

were not or will not be in connection with or related to the offering.

(5) Valuation of Non-Cash Compensation

For purposes of determining the value to be assigned to securities received as underwriting compensation, the following criteria and procedures shall be applied:

(A) No underwriter and related person may receive a security or a warrant for a security as compensation in connection with the distribution of a public offering that is different than the security to be offered to the public unless the security received as compensation has a bona fide independent market, provided, however, that:

(i) In exceptional and unusual circumstances, upon good cause shown, such arrangement may be permitted by *NASD* [the Association]; and

(ii) No Change.

(B) through (D) No Change.

(6) Unreasonable Terms and Arrangements

(A) No member or person associated with a member shall participate in any manner in a public offering of securities after any arrangement proposed in connection with the public offering, or the terms and conditions relating thereto, has been determined to be unfair or unreasonable pursuant to this Rule or inconsistent with any By-Law or any Rule or regulation of *NASD* [the Association].

(B) Without limiting the foregoing, the following terms and arrangements, when proposed in connection with the distribution of a public offering of securities, shall be unfair and unreasonable:

(i) through (iv) No Change.

(v) Any "tail fee" arrangement granted to the underwriter and related persons that has a duration of more than two (2) years from the date the member's services are terminated, in the event that the offering is not completed in accordance with the agreement between the issuer and the underwriter and the issuer subsequently consummates a similar transaction, except that a member may demonstrate on the basis of information satisfactory to *NASD* [the Association] that an arrangement of more than two (2) years is not unfair or unreasonable under the circumstances.

(vi) through (xv) No Change.

(C) No Change.

(7) through (8) No Change.

(d) Exemptions. Pursuant to the Rule 9600 Series, *NASD* [the Association] may exempt a member or person associated with a member from the

provisions of this Rule for good cause shown.

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4200. Definitions

(a) For purposes of the Rule 4000 Series, unless the context requires otherwise:

(1) through (29) No Change.

(30) "Normal unit of trading" means 100 shares of a security unless, with respect to a particular security, *NASD* [the Association] determines that a normal unit of trading shall constitute other than 100 shares. If a normal unit of trading is other than 100 shares, a special identifier shall be appended to the issuer's Nasdaq symbol.

(31) through (36) No Change.

(37) "Underwriting Activity Report" is a report provided by the *Market Regulation Department* [Corporate Financing Department of *NASD* Regulation, Inc.] in connection with a distribution of securities subject to SEC Rule 101 pursuant to Rule 2710(b)(11) and includes forms that are submitted by members to comply with their notification obligations under Rules 4614, 4619, and 4623.

(b) No Change.

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6540. Requirements Applicable to Market Makers

(a) Market-maker participation in the OTCBB is voluntary and open to any *NASD* [Association] member firm that satisfies the financial/operational requirements applicable to member firms engaged in over-the-counter market making; subscribes to Level 3 Nasdaq Workstation service; and demonstrates compliance with (or qualifies for an exception from) SEC Rule 15c2-11 at the time of initiating (or resuming) the quotation of any OTCBB-eligible security in the Service. Rule 6740 sets forth the procedure for demonstrating compliance with SEC Rule 15c2-11.

(b) through (c) No Change.

(d) OTCBB-eligible securities that meet the frequency of quotation requirement for the so called "piggyback" exception in SEC Rule 15c2-11(f)(3)(i) are identified in the Service as "active" securities. A member can commence market making in any active security by registering as a market maker through a Nasdaq Workstation at the firm. In all other instances, a member must follow the procedure contained in this Rule to become qualified as a market maker in a particular OTCBB-eligible security.*

* No change to text of footnote.

(1) Permissible Quotation Entries

(A) through (C) No Change.

(D) Any member that intends to be a distribution participant in a distribution of securities subject to SEC Rule 101, or is an affiliated purchaser in such distribution, and is entering quotations in an OTCBB-eligible security that is the subject security or reference security of such distribution shall, unless another member has assumed responsibility for compliance with this paragraph:

(i) and (ii) No Change.

(iii) Provide written notice to the Corporate Financing Department [of *NASD* Regulation, Inc.] of its intention to impose a penalty bid or to conduct syndicate covering transactions pursuant to SEC Rule 104 prior to imposing the penalty bid or engaging in the first syndicate covering transaction. Such notice shall include information as to the date the penalty bid or first syndicate covering transaction will occur; and

(iv) Provide written notice to the Market Regulation Department [of *NASD* Regulation, Inc.] by the close of business on the day the offering terminates that includes the date and time of the pricing of the offering, the offering price, and the time the offering terminated.

(E) The written notice required by subparagraphs (d)[(b)](1)(D)(i), (iii) and (iv) of this Rule may be submitted on the Underwriting Activity Report provided by the *Market Regulation Department*. [Corporate Financing Department of *NASD* Regulation, Inc.]

(F) For purposes of subparagraph (d)[(b)](1)(D), SEC Rules 100, 101, 103 and 104 are rules of the Commission adopted under Regulation M and the following terms shall have the meanings as defined in SEC Rule 100: "affiliated purchaser," "distribution," "distribution participant," "penalty bid," "reference security," "restricted period," "stabilizing," "subject security," and "syndicate covering transaction."

(2) Impermissible Quotation Entries

(A) No Change.

(B) No member or person associated with a member shall enter into the Service a priced bid and/or offer, an unpriced indication of interest (including "bid wanted" or "offer wanted" indications), or a bid or offer accompanied by a modifier to reflect unsolicited customer interest in any security of an issuer that does not make filings with the [Securities and Exchange] Commission through the Electronic Data Gathering, Analysis, and Retrieval ("EDGAR") system (or in