

series of Prairie Funds reorganized into a corresponding series of The Woodward Funds. On September 21, 1996, Prairie Managed Assets Income Fund, Prairie Equity Income Fund, Prairie Special Opportunity Fund, Prairie International Bond Fund and Prairie Intermediate Municipal Bond Fund, each a series of Prairie Funds, reorganized into a corresponding series of The Woodward Funds. First Chicago NBD Corporation, the parent company of applicant's co-investment advisers, paid approximately \$1,888,347 in expenses related to the reorganization.

On July 15, 1996, Prairie Cash Management Fund, Prairie Treasury Prime Cash Management Fund, and Prairie U.S. Government Securities Cash Management Fund, each a series of Prairie Institutional Funds, reorganized into a corresponding series of The Woodward Funds. First Chicago NBD Corporation, the parent company of applicant's co-investment advisers, paid approximately \$995,137 in expenses related to the reorganization.

Filing Dates: Each application was filed on June 27, 1997, and amended on October 20, 1997, and November 14, 1997.

Applicants' Address: Three First National Plaza, Chicago, Illinois 60670. Target Income Fund, Inc. [File No. 811-6542]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. On March 13, 1997, applicant completed a liquidation and sale of all of its investment assets to Concord Growth Corporation, a commercial finance services firm unaffiliated with applicant. On April 3, 1997, applicant completed a tender offer where each shareholder received its pro rata share of the aggregate net asset value of applicant. Applicant paid approximately \$25,000 in expenses related to the liquidation.

Filing Dates: The application was filed on July 24, 1997, and amended on October 23, 1997.

Applicant's Address: 26691 Plaza Drive, Suite 222, Mission Viejo, CA 92691.

Neuberger & Berman Genesis Fund, Inc. [File No. 811-5562]

Neuberger & Berman Manhattan Fund, Inc. [File No. 811-1363]

Neuberger & Berman Partners Fund, Inc. [File No. 811-1601]

Neuberger & Berman Selected Sectors Fund, Inc. [File No. 811-691]

Summary: Each applicant requests an order declaring that it has ceased to be an investment company. On August 2, 1993, each applicant transferred its assets and liabilities to a new, identically named portfolio of the

Neuberger & Berman Equity Funds, based on the relative net asset value per share of each fund. The approximate expenses of each merger, which were shared by the transferring and acquiring funds, were as follows: Neuberger & Berman Genesis Fund, \$40,000; Neuberger & Berman Manhattan Fund, \$141,000; Neuberger & Berman Partners Fund, \$147,000; Neuberger & Berman Selected Sectors Fund, \$84,000. In effect, the shareholders of each applicant paid the expenses related to the transaction because the relevant acquiring fund had no assets or shareholders prior to the transaction and its shareholders therefore were substantially the same as applicants' shareholders.

Filing Dates: The applications were filed on April 1, 1996, and amended on October 23, 1996.

Applicants' Address: 605 Third Avenue, New York, NY 10158-3698.

JP Investment Grade Bond Fund, Inc. [File No. 811-3544]

JP Capital Appreciation Fund, Inc. [File No. 811-3543]

Summary: Each applicant seeks an order declaring that it has ceased to be an investment company. On December 20, 1996, each applicant sold substantially all of its assets to Oppenheimer Fund, Inc. All expenses of the sale were paid by Oppenheimer Fund, Inc. and the management of each applicant; shareholders paid no expenses in connection with the sale.

Filing Date: Both applications were filed on November 10, 1997.

Applicants' Address: 100 North Greene Street, Greensboro, North Carolina 27401.

Bankers National Variable Account C [File No. 811-4373]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. Applicant, a separate account organized as a unit investment trust, liquidated its holdings in Conseco Series Trust and made liquidating distributions to its security holders between December 10, 1991 and March 5, 1992. All expenses associated with Applicant's liquidation and dissolution were borne by Applicant's depositor.

Filing Dates: The application was filed on July 12, 1994, and amended and restated on October 15, 1997.

Applicant's Address: 11815 N. Pennsylvania Street, Carmel, IN 46032.

Jackson National Capital Management Funds [File No. 811-6611]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. On December 20,

1996, applicant distributed its assets to its public shareholders of record at the net asset value per share. On December 23, 1996, applicant distributed all remaining assets to Jackson National Life Insurance Company, the sole remaining shareholder of record. Applicant's liquidation expenses totaled approximately \$89,000 and were borne by Applicant's investment adviser.

Filing Dates: The application was filed on May 19, 1997, and amended on October 14, 1997.

Applicant's Address: 5901 Executive Drive, Lansing, Michigan 48911.

John Hancock Series, Inc. [File No. 811-5254]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. On December 2, 1996, applicant on behalf of its series John Hancock Emerging Growth Fund transferred all of its assets to a new, identically named series of John Hancock Series Trust ("Series Trust"), based on the relevant net asset value per share of each fund. Reorganization expenses of approximately \$225,106 were borne equally by applicant and the Series Trust.

Filing Date: The application was filed on July 7, 1997.

Applicant's Address: 101 Huntington Avenue, Boston, Massachusetts 02199-7603.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 97-31685 Filed 12-2-97; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-39350; File No. SR-NASD-97-81]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the National Association of Securities Dealers, Inc. Relating to Changes to the Rule 1010 Series, the Rule 8000 Series, and the Rule 9000 Series To Reflect Changes in the Corporate Organization of the National Association of Securities Dealers, Inc. and Its Subsidiaries

November 21, 1997.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on October 31, 1997, the National Association of Securities Dealers, Inc. ("NASD"), through its regulatory subsidiary NASD Regulation,

Inc. ("NASD Regulation" and collectively, the "Association") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by NASD Regulation.¹ The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Association is proposing to amend (a) Article V of the NASD Regulation By-Laws; (b) the Rule 1010 Series; (c) the Rule 8000 Series; (d) the Rule 9000 Series; and (e) certain other rules of the Association, generally to conform such rules to the corporate restructuring of the Association and to make clarifying and technical changes to such rules.

Below is the text of the proposed rule change. Proposed new language is in italics; proposed deletions are in brackets.

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BY-LAWS OF NASD REGULATION, INC.

Article V—National Adjudicatory Council

Sec. 5.1 Through 5.10

No change.

Sec. 5.11 The National Adjudicatory Council shall appoint a Review Subcommittee to determine whether disciplinary and membership proceeding decisions should be called for review by the National Adjudicatory Council under the Rules of the Association and to perform any other function authorized by the Rules of the Association. The Review Subcommittee shall be composed of no fewer than two and no more than four members of the National Adjudicatory Council. The number of Non-Industry members shall

¹ Amendment Nos. 1 and 2 to this proposed rule filing were filed on November 12, 1997 and November 18, 1997, respectively. The changes contained in these amendments have been included in this Notice. See Letter Amendment No. 1 from T. Grant Callery, Senior Vice President and General Counsel, NASD to Katherine A. England, Assistant Director, Division of Market Regulation, Commission dated November 12, 1997; Letter Amendment No. 2 from Alden S. Adkins, Vice President and General Counsel, NASD Regulation to Katherine A. England, Assistant Director, Division of Market Regulation, Commission dated November 18, 1997. Several additional technical amendments are also included in this Notice. Telephone conversation between Sharon Zakula, Office of General Counsel, NASD Regulation and Mandy S. Cohen, Office of Market Supervision, Commission (November 20, 1997).

equal or exceed the number of Industry members. At all meetings of the Review Subcommittee, a quorum for the transaction of business shall consist of not less than 50 percent of the members of the Review Subcommittee, including not less than 50 percent of the Non-Industry members.

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RULES OF THE ASSOCIATION

1000. MEMBERSHIP, REGISTRATION AND QUALIFICATION REQUIREMENTS

1010. Membership Proceedings

1011. Definitions

Unless otherwise provided, terms used in the Rule 1010 Series shall have the meaning as defined in Rule 0120.

(a) "Applicant"

No change;

(b) "Associated Person"

The term "Associated Person" means a natural person registered under the Rules of the Association or a sole proprietor, partner, officer, director, branch manager, or natural person occupying a similar status or performing similar functions who will be or is anticipated to be associated with the Applicant, or [any] a natural person engaged in the investment banking or securities business who will be or is anticipated to be directly or indirectly controlling or controlled by the Applicant, whether or not any such person is registered or exempt from registration under the NASD By-Laws or the Rules of the Association.

(c) "Department"

No change.

(d) "Director"

The term "Director" means a member of the NASD Regulation Board[, excluding the Chief Executive Officer of the NASD].

* * * * *

(I) "Subcommittee"

The term "Subcommittee" means a subcommittee of the National [Business Conduct Committee] *Adjudicatory Council* that is constituted pursuant to Rule 1015 to conduct a review of a Department decision issued under the Rule 1010 Series.

1012. General Provisions

(a) Service of Notices and Decisions; Filing by Applicant

No change.

(b) Ex Parte Communications

(1) Unless on notice and opportunity for an Applicant and Interested Association Staff to participate, or to the extent required for the disposition of ex parte matters as authorized by the Rules of the Association:

(A) an Applicant, a counsel or representative of an Applicant, or an Interested Association Staff shall not make or knowingly cause to be made an ex parte communication relevant to the merits of a membership proceeding under the Rule 1010 Series to a Governor, [a Director,] a member of the National [Business Conduct Committee] *Adjudicatory Council* or a Subcommittee thereof, or an Association employee who is participating or advising in a decision of such a person with respect to that proceeding; and

(B) a Governor, [a Director,] a member of the National [Business Conduct Committee] *Adjudicatory Council* or a Subcommittee thereof, or an Association employee who is participating or advising in the decision of such a person with respect to a membership proceeding shall not make or knowingly cause to be made to an Applicant, a counsel or representative of the Applicant, or an Interested Association Staff an ex parte communication relevant to the merits of that proceeding.

(2) A Governor, [a Director,] a member of the National [Business Conduct Committee] *Adjudicatory Council* or a Subcommittee thereof, or an Association employee participating or advising in the decision of such a person, who receives, makes, or knowingly causes to be made a communication prohibited by this paragraph shall place in the record of the membership proceeding:

(A) all such written communications; (B) memoranda stating the substance of all such oral communications; and (C) all written responses and memoranda stating the substance of all oral responses to all such communications.

(3) The prohibitions against ex parte communications shall become effective when Association staff has knowledge that an Applicant intends to file a written request for review by the National [Business Conduct Committee] *Adjudicatory Council* under Rule 1015.

(c) Recusal or Disqualification

A Governor[, a Director,] or a member of the National [Business Conduct Committee] *Adjudicatory Council* or a Subcommittee thereof shall not participate in a matter governed by the Rule 1010 Series as to which that person has a conflict of interest or bias, or if circumstances otherwise exist where his

or her fairness might reasonably be questioned. In such a case, the person shall recuse himself or shall be disqualified as follows:

(1) The Chair of the NASD Board shall have authority to direct the disqualification of a Governor, and [the Vice Chair] a majority of the Governors of the NASD Board excluding the Chair shall have authority to direct the disqualification of the Chair of the NASD Board.

(2) The Chair of the [NASD Regulation Board] National Adjudicatory Council shall have authority to direct the disqualification of a [Director] member of the Council or a member of a Subcommittee appointed pursuant to Rule 1015, and the Vice Chair of the [NASD Regulation Board] Council shall have authority to direct the disqualification of the Chair of the [NASD Regulation Board] National Adjudicatory Council.

(3) The Chair of the National Business Conduct Committee shall have authority to direct the disqualification of a member of the Committee or a member of a Subcommittee appointed pursuant to Rule 1015, and the Vice Chair of the Committee shall have authority to direct the disqualification of the Chair of the National Business Conduct Committee.]

[(d)] Separation of Review Functions

A Director shall not participate or advise in the decision of a Governor with respect to the review of a membership proceeding under the Rule 1010 Series, and a Governor shall not participate or advise in the decision of a Director with respect to the review of a membership proceeding under the Rule 1010 Series.]

[(e)](d) Computation of Time

No change.

1013. Application and Membership Interview

(a) Filing of Application

(1) No change.

(2) The second part of the application shall be filed with the Department of Member Regulation at the district office in the district in which the Applicant intends to have its principal place of business and shall include the following information and documents:

* * * * *

(C) [evidence of all registrations and licenses required by the Commission, state securities authorities, the Municipal Securities Rulemaking Board, the National Securities Clearing Corporation, and self-regulatory organizations, and] a copy of any

decision by a federal or state authority or self-regulatory organization taking permanent or temporary adverse action with respect to a registration or licensing determination regarding the Applicant or an Associated Person;

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1014. Department Decision

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(e) Service and Effectiveness of Decision

The Department shall serve its decision and the membership agreement on the Applicant in accordance with Rule 1012. The decision shall become effective upon service and shall remain in effect during the pendency of any review until a decision constituting final action of the Association is issued under Rule 1015 or 1016, unless otherwise directed by the National [Business Conduct Committee, the NASD Regulation Board] Adjudicatory Council, the NASD Board, or the Commission.

(f) Effectiveness of Restriction

A restriction imposed under this Rule shall remain in effect and bind the Applicant and all successors to the ownership or control of the Applicant unless:

- (1) removed or modified by the Department under Rule 1017;
- (2) removed or modified by a decision constituting final action of the Association issued under Rule 1015 or 1016; or
- (3) stayed by the National [Business Conduct Committee, the NASD Regulation Board] Adjudicatory Council, the NASD Board, or the Commission.

(g) Final Action

No change.

1015. Review by National [Business Conduct Committee] Adjudicatory Council

(a) [Request]Initiation of Review

(1) Request by Applicant

Within 25 days after service of a decision under Rule 1014, 1017, or 1018, an Applicant may file a written request for review with the National [Business Conduct Committee] Adjudicatory Council. A request for review shall state with specificity why the Applicant believes that the Department's decision is inconsistent with the membership standards set forth in Rule 1014, or otherwise should be set aside, and state whether a hearing is requested. The Applicant simultaneously shall send by first-class mail a copy of the request to the district

office where the Applicant filed its membership application.

(2) Notice of National Adjudicatory Council

A decision issued under Rule 1014, 1017, or 1018 shall be subject to a call for review by any member of the National Adjudicatory Council or the Review Subcommittee defined in Rule 9120 within 30 days after service of the decision. If the National Adjudicatory Council calls a decision for review, a written notice of review shall be served promptly on the Applicant by first-class mail. The written notice of review shall state the specific grounds for the review and whether a hearing is directed. If a decision is called for review by any member of the National Adjudicatory Council or the Review Subcommittee the decision shall be reviewed by the National Adjudicatory Council. The National Adjudicatory Council simultaneously shall send by first-class mail a copy of the notice to the district office where the Applicant filed its membership application.

(b) Transmission of Documents

Within ten days after receipt of a request for or notice of review, the Department shall:

- (1) transmit to the National [Business Conduct Committee] Adjudicatory Council copies of all documents that were considered in connection with the Department's decision and an index to the documents; and
- (2) serve on the Applicant a copy of such documents (other than those documents originally submitted by Applicant) and a copy of the index.

(c) Membership Application Docket

The Department shall promptly record in the Association's membership application docket each request for or notice of review filed with the National [Business Conduct Committee] Adjudicatory Council under this Rule and each material subsequent event, filing, and change in the status of a membership proceeding.

(d) Appointment of Subcommittee

The National [Business Conduct Committee] 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 [Business Conduct Committee] Adjudicatory Council. The remaining member or members shall be current or past Directors or past Governors.

(e) Powers of Subcommittee

If a hearing is requested *or directed*, the Subcommittee shall conduct the hearing. If a hearing is not requested, the Subcommittee may serve a notice directing that a hearing be held. If a hearing is not requested or directed, the Subcommittee shall conduct its review on the basis of the record developed before the Department and any written submissions made by the Applicant or the Department in connection with the request for review.

(f) Hearing

(1) Notice

If a hearing is requested or directed, the hearing shall be held within 45 days after the receipt of the request or service of the notice by the National [Business Conduct Committee] *Adjudicatory Council*. The National [Business Conduct Committee] *Adjudicatory Council* shall send written notice of the date and time of the hearing to the Applicant by facsimile or commercial courier not later than 14 days before the hearing.

(2) Counsel

No change.

(3) Evidence

Formal rules of evidence shall not apply to a hearing under this Rule. Not later than five days before the hearing, the Applicant and the Department shall exchange copies of their proposed hearing exhibits and witness lists and provide copies of the same to the National [Business Conduct Committee] *Adjudicatory Council*. If the Applicant or the Department fails to provide copies of its proposed hearing exhibits or witness list within such time, the Subcommittee shall exclude the evidence or witnesses from the proceeding, unless the Subcommittee determines that good cause is shown for failure to comply with the production date set forth in this subparagraph.

(4) Transcript

No change.

(5) Failure to Appear at Hearing

If an Applicant fails to appear at a hearing for which it has notice, the National [Business Conduct Committee] *Adjudicatory Council* may dismiss the request for review as abandoned, and the decision of the Department shall become the final action of the Association. Upon a showing of good cause, the National [Business Conduct Committee] *Adjudicatory Council* may withdraw a dismissal entered pursuant to this subparagraph.

(g) Additional Information, Briefs

At any time during its consideration, the Subcommittee of the National [Business Conduct Committee] *Adjudicatory Council* may direct the Applicant or the Department to submit additional information and to file briefs. Any additional information or brief submitted shall be provided to all parties before the National [Business Conduct Committee] *Adjudicatory Council* renders its decision.

(h) Subcommittee Recommendation

The Subcommittee shall present a recommended decision in writing to the National [Business Conduct Committee and all other Directors] *Adjudicatory Council* within 60 days after the date of the hearing held pursuant to paragraph (f), and not later than seven days before the meeting of the National [Business Conduct Committee] *Adjudicatory Council* at which the membership proceeding shall be considered.

(i) Decision

(1) Proposed Written Decision

After considering all matters presented in the review and the Subcommittee's recommended written decision, the National [Business Conduct Committee] *Adjudicatory Council* may affirm, modify, or reverse the Department's decision or remand the membership proceeding with instructions. The National [Business Conduct Committee] *Adjudicatory Council* shall prepare a proposed written decision pursuant to subparagraph (2).

(2) Contents

No change.

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

The National [Business Conduct Committee] *Adjudicatory Council* shall provide its proposed written decision to the NASD [Regulation Board, and, if such decision is not called for review by the NASD Regulation Board, to the NASD Board. The NASD Regulation] *Board*. The NASD Board may call the membership proceeding for review pursuant to Rule 1016[(a). The]. *If the NASD Board [may] does not call the membership proceeding for review [pursuant to Rule 1016(b). If neither the NASD Regulation Board nor the NASD Board calls the membership proceeding for review], the proposed written decision of the National [Business Conduct Committee] Adjudicatory Council shall become final. The National [Business Conduct Committee] Adjudicatory Council shall serve the*

Applicant with a written notice specifying the date on which the call for review period expired and stating that the final written decision will be served within 15 days after such date. The National [Business Conduct Committee] *Adjudicatory Council* shall serve its final written decision within 15 days after the date on which the call for review period expired. The decision shall constitute the final action of the Association for purposes of SEC Rule 19d-3, unless the National [Business Conduct Committee] *Adjudicatory Council* remands the membership proceeding.

(4) Failure To Issue Decision

If the National [Business Conduct Committee] *Adjudicatory Council* fails to serve its final written decision within the time prescribed in subparagraph (3), the Applicant may file a written request with the NASD Board requesting that the NASD Board direct the National [Business Conduct Committee] *Adjudicatory Council* to serve its decision immediately or to show good cause for an extension of time. Within seven days after receipt of such a request, the NASD Board shall direct the National [Business Conduct Committee] *Adjudicatory Council* to serve its written decision immediately or to show good cause for an extension of time. If the National [Business Conduct Committee] *Adjudicatory Council* shows good cause for an extension of time, the NASD Board may extend the 15 day time limit by not more than 15 days.

1016. Discretionary Review by [Boards] *NASD Board*

[(a) Discretionary Review by the NASD Regulation Board

(1) Call For Review By Director

A Director may call a membership proceeding for review by the NASD Regulation Board if the call for review is made within the period prescribed in paragraph (2).

(2) Seven Day Period; Waiver

After receiving the proposed written decision of the National Business Conduct Committee pursuant to Rule 1015, a Director shall have not less than seven days to determine if the membership proceeding should be called for review. A Director shall call a membership proceeding for review by notifying the General Counsel of NASD Regulation. By a unanimous vote of the NASD Regulation Board, The NASD Regulation Board may shorten the period to less than seven days. By an affirmative vote of the majority of the NASD Regulation Board then in office,

the NASD Regulation Board may, during the seven day period, vote to extend the period to more than seven days.

(3) Review at Next Meeting

If a Director calls a membership proceeding for review within the time prescribed in subparagraph (2), the NASD Regulation Board shall review the membership proceeding not later than the next meeting of the NASD Regulation Board. The NASD Regulation Board may direct the Applicant and the Department to file briefs in connection with review proceedings pursuant to this paragraph.

(4) Decision of NASD Regulation Board, Including Remand

After review, the NASD Regulation Board may affirm, modify, or reverse the proposed written decision of the National Business Conduct Committee. Alternatively, the NASD Regulation Board may remand the membership proceeding with instructions. The NASD Regulation Board shall prepare a proposed written decision that includes all of the elements described in Rule 1015(i)(2).

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

The NASD Regulation Board shall provide its proposed written decision to the NASD Board. The NASD Board may call the membership proceeding for review pursuant to paragraph (b). If the NASD Board does not call the membership proceeding for review, the proposed written decision of the NASD Regulation Board shall become final. The NASD Regulation Board shall serve the Applicant with a written notice specifying the date on which the call for review period expired and stating that a final written decision will be served within 15 days after such date. The NASD Regulation Board shall serve its final written decision within 15 days after the date on which the call for review period expired. The decision shall constitute the final action of the Association for purposes of SEC Rule 19d-3, unless the NASD Regulation Board remands the membership proceeding.

(6) Failure To Issue Decision

If the NASD Regulation Board fails to serve its final written decision within the time prescribed in subparagraph (5), the Applicant may file a written request with the NASD Board requesting that the NASD Board direct the NASD Regulation Board to serve its decision immediately or to show good cause for an extension of time. Within seven days after receipt of such a request, the NASD

Board shall direct the NASD Regulation Board to serve its written decision immediately or to show good cause for an extension of time. If the NASD Regulation Board shows good cause for an extension of time, the NASD Board may extend the 15 day time limit by not more than 15 days.]

[(b) Discretionary Review by the NASD Board]

[(1)](a) Call for Review by Governor

A Governor may call a membership proceeding for review by the NASD Board if the call for review is made within the period prescribed in subparagraph (2).

[(2) Seven Day Period; Waiver](b) 15 Day Period; Waiver

[(A) Membership Proceeding Called for Review by NASD Regulation Board]

If the NASD Regulation Board reviewed the membership proceeding under paragraph (a), a Governor shall make his or her call for review at the next meeting of the NASD Board that is at least [seven] 15 days after the date on which the NASD Board receives the proposed written decision of the *National Adjudicatory Council* [NASD Regulation Board].

[(B) Membership Proceeding Not Called For by NASD Regulation Board]

If no Director of the NASD Regulation Board called the membership proceeding for review under paragraph (a), a Governor shall make his or her call for review at the next meeting of the NASD Board that is at least seven days after the date on which the NASD Board receives the proposed written decision of the National Business Conduct Committee.]

[(C) Waiver]

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

[(3)](c) Review At Next Meeting

If a Governor calls a membership proceeding for review within the time prescribed in [subparagraph (2)] *paragraph (b)*, the NASD Board shall review the membership proceeding not later than the next meeting of the NASD Board. The NASD Board may order the Applicant and the Department to file

briefs in connection with review proceedings pursuant to this paragraph.

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

After review, the NASD Board may affirm, modify, or reverse [:(1)] the proposed written decision of the [NASD Regulation Board, or (2) if the NASD Regulation Board did not call the membership proceeding for review under paragraph (a), the proposed written decision of the National Business Conduct Committee] *National Adjudicatory Council*. Alternatively, the NASD Board may remand the membership proceeding with instructions. The NASD Board shall prepare a written decision that includes all of the elements described in Rule 1015(i)(2).

[(5)](e) Issuance of Decision

The NASD Board shall serve its written decision on the Applicant within 15 days after the meeting at which it conducted its review. The decision shall constitute the final action of the Association for purposes of SEC Rule 19d-3, unless the NASD Board remands the membership proceeding.

1017. Removal or Modification of Business Restriction

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(f) Service and Effectiveness of Decision

The Department shall serve its decision on the Applicant in accordance with Rule 1012. The decision shall become effective upon service and shall remain in effect during the pendency of any review until a decision constituting final action of the Association is issued under Rule 1015 or 1016, unless otherwise directed by the National [Business Conduct Committee, the NASD Regulation Board] *Adjudicatory Council*, the NASD Board, or the Commission.

(g) Request for Review; Final Action

An Applicant may file a written request for review of the Department's decision with the National [Business Conduct Committee] *Adjudicatory Council* pursuant to Rule 1015. The procedures set forth in Rule 1015 shall apply to such review, and the National [Business Conduct Committee's] *Adjudicatory Council's* decision shall be subject to discretionary review by [the NASD Regulation Board and] the NASD Board pursuant to Rule 1016. If the Applicant does not file a request for a review, the Department's decision shall constitute final action by the Association.

(h) Removal or Modification of Restriction on Department's Initiative

No change.

1018. Change in Ownership, Control, or Operations

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(h) Service and Effectiveness of Decision

The Department shall serve its decision on the Applicant in accordance with Rule 1012. The decision shall become effective upon service and shall remain in effect during the pendency of any review until a decision constituting final action of the Association is issued under Rule 1015 or 1016, unless otherwise directed by the National [Business Conduct Committee, the NASD Regulation Board] *Adjudicatory Council*, the NASD Board, or the Commission.

(i) Request for Review; Final Action

An Applicant may file a written request for review of the Department's decision with the National [Business Conduct Committee] *Adjudicatory Council* pursuant to Rule 1015. The procedures set forth in Rule 1015 shall apply to such a review, and the National [Business Conduct Committee's] *Adjudicatory Council's* decision shall be subject to discretionary review by [the NASD Regulation Board and] the NASD Board pursuant to Rule 1016. If the Applicant does not file a request for review, the Department's action shall constitute the final action of the Association.

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[4615. Automated Submission of Trading Data Requested by Association

(a) A member shall submit the trade data specified below in automated format as may be prescribed by the Association from time to time. This information shall be supplied with respect to any transaction or transactions that are the subject of a request for information made by the Association.

(1) If the transaction was a proprietary transaction effected or caused to be effected by the member for any account in which such member, or person associated with a member, is directly or indirectly interested, such member shall submit or cause to be submitted the following information:

(A) Clearing house number, or alpha symbol as used by the member submitting the data;

(B) Clearing house number(s) or alpha symbol(s) as may be used from time to time, of the member(s) on the opposite side of the transaction;

(C) Identifying symbol assigned to the security;

(D) Date transaction was executed;

(E) Number of shares, or quantity of bonds or options contracts for each specific transaction and whether each transaction was a purchase, sale, short sale, or if an options contract, whether open long or short or close long or short;

(F) Transaction price;

(G) Account number; and

(H) Market center where transaction was executed.

(2) If the transaction was effected or caused to be effected by the number for any customer account, such member shall submit or cause to be submitted the following information:

(A) The data described in subparagraphs (1)(A) through (H) above; and

(B) Customer name, address(es) branch office number, registered representative number, whether order was solicited or unsolicited, date account opened and employer name and the tax identification number(s).

(C) If transaction was effected for another member whether the other member was acting as principal or agent on the transaction or transactions that are the subject of the Association's request.

(3) In addition to the above trade data, a member shall submit such other information in such automated format as may from time to time be required by the Association.

(4) The Association may grant exceptions from the requirement that the data prescribed in subparagraphs (1) and (2) above be submitted to the Association in an automated format, in such cases and for such time periods as it deems appropriate.]

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[5107. Automated Submission of Trading Data

Every Association member and approved affiliate that participates in Nasdaq International as a Service market maker or an order-entry firm shall submit to the Association the trade data specified below in automated format as may be prescribed by the Association from time to time. This information shall be supplied with respect to any transaction or transactions that are the subject of a request for information made by the Association. As used in paragraphs (a) through (d) hereof, the terms "participating firm" and "firm" include both Association members and approved affiliates that utilize the Service.

(a) If the transaction was a proprietary transaction effected or caused to be

effected by the participating firm for any account in which such firm, or person associated with the firm, is directly or indirectly interested, the participating firm shall submit or cause to be submitted the following information:

(1) Clearing house number, or alpha symbol as used by the participating firm submitting the data;

(2) Clearing house number(s), or alpha symbol(s) as may be used from time to time, of the participating firm on the opposite side of the transaction;

(3) Identifying symbol assigned to the security;

(4) Date transaction was executed;

(5) Number of shares, ADRs, units, warrants or rights for each specific transaction and whether each transaction was a purchase, sale, or short sale;

(6) Transaction price;

(7) Account number; and

(8) Market center where transaction was executed.

(b) If the transaction was effected or caused to be effected by the participating firm for any customer account, such firm shall submit or cause to be submitted the following information:

(1) The data described in subparagraphs (1) through (8) of paragraph (a);

(2) Customer name, address(es), branch office number, registered representative number; whether order was solicited or unsolicited, date account opened and employer name, and the tax identification number(s); and

(3) If the transaction was effected for another Association member or participating firm, whether the other party was acting as principal or agent on the transaction or transactions that are the subject of the Association's request.

(c) In addition to the above trade data, a participating firm shall submit such other information in such automated format as may from time to time be required by the Association.

(d) The Association may grant exceptions from the requirement that the data prescribed in paragraphs (a) and (b) above be submitted to the Association in an automated format, in such cases and for such time periods as it deems appropriate.]

* * * * *

[6730. Automated Submission of Trade Data

Each member shall submit the trade data specified in Rule 4615 in automated format as may be prescribed by the Association from time to time with respect to any transaction or transactions involving non-Nasdaq

securities that are the subject of a request for information made by the Association.]

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Investigations and Sanctions

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8000. INVESTIGATIONS AND SANCTIONS

8100. GENERAL PROVISIONS

8110. Availability of Manual to Customers

[Every member of the Association shall keep in its main office and each of its branch offices] *Members shall keep and maintain* a current copy of the [Association's Manual and all amendments to it. Upon request, a member shall make the Manual and amendments available to any customer for examination.] *NASD Manual in a readily accessible place and shall make it available for examination by customers upon request.*

8120. Definitions

No change

²This table of contents is provided for convenience only, and is not a part of the amended Rules of the Association submitted for approval in this rule filing.

8200. INVESTIGATIONS

8210. Provision of Information and Testimony and Inspection and Copying of Books

* * * * *

(d) [Receipt of] Notice

A notice under this Rule shall be deemed [to have been] received by the member or person to whom it is directed by [the mailing thereof to the mailing or otherwise transmitting the notice to the last known business address of [such] the member or the last known residential address of the person as reflected in the Central Registration Depository[, unless]. If the Adjudicator or Association staff responsible for [serving] mailing or otherwise transmitting the notice to the member or [associated] person has actual knowledge that the address in the Central Registration Depository is out of date[. In such case,] or inaccurate, then a copy of the notice shall be [served on the member at its last known address, or in the case of an associated person, at the associated person's] mailed or otherwise transmitted to: (1) the last known business address of the member or the last known residential address [and] of the [business address] person as reflected in the Central Registration Depository [of the member with which the person is employed or affiliated], and (2) any other more current address of the member or the person known to the Adjudicator or Association staff who is responsible for mailing or otherwise transmitting the notice.

* * * * *

8211. Automated Submission of Trading Data Requested by the Association

(a) A member shall submit the trade data specified below in automated format as may be prescribed by the Association from time to time. This information shall be supplied with respect to any transaction or transactions that are the subject of a request for information made by the Association.

(b) If the transaction was a proprietary transaction effected or caused to be effected by the member for any account in which such member, or person associated with a member, is directly or indirectly interested, such member shall submit or cause to be submitted the following information:

(1) Clearing house number, or alpha symbol as used by the member submitting the data;

(2) Clearing house number(s), or alpha symbol(s) as may be used from time to time, of the member(s) on the opposite side of the transaction;

(3) Identifying symbol assigned to the security;

(4) Date transaction was executed;

(5) Number of shares, or quantity of bonds or options contracts for each specific transaction and whether each transaction was a purchase, sale, short sale, or, if an options contract, whether open long or short or close long or short;

(6) Transaction price;

(7) Account number; and

(8) Market center where transaction was executed.

(c) If the transaction was effected or caused to be effected by the member for any customer account, such member shall submit or cause to be submitted the following information:

(1) The data described in

subparagraphs (b) (1) through (8) above;

(2) The customer name, address(es), branch office number, registered representative number, whether order was solicited or unsolicited, date account opened, employer name, and the tax identification number(s); and

(3) If the transaction was effected for another member, whether the other member was acting as principal or agent.

(d) In addition to the above trade data, a member shall submit such other information in such automated format as may from time to time be required by the Association.

(e) Pursuant to the Rule 9600 Series, the Association may exempt a member from the requirement that the data prescribed in paragraphs (b) through (d) above be submitted to the Association in an automated format for good cause shown.

8212. Automated Submission of Trading Data for the Nasdaq International Service Requested by the Association

(a) Every Association member and approved affiliate that participates in the Nasdaq International Service as defined in the Rule 5100 Series ("Nasdaq International") as a Service market maker or an order-entry firm shall submit to the Association the trade data specified below in automated format as may be prescribed by the Association from time to time. This information shall be supplied with respect to any transaction or transactions that are the subject of a request for information made by the Association. In this rule the terms "participating firm" and "firm" include both Association members and approved affiliates that utilize the Service.

(b) If the transaction was a proprietary transaction effected or caused to be effected by the participating firm for any account in which such firm, or person

associated with the firm, is directly or indirectly interested, the participating firm shall submit or cause to be submitted the following information:

(1) Clearing house number, or alpha symbol as used by the participating firm submitting the data;

(2) Clearing house number(s), or alpha symbol(s) as may be used from time to time, of the participating firm on the opposite side of the transaction;

(3) Identifying symbol assigned to the security;

(4) Date transaction was executed;

(5) Number of shares, ADRs, units, warrants or rights for each specific transaction and whether each transaction was a purchase, sale or short sale;

(6) Transaction price;

(7) Account number; and

(8) Market center where transaction was executed.

(c) If the transaction was effected or caused to be effected by the participating firm for any customer account, such firm shall submit or cause to be submitted the following information:

(1) The data described in subparagraphs (b)(1) through (8);

(2) Customer name, address(es), branch office number, registered representative number, whether order was solicited or unsolicited, date account opened and employer name, and the tax identification number(s); and

(3) If the transaction was effected for another Association member or participating firm, whether the other party was acting as principal or agent on the transaction or transactions that are the subject of the Association's request.

(d) In addition to the above trade data, a participating firm shall submit such other information in such automated format as may from time to time be required by the Association.

(e) Pursuant to the Rule 9600 Series, the Association may exempt a person from the requirement that the data prescribed in paragraphs (b) through (d) above be submitted to the Association in an automated format for good cause shown.

8213. Automated Submission of Trading Data for Non-Nasdaq Securities Requested by the Association

Each member shall submit trade data specified in Rule 8211 in automated format as may be prescribed by the Association from time to time with respect to any transaction or transactions involving non-Nasdaq securities as defined in the rule 6700 Series that are the subject of a request

for information made by the Association. Pursuant to the Rule 9600 Series, the Association may exempt a member from the requirement that the data prescribed in paragraphs (b) through (d) of Rule 8211 be submitted to the Association in an automated format for good cause shown.

8220. Suspension for 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 National [Business Conduct Committee] *Adjudicatory Council* 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 from 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 National [Business Conduct Committee] *Adjudicatory Council* 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 National [Business Conduct Committee] *Adjudicatory Council* shall serve the member of *person* associated [person] *with a member* with such notice via personal service or commercial courier.

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 [person] *with a member* served with a notice under Rule 8221(c) may file with the National [Business Conduct Committee] *Adjudicatory Council* a written request for an expedited hearing before a subcommittee of the National [Business Conduct Committee] *Adjudicatory Council*. The request shall state with specificity why the member

or associated person believes that there are insufficient grounds for suspension or any other reason for setting aside the notice issued by the National [Business Conduct Committee] *Adjudicatory Council*.

(b) Hearing Procedures

(1) Appointment of Subcommittee

If a hearing is requested, the National [Business Conduct Committee] *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 [person] *with a member* should be suspended. The subcommittee shall be composed of a member of the National [Business Conduct Committee] *Adjudicatory Council* and one or more [current or past] *former* members of the NASD Regulation Board and the NASD Board.

(2) Time of Hearing

The hearing shall be held within 20 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 [person] *with a member* with written notice of the date and time of the hearing via commercial courier or facsimile and notify the appropriate department or office of NASD Regulation of the date and time of the hearing. The appropriate department or office of NASD Regulation (hereinafter "appropriate department or office" in the Rule 8220 Series) shall be the department or office that issued the request for the information, report, material, data, or testimony that the member or associated person failed to provide, or in the case of a member that failed to keep its membership application or supporting documents current, the Department of Member Regulation.

(3) Transmission of Documents

Not later than seven days before the hearing, the subcommittee shall serve the member or *person* associated [person] *with a member* via commercial courier with all documents that were considered in connection with the National [Business Conduct Committee's] *Adjudicatory Council's* decision to issue a notice under Rule 8221.

(4) Counsel

The member or *person* associated [person] *with a member* and the appropriate department or office 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 [person] *with a member* and the appropriate department or office 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 [person] *with a member* or the appropriate department or office to submit additional information. Any additional information submitted shall be provided to all parties before the subcommittee renders its decision.

(8) Transcript

The hearing shall be recorded and a transcript prepared by a court reporter. The member or *person* associated [person] *with a 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.

(9) Record

The record shall consist of all documents that were considered in connection with the National [Business Conduct Committee's] *Adjudicatory Council's* decision to issue a notice under Rule 8221, the notice issued under Rule 8221, the request for hearing filed under Rule 8222, the transcript of the hearing, and each document or other item of evidence presented to or considered by the Subcommittee. The Office of the General Counsel of NASD Regulation shall be the custodian of the record.

(10) Failure to Appear at Hearing

If a member or *person* associated [person] *with a member* fails to appear at a hearing for which it has notice, the subcommittee may dismiss the request for a hearing as abandoned, and the notice of the National [Business Conduct Committee] *Adjudicatory Council* issued under Rule 8221 shall

become the final action of the Association. Upon a showing of good cause, the subcommittee may withdraw a dismissal entered pursuant to this subparagraph.

8223. Decision

(a) Subcommittee

No change.

(b) NASD Board of Governors

(1) Call for Review by Governor

No change.

(2) Review and Decision

If a Governor calls the suspension proceeding for review within the time prescribed in subparagraph (1), the NASD Board of Governors shall conduct a review not later than its next meeting. The NASD Board of Governors may affirm, modify, or reverse the decision of the subcommittee. Not later than seven days after the NASD Board of Governors meeting, the NASD Board of Governors shall serve a final written decision on the member or *person* associated [person] *with a member* via commercial courier or facsimile. The decision shall state the disposition of the suspension 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 suspended member or *person* associated [person] *with a member* may file a written request for termination if 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 appropriate department or office. The head of the appropriate department or office shall respond to the request in writing within five days after receipt of the request. If the head of the appropriate department or office grants the request, he or she shall serve the member or *person* associated [person] *with a member* with written notice of the termination of the suspension via commercial courier or facsimile. If the head of the department or office denies the request, the suspended member or *person* associated [person] *with a member* may file a written request for relief with the National [Business Conduct Committee] *Adjudicatory Council*. The National [Business Conduct Committee] *Adjudicatory Council* shall respond to the request in writing within ten days after receipt of the request. The National [Business Conduct Committee]

Adjudicatory Council's response shall be served on the member or *person* associated [person] *with a member* via commercial courier or facsimile.

8226. Copies of Notices and Decisions to Member

No change.

8227. Other Action Not Foreclosed

No change.

8300. SANCTIONS

8310. Sanctions for Violation of the Rules

(a) Imposition of Sanction

After compliance with the Rule 9000 Series, the Association may impose one or more of the following sanctions on a member or *person* associated [person] *with a member* for each violation of the federal securities laws, rules or regulations thereunder, the rules of the Municipal Securities Rulemaking Board, or Rules of the Association, or may impose one or more of the following sanctions on a member or *person* associated [person] *with a member* for any neglect or refusal to comply with an order, direction, or decision issued under the Rules of the Association:

(1) censure member or person associated with a member;

(2) impose a fine upon a member or person associated with a member;

(3) suspend the membership of a member or suspend the registration of a person associated with a member for a definite period or a period contingent on the performance of a particular act;

(4) expel a member, cancel the membership of a member, or revoke or cancel the registration of a person associated with a member;

(5) suspend or bar a member or person associated with a member from association with all members; or

(6) impose any other fitting sanction.

(b) Assent To Sanction

Each party to a proceeding resulting in a sanction shall be deemed to have assented to the imposition of the sanction unless such party files a written application for appeal, review, or relief pursuant to the Rule 9000 Series.

IM-8310-1. Effect of a Suspension, Revocation, Cancellation, or Bar

If the Association or the Commission issues an order that imposes a suspension, revocation, or cancellation of the registration of a person associated with a member or bars a person from further association with any member, a member shall not allow such person to remain associated with it in any

capacity, including a clerical or ministerial capacity. If the Association or the commission suspends a person associated with a member, the member also shall not pay or credit any salary, or any commission, profit, or other remuneration that results directly or indirectly from any securities transaction, that the *person* associated [person] with a member might have earned during the period of suspension.

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³This table of contents is provided for convenience only, and is not a part of the amended Rules of the Association submitted for approval in this rule filing.

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9000. CODE OF PROCEDURE

9100. Application and Purpose

9110. Application

No change.

9120. Definitions

(a) "Adjudicator"

The term "Adjudicator" means: (1) a body, board, committee, group, or natural person that presides over a proceeding and renders a decision; (2) a body, board, committee, group, or natural person that presides over a proceeding and renders a recommended or proposed decision which is acted upon by an Adjudicator described in (1); or (3) a natural person who serves on a body, board, committee, or group described in (1) or (2). The term includes a Review Subcommittee as defined in paragraph (z), a Subcommittee as defined in paragraph (bb), an Extended Proceeding Committee as defined in paragraph [(k)](l), and a Statutory Disqualification Committee as defined in paragraph [(y)](aa).

* * * * *

(d) "Counsel to the National [Business Conduct Committee] Adjudicatory Council"

The term "Counsel to the National [Business Conduct Committee] Adjudicatory Council" means an attorney of the Office of the General Counsel of NASD Regulation who is responsible for advising the National [Business Conduct Committee] Adjudicatory Council, the Review Subcommittee, a Subcommittee, or an Extended Proceeding Committee regarding a disciplinary proceeding on appeal or review before the National [Business Conduct Committee.] Adjudicatory Council.

(e) "Department of Enforcement"

The term "Department of Enforcement" means the Department of Enforcement or its delegatee, the Department of Market Regulation, except that the term excludes the Department of Market Regulation with respect to the actions of: (1) authorizing a complaint under Rule 9211; (2) determining the terms of a letter of acceptance, waiver, and consent or the terms of a minor rule violation plan letter under Rule 9216; (3) determining whether to contest an offer of settlement

under Rule 9270; and (4) authorizing the filing of an appeal under Rule 9311.

(f) "Director"

The term "Director" means a member of the Board of Directors of NASD Regulation[, excluding the Chief Executive Officer of the NASD.].

[(f)](g) "District Committee"

The term "District Committee" means a district committee elected pursuant to the NASD Regulation By-Laws or a resolution of the NASD Regulation Board.

[(g)](h) "Document"

The term "Document" means a writing, drawing, graph, chart, photograph, recording, or any other data compilation, including data stored by computer, from which information can be obtained.

[(h)](i) "Extended Hearing"

The term "Extended Hearing" means a disciplinary proceeding described in Rule 9231(c).

[(i)](j) "Extended Hearing Panel"

The term "Extended Hearing Panel" means an Adjudicator that is constituted under Rule 9231(c) to conduct a disciplinary proceeding that is classified as an "Extended Hearing" and is governed by the Rule 9200 Series.

[(j)](k) "Extended Proceeding"

The term "Extended Proceeding" means a disciplinary proceeding described in Rule 9331(a)(2).

[(k)](l) "Extended Proceeding Committee"

The term "Extended Proceeding Committee" means an appellate Adjudicator that is [appointed by the National Business Conduct Committee and] constituted under Rule 9331[(a)(2)] to participate in the National [Business Conduct Committee's] Adjudicatory Council's consideration of a disciplinary proceeding that is classified as an "Extended Proceeding" and governed by the Rule 9300 Series.

[(l)](m) "General Counsel"

The term "General Counsel" means the General Counsel of NASD Regulation, or his or her delegatee, who shall be a person who reports to the General Counsel of NASD Regulation and is an Associate General Counsel, an Assistant General Counsel, or a person who has substantially the same or equivalent duties and responsibilities as an Associate General Counsel or an Assistant General Counsel.

[(m)](n) "Governor"

The term "Governor" means member of the Board of Governors of the NASD.

[(n)](o) "Head of Enforcement"

The term "Head of Enforcement" means the individual designated by the President of NASD Regulation to manage the Department of Enforcement, or his or her delegatee in the Department of Enforcement.

(p)[(o)] "Hearing Officer"

The term "Hearing Officer" means an employee of NASD Regulation who is an attorney and who is appointed by the Chief Hearing Officer to act in a adjudicative role and fulfill various adjudicative responsibilities and duties in the Rule 9200 Series regarding disciplinary proceedings brought against members and associated persons.

[(p)](q) "Hearing Panel"

The term "Hearing Panel" means an Adjudicator that is constituted under Rule 9231 to conduct a disciplinary proceeding governed by the Rule 9200 Series or that is constituted under the Rule 9500 Series to conduct a proceeding.

[(q)](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) [a] an employee of the Department of Enforcement [employee] 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;
- (2) a proceeding under the Rule 9410 Series:

(A) the head of the Department of Member Regulation;

(B) a Department of Member Regulation employee who reports, directly or indirectly, to the head of the Department of Member Regulation;

(C) an Association employee who directly participated in the authorization of or the initial decision in the proceeding; or

(D) an Association employee who directly participated in an examination, investigation, prosecution, or litigation

related to a specific proceeding, and a district director or department head to whom such employee reports; or

(3) a proceeding under the Rule 9510 or 9520 Series:

(A) the head of the department or office that issues the notice or is designated as a Party;

(B) an Association employee who reports, directly or indirectly, to such person;

(C) an Association employee who directly participated in the initiation of the proceeding; or

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

[(r)](4) *a proceeding under the Rule 9600 Series:*

(A) *the head of the department or office that issues the decision granting or denying an exemption or is designated as a Party;*

(B) *an Association employee who reports, directly or indirectly, to such person;*

(C) *an Association employee who directly participated in the exemption proceeding; or*

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

(s) "Market Regulation Committee"

The term "Market Regulation Committee" means the committee of NASD Regulation designated to consider the federal securities laws and rules and regulations adopted thereunder and various Rules of the Association and policies relating to:

- (1) the quotations of securities;
- (2) the execution of transactions;
- (3) the reporting of transactions; and
- (4) trading practices, including rules prohibiting manipulation and insider trading, and those Rules designated as Trading Rules (Rule 3300 Series), the Nasdaq Stock Market Rules (Rule 4000 Series), other Nasdaq and NASD Market Rules (Rule 5000 Series), NASD Systems and Programs Rules (Rule 6000 Series), and Charges for Services and Equipment Rules (Rule 7000 Series).

[(s)](t) "NASD Board"

The term "NASD Board" means the Board of Governors of the NASD.

[(t)](u) "NASD Regulation Board"

The term "NASD Regulation Board" means the Board of Directors of NASD Regulation.

[(u)](v) "Panelist"

The term "Panelist" as used in the Rule 9200 Series, means a member of a Hearing Panel or Extended Hearing Panel who is not a Hearing Officer. As used in the Rule 9300 Series, the term means a current or former Director or a former Governor who is appointed to serve on a Subcommittee or an Extended Proceeding Committee.

[(v)](w) "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 a Respondent;

(2) in the Rule 9410 Series and the Rule 9520 Series, the Department of Member Regulation or

(A) a member that is the subject of a notice under Rule 9412;

(B) a member that is the subject of a notice or files an application under Rule 9522;

[or]

(3) in the Rule 9510 Series, the department or office designated under Rule 9514(b) or a member or person that is the subject of a notice under Rule 9512 or Rule 9513; or[.]

[(w)](4) *in the Rule 9600 Series, the department or office designated under Rule 9620 to issue the decision granting or denying an exemption or a member that seeks the exemption under Rule 9610.*

(x) "Primary District Committee"

The term "Primary District Committee" means, in a disciplinary proceeding under the Rule 9200 Series, the District Committee designated by the Chief Hearing Officer pursuant to Rule 9232 to provide one or more of the Panelists to a Hearing Panel or, if applicable, to an Extended Hearing Panel, for such disciplinary proceeding.

[(x)](y) "Respondent"

The term "Respondent" means, in a disciplinary proceeding governed by the Rule 9200 Series and in an appeal or review governed by the Rule 9300 Series, an NASD member or associated person against whom a complaint is issued.

(z) "Review Subcommittee"

The term "Review Subcommittee" means a body appointed by the National Adjudicatory Council pursuant to Article V of the NASD Regulation By-Laws.

(aa)[(y)] "Statutory Disqualification Committee"

The term "Statutory Disqualification Committee" means a Subcommittee of

the National [Business Conduct Committee] *Adjudicatory Council* [that is composed of current members of the NASD Regulation Board] that makes a recommended decision to grant or deny an application for relief from the eligibility requirements of the Association to the National [Business Conduct Committee] *Adjudicatory Council* pursuant to the Rule 9520 Series.

[(z)](bb) "Subcommittee"

The term "Subcommittee" means an Adjudicator that is [appointed by the National Business Conduct Committee]:

(1) constituted [by] *under* Rule 9331(a) to participate in the National [Business Conduct Committee's] *Adjudicatory Council's* consideration of *an appeal or a review* of a disciplinary proceeding pursuant to the Rule 9300 Series; [or]

(2) constituted under the Rule 9410 Series *or Rule 9630* to conduct a review proceeding.

* * * * *

9140. Proceedings

9141. Appearance and Practice; Notice of Appearance

(a) Representing Oneself

No change.

(b) Representing Others

A person shall not be represented before an Adjudicator, except as provided in this paragraph. Subject to the prohibitions of Rules 9150 and 9280, a person may be represented in any proceeding by an attorney at law admitted to practice before the highest court of any state of the United States, the District of Columbia, or any commonwealth, territory, or possession of the United States. A member of a partnership may represent the partnership; and a bona fide officer of a corporation, trust, or association may represent the corporation, trust, or association. When a person first makes any filing or otherwise appears in a representative capacity before an Adjudicator in a proceeding, that person shall file with the Adjudicator, and keep current[,] a *Notice of Appearance*. *The Notice of Appearance is a written notice stating the name of the proceeding; the representative's name, business address, and telephone number; and the name and address of the person or persons represented. Any individual appearing or practicing in a representative capacity before an Adjudicator may be required to file a power of attorney with the Adjudicator showing his or her authority to act in such capacity.*

9142. Withdrawal by Attorney or Representative

No change.

9143. Ex Parte Communications

(a) Prohibited Communications

Unless on notice and opportunity for all Parties to participate, or to the extent required for the disposition of ex parte matters as authorized by the Rule 9000 Series:

(1) No Party, or counsel to or representative of a Party, or Interested Association Staff shall make or knowingly cause to be made an ex parte communication relevant to the merits of a proceeding to [a Governor, a Director, or] an Adjudicator who is participating in a decision with respect to that proceeding, or to an Association employee who is participating or advising in the decision of [a Governor, a Director, or] an Adjudicator with respect to that proceeding; and

(2) No [Governor, Director, or] Adjudicator who is participating in a decision with respect to a proceeding, or no Association employee who is participating or advising in the decision of [a Governor, a Director, or] an Adjudicator with respect to a proceeding shall make or knowingly cause to be made to a Party, a counsel or representative to a Party, or Interested Association Staff an ex parte communication relevant to the merits of that proceeding.

(b) Disclosure of Prohibited Communication

[A Governor, a Director, or an] *An* Adjudicator who is participating in a decision with respect to a proceeding, or an Association employee who is participating or advising in the decision of [a Governor, a Director, or] an Adjudicator, who receives, makes, or knowingly causes to be made a communication prohibited by this Rule shall place in the record of the proceeding:

(1) all such written communications;
 (2) memoranda stating the substance of all such oral communications; and
 (3) all written responses and memoranda stating the substance of all oral responses to all such communications.

(c) Remedies

No change.

(d) Timing

No change.

(e) Waiver of Ex Parte Prohibition

No change.

9144. Separation of Functions

(a) Interested Association Staff

Except as counsel or a witness in a proceeding or as provided in the Rule 9400 Series, Interested Association Staff is prohibited from advising an Adjudicator regarding a decision or otherwise participating in a decision of an Adjudicator. An Adjudicator is prohibited from advising Interested Association Staff regarding a decision or otherwise participating in a decision of Interested Association Staff, including the decision to issue a complaint and a decision whether to appeal or cross-appeal a disciplinary proceeding to the National [Business Conduct Committee] *Adjudicatory Council*.

(b) Separation of Adjudicators

A Hearing Officer, including the Chief Hearing Officer, or a Panelist of a Hearing Panel or an Extended Hearing Panel, is prohibited from participating in: a decision whether to issue a complaint pursuant to Rule 9211; a decision whether to appeal or cross-appeal a disciplinary proceeding to the National [Business Conduct Committee] *Adjudicatory Council* pursuant to Rule 9311; and a discussion or decision relating to a call for review, a review, or an appeal pursuant to the Rule 9300 Series. [A Director] *Except for the Chair of the National Adjudicatory Council, a Governor* is prohibited from participating in a discussion or a decision relating to the above referenced acts with the *Review Subcommittee or the Adjudicators* referenced above, a Governor, or the NASD Board. A Governor is prohibited from participating in a discussion or a decision relating to the above referenced acts with the Adjudicators referenced above, a Director, or the NASD Regulation Board].

(c) Waiver of Prohibitions of Separation of Functions

No change.

9145. Rules of Evidence; Official Notice

No change.

9146. Motions

* * * * *

(j) Disposition of Procedural Motions; Disposition of Motions for Summary Disposition

(1) No change.

(2) In the Rule 9300 Series, a motion on a procedural matter may be decided by Counsel to the National [Business Conduct Committee, the Chair and the Vice Chair of the National Business Conduct Committee (or either one,

acting alone, in the event the other is recused or disqualified)] *Adjudicatory Council, the Review Subcommittee, a Subcommittee or, if applicable, an Extended Proceeding Committee, or the National [Business Conduct Committee] Adjudicatory Council*. A motion for disposition of a cause of action shall be decided by the National [Business Conduct Committee] *Adjudicatory Council*, except that a motion to dismiss a case for abandonment made under Rule 9344 may be decided by the [Chair and the Vice Chair of the National Business Conduct Committee (or either one, acting alone, in the event the other is recused or disqualified) or the National Business Conduct Committee.] *Review Subcommittee*.

(3) 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 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) If a protective order is granted, the order shall set forth the restrictions on use and disclosure of such Document or testimony. [A Hearing Officer] *An Adjudicator* does not have the authority to issue a protective order that would limit in any manner the use by the staff of the Association of such Documents or testimony in the Association staff's performance of their regulatory and self-regulatory responsibilities and

functions, including the transmittal, without restriction to the recipient, of such Documents or testimony to state, federal, or foreign regulatory authorities or other self-regulatory organizations. [A Hearing Officer] *An Adjudicator* does not have the authority to issue a protective order that purports to protect from production such Documents or testimony in the event that the Association is subject to a subpoena requiring that the Documents or testimony be produced.

(l) General

No change.

9147. Rulings on Procedural Matters

The NASD Board, the [NASD Regulation Board, the National Business Conduct Committee] *National Adjudicatory Council*, a Hearing Officer, or any other Adjudicator shall have full authority, except as otherwise provided by the Code, to rule on a procedural motion and any other procedural or administrative matter arising during the course of a proceeding conducted pursuant to the Code, subject to the rights of review or appeal provided by the Code.

9148. Interlocutory Review

No change.

9150. Exclusion From Rule 9000 Series Proceeding

(a) Exclusion

An Adjudicator may exclude an attorney for a Party or other person authorized to represent others by Rule 9141 from acting as counsel, acting in any representative capacity, or otherwise appearing in a particular Rule 9000 Series proceeding for contemptuous conduct under Rule 9280 or unethical or improper professional conduct in that proceeding. If an attorney for a Party, or other person authorized to represent others by Rule 9141, is excluded from a disciplinary hearing or conference, or any portion thereof, such attorney or person may seek review by the National [Business Conduct Committee] *Adjudicatory Council* of such exclusion under Rule 9280(c).

(b) Other Proceedings Not Precluded

No change.

9160. Recusal or Disqualification

No person shall participate as an Adjudicator in a matter governed by the Code as to which he or she has a conflict of interest or bias, or circumstances otherwise exist where his or her fairness might reasonably be

questioned. In any such case the person shall recuse himself or herself, or shall be disqualified as follows:

(a) NASD Board

The Chair of the NASD Board shall have authority to order the disqualification of a Governor, and [the Vice] *a majority of the NASD Board excluding the Chair of the NASD Board*, shall have authority to order the disqualification of the Chair [of the NASD Board;]:

[(b) NASD Regulation Board] *(b) National Adjudicatory Council, Review Subcommittee, or Certain Subcommittees*

[The Chair of the NASD Regulation Board] *The Chair of the National Adjudicatory Council* shall have authority to order the disqualification of *a member of the National Adjudicatory Council or the Review Subcommittee, a member of* [Director and the Vice Chair of the NASD Regulation Board shall have authority to order the disqualification of the Chair of the NASD Regulation Board;

(c) National Business Conduct Committee or Certain Subcommittees

The Chair of the National Business Conduct Committee shall have authority to order the disqualification of a member of the National Business Conduct Committee,] a Subcommittee appointed pursuant to the Rule 9410 Series or *The Rule 9600 Series*, a Hearing Panel appointed pursuant to the Rule 9520 Series, and the Statutory Disqualification Committee; and the Vice Chair of the National [Business Conduct Committee] *Adjudicatory Council* shall have the authority to order the disqualification of the Chair of the National [Business Conduct Committee;] *Adjudicatory Council*;

[(d)] *(c) Rule 9331 Subcommittee or Extended Proceeding Committee*

Disqualification of a Panelist of a Subcommittee or Extended Proceeding Committee appointed under the Rule 9300 Series shall be governed by Rule 9332;

[(e)] *(d) Rule 9514 Hearing Panel*

The NASD Regulation Board or Nasdaq Board shall have authority to order the disqualification of a member of a Hearing Panel appointed by such Board under Rule 9514(b).

[(f)] *(e) Panelist of Hearing Panel or Extended Hearing Panel*

Disqualification of a Panelist of a Hearing Panel or Extended Hearing

Panel appointed under the Rule 9200 Series shall be governed by Rule 9234;

[(g)] *(f) Hearing Officer*

Disqualification of a Hearing Officer of a Hearing Panel or an Extended Hearing Panel shall be governed by Rule 9233; and

[(h)] *(g) NASD Regulation Staff As Adjudicator*

The President of NASD Regulation shall have authority to order the disqualification of a member of the staff of the Department of Member Regulation participating in a Rule 9410 Series decision.

9200. DISCIPLINARY PROCEEDINGS

9210. Complaint and Answer

9211. [Issuance] *Authorization of Complaint*

(a) Complaint

(1) If the Department of Enforcement 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 may authorize [and issue a complaint as set forth in Rule 9212] *a complaint*.

(2) The NASD Regulation Board and the NASD Board each shall have the authority to direct the Department of Enforcement to *authorize and* 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.

[(3) At the time of authorization and issuance of a complaint, the Department of Enforcement 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(r), 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) 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 shall issue the complaint. Each complaint shall be in writing and signed by the Department of Enforcement. 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 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 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.

* * * * *

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

No change.

9214. Consolidation of Disciplinary Proceedings

(a) Initiated by Chief Hearing Officer

No change.

(b) Initiated by a Party

A Party may file a motion to consolidate two or more disciplinary proceedings if such consolidation would further the efficiency of the disciplinary process, if the subject complaints involve common questions of law or fact or one or more of the same Respondents, or if one or more of the factors favoring consolidation set forth in paragraph (a) appear to be present. If a Party moves to consolidate two or more disciplinary proceedings, the party shall file such motion, together with a copy of each relevant complaint and any answer thereto that has been filed, with the Office of Hearing Officers, and, pursuant to Rule 9133, shall serve the

same upon the Parties [pursuant to Rule 9133] in each of the cases proposed to be consolidated. The Parties shall have 14 days after service to file a response, stating any arguments in favor of or opposition to consolidation, and shall serve the response upon the Parties in each of the cases proposed to be consolidated. The Chief Hearing Officer shall issue an order approving or denying the request for consolidation.

(c) Impact on Hearing Panel or Extended Hearing Panel

No change.

9215. Answer to Complaint

(a) Form, Service, Notice

[Each] Pursuant to Rule 9133, each Respondent named in a complaint shall [answer and] serve an answer to the complaint on all other Parties within 25 days after service of the complaint on such Respondent [pursuant to Rule 9133], and at the time of service shall file such answer with the Office of Hearing Officers pursuant to Rule 9135, 9136 and 9137. The Hearing Officer assigned to a disciplinary proceeding pursuant to Rule 9213 may extend such period for good cause. Upon the Receipt of a Respondent's answer, the Office of Hearing Officers shall promptly send written notice of the receipt of such answer to all Parties.

* * * * *

(e) Extension of Time to Answer Amended Complaint

If a complaint is amended pursuant to Rule 9212(b), the time for filing an answer or amended answer shall be extended to 14 days after service of the amended complaint. If any Respondent has already filed an answer, such Respondent shall have [15] 14 days after service of the amended complaint, unless otherwise ordered by the Hearing Officer, within which to file an amended answer.

(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 [Hearing Officer shall order the] Department of Enforcement [to] shall send a second notice to such Respondent requiring an answer within 14 days after service of the second notice[, or within such longer period as the Hearing Officer in his or her discretion may order]. 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, to: (1) treat as admitted by the Respondent the allegations in the complaint; and (2) enter a default decision against the Respondent pursuant to Rule 9269. If no answer is filed with the Office of Hearing Officers within the time required [by the second notice], the allegations of the complaint may be considered admitted by such Respondent and a default decision may be issued by the Hearing Officer. A Respondent may, for good cause shown, move the National [Business Conduct Committee] Adjudicatory Council to set aside a default.

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 has reason to believe a violation has occurred and the member or associated person does not dispute the violation, the Department of Enforcement 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 [Business Conduct Committee] 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.

(2)(A) If a member or person associated with a member submits an executed letter of acceptance, waiver, and consent, by the submission such member or person associated with a member also waives:

(i) Any right of such member or person associated with a member to claim bias or prejudice of the General Counsel, the National [Business Conduct Committee] Adjudicatory Council, or any member of the National [Business Conduct Committee] Adjudicatory Council, in connection with such person's or body's participation in discussions regarding the terms and conditions of the letter of acceptance, waiver, and consent, or other consideration of the letter of acceptance, waiver, and consent, including acceptance or rejection of such letter of acceptance, waiver, and consent; and

(ii) Any right of such member or person associated with a member 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 letter of acceptance, waiver, and consent, or other consideration of the letter of acceptance, waiver, and consent, including acceptance or rejection of such letter of acceptance, waiver, and consent.

(B) If a letter of acceptance, waiver, and consent is rejected, the member or associated person shall be bound by the waivers made under subparagraphs (a)(1) and (a)(2)(A) for conduct by persons or bodies occurring during the period beginning on the date of the letter of acceptance, waiver, and consent was executed and submitted and ending upon the rejection of the letter of acceptance, waiver, and consent.

(3) If the member or associated person executes the letter of acceptance, waiver, and consent, it shall be submitted to the National [Business Conduct Committee. The Chair and the Vice Chair of the National Business Conduct Committee (or either one, acting alone, in the event the other is recused or disqualified)] *Adjudicatory Council. The Review Subcommittee* or the General Counsel may accept such letter or refer it to the National [Business Conduct Committee] *Adjudicatory Council* for acceptance or rejection by the National [Business Conduct Committee. The Chair and the Vice Chair of the National Business Conduct Committee (or either one, acting alone, in the event the other is recused or disqualified)] *Adjudicatory Council. The Review Subcommittee* may reject such letter or refer it to the National [Business Conduct Committee] *Adjudicatory Council* for acceptance or rejection by the National [Business Conduct Committee] *Adjudicatory Council*.

(4) If the letter is accepted by the National [Business Conduct Committee, the Chair and the Vice Chair of the National Business Conduct Committee (or either one, acting alone, in the event the other is recused or disqualified)] *Adjudicatory Council, the Review Subcommittee*, or the General Counsel, it shall be deemed final and shall constitute the complaint, answer, and decision in the matter. If the letter is rejected by the [Chair and Vice Chair of the National Business Conduct Committee (or either one, acting alone, in the event the other is recused or disqualified) or the National Business Conduct Committee] *Review*

Subcommittee or the National Adjudicatory Council, NASD Regulation may take any other appropriate disciplinary action with respect to the alleged violation or violations. If the letter is rejected, the member or associated person shall not be prejudiced by the execution of the letter of acceptance, waiver, and consent under subparagraph (a)(1) and the letter may not be introduced into evidence in connection with the determination of the issues set forth in any complaint or in any other proceeding.

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

(1) Notwithstanding Rule 9211, NASD Regulation or the National [Business Conduct Committee] *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 has reason to believe a violation has occurred and if the member or associated person does not dispute the violation, the Department of Enforcement 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 the Hearing Panel or, if applicable, an Extended Hearing Panel, and any right of appeal to the National [Business Conduct Committee] *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.

(2)(A) If a member or person associated with a member submits an executed minor rule violation plan letter, by the submission such member or person associated with a member also waives:

(i) any right of such member or person associated with a member to claim bias or prejudgment of the General Counsel, the National [Business Conduct Committee] *Adjudicatory Council*, or any member of the National [Business Conduct Committee] *Adjudicatory Council*, in connection with such person's or body's participation in discussions regarding the terms and conditions of the minor rule violation plan letter or other consideration of the

minor rule violation plan letter, including acceptance or rejection of such minor rule violation plan letter; and

(ii) any right of such member or person associated with a member 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 minor rule violation plan letter or other consideration of the minor rule violation plan letter, including acceptance or rejection of such minor rule violation plan letter.

(B) If a minor rule violation plan letter is rejected, the member or person associated with a member shall be bound by the waivers made under subparagraphs (b)(1) and (b)(2)(A) for conduct by persons or bodies occurring during the period beginning on the date the minor rule violation plan letter was executed and submitted and ending upon the rejection of the minor rule violation plan letter.

(3) If the member or associated person executes the minor rule violation plan letter, it shall be submitted to the National [Business Conduct Committee. The Chair and the Vice Chair of the National Business Conduct Committee (or either one, acting alone, in the event the other is recused or disqualified)] *Adjudicatory Council. The Review Subcommittee* or the General Counsel may accept such letter or refer it to the National [Business Conduct Committee] *Adjudicatory Council* for acceptance or rejection by the National [Business Conduct Committee. The Chair and the Vice Chair of the National Business Conduct Committee (or either one, acting alone, in the event the other is recused or disqualified)] *Adjudicatory Council. The Review Subcommittee* may reject such letter or refer it to the National [Business Conduct Committee] *Adjudicatory Council* for acceptance or rejection by the National [Business Conduct Committee] *Adjudicatory Council*.

(4) If the letter is accepted by the National [Business Conduct Committee, the Chair and the Vice Chair of the National Business Conduct Committee (or either one, acting alone, in the event the other is recused or disqualified)] *Adjudicatory Council, the Review Subcommittee*, or the General Counsel, it shall be deemed final and the Association shall report the violation to the Commission as required by the Commission pursuant to a plan approved under SEC Rule 19d-1(c)(2). If the letter is rejected by the [Chair and the Vice Chair of the National Business

Conduct Committee (or either one, acting alone, in the event the other is recused or disqualified), or by the National Business Conduct Committee] *Review Subcommittee or the National Adjudicatory Council*, NASD Regulation may take any other appropriate disciplinary action with respect to the alleged violation or violations. If the letter is rejected, the member or associated person shall not be prejudiced by the execution of the minor rule violation plan letter under subparagraph (b)(1) and the letter may not be introduced into evidence in connection with the determination of the issues set forth in any complaint or in any other proceeding.

IM-9216. Violations Appropriate for Disposition Under Plan Pursuant to SEC Rule 19d-1(c)(2)

- Rule 2210(b) and (c) and Rule 2220 (b) and (c)—Failure to have advertisements and sales literature approved by a principal prior to use; failure to maintain separate files of advertisements and sales literature containing required information; and failure to file advertisements with the Association within the required time limits.
- Rule 3360—Failure to timely file reports of short positions on Form NS-1.
- Rule 3110—Failure to keep and preserve books, accounts, records, memoranda, and correspondence in conformance with all applicable laws, rules, regulations and statements of policy promulgated thereunder, and with the Rules of the Association.
- Rule 8211, Rule 8212, and Rule 8213—Failure to submit trading data as requested.

9220. Request for Hearing; Extensions of Time, Postponements, Adjournments

9221. Request for Hearing

(a) Respondent Request for Hearing

With the filing of any Respondent's answer, such Respondent may: (1) request a hearing; (2) propose an appropriate location for the hearing; and (3) propose, if the complaint alleges at least one cause of action involving a violation of a statute or rule described in Rule 9120 [(r)(s)], that the Chief Hearing Officer select a Market Regulation Committee Panelist for a Hearing Panel or, if applicable, an Extended Hearing Panel as described in Rule 9231. If a Respondent requests a hearing, a hearing shall be granted. A Respondent who fails to request a hearing with the filing of his or her answer waives the right to a hearing unless a Hearing Officer, Hearing Panel,

or, if applicable, an Extended Hearing Panel, grants, for good cause shown, a later filed motion by such Respondent requesting a hearing.

* * * * *

9230. Appointment of Hearing Panel, Extended Hearing Panel

9231. Appointment by the Chief Hearing Officer of Hearing Panel or Extended Hearing Panel

(a) Appointment

No change.

(b) Hearing Panel

The Hearing Panel shall be composed of a Hearing Officer and two Panelists, except as provided in Rule 9234 (a), (c), (d), or (e). The Hearing Officer shall serve as the chair of the Hearing Panel. Each Panelist shall be associated with a member of the Association or retired therefrom.

(1) Except as provided in (2), the Chief Hearing Officer shall select as a Panelist a person who:

(A) currently serves or previously served on a District Committee;

(B) previously served on the National [Business Conduct Committee] *Adjudicatory Council*;

(C) previously served on a disciplinary subcommittee of the National *Adjudicatory Council* or the National Business Conduct Committee, including a Subcommittee, an Extended Proceeding Committee, or their predecessor subcommittees; or,

(D) previously served as a Director, a director of the Nasdaq Board of Directors, or a Governor, but does not serve currently in any of these positions.

(2) If the complaint alleges at least one cause of action involving a violation of a statute or a rule described in Rule 9120 [(r)(s)], the Chief Hearing Officer may select as a Panelist a person who currently serves on the Market Regulation Committee or who previously served on the Market Regulation Committee not earlier than four years before the date the complaint was served upon the Respondent who was the first served Respondent in the disciplinary proceeding for which the Hearing Panel or the Extended Hearing Panel is being appointed.

(c) Extended Hearing Panel

Upon consideration of the complexity of the issues involved, the probable length of the hearing, or other factors that the Chief Hearing Officer deems material, the Chief Hearing Officer may determine that a matters shall be designated an Extended Hearing, and that such matter shall be considered by an Extended Hearing Panel. The

Extended Hearing Panel shall be composed of a Hearing Officer and two Panelists, except as provided in Rule 9234(a), (c), (d), or (e). The Hearing Officer will serve as the chair of the Extended Hearing Panel. The Panelists shall be associated with a member of the Association, or retired therefrom. The Chief Hearing Officer shall have discretion to compensate any or all Panelists of an Extended Hearing Panel at the rate then in effect for arbitrators appointed under the Rule 10000 Series.

(1) Except as provided in (2), the Chief Hearing Officer shall select as a Panelist a person who meets the criteria set forth in paragraph (b)(1).

(2) If the complaint alleges at least one cause of action involving a violation of a statute or a rule described in Rule 9120 [(r)(s)], the Chief Hearing Officer may select as a Panelist a person who currently serves on the Market Regulation Committee or who previously served on the Market Regulation Committee not earlier than four years before the date the complaint was served upon the Respondent who was the first served Respondent in the disciplinary proceeding for which the Hearing Panel or the Extended Hearing Panel is being appointed.

(d) Observer

A person who is qualified to serve as a Panelist may be designated by the Chief Hearing Officer to serve as an observer to a Hearing Panel or an Extended Hearing Panel. If the Chief Hearing Officer designates more than two people to serve as observers to a Hearing Panel or an Extended Hearing Panel, the Chief Hearing Officer shall obtain the consent of the Parties. An observer may attend any hearing of a disciplinary proceeding and observe the proceeding, but may not vote or participate in any other manner in the hearing or the deliberations of the Hearing Panel or the Extended Hearing Panel, or participate in the administration of the disciplinary proceeding.

9232. Criteria for Selection of Panelists and Replacement Panelists

(a) Chief Hearing Officer Selection Alternatives

No change.

(b) Criteria for Selection of Panelist from Market Regulation Committee

The Chief Hearing Officer may select one but not more than one Panelist from the Market Regulation Committee, as provided in Rule 9231, to serve in a disciplinary proceeding if the complaint alleges at least one cause of action

involving a violation of a statute or a rule described in Rule 9120[(r)](s).

* * * * *

9235. Hearing Officer Authority

(a) Hearing Officer Authority

No change.

(b) Authority in the Absence of Hearing Officer

If the Hearing Officer appointed to a case is temporarily unavailable or unable for any reason to discharge his or her duties in a particular proceeding under conditions not requiring the appointment of a replacement Hearing Officer, the Chief Hearing Officer or the Deputy Chief Hearing Officer in his or her discretion may exercise the necessary authority in the same manner as if he or she had been appointed Hearing Officer in the particular proceeding.

9240. Pre-hearing Conference and Submission

9241. Pre-hearing Conference

* * * * *

(d) Scheduling

An initial pre-hearing conference, unless determined by the Hearing Officer to be unnecessary or premature, shall be held within 21 days after [service] filing of an answer, or after the expiration of the second period provided for filing an answer as set forth in Rule 9215(f). When a complaint names multiple Respondents, the 21-day period shall commence from the later of (i) the date on which the last timely answer was filed, or (ii) if one or more Respondents have failed to answer, from the expiration of the second period provided for filing an answer under Rule 9215(f).

* * * * *

9250. Discovery

9251. Inspection and Copying of Documents in Possession of Staff

* * * * *

(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, 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 [Business Conduct

Committee] *Adjudicatory Council*, shall determine whether the failure to make the document available was not harmless error, applying applicable Association, Commission, and federal judicial precedent.

9252. Requests for Information

No change.

9253. Production of Witness Statements

(a) Availability

A Respondent in a disciplinary proceeding may file a motion requesting that the Department of Enforcement produce for inspection and copying [a] 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 [, including statements] 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, 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 [Business Conduct Committee] *Adjudicatory Council*, shall determine whether the failure to provide any statement was not harmless error, applying applicable Association, Commission, and federal judicial precedent.

* * * * *

9270. Settlement Procedure

(a) When Offer Allowed; No Stay of Proceeding

A Respondent who is notified that a proceeding has been instituted against him or her may propose in writing an offer of settlement at any time. If a Respondent proposes an offer of settlement [30 or fewer days] before the hearing on the merits [is scheduled to begin, or] *has begun, the making of an offer of settlement shall not stay the proceeding, unless otherwise decided by the Hearing Officer. If a Respondent*

proposes an offer of settlement after the hearing on the merits has begun, the making of an offer of settlement shall not stay the proceeding, unless otherwise decided by the Hearing Panel or, if applicable, the Extended Hearing Panel.

* * * * *

(d) Waiver

(1) If a Respondent submits an offer of settlement, by the submission such Respondent waives:

(A) any right of such Respondent to a hearing before a Hearing Panel or, if applicable, and Extended Hearing Panel, and any right of appeal to the National [Business Conduct Committee] *Adjudicatory Council*, the Commission, and the courts, or any right otherwise to challenge or contest the validity of the order issued, if the offer of settlement and order of acceptance are accepted;

(B) any right of such Respondent to claim bias or prejudice of the Chief Hearing Officer, Hearing Officer, a Hearing Panel or, if applicable, an Extended Hearing Panel, a Panelist on a Hearing Panel, or, if applicable, an Extended Hearing Panel, the General Counsel, the National [Business Conduct Committee] *Adjudicatory Council*, or any member of the National [Business Conduct Committee] *Adjudicatory Council*, in connection with such person's or body's participation in discussions regarding the terms and conditions of the offer of settlement and the order of acceptance, or other consideration of the offer of settlement and order of acceptance, including acceptance, or rejection of such offer of settlement and order of acceptance; and

(C) any right of such Respondent to claim that a person or body 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 discussion regarding the terms and conditions of the offer of settlement and the order of acceptance, or other consideration of the offer of settlement and order of settlement, including acceptance or rejection of such offer of settlement and order of acceptance.

(2) If an offer of settlement and an order of acceptance are rejected, the Respondent shall be bound by the waivers made in this paragraph (d) for conduct by persons or bodies occurring during the period beginning from the date the offer of settlement was submitted and ending upon the rejection of the offer of settlement and order of acceptance.

(e) Uncontested Offers of Settlement

If a Respondent makes an offer of settlement and the Department of Enforcement 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 before a hearing on the merits has begun, the Department of Enforcement shall transmit the uncontested offer of settlement and a proposed order of acceptance to the National [Business Conduct Committee] *Adjudicatory Council* with its recommendation. If an offer of settlement is determined to be uncontested by the Department of Enforcement after a hearing on the merits has begun, the Department of Enforcement 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 [Business Conduct Committee] *Adjudicatory Council* to accept or reject.

(1) A proposed order of acceptance shall make findings of fact, including a statement of the rule, regulation, or statutory provision violated, and impose sanctions consistent with the terms of the offer of settlement.

(2) Before an offer of settlement and an order of acceptance shall become effective, they shall be submitted to and accepted by the National [Business Conduct Committee]. The Chair and the Vice Chair of the National Business Conduct Committee (or either one, acting alone, in the event the other is recused or disqualified) *Adjudicatory Council. The Review Subcommittee* or the General Counsel may accept such offer of settlement and order of acceptance or refer them to the National [Business Conduct Committee] *Adjudicatory Council* for acceptance or rejection by the National [Business Conduct Committee]. The Chair and the Vice Chair of the National Business Conduct Committee (or either one, acting alone, in the event the other is recused or disqualified) *Adjudicatory Council. The Review Subcommittee* may reject such offer of settlement and order of acceptance or refer them to the National [Business Conduct Committee] *Adjudicatory Council* for acceptance or rejection by the National [Business Conduct Committee] *Adjudicatory Council*.

(3) If the offer of settlement and order of acceptance are accepted by the National [Business Conduct Committee,

the Chair and the Vice Chair of the National Business Conduct Committee (or either one, acting alone, in the event the other is recused or disqualified) *Adjudicatory Council, the Review Subcommittee*, or the General Counsel, they shall become final and the National [Business Conduct Committee, the Chair and the Vice Chair of the National Business Conduct Committee (or either one, acting alone, in the event the other is recused or disqualified).] *Adjudicatory Council. The Review Subcommittee* or the General Counsel shall communicate the acceptance to the Hearing Officer who shall thereafter issue the order.

(f) Contested Offers of Settlement

If a Respondent makes an offer of settlement and the Department of Enforcement opposes it, the offer of settlement is contested. When the Department of Enforcement opposes an offer of settlement, the Respondent's written offer and the Department of Enforcement'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 Respondent to attend a settlement conference.

(1) If a contested offer of settlement is approved by the Hearing Panel or, if applicable, Extended Hearing Panel, the Hearing Officer shall draft an order of acceptance of the offer of settlement. The order of acceptance shall make findings of fact, including a statement of the rule, regulation, or statutory provision violated, and impose sanctions consistent with the terms of the offer of settlement. The offer of settlement, any written opposition thereto, and the order of acceptance shall be forwarded to the National [Business Conduct Committee] *Adjudicatory Council* to accept or reject.

(2) Before an offer of settlement and order of acceptance shall become effective, they shall be submitted to, and accepted by, the National [Business Conduct Committee]. The Chair and the Vice Chair of the National Business Conduct Committee (or either one, acting alone, in the event the other is recused or disqualified) *Adjudicatory Council. The Review Subcommittee* may accept or reject such offer of settlement and order of acceptance or refer them to the National [Business Conduct Committee] *Adjudicatory Council* for acceptance or rejection by the National [Business Conduct Committee] *Adjudicatory Council*.

(3) If the offer of settlement and order of acceptance are accepted by the

National [Business Conduct Committee or the Chair and the Vice Chair of the National Business Conduct Committee (or either one, acting alone, in the event the other is recused or disqualified), the National Business Conduct Committee or the Chair or the Vice Chair of the National Business Conduct Committee (or either one, acting alone, in the event the other is recused or disqualified) *Adjudicatory Council or the Review Subcommittee, the National Adjudicatory Council or the Review Subcommittee* shall communicate the acceptance to the Hearing Officer who shall thereafter issue the order.

(g) Final Disciplinary Action of Association

No Change.

(h) Rejection of Offer of Settlement

If an uncontested offer of settlement or an order of acceptance is rejected by the Hearing Panel or, if applicable, the Extended Hearing Panel, the [Chair and Vice Chair of the National Business Conduct Committee (or either one, acting alone, in the event the other is recused or disqualified), or the National Business Conduct Committee] *Review Subcommittee, or the National Adjudicatory Council*, the Respondent shall be notified in writing and the offer of settlement and proposed order of acceptance shall be deemed withdrawn. If a contested offer of settlement or an order of acceptance is rejected by the Hearing Panel or, if applicable, the Extended Hearing Panel, the [Chair and Vice Chair of the National Business Conduct Committee (or either one, acting alone, in the event the other is recused or disqualified), or the National Business Conduct Committee] *Review Subcommittee, or the National Adjudicatory Council*, the Respondent shall be notified in writing and the offer of settlement and proposed order of acceptance shall be deemed withdrawn. The rejected offer and proposed order of acceptance shall not constitute a part of the record in any proceeding against the Respondent making the offer.

(i) Disciplinary Proceeding With Multiple Respondents

No change.

(j) No Prejudice From Rejected Offer of Settlement

If an offer of settlement is rejected by a Hearing Panel or, if applicable, an Extended Hearing Panel, the [Chair and the Vice Chair of the National Business Conduct Committee (or either one, acting alone, in the event the other is recused or disqualified), or the National Business Conduct Committee] *Review*

Subcommittee, or the National Adjudicatory Council, the Respondent shall not be prejudiced by the offer, which may not be introduced into evidence in connection with the determination of the issues involved in the pending complaint or in any other proceeding.

9280. Contemptuous Conduct

* * * * *

(c) National [Business Conduct Committee] *Adjudicatory Council* Review of Exclusions

If an attorney for a Party, or other person authorized to represent others by Rule 9141, is excluded from a disciplinary hearing or conference, or any portion thereof, such attorney or other person may seek review of the exclusion by filing a motion to vacate with the National [Business Conduct Committee] *Adjudicatory Council*. Such motion to vacate shall be filed and served on all Parties within five days after service of the exclusion order. Any response shall be filed with the National [Business Conduct Committee] *Adjudicatory Council* and served on all Parties within five days after the service to the motion to vacate. The National [Business Conduct Committee] *Adjudicatory Council or the Review Subcommittee* shall consider such motion on an expedited basis and promptly issue a written order. The filing of a motion to vacate shall stay all aspects of the disciplinary proceeding until at least seven days after service of the order of the National [Business Conduct Committee]. The National Business Conduct Committee] *Adjudicatory Council or the Review Subcommittee*. The review proceedings shall be conducted on the basis of the written record without oral argument.

(d) Adjournment

The hearing, conferences, or other activities relating to the disciplinary proceeding shall be stayed pending the [National Business Conduct Committee's review] *review by the National Adjudicatory Council or the Review Subcommittee* of an exclusion order in paragraph (c). In the event that the National [Business Conduct Committee] *Adjudicatory Council or the Review Subcommittee* upholds an exclusion of an attorney or other person authorized to represent others by Rule 9141, the Hearing Officer may, upon motion by a Party represented by an attorney or other person subject to an order of exclusion, grant an adjournment to allow the retention of new counsel or selection of a new representative. In determining whether

to grant an adjournment or the length of an adjournment, the Hearing Officer shall consider whether there are other counsel or representatives of record on behalf of the Party, the availability of other counsel or other members of an excluded attorney's firm, or the availability of other representatives for the Party, and any other relevant factors.

9300. REVIEW OF DISCIPLINARY PROCEEDING BY NATIONAL [BUSINESS CONDUCT COMMITTEE, NASD REGULATION AND NASD BOARDS] *ADJUDICATORY COUNCIL AND NASD BOARD*; APPLICATION FOR COMMISSION REVIEW

9310. Appeal to or Review by National [Business Conduct Committee] *Adjudicatory Council*

9311. Appeal by Any Party; Cross-Appeal

(a) Time to File Notice of Appeal

No change.

(B) Effect

An appeal to the National [Business Conduct Committee] *Adjudicatory Council* from a decision issued pursuant to Rule 9268 or Rule 9269 shall operate as a stay of that decision until the National [Business Conduct Committee] *Adjudicatory Council* issues a decision pursuant to Rule 9349 or, in cases called for discretionary review by the NASD Regulation or NASD Boards, until a decision is issued pursuant to Rule 9351 or Rule 9352.

(c) Notice of Appeal Content and Signature Requirements

A Party appealing pursuant to this Rule shall file a written notice of appeal with the Office of Hearing Officers and service the notice on the Parties. The notice of appeal shall be signed by the appealing Party, or his or her counsel or representative, and shall contain:

- (1) The name of the disciplinary proceeding;
- (2) The disciplinary proceeding docket number;
- (3) The name of the Party on whose behalf the appeal is made;
- (4) A statement on whether oral argument before the National [Business Conduct Committee] *Adjudicatory Council* is requested; and
- (5) A brief statement of the findings, conclusions, or sanctions as to which exceptions are taken.

(d) Notice of Cross-Appeal

No change.

(e) Waiver of Issues Not Raised

The National [Business Conduct Committee] *Adjudicatory Council* may,

in its discretion, deem waived any issued not raised in the notice of appeal or cross-appeal. The National [Business Conduct Committee] *Adjudicatory Council*, the Review Subcommittee, a Subcommittee 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 [Business Conduct Committee] *Adjudicatory Council* if such issue was 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 [Business Conduct Committee] *Adjudicatory Council*

(a) Call for Review

(1) Rule 9268 Decision

A decision issued pursuant to Rule 9268 may be subject to a call for review by any member of the National [Business Conduct Committee] *Adjudicatory Council* or, pursuant to authority delegated from the National [Business Conduct Committee] *Adjudicatory Council*, by any member of the Review Subcommittee [of the National Business Conduct Committee]. The Review Subcommittee shall be composed of two to four persons who are current members of the National Business Conduct Committee. At least 50 percent of the persons making up the Review Subcommittee shall be Non-Industry Directors]. A decision issued pursuant to Rule 9268 shall be subject to a call for review within 45 days after the date of service of the decision. If called for review, such [decision shall be reviewed by the National [Business Conduct Committee] *Adjudicatory Council*.

(2) Rule 9269 Decision

A default decision issued pursuant to Rule 9269 shall be subject to a call for review by the General Counsel, on his or her own motion within 45 days after the date of service of the decision. If called for review, such decision shall be reviewed by the National [Business Conduct Committee] *Adjudicatory Council*.

(b) Effect

Institution of review by a member of the National [Business Conduct Committee] *Adjudicatory Council* on his or her own motion, a member of the Review Subcommittee on his or her own

motion, or the General Counsel, on his or her own motion, shall operate as a stay of a final decision issued pursuant to Rule 9268 or Rule 9269 as to all Parties subject to the notice of review, until the National [Business Conduct Committee] *Adjudicatory Council* issues a decision pursuant to Rule 9349, or, in cases called for discretionary review by the NASD [Regulation or NASD Boards] *Board*, until a decision is issued pursuant to Rule 9351 [or Rule 9352].

(c) Requirements

(1) If a member of the National [Business Conduct Committee] *Adjudicatory Council*, a member of the Review Subcommittee, or, for a disciplinary proceeding decided under Rule 9269, the General Counsel determines to call a case for review, a written notice of review shall be served promptly on each Party to the proceeding and filed with the Office of Hearing Officers. Such notice of review shall contain:

(A) the name of the disciplinary proceeding;

(B) the disciplinary proceeding docket number; and

(C) a brief statement of the findings, conclusions, or sanctions with respect to which the National [Business Conduct Committee] *Adjudicatory Council*, the Review Subcommittee, or the General Counsel determined that a call for review was necessary.

(2) The statement contained in the notice of review shall not limit the scope of the National [Business Conduct Committee's] *Adjudicatory Council's* authority under Rule 9346 to review any issues raised in the [decision rendered pursuant to Rule 9268 or Rule 9269.] *record*. The National [Business Conduct Committee] *Adjudicatory Council*, the Review Subcommittee, a Subcommittee 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 [Business Conduct Committee] *Adjudicatory Council* if such issue was not previously set forth in the notice of review.

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

If the review of a disciplinary proceeding by the National [Business Conduct Committee] *Adjudicatory Council* is terminated before the National [Business Conduct Committee] *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) a member of the National [Business Conduct Committee or] *Adjudicatory Council* or the Review Subcommittee shall have the right to call for review a decision issued pursuant to Rule 9268 in accordance with Rule 9312(a)(1), except that the 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; and,

(2) No change.

9313. Counsel to National [Business Conduct Committee] *Adjudicatory Council*

(a) Authority

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

(1) direct the Office of Hearing Officers to complete and transmit a record of a disciplinary proceeding to the National [Business Conduct Committee] *Adjudicatory Council* in accordance with Rule 9267;

* * * * *

(b) Review

A Party seeking the review of a decision of a Counsel to the National [Business Conduct Committee] *Adjudicatory Council*, may make a motion to the National [Business Conduct Committee] *Adjudicatory Council*, the Review Subcommittee, a Subcommittee or, if applicable, an Extended Proceeding Committee.

9320. [Transmission] *Transmission of Record*; Extensions of Time, Postponements, Adjournments

9321. *Transmission of Record*

Within 21 days after the filing of a notice of appeal or notice of review, or at such later time as the National [Business Conduct Committee] *Adjudicatory Council* may designate, the Office of Hearing Officers shall assemble and prepare an index to the record, transmit the record and the index to the National [Business Conduct Committee] *Adjudicatory Council*, and

serve copies of the index upon all Parties. The Hearing Officer who participated in the disciplinary proceeding, or the Chief Hearing Officer, shall certify that the record transmitted to the National [Business Conduct Committee] *Adjudicatory Council* is complete.

9322. Extensions of Time, Postponements, Adjournments

(a) Availability

At any time prior to the issuance of a decision pursuant to Rule 9349, the National [Business Conduct Committee] *Adjudicatory Council*, the Review Subcommittee, a Subcommittee or, if applicable, and Extended Proceeding Committee, or Counsel to the National [Business Conduct Committee] *Adjudicatory Council*, for good cause shown, may extend or shorten a period prescribed by the Code for the filing of any papers, except that Counsel to the National [Business Conduct Committee] *Adjudicatory Council* may shorten a period so prescribed only with the consent of the Parties. The National [Business Conduct Committee] *Adjudicatory Council*, the Review Subcommittee, a Subcommittee or, if applicable, an Extended Proceeding Committee, or Counsel to the National [Business Conduct Committee] *Adjudicatory Council*, for good cause shown, may postpone or adjourn a hearing consistent with paragraph (b), except that Counsel to the National [Business Conduct Committee] *Adjudicatory Council* may postpone or adjourn a hearing only with the consent of the Parties.

(b) Limitations on Postponements, Adjournments, and Changes in Location

Oral argument shall begin at the time and place ordered, unless the National [Business Conduct Committee] *Adjudicatory Council*, the Review Subcommittee, a Subcommittee or, if applicable, an Extended Proceeding Committee, or Counsel to the National [Business Conduct Committee] *Adjudicatory Council*, for good cause shown, postpones, adjourns, or changes the location of the oral argument, except that Counsel to the National [Business Conduct Committee] *Adjudicatory Council* may postpone or adjourn the oral argument only with the consent of the Parties. In considering a motion for the postponement or adjournment of an oral argument, the National [Business Conduct Committee] *Adjudicatory Council*, the Review Subcommittee, a Subcommittee or, if applicable, and Extended Proceeding Committee, or Counsel to the National [Business

Conduct Committee] *Adjudicatory Council* shall consider, in addition to any other relevant factors:

* * * * *

9330. Appointment of Subcommittee or Extended Proceeding Committee; Disqualification and Recusal

9331. Appointment of Subcommittee or Extended Proceeding Committee

(a) Appointment by National [Business Conduct Committee] *Adjudicatory Council*

Following the filing of a notice of appeal pursuant to Rule 9311 or a notice of review pursuant to Rule 9312, the National [Business Conduct Committee] *Adjudicatory Council* or the Review Subcommittee shall appoint a Subcommittee or an Extended Proceeding Committee to participate, subject to Rule 9345, in a disciplinary proceeding appealed or called for review.

(1) Subcommittee

Except as provided in subparagraph (2), for each disciplinary proceeding appealed or called for review, the National [Business Conduct Committee] *Adjudicatory Council* or the Review Subcommittee shall appoint a Subcommittee to participate, subject to Rule 9345, in the appeal or review. A Subcommittee shall be composed of two or more persons who shall be [current or] former Directors[,] or [former] Governors.

(2) Extended Proceeding Committee

Upon consideration of the volume and complexity of the certified record, or other factors the National [Business Conduct Committee] *Adjudicatory Council* or the Review Subcommittee deems material, the National [Business Conduct Committee] *Adjudicatory Council* or the Review Subcommittee may determine that a disciplinary proceeding appealed or called for review shall be designated an Extended Proceeding and shall appoint an Extended Proceeding Committee to participate, subject to Rule 9345, in the appeal or review. The Extended Proceeding Committee shall be composed of two or more persons who shall be [current or] former Directors[,] or [former] Governors. The [Chair of the National Business Conduct Committee] *Review Subcommittee* shall have discretion to compensate any or all Panelists of an Extended Proceeding Committee at the rate then in effect for arbitrators appointed under the Rule 1000 Series.

(b) Function

If a hearing is held, the Subcommittee or, if applicable, the Extended Proceeding Committee, shall hear oral arguments and consider, if allowed under Rule 9346(b), any new evidence. Based on the hearing and the record on appeal or review, the Subcommittee or, if applicable, the Extended Hearing Committee, shall make a recommendation to the National [Business Conduct Committee] *Adjudicatory Council* regarding the disposition of all matters on appeal, cross-appeal, or review. The recommendation shall be in the form of a written recommended decision.

9332. Disqualification and Recusal

(a) Recusal, Withdrawal of Member or Panelist

If at any time a member of the National [Business Conduct Committee] *Adjudicatory Council*, including a member of the *Review Subcommittee*, a Panelist of a Subcommittee or an Extended Proceeding Committee, or a Counsel to the National [Business Conduct Committee] *Adjudicatory Council* determines that the member, the Panelist, or the Counsel to the National [Business Conduct Committee] *Adjudicatory Council* has a conflict of interest or bias or circumstances otherwise exist where the fairness of the member, the Panelist, or the Counsel to the National [Business Conduct Committee] *Adjudicatory Council* might reasonably be questioned, the member, the Panelist, or the Counsel to National [Business Conduct Committee] *Adjudicatory Council* shall notify the Chair or the Vice [-] Chair of the National [Business Conduct Committee] *Adjudicatory Council*, and the Chair or the Vice [-] Chair of the National [Business Conduct Committee] *Adjudicatory Council* shall issue and serve on the Parties a notice stating that the member, the Panelist, or the Counsel to the National [Business Conduct Committee] *Adjudicatory Council* has withdrawn from the matter. In the event that a Panelist withdraws, is incapacitated, or is otherwise unable to continue service after a hearing has been convened, the Chair or Vice [-] Chair of the National [Business Conduct Committee] *Adjudicatory Council* shall appoint a replacement Panelist. In the event that a [Counsel to the National Business Conduct Committee] *member of the Review Subcommittee* withdraws, is incapacitated, or is otherwise unable to continue service after assignment, *the Chair or Vice Chair of the National Adjudicatory Council shall appoint another member of the National*

Adjudicatory Council to serve on the Review Subcommittee for the limited purpose of considering the issues raised in the disciplinary proceeding in which the withdrawal action was taken. The replacement member of the Review Subcommittee must have the same classification (Industry or Non-Industry) as the member who withdrew. In the event that a Counsel to the National Adjudicatory Council withdraws, is incapacitated, or is otherwise unable to continue service after assignment, the General Counsel shall assign a replacement Counsel to the National [Business Conduct Committee] Adjudicatory Council.

(b) Motion for Disqualification

A Party may move for the disqualification of a member of the National [Business Conduct Committee] *Adjudicatory Council*, the *Review Subcommittee*, a Panelist of a Subcommittee or an Extended Proceeding Committee, or a Counsel to the National [Business Conduct Committee] *Adjudicatory Council*. All such motions shall be based upon a reasonable, good faith belief that a conflict of interest or bias exists or circumstances otherwise exist where the fairness of the member, the Panelist, or the Counsel to the National [Business Conduct Committee] *Adjudicatory Council* might reasonably be questioned, and shall be accompanied by an affidavit setting forth in detail the facts alleged to constitute grounds for disqualification, and the dates on which the Party learned of those facts. Such motions shall be filed not later than 15 days after the later of:

(1) When the Party learned of the facts believed to constitute the disqualification; or

(2) When the Party was notified of the composition of the Subcommittee or, if applicable, the Extended Proceeding Committee or the assignment to the disciplinary proceeding of the Counsel to the National [Business Conduct Committee] *Adjudicatory Council*.

(c) Disposition of Disqualification Motions: Challenges to Single Member of National [Business Conduct Committee] *Adjudicatory Council* or *Review Subcommittee*, Single Panelist of Subcommittee or Extended Hearing Committee, or Counsel to the National [Business Conduct Committee] *Adjudicatory Council*

Motions for disqualification of a member of the National [Business Conduct Committee] *Adjudicatory Council*, including a member of the *Review Subcommittee*, a Panelist of a Subcommittee or an Extended

Proceeding Committee, or a Counsel to the National [Business Conduct Committee] *Adjudicatory Council* shall be decided by the Chair or Vice [-] Chair of the National [Business Conduct Committee] *Adjudicatory Council*, who shall promptly determine whether disqualification is required and issue a written ruling on the motion. *If a member of the Review Subcommittee is disqualified, the Chair or Vice Chair of the National Adjudicatory Council shall appoint another member of the National Adjudicatory Council to serve on the Review Subcommittee for the limited purpose of considering the issues raised in the disciplinary proceeding in which the motion was made. The replacement member of the Review Subcommittee must have the same classification (Industry or Non-Industry) as the member being replaced. If a Panelist is disqualified, the Chair or the Vice [-] Chair of the National [Business Conduct Committee] Adjudicatory Council shall appoint a replacement Panelist. If a Counsel is disqualified, the General Counsel shall assign a replacement Counsel to the National [Business Conduct Committee] Adjudicatory Council.*

(d) Disposition of Disqualification Motions: Challenges to Multiple Members or Panelists

(1) National [Business Conduct Committee] *Adjudicatory Council*

If a Party files a motion to disqualify more than one member of the National [Business Conduct Committee] *Adjudicatory Council*, the Chair or the Vice [-] Chair of the National [Business Conduct Committee] *Adjudicatory Council* shall promptly determine whether disqualification is required, and shall issue a written ruling on the matter. In the event of such disqualification, the remaining members of the National [Business Conduct Committee] *Adjudicatory Council* shall consider the review or appeal of the disciplinary matter.

(2) *Review Subcommittee*

If a Party files a motion to disqualify more than one member of the Review Subcommittee, the Chair or the Vice Chair of the National Adjudicatory Council shall promptly determine whether disqualification is required, and shall issue a written ruling on the matter. If members of the Review Subcommittee are disqualified, the Chair or Vice Chair of the National Adjudicatory Council shall appoint other members of the National Adjudicatory Council to serve on the Review Subcommittee for the limited

purpose of considering the issues raised in the disciplinary proceeding in which the motion was made. The replacement members of the Review Subcommittee must have the same classification (Industry or Non-Industry) as the members being replaced.

(3) Subcommittee; Extended Proceeding Committee

If a Party files a motion to disqualify more than one Panelist of a Subcommittee or an Extended Proceeding Committee, the Chair or the Vice [-] Chair of the National [Business Conduct Committee] *Adjudicatory Council* shall promptly determine whether disqualification is required, and shall issue a written ruling on the motion. If multiple Panelists are disqualified, the Chair or the Vice [-] Chair of the National [Business Conduct Committee] *Adjudicatory Council* shall appoint replacement Panelists.

9340. Proceedings

9341. Oral Argument

(a) Request for Oral Argument

A Party may request oral argument before the Subcommittee or, if applicable, the Extended Proceeding Committee. Oral argument shall be requested in writing either in the Party's notice of appeal or cross-appeal or within 15 days after service of the National [Business Conduct Committee's] *Adjudicatory Council's* notice of review. Subject to the limitations of Rules 9342 and 9344, oral argument shall be granted if timely requested. The right to oral argument set forth in this Rule is unaffected by a Party's waiver of, or failure to request, a hearing pursuant to the Rule 9200 Series.

(b) Discretion to Proceed With or Without Oral Argument

No change.

(c) Notice Regarding Oral Argument

If oral argument is held, a notice stating the date, time, and location of the oral argument shall be served on the Parties at least 21 days before the hearing. The Parties may agree in writing to waive the notice period or, in extraordinary circumstances, the Subcommittee or, if applicable, the Extended Proceeding Committee, or Counsel to the National [Business Conduct Committee] *Adjudicatory Council* may provide for a shorter notice period, except that Counsel to the National [Business Conduct Committee] *Adjudicatory Council* may provide for a

shorter notice period only with the consent of the Parties.

* * * * *

9342. Failure to Appear at Oral Argument

No change.

9343. Disposition Without Oral Argument

If an oral argument is not held, the matter shall be considered by a Subcommittee or, if applicable, an Extended Proceeding Committee, on the basis of the record, as defined in Rule 9267, and supplemented by any written materials submitted to or issued by the Subcommittee or, if applicable, the Extended Proceeding Committee, or the National [Business Conduct Committee] *Adjudicatory Council* in connection with the appeal, cross-appeal, or call for review.

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 [Business Conduct Committee] *Adjudicatory Council* or the *Review Subcommittee* may dismiss the appeal and remand the matter for further proceedings, or may [hear evidence and consider the matter] *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 [Business Conduct Committee] *Adjudicatory Council* on the basis of the record and other documents, as provided in Rules 9346 and 9347. 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

If an appealing Party fails to advise the National [Business Conduct Committee] *Adjudicatory Council* or the *Review Subcommittee* of the basis for seeking review or otherwise fails to provide information or submit a written brief in response to a request pursuant

to Rules 9346 and 9347, the National [Business Conduct Committee or the Chair and the Vice Chair of the National business Conduct Committee (or either one, acting alone, in the event the other is recused or disqualified)] *Adjudicatory Council or the Review Subcommittee* may dismiss the appeal as abandoned, and the decision of the Hearing Officer, the Hearing Panel or, if applicable, the Extended Hearing Panel, shall become the final disciplinary action of the Association. If a cross-appealing Party fails to advise the National [Business Conduct Committee] *Adjudicatory Council or the Review Subcommittee* of the basis for seeking review or otherwise fails to provide information or submit a written brief in response to a request pursuant to Rules 9346 and 9347, the National [Business Conduct Committee or the Chair and the Vice Chair of the National Business Conduct Committee (or either one, acting alone, in the event the other is recused or disqualified)] *Adjudicatory Council or the Review Subcommittee* may dismiss the cross-appeal as abandoned. Upon a showing of good cause, the National [Business Conduct Committee] *Adjudicatory Council* may withdraw any dismissal entered pursuant to this Rule.

9345. Subcommittee or Extended Proceeding Committee Recommended Decision to National [Business Conduct Committee] *Adjudicatory Council*

A Subcommittee or, if applicable, an Extended Proceeding Committee, shall present a recommended decision in writing to the National [Business Conduct Committee and all other Directors not later than seven days] *Adjudicatory Council* before the meeting of the National [Business Conduct Committee] *Adjudicatory Council* at which the disciplinary proceeding shall be considered.

9346. Evidence in National [Business Conduct Committee] *Adjudicatory Council* Proceedings

(a) Scope of Review

Except as otherwise set forth in this paragraph, the National [Business Conduct Committee's] *Adjudicatory Council's* review shall be limited to consideration of: (i) the record, as defined in Rule 9267, supplemented by briefs and other papers submitted to the Subcommittee or, if applicable, the Extended Proceeding Committee, and the National [Business Conduct Committee] *Adjudicatory Council*; and (ii) any oral argument permitted under this Code. A Party may introduce additional evidence only with prior approval of the Subcommittee or, if

applicable, the Extended Proceeding Committee, or the National [Business Conduct Committee] *Adjudicatory Council*, upon a showing that extraordinary circumstances exist under paragraph (b). If an appealing Party shows good cause for failure to participate in the disciplinary proceeding below, the National [Business Conduct Committee] *Adjudicatory Council* may hear evidence and consider the disciplinary proceeding pursuant to Rule 9344(a).

(b) Leave to Introduce Additional Evidence

A Party may apply to the Subcommittee or, if applicable, the Extended Proceeding Committee, or the National [Business Conduct Committee] *Adjudicatory Council* for leave to introduce additional evidence by motion filed not later than 30 days after service of such Party's notice of appeal or cross-appeal or not later than 35 days after service upon the Party by the National [Business Conduct Committee] *Adjudicatory Council* of a notice of review. The motion shall describe each item of proposed new evidence, demonstrate that there was good cause for failing to introduce it below, demonstrate why the evidence is material to the proceeding, and be filed and served. The Party may attach the documentary evidence as an exhibit to the motion. By a motion filed in accordance with Rule 9146, a Party may request an extension of the period during which a Party may file a motion for leave to introduce additional evidence. A Party shall demonstrate that there was good cause for failing to file the motion for leave to introduce additional evidence during the period prescribed.

(c) Motion In Opposition; Motion to Introduce Rebuttal Evidence

No change.

(d) Discretion Regarding Review of Additional Evidence

Upon consideration of any motion to introduce additional evidence and any opposition thereto, the Subcommittee or, if applicable, the Extended Proceeding Committee, or the National [Business Conduct Committee] *Adjudicatory Council* may permit the evidence to be introduced into the record on review, or the National [Business Conduct Committee] *Adjudicatory Council* may remand the disciplinary proceeding for further proceedings consistent with its ruling or for further fact finding.

(e) Requirements for Submitting Additional Documentary Evidence

A Party that is permitted to introduce additional documentary evidence before the Subcommittee or, if applicable, the Extended Proceeding Committee, or the National [Business Conduct Committee] *Adjudicatory Council* pursuant to paragraph (d) shall make copies of the evidence available to the Subcommittee or, if applicable, the Extended Proceeding Committee, or the National [Business Conduct Committee] *Adjudicatory Council*, and to all Parties at such time as the Subcommittee or, if applicable, the Extended Proceeding Committee, the National [Business Conduct Committee] *Adjudicatory Council*, or Counsel to the National [Business Conduct Committee] *Adjudicatory Council* may specify.

(f) Subcommittee or Extended Proceeding Committee Order Requiring Additional Evidence

On its own motion, the Subcommittee or, if applicable, the Extended Proceeding Committee, or the National [Business Conduct Committee] *Adjudicatory Council* may order that the record be supplemented with such additional evidence as it may deem relevant. Among other things, the Subcommittee, or if applicable, the Extended Proceeding Committee, or the National [Business Conduct Committee] *Adjudicatory Council* may order a Respondent who asserts his or her inability to pay a monetary sanction to file a sworn financial statement and to keep such statement current as ordered by the Subcommittee or, if applicable, the Extended Proceeding Committee, or the National [Business Conduct Committee] *Adjudicatory Council*.

9347. Filing of Papers in National [Business Conduct Committee] *Adjudicatory Council* Proceedings

(a) Briefs; Reply Briefs; Requirements

Parties may file briefs in connection with proceedings governed by the Rule 9300 Series. Briefs shall be confined to the particular matters at issue. An exception to findings, conclusions, or sanctions shall be supported by citation to the relevant portions of the record, including references to specific pages relied upon, and by concise argument, including citation of such statutes, decisions, and other authorities as may be relevant. If an exception relates to the admission or exclusion of evidence, the substance of the evidence admitted or excluded shall be set forth in the brief, an appendix thereto, or by citation to the record. Parties may file reply briefs. If a Party files a reply brief, such brief

shall be limited to matters in reply. All briefs shall conform to the requirements of the Rule 9130 Series, and, except with advance leave of the Subcommittee or, if applicable, the Extended Proceeding Committee, the National [Business Conduct Committee] *Adjudicatory Council*, the *Review Subcommittee*, or Counsel to the National [Business Conduct Committee] *Adjudicatory Council*, exclusive of pages containing tables of contents or tables of authorities, a brief other than a reply brief shall not exceed 25 double-spaced pages, and a reply brief shall not exceed 12 double-spaced pages.

(b) Timely Filing of Briefs

Briefs shall be due upon dates established by the Subcommittee or, if applicable, the Extended Proceeding Committee, the National [Business Conduct Committee] *Adjudicatory Council*, the *Review Subcommittee*, or Counsel to the National [Business Conduct Committee] *Adjudicatory Council* in a scheduling order. Unless the Subcommittee or, if applicable, the Extended Proceeding Committee, the National [Business Conduct Committee] *Adjudicatory Council*, the *Review Subcommittee*, or Counsel to the National [Business Conduct Committee] *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 [Business Conduct Committee] *Adjudicatory Council* may not shorten a period previously established for the filing of briefs except with the consent of the Parties.

9348. Powers of the National [Business Conduct Committee] *Adjudicatory Council* on Review

In any appeal or review proceeding pursuant to the Rule 9300 Series, the National [Business Conduct Committee] *Adjudicatory Council* may affirm, dismiss, modify, or reverse with respect to each finding, or remand the disciplinary proceeding with instructions. The National [Business Conduct Committee] *Adjudicatory Council* may affirm, modify, reverse, increase, or reduce any sanction, or impose any other fitting sanction.

9349. National [Business Conduct Committee] *Adjudicatory Council* Formal Consideration; Decision

(a) Decision of National [Business Conduct Committee] *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 [Business Conduct Committee] *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 [Business Conduct Committee] *Adjudicatory Council* may affirm, modify, reverse, increase, or reduce any sanction, or impose any other fitting sanction. Alternatively, the National [Business Conduct Committee] *Adjudicatory Council* may remand the disciplinary proceeding with instructions. The National [Business Conduct Committee] *Adjudicatory Council* shall prepare a proposed written decision pursuant to paragraph (b).

(b) Contents of Decision

No change.

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

The National [Business Conduct Committee] *Adjudicatory Council* shall provide its proposed written decision to the NASD [Regulation Board, and, if the disciplinary proceeding is not called for review by the NASD Regulation Board, to the NASD Board. The NASD Regulation] *Board*. The NASD Board may call the disciplinary proceeding for review pursuant to Rule 9351. If the NASD Board does not call the disciplinary proceeding for review, the proposed written decision of the [NASD Regulation Board] *National Adjudicatory Council* shall become final, and the [NASD Regulation Board] *National Adjudicatory Council* shall serve its written decision on the Parties and provide a copy to each member of the Association with which a Respondent is associated. The decision shall constitute the final disciplinary action of the Association for purposes of SEC Rule 19d-1(c)(1), unless the [NASD Regulation Board] *National*

Adjudicatory Council remands the proceeding.

[The NASD Board may call the disciplinary proceeding for review pursuant to Rule 9352. If neither the NASD Regulation Board nor the NASD Board calls the disciplinary proceeding for review, the proposed written decision of the National Business Conduct Committee shall become final, and the National Business Conduct Committee shall serve its written decision on the Parties and provide a copy to each member of the Association with which a Respondent is associated. The decision shall constitute the final disciplinary action of the Association for purposes of SEC Rule 19d-1(c)(1), unless the National Business Conduct Committee remands the proceeding.]

9350. Discretionary Review by NASD Board[s]

9351. [Discretionary Review by NASD Regulation Board]

(a) Call for Review by Director

A Director may call a disciplinary proceeding for review by the NASD Regulation Board, if the call for review is made within the period prescribed in paragraph (b).

(b) Seven Day Period; Waiver

After receiving the proposed written decision of the National Business Conduct Committee pursuant to Rule 9349, a Director shall have not less than seven days to determine if the disciplinary proceeding should be called for review. A Director shall call a disciplinary proceeding for review by notifying the General Counsel. By a unanimous vote of the NASD Regulation Board, the NASD Regulation Board may shorten the period to less than seven days. By an affirmative vote of the majority of the NASD Regulation Board then in office, the NASD Regulation Board may, during the seven day period, vote to extend the period to more than seven days.

(c) Review at Next Meeting

If a Director calls a disciplinary proceeding for review within the period prescribed in paragraph (b), the NASD Regulation Board shall review the disciplinary proceeding not later than the next meeting of the NASD Regulation Board. The NASD Regulation 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 NASD Regulation Board review proceedings pursuant to this Rule.

(d) Decision of NASD Regulation Board, Including Remand

After review, the NASD Regulation Board may affirm, modify, or reverse the proposed written decision of the National Business Conduct Committee. The NASD Regulation Board may affirm, modify, reverse, increase, or reduce any sanction, or impose any other fitting sanction. Alternatively, the NASD Regulation Board may remand the disciplinary proceeding with instructions. The NASD Regulation Board shall prepare a proposed written decision that includes all of the elements described in Rule 9349(b)(1) through (6).

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

The NASD Regulation Board shall provide its proposed written decision to the NASD Board. The NASD Board may call the disciplinary proceeding for review pursuant to Rule 9352.

9352.] Discretionary Review by NASD Board

(a) Call for Review by Governor

No change.

(b) [Seven] 15 Day Period; Waiver

(1) A [Disciplinary Proceeding Called for Review by NASD Regulation Board

If the NASD Regulation Board reviewed the disciplinary proceeding under Rule 9351, a) Governor shall make his or her call for review not later than the next meeting of the NASD Board that is at least [seven] 15 days after the date on which the NASD Board receives the proposed written decision of the [NASD Regulation Board.] *National Adjudicatory Council.*

[(2) Disciplinary Proceeding Not Called for Review by NASD Regulation Board

If no Director of the NASD Regulation Board called the disciplinary proceeding for review under Rule 9351, a Governor shall make his or her call for review not later than the next meeting of the NASD Board that is at least seven days after the date on which the NASD Board receives the proposed written decision of the National Business Conduct Committee.

(3)](2) Waiver

By a unanimous vote for the NASD Board, the NASD Board may shorten the period in subparagraph (1) [or (2)] to less than [seven] 15 days. By an affirmative vote of the majority of the NASD Board then in office, the NASD Board may, during the [seven] 15 day period in subparagraph (1) or (2), vote

to extend the period in subparagraph (1) [or (2)] to more than [seven] 15 days.

(c) Review at Next Meeting

No change.

(d) Decision of NASD Board, Including Remand.

After review, the NASD Board may affirm, modify, or reverse [(1)] the proposed written decision of the [NASD Regulation Board; or (2) if the NASD Regulation Board did not call a disciplinary proceeding for review under Rule 9351, the proposed written decision of the National Business Conduct Committee] *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).

* * * * *

9400. LIMITATION PROCEDURES UNDER RULES 3130 AND 3131

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

* * * * *

9413. Department of Member Regulation Consideration

(a) Request for Hearing

No change.

(b) Stay

A request for hearing shall stay the notice of limitations served under Rule 9412 unless the National [Business Conduct Committee] *Adjudicatory Council* orders otherwise.

* * * * *

(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 [Business Conduct Committee] *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 [9418(b)] 9417(b).

9414. National [Business Conduct Committee] *Adjudicatory Council* Review

(a) Initiation of a Review

(1) Application by Member

A member aggrieved by a decision issued under Rule 9413 may file a written application for review by the National [Business Conduct Committee] *Adjudicatory Council.* The application shall state the specific grounds for 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 application for review at any time by filing a written notice with the National [Business Conduct Committee] *Adjudicatory Council* pursuant to Rules 9135, 9136, and 9137.

(2) Motion of National [Business Conduct Committee] *Adjudicatory Council*

A decision issued under Rule 9413 shall be subject to a call for review by any member of the National [Business Conduct Committee] *Adjudicatory Council* or the Review Subcommittee [described in Rule 9312(a)(1)] 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 [Business Conduct Committee] *Adjudicatory Council* or the Review Subcommittee within 30 days after the effective date of the notice. If the National [Business Conduct Committee] *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 [Business Conduct Committee] *Adjudicatory Council* or the Review Subcommittee, the National [Business Conduct Committee] *Adjudicatory Council* shall review the decision.

(3) Stay

Unless otherwise ordered by the National [Business Conduct Committee] *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.

(4) Transmission of the Record

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 [Business Conduct Committee] *Adjudicatory Council*, certify to the National [Business Conduct Committee] *Adjudicatory Council* that the record is complete, and serve a copy of the record and index on the member.

(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 National [Business Conduct Committee] *Adjudicatory Council* intends to review a decision on its own motion under this Rule.

(b) Subcommittee Consideration

(1) Appointment of Subcommittee

The National [Business Conduct Committee] *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 [Business Conduct Committee] *Adjudicatory Council*, and the remaining member or members shall be current or former [Directors of the NASD Regulation Board or former Governors of the NASD Board.] *member of the National Adjudicatory Council or a former Director or Governor.*

* * * * *

(5) Recommendation

The Subcommittee shall present a recommended decision in writing to the National [Business Conduct Committee and all other Directors] *Adjudicatory Council* not later than seven days before the meeting of the National [Business Conduct Committee] *Adjudicatory Council* at which the proceeding shall be considered.

(c) Decision

(1) Decision of National [Business Conduct Committee] *Adjudicatory Council*, Including Remand

After considering all matters presented in the review and the written recommended decision of the Subcommittee, the National [Business Conduct Committee] *Adjudicatory Council* may affirm, modify, or reverse the Department of Member Regulation's decision or remand the proceeding with instructions. The National [Business

Conduct Committee] *Adjudicatory Council* shall prepare a proposed written decision pursuant to subparagraph (2).

(2) Contents of Decision

The decision shall include:

* * * * *

(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 [9417] 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 [Business Conduct Committee] *Adjudicatory Council* shall provide its proposed written decision to the NASD [Regulation Board, and, if the proceeding is not called for review by the NASD Regulation Board, to the NASD Board. The NASD Regulation] *Board. The NASD Board* may call the proceeding for review pursuant to Rule 9415. [The] *If the NASD Board [may] does not* call the proceeding for review [pursuant to Rule 9416. If neither the NASD Regulation Board nor the NASD Board calls the proceeding for review], the proposed written decision of the National [Business Conduct Committee] *Adjudicatory Council* shall become final, and the National [Business Conduct Committee] *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 the National Business Conduct Committee remands the proceeding.]

[9415. Discretionary Review by the NASD Regulation Board

(a) Call for Review by Director

A Director may call a proceeding for review by the NASD Regulation Board if the call for review is made within the period prescribed in paragraph (b).

(b) Seven Day Period; Waiver

After receiving the proposed written decision of the National Business Conduct Committee pursuant to Rule 9414, a Director shall have not less than seven days to determine if the proceeding should be called for review. A Director shall call a proceeding for review by notifying the General Counsel of NASD Regulation. By a unanimous vote of the NASD Regulation Board, the NASD Regulation Board may shorten

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

(c) Review at Next Meeting

If a Director calls a proceeding for review within the period prescribed by paragraph (b), the NASD Regulation Board shall review the proceeding not later than the next meeting of the NASD Regulation Board. The NASD Regulation Board may order the filing of briefs in connection with its review proceedings pursuant to this Rule.

(d) Decision of NASD Regulation Board, Including Remand

After review, the NASD Regulation Board may affirm, modify, or reverse the proposed written decision of the National Business Conduct Committee or remand the proceeding with instructions. The NASD Regulation Board shall prepare a proposed written decision that includes all of the elements described in Rule 9414(c)(2).

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

The NASD Regulation Board shall provide its proposed written decision to the NASD Board. The NASD Board may call the proceeding for review pursuant to Rule 9416. If the NASD Board does not call the proceeding for review, the proposed written decision of the NASD Regulation Board shall become final, and the NASD Regulation Board 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 the [NASD Regulation Board] *National Adjudicatory Council* remands the proceeding.

[9416]9415. Discretionary Review by the NASD Board

(a) Call for Review by Governor

No change.

(b) [Seven] 15 Day Period; Waiver

[(1) Proceeding Called for Review by NASD Regulation Board

If the NASD Regulation Board reviewed the proceeding under Rule 9415, a) A Governor shall make his or her call for review not later than the next meeting of the NASD Board that is at least [seven] 15 days after the date on which the NASD Board receives the proposed written decision of the

National Adjudicatory Council. [NASD Regulation Board.

(2) Proceeding Not Called for Review by NASD Regulation Board

If no Director of the NASD Regulation Board called the proceeding for review under Rule 9415, a Governor shall make his or her call for review not later than the next meeting of the NASD Board that is at least seven days after the date on which the NASD Board receives the proposed written decision of the National Business Conduct Committee.

(3) Waiver

] By a unanimous vote of the NASD Board, the NASD Board may shorten the period [in subparagraph (1) or (2)] to less than [seven] 15 days. By an affirmative vote of the majority of the NASD Board then in office, the NASD Board may, during the [seven] 15 day period [in subparagraph (1) or (2)], vote to extend the period [in subparagraph (1) or (2)] to more than [seven] 15 days.

(c) Review at Next Meeting

No change.

(d) Decision of NASD Board, Including Remand

After review, the NASD Board may affirm, modify, or reverse [: (1)] the proposed written decision of the [NASD Regulation Board, or (2) if the NASD Regulation Board did not call the proceeding for review under Rule 9415, the proposed written decision of the National Business Conduct Committee] *National Adjudicatory Council.* Alternatively, the NASD Board may remand the proceeding with instructions. The NASD Board shall prepare a written decision that includes all of the elements described in Rule 9414(c)(2).

(e) Issuance of Decision

No change.

[9417] 9416. Enforcement of Sanctions

* * * * *

(c) No Stay of Sanctions

Unless otherwise ordered by the National [Business Conduct Committee] *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

No change.

[9418] 9417. Additional Limitations; Reduction or Removal of Limitations

(a) Additional Limitations

If a member continues to experience financial or operational difficulty specified in Rule 3130 or 3131, notwithstanding an effective notice or decision under the Rule 9410 Series, the Department of Member Regulation may impose additional limitations by issuing a notice under Rule 9412. The notice shall state that the member may apply for relief from the additional limitations by filing a written application for a hearing under Rule 9413 and that the procedures in Rules 9413 through [9417] 9416 shall be applicable. An application for a hearing also shall include a detailed statement of the member's objections to the additional limitations.

(b) Reduction or Removal of Limitations

No change.

[9419] 9418. Application to Commission for Review[; Other Action Not Foreclosed

(a) The right to have any action taken by the Association 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 the action taken by the Association, unless the Commission otherwise orders.

9419. Other Action Not Foreclosed

[(b)] Action by the Association under the Rule 9410 Series shall not foreclose action by the Association under any other Rule.

[9420. Approval of Change in Business Operations That Will Result in a Change in Exemptive Status under SEC Rule 15c3-3

Deleted].

9500. SUSPENSION, CANCELLATION, BAR, DENIAL OF ACCESS, AND ELIGIBILITY PROCEDURES

9510. Procedures for Summary and Non-Summary Suspension, Cancellation, Bar, Limitation, or Prohibition

9511. Purpose and Computation of Time

(a) Purpose

(1) No change.

(2) The Association also may take the following actions, after notice and opportunity for hearing:

(A) cancel the membership of a member that becomes ineligible for continuance in membership, or that continues to be associated with an ineligible person, or suspend or bar a

person from continuing to be associated with a member because such person is or becomes ineligible for association under Article [II] III, Section 3 of the NASD By-Laws;

(B) suspend or cancel the membership of a member or the registration of a person for failure to pay fees, dues, assessments, or other charges; failure to submit a required report or information related to such payment; or failure to comply with an arbitration award or a settlement agreement related to an arbitration or mediation under Article [V] VI, Section [2] 3 of the NASD By-Laws;

(C) cancel the membership of a member for failure to file or submit on request any report, document, or other information required to be filed with or requested by the Association under Article [VI] VII, Section 2 of the NASD By-Laws; and

(D) limit or prohibit any member, associated person, or other person with respect to access to services offered by the Association or a member thereof if the Association determines that such person does not meet the qualification requirements or other prerequisites for such access or such person cannot be permitted to continue to have such access with safety to investors, creditors, members, or the Association.

* * * * *

9513. Initiation of Proceeding for Non-Summary Suspension, Cancellation, Bar, Limitation, or Prohibition

(a) Notice

Association staff shall initiate a proceeding authorized under Section 3 of Article [II.] III, Section [2] 3 of Article [VI] VII of the NASD By-Laws, or Rule 9511(a)(2)(D), 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

For any cancellation, suspension, or bar under Section 3 of Article [II] III of the NASD By-Laws, the effective date shall be at least seven days after service of the notice on the member or associated person. For any cancellation or suspension under Section [2] 3 of Article [V] VI or Section 2 of Article [VI] VII of the NASD By-Laws, the effective date shall be at least 15 days after service of the notice on the member or

associated person. For any limitation or prohibition on access to services offered by the Association or a member thereof pursuant to Rule 9511(a)(2)(D), the effective date shall be upon receipt of the notice with respect to services to which the member, associated person, or other person does not have access and shall be at least seven days after service of the notice with respect to services to which the member, associated person, or other person already has access.

9514. Hearing and Decision

(a) Request

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 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) If the President of NASD Regulation or NASD Regulation staff issued the notice initiating the proceeding under Rule 9512(a) or 9513(a), the President of NASD Regulation shall designate an appropriate NASD Regulation department or office as a Party, and the NASD Regulation Board shall appoint a Hearing Panel. The Hearing Panel shall be composed of two or more members. One member shall be a Director of NASD Regulation, and the remaining member or members shall be [a] current or former [Director] *Directors* of NASD Regulation or [a former Governor of the NASD] *Governors*. The President of NASD Regulation may not serve on the Hearing Panel.

(2) If the President of Nasdaq or Nasdaq staff issued the notice under Rule 9512(a) or 9513(a), the President of Nasdaq shall designate an appropriate Nasdaq department or office as a Party, and the Nasdaq Board shall appoint a Hearing Panel. The Hearing Panel shall be composed of two or more members. One member shall be a [Director] *Director* of Nasdaq, and the remaining member or members shall be [a] current or former [Director] *Directors* of Nasdaq or [a former governor of the NASD] *Governors*. The President of Nasdaq may not serve on the Hearing Panel.

* * * * *

9515. Discretionary Review by the NASD Board

(a) Call for Review by Governor

No change.

(b) [Seven] 15 Day Period; Waiver

A Governor shall make his or her call for review not later than the next meeting of the NASD Board that is at least [seven] 15 days after the date on which the NASD Board receives the proposed written decision of the Hearing Panel. By a unanimous vote of the NASD Board, the NASD Board may shorten this period. By an affirmative vote of the majority of the NASD Board then in office, the NASD Board may, during the period, vote to extend the period.

* * * * *

9522. Initiation of Eligibility Proceedings

(a) Notice of Disqualification or Ineligibility

(1) Issuance

No change.

(2) Notice to Member

A notice issued to a member that is subject to a statutory disqualification or is otherwise ineligible for membership shall state that the member may apply for relief by filing a written application for relief with the National [Business Conduct Committee] *Adjudicatory Council* within ten days after service of the notice.

(3) Notice to Associated Person

A notice issued to an associated person who is subject to a statutory disqualification or is otherwise ineligible for association shall state that a member may apply for relief on behalf of itself and such person by filing a written application for relief with the National [Business Conduct Committee] *Adjudicatory Council* within ten days after service of the notice.

(4) Service

No change.

(b) Application by Member

A member shall file a written application for relief from the eligibility requirements of the Association with the National [Business Conduct Committee] *Adjudicatory Council* if the member:

(1) determines that it is subject to a statutory disqualification or otherwise is no longer eligible for membership;

(2) determines that a person associated with it is subject to a statutory disqualification or otherwise is no longer eligible for association with the member; or

(3) wishes to sponsor the association of a person who is subject to a statutory disqualification or otherwise is

ineligible for association with a member.

(c) Form of Application for Relief

No change.

(d) Withdrawal of Application

A member may withdraw its application for relief at any time by filing a written notice with the National [Business Conduct Committee] *Adjudicatory Council* pursuant to Rules 9135, 9136, and 9137.

(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 a written application for relief with the National [Business Conduct Committee] *Adjudicatory Council*.

9523. National [Business Conduct Committee] *Adjudicatory Council* Consideration

(a) Hearing Panel Consideration

(1) Appointment of Hearing Panel

If a member files an application for relief, the National [Business Conduct Committee] *Adjudicatory Council* or the *Review Subcommittee* shall appoint a Hearing Panel composed of two or more members, who shall be current or former [Directors] *members* of the [NASD Regulation Board] *National Adjudicatory Council* or former *Directors* or Governors [of the NASD Board]. The Hearing Panel shall conduct a hearing and recommend a decision on the request for relief.

(2) Notice of Hearing

No change.

(3) Transmission of Documents

* * * * *

(ii) Not less than ten days before the hearing, the Department of Member Regulation, [who] *which* shall act as a Party in the eligibility proceeding, and the member and its current or prospective associated person shall exchange proposed exhibit and witness lists. The exhibit and witness lists shall be served by facsimile or commercial courier.

* * * * *

(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 [Business Conduct Committee and all other Directors] *Adjudicatory Council* not later than seven days before the meeting of the National [Business Conduct Committee] *Adjudicatory Council* at which the eligibility proceeding shall be considered.

(b) Decision

(1) Decision of the National [Business Conduct Committee] *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 [Business Conduct Committee] *Adjudicatory Council* may grant or deny the request for relief, and, if relief is granted, impose conditions on the member and its current or prospective associated person. Alternatively, the National [Business Conduct Committee] *Adjudicatory Council* may remand the eligibility proceeding. The National [Business Conduct Committee] *Adjudicatory Council* shall prepare a proposed written decision pursuant to subparagraph (2).

(2) Contents of Decision

No change.

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

The National *Adjudicatory Council* [Business Conduct Committee shall provide its proposed written decision to the NASD Regulation Board, and, if the eligibility proceeding is not called for review by the NASD Regulation Board, the NASD Board. The NASD Regulation Board may call the eligibility proceeding for review pursuant to Rule 9524. The NASD Board may call the eligibility proceeding for review pursuant to Rule 9525. If neither the NASD Regulation Board nor the NASD Board calls the eligibility proceeding for review, the proposed written decision of the National Business Conduct Committee shall become final, and the National Business Conduct Committee shall serve its written decision on the member, the current or prospective associated person, and 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 Business Conduct Committee remands the eligibility proceeding.

9524. Discretionary Review by the NASD Regulation Board

(a) Call for Review by Director

A Director may call an eligibility proceeding for review by the NASD Regulation Board if the call for review is made within the period prescribed in paragraph (b).

(b) Seven Day Period; Waiver

After receiving the proposed written decision of the National Business Conduct Committee pursuant to Rule 9523, a Director shall have not less than seven days to determine if the eligibility proceeding should be called for review. A Director shall call an eligibility proceeding for review by notifying the General Counsel of NASD Regulation. By a unanimous vote of the NASD Regulation Board, the NASD Regulation Board may shorten the period to less than seven days. By an affirmative vote of the majority of the NASD Regulation Board then in office, the NASD Regulation Board may, during the seven day period, vote to extend the period to more than seven days.

(c) Review at Next Meeting

If a Director calls the eligibility proceeding for review within the period prescribed by paragraph (b), the NASD Regulation Board shall review the eligibility proceeding not later than the next meeting of the NASD Regulation Board. The NASD Regulation Board may order the filing of briefs in connection with its review proceedings pursuant to this Rule.

(d) Decision of NASD Regulation Board, Including Remand

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

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

The NASD Regulation Board 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 [NASD Regulation Board] *National Adjudicatory Council* shall become final, and the [NASD Regulation Board]

National Adjudicatory Council shall serve its written decision on the member, the current or prospective associated person, and 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 Regulation Board] *National Adjudicatory Council* remands the eligibility proceeding.

[9525] 9524. Discretionary Review by the NASD Board

(a) Call for Review by Governor

No change.

(b) [Seven Day Period; Waiver] *15 Day Period; Waiver*

[(1) Eligibility Proceeding Called for Review by NASD Regulation Board

If the NASD Regulation Board reviewed the eligibility proceeding under Rule 9524, as a] A Governor shall make his or her call for review not later than the next meeting of the NASD Board that is at least [seven] 15 days after the date on which the NASD Board receives the proposed written decision of the *National Adjudicatory Council* [NASD Regulation Board.

(2) Eligibility Proceeding Not Called for Review by NASD Regulation Board

If no Director of the NASD Regulation Board called the eligibility proceeding for review under Rule 9524, a Governor shall make his or her call for review not later than the next meeting of the NASD Board that is at least seven days after the date on which the NASD Board receives the proposed written decision of the National Business Conduct Committee.

(3) Waiver

] By a unanimous vote of the NASD Board, the NASD Board may shorten the period [in subparagraph (1) or (2)] to less than [seven] 15 days. By an affirmative vote of the majority of the NASD Board then in office, the NASD Board may, during the [seven] 15 day period [in subparagraph (1) or (2)], vote to extend the period [in subparagraph (1) or (2)] to more than [seven] 15 days.

(c) Review at Next Meeting

No change.

(d) Decision of NASD Board, Including Remand

After review, the NASD Board may affirm, modify, or reverse [: (1)] the proposed written decision of the [NASD Regulation Board, or (2) if the NASD Regulation Board did not call an eligibility proceeding for review under

Rule 9524, the proposed written decision of the National Business Conduct Committee] *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 9523(b)(2).

(e) Issuance of Decision

No change.

[9526] 9525. 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.

9600. PROCEDURES FOR EXEMPTIONS

9610. Application

(a) File with General Counsel

A member seeking an exemption from Rule 1021, 1022, 1070, 2210, 2340, 2520, 2710, 2720, 2810, 2850, 2851, 2860, Interpretive Material 2860-1, 3010, 3210, 3350, 8211, 8212, 8213, 11870, or 11900, Interpretive Material 2110-1, or Municipal Securities Rulemaking Board Rule G-37 shall file a written application with the appropriate department or staff of the Association and provide a copy of the application to the Office of General Counsel of NASD Regulation.

* * * * *

9630. Appeal

(a) Notice

An Applicant may file a written notice of appeal within 15 calendar days after service of a decision issued under Rule 9620. *The Notice of appeal shall be filed with the Office of General Counsel of NASD Regulation, with a copy of the notice also provided to the appropriate department or staff of the Association.* The notice of appeal shall contain a brief statement of the findings and conclusions as to which exception is taken. The National [Business Conduct] *Adjudicatory Council* [Committee] may order oral argument. If the Applicant does not want the National [Business Conduct Committee's] *Adjudicatory Council's* decision on the appeal to be publicly available in whole or in part, the Applicant also shall include in its notice of appeal a detailed statement, including supporting facts, showing good cause for treating the decision as confidential in whole or in part. The

notice of appeal shall be signed by the Applicant.

(b) Expedited Review

Where the failure to promptly review a decision to deny a request for exemption would unduly or unfairly harm the applicant, the National [Business Conduct Committee] *Adjudicatory Council* shall provide expedited review.

(c) Withdrawal of Appeal

An Applicant may withdraw its notice of appeal at any time by filing a written notice of withdrawal of appeal with the National [Business Conduct Committee] *Adjudicatory Council*.

(d) Appointment of Subcommittee

Following the filing of a notice of appeal, the National [Business Conduct Committee shall] *Adjudicatory Council or Review Subcommittee* may designate a Subcommittee to hear an oral argument, if ordered, consider any new evidence that the Applicant can show good cause for not including in its application, and recommend to the National [Business Conduct Committee] *Adjudicatory Council* a disposition of all matters on appeal.

(e) Decision

After considering all matters on appeal and the Subcommittee's recommendation, the National [Business Conduct Committee] *Adjudicatory Council* shall affirm, modify, or reverse the decision issued under Rule 9620. The National [Business Conduct Committee] *Adjudicatory Council* shall issue a written decision setting forth its findings and conclusions and serve the decision on the Applicant. The decision shall be served pursuant to Rules 9132 and 9134. The decisions shall be effective upon service and shall constitute final action of the Association.

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, NASD Regulation included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. NASD Regulation has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Association is proposing changes to the Rule 1010 Series, the Rule 8000 Series, the Rule 9000 Series, and various other rules to conform the rules to the changes adopted by the NASD Board to reorganize the NASD, NASD Regulation, and Nasdaq. The proposed rule amendments are intended to conform the Rule 1010 Series, the Rule 8000 Series, and the Rule 9000 Series to reflect the terms of the corporate reorganization that the NASD Board of Governors approved on June 26, 1997.⁴

Among other things, the corporate reorganization modifies the structure of the NASD Board. As a result, the structure of the NASD Regulation Board, and the Nasdaq Board and certain committees of NASD Regulation and Nasdaq will also change. Of all the structural changes approved by the NASD Board and the two subsidiary boards, two are most related to the operations described in the Rule 1010 Series, the Rule 8000 Series, and the Rule 9000 Series and are the impetus for a number of the rule changes described below.

First, the adjudicatory functions currently performed by the National Business Conduct Committee ("NBCC"), a committee of the NASD Regulation Board, will be performed instead by the National Adjudicatory Council ("NAC"). The proposed NAC members will be appointed by the NASD Regulation Board, but, except for the NAC Chair, will not be members of the NASD Regulation Board or the NASD Board.

Second, the process for reviewing a disciplinary proceeding has been streamlined. Under the proposal, if a disciplinary proceeding is subject to discretionary review at an executive level, such discretionary review will be performed solely by the NASD Board. In contrast, the Association's current practice requires that both the NASD Regulation Board and the NASD Board have an opportunity to review a disciplinary proceeding before the Association may issue a final decision. Although the regulatory responsibility of the NASD Regulation Board to engage in a review of a disciplinary proceeding

⁴ The Commission recently approved a comprehensive amendment of the NASD By-Laws, the NASD Regulation By-Laws, the Nasdaq By-Laws, and the Delegation Plan containing the terms of the corporate reorganization. See Securities Exchange Act Release No. 39326 (November 14, 1997) (File No. SR-NASD-97-71).

has been eliminated, all directors of NASD Regulation will continue to play a vital role in the review of disciplinary proceedings, because, under the new board structure, all directors of the NASD Regulation Board also sit as Governors on the NASD Board.

As a result of these structural changes, the Association is proposing changes to Article V of the NASD Regulation By-Laws, the Rule 1010 Series, the Rule 8000 Series, and the Rule 9000 Series. First, the references to the adjudicatory functions currently performed by the NBCC have been redesignated as those performed by the proposed NAC. Second, the Association proposes amendments to the Rule 1010 Series, the Rule 8000 Series, and the Rule 9000 Series to delete the discretionary review function of the NASD Regulation Board in a Series of rules in which such function is currently set forth. Finally, other changes are proposed in this rule filing to clarify or simplify the rules that were approved on August 7, 1997, as part of SR-NASD-97-28.⁵ Such changes are described later in detail.

(a) Changes to Article V of NASD Regulation By-Laws. The Association is proposing to add a new Section 5.11 to Article V of the NASD Regulation By-Laws. This section will set the quorum requirements and composition of the Review Subcommittee, a subcommittee of the new NAC. As described in greater detail below, the Review Subcommittee shall perform those functions in membership and disciplinary proceedings that are set forth in the membership and disciplinary procedure rules.

(b) Changes to the Rule 1010 Series. The Rule 1010 Series is entitled "Membership, Registration and Qualification Requirement." The Association is proposing changes to the Rule 1010 Series in order to reflect the changes required pursuant to the corporate reorganization approved by the NASD Board while SR-NASD-97-28 was under consideration by the Commission.

First, in order to reflect the changes proposed as part of the corporate reorganization, the Association will amend the Rule 1010 Series generally by deleting each reference to the term, "National Business Conduct Committee," and substituting the term, "National Adjudicatory Council."

Second, in current Rule 1016, the NASD Regulation Board has the authority to review an NBCC decision following an appeal or review proceeding regarding an applicant

whose request for NASD membership has been denied, granted without restriction, or granted but is subject to one or more restrictions set forth in Rule 1014(b)(2). This change parallels the authority of the NBCC to call any disciplinary proceeding decision for review in the Rule 9000 Series. The Association is proposing to eliminate the discretionary review authority of the NASD Regulation Board in current Rule 1016 for the purpose of making the review process more efficient. Generally, this change means that an applicant will receive a final decision of the Association regarding membership status at least 30 days before the applicant would have received such notification under the current Rule 1010 Series. The NASD Board will continue to have the authority now set forth in Rule 1016.

(c) Changes to the Rule 8000 Series. The Rule 8000 Series is entitled "Investigations and Sanctions." Several changes to the Rule 8000 Series were approved by the Commission on August 7, 1997, in SR-NASD-97-28. The Association is now proposing additional changes to the Rule 8000 Series in order to reflect the changes required pursuant to the corporate reorganization approved while SR-NASD-97-28 was under consideration by the Commission. In addition, the Association is proposing changes to Rule 8110 regarding the availability of the NASD Manual and Rule 8210(d) regarding notices sent under the Rule. Finally, the NASD is proposing to move three rules requiring that certain persons provide the Association with information to the Rule 8000 Series from other rule series.

First, in order to reflect the changes proposed as part of the corporate reorganization, the Association will amend the Rule 8000 Series generally by deleting each reference to the term, "National Business Conduct Committee," and substituting the term, "National Adjudicatory Council," and make other conforming changes discussed above to reflect the corporate reorganization.

Second, the Association proposes minor changes to Rule 8110 and Rule 8210(d). Rule 8110 requires a member to maintain an NASD Manual. If approved, the proposed change to Rule 8110 would allow a member to comply with the obligation of Rule 8110 to maintain a copy of the NASD Manual in its offices, including branch offices, by allowing the member to maintain an electronic version of the NASD Manual, among other options, in such offices.

Third, the proposed change to Rule 8210(d) is intended to clarify how the Association will determine if a member

or a person subject to the Rule 8000 Series obligation to provide information to the Association upon request receives a notice sent by the Association. Additional addresses at which a person may be served have been added to the list to provide additional safeguards to potential recipients of such notices.

Fourth, the Association proposes to renumber three rules, Rule 4615, Rule 5107, and Rule 6730, as proposed Rule 8211, proposed Rule 8212, and proposed Rule 8213. Each of these rules requires certain persons to provide information to the Association. The Rule 8000 Series, by Rule 8210, contains the general requirement that a member or another person must provide information to the Association when requested to do so. The rules, in the current form and as renumbered proposed rules, set forth the same type of obligation as to specific types of information. The Association believes that members and other persons will be more aware of these information sharing obligations by placing the three current rules in the Rule 8000 Series. The Association also proposes minor, technical changes to such renumbered rules, as described below.

Rule 4615 requires a member to submit automated trading data upon request to the Association. The Association does not propose to amend the text of current Rule 4615, renumbered as Rule 8211, except as follows. The Association proposes to add an explicit reference to the Rule 9600 Series to identify the Rule 9600 Series as the avenue by which a member may seek a good cause exemption and to set forth clearly that "good cause" is the standard for seeking an exemption. The other amendments proposed are technical (e.g., the paragraphs and subparagraphs of the rule are renumbered and a redundant clause is stricken).

Proposed Rule 8212, now Rule 5107, requires a member and an approved affiliate that participates in Nasdaq International as a Service market maker or an order-entry firm to submit certain trading data. The minor changes the Association proposes to the existing rule text include amending the title to clarify that the proposed Rule 8212 obligation is to provide information on trading data for the Nasdaq International Service transactions, adding a reference to the Rule 9600 Series as the appropriate rule series under which a member may seek a good cause exemption from the obligations of the rule, and stating explicitly that "good cause" is the standard for obtaining an exemption.

⁵ See Securities Exchange Release No. 38908 (August 7, 1997), 62 FR 43385 (August 13, 1997).

Proposed Rule 8212, now Rule 6730, requires a member to submit certain types of trade data pursuant to proposed Rule 8211 (current Rule 4615) in automated format. Proposed Rule 8213 differs from current Rule 6730 in that the Association proposes to clarify the title of the rule, make an explicit reference to the Rule 6700 Series, and add a sentence at the end of the rule referring a member to the Rule 9600 Series in order to request exemptive relief.

The Association notes that its proposal to move Rule 4615, Rule 5107, and Rule 6730 to the Rule 8000 Series will not affect the Association's ability to seek information pursuant to any other Association rule under which the Association may do so from persons subject to the rule. For example, under proposed Rule 4623, Nasdaq is proposing to request information from electronic communications networks ("ECNs") and the changes the Association is proposing with respect to the Rule 8000 Series are not intended to have any impact on the Association's proposal to gather information under proposed Rule 4623.

(d) Changes to the Rule 9000 Series. The Rule 9000 Series is entitled the "Code of Procedure." The Rule 9000 Series was comprehensively changed pursuant to the Commission approval of SR-NASD-97-28 on August 7, 1997.⁶ The Association is now proposing additional changes to the Rule 9000 Series in order to reflect the changes required pursuant to the corporate reorganization approved while SR-NASD-97-28 was under consideration by the Commission. In addition, the Association is amending Rule 9102(d), Rule 9844(b), and Rule 9347 (a-b), to clarify the role of the Review Subcommittee of the NAC. Finally, the Association is proposing minor changes to several other Rules, including Rule 9120, Rule 9141, Rule 9214, Rule 9215, Rule 9216, Rule 9231, Rule 9235, Rule 9241, Rule 9270, and 9312.

(1) Changes Related to the Corporate Reorganization. In order to reflect the changes proposed as part of the corporate reorganization, the Association will amend the Rule 9000 Series generally by deleting each reference to the term, "National Business Conduct Committee," and substituting the term, "National Adjudicatory Council."

In addition, there are several proceedings described in the current Rule 9000 Series in which the NASD Regulation Board has the authority to review a disciplinary or other decision

of the NBCC relating to the proceeding (e.g., Rule 9351, relating to a Rule 9300 Series disciplinary proceeding that has been appealed to or reviewed by the proposed National Adjudicatory Council, and Rule 9415, relating to a Rule 9400 proceeding used to regulate the activities of a member experiencing financial or operational difficulties). The Association is proposing to eliminate such authority. Generally, if this proposed change is approved by the Commission, persons subject to disciplinary and other proceedings in which the discretionary review function of the NASD Regulation Board is eliminated will be notified of the final decision of the Association approximately 30 days earlier than such persons would be notified under the current Rule 9000 Series.

In order to reflect the increased role of the Review Subcommittee of the NAC in the administration of disciplinary proceedings during the appeal or review stages, the Association is proposing to amend several rules in the Rule 9300 Series, or other rules relating to a Rule 9300 Series appeal or review proceeding, by granting authority to the Review Subcommittee to make a number of decisions, and deleting from the same rules the authority of the Chair and Vice Chair of the proposed NAC (formerly, the NBCC) to make such decisions. In addition, in proposed amendments to Rule 9216 and Rule 9270, the Review Subcommittee is substituted for the Chair and the Vice Chair of the NAC (formerly, the NBCC) in: (a) Rule 9216(a), relating to the review and acceptance of letters of acceptance, waiver, and consent; (b) Rule 9216(b), relating to the review and acceptance of minor rule plan violation letters; and, (c) Rule 9270, relating to the review and acceptance of offers of settlement. As a result of the restructuring of the NBCC as the NAC and the proposed changes in procedural operations, the Association believes that it is more appropriate for either the full disciplinary committee, the proposed NAC, or by delegation, the smaller Review Subcommittee, balanced as to Industry and Non-Industry members, to make certain decision and rulings within the authority of the NBCC (the proposed NAC) that had been delegated previously to the Chair and the Vice Chair of the NBCC. Each of the above changes are reflected in amendments to a number of Rules in the Rule 9000 Series.

(2) Rule 9100 Series, Rule 9200 Series, and Rule 9300 Series—Other Changes. The Association proposes to add a new definition, "Department of Enforcement," in Rule 9120, as new

paragraph (e) and renumber all other paragraphs. The definition of "Department of Enforcement" is being added because a substantial number of Association disciplinary proceedings are conducted cooperatively by the Department of Enforcement and the Department of Market Regulation. In some cases, staff of the Department of Market Regulation will perform many of the functions of the complaining Party by delegated authority.

Proposed paragraph (e) provides that the Department of Enforcement means the Department of Enforcement itself, and for most purposes under the Code, its delegatee, the Department of Market Regulation as well. Although the Department of Market Regulation would have delegated authority to prosecute a disciplinary matter after authorization of the complaint by the Division of Enforcement, however, it would not have authority to authorize a disciplinary proceeding under Rule 9211, determine the terms of a letter of acceptance, waiver, and consent, or of a minor rule violation plan letter under Rule 9216 (a) and (b), or authorize the filing of a notice of appeal under Rule 9311.

The Association purposes many other minor changes to Rule 9120 which reflect renumbering or a change in the term, "National Business Conduct Committee" to the term, "National Adjudicatory Council." In addition, certain definitions contain technical corrections to add references to proceedings in the Rule 9600 Series. Finally the Association is proposing to amend the definition of "Review Subcommittee." The Association proposes to delete the definition from the Rule 9300 Series, locate it in Rule 9120, and amend it to clarify the composition of the Review Subcommittee and other terms of the Review Subcommittee by a cross reference to new Article V, Section 5.11 of the NASD Regulation By-Laws.

The Association proposes to amend Rule 9141(b) to clarify that the written notice one is required to file under that provision is a "notice of appearance." Rule 9141(b) indicates that when a Respondent is represented by a third party, a written notice stating the name of the representative, among other things, shall be filed. The proposed change to paragraph (b) would make explicit that the written notice is a notice of appearance, and that the notice of appearance must be filed in each case. This procedure will avoid any misunderstanding as to who the representative is for a particular Respondent.

⁶ See Release No. 34-38908, *supra* note 5.

The Association proposes to amend Rule 9214(b) to clarify that when the consolidation of two or more cases is being considered, all Parties to all such cases will be served with all papers filed and all orders issued. The proposed amendment also makes explicit that when a Party moves to consolidate two or more cases, the Chief Hearing Officer will decide which panel will hear the case and will issue an order accordingly.

The Association proposes to amend Rule 9215 in paragraph (a) to clarify that service of an answer occurs under Rule 9133, in paragraph (e) to change a 15 day period to a 14 day period, which is consistent with other periods in the Code, and in paragraph (f) to permit the Department of Enforcement to send a second notice to a Respondent who fails to file an answer. Paragraph (a) includes a reference to Rule 9133 which could be read as incorrectly stating that service of the complaint is made pursuant to Rule 9133. The amendment to paragraph (a) clarifies that service of an answer must be made pursuant to Rule 9133.

Currently, paragraph (e) of Rule 9215 provides for an extension of time for the Respondent to file an answer to an amended complaint. The time period is 14 days if the Respondent has not filed an answer to the original complaint and 15 days if the Respondent has filed an answer to the original complaint. The Association is proposing to make both periods 14 days, to eliminate confusion.

Rule 9215(f) provides that if a Respondent does not file an answer within the time period of the original complaint, the Hearing Officer will direct the Department of Enforcement to send a second notice of the complaint to the Respondent. Subsequently, the Hearing Officer may treat a failure to respond to the second notice as a default. In those cases in which the Respondent has filed an extension request or a letter or some other document with the Office of Hearing Officers, and subsequently fails to file an answer, it is unnecessary to have the Department of Enforcement send a second notice before a default is declared because the earlier filing by the Respondent is evidence that the Respondent received the original complaint. If there is evidence in the form of a communication to the Office of Hearing Officers that Respondent received the original complaint and failed to file an answer, the Association believes that there should be no requirement that a second notice of the complaint be sent before a default judgment can be entered. In addition, in the interests of efficiency, in those cases in which the Respondent does not file

anything, the Department of Enforcement on its own initiative should send the second notice without an order from the Office of Hearing Officers. Therefore, the Association is proposing to amend Rule 9215 (f) to (i) delete the requirement that the Office of Hearing Officers order the Department of Enforcement to send the second notice when required, and (ii) delete the requirement to send a second notice before declaring a default if the Respondent has made a filing with the Office of Hearing Officers but has failed to answer the complaint in a timely manner.

The Association proposes to amend IM-9216, which follows Rule 9216(b), the provision allowing a person to resolve some rule violations by submitting a minor rule violation plan letter ("MRV") to the Association. In IM-9216, the Association lists the rules that the Association may resolve violations of by using an MRV. The Association proposes to add Rule 4615, Rule 6730 and Rule 5107 to IM-9216 (as renumbered proposed Rules 8211 through proposed Rules 8213).

The Association inadvertently omitted Rule 4615 and Rule 6730 in IM-9216 in the submission of the proposed Rule 9000 Series in SR-NASD-97-28. Prior to August 7, 1997, when SR-NASD-97-28 was approved by the Commission, old Rule IM-9217, the former provision listing rule violations appropriate for resolution by an MRV included Rule 4615 and the Rule 6730 Series, which included Rule 6730. The Association also proposes to add Rule 5107 (proposed as Rule 8212) to IM-9216 because it is similar to Rule 4615 and Rule 6730. Rule 5107, like Rule 4615 and Rule 6730, is a "blue sheeting" rule, requiring the same type of information to be submitted as do the Rules 4615 and Rule 6730.

The Office of Hearing Officers has determined that without express authority in the Code of Procedure the Chief Hearing Officer would be unable to appoint persons to serve as observers to observe a disciplinary proceeding. Rule 9231 (b) and (c) currently provides that a Hearing Panel or an Extended Hearing Panel shall consist of a Hearing Officer and two Panelists, except in extraordinary circumstances relating to the prior disqualification or recusal of a Panelist as set forth in Rule 9234. The Association is proposing to add paragraph (d) to Rule 9231 to assure that, for training purposes only, the Chief Hearing Officer could appoint an observer to observe a disciplinary proceeding. Under paragraph (d), the Chief Hearing Officer could designate a person as an observer to a Hearing Panel

or an Extended Hearing Panel if the person is eligible to be appointed as a Panelist. The Function is being established to provide future Panelists with the opportunity to observe a disciplinary proceeding hearing for training purposes.

The Association proposes to amend Rule 9235 to allow the Chief Hearing Officer or the Deputy Chief Hearing Officer to issue an order in a disciplinary proceeding in the event a Hearing Officer is unavailable. The Association is proposing to add new paragraph (b) to state explicitly that, in the event the appointed Hearing Officer is temporarily unavailable and exigent circumstances require action by the Hearing Officer, the Chief Hearing Officer or the Deputy Chief Hearing Officer may temporarily function as the appointed Hearing Officer in a proceeding until the appointed Hearing Officer is available.

The Association is proposing to amend Rule 9241 to trigger the 21 day period in the rule from the filing of an answer, rather than from the service of the answer. The Office of Hearing Officers knows when an answer has been filed; it may not know for a period of time whether the answer has been served.

The Association is proposing to amend Rule 9270(a) to allow a Hearing Officer to determine if an offer of settlement made before a hearing on the merits has begun should stay the hearing. Currently, a Hearing Panel must issue such decisions if the offer of settlement is filed within 30 days prior to the date the hearing is scheduled to begin. The specific change would provide that if a settlement motion is filed prior to the commencement of a hearing, the Hearing Officer has the authority to determine whether the hearing should be stayed. In contrast, if the settlement motion is filed after commencement of a hearing, the panel, rather than the Hearing Officer, has the authority to determine whether the hearing should be stayed.

In Rule 9312(e), the Association proposes to clarify that the National Adjudicatory Council's authority to review a case extends to any issue raised in the "record" of the disciplinary proceeding, rather than the "decision" as the Code now provides.

(3) Rule 9600 Series—Other Changes. The Association is proposing to amend the Rule 9600 Series under the Code of Procedure to require a member seeking an exemption from proposed Rule 8211, 8212, and 8213 (current Rule 4615, Rule 5107, and Rule 6730, discussed, *supra*, as changes to the Rule 8000 Series), to follow the procedures outlined in the

recently adopted Rule 9600 Series. Currently, the exemptive authority under Rule 4615, Rule 5107, and Rule 6730 is a generalized authority vested in the Association.

In addition, to eliminate delays in processing a request for an exemption, the Association proposes to modify Rule 9610. Proposed Rule 9610 requires a person seeking exemptive relief to file a written application with "the appropriate department or staff of the Association, and provide a copy of the application to the Office of General Counsel of NASD Regulation," rather than filing the application only with the Office of the General Counsel of NASD Regulation. The same change is proposed in Rule 9630(a), which deals with filing a notice of an appeal of a decision regarding exemptive relief.

2. Statutory Basis

(a) The Association is requesting that the proposed rule change be effective within 45 days of SEC approval, but not later than January 1, 1998.

(b) The Association believes that the proposed rule change is consistent with Section 15A(b)(6), (7), and (8) of the Act.⁷ The proposed rule change is consistent with Section 15A(b)(6) of the Act in that it will promote just and equitable principles of trade by providing fair procedures and standards for membership admission, and fair procedures and consistent treatment for requesting information from members or other persons who are obligated to provide the Association with information. The proposed rule change is consistent with Section 15A(b)(7) in that it furthers the statutory mandate that the Association establish rules providing that its members and persons associated with its members shall be appropriately disciplined for violation of any provision of this title, the rules or regulations thereunder, the rules of the Municipal Securities Rulemaking Board, or the rules of the association, by expulsion, suspension, limitation of activities, functions, and operations, fine, censure, being suspended or barred from being associated with a member, or any other fitting sanction. The rule change is consistent with Section 15A(b)(8) in that it furthers the statutory goals of providing a fair procedure for disciplining members and persons associated with members, fair procedures for admitting or denying membership to any person seeking membership to the Association, fair procedures for barring any person from becoming associated with a member of the Association, and fair procedures for

prohibiting or limiting the association of any person with respect to access to services offered by the Association or a member thereof.

B. Self-Regulatory Organization's Statement on Burden on Competition

NASD Regulation does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice if the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

A. by order approve such proposed rule change, or

B. institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to file number SR-NASD-97-81 and should be submitted by December 18, 1997.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.⁸

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 97-31523 Filed 12-2-97; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-39369; File No. SR-NASD-97-51]

Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Order Approving a Proposed Rule Change Regarding the Transfer of Securities of Issuers Listed on the Nasdaq Stock Market That Are Held Pursuant to a Direct Registration Program

November 26, 1997.

I. Introduction

On July 16, 1997, The Nasdaq Stock Market, Inc. ("Nasdaq") filed with the Securities and Exchange Commission ("Commission") a proposed rule change (File No. SR-NASD-97-51) pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act").¹ The rule change will amend Rules 4200, 4310, 4320, and 4460 of the National Association of Securities Dealers, Inc. ("NASD") to require Nasdaq issuers that elect to offer a direct registration program² to shareholders to participate, either directly or through the issuer's transfer agent, in an electronic link with a securities depository registered under Section 17A of the Act.³ Notice of the proposal was published in the **Federal Register** on September 23, 1997.⁴ No comment letters were received. For the reasons discussed below, the Commission is approving the proposed rule change.

II. Description of the Proposal

In 1994, the Commission requested comments on the establishment of a transfer agent operated direct registration system ("DRS") for securities which would allow investors to have their securities registered in book-entry form directly on the books of

⁸ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² New section (j) of NASD Rule 4200 defines a *direct registration program* as any program by an issuer, directly or through its transfer agent whereby a shareholder may have securities registered in the shareholder's name on the books of the issuer or its transfer agent without the need for a physical certificate to evidence ownership.

³ 15 U.S.C. 78q-1.

⁴ Securities Exchange Act Release No. 39082 (September 16, 1997), 62 FR 49719.