

9400. LIMITATION PROCEDURES UNDER RULES 3130 AND 3131

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

9411. Purpose

The Rule 9410 Series sets forth procedures for regulating the activities of a member that is experiencing the financial or operational difficulties specified in Rule 3130 or 3131.

9412. Notice of Limitations

The Department of Member Regulation may issue a notice directing a member to limit its business activities if the Department of Member Regulation has reason to believe that any condition specified in Rule 3130 or 3131 exists. The notice shall specify the grounds on which such action is being taken, the nature of the limitations to be imposed, the effective date of the limitations, a fitting sanction that will be imposed if the member fails to comply with the limitations set forth in the notice, and the conditions for terminating such limitations. The effective date of the limitations shall be at least seven days after the date of service of the notice. The notice also shall inform the member that it may request a hearing before the Department of Member Regulation under Rule 9413. The Department of Member Regulation shall serve the notice by facsimile or overnight commercial courier.

9413. Department of Member Regulation Consideration

(a) Request for Hearing

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

(b) Stay

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

(c) Time of Hearing

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

(d) Transmission of Documents

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

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

(e) Hearing and Rights of Member

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

(f) Record

The record shall consist of:

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

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

- (5) any evidence considered at the hearing; and
- (6) the transcript of the hearing and any corrections thereto.

(g) Custodian of the Record

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

(h) Evidence Not Admitted

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

(i) Decision

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

(j) Failure to Request Hearing

If a member does not request a hearing under paragraph (a), the limitations specified in the notice shall become effective on the date specified in the notice. Unless the National Business Conduct Committee 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).

9414. National Business Conduct Committee 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. 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 pursuant to Rules 9135, 9136, and 9137.

(2) Motion of National Business Conduct Committee

A decision issued under Rule 9413 shall be subject to a call for review by any member of the National Business Conduct Committee 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 or the Review Subcommittee within 30 days after the effective date of the notice. If the National Business Conduct Committee 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 or the Review Subcommittee, the National Business Conduct Committee shall review the decision.

(3) Stay

Unless otherwise ordered by the National Business Conduct Committee, 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, certify to the National Business Conduct Committee 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 intends to review a decision on its own motion under this Rule.

(b) Subcommittee Consideration

(1) Appointment of Subcommittee

The National Business Conduct Committee 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, and the remaining member or members shall be current or former Directors of the NASD Regulation Board or former Governors of the NASD Board.

(2) Oral Argument

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

(3) Review on Record

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

(4) Additional Evidence

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

(5) Recommendation

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

(c) Decision

(1) Decision of National Business Conduct Committee, Including Remand

After considering all matters presented in the review and the written recommended decision of the Subcommittee, the National Business Conduct Committee may affirm, modify, or reverse the Department of Member Regulation's decision or remand the

proceeding with instructions. The National Business Conduct Committee shall prepare a proposed written decision pursuant to subparagraph (2).

(2) Contents of Decision

The decision shall include:

(A) a description of the Department of Member Regulation's decision, including its rationale;

(B) a description of the principal issues regarding the imposition of limitations raised in the review and a statement supporting the disposition of such issues;

(C) a summary of the evidence on each issue;

(D) a statement of whether the Department of Member Regulation's decision is affirmed, modified, or reversed, and a rationale therefor; and

(E) if any limitations are imposed: (i) a description of the limitations and a statement describing a fitting sanction that will be imposed under Rule 9417 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 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 may call the proceeding for review pursuant to Rule 9415. The NASD Board may 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 shall become final, and the National Business Conduct Committee 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 remands the proceeding.

9416. Discretionary Review by the NASD Board

(a) Call for Review by Governor

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

(b) Seven Day Period; Waiver

(1) Proceeding Called for Review by NASD Regulation Board

If the NASD Regulation Board reviewed the proceeding 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 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 days. By an affirmative vote of the majority of the NASD Board then in office, the NASD Board may, during the seven day period in subparagraph (1) or (2), vote to extend the period in subparagraph (1) or (2) to more than seven days.

(c) Review at Next Meeting

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

(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. 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

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

9417. Enforcement of Sanctions

(a) Order

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

(b) Hearing

(1) A member aggrieved by an order issued under paragraph (a) may file a written request for a hearing before the Department of Member Regulation. The request shall be filed pursuant to Rules 9135, 9136, and 9137 within seven days (including intermediate Saturdays, Sundays, and Federal holidays) after service of the order. The hearing shall be held within ten days after service of the order under paragraph (a).

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

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

(c) No Stay of Sanctions

Unless otherwise ordered by the National Business Conduct Committee, a request for a hearing pursuant to this Rule shall not stay the effectiveness of the order issued under paragraph(a).

(d) Decision

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

9418. 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 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

If the Department of Member Regulation determines that any limitations previously imposed under the Rule 9410 Series should be reduced or removed, the Department of Member Regulation shall serve a written notice on the member pursuant to Rules 9132 and 9134.

9419. 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.

(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) The purpose of the Rule 9510 Series is to set forth procedures for certain suspensions, cancellations, bars, and limitations and prohibitions on access to the Association's services authorized by the Act and the NASD By-Laws. Pursuant to Section 15A(h)(3) of the Act, the Association may summarily:

(A) suspend a member or associated person who has been and is expelled or suspended from any self-regulatory organization or barred or suspended from being associated with a member of any self-regulatory organization;

(B) suspend a member who is in such financial or operating difficulty that the Association determines and so notifies the Commission that the member cannot be permitted to continue to do business as a member with safety to investors, creditors, other members, or the Association; or

(C) limit or prohibit any person with respect to access to services offered by the Association if subparagraph(A) or (B) applies to such person, or in the case of a person who is not a member, if the Association determines that such person does not meet the qualification requirements or other prerequisites for such access and such person cannot be permitted to continue to have such access with safety to investors, creditors, members, or the Association.

(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, 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, Section 2 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, 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.

(3) Other procedures for suspending the membership of a member, suspending the registration of an associated person, or suspending a person from association with any

member are found in the Rule 8220 Series and Rule 8320. Procedures for listing qualification matters are found in the Rule 9700 Series; the Rule 9510 Series does not apply to listing qualification matters.

(b) Computation of Time

For purposes of the 9510 Rule Series, time shall be computed as set forth in Rule 9138, except that intermediate Saturdays, Sundays, and holidays shall be included in the computation.

9512. Initiation of Proceedings for Summary Suspension, Limitation, or Prohibition

(a) Authorization

(1) The NASD Board may authorize the President of NASD Regulation to issue on a case-by-case basis a written notice that:

(A) summarily suspends a member or associated person who has been and is expelled or suspended from any self-regulatory organization or barred or suspended from being associated with a member of any self-regulatory organization; or

(B) summarily suspends a member who is in such financial or operating difficulty that the Association determines and so notifies the Commission that the member cannot be permitted to continue to do business as a member with safety to investors, creditors, other members, or the Association.

(2) The NASD Board may authorize the President of NASD Regulation or the President of Nasdaq to issue on a case-by-case basis a written notice that summarily limits or prohibits any person with respect to access to services offered by the Association if paragraph (a)(1) applies to such person or, in the case of a person who is not a member, if the NASD Board determines that such person does not meet the qualification requirements or other prerequisites for such access and such person cannot be permitted to continue to have such access with safety to investors, creditors, members, or the Association.

(b) Contents and Service of Notice

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

(c) Effective Date

A summary suspension, limitation, or prohibition shall be effective upon service of the notice under paragraph (b).

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, Section 2 of Article V, or Section 2 of Article VI 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 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 of Article V or Section 2 of Article VI 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

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

A member, associated person, or other person who is subject to a notice issued under Rule 9512(a) or 9513(a) may file a written request for a hearing with the Association. The request shall state either the specific grounds for reversing the summary suspension, limitation, or prohibition or for opposing the cancellation, suspension, bar, limitation, or prohibition. The request shall be filed pursuant to Rules 9135, 9136, and 9137 within seven days after service of the notice under Rule 9512 or 9513. The member, associated person, or other person may withdraw its request for a hearing at any time by filing a written notice with the Association pursuant to Rules 9135, 9136, and 9137.

(2) Failure to File Request

If the member, associated person, or other person subject to the notice issued under Rule 9512(a) or 9513(a) does not file a written request for a hearing under subparagraph (1), the notice shall constitute final action by the Association.

(3) Ex Parte Communications

The prohibition against ex parte communications in Rule 9143 shall become effective under the Rule 9510 Series when Association staff has knowledge that a member, associated person, or other person intends to request a hearing under this paragraph.

(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 of NASD Regulation or a former Governor of the NASD. 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 of Nasdaq, and the remaining member or members shall be a current or former Director of Nasdaq or a former Governor of the NASD. The President of Nasdaq may not serve on the Hearing Panel.

(c) Stays

(1) Summary Suspension, Limitation, or Prohibition

Unless the NASD Board orders otherwise, a request for a hearing shall not stay the effectiveness of a summary suspension, limitation, or prohibition under Rule 9512.

(2) Non-Summary Cancellation, Suspension, Bar, Limitation, or Prohibition

Unless the NASD Board orders otherwise, a request for a hearing shall stay the notice issued under Rule 9513, except that a request for a hearing shall not stay a notice of a limitation or prohibition on services offered by the Association or a member thereof with respect to services to which a member, associated person, or other person does not have access.

(d) Time of Hearing

(1) Summary Suspension

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

(2) Non-Summary Suspension, Cancellation, Bar, Limitation or Prohibition

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

(e) Transmission of Documents

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

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

(f) Hearing Panel Consideration

(1) Rights of Parties

The Parties shall be entitled to be heard in person, to be represented by an attorney, and to submit any relevant evidence.

(2) Witnesses

A person who is subject to the jurisdiction of the Association shall testify under oath or affirmation. The oath or affirmation shall be administered by a court reporter.

(3) Recordation of Hearing

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

(4) Record

The record shall consist of: (1) the notice issued under Rule 9512 or 9513; (2) all documents transmitted by the Association under Rule 9514(e)(1); (3) the request for hearing; (4) any other submissions by the Parties; (5) any evidence considered at the hearing; and (6) the transcript of the hearing and any corrections thereto.

(5) Custodian of the Record

If the President of NASD Regulation or NASD Regulation staff initiated the proceeding under Rule 9512 or 9513, the Office of the General Counsel of NASD Regulation shall be the custodian of the record. If the President of Nasdaq or Nasdaq staff initiated the proceeding under Rule 9512 or 9513, the Office of the General Counsel of Nasdaq shall be the custodian of the record.

(6) Evidence Not Admitted

Evidence that is proffered but not admitted during the hearing shall not be part of the record, but shall be retained by the custodian of the record until the

date when the Association's decision becomes final or, if applicable, upon the conclusion of any review by the Commission or the federal courts.

(g) Decision of the Hearing Panel

(1) Summary Suspension, Limitation, or Prohibition

Based on its review of the record, the Hearing Panel shall affirm, modify, or reverse the summary suspension, limitation, or prohibition. The Hearing Panel shall prepare a proposed written decision pursuant to subparagraph (3).

(2) Non-Summary Suspension, Cancellation, Bar, Limitation, or Prohibition

Based on its review of the record, the Hearing Panel shall decide whether a cancellation, suspension, bar, limitation, or prohibition shall be imposed or continue to be imposed. The Hearing Panel shall prepare a proposed written decision pursuant to subparagraph (3).

(3) Contents of Decision

The decision shall include:

(A) a statement setting forth the specific statute, rule, or NASD by-law that authorized the proceeding;

(B) a statement describing the investigative or other origin of the proceeding;

(C) the grounds for issuing the notice under Rule 9512 or 9513;

(D) a statement of findings of fact with respect to any act or practice that was alleged to have been committed or omitted by the member, associated person, or other person;

(E) a statement in support of the disposition of the principal issues raised in the proceedings; and

(F) if a summary suspension, limitation, or prohibition continues to be imposed, the specific grounds for imposing such suspension, limitation, or prohibition, and the terms of the suspension, limitation, or prohibition, or, if a non-summary suspension, cancellation, bar, limitation, or prohibition is to be imposed or continue to be imposed, the effective date, time, and terms of the suspension, cancellation, bar, limitation, or prohibition.

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

The Hearing Panel shall provide its proposed written decision to the NASD Board. The NASD Board may call the proceeding for review pursuant to Rule 9515. If the NASD Board does not call the proceeding for review, the proposed written decision of the Hearing Panel shall become final, and the Hearing Panel shall serve its written decision on the Parties pursuant to Rules 9132 and 9134. The decision shall be effective upon service and shall constitute the final action of the Association.

9515. Discretionary Review by the NASD Board

(a) Call for Review by Governor

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

(b) Seven 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 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.

(c) Review at Next Meeting

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

(d) Decision of the NASD Board, Including Remand

After review, the NASD Board may affirm, modify, or reverse the proposed written decision of the Hearing Panel. Alternatively, the NASD Board may remand the proceeding with instructions. The NASD Board shall prepare a written decision that includes all of the elements of Rule 9514(g)(3).

(e) Issuance of Decision

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

9516. Reinstatement

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

9517. Copies of Notices and Decisions to Members

A copy of a notice initiating a proceeding, a notice of a hearing, or any other notice or decision that is served on a person associated with a member under the Rule 9510 Series shall be served simultaneously on such member by the same method of service provided for in the applicable rule.

9518. Application to Commission for Review

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

9519. Other Action Not Foreclosed; Costs

(a) Action by the Association under the Rule 9510 Series shall not foreclose action by the Association under any other Rule.

(b) The Association may impose on a member, associated person, or other person such costs of a denial of access proceeding as the Association deems fair and appropriate under the circumstances. Costs relating to other proceedings under the Rule 9510 Series may be imposed under Rule 8330.

9520. Eligibility Proceedings

9521. Purpose

The Rule 9520 Series sets forth procedures for a person to become or remain associated with a member, notwithstanding the existence of a statutory disqualification as defined in Section 3(a)(39) of the Act and for a current member or person associated with a member to obtain relief from the eligibility or qualification requirements of the NASD By-Laws and the Rules of the Association. Such actions hereinafter are referred to as "eligibility proceedings."

9522. Initiation of Eligibility Proceedings

(a) Notice of Disqualification or Ineligibility

(1) Issuance

If Association staff has reason to believe that a statutory disqualification exists or that a member or person associated with a member otherwise fails to meet the eligibility requirements of the Association, Association staff shall issue a written notice to the

member or associated person. The notice shall specify the grounds for such disqualification or ineligibility.

(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 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 within ten days after service of the notice.

(4) Service

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

(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 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

A written application for relief shall be submitted on Form MC400 and shall include a detailed statement demonstrating why the requested relief should be granted.

(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 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.

9523. National Business Conduct Committee Consideration

(a) Hearing Panel Consideration

(1) Appointment of Hearing Panel

If a member files an application for relief, the National Business Conduct Committee shall appoint a Hearing Panel composed of two or more members, who shall be current or former Directors of the NASD Regulation Board or former 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

Not less than fourteen days before the hearing, the member shall be notified via facsimile or commercial courier of the location, time, and date of the hearing.

(3) Transmission of Documents

(i) If Association staff initiated the eligibility proceeding by issuing a notice under Rule 9522(a), Association staff shall provide to the member and its current or prospective associated person all documents that were relied on in issuing the notice. Such documents shall be served on the member and its current or prospective associated person by facsimile or commercial courier not less than ten days before the hearing.

(ii) Not less than ten days before the hearing, the Department of Member Regulation, who 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.

(4) Rights of Member, Current or Prospective Associated Person, and Department of Member Regulation

The member, its current or prospective associated person, and the Department of Member Regulation shall be entitled to be heard in person, to be represented by an attorney, and to submit any relevant evidence.

(5) Recordation of Hearing

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

(6) Record

The record shall consist of: (1) the notice issued pursuant to Rule 9522(a), if applicable; (2) all documents relied upon in issuing the notice under Rule 9522(a), if applicable; (3) the application for relief filed pursuant to Rule 9522(b); (4) any other submissions by the member, the current or prospective associated person, and the Department of Member Regulation; (5) any evidence considered at the hearing; and (6) the transcript of the hearing and any corrections thereto.

(7) Custodian of the Record

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

(8) Evidence Not Admitted

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

(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 not later than seven days before the meeting of the National Business Conduct Committee at which the eligibility proceeding shall be considered.

(b) Decision

(1) Decision of the National Business Conduct Committee

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 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 may remand the eligibility proceeding. The National Business Conduct Committee shall prepare a proposed written decision pursuant to subparagraph (2).

(2) Contents of Decision

The decision shall include:

(A) a description of the origin of the eligibility proceeding and the nature of the disqualification;

(B) a description of the prospective business or employment requested to be engaged in; and

(C) a statement in support of the disposition of the request for relief, which, if granted, includes any of the applicable elements under SEC Rule 19h-1(e) and a description of any conditions that are imposed on the member and current or prospective associated person.

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

The National 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, to 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. If the NASD Board does not call the eligibility 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, 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 remands the eligibility proceeding.

9525. Discretionary Review by the NASD Board

(a) Call for Review by Governor

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

(b) Seven 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, 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 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 days. By an affirmative vote of the majority of the NASD Board then in office, the NASD Board may, during the seven day period in subparagraph (1) or (2), vote to extend the period in subparagraph (1) or (2) to more than seven days.

(c) Review at Next Meeting

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

(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. 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

The NASD Board shall issue and 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 Board remands the proceeding.

9526. Application to Commission for Review

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