

# **NYSE Arca Equities, Inc.**

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*Equity Trading Permit Application and Contracts*

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## APPLICATION PROCESS

### Filing Requirements

Prior to submitting the Application for Equity Trading Permit (“ETP”), an Applicant Broker-Dealer must file a Uniform Application for Broker-Dealer Registration (Form-BD) with the Securities and Exchange Commission and register with the FINRA Central Registration Depository (“Web CRD®”).

### Checklist

Applicant Broker-Dealer must complete and submit all applicable materials addressed in the Application Checklist (page 4) to [crs@nyse.com](mailto:crs@nyse.com).

**Note: All application materials sent to NYSE Arca will be reviewed by NYSE Arca’s Client Relationship Services (“CRS”) Department for completeness. The applications are then submitted to FINRA who performs the application approval recommendation. All applications are deemed confidential and are handled in a secure environment. CRS or FINRA may request applicants to submit documentation in addition to what is listed in the Application Checklist during the application review process, pursuant to NYSE Arca Equities Rule 2.3. If you have questions on completing the application, you may direct them to: Client Relationship Services: Email: [crs@nyse.com](mailto:crs@nyse.com) or (212) 896-2830 option 5.**

### Application Process

- Following submission of the Application for Equity Trading Permit, fees and supporting documents to NYSE Arca, Inc. (“NYSE Arca”), the application will be reviewed for accuracy and regulatory or other disclosures. NYSE Arca will submit the application to FINRA for review and approval recommendation; NYSE Arca Compliance and Regulation complete the final review and approval.
- If review of Statutory Disqualification Disclosure information and/or a background investigation indicates that the Applicant Broker-Dealer has an associated person(s) with a possible statutory disqualification, NYSE Arca will contact the representative of the Applicant Broker-Dealer to discuss the statutory disqualification process.
- If it appears that the Applicant Broker-Dealer has outstanding debt, civil judgment actions and/or regulatory disciplinary actions, the Applicant Broker-Dealer will be contacted by NYSE Arca for further information.
- Applicants who have completed and returned all documents without indication of a statutory disqualification, outstanding debt, civil judgment actions and/or regulatory disciplinary actions will be presented to NYSE Arca for approval or disapproval without delay.
  - ✓ Applicant Broker-Dealer will be subject to disciplinary action if false or misleading answers are given pursuant to the Application for Equity Trading Permit.
- NYSE Arca does not accept fingerprint cards. Fingerprint cards must be submitted directly to FINRA within 30 days of filing the Form U4. The fingerprint cards must be cleared by the FBI for individuals who seek to register with NYSE Arca or be approved by NYSE Arca. Firms may request FINRA-approved fingerprint cards through the Gateway Call Center at: (301) 590-6500. Fingerprint cards should be sent directly to: For Regular U.S. Mail: FINRA, Registration and Disclosure Department, P.O. Box 9495, Gaithersburg, MD 20898-9495. P.O. Boxes will not accept courier or overnight deliveries. For Express/Overnight Mail Delivery: FINRA, Registration and Disclosure Department, 9509 Key West Avenue, Rockville, MD 20850. If a phone number is required for the recipient, provide: (301) 590-6500. Your firm should receive the FBI search results in the “Fingerprint Status Received from FBI Notice Queue” within three business days after the card is sent to the FBI. Additional information regarding the submission of fingerprints to Web CRD may be obtained on the FINRA Web site: <https://firms.finra.org/webcrd>.
- NYSE Arca will promptly notify the Applicant Broker-Dealer, in writing, of their Membership decision.

In the event an Applicant Broker-Dealer is disapproved by NYSE Arca, the Applicant Broker-Dealer has an opportunity to be heard upon the specific grounds for the disapproval, in accordance with the provisions of NYSE Arca Rule 10.13. A disapproved applicant desiring to be heard must, within thirty (30) calendar days of the date upon which the Corporation's decision was mailed to the applicant, file a petition in accordance with the provisions of Rule 10.13

## APPLICATION CHECKLIST & FEES<sup>1</sup>

### DOCUMENTATION CHECKLIST FOR NON-NYSE ARCA DEA BROKER-DEALER APPLICANTS

- Application for Equity Trading Permit
  - Sections 1-6, and 8-10 are MANDATORY for all applicants
  - Section 7 if applicant is not self-clearing
- Form BD, including Schedules & Disclosure Reporting pages must be up to date and accurate on FINRA's WebCRD®
- A Form U-4 and Fingerprint cards for the following individuals needs to be submitted directly to the FINRA, if not currently available on Web CRD®<sup>2</sup>
  - Direct/Indirect Owners, Allied Persons, and Approved Persons as listed on Form BD Schedules A & B
  - Designated supervisors and principals
- Financial Documentation
  - Four (4) Most Recent FOCUS Reports<sup>3</sup> and the Most Recent Audited Financial Statements, if applicable
  - Most Recent Balance Sheet and Capital Computation
  - Six Month Profit/Loss Projection
- All examination reports and corresponding responses from the Applicant Broker-Dealer for the last two exam reports
- Organizational Documents: Articles of Incorporation and Bylaws; Partnership Agreement; Limited Liability Company ("LLC") Agreements; Operating Agreement; or similar documentation
- Copy of Written Supervisory Procedures<sup>4</sup>, Anti-Money Laundering Procedures, and Insider Trading Act Procedures (if separate)

### DOCUMENTATION CHECKLIST FOR NYSE ARCA DEA BROKER-DEALER APPLICANTS

- Application for Equity Trading Permit
  - Sections 1-6, and 8-10 are MANDATORY for all applicants
  - Section 7 if applicant is not self-clearing
- Form BD, including Schedules & Disclosure Reporting pages must be up to date and accurate on FINRA's WebCRD®
- A Form U-4 and Fingerprint cards for the following individuals needs to be submitted directly to the FINRA, if not currently available on Web CRD®<sup>2</sup>
  - Direct/Indirect Owners, Allied Persons, and Approved Persons as listed on Form BD Schedules A & B
  - Designated supervisors and principals
  - All Authorized Traders
- NYSE Arca AP Form to be completed by persons required to be Approved Persons with the Exchange and for whom the required disclosure information is not available on Web CRD®.
- Financial Documentation
  - Four (4) Most Recent FOCUS Reports<sup>3</sup> and the Most Recent Audited Financial Statements, if applicable
  - Most Recent Balance Sheet and Capital Computation
  - Six Month Profit/Loss Projection
  - Subordination Agreements, if applicable
- Proprietary Accounts of Introducing Broker-Dealers (PAIB) Agreements, if applicable
- All examination reports and corresponding responses from the Applicant Broker-Dealer for the last two exam reports
- Organizational Documents: Articles of Incorporation and Bylaws; Partnership Agreement; Limited Liability Company ("LLC") Agreements; Operating Agreement; or similar documentation
- Copy of Written Supervisory Procedures<sup>4</sup>, Anti-Money Laundering Procedures, and Insider Trading Act Procedures (if separate)

Note: All ETP Holders are responsible for maintaining a list of all Authorized Traders, and such list must be made available to NYSE Arca upon request as required by NYSE Arca Equities Rule 7.30(a).

<sup>1</sup> For a list of fees, please review the "Schedule of Fees and Charges for Exchange Services" found at [https://www.nyse.com/publicdocs/nyse/markets/nyse-arca/NYSE\\_Arca\\_Marketplace\\_Fees.pdf](https://www.nyse.com/publicdocs/nyse/markets/nyse-arca/NYSE_Arca_Marketplace_Fees.pdf). Additional fees to those listed within this application may apply.

<sup>2</sup> A \$125 Investigation Fee may be required for each Control Person, Allied Person, Approved Person, Designated Supervisor or Authorized Trader (DEA Applicants Only) for whom required information is not available on Web CRD®. Please make checks payable to NYSE Arca, Inc

<sup>3</sup> Applicants must demonstrate that they have current net capital of 140% of their minimum net capital requirement or \$20,000 in excess of their minimum dollar net capital requirement, **whichever is greater**. If the Broker-Dealer has reported net losses for the period reviewed, the Firm's financial statements must demonstrate that its excess net capital can withstand six (6) consecutive months of average losses. Applicant Broker-Dealers that do not have the requested financial information available are required to submit Pro Forma Financial statements reflecting the Balance Sheet and Profit & Loss Statement detail for each month for the most recent six (6) months or since inception, whichever is less.

<sup>4</sup> Market Maker applicants must include, but are not limited to, the following NYSE Arca Equity Rules: 6.3 (Prevention of the Misuse of Material, Nonpublic Information), 6.17 (Anti-Money Laundering Compliance Program), 6.18 (Supervision), and 7.20 – 7.25 (Market Makers).

## EXPLANATION OF TERMS

*For purposes of this application, the following terms shall have the following meanings:*

**Applicant Broker-Dealer** – is the Broker-Dealer organization applying for an Equity Trading Permit or amending this form.

**Associated Person** - a person who is a partner, officer, director, member of a LLC, trustee of a Business Trust, or employee of an ETP Holder or any person directly or indirectly controlling, controlled by or under common control with an ETP Holder.

**Authorized Trader** – a person who may submit orders to NYSE Arca, LLC's trading facilities on behalf of his or her ETP Holder or Sponsored Participant.

**Clearing Services** - a Broker-Dealer who receives and executes customers' instructions, prepares trade confirmations, sends the money related to the trades, arranges for the physical movement of securities, and shares responsibility with an introducing broker-dealer for compliance with regulatory requirements.

**Control** – (as defined on Form-BD) the power, directly or indirectly, to direct the management or policies of a company, whether through ownership of securities, by contract or otherwise. Any person that (1) is a director, general partner or officer exercising executive responsibility (or having similar status or functions); (2) directly or indirectly has the right to vote 25% or more of a class of a voting security or has the power to sell or direct the sale of 25% or more of a class of voting securities; or (3) in the case of a partnership, has the right to receive upon dissolution, or has contributed, 25% or more of the capital, is presumed to control that company.

**Central Registration Depository System ("Web CRD®")** – A centralized electronic registration system maintained by FINRA which provides information on registered representatives and principals for members of participant organizations. This database contains employment history, exam scores, licensing information, disciplinary actions, fingerprint results, and other related registration information. NYSE Arca, Inc. is a participant of this system.

**Designated Examining Authority ("DEA")** – the SEC will designate one Self-Regulatory Organization ("SRO") to be a Broker-Dealer's examining authority, when the Broker-Dealer is a Member or ETP Holder of more than one SRO. Every Broker-Dealer is assigned a DEA, who will examine the Broker-Dealer for compliance with financial responsibility rules.

**Designated Supervisor** – refers to any person that is a partner, director, or officer exercising executive responsibility (or having similar status or functions) for supervising Authorized Trader(s) ("AT") (as defined in NYSE Arca Equities Rule 1.1(g)).

**Direct Owners/Executive Officers** – Allied Persons and Approved Persons, as those terms are defined by NYSE Arca Equities Rules 1.1(c) and 1.1(d), respectively, and generally refer to (1) a director, general partner or officer exercising executive responsibility (or having similar status or function); or (2) directly or indirectly has the right to vote 5% or more of a class of voting security or has the power to sell or direct the sale of 5% or more of a class of voting securities; (3) is entitled to receive 5% or more of the net profits; (4) in the case of a partnership, all general partners and those limited and special partners that have the right to receive upon dissolution or have contributed, 5% or more of the capital; or (5) in the case of a LLC, those members that have the right to receive upon dissolution, or have contributed, 5% or more of the LLC's capital, and if managed by elected managers, all elected managers.

**ETP or ETP Holder** – an Equity Trading Permit issued by the Corporation for effecting approved securities transactions on the Corporation's trading facilities. An ETP may be issued to a Sole Proprietor, Partnership, Corporation, LLC or other organization which is a registered Broker or Dealer, pursuant to Section 15 of the Securities Exchange Act of 1934, as amended, and which has been approved by the Corporation.

**Financial Arrangement** – (1) the direct financing of an ETP Holder's dealings upon the Exchange; (2) any direct equity investment or profit sharing arrangement; or (3) any consideration over the amount of \$5,000.00 including, but not limited to, gifts, loans, annual salaries or bonuses.

**Market Maker** -is obligated to maintain continuous two-sided Q Orders in those securities in which the Market Maker is registered to trade, pursuant to NYSE Arca Equities Rule 7.23(a).

**Market Maker Authorized Trader ("MMAT")** – an authorized trader who performs market-making activities pursuant to Rule 7, on behalf of a Market Maker.

**NYSE Arca, Inc. ("NYSE Arca" or the "Corporation")** – a Delaware corporation as described in the Corporation's Certificate of Incorporation and Bylaws. NYSE Arca is a national securities exchange as that term is defined by Section 6 of the Securities Exchange Act of 1934, as amended. NYSE Arca, Inc. is the Self-Regulatory Organization for NYSE Arca, LLC

**NYSE Arca, LLC** – The equities marketplace and a trading facility of NYSE Arca, Inc.

**NYSE Arca Equities** – NYSE Arca Equities, Inc. (a wholly owned subsidiary of NYSE Arca, Inc.).

**Primary Business** – refers to greater than 50% of the ETP Holder's business.

**Self-Regulatory Organization ("SRO")** - each exchange or national securities association is an SRO. Each SRO must have rules that provide for the expulsion, suspension and other discipline of member Broker-Dealers for violation of the SRO's rules.

# **NYSE Arca Equities, Inc.**

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***Equity Trading Permit Application and Clearing Letter of Consent***

**SECTION 1 – ORGANIZATIONAL PROFILE**

Date: \_\_\_\_\_ SEC #: \_\_\_\_\_ CRD #: \_\_\_\_\_ MPID: \_\_\_\_\_  
(If NASDAQ Participant)

Application  Amendment

**GENERAL INFORMATION**

Name of Applicant Broker-Dealer: \_\_\_\_\_

Business Address: \_\_\_\_\_

City: \_\_\_\_\_ State: \_\_\_\_\_ Zip Code: \_\_\_\_\_

Business Phone: \_\_\_\_\_ Fax: \_\_\_\_\_

Website Address: \_\_\_\_\_

Contact Name: \_\_\_\_\_ Title: \_\_\_\_\_

Phone: \_\_\_\_\_ Fax: \_\_\_\_\_

Email Address: \_\_\_\_\_

**TYPE OF ORGANIZATION**

Corporation  Limited Liability Company  Partnership  Sole Proprietor

**TYPE OF BUSINESS TO BE CONDUCTED WITH EQUITY TRADING PERMIT (Check all that apply)**

Market Maker\*  Public Customer Business  Clearing Services  Proprietary Trading  
 Other \_\_\_\_\_

\* Please also complete Application for Market Maker/Odd Lot Dealer Registration

**OTHER BUSINESS ACTIVITIES CONDUCTED BY APPLICANT BROKER DEALER (Check all that apply)**

Investment Banking  Public Customer Business  Options Market Making  
 Proprietary Trading  Other \_\_\_\_\_

**OTHER SELF-REGULATORY ORGANIZATION MEMBERSHIPS (Check all that apply)**

NYSE MKT (fka AMEX)  Boston Stock Exchange (BSE)  
 Chicago Board Options Exchange (CBOE)  Chicago Stock Exchange (CHX)  
 National Stock Exchange (NSX)  International Securities Exchange (ISE)  
 Financial Industry Regulatory Authority, Inc. (FINRA)  New York Stock Exchange (NYSE)  
 Philadelphia Stock Exchange (PHLX)  BATS (BATS)  
 Nasdaq Stock Market (NQX)  Investors' Exchange LLC (IEX)

**APPLICANT'S DESIGNATED EXAMINING AUTHORITY ("DEA")**

NYSE Arca, Inc. (NYSE Arca / NYSE Arca Equities)  Other \_\_\_\_\_

**SECTION 2 - MEMBERSHIP AGREEMENT**

Applicant Broker-Dealer agrees to abide by the Bylaws and Rules of NYSE Arca Equities, Inc., as amended from time to time, and all circulars, notices, interpretations, directives or decisions adopted by NYSE Arca Equities, Inc.

Applicant Broker-Dealer authorizes any SRO, commodities exchange, governmental agency or similar entity to furnish to NYSE Arca, upon its request, any information that such person may have concerning the ability, business activities, and reputation of Applicant Broker-Dealer or its associated persons, and releases such person or entity from any and all liability in furnishing such information. Applicant Broker-Dealer authorizes NYSE Arca to make available to any governmental agency, SRO, commodities exchange or similar entity, any information it may have concerning the Applicant Broker-Dealer or its associated persons, and releases NYSE Arca from any and all liability in furnishing such information.

Applicant Broker-Dealer acknowledges its obligation to update any and all information contained in any part of this application, including termination of membership with another SRO, which may cause a change in the Applicant Broker-Dealer's DEA. It is understood that in that event, additional information may be required by NYSE Arca.

\_\_\_\_\_  
Applicant Broker-Dealer

\_\_\_\_\_  
Signature of Authorized Officer, Partner, Managing Member, or Sole Proprietor

\_\_\_\_\_  
Date

\_\_\_\_\_  
Print Name of Authorized Officer, Partner, Managing Member, or Sole Proprietor

\_\_\_\_\_  
Title



**SECTION 3 – FINANCIAL DISCLOSURE****FINANCIAL STATEMENT**

Copies of the required financial items as noted on the checklist including: the four (4) most recent FOCUS Reports<sup>5</sup> and most recent Audited Financial Statements, and all examination reports and corresponding responses.

**SOURCE OF CAPITAL**

Explain the source of Applicant Broker-Dealer's Capital

\_\_\_\_\_

**PROPRIETARY ACCOUNTS OF INTRODUCING BROKER-DEALERS (PAIB)**

Do you hold a Proprietary Account as an Introducing Broker-Dealer (PAIB)  Yes  No

\*If Yes: An introducing Broker-Dealer must notify its DEA in writing when it has entered into a PAIB Agreement with a clearing Broker-Dealer regarding the net capital treatment of assets held in proprietary accounts. Assets (cash and securities) held in trading accounts without a PAIB Agreement are considered to be non-allowable in the computation of net capital under SEC Rule 15c3-1. If NYSE Arca will be your DEA, please enclose a copy of all PAIB Agreements you have entered into with a clearing broker-dealer.

**SUBORDINATED LOANS**

Have any subordinated loans been made to Applicant Broker-Dealer?  Yes (Explain below)  No

\_\_\_\_\_

\_\_\_\_\_

**FINANCIAL OR CONTROLLING INTERESTS**

Does the Applicant Broker-Dealer have a financial or controlling (as defined in Form-BD) interest (through direct or indirect stock or bond ownership, through outstanding loans, or otherwise) in any organization engaged in a securities, financial or related business?

Yes (Explain below)  No

\_\_\_\_\_

\_\_\_\_\_

**FINANCIAL ARRANGEMENT**

Does the Applicant Broker-Dealer have a financial arrangement with any other Broker-Dealer?

Yes (Explain below)  No

Type of Arrangement:  Direct Equity Investment  Any consideration over \$5,000  
 Profit Sharing  Direct Financing  
 Other \_\_\_\_\_

Terms of Arrangement (include the names of all participants in the arrangement, and the nature and terms of the arrangement):

\_\_\_\_\_

\_\_\_\_\_

**OUTSTANDING DEBT (Check all that apply)**

Does the Applicant Broker-Dealer owe money to any of the following?

- Any NYSE Arca member or member organization or NYSE Arca ETP Holder
- Any other national securities or commodities exchange or national securities association
- Any member of any other national securities or commodities exchange or national securities association

Explain to whom the money is owed and the dollar amount. Attach a copy of arrangements made for repayment of this debt and evidence of an agreement of repayment.. \_\_\_\_\_

\_\_\_\_\_

No, the Applicant Broker-Dealer does not owe money to any of the above referenced persons or entities.

<sup>5</sup> Applicant Broker-Dealers that do not have the requested financial information available are required to submit Pro Forma Financial statements for the most recent six (6) months or since inception, whichever is less.

**SECTION 4 – DIRECT OWNERS / INDIRECT OWNERS / EXECUTIVE OFFICERS**

Please list the following individuals: (A) each Allied Person as defined in NYSE Arca Equities Rule 1.1(c)<sup>6</sup>; (B) each Approved Person as defined in NYSE Arca Equities Rule 1.1(d)<sup>7</sup>; and (C) each Person as defined in NYSE Arca Equities Rule 6.18(b)(2)<sup>8</sup>. You may submit multiple copies of this form, if needed, or attach a copy of Schedule A and Schedule B of Form BD. For individuals required to be disclosed pursuant to (A), (B), or (C) above who do not have required information available on Web CRD®, the Applicant may be required to submit an investigation fee of \$125 per individual.

**APPLYING AS:**       **ALLIED PERSON**       **APPROVED PERSON**

Name: \_\_\_\_\_ Title: \_\_\_\_\_ CRD# \_\_\_\_\_

Firm Name:: \_\_\_\_\_ Phone: \_\_\_\_\_

Designated Supervisor of Authorized Traders

Email: \_\_\_\_\_

Form U4 and fingerprint information<sup>8</sup> is current and accessible for this person on Web CRD™

**APPLYING AS:**       **ALLIED PERSON**       **APPROVED PERSON**

Name: \_\_\_\_\_ Title: \_\_\_\_\_ CRD# \_\_\_\_\_

Firm Name:: \_\_\_\_\_ Phone: \_\_\_\_\_

Designated Supervisor of Authorized Traders

Email: \_\_\_\_\_

Form U4 and fingerprint information<sup>8</sup> is current and accessible for this person on Web CRD™

**APPLYING AS:**       **ALLIED PERSON**       **APPROVED PERSON**

Name: \_\_\_\_\_ Title: \_\_\_\_\_ CRD# \_\_\_\_\_

Firm Name:: \_\_\_\_\_ Phone: \_\_\_\_\_

Designated Supervisor of Authorized Traders

Email: \_\_\_\_\_

Form U4 and fingerprint information<sup>8</sup> is current and accessible for this person on Web CRD™

**APPLYING AS:**       **ALLIED PERSON**       **APPROVED PERSON**

Name: \_\_\_\_\_ Title: \_\_\_\_\_ CRD# \_\_\_\_\_

Firm Name:: \_\_\_\_\_ Phone: \_\_\_\_\_

Designated Supervisor of Authorized Traders

Email: \_\_\_\_\_

Form U4 and fingerprint information<sup>8</sup> is current and accessible for this person on Web CRD™

<sup>6</sup> Pursuant to NYSE Arca Equities Rule 1.1(c), the term "Allied Person" shall refer to an individual, who is: (1) an employee of an ETP Holder who controls such firm, or (2) an employee of an ETP Holder corporation who is a director or a principal executive officer of such corporation, or (3) an employee of an ETP Holder limited liability company who is a manager or a principal executive officer of such limited liability company, or (4) a general partner in an ETP Holder partnership; and who has been approved by the Corporation as an Allied Person.

<sup>7</sup> Pursuant to NYSE Arca Equities Rule 1.1(d), the term "Approved Person" shall refer to a person who is not an ETP Holder, nor an employee or an Allied Person of an ETP Holder, and who: (1) is a director of an ETP Holder, or (2) controls an ETP Holder, or (3) beneficially owns, directly or indirectly, 5% or more of the outstanding equity securities of an ETP holder, or (4) has contributed 5% or more of the partnership capital; and who has been approved by the Corporation as an Approved Person.

<sup>8</sup> NYSE Arca Equities Rule 6.18(b)(2) refers to the designation of a person with authority to reasonably discharge his/her duties and obligations in connection with supervision and control of the activities of the Associated Persons of the ETP Holder. Pursuant to NYSE Arca Equities Rule 1.1(f), the term "Associated Person" shall refer to a person who is a partner, officer, director, member of a limited liability company, trustee of a business trust, employee of an ETP Holder or any person directly or indirectly controlling, controlled by or under common control with an ETP Holder.

**SECTION 5 – STATUTORY DISQUALIFICATION DISCLOSURE**

Pursuant to the Securities Exchange Act of 1934, as amended ("the Act"), NYSE Arca, Inc. ("NYSE Arca") may deny (or may condition) trading privileges or may bar a natural person from becoming associated (or may condition an association) with an ETP Holder for the same reasons that the Securities and Exchange Commission may deny or revoke a broker-dealer registration under the Act. The Act provides for Statutory Disqualification if a person has:

- Been expelled, barred or suspended from membership in or being associated with a member of a self regulatory organization;
- had broker, dealer or similar privileges denied or suspended or caused such denial or suspension of another;
- Violated any provision of the Act; or
- Been convicted of a theft or securities related misdemeanor or any felony within ten (10) years of the date of applying for membership status or becoming an Associated Person.

Check here if you DO NOT have person(s) associated with the Applicant Broker-Dealer who is or may be subject to Statutory Disqualification.

Check here if you DO have person(s) associated with the Applicant Broker-Dealer who is or may be subject to Statutory Disqualification.\*

Please identify any such person(s) associated with the Applicant Broker-Dealer who is or may be subject to Statutory Disqualification. Additionally, identify any such person(s) who are associated with the Applicant Broker-Dealer and who have been approved for association or continued association by another SRO due to a Statutory Disqualification.

\* Attach a sheet identifying any such person(s), including the following information:

1. Name of the person(s).
2. Copies of documents relating to the Statutory Disqualification.
3. Description of each such person's duties (for non-registered individuals, this should include a statement indicating if the position allows access to books, records, funds or securities).
4. Explanation of action taken or approval given by any other SRO regarding each person.

On behalf of \_\_\_\_\_ (Applicant Broker-Dealer), I hereby attest and affirm that I have read and understand the above and the attached information, and that the answers and the information provided (including copies of any documents) are true and complete to the best of my knowledge. I acknowledge that NYSE Arca shall rely on the information provided pursuant to this Notice in order to preliminarily approve or deny Applicant Broker-Dealer's application for trading privileges, but that NYSE Arca will also perform a complete background check of Applicant Broker-Dealer, and such trading privileges may be immediately revoked by NYSE Arca depending on the results of such background check. I understand that Applicant Broker-Dealer will be subject to a disciplinary action if false or misleading answers are given pursuant to this Notice. I also acknowledge the obligation of Applicant Broker-Dealer to submit to NYSE Arca any amendment to any document submitted as part of its application, including but not limited to this Notice, within ten (10) business days of such amendment or change.

\_\_\_\_\_  
Signature of Authorized Officer, Partner, Managing Member, or Sole Proprietor

\_\_\_\_\_  
Date

\_\_\_\_\_  
Print Name of Authorized Officer, Partner, Managing Member, or Sole Proprietor

\_\_\_\_\_  
Title

## SECTION 6 – SUPERVISION

Each ETP Holder must identify the person(s) that is a member, partner, director, or officer exercising executive responsibility (or having similar status or functions) for supervising an Authorized Trader(s) as defined in NYSE Arca Equities Rule 1.1(g). ETP Holders must provide a copy of their Written Supervisory Procedures (“WSP”) with their Application.

Name and Title of Person responsible for maintaining WSPs: \_\_\_\_\_

NYSE Arca Equities Rules state:

- (a) Adherence to Law – No Equity Trading Permit Holder or Associated Person of an Equity Trading Permit Holder may engage in conduct in violation of the federal securities laws, the Constitution or the Rules of the Exchange. Every Equity Trading Permit Holder must supervise persons associated with the Equity Trading Permit Holder as to assure compliance therewith.
- (b) Supervisory System – Each Equity Trading Permit Holder for whom NYSE Arca is DEA must establish and maintain a system to supervise the activities of its associated persons and the operations of its business. Such system must be reasonably designed to ensure compliance with applicable federal securities laws and regulations and NYSE Arca Equities Rules. Final responsibility for proper supervision will rest with the Equity Trading Permit Holder. The Equity Trading Permit Holder’s supervisory system must provide, at a minimum, for the following:
  - (1) The establishment and maintenance of written procedures as required by paragraph (c) of this Rule.
  - (2) The designation of a person with authority to reasonably discharge his/her duties and obligations in connection with supervision and control of the activities of the associated persons of the Equity Trading Permit Holder.
  - (3) The Equity Trading Permit Holder must undertake reasonable efforts to determine that all supervisory personnel are qualified by virtue of experience or training to carry out their assigned responsibilities.
  - (4) Each Equity Trading Permit Holder must designate and specifically identify to NYSE Arca one or more persons who will be responsible for such supervision.
- (c) Written Procedures – Each Equity Trading Permit Holder must establish, maintain, and enforce written procedures to supervise the business in which it engages and to supervise the activities of its associated persons that are reasonably designed to ensure compliance with applicable federal securities laws and regulations, and with NYSE Arca Equities Rules.

Pursuant to this rule, WSPs should describe the following:

- Specific identification of the individual(s) responsible for supervision – either by name or by title and position.
- The supervisory steps and reviews to be taken by the appropriate supervisor – this process should identify any exception reports and/or other documents being reviewed and the substantive area being reviewed (e.g., limit order protection, trade reporting, etc.). If an ETP Holder employs automated systems as part of its supervisory system, those systems should also be generally described.
- The frequency of such reviews – this should be more specific than simply providing for “a review” or a “review from time to time.” The frequency of reviews should be described (i.e., daily, weekly, monthly, quarterly, or annually).
- How reviews will be documented, for example, initialing order tickets or filling out review logs. The procedures should also provide for the documentation of steps taken as a result of supervisory reviews.

For Market Makers, the WSPs and supervisory systems of firms engaged in market making activities must address, at a minimum, trading practice rules (i.e., passive market making, firm quote rule compliance, limit order protection), trading systems, trade reporting, rules compliance and any other material aspect of the firm’s market making business. WSPs should include the following subject areas:

- Size conventions
- Coordination of quotations, trades and trade reports
- Improper collaboration and coordination of Market Maker activities
- Failure to honor quotations
- Harassment
- Late and inaccurate trade reporting

**ALL EQUITY TRADING PERMIT HOLDERS MUST KEEP ABREAST OF CHANGES IN LAWS, RULES AND REGULATIONS, MARKET PRACTICES AND INDICATED PATTERNS OF NON-COMPLIANCE AND MUST MODIFY THEIR SUPERVISORY PROCEDURES AND SYSTEMS AS NECESSARY.**

**SECTION 7 – CLEARING LETTER OF CONSENT**

**Notice of Consent – To be completed by Clearing ETP Holder of Application Broker-Dealer**

The undersigned hereby represents the clearing agency named below, a member of the National Securities Clearing Corporation (“NSCC”), and an approved ETP Holder of NYSE Arca, LLC, a facility of NYSE Arca.

The undersigned Clearing ETP Holder hereby agrees to accept full financial responsibility for all transactions effected through and carried in all accounts held by the following Applicant Broker-Dealer with the clearing agency:

\_\_\_\_\_  
Applicant Broker-Dealer

\_\_\_\_\_  
CRD# and/or SEC File#

This section shall be deemed a letter of guarantee, letter of authorization, or notice of consent pursuant to NYSE Arca Equities Rules and may be relied upon by NYSE Arca Equities, NYSE Arca, Inc., the NSCC, and their respective members. This Notice of Consent shall be subject to NYSE Arca Equities Rules, as amended from time to time, and shall remain in effect until revoked in writing by the Clearing ETP Holder.

\_\_\_\_\_  
Clearing ETP Holder (Broker-Dealer Name)

\_\_\_\_\_  
Clearing ETP Holder (NSCC Clearing #)

\_\_\_\_\_  
Signature of Authorized Officer, Partner or  
Managing Member of Clearing ETP Holder

\_\_\_\_\_  
Signature of Authorized Officer, Partner or  
Managing Member, or Sole Proprietor of ETP Holder

\_\_\_\_\_  
Print Name / Title

\_\_\_\_\_  
Print Name / Title

\_\_\_\_\_  
Date

\_\_\_\_\_  
Date

# **NYSE Arca Equities, Inc.**

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## ***Contracts***

**SECTION 8 - NYSE Arca<sup>SM</sup> USER AGREEMENT**

This User Agreement, with an Effective Date as of the date executed by NYSE Arca, LLC. ("NYSE Arca"), is made between NYSE Arca, a Delaware corporation, with its principal offices located at 353 N. Clark St., 31<sup>st</sup> Floor, Chicago, IL 60654 and the User, as identified below. NYSE Arca operates an exchange trading platform of its affiliate, NYSE Arca Equities, Inc., for securities (the "Platform") under the oversight of NYSE Arca, Inc., a self-regulatory organization (NYSE Arca, NYSE Arca Equities, Inc. and NYSE Arca, Inc., collectively the "NYSE Parties"). NYSE Arca shall provide User with access to the Platform pursuant to the terms of this User Agreement. Use of the Platform is governed by the Rules and this User Agreement.

User: \_\_\_\_\_

Business Address: \_\_\_\_\_

Corporate Form: \_\_\_\_\_

State of Incorporation: \_\_\_\_\_

Telephone: \_\_\_\_\_ Primary Contact: \_\_\_\_\_

Fax: \_\_\_\_\_ Email: \_\_\_\_\_

**1. Definitions**

- (a) "Authorized Trader" means a person authorized to submit orders to the Platform on behalf of his or her User.
- (b) "Permit" means an Equity Trading Permit issues by NYSE Arca Equities for effecting approved securities transactions on the Platform.
- (c) "Permit Holder" means a Sole Proprietorship, Partnership, Corporation, LLC or other organization in good standing that has been issued a Permit in accordance with the Rules.
- (d) "Information" has the meaning set forth in subsection 6(a).
- (e) "Rules" means the NYSE Parties' operating agreements, certification of incorporations, bylaws, rules, procedures, policies, practices, technical specifications, circulars, notices, interpretations, directives and decisions, each as amended from time to time.
- (f) "User" means the entity, other than NYSE Arca, that has signed this User Agreement.

**2. Rights and Obligations**

- (a) Access. Pursuant to the terms and conditions of this User Agreement, NYSE Arca grants the User a personal, non-exclusive, non-transferable, revocable (at will) right to access the Platform only in accordance with the then-current Rules and User's obligations under this User Agreement and solely for the purpose of placing orders with the Platform for execution and for receiving information from the Platform about these orders. The User is solely and exclusively responsible for any hardware, software, communication equipment, communication services, information formatting requirements or other items or services necessary for accessing and using the Platform.
- (b) Restrictions on Use; Security. User may not sell, lease, furnish or otherwise permit or provide access to the Platform or any information or data made available from the Platform to any other entity or to any individual that is not User's employee, customer or agent. User accepts full responsibility for its employee's, customers' and agent's use of the Platform and for their compliance with the Rules and the User's obligations under this User Agreement. User shall ensure its employees, customers and agents are made aware (to the extent necessary) of the terms of this User Agreement and that all relevant rights and obligations are reflected in the User's contractual relationships with these third parties (to the extent appropriate). User shall not and shall not allow any other party to alter, decompile or disassemble any code underlying the Platform, attempt to circumvent any security protections for the Platform or interfere with or disrupt the Platform or any servers or networks connected to the Platform. User shall ensure that there is no unauthorized use of or access to the Platform, including unauthorized entry of information into the Platform, or the information and data made available by the Platform. User is responsible for all orders, trades and other messages and instructions entered, transmitted or received under identifiers, passwords and security codes of Authorized Traders, and for the trading and consequences of these orders, trades and other messages and instructions. Unless otherwise expressly authorized in writing, the Rules or as otherwise permitted by law, User, including any service bureau or public extranet, may not redistribute the information and data made available by the Platform.
- (c) User Information. User grants to NYSE Arca a perpetual, non-exclusive, world-wide, irrevocable, royalty-free, fully-paid-up license to use, reproduce, display, compile, modify and create derivative works of the information and data supplied by User to the Platform, including information or data of or related to User's customers and agents. User represents and warrants that User owns or has sufficient rights in the information and data to authorize NYSE Arca to perform all of its obligations under this User Agreement and that may be required for User's and NYSE Arca's use of the information and data. User represents and warrants that use or delivery of this information and data by User and NYSE Arca: (i) does not violate any copyright, patent, trademark or trade secrets law; (ii) is not an infringement of any kind of any rights of any third party; (iii) does not constitute defamation or invasion of the right of privacy or publicity; and (iv) will not violate any applicable law, regulation or the Rules.
- Notwithstanding the rest of subsection 2(c), unless otherwise required by law, regulation or governmental authority, Rules or as otherwise agreed to by User, NYSE Arca shall not make information and data supplied by User available outside of the Intercontinental Exchange, Inc. ("ICE") group of companies (other than to their directors or professional advisors pursuant to a non-disclosure agreement) in a manner that would reasonably be expected to directly or indirectly identify User as the source of that information or data.
- (d) Fees. User shall pay when due all amounts payable arising from User's access to the Platform. These amounts include applicable exchange and regulatory fees.
- (e) Order Designation. All orders and any trades resulting from these orders are the responsibility of the Permit Holder from which the orders originated.



## SECTION 8 - NYSE Arca<sup>SM</sup> USER AGREEMENT (CONTINUED)

### 3. Compliance

- (a) Compliance with the Rules and Law. User represents and warrants that: (i) it will use the Platform only if and when it is authorized to use the Platform pursuant to the Rules and when User is a Permit Holder; (ii) it will only use the Platform in compliance with the Rules; (iii) it is and will remain responsible for its use of the Platform and the use of the Platform by any of its employees, customers and agents; (iv) it will maintain and keep current a list of all Authorized Traders who may obtain access the Platform on behalf of the User; and (v) it will familiarize all Authorized Traders with all of User's obligations under this User Agreement and will ensure that they receive appropriate training prior to any use or access to the Platform. User represents and warrants that it will comply with all applicable laws and regulations.
- (b) Monitoring. The NYSE Parties may monitor the User's use of the Platform for compliance with all applicable laws, regulations, the Rules and this User Agreement. User shall monitor its employees, agents and customers for compliance with the Rules, the rules and regulations of any self-regulatory organizations of which User is a member, all other applicable regulations and all applicable federal and state laws.
- (c) Integrity of the Platform. User shall not: (i) alter the information or data supplied to or received from the Platform in violation of the Rules, (ii) materially affect the integrity of the information or data supplied to or received from the Platform, or (iii) supply or render information or data to or from the Platform that is illegal, inaccurate, unfair, uninformative, fictitious, misleading or discriminatory. User shall not permit its employees, agents, or customers to interfere with or adversely affect the Platform or any use of the Platform by any other authorized individuals or entities.
- (d) Indemnity. User shall indemnify, defend and hold the NYSE Parties and their respective affiliates, officers, directors, employees and agents harmless from and against all claims, demands, losses, costs, expenses, obligations, liabilities, damages, recoveries and deficiencies, including interest, penalties and attorneys' fees, arising from or as a result of User's breach of its obligations under this User Agreement or otherwise from its use of the Platform. The NYSE Parties may participate, at their own expense, in any defense and settlement directly or through counsel of their choice and User shall not, without the prior written consent of the NYSE Parties, enter into any settlement agreement: 1) on terms that would diminish the rights provided to the NYSE Parties or increase the obligations assumed by the NYSE Parties under this User Agreement, and 2) which does not include an unconditional release of the NYSE Parties by every claimant or plaintiff from all liability in respect to the claim, demand, expense, obligation, liability, damage, recovery or deficiency.

### 4. Change of the Platform

Nothing in this User Agreement constitutes an obligation by NYSE Arca to continue or support any aspect of the Platform in its current form or previous forms. NYSE Arca may from time to time make additions, deletions or modifications to the Platform. NYSE Arca may temporarily or permanently, unilaterally condition, modify or terminate the right of any individuals or entities to access, receive or use the Platform in accordance with the Rules. Further, NYSE Arca may temporarily or permanently terminate the right of any individuals or entities to access the Platform at any time if so instructed by any of the NYSE Parties.

### 5. Ownership

All patents, copyrights, trade secrets, trademarks and other property rights in or related to the Platform and the information and data made available through the Platform (including compilation rights in information and data) are and will remain the exclusive property of NYSE Arca or its licensors. User shall attribute the source as appropriate under all circumstances.

### 6. Information

- (a) Confidentiality. Both parties acknowledge that: (i) the Platform and the information and data made available in the Platform incorporate confidential and proprietary information developed, acquired by or licensed to NYSE Arca, including confidential information of the NYSE Parties or other entities, and (ii) each party may receive or have access to other proprietary or confidential information disclosed and marked as confidential by the disclosing party (the confidential and proprietary information in (i) and (ii), collectively, the "Information"). The receiving party shall use the disclosing party's Information solely to perform its obligations under this User Agreement. The receiving party shall take all precautions necessary to safeguard the confidentiality of the disclosing party's Information, including: (i) those taken by the receiving party to protect its own confidential information, and (ii) those which the disclosing party may reasonably request from time to time.

## SECTION 8 - NYSE Arca<sup>SM</sup> USER AGREEMENT (CONTINUED)

- (b) Disclosure. The receiving party shall not disclose, in whole or in part, the disclosing party's Information to any person, except as specifically authorized under this User Agreement. User shall not disclose any data or compilations of data made available to User by the Platform without the express, prior written authorization of NYSE Arca. User consents to NYSE Arca disclosing: (i) Information in accordance with its regulatory obligations, and (ii) to the NYSE Parties, ICE, and any affiliates of the NYSE Parties or ICE.
- (c) Unauthorized Use or Disclosure. The parties acknowledge that any unauthorized use or disclosure of the disclosing party's Information may cause irreparable damage to the disclosing party. If an unauthorized use or disclosure occurs, the receiving party shall immediately notify the disclosing party and take at its expense all steps necessary to recover the disclosing party's Information and to prevent its subsequent unauthorized use or dissemination, including availing itself of actions for seizure and injunctive relief. If the receiving party fails to take these steps in a timely and adequate manner, the disclosing party may take them at the receiving party's expense, and the receiving party shall cooperate reasonably in the actions that the disclosing party may request.
- (e) Limitation. Unless otherwise required by law, regulation or the Rules, the receiving party has no confidentiality obligation with respect to any portion of the disclosing party's Information that: (i) the receiving party independently developed before receiving the Information from the disclosing party, (ii) the receiving party lawfully obtained from a third party under no obligation of confidentiality, (iii) is or becomes available to the public other than as a result of an act or omission of the receiving party or any of its employees or (iv) the receiving party is compelled to disclose pursuant to legal process provided by a court of competent jurisdiction or other governmental entity or regulatory or self-regulatory authority to whose jurisdiction the receiving party is subject.

### 7. Disclaimer of Warranty

THE PLATFORM IS MADE AVAILABLE "AS IS" AND WITHOUT WARRANTY OF ANY KIND. ALL WARRANTIES, CONDITIONS, REPRESENTATIONS, INDEMNITIES AND GUARANTIES WITH RESPECT TO THE PLATFORM AND ANY DATA, SOFTWARE OR INFORMATION MADE AVAILABLE IN THE PLATFORM BY THE NYSE PARTIES OR THEIR LICENSORS, WHETHER EXPRESS, IMPLIED OR STATUTORY, ARISING BY LAW, CUSTOM, PRIOR ORAL OR WRITTEN STATEMENTS BY THE NYSE PARTIES OR THEIR AGENTS, AFFILIATES, LICENSORS OR OTHERWISE (INCLUDING ANY WARRANTY OF SATISFACTORY QUALITY, ACCURACY, UNINTERRUPTED USE, TIMELINESS, LATENCY, TRUTHFULNESS, SEQUENCE, COMPLETENESS, MERCHANTABILITY, FITNESS FOR PARTICULAR PURPOSE, NON-INFRINGEMENT OR THAT THE PLATFORM IS FREE OF VIRUSES OR OTHER HARMFUL COMPONENTS AND ANY IMPLIED WARRANTIES ARISING FROM TRADE USAGE, COURSE OF DEALING OR COURSE OF PERFORMANCE) ARE OVERRIDDEN, EXCLUDED AND DISCLAIMED TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW.

### 8. No Liability for Trades

USER UNDERSTANDS THAT: (I) NYSE ARCA IS NOT DIRECTLY OR INDIRECTLY A PARTY TO OR A PARTICIPANT IN ANY TRADE OR TRANSACTION ENTERED INTO OR OTHERWISE CONDUCTED THROUGH THE PLATFORM, AND (II) NYSE ARCA IS NOT LIABLE IN ANY MANNER TO ANY PERSON (INCLUDING THE USER AND ANY PERSON FOR WHOM THE USER IS AUTHORIZED TO TRADE OR ACT) FOR THE FAILURE OF ANY PERSON ENTERING INTO A TRADE OR TRANSACTION BY MEANS OF THE PLATFORM TO PERFORM THIS PERSON'S SETTLEMENT OR OTHER OBLIGATIONS UNDER THE TRADE OR TRANSACTION. THE NYSE PARTIES AND THEIR AGENTS, AFFILIATES AND LICENSORS ARE NOT LIABLE FOR ANY LOSSES, DAMAGES OR OTHER CLAIMS, ARISING OUT OF THE PLATFORM OR ITS USE. USER SHALL ABSORB ANY LOSSES, DAMAGES OR OTHER CLAIMS, RELATED TO A FAILURE OF THE PLATFORM TO DELIVER, DISPLAY, TRANSMIT, EXECUTE, COMPARE, SUBMIT FOR CLEARANCE AND SETTLEMENT, OR OTHERWISE PROCESS AN ORDER, MESSAGE OR OTHER DATA ENTERED INTO, OR CREATED BY, THE PLATFORM. IF THIS SECTION IS DEEMED TO CONFLICT WITH ANY OTHER SECTION OF THIS USER AGREEMENT, THIS SECTION SUPERCEDES THE OTHER SECTION.

### 9. No Consequential Damages

THE NYSE PARTIES AND THEIR AGENTS, AFFILIATES AND LICENSORS ARE NOT LIABLE FOR ANY LOSS, DAMAGES, CLAIM OR EXPENSE, INCLUDING ANY DIRECT, CONSEQUENTIAL, INDIRECT, SPECIAL, PUNITIVE OR INCIDENTAL DAMAGES OR LOST PROFITS, WHETHER FORESEEABLE OR UNFORESEEABLE, BASED ON USER'S CLAIMS OR THE CLAIMS OF ITS CUSTOMERS, EMPLOYEES OR AGENTS (INCLUDING CLAIMS FOR LOSS OF DATA, GOODWILL, USE OF MONEY OR USE OF THE PLATFORM, INTERRUPTION IN USE OR AVAILABILITY OF THE PLATFORM, STOPPAGE OF OTHER WORK OR IMPAIRMENT OF OTHER ASSETS), ARISING OUT OF OR RESULTING FROM THE PERFORMANCE OF THEIR OBLIGATIONS UNDER THIS USER AGREEMENT, WHETHER LIABILITY IS BASED ON BREACH OR FAILURE OF EXPRESS OR IMPLIED WARRANTY, BREACH OF CONTRACT, MISREPRESENTATION, NEGLIGENCE, STRICT LIABILITY IN TORT OR OTHER LEGAL OR EQUITABLE THEORY. THIS SECTION DOES NOT APPLY ONLY WHEN AND TO THE EXTENT THAT APPLICABLE LAW SPECIFICALLY REQUIRES LIABILITY, DESPITE THE FOREGOING EXCLUSION AND LIMITATION.

## SECTION 8 - NYSE Arca<sup>SM</sup> USER AGREEMENT (CONTINUED)

### 10. Term and Termination

This User Agreement is effective as of the Effective Date and remains in effect until terminated. NYSE Arca may terminate this User Agreement immediately if: (i) User is in breach of this User Agreement for any reason, (ii) any representations made by User in connection with this User Agreement are or become false or misleading, (iii) NYSE Arca determines that it is necessary to protect the Platform from abuse, degradation or material harm, (iv) NYSE Arca determines that continued provision of access will contravene any local, state, federal or international law or regulation, (v) NYSE Arca is notified that User is no longer a Permit Holder in good standing with NYSE Arca Equities or otherwise is no longer authorized to access the Platform, or (vi) termination of, expiration of or suspension of services under User's Common Access Point ("CAP") Agreement or Connectivity Questionnaire, as applicable. Either party may terminate this User Agreement for convenience upon thirty (30) days' written notice to the other party. Upon the termination of this User Agreement for any reason, all rights granted to User under this User Agreement cease. The provisions of Sections and subsections 2(c), 3(d), 5, 6, 7, 8, 9, 10 and 13 survive the termination or expiration of this User Agreement for any reason. Termination of this User Agreement does not relieve User of any obligations incurred through its use of the Platform.

### 11. Assignment

User shall not assign, delegate or otherwise transfer this User Agreement or any of its rights or obligations under this User Agreement without NYSE Arca's prior approval. NYSE Arca may assign or transfer this User Agreement or any of its rights or obligations under this User Agreement to a related or unrelated party upon notice to User. Any purported assignment or delegation in violation of this Section 11 is null and void.

### 12. Force Majeure

Without prejudice to any of NYSE Arca's rights under the Rules, neither party is liable nor will be deemed in default for any failure or delay in its performance under this User Agreement (other than User's payment obligations) to the extent due to a cause or causes beyond its control, including acts of God or public enemy, war, terrorist act, insurrection or riot, fire, flood, explosion, earthquake, unusually severe weather, labor dispute, national emergency, or act or omission of any governing authority or agency of a governing authority.

### 13. Miscellaneous

- (a) Except as set forth in subsections 13(i) and (j), this User Agreement can only be amended by a written instrument signed by both parties. An obligation under this User Agreement can only be waived by a written instrument signed by the party waiving the obligation. The failure of NYSE Arca at any time to enforce any provision of this User Agreement does not affect its right thereafter to require complete performance by User. This User Agreement binds each party's respective successors and permitted assigns. This User Agreement, together with the Rules, all agreements required by the Rules and all other agreements entered into related to User's access or use of the Platform constitute the entire agreement between the parties with respect to use of the Platform.
- (b) This User Agreement is governed by and construed under the laws of the State of New York, without regard to choice of law principles. All controversies or claims that are subject to arbitration under the Rules must be submitted to arbitration in New York, New York pursuant to the applicable Rules. This requirement for arbitration does not prevent NYSE Arca for any reason or either party in accordance with subsection 6(c) from seeking interim injunctive relief in any court of competent jurisdiction. If the Rules do not require arbitration for a controversy or claim, then the parties agree that the controversy or claim arising out of or relating to this User Agreement or the breach of this User Agreement must be tried in a court of competent jurisdiction in the State and County of New York, and the parties consent to the exclusive personal jurisdiction of these courts. Nothing in this section 13(b) limits the right of NYSE Arca to commence proceedings against a non-U.S. User in any other court of competent jurisdiction in which the non-U.S. User is located. User may not bring an action arising out of this User Agreement or any claimed breach of this User Agreement more than one (1) year after the cause of action arose.
- (c) If any provision of this User Agreement is held to be unenforceable, in whole or in part, that holding will not affect the validity of the other provisions of this User Agreement.
- (d) Headings in this User Agreement are for convenience only and do not form a part of this User Agreement and do not in any way modify, interpret or construe the intentions of the parties.

## SECTION 8 - NYSE Arca<sup>SM</sup> USER AGREEMENT (CONTINUED)

- (e) From time to time, NYSE Arca may use or refer to User in advertising, publicity, promotional, marketing or other materials, media or activities, and User grants NYSE Arca a limited license to use User's name, trade name, trademark, service mark, log and any other designation in connection with this use.
- (f) Nothing contained in this User Agreement will be construed as creating a partnership, joint venture or other contractual relationship between the parties.
- (g) Except as otherwise provided in this User Agreement, all notices to the parties must be sent by: (i) courier, (ii) certified mail, postage prepaid and return receipt requested, or (iii) e-mail with e-mail acknowledgement of receipt. All notices must be sent to the notice address listed on the last page of this User Agreement. Either party may change its designated notice recipient by notice to the other party.
- (h) The NYSE Parties are third party beneficiaries of this User Agreement and are entitled to receive the rights of NYSE Arca and enforce the provisions of this User Agreement against the User or any other person, to the same extent as if the NYSE Parties had been a signatory to this User Agreement. Notwithstanding the rest of this subsection 13(h), nothing in this User Agreement will impose directly upon the NYSE Parties any of the obligations of NYSE Arca set forth in this User Agreement.
- (i) NYSE Arca may, in its sole discretion, amend any provision of this User Agreement by notice to the User, where failure to do so will or would be likely to give rise to a breach of the rules or regulations of an applicable regulatory authority by NYSE Arca. The User expressly agrees that this provision is a condition of the User Agreement and is necessary to ensure that regulatory compliance is maintained by NYSE Arca at all times.
- (j) NYSE Arca may further amend the provisions of this Agreement by notice. The amendment to this User Agreement contained within this notice will be effective one (1) month subsequent to receipt of the notice by the User, unless the User raises a substantive objection to the amendment before the effective date of the amendment. If the User raises a substantive objection prior to the effective date of the amendment, then NYSE Arca may suspend the User's access to the Platform from the effective date of the amendment until the time that the User has confirmed its acceptance of the relevant amendment in writing to NYSE Arca. In the event that the User has not signified its acceptance of the amendment in writing to NYSE Arca by the date six (6) months subsequent to the effective date of the amendment, then NYSE Arca reserves the right to terminate this User Agreement on one (1) month's notice to the User.
- (k) No remedy conferred by any of the provisions of this User Agreement is intended to be exclusive of any other remedy including any remedy or rights under the Rules, except as expressly provided in this User Agreement, and each and every remedy is cumulative and in addition to every other remedy given under this User Agreement or now or later existing in law or in equity or by statute or otherwise.
- (l) It is not the responsibility of NYSE Arca to inform Users of regulatory requirements including all regulatory, audit trail, record keeping and record retention requirements to which they may be subject (in any jurisdiction). The User assumes all responsibility for keeping itself fully informed of all Rules, rules, requirements, policies and laws.
- (m) Notwithstanding any other provision in this Agreement, User acknowledges and agrees that confidential information and services (including any software, data or related materials provided by NYSE Arca to User in connection with this Agreement) may not be disclosed to any person or entity targeted by any of the economic sanctions of the United States administered by the United States Treasury Department's Office of Foreign Assets Control ("OFAC"), or any person in any country targeted by OFAC sanctions, or used, in whole or in part, in any way that reasonably could be expected to cause a violation by any of the NYSE Parties or an affiliate of any of the NYSE Parties of OFAC sanctions or restrictions on the export, re-export, sale or transfer of goods and technology administered by the United States Department of State or United States Department of Commerce.

**SECTION 8 - NYSE Arca<sup>SM</sup> USER AGREEMENT (CONTINUED)**

The parties have executed this User Agreement by their duly authorized representatives.

**Accepted on behalf of User:**

**Accepted on behalf of NYSE Arca, Inc.:**

\_\_\_\_\_  
(Print Company Name)

By (Signature): \_\_\_\_\_

By (Signature): \_\_\_\_\_

Name: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Date: \_\_\_\_\_

**With Notices To:**

User Name: \_\_\_\_\_

NYSE Arca, Inc.

Contact Name: \_\_\_\_\_

Attention: Client Relationship Services

Address: \_\_\_\_\_

353 N. Clark St., 31<sup>st</sup> Floor

City, State, Zip: \_\_\_\_\_

Chicago, IL 60654

## **SECTION 9 - ARCHIPELAGO SECURITIES™ ROUTING AGREEMENT**

Provided that User is an ETP Holder of NYSE Arca Equities and subject to a valid, ongoing User Agreement with NYSE Arca, LLC; Archipelago Securities, LLC (hereinafter "Archipelago Securities"), a broker-dealer registered in accordance with Section 15(a) of the Securities Exchange Act of 1934, agrees to act as agent to User for the purpose of providing certain routing services, as described herein, provided that User is bound by the terms and conditions of this Routing Agreement and any applicable rules and interpretations of NYSE Arca Equities Rules. Whereas Archipelago Securities provides certain order routing services for NYSE Arca Equities, and User desires to use the order routing facilities of NYSE Arca Equities and NYSE Arca, for good and valuable consideration, User and Archipelago Securities agree as follows:

### **1. ROUTING SERVICES.**

Archipelago Securities, a wholly owned subsidiary of Archipelago Holdings, Inc., agrees to act as agent of the User for routing orders entered into NYSE Arca to the applicable market centers or broker-dealers for execution, whenever such routing is required in accordance with NYSE Arca Equities Rules. User understands and agrees that orders executed on its behalf shall at all times be subject to the terms and conditions of NYSE Arca Equities Rules.

### **2. ORDERS NOT ELIGIBLE FOR ROUTING SERVICES.**

User agrees that Archipelago Securities will not execute any orders that are not eligible for order routing in accordance with NYSE Arca Equities Rules. For example, NYSE Arca Equities Rules may provide that if a User has indicated that an order must not be routed to another market center for execution (*i.e.*, by designating an order as a fill-or-return or fill-or-return plus order), the order will not be eligible for routing services provided by Archipelago Securities.

### **3. CANCELLATION; MODIFICATION OF ORDERS.**

User agrees that any requests regarding cancellation or modification of orders shall be subject to NYSE Arca Equities Rules. User understands that such rules may provide that requests to cancel orders while the order is routed away to another market center and remains outside NYSE Arca will be processed by Archipelago Securities, subject to the applicable trading rules of the relevant market center.

### **4. TRANSMISSION OF ORDER INSTRUCTIONS.**

User agrees that all orders on its behalf must be transmitted to Archipelago Securities through NYSE Arca. User agrees that NYSE Arca is its exclusive mechanism for purposes of transmitting orders on its behalf to Archipelago Securities and for receiving notice regarding such orders. Archipelago Securities shall be entitled to rely upon and act in accordance with any order instructions received from NYSE Arca on behalf of User. User agrees that all order executions effected on behalf of User pursuant to this agreement shall be reported by Archipelago Securities to NYSE Arca. The User shall be notified of such executions through NYSE Arca.

### **5. CLEARANCE AND SETTLEMENT.**

User agrees that all transactions executed on its behalf shall be processed in accordance with NYSE Arca Equities Rules. If User is an ETP Holder, User agrees that orders executed on its behalf by Archipelago Securities shall be automatically processed by NYSE Arca for clearance and settlement on a locked-in basis. If User is a Sponsored Participant, User agrees that all orders executed on its behalf by Archipelago Securities shall be cleared and settled, using the relevant Sponsoring ETP Holder's mnemonic (or its clearing firm's mnemonic as applicable).

### **6. TERM OF AGREEMENT.**

This Routing Agreement will be effective as of the Effective Date and will remain in effect thereafter until terminated by either party upon notice to the other party. Termination will be effective at the close of trading in the affected markets and applications on the day that notice of termination is received by the other party hereto. Archipelago Securities may terminate this Routing Agreement immediately if (i) the User is in breach of this Routing Agreement for any reason, (ii) any representations made by the User in connection with this Agreement or the User Agreement are or become false or misleading or (iii) User is no longer a ETP Holder or Sponsored Participant of NYSE Arca Equities or otherwise authorized to access NYSE Arca. Upon the termination of this Agreement or the User Agreement for any reason, all rights granted to User hereunder will cease. The provisions of Paragraphs 7, 8, 9 and 10 will survive the termination or expiration of this Routing Agreement for any reason. In no event will termination of this Routing Agreement relieve User of any obligations incurred through its use of NYSE Arca.

## SECTION 9 - ARCHIPELAGO SECURITIES™ ROUTING AGREEMENT (CONTINUED)

### 7. INDEMNITY.

User agrees to indemnify, defend and hold Archipelago Securities harmless from and against any and all claims, demands, losses, costs, expenses, obligations, liabilities, damages, recoveries, and deficiencies, including interest, penalties, and attorneys' fees, arising from or as a result of User's breach of its obligations under this Agreement or otherwise from its use of the Archipelago Securities routing services.

### 8. DISCLAIMER OF WARRANTY.

ROUTING SERVICES ARE PROVIDED "AS IS" AND WITHOUT WARRANTY OF ANY KIND. ALL WARRANTIES, CONDITIONS, REPRESENTATIONS, INDEMNITIES AND GUARANTEES WITH RESPECT TO THE ROUTING SERVICE, WHETHER EXPRESS, IMPLIED, OR STATUTORY, ARISING BY LAW, CUSTOM, PRIOR ORAL OR WRITTEN STATEMENTS BY ARCHIPELAGO SECURITIES, NYSE Arca EQUITIES OR ITS OR THEIR AGENTS, AFFILIATES, LICENSORS OR OTHERWISE (INCLUDING, BUT NOT LIMITED TO ANY WARRANTY OF SATISFACTORY QUALITY, ACCURACY, UNINTERRUPTED USE, TIMELINESS, TRUTHFULNESS, SEQUENCE, COMPLETENESS, MERCHANTABILITY, FITNESS FOR PARTICULAR PURPOSE OR NON-INFRINGEMENT AND ANY IMPLIED WARRANTIES ARISING FROM TRADE USAGE, COURSE OF DEALING OR COURSE OF PERFORMANCE) ARE HEREBY OVERRIDDEN, EXCLUDED AND DISCLAIMED.

### 9. NO LIABILITY FOR TRADES.

USER UNDERSTANDS AND AGREES THAT (I) ARCHIPELAGO SECURITIES IS NOT LIABLE IN ANY MANNER TO ANY PERSON (INCLUDING WITHOUT LIMITATION THE USER AND ANY PERSON FOR WHOM THE USER IS AUTHORIZED TO TRADE OR ACT) FOR THE FAILURE OF ANY PERSON ENTERING INTO A TRADE OR TRANSACTION BY MEANS OF NYSE Arca TO PERFORM SUCH PERSON'S SETTLEMENT OR OTHER OBLIGATIONS UNDER SUCH TRADE OR TRANSACTION. NEITHER ARCHIPELAGO SECURITIES, OR ITS AGENTS, AFFILIATES OR LICENSORS WILL BE LIABLE FOR ANY LOSSES, DAMAGES, OR OTHER CLAIMS, ARISING OUT OF THE ROUTING SERVICE OR ITS USE. ANY LOSSES, DAMAGES, OR OTHER CLAIMS, RELATED TO A FAILURE OF ARCHIPELAGO SECURITIES TO DELIVER, DISPLAY, TRANSMIT, EXECUTE, COMPARE, SUBMIT FOR CLEARANCE AND SETTLEMENT, OR OTHERWISE PROCESS AN ORDER, MESSAGE, OR OTHER DATA ENTERED INTO, OR CREATED BY, NYSE Arca WILL BE ABSORBED BY THE USER OR THE ETP HOLDER SPONSORING THE USER, THAT ENTERED THE ORDER, MESSAGE OR OTHER DATA INTO NYSE Arca. IF THIS SECTION IS DEEMED TO CONFLICT WITH ANY OTHER SECTION OF THIS USER AGREEMENT, THIS SECTION WILL SUPERCEDE SUCH OTHER SECTION.

**10. NO CONSEQUENTIAL DAMAGES.** UNDER NO CIRCUMSTANCES WILL ARCHIPELAGO SECURITIES, NYSE Arca EQUITIES OR ITS OR THEIR AGENTS, AFFILIATES OR LICENSORS BE LIABLE FOR ANY LOSS, DAMAGE, CLAIM OR EXPENSE, INCLUDING WITHOUT LIMITATION ANY DIRECT, CONSEQUENTIAL, INDIRECT, SPECIAL, PUNITIVE OR INCIDENTAL DAMAGES OR LOST PROFITS, WHETHER FORESEEABLE OR UNFORESEEABLE, BASED ON USER'S CLAIMS OR THE CLAIMS OF ITS CUSTOMERS, EMPLOYEES OR AGENTS (INCLUDING, BUT NOT LIMITED TO, CLAIMS FOR LOSS OF DATA, GOODWILL, USE OF MONEY OR USE OF ROUTING SERVICES, INTERRUPTION IN USE OR AVAILABILITY OF ARCHIPELAGO SECURITIES, STOPPAGE OF OTHER WORK OR IMPAIRMENT OF OTHER ASSETS), ARISING OUT OF BREACH OR FAILURE OF EXPRESS OR IMPLIED WARRANTY, BREACH OF CONTRACT, MISREPRESENTATION, NEGLIGENCE, STRICT LIABILITY IN TORT OR OTHERWISE. THIS SECTION WILL NOT APPLY ONLY WHEN AND TO THE EXTENT THAT APPLICABLE LAW SPECIFICALLY REQUIRES LIABILITY, DESPITE THE FOREGOING EXCLUSION AND LIMITATION.

### 11. ASSIGNMENT.

User shall not assign, delegate or otherwise transfer this Routing Agreement or any of its rights or obligations hereunder without Archipelago Securities' prior approval, which will not be unreasonably withheld. Archipelago Securities may assign or transfer this Routing Agreement or any of its rights or obligations hereunder to a related or unrelated party upon notice to User.

### 12. FORCE MAJEURE.

Notwithstanding any other term or condition of this Routing Agreement to the contrary, neither Archipelago Securities nor User will be obligated to perform or observe their obligations undertaken in this Routing Agreement if prevented or hindered from doing so by any circumstances found to be beyond their control.

**SECTION 9 - ARCHIPELAGO SECURITIES™ ROUTING AGREEMENT (CONTINUED)**

**13. MISCELLANEOUS.**

All notices or approvals required or permitted under this Routing Agreement must be given in writing to the address specified above. Any waiver or modification of this Routing Agreement will not be effective unless executed in writing and signed by the other party, provided that this agreement shall at all times be interpreted to effect the rules and interpretations of NYSE Arca Equities, as applicable. This Routing Agreement will bind each party's successors-in-interest. This Routing Agreement will be governed by and interpreted in accordance with the internal laws of the State of New York, USA. All disputes, claims or controversies between the parties hereto will be submitted to arbitration in New York, New York. This Routing Agreement, together with the applicable NYSE Arca Equities Rules, constitutes the complete and entire statement of all conditions and representations of the agreement between Archipelago Securities and User with respect to its subject matter and supersedes all prior writings or understandings.

**Execution of this Agreement by an ETP Holder may be effected by initialing the User Agreement for NYSE Arca or, alternatively, by signing in the space provided below:**

Accepted on behalf of ETP Holder:

By (Signature): \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_



**SECTION 10 – INDIVIDUAL REGISTRATION**

Provide the information requested below for each of the requested individuals associated with the Applicant Broker-Dealer. Pursuant to NYSE Arca Equities Rule 6.18, all applicants must designate a Series 24 licensed principal. Applicants subject to Exchange Act Rule 15c3-1 are required to have a designated Series 27 licensed principal, pursuant to NYSE Arca Equities Rules 4.5. Additionally, Authorized Traders for whom NYSE Arca will be the DEA are required to have successfully passed the Series 7 examination, pursuant to NYSE Arca Equities Rule 2.4. Proof of examination requirements, fingerprint card submission, and Form U-4s should be submitted by the Applicant to Web CRD® for review by NYSE Arca.

For individuals required to be disclosed below who do not have required information available on Web CRD®, the Applicant may be required to submit an investigation fee of \$125 per individual

**DESIGNATED SERIES 24 LICENSED PRINCIPAL**

Name: \_\_\_\_\_ CRD: \_\_\_\_\_  
Phone: \_\_\_\_\_ Fax: \_\_\_\_\_  
Email: \_\_\_\_\_

**DESIGNATED SERIES 27 LICENSED PRINCIPAL**

Name: \_\_\_\_\_ CRD: \_\_\_\_\_  
Phone: \_\_\_\_\_ Fax: \_\_\_\_\_  
Email: \_\_\_\_\_

**AUTHORIZED TRADER**

Name: \_\_\_\_\_ CRD: \_\_\_\_\_  
Phone: \_\_\_\_\_ Fax: \_\_\_\_\_  
Email: \_\_\_\_\_

**AUTHORIZED TRADER**

Name: \_\_\_\_\_ CRD: \_\_\_\_\_  
Phone: \_\_\_\_\_ Fax: \_\_\_\_\_  
Email: \_\_\_\_\_

**AUTHORIZED TRADER**

Name: \_\_\_\_\_ CRD: \_\_\_\_\_  
Phone: \_\_\_\_\_ Fax: \_\_\_\_\_  
Email: \_\_\_\_\_

**AUTHORIZED TRADER**

Name: \_\_\_\_\_ CRD: \_\_\_\_\_  
Phone: \_\_\_\_\_ Fax: \_\_\_\_\_  
Email: \_\_\_\_\_

Additional Authorized Traders are submitted in a separate document attached hereto

**SECTION 10 (CONTINUED) - KEY PERSONNEL**

Please identify the key personnel who hold the below positions (or the individual whose responsibilities are the functional equivalent of such position, regardless of actual titles used by the Applicant Firm) and who will want to receive communications pertaining to our equities markets.

**Chief Executive Officer ("CEO")**

Name: \_\_\_\_\_ CRD: \_\_\_\_\_  
Phone: \_\_\_\_\_ Fax: \_\_\_\_\_  
Email: \_\_\_\_\_

**Chief Financial Officer ("CFO")**

Name: \_\_\_\_\_ CRD: \_\_\_\_\_  
Phone: \_\_\_\_\_ Fax: \_\_\_\_\_  
Email: \_\_\_\_\_

**Chief Compliance Officer ("CCO")**

Name: \_\_\_\_\_ CRD: \_\_\_\_\_  
Phone: \_\_\_\_\_ Fax: \_\_\_\_\_  
Email: \_\_\_\_\_

**Chief Operations Officer ("COO")**

Name: \_\_\_\_\_ CRD: \_\_\_\_\_  
Phone: \_\_\_\_\_ Fax: \_\_\_\_\_  
Email: \_\_\_\_\_

**Head of Clearing**

Name: \_\_\_\_\_ CRD: \_\_\_\_\_  
Phone: \_\_\_\_\_ Fax: \_\_\_\_\_  
Email: \_\_\_\_\_

**Head of Connectivity**

Name: \_\_\_\_\_ CRD: \_\_\_\_\_  
Phone: \_\_\_\_\_ Fax: \_\_\_\_\_  
Email: \_\_\_\_\_

**Head of Trading**

Name: \_\_\_\_\_ CRD: \_\_\_\_\_  
Phone: \_\_\_\_\_ Fax: \_\_\_\_\_  
Email: \_\_\_\_\_

# **NYSE Arca Equities, Inc.**

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## ***DEA Application Requirements***

**SECTION 11- DESIGNATED EXAMINING AUTHORITY (DEA) REQUIREMENTS**

**ITSFEA COMPLIANCE ACKNOWLEDGEMENT**

**This form should be completed by a Director, Officer, General Partner or Individual responsible for ensuring that the Broker-Dealer's ITSFEA Compliance Procedures are followed. In the future, this certification must be completed and filed with NYSE Arca along with the Broker-Dealer's year-end FOCUS Report (Form X-17A-5).**

Broker-Dealer: \_\_\_\_\_

SEC #. \_\_\_\_\_

The undersigned states and certifies as follows:

It is understood that should any Director, Officer, General Partner or Associated Person (as defined in NYSE Arca Equities Rule 1.1(f)) of the Broker-Dealer acquire material, non-public information concerning a corporation whose securities are publicly traded, it may be a violation of NYSE Arca Equities Rules and Federal securities laws to misuse such information or trade any securities issued by the corporation, or any options or other derivative securities based thereon, while such information remains non-public.

It is further understood that should any Director, Officer, General Partner or Associated Person of the Broker-Dealer obtain material, non-public information concerning the market in a security or group of securities, it may be a violation of NYSE Arca Equities Rules and Federal securities laws to make improper use of such information in connection with trading in the security, group of securities or any option or other derivative based thereon.

It is also understood that it may be a violation of NYSE Arca Equities Rules and Federal securities laws to disclose to any other person or entity any non-public, material corporate or market information that may be acquired regarding a publicly traded security or group of securities.

Additionally, the Broker-Dealer represents that it has established written procedures reasonably designed to prevent misuse of material non-public information by the Broker-Dealer or by any of the Broker-Dealer's Directors, Officers, General Partners or Associated Persons, taking into consideration the nature of the Broker-Dealer's business.

The Individual(s) responsible for overseeing and supervising the specific element of the member firm or organization's ITSFEA Compliance procedures has reviewed (or supervised the review of) the Broker-Dealer's proprietary, error account(s), and any outside brokerage securities accounts of Directors, Officers, General Partners, and Associated Persons with the Broker-Dealer, in accordance with the specific provisions (including timing and type of review) detailed in and required by the firm's written ITSFEA compliance procedures.

Based upon the assessment of the adequacy of those procedures and of the authority and diligence of the person(s) carrying out those procedures (except as to any securities transactions involving the possible misuse of non-public information which already have been reported to NYSE Arca), there is no reasonable cause to believe that any Director, Officer, General Partner, or Associated Persons of the Broker-Dealer has misused, made improper use of, or disclosed material non-public information, or may otherwise be in violation of NYSE Arca Equities Rule 6.3

Accepted on behalf of ETP Holder:

\_\_\_\_\_  
Signature of Authorized Officer, Partner, Managing Member, or Sole Proprietor

\_\_\_\_\_  
Date

\_\_\_\_\_  
Print Name of Authorized Officer, Partner, Managing Member, or Sole Proprietor

\_\_\_\_\_  
Title