

NASD Notice to Members 99-73

NASD Requests
Comment On Proposed
Amendments To The
Code Of Procedure And
Other Provisions;
Comment Period Expires
September 13, 1999

Suggested Routing

- Senior Management
- Advertising
- Continuing Education
- Corporate Finance
- Executive Representatives
- Government Securities
- Institutional
- Insurance
- Internal Audit
- Legal & Compliance
- Municipal
- Mutual Fund
- Operations
- Options
- Registered Representatives
- Registration
- Research
- Syndicate
- Systems
- Trading
- Training
- Variable Contracts

Executive Summary

The National Association of Securities Dealers, Inc. (NASD® or Association) Code of Procedure (the Code) has been in place since August 7, 1997. In light of the Association's additional experience litigating matters under the Code, the Association is proposing a series of clarifying and substantive changes to the Code and other provisions as described more fully below. These changes include:

- setting forth more clearly the Department of Market Regulation's role in disciplinary proceedings;
- clarifying the authority of hearing officers and making some limited changes to that authority;
- clarifying the scope of the Association's document production requirements;
- providing for hearing panel review of staff determinations to impose limitations on member firms' business activities because of financial and/or operational difficulties;
- providing for changes to the process for appeals of disciplinary actions, statutory disqualification proceedings, and certain other accelerated proceedings;
- providing for a streamlined process to impose bars or expulsions for the failure to provide information to the Association; and
- providing for a process by which the Association can more expeditiously cancel memberships of firms that fail to meet the Association's eligibility and qualification standards.

Attachment A includes the text of the proposed changes.

Request For Comment

NASD Regulation encourages all interested parties to comment on the proposal. Comments must be received by **September 13, 1999**. Comments should be mailed to:

Joan Conley
Office of the Corporate Secretary
NASD Regulation, Inc.
1735 K Street, NW
Washington, DC 20006-1500

or e-mail to:
pubcom@nasd.com

Important Note: The only comments that will be considered are those submitted via e-mail or in writing.

Before becoming effective, any rule change developed as a result of comments received must be adopted by the NASD Regulation, Inc. (NASD Regulation®) Board of Directors, may be reviewed by the NASD Board of Governors, and must be approved by the Securities and Exchange Commission (SEC).

Questions/Further Information

As noted, written comments should be submitted to Joan Conley. Questions concerning this *Notice to Members—Request For Comment* may be directed to Eric Moss, Assistant General Counsel, NASD Regulation, at (202) 728-8982.

Discussion

The Code, implemented on August 7, 1997, provides detailed requirements governing NASD Regulation's process for:

(1) authorizing, litigating, and issuing disciplinary decisions;

(2) providing for appeals of those decisions;

(3) taking certain actions through categories of accelerated proceedings; and

(4) determining requests for relief from statutory disqualifications.

Since August 7, 1997, the Association staff has had significant experience under the Code and has noted certain areas that need to be clarified or changed.

Custodian Of The Record

Firms often list persons not associated with the firms as custodians of records on the SEC Form BDW, and then the Association has difficulty obtaining records when firms no longer conduct business. The Association is proposing to add a provision to its Conduct Rules that would require members to designate, as the custodians of the record on the Form BDW, persons who are associated with the firms at the time the Forms BDW are filed.

Eligibility Of Panel Members

In certain circumstances, the National Adjudicatory Council (NAC) or the Review Subcommittee of the NAC (Review Subcommittee) may appoint panels to conduct hearings. Under Rule 1015, only one panel member can be from the NAC, unless a panel member is also a former NASD Regulation Director or NASD Governor. The Association is proposing to eliminate this restriction.

Market Regulation's Role In Disciplinary Process

Both the Department of Market Regulation and the Department of Enforcement represent NASD Regulation in formal disciplinary matters under the Code. However, the disciplinary rules only refer to the Department of Enforcement as the representative of the Association in these matters. The Department of Market Regulation represents NASD Regulation under a delegation of authority from the

Department of Enforcement. The Association is proposing amending the Code to clarify the Department of Market Regulation's role in the disciplinary process.

Investigations

The Rule 8220 Series permits the Department of Enforcement to initiate proceedings to suspend or cancel membership from the Association or suspend the association of a person with a member based upon the failure to provide information. These proceedings may be initiated for the failure to provide information pursuant to an Association request or the failure to make required filings with the Association, such as FOCUS reports, or to keep membership applications or supporting documents current. The Association is proposing to amend the Rule 8220 Series to:

(1) as discussed below (under the heading *Failure To Respond*), limit the use of Rule 8220 proceedings to address serious on-going violations concerning associated persons and members that fail to provide the Association with requested information; and

(2) limit the sanctions available under Rule 8220 proceedings to suspensions.

Finally, the Association is proposing to amend the service provision under the Rule 8220 Series to make it consistent with the service provision under the Rule 9530 Series, a similar rule series. The staff is proposing that both the Rule 8220 Series and the Rule 9530 Series service provisions permit personal service, service by facsimile, and service by overnight courier. The Association is further proposing to clarify that attempted delivery of a document by an overnight courier may count as service under these provisions.

Service Of Papers—Address Changes

Rule 9134(b)(1) states that service of papers on a natural person in a disciplinary hearing must be at the person's residential address as reflected in the Central Registration Depository (CRDSM). If the Association staff has actual knowledge that the person's CRD address is out of date, then in addition to serving at the residential address as reflected in the CRD, service should also be made at the person's last known residential address and the CRD address of the firm with which the person is associated or affiliated, if he/she is currently in the industry. The Association is proposing to modify the rule to permit adjudicators to waive the requirement of sending papers to CRD addresses when they are no longer valid, and there is a more current address available. This change would only relate to documents served on respondents after complaints have been served.

Further, the Association is proposing to amend Rule 9135(a) to clarify that complaints shall be deemed timely filed so long as they are either mailed or delivered to the Office of Hearing Officers within the two-year jurisdictional period, as outlined in the By-Laws.

Severance Of Cases

Rule 9214 authorizes the Chief Hearing Officer to order the consolidation of disciplinary hearings, but does not specifically refer to the authority of the Chief Hearing Officer to sever disciplinary proceedings. The Association is proposing to amend Rule 9214 to clarify that the Chief Hearing Officer has authority to sever disciplinary proceedings involving multiple respondents into one or more proceedings.

Producing Documents

The Association is proposing amendments to Rule 9253 to clarify the scope of the Association's document production requirements. Rule 9251(a) requires the Association staff to make available to respondents documents prepared or obtained by the staff in connection with the investigations that led to the institution of a disciplinary proceeding. Exceptions to the production requirements are listed in Rule 9251(b), and include examination and inspection reports and internal employee communications. Notwithstanding these exceptions, documents containing the staff's investigative techniques might become discoverable under Rule 9253 if staff members are called as witnesses during hearings. Rule 9253 requires Association staff to produce written statements made or adopted by staff members, if they relate to the subject matter of those persons' testimony. It also requires the staff to produce contemporaneously recorded recitals of oral statements made by witnesses, if those written statements are substantially verbatim.

The proposed modifications of Rule 9253 clarify that the *only portions* of routine examination or inspection reports, internal employee communications, and any other internal documents that are required to be produced, under this rule, are the portions outlining the substance of (and any conclusions regarding) oral statements made by persons who are not employees of the Association when evidence of those statements are offered by Association staff during disciplinary hearings.

Amending Complaints

The Association is proposing to modify its rules regarding amending

complaints to more closely follow the Federal Rules of Civil Procedure (FRCP). The FRCP does not limit the types of amendments that may be made to complaints. NASD Rule 9212, however, only permits amendments to "new matters of fact or law." The Association is proposing to amend the rule to eliminate this restriction. Thus, for instance, under proposed rule change, the Association staff could amend complaints to include additional respondents. Further, the FRCP permits amendments to make complaints conform to the evidence presented. The Association is proposing to modify Rule 9212 to permit such amendments. Also, the FRCP states that amendments to complaints will be freely granted when justice so requires. The Association is proposing to amend Rule 9212 to state that amendments to complaints will be freely granted when justice so requires. Association staff will need to obtain hearing officer approval to amend complaints after answers have been filed.

Effective Dates Of Sanctions

CRD currently sets the time of the imposition of sanctions imposed under the Code by notifying respondents in writing when fines are due and of the effective date of suspensions. The Association is proposing to amend several provisions of the Code to clarify that the effective dates of sanctions are the dates set by the Association staff unless stated otherwise in orders, decisions, or settlement agreements.

Written Orders

Rule 9241(e) states that hearing officers shall enter written rulings or orders reciting any agreements reached and any procedural determinations made by hearing officers at pre-hearing conferences.

The Association is proposing to modify this rule to clarify that, when court reporters are present and transcripts of pre-hearing conferences are prepared, hearing officers may deem such transcripts to be sufficient records of the orders in lieu of written orders.

Summary Dispositions

Rule 9264(a) authorizes either the Association or respondents to file motions to summarily dispose of "any or all the causes of action in the complaint." This rule, however, does not permit parties to move to eliminate issues that do not involve entire "causes of actions." The Association is proposing to modify Rule 9264(a) to track the language in the FRCP, which permits courts to dismiss factual issues.

Further, the Association is proposing to modify Rule 9264 to authorize hearing officers to deny, grant, or defer motions to dismiss without referring the matter to the full panel. The authority to grant such motions would be limited to jurisdictional issues, such as whether the complaint was filed within the two-year jurisdictional period.

Default Decisions

Rule 9269 provides that motions to set aside default decisions should be made to the Review Subcommittee or the NAC. The hearing officers who issue the default decisions, however, are particularly familiar with the issues presented. The staff is proposing to modify the rule to state that motions to set aside default decisions should be made to the hearing officers that originally decided the defaults. Appeals from such denials could be made to the NAC or the Review Subcommittee.

Remand Cases

Rule 9349 authorizes the NAC to remand disciplinary cases back to hearing panels. The Association is proposing to amend Rule 9344 and Rule 9349 to clarify that the Review Subcommittee may also remand disciplinary cases back to hearing panels.

Office Of General Counsel

Under Rule 9311 and Rule 9312, the General Counsel is required to obtain Review Subcommittee or NAC authorization to order parties to brief particular matters. The General Counsel rarely seeks additional briefing on particular points, but where the General Counsel believes that additional briefing is necessary, the Review Subcommittee or the NAC would most likely order it. Thus, requiring the General Counsel to seek authorization for additional briefing is an unnecessary use of resources. The Association is proposing that this provision be modified to eliminate this requirement. The Association proposes including in the rules a process by which parties may challenge, before the Review Subcommittee or the NAC, requests for additional briefing made by the General Counsel.

Briefing Schedules

Rule 9347(b) establishes briefing schedules for papers filed in NAC proceedings. The Association is proposing amending this rule to clarify that the time periods listed in the rule are only applicable to the principal briefing schedule and not applicable to the briefing of subsequent collateral issues.

Schedule For Board Submissions

The Association is proposing to amend Rule 9351 to eliminate the

requirement that an NASD Governor needs to initiate the review of a disciplinary decision by the Board meeting that is at least 15 days after the date that the Board receives the proposed decision. The Association is proposing to amend the rule to state that if an NASD Governor decides to initiate a review of a disciplinary case, he/she should do so as soon as practicable, but no later than the second Board meeting following the transmission of material to the Board. Finally, the Association is proposing to amend the rule to state that the NASD Board should issue its decision as soon as practicable, but no later than the second Board meeting following the transmission of materials to the Board.

Procedures For Regulation Of Activities Of A Member Experiencing Financial Or Operational Difficulties

Under the Rule 9410 Series, the Department of Member Regulation issues notices and holds initial hearings to determine whether members must limit their business activities as a result of financial and/or operational difficulties. Members can appeal Member Regulation's decisions to the NAC, and the NAC or the Review Subcommittee will appoint a Subcommittee to participate in the review. The Association is proposing to amend the rule series to provide that firms may appeal limitations in notices issued by the Department of Member Regulation to hearing panels that will consist of a hearing officer and two other panelists. Under the proposal, the Department of Member Regulation would not hold hearings, and the NAC would not participate in matters handled under this rule series.

Currently, an NASD Governor may initiate the review of a decision issued by the NAC, under the Rule

9410 Series, not later than the next meeting of the NASD Board that is at least 15 days after the date on which the NASD Board receives the proposed written decision of the NAC. The Association is proposing to replace this procedure with a mechanism by which the Executive Committee of the NASD Board may initiate the review of the hearing panel decision for a period of 15 days. Currently, the Department of Member Regulation's decision is stayed unless otherwise ordered by the NAC decision. The Association is proposing to modify this provision to provide that the Department of Member Regulation's recommendation is stayed unless ordered otherwise by the Executive Committee.

Other Proceedings

Rule 9514(d)(2) states that proceedings involving the following need to be held within 21 days after respondents request hearings:

- (i) the failure to pay an arbitration award or settlement agreement;
- (ii) the denial of access to Association services; or
- (iii) an advertising pre-use filing requirement.

Hearing panels may, during the initial 21-day period, extend the time an additional 21 days. The Association believes that these periods are too short, and is proposing to extend the initial period to 40 days, and the extension period to 30 days. Since suspensions are not in effect during the prehearing period, extending the period will not prejudice respondents.

Eligibility Proceedings

The Association is proposing several changes to the rules that govern the process by which

persons may become or remain associated with a member notwithstanding the existence of a statutory disqualification or for a current member or person associated with a member to obtain relief from the eligibility or qualification requirements. First, the eligibility rules do not state whether extensions of time or waivers of time limitations for filing of papers or holding of hearings may be granted. The Association is proposing to create a rule that permits such actions by consent of all the parties. Further, the eligibility rules do not state whether the disqualification hearing panel or the NAC may order that the record be supplemented. The Association is proposing to create such a rule.

The eligibility rules state that NASD Regulation's statutory disqualification recommendations become effective upon service on applicants. However, only the SEC can grant final approval of statutory disqualification applications. The Association is proposing to amend these rules to reflect this point.

If a member files an application for relief under the eligibility rules, the NAC or the Review Subcommittee appoints a hearing panel composed of two or more members who are current or former members of the NAC or former Directors or Governors. The Association is proposing that the rules be amended to state that members of the Statutory Disqualification Committee may also serve on hearing panels.

The eligibility rules state that if the Association staff initiated the proceedings, the Association will give to the applicant all documents that were relied on by the Association in issuing its notice. However, most applications are started by member firms, not the Association. The Association is proposing to amend the rules to reflect this fact.

The Association is also proposing to amend the rules to provide that once an application is filed, CRD will gather all of the information necessary to process the application, including:

(1) CRD records for the disqualified member, sponsoring member, and/or disqualified person, and the proposed supervisor; and

(2) all of the information submitted by the disqualified member or sponsoring member in support of the application.

The proposed rule would further provide that CRD will prepare an index of these documents, and simultaneously provide this index and copies of the documents to the disqualified member or sponsoring member, the Office of the General Counsel of NASD Regulation, and the Department of Member Regulation. The rule also would require the Department of Member Regulation to submit its recommendation and supporting documents to the hearing panel and the disqualified member or sponsoring member within 10 business days of the hearing, unless the parties otherwise agree. Similarly, the disqualified member or sponsoring member would be required to submit its documents to the hearing panel and the Department of Member Regulation within 10 business days of the hearing, unless otherwise agreed.

The amendments to the Rule 9520 Series concern the review procedures undertaken by Association staff in the case of certain disqualifying events. In particular, the Association is proposing to amend the rules to permit members to submit a written request for relief (rather than an MC-400 application) in cases where the disqualified member or person is subject to an injunction that was entered 10 or more years prior to

the proposed admission or association. Under Exchange Act Rule 19h-1, the NASD is not required to provide any notice to the SEC of the proposed admission or association in these types of cases. The Association also proposes that members be able to file a written request for relief in cases where a member requests to change the supervisor of a disqualified person or where, for instance, the New York Stock Exchange (NYSE) has determined to approve the proposed association of a disqualified person and the NASD concurs with the determination. Member Regulation would also be granted discretion to approve the written request for relief in these cases, if it deemed such action to be consistent with the public interest and the protection of investors.

The Association also proposes to amend the Rule 9520 Series to permit Member Regulation to approve an MC-400 application for relief in those cases where the disqualifying event is excepted from the "full" notice requirements of Rule 19h-1, but where a "short form" notification to the SEC under Rule 19h-1 is still required. In these cases, the member would be required to file an MC-400, but Member Regulation would have the discretion to approve the application when consistent with the public interest and the protection of investors.

In addition, the Association is proposing new Rule 9523 to permit Member Regulation to recommend the membership or continued membership of a disqualified member or sponsoring member or the association or continuing association of a disqualified person pursuant to a supervisory plan. The procedures set forth in proposed Rule 9523 are modeled on current Rule 9216 concerning Acceptance, Waiver, and Consent procedures, and are intended to avoid the

requirement of a formal hearing and decision by the Statutory Disqualification Committee (and its hearing panels) in cases that generally involve only the issue of what type of supervisory plan is appropriate for the disqualified member or person. Under proposed Rule 9523, the member would be required to file an MC-400 application with the NASD. Member Regulation, however, would have the discretion to recommend the approval of the application in the event an appropriate supervisory plan is established. The member would be required to execute a letter consenting to the imposition of the supervisory plan. The letter and the supervisory plan would then be submitted to the Office of General Counsel and/or the Chairman of the Statutory Disqualification Committee for review and possible approval. While both the Office of General Counsel and the Committee Chairman would have authority to approve the application or refer it to the NAC, only the Committee Chairman would be permitted to reject the application.

Failure To Respond

As noted above (under the heading *Investigations*), proceedings initiated under the Rule 8220 Series are designed to address serious on-going violations concerning associated persons and members that are failing to provide the Association with information. For this reason, these proceedings are brought on an accelerated basis.

The Association is proposing to create a new rule series (Rule 9540 Series), which would be used against those who fail to provide the Association with information, required filings, or keep membership applications or supporting documents current. Under the proposed Rule 9540 Series, the Association would send notices informing respondents that failure to provide the Association with previously requested information or required filings or the failure to keep its membership application or supporting documents current will result in suspensions, unless the information is provided to the Association within 20 days. Respondents would have five days to request hearings to challenge proposed suspensions.

These hearings would be conducted before three-member hearing panels, and the hearing panels would have the authority to order any fitting sanctions, including expulsions and bars. Respondents who fail to request hearings to challenge the suspension during the six-month period following the receipt of notices initiating proceedings under this rule series will be automatically barred or expelled.

Further, the Association is proposing to include in the Rule 9540 Series a process by which the Department of Member Regulation could quickly cancel the memberships of firms that fail to meet the Association's eligibility and qualification standards. Under the proposal, the Association would send letters to members informing them that their memberships will be canceled within 20 days of receipt of the letters, unless the firm becomes eligible for continuance in membership within this time period. The members will be provided opportunities to request hearings within five days of service of the notices to challenge the proposed cancellations. The hearings would be held before Hearing Officers.

ATTACHMENT A

Text Of Amendments

(Note: New text is underlined; deletions are bracketed.)

1000. MEMBERSHIP, REGISTRATION AND QUALIFICATION REQUIREMENTS

1010. Membership Proceedings

1015. Review by National Adjudicatory Council

(a) through (c) No change.

(d) Appointment of Subcommittee

The National Adjudicatory Council or the Review Subcommittee defined in Rule 9120 shall appoint a Subcommittee to participate in the review. The Subcommittee shall be composed of [at least two members. One member shall be a current member of the National Adjudicatory Council. The remaining member or members shall be current or past Directors or past Governors.] two or more persons who shall be current or past members of the National Adjudicatory Council or former Directors or Governors.

3100. BOOKS AND RECORDS, AND FINANCIAL CONDITION

3121. Custodian of the Record

A member who files a Securities and Exchange Commission Form BDW shall designate on the Form BDW, as the custodian of the record, a person associated with the member at the time that the Form BDW is filed.

8000. INVESTIGATIONS AND SANCTIONS

8200. INVESTIGATIONS

8220. Suspension [or Cancellation] for Obstructing Investigations [Failure to Provide Requested Information]

8221. Notice

(a) Notice to Member

If a member fails to provide any information, report, material, data, or testimony requested pursuant to the NASD By-Laws or the Rules of the Association[, or fails to keep its membership application or supporting documents current], the Department of Enforcement or the Department of Market Regulation may provide written notice to such member specifying the nature of the failure and stating that the failure to take such action within 20 days after service of the notice constitutes grounds for suspension [or cancellation] of membership.

(b) Notice to Person Associated with Member

If a person associated with a member fails to provide any information, report, material, data, or testimony requested pursuant to the NASD By-Laws or the Rules of the Association, the Department of Enforcement or the Department of Market Regulation may provide written notice to such person specifying the nature of the failure and stating that the failure to take such action within 20 days after service of the notice constitutes grounds for suspending the association of the person with the member.

(c) Service of Notice

The Department of Enforcement or the Department of Market Regulation shall serve the member or person associated with a member with such notice via personal service or overnight [commercial] courier or by facsimile at location described in Rule

9134(b). Service by overnight courier shall be accomplished by sending the papers through an overnight courier service that generates a written confirmation of receipt or of attempts at delivery.

8222. Hearing

(a) Request for Hearing

Within five days after the date of service of a notice issued under Rule 8221, a member or person associated with a member served with a notice under Rule 8221(c) may file with the NASD Regulation Office of General Counsel a written request for an expedited hearing before a subcommittee of the National Adjudicatory Council. The request shall state with specificity why the member or associated person believes that there are insufficient grounds for suspension or [cancellation or] any other reason for setting aside the notice issued under Rule 8221.

(b) Hearing Procedures

(1) Appointment of Subcommittee

If a hearing is requested, the National Adjudicatory Council or the Review Subcommittee described in Rule 9120 shall appoint a subcommittee to conduct the hearing and decide whether the member or person associated with a member should be suspended [or canceled]. The subcommittee shall be composed of a current member of the National Adjudicatory Council and one or more current or former members of the National Adjudicatory Council[, or former Governor or Director. [NASD Regulation Board, or NASD Board.]

(2) Time of Hearing

The hearing shall be held within

30 days after the date of service of the notice issued under Rule 8221. Not later than seven days before the hearing, the subcommittee shall serve the member or person associated with a member with written notice of the date and time of the hearing via overnight [commercial] courier or facsimile and notify the Department of Enforcement or the Department of Market Regulation of the date and time of the hearing.

(3) Transmission of Documents

Not later than seven days before the hearing, the Department of Enforcement or the Department of Market Regulation shall serve the member or person associated with a member via overnight [commercial] courier with all documents that were considered in connection with the decision to issue a notice under Rule 8221, unless a document meets the criteria of Rule 9251(b)(1)(A), (B), or (C). A document that meets such criteria shall not constitute part of the record, but shall be retained by the Association until the date upon which the Association serves a final decision or, if applicable, upon the conclusion of any review by the Commission or the federal courts. The Department of Enforcement or the Department of Market Regulation shall provide a copy of the documents transmitted to the member or person associated with a member to the subcommittee.

(4) Counsel

The member or person associated with a member and the Department of Enforcement or the Department of Market Regulation may be represented by counsel at a hearing conducted under this Rule.

(5) Evidence

Formal rules of evidence shall not apply to a hearing under this Rule. Not later than four days before the hearing, the member or person associated with a member and the Department of Enforcement or the Department of Market Regulation shall exchange copies of proposed hearing exhibits and witness lists and provide copies of the same to the subcommittee.

(6) Witnesses No change.

(7) Additional Information

At any time during its consideration, the subcommittee may direct the member or person associated with a member or the Department of Enforcement or the Department of Market Regulation to submit additional information. Any additional information submitted shall be provided promptly to all parties at least one business day before the subcommittee renders its decision.

(8) through (10) No change.

8223. Decision

(a) Subcommittee

(1) Proposed Written Decision
No change.

(2) Issuance of Decision After Expiration of Call for Review Period

If no Governor calls the proceeding for review within the time prescribed in paragraph (b)(1), the subcommittee's proposed written decision shall become final, and the subcommittee shall serve the final written decision on the member or associated person via overnight [commercial] courier or facsimile.

(b) NASD Board of Governors

(1) Call For Review by Governor No change.

(2) Review and Decision

If a Governor calls the suspension or cancellation proceeding for review within the time prescribed in subparagraph (1), a review panel shall meet and conduct a review not later than 14 days after the call for review. The review panel shall be composed of the NASD Board Executive Committee, except that the Governor who calls the proceeding for review shall serve on the review panel in lieu of a member of the Executive Committee who has the same classification (Industry, Non-Industry, or Public) as such Governor. The review panel may affirm, modify, or reverse the decision of the subcommittee. Not later than seven days after the review panel meeting, the review panel shall serve a final written decision on the member or person associated with a member via overnight [commercial] courier or facsimile. The decision shall state the disposition of the suspension or cancellation proceeding, and if a suspension is imposed, state the grounds for the suspension and the conditions for terminating the suspension.

8225. Termination of Suspension

(a) Filing of Request

A suspended member or person associated with a member may file a written request for termination of the suspension on the ground of full compliance with the notice issued under Rule 8221 or, if applicable, the conditions of a decision under Rule 8223, with the head of the

department or office of the Association that filed the notices under Rule 8221 [Department of Enforcement].

(b) Response by Association Staff [Department of Enforcement]

The head of the department of the Association that filed the notice under Rule 8221 [Department of Enforcement] shall respond to the request in writing within five days after receipt of the request.

(1) Request Granted

If the head of the department or office [Department of Enforcement] grants the request, he or she shall serve the member or person associated with a member with written notice of the termination of the suspension via overnight [commercial] courier or facsimile.

(2) Request Denied

If the head of the department or office denies the request, the suspended member or person associated with a member may file a written request for relief with the NASD Regulation Office of General Counsel. If the member or person associated with a member files the written request for relief within 30 days after service of the decision under Rule 8223, the review panel constituted under Rule 8223 shall respond to the request for relief in writing within ten days after receipt of the request. If the member or person associated with a member files the written request for relief more than 30 days after service of the decision under Rule 8223, the National Adjudicatory Council shall respond to the request for relief in writing within ten days after

receipt of the request. The review panel's or National Adjudicatory Council's response shall be served on the member or person associated with a member via overnight [commercial] courier or facsimile.

8300. SANCTIONS

8310. Sanctions for Violation of the Rules

IM-8310-2. Release of Disciplinary Information

(a) through (b) No Change.

(c) (1) The Association shall release to the public information with respect to any disciplinary complaint initiated by the Department of Enforcement or the Department of Market Regulation of NASD Regulation, Inc., the NASD Regulation, Inc. Board of Directors, or the NASD Board of Governors containing an allegation of a violation of a designated statute, rule or regulation of the Commission, NASD, or Municipal Securities Rulemaking Board, as determined by the NASD Regulation, Inc. Board of Directors (a "Designated Rule"); and may also release such information with respect to any disciplinary complaint or group of disciplinary complaints that involve a significant policy or enforcement determination where the release of information is deemed by the President of NASD Regulation, Inc. to be in the public interest.

(2) No change.

(d) through (g) No change.

[(h) If a final decision of the Association is not appealed to the Commission, the sanctions specified in the decision (other than bars and expulsions) shall become effective on a date established by the Association but not before the

expiration of 30 days after the date of the decision. Bars and expulsions, however, shall become effective upon issuance of the decision, unless the decision specifies otherwise.]

(h)[(i)] If a decision of the Association imposing monetary sanctions of \$10,000 or more or a penalty of expulsion, revocation, suspension and/or barring of a member from being associated with all members is appealed to the Commission, notice thereof shall be given to the membership and to the press as soon as possible after receipt by the Association of notice from the Commission of such appeal and the Association's notice shall state whether the effectiveness of the Board's decision has been stayed pending the outcome of proceedings before the Commission.

(i)[(j)] In the event an appeal to the courts is filed from a decision by the Commission in a case previously appealed to it from a decision of the Association, involving the imposition of monetary sanctions of \$10,000 or more or a penalty of expulsion, revocation, suspension and/or barring of a member from being associated with all members, notice thereof shall be given to the membership as soon as possible after receipt by the Association of a formal notice of appeal. Such notice shall include a statement whether the order of the Commission has been stayed.

(j)[(k)] Any order issued by the Commission of revocation or suspension of a member's broker/dealer registration with the Commission; or the suspension or expulsion of a member from the Association; or the suspension or barring of a member or person associated with a member from association with all broker/dealers or membership; or the imposition of monetary sanctions of \$10,000 or more shall be released to the public

through a notice containing the effective date thereof sent as soon as possible after receipt by the Association of the order of the Commission.

(k)[(l)] Cancellations of membership or registration pursuant to the Association's By-Laws, Rules and Interpretative Material shall be released to the public as soon after the effective date of the cancellation as possible.

(l)[(m)] Releases to the public referred to in paragraphs (c) and (d) above shall identify the Rules and By-Laws of the Association or the SEC Rules violated, and shall describe the conduct constituting such violation. Releases may also identify the member with which an individual was associated at the time the violations occurred if such identification is determined by the Association to be in the public interest.

9000. CODE OF PROCEDURE

9100. APPLICATION AND PURPOSE

9120. Definitions

(a) through (d) No change.

(e) "Department of Enforcement"

The term "Department of Enforcement" means the Department of Enforcement of NASD Regulation [or its delegatee, the Department of Market Regulation].

(f) through (q) No change.

(r) "Interested Association Staff"

The term "Interested Association Staff" means, in the context of:

- (1) a disciplinary proceeding under the Rule 9200 Series and the Rule 9300 Series;

(A) the Head of Enforcement;

(B) an employee of the Department of Enforcement who reports, directly or indirectly, to the Head of Enforcement;

(C) an Association employee who directly participated in the authorization of the complaint; [or]

(D) an Association employee who directly participated in an examination, investigation, prosecution, or litigation related to a specific disciplinary proceeding, and a district director or department head to whom such employee reports;

(E) the Head of the Department of Market Regulation; or

(F) an employee of the Department of Market Regulation who reports, directly or indirectly, to the Head of the Department of Market Regulation;

(2) through (4) No change.

(s) through (w) No change.

(x) "Party"

With respect to a particular proceeding, the term "Party" means:

- (1) in the Rule 9200 Series and the Rule 9300 Series, the Department of Enforcement or the Department of Market Regulation or a Respondent;

(2) through (4) No change.

(y) through (bb) No change.

9130. Service; Filing of Papers

9131. Service of Complaint and Document Initiating a Proceeding

(a) Service on Each Party

A complaint shall be served on each Party by the Department of Enforcement or the Department of Market Regulation. A document initiating a proceeding shall be served on each Party by the Party or person initiating such proceeding or his or her counsel or representative.

(b) through (c) No change.

9134. Methods of, Procedures for Service

(a) Methods

(1) through (2) No change.

(3) Service by [Commercial] Courier

Service by [commercial] courier may be accomplished by sending the papers through an [commercial] courier service that generates a written confirmation of receipt or of attempts at delivery.

(b) Procedures

(1) Service on Natural Persons

Papers served on a natural person may be served at the natural person's residential address, as reflected in the Central Registration Depository, if applicable. When a Party or other person responsible for serving such person has actual knowledge that the natural person's Central Registration Depository address is out of date, duplicate copies shall be served on the natural person at the natural person's last known residential address and the

business address in the Central Registration Depository of the entity with which the natural person is employed or affiliated. Papers may also be served at the business address of the entity with which the natural person is employed or affiliated, as reflected in the Central Registration Depository, or at a business address, such as a branch office, at which the natural person is employed, or at which the natural person is physically present during a normal business day. The Hearing Officer may waive the requirement of serving documents (other than complaints) at the addresses listed in the Central Registration Depository if there is evidence that these addresses are no longer valid, and there is a more current address available. If a natural person is represented by counsel or a representative, papers served on the natural person, excluding a complaint or a document initiating a proceeding, shall be served on the counsel or representative.

(2) No change.

(3) When Service Is Complete

Personal service and service by [commercial] courier or express delivery are complete upon delivery. Service by mail is complete upon mailing.

9135. Filing of Papers with Adjudicator: Procedure

(a) When to File

Papers that are required to be filed with an Adjudicator within a time limit specified by the Adjudicator or within a time limit set forth in the Rules shall be deemed timely if received within the time limit, unless otherwise ordered by an Adjudicator, except complaints,

which shall be deemed timely filed upon mailing or delivery to the Office of Hearing Officers. Other papers that are required to be filed shall be deemed timely if, on the same day such papers are served, they are also hand-delivered, mailed via U.S. Postal service first class mail, or sent by courier to the Association.

(b) Where to File

All papers required to be filed pursuant to the Rule 9200 Series and any notice of appeal or review required to be filed pursuant to the Rule 9300 Series shall be filed with the Office of Hearing Officers. All other papers required to be filed pursuant to the Rule 9000 Series shall be filed where specified in the Rule, or if not specified in the Rule, with the Adjudicator, unless the Adjudicator orders otherwise.

(c) Certificate of Service

Papers filed with an Adjudicator or the Office of Hearing Officers shall be accompanied by a certificate of service stating the name of the person or persons served, the date on which service is made, the method of service and, if service is not made in person, the address to which service is made. Such certificate shall be executed by the person who made the service. If the method of service on a Party is different from the method of service on any other Party, the certificate shall state why such different method was used.

9140. Proceedings

9146. Motions

(a) through (j) No change.

(k) Motion For Protective Order

(1) A Party, a person who is the owner, subject, or creator of a Document subject to production

under Rule 8210 or any other Rule which may be introduced as evidence in a disciplinary proceeding, or a witness who testifies at a hearing in a disciplinary proceeding may file a motion requesting a protective order to limit disclosure or prohibit from disclosure to other Parties, witnesses or other persons, except the Department of Enforcement and the Department of Market Regulation and other Association staff, Documents or testimony that contain confidential information. The motion shall include a general summary or extract of the Documents or testimony without revealing confidential details. If the movant seeks a protective order against disclosure to other Parties, copies of the Documents shall not be served on the other Parties. Unless the Documents are unavailable, the movant shall file for *in camera* inspection a sealed copy of the Documents for which the order is sought. If the movant is not a Party, the motion shall be served on each Party by the movant using a method in Rule 9134(a) and filed with the Adjudicator. A motion for a protective order shall be granted only upon a finding that disclosure of the Document or testimony would have a demonstrated adverse business effect on the movant or would involve an unreasonable breach of the movant's personal privacy.

(2) No change.

(l) General No change.

9200. DISCIPLINARY PROCEEDINGS

9210. Complaint and Answer

9211. Authorization of Complaint

(a) Complaint

(1) If the Department of Enforcement or the Department of Market Regulation believes that any NASD member or associated person is violating or has violated any rule, regulation, or statutory provision, including the federal securities laws and the regulations thereunder, which the Association has jurisdiction to enforce, the Department of Enforcement or the Department of Market Regulation may request authorization from the Office of Disciplinary Affairs to issue a complaint.

(2) The NASD Regulation Board and the NASD Board each shall have the authority to direct the Office of Disciplinary Affairs to authorize and the Department of Enforcement or the Department of Market Regulation to issue a complaint when, on the basis of information and belief, either of such boards is of the opinion that any NASD member or associated person is violating or has violated any rule, regulation, or statutory provision, including the federal securities laws and the regulations thereunder, which the Association has jurisdiction to enforce.

(b) Commencement of Disciplinary Proceeding No change.

9212. Complaint Issuance — Requirements, Service, Amendment, Withdrawal, and Docketing

(a) Form, Content, Notice, Docketing, and Service

(1) If a complaint is authorized, the Department of Enforcement or the Department of Market Regulation shall issue the complaint. Each complaint shall be in writing and signed by the

Department of Enforcement or the Department of Market Regulation. The complaint shall specify in reasonable detail the conduct alleged to constitute the violative activity and the rule, regulation, or statutory provision the Respondent is alleged to be violating or to have violated. If the complaint consists of several causes of action, each cause shall be stated separately. Complaints shall be served by the Department of Enforcement or the Department of Market Regulation on each Party pursuant to Rules 9131 and 9134, and filed at the time of service with the Office of Hearing Officers pursuant to Rules 9135, 9136, and 9137.

(2) At the time of issuance of a complaint, the Department of Enforcement or the Department of Market Regulation may propose:

(A) an appropriate location for the hearing; and

(B) if the complaint alleges at least one cause of action involving a violation of a statute or a rule described in Rule 9120(s), that the Chief Hearing Officer select a Market Regulation Committee Panelist for the Hearing Panel, or, if applicable, the Extended Hearing Panel as described in Rule 9231.

(b) Amendments to Complaint

The Department of Enforcement or the Department of Market Regulation may file and serve an amended complaint [that includes new matters of fact or law] once as a matter of course at any time before the Respondent answers the complaint. Otherwise, upon motion by the Department of Enforcement or the Department of Market Regulation, the Hearing Officer may

permit the Department of Enforcement or the Department of Market Regulation to amend the complaint, including amendments so as to make the complaint conform to the evidence presented [to include new matters of fact or law], after considering whether the Department of Enforcement or the Department of Market Regulation has shown good cause for the amendment and whether any Respondent will suffer any unfair prejudice if the amendment is allowed. Amendments to complaints will be freely granted when justice so requires.

(c) Withdrawal of Complaint

With prior leave of the Hearing Officer, the Department of Enforcement or the Department of Market Regulation may withdraw a complaint. If the Department of Enforcement or the Department of Market Regulation withdraws the complaint before the earlier of (1) the Hearing Panel's or, if applicable, the Extended Hearing Panel's, issuance of a ruling on a motion for summary disposition, or (2) the start of the hearing on the merits, the withdrawal of the complaint by the Department of Enforcement or the Department of Market Regulation shall be without prejudice and the Department of Enforcement or the Department of Market Regulation shall be permitted to refile a case based on allegations concerning the same facts and circumstances that are set forth in the withdrawn complaint. If the Department of Enforcement or the Department of Market Regulation requests to withdraw such complaint after the occurrence of either of the two events set forth in (1) and (2) in this paragraph, the Hearing Panel or, if applicable, the Extended Hearing Panel, after considering the facts and circumstances of the request, shall determine whether the withdrawal shall be granted with prejudice.

(d) Disciplinary Proceeding Docket No change.

9213. Assignment of Hearing Officer and Appointment of Panelists to Hearing Panel or Extended Hearing Panel

(a) Assignment of Hearing Officer

As soon as practicable after the Department of Enforcement or the Department of Market Regulation has filed a complaint with the Office of Hearing Officers, the Chief Hearing Officer shall assign a Hearing Officer to preside over the disciplinary proceeding and shall serve the Parties with notice of the Hearing Officer's assignment pursuant to Rule 9132.

(b) Appointment of Panelists No change.

9214. Consolidation or Severance of Disciplinary Proceedings

(a) Consolidation Initiated by Chief Hearing Officer

No change.

(b) Consolidation Initiated by a Party

No change.

(c) Impact on Hearing Panel or Extended Hearing Panel of Consolidation

No change.

(d) Severance Initiated by Chief Hearing Officer

The Chief Hearing Officer may order the severance of a disciplinary proceeding into two or more disciplinary proceedings, upon his or her own motion, in determining whether to order the severance of such disciplinary

proceedings, the Chief Hearing Officer shall consider:

(1) whether the same or similar evidence reasonably would be expected to be offered at each of the possible hearings;

(2) whether the severance would conserve the time and resources of the Parties; and

(3) whether any unfair prejudice would be suffered by one or more Parties if the severance is (not) ordered.

If the Chief Hearing Officer proposes to sever a disciplinary proceeding, the Chief Hearing Officer shall serve upon the Parties notice of the proposed severance of disciplinary proceedings pursuant to Rule 9132. The Parties shall have 14 days after service to file a response, stating any arguments in favor of or opposition to severance.

(e) Severance Initiated by a Party

A Party may file a motion to sever a disciplinary proceeding if one or more of the factors favoring severance set forth in paragraph (d) appear to be present. If a Party moves to sever a disciplinary proceeding, the Party shall file such motion with the Office of Hearing Officers, and, pursuant to Rule 9133, shall serve the same upon each of the parties to the action proposed to be severed. The Parties shall have 14 days after service to file a response, stating any arguments in favor of or opposition to severance, and shall serve the response upon the Parties in the case proposed to be severed. The Chief Hearing Officer shall issue an order approving or denying the request for severance.

(f) Impact on Hearing Panel or Extended Hearing Panel of Severance

If the Chief Hearing Officer issues an order to sever a disciplinary proceeding for which a Hearing Panel or, if applicable, Extended Hearing Panel, has been appointed, the Chief Hearing Officer's order shall specify whether the same Hearing Panel or, if applicable, Extended Hearing Panel, shall preside over the severed disciplinary proceedings, or shall appoint a new Hearing Panel(s) or, if applicable, Extended Hearing Panel(s), to preside over any or all of the severed proceedings, based on the criteria set forth in Rules 9231 and 9232.

9215. Answer to Complaint

(a) through (e) No change.

(f) Failure to Answer, Default

If a Respondent does not file an answer or make any other filing or request related to the complaint with the Office of Hearing Officers within the time required, the Department of Enforcement or the Department of Market Regulation shall send a second notice to such Respondent requiring an answer within 14 days after service of the second notice. The second notice shall state that failure of the Respondent to reply within the period specified shall allow the Hearing Officer, in the exercise of his or her discretion, pursuant to Rule 9269 to: (1) treat as admitted by the Respondent the allegations in the complaint; and (2) issue a default decision against the Respondent. If the Respondent fails to file an answer with the Office of Hearing Officers within the time required, the Hearing Officer may issue a default decision against the Respondent pursuant to Rule 9269.

9216. Acceptance, Waiver, and Consent; Plan Pursuant to SEC Rule 19d-1(c)(2)

(a) Acceptance, Waiver, and Consent Procedures

(1) Notwithstanding Rule 9211, if the Department of Enforcement or the Department of Market Regulation has reason to believe a violation has occurred and the member or associated person does not dispute the violation, the Department of Enforcement or the Department of Market Regulation may prepare and request that the member or associated person execute a letter accepting a finding of violation, consenting to the imposition of sanctions, and agreeing to waive such member's or associated person's right to a hearing before a Hearing Panel or, if applicable, an Extended Hearing Panel, and any right of appeal to the National Adjudicatory Council, the Commission, and the courts, or to otherwise challenge the validity of the letter, if the letter is accepted. The letter shall describe the act or practice engaged in or omitted, the rule, regulation, or statutory provision violated, and the sanction or sanctions to be imposed. Unless the letter states otherwise, the effective date of any sanction(s) imposed will be a date to be determined by the Association staff.

(2) through (4) No change.

(b) Procedure for Violation Under Plan Pursuant to SEC Rule 19d-1(c)(2)

(1) Notwithstanding Rule 9211, NASD Regulation or the National Adjudicatory Council may, subject to the requirements set forth in subparagraphs (b)(2) through (b)(4) and in SEC Rule 19d-1(c)(2), impose a fine (not to exceed \$2,500) and/or a censure on any member or associated person with respect to any rule listed in IM-9216. If the Department of Enforcement

or the Department of Market Regulation has reason to believe a violation has occurred and if the member or associated person does not dispute the violation, the Department of Enforcement or the Department of Market Regulation may prepare and request that the member or associated person execute a minor rule violation plan letter accepting a finding of violation, consenting to the imposition of sanctions, and agreeing to waive such member's or associated person's right to a hearing before a Hearing Panel or, if applicable, an Extended Hearing Panel, and any right of appeal to the National Adjudicatory Council, the Commission, and the courts, or to otherwise challenge the validity of the letter, if the letter is accepted. The letter shall describe the act or practice engaged in or omitted, the rule, regulation, or statutory provision violated, and the sanction or sanctions to be imposed. Unless the letter states otherwise, the effective date of any sanction(s) imposed will be a date to be determined by the Association staff.

(2) through (4) No change.

9240. Pre-hearing Conference and Submission

9241. Pre-hearing Conference

(a) through (d) No change.

(e) Pre-hearing Order

At or following the conclusion of any conference held pursuant to this Rule, the Hearing Officer shall enter a written ruling or order that recites any agreements reached and any procedural determinations made by the Hearing Officer. However, if a court reporter prepares a transcript of the conference, the Hearing Officer

may determine that it is unnecessary to issue a written ruling or order.

(f) Failure to Appear: Default No change.

9250. Discovery

9251. Inspection and Copying of Documents in Possession of Staff

(a) Documents to be Available for Inspection and Copying

(1) Unless otherwise provided by this Rule, or by order of the Hearing Officer, the Department of Enforcement or the Department of Market Regulation shall make available for inspection and copying by any Respondent, Documents prepared or obtained by Interested Association Staff in connection with the investigation that led to the institution of proceedings. Such Documents include but are not limited to:

(A) through (E) No change.

(2) The Department of Enforcement or the Department of Market Regulation shall promptly inform the Hearing Officer and each other Party if, after the issuance of a complaint, requests for information under Rule 8210 are issued under the same investigative file number under which the investigation leading to the institution of disciplinary proceedings was conducted. If Interested Association Staff receives Documents pursuant to a request for information under Rule 8210 after Documents have been made available to a Respondent for inspection and copying as set forth in paragraph (a), and if such Documents are material and relevant to the disciplinary proceeding in which such

Respondent is a Party, the additional Documents shall be made available to the Respondent not later than 14 days after the Interested Association Staff receives such Documents. If a hearing on the merits is scheduled to begin, Interested Association Staff shall make the additional Documents available to the Respondent not less than ten days before the hearing. If Interested Association Staff receives such Documents ten or fewer days before a hearing on the merits is scheduled to begin or after such hearing begins, Interested Association Staff shall make the additional Documents available immediately to the Respondent.

(3) Nothing in subparagraph (a)(1) shall limit the discretion of the Department of Enforcement or the Department of Market Regulation to make available any other Document or the authority of the Hearing Officer to order the production of any other Document.

(b) Documents That May Be Withheld

(1) The Department of Enforcement or the Department of Market Regulation may withhold a Document if:

(A) through (D) No change.

(2) Nothing in subparagraph (b)(1) authorizes the Department of Enforcement or the Department of Market Regulation to withhold a Document, or a part thereof, that contains material exculpatory evidence.

(c) Withheld Document List

The Hearing Officer may require the Department of Enforcement or

the Department of Market Regulation to submit to the Hearing Officer a list of Documents withheld pursuant to subparagraphs (b)(1)(A) through (D) or to submit to the Hearing Officer any Document withheld. Upon review, the Hearing Officer may order the Department of Enforcement or the Department of Market Regulation to make the list or any Document withheld available to the other Parties for inspection and copying. A motion to require the Department of Enforcement or the Department of Market Regulation to produce a list of Documents withheld pursuant to paragraph (b) shall be based upon some reason to believe that a Document is being withheld in violation of the Code.

(d) Timing of Inspection and Copying

The Hearing Officer shall determine the schedule of production of documents pursuant to this Rule. Unless otherwise ordered by the Hearing Officer, the Department of Enforcement or the Department of Market Regulation shall commence making Documents available to a Respondent for inspection and copying pursuant to this Rule not later than 21 days after service of the Respondent's answer or, if there are multiple Respondents, not later than 21 days after the last timely answer is filed. If a Respondent in a multi-Respondent case fails to answer, the Department of Enforcement or the Department of Market Regulation shall make Documents available to all other Respondents not later than the later of:

(1) 21 days after the filing date of the last timely answer, or

(2) the expiration of the second period provided for filing an answer as set forth in Rule 9215(f).

(e) through (f) No change.

(g) Failure to Make Documents Available — Harmless Error

In the event that a Document required to be made available to a Respondent pursuant to this Rule is not made available by the Department of Enforcement or the Department of Market Regulation, no rehearing or amended decision of a proceeding already heard or decided shall be required unless the Respondent establishes that the failure to make the Document available was not harmless error. The Hearing Officer, or, upon appeal or review, a Subcommittee, an Extended Proceeding Committee, or the National Adjudicatory Council, shall determine whether the failure to make the document available was not harmless error, applying applicable Association, Commission, and federal judicial precedent.

9253. Production of Witness Statements

(a) Availability

Notwithstanding the provisions of Rule 9251(b),

(1) A Respondent in a disciplinary proceeding may file a motion requesting that the Department of Enforcement or the Department of Market Regulation produce for inspection and copying any statement of any person called or to be called as a witness by the Department of Enforcement or the Department of Market Regulation that pertains, or is expected to pertain, to his or her direct testimony and which is "a stenographic, mechanical, electrical, or other recording, or a transcription thereof, which is a substantially verbatim recital of an oral statement made by

said witness and recorded contemporaneously with the making of such oral statement,” as that phrase is used in 18 U.S.C. § 3500(e)(2).

(2) A Respondent in a disciplinary proceeding may also file a motion requesting that the Department of Enforcement or the Department of Market Regulation produce for inspection and copying any contemporaneously written statement made by an Interested Association Staff member during a routine examination or inspection about the substance of oral statements made by a non-Association person when (a) either the Interested Association Staff member or non-Association person is called as a witness by the Department of Enforcement or the Department of Market Regulation, and (b) that portion of the statement for which production is sought directly relates to the Interested Association Staff member’s testimony or the testimony of the non-Association witness.

[A Respondent in a disciplinary proceeding may file a motion requesting that the Department of Enforcement produce for inspection and copying any statement of any person called or to be called as a witness by the Department of Enforcement that pertains, or is expected to pertain, to his or her direct testimony and that would be required to be produced pursuant to the Jencks Act, 18 U.S.C. § 3500. The production shall be made at a time and place fixed by the Hearing Officer and shall be made available to all Parties. Such production shall be made under conditions intended to preserve the items to be inspected or copied.]

(b) Failure to Produce — Harmless Error

In the event that a statement required to be made available for inspection and copying by a Respondent is not provided by the Department of Enforcement or the Department of Market Regulation, there shall be no rehearing of a proceeding already heard, or issuance of an amended decision in a proceeding already decided, unless the Respondent establishes that the failure to provide the statement was not harmless error. The Hearing Officer, or upon appeal or review, a Subcommittee, an Extended Proceeding Committee, or the National Adjudicatory Council, shall determine whether the failure to provide any statement was not harmless error, applying applicable Association, Commission, and federal judicial precedent.

9260. Hearing and Decision

9264. Motion for Summary Disposition

(a) Pre-hearing

After a Respondent’s answer has been filed and Documents have been made available to that Respondent for inspection and copying pursuant to Rule 9251, the Respondent or the Department of Enforcement or the Department of Market Regulation, without leave of the Hearing Officer, may make a motion for summary disposition of any or all the causes of action in the complaint with respect to that Respondent, as well as any defense raised in a Respondent’s answer. All pre-hearing motions for summary disposition and supporting papers shall be filed at least 21 days before the time set for the hearing, or at such earlier time as ordered by the Hearing Officer. Notwithstanding the provisions of Rule 9146(d), any opposition or response to a pre-hearing motion for summary disposition shall be filed at least seven days before the time set for the hearing.

(b) After Commencement of Hearing on Merits

After a hearing on the merits has commenced, a Respondent or the Department of Enforcement or the Department of Market Regulation may make a motion for summary disposition of any or all of the causes of action in the complaint with respect to that Respondent or defenses raised in that Respondent’s answer only with leave of the Hearing Officer.

(c) Case Not Fully Adjudicated on Motion

If on motion under this rule a decision is not rendered upon the whole case or for all the relief asked and a hearing is necessary, the Hearing Panel or, if applicable, the Extended Hearing Panel, at the hearing of the motion, by examining the pleadings and the evidence before it and by questioning counsel, shall, if practicable ascertain what material facts exist without substantial controversy and what material facts are actually and in good faith controverted. It shall thereupon make an order specifying the facts that appear without substantial controversy, and directing such further proceedings in the action as are just. Upon the hearing of the action the facts so specified shall be deemed established, and the hearing shall be conducted accordingly.

(d) Form of Papers

A motion for summary disposition pursuant to paragraph (a) shall be accompanied by the following: a statement of undisputed facts; a supporting memorandum of points and authorities; and affidavits or declarations that set forth such facts as would be admissible at the hearing and show affirmatively that the affiant is competent to testify to the matters stated therein. A memorandum of points and

authorities in support or opposition shall not exceed 35 pages.

(e) [(d)] Rulings on Motion

The Hearing Officer may promptly deny or defer decisions on any motion for summary disposition, however, only the Hearing Panel or, if applicable, the Extended Hearing Panel, may grant a motion for summary disposition, except the Hearing Officer may grant motions for summary disposition with respect to questions of jurisdiction.

[The Hearing Panel or, if applicable, the Extended Hearing Panel, shall promptly grant or deny the motion for summary disposition or shall defer decision on the motion.] The Hearing Panel or, if applicable, the Extended Hearing Panel, may grant the motion for summary disposition if there is no genuine issue with regard to any material fact and the Party that files the motion is entitled to summary disposition as a matter of law. If a Party files a motion under paragraph (a), the facts alleged in the pleadings of the Party against whom the motion is made shall be taken as true, except as modified by stipulations or admissions made by the non-moving Party, by uncontested affidavits or declarations, or by facts officially noticed pursuant to Rule 9145. If a Party opposing a motion for summary disposition made under paragraph (a) cannot present, by affidavit prior to the hearing, facts essential to justify the Party's opposition to the motion, the Hearing Panel or, if applicable, the Extended Hearing Panel, may deny the motion for summary disposition or defer the decision on the motion.

9268. Decision of Hearing Panel or Extended Hearing Panel

(a) Majority Decision No change.

(b) Contents of Decision

The decision shall include:

(1) through (5) No change.

(6) a statement describing any sanction imposed, the reasons therefor, and the date upon which such sanction shall become effective. Unless otherwise provided in the decision, the sanction(s) shall become effective on a date to be determined by Association staff.

(c) through (e) No change.

9269. Default Decisions

(a) Issuance of Default Decisions

(1) No change.

(2) If the defaulting Party is the Respondent, the Hearing Officer may deem the allegations against that Respondent admitted. If the defaulting Party is the Department of Enforcement or the Department of Market Regulation, the Hearing Officer may issue a default decision ordering that the complaint be dismissed with prejudice.

(3) No change.

(b) Contents of Decision No change.

(c) Review of Default Decision

Party may, for good cause shown, file a motion to set aside a default, dismissal, and the imposition of costs. Upon a showing of good cause, the Hearing Officer that entered the original order shall decide the motion. [either the Review Subcommittee or the National Adjudicatory Council may enter such an order.] If the Hearing Officer that issued the original order is not available, the Chief Hearing Officer shall appoint another Hearing Officer to decide the motion.

(d) Final Disciplinary Action of the Association; Effectiveness of Sanctions

If a default decision is not appealed pursuant to Rule 9311 or called for review pursuant to Rule 9312 within 25 days after the date the Office of Hearing Officers serves it on the Parties, the default decision shall become the final disciplinary action of the Association for purposes of SEC Rule 19d-1(c)(1). Unless otherwise provided in the default decision, the sanction(s) shall become effective on a date to be determined by the Association staff [30 days after the default decision becomes the final disciplinary action of the Association], except that a bar or expulsion shall become effective immediately upon the default decision becoming the final disciplinary action of the Association. The Association shall serve the decision on a Respondent by [overnight] courier, facsimile or other means reasonably likely to obtain prompt service when the sanction is a bar or an expulsion.

9270. Settlement Procedure

(a) through (b) No change.

(c) Content and Signature Requirements

An offer of settlement shall be in writing and signed by the person making the offer, and, if the person is represented by counsel or a representative, signed also by the counsel or representative. The offer of settlement shall contain in reasonable detail:

(1) through (3) No change.

(4) a statement consenting to findings of fact and violations consistent with the statements contained in the offer of settlement required by subparagraphs (c)(2) and (c)(3); [and,]

(5) a proposed sanction to be imposed that is consistent with the Association's then current sanction guidelines or, if inconsistent with the sanction guidelines, a detailed statement supporting the proposed sanction; and, [.]

(6) the effective date of any sanction(s) imposed, or a statement that the effective date of the sanction(s) will be a date to be determined by the Association staff.

(d) Waiver No change.

(e) Uncontested Offers of Settlement

If a Respondent makes an offer of settlement and the Department of Enforcement or the Department of Market Regulation does not oppose it, the offer of settlement is uncontested. If an offer of settlement is determined to be uncontested by the Department of Enforcement or the Department of Market Regulation before a hearing on the merits has begun, the Department of Enforcement or the Department of Market Regulation shall transmit the uncontested offer of settlement and a proposed order of acceptance to the National Adjudicatory Council with its recommendation. If an offer of settlement is determined to be uncontested by the Department of Enforcement or the Department of Market Regulation after a hearing on the merits has begun, the Department of Enforcement or the Department of Market Regulation shall transmit the offer of settlement and a proposed order of acceptance to the Hearing Panel or, if applicable, the Extended Hearing Panel for acceptance or rejection. If accepted by the Hearing Panel or, if applicable, Extended Hearing Panel, the offer of settlement and the order of acceptance shall be forwarded to

the National Adjudicatory Council to accept or reject.

(1) through (3) No change.

(f) Contested Offers of Settlement

If a Respondent makes an offer of settlement and the Department of Enforcement or the Department of Market Regulation opposes it, the offer of settlement is contested. When the Department of Enforcement or the Department of Market Regulation opposes an offer of settlement, the Respondent's written offer and the Department of Enforcement's or the Department of Market Regulation's written opposition shall be submitted to a Hearing Panel or, if applicable, an Extended Hearing Panel. The Hearing Panel or, if applicable, the Extended Hearing Panel, may order the Department of Enforcement or the Department of Market Regulation and the Respondent to attend a settlement conference.

(1) through (3) No change.

(g) through (j) No change.

9300. REVIEW OF DISCIPLINARY PROCEEDING BY NATIONAL ADJUDICATORY COUNCIL AND NASD BOARD; APPLICATION FOR COMMISSION REVIEW

9310. Appeal to or Review by National Adjudicatory Council

9311. Appeal by Any Party; Cross-Appeal

(a) Time to File Notice of Appeal

A Respondent or the Department of Enforcement or the Department of Market Regulation may file a written notice of appeal within 25 days after service of a decision issued pursuant to Rule 9268 or Rule 9269.

(b) through (d) No change.

(e) Waiver of Issues Not Raised

The National Adjudicatory Council may, in its discretion, deem waived any issue not raised in the notice of appeal or cross-appeal. The National Adjudicatory Council, the Review Subcommittee, a Subcommittee, the General Counsel or, if applicable, an Extended Proceeding Committee, [or, for a disciplinary proceeding decided under Rule 9269, the General Counsel,] shall provide the Parties with notice of, and an opportunity to submit briefs on, any issue that shall be considered by the National Adjudicatory Council if such issue was not previously set forth in the notice of appeal. Parties may submit motions to either the Review Subcommittee or the National Adjudicatory Council challenging requests for briefing made by the General Counsel under this Rule of issues that were not previously set forth in the notice of appeal.

(f) Withdrawal of Notice of Appeal or Cross-Appeal No change.

9312. Review Proceeding Initiated By National Adjudicatory Council

(a) through (b) No change.

(c) Requirements

(1) No change.

(2) The statement contained in the notice of review shall not limit the scope of the National Adjudicatory Council's authority under Rule 9346 to review any issues raised in the record. The National Adjudicatory Council, the Review Subcommittee, a Subcommittee, the General Counsel or, if applicable, an Extended Proceeding

Committee, [or, for a disciplinary proceeding decided under Rule 9269, the General Counsel] shall provide the Parties with notice of, and an opportunity to submit briefs on, any issue that shall be considered by the National Adjudicatory Council if such issue was not previously set forth in the notice of review. Parties may submit motions to either the Review Subcommittee or the National Adjudicatory Council challenging requests for briefing made by the General Counsel under this Rule of issues that were not previously set forth in the notice of appeal.

(d) Effect of Withdrawal of Notice of Appeal, Cross-Appeal

If the review of a disciplinary proceeding by the National Adjudicatory Council is terminated before the National Adjudicatory Council issues a decision on the merits because all appealing Parties file a notice of withdrawal of appeal and no Party previously filed a notice of cross-appeal, or all Parties who previously filed a notice of cross-appeal file a notice of withdrawal of cross-appeal:

(1) No change.

(2) the General Counsel shall have the right to call for review a decision issued pursuant to Rule 9269 in accordance with Rule 9312(a)(2), except that the 25 [45] day period during which a call for review may be made shall begin on the day the Association receives the last filed notice of withdrawal of appeal or, if applicable, the last filed notice of withdrawal of cross-appeal.

9313. Counsel to National Adjudicatory Council

(a) Authority

[A Counsel to the National Adjudicatory Council shall be appointed by the General Counsel for each disciplinary case on appeal or review.] A Counsel to the National Adjudicatory Council shall have authority to take ministerial and administrative actions to further the efficient administration of a proceeding, including the authority to:

(1) through (7) No change.

(b) Review No change.

9340. Proceedings

9344. Failure to Participate Below; Abandonment of Appeal

(a) Failure to Participate Below

When an appealing Party did not participate in the disciplinary proceeding before a Hearing Officer, a Hearing Panel or, if applicable, an Extended Hearing Panel, but shows good cause for the failure to participate, the National Adjudicatory Council or the Review Subcommittee may dismiss the appeal and remand the matter for further proceedings, or may order that the appeal proceed. If the appealing Party did not participate in the disciplinary proceeding before a Hearing Officer, a Hearing Panel or, if applicable, an Extended Hearing Panel, and fails to show good cause for the failure to participate, the matter shall be considered by the Subcommittee or, if applicable, the Extended Proceeding Committee, and the National Adjudicatory Council on the basis of the record and other documents, as provided in Rules 9346 and 9347. Alternatively, the National Adjudicatory Council or Review Subcommittee may remand the disciplinary proceeding with instructions. For purposes of this paragraph, failure to participate shall include failure to file an

answer or otherwise respond to a complaint, or failure to appear at a scheduled hearing, but shall not include failure to request a hearing pursuant to Rule 9221.

(b) Abandonment of Appeal No change.

9347. Filing of Papers in National Adjudicatory Council Proceedings

(a) Briefs; Reply Briefs; Requirements No change.

(b) Timely Filing of Briefs

Briefs shall be due upon dates established by the Subcommittee or, if applicable, the Extended Proceeding Committee, the National Adjudicatory Council, the Review Subcommittee, or Counsel to the National Adjudicatory Council in a scheduling order. Unless the Subcommittee or, if applicable, the Extended Proceeding Committee, the National Adjudicatory Council, the Review Subcommittee, or Counsel to the National Adjudicatory Council specifies otherwise, opening briefs shall be submitted not less than 21 days from the date of the scheduling order, and answering briefs shall be submitted 21 days thereafter. When reply briefs are submitted, such briefs shall be filed not later than ten days after service of the answering brief. Counsel to the National Adjudicatory Council may not shorten a period previously established for the filing of briefs except with the consent of the Parties. The time periods listed in this provision are only applicable to the filing of opening briefs, answering briefs, and reply briefs.

9349. National Adjudicatory Council Formal Consideration; Decision

(a) Decision of National Adjudicatory Council, Including Remand

In an appeal or review of a disciplinary proceeding governed by the Rule 9300 Series that is not withdrawn or dismissed prior to a decision on the merits, the National Adjudicatory Council, after considering all matters presented in the appeal or review and the written recommended decision of the Subcommittee or, if applicable, the Extended Proceeding Committee, may affirm, dismiss, modify or reverse the decision of the Hearing Panel or, if applicable, Extended Hearing Panel, with respect to each Respondent who has appealed or cross-appealed or is subject to a call for review. The National Adjudicatory Council may affirm, modify, reverse, increase, or reduce any sanction, or impose any other fitting sanction. Alternatively, the National Adjudicatory Council or the Review Subcommittee may remand the disciplinary proceeding with instructions. The National Adjudicatory Council shall prepare a proposed written decision pursuant to paragraph (b).

(b) through **(c)** No change.

9350. Discretionary Review by NASD Board

9351. Discretionary Review by NASD Board

(a) Call for Review by Governor

A Governor may call a disciplinary proceeding for review by the NASD Board [if the call for review is made within the period prescribed in paragraph (b).] The Governor should call a case for review as soon as practicable, but no later than the second NASD Board meeting following the receipt of the proposed National Adjudicatory Council decision by the NASD Board.

(b) [15 Day Period; Waiver

(1) A Governor shall make his or

her call for review not later than the next meeting of the NASD Board that is at least 15 days after the date on which the NASD Board receives the proposed written decision of the National Adjudicatory Council.

(2) Waiver

By a unanimous vote of the NASD Board, the NASD Board may shorten the period in subparagraph (1) to less than 15 days. By an affirmative vote of the majority of the NASD Board then in office, the NASD Board may, during the 15 day period in subparagraph (1), vote to extend the period in subparagraph (1) to more than 15 days.]

[(c)] Review [at Next Meeting]

If a Governor calls a disciplinary proceeding for review [within the period prescribed in paragraph (b)], the NASD Board shall review the disciplinary proceeding as soon as practicable. [not later than the next meeting of the NASD Board]. The NASD Board may order the Parties (excluding any Respondent who did not appeal or cross-appeal, or as to whom the issues appealed or called for review do not apply) to file briefs in connection with the review proceedings pursuant to this Rule.

[(c)][(d)] Decision of NASD Board, Including Remand

After review, the NASD Board may affirm, modify, or reverse the proposed written decision of the National Adjudicatory Council. The NASD Board may affirm, modify, reverse, increase, or reduce any sanction, or impose any other fitting sanction. Alternatively, the NASD Board may remand the disciplinary proceeding with instructions. The NASD Board shall prepare a written decision that includes all of the elements described in Rule

9349(b)(1) through (6). The NASD Board shall reach a decision as soon as practicable, but no later than the second Board meeting following the call for review.

[(d)][(e)] Issuance of Decision After Expiration of Call for Review Period No change.

9360. Effectiveness of Sanctions

Unless otherwise provided in the decision issued under Rule 9349 or Rule 9351, a sanction (other than a bar or an expulsion) specified in a decision constituting final disciplinary action of the Association for purposes of SEC Rule 19d-1(c)(1) shall become effective on a date to be determined by Association staff [30 days after the date of service of the decision constituting final disciplinary action]. A bar or an expulsion shall become effective upon service of the decision constituting final disciplinary action of the Association [for purposes of SEC Rule 19d-1(c)(1)], unless otherwise specified therein. The Association shall serve the decision on a Respondent by [overnight] courier, facsimile or other means reasonable likely to obtain prompt service when the sanction is a bar or an expulsion.

9400. LIMITATION PROCEDURES UNDER RULES 3130 AND 3131

9410. Procedures for Regulating Activities of a Member Experiencing Financial or Operational Difficulties

9412. Notice of Limitations

The Department of Member Regulation may issue a notice directing a member to limit its business activities if the Department of Member Regulation has reason to believe that any condition specified in Rule 3130 or

3131 exists. The notice shall specify the grounds on which such action is being taken, the nature of the limitations to be imposed, the effective date of the limitations, a fitting sanction that will be imposed if the member fails to comply with the limitations set forth in the notice, and the conditions for terminating such limitations. The effective date of the limitations shall be at least seven days after the date of service of the notice. The notice also shall inform the member that it may request a hearing before the Department of Member Regulation under Rule 9413. The Department of Member Regulation shall serve the notice by facsimile or overnight [commercial] courier.

9413. [Department of Member Regulation Consideration

(a) Request for Hearing

A member aggrieved by a notice issued under Rule 9412 may file a written request for a hearing before the Department of Member Regulation. The request shall state the specific grounds for withdrawing or modifying the limitations specified in the notice. The request shall be filed pursuant to Rules 9135, 9136, and 9137 within five days after service of the notice under Rule 9412.

(b) Stay

A request for hearing shall stay the notice of limitations served under Rule 9412 unless the National Adjudicatory Council orders otherwise.

(c) Time of Hearing

If a member requests a hearing under paragraph (a), the Department of Member Regulation shall conduct a hearing within 14 days after service of the notice under Rule 9412. Not less than five business days before the hearing,

the Department of Member Regulation shall provide written notice to the member of the location, date, and time of the hearing by facsimile or overnight commercial courier.

(d) Transmission of Documents

(1) Not less than five business days before the hearing, the Department of Member Regulation shall provide to the member by facsimile or overnight commercial courier all documents that were considered in imposing the limitations on business activities set forth in the notice served under Rule 9412, unless a document meets the criteria of Rule 9251(b)(1)(A), (B), or (C). A document that meets such criteria shall not constitute part of the record, but shall be retained by the Association until the date upon which the Association serves a final decision or, if applicable, upon conclusion of any review by the Commission or the federal courts.

(2) Not less than five business days before the hearing, the Department of Member Regulation and the member shall exchange proposed exhibit and witness lists. The exhibit and witness lists shall be served by facsimile or by overnight commercial courier.

(e) Hearing and Rights of Member

The member shall be entitled to be heard in person, to be represented by an attorney, and to submit any relevant evidence. The hearing shall be recorded and a transcript prepared by a court reporter. The member may purchase a copy of the transcript from the court reporter at prescribed rates. A witness may purchase a copy of the

transcript of his or her own testimony from the court reporter at prescribed rates. Proposed corrections to the transcript may be submitted by affidavit to the Department of Member Regulation within a reasonable time determined by the Department of Member Regulation. Upon notice to the participants in the hearing, the Department of Member Regulation may order corrections to the transcript as requested or sua sponte.

(f) Record

The record shall consist of:

(1) the notice issued pursuant to Rule 9412;

(2) all documents transmitted to the member under Rule 9413(d);

(3) the request for hearing filed pursuant to Rule 9413(a);

(4) any other submissions by the member and the Department of Member Regulation at the hearing;

(5) any evidence considered at the hearing; and

(6) the transcript of the hearing and any corrections thereto.

(g) Custodian of the Record

The custodian of the record shall be the Department of Member Regulation.

(h) Evidence Not Admitted

Evidence that is proffered but not admitted during the hearing shall not be part of the record, but shall be retained by the custodian of the record until the date when the Association's decision becomes final or, if applicable, upon the conclusion of any review by the

Commission or the federal courts.

(i) Decision

Within seven days after the hearing, the Department of Member Regulation shall issue a written decision approving, modifying, or withdrawing the limitations specified in the notice. If the decision imposes limitations, the decision shall state the grounds for the limitations, the conditions for terminating such limitations, and provide for a fitting sanction to be imposed under Rule 9416 if the member fails to comply with the limitations. The Department of Member Regulation shall promptly serve the decision by facsimile or overnight commercial courier. The limitations imposed shall become effective upon service of the decision.

(j) Failure to Request Hearing

If a member does not request a hearing under paragraph (a), the limitations specified in the notice shall become effective on the date specified in the notice. Unless the National Adjudicatory Council calls the notice for review under Rule 9414(a)(2), the limitations specified in the notice shall remain in effect until the Department of Member Regulation reduces or removes the limitations pursuant to Rule 9417(b).]

[9414.] Hearing Panel Review [National Adjudicatory Council Review]

[(a) Initiation of a Review]

(a)[(1)] Request for a Hearing [Application by Member]

A member aggrieved by a notice [decision] issued under Rule 9412 [9413] may file a written request [application] for hearing [review by] before a Hearing Panel [the National Adjudicatory Council] with

the Office of Hearing Officers. The request [application] shall state the specific grounds for withdrawing or modifying the limitations specified in the notice. The request shall be filed pursuant to Rules 9135, 9136, and 9137 within five days after service of the notice under Rule 9412. [the review and whether oral argument is requested. The application shall be filed pursuant to Rules 9135, 9136, and 9137 within seven days after service of the decision.] The member may withdraw its request [application for review] at any time by filing a written notice with the Office of Hearing Officers [National Adjudicatory Council] pursuant to Rules 9135, 9136, and 9137.

[(2) Motion of National Adjudicatory Council]

A decision issued under Rule 9413 shall subject to a call for review by any member of National Adjudicatory Council or the Review Subcommittee within 30 days after service of the decision. If a member that receives a notice under Rule 9412 does not request a hearing under Rule 9413, the notice shall be subject to a call for review by any member of the National Adjudicatory Council or the Review Subcommittee within 30 days after the effective date of the notice. If the National Adjudicatory Council or the Review Subcommittee calls a decision or notice for review, a written notice of review shall be served promptly on the member pursuant to Rules 9132 and 9134. The notice of review shall state the specific grounds for the review and whether an oral argument is ordered. If a decision is called for review by a member of the National Adjudicatory Council or the Review Subcommittee, the National Adjudicatory Council shall review the decision.]

(b) Appointment of Hearing Panel

The Chief Hearing Officer shall assign a Hearing Officer to preside over the matter, and appoint Panelists pursuant to Rule 9231 and 9232 to the Hearing Panel. As soon as practicable after assignment, the Chief Hearing Officer shall serve the Parties with notice of the Hearing Panel.

(c)[(3)] Stay

Unless otherwise ordered by the NASD Board Executive Committee [National Adjudicatory Council], the initiation of a review under this paragraph shall stay the decision of the Department of Member Regulation or an uncontested notice until a decision constituting final action of the Association is issued.

(d)[(4)] Transmission of Documents [the Record]

(1) Not less than five business days before the hearing, the Department of Member Regulation shall provide to the member by facsimile or overnight courier all documents that were considered in imposing the limitations on business activities set forth in the notice served under Rule 9412, unless a document meets the criteria of Rule 9251(b)(1)(A), (B), or (C). A document that meets such criteria shall not constitute part of the record, but shall be retained by the Association until the date upon which the Association serves a final decision or, if applicable, upon conclusion of any review by the Commission or the federal courts.

(2) Not less than five business days before the hearing, the Department of Member Regulation and the member shall exchange proposed exhibit and witness lists. The exhibit

and witness lists shall be served by facsimile or by overnight courier.

(e) Time of Hearing

If a member requests a hearing under paragraph (a), the a Hearing Panel shall conduct a hearing within 14 days after service of the notice under Rule 9412. Not less than five business days before the hearing, the Office of Hearing Officers shall provide written notice to the member of the location, date, and time of the hearing by facsimile or overnight courier.

(f) Hearing and Rights of Member

The member shall be entitled to be heard in person, to be represented by an attorney, and to submit any relevant evidence. The hearing shall be recorded and a transcript prepared by a court reporter. The member may purchase a copy of the transcript from the court reporter at prescribed rates. A witness may purchase a copy of the transcript of his or her own testimony from the court reporter at prescribed rates. Proposed corrections to the transcript may be submitted by affidavit to the Office of Hearing Officers within a reasonable time determined by the Office of Hearing Officers. Upon notice to the participants in the hearing, the Department of Member Regulation may order corrections to the transcript as requested or sua sponte.

(g) Record

The record shall consist of:

- (1) the notice issued pursuant to Rule 9412;
- (2) all documents transmitted to the member under Rule 9413;
- (3) the request for hearing filed pursuant to Rule 9413;

(4) any other submissions by the member and the Department of Member Regulation at the hearing;

(5) any evidence considered at the hearing; and

(6) the transcript of the hearing and any corrections thereto.

(h) Custodian of the Record

The custodian of the record shall be the Office of Hearing Officers.

(i) Evidence Not Admitted

Evidence that is proffered but not admitted during the hearing shall not be part of the record, but shall be retained by the custodian of the record until the date when the Association's decision becomes final or, if applicable, upon the conclusion of any review by the Commission or the federal courts.

[If a review is initiated under this paragraph, the Department of Member Regulation shall assemble and prepare an index of the record, transmit the record and index to the National Adjudicatory Council, certify to the National Adjudicatory Council that the record is complete, and serve a copy of the record and index on the member.]

(j) Failure to Request Hearing

If a member does not request a hearing under paragraph (a), the limitations specified in the notice shall become effective on the date specified in the notice. Unless the Executive Committee calls the notice for review under Rule 9415, the limitations specified in the notice shall remain in effect until a Hearing Panel reduces or removes the limitations pursuant to Rule 9417(b).

(k) Decision

Within seven days after the hearing, the Hearing Panel shall issue a written decision approving, modifying, or withdrawing the limitations specified in the notice. If the decision imposes limitations, the decision shall state the grounds for the limitations, the conditions for terminating such limitations, and provide for a fitting sanction to be imposed under Rule 9416 if the member fails to comply with the limitations. The Office of Hearing Officers shall promptly serve the decision by facsimile or overnight courier. The limitations imposed shall become effective upon service of the decision.

(l) Issuance of Decision After Expiration of Call for Review Period

The Hearing Panel shall provide its proposed written decision to the NASD Board Executive Committee. The NASD Board Executive Committee may call the proceeding for review pursuant to Rule 9415. If the NASD Board Executive Committee does not call the proceeding for review, the proposed written decision of the Hearing Panel shall become final, and the Hearing Panel shall serve its written decision on the member and the Department of Member Regulation pursuant to Rules 9132 and 9134. The decision shall be effective upon service. The decision shall constitute the final action of the Association.

(m)[(5)] Ex Parte Communications

The prohibitions against ex parte communications in Rule 9143 shall become effective under the Rule 9410 Series when Association staff has knowledge that a member intends to file a written application for review or that the NASD Board Executive Committee [National Adjudicatory Council] intends to review a decision on its own motion under this Rule.

[(b) Subcommittee Consideration

(1) Appointment of Subcommittee

The National Adjudicatory Council or the Review Subcommittee shall appoint a Subcommittee to participate in the review. The Subcommittee shall be composed of two or more members. One member shall be a member of the National Adjudicatory Council, and the remaining member or members shall be current or former members of the National Adjudicatory Council or a former Director or Governor.

(2) Oral Argument

If oral argument is timely requested by the member, oral argument shall be held before the Subcommittee within 14 days after service of the decision under Rule 9413. If oral argument is ordered by the Subcommittee, oral argument shall be held before the Subcommittee within 14 days after service of the order under paragraph (a)(2). The member shall be entitled to be represented by an attorney. The oral argument shall be recorded and a transcript prepared by a court reporter. The member may purchase a copy of the transcript from the court reporter at prescribed rates. A witness may purchase a copy of the transcript of his or her own testimony from the court reporter at prescribed rates. Proposed corrections to the transcript may be submitted by affidavit to the Subcommittee within a reasonable time determined by the Subcommittee. Upon notice to the participants in the hearing, the Subcommittee may order corrections to the transcript as requested or sua sponte.

(3) Review on Record

The Subcommittee shall conduct its review on the basis of the record, any written submissions by the member and the Department of Member Regulation, and the decision issued pursuant to Rule 9413(i). If oral argument is requested or ordered, Subcommittee also may consider any submissions or additional arguments by the member and the Department of Member Regulation.

(4) Additional Evidence

The Subcommittee may consider any additional relevant and material evidence if the member shows good cause for not previously submitting such evidence. If additional evidence is accepted by the Subcommittee, the evidence shall be included in the record. Proffered evidence that is not accepted into the record by the Subcommittee shall be retained until the date when the Association's decision becomes final or, if applicable, upon the conclusion of any review by the Commission or the federal courts.

(5) Recommendation

The Subcommittee shall present a recommended decision in writing to the National Adjudicatory Council not later than seven days before the meeting of the National Adjudicatory Council at which the proceeding shall be considered.

(c) Decision

(1) Decision of National Adjudicatory Council, Including Remand

After considering all matters

presented in the review and the written recommended decision of the Subcommittee, the National Adjudicatory Council] may affirm, modify, or reverse the Department of Member Regulation's decision or remand the proceeding with instructions. The National Adjudicatory Council shall prepare a proposed written decision pursuant to subparagraph (2).

(2) Contents of Decision

The decision shall include:

- (A) a description of the Department of Member Regulation's decision, including its rationale;
- (B) a description of the principal issues regarding the imposition of limitations raised in the review and a statement supporting the disposition of such issues;
- (C) a summary of the evidence on each issue;
- (D) a statement of whether the Department of Member Regulation's decision is affirmed, modified, or reversed, and a rationale therefor; and
- (E) if any limitations are imposed:
 - (i) a description of the limitations and a statement describing a fitting sanction that will be imposed under Rule 9416 if the member fails to comply with any of the limitations; and
 - (ii) the conditions for terminating the limitations.

(3) Issuance of Decision After Expiration of Call for Review Period

The National Adjudicatory Council shall provide its proposed written decision to the NASD Board. The NASD Board may call the proceeding for review pursuant to Rule 9415. If the NASD Board does not call the proceeding for review, the proposed written decision of National Adjudicatory Council shall become final, and the National Adjudicatory Council shall serve its written decision on the member and the Department of Member Regulation pursuant to Rules 9132 and 9134. The decision shall be effective upon service. The decision shall constitute the final action of the Association, unless National Adjudicatory Council remands the proceeding.]

9415. Discretionary Review by the NASD Board Executive Committee

(a) Call for Review by NASD Board Executive Committee [Governor]

A member of the NASD Board Executive Committee [Governor] may call a proceeding for review by the NASD Board Executive Committee if the call for review is made within the period prescribed in paragraph (b).

(b) 15 Day Period; Waiver

A member of the NASD Board Executive Committee [Governor] shall make his or her call for review not later than the next meeting of the NASD Board Executive Committee that is at least 15 days after the date on which the NASD Board Executive Committee receives the proposed written decision of the Hearing Panel [National Adjudicatory Council]. By a unanimous vote of the NASD Board Executive Committee, the NASD Board Executive Committee

may shorten the period to less than 15 days. By an affirmative vote of the majority of the NASD Board Executive Committee then in office, the NASD Board Executive Committee may, during the 15 day period, vote to extend the period to more than 15 days.

(c) Review at Next Meeting

If an NASD Board Executive Committee member [Governor] calls a proceeding for review within the period prescribed in paragraph (b), the NASD Board Executive Committee shall review the proceeding not later than the next meeting of the NASD Board Executive Committee. The NASD Board Executive Committee may order the filing of briefs in connection with its review proceedings pursuant to this Rule.

(d) Decision of NASD Board Executive Committee, Including Remand

After review, the NASD Board Executive Committee may affirm, modify, or reverse the proposed written decision of the Hearing Panel [National Adjudicatory Council]. Alternatively, the NASD Regulation Board may remand the proceeding with instructions. The NASD Board Executive Committee shall prepare a written decision that includes all of the elements described in Rule 9414(k)(c)(2)].

(e) Issuance of Decision

The NASD Board Executive Committee shall issue and serve its written decision on the member and the Department of Member Regulation pursuant to Rules 9132 and 9134. The decision shall be effective upon service. The decision shall constitute the final action of the Association, unless the NASD Board Executive Committee remands the proceeding.

9416. Enforcement of Sanctions

(a) Order

If the Department of Member Regulation determines that a member has failed to comply with any limitations imposed by a decision or an effective notice under the Rule 9410 Series that has not been stayed, the Department of Member Regulation shall issue an order imposing the sanctions set forth in the decision or notice and specifying the effective date and time of such sanctions. The Department of Member Regulation shall serve the order on the member by facsimile or overnight [commercial] courier.

(b) Hearing

(1) A member aggrieved by an order issued under paragraph (a) may file a written request for a hearing before a Hearing Panel with the Office of Hearing Officers [the Department of Member Regulation]. The request shall be filed pursuant to Rules 9135, 9136, and 9137 within seven days (including intermediate Saturdays, Sundays, and Federal holidays) after service of the order. The Chief Hearing Officer shall assign a Hearing Officer to preside over the matter, and appoint Panelists pursuant to Rule 9231 and 9232 to the Hearing Panel. As soon as practicable after assignment, the Office of Hearing Officers shall serve the Parties with notice of the Hearing Panel. The hearing shall be held within ten days after service of the order under paragraph (a).

(2) The member shall be entitled to be heard in person, to be represented by an attorney, and to submit any relevant evidence.

(3) The hearing shall be recorded and a transcript prepared by a court reporter. The member may purchase a copy of the transcript from the court reporter at prescribed rates. A witness may purchase a copy of the transcript of his or her own testimony from the court reporter at prescribed rates. Proposed corrections to the transcript may be submitted by affidavit to the Office of Hearing Officers [Department of Member Regulation] within a reasonable time determined by the Office of Hearing Officers [Department of Member Regulation]. Upon notice to the participants in the hearing, the Office of Hearing Officers [Department of Member Regulation] may order corrections to the transcript as requested or sua sponte.

(c) No Stay of Sanctions

Unless otherwise ordered by the NASD Board Executive Committee [National Adjudicatory Council], a request for a hearing pursuant to this Rule shall not stay the effectiveness of the order issued under paragraph (a).

(d) Decision

Within four days after the hearing, the Hearing Panel [Department of Member Regulation] shall affirm, modify, or reverse the order issued under paragraph (a). The Office of Hearing Officers [Department of Member Regulation] shall serve the decision on the member pursuant to Rules 9132 and 9134. The decision shall become effective upon service and shall constitute final action of the Association.

9500. OTHER PROCEEDINGS

9510. Summary and Non-Summary Proceedings

9512. Initiation of Summary Proceeding

(a) Authorization No change.

(b) Contents and Service of Notice

A notice issued under this subsection shall state the specific grounds and include the factual basis for the summary suspension, limitation, or prohibition and state that the member, associated person, or other person may file a written request for a hearing under Rule 9514. The notice shall be served by facsimile or overnight [commercial] courier.

(c) Effective Date No change.

9513. Initiation of Non-Summary Proceeding

(a) Notice

Association staff may initiate a proceeding authorized under Rule 9511(a)(2)(A) or (B), by issuing a written notice to the member, associated person, or other person. The notice shall specify the grounds for and effective date of the cancellation, suspension, bar, limitation, or prohibition and shall state that the member, associated person, or other person may file a written request for a hearing under Rule 9514. The notice shall be served by facsimile or overnight [commercial] courier.

(b) Effective Date No change.

9514. Hearing and Decision

(a) Request

(1) Request by Member, Associated Person, or Other Person

No change.

(2) Failure to File Request

If the member, associated person, or other person subject to the notice issued under Rule 2210, 2220, 9512(a), or 9513(a) does not file a written request for a hearing within the seven day time period specified in [under] subparagraph (1), the notice shall constitute final action by the Association.

(3) Ex Parte Communications

No change.

(b) Designation of Party for the Association and Appointment of Hearing Panel

If a member, associated person, or other person subject to a notice under Rule 2210, 2220, 9512, or 9513 files a written request for a hearing, an appropriate department or office of the Association shall be designated as a Party in the proceeding, and a Hearing Panel shall be appointed.

(1) through (2) No change.

(3) A Hearing Officer appointed pursuant to this provision shall have authority to do all things necessary and appropriate to discharge his or her duties as set forth under Rule 9235.

(c) Stays No change.

(d) Time of Hearing

(1) Summary Proceeding

If a member, associated person, or other person who is subject to a notice issued under Rule 9512(a) files a written request for a hearing, a hearing shall be held within seven days after the filing of the request for hearing. Not less than five days before the hearing, the Hearing Panel shall provide written notice to the Parties of the location, date,

and time of the hearing by facsimile or overnight [commercial] courier.

(2) Non-Summary Proceeding

If a member, associated person, or other person who is subject to a notice issued under Rule 2210, 2220, or 9513(a) files a written request for a hearing, a hearing shall be held within 40 [21] days after the filing of the request for hearing. The Hearing Panel may, during the initial 40 [21] day period, extend the time in which the hearing shall be held by an additional 30 [21] days on its own motion or at the request of a Party. Not less than five days before the hearing, the Hearing Panel shall provide written notice to the Parties of the location, date, and time of the hearing by facsimile or overnight [commercial] courier.

(e) Transmission of Documents

(1) Not less than five days before the hearing, the Association shall provide to the member, associated person, or other person who requested the hearing, by facsimile or overnight [commercial] courier, all documents that were considered in issuing the notice under Rule 2210, 2220, 9512, or 9513, unless a document meets the criteria of Rule 9251(b) (1)(A), (B), or (C). A document that meets such criteria shall not constitute part of the record, but shall be retained by the Association until the date upon which the Association serves a final decision or, if applicable, upon the conclusion of any review by the Commission or the federal courts.

(2) Not less than five days before the hearing, the Parties shall exchange proposed exhibit and witness lists. The exhibit

and witness lists shall be served by facsimile or by overnight [commercial] courier.

(f) Hearing Panel Consideration No change.

9516. Reinstatement

A member, associated person, or other person who has been suspended or limited by a final action of the Association under the Rule 9510 Series may file a written request for reinstatement on the ground of full compliance with the conditions of the suspension or limitation. The request shall be filed with the department or office of the Association that acted as a Party in the proceeding. The head of the department or office shall serve its response on the member or person via facsimile or overnight [commercial] courier within five days after receipt of the request. If the head of the department or office denies the request, the member or person may file a written request for relief with the Review Subcommittee [NASD Board]. The Review Subcommittee [NASD Board] shall respond to the request in writing within 14 days after receipt of the request. The Review Subcommittee [NASD Board] shall serve its response by facsimile or overnight [commercial] courier.

9520. Eligibility Proceedings

9521. Purpose and Definitions

(a) Purpose

The Rule 9520 Series sets forth procedures for a person to become or remain associated with a member, notwithstanding the existence of a [statutory] disqualification as defined in Article III, Section 4 of the NASD By-Laws [Section 3(a)(39) of the Act] and for a current member or person associated with a member to obtain

relief from the eligibility or qualification requirements of the NASD By-Laws and the Rules of Association. Such actions hereinafter are referred to as “eligibility proceedings.”

(b) Definitions

(1) The term “application” means NASD Regulation’s Form MC-400 for individuals or Form MC-400A for members, filed with the Central Registration Depository/Public Disclosure.

(2) The term “disqualified member” means a broker, dealer, municipal securities broker or dealer, government securities broker or dealer, or member that is or becomes subject to a disqualification or is otherwise ineligible for membership under Article III, Section 3 of the NASD’s By-Laws.

(3) The term “disqualified person” means an associated person or person seeking to become an associated person who is or becomes subject to a disqualification or is otherwise ineligible for association under Article III, Section 4 of the NASD’s By-Laws.

(4) The term “sponsoring member” means the member or applicant for membership pursuant to Rule 1013 that is sponsoring the association or continued association of a disqualified person to be admitted, readmitted, or permitted to continue in association.

9522. Initiation of Eligibility Proceeding: Member Regulation Consideration

(a) Initiation by Association

(1) Issuance of Notice of Disqualification or Ineligibility

If Association staff has reason to believe that a [statutory] disqualification exists or that a member or person associated with a member otherwise fails to meet the eligibility requirements of the Association, Association staff shall issue a written notice to the member or applicant for membership under Rule 1013 [associated person]. The notice shall specify the grounds for such disqualification or ineligibility.

(2) Notice Regarding a [to] Member

A notice issued to a disqualified member [that is subject to a statutory disqualification or is otherwise ineligible for membership] shall state that the disqualified member may apply for relief by filing an [written] application [for relief pursuant to paragraph (c) with the National Adjudicatory Council] or, in the case of a matter set forth in Rule 9522(e)(1), a written request for relief, within ten business days after service of the notice. If the member fails to file the [written] application [for relief] or, where appropriate, the written request for relief, within the 10-day period, the membership of the member shall be canceled, unless the Department of Member Regulation grants an extension for good cause shown.

(3) Notice Regarding an [to] Associated Person

A notice issued [to] regarding a[n] [associated] disqualified person [who is subject to a statutory disqualification or is otherwise ineligible for association] to a member or applicant for membership under

Rule 1013 shall state that [a] such member or applicant for membership may file an application [apply for relief] on behalf of itself and such person [by filing a written application for relief pursuant to paragraph (c) with the National Adjudicatory Council] or, in the case of a matter set forth in Rule 9522(e)(1), a written request for relief, within ten business days after service of the notice. If the member fails to file the [written] application [for relief] or, where appropriate, the written request for relief, within the 10-day period, the registration of the [associated] disqualified person shall be revoked, unless the Department of Member Regulation grants an extension for good cause shown.

(4) Service

A notice issued under this section shall be served by facsimile or pursuant to Rules 9131 and 9134.

(b) Obligation of Member to Initiate Proceeding

A member shall file an [written] application [for relief from the eligibility requirements of the Association pursuant to paragraph (c) with the National Adjudicatory Council] or, in the case of a matter set forth in Rule 9522(e)(1), a written request for relief, with the Central Registration Depository/ Public Disclosure, if the member determines prior to receiving a notice under paragraph (a) that:

(1) it has become a disqualified member [the member is subject to a statutory disqualification or otherwise is no longer eligible for membership];

(2) a person associated with such member or whose association is proposed by an

applicant for membership under Rule 1013 has become a disqualified person [is subject to a statutory disqualification or otherwise is no longer eligible for association with the member]; or

(3) the member or applicant for membership under Rule 1013 wishes to sponsor the association of a person who is a disqualified person. [subject to a statutory disqualification or otherwise is ineligible for association with a member.]

[(c) Form of Application for Relief]

[A written application for relief shall be submitted on Form MC-400 and shall include a detailed statement demonstrating why the requested relief should be granted.]

[(c)][(d)] Withdrawal of Application

A member may withdraw its application or written request for relief prior to a hearing [at any time] by filing a written notice with the [National Adjudicatory Council] Central Registration Depository/Public Disclosure pursuant to Rules 9135, 9136, and 9137. A member may withdraw its application after the start of a hearing but prior to the issuance of a decision by the National Adjudicatory Council with prior written consent of the National Adjudicatory Council.

[(d)][(e)] Ex Parte Communications

The prohibitions against ex parte communications set forth in Rule 9143 shall become effective under the Rule 9520 Series when Association staff has initiated the eligibility proceeding and Association staff has knowledge that a member intends to file an [written] application or written request for relief pursuant to the

Rule 9520 Series [with the National Adjudicatory Council].

(e) Member Regulation Consideration

(1) Matters that may be Approved by the Department of Member Regulation without the Filing of an Application

The Department of Member Regulation, as it deems consistent with the public interest and the protection of investors, may grant a written request for relief from the eligibility requirements by a disqualified member or a sponsoring member without the filing of an application by such disqualified member or sponsoring member if a disqualified member or disqualified person is subject to one or more of the following conditions but is not otherwise subject to disqualification:

(A) a disqualified member or disqualified person is subject to a disqualification based on an injunction that was entered ten or more years prior to the proposed admission or continuance by order, judgment, or decree of any court of competent jurisdiction from acting as an investment adviser, underwriter, broker, dealer, municipal securities dealer, government securities broker, government securities dealer, transfer agent, foreign person performing a function substantially equivalent to any of the above, entity or person required to be registered under the Commodity Exchange Act, or any substantially equivalent foreign statute or regulation, or as an affiliated person or employee of any investment company, bank, insurance company, foreign entity substantially equivalent to any

of the above, or entity or person required to be registered under the Commodity Exchange Act or any substantially equivalent foreign statute or regulation, or from engaging in or continuing any conduct or practice in connection with any such activity, or in connection with the purchase or sale of any security.

(B) a sponsoring member makes a request to change the supervisor of a disqualified person; or

(C) a disqualified member or sponsoring member is a member of both the Association and another self-regulatory organization; and:

(i) the other self-regulatory organization intends to file a Notice under SEC Rule 19h-1 approving the membership continuance of the disqualified member or, in the case of a sponsoring member, the proposed association or continued association of the disqualified person; and

(ii) Member Regulation concurs with that determination.

(2) Matters that may be Approved by the Department of Member Regulation after the Filing of an Application

The Department of Member Regulation, as it deems consistent with the public interest and the protection of investors, may approve an application filed by a disqualified member or sponsoring member if a disqualified member or disqualified person is subject to one or more of the following conditions but is not otherwise

subject to disqualification (other than a matter set forth in subparagraph(e)(1)):

(A) The disqualified person is already a participant in, a member of, or a person associated with a member of, a self-regulatory organization, and the terms and conditions of the proposed admission are the same in all material respects as those imposed or not disapproved in connection with such person's prior admission or continuance pursuant to an order of the Commission under SEC Rule 19h-1 or other substantially equivalent written communication;

(B) The Department of Member Regulation finds, after reasonable inquiry, that except for the identity of the employer concerned, the terms and conditions of the proposed admission or continuance are the same in all material respects as those imposed or not disapproved in connection with a prior admission or continuance of the disqualified person pursuant to an order of the Commission under SEC Rule 19h-1 or other substantially equivalent written communication, and that there is no intervening conduct or other circumstance that would cause the employment to be inconsistent with the public interest or the protection of investors; or

(C) The disqualification previously was a basis for the institution of an administrative proceeding pursuant to a provision of the federal securities laws, and was considered by the Commission in determining a sanction

against such disqualified person in the proceeding; and the Commission concluded in such proceeding that it would not restrict or limit the future securities activities of such disqualified person in the capacity now proposed, or, if it imposed any such restrictions or limitations for a specified time period, such time period has elapsed.

(3) Rights of Disqualified Member, Sponsoring Member, Disqualified Person, and Department of Member Regulation

(A) In the event the Department of Member Regulation does not approve a written request for relief from the eligibility requirements pursuant to subparagraph (e)(1), the disqualified member or sponsoring member may file an application, and such member shall have the right to proceed under Rule 9523 or 9524, as applicable. The Department of Member Regulation may require a disqualified member or sponsoring member to file an application with the Central Registration Depository/Public Disclosure, notwithstanding the provisions of subparagraph (e)(1).

(B) In the event the Department of Member Regulation does not approve an application pursuant to subparagraph (e)(2), the disqualified member or sponsoring member shall have the right to proceed under Rule 9523 or 9524, as applicable.

9523. Acceptance of Member Regulation Recommendations and Supervisory Plans by Consent Pursuant to SEC Rule 19h-1

(a) After an application is filed, the Department of Member Regulation may recommend the membership or continued membership of a disqualified member or sponsoring member or the association or continuing association of a disqualified person pursuant to a supervisory plan where the disqualified member, sponsoring member, and/or disqualified person, as the case may be, consent to the recommendation and the imposition of the supervisory plan. The disqualified member, sponsoring member, and/or disqualified person, as the case may be, shall execute a letter consenting to the imposition of the supervisory plan.

(b)(1) If a disqualified member, sponsoring member, and/or disqualified person submit an executed letter consenting to a supervisory plan, by the submission of such letter, the disqualified member, sponsoring member and/or disqualified person waive:

(A) the right to a hearing before a Hearing Panel and any right of appeal to the National Adjudicatory Council, the Commission, and the courts, or otherwise challenge the validity of the supervisory plan, if the supervisory plan is accepted.

(B) any right of the disqualified member, sponsoring member, and/or disqualified person to claim bias or prejudgment by the Department of Member Regulation, the General Counsel, the National Adjudicatory Council, or any member of the National Adjudicatory Council, in connection with such person's or body's participation in discussions regarding the terms and conditions of the Department of Member Regulation's recommendation

or the supervisory plan, or other consideration of the recommendation or supervisory plan, including acceptance or rejection of such recommendation or supervisory plan; and

(C) any right of the disqualified member, sponsoring member, and/or disqualified person to claim that a person violated the *ex parte* prohibitions of Rule 9143 or the separation of functions prohibitions of Rule 9144, in connection with such person's or body's participation in discussions regarding the terms and conditions of the recommendation or supervisory plan, or other consideration of the recommendation or supervisory plan, including acceptance or rejection of such recommendation or supervisory plan.

(2) If a recommendation or supervisory plan is rejected, the disqualified member, sponsoring member, and/or disqualified person shall be bound by the waivers made under subparagraph (b)(1) for conduct by persons or bodies occurring during the period beginning on the date the supervisory plan was submitted and ending upon the rejection of the supervisory plan and shall have the right to proceed under this rule and Rule 9524, as applicable.

(c) If the disqualified member, sponsoring member, and/or disqualified person execute the letter consenting to the supervisory plan, it shall be submitted to the General Counsel and/or the Chairman of the Statutory Disqualification Committee, acting on behalf of the National Adjudicatory Council, by the Department of Member Regulation

with a proposed Notice under SEC Rule 19h-1, where required. The Chairman of the Statutory Disqualification Committee or the General Counsel may accept the recommendation of the Department of Member Regulation and the supervisory plan or refer them to the National Adjudicatory Council for acceptance or rejection by the National Adjudicatory Council. The Chairman of the Statutory Disqualification Committee may reject such recommendation and supervisory plan or refer them to the National Adjudicatory Council for acceptance or rejection by the National Adjudicatory Council.

(d) If the recommendation and supervisory plan is accepted by the National Adjudicatory Council, the Chairman of the Statutory Disqualification Committee, or the General Counsel, it shall be deemed final and, where required, the proposed Notice under SEC Rule 19h-1 will be filed by the Association. If the recommendation and supervisory plan are rejected by the Chairman of the Statutory Disqualification Committee or the National Adjudicatory Council, NASD Regulation may take any other appropriate action with respect to the disqualified member, sponsoring member, and/or disqualified person. If the recommendation and supervisory plan are rejected, the disqualified member, sponsoring member, and/or disqualified person shall not be prejudiced by the execution of the letter consenting to the supervisory plan under subparagraph (a) and the letter may not be introduced into evidence in any proceeding.

9524[9523]. National Adjudicatory Council Consideration

(a) Hearing Panel Consideration

(1) Appointment of Hearing Panel

When a hearing is necessary under this Series [If a member files an application for relief], the National Adjudicatory Council or the Review Subcommittee shall appoint a Hearing Panel composed of two or more members, who shall be current or former members of the National Adjudicatory Council or the Statutory Disqualification Committee or former Directors or Governors. The Hearing Panel shall conduct a hearing and recommend a decision on the request for relief.

(2) Notice of Hearing

The disqualified member or sponsoring member, as the case may be, and the Department of Member Regulation [Not less than fourteen days before the hearing, the member] shall be notified via mail, facsimile, or overnight [commercial] courier of the location, time, and date of the hearing not less than fourteen business days before the hearing, unless the parties agree to shorten the time period.

(3) Transmission of Documents

(A) Upon receipt of an application, the Central Registration Depository shall gather all of the information necessary to process the application, including (i) the Central Registration Depository records for the disqualified member, sponsoring member, and/or disqualified person, as the case may be, and the proposed supervisor; and (ii) all of the information submitted by the disqualified member or sponsoring member in support of the application. The Central Registration Depository will prepare an index of these

documents, and simultaneously provide this index and copies of the documents to the disqualified member or sponsoring member, as the case may be, the Office of the General Counsel, and the Department of Member Regulation. [If Association staff initiated the eligibility proceeding by issuing a notice under Rule 9522(a), Association staff shall provide to the member and its current or prospective associated person all documents that were relied on in issuing the notice.] Such documents shall be served on the disqualified member [and its current or prospective associated person] or sponsoring member, as the case may be, by mail, facsimile, or overnight [commercial] courier as soon as practicable [not less than ten days before the hearing]. The Department of Member Regulation shall serve its recommendation and its supporting documents on the Hearing Panel and the disqualified member or sponsoring member, as the case may be, within ten business days of the hearing, unless the Parties agree otherwise. The disqualified member or sponsoring member, as the case may be, shall serve its documents on the Hearing Panel and the Department of Member Regulation within ten business days of the hearing, unless the Parties agree otherwise.

(B) Not less than ten business days before the hearing, the Department of Member Regulation, which shall act as a Party in the eligibility proceeding, and the disqualified member [and its current or prospective associated person] or sponsoring member, as the

case may be, shall [exchange] serve proposed exhibit and witness lists on each other and the Hearing Panel. [The exhibit and witness lists shall be served by facsimile or overnight [commercial] courier.]

(C) At any time prior to the issuance of its recommendation, the Hearing Panel may order the Parties to supplement the record with any additional information that the Hearing Panel deems necessary.

(4) Rights of Disqualified Member, Sponsoring Member, Disqualified [Current or Prospective Associated] Person, and Department of Member Regulation

The disqualified member, sponsoring member, [its current or prospective associated] and/or disqualified person, as the case may be, and, the Department of Member Regulation, shall be entitled to be heard in person, to be represented by an attorney, and to submit any relevant evidence.

(5) Extensions of Time, Postponements, and Adjournments

At any time prior to the issuance of the decision of the Hearing Panel, after obtaining consent of all the Parties, the Hearing Panel may extend or shorten any time limits prescribed by the Code for the filing of any papers and may postpone or adjourn any hearing.

(6)[(5)] Recordation of Hearing

The hearing shall be recorded and a transcript prepared by a court reporter. The disqualified member, sponsoring member,

and/or [the current or prospective associated] disqualified person, as the case may be, may purchase a copy of the transcript from the court reporter at prescribed rates. A witness may purchase a copy of the transcript of his or her own testimony from the court reporter at prescribed rates. Proposed corrections to the transcript may be submitted by affidavit to the Hearing Panel within a reasonable time determined by the Hearing Panel. Upon notice to the participants in the hearing, the Hearing Panel may order corrections to the transcript as requested or sua sponte.

(7)[(6)] Record

The record shall consist of:

(A) the notice issued pursuant to Rule 9522(a), if applicable;

(B) all documents relied upon in issuing the notice under Rule 9522(a), if applicable;

(C) the application for relief filed pursuant to Rule 9522(b);

(D) any other submissions by the disqualified member, sponsoring member, and/or [the] [current or prospective associated] disqualified person, as the case may be, and the Department of Member Regulation;

(E) any evidence considered at the hearing; and

(F) the transcript of the hearing and any corrections thereto.

(8)[(7)] Custodian of the Record

The custodian of the record shall be the Office of General Counsel of NASD Regulation.

(9)[(8)] Evidence Not Admitted

Evidence that is proffered but not admitted during the hearing shall not be part of the record, but shall be retained by the custodian of the record until the date when the Association's decision becomes final or, if applicable, upon the conclusion of any review by the Commission or the federal courts.

(10)[(9)] Recommendation

On the basis of the record, the Hearing Panel shall present a recommended decision in writing on the request for relief to the Statutory Disqualification Committee. After considering the record and recommendation of the Hearing Panel, the Statutory Disqualification Committee shall present its recommended decision in writing to the National Adjudicatory Council [not later than seven days before the meeting of the National Adjudicatory Council at which the eligibility proceeding shall be considered].

(b) Decision

(1) Decision of the National Adjudicatory Council

After considering all matters presented in the request for relief, the Statutory Disqualification Committee's recommended decision, the public interest, and the protection of investors, the National Adjudicatory Council may grant or deny the request for relief, and, if relief is granted, impose conditions on the disqualified member, sponsoring member, and/or [its current or prospective associated] disqualified person, as the case may be. At any time prior to the

issuance of its recommendation, the National Adjudicatory Council may order the Parties to supplement the record with any additional information that the National Adjudicatory Council deems necessary. Alternatively, the National Adjudicatory Council may remand the eligibility proceeding. The National Adjudicatory Council shall prepare a proposed written decision pursuant to subparagraph (2).

(2) Contents of Decision

The decision shall include:

- (A) No change.
- (B) No change.
- (C) a statement in support of the disposition of the request for relief, which, if granted, includes any of the applicable elements under SEC Rule 19h-1(e) and a description of any conditions that are imposed on the disqualified member, sponsoring member, or disqualified [and current or prospective associated] person, as the case may be.

(3) Issuance of Decision After Expiration of Call for Review Period

The National Adjudicatory Council shall provide its proposed written decision to the NASD Board. The NASD Board may call the eligibility proceeding for review pursuant to Rule 9525 [9524]. If the NASD Board does not call the eligibility proceeding for review, the proposed written decision of the National Adjudicatory Council shall become final, and the National Adjudicatory Council shall serve its written decision on the disqualified

member, sponsoring member, and/or [the current or prospective associated] disqualified person, as the case may be, and the Department of Member Regulation pursuant to Rules 9132 and 9134. [The decision shall be effective upon service.] The decision shall constitute final action of the Association, unless the National Adjudicatory Council remands the eligibility proceeding. The decision shall be effective upon approval by the Commission.

9525[9524]. Discretionary Review by the NASD Board

(a) through (c) No change.

(d) Decision of NASD Board, Including Remand

After review, the NASD Board may affirm, modify, or reverse the proposed written decision of the National Adjudicatory Council. Alternatively, the NASD Board may remand the eligibility proceeding with instructions. The NASD Board shall prepare a written decision that includes all of the elements described in Rule 9524(b)(2) [9523(b)(2)].

(e) Issuance of Decision

The NASD Board shall issue and serve its written decision on the disqualified member, sponsoring member, and/or disqualified [the current or prospective associated] person, as the case may be, and the Department of Member Regulation pursuant to Rules 9132 and 9134. The decision shall [be effective upon service. The decision shall] constitute the final action of the Association, unless the NASD Board remands the proceeding. The decision shall be effective upon approval by the Commission.

9526[9525]. Expedited Review

(a) Direction by Executive Committee

Notwithstanding Rules [9523 and] 9524 and 9525, the NASD Board Executive Committee, upon request of the Statutory Disqualification Committee, may direct an expedited review of a recommended written decision of the Statutory Disqualification Committee if the NASD Board Executive Committee determines that expedited review is necessary for the protection of investors.

(b) Call for Review Period No change.

(c) No Call for Review

If no Governor calls the proceeding for review within the time prescribed, the decision shall become final, and the Statutory Disqualification Committee shall serve the decision on the disqualified member, sponsoring member, and/or disqualified [the current or prospective associated] person, as the case may be, and the Department of Member Regulation pursuant to Rules 9132 and 9134. The decision shall [be effective upon service and shall] constitute final action of the Association. The decision shall be effective upon approval by the Commission.

(d) Call for Review

If a Governor calls the eligibility proceeding for review within the prescribed time, a review panel shall meet and conduct a review not later than 14 days after the call for review. The review panel shall be composed of the NASD Board Executive Committee, except that the Governor who calls the proceeding for review shall serve on the review panel in lieu of a

member of the Executive Committee who has the same classification (Industry, Non-Industry, or Public) as such Governor. The review panel may affirm, modify, or reverse the recommended written decision of the Statutory Disqualification Committee or remand the eligibility proceeding with instructions. The review panel shall prepare, issue, and serve its decision pursuant to Rule [9524] 9525(d) and (e).

9527[9526]. Application to Commission for Review

The right to have any action taken pursuant to this Rule Series reviewed by the Commission is governed by Section 19 of the Act. [The filing of an application for review shall not stay the effectiveness of final action by the Association, unless the Commission otherwise orders.]

9530. Suspension or Cancellation for Failure to Pay Dues, Fees and Other Charges

9531. Notice

(a) **Notice** No change.

(b) Service of Notice

Association staff shall serve the notice via personal service, [by] facsimile or overnight [commercial] courier and shall file a copy of the notice with the Office of Hearing Officers.

(c) **Effective Date of Notice** No change.

9532. Hearing

(a) **Request for Hearing** No change.

(b) Hearing Procedures

(1) through (3) No change.

(4) Transmission of Documents

Not later than seven days before the hearing, the NASD Treasurer shall serve the member or person associated with a member via overnight [commercial] courier with all documents that were considered in connection with the decision to issue a notice under Rule 9531 and provide copies of the same to the Hearing Officer.

(5) through (11) No change.

9535. Termination of Suspension

A suspended member or person may file a written request for termination of the suspension on the ground of full compliance with the notice issued under Rule 9531 or, if applicable, the conditions of a decision under Rule 9533, with the Office of Hearing Officers. The Office of Hearing Officers shall respond to the request in writing within five days after receipt of the request. The Office of Hearing Officers shall send the written response via overnight [commercial] courier or facsimile.

9540. Failure to Provide Information or Meet the Eligibility and Qualification Standards

9541. Notice

(a) Notice to Member for Failure to Provide Information

If a member fails to provide any information, report, material, data, or testimony requested or required to be filed pursuant to the NASD By-Laws or the Rules of the Association, or fails to keep its membership application or supporting documents current, the Association staff may provide written notice to such member specifying the nature of the failure and stating that the failure to take

corrective action within 20 days after service of the notice constitutes grounds for suspension of membership.

(b) Notice to Person Associated with Member for Failure to Provide Information

If a person associated with a member fails to provide any information, report, material, data, or testimony requested or required to be filed pursuant to the NASD By-Laws or the Rules of the Association, the Association staff may provide written notice to such person specifying the nature of the failure and stating that the failure to take corrective action within 20 days after service of the notice constitutes grounds for suspending the association of the person with the member.

(c) Notice to Member for Failure to Meet the Eligibility and Qualification Standards

If a member becomes ineligible for continuance in membership because it does not meet the eligibility and qualification standards set forth in Article III of the By-Laws, the Association staff may provide written notice to such member stating that the failure to become eligible for continuance in membership within 20 days after service of the notice constitutes grounds for cancellation of membership.

(d) Service of Notice

The Association staff shall serve the member or person associated with a member with such notice via personal service or overnight courier or by facsimile at location described in Rule 9134(b). Service by overnight courier shall be accomplished by sending the papers through an overnight courier service that generates a written confirmation of receipt or of attempts at delivery.

(e) Effective Date of Notice

A notice issued and served under this Rule shall become effective 20 days after the date of service of the notice.

9542. Hearing

(a) Request for Hearing

Within five days after the date of service of a notice issued under Rule 9541, the member or person served with such notice may file with the Office of Hearing Officers a written request for a hearing. The request shall state with specificity why the member or person believes that the notice should be set aside. The request for the hearing shall stay the effective date of the notice.

(b) Hearing Procedures

(1) Appointment of Hearing Panel

If a hearing is requested, based upon a notice issued under Rule 9541(a) or (b), the Chief Hearing Officer shall assign a Hearing Officer to preside over the matter, and appoint Panelists pursuant to Rules 9231 and 9232 to the Hearing Panel. As soon as practicable after the assignment, the Chief Hearing Officer shall serve the Parties with notice of the Hearing Panel.

(2) Appointment of a Hearing Officer

If a hearing is requested, based upon a notice issued under Rule 9541(c), the Chief Hearing Officer shall assign a Hearing Officer to conduct the hearing and decide whether the member should be canceled. As soon as practicable after the assignment, the Chief Hearing Officer shall serve the Parties with notice of the Hearing Officer.

(3) Parties

The Parties shall be the member or person to whom the notice was issued and the head of the department or office that issued the notice under Rule 9541.

(4) Time of Hearing

The hearing shall be held within 45 days after the date of service of the notice under Rule 9541. Not later than seven days before the hearing, the Hearing Officer shall serve the Parties with written notice of the date and time of the hearing.

(5) Transmission of Documents

Not later than seven days before the hearing, the head of the department or office that issued the notice under Rule 9541 shall serve the member or person associated with a member via overnight courier with all documents that were considered in connection with the decision to issue a notice under Rule 9541 and provide copies of the same to the Hearing Officer.

(6) Counsel

The Parties may be represented by counsel at a hearing conducted under this Rule.

(7) Evidence

Formal rules of evidence shall not apply to a hearing under this Rule. Not later than four days before the hearing, the Parties shall exchange copies of proposed hearing exhibits and witness lists and provide copies of the same to the Hearing Officer.

(8) Witnesses

A person who is subject to the

jurisdiction of the Association shall testify under oath or affirmation. The oath or affirmation shall be administered by a court reporter or a notary public.

(9) Additional Information

At any time during its consideration, the Hearing Officer may direct the Parties to submit additional information. Any additional information submitted shall be provided promptly to all Parties at least one business day before the Hearing Panel renders its decision.

(10) Transcript

The hearing shall be recorded and a transcript prepared by a court reporter. A Party may purchase a copy of the transcript from the court reporter at prescribed rates. A witness may purchase a copy of the transcript of his or her own testimony from the court reporter at prescribed rates. Proposed corrections to the transcript may be submitted by affidavit to the Hearing Officer within a reasonable time determined by the Hearing Officer. Upon notice to the participants in the hearing, the Hearing Officer may order corrections to the transcript as requested or sua sponte.

(11) Record

The record shall consist of all documents that were considered in connection with the decision to issue a notice under Rule 9541, the notice issued under Rule 9541, the request for hearing filed under Rule 9542, the transcript of the hearing, and each document or other item of evidence presented to or considered by the Hearing

Panel renders its decision. The Office of Hearing Officers shall be the custodian of the record.

(12) Failure to Appear at Hearing

If a member or person fails to appear at a hearing for which he has notice, the Hearing Officer may dismiss the request for a hearing as abandoned, and the notice issued under Rule 9541 shall become final. Upon a showing of good cause, the Hearing Officer may withdraw a dismissal entered pursuant to this subparagraph.

9543. Decision

(a) Failure to Provide Information

The Hearing Panel may impose any fitting sanction, including fines, suspension, expulsions and bars, based upon the failure to provide any information, report, material, data, or testimony requested or required to be filed pursuant to the NASD By-Laws or the Rules of the Association, or failure to keep a membership application or supporting documents current. The Hearing Panel shall prepare a proposed written decision, and if the Hearing Panel determines that a sanction should be imposed, the proposed written decision shall state the grounds for the sanction, and in the case of a suspension, the conditions for termination the suspension. A Party sanctioned under this Rule will have the right to

appeal such a decision to the National Adjudicatory Council and ultimately to the NASD Board, in accordance with the Rule 9300 Series. If not timely appealed or called for review, the majority decision shall constitute final disciplinary action of the Association for purposes of SEC Rule 19d-1(c)(1).

(b) Failure to Meet the Eligibility and Qualification Standards

The Hearing Officer may cancel the membership of any member who is ineligible for continuance in membership because it does not meet the eligibility and qualification standards set forth in Article III of the By-Laws. The Hearing Officer shall prepare a proposed written decision, and if the Hearing Officer determines that a cancellation should be imposed, the proposed written decision shall state the grounds for the cancellation. A member canceled under this Rule will have the right to appeal such a decision to the National Adjudicatory Council and ultimately to the NASD Board, in accordance with the Rule 9300 Series. If not timely appealed or called for review, the majority decision shall constitute final disciplinary action of the Association for purposes of SEC Rule 19d-1(c)(1).

9544. Defaults

Respondents may file motions for reinstatement with the head of the department that issued the original

pre-suspension notice under Rules 9541(a) or (b) within six months of the date of the original pre-suspension notice. If such a notion is filed, a Hearing Panel will be convened under Rule 9542, and the Hearing Panel may impose any fitting sanction. Respondents who are suspended pursuant to Rules 9541(a) or (b) and who fail to request hearing to challenge the suspensions within six months or receipt of the pre-suspension notice issued Rules 9541(a) or (b) will automatically be barred or expelled.

9545. Notice to Membership

The Association shall provide notice of a suspension, expulsion, cancellation, or bar under this Rule Series and the grounds therefor in the next membership supplement.

9546. Copies of Notices and Decisions to Member

A copy of a notice or decision under the Rule 9540 Series that is served on a person associated with a member shall be served on such member.

9547. Other Action Not Foreclosed

Action by the Association under the Rule 9540 Series shall not foreclose action by the Association under any other Rule.

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