

period of one and two years, respectively, beyond the one-year period of restriction required by subparagraph (7)(A)(i) below.]

A lower value equal to 10% of the calculated value shall be deducted for each 180-day period that the securities or underlying securities are restricted from sale or other disposition beyond the 180-day period of the lock-up restriction required by subparagraph (g)(1) below. The transfers permitted during the lock-up restriction by subparagraphs (g)(2)(A)(iii)–(iv) are not available for such securities.

(5) Valuation of Items of Value Acquired in Connection with a Fair Price Derivative or Debt Transaction

Any debt or derivative transaction acquired or entered into at a “fair price” as defined in subsection (a)(9) and item of value received in or receivable in the settlement, exercise or other terms of such debt or derivative transaction shall not have a compensation value for purposes of determining underwriting compensation. If the actual price for the debt or derivative security is not a fair price, compensation will be calculated pursuant to this subsection (e) or based on the difference between the fair price and the actual price.

[(6)] (f) Unreasonable Terms and Arrangements

[(A)] (1) General

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 [the Association] NASD.

[(B)] (2) Prohibited Arrangements

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)] (A) [a] Any accountable expense allowance granted by an issuer to the underwriter and related persons [which] that includes payment for general overhead, salaries, supplies, or similar expenses of the underwriter incurred in the normal conduct of business[;].

[(ii)] (B) [a] Any non-accountable expense allowance in excess of [three (3) percent;] 3% of offering proceeds.

[(iii)] (C) [a] Any payment of commissions or reimbursement of expenses directly or indirectly to the

underwriter and related persons prior to commencement of the public sale of the securities being offered, except a reasonable advance against out-of-pocket accountable expenses actually anticipated to be incurred by the underwriter and related persons, which advance is reimbursed to the issuer to the extent not actually incurred[;].

[(iv)] (D) [t] The payment of any compensation by an issuer to a member or person associated with a member in connection with an offering of securities [which] that is not completed according to the terms of agreement between the issuer and underwriter, except those negotiated and paid in connection with a transaction that occurs in lieu of the proposed offering as a result of the efforts of the underwriter and related persons and provided, however, that the reimbursement of out-of-pocket accountable expenses actually incurred by the member or person associated with a member shall not be presumed to be unfair or unreasonable under normal circumstances[;].

[(v)] (E) [a] 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 [the Association] NASD that an arrangement of more than two [(2)] years is not unfair or unreasonable under the circumstances.

[(vi)] (F) [a] Any right of first refusal provided to the underwriter or related persons to underwrite or participate in future public offerings, private placements or other financings [which] that:

[a.] (i) has a duration of more than three [(3)] years from the [effective] date of effectiveness or commencement of sales of the public offering; or

[b.] (ii) has more than one opportunity to waive or terminate the right of first refusal in consideration of any payment or fee[;].

[(vii)] (G) [a] Any payment or fee to waive or terminate a right of first refusal regarding future public offerings, private placements or other financings provided to the underwriter and related persons [which] that:

[a.] (i) has a value in excess of the greater of [one percent (1%)] of the offering proceeds in the public offering where the right of first refusal was granted (or an amount in excess of [one percent] 1% if additional compensation

is available under the compensation guideline of the original offering) or [five percent (5%)] of the underwriting discount or commission paid in connection with the future financing (including any overallotment option that may be exercised), regardless of whether the payment or fee is negotiated at the time of or subsequent to the original public offering; or

[b.] (ii) is not paid in cash[;].

[(viii)] (H) *The terms or the exercise of the terms of an agreement for the receipt by the underwriter and related persons of underwriting compensation consisting of any option, warrant or convertible security [which] that:*

[a.] (i) is exercisable or convertible more than five [(5)] years from the effective date of the offering;

[b.] is exercisable or convertible at a price below either the public offering price of the underlying security or, if a bona fide independent market exists for the security or the underlying security, the market price at the time of receipt[;]

[c.] (ii) is not in compliance with subparagraph [(5)(A)] (e)(1) above;

[d.] (iii) has more than one demand registration right at the issuer’s expense;

[e.] (iv) has a demand registration right with a duration of more than five [(5)] years from the [effective] date of effectiveness or the commencement of sales of the public offering;

[f.] (v) has a piggyback registration right with a duration of more than seven [(7)] years from the [effective] date of effectiveness or the commencement of sales of the public offering;

[g.] (vi) has anti-dilution terms [designed to provide] that allow the underwriter and related persons [with disproportionate rights, privileges and economic benefits which are not provided to the purchasers of the securities offered to the public (or the public shareholders, if in compliance with subparagraph (5)(A) above)] to receive more shares or to exercise at a lower price than originally agreed upon at the time of the public offering, when the public shareholders have not been proportionally affected by a stock split, stock dividend, or other similar event; or

[h.] (vii) has anti-dilution terms [designed to provide for the receipt or accrual of] that allow the underwriter and related persons to receive or accrue cash dividends prior to the exercise or conversion of the security[; or].

[i.] is convertible or exercisable or otherwise is on terms more favorable than the terms of the securities being offered to the public[;]

[(ix)] (I) [t] The receipt by the underwriter and related persons of any item of compensation for which a value