

# Attachment A

## 1000. MEMBERSHIP APPLICATION AND ASSOCIATED PERSON REGISTRATION

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### 1011. Definitions

Unless otherwise provided, terms used in the Rule 1000 Series shall have the meaning as defined in Rule 0160.

(a) through (b) No Change.

#### **(c) "Covered Pending Arbitration Claim"**

The term "Covered Pending Arbitration Claim" means:

(1) For purposes of a business expansion as described in IM-1011-2 and Rule 1017(a)(6)(B):

(A) An investment-related, consumer initiated claim filed against the Associated Person in any arbitration forum that is unresolved; and whose claim amount (individually or, if there is more than one claim, in the aggregate) exceeds the hiring member's excess net capital.

(2) For purposes of an event described in Rule 1017(a)(6)(A):

(A) An investment-related, consumer initiated claim filed against the transferring member or its Associated Persons in any arbitration forum that is unresolved; and whose claim amount (individually or, if there is more than one claim, in the aggregate) exceeds the transferring member's excess net capital.

For purposes of this definition, the claim amount includes claimed compensatory loss amounts only, not requests for pain and suffering, punitive damages or attorney's fees, and shall be the maximum amount for which the Associated Person or transferring member, as applicable, is potentially liable regardless of whether the claim was brought against additional persons or the Associated Person reasonably expects to be indemnified, share liability or otherwise lawfully avoid being held responsible for all or part of such maximum amount.

(c) through (n) renumbered as (d) through (o).

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**IM-1011-2. Business Expansions and Covered Pending Arbitration Claims**

The safe harbor for business expansions in IM-1011-1 is not available to any member that is seeking to add one or more Associated Persons involved in sales and one or more of those Associated Persons has a Covered Pending Arbitration Claim (as defined in Rule 1011(c)(1)), an unpaid arbitration award or unpaid settlement related to an arbitration; in such circumstances, if the member is not otherwise required to file a Form CMA in accordance with Rule 1017, the member must comply with the requirements of Rule 1017(a)(6)(B).

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**1013. New Member Application and Interview**

(a) through (b) No Change.

**(c) Notification of Pending Arbitration Claims, Unpaid Arbitration Awards, or Unpaid Settlement Agreements Related to Arbitration**

The Applicant shall promptly notify the Department in writing of any arbitration claim involving the Applicant or its Associated Persons that is filed, awarded or becomes unpaid before a decision constituting final action of FINRA is served on the Applicant.

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**1014. Department Decision**

**(a) Standards for Admission**

After considering the application, the membership interview, other information and documents provided by the Applicant, other information and documents obtained by the Department, and the public interest and the protection of investors, the Department shall determine whether the Applicant meets each of the following standards:

(1) through (2) No Change.

(3) The Applicant and its Associated Persons are capable of complying with [the federal] applicable securities laws[, the rules] and regulations [thereunder], and with applicable FINRA rules, including observing high standards of commercial honor and just

and equitable principles of trade. In determining whether this standard is met, the Department shall take into consideration whether:

(A) No Change.

(B) an Applicant's or Associated Person's record reflects a sales practice event[, a pending arbitration,] or a pending private civil action;

(C) an Applicant or Associated Person is the subject of a pending, adjudicated, or settled regulatory action or investigation by the SEC, the Commodity Futures Trading Commission, a federal[, ] or state regulatory agency, [or] a foreign financial regulatory [agency] authority, or a self-regulatory organization; an adjudicated[, ] or settled investment-related private civil action for damages or an injunction; or a criminal action (other than a minor traffic violation) that is pending, adjudicated, or that has resulted in a guilty or no contest plea; [or]

(D) an Applicant, its control persons, principals, registered representatives, other Associated Persons, any lender of [5] five percent or more of the Applicant's net capital, and any other member with respect to which these persons were a control person or a [5] five percent lender of its net capital is subject to unpaid arbitration awards, other adjudicated customer awards, or unpaid arbitration settlements;

(E) an Applicant or Associated Person is the subject of a pending arbitration claim;

(D) through (F) renumbered as (F) through (H).

(4) through (14) No Change.

**(b) Granting or Denying Application**

(1) In reviewing an application for membership, the Department shall consider whether the Applicant and its Associated Persons meet each of the standards in paragraph (a). Where the Department determines that the Applicant or its Associated Persons are the subject of any of the events set forth in Rule 1014(a)(3)(A), [and] (C),

(D), (F) and [through] ([E]G), and (E) for new member applications, a presumption exists that the application should be denied. The Applicant may overcome the presumption by demonstrating that it can meet each of the standards in paragraph (a), notwithstanding the existence of any of the events set forth in Rule 1014(a)(3)(A), [and] (C), (D), (F) and [through] ([E]G), and (E) for new member applications.

(2) through (3) No Change.

(c) through (g) No Change.

**IM-1014-1. Evidence of Ability to Satisfy Unpaid Arbitration Awards, Other Adjudicated Customer Awards, Unpaid Arbitration Settlements or, for New Member Applications, Pending Arbitration Claims**

To the extent that the Applicant or Associated Person is subject to unpaid arbitration awards, other adjudicated customer awards, unpaid arbitration settlements or, for new member applications, pending arbitration claims, the Applicant may submit with an application documentation that evidences the ability to satisfy all such awards, settlements or claims through supporting documentation. Such documentation may include an escrow agreement, insurance coverage, a clearing deposit, a guarantee, a reserve fund or the retention of proceeds from an asset transfer, or such other forms that the Department may determine to be acceptable. The Applicant may provide a written opinion of an independent, reputable U.S. licensed counsel knowledgeable as to the value of such arbitration claims. To overcome the presumption to deny the application, the Applicant must guarantee that any funds used to evidence the Applicant's ability to satisfy any awards, settlements or claims will be used for that purpose. Any demonstration by an Applicant of its ability to satisfy these outstanding obligations will be subject to a reasonableness assessment by the Department.

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**1017. Application for Approval of Change in Ownership, Control, or Business Operations**

**(a) Events Requiring Application**

A member shall file an application for approval of any of the following changes to its ownership, control, or business operations:

(1) through (3) No Change.

(4) a change in the equity ownership or partnership capital of the member that results in one person or entity directly or indirectly owning or controlling 25 percent or more of the equity or partnership capital; [or]

(5) a material change in business operations as defined in Rule 1011([k])[].; or

(6)(A) notwithstanding subparagraph (3) of Rule 1017(a), any direct or indirect acquisition or transfer of a member's assets or any asset, business or line of operation where the transferring member or an Associated Person of the transferring member has a Covered Pending Arbitration Claim (as defined in Rule 1011(c)(2)), unpaid arbitration award or unpaid settlement related to an arbitration, and the member is not otherwise required to file a Form CMA in accordance with Rule 1017, unless the member has first submitted a written request to the Department, in a manner prescribed by FINRA, seeking a materiality consultation for the contemplated acquisition or transfer. The written request must address the issues that are central to the materiality consultation. As part of the materiality consultation, the Department shall consider the written request and other information or documents provided by the member to determine in the public interest and the protection of investors that either (i) the member is not required to file a Form CMA in accordance with Rule 1017 and may effect the contemplated acquisition or transfer; or (ii) the member is required to file a Form CMA in accordance with Rule 1017 and the member may not effect the contemplated acquisition or transfer unless the Department approves the Form CMA; or

(B) notwithstanding IM-1011-1, any addition of one or more Associated Persons involved in sales as described in IM-1011-2, and one or more of those Associated Persons has a Covered Pending Arbitration Claim (as defined in Rule 1011(c)(1)), an unpaid arbitration award or unpaid settlement related to an arbitration, and the member is not otherwise required to file a Form CMA in accordance with Rule 1017, unless the member has first submitted a written request to the Department, in a manner prescribed by FINRA, seeking a

materiality consultation for the contemplated business expansion. The written request must address the issues that are central to the materiality consultation. As part of the materiality consultation, the Department shall consider the written request and other information or documents provided by the member to determine in the public interest and the protection of investors that either (i) the member is not required to file a Form CMA in accordance with Rule 1017 and may effect the contemplated business expansion; or (ii) the member is required to file a Form CMA in accordance with Rule 1017 and the member may not effect the contemplated business expansion unless the Department approves the Form CMA. The safe harbor for business expansions under IM-1011-1 shall not be available to the member when a materiality consultation is required under this paragraph (a)(6)(B).

(b) No Change.

**(c) Effecting Change and Imposition of Interim Restrictions**

(1) through (3) No Change.

(4) Notwithstanding subparagraphs (1) through (3) of Rule 1017(c), where a member or Associated Person has a unpaid arbitration award or unpaid settlement related to an arbitration at the time of filing an application under Rule 1017, the member may not effect such change until the member has demonstrated in the application its ability to satisfy such obligation in accordance with Rule 1014 and IM-1014-1.

(d) through (f) No Change.

**(g) Membership Interview**

(1) through (3) No Change.

(4) During the membership interview, the Department shall review the application and the considerations for the Department's decision set forth in paragraph [(h)](i)(1) with the Applicant's representative or representatives. The Department shall provide to the Applicant's representative or representatives any information or document that the Department has obtained from the Central Registration Depository or a source

other than the Applicant and upon which the Department intends to base its decision under paragraph [(h)](i). If the Department receives such information or document after the membership interview or decides to base its decision on such information after the membership interview, the Department shall promptly serve the information or document and an explanation thereof on the Applicant.

**(h) Notification of Pending Arbitration Claims, Unpaid Arbitration Awards, or Unpaid Settlement Agreements Related to Arbitration**

The Applicant shall promptly notify the Department in writing of any arbitration claim involving the Applicant or its Associated Persons that is filed, awarded or becomes unpaid before a decision constituting final action of FINRA is served on the Applicant.

**([h]) Department Decision**

(1) The Department shall consider the application, the membership interview, other information and documents provided by the Applicant or obtained by the Department, the public interest, and the protection of investors. In rendering a decision on an application submitted under Rule 1017(a), the Department shall consider whether the Applicant and its Associated Persons meet each of the standards in Rule 1014(a). Where the Department determines that the Applicant or its Associated Person are the subject of any of the events set forth in Rule 1014(a)(3)(A), [and] (C), (D), (F) and [through] ([E]G), a presumption exists that the application should be denied. The Applicant may overcome the presumption by demonstrating that it can meet each of the standards in Rule 1014(a), notwithstanding the existence of any of the events set forth in Rule 1014(a)(3)(A), [and] (C), (D), (F) and [through] ([E]G).

(A) through (B) No Change.

(2) through (4) No Change.

(i) through (l) renumbered as (j) through (m).

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**Capital Acquisition Broker Rules**

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## 100. MEMBER APPLICATION AND ASSOCIATED PERSON REGISTRATION

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### 111. Membership Proceedings

(a) No Change.

#### **(b) Safe Harbor for Business Expansions**

All capital acquisition brokers are subject to FINRA IM-1011-1 and IM-1011-2.

(c) No Change.

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### 113. Department Decision

(a) All capital acquisition brokers and applicants for membership in FINRA as a capital acquisition broker are subject to FINRA Rule 1014 and IM-1014-1.

(b) No Change.

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