

OMB APPROVAL

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Page 1 of 29

SECURITIES AND EXCHANGE COMMISSION  
 WASHINGTON, D.C. 20549  
 Form 19b-4

File No. SR - 2007 - 08  
 Amendment No. 2

Proposed Rule Change by National Securities Clearing Corporation  
 Pursuant to Rule 19b-4 under the Securities Exchange Act of 1934

Initial  Amendment  Withdrawal  Section 19(b)(2)  Section 19(b)(3)(A)  Section 19(b)(3)(B)

Pilot  Extension of Time Period for Commission Action  Date Expires   
 Rule  
 19b-4(f)(1)  19b-4(f)(4)  
 19b-4(f)(2)  19b-4(f)(5)  
 19b-4(f)(3)  19b-4(f)(6)

Exhibit 3 Sent As Paper Document  Exhibit 3 Sent As Paper Document

**Description**

Provide a brief description of the proposed rule change (limit 250 characters).

**Contact Information**

Provide the name, telephone number and e-mail address of the person on the staff of the self-regulatory organization prepared to respond to questions and comments on the proposed rule change.

First Name Allison Last Name Finnegan  
 Title Senior Associate Counsel  
 E-mail afinnegan@dtcc.com  
 Telephone (212) 855-3283 Fax (212) 855-3215

**Signature**

Pursuant to the requirements of the Securities Exchange Act of 1934,

has duly caused this filing to be signed on its behalf by the undersigned thereunto duly authorized officer.

Date 03/13/2008  
 By Larry Thompson General Counsel  
 (Name) (Title)

NOTE: Clicking the button at right will digitally sign and lock this form. A digital signature is as legally binding as a physical signature, and once signed, this form cannot be changed.

Digitally Sign and Lock Form

SECURITIES AND EXCHANGE COMMISSION  
WASHINGTON, D.C. 20549

For complete Form 19b-4 instructions please refer to the EFFF website.

**Form 19b-4 Information**

The self-regulatory organization must provide all required information, presented in a clear and comprehensible manner, to enable the public to provide meaningful comment on the proposal and for the Commission to determine whether the proposal is consistent with the Act and applicable rules and regulations under the Act.

**Exhibit 1 - Notice of Proposed Rule Change**

The Notice section of this Form 19b-4 must comply with the guidelines for publication in the Federal Register as well as any requirements for electronic filing as published by the Commission (if applicable). The Office of the Federal Register (OFR) offers guidance on Federal Register publication requirements in the Federal Register Document Drafting Handbook, October 1998 Revision. For example, all references to the federal securities laws must include the corresponding cite to the United States Code in a footnote. All references to SEC rules must include the corresponding cite to the Code of Federal Regulations in a footnote. All references to Securities Exchange Act Releases must include the release number, release date, Federal Register cite, Federal Register date, and corresponding file number (e.g., SR-[SRO]-xx-xx). A material failure to comply with these guidelines will result in the proposed rule change being deemed not properly filed. See also Rule 0-3 under the Act (17 CFR 240.0-3)

**Exhibit 2 - Notices, Written Comments, Transcripts, Other Communications**

Exhibit Sent As Paper Document

Copies of notices, written comments, transcripts, other communications. If such documents cannot be filed electronically in accordance with Instruction F, they shall be filed in accordance with Instruction G.

**Exhibit 3 - Form, Report, or Questionnaire**

Exhibit Sent As Paper Document

Copies of any form, report, or questionnaire that the self-regulatory organization proposes to use to help implement or operate the proposed rule change, or that is referred to by the proposed rule change.

**Exhibit 4 - Marked Copies**

The full text shall be marked, in any convenient manner, to indicate additions to and deletions from the immediately preceding filing. The purpose of Exhibit 4 is to permit the staff to identify immediately the changes made from the text of the rule with which it has been working.

**Exhibit 5 - Proposed Rule Text**

The self-regulatory organization may choose to attach as Exhibit 5 proposed changes to rule text in place of providing it in Item 1 and which may otherwise be more easily readable if provided separately from Form 19b-4. Exhibit 5 shall be considered part of the proposed rule change.

**Partial Amendment**

If the self-regulatory organization is amending only part of the text of a lengthy proposed rule change, it may, with the Commission's permission, file only those portions of the text of the proposed rule change in which changes are being made if the filing (i.e. partial amendment) is clearly understandable on its face. Such partial amendment shall be clearly identified and marked to show deletions and additions.

*Form 19b-4 of SR-NSCC-2007-08 remains unchanged by this Amendment II.*

*Exhibit 1 of SR-NSCC-2007-08 remains unchanged by this Amendment II.*

Underlined and bold indicates text proposed by SR-NSCC-2007-08

**Bolded, underlined, italicized text** indicates proposed additions made by this Amendment II to SR-NSCC-2007-08.

Double underlined text indicates pending additional language

NATIONAL SECURITIES CLEARING CORPORATION

DEFINITIONS

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RULE 2A INITIAL MEMBERSHIP REQUIREMENTS

G. Disqualification Criteria

Rule 15 provides the Corporation with the authority to establish, as it deems necessary or appropriate, standards of financial responsibility, operational capability, experience and competence for membership. The Rule also provides the Corporation with the authority to establish guidelines for the application of such membership standards. Pursuant to this authority, the Corporation has determined to establish the following additional standards. The Corporation may deny membership to any applicant or cease to act for any participant when such participant or its Controlling Management has a record that reflects:

(i) the applicant is subject to any Statutory Disqualification as defined in Section 3(a)(39) of the Exchange Act, or an order of similar effect issued by a Federal or State banking authority, or other examining authority or regulator, including a non-U.S. examining authority or regulator;

(ii) the applicant or its Controlling Management is responsible for: (A) making a misstatement of a material fact or has omitted to state a material fact to the Corporation in connection with its application to become a Member or thereafter, (B) fraudulent acts or a violation of the Securities Act of 1933, the Exchange Act, or the Investment Company Act, the Investment Advisers Act or any rule or regulation promulgated thereunder;

(iii) the applicant or its Controlling Management has been convicted within the ten years preceding the filing of the application or at any time thereafter of (A) any criminal offense involving the purchase, sale or delivery of any security, or bribery, or burglary, or conspiracy to commit any offense referred to in this subparagraph (iii), (B) the larceny, theft, robbery, embezzlement, extortion, fraudulent conversion, fraudulent concealment, forgery or misappropriation of funds, securities or other property, (C) any violation of Sections 1341, 1342 or 1343 of Title 18, United States Code, or (D) any other criminal offense involving breach of fiduciary obligation, or arising out of the conduct of business as a broker, dealer, investment company, adviser or underwriter, bank, trust company, fiduciary, insurance company, or other financial institution;

(iv) the applicant or its Controlling Management has been permanently or temporarily enjoined or prohibited by order, judgment or decree of any court or other governmental authority of competent jurisdiction from acting as a broker, dealer, investment company, advisor or underwriter, bank, trust company, fiduciary, insurance company, or other financial institution, or from engaging or in continuing any conduct or practice in connection with any such activity, or in connection with the purchase, sale or delivery of any security, and the enforcement of such injunction or prohibition has not been stayed; or

(v) the applicant has been expelled or suspended from or had its participation terminated by a national securities association or exchange registered under the Exchange Act, or self-regulatory organization as defined in Section 3(a)(26) of the Exchange Act, or a Corporation that engages in clearance and settlement activities or a securities depository, or has been barred or suspended from being associated with any member of such an exchange, association, organization, Corporation, or securities depository.

The Corporation shall retain the right to deny membership to an applicant if the Corporation becomes aware of any factor or circumstance about the applicant or its Controlling Management, which may impact the suitability of that particular applicant as a Member of the Corporation. Further, applicants are required to inform the Corporation as to any member of its Controlling Management that is or becomes subject to Statutory Disqualification (as defined in Section 3(a)(39) of the Exchange Act).

Finally, this Rule shall not be construed to limit the Corporation's authority to deny membership to, cease to act for, or obtain further assurances from, any applicant or participant in accordance with the Corporation's Rules and Procedures when the circumstances warrant even if such circumstances include (or consist solely of) items that are specifically not grounds for such action under this Rule.

Underlined and bold indicates proposed new text

**[Bolded, Bracketed]** indicates proposed deleted text

~~Shaded text~~ indicates pending deleted language

Double underlined text indicates pending additional language

## NATIONAL SECURITIES CLEARING CORPORATION

### DEFINITIONS

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#### Controlling Management

**The term "Controlling Management" shall mean the Chief Executive Officer, the Chief Financial Officer, and the Chief Operations Officer, or their equivalents, of an applicant or Member.**

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### RULE 2A INITIAL MEMBERSHIP REQUIREMENTS

#### SEC. 1. ELIGIBILITY FOR MEMBERSHIP

In furtherance of the Corporation's rights and authority to establish standards for membership, the Corporation shall establish, as it deems necessary or appropriate, standards of financial responsibility, operational capability, experience and competence for membership applicable to Members and to Limited Members. The Corporation shall also establish guidelines for the application of such membership standards.

##### A. Qualifications

A Person shall be qualified to become a participant if it satisfies the qualifications for membership applicable to its membership type, as set forth in Addendum B of these Rules.

## B. Membership Standards

The Corporation shall approve a membership application only upon a determination by the Corporation that the applicant meets the qualifications and financial, operational and other standards applicable to its membership type as set forth in Addendum B of these Rules, or such other qualifications and standards as the Corporation may promulgate. If the applicant is subject to a Statutory Disqualification or an order of similar effect issued by a Federal banking agency or other examining authority or regulator, the Corporation may take such factor into consideration when making its determination.<sup>1</sup>

## C. Application Documents

Each applicant shall, as required by the Corporation from time to time, complete and deliver to the Corporation an Applicant Questionnaire in such form as prescribed by the Corporation from time to time and shall provide such other reports, opinions, financial and other information as the Corporation may determine are appropriate for each membership type. Each applicant (as determined by the Corporation) must also fulfill, within the timeframes established by the Corporation, any operational testing requirements (the scope of such testing to be determined by the Corporation in its sole discretion) and related reporting requirements (such as reporting test results to the Corporation in a manner specified) that may be imposed by the Corporation to ensure the operational capability of the applicant.

Any information furnished to the Corporation pursuant to this Rule shall be held in the same degree of confidence as may be required by law or the rules and regulations of the appropriate regulatory body having jurisdiction over the applicant or which relate to the confidentiality of records, to the extent permitted by law, rule or regulation.

## D. Evaluation of Applicant

In evaluating a membership application, the Corporation shall, in addition to reviewing the qualifications and standards set forth in Sections 1.A. and 1.B. of this Rule, review any Applicant Questionnaire and any other information submitted by the applicant to the Corporation and shall have such authority to examine the financial responsibility and operational capability of any applicant as set forth in Rule 15.

The Corporation shall approve an applicant only upon a determination by the Corporation that the applicant meets the qualifications, standards and other requirements applicable to the relevant membership type.

Notwithstanding that a membership application shall have been approved by the Corporation, if a material change in condition at the applicant occurs which could bring into question the applicant's ability to perform, and such material change becomes known to the

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<sup>1</sup> Pursuant to its authority, the Corporation has established guidelines with regard to character and other considerations that are reflected in Addendum S to these Rules (Statement of Policy, Standards Relating to Competence for Membership).

Corporation prior to the applicant commencing use of the Corporation's services (or, for Settling Bank Only Members, prior to the applicant commencing the services of a Settling Bank ), the Corporation shall have the right to stay commencement by the applicant until a reconsideration of the applicant's financial responsibility and operational capability can be completed. As a result of such reconsideration, the Corporation may determine to withdraw approval or condition the approval upon the furnishing of additional information or assurances.

If the Corporation determines that the applicant fails to meet any membership standards, but in the opinion of the Corporation any one or more of such standards as applied to the applicant is unduly or disproportionately severe or the conduct of the applicant has been such as not to make it against the interests of the Corporation, its participants, creditors or investors to approve such application, the Corporation may approve the application either unconditionally or on a temporary or other conditional basis. When approving an application on a conditional or temporary basis, the Corporation may obtain additional assurances from the applicant as provided for in Rule 15.

Notwithstanding the foregoing, the Corporation may deny an application or request to use one or more additional services of the Corporation upon a determination by the Corporation that the Corporation does not have adequate personnel, space, data processing capacity or other operational capability at such time to perform its services for the applicant or participant without impairing the ability of the Corporation to provide services for its existing participants, to assure the prompt, accurate and orderly processing and settlement of securities transactions or to otherwise carry out its functions; provided, however, that any such applications which are denied pursuant to this paragraph shall be approved as promptly as the capabilities of the Corporation permit.

Before denying an application pursuant to this Rule, the Corporation shall furnish the applicant with a concise written statement setting forth the specific grounds under consideration upon which any such denial may be based and shall notify the applicant of its right to request a hearing to determine whether the application should be denied, such request to be filed by the applicant with the Corporation pursuant to Rule 37.

#### E. Membership and Other Agreements

Each applicant to become a Member, Mutual Fund/Insurance Services Member, Insurance Carrier/Retirement Services Member, Fund Member, Third Party Administrator Member or Data Services Only shall sign and deliver to the Corporation an instrument in writing whereby the applicant shall agree, among other things:

- (a) That the only services or systems, which the participant may utilize, are those that are permitted by the Corporation. If the participant intends only to use the (i) Mutual Fund Services and/or (ii) the Insurance and Retirement Processing Services, that the participant will so limit its activities at the Corporation;

- (b) The Rules of the Corporation shall be a part of the terms and conditions of every contract or transaction which the participant may take or have with or through the Corporation;
- (c) Not to submit, clear or settle through the Corporation any contract or transaction unless the Rules of the Corporation are part of the terms and conditions of such contract or transaction;
- (d) That it has reviewed the Rules of the Corporation including the provisions of Rule 4 relating to the Clearing Fund and Addendum D relating to the non-guarantee by the Corporation of payments made in the settlement of transactions submitted through the Corporation's services;
- (e) To abide by the Rules of the Corporation and be bound by all the provisions thereof, and that the Corporation shall have all the rights and remedies contemplated by said Rules. Notwithstanding that the participant may have ceased to be a participant, the participant shall continue to be bound by the Rules of the Corporation as to all matters and transactions occurring while a participant;
- (f) To be bound by any amendment to the Rules of the Corporation with respect to any transaction occurring subsequent to the time such amendment takes effect, as fully as though such amendment were now a part of the Rules of the Corporation; provided, however, that no such amendment shall affect the participant's right to cease to be a participant or alter the provisions of Rule 4, unless before such amendment becomes effective, the participant is given an opportunity to give written notice to the Corporation of the participant's election that the Corporation shall cease to act for the participant;
- (g) Not to submit or confirm any transaction, charge, request, instruction or transmission through the Corporation's services, nor to otherwise utilize the Corporations services, in contravention of any law, rule, regulation or statute;
- (h) To pay to the Corporation the compensation provided for under the Rules of the Corporation for services rendered to the participant, while a participant<sup>2</sup>;
- (i) To pay such fines while a participant as may be imposed in accordance with the Rules of the Corporation for the failure to comply therewith;
- (j) If applicable to its membership type, to pay to the Corporation any amounts which, pursuant to the provisions of Rule 4, shall become payable by the participant to the

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<sup>2</sup> With respect to Fund Members, the applicant shall agree to pay to the Corporation the compensation provided for by the Rules of the Corporation for Fund/Serv Eligible Fund transactions if the applicant distributes shares on a principal basis. However, to the extent the applicant distributes shares of an investment company regulated under the Investment Company Act of 1940, as amended, on an agency basis, then the applicant shall agree to pay to the Corporation the compensation provided for by the Rules of the Corporation for transactions in such investment company shares to the extent that the applicant can recover such amount from the investment company(ies) whose shares it distributes. Whether the applicant distributes shares on a principal or agency basis, the applicant shall agree to pay such fines as may be imposed in accordance with such Rules of the Corporation for the failure to comply therewith.

Corporation and that the determination by the Board of Directors of the Corporation of all questions affecting the charges to which the participant's contribution to the Clearing Fund (if required pursuant to Rule 4) are or may be subject shall be final and conclusive;

- (k) That its books and records<sup>3</sup> shall at all times be open to the inspection of the duly authorized representatives of the Corporation, and that the Corporation shall be furnished with all such information in respect of the participant's business and transactions as it may require, provided that if the participant shall cease to be a participant, the Corporation shall have no right to inspect the participant's books and records or to require information relating to transactions wholly subsequent to the time when the participant ceases to be such;<sup>4</sup> and
- (l) That to the extent the participant authorizes an agent (if permitted pursuant to the Corporation's Rules) to receive from and/or transmit to the Corporation data or payments, the participant shall be solely responsible for the acts of said agents as if it were receiving and/or transmitting such data itself and that the failure of said agents to perform shall not excuse the participant from a violation of the Corporation's Rules.<sup>5</sup>

In addition to the above:

1. Members:

Members that are Municipal Securities Brokers' Broker sponsored account applicants shall sign and deliver to the Corporation an agreement in writing whereby the applicant shall agree that (i) if securities received on a business day are pledged prior to money settlement on that business day, the Corporation shall be paid directly by the pledgee bank the amount the applicant is required to pay for the securities received or the applicant's net settlement obligation for that business day, whichever is less; and (ii) no securities received on a business day through a qualified securities depository shall be placed in transfer, withdrawn or delivered to a third party for no value prior to paying the Corporation the amount the applicant is obligated to pay for the receipt of the securities or the applicant's net settlement obligation for that business day, whichever is less.

2. Third Party Administrator Members:

Third Party Administrator Member applicants shall sign and deliver to the Corporation, (i) documentation and/or agreements in such form as required by the

<sup>3</sup> With respect to Fund Members, the applicant shall agree that the Fund Member's books and records and, to the extent the applicant is not a management company, the books and records of each management company affiliated with the applicant and, with respect to Fund/Serv Eligible Funds that are not investment companies regulated under the Investment Company Act of 1940, as amended, the books and records of any entity affiliated or having any regulatory connection with the fund, shall at all times be open to inspection by the duly authorized representatives of the Corporation and that the Corporation shall be furnished with all such information in respect of its business and transactions as the Corporation may require; provided that if it shall cease to be a Fund Member, the Corporation shall have no right to inspect its books and records, or the books and records of each such management company and/or entity affiliated or connected with the fund, as the case may be, or to require information relating to transactions wholly subsequent to the time when it ceased to be a Fund Member.

<sup>4</sup> This provision is not applicable to DSO Members or TPA Members.

<sup>5</sup> This provision is not applicable to TPA Members.

Corporation from time to time, for the payment or collection of charges pursuant to Rule 26 of the Corporation for the processing of transactions through the Mutual Fund Services and (ii) a duly completed Third Party Administrator Member Consent And Authorization Form designating the Member(s)/Mutual Fund/Insurance Services Member(s) who will be responsible for the settlement of orders initiated by the applicant.

Each applicant to become a Commission Billing Member, Settling Bank Only Member or Municipal Comparison Only Member shall sign and deliver to the Corporation such instruments in writing as the Corporation may require from time to time.

#### F. Original Clearing Fund Contribution

An applicant whose application has been approved by the Corporation shall, if required, pay to the Corporation its original contribution to the Clearing Fund determined in accordance with the provisions of Rule 4 and shall, if required, sign and deliver to the Corporation an instrument in writing evidencing any open account indebtedness permitted pursuant to Rule 4.

#### G. Disqualification Criteria

Rule 15 provides the Corporation with the authority to establish, as it deems necessary or appropriate, standards of financial responsibility, operational capability, experience and competence for membership. The Rule also provides the Corporation with the authority to establish guidelines for the application of such membership standards. Pursuant to this authority, the Corporation has determined to establish the following additional standards. The Corporation may deny membership to any applicant or cease to act for any participant when such participant or its Controlling Management has a record that reflects:

(i) the applicant is subject to any Statutory Disqualification as defined in Section 3(a)(39) of the Exchange Act, or an order of similar effect issued by a Federal or State banking authority, or other examining authority or regulator, including a non-U.S. examining authority or regulator;

(ii) the applicant or its Controlling Management is responsible for: (A) making a misstatement of a material fact or has omitted to state a material fact to the Corporation in connection with its application to become a Member or thereafter, (B) fraudulent acts or a violation of the Securities Act of 1933, the Exchange Act, or the Investment Company Act, the Investment Advisers Act or any rule or regulation promulgated thereunder;

(iii) the applicant or its Controlling Management has been convicted within the ten years preceding the filing of the application or at any time thereafter of (A) any criminal offense involving the purchase, sale or delivery of any security, or bribery, or burglary, or conspiracy to commit any offense referred to in this

subparagraph (iii), (B) the larceny, theft, robbery, embezzlement, extortion, fraudulent conversion, fraudulent concealment, forgery or misappropriation of funds, securities or other property, (C) any violation of Sections 1341, 1342 or 1343 of Title 18, United States Code, or (D) any other criminal offense involving breach of fiduciary obligation, or arising out of the conduct of business as a broker, dealer, investment company, adviser or underwriter, bank, trust company, fiduciary, insurance company, or other financial institution;

(iv) the applicant or its Controlling Management has been permanently or temporarily enjoined or prohibited by order, judgment or decree of any court or other governmental authority of competent jurisdiction from acting as a broker, dealer, investment company, advisor or underwriter, bank, trust company, fiduciary, insurance company, or other financial institution, or from engaging or in continuing any conduct or practice in connection with any such activity, or in connection with the purchase, sale or delivery of any security, and the enforcement of such injunction or prohibition has not been stayed; or

(v) the applicant has been expelled or suspended from or had its participation terminated by a national securities association or exchange registered under the Exchange Act, or self-regulatory organization as defined in Section 3(a)(26) of the Exchange Act, or a Corporation that engages in clearance and settlement activities or a securities depository, or has been barred or suspended from being associated with any member of such an exchange, association, organization, Corporation, or securities depository.

The Corporation shall retain the right to deny membership to an applicant if the Corporation becomes aware of any factor or circumstance about the applicant or its Controlling Management, which may impact the suitability of that particular applicant as a Member of the Corporation. Further, applicants are required to inform the Corporation as to any member of its Controlling Management that is or becomes subject to Statutory Disqualification (as defined in Section 3(a)(39) of the Exchange Act).

Finally, this Rule shall not be construed to limit the Corporation's authority to deny membership to, cease to act for, or obtain further assurances from, any applicant or participant in accordance with the Corporation's Rules and Procedures when the circumstances warrant even if such circumstances include (or consist solely of) items that are specifically not grounds for such action under this Rule.

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## ADDENDUM B

### QUALIFICATIONS AND STANDARDS OF FINANCIAL RESPONSIBILITY, AND OPERATIONAL CAPABILITY AND BUSINESS HISTORY

The Corporation shall apply the following standards in determining the financial responsibility and operational capability of Settling Members and applicants for membership and shall follow the Guidelines in making surveillance determinations.

#### I. MEMBERSHIP STANDARDS

A. In addition to the requirements established pursuant to the provisions of Rule 2, an applicant for membership shall:

1. have sufficient financial ability to make anticipated contributions to the Clearing Fund and to meet obligations to the Corporation;
2. have an established business history of a minimum of six months or personnel with sufficient operational background and experience to ensure the ability of the firm to conduct such a business;
3. be able to satisfactorily communicate with the Corporation and to fulfill anticipated commitments to and to meet the operational requirements of the Corporation with necessary promptness and accuracy and to conform to any condition and requirement which the Corporation reasonably deems necessary for its protection;
4. not be known to be subject to a Statutory Disqualification or an order of similar effect issued by a Federal banking agency or, with respect to an Insurance Company, be in good standing in those states in which it is licensed as an Insurance Company and in its state of organization; and
5. not be known to be subject to any other action or condition the existence of which would require the applicant to be placed on surveillance by the Corporation.

B. In addition to the foregoing standards,

1. All broker/dealer applicants shall:
  - a. have excess net capital over the minimum net capital requirement imposed by the SEC or such higher minimum capital requirement imposed by the brokers/ dealer=s designated examining authority in the amount of (i) \$500,000, or (ii) \$100,000, if such applicant is a Municipal Securities Brokers= Brokers (as defined in Rule 15c3-1(a)(8) of the Exchange Act) or (iii) \$1,000,000 if such applicant clears for other broker/dealers; and
  - b. have a capital ratio or percentage that would not require the applicant to be placed on immediate surveillance by the Corporation; and

c. not be known to be on a "closer-than-normal" surveillance by the applicants designated examining authority as that term is defined by the applicants designated examining authority.

2. Bank applicants, other than applicants for Settling Bank Only Membership shall:

a. (i) have at least \$50 million in capital;<sup>1</sup> or

(ii) have furnished to the Corporation a guarantee of its parent bank holding company respecting the payment of any and all obligations of the bank applicant, and such parent bank holding company shall have total consolidated capital of at least \$50 million; or

(iii) in the case of a trust company that is not a bank, but is a member of the Federal Reserve System or is an institution insured under the Federal Deposit Insurance Act, have consolidated capital of at least \$10 million and that is adequate in the judgment of the Corporation to the scope and character of the business conducted by such trust company.

3. Municipal Securities Brokers= Broker sponsored account applicants shall:

a. be in compliance with SEC Rule 15c3-1(a)(8); and,

b. sign and deliver to the Corporation an agreement in writing whereby the applicant shall agree that

(i) if securities received on a business day are pledged prior to money settlement on that business day, the Corporation shall be paid directly by the pledgee bank the amount the applicant is required to pay for the securities received or the applicant=s net settlement obligation for that business day whichever is less; and

(ii) no securities received on a business day through a qualified securities depository shall be placed in transfer, withdrawn or delivered to a third party for no value prior to paying the Corporation the amount the applicant is obligated to pay for the receipt of the securities or the applicant=s net settlement obligation for that business day whichever is less.

4. All applicants for membership limited to the use of the Mutual Fund Services and/or the Insurance and Retirement Processing Services shall meet the following:

a. If a broker-dealer:

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<sup>1</sup> For the purpose of the membership standards and surveillance status rules applicable to banks, "capital" is defined as defined on the Consolidated Report of Condition ("CALL report").

(i) have \$50,000 in excess net capital over the minimum net capital requirement imposed by the SEC or such higher minimum capital requirement imposed by the broker/dealer's designated examining authority, and,

(ii) the standards in (I) (B) (1) (b) and (c) set forth above.

b. If a bank or trust company:

(i) have a Tier 1 risk-based capital ratio of 6% or greater or, with respect to trust companies which do not calculate a Tier 1 risk-based capital ratio, have at least \$2 million in capital, and,

(ii) the standards in (I)(B)(1)(b) and (c) set forth above.

c. If an Insurance Company, the standards set forth in Section 1(a) of Rule 56.

d. All others shall:

(i) have the operational capability for membership or have an agreement, concerning the provision of operational support services to such applicant, with an entity acceptable to the Corporation and which may not be replaced without prior approval by the Corporation; and,

(ii) agree to restrict its business activities as the Corporation may require.

5. All other applicants shall be required to meet financial stability standards as are applied to the industry in which the applicant is associated.

C. Unless the context otherwise requires, the parent bank holding company of a Settling Member that has been admitted to membership in accordance with section (i)(B)(2)(a)(ii) of the standards, and any material banking subsidiary of such parent bank holding company, shall, for the purpose of applying the surveillance status rules, be treated as if it were also a Settling Member, so that the Settling Member, the parent bank holding company, and any affiliated material banking subsidiary shall be required individually to meet the standards for a Settling Member not under surveillance, if the Settling Member is not to be placed on a surveillance status.

## II. GUIDELINES FOR DETERMINING WHEN THE CORPORATION MAY PLACE A SETTLING MEMBER ON SURVEILLANCE STATUS

Based upon criteria as established by the Corporation from time to time (e.g. the "credit risk matrix"), a settling Member whose financial and/or operational condition has been determined to be such that it may increase, or potentially increase, operational and/or financial risk to the Corporation and/or its participants, may be placed on the corporation's "watch list". Settling Members included on the watch list are subject to closer monitoring by the Corporation, and the

Corporation may take such actions with regard to such Settling Member as permitted within these rules and procedures.

MEMBERS (Section 1);

MUTUAL FUND/INSURANCE SERVICES MEMBERS (Section 2);

FUND MEMBERS (Section 3);

INSURANCE CARRIER/RETIREMENT SERVICES MEMBERS (Section 4);

MUNICIPAL COMPARISON ONLY MEMBERS (Section 5);

DATA SERVICES ONLY MEMBERS (Section 6);

COMMISSION BILLING MEMBERS (Section 7);

SETTLING BANK ONLY MEMBERS (Section 8) AND

THIRD PARTY ADMINISTRATOR MEMBERS (Section 9)

Each applicant for membership in the Corporation shall meet the qualifications, financial responsibility, operational capability and business history as applicable to its membership type.

An applicant must demonstrate (i) that it has sufficient financial ability to meet all of its anticipated obligations to the Corporation and, (ii) if applicable to its membership type, that it has sufficient financial ability to make anticipated contributions to the Clearing Fund.

In addition to the above, the applicant must satisfy the following requirements:

## SEC. 1. MEMBERS

### A. Qualification

To qualify for membership, a Member shall be:

- (i) a Registered Broker-Dealer; or
- (ii) a bank or trust company, including a trust company having limited power, which is a member of the Federal Reserve System or is supervised and examined by state or federal authorities having supervision over banks; or
- (iii) a Registered Clearing Agency; or
- (iv) an Insurance Company or an Insurance Entity; or
- (v) an Investment Company registered under Section 8 of the Investment Company Act of 1940, as amended; or
- (iv) if it does not qualify under paragraphs (i) through (v) above, an entity that has demonstrated to the Board of Directors that its business and capabilities are such that it could reasonably expect material benefit from direct access to the Corporation's services.

### B. Financial Responsibility

The applicant shall satisfy the following minimum financial requirements:

1. Registered Broker-Dealers:

have excess net capital over the minimum net capital requirement imposed by the SEC or such higher minimum capital requirement imposed by the brokers/ dealer's designated examining authority in the amount of (i) \$500,000, or (ii) \$100,000, if such applicant is a Municipal Securities Brokers' Brokers (as defined in Rule 15c3-1(a)(8) of the Exchange Act) or (iii) \$1,000,000 if such applicant clears for other broker/dealers; and

Members that are Municipal Securities Brokers' Broker sponsored account applicants shall be in compliance with SEC Rule 15c3-1(a)(8).

2. Bank or trust companies:

(a) Banks:

(i) have at least \$50 million in equity capital;<sup>2</sup> or  
(ii) have furnished to the Corporation a guarantee<sup>3</sup> of its parent bank holding company respecting the payment of any and all obligations of the bank applicant, and such parent bank holding company shall have total consolidated capital of at least \$50 million; or

(b) Trust Companies:

in the case of a trust company that is not a bank, but is a member of the Federal Reserve System or is an institution insured under the Federal Deposit Insurance Act, have consolidated capital of at least \$10 million and that is adequate in the judgment of the Corporation to the scope and character of the business conducted by such trust company.

3. Others:

be required to satisfy such minimum standards of financial responsibility as determined by the Corporation.

C. Operational Capability<sup>4</sup>

An applicant shall be qualified for membership if it is able to satisfactorily communicate with the Corporation and fulfill anticipated commitments to and meet the operational

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<sup>2</sup> For the purpose of the membership standards and surveillance status rules applicable to banks, "equity capital" is defined as defined on the Consolidated Report of Condition and Income ("Call Report").

<sup>3</sup> See also Rule 2A, Section 4 (Ongoing Monitoring (Surveillance Status)).

<sup>4</sup> An applicant must have the operational capability for membership or have an agreement, concerning the provision of operational support services to such applicant, with an entity acceptable to the Corporation and which may not be replaced without prior approval by the Corporation.

requirements of the Corporation with necessary promptness and accuracy and to conform to any condition and requirement that the Corporation reasonably deems necessary for its protection.

D. Business History

An applicant must have an established business history of a minimum of six months or personnel with sufficient operational background and experience to ensure the ability of the firm to conduct such a business.

E. Other Considerations:

In addition to the above, the following shall apply:

Members -

if a Registered Broker-Dealer, not be known to be on a "closer-than-normal" surveillance by its designated examining authority as that term is defined by such designated examining authority.

SEC. 2. MUTUAL FUND/INSURANCE SERVICES MEMBERS

A. Qualification

To qualify for membership, a Mutual Fund/Insurance Services Member shall be:

- (i) a Registered Broker-Dealer; or
- (ii) a bank or trust company, including a trust company having limited power, which is a member of the Federal Reserve System or is supervised and examined by state or federal authorities having supervision over banks; or
- (iii) a Registered Clearing Agency; or
- (iv) an Insurance Company or an Insurance Entity; or
- (v) an investment company registered under Section 8 of the Investment Company Act of 1940, as amended; or
- (vi) if it does not qualify under paragraphs (i) through (v) above, an entity that has demonstrated to the Board of Directors that its business and capabilities are such that it could reasonably expect material benefit from direct access to the Corporation's services.

B. Financial Responsibility

The applicant shall satisfy the following minimum financial requirements:

1. Registered Broker-Dealers:

have \$50,000 in excess net capital over the minimum net capital requirement imposed by the SEC or such higher minimum capital requirement imposed by the broker-dealer's designated examining authority.

2. Banks and trust companies:

have a Tier 1 Risk Based Capital ("RBC") ratio of 6% or greater or, with respect to trust companies which do not calculate a Tier 1 RBC ratio, have at least \$2 million in equity capital.

3. Insurance Companies:

have a Risk Based Capital ("RBC") Ratio, as derived from annual statutory financial statements filed by it with its supervisory or regulatory entity (or, between filings of such annual statutory financial statements, an RBC Ratio derived in a similar manner from then-current financial data), of 250% or greater.

4. Others shall:

be required to satisfy such minimum standards of financial responsibility as determined by the Corporation.

C. Operational Capability<sup>4</sup>

An applicant shall be qualified for membership if it is able to satisfactorily communicate with the Corporation and fulfill anticipated commitments to and meet the operational requirements of the Corporation with necessary promptness and accuracy and to conform to any condition and requirement that the Corporation reasonably deems necessary for its protection.

D. Business History

An applicant must have an established business history of a minimum of six months or personnel with sufficient operational background and experience to ensure the ability of the firm to conduct such a business.

E. Other Considerations

In addition to the above, the following shall apply:

Mutual Fund/Insurance Services Members -

if a Registered Broker-Dealer, not be known to be on a "closer-than-normal" surveillance by its designated examining authority as that term is defined by such designated examining authority.

<sup>4</sup> An applicant must have the operational capability for membership or have an agreement, concerning the provision of operational support services to such applicant, with an entity acceptable to the Corporation and which may not be replaced without prior approval by the Corporation.

## SEC. 3. FUND MEMBERS

### A. Qualification

To qualify for membership, a Fund Member shall be:

- (i) a Principal Underwriter as defined in Section 2(a)(29) of the Investment Company Act of 1940, as amended, or a co-distributor, sub-distributor, or is otherwise authorized to process transactions through the Corporation's Mutual Fund Services, and is a Registered Broker-Dealer; or
- (ii) an Investment Company registered under Section 8 of the Investment Company Act of 1940, as amended; or
- (iii) an Investment Adviser as defined in Section 202(a)(11) of the Investment Advisers Act of 1940, as amended; or
- (iv) an Insurance Company; or
- (v) a bank or trust company, including a trust company having limited power, which is a member of the Federal Reserve System or is supervised and examined by state or federal authorities having supervision over banks; or
- (vi) if it does not qualify under paragraphs (i) through (v) above, it is an entity that has demonstrated to the Board of Directors that its business and capabilities are such that it could reasonably expect material benefit from direct access to the Corporation's Services.

### B. Financial Responsibility

The applicant shall satisfy the following minimum financial requirements:

1. Registered Broker-Dealers:

have \$50,000 in excess net capital over the minimum net capital requirement imposed by the Securities and Exchange Commission or such higher requirement imposed by the broker-dealer's designated examining authority.

2. Banks or trust companies:

have a Tier 1 Risk Based Capital ("RBC") ratio of 6% or greater or, with respect to trust companies that do not calculate a Tier 1 RBC ratio, have at least \$2 million in equity capital.

3. Investment Companies:

have a minimum of \$100,000 in assets under management.

4. Investment Advisers:

have a minimum of \$25,000,000 in assets under management and \$100,000 in total net worth.

5. Insurance Companies:

have a Risk Based Capital Ratio ("RBC"), as derived from annual statutory financial statements filed by it with its supervisory or regulatory entity (or, between filings of such annual statutory financial statements, an RBC Ratio derived in a similar manner from then-current financial data), of 250% or greater.

6. Others shall:

be required to satisfy such minimum standards of financial responsibility as determined by the Corporation.

C. Operational Capability<sup>4</sup>

An applicant shall be qualified for membership if it is able to satisfactorily communicate with the Corporation and fulfill anticipated commitments to and meet the operational requirements of the Corporation with necessary promptness and accuracy and to conform to any condition and requirement that the Corporation reasonably deems necessary for its protection.

D. Business History

An applicant must have an established business history of a minimum of six months or personnel with sufficient operational background and experience to ensure the ability of the firm to conduct such a business.

E. Other Considerations:

In addition to the above, the following shall apply:

Fund Members –

- (i) if an Insurance Company, be in good standing in those states in which it is licensed as an insurance company and in its state of organization; and
- (ii) if a Registered Broker-Dealer, not be known to be on a "closer-than-normal" surveillance by its designated examining authority as that term is defined by such designated examining authority.

<sup>4</sup> An applicant must have the operational capability for membership or have an agreement, concerning the provision of operational support services to such applicant, with an entity acceptable to the Corporation and which may not be replaced without prior approval by the Corporation.

SEC. 4. INSURANCE CARRIER/RETIREMENT SERVICES MEMBERS

A. Qualification

To qualify for membership, an Insurance Carrier/Retirement Services Member shall be:

- (i) an Insurance Company.

B. Financial Responsibility

The applicant shall satisfy the following minimum financial requirements:

have a Risk Based Capital Ratio ("RBC"), as derived from annual statutory financial statements filed by it with its supervisory or regulatory entity (or, between filings of such annual statutory financial statements, an RBC Ratio derived in a similar manner from then-current financial data), of 250% or greater.

C. Operational Capability<sup>4</sup>

An applicant shall be qualified for membership if it is able to satisfactorily communicate with the Corporation and fulfill anticipated commitments to and meet the operational requirements of the Corporation with necessary promptness and accuracy and to conform to any condition and requirement that the Corporation reasonably deems necessary for its protection.

D. Business History

An applicant to become an Insurance Carrier/Retirement Services Member must have an established business history of a minimum of six months or personnel with sufficient operational background and experience to ensure the ability of the firm to conduct such a business.

E. Other Considerations:

In addition to the above, the following shall apply:

Insurance Carrier/Retirement Services Members – shall be in good standing in those states in which it is licensed as an insurance carrier and in its state of organization.

<sup>4</sup> An applicant must have the operational capability for membership or have an agreement, concerning the provision of operational support services to such applicant, with an entity acceptable to the Corporation and which may not be replaced without prior approval by the Corporation.

## SEC. 5. MUNICIPAL COMPARISON ONLY MEMBERS

### A. Qualification

To qualify for membership, a Municipal Comparison Only Member shall be:

- (i) a Registered Broker-Dealer; or
- (ii) a bank or trust company, including a trust company having limited power, which is a member of the Federal Reserve System or is supervised and examined by state or federal authorities having supervision over banks; or
- (iii) a Registered Clearing Agency; or
- (iv) an Insurance Company or an Insurance Entity; or
- (v) an Investment Company registered under Section 8 of the Investment Company Act of 1940, as amended; or
- (vi) if it does not qualify under paragraphs (i) through (v) above, an entity that has demonstrated to the Board of Directors that its business and capabilities are such that it could reasonably expect material benefit from direct access to the Corporation's services.

### B. Financial Responsibility

The Corporation shall approve an application to become a Municipal Comparison Only Member only upon a determination by the Corporation that the applicant meets the standards of financial responsibility as the Corporation may promulgate.

## SEC. 6. DATA SERVICES ONLY MEMBERS

### A. Qualification

To qualify for membership, a Data Services Only Member shall be:

- (i) a Registered Broker-Dealer; or
- (ii) a bank or trust company, including a trust company having limited power, which is a member of the Federal Reserve System or is supervised and examined by state or federal authorities having supervision over banks; or
- (iii) a Registered Clearing Agency; or
- (iv) an Insurance Company or an Insurance Entity; or
- (v) it is an investment company registered under Section 8 of the Investment Company Act of 1940, as amended; or
- (vi) a Principal Underwriter as defined in Section 2(a)(29) of the Investment Company Act of 1940, as amended, or a co-distributor, sub-distributor, or is otherwise authorized to process mutual fund transactions; or
- (vii) an Investment Adviser as defined in Section 202(a)(11) of the Investment Advisers Act of 1940, as amended; or

- (viii) an organization or entity that acts as a third-party administrator on behalf of a retirement or other benefit plan; or
- (ix) if it does not qualify under paragraphs (i) through (viii) above, it is an entity that has demonstrated to the Board of Directors that its business and capabilities are such that it could reasonably expect material benefit from direct access to the Corporation's services.

#### B. Financial Responsibility

The Corporation shall approve an application to become a Data Services Only Member only upon a determination by the Corporation that the applicant meets the standards of financial responsibility as the Corporation may promulgate.

### SEC. 7. COMMISSION BILLING MEMBERS

#### A. Qualification

To qualify for membership, a Commission Billing Member shall be:

- (i) it is Registered Broker-Dealer; or
- (ii) if it does not qualify under paragraph (i) above, it is an entity that has demonstrated to the Board of Directors that its business and capabilities are such that it could reasonably expect material benefit from direct access to the Corporation's services.

#### B. Financial Responsibility

The Corporation shall approve an application to become a Commission Billing Member only upon a determination by the Corporation that the applicant meets the standards of financial responsibility as the Corporation may promulgate.

### SEC. 8. SETTLING BANK ONLY MEMBERS

#### A. Qualification

To qualify for membership, a Settling Bank Only Member shall be a bank or trust company, including a trust company having limited power, which is a member of the Federal Reserve System or has direct access to the Federal Reserve System.

#### B. Financial Responsibility

The Corporation shall approve an application to become a Settling Bank Only Member only upon a determination by the Corporation that the applicant meets the standards of financial responsibility as the Corporation may promulgate.

### C. Operational Capability

The Corporation shall approve an application to become a Settling Bank Only Member only upon a determination by the Corporation that the applicant meets the standards of operational capability as the Corporation may promulgate.

## SEC. 9. THIRD PARTY ADMINISTRATOR MEMBERS

### A. Qualification

To qualify for membership, a Third Party Administrator Member shall be an entity that demonstrates to the Corporation that its business and capabilities are such that it could reasonably expect material benefit from direct access to the Corporation's services.

### B. Operational Capability<sup>4</sup>

An applicant shall be qualified for membership if it is able to satisfactorily communicate with the Corporation and fulfill anticipated commitments to and meet the operational requirements of the Corporation with necessary promptness and accuracy and to conform to any condition and requirement that the Corporation reasonably deems necessary for its protection.

### C. Business History

An applicant must have an established business history of a minimum of six months or personnel with sufficient operational background and experience to ensure the ability of the firm to conduct such a business.

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<sup>4</sup> An applicant must have the operational capability for membership or have an agreement, concerning the provision of operational support services to such applicant, with an entity acceptable to the Corporation and which may not be replaced without prior approval by the Corporation.

ADDENDUM S

(RESERVED FOR FUTURE USE)

[STATEMENT OF POLICY  
STANDARDS RELATING TO COMPETENCE FOR MEMBERSHIP

Rule 15 provides the Corporation with the authority to establish, as it deems necessary or appropriate, standards of financial responsibility, operational capability, experience and competence for membership. The Rule also provides the Corporation with the authority to establish guidelines for the application of such membership standards. Pursuant to this authority, the Corporation has determined to establish the following additional standards.

The Corporation may deny membership to any applicant or cease to act for any participant when a person (the "Person") with significant managerial responsibility or otherwise with significant ability to influence the policies and actions of the applicant or participant (through ownership interest, contract or otherwise), whether or not the Persons currently act as a principal or registered representative, has a record that reflects:

- (1) any felony conviction (or plea of guilty or nolo contendere) or pending felony indictment or information or other institution of felony proceedings, or any investment-related<sup>2</sup> misdemeanor conviction (or plea of guilty or nolo contendere) or pending investment-related misdemeanor information or other institution of criminal proceedings with respect to an investment-related misdemeanor;
- (2) permanent bar or temporary suspension of ability to act as a principal or registered representative or otherwise to be associated with or perform designated functions for a firm engaging in an investment-related business (other than any temporary suspension for minor or technical violations);
- (3) other disciplinary or adverse regulatory or administrative actions (except for actions that are both isolated and minor) taken by any governmental, regulatory or self-regulatory body (a "Regulatory Authority");
- (4) arbitrations, administrative proceedings, civil actions or other proceedings not resolved in favor of the Person (except for proceedings that are both minor and isolated), including, but not limited to, proceedings ending in settlements involving a payment and proceedings that have not yet been adjudicated<sup>3</sup> (collectively, "Adverse Civil Proceedings"); provided, however, that

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<sup>2</sup> The term "investment-related" pertains, but is not limited, to securities, commodities, banking, insurance or real estate.]

<sup>3</sup> The term "adjudicated" for purposes of this Statement of Policy shall be deemed to mean any arbitration, proceeding or action that has been resolved subject to appeal, whether or not the resolution has been stayed pending appeal.]

- (a) unadjudicated proceedings brought by someone other than a Regulatory Authority shall not, by themselves, constitute grounds for the Corporation to deny membership to an applicant or cease to act for a participant, and
- (b) unadjudicated proceedings brought by a Regulatory Authority shall not, by themselves, constitute grounds to cease to act for a participant but may constitute grounds to deny membership to an applicant;
- (5) multiple customer complaints;
- (6) a termination or permitted resignation after an investigation or allegation of sales practice problems or of violation of investment-related statutes, regulations or rules or industry standards of conduct; or
- (7) being subject to heightened supervision in accordance with guidelines or recommendations promulgated by a Regulatory Authority.

In addition to the above, it is specifically understood that:

Any action, complaint, or proceeding of a type referred to in the enumerated items above that is not taken against a particular Person shall nonetheless be deemed to be taken against that Person if that Person=s activities are cited in whole or in part as being a contributing cause to such action, complaint or proceeding.

Single instances under items (3) or (4) above may be considered as part of the adverse regulatory history of a Person under this statement of policy (despite the plural designation in such items) if there exist one or more other items of adverse regulatory history or if that single instance indicates that the Person has a propensity to act in a manner that could cause significant financial cost to the applicant or participant.

No Person shall be deemed to have a record that reflects an adverse regulatory history under items (4) or (5) above due to being named in customer complaints or Adverse Civil Proceedings merely because of the Person=s management or ownership position in the applicant or participant (as opposed to actually engaging in wrongful conduct, including failure to supervise) unless the number of customer complaints or Adverse Civil Proceedings are disproportionate to the size of the firm.

The Corporation may deny membership to an applicant or cease to act for a participant if a correspondent of the applicant or participant or any entity for which the applicant or participant is financially responsible would fail to meet the above membership Standards, but only if the size of the business of the correspondent or other entity is significant relative to the capital of the applicant or participant.

Finally, this Statement of Policy shall not be construed to limit the Corporation=s authority to deny membership to, cease to act for, or obtain further assurances from, any applicant or participant in accordance with the Corporation=s Rules and Procedures when the circumstances warrant even if such circumstances include (or consist solely of) items that are specifically not grounds for such action under this Statement of Policy. For example, any unadjudicated proceeding that could create significant financial difficulties for an

**applicant or participant may be grounds for such action even if it would not constitute adverse regulatory history under this Statement of Policy.]**