

placement agent compensation for, a private placement before the required filing date of the public offering pursuant to subparagraph (b)(4) above if:

(i) institutional investors purchase at least 51% of the "total offering" (comprised of the total number of securities sold in the private placement and received or to be received as placement agent compensation by any member);

(ii) an institutional investor was the lead negotiator or, if the terms were not negotiated, was the lead investor with the issuer to establish or approve the terms of the private placement; and

(iii) underwriters and related persons did not, in the aggregate, purchase or receive as placement agent compensation more than 20% of the "total offering" (excluding purchases by any entity qualified under subparagraph (d)(5)(A) above).

(D) Acquisitions and Conversions to Prevent Dilution—Securities of the issuer if:

(i) the securities were acquired as the result of:

a. a right of preemption that was granted in connection with securities that were purchased either:

1. in a private placement and the securities are not deemed by the NASD to be underwriting compensation; or  
2. from a public offering or the public market; or

b. a stock-split or a pro-rata rights or similar offering; or

c. the conversion of securities that have not been deemed by the NASD to be underwriting compensation; and

(ii) the only terms of the purchased securities that are different from the terms of securities purchased by other investors are pre-existing contractual rights that were granted in connection with a prior purchase;

(iii) the opportunity to purchase in a rights offering or pursuant to a right of preemption, or to receive additional securities as the result of a stock-split or conversion was provided to all similarly situated securityholders; and

(iv) the amount of securities purchased or received did not increase the recipient's percentage ownership of the same generic class of securities of the issuer or of the class of securities underlying a convertible security calculated immediately prior to the investment, except in the case of conversions and passive increases that result from another investor's failure to exercise its own rights.

(E) Purchases Based On a Prior Investment History—Purchases of securities of the issuer if:

(i) the amount of securities purchased did not increase the purchaser's percentage ownership of the same generic class of securities of the issuer or of the class of securities underlying a convertible security calculated immediately prior to the investment; and

(ii) an initial purchase of securities of the issuer was made at least two years and a second purchase was made more than 180 days before the required filing date of the public offering pursuant to subparagraph (b)(4) above.

#### [(5)](e) 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 the Association; and (ii) in an offering of units, the underwriter and related persons may only receive a warrant for the unit offered to the public where the unit is the same as the public unit and the terms are no more favorable than the terms of the public unit.]

#### (1) Limitation on Securities Received Upon Exercise or Conversion of Another Security

An underwriter and related person may not receive a security (including securities in a unit), a warrant for a security, or a security convertible into another security as underwriting compensation in connection with a public offering unless:

(A) the security received or the security underlying the warrant or convertible security received is identical to the security offered to the public or to a security with a bona fide independent market; or

(B) the security can be accurately valued, as required by subparagraph (f)(2)(I) below.

#### [(B)](2) Valuation of Securities That Do Not Have an Exercise or Conversion Price

[s] Securities that [are not options, warrants or convertible securities] do not have an exercise or conversion price

shall have a compensation value [be valued on the basis of] based on:

[(i)] (A) the difference between [the per security cost and];

(i) either the market price per security on the date of acquisition, [where a] or, if no bona fide independent market exists for the security, [or] the [proposed (and actual)] public offering price per security; and

(ii) the per security cost;

[(ii)] (B) multiplied by the number of securities received or to be received as underwriting compensation;

[(iii)] (C) divided by the offering proceeds; and

[(iv)] (D) multiplied by one hundred [(100)].

#### (3) Valuation of Securities That Have an Exercise or Conversion Price

[(C) o] Options, warrants or convertible securities that have an exercise or conversion price ("warrants") shall [be valued on the basis of] have a compensation value based on the following formula:

[(i)] (A) the [proposed (and actual)] public offering price per security multiplied by .65 [(65%)];

[(ii)] (B) minus the [difference between] resultant of the exercise or conversion price per [security] warrant [and] less either:

(i) the market price per security on the date of acquisition, where a bona fide independent market exists for the security, or

(ii) the [proposed (and actual)] public offering price per security;

[(iii)] (C) divided by two [(2)];

[(iv)] (D) multiplied by the number of securities underlying the warrants[, options, and convertible securities received or to be received as underwriting compensation];

[(v)] (E) less the total price paid for the [securities] warrants;

[(vi)] (F) divided by the offering proceeds; and

[(vii)] (G) multiplied by one hundred [(100).];

(H) provided, however, that, notwithstanding subparagraph (e)(4) below, such warrants shall have a compensation value of at least .2% of the offering proceeds for each amount of securities that is up to 1% of the securities being offered to the public (excluding securities subject to an overallotment option).

#### (4) Valuation Discount for Securities With a Longer Resale Restriction

[(D) a lower value equal to 80% and 60% of the calculated value shall be assigned if securities, and where relevant, underlying securities, are or will be restricted from sale, transfer, assignment or other disposition for a