissemination of the information, insiders should refrain from trading until the public has had an opportunity to evaluate it thoroughly. Where the effect of the information on investment decisions is readily understandable, as in the case of earnings, the required waiting period will be shorter than where the information must be interpreted before its bearing on investment decisions can be evaluated. While the waiting period is dependent on the circumstances, the Exchange recommends that, as a basic policy, when dissemination is made in accordance with Exchange policy (see Rule 26402(b)—26402(d)), insiders should wait for at least 24 hours after the general publication of the release in a national medium. Where publication is not so widespread, a minimum waiting period of 48 hours is recommended. Where publication does not occur, or if it should otherwise appear appropriate, it may be desirable to obtain an opinion of counsel before insiders trade.

Q. What steps can companies take to prevent improper insider trading?

A. Companies can establish, publish and enforce effective procedures applicable to the purchase and sale of its Securities by officers, directors, employees and other "insiders" designed not only to prevent improper trading, but also to avoid any question of the propriety of insider purchases or sales. One such procedure might require corporate insiders to restrict their purchases and sales of the company's Securities to periods following the release of annual statements or other releases setting forth the financial condition and status of the company. Another could involve the purchase of a company's Securities on a regular periodic basis by an agent over which neither the company nor the individual has any control.

In the exceptional cases in which Exchange policy permits companies to withhold material information temporarily, extreme caution must be exercised to maintain the confidentiality of the information withheld, since the danger of insider trading generally increases proportionately to the number of persons privy to the information. Recommended procedures for maintaining confidentiality are discussed in Rule 26402(a).

(g) Receipt of Written Notice of Noncompliance with a Continued Listing Requirement or Written Delisting Notice

Q. What kinds of information should be included in the public announcement?

A. The public announcement must indicate that the Exchange has determined that the company does not meet a listing standard, or has determined to remove the company's Security listing (or unlisted trading), as applicable, and must include the specific policies and standards upon which the determination is based. In order to assist the company in the preparation of the public announcement, Exchange staff will provide the company with the Rule(s) upon which its determination was based and a template for disclosure.

Q. When must the public announcement be made?

A. The public announcement must be made as promptly as possible, but no more than four business days following the company's receipt of the written notice from the Exchange. The

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Exchange notes that companies should not construe the four business day time frame as a safe harbor for disclosure.

Q. What action may the Exchange take if a company fails to make a public announcement indicating that the Exchange has determined that the company is noncompliant and/or has failed to satisfy one or more continued listing standards, or has determined to remove the company's Securities from listing (or unlisted trading)?

A. Failure by a company to make the required public announcement will result in the institution of a trading halt in the company's Securities until the announcement is made, even if the company appeals the determination as provided for under Rules 27009 and 27010. If the company fails to make the announcement prior to the time that the Exchange issues its decision, the Exchange may decide to delist the company's Securities for failure to make the public announcement.

Q. Does Rule 27009(j) or 27010(b) relieve the company of its disclosure obligations under the federal securities laws?

A. No. Neither Rule 27009(j) nor 27010(b) relieves the company of its disclosure obligations under the federal securities laws, nor should Rule 27009(j) or 27010(b) be construed as providing a safe harbor under the federal securities laws. The Exchange suggests that the company consult with corporate/securities counsel in assessing its disclosure obligations under the federal securities laws.

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A written notice of noncompliance with a continued listing requirement may be in the form of either a Warning Letter (as defined in Rule 27009(a)(i)) or Deficiency Letter (as defined in Rule 21009(b)).

**IM-26402-2**

When the Exchange believes it is necessary to request from an issuer information relating to:

- (i) material news;
- (ii) the issuer's compliance with Exchange continued listing requirements; or
- (iii) any other information which is necessary to protect investors and the public interest.

The Exchange may halt trading in a listed Security until it has received and evaluated such information.

The Exchange may halt trading in an American Depositary Receipt ("ADR") or other Securities listed on the Exchange, when the Exchange-listed Security or the security underlying the ADR is

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listed on or registered with another national securities exchange or foreign exchange or market, and the national securities exchange or foreign exchange or market, or regulatory authority overseeing such exchange or market, halts trading in such ADR or Security for regulatory reasons. The Exchange may halt trading in a Security when the issuer's Primary Equity Security is halted.

**IM-26402-3**

The Exchange asks companies that intend to issue material news after the closing of trading on BSTX to delay doing so until the earlier of publication of such company's official closing price on BSTX or fifteen minutes after the close of trading on BSTX in order to facilitate an orderly closing process to trading on BSTX. Trading on BSTX typically closes at 4:00 P.M. Eastern Time, except for certain days on which trading closes early at 1:00 P.M. Eastern Time.

**26403. Content and Preparation of Public Announcements**

- (a) Exchange Requirements—The content of a press release or other public announcement is as important as its timing. Each announcement should:
- (1) be factual, clear and succinct;
  - (2) contain sufficient quantitative information to allow investors to evaluate its relative importance to the activities of the company;
  - (3) be balanced and fair, i.e., the announcement should avoid the following:
    - i. The omission of important unfavorable facts, or the slighting of such facts (e.g., by “burying” them at the end of a press release).
    - ii. The presentation of favorable possibilities as certain, or as more probable than is actually the case.
    - iii. The presentation of projections without sufficient qualification or without sufficient factual basis.
    - iv. Negative statements phrased so as to create a positive implication, e.g., “The company cannot now predict whether the development will have a materially favorable effect on its earnings” (creating the implication that the effect will be favorable even if not materially favorable), or “The company expects that the development will not have a materially favorable effect on earnings in the immediate future” (creating the implication that the development will eventually have a materially favorable effect).
    - v. The use of promotional jargon calculated to excite rather than to inform.
  - (4) avoid over-technical language, and should be expressed to the extent possible in language comprehensible to the layman;

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- (5) explain, if the consequences or effects of the information on the company's future prospects cannot be assessed, why this is so; and
  - (6) clarify and point out any reasonable alternatives where the public announcement undertakes to interpret information disclosed.
- (b) **Securities Laws Requirements**—The requirements of the Federal securities laws must also be carefully considered in the preparation of public announcements. In particular, these laws may impose special restrictions on the extent of permissible disclosure before or during a public offering of securities, including Securities, or a solicitation of proxies. Generally, in such circumstances, while the restrictions of the securities laws may affect the character of disclosure, they do not prohibit the timely disclosure of material factual information. Thus, it is normally possible to effect the disclosure required by Exchange policy.
- (c) **Preparation of Announcements**—The following guidelines for the preparation of press releases and other public announcements should help companies to ensure that the content of such announcements will meet the requirements discussed above:
- (1) Every announcement should be either prepared or reviewed by a company official having familiarity with the matters about which disclosure is to be made and a company official familiar with the requirements of the Exchange, as well as any applicable requirements of the securities laws.
  - (2) Since skill and experience are important to the preparation and editing of accurate, fair and balanced public announcements, the Exchange recommends that a limited group of individuals within the company be given this assignment on a continuing basis. (Since a press announcement usually must be prepared and released as quickly as possible, however, the group charged with this assignment should be large enough to handle problems that arise suddenly and unexpectedly.) The Exchange can assist in assessing whether the release satisfies the Exchange's disclosure requirements.
  - (3) Review of press releases and other public announcements by legal counsel is often desirable and necessary, depending on the importance and complexity of the announcement.

**26404. Exchange Surveillance Procedures**

In many cases, when unusual market activity occurs, the Exchange is able to trace the reason for the activity to a specific cause, such as recently disclosed information, recommendations by advisory services, or rumors. In certain instances, the Exchange may also contact brokerage firms if such firms or their customers are parties to unusual activity to inquire as to the source and reasons for such activity. (This latter information, it should be noted, must remain confidential to the Exchange.) If no explanation of the unusual activity is revealed, the Exchange may call officials of the company to determine whether the cause of the activity is known to them. If the activity appears to be attributable to a rumor or report, or to material information that has not been publicly disseminated, the company is requested to take appropriate corrective action, and it may be advisable to halt trading until such action has been taken.

**EXHIBIT 5A****26405. Notifications to Exchange**

Prompt notice from the listed company to the Exchange is required in connection with certain actions or events. If a provision of the BSTX Listing Standards require a company to give notice to the Exchange pursuant to this Rule 26405, the company shall provide such notice via an email address specified by the Exchange on its website (and the Exchange shall promptly update and prominently display the applicable information on its website in the event that it ever changes), except in emergency situations, when notification may instead be provided by telephone and confirmed by facsimile as specified by the Exchange on its website. For purposes of this Rule 26405, an emergency situation includes lack of computer or internet access; or a technical problem on the systems of either the listed company or the Exchange; or an incompatibility between the systems of the listed company and the Exchange. If a material event or a statement dealing with a rumor which calls for immediate release is made shortly before the opening or during market hours, notice is required to be given through the Exchange's telephone alert procedures. (See Rule 26401) If a rule containing a notification requirement does not specify that such requirement must be met by complying with the notification procedures set forth in this Rule 26405, the company may use the methods provided by this Rule 26405 or any other reasonable method. Listed companies are encouraged to contact the Exchange if they have any questions about the appropriate method of providing notification under applicable Exchange rules.

**26500 – Dividends and Splits****26501. Notice of Dividend**

Prompt notice must be given to the Exchange as to any dividend action or action relating to a Security distribution in respect of a listed Security (including the omission or postponement of a dividend action at the customary time as well as the declaration of a dividend). Such notice is in addition to immediate publicity and should be given at least ten days in advance of the record date. The dividend notice should be given to the Exchange in accordance with Rule 26405. Notice should be given as soon as possible after declaration. Notice must be given to the Exchange no later than 10 minutes before the announcement to the news media (including when the notice is to be issued outside of Exchange trading hours).

**26502. Record Date**

A company is not permitted to close its stock transfer books for any reason, including the declaration of a dividend. Rather, it must establish a record date for Security holders entitled to a dividend which is at least ten days after the date on which the dividend is declared (declaration date).

A company is also required to give the Exchange at least ten days' notice in advance of a record date established for any other purpose, including meetings of shareholders.

**26503. Form of Notice**



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Immediately after the board of directors has declared a cash, Security or stock dividend, the company should comply with: (a) the notification requirements set forth in Rules 26405 and 26501 and (b) the immediate release policy pursuant to Rules 26401(a) and (b). The announcement and notice should specify the name of the company, date of declaration, amount (per Security) of the dividend, and the record and payment dates.

In the case of stock or Security dividends, payment of cash is required with respect to any distribution (or part of a distribution) that would result in fractional Security interests (see Rule 26507) and the notice to the Exchange should also state the basis for determining the amount (for example, based on the “last sale” on the record date).

The dividend notice should also state the “cut-off” date (usually five to seven days after the record date) until which the transfer agent will accept instructions from brokers as to their requirements for full shares, Securities, or cash with respect to Securities registered in their names, as nominees, and as to which they must make exact allocations among their clients.

**26504. Non-Payment of Dividends**

If a company has been paying regular dividends and its board of directors determines to cease or postpone such payments, this fact should be announced at least twice: first, immediately at the time the board decides to cease or postpone payment, and second, on the next monthly, quarterly, or other periodic date of declaration (assuming it is again decided to omit or postpone payment). Such announcement should be provided to the Exchange pursuant to Rules 26405 and 26501 above and issued to the public pursuant to the immediate release policy set forth in Rules 26401 above. The notice and announcement should be in the form specified in Rule 26503 above.

**26505. Security Dividends or Forward Splits of Lower Priced Issues**

The Exchange does not view favorably a Security dividend or forward split of a Security selling in a low price range or a substantial Security dividend or forward split which may result in an abnormally low price range for Securities after the split or Security dividend. Any company considering a forward split (or a Security dividend of more than 5%) which would result in an adjusted price of less than \$3 per Security should consult with the Exchange in advance of taking formal action. (See also Rule 26970 for information regarding reverse splits.)

**26506. Reserved****26507. Cash in Lieu of Fractional Securities**

The Exchange does not permit fractional interests in Securities. Any distribution or part of a distribution that might result in fractional interests in Securities must be paid in cash.

**26508. Reserved****26509. Dividend or Split-Up Listing Application**

Refer to Rule 26304

**EXHIBIT 5A****26510. Reserved****26511. Definition of “ex-dividend” and “ex-rights”**

The term “ex-dividend” means “without the dividend” and the term “ex-rights” means “without the rights”. The effect of quoting a Security “ex-dividend” or “ex-rights” is that quotations for, and transactions in, the Security on and after the “ex-dividend” or “ex-rights” date reflect the fact that the buyer is not entitled to the dividend or rights.

**NOTE:** Transactions in Securities are not ex-dividend or ex-rights until an announcement to that effect is made by the Exchange.

**26512. Ex-dividend Procedure**

Transactions in Securities (except those made for “cash”) are ex-dividend on the business day preceding the record date. If the record date selected is not a business day, the Security will be quoted ex-dividend on the second preceding business day. “Cash” transactions are ex-dividend on the business day following the record date.

**26513. Ex-Rights Procedure**

In the establishment and announcement of ex-rights dates, the Exchange proceeds as follows:

(a) Subscription Price Not Known—Where the subscription price and all other terms of the rights and subscription offering are not known sufficiently in advance of the record date to determine the value of the rights, the Exchange will rule the Securities ex-rights on the day following the date the rights commence trading (which, in most instances, is a date subsequent to the record date for the subscription offering).

Under such circumstances, the Exchange requires that all deliveries of Securities made after the record date in settlement of transactions made prior to the ex-rights date, and on a “rights on” basis carry “due bills” for the rights.\*

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A “DUE BILL” is an instrument used by Participants, when, for any reason, it becomes necessary to postpone an “ex-dividend” or “ex-rights” date. The due bill has the effect of transferring the right to receive a dividend, distribution or subscription right from the Security holder on the record date to the purchaser of the Security who, at the time of the transaction, paid a “dividend on” or “rights on” price.

**26514. Special Rulings**

As more fully explained in Rule 26521, the Exchange may, in any particular case (such as where conditional, large or valuable dividends are declared, or where the Exchange does not receive timely notice of dividend declarations or offerings of subscription rights), direct that transactions shall be ex-dividend or ex-rights on a day other than that fixed by Exchange rules and may

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prescribe the procedure to be followed in connection therewith. In such instances, on transactions made prior to the ex-dividend or ex-rights date, the Exchange, by special ruling, will require that deliveries too late to effect transfer in the normal course by the record date, shall be accompanied by due bills for the dividend or rights.

**26515. Return of Dividend**

Participants, receiving deliveries in advance of the record date against ex-dividend or ex-rights transactions, who are able to effect transfer of the purchased Security by the record date, will be responsible to return the dividend or rights to the Participant from whom delivery was received.

**26516. Reserved****26517. Optional Dividends**

When a dividend is payable at the option of the Security holder, in either cash or securities, the Securities will be ex-dividend the value of the cash or securities, whichever is greater.

**26518. Canadian Currency**

When a dividend is payable in Canadian currency, the stock will be “ex” the amount of the dividend in U.S. currency, at the rate of exchange prevailing on the ex-dividend date. Orders will not be reduced to an ex-dividend basis by the amount of any tax on the dividend deductible at the source.

**26519. American Depositary Receipts**

In the case of American shares or American Depositary Receipts for stocks of foreign (other than Canadian) corporations, the reduction of orders to an ex-dividend basis shall be for the net amount of the dividend in U.S. currency after giving effect to all deductions, including taxes, foreign exchange discount, and the expenses of the Depositary.

**26520. Reserved****26521. Special Ex-dividend Rulings**

- (a) Late Notices—If, as required by Exchange rules, the Exchange does not receive a notice of a dividend declaration sufficiently in advance of a record date to permit a Security to be quoted “ex-dividend” in the usual manner, the Exchange quotes the Security “ex-dividend” as soon as possible following receipt of notice of the dividend. The Exchange also rules that the “dividend on” purchaser (in transactions made during the interval between the date when the Security should have been quoted “ex” and the date when the Security is actually quoted “ex”) is entitled to receive the dividend from the seller. The seller in such transactions is required to give to the purchaser a due bill, covering the amount of the dividend, to be redeemed subsequent to the payment date for the dividend.

The use of due bills causes vexing problems between Participants and their customers because it is often difficult to explain to the selling customer why he should give up a dividend paid to him by the company. Therefore, the Exchange requires listed companies

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to furnish to the Exchange timely notification of dividend declarations (i) as many days as possible in advance of the record date and, in any event, (ii) no less than ten (10) days in advance of the record date.

- (b) **Large or Valuable Dividends, Dividends “Not In Kind”, and Split-ups Effected as Distributions**—When large or valuable cash, stock or Security dividends (usually 20% or more), or a dividend “not in kind” (i.e., a distribution of securities of another issuer), or a split-up is declared, it is the policy of the Exchange to postpone the “ex-dividend” or “ex-distribution” date until the dividend has been paid. The reason for this is so that the Security is not quoted at the substantially lower “ex-dividend” or “ex-distribution” price until the distribution is received by Security holders. If this were not the case, the collateral value of the Security would be reduced between the “ex” date and payment date, and the Security holder might be required to provide additional collateral.

In the case of dividends “not in kind” (regardless of its size in relation to the listed Security), it will be necessary to postpone the “ex-dividend” date in the event a market does not exist in the security to be distributed at the time the listed issue would normally be quoted “ex-dividend”.

In all of the above instances, the postponement of the “ex” date until after the payment date makes it possible for Security holders to sell all of their holdings at one time, on a “dividend on” basis (prior to the “ex” date). As a result, purchasers of the Security prior to the “ex” date continue to pay a “dividend on” price, but will not receive the dividend payment from the company. Accordingly, the Exchange rules that the “dividend on” purchaser is entitled to receive the dividend from the seller. The seller, in turn, is required to give the purchaser a due bill, covering the amount of the dividend, to be redeemed on the date fixed by the Exchange.

- (c) **“Cash” Transactions**—The Ex-Dividend Rule of the Exchange specifies that “cash” transactions (in which delivery of the security must be made on the date of the transaction) shall be “ex-dividend” on the business day following the record date.

**26522. Price Adjustment of Open Orders on “Ex-Date”**

- (a) When a Securities quoted ex-dividend, ex-distribution, ex-rights or ex-interest, all open orders to buy and open stop orders to sell shall be reduced by the cash value of the payment or rights, except where the Security is quoted "ex" a Security dividend or Security distribution, in which case the provisions of paragraph (b) apply.
- (b) When a Security is quoted "ex" a Security dividend, or Security distribution all open orders, including open orders to sell and open orders to buy, shall be reduced by the proportional value of the dividend.

NOTE: The fact that a Security is quoted "ex-dividend" does not mean that the initial sale of the Security "ex-dividend" will always be lower, by the amount of the dividend, than the last preceding "dividend on" sale. In many instances this does happen. Other times,

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however, Securities sell "ex-dividend" at prices (lower or higher than the preceding "dividend on" sale) unrelated to the amount of the dividend, since factors other than "ex-dividend" dates influence prices.

**26600 – Accounting; Annual and Quarterly Reports****26601. Reserved****26602. Reserved****26603. Change in Accountants**

A listed company is required to notify the Exchange (prior to filing its 8-K) if it changes independent accountants; and must state the reason for such change.

**26604. Defaults**

A listed company must immediately notify the Exchange whenever there exists: (a) an event of default in any technical covenant of its outstanding loan agreements; (b) a default in interest or principal payments on outstanding indebtedness; (c) a default in cumulative dividend payments on an outstanding preferred stock issue; (d) a default in cumulative dividend payments on an outstanding preferred Securities or (e) a failure to meet the sinking fund or redemption provisions of any outstanding debt or equity issues of the company.

**26605. Peer Review**

- (a) A listed company must be audited by an independent public accountant that:
  - (1) has received an external quality control review by an independent public accountant ("peer review") that determines whether the auditor's system of quality control is in place and operating effectively and whether established policies and procedures and applicable auditing standards are being followed; or
  - (2) is enrolled in a peer review program and within 18 months receives a peer review that meets acceptable guidelines.
- (b) The following guidelines are acceptable for the purposes of Rule 26605:
  - (1) the peer review should be comparable to AICPA standards included in Standards for Performing on Peer Reviews, codified in the AICPA's SEC Practice Section Reference Manual;
  - (2) the peer review program should be subject to oversight by an independent body comparable to the organizational structure of the Public Oversight Board as codified in the AICPA's SEC Practice Section Reference Manual; and
  - (3) the administering entity and the independent oversight body of the peer review program must, as part of their rules of procedure, require the retention of the peer review working papers for 90 days after acceptance of the peer review report and allow the Exchange access to those working papers.

**EXHIBIT 5A****26606-26609. Reserved****26610. Publication of Annual Report**

- (a) Any listed company that is required to file with the SEC an annual report that includes audited financial statements (including on Forms 10-K, 20-F, 40-F or N-CSR) is required to simultaneously make such annual report available to Security holders on or through the company's website.

A company must also post to its website a prominent undertaking in the English language to provide all holders (including preferred stockholders, preferred Security holders and bondholders) the ability, upon request, to receive a hard copy of the company's complete audited financial statements free of charge and simultaneously issue a press release stating that its annual report has been filed with the SEC. This press release must also specify the company's website address and indicate that shareholders have the ability to receive a hard copy of the company's complete audited financial statements free of charge upon request. The company must provide such hard copies within a reasonable period of time following the request. Moreover, the press release must be published pursuant to the Exchange's press release policy (see Rule 26401 above).

A listed company that:

- is subject to the U.S. proxy rules that provides its audited financial statements (as included on Forms 10-K, 20-F and 40-F) to beneficial shareholders in a manner that is consistent with the physical or electronic delivery requirements applicable to annual reports set forth in Rules 14a-3 and 14a-16 of the U.S. proxy rules, or
- is an issuer not subject to the U.S. proxy rules that provides its audited financial statements (as included on Forms 10-K, 20-F and 40-F) to beneficial shareholders in a manner that is consistent with the physical or electronic delivery requirements applicable to annual reports set forth in Rules 14a-3 and 14a-16 of the U.S. proxy rules,

is not required to issue the press release or post the undertaking required above. A company that fails to file its annual report on Forms 10-K, 20-F, 40-F or N-CSR with the SEC in a timely manner is subject to the compliance procedures set forth in Rule 27007.

- (b) A listed company that receives an audit opinion that contains a going concern emphasis must make a public announcement through the news media disclosing the receipt of such opinion. Prior to the release of the public announcement, the listed company must provide such announcement to the Exchange in a manner consistent with the requirements for the provision of material news to the Exchange under Rule 26401 hereof. The public announcement shall be made contemporaneously with the filing of such audit opinion in a public filing with the Securities and Exchange Commission.

**EXHIBIT 5A****26611-26615. Reserved****26616. President's Letter**

Most annual reports contain a letter to shareholders from the President or other officer of the company. The Exchange expects that such letter, as well as all other releases and statements by the company, will be factual and that judgment and restraint will be used in not publicizing information which may be construed as over-optimistic, slanted or promotional. (See Rules 26401-26404 for a further discussion of the Exchange's disclosure requirements.)

**26617-26622. Reserved****26623. Dissemination**

Interim statements (unaudited) are not required to be sent to Security holders by any company whose common stock or equity Securities is listed on a national securities exchange. (However, many companies do send such statements.)

Companies whose common stock or Securities are not listed on a national securities exchange must send interim statements (unaudited) to holders of its Securities which are listed on BSTX.

Interim statements of sales and earnings must be on the basis of the same degree of consolidation as the annual report. Such statements should disclose any substantial items of unusual or nonrecurrent nature and will show net income before and after federal income taxes.

As a matter of fairness, corporations which distribute interim reports to shareholders should distribute such reports to both registered and beneficial shareholders.

In all cases, such information (whether or not furnished to Security holders) must be disseminated in the form of a press release to one or more newspapers of general circulation in New York regularly publishing financial news and to one or more of the national news-wire services. A copy must also be sent to the Exchange. Further information on the handling of press releases is set forth in Rules 26401-26404.

**26624. Exceptions**

Exception to the Exchange's requirement that quarterly results be distributed in the form of a press release is made only in cases where conditions peculiar to the type of company, or to the particular company itself, would make such a release impracticable or misleading, as in the case of companies dependent upon long-term contracts, or companies dependent upon the growth and sale of a crop in an annual cycle, or companies operating under conditions which make such releases virtually impossible or misleading.

When the Exchange is convinced that the release of quarterly results is impracticable, or could be misleading, it may require an agreement to release a semi-annual statement of sales and earnings, or an interim statement of certain operating statistics which will serve to indicate the trend of the company's business during the period between annual reports. Only when the Exchange is

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convinced that any type of interim release is either impracticable, or misleading, will an agreement calling merely for publication of annual statements be accepted.

**NOTE:** Any agreement between the Exchange and a listed company on the issuance of quarterly operating results does not alter the company's obligation to publish quarterly statements pursuant to SEC rules.

**26700 – Shareholders' Meetings, Approval and Voting of Proxies****26701. Filing Material Distributed to Shareholders**

A listed company is required to file with the Exchange five copies of proxy statements, forms of proxy and other soliciting materials distributed to shareholders. A listed company is also required to file with the Exchange one copy of the notice of shareholders' meetings and three copies of annual reports distributed to shareholders. Copies of such material should be sent to the Exchange when distributed to shareholders, unless the material was otherwise filed electronically with the SEC (See Rule 27101).

**IM-26701-1**

Proxy statements, forms of proxy and other soliciting materials shall be distributed by such means as are permitted or required by applicable law and regulation (including any interpretations thereof by the SEC). Companies should also note Rule 26722 applicable to Participants regarding transmission of proxy material to customers.

**26702. Reserved****26703. Notice of Meetings**

A listed company is required to give shareholders written notice at least ten days in advance of all shareholders' meetings, and to provide for such notice in its by-laws.

In addition, the company must immediately notify the Exchange when it establishes a date for the taking of a record of its shareholders. Such notice must be given at least ten days in advance of the record date.

**NOTE:** Exchange rules prohibit the closing of a listed company's transfer books, for any purpose.

The Exchange recommends that such notice and proxy-soliciting material be received by shareholders as many days as possible (preferably at least 20 days) in advance of the meeting. A similar arrangement should be followed in delivering such proxy material to Participants in order to allow such organizations ample time to mail the material to, and receive voting instructions from, beneficial owners.



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Companies should be aware that the Exchange's proxy rules provide that in the case of a routine meeting (see Rule 26723), if the proxy material is distributed by a Participant, as record holder, to the beneficial owners of the Securities, at least 15 days before the meeting, and voting instructions from the beneficial owner are not received ten days prior to the meeting, the Participant may then vote the proxy in its discretion. Otherwise, the Participant must receive specific voting instructions from its customers.

If a company plans to request brokers to forward proxy-soliciting material to customers, it should communicate with the brokers at least ten days in advance of the voting record date for the meeting:

- (a) informing them of the record and meeting dates:
- (b) providing them with a return postcard on which they may indicate the number of sets of proxy material required for transmittal to customers; and
- (c) agreeing to reimburse them for out-of-pocket expenses incurred in handling the material.  
The sets of proxy material distributed to Participants should include the required number of proxies and annual reports to assure compliance with the rules and regulations of the Exchange and the SEC.

**26704. Annual Meetings**

Each issuer listing equity Securities or voting preferred Securities, and/or their equivalents, shall hold an annual meeting of shareholders no later than one year after the end of the issuer's fiscal year.

**IM-26704-1**

At each annual meeting, shareholders must be afforded the opportunity to discuss company affairs with management and, if required by the issuer's governing documents, to elect directors. A new listing that was not previously subject to a requirement to hold an annual meeting is required to hold its first annual meeting within one year after its first fiscal year-end following listing. In addition, an issuer is not required to hold an annual meeting:

- With respect to any fiscal year less than 12 months long that results from a change in fiscal year end; or
- In the year in which it completes an initial public offering.

However, the Exchange's annual meeting requirement does not supplant any applicable state or federal securities laws concerning annual meetings.

**26705. Meetings and Solicitations of Proxies Required**

**EXHIBIT 5A**

A listed company is required, with respect to any matter requiring authorization by its shareholders, to either (a) hold a meeting of its shareholders in accordance with its charter, by-laws and applicable state or other laws and to solicit proxies (pursuant to a proxy statement conforming to the proxy rules of the SEC) for such meeting of shareholders, or, (b) use written consents in lieu of a special meeting of shareholders as permitted by applicable law. The Exchange has no separate requirements with respect to the solicitation of such consents, but listed companies must comply with applicable state and federal laws and rules (including interpretations thereof), including without limitation, SEC Regulations 14A and 14C.

**26706 - 26709. Reserved****26710. Vote Required**

- (a) With respect to votes cast on a proposal in person or by proxy, the minimum vote, under Rules 26711, 26712 and 26713, which will constitute shareholder approval for listing purposes, is defined as approval by a majority of votes cast. (See Rule 26123 regarding quorum requirements.) With respect to the use of written consents in lieu of a special shareholders meeting, the written consent to the proposal of holders of a majority of the shares entitled to vote will constitute shareholder approval for listing purpose under Rules 26711, 26712 and 26713.
- (b) An exception to the shareholder approval requirements contained in Rules 26711, 26712 and 26713 below may be made with respect to a specified issuance of Securities upon prior written application to the Exchange when (1) the delay in securing shareholder approval would seriously jeopardize the financial viability of the enterprise, and (2) reliance by the company on this exception is expressly approved by the audit committee of the company's board of directors or a comparable body of the board of directors comprised solely of independent, disinterested directors. The company is not permitted to issue, or to authorize its transfer agent or registrar to issue or register the Securities in question until it has received written notification from the Exchange that the exception to the shareholder approval requirements has been granted and the Securities have been approved for listing pursuant to Rule 26301.

A company that receives such an exception must mail to all shareholders not later than ten days before issuance of the Securities a letter alerting them to its omission to seek the shareholder approval that would otherwise be required. Such notification shall disclose the terms of the transaction (including the number of equity Securities that could be issued and the consideration received), the fact that the company is relying on a financial viability exception to the shareholder approval rules, and that the audit committee or a comparable body of the board of directors comprised solely of independent, disinterested directors has expressly approved the company's reliance on the exception. The company shall also make a public announcement through the news media disclosing the same information as promptly as possible, but no later than ten days before the issuance of the Securities.

**26711. Shareholder Approval of Option and Equity Compensation Plans**

**EXHIBIT 5A**

Approval of shareholders is required in accordance with Rule 26705 with respect to the establishment of (or material amendment to) a stock option or purchase plan or other equity compensation arrangement pursuant to which options, or stock (or Securities) may be acquired by officers, directors, employees, or consultants, regardless of whether or not such authorization is required by law or by the company's charter, except for:

- (a) issuances to an individual, not previously an employee or director of the company, or following a bona fide period of non-employment, as an inducement material to entering into employment with the company provided that such issuances are approved by the company's independent compensation committee or a majority of the company's independent directors, and, promptly following an issuance of any employment inducement grant in reliance on this exception, the company discloses in a press release the material terms of the grant, including the recipient(s) of the grant and the number of shares involved; or
- (b) tax-qualified, non-discriminatory employee benefit plans (e.g., plans that meet the requirements of Section 401(a) or 423 of the Internal Revenue Code) or parallel nonqualified plans, provided such plans are approved by the company's independent compensation committee or a majority of the company's independent directors; or plans that merely provide a convenient way to purchase shares in the open market or from the issuer at fair market value; or
- (c) a plan or arrangement relating to an acquisition or merger; or
- (d) warrants or rights issued generally to all security holders of the company or stock (or Security) purchase plans available on equal terms to all security holders of the company (such as a typical dividend reinvestment plan).

A listed company is required to notify the Exchange in writing with respect to the use of any of the exceptions set forth in paragraphs (a) through (d).

**IM-26711-1**

Rule 26711 requires shareholder approval when a plan or other equity compensation arrangement is established or materially amended. For these purposes, a material amendment would include, but not be limited to, the following:

- (a) any material increase in the number of shares to be issued under the plan (other than to reflect a reorganization, share split, merger, spinoff or similar transaction);
- (b) any material increase in benefits to participants, including any material change to: (i) permit a repricing (or decrease in exercise price) of outstanding options, (ii) reduce the price at which shares, or options to purchase shares may be offered, or (iii) extend the duration of a plan;
- (c) any material expansion of the class of participants eligible to participate in the plan; and

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(d) any expansion in the types of options or awards provided under the plan.

While general authority to amend a plan would not obviate the need for shareholder approval, if a plan permits a specific action without further shareholder approval, then no such approval would generally be required. However, if a plan contains a formula for automatic increases in the shares available (sometimes called an “evergreen formula”), or for automatic grants pursuant to a dollar-based formula (such as annual grants based on a certain dollar value, or matching contributions based upon the amount of compensation the participant elects to defer), such plans cannot have a term in excess of ten years unless shareholder approval is obtained every ten years. Plans that do not contain a formula and do not impose a limit on the number of shares available for grant would require shareholder approval of each grant under the plan. A requirement that grants be made out of treasury shares or repurchased shares will not alleviate these additional shareholder approval requirements.

As a general matter, when preparing plans and presenting them for shareholder approval, issuers should strive to make plan terms easy to understand. In that regard, it is recommended that plans meant to permit repricing use explicit terminology to make this clear.

Rule 26711 provides an exception to the requirement for shareholder approval for warrants or rights offered generally to all security holders. In addition, an exception is provided for tax qualified, non-discriminatory employee benefit plans as well as parallel nonqualified plans, as these plans are regulated under the Internal Revenue Code and Treasury Department regulations. An equity compensation plan that provides non-U.S. employees with substantially the same benefits as a comparable tax-qualified, non-discriminatory employee benefit plan or parallel nonqualified plan that the issuer provides to its U.S. employees, but for features necessary to comply with applicable foreign tax law, is also exempt from shareholder approval under this rule.

Further, there is an exception for inducement grants to new employees because in these cases a company has an arm’s length relationship with the new employees. Inducement grants for these purposes include grants of options or stock to new employees in connection with a merger or acquisition. Rule 26711 requires that such issuances must be approved by the issuer’s independent compensation committee or a majority of the issuer’s independent directors. Also, promptly following an issuance of any employment inducement grant in reliance on this exception, the listed company must disclose in a press release the material terms of the grant, including the recipient(s) of the grant and the number of shares involved.

In addition, plans or arrangements involving a merger or acquisition do not require shareholder approval in two situations. First, shareholder approval will not be required to convert, replace or adjust outstanding options or other equity compensation awards to reflect the transaction. Second, shares available under certain plans acquired in acquisitions and mergers may be used for certain post-transaction grants without further shareholder approval. This exception applies to situations where the party which is not a listed company following the transaction has shares available for grant under pre-existing plans that meet the requirements of this Rule 26711. These shares may be used for post-transaction grants of options and other equity awards by the listed

**EXHIBIT 5A**

company (after appropriate adjustment of the number of shares to reflect the transaction), either under the pre-existing plan or arrangement or another plan or arrangement, without further shareholder approval, provided: (1) the time during which those shares are available for grants is not extended beyond the period when they would have been available under the pre-existing plan, absent the transaction, and (2) such options and other awards are not granted to individuals who were employed by the granting company or its subsidiaries at the time the merger or acquisition was consummated. A plan or arrangement adopted in contemplation of the merger or acquisition transaction would not be viewed as pre-existing for purposes of this exception. This exception is appropriate because it will not result in any increase in the aggregate potential dilution of the combined enterprise. In this regard, any additional shares available for issuance under a plan or arrangement acquired in connection with a merger or acquisition would be counted in determining whether the transaction involved the issuance of 20% or more of the company's outstanding Equity shares, thus triggering the shareholder approval requirements of Rule 26712(b).

Inducement grants, tax qualified non-discriminatory benefit plans, and parallel nonqualified plans are subject to approval by either the issuer's independent compensation committee, or a majority of the issuer's independent directors. A listed company is not permitted to use repurchased shares to fund option plans or grants without prior shareholder approval. In addition, the issuer must notify the Exchange in writing when it uses any of these exceptions (see also Rule 26300 Series with respect to the requirements applicable to additional listing of the underlying shares).

**IM-26711-2**

The term "parallel nonqualified plan" means a plan that is a "pension plan" within the meaning of the Employee Retirement Income Security Act ("ERISA"), 29 U.S.C. §1002 (1999), that is designed to work in parallel with a plan intended to be qualified under Internal Revenue Code Section 401(a), to provide benefits that exceed the limits set forth in Internal Revenue Code Section 402(g) (the section that limits an employee's annual pre-tax contributions to a 401(k) plan), Internal Revenue Code Section 401(a)(17) (the section that limits the amount of an employee's compensation that can be taken into account for plan purposes) and/or Internal Revenue Code Section 415 (the section that limits the contributions and benefits under qualified plans) and/or any successor or similar limitations that may thereafter be enacted. However, a plan will not be considered a parallel nonqualified plan unless (i) it covers all or substantially all employees of an employer who are participants in the related qualified plan whose annual compensation is in excess of the limit of Code Section 401(a)(17) (or any successor or similar limitation that may hereafter be enacted) and (ii) its terms are substantially the same as the qualified plan that it parallels except for the elimination of the limitations described in the preceding sentence; and (iii) no participant receives employer equity contributions under the plan in excess of 25% of the participant's cash compensation.

**26712. Acquisitions**

**EXHIBIT 5A**

Approval of shareholders is required in accordance with Rule 26705 as a prerequisite to approval of applications to list additional shares to be issued as sole or partial consideration for an acquisition of the equity or assets of another company in the following circumstances:

- (a) if any individual director, officer or substantial shareholder of the listed company has a 5% or greater interest (or such persons collectively have a 10% or greater interest), directly or indirectly, in the company or assets to be acquired or in the consideration to be paid in the transaction and the present or potential issuance of equity Securities or common stock, or securities convertible into equity Securities or common stock, could result in an increase in total outstanding equity Securities and common stock of 5% or more; or
- (b) where the present or potential issuance of equity Securities, or securities convertible into equity Securities or common stock, could result in an increase in total outstanding equity Securities and common stock of 20% or more.

**IM-26712-1**

A series of closely related transactions may be regarded as one transaction for the purpose of this policy. Companies engaged in merger or acquisition discussions must be particularly mindful of the Exchange's timely disclosure policies. In view of possible market sensitivity and the importance of providing investors with sufficient information relative to an intended merger or acquisition, listed company representatives are strongly urged to consult with the Exchange in advance of such disclosure.

**26713. Other Transactions**

The Exchange will require shareholder approval in accordance with Rule 26705 as a prerequisite to approval of applications to list additional Securities in the following circumstances:

- (a) when the additional shares will be issued in connection with a transaction involving:
  - (1) the sale, issuance, or potential issuance by the issuer of equity Securities or common stock (or securities convertible into equity Securities or common stock) at a price less than the greater of book or market value which together with sales by officers, directors or principal shareholders of the issuer equals 20% or more of total equity Securities and common stock presently outstanding; or
  - (2) the sale, issuance, or potential issuance by the issuer of equity Securities or common stock (or securities convertible into equity Securities or common stock) equal to 20% or more of total equity Securities and common stock presently outstanding for less than the greater of book or market value of the equity Securities and common stock; or
- (b) when the issuance or potential issuance of additional shares will result in a change of control of the issuer, including, but not limited to, those issuances that constitute a Reverse Merger as specified in Rule 26341.

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The Exchange should be consulted whenever an issuer is considering issuing a significant percentage of its shares, to ascertain whether shareholders' approval will be required under this rule.

**NOTE:** This rule does not apply to public offerings.

**IM-26713-1**

Rule 26713 provides that shareholder approval is required for “a transaction involving the sale or issuance by the company of equity Securities or common stock (or securities convertible into or exercisable for equity Securities or common stock) equal to 20 percent or more of total Securities and common stock presently outstanding for less than the greater of book or market value of the Security or common stock.” Under this rule, shareholder approval is not required for a “public offering.”

Issuers are encouraged to consult with the Exchange in order to determine if a particular offering is a “public offering” for purposes of the shareholder approval rules. Generally, a firm commitment underwritten securities offering registered with the Securities and Exchange Commission will be considered a public offering for these purposes. Likewise, any other securities offering which is registered with the Securities and Exchange Commission and which is publicly disclosed and distributed in the same general manner and extent as a firm commitment underwritten securities offering will be considered a public offering for purposes of the shareholder approval rules. However, the Exchange will not treat an offering as a “public offering” for purposes of the shareholder approval rules merely because they are registered with the Commission prior to the closing of the transaction.

When determining whether an offering is a “public offering” for purposes of these rules, the Exchange will consider all relevant factors, including but not limited to:

- (i) the type of offering (including whether the offering is conducted by an underwriter on a firm commitment basis, or an underwriter or placement agent on a best-efforts basis, or whether the offering is self-directed by the issuer);
- (ii) the manner in which the offering is marketed (including the number of investors offered securities, how those investors were chosen, and the breadth of the marketing effort);
- (iii) the extent of the offering's distribution (including the number and identity of the investors who participate in the offering and whether any prior relationship existed between the issuer and those investors);
- (iv) the offering price (including the extent of any discount to the market price of the Securities offered); and
- (v) the extent to which the issuer controls the offering and its distribution.

**EXHIBIT 5A****26714 – 26719. Reserved****26720. Application of Proxy Rules**

Rules 26720 through 26725 and Rule 22020, inclusive applies to Participants regardless of whether the Security involved is traded on the Exchange. However, if a conflict arises between this rule and those of another registered national securities association or exchange, the rules of the Exchange apply only if it is the principal market for the Security.

**IM-26720-1**

All Participants are expected to be familiar with the proxy rules of the Securities and Exchange Commission.

**26721. Giving of Proxies—Restrictions on Participants**

No Participant shall give or authorize the giving of a proxy to vote Securities registered in its name, or in the name of its nominee, except as required or permitted under the provisions of Rule 26723, unless such Participant is the beneficial owner of such Securities. Notwithstanding the foregoing.

(1) any Participant designated by a named fiduciary as the investment manager of Securities held as assets of an ERISA Plan that expressly grants discretion to the investment manager to manage, acquire, or dispose of any plan asset and which has not expressly reserved the proxy voting right for the named fiduciary may vote the proxies in accordance with its ERISA Plan fiduciary responsibilities; and

(2) any person registered as an investment adviser either under the Investment Advisers Act of 1940 or under the laws of a state, who exercises investment discretion pursuant to an advisory contract for the beneficial owner and has been designated in writing by the beneficial owner to vote the proxies for Securities which is in the possession or control of the Participant, may vote such proxies.

**IM-26721-1**

The term “state” as used in Rules 26721, 26722, 26723 and 26725 shall have the meaning given to such term in Section 202(a)(19) of the Investment Advisers Act of 1940, as such term may be amended from time to time therein.

**26722. Transmission of Proxy Material to Customers**

(a) Whenever a person soliciting proxies shall furnish a Participant:

(1) copies of all soliciting material which such person is sending to registered holders, and



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(2) satisfactory assurance that he will reimburse such Participant for all out-of-pocket expenses, including reasonable clerical expenses, incurred by such Participant in connection with such solicitation, such Participant shall transmit to each beneficial owner of Securities which is in its possession or control or to an investment adviser registered either under the Investment Advisers Act of 1940 or under the laws of a state, who exercises investment discretion pursuant to an advisory contract for the beneficial owner and has been designated in writing by the beneficial owner of such Security (hereinafter “designated adviser”) to receive soliciting material in lieu of the beneficial owner, the material furnished; and

(b) such Participant shall transmit with such material either:

(1) a request for voting instructions and, as to matters which may be voted without instructions under Rule 26723, a statement to the effect that, if such instructions are not received by the tenth day before the meeting, the proxy may be given at discretion by the owner of record of the Security; provided, however, that such statement may be made only when the proxy soliciting material is transmitted to the beneficial owner of the Security or to the beneficial owner’s designated investment adviser, at least fifteen days before the meeting. When the proxy soliciting material is transmitted to the beneficial owner of the Security or to the beneficial owner’s designated investment adviser twenty-five days or more before the meeting, the statement accompanying such material shall be to the effect that the proxy may be given fifteen days before the meeting at the discretion of the owner of record of the Security; or

(2) a signed proxy indicating the number of Securities held for such beneficial owner and bearing a symbol identifying the proxy with proxy records of such Participant, and also a letter informing the beneficial owner or the beneficial owner’s designated investment adviser, of the necessity for completing the proxy form and forwarding it to the person soliciting proxies in order that the Securities may be represented at the meeting.

**IM-26722-1 Annual reports to be transmitted**

The annual report shall be transmitted to beneficial owners or to the beneficial owners’ designated investment advisers under the same conditions as those applying to proxy soliciting material under Rule 26722 even though it is not proxy-soliciting material under the proxy rules of the Securities and Exchange Commission.

**IM-26722-2 Forms of letters to clients requesting voting instructions**

The BSTX Listing Supplement contains specimens of letters containing the information and instructions required pursuant to the proxy rules to be given to clients in the circumstances indicated in the appropriate heading. These are shown as examples and not as prescribed forms. Participants are permitted to adapt the form of these letters for their own purposes provided all of the required information and instructions are clearly enumerated in letters to clients.

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These letters are designed to permit furnishing to clients the actual proxy form for use in transmitting instructions to the Participant.

**IM-26722-3 Forwarding of signed proxy**

The following conditions shall be met by a Participant adopting the procedure of sending signed proxies to customers:

- (1) Each signed proxy sent to a customer shall contain a code number for identification and the exact number of Securities held of record for the account of the customer.
- (2) Signed proxies sent to customers shall be accompanied by appropriate instructions to the customer for transmitting his vote to the company.
- (3) The Participant shall advise the company of the number of proxies sent to customers and the identifying numbers and Securities represented by such proxies.
- (4) When requested by a company, the Participant shall send a follow-up request to customers whose proxies have not been received by the company.
- (5) Records of the Participant covering the solicitation of proxies shall show:
  - (a) the date of receipt of the proxy material from the issuer or other person soliciting the proxies;
  - (b) names of customers to whom the material and proxies are sent, and the date of mailing;
  - (c) the number of Securities covered by each proxy;
  - (d) the code number of each customer's proxy.

**IM-26722-4 Forms of letters to clients to accompany signed proxies**

The BSTX Listing Supplement contains specimens of letters containing the information and instructions required pursuant to the proxy rules to be given to clients in the circumstances indicated in the appropriate heading. These are shown as examples and not as prescribed forms.

**IM-26722-5 Method to be used in transmission of proxy material**

First class mail should be used to facilitate the obtaining of voting instructions or forwarding signed proxies, unless another method is specified by the persons for whom the material is transmitted.

**IM-26722-6 Duty to transmit even when requested not to**

**EXHIBIT 5A**

The proxy material must be sent to a beneficial owner even though such owner has instructed the Participant not to do so, unless the beneficial owner has instructed the Participant in writing to send such material to the beneficial owner's designated investment adviser.

**IM-26722-7 Duty of out-of-town Participants**

If securities are held in an omnibus account for an out-of-town or non-clearing BSTX Participant organization, it is incumbent upon the out-of-town or non-clearing BSTX Participant to see that the necessary proxy material is transmitted to the beneficial owners and that the proper records relative thereto are kept.

**IM-26722-8 Approved charges by Participants in connection with proxy solicitations.**

The rates of reimbursement of Participants for all out-of-pocket expenses must be fair and reasonable, including reasonable clerical expenses, incurred in connection with proxy solicitations pursuant to Rule 26722 and in mailing interim reports or other material pursuant to Rule 26725. In addition to the charges specified in this schedule, BSTX Participants also are entitled to receive reimbursement for: (i) actual postage costs (including return postage at the lowest available rate); (ii) the actual cost of envelopes (provided they are not furnished by the person soliciting proxies); and (iii) any actual communication expenses (excluding overhead) incurred in receiving voting returns either telephonically or electronically.

**Charges for Initial Proxy and/or Annual Report Mailings**

40¢ for each set of proxy material, i.e., proxy statement, form of proxy and annual report when mailed as a unit, unless an opposition proxy statement has been furnished to security holders, with a minimum of \$5.00 for all sets mailed;

\$1.00 for each set of proxy material, i.e., proxy statement, form of proxy and annual report when mailed as a unit, for a meeting for which an opposition proxy statement has been furnished to security holders, with a minimum of \$5.00 for all sets mailed;

15¢ for each copy, plus postage, for annual reports, which are mailed separately from the proxy material pursuant to the instruction of the person soliciting proxies, with a minimum charge of \$3.00 for all sets mailed.

Supplemental proxy fees for intermediaries that coordinate multiple nominees:

\$20.00 per nominee plus (i) 10¢ for each set of proxy material, with respect to issuers whose shares are held in fewer than 200,000 nominee accounts, or (ii) 5¢ for each set of proxy material, with respect to issuers whose shares are held in at least 200,000 nominee accounts.

**Charges for Proxy Follow-up Mailings**

40¢ for each set of follow-up materials, plus postage.

**EXHIBIT 5A****Charges for Interim Report Mailings**

15¢ for each copy, plus postage, for interim reports, annual reports if mailed separately, post meeting reports or other material, with a minimum of \$2.00 for all sets mailed.

BSTX Participants may charge for envelopes, provided they are not furnished by the person soliciting proxies.

**Incentive Fees**

An "Incentive Fee" (as defined below) for proxy material mailings, including the annual report, and 10¢ for interim report mailings, with respect to each account where the BSTX Participants has eliminated the need to send materials in paper format through the mails (such as by including multiple proxy ballots or forms in one envelope with one set of material mailed to the same household, by distributing multiple proxy ballots or forms electronically thereby reducing the sets of material mailed, or by distributing some or all material electronically.)

With respect to issuers whose shares are held in at least 200,000 nominee accounts, the Incentive Fee shall be 25¢.

With respect to issuers whose shares are held in fewer than 200,000 nominee accounts, the Incentive Fee shall be 50¢.

**IM-26722-9.0**

Proxy solicitation surcharge payable by issuers in connection with Rules 14b-1(c) and 17a-3(a)(9)(ii) of the Securities Exchange Act of 1934. The following describes the acceptable surcharge on issuers (as a fair and reasonable rate of reimbursement of Participants) for direct and indirect expenses associated with start-up costs incurred to comply with Rules 14b-1(c) and 17a-3(a)(9)(ii) of the Securities Exchange Act of 1934:

**Surcharge For Proxy Mailings For Annual Meetings**

A surcharge for each set of proxy material, i.e. proxy statement and form of proxy (not including follow-up mailings), mailed in connection with each of the issuer's next two annual meetings held after March 28, 1985, at the following rates: 20¢ for each set of proxy material mailed in connection with the first such annual meeting; and 18 1/2¢ for each set of proxy material mailed in connection with the second such annual meeting. This surcharge will be in addition to the appropriate charge(s) specified in IM-26722-8 regarding approved charges by Participants in connection with proxy solicitations and IM-26725-2 regarding mailing charges by BSTX Participants.

**IM-26722-9.1**

**EXHIBIT 5A**

The following is a fair and reasonable rate of reimbursement of Participants for out-of-pocket expenses (except as referred to below), including reasonable clerical expenses, incurred in connection with furnishing non-objecting beneficial ownership information to requesting issuers pursuant to Rule 14b-1(c) of the Securities Exchange Act of 1934:

**Charge For Providing Beneficial Ownership Information**

6 1/2% per name of non-objecting beneficial owner provided to a requesting issuer. Where the non-objecting beneficial ownership information is not furnished directly to the issuer by the Participant, but is furnished through an agent designated by the Participant, the issuer will be expected to pay the reasonable expenses of the agent in providing such information, in addition to the rate described above. (See SEC Rules 14a-13(b) and 14c-7(b) under the Securities Exchange Act of 1934 and notes thereto.)

Any Participant that designates an agent for the purpose of furnishing requesting issuers with beneficial ownership information pursuant to SEC Rule 14b-1(c) and thereafter cancels that designation or appoints a new agent for such purpose should promptly inform interested issuers.

**IM-26722-9.3**

Participants are required to mail out such material as provided by Rules 26722 and 26725 when satisfactory assurance is received of reimbursement of expenses at such rates: provided that a Participant may request reimbursement of expenses at less than Exchange approved rates; however, no Participant may seek reimbursement at rates higher than any Exchange approved rates or for items or services not specifically listed by the Exchange without the prior notification to and consent of the person soliciting proxies or the company.

**IM-26722-9.4 “Householding” of Reports**

Rules 26722 and 26725 require Participants to transmit issuer-supplied annual reports, interim reports, proxy statements and other material to beneficial owners. Participants are not required to transmit more than one annual report, interim report, proxy statement or other material to beneficial owners with more than one account (including trust accounts). In addition, Participants may eliminate multiple transmissions of reports, statements or other materials to beneficial owners having the same address, provided they comply with applicable SEC rules with respect thereto (see SEC Rule 14b-1 under the Securities Exchange Act of 1934).

**26723. Giving Proxies By Participants**

A Participant shall give or authorize the giving of a proxy for Securities registered in its name, or in the name of its nominee, at the direction of the beneficial owner. If the Security is not in the control or possession of the Participant, satisfactory proof of the beneficial ownership as of the record date may be required.

**EXHIBIT 5A****(a) Voting Participant Holdings as Executor, etc.**

A Participant may give or authorize the giving of a proxy to vote any Security registered in its name, or in the name of its nominee, if such Participant holds such Securities as executor, administrator, guardian, trustee, or in a similar representative or fiduciary capacity with authority to vote.

**(b) Voting Procedure Without Instructions**

A Participant which has transmitted proxy soliciting material to the beneficial owner of a Security or to an investment adviser registered either under the Investment Advisers Act of 1940 or under the laws of a state who exercises investment discretion pursuant to an advisory contract for the beneficial owner and has been designated in writing by the beneficial owner of such Security (hereinafter “designated investment adviser”) to receive soliciting material in lieu of the beneficial owner and solicited voting instructions in accordance with the provisions of Rule 26722, and which has not received instructions from the beneficial owner or from the beneficial owner’s designated investment adviser by the date specified in the statement accompanying such material, may give or authorize the giving of a proxy to vote such Security, provided the person in the Participant organization giving or authorizing the giving of the proxy has no knowledge of any contest as to the action to be taken at the meeting and provided such action is adequately disclosed to Security holders and does not include authorization for a merger, consolidation or any other matter which may affect substantially the rights or privileges of such Security.

**(c) Instructions on Securities in Names of Other Participants**

A Participant which has in its possession or control Securities registered in the name of another Participant, and which has solicited voting instructions in accordance with the provisions of Rule 26722(b)(1), shall

- (1) Forward to the second Participant any voting instructions received from the beneficial owner, or
- (2) if the proxy-soliciting material has been transmitted to the beneficial owner of the Security in accordance with Rule 26722 and no instructions have been received by the date specified in the statement accompanying such material, notify the second Participant of such fact in order that such Participant may give the proxy as provided in the third paragraph of this rule.

**(d) Signed Proxies for Securities in Names of Other Participants**

A Participant which has in its possession or control Securities registered in the name of another Participant, and which desires to transmit signed proxies pursuant to the provisions of Rule 26722(b)(2), shall obtain the requisite number of signed proxies from such holder of record.

**IM-26723-1 When a Participant may vote without customer instructions.**

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Rule 26723, above, provides that a Participant may give a proxy to vote Securities provided that:

- (1) it has transmitted proxy soliciting material to the beneficial owner of Securities or to the beneficial owner's designated investment adviser in accordance with Rule 26722, and
- (2) it has not received voting instructions from the beneficial owner or from the beneficial owner's designated investment adviser, by the date specified in the statement accompanying such material, and
- (3) the person at the Participant giving or authorizing the giving of the proxy has no knowledge of any contest as to the action to be taken at the meeting and provided such action is adequately disclosed to shareholders and does not include authorization for a merger, consolidation or any matter which may affect substantially the rights or privileges of such Securities.

**IM-26723-2 When Participants may not vote without customer instructions**

In the list of meetings of shareholders, after proxy material has been reviewed by the Exchange, each meeting will be designated by an appropriate symbol to indicate either (a) that Participants may vote a proxy without instructions of beneficial owners, (b) that Participants may not vote specific matters on the proxy, or (c) that Participants may not vote the entire proxy.

Generally speaking, a Participant may not give or authorize a proxy to vote without instructions from beneficial owners when the matter to be voted upon:

- (1) is not submitted to shareholders by means of a proxy statement comparable to that specified in Schedule 14-A of the Securities and Exchange Commission;
- (2) is the subject of a counter-solicitation, or is part of a proposal made by a shareholder which is being opposed by management (i.e., a contest);
- (3) relates to a merger or consolidation (except when the company's proposal is to merge with its own wholly owned subsidiary, provided its shareholders dissenting thereto do not have rights of appraisal);
- (4) involves right of appraisal;
- (5) authorizes mortgaging of property;
- (6) authorizes or creates indebtedness or increases the authorized amount of indebtedness;
- (7) authorizes or creates a preferred Security or stock, or increases the authorized amount of an existing preferred Security or stock;

**EXHIBIT 5A**

- (8) alters the terms or conditions of existing Securities or indebtedness;
- (9) involves waiver or modification of preemptive rights;
- (10) changes existing quorum requirements with respect to shareholder meetings;
- (11) alters voting provisions or the proportionate voting power of a Security, or the number of its votes per Security (except where cumulative voting provisions govern the number of votes per Security for election of directors and the company's proposal involves a change in the number of its directors by not more than 10% or not more than one);
- (12) authorizes the implementation of any equity compensation plan, or any material revision to the terms of any existing equity compensation plan (whether or not shareholder approval of such plan is required by Rule 26711;

Commentary to Item 12 - A Participant may not give or authorize a proxy to vote without instructions on a matter relating to executive compensation, even if such matter would otherwise qualify for an exception from the requirements of Item 12, Item 13 or any other Item under this Rule 26723. See Item 21.

- (13) authorizes
  - (a) a new profit-sharing or special remuneration plan, or a new retirement plan, the annual cost of which will amount to more than 10% of average annual income before taxes for the preceding five years, or
  - (b) the amendment of an existing plan which would bring its cost above 10% of such average annual income before taxes.

Exception may be made in cases of

- (a) retirement plans based on agreement or negotiations with labor unions (or which have been or are to be approved by such unions); and
- (b) any related retirement plan for benefit of non-union employees having terms substantially equivalent to the terms of such union-negotiated plan, which is submitted for action of shareholders concurrently with such union-negotiated plan.

Commentary to Item 13 - A Participant may not give or authorize a proxy to vote without instructions on a matter relating to executive compensation, even if such matter would otherwise qualify for an exception from the requirements of Item 12, Item 13 or any other Item under this Rule 26723. See Item 21.



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- (14) changes the purposes or powers of a company to an extent which would permit it to change to a materially different line of business and it is the company's stated intention to make such a change;
- (15) authorizes the acquisition of property, assets, or a company, where the consideration to be given has a fair value approximating 20% or more of the market value of the previously outstanding Securities;
- (16) authorizes the sale or other disposition of assets or earning power approximating 20% or more of those existing prior to the transaction;
- (17) authorizes a transaction not in the ordinary course of business in which an officer, director or substantial security holder has a direct or indirect interest;
- (18) reduces earned surplus by 51% or more, or reduces earned surplus to an amount less than the aggregate of three years' Security dividends computed at the current dividend rate;
- (19) is the election of directors, provided, however, that this prohibition shall not apply in the case of a company registered under the Investment Company Act of 1940;
- (20) materially amends an investment advisory contract with an investment company; or

Commentary to Item 20 - A material amendment to an investment advisory contract would include any proposal to obtain shareholder approval of an investment company's investment advisory contract with a new investment adviser, which approval is required by the Investment Company Act of 1940, as amended (the "1940 Act"), and the rules thereunder. Such approval will be deemed to be a "matter which may affect substantially the rights or privileges of such stock" for purposes of this rule so that a Participant may not give or authorize a proxy to vote Securities registered in its name absent instruction from the beneficial holder of the Securities. As a result, for example, a Participant may not give or authorize a proxy to vote Securities registered in its name, absent instruction from the beneficial holder of the Securities, on any proposal to obtain shareholder approval required by the 1940 Act of an investment advisory contract between an investment company and a new investment adviser due to an assignment of the investment company's investment advisory contract, including an assignment caused by a change in control of the investment adviser that is party to the assigned contract.

- (21) relates to executive compensation.

Commentary to Item 21 - A matter relating to executive compensation would include, among other things, the items referred to in Section 14A of the Exchange Act, including (i) an advisory vote to approve the compensation of executives, (ii) a vote on whether to hold such an advisory vote every one, two or three years, and (iii) an advisory vote to approve any type of compensation (whether present, deferred, or contingent) that is based on or otherwise relates to an acquisition, merger, consolidation, sale, or other disposition of all or

**EXHIBIT 5A**

substantially all of the assets of an issuer and the aggregate total of all such compensation that may (and the conditions upon which it may) be paid or become payable to or on behalf of an executive officer. In addition, a Participant may not give or authorize a proxy to vote without instructions on a matter relating to executive compensation, even if such matter would otherwise qualify for an exception from the requirements of Item 12, Item 13 or any other Item under this Rule 26723. Any vote on these or similar executive compensation-related matters is subject to the requirements of Rule 26723.

**IM-26723-3 Discretionary and non-discretionary proposals in one proxy form**

In some cases, a proxy form may contain proposals, some of which may be acted upon at the discretion of the Participant in the absence of instructions, and others which may be voted only in accordance with the directions of the beneficial owner. This should be indicated in the letter of transmittal. In such cases, the Participant may vote the proxy in the absence of instructions if it physically crosses out those portions where it does not have discretion.

**IM-26723-4 Cancellation of discretionary proxy where counter-solicitation develops**

Where a discretionary proxy has been given in good faith under the rules and counter-solicitation develops at a later date, thereby creating a “contest”, the question as to whether or not the discretionary proxy should then be cancelled is a matter which each Participant must decide for itself. After a contest has developed no further proxies should be given except at the direction of beneficial owners.

**IM-26723-5 Subsequent proxy**

Where a Participant gives a subsequent proxy, it should clearly indicate whether the proxy is in addition to, in substitution for or in revocation of any prior proxy.

**IM-26723-6 Signing and dating proxy-designating Securities covered**

All proxies should be dated and should show the number of Securities voted. Since manual signatures are sometimes illegible, a Participant should also either type or rubber-stamp its name on such proxy.

**IM-26723-7 Proxy records**

Records covering the solicitation of proxies shall show the following:

- (1) the date of receipt of the proxy material from the issuer or other person soliciting the proxies;
- (2) names of customers to whom the material is sent together with date of mailing;

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- (3) all voting instructions showing whether verbal or written; and
- (4) a summary of all proxies voted by the Participant clearly setting forth total Securities voted for or against or not voted for each proposal to be acted upon at the meeting.

Verbal voting instructions may be accepted provided a record is kept of the instructions of the beneficial owner and the instructions are retained by the Participant. The record shall also indicate the date of the receipt of the instructions and the name of the recipient.

Instructions from beneficial owners may also be accepted by Participants or their agents through the use of an automated telephone voting system or other electronic means, which has been approved by the Exchange. Such a system shall utilize an identification code for beneficial owners and provide an opportunity for beneficial owners to validate votes to ensure that they were received correctly. The automated system must provide beneficial owners with the same power and authority to issue, revoke, or otherwise change voting instructions as currently exists for instructions communicated in written form. Records of voting including the date of receipt of instructions and the name of the recipient must be retained by the Participant or their agents.

**IM-26723-8 Retention of records**

All proxy solicitation records, originals of all communications received and copies of all communications sent relating to such solicitation, shall be retained for a period of not less than three years, the first two years in an easily accessible place.

**26724. Transfers to Facilitate Solicitation**

A Participant, when so requested by the Exchange, shall transfer Securities held either for its own account or for the account of others, if registered in the name of a previous holder of record, into its own name, or in the name of its nominee, prior to the taking of a record of shareholders, to facilitate the convenient solicitation of proxies.

The Exchange will make such request at the instance of the issuer or of persons owning in the aggregate at least 10 percent of such Security, provided, if the Exchange so requires, the issuer or persons making such request agree to indemnify Participants against transfer taxes, the Exchange may make such a request whenever it deems it advisable.

**26725. Transmission of Interim Reports and Other Material**

A BSTX Participant, when so requested by a company, and upon being furnished with:

- (1) copies of interim reports of earnings or other material being sent to shareholders, and
- (2) satisfactory assurance that it will be reimbursed by such company for all out-of-pocket expenses, including reasonable clerical expenses, shall transmit such reports or materials to each beneficial owner of Securities of such company held by such Participant and registered in a name other than the name of the beneficial owner unless the beneficial owner has

**EXHIBIT 5A**

instructed the Participant in writing to transmit such reports or material to a designated investment adviser registered either under the Investment Advisers Act of 1940 or under the laws of a state, who exercises investment discretion pursuant to an advisory contract for such beneficial owner.

**IM-26725-1**

This rule applies to both listed and unlisted companies.

**IM-26725-2**

Mailing charges by Participants are set forth at IM-26722-8, IM-26722-9.0, IM-26722-9.1, IM-26722-9.3 and IM-26722-9.4.

**IM-26725-3**

**Form of bill to be used by member organizations.—**

**PROXY INVOICE**

TO: INVOICE NO.  
 CORPORATE SECRETARY DATE  
 COMPANY  
 ADDRESS PLEASE DIRECT ANY QUESTION WITH RESPECT TO THIS INVOICE TO  
 (NAME) (TELEPHONE NO.)  
 \_\_\_\_\_  
 BROKERAGE FIRM NAME

DESCRIPTION OF CHANGES	ENVELOPES		POSTAGE		CLASS	TOTAL
	NO. SETS	SERVICE	FEE	U.S. FOREIGN		
		(Not supplied)				
	MAILED	FEE	by Issuer)	U.S.	FOREIGN	OF MAIL

Proxy Soliciting Mat'l.  
 Annual Reports  
 (Mailed Separately)  
 Proxy Follow-Up  
 (Mailed to all Accts.)  
 (Mailed Selectively)  
 Interim Reports

**EXHIBIT 5A**

Post Meeting Reports

Stockholder Ltr.

Other (Explain)

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

TOTAL AMOUNT DUE ->

FOR CORPORATION'S  
RECORDS

DATE PAID \_\_\_\_\_

Please return a copy of this invoice with your  
remittance in the enclosed self-addressed  
envelope.

CHECK NO. \_\_\_\_\_

**26726. Voting by DMMs**

BSTX DMMs are prohibited from soliciting, directly or indirectly, any proxy on behalf of themselves or any other person in respect of a Security in which they are registered as a DMM. DMMs are also prohibited from voting in any proxy contest any such Security in which they have a beneficial interest.

**26727. Proxy to Show Number of Securities**

In all cases in which a proxy is given by a Participant the proxy shall state the actual number of Securities for which the proxy is given.

**26728. Rules Apply to Nominees**

Rules 26721 through 26724 and 26727 shall apply also to any nominees of Participants. They shall apply also to voting in person.

**26729. Representations to Management**

Before a Participant or employee thereof states to the management of a listed company that he represents shareholders in making demands for changes in management or company policies, he must have received permission of such shareholders to make such demands.

**26800 – Corporate Governance**

**26801. General**

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In addition to the quantitative listing standards set forth in the Rule 26000 Series, this Rule 26800 Series specifies certain corporate governance listing standards. These standards apply to all listed companies, subject to the exceptions set forth below, to the extent not inconsistent with Rule 10A-3 under the Securities Exchange Act of 1934.

- (a) **Controlled Companies**—A company in which over 50% of the voting power is held by an individual, a group or another company (a “controlled company”) is not required to comply with Rules 26802(a), 26804 or 26805. A controlled company that chooses to take advantage of any or all of these exceptions must disclose in its annual meeting proxy statement (or in its next annual report on SEC Form 10-K or equivalent if the issuer does not file an annual proxy statement) that it is a controlled company and the basis for that determination.
- (b) **Limited Partnerships and Companies in Bankruptcy**—Limited partnerships and companies in bankruptcy are not required to comply with Rules 26802(a), 26804 or 26805. If a limited partnership is managed by a general partner rather than a board of directors, the audit committee requirements applicable to the listed entity should be satisfied by the general partner.
- (c) **Reserved**
- (d) **Registered Management Investment Companies**—Management investment companies that are registered under the Investment Company Act of 1940 (including closed-end funds) are subject to extensive federal regulation. Accordingly, closed-end funds are not required to comply with the requirements in the Rule 26800 Series other than Rules 26802(e), 26803B(1) and the other provisions of Rule 26803 to the extent required under Rule 10A-3 under the Securities Exchange Act of 1934, and are also required to comply with Rule 26810. Closed-end funds are required to comply with the provision in Rule 26803B(4) requiring audit committees for investment companies to establish procedures for the confidential, anonymous submission of concerns regarding questionable accounting or auditing matters by employees of the investment adviser, administrator, principal underwriter, or any other provider of accounting related services for the investment company, as well as employees of the investment company.
- (e) **Business development companies**, which are a type of closed-end management investment company defined in Section 2(a)(48) of the Investment Company Act of 1940, that are not registered under that Act, are subject to all corporate governance requirements
- (f) **Foreign Issuers**— While foreign issuers, such as Canadian issuers, may receive exemptions from certain provisions of the BSTX Listing Rules, all foreign issuers are nonetheless required to comply with Rule 26810..
- (g) **Preferred**—Companies listing only preferred Securities on the Exchange (including cooperative entities that are structured to comply with relevant state law and federal tax law and do not have a publicly traded class of common stock or equity Security) are only required to comply with Rule 26803 to the extent required by Rule 10A-3 under the Securities Exchange Act of 1934 and the issuer must also comply with Rules 26810(b) and 26810(c).

**EXHIBIT 5A**

- (h) Smaller Reporting Companies - Issuers that satisfy the definition of Smaller Reporting Company in Exchange Act Rule 12b-2 are subject to all requirements specified in Rules 26802 and 26803 below, except that such issuers are only required to maintain a board of directors comprised of at least 50% independent directors, and an audit committee of at least two members, comprised solely of independent directors who also meet the requirements of Rule 10A-3 under the Securities Exchange Act of 1934. Smaller Reporting Companies are subject to Rule 26805, except that they are not subject to Rules 26805(c)(1) and (c)(4).

**26802. Board of Directors**

- (a) At least a majority of the directors on the Board of Directors of each listed company must be independent directors as defined in Rule 26803A, unless the issuer is a controlled company (see Rule 26801(a)), a Smaller Reporting Company (see Rule 26801 (h)) or otherwise exempt under Rule 26801. Each listed company must disclose in its annual meeting proxy statement (or in its next annual report on SEC Form 10-K or equivalent if the issuer does not file an annual proxy statement) those directors that the board of directors has determined to be independent pursuant to Rule 26803A.
- (b) If an issuer fails to comply with the board independence composition requirement due to one vacancy, or if one director ceases to be independent due to circumstances beyond his or her reasonable control, the issuer shall regain compliance with the requirement by the earlier of its next annual shareholders' meeting or one year from the occurrence of the event that caused the failure to comply with this requirement; provided, however, that if the annual shareholders' meeting occurs no later than 180 days following the event that caused the failure to comply with this requirement, the issuer shall instead have 180 days from such event to regain compliance.
- (c) Each company shall hold meetings of its Board of Directors on at least a quarterly basis. The independent directors shall meet on a regular basis as often as necessary to fulfill their responsibilities, including at least annually in executive session without the presence of non-independent directors and management.
- (d) The Board of Directors of each listed company may not be divided into more than three classes. Where the company's charter provides for classes, they should be of approximately equal size and tenure and directors' terms of office should not exceed three years. This paragraph is not intended to restrict the number of terms of office that a director may serve, whether consecutive or otherwise.
- (e) A listed company is not permitted to appoint or permit an Exchange employee to serve on its Board of Directors.
- (f) Listed companies are urged to develop and implement continuing education programs for all directors, including orientation and training programs for new directors (see also IM-26807-1 to Rule 26807).

**EXHIBIT 5A****26803. Independent Directors and Audit Committee****A. Independent Directors.**

(1) Each issuer must have a sufficient number of independent directors on its board of directors (a) such that at least a majority of such directors are independent directors (subject to the exceptions set forth in Rule 26801) and (b) to satisfy the audit committee requirements set forth below.

(2) “Independent director” means a person other than an executive officer or employee of the company. No director qualifies as independent unless the issuer’s board of directors affirmatively determines that the director does not have a relationship that would interfere with the exercise of independent judgment in carrying out the responsibilities of a director.

In addition to the requirements contained in this Rule 26803(a): (i) directors serving on audit committees must also comply with the additional, more stringent requirements set forth in Rule 26803B(2) below; and (ii) directors serving on compensation committees and, in the case of a company that does not have a compensation committee, all independent directors, must also comply with the additional, more stringent requirements set forth in Rule 26805(c) below. The following is a non-exclusive list of persons who shall not be considered independent:

(a) a director who is, or during the past three years was, employed by the company, other than prior employment as an interim executive officer (provided the interim employment did not last longer than one year) (See IM-26803-8;

(b) a director who accepted or has an immediate family member who accepted any compensation from the company in excess of \$120,000 during any period of twelve consecutive months within the three years preceding the determination of independence, other than the following:

(i) compensation for board or board committee service,

(ii) compensation paid to an immediate family member who is an employee (other than an executive officer) of the company,

(iii) compensation received for former service as an interim executive officer (provided the interim employment did not last longer than one year) (See IM-26803-8), or

(iv) benefits under a tax-qualified retirement plan, or non-discretionary compensation;

(c) a director who is an immediate family member of an individual who is, or at any time during the past three years was, employed by the company as an executive officer;

(d) a director who is, or has an immediate family member who is, a partner in, or a controlling shareholder or an executive officer of, any organization to which the company made, or from which the company received, payments (other than those



**EXHIBIT 5A**

arising solely from investments in the company's securities or payments under non-discretionary charitable contribution matching programs) that exceed 5% of the organization's consolidated gross revenues for that year, or \$200,000, whichever is more, in any of the most recent three fiscal years;

(e) a director who is, or has an immediate family member who is, employed as an executive officer of another entity where at any time during the most recent three fiscal years any of the issuer's executive officers serve on the compensation committee of such other entity; or

(f) a director who is, or has an immediate family member who is, a current partner of the company's outside auditor, or was a partner or employee of the company's outside auditor who worked on the company's audit at any time during any of the past three years.

(3) In the case of an investment company, in lieu of Rule 26803A(2) (a) through (f), a director who is an "interested person" of the investment company as defined in Section 2(a)(19) of the Investment Company Act of 1940, other than in his or her capacity as a member of the board of directors or any board committee.

**B. Audit Committee:****(1) Charter**

Each issuer must certify that it has adopted a formal written audit committee charter and that the audit committee has reviewed and reassessed the adequacy of the formal written charter on an annual basis. The charter must specify the following:

- (a) the scope of the audit committee's responsibilities, and how it carries out those responsibilities, including structure, processes, and membership requirements;
- (b) the audit committee's responsibility for ensuring its receipt from the outside auditors of a formal written statement delineating all relationships between the auditor and the issuer, consistent with The Public Company Accounting Oversight Board Rule 3526, and the audit committee's responsibility for actively engaging in a dialogue with the auditor with respect to any disclosed relationships or services that may impact the objectivity and independence of the auditor and for taking, or recommending that the full board take, appropriate action to oversee the independence of the outside auditor;
- (c) the audit committee's purpose of overseeing the accounting and financial reporting processes of the issuer and the audits of the financial statements of the issuer; and
- (d) the specific audit committee responsibilities and authority set forth in Rule 26803B(4).

**(2) Composition**

**EXHIBIT 5A**

- (a) Each issuer must have, and certify that it has and will continue to have, an audit committee of at least three members, each of whom:
- (i) satisfies the independence standards specified in Rule 26803A and Rule 10A-3 under the Securities Exchange Act of 1934;
  - (ii) must not have participated in the preparation of the financial statements of the issuer or any current subsidiary of the issuer at any time during the past three years; and
  - (iii) is able to read and understand fundamental financial statements, including a company's balance sheet, income statement, and cash flow statement. Additionally, each issuer must certify that it has, and will continue to have, at least one member of the audit committee who is financially sophisticated, in that he or she has past employment experience in finance or accounting, requisite professional certification in accounting, or any other comparable experience or background which results in the individual's financial sophistication, including but not limited to being or having been a chief executive officer, chief financial officer, other senior officer with financial oversight responsibilities. A director who qualifies as an audit committee financial expert under Item 407(d)(5)(ii) and (iii) of Regulation S-K or Item 3 of Form N-CSR (in the case of a registered management investment company) is presumed to qualify as financially sophisticated.
- (b) Notwithstanding Rule 26803B(2)(a), one director who is not independent as defined in Rule 26803A, but who satisfies the requirements of Rule 10A-3 under the Securities Exchange Act of 1934 (see Rule 26803B(2)(a)(i)), and is not a current officer or employee or an immediate family member of such officer or employee, may be appointed to the audit committee, if the board, under exceptional and limited circumstances, determines that membership on the committee by the individual is required by the best interests of the issuer and its shareholders, and the board discloses, in the next annual meeting proxy statement (or in its next annual report on SEC Form 10-K or equivalent if the issuer does not file an annual proxy statement) subsequent to such determination, the nature of the relationship and the reasons for that determination. A director appointed to the audit committee pursuant to this exception may not serve for in excess of two consecutive years and may not chair the audit committee.
- (c) Smaller Reporting Companies – Issuers that satisfy the definition of Smaller Reporting Company in Regulation S-K, Item 10(f)(1) are only required to maintain an audit committee of at least two members, comprised solely of independent directors who also meet the requirements of Rule 10A-3 under the Securities Exchange Act of 1934.
- (3) Meeting Requirements – The audit committee of each issuer must meet on at least a quarterly basis, except that with respect to registered closed-end management investment companies, the audit committee must meet on a regular basis as often as necessary to fulfill its responsibilities, including at least annually in connection with issuance of the investment company's audited financial statements.

**EXHIBIT 5A**

- (4) **Audit Committee Responsibilities and Authority** – The audit committee of each issuer must have the specific audit committee responsibilities, authority and procedures necessary to comply with Rule 10A-3(b)(2), (3), (4) and (5) under the Securities Exchange Act of 1934 (subject to the exemptions provided in Rule 10A-3(c) under the Securities Exchange Act of 1934), concerning responsibilities relating to: (a) registered public accounting firms, (b) complaints relating to accounting, internal accounting controls or auditing matters, (c) authority to engage advisors, and (d) funding as determined by the audit committee. Audit committees for investment companies must also establish procedures for the confidential, anonymous submission of concerns regarding questionable accounting or auditing matters by employees of the investment adviser, administrator, principal underwriter, or any other provider of accounting related services for the investment company, as well as employees of the investment company.
- (5) **Exception** – At any time when an issuer has a class of common equity securities (or similar securities which may include Securities) that is listed on another national securities exchange or national securities association subject to the requirements of SEC Rule 10A-3 under the Securities Exchange Act of 1934, the listing of classes of Securities of a direct or indirect consolidated subsidiary or an at least 50% beneficially owned subsidiary of the issuer (except classes of equity Securities, other than non-convertible, non-participating preferred Securities, of such subsidiary) shall not be subject to the requirements of this Rule 26803B.
- (6) **Cure Period**
- (a) If an issuer fails to comply with the audit committee composition requirements because a member of the issuer’s audit committee ceases to be independent in accordance with Rule 26803A and/or the requirements of Rule 10A-3 under the Securities Exchange Act of 1934 for reasons outside the member’s reasonable control, that person, with prompt notice to the Exchange, may remain an audit committee member of the issuer until the earlier of the next annual shareholders’ meeting of the issuer or one year from the occurrence of the event that caused the member to be no longer independent.
- (b) If an issuer fails to comply with the audit committee composition requirements because a vacancy arises on the audit committee, and the cure period in paragraph (a) is not otherwise being relied upon for another member, the issuer will have until the earlier of the next annual shareholders’ meeting or one year from the occurrence of the event that caused the failure to comply with this requirement; provided, however, that if the annual shareholders’ meeting occurs no later than 180 days following the event that caused the failure to comply with the audit committee composition requirement, the listed issuer (other than a Smaller Reporting Company) shall instead have 180 days from such event to regain compliance and for a Smaller Reporting Company if the annual shareholders’ meeting occurs no later than 75 days following the event that caused the failure to comply with the audit composition requirement a Smaller Reporting Company shall instead have 75 days from such event to regain compliance.

**EXHIBIT 5A****IM-26803-1**

“Immediate family member” includes a person’s spouse, parents, children, siblings, mother-in-law, father-in-law, brother-in-law, sister-in-law, son-in-law, daughter-in-law, and anyone who resides in such person’s home (other than domestic employees).

**IM-26803-2**

“Company” includes any parent or subsidiary of the issuer listed on BSTX. “Parent” or “subsidiary” includes entities that are consolidated with the issuer’s financial statements as filed with the SEC (but not if the issuer reflects such entity solely as an investment in its financial statements).

**IM-26803-3**

“Officer” shall have the meaning specified in Rule 16a-1(f) under the Securities Exchange Act of 1934, or any successor rule.

**IM-26803-4**

“Executive Officer” shall have the meaning specified in Rule 3b-7 under the Securities Exchange Act of 1934, or any successor rule.

**IM-26803-5**

Reserved

**IM-26803-6**

In order to affirmatively determine that an independent director does not have a material relationship with the issuer that would interfere with the exercise of independent judgment, as specified in Rule 26803A, the board of directors of each issuer must obtain from each such director full disclosure of all relationships which could be material in this regard.

**IM-26803-7**

The three year look-back periods referenced in Rules 26803A(2)(a), (c), (e), and (f) commence on the date the relationship ceases. For example, a director employed by the company is not independent until three years after such employment terminates.

**IM-20803-8**

For purposes of Rule 26803A(2)(a), employment by a director as an executive officer on an interim basis shall not disqualify that director from being considered independent following such

**EXHIBIT 5A**

employment, provided the interim employment did not last longer than one year. A director would not be considered independent while serving as an interim officer. Similarly, for purposes of Rule 26803A(2)(b), compensation received by a director for former service as an interim executive officer need not be considered as compensation in determining independence after such service, provided such interim employment did not last longer than one year. Nonetheless, the issuer's board of directors still must consider whether such former employment and any compensation received would interfere with the director's exercise of independent judgment in carrying out the responsibilities of a director. In addition, if the director participated in the preparation of the company's financial statements while serving as an interim executive officer, Rule 26803B(2)(a)(ii) would preclude service on the issuer's audit committee for three years.

**IM-20803-9**

Rule 26803A(2)(b) is generally intended to capture situations where compensation is made directly to (or for the benefit of) the director or an immediate family member of the director. For example, consulting or personal service contracts with a director or an immediate family member of the director would be analyzed under Rule 26803A(2)(b). In addition, political contributions to the campaign of a director or an immediate family member of the director would be considered indirect compensation under Rule 26803A(2)(b). Non-preferential payments made in the ordinary course of providing business services (such as payments of interest or proceeds related to banking services or loans by an issuer that is a financial institution or payment of claims on a policy by an issuer that is an insurance company), payments arising solely from investments in the company's securities and loans permitted under Section 13(k) of the Securities Exchange Act of 1934 will not preclude a finding of director independence as long as the payments are non-compensatory in nature. Depending on the circumstances, a loan or payment could be compensatory if, for example, it is not on terms generally available to the public.

**26804. Board Nominations**

- (a) Board of Director nominations must be either selected, or recommended for the Board's selection, by either a Nominating Committee comprised solely of independent directors or by a majority of the independent directors.
- (b) Notwithstanding paragraph (a) above, if the Nominating Committee is comprised of at least three members, one director who is not independent as defined in Rule 26803A, and is not a current officer or employee or an immediate family member of such person, may be appointed to the Nominating Committee, if the board, under exceptional and limited circumstances, determines that membership on the committee by the individual is required by the best interests of the company and its shareholders, and the board discloses, in the next annual meeting proxy statement (or in its next annual report on SEC Form 10-K or equivalent if the issuer does not file an annual proxy statement) subsequent to such determination, the nature of the relationship and the reasons for that determination. A director appointed to the Nominating Committee pursuant to this exception may not serve for in excess of two years.

**EXHIBIT 5A**

- (c) Each listed company must adopt a formal written charter or board resolution, as applicable, addressing the nominations process and such related matters as may be required under the federal securities laws.

**IM-26804-1**

Rule 26804 is not applicable to a controlled company (See Rule 26801(a)).

**IM-26804-2**

If a company is legally required by contract or otherwise to provide third parties with the ability to nominate and/or appoint directors (e.g., preferred Security or stock rights to elect directors upon dividend default, shareholder agreements, management agreements), the selection and nomination of such directors is not subject to approval by the Nominating Committee or a majority of independent directors.

**26805. Executive Compensation**

- (a) Compensation of the chief executive officer of a listed company must be determined, or recommended to the Board for determination, either by a Compensation Committee comprised of independent directors or by a majority of the independent directors on its Board of Directors (as used in this Rule 26805, the term “Compensation Committee” shall, in relation to any listed company that does not have a Compensation Committee, refer to the listed company’s independent directors as a group). The chief executive officer may not be present during voting or deliberations. Compensation for all other officers must be determined, or recommended to the Board for determination, either by such Compensation Committee or a majority of the independent directors on the company’s Board of Directors.
- (b) Notwithstanding paragraph (a) above, if the Compensation Committee of a Smaller Reporting Company is comprised of at least three members, one director who is not independent as defined in Rule 26803A, and is not a current officer or employee or an immediate family member of such person, may be appointed to the Compensation Committee, if the board, under exceptional and limited circumstances, determines that membership on the committee by the individual is required by the best interests of the company and its shareholders, and the board discloses, in the next annual meeting proxy statement (or in its next annual report on SEC Form 10-K or equivalent if the issuer does not file an annual proxy statement) subsequent to such determination, the nature of the relationship and the reasons for that determination. A director appointed to the Compensation Committee pursuant to this exception may not serve for in excess of two years.
- (c)
- (1) Independence Requirements. In addition to the director independence requirements of Rule 26803A, the board must affirmatively determine that all of the members of the Compensation Committee or, in the case of a company that

**EXHIBIT 5A**

does not have a Compensation Committee, all of the independent directors, are independent under this Rule 26805(c)(1). In affirmatively determining the independence of any director who will serve on the Compensation Committee, the Board must consider all factors specifically relevant to determining whether a director has a relationship to the listed company which is material to that director's ability to be independent from management in connection with the duties of a Compensation Committee member, including, but not limited to: (A) the source of compensation of such director, including any consulting, advisory or other compensatory fee paid by the listed company to such director; and (B) whether such director is affiliated with the listed company, a subsidiary of the listed company or an affiliate of a subsidiary of the listed company.

- (2) Cure Period. If a listed company fails to comply with the Compensation Committee composition requirements of either paragraph (a) above or (if applicable) this Rule 26805(c) because a member of the Compensation Committee ceases to be independent in accordance with Rule 26803A or (if applicable) this Rule 26805(c) for reasons outside the member's reasonable control, that person, with prompt notice to the Exchange and only so long as a majority of the members of the Compensation Committee continue to be independent in accordance with the applicable Exchange independence standards, may remain a member of the Compensation Committee until the earlier of the next annual shareholders' meeting of the listed company or one year from the occurrence of the event that caused the member to be no longer independent.
- (3) Compensation Consultants
  - i. The Compensation Committee may, in its sole discretion, retain or obtain the advice of a compensation consultant, independent legal counsel or other adviser.
  - ii. The Compensation Committee shall be directly responsible for the appointment, compensation and oversight of the work of any compensation consultant, independent legal counsel or other adviser retained by the Compensation Committee.
  - iii. The listed company must provide for appropriate funding, as determined by the Compensation Committee, for payment of reasonable compensation to a compensation consultant, independent legal counsel or any other adviser retained by the Compensation Committee.
- (4) Compensation Consultant Independence. The Compensation Committee may select a compensation consultant, legal counsel or other adviser to the Compensation Committee only after taking into consideration all relevant factors, including the following:
  - i. The provision of other services to the listed company by the person that employs the compensation consultant, legal counsel or other adviser;
  - ii. The amount of fees received from the listed company by the person that

**EXHIBIT 5A**

- employs the compensation consultant, legal counsel or other adviser, as a percentage of the total revenue of the person that employs the compensation consultant, legal counsel or other adviser;
- iii. The policies and procedures of the person that employs the compensation consultant, legal counsel or other adviser that are designed to prevent conflicts of interest;
  - iv. Any business or personal relationship of the compensation consultant, legal counsel or other adviser with a member of the compensation committee;
  - v. Any stock or Security of the listed company owned by the compensation consultant, legal counsel or other adviser; and
  - vi. Any business or personal relationship of the compensation consultant, legal counsel, other adviser or the person employing the adviser with an executive officer of the listed company.
- (5) Transition Period for Companies Losing Their Smaller Reporting Company Status. Under Exchange Act Rule 12b-2, a company tests its status as a smaller reporting company on an annual basis at the end of its most recently completed second fiscal quarter (hereinafter, for purposes of this subsection, the “Smaller Reporting Company Determination Date”). A smaller reporting company which ceases to meet the requirements for smaller reporting company status as of the last business day of its second fiscal quarter will cease to be a smaller reporting company as of the beginning of the fiscal year following the Smaller Reporting Company Determination Date. The compensation committee of a company that has ceased to be a smaller reporting company shall be required to comply with Rule 26805(c)(4) as of six months from the date it ceases to be a smaller reporting company and must have:
- i. one member of its compensation committee that meets the independence standard of Rule 26805(c)(1) within six months of that date;
  - ii. a majority of directors on its compensation committee meeting those requirements within nine months of that date; and
  - iii. a compensation committee comprised solely of members that meet those requirements within twelve months of that date.

Any such company that does not have a compensation committee must comply with this transition requirement with respect to all of its independent directors as a group.

**IM-26805-1**

Rule 26805 is not applicable to a controlled company (See Rule 26801(a)). Rules 26805(c)(1) and (c)(4) are not applicable to a smaller reporting company.



**EXHIBIT 5A****IM-26805-2**

The Compensation Committee or a majority of the independent directors is not precluded from approving awards (either with or without board ratification) or from seeking board ratification or approval as may be required to comply with applicable tax or state corporate laws.

**IM-26805-3**

When considering the sources of a director's compensation in determining his independence for purposes of compensation committee service, the board should consider whether the director receives compensation from any person or entity that would impair his ability to make independent judgments about the listed company's executive compensation. Similarly, when considering any affiliate relationship a director has with the company, a subsidiary of the company, or an affiliate of a subsidiary of the company, in determining his independence for purposes of compensation committee service, the proposed commentary provides that the board should consider whether the affiliate relationship places the director under the direct or indirect control of the listed company or its senior management, or creates a direct relationship between the director and members of senior management, in each case of a nature that would impair his ability to make independent judgments about the listed company's executive compensation.

**IM-26805-4**

Nothing in Rule 26805(c) shall be construed: (A) to require the Compensation Committee to implement or act consistently with the advice or recommendations of the compensation consultant, independent legal counsel or other adviser to the Compensation Committee; or (B) to affect the ability or obligation of the Compensation Committee to exercise its own judgment in fulfillment of the duties of the Compensation Committee.

**IM-26805-5**

The Compensation Committee is required to conduct the independence assessment outlined in Rule 26805(c)(4) with respect to any compensation consultant, legal counsel or other adviser that provides advice to the Compensation Committee, other than: (i) inhouse legal counsel; and (ii) any compensation consultant, legal counsel or other adviser whose role is limited to the following activities for which no disclosure would be required under Item 407(e)(3)(iii) of Regulation S-K: consulting on any broad-based plan that does not discriminate in scope, terms, or operation, in favor of executive officers or directors of the listed company, and that is available generally to all salaried employees; or providing information that either is not customized for a particular company or that is customized based on parameters that are not developed by the compensation consultant, and about which the compensation consultant does not provide advice.

**IM-26805-6**

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Nothing in Rule 26805 requires a compensation consultant, legal counsel or other compensation adviser to be independent, only that the Compensation Committee consider the enumerated independence factors before selecting or receiving advice from a compensation adviser. The Compensation Committee may select or receive advice from any compensation adviser they prefer including ones that are not independent, after considering the six independence factors outlined in Rule 26805(c)(4)(i)—(vi).

**26806. Reserved****26807. Code of Conduct and Ethics**

Each company shall adopt a code of conduct and ethics, applicable to all directors, officers and employees, which also complies with the definition of a “code of ethics” as set forth in Item 406 of SEC Regulation S-K. The code of conduct and ethics must be publicly available.

**IM-26807-1**

While each company should determine the appropriate standards and guidelines for inclusion in its code of conduct and ethics, all codes of conduct and ethics must promote honest and ethical conduct, including the ethical handling of actual or apparent conflicts of interest between personal and professional relationships; full, fair, accurate, timely and understandable disclosure in periodic reports and documents required to be filed by the company; compliance with applicable Exchange and governmental rules and regulations; prompt internal reporting of violations of the code of conduct and ethics to an appropriate person or persons identified in the code of conduct and ethics; and accountability for adherence to the code of conduct and ethics. A company may adopt one or more codes of conduct and ethics such that all directors, officers and employees are subject to a code of conduct and ethics that satisfies the definition of a “code of ethics.” Any waivers of the code of conduct and ethics for directors or executive officers must be approved by the company’s board of directors and disclosed in an SEC Form 8-K within four business days after the occurrence of the event. If the event occurs on a Saturday, Sunday or holiday on which the Commission is not open for business, then the four business day period shall begin to run on, and include, the first business day thereafter.

**26808. Reserved****26809. Effective Dates/Transition**

- (a) Companies that have listed or will be listed in conjunction with their initial public offering shall be afforded exemptions from all board composition requirements consistent with the exemptions afforded in Rule 10A-3 under the Securities Exchange Act of 1934. That is, for each applicable committee that the company establishes (i.e., nominating and/or compensation) the company shall have one independent member at the time of listing, a majority of independent members within 90 days of listing and all independent members within one year. Such companies will be required to meet the majority independent board requirement (or 50% independent in the case of a Smaller Reporting Company) within one year of listing. It should be noted however, that investment companies are not afforded these exemptions under Rule 10A-3 under the Securities

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Exchange Act of 1934. Companies emerging from bankruptcy or which have ceased to be controlled companies will be required to meet the majority independent board requirement (or 50% independent in the case of a Smaller Reporting Company) within one year. Companies may choose not to establish a compensation or nomination committee and may rely instead upon a majority of independent directors to discharge responsibilities under the Rule 26800 Series.

- (b) Companies transferring from other markets with a substantially similar requirement shall be afforded the balance of any grace period afforded by the other market. Companies transferring from other markets that do not have a substantially similar requirement shall be afforded one year from the date of listing, to the extent not inconsistent with Rule 10A-3 under the Securities Exchange Act of 1934.

**26810. Written Affirmations**

- (a) Each listed company CEO must certify to the Exchange each year that he or she is not aware of any violation by the listed company of Exchange corporate governance listing standards, qualifying the certification to the extent necessary. A blank copy of the CEO certification form required by this Rule 26810(a) will be included in the BSTX Listing Supplement.

Commentary: The CEO's annual certification regarding the Exchange's corporate governance listing standards will focus the CEO and senior management on the listed company's compliance with the listing standards.

- (b) Each listed company CEO must promptly notify the Exchange in writing after any executive officer of the listed company becomes aware of any non-compliance with any applicable provisions of this Rule 26800 Series.
- (c) Each listed company must submit an executed written affirmation of compliance with Rule 26800 Series of the BSTX Listing Standards annually to the Exchange. In addition, each listed company must promptly submit an interim written affirmation after becoming aware of any noncompliance with Rule 26800 Series of the BSTX Listing Standards or in the event of any change in the composition of its board of directors or the audit, compensation or nominating committees thereof. If the interim written affirmation relates to noncompliance with Rule 26800 Series of the BSTX Listing Standards and is being submitted to the Exchange to satisfy the notice requirement of Rule 26810(b), it must be signed by the company's CEO. Blank copies of the affirmation forms mentioned in this Rule 26810(c) will be included in the BSTX Listing Supplement.

**26900 – Additional Matters****26901 – 26919. Reserved****26920. General Changes in Character of Business or Form or Nature of Securities**

- (a) Change in form or nature of Securities—A company is required to notify the Exchange,

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at least 20 days in advance, of any change in the form or nature of any listed Security or in the rights, benefits and privileges of the holders of such Security.

- (b) Change in general character of business—A company is required to notify the Exchange promptly (and confirm in writing) of any change in the general character or nature of its business. Obviously, such a change, if not previously made known to the public, would be a material development and a prompt public release would be required under the Exchange’s timely disclosure policies (see Rules 26401-26405).

**26921. Changes in Officers or Directors**

A listed company is required to notify the Exchange promptly (and confirm in writing) of any changes of officers or directors.

**26922. Disposition of Property or Stock**

A listed company is required to notify the Exchange promptly in the event that it, or any company controlled by it, disposes of any property or any equity interest in any of its subsidiary or controlled companies, if such disposal will materially affect the financial position of the company or the nature or extent of its operations. As in the case of changes in character or nature of business, a material disposition would normally call for prompt public disclosure under the Exchange’s timely disclosure policy. Where such disclosure has been made, the filing of three copies of the release containing the disclosure and the subsequent filing of Form 8-K, if required, will suffice to comply with Item 1b.

**26923. Change in Collateral**

A company is required to notify the Exchange promptly of any changes in, or removal of, collateral deposited under any mortgage or trust indenture under which Securities of the company listed on the Exchange have been issued. This notice, if of material significance to investors, should also be reported through a public release under the Exchange’s timely disclosure policy. If a change in collateral is not of sufficient materiality to call for a press release, such change should nevertheless be reported to the Exchange by letter which will be placed in a public file.

**26924. Deposit of Securities**

A company is required to notify the Exchange promptly of any diminution in the supply of Securities available for public trading occasioned by deposit of Securities under voting trust or other deposit agreements. If knowledge of any actual or proposed deposits should come to the attention of any officer or director of the company, the Exchange should be notified immediately.

**26925 – 26929. Reserved****26930. Change of Name**

A company proposing to change its name should:

- (a) Notify the Exchange of the record date and date of its shareholders’ meeting at which the

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change in name will be considered, as soon as such dates have been established.

- (b) Furnish the Exchange with one copy of the meeting notice and five copies of the proxy-solicitation material at the time they are mailed to shareholders.
- (c) As soon as the change in name has been approved by shareholders, notify the Exchange of the time when the amendment to the charter will be filed and the change in name will become effective. Confirm this advice by letter.
- (d) Reserved
- (e) Notify the Exchange as soon as the amendment has actually been filed and confirm this advice by letter.

**26931. Announcement of New Name**

When the change in name becomes effective, the Exchange will notify its Participants of the new name and will advise them that, either on the date of its announcement or on the day after, transactions in the Securities of the company will be recorded under its new name. If a substantial change in name is involved, a new ticker symbol may be designated for the company's Securities.

**26931 – 26939. Reserved****26940. Change in Par Value**

A company that changes the par value of a Security issue listed on the Exchange, without an increase or decrease in the number of Securities listed, is required to follow the procedures and file the papers specified below:

**NOTE:** If the change in par value affects the number of Securities listed, an additional listing application is necessary.

- (a) File two preliminary copies of proxy soliciting material to be issued to shareholders in connection with the meeting to consider the charter amendment.
- (b) Furnish the Exchange with: (i) ten days' notice in advance of the taking of the record of shareholders entitled to notice of and to vote at the meeting; and (ii) six copies of all final printed notices, circulars or proxy statements issued to shareholders in connection with the meeting, at the time they are mailed to shareholders.
- (c) When the change in par value becomes effective by the filing of the charter amendment with the Secretary of State, it is important that the Exchange substitute the new par value shares for the previously listed shares without any interruption of trading. This is accomplished by notifying the Exchange: (i) in advance of the date when it is proposed to file the charter amendment, and (ii) immediately upon its filing.

**26941 –26959. Reserved**

**EXHIBIT 5A****26960. Special Margin Requirements**

The Exchange may, from time to time, prescribe higher initial margin requirements in respect of particular Securities dealt in on the Exchange than the margin requirements generally in effect. Such higher margin requirements are imposed whenever in the opinion of the Exchange a particular Security is subject to possible excessive speculative interest. Such requirements do not constitute a rating or evaluation by the Exchange of the merits of the Security subject hereto.

Securities placed on special margin are reviewed weekly, and are removed from special margin requirements whenever it appears that possibly excessive speculative interest no longer exists.

**26961 – 26969. Reserved****26970. Reverse Split Policy – Exchange Recommendation**

The Exchange may recommend to the management of a company, whose Security sells at a low price per Security for a substantial period of time, that it submit to its shareholders a proposal providing for a combination (“reverse split”) of such Securities.

**26971-26989. Reserved****26990. Application of Requirements**

As indicated in Rule 26301, a company applying to list additional Securities on BSTX is required to execute, if it has not already done so, the Exchange’s most recent form of agreement with listed companies.

**26991. Interpretation of Requirements**

The Board of Directors of the Exchange is authorized by the Exchange Rules to make and amend rules, requirements and policies governing listed companies. The Board is also authorized to delegate the administration of such requirements to the president or other officers or employees of the Exchange or to such committees as the Board may authorize.

**26992. Opinions**

The Exchange will, in appropriate cases, render opinions concerning interpretations of the requirements set forth in the BSTX Listing Requirements to companies on request. Such opinions are carefully considered by the Exchange, and normally require at least two weeks to process. Letters requesting such opinions should fully set forth the facts and circumstances leading to the request.

**26993. Review**

If a company disagrees with an opinion rendered by the staff, the Exchange may, where the opinion covers a novel or unusual question, or relates to a matter not specifically covered in the BSTX Listing Requirements or the rules, regulations and policies of the Exchange, arrange for the question to be reviewed by a committee of Exchange Officials. It normally takes

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approximately three weeks to process such a review. With the Exchange's consent, representatives of the company may appear at a meeting of the committee reviewing the matter.

**26994. New Policies**

Copies of new or revised rules, policies, or forms, adopted subsequent to the date of the adoption of the BSTX Listing Rules, will be distributed, following their adoption. Questions should be directed to the Exchange and further information is available on the Exchange's website.

**27000 – Suspension and Delisting****27001. General**

In considering whether a Security warrants continued trading and/or listing on BSTX, many factors are taken into account, such as the degree of investor interest in the company, its prospects for growth, the reputation of its management, the degree of commercial acceptance of its products, and whether its securities have suitable characteristics for trading on BSTX. Thus, any developments which substantially reduce the size of a company, the nature and scope of its operations, the value or amount of its securities available for the market, or the number of holders of its securities, may occasion a review of continued listing by the Exchange. Moreover, events such as the sale, destruction, loss or abandonment of a substantial portion of its business, the inability to continue its business, steps towards liquidation, or repurchase or redemption of its securities, may also give rise to such a review.

**27002. Policies with Respect to Continued Listing**

The Rules of the Exchange provides that the Board of Directors may, in its discretion, at any time, and without notice, suspend dealings in, or may remove any Security from, listing or unlisted trading privileges.

The Exchange, as a matter of policy, will consider the suspension of trading in, or removal from listing or unlisted trading of, any Security when, in the opinion of the Exchange:

- (a) the financial condition and/or operating results of the issuer appear to be unsatisfactory;  
or
- (b) it appears that the extent of public distribution or the aggregate market value of the Security has become so reduced as to make further dealings on BSTX inadvisable; or
- (c) the issuer has sold or otherwise disposed of its principal operating assets, or has ceased to be an operating company; or
- (d) the issuer has failed to comply with its listing agreements with the Exchange; or
- (e) any other event shall occur or any condition shall exist which makes further dealings on BSTX unwarranted. (See Rule 26127)

**EXHIBIT 5A****27003. Application of Policies**

The Exchange has adopted certain standards, outlined below, under which it will normally give consideration to suspending dealings in, or removing, a Security from listing or unlisted trading. When an issuer falls below any of the continued listing standards, the Exchange will review the appropriateness of continued listing. The Exchange may give consideration to any action that an issuer proposes to take that would enable it to comply with the continued listing standards. The specific procedures and timelines regarding such proposals are set forth in Rule 27009. However, the standards set forth below in no way limit or restrict the Exchange in applying its policies regarding continued listing, and the Exchange may at any time, in view of the circumstances in each case, suspend dealings in, or remove, a Security from listing or unlisted trading when in its opinion such Security is unsuitable for continued trading on BSTX. Such action will be taken regardless of whether the issuer meets or fails to meet any or all of the standards discussed below.

(a) Financial Condition and/or Operating Results—The Exchange will normally consider suspending dealings in, or removing from the list, Securities of an issuer which:

- (i) has Security holders' equity of less than \$2,000,000 if such issuer has sustained losses from continuing operations and/or net losses in two of its three most recent fiscal years; or
- (ii) has Security holders' equity of less than \$4,000,000 if such issuer has sustained losses from continuing operations and/or net losses in three of its four most recent fiscal years; or
- (iii) has Security holders' equity of less than \$6,000,000 if such issuer has sustained losses from continuing operations and/or net losses in its five most recent fiscal years; or
- (iv) has sustained losses which are so substantial in relation to its overall operations or its existing financial resources, or its financial condition has become so impaired that it appears questionable, in the opinion of the Exchange, as to whether such issuer will be able to continue operations and/or meet its obligations as they mature.

However, the Exchange will not normally consider suspending dealings in, or removing from the list, the Securities of an issuer which is below any of standards (i) through (iii) above if the issuer is in compliance with the following:

- (1) Total value of market capitalization \* of at least \$50,000,000; or total assets and revenue of \$50,000,000 each in its last fiscal year, or in two of its last three fiscal years; and
- (2) The issuer has at least 1,100,000 Securities publicly held, a market value of publicly held Securities of at least \$15,000,000 and 400 round lot Security holders.

Issuers falling below one of the above standards and considering a combination with an unlisted company should see Rule 26341 for the discussion of the Exchange's listing policies contained therein.



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(b) Limited Distribution—Reduced Market Value—The Exchange will normally consider suspending dealings in, or removing from the list, a Security when any one or more of the following conditions exist:

(i) Equity Security:

(A) if the number of Securities publicly held (exclusive of holdings of officers, directors, controlling shareholders or other family or concentrated holdings) is less than 200,000; or

(B) if the total number of public Security holders is less than 300; or

(C) if the aggregate market value of the Securities publicly held is less than \$1,000,000 for more than 90 consecutive days.

(ii) Security Warrants:

(A) if the number of Security warrants publicly held is less than 50,000;

(iii) Preferred Securities:

(A) if the number of Securities publicly held is less than 50,000; or

(B) if the aggregate market value of Securities publicly held is less than \$1,000,000;

(iv) Reserved

(v) Closed-End Funds:

(A) If the total market value of publicly held Securities and net assets are each less than \$5,000,000 for more than 60 consecutive days; or

(B) It ceases to qualify as a closed-end fund under the Investment Company Act of 1940 (unless the resultant entity otherwise qualifies for listing).

(c) Disposal of Assets—Reduction of Operations—The Exchange will normally consider suspending dealings in, or removing from the list, Securities of an issuer whenever any of the following events shall occur:

(i) If the issuer has sold or otherwise disposed of its principal operating assets or has ceased to be an operating company or has discontinued a substantial portion of its operations or business for any reason whatsoever, including, without limitation, such events as sale, lease, spin-off, distribution, foreclosure, discontinuance, abandonment, destruction, condemnation, seizure or expropriation. Where the issuer has substantially discontinued the business that it conducted at the time it was listed or admitted to trading, and has become

**EXHIBIT 5A**

engaged in ventures or promotions which have not developed to a commercial stage or the success of which is problematical, it shall not be considered an operating company for the purposes of continued trading and listing on BSTX.

- (ii) If liquidation of the issuer has been authorized. However, where such liquidation has been authorized by shareholders and the issuer is committed to proceed, the Exchange will normally continue trading until substantial liquidating distributions have been made.
- (iii) If advice has been received, deemed by the Exchange to be authoritative, that the Security is without value. In this connection, it should be noted that the Exchange does not pass judgment upon the value of any Security.

(d) Failure to Comply with Listing Agreements and/or SEC Requirements—The Securities of an issuer failing to comply with its listing or other agreements with the Exchange and/or SEC Requirements in any material respect (e.g., failure to distribute annual reports when due, failure to report interim earnings, failure to observe Exchange policies regarding timely disclosure of important corporate developments, failure to solicit proxies, issuance of additional Securities of a listed class without prior listing thereof, failure to obtain shareholder approval of corporate action where required by Exchange policies, failure to provide requested information within a reasonable period of time or providing information that contains a material misrepresentation or omits material information necessary to make the communication to the Exchange not misleading, etc.) are subject to suspension from dealings and, unless prompt corrective action is taken, removal from listing.

(e) Reserved

(f) Other Events—The Exchange will normally consider suspending dealings in, or removing from the list, a Security when any one of the following events shall occur:

- (i) Registration No Longer Effective—If the registration (or exemption from registration thereof) pursuant to the Securities Exchange Act of 1934 is no longer effective.
- (ii) Payment, Redemption or Retirement of Entire Class, Issue or Series—If the entire outstanding amount of a class, issue or series of Securities is retired through payment at maturity or through redemption, reclassification or otherwise. In such event, the Exchange may, at a time which is appropriate under all the circumstances of the particular case, suspend dealings in the Security and, in the case of a listed Security, give notice to the SEC, on Form 25, of the Exchange's intention to remove such Security from listing and registration as required by Rule 12d2-2(a) under the Securities Exchange Act of 1934.
- (iii) Operations Contrary to Public Interest—If the issuer or its management shall engage in operations which, in the opinion of the Exchange, are contrary to the public interest.
- (iv) Failure to Pay Listing Fees—If the issuer shall fail or refuse to pay, when due, any applicable listing fees established by the Exchange.

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(v) **Low Selling Price Issues**—In the case of an equity Security for a substantial period of time at a low price per Security, if the issuer shall fail to effect a reverse split of such Securities within a reasonable time after being notified that the Exchange deems such action to be appropriate under all the circumstances. In its review of the question of whether it deems a reverse split of a given issue to be appropriate, the Exchange will consider all pertinent factors including, market conditions in general, the number of Securities outstanding, plans which may have been formulated by management, applicable regulations of the state or country of incorporation or of any governmental agency having jurisdiction over the issuer, the relationship to other Exchange policies regarding continued listing, and, in respect of securities of foreign issuers, the general practice in the country of origin of trading in low-selling price issues.

(g) Reserved

\* Market capitalization for purposes of Rule 27003 includes the total Equity Security outstanding (excluding treasury Securities) as well as any Equity Securities that would be issued upon conversion of another outstanding Security, if such other Security is a “substantial equivalent” of Equity Securities. Generally, the Security must be (1) publicly traded or quoted, or (2) convertible into a publicly traded or quoted Security. A convertible Security will be considered the “substantial equivalent” of Equity Securities if the convertible Security is presently convertible, and the conversion price is equal to or less than the current market price of the Equity Security. For partnerships, the current capital structure will be analyzed to determine whether it is appropriate to include other publicly traded or quoted Securities in the calculation.

**27004. Prospective Application of Delisting Policies**

The Exchange’s delisting policies will be applied prospectively to companies which originally qualified for listing pursuant to Rule 26101(b).

**27005 - 27006. Reserved****27007. SEC Annual and Quarterly Report Timely Filing Criteria***Occurrence of a Filing Delinquency*

For purposes of remaining listed on BSTX, a company will incur a late filing delinquency and be subject to the procedures set forth in this Rule 27007 on the date on which any of the following occurs:

- the company fails to file its annual report (Forms 10-K, 20-F, 40-F or N-CSR) or its quarterly report on Form 10-Q or semi-annual report on Form N-CSR (“Semi- Annual Form N-CSR”) with the SEC by the date such report was required to be filed by the applicable form, or if a Form 12b-25 was timely filed with the SEC, the extended filing due date for the annual report, Form 10-Q, or Semi-Annual Form NCSR for purposes of this Rule 21007, the later of these two dates, along with any Semi-Annual Report Filing Due Date as

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defined below, will be referred to as the “Filing Due Date” and the failure to file a report by the applicable Filing Due Date, a “Late Filing Delinquency”);

- the company files its annual report without a financial statement audit report from its independent auditor for any or all of the periods included in such annual report (a “Required Audit Report” and the absence of a Required Audit Report, a “Required Audit Report Delinquency”);
- the company’s independent auditor withdraws a Required Audit Report or the company files a Form 8-K with the SEC pursuant to Item 4.02(b) thereof disclosing that it has been notified by its independent auditor that a Required Audit Report or completed interim review should no longer be relied upon (a “Required Audit Report Withdrawal Delinquency”); or
- the company files a Form 8-K with the SEC pursuant to Item 4.02(a) thereof to disclose that previously issued financial statements should no longer be relied upon because of an error in such financial statements (a “Non-Reliance Disclosure”) and, in either case, the company does not refile all required corrected financial statements within 60 days of the issuance of the Non-Reliance Disclosure (an “Extended Non-Reliance Disclosure Event” and, together with a Late Filing Delinquency, a Required Audit Report Delinquency and a Required Audit Report Withdrawal Delinquency, a “Filing Delinquency”) (for purposes of the cure periods described below, an Extended Non-Reliance Disclosure Event will be deemed to have occurred on the date of original issuance of the Non- Reliance Disclosure); if the Exchange believes that a company is unlikely to refile all required corrected financial statements within 60 days after a Non-Reliance Disclosure or that the errors giving rise to such Non-Reliance Disclosure are particularly severe in nature, the Exchange may, in its sole discretion, determine earlier than 60 days that the applicable company has incurred a Filing Delinquency as a result of such Non-Reliance Disclosure.

The Exchange will also deem a company to have incurred a Filing Delinquency if the company submits an annual report, Form 10-Q, or Semi-Annual Form N-CSR to the SEC by the applicable Filing Due Date, but such filing fails to include an element required by the applicable SEC form and the Exchange determines in the Exchange’s sole discretion that such deficiency is material in nature.

The annual report, Form 10-Q, Semi-Annual Form N-CSR or Semi-Annual Report that gives rise to a Filing Delinquency shall be referred to in this Rule 27007 as the “Delinquent Report.”

*Subsequent Late Reports*

A company that has an uncured Filing Delinquency will not incur an additional Filing Delinquency if it fails to file a subsequent annual report, Form 10-Q, Semi-Annual Form N-CSR or Semi-Annual Report (a “Subsequent Report”) by the applicable Filing Due Date for such Subsequent Report. However, in order for the company to cure its initial Filing Delinquency, no

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Subsequent Report may be delinquent or deficient on the date by which the initial Filing Delinquency is required to be cured.

*Notification and Cure Periods*

Upon the occurrence of a Filing Delinquency, the Exchange will promptly send written notification (the “Filing Delinquency Notification”) to a company of the procedures set forth below. Within five days of the date of the Filing Delinquency Notification, the company will be required to (a) contact the Exchange to discuss the status of the Delinquent Report and (b) issue a press release disclosing the occurrence of the Filing Delinquency, the reason for the Filing Delinquency and, if known, the anticipated date such Filing Delinquency will be cured via the filing or refiling of the applicable report, as the case may be. If the company has not issued the required press release within five days of the date of the Filing Delinquency Notification, the Exchange will issue a press release stating that the company has incurred a Filing Delinquency and providing a description thereof.

During the six-month period from the date of the Filing Delinquency (the “Initial Cure Period”), the Exchange will monitor the company and the status of the Delinquent Report and any Subsequent Reports, including through contact with the company, until the Filing Delinquency is cured. If the company fails to cure the Filing Delinquency within the Initial Cure Period, the Exchange may, in the Exchange’s sole discretion, allow the company’s Securities to be traded for up to an additional six-month period (the “Additional Cure Period”) depending on the company’s specific circumstances. If the Exchange determines that an Additional Cure Period is not appropriate, suspension and delisting procedures will commence in accordance with the procedures set out in Rule 27010 hereof. A company is not eligible to follow the procedures outlined in Rule 27009 with respect to these criteria. Notwithstanding the foregoing, however, the Exchange may in its sole discretion decide (i) not to afford a company any Initial Cure Period or Additional Cure Period, as the case may be, at all or (ii) at any time during the Initial Cure Period or Additional Cure Period, to truncate the Initial Cure Period or Additional Cure Period, as the case may be, and immediately commence suspension and delisting procedures if the company is subject to delisting pursuant to any other provision of the company Guide, including if the Exchange believes, in the Exchange’s sole discretion, that continued listing and trading of a company’s Securities on the Exchange is inadvisable or unwarranted in accordance with Rules 27001-27004 hereof. The Exchange may also commence suspension and delisting procedures without affording any cure period at all or at any time during the Initial Cure Period or Additional Cure Period if the Exchange believes, in the Exchange’s sole discretion, that it is advisable to do so on the basis of an analysis of all relevant factors, including but not limited to:

- whether there are allegations of financial fraud or other illegality in relation to the company’s financial reporting;
- the resignation or termination by the company of the company’s independent auditor due to a disagreement;

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- any extended delay in appointing a new independent auditor after a prior auditor's resignation or termination;
- the resignation of members of the company's audit committee or other directors;
- the resignation or termination of the company's chief executive officer, chief financial officer or other key senior executives;
- any evidence that it may be impossible for the company to cure its Filing Delinquency within the cure periods otherwise available under this rule; and
- any past history of late filings.

In determining whether an Additional Cure Period after the expiration of the Initial Cure Period is appropriate, the Exchange will consider the likelihood that the Delinquent Report and all Subsequent Reports can be filed or refiled, as applicable, during the Additional Cure Period, as well as the company's general financial status, based on information provided by a variety of sources, including the company, its audit committee, its outside auditors, the staff of the SEC and any other regulatory body. The Exchange strongly encourages companies to provide ongoing disclosure on the status of the Delinquent Report and any Subsequent Reports to the market through press releases, and will also take the frequency and detail of such information into account in determining whether an Additional Cure Period is appropriate. If the Exchange determines that an Additional Cure Period is appropriate and the company fails to file the Delinquent Report and all Subsequent Reports by the end of such Additional Cure Period, suspension and delisting procedures will commence immediately in accordance with the procedures set out in Rule 27010. In no event will the Exchange continue to trade a company's Securities if that company (i) has failed to cure its Filing Delinquency or (ii) is not current with all Subsequent Reports, on the date that is twelve months after the company's initial Filing Delinquency.

**27008. Reserved****27009. Continued Listing Evaluation and Follow-up**

(a) The following procedures shall be applied by the Exchange to companies identified as being below the Exchange's continued listing policies and standards. Notwithstanding such procedures, when necessary or appropriate:

- (i) the Exchange may issue a Warning Letter to a company with respect to a minor violation of the Exchange's corporate governance or shareholder protection requirements (other than violations of the requirements pursuant to Rule 10A-3 under the Securities Exchange Act of 1934); or
- (ii) for the protection of investors, the Exchange may immediately suspend trading in any Security, and make application to the SEC to delist the Security and/or the Exchange may truncate the procedures specified in this Rule.

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(b) Once the Exchange identifies, through internal reviews or notice (a press release, news story, company communication, etc.), a company as being below the continued listing criteria set forth in Rules 27001 through 27004 (and not able to otherwise qualify under an initial listing standard), the Exchange will notify the company by letter (a “Deficiency Letter”) of its status within 10 business days. The Deficiency Letter will also provide the company with an opportunity to provide the Exchange with a plan (the “Plan”) advising the Exchange of action the company has taken, or will take, that would bring it into compliance with the continued listing standards within 18 months of receipt of the Deficiency Letter. However, the Exchange may establish a time period of less than 18 months for a company to regain compliance with some or all of the continued listing standards if it determines that the nature and circumstances of the company’s particular continued listing status warrant such shorter period of time (see IM-27009-1). Within four business days after receipt of the Deficiency Letter, the company must contact the Exchange to confirm receipt of the notification, discuss any possible financial data of which the Exchange may be unaware, and indicate whether or not it plans to present a Plan; otherwise, delisting proceedings will commence.

(c) The company has 30 days from the receipt of the Deficiency Letter to submit its Plan to the Exchange for review. However, the Exchange may require submission of a company’s Plan within less than 30 days (but in no event less than seven days) if the Exchange has established a time period of 90 days or less for the company to regain compliance with some or all of the continued listing standards pursuant to paragraph (b) of this Rule. If it does not submit a Plan within the specified time period, delisting procedures will commence. The Plan must include specific milestones, quarterly financial projections, and details related to any strategic initiatives the company plans to complete. The Exchange will evaluate the Plan, including any additional documentation that supports the Plan, and make a determination as to whether the company has made reasonable demonstration in the Plan of an ability to regain compliance with the continued listing standards within the time period described in paragraph (b) of this Rule. The Exchange will make such determination within 45 days of receipt of the proposed Plan (or such shorter period of time as is consistent with the time period established by the Exchange for the company to regain compliance pursuant to paragraph (b) of this Rule), and will promptly notify the company of its determination in writing.

(d) If the Exchange does not accept the Plan, the Exchange will promptly initiate delisting proceedings. The company may appeal the Exchange’s determination not to accept the Plan, and request a review thereof, in accordance with Rule 27010 and Rule 27200 Series.

(e) If the Exchange accepts the Plan, the company must make a public announcement through the news media, within four business days from receipt of the notification thereof, disclosing that the Exchange has accepted the Plan, that the company’s listing is being continued pursuant to an exception, and the term of the extension (the “Plan Period”). The Exchange will review the company on a quarterly basis for compliance with the Plan. If the company does not show progress consistent with the Plan, the Exchange will review the circumstances and variance, and determine whether such variance warrants the commencement of delisting procedures. Should the Exchange determine to proceed with delisting proceedings, it may do so regardless of the company’s continued listing status at that time.

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(f) If, prior to the end of the Plan Period, the company is able to demonstrate compliance with the continued listing standards (or that it is able to qualify under an original listing standard) for a period of two consecutive quarters, the Exchange will deem the Plan Period over. If the company does not meet continued listing standards at the end of the Plan Period, the Exchange will promptly initiate delisting procedures.

(g) The company may appeal an Exchange determination, pursuant to paragraph (e) or (f), to initiate delisting proceedings, and request a review thereof, in accordance with Rule 27010 and the Rule 27200 Series.

(h) If the company, within 12 months of the end of the Plan Period (including any early termination of the Plan Period under the procedures described in paragraph (g)), is again determined to be below continued listing standards, the Exchange will examine the relationship between the two incidents of falling below continued listing standards and re-evaluate the company's method of financial recovery from the first incident. It will then take appropriate action, which, depending upon the circumstances, may include truncating the procedures described above or immediately initiating delisting proceedings.

(i) The provisions of this Rule are also applicable to the trading of Securities admitted to unlisted trading privileges.

(j) An issuer that receives a Warning Letter pursuant to paragraph (a)(i) of this Rule and/or a Deficiency Letter pursuant to paragraph (b) of this Rule that it is below the continued listing criteria shall make a public announcement through the news media that it has received such Warning Letter and/or Deficiency Letter, and must include the specific policies and standards upon which the determination is based. Prior to the release of the public announcement, the issuer shall provide such announcement to the Exchange. The public announcement shall be made as promptly as possible, but not more than four business days following receipt of the Warning Letter or Deficiency Letter, as applicable.

**IM-27009-1**

In determining whether to establish a time period of less than 18 months for a company to regain compliance with some or all of the continued listing standards, pursuant to paragraph (b), the Exchange will consider whether, in view of the nature and severity of the particular continued listing deficiency, including the investor protections concerns raised, 18 months would be an inappropriately long period of time to regain compliance. While it is not possible to enumerate all possible circumstances, the following is a non-exclusive list of the types of continued listing deficiencies that, based on the a particular listed company's unique situation, may result in imposition of a shorter time period: delinquencies with respect to SEC filing obligations, severe short-term liquidity and/or financial impairment, present or potential public interest concerns;<sup>1</sup> deficiencies with respect to the requisite distribution requirements that make the Security unsuitable for trading on BSTX.

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<sup>1</sup> Public interest concerns could include, for example, situations where the company, a corporate officer or affiliate is the subject of a criminal or regulatory investigation or action; or the company's auditors have resigned and withdrawn their most recent audit opinion raising concerns regarding the internal controls and financial reporting process. However, other situations not specifically enumerated could also raise public interest concerns regarding the appropriateness of a particular company's continued listing.

**27010. Procedures for Delisting and Removal**

(a) The action required to be taken by the Exchange to strike a class of Securities from listing and registration following certain corporate actions (as specified in Rule 12d2-2(a) promulgated under the Securities Exchange Act of 1934), such as where the entire Security class is matured, redeemed, retired or extinguished by operation of law is set forth in Rule 12d2-2(a) promulgated under the Securities Exchange Act.

(b) Whenever the Exchange determines, in accordance with Rule 27009 or otherwise, that a class of Securities should be removed from listing (or unlisted trading) for reasons other than the reasons specified in paragraph (a), it will follow the procedures contained in Rule 27200 Series.

(c) Whenever the Exchange is authorized to file an application with the Securities and Exchange Commission on Form 25 to strike a class of Securities from listing and registration for reasons other than certain corporate actions (as specified in Rule 12d2-2(a) promulgated under the Securities Exchange Act of 1934), the following procedures are applicable:

(i) The Exchange will file an application with the Securities and Exchange Commission on Form 25, with a statement attached that sets forth the specific grounds on which the delisting is based, in accordance with Sections 19(d) and 6(d) of the Exchange Act, and will promptly deliver a copy of such form and attached statement to the issuer of the class of Securities which is subject to delisting and deregistration. The Form 25 will be filed at least ten days prior to the date the delisting is anticipated to be effective.

(ii) The Exchange will provide public notice of its final determination to strike the class of Securities from listing by issuing a press release and posting notice on the Exchange's website at least ten days prior to the date that the delisting is anticipated to be effective. The posting will remain on the Exchange's website until the delisting is effective.

(iii) The issuer of the class of Securities which is subject to delisting must comply with all applicable reporting and disclosure obligations including, but not limited to, obligations mandated by the Exchange, state laws in effect in the state in which the issuer is incorporated, and the federal securities laws.

(d) An issuer may voluntarily withdraw its Securities from listing and registration with the Exchange as permitted by and in accordance with Exchange Rule 18 and Rule 12d2-2 under the Securities Exchange Act of 1934.

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(e) As required by Rule 12d2-2 under the Securities Exchange Act of 1934, upon receiving written notice from an issuer that such issuer has determined to withdraw a class of Securities from listing on BSTX pursuant to paragraph (d), the Exchange will provide notice on its website of the issuer's intent to delist its Securities beginning on the business day following such notice, which will remain posted on the Exchange's website until the delisting on Form 25 is effective.

**27100 – Guide to Filing Requirements****27101. General**

An issuer having a Security listed on BSTX is required to file with the Exchange three (3) copies of all reports and other documents filed or required to be filed with the SEC. Listed issuers must comply with applicable SEC requirements with respect to the filing of reports and other documents through the SEC's Electronic Data Gathering Analysis and Retrieval ("EDGAR") system, and an issuer which submits such reports through EDGAR (as well as any reports which are permitted but not required to be submitted through EDGAR) will be deemed to have satisfied its filing requirement to the Exchange. A company that is not required to file reports with the SEC shall file with the Exchange three (3) copies of reports required to be filed with the appropriate regulatory authority. All required reports shall be filed with the Exchange on or before the date they are required to be filed with the SEC or appropriate regulatory authority.

The Exchange also requires that certain other submissions be made and notice be given to the Exchange on a timely basis, including but not limited to materials related to corporate actions (such as record dates and dividend and shareholder meeting notifications), additional listing applications and supporting materials, notices of changes in officers and directors, changes in the form or nature of securities or the general character of the business and all materials sent to shareholders or released to the press. Companies having a Securities listed on BSTX are urged to consult the Exchange or appropriate BSTX Listing Requirement provisions in this regard. In particular, see Rule 27007 (SEC Annual and Quarterly Report Timely Filing Criteria).

**27200 Procedures for Review of Exchange Listing Determinations****27201. Purpose and General Provisions**

(a) The purpose of the Rule 27200 Series is to provide procedures for the independent review of determinations that prohibit or limit the continued listing (or unlisted trading) of an issuer's Securities on BSTX based upon the Suspension and Delisting Policies set forth in the Rule 21000 Series (Rule 27001-27009).

(b) At each level of a proceeding under this Rule 27200 Series, a Listing Qualifications Panel (as defined in Rule 27204 below), the Committee for Review (as defined in Rule 27205 below) or the Exchange Board of Directors, as part of its respective review, may request additional information from the issuer. The issuer will be afforded an opportunity to address the significance of the information requested.

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(c) At each level of a proceeding under this Rule 27200 Series, a Listing Qualifications Panel, the Committee for Review or the Exchange Board of Directors, as part of its respective review, may also consider the issuer's stock or Security price or any information that the issuer releases to the public, including any additional quantitative deficiencies or qualitative considerations reflected in the released information.

(d) At each level of a proceeding under the Rule 27200 Series, a Listing Qualifications Panel, the Committee for Review, or the Exchange Board of Directors, as part of its respective review, may consider any failure to meet any quantitative standard or qualitative consideration set forth in the Rule 27000 Series, including failures previously not considered in the proceeding. The issuer will be afforded notice of such consideration and an opportunity to respond.

(e) Although the Exchange has adopted certain standards under which it will normally give consideration to suspending dealings in, or removing, a Security from listing or unlisted trading, these standards in no way limit or restrict the Exchange in applying its policies regarding continued listing, and the Exchange may at any time, in view of the circumstances of each case, suspend dealings in, or file an application with the Securities and Exchange Commission on Form 25 to strike the class of Securities from listing or unlisted trading when in its opinion such Security is unsuitable for continued trading on BSTX. Such action will be taken in accordance with Rule 27010 regardless of whether the issuer meets or fails to meet any or all of the continued listing standards.

**27202. Written Notice of Exchange Determination**

(a) If the Exchange reaches a determination to limit or prohibit the continued listing of an issuer's Securities, it will notify the issuer in writing, describe the specific grounds for the determination, identify the quantitative standard(s) or qualitative consideration(s) set forth in Rule 27000 Series that the issuer has failed to satisfy, and provide notice that upon request the issuer will be provided an opportunity for a hearing under the procedures set forth in this Rule 27200 Series (the "Exchange Determination").

(b) An issuer that receives an Exchange Determination to prohibit the continued listing of the issuer's Securities under Rule 27202(a) shall make a public announcement through the news media that it has received such notice, including the specific policies and standards upon which the determination was based. Prior to the release of the public announcement, the issuer shall provide such announcement to the Exchange. The public announcement shall be made as promptly as possible, but not more than four business days following receipt of the Exchange Determination.

**27203. Request for Hearing**

(a) An issuer may, within seven calendar days of the date of the Exchange Determination, request either a written or oral hearing to review the Exchange Determination. Requests for hearings should be filed with the Exchange's Legal Department. An issuer must submit a hearing fee to the Exchange, to cover the cost of holding the hearing, as follows: (1) where consideration is on the basis of a written submission from the issuer, \$8,000 or (2) where consideration is on

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the basis of an oral hearing, whether in person or by telephone, \$10,000. No payment will be credited and applied towards the applicable hearing fee unless the issuer has previously paid all applicable listing fees due to the Exchange. The issuer will be deemed to have waived the opportunity to request a hearing, and a hearing will not be scheduled, unless the applicant has submitted such hearing fee and any unpaid listing fees due to the Exchange, in the form and manner prescribed by the Exchange, no later than seven calendar days of the date of the Exchange Determination. All hearings will be held before a Listing Qualifications Panel as described in Rule 27204. All hearings will be scheduled on a date and time determined by the Exchange's Legal Department, to the extent practicable, within 45 days of the date that the request for hearing is filed, at a location determined by the Exchange's Legal Department. The Exchange will make an acknowledgment of the issuer's hearing request stating the date, time, and location of the hearing, and the deadline for written submissions to the Listing Qualifications Panel. The issuer will be provided at least 10 calendar days notice of the hearing unless the issuer waives such notice.

(b) The issuer may file a written submission with the Exchange's Legal Department stating the specific grounds for the issuer's contention that the Exchange's determination was in error and/or requesting an extension of time to comply with the continued listing standards as permitted by Rule 27009. The issuer may also submit any documents or other written material in support of its request for review, including any information not available at the time of the Exchange Determination.

(c) A request for a hearing will ordinarily stay a delisting action pursuant to an Exchange Determination to prohibit the continued listing of an issuer's Securities in accordance with Rule 27204(d), but the Exchange may immediately suspend trading in any Security or Securities pending review should it determine that such immediate suspension is necessary or appropriate in the public interest, for the protection of investors, or to promote just and equitable principles of trade. If the issuer does not request a review and pay the requisite fee, within the time period specified in paragraph (a) of this Section, the Exchange shall suspend trading in the Security or Securities when such time period has elapsed and the Exchange staff shall file an application with the Securities and Exchange Commission on Form 25 to strike the class of Securities from listing and registration in accordance with Section 12 of the Securities Exchange Act of 1934 and the rules promulgated thereunder and in accordance with Rule 27010.

**27204. The Listing Qualifications Panel**

(a) All hearings will be conducted before a Listing Qualifications Panel ("Panel") comprised of at least two members of the Committee for Review. No person shall serve as a Panel member for a matter if his or her interest or the interests of any person in whom he or she is directly or indirectly interested will be substantially affected by the outcome of the matter. In the event of a tie vote among the panel members, the matter will be forwarded to the full Committee for Review for review pursuant to Rule 27205.

(b) Prior to the hearing, the Panel will review the written record, as defined in Rule 27207. At the hearing, the issuer may make such presentation as it deems appropriate, including the appearance

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by its officers, directors, accountants, counsel, investment bankers, or other persons. Hearings are generally scheduled for thirty minutes, but may be extended at the discretion of the Panel. The Panel may question any representative of the issuer appearing at the hearing. A transcript of oral hearings will be kept. The record of proceedings before the Panel will be kept by the Exchange's Legal Department.

(c) After the hearing, the Panel will issue a written decision (the "Panel Decision") describing the specific grounds for its determination and identifying any quantitative standard or qualitative consideration set forth in the Rule 27000 Series that the issuer has failed to satisfy, including, if applicable, the basis for its determination that the issuer's Securities should continue to be listed as permitted by Rule 27009 or that the Exchange Determination was in error. The Panel Decision will be promptly provided to the issuer and is effective immediately unless it specifies to the contrary, or as provided in paragraph (d) of this Section. The Panel Decision will provide notice that the issuer may request review of the Panel Decision by the Committee for Review within 15 calendar days of the date of the Panel Decision and that any such Committee for Review Decision may be called for review by the Exchange Board of Directors not later than the next Exchange Board meeting that is 15 calendar days or more following the date of the Committee for Review Decision pursuant to Rule 27206.

(d) If the Panel Decision provides that the issuer's Security or Securities should be delisted, the Exchange will suspend trading in such Securities as soon as practicable and initiate the delisting process in accordance with Rule 27010.

**27205. Review By the Exchange Committee for Review**

(a) The Committee for Review is defined in Section 6.07 of the Exchange's by-laws.

(b) The issuer may initiate the Committee for Review's review of any Panel Decision by making a written request within 15 calendar days of the date of the decision. Requests for review should be addressed to the Committee for Review in care of the Exchange's Legal Department. If the issuer requests review of the Panel Decision, the issuer must submit a fee of \$10,000 to the Exchange to cover the cost of the review by the Committee for Review. No payment will be credited and applied towards the applicable hearing fee unless the issuer has previously paid all applicable listing fees due to the Exchange. The issuer will be deemed to have waived the opportunity for review, and a review will not be commenced, unless the issuer has submitted the hearing fee and any unpaid listing fees due to the Exchange, in the form and manner prescribed by the Exchange, within 15 calendar days of the date of the Panel Decision.

Upon receipt of the request for review, the Exchange's Legal Department will make an acknowledgment of the issuer's request stating the deadline for the issuer to provide any written submissions.

(c) The Committee for Review may authorize the continued listing of the issuer's Securities if it determines that such Securities should continue to be listed as permitted by Rule 27009 or the Panel Decision was in error.

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(d) The Committee for Review will consider the written record and, in its discretion, hold additional hearings. Any hearing will be scheduled, to the extent practicable, within 45 days of the date that a request for review initiated by the issuer is made. The Committee for Review may also recommend that the Exchange Board of Directors consider the matter. The record of proceedings before the Committee for Review will be kept by the Exchange's Legal Department.

(e) The Committee for Review will issue a written decision (the "Committee for Review Decision") that affirms, modifies, or reverses the Panel Decision or that refers the matter to the Exchange staff or to the Panel for further consideration. The Committee for Review will describe the specific grounds for the decision, identify any quantitative standard or qualitative consideration set forth in the Rule 27000 Series that the applicant has failed to satisfy, including, if applicable, the basis for its determination that the issuer's securities should continue to be listed as permitted by Rule 27009 or the Panel Decision was in error, and provide notice that the Exchange Board of Directors may call the Committee for Review Decision for review at any time before its next meeting that is at least 15 calendar days following the issuance of the Committee for Review Decision. The Committee for Review Decision will be promptly provided to the issuer and will take immediate effect unless it specifies to the contrary, or as provided in Rule 27205(f).

(f) If the Committee for Review Decision reverses the Panel Decision and provides that the issuer's Security or Securities should not be delisted, and such Security or Securities have been suspended pursuant to Rule 27204(d), such suspension shall continue until either the Committee for Review Decision represents final action of the Exchange as specified in Rule 27206(d) or in accordance with a discretionary review by the Exchange Board of Directors pursuant to Rule 27206.

(g) If the issuer does not request a review, and pay the requisite fee, within the time period specified in paragraph (b) of this Rule, by the Committee for Review of a Panel Decision which provided that the issuer's Security (or Securities) should be delisted, when such time period has elapsed, the Exchange will suspend trading in such Security (or Securities), if it has not already done so pursuant to Rule 27204(d), and file an application with the Securities and Exchange Commission on Form 25 to strike the class of Securities from listing and registration in accordance with the Rule 27200 Series of the Securities Exchange Act of 1934 and the rules promulgated thereunder and in accordance with Rule 27010.

**27206. Discretionary Review by Board of Directors**

(a) A Committee for Review Decision may be called for review by the Exchange Board of Directors solely upon the request of one or more Directors not later than the next Exchange Board of Directors meeting that is 15 calendar days or more following the date of the Committee for Review Decision. Such review will be undertaken solely at the discretion of the Exchange Board of Directors. The institution of discretionary review by the Exchange Board of Directors will not operate as a stay of the Committee for Review Decision. At the sole discretion of the Exchange Board of Directors, the call for review of a Committee for Review Decision may be withdrawn at any time prior to the issuance of a decision.

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(b) If the Exchange Board of Directors conducts a discretionary review, the review generally will be based on the written record considered by the Committee for Review. The Exchange Board of Directors will be provided with the documents in the Record on Review as specified in Rule 27207, except for the issuer's public filings and information released to the public by the issuer, which will be available on request from the Exchange's Legal Department. However, the Exchange Board of Directors may, at its discretion, request and consider additional information from the issuer and/or from the Exchange staff. Should the Exchange Board of Directors consider additional information, the record of proceedings before the Exchange Board of Directors will be kept by the Exchange's Legal Department.

(c) The Exchange Board of Directors may authorize the applicant's Securities for continued listing if it determines that the issuer's Securities should continue to be listed as permitted by Rule 27009 or the Committee for Review Decision was in error.

(d) If the Exchange Board of Directors conducts a discretionary review, the issuer will be provided with a written decision describing the specific grounds for its decision, and identifying any quantitative standard or qualitative consideration set forth in the Rule 27000 Series that the issuer has failed to satisfy, including, if applicable, the basis for its determination that the issuer's Securities should continue to be listed as permitted by Rule 27009 or that the Committee for Review Decision was in error. The Board may affirm, modify or reverse the Committee for Review Decision and may remand the matter to the Committee for Review for Panel or Exchange staff with appropriate instructions. The decision represents the final action of the Exchange and will take immediate effect unless it specifies to the contrary. If the Board Decision provides that the issuer's Security (or Securities) should be delisted, the Exchange will suspend trading in such Security (or Securities) on BSTX as soon as practicable, if it has not already done so pursuant to Rule 27204(d), and the Exchange staff will file an application with the Securities and Exchange Commission on Form 25 to strike the class of Securities from listing and registration in accordance with Section 12 of the Securities Exchange Act of 1934 and the rules promulgated thereunder and in accordance with Rule 27010.

(e) If the Exchange Board of Directors declines to conduct a discretionary review or withdraws its call for review, the issuer will be promptly provided with written notice that the Committee for Review Decision represents the final action of the Exchange. If the Committee for Review Decision provides that the issuer's Security or Securities should be delisted, upon the expiration of the time period specified in paragraph (a) of this Section, or upon the Exchange Board of Directors' determination to withdraw a call for review, the Exchange will suspend trading in such Security or Securities as soon as practicable, if it has not already done so pursuant to Rule 27204(d), and the Exchange staff will file an application with the Securities and Exchange Commission on Form 25 to strike the class of Securities from listing and registration in accordance with Section 12 of the Securities Exchange Act of 1934 and the rules promulgated thereunder and in accordance with Rule 27010.

(f) Any issuer aggrieved by a final action of the Exchange may make application for review to the Commission in accordance with Section 19 of the Securities Exchange Act of 1934.

**EXHIBIT 5A****27207. Record on Review**

(a) Documents in the written record may consist of the following items, as applicable: correspondence between the Exchange and the issuer, the issuer's public filings, information released to the public by the issuer, and any written submissions or exhibits submitted by either the issuer, or the Exchange's listing department, including any written request for listing approval pursuant to Rule 27203(c) or continued listing pursuant to Rule 27009 and any response thereto. Any additional information requested from the issuer by the Panel, the Exchange Board of Directors, or any other unit of the Exchange such as the Committee for Review, as part of the review process will be included in the written record. The written record will be supplemented by the transcript of any oral hearings held during the review process and each decision issued. At each level of review under this Rule 27200 Series, the issuer will be provided with a list of documents in the written record, and a copy of any documents included in the record that are not in the issuer's possession or control, at least three calendar days in advance of the deadline for the issuer's submissions, unless the applicant waives such production.

(b) In addition to the documents described in paragraph (a) above, if the issuer's Security price or any information that the issuer releases to the public is considered as permitted in Rule 27201(c), that information, and any written submission addressing the significance of that information, will be made part of the record.

(c) If additional issues arising under the Rule 26100 Series or the Rule 27000 Series are considered, as permitted in Rule 27201, the notice of such consideration and any response to such notice will be made a part of the record.

**27208. Document Retention Procedures**

Any document submitted to the Exchange in connection with a Rule 27200 Series proceeding that is not made part of the record will be retained by the Exchange until the date upon which the Rule 27200 Series proceeding decision becomes final including, if applicable, upon conclusion of any review by the Commission or a federal court.

**27209. Delivery of Documents**

Delivery of any document under this Rule 27200 Series by an issuer or by the Exchange may be made by hand delivery or overnight courier to the designated address, or by facsimile to the designated facsimile number and regular mail to the designated address. Delivery will be considered timely if delivered by hand or overnight courier prior to the relevant deadline or upon being faxed and sent by regular mail service prior to the relevant deadline. If an issuer has not specified a facsimile number or address, delivery will be made to the last known facsimile number and address. If an issuer is represented by counsel or a representative, delivery will be made to the counsel or representative.

**27210. Computation of Time**



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In computing any period of time under this Rule 27200 Series, the day of the act, event, or default from which the period of time begins to run is not to be included. The last day of the period so computed is included, unless it is a Saturday, Sunday, federal holiday, or Exchange holiday in which event the period runs until the end of the next day that is not a Saturday, Sunday, federal holiday or Exchange holiday.

**27211. Prohibited Communications**

(a) Unless on notice and opportunity for the appropriate Exchange staff and the issuer to participate, a representative of the Exchange involved in reaching an Exchange Determination, or an issuer, counsel to or representative of an issuer, shall not make or knowingly cause to be made a communication relevant to the merits of a proceeding under this Rule 27200 Series (a “Prohibited Communication”) to any member of the Panel, Committee for Review or to any Director of the Exchange Board of Directors, who is participating in or advising in the decision in that proceeding, or to any Exchange employee who is participating or advising in the decision of these individuals.

(b) Panel, Committee for Review members, Board of Directors and Exchange employees who are participating in or advising in the decision in a proceeding under this Rule 27200 Series, shall not make or knowingly cause to be made a Prohibited Communication to an issuer, counsel to or representative of an issuer, or a representative of the Exchange involved in reaching an Exchange Determination.

(c) If a Prohibited Communication is made, received, or caused to be made, the Exchange will place a copy of it, or its substance if it is an oral communication, in the record of the proceeding. The Exchange will permit Exchange staff or the issuer, as applicable, to respond to the Prohibited Communication, and will place any response in the record of the proceeding.

(d) If the issuer submits a proposal to resolve matters at issue in a Rule 27200 Series proceeding, that submission will constitute a waiver of any claim that the Exchange communications relating to the proposal were Prohibited Communications.

**28000 – Trading and Listing of Exchange Traded Products****28000. Investment Company Units**

The Exchange will consider for trading, whether by listing or pursuant to unlisted trading privileges, units of trading (“Units”) that meet the criteria of this Rule. A Unit is a security that represents an interest in a registered investment company (“Investment Company”) that could be organized as a unit investment trust, an open-end management investment company, or a similar entity. The term “US Component Stock” shall mean an equity security that is registered under Sections 12(b) or 12(g) of the Securities Exchange Act of 1934 or an American Depositary Receipt, the underlying equity security of which is registered under Sections 12(b) or 12(g) of the Securities Exchange Act of 1934. The term “Non-US Component Stock” shall mean an equity security that is not registered under Sections 12(b) or 12(g) of the Securities Exchange Act of 1934 and that is issued by an entity that (a) is not organized, domiciled or incorporated in

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the United States, and (b) is an operating company (including Real Estate Investment Trusts (REITs) and income trusts, but excluding investment trusts, unit trusts, mutual funds, and derivatives).

The Exchange may submit a rule filing pursuant to Section 19(b) of the Securities Exchange Act of 1934 to permit the listing and trading of a series of Units that do not otherwise meet the standards set forth below. All statements or representations contained in such rule filing regarding (a) the description of the index, portfolio or reference asset, (b) limitations on index or portfolio holdings or reference assets, or (c) the applicability of Exchange listing rules specified in such rule filing will constitute continued listing requirements. An issuer of such securities must notify the Exchange of any failure to comply with such continued listing requirements. If a series of Units does not satisfy these requirements, the Exchange may halt trading in the securities and will initiate delisting proceedings pursuant to Rule 27010.

A. Unit Listing Standards

- i. The Investment Company must:
  - a. hold securities (including fixed income securities) comprising, or otherwise based on or representing an interest in, an index or portfolio or securities; or
  - b. hold securities in another registered investment company that holds securities as described in (a) above.

An index or portfolio may be revised as necessary or appropriate to maintain the quality and character of the index or portfolio.

- ii. The Investment Company must issue Units in a specified aggregate number in return for a deposit (the "Deposit") consisting of either:
  - a. a specified number of shares of securities (and, if applicable, a specified portfolio of fixed income securities) that comprise the index or portfolio, or are otherwise based on or represent an investment in securities comprising such index or portfolio, and/or a cash amount; or
  - b. shares of a registered investment company, as described in subsection (A)(i)(a) above, and/or a cash amount.
- iii. Units must be redeemable, directly or indirectly, from the Investment Company for securities (including fixed income securities) and/or cash then comprising the Deposit. Units must pay holders periodic cash payments corresponding to the regular cash dividends or distributions declared with respect to the securities held by the Investment Company, less applicable expenses and charges.

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- iv. The minimum number of Units required to be outstanding at the commencement of trading is set forth in IM-28000-1 paragraph (d) of this Rule.
  - v. The Exchange will obtain a representation from the issuer of each series of Units that the net asset value per share for the series will be calculated daily and will be made available to all market participants at the same time.
- B. Underlying Indices and Portfolios. The Exchange may trade, whether by listing or pursuant to unlisted trading privileges, specified series of Units, with each series based on a specified index or portfolio of securities. The value of the index or portfolio must be calculated and disseminated to the public at least once per business day; provided that, if the securities representing at least half the value of the index or portfolio are securities of a single country other than the United States, then the value of the index or portfolio may be calculated and disseminated to the public at least once per business day in that country.
- C. Form of Certificates. Units may be either certified or issued in the form of a single global certificate.
- D. Limitation of Liability of the Exchange. Neither the Exchange, the Reporting Authority nor any agent of the Exchange shall have any liability for damages, claims, losses or expenses caused by any errors, omissions, or delays in calculating or disseminating any current index or portfolio value the current value of the portfolio of securities required to be deposited to the open-end management investment company; the amount of any dividend equivalent payment or cash distribution to holders of Units; net asset value; or other information relating to the creation, redemption or trading of Units, resulting from any negligent act or omission by the Exchange, or the Reporting Authority, or any agent of the Exchange, or any act, condition or cause beyond the reasonable control of the Exchange or its agent, or the Reporting Authority, including, but not limited to, an act of God; fire; flood; extraordinary weather conditions; war; insurrection; riot; strike; accident; action of government; communications or power failure; equipment or software malfunction; or any error, omission or delay in the reporting of transactions in one or more underlying securities. The Exchange makes no warranty, express or implied, as to results to be obtained by any person or entity from the use of Units or any underlying index or data included therein and the Exchange makes no express or implied warranties, and disclaims all warranties of merchantability or fitness for a particular purpose with respect to Units or any underlying index or data included therein. This limitation of liability shall be in addition to any other limitation contained in the Exchange's Bylaws and Rules.

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Equity. The Exchange may approve a series of Units for listing and/or trading (including pursuant to unlisted trading privileges) pursuant to Rule 19b-4(e) under the Securities Exchange Act of 1934. Units listed pursuant to Rule 19b-4(e) shall satisfy the criteria set forth in (a)(A), (B) or (C) and (b), (c) and (f) through (h) below on an initial and continued listing basis, provided further, that the Exchange may not so approve a series of Units that are issued by an open-end management investment company that seeks to provide investment results, before fees and expenses, in an amount that exceeds -300% of the percentage performance on a given day of a particular domestic equity, international or global equity securities index.

a. Eligibility Criteria for Index Components.

A. US index or portfolio. Components of an index or portfolio of (a) only US Component Stocks or (b) US Component Stocks and cash underlying a series of Units listed pursuant to Rule 19b-4(e) under the Securities Exchange Act of 1934 shall meet the following criteria on an initial and continued listing basis:

1. Component stocks (excluding Units and securities defined in Rule 28003 and Rule 28004, collectively, "Derivative Securities Products") that in the aggregate account for at least 90% of the weight of the US Component Stocks portion of the index or portfolio (excluding such Derivative Securities Products) each shall have a minimum market value of at least \$75 million;
2. Component stocks (excluding Derivative Securities Products) that in the aggregate account for at least 70% of the US Component Stocks portion of the weight of the index or portfolio (excluding such Derivative Securities Products) each shall have a minimum monthly trading volume of 250,000 shares, or minimum notional volume traded per month of \$25,000,000, averaged over the last six months;
3. The most heavily weighted component stock (excluding Derivative Securities Products) shall not exceed 30% of the US Component Stocks portion of the weight of the index or portfolio, and, to the extent applicable, the five most heavily weighted component stocks (excluding Derivative Securities Products) shall not exceed 65% of the US Component Stocks portion of the weight of the index or portfolio;
4. The index or portfolio shall include a minimum of 13 component stocks; provided, however, that there shall be no minimum number of component stocks if (a) one or more series of Units or Portfolio Depositary Receipts constitute, at least in part, components underlying a series of Units, or (b) one or more series of Derivative Securities Products account for 100% of the US Component Stocks portion of the weight of the index or portfolio; and
5. All securities in the index or portfolio shall be US Component Stocks listed on a national securities exchange and shall be NMS Stocks as defined in Rule 600 of Regulation NMS under the Securities Exchange Act of 1934.

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- B. International or global index or portfolio. Components of an index or portfolio underlying a series of Units listed pursuant to Rule 19b-4(e) under the Securities Exchange Act of 1934 that consist of (a) only Non-US Component Stocks, (b) Non-US Component Stocks and cash, (c) both US Component Stocks and Non-US Component Stocks, or (d) US Component Stocks, Non-US Component Stocks and cash shall meet the following criteria on an initial and continued listing basis:
1. Component stocks (excluding Derivative Securities Products) that in the aggregate account for at least 90% of the weight of the US and Non-US Component Stocks portions of the index or portfolio (excluding such Derivative Securities Products) each shall have a minimum market value of at least \$100 million;
  2. Component stocks (excluding Derivative Securities Products) that in the aggregate account for at least 70% of the US and Non-US Component Stocks portions of the weight of the index or portfolio (excluding such Derivative Securities Products) each shall have a minimum global monthly trading volume of 250,000 shares, or minimum global notional volume traded per month of \$25,000,000, averaged over the last six months;
  3. The most heavily weighted component stock (excluding Derivative Securities Products) shall not exceed 25% of the combined US and Non-US Component Stocks portions of the weight of the index or portfolio, and, to the extent applicable, the five most heavily weighted component stocks (excluding Derivative Securities Products) shall not exceed 60% of the combined US and Non-US Component Stocks portions of the weight of the index or portfolio;
  4. The index or portfolio shall include a minimum of 20 component stocks; provided, however, that there shall be no minimum number of component stocks if (a) one or more series of Units or Portfolio Depositary Receipts constitute, at least in part, components underlying a series of Units, or (b) one or more series of Derivative Securities Products account for 100% of the weight of the combined US and Non-US Component Stocks portions of the index or portfolio; and
  5. Each US Component Stock shall be listed on a national securities exchange and shall be an NMS Stock as defined in Rule 600 of Regulation NMS under the Securities Exchange Act of 1934, and each Non-US Component Stock shall be listed and traded on an exchange that has last-sale reporting.
- C. Index or portfolio approved in connection with options or other derivative securities. For the initial and continued listing of a series of Units pursuant to Rule 19b-4(e) under the Securities Exchange Act of 1934, the index or portfolio underlying the series of Units shall have been reviewed and approved for trading of options, Portfolio Depositary Receipts, Units, Index-Linked Exchangeable Notes or Index-Linked

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Securities, as applicable, by the Securities and Exchange Commission under Section 19(b) of the Securities Exchange Act of 1934 and rules thereunder and the conditions set forth in the Securities and Exchange Commission's approval order, including comprehensive surveillance sharing agreements with respect to Non-US Component Stocks and the requirements regarding dissemination of information, must continue to be satisfied. On an initial and continued listing basis, each component stock of the index or portfolio shall be either (i) a US Component Stock that is listed on a national securities exchange and is an NMS Stock as defined in Rule 600 of Regulation NMS under the Securities Exchange Act of 1934, or (ii) a Non-US Component Stock that is listed and traded on an exchange that has last-sale reporting.

b. Index Methodology and Calculation.

1. If the index is maintained by a broker-dealer or fund advisor, the broker-dealer or fund advisor shall erect and maintain a "firewall" around the personnel who have access to information concerning changes and adjustments to the index and the index shall be calculated by a third party who is not a broker-dealer or fund advisor. In addition, any advisory committee, supervisory board, or similar entity that advises a Reporting Authority or that makes decisions on the index or portfolio composition, methodology and related matters, must implement and maintain, or be subject to, procedures designed to prevent the use and dissemination of material non-public information regarding the applicable index; and
2. The current index value for Units listed pursuant to (a) IM-28000-1(a)(A) above will be widely disseminated by one or more major market data vendors at least every 15 seconds during Regular Trading Hours; (b) IM-28000-1(a)(B) above will be widely disseminated by one or more major market data vendors at least every 60 seconds during Regular Trading Hours; or (c) IM-28000-1 (a)(C) above will be widely disseminated during the Regular Trading Hours by one or more major market data vendors at least every 15 seconds with respect to indexes containing only US Component Stocks and at least every 60 seconds with respect to indexes containing Non-US Component Stocks. If the official index value does not change during some or all of the period when trading is occurring on the Exchange (for example, for indexes of Non-US Component Stocks because of time zone differences or holidays in the countries where such indexes' component stocks trade), then the last calculated official index value must remain available throughout Regular Trading Hours.

- c. Disseminated Information. One or more major market data vendors will disseminate for each series of Units listed or traded on the Exchange an estimate, updated at least every 15 seconds during Regular Trading Hours, of the value in U.S. dollars of a share of each series (the "Intraday Indicative Value"). The "Intraday Indicative Value" may be based, for example, upon current information regarding the required deposit of securities and

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cash amount to permit creation of new shares of the series or upon the index value. The Intraday Indicative Value will be updated at least every 15 seconds during the Regular Trading Hours to reflect changes in the exchange rate between the U.S. dollar and the currency in which any component stock is denominated. If the Intraday Indicative Value does not change during some or all of the period when trading is occurring on the Exchange, then the last official calculated Intraday Indicative Value must remain available throughout Exchange trading hours.

- d. Initial Shares Outstanding. A minimum of 100,000 shares of a series of Units is required to be outstanding at commencement of trading.
- e. Hours of Trading. The hours of trading for series of Units are Regular Trading Hours.
- f. Surveillance Procedures. The Exchange will implement written surveillance procedures for Units.
- g. Disclosures. The provisions of this subparagraph apply only to series of Units that are the subject of an order by the Securities and Exchange Commission exempting such series from certain prospectus delivery requirements under Section 24(d) of the Investment Company Act of 1940 and are not otherwise subject to prospectus delivery requirements under the Securities Act of 1933. The Exchange will inform ETP Holders regarding application of these provisions of this subparagraph to a particular series of Units by means of an information circular prior to commencement of trading in such series.

The Exchange requires that ETP Holders provide to all purchasers of a series of Units a written description of the terms and characteristics of those securities, in a form approved by the Exchange or prepared by the open-end management investment company issuing such securities, not later than the time a confirmation of the first transaction in such series is delivered to such purchaser. In addition, ETP Holders shall include such a written description with any sales material relating to a series of Units that is provided to customers or the public. Any other written materials provided by an ETP Holder to customers or the public making specific reference to a series of Units as an investment vehicle must include a statement in substantially the following form: "A circular describing the terms and characteristics of (the series of Units) has been prepared by the (open-end management investment company name) and is available from your broker. It is recommended that you obtain and review such circular before purchasing (the series of Units)." The term "ETP Holder" shall refer to a sole proprietorship, partnership, corporation, limited liability company or other organization in good standing that has been issued an ETP. An ETP Holder must be a registered broker or dealer pursuant to Section 15 of the Securities Exchange Act of 1934. An ETP Holder shall agree to be bound by the Certificate of Incorporation, Bylaws and Rules of the Exchange, and by all applicable rules and regulations of the Securities and Exchange Commission. An ETP Holder shall not have ownership or distribution rights in the Exchange. An ETP Holder will have status as a "member" of the Exchange as that term is defined in Section 3 of the Securities Exchange Act of 1934, as amended.

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An ETP Holder carrying an omnibus account for a non-ETP Holder is required to inform such non-ETP Holder that execution of an order to purchase a series of Units for such omnibus account will be deemed to constitute agreement by the non-ETP Holder to make such written description available to its customers on the same terms as are directly applicable to ETP Holders under this rule.

Upon request of a customer, an ETP Holder shall also provide a prospectus for the particular series of Units.

- h. **Creation and Redemption.** For Units listed pursuant to IM-28000-1(a)(B) or (C) above, the statutory prospectus or the application for exemption from provisions of the Investment Company Act of 1940 for the series of Units must state that the series of Units must comply with the federal securities laws in accepting securities for deposits and satisfying redemptions with redemption securities, including that the securities accepted for deposits and the securities used to satisfy redemption requests are sold in transactions that would be exempt from registration under the Securities Act of 1933.

**IM-28000-2**

**Fixed Income.** "Fixed Income Securities" are debt securities that are notes, bonds, debentures or evidence of indebtedness that include, but are not limited to, U.S. Department of Treasury securities ("Treasury Securities"), government-sponsored entity securities ("GSE Securities"), municipal securities, trust preferred securities, supranational debt and debt of a foreign country or a subdivision thereof. The Exchange may approve a series of Units based on Fixed Income Securities for listing and pursuant to Rule 19b-4(e) under the Securities Exchange Act of 1934 provided such portfolio or index (i) has been reviewed and approved for the trading of options, Units, Portfolio Depository Receipts, Index-Linked Exchangeable Notes or Index-Linked Securities by the Commission under Section 19(b) of the Securities Exchange Act of 1934 and rules thereunder and the conditions set forth in the Commission's approval order, continue to be satisfied or (ii) satisfy the following criteria, and provided further, that the Exchange may not so approve a series of Units that are issued by an open-end management investment company that seeks to provide investment results, before fees and expenses, in an amount that exceeds -300% of the percentage performance on a given day of a particular Fixed Income Securities index. Units listed pursuant to Rule 19b-4(e) shall satisfy the criteria set forth in (a) through (c), (f) and (g) below on an initial and continued listing basis.

- a. **Eligibility Criteria for Index Components.** Components of an index or portfolio underlying a series of Units listed pursuant to Rule 19b-4(e) under the Securities Exchange Act of 1934 shall meet the following criteria on an initial and continued listing basis:
  1. The index or portfolio must consist of (a) only Fixed Income Securities or (b) Fixed Income Securities and cash;



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2. Fixed Income Security components that in aggregate account for at least 75% of the Fixed Income Securities portion of the weight of the index or portfolio each shall have a minimum original principal amount outstanding of \$100 million or more;
  3. A component may be a convertible security, however, once the convertible security component converts to the underlying equity security, the component is removed from the index or portfolio;
  4. No component fixed-income security (excluding Treasury Securities and GSE Securities) shall represent more than 30% of the Fixed Income Securities portion of the weight of the index or portfolio, and the five most heavily weighted component fixed-income securities in the index or portfolio shall not in the aggregate account for more than 65% of the Fixed Income Securities portion of the weight of the index or portfolio;
  5. An underlying index or portfolio (excluding one consisting entirely of exempted securities) must include a minimum of 13 non-affiliated issuers; and
  6. Component securities that in aggregate account for at least 90% of the Fixed Income Securities portion of the weight of the index or portfolio must be either a) from issuers that are required to file reports pursuant to Sections 13 and 15(d) of the Securities Exchange Act of 1934; b) from issuers that have a worldwide market value of its outstanding common equity held by non-affiliates of \$700 million or more; c) from issuers that have outstanding securities that are notes, bonds debentures, or evidence of indebtedness having a total remaining principal amount of at least \$1 billion; d) exempted securities as defined in Section 3(a)(12) of the Securities Exchange Act of 1934; or e) from issuers that are a government of a foreign country or a political subdivision of a foreign country.
- b. Index Methodology and Calculation.
- i. If the index is maintained by a broker-dealer or fund advisor, the broker-dealer or fund advisor shall erect and maintain a "firewall" around the personnel who have access to information concerning changes and adjustments to the index;
  - ii. The current index value for Units listed pursuant to IM-28000-2(a) above will be widely disseminated by one or more major market data vendors at least once per day and if the index value does not change during some or all of the period when trading is occurring on the Exchange, the last official calculated index value must remain available throughout Regular Trading Hours; and
  - iii. Any advisory committee, supervisory board, or similar entity that advises a Reporting Authority or that makes decisions on the index composition, methodology and related matters, must implement and maintain, or be subject to, procedures designed to prevent the use and dissemination of material non-public information regarding the applicable index.

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- c. **Disseminated Information.** One or more major market data vendors shall disseminate for each series of Units listed pursuant to IM-28000-2 (a) above an estimate, updated at least every 15 seconds during Regular Trading Hours, of the value of a share of each series (the "Intraday Indicative Value"). The Intraday Indicative Value may be based, for example, upon current information regarding the required deposit of securities and cash amount to permit creation of new shares of the series or upon the index value. The Intraday Indicative Value may be calculated by the Exchange or by an independent third party throughout the day using prices obtained from independent market data providers or other independent pricing sources such as a broker-dealer or price evaluation services. If the Intraday Indicative Value does not change during some or all of the period when trading is occurring on the Exchange, then the last official calculated Intraday Indicative Value must remain available throughout Regular Trading Hours.
- d. **Initial Shares Outstanding.** The provisions of IM-28000-1(d) above shall apply to series of Units listed pursuant to IM-28000-2(a) above.
- e. **Hours of Trading.** The provisions of IM-28000-1 (e) above shall apply to series of Units listed pursuant to IM-28000-2(a) above.
- f. **Surveillance Procedures.** The provisions of IM-28000-1(f) above shall apply to series of Units based on Fixed Income Securities that are listed and/or traded pursuant to UTP.
- g. **Disclosures.** The provisions of IM-28000-1(g) above will apply to series of Units based on Fixed Income Securities.

**IM-28000-2A**

Municipal Securities. The Exchange may approve a series of Units based on a portfolio or index of Municipal Securities (as defined in Section 3(a)(29) of the Securities Exchange Act of 1934) that does not meet the requirements of IM-28000-2 of this Rule for listing and pursuant to Rule 19b-4(e) under the Securities Exchange Act of 1934 provided such portfolio or index (i) has been reviewed and approved for the trading of options, Units, Portfolio Depository Receipts, Index-Linked Exchangeable Notes or Index-Linked Securities, as applicable, by the Commission under Section 19(b) of the Securities Exchange Act of 1934 and rules thereunder and the conditions set forth in the Commission's approval order, continue to be satisfied or (ii) satisfy the following criteria. Units listed pursuant to Rule 19b-4(e) shall satisfy the criteria set forth in (a) through (c), (f) and (g) below on an initial and continued listing basis. The Exchange may not so approve a series of Units that are issued by an open-end management investment company that seeks to provide investment results, before fees and expenses, in an amount that exceeds -300% of the percentage performance on a given day of a particular Municipal Securities index.

- a. **Eligibility Criteria for Index Components.** Components of an index or portfolio underlying a series of Units listed pursuant to Rule 19b-4(e) under the Securities Exchange Act of 1934 shall meet the following criteria on an initial and continued listing basis:

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1. The index or portfolio must consist of (a) only Municipal Securities (as defined in Section 3(a)(29) of the Securities Exchange Act of 1934) or (b) Municipal Securities and cash;
  2. Municipal Security components that in aggregate account for at least 90% of the Municipal Securities portion of the weight of the index or portfolio each shall have a minimum original principal amount outstanding of at least \$5 million and have been issued as part of a transaction of at least \$20 million;
  3. No component Municipal Security shall represent more than 10% of the Municipal Securities portion of the weight of the index or portfolio, and the five most heavily weighted component Municipal Securities in the index or portfolio shall not in the aggregate account for more than 30% of the Municipal Securities portion of the weight of the index or portfolio;
  4. An underlying index or portfolio must include a minimum of 13 unique issuers; and
  5. An underlying index or portfolio must include a minimum of 500 component Municipal Securities.
- b. Index Methodology and Calculation.
- i. If the index is maintained by a broker-dealer or fund advisor, the broker-dealer or fund advisor shall erect and maintain a "firewall" around the personnel who have access to information concerning changes and adjustments to the index;
  - ii. The current index value for Units listed pursuant to IM-28000-2A(a) above will be widely disseminated by one or more major market data vendors at least once per day and if the index value does not change during some or all of the period when trading is occurring on the Exchange, the last official calculated index value must remain available throughout Regular Trading Hours; and
  - iii. Any advisory committee, supervisory board, or similar entity that advises a Reporting Authority or that makes decisions on the index composition, methodology and related matters, must implement and maintain, or be subject to, procedures designed to prevent the use and dissemination of material non-public information regarding the applicable index.
- c. Disseminated Information. One or more major market data vendors shall disseminate for each series of Units listed pursuant to IM-28000-2A(a) above an estimate, updated at least every 15 seconds during the Regular Trading Hours, of the value of a share of each series (the "Intraday Indicative Value"). The Intraday Indicative Value may be based, for example, upon current information regarding the required deposit of securities and cash amount to permit creation of new shares of the series or upon the index value. The

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Intraday Indicative Value may be calculated by the Exchange or by an independent third party throughout the day using prices obtained from independent market data providers or other independent pricing sources such as a broker-dealer or price evaluation services. If the Intraday Indicative Value does not change during some or all of the period when trading is occurring on the Exchange, then the last official calculated Intraday Indicative Value must remain available throughout Regular Trading Hours.

- d. Initial Shares Outstanding. The provisions of IM-28000-1(d) above shall apply to series of Units listed pursuant to IM-28000-2A(a) above.
- e. Hours of Trading. The provisions of IM-28000-1(e) above shall apply to series of Units listed pursuant to IM-28000-2A(a) above.
- f. Surveillance Procedures. The provisions of IM-28000-1(f) above shall apply to series of Units based on Municipal Securities that are listed and/or traded pursuant to UTP.
- g. Disclosures. The provisions of IM-28000-1(g) above will apply to series of Units based on Municipal Securities.

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The Exchange may approve a series of Units based on a combination of indexes or an index or portfolio of component securities representing the U.S. or domestic equity market, the international equity market, the fixed income market, or the municipal securities market for listing and trading pursuant to Rule 19b-4(e) under the Securities Exchange Act of 1934 provided (i) such portfolio or combination of indexes have been reviewed and approved for the trading of options, Units, Portfolio Depository Receipts, Index-Linked Exchangeable Notes or Index-Linked Securities, as applicable, by the Commission under Section 19(b) of the Securities Exchange Act of 1934 and rules thereunder and the conditions set forth in the Commission's approval order continue to be satisfied or (ii) each index or portfolio of equity, fixed income, or municipal component securities separately meet either the criteria set forth in IM-28000- 1(a), 2(a), or 2A(a) above, as applicable, and provided further, that the Exchange may not so approve a series of Units that is issued by an open-end management investment company that seeks to provide investment results, before fees and expenses, in an amount that exceeds -300% of the percentage performance on a given day of a particular domestic equity, international or global equity securities index, Municipal Securities or Fixed Income Securities index or a combination thereof. Units listed pursuant to Rule 19b-4(e) shall satisfy the criteria set forth in (a) below and in IM-28000-1(c) and (f) - (g) on an initial and continued listing basis.

- a. Index Methodology and Calculation
  - i. If the index is maintained by a broker-dealer or fund advisor, the broker-dealer or fund advisor shall erect and maintain a "firewall" around the personnel who have access to information concerning changes and adjustments to the index;

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- ii. The current composite index value for Units listed pursuant to IM-28000- 1(a), 2(a), or 2A(a) above shall be widely disseminated by one or more major market data vendors at least once every 15 seconds during Regular Trading Hours, provided however, that (a) with respect to the Non-US Component Stocks of the combination index, the impact on the index is only required to be updated at least every 60 seconds during the Regular Trading Hours, and (b) with respect to the fixed income and municipal security components of the combination index, the impact on the index is only required to be updated at least once each day; and
  - iii. Any advisory committee, supervisory board, or similar entity that advises a Reporting Authority or that makes decisions on the index composition, methodology and related matters, must implement and maintain, or be subject to, procedures designed to prevent the use and dissemination of material non-public information regarding the applicable index.
- b. Other Applicable Provisions. The provisions of IM-28000-1(c)-(h) shall also apply to series of Units based on a combination of indexes or an index or portfolio of component securities representing the U.S. or domestic equity market, the international equity market, the fixed income market, or the municipal securities market.

**IM-28000-4**

The provisions of this IM-28000-4 apply only to series of Units that are issued by an open-end management investment company that (i) seeks to provide investment results, before fees and expenses, that correspond to a specific multiple of the percentage performance on a given day of a particular domestic equity, international or global equity securities index or Fixed Income Securities index or a combination thereof ("Multiple Fund Shares") or (ii) seeks to provide investment results, before fees and expenses, that correspond inversely up to -300% of the percentage performance on a given day of a particular domestic equity, international or global equity securities index or Fixed Income Securities index or a combination thereof ("Inverse Fund Shares"). For the initial and continued listing of Multiple Fund Shares and/or Inverse Fund Shares, the following requirements must be adhered to:

- a. Daily public Web site disclosure of portfolio holdings that will form the basis for the calculation of the net asset value by the issuer of a series of Multiple Fund Shares or Inverse Fund Shares, including, as applicable, the following instruments:
  - i. The identity and number of shares held of each specific equity security;
  - ii. The identity and amount held of each specific Fixed Income Security;
  - iii. The specific types of financial instruments, including, but not limited to, stock index futures contracts; options on futures contracts; options on securities and indices; equity caps, collars and floors; swap agreements; forward contracts; and repurchase agreements (the "Financial Instruments") and characteristics of such Financial Instruments; and

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- iv. Cash equivalents and the amount of cash held in the portfolio.
- b. If the Exchange becomes aware that the net asset value related to a Multiple Fund Share or Inverse Fund Share is not being disseminated to all market participants at the same time or the daily public Web site disclosure of portfolio holdings does not occur, the Exchange shall halt trading in such series of Multiple Fund Shares or Inverse Fund Shares, as appropriate. The Exchange may resume trading in such Fund Shares only when the net asset value is disseminated to all market participants at the same time or the daily public Web site disclosure of portfolio holdings occurs, as appropriate.

**28001. Equity Index-Linked Securities, Commodity-Linked Securities, Currency-Linked Securities, Fixed Income Index-Linked Securities, Futures-Linked Securities and Multifactor Index-Linked Securities**

The Exchange will consider listing equity index-linked securities (“Equity Index-Linked Securities”), commodity-linked securities (“Commodity-Linked Securities”), currency-linked securities (“Currency-Linked Securities”), fixed income index-linked securities (“Fixed Income Index-Linked Securities”), futures-linked securities, (“Futures-Linked Securities”) and multifactor index-linked securities (“Multifactor Index-Linked Securities” and, together with Equity Index-Linked Securities, Commodity-Linked Securities, Currency-Linked Securities, Fixed Income Index-Linked Securities and Futures-Linked Securities, “Index-Linked Securities”) that in each case meet the applicable criteria of this Rule.

The payment at maturity with respect to Equity Index-Linked Securities, Commodity-Linked Securities, Currency-Linked Securities, Fixed Income Index-Linked Securities, Futures-Linked Securities and Multifactor Index-Linked Securities is based on the performance of:

- i. in the case of Equity Index-Linked Securities, an underlying index or indexes of equity securities (an “Equity Reference Asset”), or
- ii. in the case of Commodity-Linked Securities, one or more physical commodities or commodity futures, options or other commodity derivatives or Commodity-Based Trust Shares (as defined in Rule 28004) or a basket or index of any of the foregoing (a “Commodity Reference Asset”), or
- iii. in the case of Currency-Linked Securities, one or more currencies, or options or currency futures or other currency derivatives or a basket or index of any of the foregoing (a “Currency Reference Asset”), or
- iv. in the case of Fixed Income Index-Linked Securities, one or more indexes or portfolios of notes, bonds, debentures or evidence of indebtedness that include, but are not limited to, U.S. Department of Treasury securities (“Treasury Securities”), government-sponsored entity securities (“GSE Securities”), municipal securities, trust preferred securities, supranational debt and debt of a foreign country or a subdivision

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- thereof or a basket or index of any of the foregoing (a “Fixed Income Reference Asset”), or
- v. in the case of Futures-Linked Securities, an index of (a) futures on Treasury Securities, GSE Securities, supranational debt and debt of a foreign country or a subdivision thereof, or options or other derivatives on any of the foregoing; (b) interest rate futures or options or derivatives on the foregoing in this subparagraph (b); (c) CBOE Volatility Index (VIX) Futures; or (d) EURO STOXX 50 Volatility Index (VSTOXX) Futures (a “Futures Reference Asset”), or
  - vi. in the case of Multifactor Index-Linked Securities, any combination of two or more Equity Reference Assets, Commodity Reference Assets, Currency Reference Assets, Fixed Income Reference Assets or Futures Reference Assets (a “Multifactor Reference Asset”, and together with Equity Reference Asset, Commodity Reference Asset, Currency Reference Asset, Fixed Income Reference Asset and Futures Reference Asset, “Reference Assets”). A Multifactor Reference Asset may include as a component a notional investment in cash or a cash equivalent based on a widely accepted overnight loan interest rate, LIBOR, Prime Rate, or an implied interest rate based on observed market spot and foreign currency forward rates.

Index-Linked Securities may or may not provide for the repayment of the original principal investment amount. The Exchange may submit a rule filing pursuant to Section 19(b) of the Exchange Act to permit the listing and trading of Index-Linked Securities that do not otherwise meet the standards set forth below. All statements or representations contained in such rule filing regarding (a) the description of the reference asset, (b) limitations on reference assets, or (c) the applicability of Exchange listing rules specified in such rule filing will constitute continued listing requirements. An issuer of such securities must notify the Exchange of any failure to comply with such continued listing requirements. If a series of Index-Linked Securities does not satisfy these requirements, the Exchange may halt trading in the securities and will initiate delisting proceedings pursuant to Rules in the 27000 Series.

The Exchange will consider for listing and trading pursuant to Rule 19b-4(e) under the Act, Index-Linked Securities provided the following criteria are met:

**(A) Requirements Common to All Index-Linked Securities**

- a. Both the issue and the issuer of such security initially meet and continuously maintain the criteria set forth in one of Rule 26101 (a), (b), (c), or (d) except that: (i) if the Index-Linked Securities are redeemable at the option of the holders thereof on at least a weekly basis, then no minimum number of publicly held trading units, and (ii) a minimum principal amount/market value outstanding of at least \$4 million, and (iii) if the Index-Linked Securities are traded in thousand dollar denominations or are redeemable at the option of the holders thereof on at least a weekly basis, then no minimum number of holders.
- b. The issue has a minimum term of one (1) year but not greater than thirty (30) years.

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- c. The issue must, on an initial and continued listing basis, be the non-convertible debt of the issuer.
- d. On an initial and continued listing basis, the payment at maturity may or may not provide for a multiple of the direct or inverse performance of an underlying Reference Asset; however, in no event will a loss or negative payment at maturity be accelerated by a multiple that exceeds three times the performance of an underlying Reference Asset.
- e. On an initial and continued listing basis, the issuer will be expected to have a minimum tangible net worth of \$250,000,000 (if the Index-Linked Securities are fully and unconditionally guaranteed by an affiliate of the issuer, the Exchange will rely on such affiliate's tangible net worth for purposes of this requirement). In the alternative, the issuer will be expected to have a minimum tangible net worth of \$150,000,000 and the original issue price of the Index-Linked Securities, combined with all of the issuer's other Index-Linked Securities listed on a national securities exchange or otherwise publicly traded in the United States, must not be greater than 25 percent of the issuer's tangible net worth at the time of issuance (if the Index-Linked Securities are fully and unconditionally guaranteed by an affiliate of the issuer, the Exchange will apply the provisions of this paragraph to such affiliate instead of the issuer and will include in its calculation all Index-Linked Securities that are fully and unconditionally guaranteed by such affiliate). Government issuers and supranational entities will be evaluated on a case-by-case basis.
- f. The issuer is in compliance with Rule 10A-3 under the Act on an initial and continued listing basis.

**(B) Requirements Specific to Equity Index-Linked Securities, Commodity-Linked Securities, Currency-Linked Securities, Fixed Income Index-Linked Securities, Futures-Linked Securities and Multifactor Index-Linked Securities.**

The issue must meet one of the criteria set forth below.

**I. Equity Index-Linked Securities Listing Standards**

1. The Exchange will consider listing Equity Index-Linked Securities that meet the requirements of this subparagraph (B)(I), where the payment at maturity or earlier redemption is based on an index or indexes of equity securities, securities of closed-end management investment companies registered under the Investment Company Act of 1940 (the "1940 Act") and/or Investment Company Units. The issue must meet the following initial listing criteria:
  - a. Each underlying index is required to have at least ten (10) component securities; provided, however, that there shall be no minimum number of component securities if one or more issues of Derivative Securities Products (i.e., Investment Company Units (as described in Rule 28000) or Index-Linked Securities (as described in Rule 28001), constitute, at least in part, component securities underlying an issue of Equity Index-Linked Securities. The securities described in



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Rule 28000 and Rule 28001, as referenced below in Rule 28001(B)(I)(1)(b)(2) and Rule 28001(B)(I)(2)(a) below, shall include securities listed on another national securities exchange pursuant to substantially equivalent listing rules.

- b. The index or indexes to which the security is linked shall either (1) have been reviewed and approved for the trading of Investment Company Units or options or other derivatives by the Commission under Section 19(b)(2) of the Act and rules thereunder and the conditions set forth in the Commission's approval order, including comprehensive surveillance sharing agreements for non-U.S. stocks, continue to be satisfied, or (2) the index or indexes meet the following criteria:
  - i. Each component security (excluding Derivative Securities Products and Index-Linked Securities) has a minimum market value of at least \$75 million, except that for each of the lowest dollar weighted component securities in the index that in the aggregate account for no more than 10% of the dollar weight of the index (excluding Derivative Securities Products and Index-Linked Securities), the market value can be at least \$50 million;
  - ii. Component stocks (excluding Derivative Securities Products and Index-Linked Securities) that in the aggregate account for at least 90% of the weight of the index (excluding Derivative Securities Products and Index-Linked Securities) each shall have a minimum global monthly trading volume of 1,000,000 shares, or minimum global notional volume traded per month of \$25,000,000, averaged over the last six months;
  - iii. No underlying component security (excluding Derivative Securities Products and Index-Linked Securities) will represent more than 25% of the dollar weight of the index, and, to the extent applicable, the five highest dollar weighted component securities in the index (excluding Derivative Securities Products and Index-Linked Securities) do not in the aggregate account for more than 50% of the dollar weight of the index (60% for an index consisting of fewer than 25 component securities); and
  - iv. 90% of the index's numerical value (excluding Derivative Securities Products and Index-Linked Securities) and at least 80% of the total number of component securities (excluding Derivative Securities Products and Index-Linked Securities) will meet the then current criteria for standardized option trading set forth in BOX Rule 5020; an index will not be subject to this requirement if (a) no underlying component security represents more than 10% of the dollar weight of the index (excluding Derivative Securities Products and Index-Linked Securities) and (b) the index has a minimum of 20 components (excluding Derivative Securities Products and Index-Linked Securities); and
  - v. All component securities shall be either:

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- A. Securities (other than foreign country securities and American Depository Receipts ("ADRs")) that are (x) issued by a 1934 Act reporting company or by an investment company registered under the 1940 Act, which in each case is listed on a national securities exchange, and (y) an "NMS stock" (as defined in Rule 600 of SEC Regulation NMS); or
- B. Foreign country securities or ADRs, provided that foreign country securities or foreign country securities underlying ADRs having their primary trading market outside the United States on foreign trading markets that are not members of the Intermarket Surveillance Group ("ISG") or parties to comprehensive surveillance sharing agreements with the Exchange will not in the aggregate represent more than 50% of the dollar weight of the index, and provided further that:
  - i. the securities of any one such market do not represent more than 20% of the dollar weight of the index, and
  - ii. the securities of any two such markets do not represent more than 33% of the dollar weight of the index.

**2. Continued Listing Criteria—**

- a. The Exchange will maintain surveillance procedures for securities listed under this Rule and may halt trading in such securities and will initiate delisting proceedings pursuant to Rules in the 27000 Series (unless the Commission has approved the continued trading of the subject Index-Linked Security), if any of the standards set forth above in paragraphs 1(a) and (b)(2) are not continuously maintained, except that:
  - i. the criteria that no single component represent more than 25% of the dollar weight of the index (excluding Derivative Securities Products and Index-Linked Securities) and, to the extent applicable, the five highest dollar weighted components in the index (excluding Derivative Securities Products and Index-Linked Securities) cannot represent more than 50% (or 60% for indexes with less than 25 components) of the dollar weight of the index, need only be satisfied at the time the index is rebalanced;

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- ii. Component stocks (excluding Derivative Securities Products and Index-Linked Securities) that in the aggregate account for at least 90% of the weight of the index (excluding Derivative Securities Products and Index-Linked Securities) each shall have a minimum global monthly trading volume of 500,000 shares, or minimum global notional volume traded per month of \$12,500,000, averaged over the last six months.
  - b. In connection with an Index-Linked Security that is listed pursuant to paragraph (b)(1) above, the Exchange may halt trading in the securities and will initiate delisting proceedings pursuant to Rules in the 27000 Series (unless the Commission has approved the continued trading of the subject Index-Linked Security) if an underlying index or indexes fails to satisfy the maintenance standards or conditions for such index or indexes as set forth by the Commission in its order under Section 19(b)(2) of the Act approving the index or indexes for the trading of options or other derivatives.
  - c. The Exchange may halt trading in the securities and will initiate delisting proceedings pursuant to Rules in the 27000 Series (unless the Commission has approved the continued trading of the subject Index-Linked Security), under any of the following circumstances:
    - i. if the aggregate market value or the principal amount of the Equity Index-Linked Securities publicly held is less than \$400,000;
    - ii. if the value of the index or composite value of the indexes is no longer calculated or widely disseminated on at least a 15-second basis with respect to indexes containing only securities listed on a national securities exchange, or on at least a 60-second basis with respect to indexes containing foreign country securities, provided, however, that, if the official index value does not change during some or all of the period when trading is occurring on the Exchange (for example, for indexes of foreign country securities, because of time zone differences or holidays in the countries where such indexes' component stocks trade) then the last calculated official index value must remain available throughout Regular Trading Hours; or
    - iii. if such other event shall occur or condition exists which in the opinion of the Exchange makes further dealings on the Exchange inadvisable.
  - d. Index Rebalancing—Indexes will be rebalanced at least annually.

**II. Commodity-Linked Securities Listing Standards**

1. The issue must meet the initial listing standard set forth in either (a) or (b) below:

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- a. The Commodity Reference Asset to which the security is linked shall have been reviewed and approved for the trading of Commodity-Based Trust Shares or options or other derivatives by the Commission under Section 19(b)(2) of the Act and rules thereunder and the conditions set forth in the Commission's approval order, including with respect to comprehensive surveillance sharing agreements, continue to be satisfied.
- b. The pricing information for components of a Commodity Reference Asset must be derived from a market which is an ISG member or affiliate or with which the Exchange has a comprehensive surveillance sharing agreement. Notwithstanding the previous sentence, pricing information for gold and silver may be derived from the London Bullion Market Association. A Commodity Reference Asset may include components representing not more than 10% of the dollar weight of such Commodity Reference Asset for which the pricing information is derived from markets that do not meet the requirements of this subparagraph (b); provided, however, that no single component subject to this exception exceeds 7% of the dollar weight of the Commodity Reference Asset.

In addition, the issue must meet both of the following initial listing criteria:

- i. the value of the Commodity Reference Asset must be calculated and widely disseminated by one or more major market data vendors on at least a 15-second basis during the Regular Trading Hours; and
- ii. in the case of Commodity-Linked Securities that are periodically redeemable, the indicative value of the subject Commodity-Linked Securities must be calculated and widely disseminated by the Exchange or one or more major market data vendors on at least a 15-second basis during Regular Trading Hours.

2. The issue must meet the following continued listing criteria:

- a. The Exchange may halt trading in the securities and will initiate delisting proceedings pursuant to Rules in the 27000 Series if any of the initial listing criteria described above are not continuously maintained.
- b. The Exchange may also halt trading in the securities and will initiate delisting proceedings pursuant to Rules in the 27000 Series under any of the following circumstances:
  - i. If the aggregate market value or the principal amount of the Commodity-Linked Securities publicly held is less than \$400,000;
  - ii. The value of the Commodity Reference Asset is no longer calculated or available and a new Commodity Reference Asset is substituted, unless the new Commodity Reference Asset meets the requirements of this Rule; or

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- iii. If such other event shall occur or condition exists which in the opinion of the Exchange makes further dealings on the Exchange inadvisable.

**III. Currency-Linked Securities Listing Standards**

1. The issue must meet the initial listing standard set forth in either (a) or (b) below:

- a. The Currency Reference Asset to which the security is linked shall have been reviewed and approved for the trading of Currency Trust Shares or options or other derivatives by the Commission under Section 19(b)(2) of the Act and rules thereunder and the conditions set forth in the Commission's approval order, including with respect to comprehensive surveillance sharing agreements, continue to be satisfied.
- b. The pricing information for each component of a Currency Reference Asset must be:

(x) the generally accepted spot or forward price (subject to the list of currencies below), applicable to the component of such Currency Reference Asset, for the currency exchange rate in question or

(y) derived from a market which (i) is an ISG member or affiliate or with which the Exchange has a comprehensive surveillance sharing agreement and (ii) is the pricing source for components of a Currency Reference Asset that has previously been approved by the Commission.

If pricing information is based upon the generally accepted forward price, the currency must be one of the following: US Dollar, Euro, Japanese Yen, British Pound Sterling, Swiss Franc, Canadian Dollar, Australian Dollar, Brazilian Real, Chinese Renminbi, Czech Koruna, Danish Krone, Hong Kong Dollar, Hungarian Forint, Indian Rupee, Indonesian Rupiah, Korean Won, Mexican Peso, Norwegian Krone, New Zealand Dollar, Philippine Peso, Polish Zloty, Russian Ruble, Swedish Krona, South African Rand, Singapore Dollar, Taiwan Dollar, Thai Baht, or New Turkish Lira.

A Currency Reference Asset may include components representing not more than 10% of the dollar weight of such Currency Reference Asset for which the pricing information is derived from markets that do not meet the requirements of either (x) or (y) above; provided, however, that no single component subject to this exception exceeds 7% of the dollar weight of the Currency Reference Asset.

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In the event a Currency Reference Asset is based upon the forward price and the forward price becomes unavailable due to a holiday, the spot price may be used for calculating the pricing

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information of the Currency Reference Asset. The pricing information of the Currency Reference Asset on the following business day must be based upon the forward price.

In addition, the issue must meet both of the following initial listing criteria:

- i. the value of the Currency Reference Asset must be calculated and widely disseminated by one or more market data vendors on at least a 15-second basis during the Regular Trading Hours; and
  - ii. in the case of Currency-Linked Securities that are periodically redeemable, the indicative value of the subject Currency-Linked Securities must be calculated and widely disseminated by the Exchange or one or more major market data vendors on at least a 15-second basis during the Regular Trading Hours.
2. The issue must meet the following continued listing criteria:
  - a. The Exchange may halt trading in the securities and will initiate delisting proceedings pursuant to Rules in the 27000 Series if any of the initial listing criteria described above are not continuously maintained.
  - b. The Exchange may also halt trading in the securities and will initiate delisting proceedings pursuant to Rules in the 27000 Series under any of the following circumstances:
    - i. If the aggregate market value or the principal amount of the Currency-Linked Securities publicly held is less than \$400,000;
    - ii. If the value of the Currency Reference Asset is no longer calculated or available and a new Currency Reference Asset is substituted, unless the new Currency Reference Asset meets the requirements of this Rule; or
    - iii. If such other event shall occur or condition exists which in the opinion of the Exchange makes further dealings on the Exchange inadvisable.

**IV. Fixed Income Index-Linked Securities Listing Standards**

1. The issue must meet initial listing standards set forth in either (a) or (b) below:
  - a. The Fixed Income Reference Asset to which the security is linked shall have been reviewed and approved for the trading of options, Investment Company Units, or other derivatives by the Commission under Section 19(b)(2) of the Securities Exchange Act of 1934 and rules thereunder and the conditions set forth in the Commission's approval order, continue to be satisfied.
  - b. The issue must meet the following initial listing criteria:



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- i.** If the aggregate market value or the principal amount of the Fixed Income Index-Linked Securities publicly held is less than \$400,000;
- ii.** The value of the Fixed Income Reference Asset is no longer calculated or available and a new Fixed Income Reference Asset is substituted, unless the new Fixed Income Reference Asset meets the requirements of this Rule; or
- iii.** If such other event shall occur or condition exists which in the opinion of the Exchange makes further dealings inadvisable.

**V. Futures-Linked Securities Listing Standards**

1. The issue must meet the initial listing standard set forth in either (a) or (b) below:
  - a.** The Futures Reference Asset to which the security is linked shall have been reviewed and approved for the trading of Futures-Linked Securities or options or other derivatives by the Commission under Section 19(b)(2) of the Securities Exchange Act of 1934 and rules thereunder and the conditions set forth in the Commission's approval order, including with respect to comprehensive surveillance sharing agreements, continue to be satisfied.
  - b.** The pricing information for components of a Futures Reference Asset must be derived from a market which is an ISG member or affiliate or with which the Exchange has a comprehensive surveillance sharing agreement. A Futures Reference Asset may include components representing not more than 10% of the dollar weight of such Futures Reference Asset for which the pricing information is derived from markets that do not meet the requirements of this subparagraph (b); provided, however, that no single component subject to this exception exceeds 7% of the dollar weight of the Futures Reference Asset.

In addition, the issue must meet both of the following initial listing criteria:

- i.** the value of the Futures Reference Asset must be calculated and widely disseminated by one or more major market data vendors on at least a 15-second basis during the Regular Trading Hours; and
  - ii.** in the case of Futures-Linked Securities that are periodically redeemable, the indicative value of the subject Futures-Linked Securities must be calculated and widely disseminated by the Exchange or one or more major market data vendors on at least a 15-second basis during Regular Trading Hours.
2. The issue must meet the following continued listing criteria:



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- a. The Exchange may halt trading in the securities and will initiate delisting proceedings pursuant to Rules in the 27000 Series if any of the initial listing criteria described above are not continuously maintained.
- b. The Exchange may also halt trading in the securities and will initiate delisting proceedings pursuant to Rules in the 27000 Series under any of the following circumstances:
  - i. If the aggregate market value or the principal amount of the Futures-Linked Securities publicly held is less than \$400,000;
  - ii. The value of the Futures Reference Asset is no longer calculated or available and a new Futures Reference Asset is substituted, unless the new Futures Reference Asset meets the requirements of this Rule; or
  - iii. If such other event shall occur or condition exists which in the opinion of the Exchange makes further dealings on the Exchange inadvisable.

**VI. Multifactor Index-Linked Securities Listing Standards**

1. The issuer must meet the following initial listing standards set forth in either (a) or (b) below:
  - a. Each component of the Multifactor Reference Asset to which the security is linked shall have been reviewed and approved for the trading of either options, Investment Company Units, or other derivatives under Section 19(b)(2) of the Securities Exchange Act of 1934 and rules thereunder and the conditions set forth in the Commission's approval order continue to be satisfied.
  - b. Each Reference Asset included in the Multifactor Reference Asset must meet the applicable initial and continued listing criteria set forth in the relevant subsection of this Rule.
2. In addition, the issue must meet both of the following initial listing criteria:
  - a. The value of the Multifactor Reference Asset must be calculated and widely disseminated to the public on at least a 15-second basis during the time the Multifactor Index-Linked Security trades on the Exchange; and
  - b. In the case of Multifactor Index-Linked Securities that are periodically redeemable, the indicative value of the Multifactor Index-Linked Securities must be calculated and widely disseminated by one or more major market data vendors on at least a 15-second basis during the time the Multifactor Index-Linked Securities trade on the Exchange.

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3. The Exchange may halt trading in the securities and will initiate delisting proceedings pursuant to Rules in the 27000 Series under any of the following circumstances:
  - a. If any of the initial listing criteria described above are not continuously maintained;
  - b. If the aggregate market value or the principal amount of the Multifactor Index-Linked Securities publicly held is less than \$400,000;
  - c. The value of the Multifactor Reference Asset is no longer calculated or available and a new Multifactor Reference Asset is substituted, unless the new Multifactor Reference Asset meets the requirements of this Rule; or
  - d. If such other event shall occur or condition exists which in the opinion of the Exchange makes further dealings on the Exchange advisable.

**(C) Firewalls**

If the value of an Index-Linked Security listed under this Rule is based in whole or in part on an index that is maintained by a broker-dealer, the broker-dealer shall erect and maintain a "firewall" around the personnel responsible for the maintenance of such index or who have access to information concerning changes and adjustments to the index, and the index shall be calculated by a third party who is not a broker-dealer.

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

**(D) Equity Trading Rules**

Index-Linked Securities will be subject to the Exchange's equity trading rules.

**(E) Trading Halts**

If the indicative value or Reference Asset value applicable to a series of Index-Linked Securities is not being disseminated as required, the Exchange may halt trading during the day on which the interruption first occurs. If such interruption persists past the trading day in which it occurred, the Exchange will halt trading no later than the beginning of the trading day following the interruption.

**(F) Surveillance Procedures**

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The Exchange will implement written surveillance procedures for Index-Linked Securities, including adequate comprehensive surveillance sharing agreements with markets trading in non-U.S. components, as applicable.

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(a) The ETP Holder acting as a Market Maker in Commodity-Linked Securities, Currency-Linked Securities, Futures-Linked Securities or Multifactor Index-Linked Securities, if applicable, must file with the Exchange, in a manner prescribed by the Exchange, and keep current a list identifying all accounts for trading in the Index Asset components, the commodities, currencies or futures underlying the Index Asset components, or any derivative instruments based on the Index Asset or based on any Index Asset component or any physical commodity, currency or futures underlying an Index Asset component, which the ETP Holder acting as Market Maker may have or over which it may exercise investment discretion. No ETP Holder acting as Market Maker in the Commodity-Linked Securities, Currency-Linked Securities, Futures-Linked Securities or Multifactor Index-Linked Securities, if applicable, shall trade in the Index Asset components, the commodities currencies or futures underlying the Index Asset components, or any derivative instruments based on the Index Asset or based on any Index Asset component or any physical commodity, or futures currency underlying an Index Asset component, in an account in which an ETP Holder acting as a Market Maker, 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 by this Rule.

(b) In addition to the existing obligations under Exchange rules regarding the production of books and records, the ETP Holder acting as a Market Maker in Commodity-Linked Securities, Currency-Linked Securities, Futures-Linked Securities or Multifactor Index-Linked Securities, if applicable, shall make available to the Exchange such books, records or other information pertaining to transactions by such entity or any limited partner, officer or approved person thereof, registered or nonregistered employee affiliated with such entity for its or their own accounts in the Index Asset components, the commodities, currencies or futures underlying the Index Asset components, or any derivative instruments based on the Index Asset or based on any Index Asset component or any physical commodity, currency or futures underlying an Index Asset component, as may be requested by the Exchange.

**28002. Exchange-Traded Fund Shares**

- a. The Exchange will consider for trading, whether by listing or pursuant to unlisted trading privileges, Exchange-Traded Fund Shares that meet the criteria of this Rule.
- b. **Applicability.** This Rule is applicable only to Exchange-Traded Fund Shares. Except to the extent inconsistent with this Rule, or unless the context otherwise requires, Exchange rules will be applicable to the trading on the Exchange of such securities. Exchange-Traded Fund Shares are included within the definition of NMS Stock.

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- c. Definitions. The following are definitions for purposes of this Rule:
1. “1940 Act” means the Investment Company Act of 1940, as amended.
  2. “Exchange-Traded Fund” has the same meaning as the term “exchange-traded fund” as defined in Rule 6c-11(a)(1) under the 1940 Act.
  3. “Exchange-Traded Fund Share” means a share of stock issued by an Exchange-Traded Fund.
  4. “Reporting Authority” means, in respect of a particular series of Exchange-Traded Fund Shares, the Exchange, an institution, or a reporting service designated by the Exchange or by the exchange that lists a particular series of Exchange-Traded Fund Shares (if the Exchange is trading such series pursuant to unlisted trading privileges) as the official source for calculating and reporting information relating to such series, including, but not limited to, any current index or portfolio value, the current value of the portfolio of any securities required to be deposited in connection with issuance of Exchange-Traded Fund Shares, the amount of any dividend equivalent payment or cash distribution to holders of Exchange-Traded Fund Shares, net asset value, or other information relating to the issuance, redemption or trading of Exchange-Traded Fund Shares. A series of Exchange-Traded Fund Shares may have more than one Reporting Authority, each having different functions.
- d. Limitation of Exchange Liability. Neither the Exchange, the Reporting Authority, nor any agent of the Exchange shall have any liability for damages, claims, losses or expenses caused by any errors, omissions, or delays in calculating or disseminating any current index or portfolio value; the current value of the portfolio of securities required to be deposited to the open-end management investment company in connection with issuance of Exchange-Traded Fund Shares; the amount of any dividend equivalent payment or cash distribution to holders of Exchange-Traded Fund Shares; net asset value; or other information relating to the purchase, redemption, or trading of Exchange-Traded Fund Shares, resulting from any negligent act or omission by the Exchange, the Reporting Authority or any agent of the Exchange, or any act, condition, or cause beyond the reasonable control of the Exchange, its agent, or the Reporting Authority, including, but not limited to, an act of God; fire; flood; extraordinary weather conditions; war; insurrection; riot; strike; accident; action of government; communications or power failure; equipment or software malfunction; or any

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

- e. The Exchange may approve Exchange-Traded Fund Shares for listing and/or trading (including pursuant to unlisted trading privileges) pursuant to Rule 19b-4(e) under the Exchange Act. Each series of Exchange-Traded Fund Shares must be eligible to operate in reliance on Rule 6c-11 under the 1940 Act and must satisfy the requirements of this Rule upon initial listing and, except for subparagraph (1)(A) of Rule 28002(e), on a continuing basis. An issuer of such securities must notify the Exchange of any failure to comply with such requirements.
  1. Initial and Continued Listing—Exchange-Traded Fund Shares will be listed and traded on the Exchange subject to the requirement that the investment company issuing a series of Exchange-Traded Fund Shares is eligible to operate in reliance on the requirements of Rule 6c-11(c) under the 1940 Act on an initial and continued listing basis.
    - A. Initial Shares Outstanding. For each series of Exchange-Traded Fund Shares, the Exchange will establish a minimum number of Exchange-Traded Fund Shares required to be outstanding at the time of commencement of trading on the Exchange.
  2. Suspension of trading or removal. The Exchange will consider the suspension of trading in, and will commence delisting proceedings under Rules in the 27000 Series of, a series of Exchange-Traded Fund Shares under any of the following circumstances:
    - A. if the Exchange becomes aware that the investment company is no longer eligible to operate in reliance on Rule 6c-11;
    - B. if the investment company no longer complies with the requirements set forth in this Rule;
    - C. if, following the initial twelve-month period after commencement of trading on the Exchange of a series of Exchange-Traded Fund Shares, there are fewer than 50 beneficial holders of such series of Exchange-Traded Fund Shares; or
    - D. if such other event shall occur or condition exists which, in the opinion of the Exchange, makes further dealings on the Exchange inadvisable.

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- f. Transactions in Exchange-Traded Fund Shares will occur during Regular Trading Hours.
- g. Surveillance Procedures. The Exchange will implement and maintain written surveillance procedures for Exchange-Traded Fund Shares.
- h. Termination. Upon termination of an investment company issuing Exchange-Traded Fund Shares, the Exchange requires that Exchange-Traded Fund Shares issued in connection with such entity be removed from Exchange listing.

**IM-28002-1**

A security that has previously been approved for listing on the Exchange pursuant to the generic listing requirements specified in Rule 28000 or IM-20005-1 of Rule 20005, or pursuant to a proposed rule change approved or subject to a notice of effectiveness by the Commission, may be considered approved for listing solely under this Rule if such security is eligible to operate in reliance on Rule 6c-11 under the 1940 Act. Once so approved for listing, the continued listing requirements applicable to such previously-listed security will be those specified in paragraph (e) of this Rule. Any requirements for listing as specified in Rule 28000 or IM-20005-1 of Rule 20005, or an approval order or notice of effectiveness of a separate proposed rule change that differ from the requirements of this Rule will no longer be applicable to such security.

**IM-28002-2**

The following requirements shall be met by series of Exchange-Traded Fund Shares on an initial and continued listing basis:

- a. With respect to series of Exchange-Traded Fund Shares that are based on an index:
  - 1. If the underlying index is maintained by a broker-dealer or fund adviser, the broker-dealer or fund adviser will erect and maintain a "fire wall" around the personnel who have access to information concerning changes and adjustments to the index and the index will be calculated by a third party who is not a broker-dealer or fund adviser.
  - 2. Any advisory committee, supervisory board, or similar entity that advises a Reporting Authority or that makes decisions on the index composition, methodology and related matters, must implement and maintain, or be subject to, procedures designed to prevent the use and dissemination of material nonpublic information regarding the applicable index.
- b. With respect to series of Exchange-Traded Fund Shares that are actively managed, if the investment adviser to the investment company issuing Exchange-Traded Fund Shares is affiliated with a broker-dealer, such investment adviser will erect and maintain a "fire

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wall" between the investment adviser and the broker-dealer with respect to access to information concerning the composition and/or changes to such Exchange-Traded Fund's portfolio. Personnel who make decisions on the Exchange-Traded Fund's portfolio composition must be subject to procedures designed to prevent the use and dissemination of material nonpublic information regarding the applicable Exchange-Traded Fund portfolio. The Reporting Authority that provides information relating to the portfolio of a series of Exchange-Traded Fund Shares must implement and maintain, or be subject to, procedures designed to prevent the use and dissemination of material non-public information regarding the actual components of such portfolio.

**28003. Trust Issued Receipts**

- a. The Exchange will consider for trading, whether by listing or pursuant to unlisted trading privileges, Trust Issued Receipts that meet the criteria of this Rule. The Exchange may submit a rule filing pursuant to Section 19(b) of the Securities Exchange Act of 1934 to permit the listing and trading of a series of Trust Issued Receipts that do not meet the standards set forth in IM-28003-1. All statements or representations contained in such rule filing regarding (a) the description of the index, portfolio or reference asset, (b) limitations on index or portfolio holdings or reference assets, or (c) the applicability of Exchange listing rules specified in such rule filing will constitute continued listing requirements. An issuer of such securities must notify the Exchange of any failure to comply with such continued listing requirements. If an issue of Trust Certificates does not satisfy these requirements, the Exchange may halt trading in the securities and will initiate delisting proceedings pursuant to Rules in the 27000 Series.
- b. Definitions. A Trust Issued Receipt is a security (1) that is issued by a trust ("Trust") which holds specific securities deposited with the Trust; (2) that, when aggregated in some specified minimum number, may be surrendered to the Trust by the beneficial owner to receive the securities; and (3) that pay beneficial owners dividends and other distributions on the deposited securities, if any are declared and paid to the trustee ("Trustee") by an issuer of the deposited securities.
- c. Designation. The Exchange may trade, whether by listing or pursuant to unlisted trading privileges, Trust Issued Receipts based on one or more securities. The Trust Issued Receipts based on particular securities shall be designated as a separate series and shall be identified by a unique symbol. The securities that are included in a series of Trust Issued Receipts shall be selected by the Exchange or by such other person as shall have a proprietary interest in such Trust Issued Receipts.
- d. Initial and Continued Listing and/or Trading. Trust Issued Receipts will be traded on the Exchange subject to application of the following criteria:
  1. Commencement of Trading—For each Trust, the Exchange will establish a minimum number of Trust Issued Receipts required to be outstanding at the time of commencement of trading on the Exchange.

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2. Continued Trading—The Exchange will consider the suspension of trading in or termination of unlisted trading privileges for, and will initiate delisting proceedings under Rules in the 27000 Series of, a Trust upon which a series of Trust Issued Receipts is based under any of the following circumstances:
  - A. if, following the initial twelve month period following formation of a Trust and commencement of trading on the Exchange, the Trust has more than 60 days remaining until termination and there are fewer than 50 record and/or beneficial holders of Trust Issued Receipts;
  - B. if, following the initial twelve month period following formation of a Trust and commencement of trading on the Exchange, the Trust has fewer than 50,000 receipts issued and outstanding;
  - C. if, following the initial twelve month period following formation of a Trust and commencement of trading on the Exchange, the market value of all receipts issued and outstanding is less than \$1,000,000;
  - D. if any of the continued listing requirements set forth in this Rule are not continuously maintained; or
  - E. if the Exchange files separate proposals under 19(b) of the Securities Exchange Act of 1934 and any of the statements or representations regarding (a) the description of the index, portfolio or reference asset, (b) limitations on index or portfolio holdings or reference assets, or (c) the applicability of Exchange listing rules specified in such rule filing are not continuously maintained;
  - F. if any other event shall occur or condition exists which, in the opinion of the Exchange, makes further dealings on the Exchange inadvisable.

Upon termination of a Trust, the Exchange requires that Trust Issued Receipts issued in connection with such trust be removed from listing or have their unlisted trading privileges terminated. A Trust may terminate in accordance with the provisions of the Trust prospectus, which may provide for termination if the value of securities in the Trust falls below a specified amount.

3. Term—The stated term of the Trust shall be as stated in the Trust prospectus; however, a Trust may be terminated under such earlier circumstances as may be specified in the Trust prospectus.



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4. Trustee—The trustee must on an initial and continued listing basis be a trust company or banking institution having substantial capital and surplus and the experience and facilities for handling corporate trust business. In cases where, for any reason, an individual has been appointed as trustee, as qualified trust company or banking institution must be appointed co-trustee.
  5. Voting—Voting rights shall be as set forth in the Trust prospectus.
- e. ETP Holders. ETP Holders shall provide to all purchasers of newly issued Trust Issued Receipts a prospectus for the series of Trust Issued Receipts.
  - f. Applicability. This Rule is applicable only to Trust Issued Receipts. Except to the extent inconsistent with this Rule, or unless the context otherwise requires, the provisions of the Bylaws and all other rules and procedures of the Board of Directors shall be applicable to the trading on the Exchange of such securities. Trust Issued Receipts are included within the definition of "security" or "securities" as such terms are used in the Bylaws and Rules of the Exchange.

**IM-28003-1**

The Exchange may approve trust issued receipts for trading, whether by listing or pursuant to unlisted trading privileges, pursuant to Rule 19b-4(e) under the Securities Exchange Act of 1934, provided that the following criteria (other than clause (f) which need only be satisfied on an initial listing basis) are satisfied on an initial and continued listing basis:

- a. each security underlying the trust issued receipt must be registered under Section 12 of the Exchange Act;
- b. each security underlying the trust issued receipt must have a minimum public float of at least \$150 million;
- c. each security underlying the trust issued receipt must be listed on a national securities exchange or traded through the facilities of Nasdaq as a reported national market system security;
- d. each security underlying the trust issued receipt must have an average daily trading volume of at least 100,000 shares during the preceding sixty-day trading period;
- e. each security underlying the trust issued receipt must have an average daily dollar value of shares traded during the preceding sixty-day trading period of at least \$1 million; and
- f. the most heavily weighted security in the trust issued receipt cannot initially represent more than 20% of the overall value of the trust issued receipt.

**IM-28003-2**

**EXHIBIT 5A**

- a. The provisions of IM-28003-2 apply only to Trust Issued Receipts that invest in "Investment Shares" or "Financial Instruments" as defined below. Rules that reference Trust Issued Receipts shall also apply to Trust Issued Receipts investing in Investment Shares or "Financial Instruments" .
- b. Definitions. The following terms as used in IM-28003-2 shall, unless the context otherwise requires, have the meanings herein specified:
  1. Investment Shares. The term "Investment Shares" means a security (a) that is issued by a trust, partnership, commodity pool or other similar entity that invests in any combination of futures contracts, options on futures contracts, forward contracts, commodities, swaps or high credit quality short-term fixed income securities or other securities; and (b) issued and redeemed daily at net asset value in amounts correlating to the number of receipts created and redeemed in a specified aggregate minimum number.
  2. Futures Contract. The term "futures contract" is commonly known as a "contract of sale of a commodity for future delivery" set forth in Section 2(a) of the Commodity Exchange Act.
  3. Forward Contract. A forward contract is a contract between two parties to purchase and sell a specific quantity of a commodity at a specified price with delivery and settlement at a future date. Forwards are traded over-the-counter ("OTC") and not listed on a futures exchange.
  4. Financial Instruments. The term "Financial Instruments" means any combination of investments, including cash; securities; options on securities and indices; futures contracts; options on futures contracts; forward contracts; equity caps, collars and floors; and swap agreements.
- c. Designation. The Exchange may list and trade Trust Issued Receipts investing in Investment Shares or Financial Instruments. Each issue of a Trust Issued Receipt based on a particular Investment Share shall be designated as a separate series and shall be identified by a unique symbol.
- d. Initial and Continued Listing. Trust Issued Receipts based on Investment Shares or Financial Instruments will be listed and traded on the Exchange subject to application of the following criteria:
  1. Initial Listing—The Exchange will establish a minimum number of receipts required to be outstanding at the time of commencement of trading on the Exchange.

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2. Continued Listing—The Exchange will maintain surveillance procedures for securities listed under this rule and will consider the suspension of trading in, and will initiate delisting proceedings under Rules in the 27000 Series of, Trust Issued Receipts based on an Investment Share or Financial Instruments under any of the following circumstances:
  - i. if following the initial twelve month period following the commencement of trading of the shares, (A) the Issuer has more than 60 days remaining until termination and there are fewer than 50 record and/or beneficial holders of Trust Issued Receipts; (B) if the Issuer has fewer than 50,000 securities or shares issued and outstanding; or (C) if the market value of all securities or shares issued and outstanding is less than \$1,000,000;
  - ii. if the value of an underlying index or portfolio is no longer calculated or available on at least a 15-second delayed basis or the Exchange stops providing a hyperlink on its website to any such asset or investment value;
  - iii. if the Indicative Value is no longer made available on at least a 15-second delayed basis;
  - iv. if any of the continued listing requirements set forth in this Rule are not continuously maintained;
  - v. if the Exchange submits a rule filing pursuant to Section 19(b) of the Securities Exchange Act of 1934 to permit the listing and trading of a series of Trust Issued Receipts based on separate Investment Shares or Financial Instruments and any of the statements or representations regarding (a) the description of the index, portfolio or reference asset, (b) limitations on index or portfolio holdings or reference assets, or (c) the applicability of Exchange listing rules specified in such rule filing are not continuously maintained; or
  - vi. if such other event shall occur or condition exists which in the opinion of the Exchange makes further dealings on the Exchange inadvisable.

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

3. Term—The stated term of the Trust shall be as stated in the prospectus. However, such entity may be terminated under such earlier circumstances as may be specified in the Trust prospectus.
4. Trustee—The following requirements apply on an initial and continued listing basis:
  - i. The trustee of a Trust must be a trust company or banking institution having substantial capital and surplus and the experience and facilities for handling corporate trust business. In cases where, for any reason, an individual has been appointed as trustee, a qualified trust company or banking institution must be appointed co-trustee.
  - ii. No change is to be made in the trustee of a listed issue without prior notice to and approval of the Exchange.
5. Voting—Voting rights shall be as set forth in the applicable Trust prospectus.

e. Market Maker Accounts.

1. The ETP Holder acting as a registered Market Maker in Trust Issued Receipts must file, with the Exchange, in a manner prescribed by the Exchange, and keep current a list identifying all accounts for trading the underlying physical asset or commodity, related futures or options on futures, or any other related derivatives, which the ETP Holder acting as registered Market Maker may have or over which it may exercise investment discretion. No ETP Holder acting as registered Market Maker in the Trust Issued Receipts shall trade in the underlying physical asset or commodity, related futures or options on futures, or any other related derivatives, in an account in which an ETP Holder acting as a registered Market Maker, directly or indirectly, controls trading activities, or has a direct interest in the profits or losses

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thereof, which has not been reported to the Exchange as required by this Rule.

2. In addition to the existing obligations under Exchange rules regarding the production of books and records, the ETP Holder acting as a registered Market Maker in Trust Issued Receipts shall make available to the Exchange such books, records or other information pertaining to transactions by such entity or registered or non-registered employee affiliated with such entity for its or their own accounts in the underlying physical asset or commodity, related futures or options on futures, or any other related derivatives, as may be requested by the Exchange.
- f. **Limitation of Exchange Liability.** Neither the Exchange nor any agent of the Exchange shall have any liability for damages, claims, losses or expenses caused by any errors, omissions, or delays in calculating or disseminating any underlying asset or commodity value, the current value of the underlying asset or commodity if required to be deposited to the Trust in connection with issuance of Trust Issued Receipts; net asset value; or other information relating to the purchase, redemption or trading of Trust Issued Receipts, resulting from any negligent act or omission by the Exchange or any agent of the Exchange, or any act, condition or cause beyond the reasonable control of the Exchange or its agent, including, but not limited to, an act of God; fire; flood; extraordinary weather conditions; war; insurrection; riot; strike; accident; action of government; communications or power failure; equipment or software malfunction; or any error, omission or delay in the reports of transactions in an underlying asset or commodity.
- g. The Exchange will file separate proposals under Section 19(b) of the Securities Exchange Act of 1934 before listing and trading Trust Issued Receipts based on separate Investment Shares or Financial Instruments. All statements or representations contained in such rule filing regarding (a) the description of the index, portfolio or reference asset, (b) limitations on index or portfolio holdings or reference assets, or (c) the applicability of Exchange listing rules specified in such rule filing will constitute continued listing requirements. An issuer of such securities must notify the Exchange of any failure to comply with such continued listing requirements.

**28004. Commodity-Based Trust Shares**

- a. The Exchange will consider for trading, whether by listing or pursuant to unlisted trading privileges, Commodity-Based Trust Shares that meet the criteria of this Rule.
- b. **Applicability.** This Rule is applicable only to Commodity-Based Trust Shares. Except to the extent inconsistent with this Rule, or unless the context otherwise requires, the provisions of the trust issued receipts rules, Bylaws, and all other rules and procedures of the Board of Directors of the Exchange shall be applicable to the trading on the Exchange

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of such securities. Commodity-Based Trust Shares are included within the definition of "security" or "securities" as such terms are used in the Bylaws and Rules of the Exchange.

- c. Definitions. The following terms as used in the Rules shall, unless the context otherwise requires, have the meaning herein specified:
  1. Commodity-Based Trust Shares. The term "Commodity-Based Trust Shares" means a security (a) that is issued by a trust ("Trust") that holds (1) a specified commodity deposited with the Trust, or (2) a specified commodity and, in addition to such specified commodity, cash; (b) that is issued by such Trust in a specified aggregate minimum number in return for a deposit of a quantity of the underlying commodity and/or cash; and (c) that, when aggregated in the same specified minimum number, may be redeemed at a holder's request by such Trust which will deliver to the redeeming holder the quantity of the underlying commodity and/or cash.
  2. Commodity. The term "commodity" is defined in Section 1a(9) of the Commodity Exchange Act.
- d. Designation of an Underlying Commodity. The Exchange may trade, either by listing or pursuant to unlisted trading privileges, Commodity-Based Trust Shares based on an underlying commodity. Each issue of a Commodity-Based Trust Share shall be designated as a separate series and shall be identified by a unique symbol.
- e. Initial and Continued Listing. Commodity-Based Trust Shares will be listed and traded on the Exchange subject to application of the following criteria:
  1. Initial Listing—the Exchange will establish a minimum number of Commodity-Based Trust Shares required to be outstanding at the time of commencement of trading on the Exchange.
  2. Continued Listing—The Exchange will maintain surveillance procedures for securities listed under this rule and will consider the suspension of trading in, and will initiate delisting proceedings under Rules in the 27000 Series of, such series under any of the following circumstances:
    - i. if, following the initial twelve month period following commencement of trading on the Exchange of Commodity-Based Trust Shares, the Trust has more than 60 days remaining until termination and there are fewer than 50 record

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and/or beneficial holders of Commodity-Based Trust Shares; or

- ii. if, following the initial twelve month period following commencement of trading on the Exchange of Commodity-Based Trust Shares, the Trust has fewer than 50,000 receipts issued and outstanding; or
- iii. if, following the initial twelve month period following commencement of trading on the Exchange of Commodity-Based Trust Shares, the market value of all receipts issued and outstanding is less than \$1,000,000; or
- iv. if the value of the underlying commodity is no longer calculated or available on at least a 15-second delayed basis from a source unaffiliated with the sponsor, Trust, custodian or the Exchange or the Exchange stops providing a hyperlink on its Web site to any such unaffiliated commodity value;
- v. if the Indicative Trust Value is no longer made available on at least a 15-second delayed basis;
- vi. if any of the continued listing requirements set forth in this Rule are not continuously maintained;
- vii. if the Exchange submits a rule filing pursuant to Section 19(b) of the Securities Exchange Act of 1934 to permit the listing and trading of a series of Commodity-Based Trust Shares and any of the statements or representations regarding (a) the description of the index, portfolio or reference asset, (b) limitations on index or portfolio holdings or reference assets, or (c) the applicability of Exchange listing rules specified in such rule filing are not continuously maintained; or
- viii. if such other event shall occur or condition exists which in the opinion of the Exchange makes further dealings on the Exchange inadvisable.

Upon termination of a Trust, the Exchange requires that Commodity-Based Trust Shares issued in connection with such entity Trust be removed from Exchange listing. A Trust may terminate

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

3. Term—The stated term of the Trust shall be as stated in the Trust prospectus. However, a Trust may be terminated under such earlier circumstances as may be specified in the Trust prospectus.
  4. Trustee—The following requirements apply on an initial and continued listing basis:
    - i. The trustee of a Trust must be a trust company or banking institution having substantial capital and surplus and the experience and facilities for handling corporate trust business. In cases where, for any reason, an individual has been appointed as trustee, a qualified trust company or banking institution must be appointed co-trustee.
    - ii. No change is to be made in the trustee of a listed issue without prior notice to and approval of the Exchange.
  5. Voting—Voting rights shall be as set forth in the applicable Trust prospectus.
- f. Limitation of Exchange Liability. Neither the Exchange nor any agent of the Exchange shall have any liability for damages, claims, losses or expenses caused by any errors, omissions, or delays in calculating or disseminating any underlying commodity value, the current value of the underlying commodity required to be deposited to the Trust in connection with issuance of Commodity-Based Trust Shares; resulting from any negligent act or omission by the Exchange, or any agent of the Exchange, or any act, condition or cause beyond the reasonable control of the Exchange, its agent, including, but not limited to, an act of God; fire; flood; extraordinary weather conditions; war; insurrection; riot; strike; accident; action of government; communications or power failure; equipment or software malfunction; or any error, omission or delay in the reports of transactions in an underlying commodity.
- g. Market Maker Accounts. An ETP Holder acting as a Market Maker in Commodity-Based Trust Shares with no exposure to a non-U.S. currency or currencies must file with the Exchange in a manner prescribed by the Exchange and keep current a list identifying all accounts for trading in an underlying commodity, related commodity futures or options on commodity futures, or any other related commodity derivatives, which the Market Maker may have or over which it may exercise investment discretion. An ETP Holder acting as a Market Maker in Commodity-Based Trust Shares with exposure to one or more non-U.S. currencies ("Underlying FX") also must file with the Exchange, in a manner prescribed by the Exchange, and keep current a list identifying all accounts for



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trading in Underlying FX and derivatives overlying Underlying FX which the Market Maker may have or over which it may exercise investment discretion, as well as a list of all commodity and commodity-related accounts referenced above. No Market Maker in Commodity-Based Trust Shares shall trade in a commodity, Underlying FX or any related derivative in an account that the Market Maker (1) directly or indirectly controls trading activities or has a direct interest in the profits or losses thereof, (2) is required by this rule to disclose to the Exchange, and (3) has not reported to the Exchange.

In addition to the existing obligations under Exchange rules regarding the production of books and records, the ETP Holder acting as a Market Maker in Commodity-Based Trust Shares shall make available to the Exchange such books, records or other information pertaining to transactions by such entity or registered or non-registered employee affiliated with such entity for its or their own accounts for trading the underlying physical commodity, related commodity futures or options on commodity futures, applicable Underlying FX, or any other related commodity or applicable Underlying FX derivatives, as may be requested by the Exchange.

**IM-28004-1**

A Commodity-Based Trust Share is a Trust Issued Receipt that holds a specified commodity deposited with the Trust.

**IM-28004-2**

The Exchange requires that ETP Holders provide all purchasers of newly issued Commodity-Based Trust Shares a prospectus for the series of Commodity-Based Trust Shares.

**IM-28004-3**

Transactions in Commodity-Based Trust Shares will occur during Regular Trading Hours.

**IM-28004-4**

The Exchange will file separate proposals under Section 19(b) of the Securities Exchange Act of 1934 before trading, either by listing or pursuant to unlisted trading privileges, Commodity-Based Trust Shares. All statements or representations contained in such rule filing regarding (a) the description of the index, portfolio or reference asset, (b) limitations on index or portfolio holdings or reference assets, or (c) the applicability of Exchange listing rules specified in such rule filing will constitute continued listing requirements. An issuer of such securities must notify the Exchange of any failure to comply with such continued listing requirements.

**28005. Managed Fund Shares**

- a. The Exchange will consider for trading, whether by listing or pursuant to unlisted trading privileges, Managed Fund Shares that meet the criteria of this Rule.

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- b. **Applicability.** This Rule is applicable only to Managed Fund Shares. Except to the extent inconsistent with this Rule, or unless the context otherwise requires, the rules and procedures of the Board of Directors of the Exchange shall be applicable to the trading on the Exchange of such securities. Managed Fund Shares are included within the definition of "security" or "securities" as such terms are used in the Rules of the Exchange.
- c. **Definitions.** The following terms as used in the Rules shall, unless the context otherwise requires, have the meanings herein specified:
1. **Managed Fund Share.** The term "Managed Fund Share" means a security that (a) represents an interest in a registered investment company ("Investment Company") organized as an open-end management investment company or similar entity, that invests in a portfolio of securities selected by the Investment Company's investment adviser consistent with the Investment Company's investment objectives and policies; (b) is issued in a specified aggregate minimum number in return for a deposit of a specified portfolio of securities and/or a cash amount with a value equal to the next determined net asset value; and (c) when aggregated in the same specified minimum number, may be redeemed at a holder's request, which holder will be paid a specified portfolio of securities and/or cash with a value equal to the next determined net asset value.
  2. **Disclosed Portfolio.** The term "Disclosed Portfolio" means the identities and quantities of the securities and other assets held by the Investment Company that will form the basis for the Investment Company's calculation of net asset value at the end of the business day. The website for each series of Managed Fund Shares shall disclose the following information regarding the Disclosed Portfolio, to the extent applicable:
    - A. ticker symbol;
    - B. CUSIP or other identifier;
    - C. description of the holding;
    - D. with respect to holdings in derivatives, the identity of the security, commodity, index or other asset upon which the derivative is based;
    - E. the strike price for any options;
    - F. the quantity of each security or other asset held as measured by;

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- i. par value,
    - ii. notional value,
    - iii. number of shares,
    - iv. number of contracts, and
    - v. number of units;
  - G. maturity date;
  - H. coupon rate;
  - I. effective date;
  - J. market value; and
  - K. percentage weighting of the holding in the portfolio.
3. **Portfolio Indicative Value.** The term "Portfolio Indicative Value" is the estimated indicative value of a Managed Fund Share based on current information regarding the value of the securities and other assets in the Disclosed Portfolio.
  4. **Reporting Authority.** The term "Reporting Authority" in respect of a particular series of Managed Fund Shares means the Exchange, an institution, or a reporting service designated by the Exchange or by the exchange that lists a particular series of Managed Fund Shares (if the Exchange is trading such series pursuant to unlisted trading privileges) as the official source for calculating and reporting information relating to such series, including, but not limited to, the Portfolio Indicative Value; the Disclosed Portfolio; the amount of any cash distribution to holders of Managed Fund Shares, net asset value, or other information relating to the issuance, redemption or trading of Managed Fund Shares. A series of Managed Fund Shares may have more than one Reporting Authority, each having different functions.
  5. **Normal Market Conditions.** The term "normal market conditions" includes, but is not limited to, the absence of trading halts in the applicable financial markets generally; operational issues (e.g., systems failure) causing dissemination of inaccurate market information; or force majeure type events such as natural or manmade disaster, act of God, armed conflict, act of terrorism, riot or labor disruption or any similar intervening circumstance.

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- d. Initial and Continued Listing—Managed Fund Shares will be listed and traded on the Exchange subject to application of the following criteria:
1. Initial Listing—Each series of Managed Fund Shares will be listed and traded on the Exchange subject to application of the following initial listing criteria:
    - A. For each series, the Exchange will establish a minimum number of Managed Fund Shares required to be outstanding at the time of commencement of trading on the Exchange.
    - B. The Exchange will obtain a representation from the issuer of each series of Managed Fund Shares that the net asset value per share for the series will be calculated daily and that the net asset value and the Disclosed Portfolio will be made available to all market participants at the same time.
    - C. All Managed Fund Shares shall have a stated investment objective, which shall be adhered to under normal market conditions.
  2. Continued Listing—Each series of Managed Fund Shares will be listed and traded on the Exchange subject to application of the following continued listing criteria:
    - A. Portfolio Indicative Value. The Portfolio Indicative Value for Managed Fund Shares will be widely disseminated by one or more major market data vendors at least every 15 seconds during Regular Trading Hours.
    - B. Disclosed Portfolio.
      - i. The Disclosed Portfolio will be disseminated at least once daily and will be made available to all market participants at the same time.
      - ii. The Reporting Authority that provides the Disclosed Portfolio must implement and maintain, or be subject to, procedures designed to prevent the use and dissemination of material non-public information regarding the actual components of the portfolio.
    - C. Suspension of trading or removal. The Exchange will maintain surveillance procedures for securities listed under

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this rule and will consider the suspension of trading in, and will commence delisting proceedings under Rules in the 27000 Series of, a series of Managed Fund Shares under any of the following circumstances:

- i. if, following the initial twelve-month period after commencement of trading on the Exchange of a series of Managed Fund Shares, there are fewer than 50 beneficial holders of the series of Management Fund Shares;
- ii. if the value of the Portfolio Indicative Value is no longer calculated or available or the Disclosed Portfolio is not made available to all market participants at the same time;
- iii. if the Investment Company issuing the Managed Fund Shares has failed to file any filings required by the Securities and Exchange Commission or if the Exchange is aware that the Investment Company is not in compliance with the conditions of any exemptive order or no-action relief granted by the Securities and Exchange Commission to the Investment Company with respect to the series of Managed Fund Shares;
- iv. if any of the continued listing requirements set forth in this Rule are not continuously maintained;
- v. if the Exchange submits a rule filing pursuant to Section 19(b) of the Securities Exchange Act of 1934 to permit the listing and trading of a series of Managed Fund Shares that do not otherwise meet the standards set forth in this Rule and any of the statements or representations regarding (a) the description of the portfolio or reference asset, (b) limitations on portfolio holdings or reference assets, or (c) the applicability of Exchange listing rules specified in such rule filing are not continuously maintained; or
- vi. if such other event shall occur or condition exists which, in the opinion of the Exchange, makes further dealings on the Exchange inadvisable.

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- D. **Trading Halt.** If the Portfolio Indicative Value (as defined in this Rule at (c)(3)) of a series of Managed Fund Shares is not being disseminated as required, the Exchange may halt trading during the day in which the interruption to the dissemination of the Portfolio Indicative Value occurs. If the interruption to the dissemination of the Portfolio Indicative Value persists past the trading day in which it occurred, the Exchange will halt trading no later than the beginning of the trading day following the interruption. If a series of Managed Fund Shares is trading on the Exchange pursuant to unlisted trading privileges, the Exchange will halt trading in that series as specified in Rule 25050(c). In addition, if the Exchange becomes aware that the net asset value or the Disclosed Portfolio with respect to a series of Managed Fund Shares is not disseminated to all market participants at the same time, it will halt trading in such series until such time as the net asset value or the Disclosed Portfolio is available to all market participants.
  - E. **Termination.** Upon termination of an Investment Company, the Exchange requires that Managed Fund Shares issued in connection with such entity be removed from Exchange listing.
  - F. **Voting.** Voting rights shall be as set forth in the applicable Investment Company prospectus.
- e. **Limitation of Exchange Liability.** Neither the Exchange, the Reporting Authority, nor any agent of the Exchange shall have any liability for damages, claims, losses or expenses caused by any errors, omissions, or delays in calculating or disseminating any current portfolio value; the current value of the portfolio of securities required to be deposited to the open-end management investment company in connection with issuance of Managed Fund Shares; the amount of any dividend equivalent payment or cash distribution to holders of Managed Fund Shares; net asset value; or other information relating to the purchase, redemption, or trading of Managed Fund Shares, resulting from any negligent act or omission by the Exchange, the Reporting Authority or any agent of the Exchange, or any act, condition, or cause beyond the reasonable control of the Exchange, its agent, or the Reporting Authority, including, but not limited to, an act of God; fire; flood; extraordinary weather conditions; war; insurrection; riot; strike; accident; action of government; communications or power failure; equipment or software malfunction; or any error, omission, or delay in the reports of transactions in one or more underlying securities.

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The Exchange may approve Managed Fund Shares for listing and/or trading (including pursuant to unlisted trading privileges) pursuant to Rule 19b-4(e) under the Securities Exchange Act of 1934. Components of a series of Managed Fund Shares listed pursuant to Rule 19b-4(e) shall satisfy the criteria set forth in this Rule upon initial listing and on a continual basis. The Exchange will file separate proposals under Section 19(b) of the Securities Exchange Act of 1934 before the listing and trading of a series of Managed Fund Shares with components that do not satisfy the criteria set forth in this IM-28005-1 or components other than those specified below. All statements or representations contained in such rule filing regarding (a) the description of the portfolio or reference asset, (b) limitations on portfolio holdings or reference assets, or (c) the applicability of Exchange listing rules specified in such rule filing will constitute continued listing requirements. An issuer of such securities must notify the Exchange of any failure to comply with such continued listing requirements.

- a. Equity-Equity securities include the following: U.S. Component Stocks (as described in Rule 28000); Non-U.S. Component Stocks (as described in Rule 28000); Derivative Securities Products (i.e., Investment Company Units and securities described in IM-28000-1); and Index-Linked Securities that qualify for Exchange listing and trading under Rule 28001. For Derivative Securities Products and Index-Linked Securities, no more than 25% of the equity weight of the portfolio shall consist of leveraged and/or inverse leveraged Derivative Securities Products or Index-Linked Securities. The securities described in Rule 28000 and Rule 28001 referenced above, shall include securities listed on another national securities exchange pursuant to substantially equivalent listing rules. To the extent that a portfolio includes convertible securities, the equity security into which such security is converted shall meet the criteria of this IM-28005-1a. after converting.
  1. U.S. Component Stocks. The component stocks of the equity portion of a portfolio that are U.S. Component Stocks shall meet the following criteria initially and on a continuing basis:
    - A. Component stocks (excluding Derivative Securities Products and Index-Linked Securities) that in the aggregate account for at least 90% of the equity weight of the portfolio (excluding such Derivative Securities Products and Index-Linked Securities) each shall have a minimum market value of at least \$75 million;
    - B. Component stocks (excluding Derivative Securities Products and Index-Linked Securities) that in the aggregate account for at least 70% of the equity weight of the portfolio (excluding such Derivative Securities Products and Index-Linked Securities) each shall have a minimum monthly trading volume of 250,000 shares, or minimum

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notional volume traded per month of \$25,000,000, averaged over the last six months;

- C. The most heavily weighted component stock (excluding Derivative Securities Products and Index-Linked Securities) shall not exceed 30% of the equity weight of the portfolio, and, to the extent applicable, the five most heavily weighted component stocks (excluding Derivative Securities Products and Index-Linked Securities) shall not exceed 65% of the equity weight of the portfolio;
  - D. Where the equity portion of the portfolio does not include Non-U.S. Component Stocks, the equity portion of the portfolio shall include a minimum of 13 component stocks; provided, however, that there shall be no minimum number of component stocks if (i) one or more series of Derivative Securities Products or Index-Linked Securities constitute, at least in part, components underlying a series of Managed Fund Shares, or (ii) one or more series of Derivative Securities Products or Index-Linked Securities account for 100% of the equity weight of the portfolio of a series of Managed Fund Shares;
  - E. Except as provided herein, equity securities in the portfolio shall be U.S. Component Stocks listed on a national securities exchange and shall be NMS Stocks as defined in Rule 600 of Regulation NMS under the Securities Exchange Act of 1934; and
  - F. American Depositary Receipts ("ADRs") in a portfolio may be exchange-traded or nonexchange-traded. However, no more than 10% of the equity weight of a portfolio shall consist of non-exchange-traded ADRs.
2. Non-U.S. Component Stocks. The component stocks of the equity portion of a portfolio that are Non-U.S. Component Stocks shall meet the following criteria initially and on a continuing basis:
- A. Non-U.S. Component Stocks each shall have a minimum market value of at least \$100 million;
  - B. Non-U.S. Component Stocks each shall have a minimum global monthly trading volume of 250,000 shares, or



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minimum global notional volume traded per month of \$25,000,000, averaged over the last six months;

- C. The most heavily weighted Non-U.S. Component stock shall not exceed 25% of the equity weight of the portfolio, and, to the extent applicable, the five most heavily weighted Non-U.S. Component Stocks shall not exceed 60% of the equity weight of the portfolio;
  - D. Where the equity portion of the portfolio includes Non-U.S. Component Stocks, the equity portion of the portfolio shall include a minimum of 20 component stocks; provided, however, that there shall be no minimum number of component stocks if (i) one or more series of Derivative Securities Products or Index-Linked Securities constitute, at least in part, components underlying a series of Managed Fund Shares, or (ii) one or more series of Derivative Securities Products or Index-Linked Securities account for 100% of the equity weight of the portfolio of a series of Managed Fund Shares; and
  - E. Each Non-U.S. Component Stock shall be listed and traded on an exchange that has last-sale reporting.
- b. Fixed Income - Fixed income securities are debt securities that are notes, bonds, debentures or evidence of indebtedness that include, but are not limited to, U.S. Department of Treasury securities ("Treasury Securities"), government-sponsored entity securities ("GSE Securities"), municipal securities, trust preferred securities, supranational debt and debt of a foreign country or a subdivision thereof, investment grade and high yield corporate debt, bank loans, mortgage and asset backed securities, and commercial paper. To the extent that a portfolio includes convertible securities, the fixed income security into which such security is converted shall meet the criteria of this IM-28005-1b after converting. The components of the fixed income portion of a portfolio shall meet the following criteria initially and on a continuing basis:
- 1. Components that in the aggregate account for at least 75% of the fixed income weight of the portfolio each shall have a minimum original principal amount outstanding of \$100 million or more;
  - 2. No component fixed-income security (excluding Treasury Securities and GSE Securities) shall represent more than 30% of the fixed income weight of the portfolio, and the five most heavily weighted component fixed income securities in the portfolio (excluding Treasury Securities and GSE Securities) shall not in the

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aggregate account for more than 65% of the fixed income weight of the portfolio;

3. An underlying portfolio (excluding exempted securities) that includes fixed income securities shall include a minimum of 13 non-affiliated issuers, provided, however, that there shall be no minimum number of non-affiliated issuers required for fixed income securities if at least 70% of the weight of the portfolio consists of equity securities as described in IM-20009-1a above;
  4. Component securities that in aggregate account for at least 90% of the fixed income weight of the portfolio must be either (a) from issuers that are required to file reports pursuant to Sections 13 and 15(d) of the Securities Exchange Act of 1934; (b) from issuers that have a worldwide market value of its outstanding common equity held by non-affiliates of \$700 million or more; (c) from issuers that have outstanding securities that are notes, bonds debentures, or evidence of indebtedness having a total remaining principal amount of at least \$1 billion; (d) exempted securities as defined in Section 3(a)(12) of the Securities Exchange Act of 1934; or (e) from issuers that are a government of a foreign country or a political subdivision of a foreign country; and
  5. Non-agency, non-GSE and privately-issued mortgage-related and other asset-backed securities components of a portfolio shall not account, in the aggregate, for more than 20% of the weight of the portfolio.
- c. Cash and Cash Equivalents. Cash equivalents shall include short-term instruments with maturities of less than 3 months (as described herein). In addition, a portfolio may hold cash.
1. There shall be no limitation to the percentage of the portfolio invested in such holdings.
  2. Short-term instruments shall include the following:
    - i. U.S. Government securities, including bills, notes and bonds differing as to maturity and rates of interest, which are either issued or guaranteed by the U.S. Treasury or by U.S. Government agencies or instrumentalities;
    - ii. certificates of deposit issued against funds deposited in a bank or savings and loan association;

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- iii. bankers' acceptances, which are short-term credit instruments used to finance commercial transactions;
  - iv. repurchase agreements and reverse repurchase agreements;
  - v. bank time deposits, which are monies kept on deposit with banks or savings and loan associations for a stated period of time at a fixed rate of interest;
  - vi. commercial paper, which are short-term unsecured promissory notes; and
  - vii. money market funds.
- d. **Listed Derivatives.** The portfolio may hold listed derivatives, including futures, options and swaps on commodities, currencies and financial instruments (e.g., stocks, fixed income, interest rates, and volatility) or a basket or index of any of the foregoing. There shall be no limitation to the percentage of the portfolio invested in such holdings, subject to the following requirements:
- 1. in the aggregate, at least 90% of the weight of such holdings invested in futures, exchange-traded options, and listed swaps shall, on both an initial and continuing basis, consist of futures, options, and swaps for which the Exchange may obtain information via the Intermarket Surveillance Group ("ISG") from other members or affiliates of the ISG or for which the principal market is a market with which the Exchange has a comprehensive surveillance sharing agreement. (For purposes of calculating this limitation, a portfolio's investment in listed derivatives will be calculated as the aggregate gross notional value of the listed derivatives.); and
  - 2. the aggregate gross notional value of listed derivatives based on any five or fewer underlying reference assets shall not exceed 65% of the weight of the portfolio (including gross notional exposures), and the aggregate gross notional value of listed derivatives based on any single underlying reference asset shall not exceed 30% of the weight of the portfolio (including gross notional exposures).
- e. **Over-the-Counter ("OTC") Derivatives.** The portfolio may hold OTC derivatives, including forwards, options and swaps on commodities, currencies and financial instruments (e.g., stocks, fixed income, interest rates, and volatility) or a basket or index

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of any of the foregoing; however, on both an initial and continuing basis, no more than 20% of the assets in the portfolio may be invested in OTC derivatives. For purposes of calculating this limitation, a portfolio's investment in OTC derivatives will be calculated as the aggregate gross notional value of the OTC derivatives.

- f. To the extent that listed or OTC derivatives are used to gain exposure to individual equities and/or fixed income securities, or to indexes of equities and/or indexes of fixed income securities, the aggregate gross notional value of such exposure shall meet the criteria set forth in IM-28005-1a and 1b (including gross notional exposures), respectively.

**IM-28005-2**

Transactions in Managed Fund Shares will occur during Regular Trading Hours.

**IM-28005-3**

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

**IM-28005-4**

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

**IM-28005-5**

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

The Exchange requires that ETP Holders provide to all purchasers of a series of Managed Fund Shares a written description of the terms and characteristics of those securities, in a form prepared by the open-end management investment company issuing such securities, not later than the time a confirmation of the first transaction in such series is delivered to such purchaser.

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In addition, ETP Holders shall include such a written description with any sales material relating to a series of Units that is provided to customers or the public. Any other written materials provided by an ETP Holder to customers or the public making specific reference to a series of Managed Fund Shares as an investment vehicle must include a statement in substantially the following form: "A circular describing the terms and characteristics of (the series of Managed Fund Shares) has been prepared by the (open-end management investment company name) and is available from your broker. It is recommended that you obtain and review such circular before purchasing (the series of Managed Fund Shares)."

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

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

**IM-28005-6**

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

**28006. Active Proxy Portfolio Shares**

- a. The Exchange shall consider for trading, whether by listing or pursuant to unlisted trading privileges, Active Proxy Portfolio Shares that meet the criteria of this Rule.
- b. **Applicability.** This Rule is applicable only to Active Proxy Portfolio Shares. Except to the extent inconsistent with this Rule, or unless the context otherwise requires, the rules and procedures of the Board of Directors of the Exchange shall be applicable to the trading on the Exchange of such securities. Active Proxy Portfolio Shares are included within the definition of "security" or "securities" as such terms are used in the Rules of the Exchange.
- c. **Definitions.** The following terms as used in the Rules shall, unless the context otherwise requires, have the meanings herein specified:
  1. **Active Proxy Portfolio Shares.** The term "Active Proxy Portfolio Share" means a security that (a) is issued by a investment company registered under the Investment Company Act of 1940

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(“Investment Company”) organized as an openend management investment company that invests in a portfolio of securities selected by the Investment Company’s investment adviser consistent with the Investment Company’s investment objectives and policies; (b) is issued in a specified minimum number of shares , or multiples thereof, in return for a deposit by the purchaser of the Proxy Portfolio and/or cash with a value equal to the next determined net asset value (“NAV”); (c) when aggregated in the same specified minimum number of Active Proxy Portfolio Shares, or multiples thereof, may be redeemed at a holder’s request in return for the Proxy Portfolio and/or cash to the holder by the issuer with a value equal to the next determined NAV; and (d) the portfolio holdings for which are disclosed within at least 60 days following the end of every fiscal quarter.

2. Actual Portfolio. The term “Actual Portfolio” means the identities and quantities of the securities and other assets held by the Investment Company that shall form the basis for the Investment Company’s calculation of NAV at the end of the business day.
3. Proxy Portfolio. The term “Proxy Portfolio” means a specified portfolio of securities, other financial instruments and/or cash designed to track closely the daily performance of the Actual Portfolio of a series of Active Proxy Portfolio Shares as provided in the exemptive relief pursuant to the Investment Company Act of 1940 applicable to such series. The website for each series of Active Proxy Portfolio Shares shall disclose the information regarding the Proxy Portfolio as provided in the exemptive relief pursuant to the Investment Company Act of 1940 applicable to such series, including the following, to the extent applicable:
  - i. Ticker symbol;
  - ii. CUSIP or other identifier;
  - iii. Description of holding;
  - iv. Quantity of each security or other asset held; and
  - v. Percentage weighting of the holding in the portfolio.
4. Reporting Authority. The term “Reporting Authority” in respect of a particular series of Active Proxy Portfolio Shares means the Exchange, an institution, or a reporting service designated by the Exchange or by the exchange that lists a particular series of Active Proxy Portfolio Shares (if the Exchange is trading such series

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pursuant to unlisted trading privileges) as the official source for calculating and reporting information relating to such series, including, but not limited to, NAV, the Actual Portfolio, Proxy Portfolio, or other information relating to the issuance, redemption or trading of Active Proxy Portfolio Shares. A series of Active Proxy Portfolio Shares may have more than one Reporting Authority, each having different functions.

5. Normal Market Conditions. The term "normal market conditions" includes, but is not limited to, the absence of trading halts in the applicable financial markets generally; operational issues (e.g., systems failure) causing dissemination of inaccurate market information; or force majeure type events such as natural or manmade disaster, act of God, armed conflict, act of terrorism, riot or labor disruption or any similar intervening circumstance.
- d. Initial and Continued Listing. Active Proxy Portfolio Shares shall be listed and traded on the Exchange subject to application of the following criteria:
1. Initial Listing. Each series of Active Proxy Portfolio Shares shall be listed and traded on the Exchange subject to application of the following initial listing criteria:
    - A. For each series, the Exchange shall establish a minimum number of Active Proxy Portfolio Shares required to be outstanding at the time of commencement of trading on the Exchange.
    - B. The Exchange shall obtain a representation from the issuer of each series of Active Proxy Portfolio Shares that the NAV per share for the series shall be calculated daily and that the NAV, the Proxy Portfolio, and the Actual Portfolio shall be made publicly available to all market participants at the same time.
    - C. All Active Proxy Portfolio Shares shall have a stated investment objective, which shall be adhered to under normal market conditions.
  2. Continued Listing. Each series of Active Proxy Portfolio Shares shall be listed and traded on the Exchange subject to application of the following continued listing criteria:
    - A. Actual Portfolio.

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- i. The Actual Portfolio shall be publicly disseminated within at least 60 days following the end of every fiscal quarter and shall be made publicly available to all market participants at the same time.
- B. Proxy Portfolio.
  - i. The Proxy Portfolio shall be made publicly available on the website for each series of Active Proxy Portfolio Shares at least once daily and shall be made available to all market participants at the same time.
- C. Suspension of trading or removal. The Exchange will consider the suspension of trading in, and will commence delisting proceedings under Rules in the 27000 Series for, a series of Active Proxy Portfolio Shares under any of the following circumstances:
  - i. if any of the continued listing requirements set forth in this Rule are not continuously maintained;
  - ii. if either the Proxy Portfolio or Actual Portfolio is not made available to all market participants at the same time;
  - iii. if, following the initial twelve month period after commencement of trading on the Exchange of a series of Active Proxy Portfolio Shares, there are fewer than 50 beneficial holders of such series of Active Proxy Portfolio Shares;
  - iv. if the Exchange is notified, or otherwise becomes aware, that the Investment Company has failed to file any filings required by the Commission or is not in compliance with the conditions of any currently applicable exemptive order or no-action relief granted by the Commission or Commission staff to the Investment Company with respect to a series of Active Proxy Portfolio Shares;
  - v. if any of the statements or representations regarding (a) the description of the portfolio, (b) limitations on portfolio holdings, or (c) the applicability of Exchange listing rules, specified in the Exchange's rule filing pursuant to Section 19(b) of the



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Securities Exchange Act of 1934 to permit the listing and trading of a series of Active Proxy Portfolio Shares, is not continuously maintained; or

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

**D. Trading Halt.**

- i. The Exchange may consider all relevant factors in exercising its discretion to halt trading in a series of Active Proxy Portfolio Shares. Trading may be halted because of market conditions or for reasons that, in the view of the Exchange, make trading in the series of Active Proxy Portfolio Shares inadvisable. These may include: (a) the extent to which trading is not occurring in the securities and/or the financial instruments composing the Proxy Portfolio and/or Actual Portfolio, or (b) whether other unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market are present.
- ii. If a series of Active Proxy Portfolio Shares is trading on the Exchange pursuant to unlisted trading privileges, the Exchange shall halt trading in that series as specified in Rule 20505(c).
- iii. If the Exchange becomes aware that the NAV, Proxy Portfolio or Actual Portfolio with respect to a series of Active Proxy Portfolio Shares is not made available to all market participants at the same time, the Exchange shall halt trading in such series until such time as the NAV, Proxy Portfolio or Actual Portfolio is available to all market participants at the same time, as applicable.

**E. Termination.** Upon termination of an Investment Company, the Exchange requires that Active Proxy Portfolio Shares issued in connection with such entity be removed from Exchange listing.

**F. Voting.** Voting rights shall be as set forth in the applicable Investment Company prospectus.

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- e. **Limitation of Exchange Liability.** Neither the Exchange, the Reporting Authority, when the Exchange is acting in the capacity of a Reporting Authority, nor any agent of the Exchange shall have any liability for damages, claims, losses or expenses caused by any errors, omissions, or delays in calculating or disseminating any current portfolio value; the current value of the portfolio of securities required to be deposited to the Investment Company in connection with issuance of Active Proxy Portfolio Shares; the amount of any dividend equivalent payment or cash distribution to holders of Active Proxy Portfolio Shares; NAV; or other information relating to the purchase, redemption, or trading of Active Proxy Portfolio Shares, resulting from any negligent act or omission by the Exchange, the Reporting Authority, when the Exchange is acting in the capacity of a Reporting Authority, or any agent of the Exchange, or any act, condition, or cause beyond the reasonable control of the Exchange, its agent, or the Reporting Authority, when the Exchange is acting in the capacity of a Reporting Authority, including, but not limited to, an act of God; fire; flood; extraordinary weather conditions; war; insurrection; riot; strike; accident; action of government; communications or power failure; equipment or software malfunction; or any error, omission, or delay in the reports of transactions in one or more underlying securities.

**IM-28006-1**

The Exchange will file separate proposals under Section 19(b) of the Securities Exchange Act of 1934 before the listing and trading of a series of Active Proxy Portfolio Shares. All statements or representations contained in such rule filing regarding (a) the description of the portfolio, (b) limitations on portfolio holdings, or (c) the applicability of Exchange listing rules specified in such rule filing will constitute continued listing requirements. An issuer of such securities must notify the Exchange of any failure to comply with such continued listing requirements.

**IM-28006-2**

Transactions in Active Proxy Portfolio Shares shall occur during Regular Trading Hours.

**IM-28006-3**

**Surveillance Procedures.** The Exchange will implement and maintain written surveillance procedures for Active Proxy Portfolio Shares. As part of these surveillance procedures, the Investment Company's investment adviser will, upon request by the Exchange or FINRA, on behalf of the Exchange, make available to the Exchange or FINRA the daily Actual Portfolio holdings of each series of Active Proxy Portfolio Shares.

**IM-28006-4**

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If the investment adviser to the Investment Company issuing Active Proxy Portfolio Shares is registered as a broker-dealer or is affiliated with a broker-dealer, such investment adviser will erect and maintain a “fire wall” between the investment adviser and personnel of the broker-dealer or broker-dealer affiliate, as applicable, with respect to access to information concerning the composition and/or changes to such Investment Company’s Actual Portfolio and/or Proxy Portfolio. Any person related to the investment adviser or Investment Company who makes decisions pertaining to the Investment Company’s Actual Portfolio and/or Proxy Portfolio or has access to non-public information regarding the Investment Company’s Actual Portfolio and/or the Proxy Portfolio or changes thereto must be subject to procedures reasonably designed to prevent the use and dissemination of material non-public information regarding the Actual Portfolio and/or the Proxy Portfolio or changes thereto.

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Any person or entity, including a custodian, Reporting Authority, distributor, or administrator, who has access to non-public information regarding the Investment Company’s Actual Portfolio or the Proxy Portfolio or changes thereto, must be subject to procedures reasonably designed to prevent the use and dissemination of material non-public information regarding the applicable Investment Company Actual Portfolio or the Proxy Portfolio or changes thereto. Moreover, if any such person or entity is registered as a broker-dealer or affiliated with a broker-dealer, such person or entity will erect and maintain a “fire wall” between the person or entity and the broker-dealer with respect to access to information concerning the composition and/or changes to such Investment Company Actual Portfolio or Proxy Portfolio.

**28007. Managed Portfolio Shares**

- a. The Exchange will consider for trading, whether by listing or pursuant to unlisted trading privileges, Managed Portfolio Shares that meet the criteria of this Rule.
- b. Applicability. This Rule is applicable only to Managed Portfolio Shares. Except to the extent inconsistent with this Rule, or unless the context otherwise requires, the rules and procedures of the Board of Directors of the Exchange shall be applicable to the trading on the Exchange of such securities. Managed Portfolio Shares are included within the definition of "security" or "securities" as such terms are used in the Rules of the Exchange.
  1. The Exchange will file separate proposals under Section 19(b) of the Securities Exchange Act of 1934 before the listing and trading of a series of Managed Portfolio Shares. All statements or representations contained in such rule filing regarding (a) the description of the portfolio or reference asset, (b) limitations on portfolio holdings or reference assets, or (c) the applicability of Exchange listing rules specified in such rule filing will constitute continued listing requirements. An issuer of such securities must

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notify the Exchange of any failure to comply with such continued listing requirements.

2. Transactions in Managed Portfolio Shares shall occur during Regular Trading Hours.
3. Surveillance Procedures. The Exchange will implement and maintain written surveillance procedures for Managed Portfolio Shares. As part of these surveillance procedures, the Investment Company's investment adviser will upon request by the Exchange or FINRA, on behalf of the Exchange, make available to the Exchange or FINRA the daily portfolio holdings of each series of Managed Portfolio Shares.
4. If the investment adviser to the Investment Company issuing Managed Portfolio Shares is registered as a broker-dealer or is affiliated with a broker-dealer, such investment adviser will erect and maintain a "fire wall" between the investment adviser and personnel of the broker-dealer or broker-dealer affiliate, as applicable, with respect to access to information concerning the composition of and/or changes to such Investment Company portfolio and/or the Creation Basket. Any person related to the investment adviser or Investment Company who makes decisions pertaining to the Investment Company's portfolio composition or has access to information regarding the Investment Company's portfolio composition or changes thereto or the Creation Basket must be subject to procedures designed to prevent the use and dissemination of material non-public information regarding the applicable Investment Company portfolio or changes thereto or the Creation Basket.
5. Any person or entity, including an AP Representative, custodian, Reporting Authority, distributor, or administrator, who has access to non-public information regarding the Investment Company's portfolio composition or changes thereto or the Creation Basket, must be subject to procedures reasonably designed to prevent the use and dissemination of material nonpublic information regarding the applicable Investment Company portfolio or changes thereto or the Creation Basket. Moreover, if any such person or entity is registered as a broker-dealer or affiliated with a broker-dealer, such person or entity will erect and maintain a "fire wall" between the person or entity and the broker-dealer with respect to access to information concerning the composition and/or changes to such Investment Company portfolio or Creation Basket.

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- c. Definitions. The following terms as used in the Rules shall, unless the context otherwise requires, have the meanings herein specified:
1. **Managed Portfolio Share.** The term "Managed Portfolio Share" means a security that (a) represents an interest in an investment company registered under the Investment Company Act of 1940 ("Investment Company") organized as an open-end management investment company, that invests in a portfolio of securities selected by the Investment Company's investment adviser consistent with the Investment Company's investment objectives and policies; (b) is issued in a Creation Unit, or multiples thereof, in return for a designated portfolio of instruments (and/or an amount of cash) with a value equal to the next determined net asset value and delivered to the Authorized Participant (as defined in the Investment Company's Form N-1A filed with the Commission) through a Confidential Account; (c) when aggregated into a Redemption Unit, or multiples thereof, may be redeemed for a designated portfolio of instruments (and/or an amount of cash) with a value equal to the next determined net asset value delivered to the Confidential Account for the benefit of the Authorized Participant; and (d) the portfolio holdings for which are disclosed within at least 60 days following the end of every fiscal quarter.
  2. **Verified Intraday Indicative Value.** The term "Verified Intraday Indicative Value" is the indicative value of a Managed Portfolio Share based on all of the holdings of a series of Managed Portfolio Shares as of the close of business on the prior business day and, for corporate actions, based on the applicable holdings as of the opening of business on the current business day, priced and disseminated in one second intervals during Regular Trading Hours by the Reporting Authority.
  3. **AP Representative.** The term "AP Representative" means an unaffiliated broker-dealer, with which an Authorized Participant has signed an agreement to establish a Confidential Account for the benefit of such Authorized Participant, that will deliver or receive, on behalf of the Authorized Participant, all consideration to or from the Investment Company in a creation or redemption. An AP Representative will not be permitted to disclose the Creation Basket to any person, including the Authorized Participants.
  4. **Confidential Account.** The term "Confidential Account" means an account owned by an Authorized Participant and held with an AP Representative on behalf of the Authorized Participant. The

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account will be established and governed by contractual agreement between the AP Representative and the Authorized Participant solely for the purposes of creation and redemption, while keeping confidential the Creation Basket constituents of each series of Managed Portfolio Shares, including from the Authorized Participant. The books and records of the Confidential Account will be maintained by the AP Representative on behalf of the Authorized Participant.

5. **Creation Basket.** The term “Creation Basket” means on any given business day the names and quantities of the specified instruments (and/or an amount of cash) that are required for an AP Representative to deposit in-kind on behalf of an Authorized Participant in exchange for a Creation Unit and the names and quantities of the specified instruments (and/or an amount of cash) that will be transferred in-kind to an AP Representative on behalf of an Authorized Participant in exchange for a Redemption Unit, which will be identical and will be transmitted to each AP Representative before the commencement of trading.
6. **Creation Unit.** The term “Creation Unit” means a specified minimum number of Managed Portfolio Shares issued by an Investment Company at the request of an Authorized Participant in return for a designated portfolio of instruments and/or cash.
7. **Redemption Unit.** The term “Redemption Unit” means a specified minimum number of Managed Portfolio Shares that may be redeemed to an Investment Company at the request of an Authorized Participant in return for a portfolio of instruments and/or cash.
8. **Reporting Authority.** The term "Reporting Authority" in respect of a particular series of Managed Portfolio Shares means the Exchange, an institution, or a reporting service designated by the Exchange or by the exchange that lists a particular series of Managed Portfolio Shares (if the Exchange is trading such series pursuant to unlisted trading privileges), as the official source for calculating and reporting information relating to such series, including, but not limited to, the net asset value, the Verified Intraday Indicative Value, or other information relating to the issuance, redemption or trading of Managed Portfolio Shares. A series of Managed Portfolio Shares may have more than one Reporting Authority, each having different functions.

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9. Normal Market Conditions. The term “Normal Market Conditions” includes, but is not limited to, the absence of trading halts in the applicable financial markets generally; operations issues (e.g., systems failure) causing dissemination of inaccurate market information; or force majeure type events such as natural or man-made disaster, act of God, armed conflict, act of terrorism, riot or labor disruptions or any similar intervening circumstance.
- d. Initial and Continued Listing. Managed Portfolio Shares will be listed and traded on the Exchange subject to application of the following criteria:
    1. Initial Listing. Each series of Managed Portfolio Shares will be listed and traded on the Exchange subject to application of the following initial listing criteria:
      - A. For each series, the Exchange will establish a minimum number of Managed Portfolio Shares required to be outstanding at the time of commencement of trading on the Exchange.
      - B. The Exchange will obtain a representation from the Investment Company that issues each series of Managed Portfolio Shares that the net asset value per share for the series will be calculated daily and that the net asset value will be made available to all market participants at the same time.
      - C. All Managed Portfolio Shares shall have a stated investment objective, which shall be adhered to under Normal Market Conditions.
    2. Continued Listing. Each series of Managed Portfolio Shares will be listed and traded on the Exchange subject to application of the following continued listing criteria:
      - A. Verified Intraday Indicative Value. The Verified Intraday Indicative Value for Managed Portfolio Shares will be widely disseminated by the Reporting Authority and/or by one or more major market data vendors in one second intervals during Regular Trading Hours, and will be disseminated to all market participants at the same time.
      - B. Suspension of trading or removal. The Exchange will consider the suspension of trading in, and will commence delisting proceedings under Rules in the 27000 Series for, a

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series of Managed Portfolio Shares under any of the following circumstances:

- i. if, following the initial twelve-month period after commencement of trading on the Exchange of a series of Managed Portfolio Shares, there are fewer than 50 beneficial holders of the series of Managed Portfolio Shares;
- ii. if the Exchange has halted trading in a series of Managed Portfolio Shares because the Verified Intraday Indicative Value is interrupted pursuant to this Rule at (d)(2)(C)(ii) and such interruption persists past the trading day in which it occurred or is no longer available;
- iii. if the Exchange has halted trading in a series of Managed Portfolio Shares because the net asset value with respect to such series of Managed Portfolio Shares is not disseminated to all market participants at the same time, the holdings of such series of Managed Portfolio Shares are not made available on at least a quarterly basis as required under the 1940 Act, or such holdings are not made available to all market participants at the same time pursuant to this Rule at (d)(2)(C)(ii) and such issue persists past the trading day in which it occurred;
- iv. if the Exchange has halted trading in a series of Managed Portfolio Shares pursuant to this Rule at (d)(2)(C)(i), such issue persists past the trading day in which it occurred;
- v. if the Investment Company issuing the Managed Portfolio Shares has failed to file any filings required by the Commission or if the Exchange is aware that the Investment Company is not in compliance with the conditions of any currently applicable exemptive order or no-action relief granted by the Commission or Commission staff to the Investment Company with respect to the series of Managed Portfolio Shares;
- vi. if any of the continued listing requirements set forth in this Rule are not continuously maintained;



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- vii. if any of the statements or representations regarding (a) the description of the portfolio, (b) limitations on portfolio holdings, or (c) the applicability of Exchange listing rules, specified in the Exchange's rule filing pursuant to Section 19(b) of the Securities Exchange Act of 1934 to permit the listing and trading of a series of Managed Portfolio Shares, are not continuously maintained; or
- viii. if such other event shall occur or condition exists which, in the opinion of the Exchange, makes further dealings on the Exchange inadvisable.

**C. Trading Halt.**

- i. The Exchange may consider all relevant factors in exercising its discretion to halt trading in a series of Managed Portfolio Shares. Trading may be halted because of market conditions or for reasons that, in the view of the Exchange, make trading in the series of Managed Portfolio Shares inadvisable. These may include: (a) the extent to which trading is not occurring in the securities and/or the financial instruments composing the portfolio; or (b) whether other unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market are present.
- ii. If the Exchange becomes aware that: (a) the Verified Intraday Indicative Value of a series of Managed Portfolio Shares is not being calculated or disseminated in one second intervals, as required; (b) the net asset value with respect to a series of Managed Portfolio Shares is not disseminated to all market participants at the same time; (c) the holdings of a series of Managed Portfolio Shares are not made available on at least a quarterly basis as required under the 1940 Act; or (d) such holdings are not made available to all market participants at the same time (except as otherwise permitted under the currently applicable exemptive order or no action relief granted by the Commission or Commission staff to the Investment Company with respect to the series of Managed Portfolio Shares), it will halt trading in such series until such time as

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the Verified Intraday Indicative Value, the net asset value, or the holdings are available, as required.

- D. Termination. Upon termination of an Investment Company, the Exchange requires that Managed Portfolio Shares issued in connection with such entity be removed from Exchange listing.
  - E. Voting. Voting rights shall be as set forth in the applicable Investment Company prospectus and/or statement of additional information.
- e. Limitation of Exchange Liability. Neither the Exchange, the Reporting Authority, when the Exchange is acting in the capacity of a Reporting Authority, nor any agent of the Exchange shall have any liability for damages, claims, losses or expenses caused by any errors, omissions, or delays in calculating or disseminating any current portfolio value; the current value of the portfolio of securities required to be deposited to the open end management investment company in connection with issuance of Managed Portfolio Shares; the Verified Intraday Indicative Value; the amount of any dividend equivalent payment or cash distribution to holders of Managed Portfolio Shares; net asset value; or other information relating to the purchase, redemption, or trading of Managed Portfolio Shares, resulting from any negligent act or omission by the Exchange, the Reporting Authority when the Exchange is acting in the capacity of a Reporting Authority, or any agent of the Exchange, or any act, condition, or cause beyond the reasonable control of the Exchange, its agent, or the Reporting Authority, when the Exchange is acting in the capacity of a Reporting Authority, including, but not limited to, an act of God; fire; flood; extraordinary weather conditions; war; insurrection; riot; strike; accident; action of government; communications or power failure; equipment or software malfunction; or any error, omission, or delay in the reports of transactions in one or more underlying securities.
- f. Disclosures. The provisions of this subparagraph apply only to series of Managed Portfolio Shares that are the subject of an order by the Commission exempting such series from certain prospectus delivery requirements under Section 24(d) of the Investment Company Act of 1940 and are not otherwise subject to prospectus delivery requirements under the Securities Act of 1933. The Exchange will inform its ETP Holders regarding application of this subparagraph to a particular series of Managed Portfolio Shares by means of an information circular prior to commencement of trading in such series.

The Exchange requires that ETP Holders provide to all purchasers of a series of Managed Portfolio Shares a written description of the terms and characteristics of those securities, in a form prepared by the open-end management investment company issuing such securities, not later than the time a confirmation of the first transaction in such series is

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delivered to such a purchaser. In addition, ETP Holders shall include such a written description with any sales material relating to a series of Managed Portfolio Shares that is provided to customers or the public. Any other written materials provided by an ETP Holder to customers or the public making specific reference to a series of Managed Portfolio Shares as an investment vehicle must include a statement in substantially the following form: “A circular describing the terms and characteristics of (the series of Managed Portfolio Shares) has been prepared by the (open-end management investment company name) and is available from your broker. It is recommended that you obtain and review such circular before purchasing (the series of Managed Portfolio Shares).”

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

Upon request of a customer, an ETP Holder shall also provide a prospectus for the particular series of Managed Portfolio Shares.

**29000 – DUES, FEES, ASSESSMENTS, AND OTHER CHARGES****29000. Authority to Prescribe Dues, Fees, Assessments and Other Charges**

- (a) *Generally.* Consistent with Exchange Rule 2080, the Exchange may prescribe such reasonable dues, fees, assessments or other charges as it may, in its discretion, deem appropriate. Such dues, fees, assessments and charges may include membership dues, transaction fees, communication and technology fees, regulatory charges, listing fees, and other fees and charges as the Exchange may determine. All such dues, fees and charges shall be equitably allocated among BSTX Participants, issuers and other persons using the Exchange’s facilities.
- (b) *Regulatory Transaction Fee.* Under Section 31 of the Act, the Exchange must pay certain fees to the Commission. To help fund the Exchange’s obligations to the Commission under Section 31, this Regulatory Transaction Fee is assessed to BSTX Participants. To the extent there may be any excess monies collected under this Rule, the Exchange may retain those monies to help fund its general operating expense. Each BSTX Participant engaged in executing transactions on the Exchange shall pay, in such manner and at such times as the Exchange shall direct, a Regulatory Transaction Fee equal to (i) the rate determined by the Commission to be applicable to covered sales occurring on the Exchange in accordance with Section 31 of the Act multiplied by (ii) the BSTX Participant’s aggregate dollar amount of covered sales occurring on the Exchange during any computational period.
- (c) *Schedule of Fees.* The Exchange will provide BSTX Participants with notice of all relevant dues, fees, assessments and charges of the Exchange. Such notice may be made available to BSTX Participants on the Exchange’s website or by any other method deemed reasonable by the Exchange.

**EXHIBIT 5A****29010. Regulatory Revenues**

Any revenues received by the Exchange from fees derived from its regulatory function or regulatory fines will not be used for non-regulatory purposes or distributed to the stockholder, but rather, shall be applied to fund the legal and regulatory operations of the Exchange (including surveillance and enforcement activities), or, as the case may be, shall be used to pay restitution and disgorgement of funds intended for customers (except in the event of liquidation of the Exchange).