

9250. Discovery

9251. Inspection and Copying of Documents in Possession of Staff

(a) Documents to be Available for Inspection and Copying.

(1) Unless otherwise provided by this Rule, or by order of the

Hearing Officer, the Department of Enforcement shall make available for

inspection and copying by any Respondent, Documents prepared or obtained by Interested Association Staff in connection with the investigation that led to the institution of proceedings. Such Documents

include but are not limited to:

Rule (A) requests for information issued pursuant to

8210;

persons not (B) every other written request directed to

employed by the Association to provide Documents or to be

interviewed;

such (C) the Documents provided in response to any

requests described in (A) and (B) above;

(D) all transcripts and transcript exhibits; and

(E) all other Documents obtained from persons not employed by the Association.

(2) The Department of Enforcement shall promptly inform the Hearing Officer and each other Party if, after the issuance of a complaint,

requests for information under Rule 8210 are issued under the same investigative file number under which the investigation leading to the institution of disciplinary proceedings was conducted. If Interested Association Staff receives Documents pursuant to a request for information under Rule 8210 after Documents have been made available to a Respondent for inspection and copying as set forth in paragraph (a),

and if such Documents are material and relevant to the disciplinary proceeding in which such Respondent is a Party, the additional Documents shall be made available to the Respondent not later than 14 days after the Interested Association Staff receives such Documents. If a

hearing on the merits is scheduled to begin, Interested Association Staff

shall make the additional Documents available to the Respondent not less

than ten days before the hearing. If Interested Association Staff receives

such Documents ten or fewer days before a hearing on the merits is scheduled to begin or after such hearing begins, Interested Association Staff shall make the additional Documents available immediately to the Respondent.

(3) Nothing in subparagraph (a)(1) shall limit the discretion of the

Department of Enforcement to make available any other Document or the

authority of the Hearing Officer to order the production of any other Document.

(b) Documents That May Be Withheld

(1) The Department of Enforcement may withhold a Document if:

(A) the Document is privileged or constitutes attorney work product;

(B) the Document is an examination or inspection report, an internal memorandum, or other note or writing prepared by an

Association employee that shall not be offered in evidence;

(C) the Document would disclose (i) an examination, investigatory or enforcement technique or guideline of the Association, a federal, state, or foreign regulatory authority, or a self-
self-regulatory organization; (ii) the identity of a source, including a federal, state, or foreign regulatory authority or a self-regulatory organization that furnished information or was furnished information on a confidential basis regarding an investigation, an examination, an enforcement proceeding, or any other type of civil or criminal enforcement action; or (iii) an examination, an investigation, an enforcement proceeding, or any other type of civil or criminal enforcement action under consideration by, or initiated by, the Association, a federal, state,

or foreign regulatory authority, or a self-regulatory organization;

or

(D) the Hearing Officer grants leave to withhold a Document or category of Documents as not relevant to the subject matter of the proceeding, or for other good cause shown.

(2) Nothing in subparagraph (b)(1) authorizes the Department of

Enforcement to withhold a Document, or a part thereof, that contains

material exculpatory evidence.

(c) Withheld Document List

The Hearing Officer may require the Department of Enforcement to submit to the Hearing Officer a list of Documents withheld pursuant to subparagraphs (b)(1)(A) through (D) or to submit to the Hearing Officer any

Document withheld. Upon review, the Hearing Officer may order the Department of Enforcement to make the list or any Document withheld available

to the other Parties for inspection and copying. A motion to require the

Department of Enforcement to produce a list of Documents withheld pursuant to

paragraph (b) shall be based upon some reason to believe that that a Document is

being withheld in violation of the Code.

(d) Timing of Inspection and Copying

The Hearing Officer shall determine the schedule of production of

documents pursuant to this Rule. Unless otherwise ordered by the Hearing

Officer, the Department of Enforcement shall commence making Documents available to a Respondent for inspection and copying pursuant to this Rule not

later than 21 days after service of the Respondent's answer or, if there are

multiple Respondents, not later than 21 days after the last timely answer is filed.

If a Respondent in a multi-Respondent case fails to answer, the Department of

Enforcement shall make Documents available to all other Respondents not later

than the later of:

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

(2) the expiration of the second period provided for filing an

answer as set forth in Rule 9215(f).

(e) Place and Time of Inspection and Copying

Documents subject to inspection and copying pursuant to this Rule shall

be made available to the Respondent for inspection and copying at the Association office where they are ordinarily maintained, or at such other

Association office as the Hearing Officer, in his or her discretion, shall designate,

or as the Parties otherwise agree. A Respondent shall be given access to the

Documents at the Association's offices during normal business hours. A Respondent shall not be given custody of the Documents or be permitted to remove the Documents from the Association's offices.

(f) Copying Costs

A Respondent may obtain a photocopy of all Documents made available

for inspection. A Respondent shall be responsible for the cost of photocopying.

Unless otherwise ordered, charges for copies made at the request of a Respondent

shall be at a rate to be established by the NASD Regulation Board.

(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, 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

(a) Content and Timing of Requests

A Respondent who requests that the Association invoke Rule 8210 to

compel the production of Documents or testimony at the hearing shall do so in

writing and serve copies on all Parties. Such request shall: be submitted to the

Hearing Officer no later than 21 days before the scheduled hearing date; describe

with specificity the Documents, the category or type of Documents, or the

testimony sought; state why the Documents, the category or type of Documents,

or the testimony are material; describe the requesting Party's previous efforts to

obtain the Documents, the category or type of Documents, or the testimony

through other means; and state whether the custodian of each Document, or the

custodian of the category or type of Documents, or each proposed witness is

subject to the Association's jurisdiction.

(b) Standards for Issuance

A request that the Association compel the production of Documents or

testimony shall be granted only upon a showing that: the information sought is

relevant, material, and non-cumulative; the requesting Party has previously

attempted in good faith to obtain the desired Documents and testimony through

other means but has been unsuccessful in such efforts; and each of the persons

from whom the Documents and testimony are sought is subject to the Association's jurisdiction. In addition, the Hearing Officer shall consider

whether the request is unreasonable, oppressive, excessive in scope, or unduly

burdensome, and whether the request should be denied, limited, or modified.

(c) Limitations on Requests

If, after consideration of all the circumstances, the Hearing Officer

determines that a request submitted pursuant to this Rule is unreasonable,

oppressive, excessive in scope, or unduly burdensome, he or she shall deny the

request, or grant it only upon such conditions as fairness requires. In making the

foregoing determination, the Hearing Officer may inquire of the other Parties

whether they shall stipulate to the facts sought to be proved by the Documents or

testimony sought. If the Hearing Officer grants the request, the Hearing Officer

shall order that requested Documents be produced to all Parties not less than ten

days before the hearing, and order that witnesses whose testimony was requested

appear and testify at the hearing. If the Hearing Officer grants the request ten or

fewer days before a hearing on the merits is scheduled to begin or after such

hearing begins, the Documents or testimony shall be produced immediately to all

Parties.

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 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 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, shall determine whether the failure to provide any statement was not harmless error,

applying applicable Association, Commission, and federal judicial precedent.

9260. Hearing and Decision

9261. Evidence and Procedure in Hearing

(a) Submission of Documentary Evidence and List of Witnesses
Before Hearing

No later than ten days before the hearing, or at such earlier date as may be

specified by the Hearing Officer, each Party shall submit to all other Parties and

to the Hearing Officer copies of documentary evidence and the names of the

witnesses each Party intends to present at the hearing.

(b) Party's Right to Be Heard

If a hearing is held, a Party shall be entitled to be heard in person, by

counsel, or by the Party's representative.

(c) Request to Submit Additional Evidence

Notwithstanding paragraph (a), a Party, for good cause shown, may seek

to submit any additional evidence at the hearing as the Hearing Officer, in his or her discretion, determines may be relevant and necessary for a complete record.

9262. Testimony

A person who is subject to the jurisdiction of the Association shall testify

under oath or affirmation. The oath or affirmation shall be administered by a

court reporter or a notary public.

9263. Evidence: Admissibility

(a) Criteria for Receiving and Excluding Evidence

The Hearing Officer shall receive relevant evidence, and may exclude all

evidence that is irrelevant, immaterial, unduly repetitious, or unduly prejudicial.

(b) Objections

Objections to the admission or exclusion of evidence shall be made on the

record and shall succinctly state the grounds relied upon. Excluded material

shall be deemed a supplemental document, which shall be attached to the record

and retained under Rule 9267.

9264. Motion for Summary Disposition

(a) Pre-hearing

After a Respondent's answer has been filed and Documents have been

made available to that Respondent for inspection and copying pursuant to Rule

9251, the Respondent or the Department of Enforcement, without leave of the

Hearing Officer, may make a motion for summary disposition of any or all the

causes of action in the complaint with respect to that Respondent. All pre-

hearing motions for summary disposition and supporting papers shall be filed at

least 21 days before the time set for the hearing, or at such earlier time as ordered

by the Hearing Officer. Notwithstanding the provisions of Rule 9146(d), any

opposition or response to a pre-hearing motion for summary disposition shall be

filed at least seven days before the time set for the hearing.

(b) After Commencement of Hearing on Merits

After a hearing on the merits has commenced, a Respondent may make a

motion for summary disposition of any or all of the causes of action in the

complaint with respect to that Respondent only with leave of the Hearing

Officer.

(c) Form of Papers

A motion for summary disposition pursuant to paragraph (a) shall be

accompanied by the following: a statement of undisputed facts; a supporting

memorandum of points and authorities; and affidavits or declarations that set

forth such facts as would be admissible at the hearing and show affirmatively

that the affiant is competent to testify to the matters stated therein. A

memorandum of points and authorities in support or opposition shall not exceed

35 pages.

(d) Rulings on Motion

The Hearing Panel or, if applicable, the Extended Hearing Panel, shall

promptly grant or deny the motion for summary disposition or shall defer

decision on the motion. The Hearing Panel or, if applicable, the Extended

Hearing Panel, may grant the motion for summary disposition if there is no

genuine issue with regard to any material fact and the Party that files the motion

is entitled to summary disposition as a matter of law. If a Party files a motion

under paragraph (a), the facts alleged in the pleadings of the Party against whom

the motion is made shall be taken as true, except as modified by stipulations or

admissions made by the non-moving Party, by uncontested affidavits or declarations, or by facts officially noticed pursuant to Rule 9145. If a Party

opposing a motion for summary disposition made under paragraph (a) cannot

present, by affidavit prior to the hearing, facts essential to justify the Party's

opposition to the motion, the Hearing Panel or, if applicable, the Extended

Hearing Panel, may deny the motion for summary disposition or defer the decision on the motion.

9265. Record of Hearing

(a) Recordation

A hearing shall be recorded by a court reporter and a transcript shall be

prepared. Unless otherwise ordered by a Hearing Officer, a pre-hearing conference shall be recorded by a court reporter and a transcript shall be

prepared.

(b) Availability of a Transcript

A transcript of a pre-hearing conference and a transcript of a hearing shall

be available to a Party for purchase from the court reporter at prescribed rates. A

witness may purchase from the court reporter a transcript of his or her own

testimony.

(c) Transcript Correction

Prior to the filing of post-hearing briefs or proposed findings and

conclusions, or within such earlier time as ordered by the Hearing Officer, a

Party or witness may seek to correct his or her transcript. A proposed correction

of the transcript shall be submitted to the Hearing Officer by affidavit. Upon

notice to all Parties to the disciplinary proceeding, the Hearing Officer may order

the correction to the transcript as requested or sua sponte.

9266. Proposed Findings of Fact, Conclusions of Law, and Post-Hearing

Briefs

(a) Discretion of Hearing Officer to Require Proposed Findings of

Fact, Conclusions of Law, and Post-Hearing Briefs

At the discretion of the Hearing Officer, the Parties may be ordered to file

proposed findings of facts and conclusions of law, or post-hearing briefs, or both.

The Hearing Officer may order that such proposed findings and conclusions be

filed together with, or as part of, post-hearing briefs.

(b) Reference to Record Required

Proposed findings of fact or other statements of fact in briefs shall be

supported by specific references to the record.

(c) Period for Filing

In any case in which the Hearing Officer ordered the filing of proposed

findings or conclusions of law, or post-hearing briefs, the Hearing Officer shall,

after consultation with the Parties, prescribe the period within which proposed

findings and conclusions of law and post-hearing briefs are to be filed. Such

period shall be reasonable under all the circumstances but the total period

allowed for the filing of post-hearing submissions shall not exceed 60 days after

the conclusion of the hearing unless the Hearing Officer, for good cause shown,

permits a different period and sets forth in an order the reasons why a longer

period is necessary.

(d) Form, Length of Papers

Unless the Hearing Officer orders otherwise, each post-hearing submission shall not exceed 25 pages, exclusive of cover sheets, tables of

contents, and tables of authorities.

9267. Record; Supplemental Documents Attached to Record; Retention

(a) Contents of the Record, Retention

The record shall consist of:

(1) the complaint, answers, each notice of hearing, pre-hearing

order, and any amendments thereto;

(2) each application, motion, submission, and other paper, and

any amendments, motions, objections, and exceptions to or regarding

them;

(3) each transcript of a pre-hearing conference and of a hearing,

and each stipulation, transcript of testimony, Document, and other item

admitted into evidence;

(4) each written communication accepted at the discretion of the

Hearing Officer;

(5) with respect to a motion to disqualify a Hearing Officer under

Rule 9233 or a Panelist under Rule 9234, each affidavit or transcript of

testimony taken and the ruling made in connection with the request;

(6) all proposed findings and conclusions;

(7) each written ruling, order, and decision issued by the Chief

Hearing Officer, Hearing Officer, Hearing Panel or, if applicable,

Extended Hearing Panel; and,

(8) any other Document or item accepted into the record by the

Hearing Officer, the Hearing Panel or, if applicable, the Extended

Hearing Panel.

(b) Supplemental Documents Attached To Record; Retention

(1) A supplemental Document attached to the record is any

Document submitted to the Hearing Officer that did not become part of

the record, including:

(A) a Document not admitted by the Hearing Officer, Hearing

Panel or, if applicable, the Extended Hearing Panel;

(B) any matter stricken from any filing or stricken during an oral

presentation, including any matter stricken from any filing or

stricken during any oral presentation because the Adjudicator

determined it was scandalous or impertinent as provided in Rule

9136(e); and

(C) a list of Documents, if any, that a Respondent unsuccessfully

sought by motion to inspect and copy under Rule 9251(c).

(2) A supplemental Document attached to the record shall not

constitute part of the record, but shall be retained until the date upon

which the Association's decision becomes final disciplinary action or, if

applicable, upon the conclusion of any review by the Commission or the

federal courts.

(c) Substitution of Copies

Parties may submit to the Hearing Officer for substitution a true copy of a

Document in the record.

9268. Decision of Hearing Panel or Extended Hearing Panel

(a) Majority Decision

Within 60 days after the final date allowed for filing proposed findings of

fact, conclusions of law, and post-hearing briefs, or by a date established at the

discretion of the Chief Hearing Officer, the Hearing Officer shall prepare a

written decision that reflects the views of the Hearing Panel or, if applicable, the

Extended Hearing Panel, as determined by majority vote.

(b) Contents of Decision

The decision shall include:

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

(2) the specific statutory or rule provisions that were alleged to have been violated;

(3) a statement setting forth the findings of fact with respect to any act or practice the Respondent was alleged to have committed or omitted;

(4) the conclusions of the Hearing Panel, or Extended Hearing

Panel, as to whether the Respondent violated any provision alleged in the complaint;

(5) a statement of the Hearing Panel, or the Extended Hearing

Panel, in support of the disposition of the principal issues raised in the proceeding; and

(6) a statement describing any sanction imposed, the reasons

therefor, and the date upon which such sanction shall become effective.

(c) Dissenting Opinion

Within 65 days after the final date allowed for filing proposed findings of fact and conclusions of law, and post-hearings briefs, or by a date established at the discretion of the Chief Hearing Officer, the Hearing Officer or any Panelist may prepare a written dissenting opinion.

(d) Service, Notice, And Dissemination Requirements

The Office of Hearing Officers shall promptly serve the decision of the Hearing Panel, or the Extended Hearing Panel, and any dissenting opinion on the parties; publish notice of the decision and any dissenting opinion in the Central Registration Depository; and provide a copy of the decision and any dissenting opinion to each member of the Association with which a Respondent is associated.

(e) Appeal or Review

If not timely appealed pursuant to Rule 9311 or timely called for review pursuant to Rule 9312, the majority decision shall constitute final disciplinary action of the Association for purposes of SEC Rule 19d-1(c)(1).

9269. Failure to Appear at Hearing; Default

(a) Failure to Appear May Result in Default Decision

A Party who fails to appear at a hearing of which he or she has been duly

notified may be deemed to be in default. As a consequence of the default, the

allegations against a non-appearing Respondent may be deemed admitted and a

default decision entered by the Hearing Officer. If the non-appearing Party is the

Department of Enforcement, the Hearing Officer may order that the complaint be

dismissed with prejudice. In addition, the Hearing Officer may order that the non-

appearing Party pay the costs incurred by other Parties in connection with their

appearance at the hearing.

(b) Request to Set Aside Default

A Party may, for good cause shown, file a motion to set aside a default,

dismissal, and the imposition of costs.

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 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.

(b) Settlement Offer Shall Conform to Rule

A Respondent who makes an offer of settlement shall do so in conformity

with the provisions of this Rule and shall not make such an offer of settlement

frivolously or propose a sanction inconsistent with the seriousness of the

violations to be found.

(c) Content and Signature Requirements

An offer of settlement shall be in writing and signed by the person making the

offer, and, if the person is represented by counsel or a representative, signed also

by the counsel or representative. The offer of settlement shall contain in

reasonable detail:

(1) a statement describing the investigative or other origin of the

disciplinary action;

(2) the specific statutory or rule provisions that the member or associated

person is alleged to have violated;

(3) a statement containing the acts or practices which the member or

associated person is alleged to have engaged in or omitted;

(4) a statement consenting to findings of fact and violations consistent

with the statements contained in the offer of settlement required by subparagraphs

(c)(2) and (c)(3); and,

(5) a proposed sanction to be imposed that is consistent with the

Association's then current sanction guidelines or, if inconsistent with the sanction

guidelines, a detailed statement supporting the proposed sanction.

(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, an Extended Hearing Panel, and any right of appeal

to the National Business Conduct Committee, 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 prejudgment 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, or any member of the National

Business Conduct Committee, 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 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 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) or the General Counsel may accept such offer of settlement and

order of acceptance or refer them to the National Business Conduct Committee 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) may reject such

offer of settlement and order of acceptance or refer them to the National Business

Conduct Committee for acceptance or rejection by the National Business Conduct

Committee.

(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), 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), 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 Department of

Enforcement and 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 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) may accept or reject such offer of settlement and order of

acceptance or refer them to the National Business Conduct Committee for acceptance or rejection by the National Business Conduct Committee.

(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) shall

communicate the acceptance to the Hearing Officer who shall thereafter issue the

order.

(g) Final Disciplinary Action of Association

The proceeding shall conclude as of the date the order of acceptance is issued.

The order of acceptance shall constitute final disciplinary action of the

Association. The sanction shall take effect as set forth in the order.

(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, 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, 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

When a disciplinary proceeding names multiple Respondents, settlement offers

may be accepted or rejected as to any one or all of the Respondents submitting

offers. The proceedings shall thereafter be terminated as to those Respondents

whose offers of settlement are accepted, but such Respondents may be required to

participate in any hearing conducted as to those Respondents that did not submit

offers of settlement or whose offers of settlement were rejected.

(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, 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

(a) Persons Subject to Sanctions

If a Party, attorney for a Party, or other person authorized to represent others by

Rule 9141, engages in conduct in violation of an order of a Hearing Officer, a

Hearing Panel or, if applicable, an Extended Hearing Panel, or other contemptuous conduct during a proceeding, a Hearing Officer, Hearing Panel or,

if applicable, an Extended Hearing Panel, may:

(1) subject the Party, attorney for a Party, or other person authorized to

represent others by Rule 9141, to the sanctions set forth in paragraph (b); and

(2) exclude an attorney for a Party, or other person authorized to represent

others by Rule 9141, under Rule 9150.

(b) Sanctions Other Than Exclusion

A Hearing Officer, Hearing Panel or, if applicable, an Extended Hearing Panel,

may make such orders as are just in regard to a Party, an attorney for a Party, or

other person authorized to represent others by Rule 9141.

(1) Such orders may include:

(A) an order providing that the matters on which the order is made

or any other designated facts shall be taken to be established for the

purposes of the disciplinary proceeding in accordance with the claim of

the Party obtaining the order;

(B) an order providing that the disobedient Party may not support

or oppose designated claims or defenses, or may not introduce designated

matters in evidence;

(C) an order providing that pleadings or a specified part of the

pleading shall be stricken, or an order providing that the proceeding shall

be stayed until the Party subject to the order obeys it;

(D) in lieu of any of the foregoing orders or in addition thereto, an

order providing that contemptuous conduct includes the failure to obey

any order; and

(E) an order as provided in subparagraphs (A), (B), and (C) where

a Party has failed to comply with an order to produce a person for

examination, unless the Party failing to comply shows that such Party is

unable to produce such person for examination.

(2) A Party that without substantial justification fails to disclose

information required by the Rule 9240 Series and the Rule 9250 Series or

otherwise required by order of the Hearing Officer, Hearing Panel or, if

applicable, the Extended Hearing Panel, shall not, unless such failure is harmless,

be permitted to use as evidence at a hearing, in a motion or in any other filing of

papers, or in oral argument, any witness or information not so disclosed. In

addition to, or in lieu of this sanction, the Hearing Officer, Hearing Panel or, if

applicable, the Extended Hearing Panel, on motion and after affording an

opportunity to be heard, may impose other appropriate sanctions. These sanctions

may include any of the sanctions provided for in subparagraphs (b)(1)(A) through

(C).

(c) National Business Conduct Committee 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. 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 and served on all Parties within five days after the service of the

motion to vacate. The National Business Conduct Committee 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 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 of an

exclusion order in paragraph (c). In the event that the National Business Conduct

Committee 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; APPLICATION FOR COMMISSION REVIEW

9310. Appeal to or Review by National Business Conduct Committee

9311. Appeal by Any Party; Cross-Appeal

(a) Time to File Notice of Appeal

A Respondent or the Department of Enforcement may file a written notice of

appeal within 25 days after service of a decision issued pursuant to Rule 9268 or

Rule 9269.

(b) Effect

An appeal to the National Business Conduct Committee 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 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 serve 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 is requested; and

(5) a brief statement of the findings, conclusions, or sanctions as to which

exceptions are taken.

(d) Notice of Cross-Appeal

A Party who is served with a notice of appeal may file a written notice of cross-

appeal and serve the notice of cross-appeal on the Parties. The notice of cross-

appeal shall be filed within five days after service of the notice of appeal. The

notice of cross-appeal shall be signed by the Party cross-appealing, or his or her

counsel, and shall contain the information set forth in subparagraphs (c)(1), (c)(2),

(c)(4), and (c)(5), and the name of the Party on whose behalf the cross-appeal is

made.

(e) Waiver of Issues Not Raised

The National Business Conduct Committee may, in its discretion, deem waived

any issue not raised in the notice of appeal or cross-appeal. The National Business

Conduct Committee, 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 if such issue was not previously set forth

in the notice of appeal.

(f) Withdrawal of Notice of Appeal or Cross-Appeal

A Party may withdraw a notice of appeal or a notice of cross-appeal filed by him

or her at any time by filing a written notice of withdrawal of appeal or cross-

appeal with the Office of Hearing Officers and serving notice thereof on the

Parties. The notice of withdrawal of appeal or cross-appeal shall contain: the

name of the disciplinary proceeding; the disciplinary proceeding docket number;

and the name of the Party on whose behalf the notice of appeal or cross-appeal

was filed previously. The notice of withdrawal of appeal or cross-appeal shall be

signed by the Party, or his or her counsel or representative. Upon the withdrawal

of a notice of appeal, any outstanding cross-appeal shall be treated as an appeal

unless it is withdrawn.

9312. Review Proceeding Initiated By National Business Conduct Committee

(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 or, pursuant

to authority delegated from the National Business Conduct Committee, 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.

(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.

(b) Effect

Institution of review by a member of the National Business Conduct Committee 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 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) Requirements

(1) If a member of the National Business Conduct Committee, 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, 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 authority under Rule 9346

to review any issues raised in the decision rendered pursuant to Rule 9268 or Rule

9269. The National Business Conduct Committee, 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 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 is terminated before the National Business Conduct Committee 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 of

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) the General Counsel shall have the right to call for review a

decision issued pursuant to Rule 9269 in accordance with Rule 9312(a)(2),

except that the 45 day period during which a call for review may be made

shall begin on the day the Association receives the last filed notice of

withdrawal of appeal or, if applicable, the last filed notice of withdrawal of

cross-appeal.

9313. Counsel to National Business Conduct Committee

(a) Authority

A Counsel to the National Business Conduct Committee shall be appointed by the General Counsel for each disciplinary case on appeal or review.

A Counsel to the National Business Conduct Committee 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 in accordance with Rule 9267;

(2) establish or amend a briefing schedule under Rule 9347(b) but

not shorten a briefing schedule except with the consent of the Parties;

(3) permit a brief or any other document required to be filed to

vary from the requirements of the Rule 9130 Series as provided in Rule

9347(a);

(4) establish the date, time, and location of an oral argument and

provide for notice of the hearing under Rule 9341;

(5) for other than a Party and counsel or a person acting in a

representative capacity, determine who may attend a hearing;

(6) rule on a motion by a Party to request to lengthen or shorten a

period of time prescribed by the Code for the filing of any papers, or

request that a hearing be postponed or adjourned under Rule 9322, except

that a period may not be shortened and a hearing may not be postponed or

adjourned without the consent of the Parties; and

(7) create and maintain the official record of the disciplinary

proceeding on appeal or review.

(b) Review

A Party seeking the review of a decision of a Counsel to the National

Business Conduct Committee may make a motion to the National Business

Conduct Committee, a Subcommittee or, if applicable, an Extended Proceeding

Committee.

9320. 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 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,

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 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, a Subcommittee or, if applicable, an

Extended Proceeding Committee, or Counsel to the National Business Conduct

Committee, 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 may shorten a period so prescribed only with the consent of

the Parties. The National Business Conduct Committee, a Subcommittee or, if

applicable, an Extended Proceeding Committee, or Counsel to the National

Business Conduct Committee, for good cause shown, may postpone or adjourn a

hearing consistent with paragraph (b), except that Counsel to the National

Business Conduct Committee 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, a Subcommittee or, if applicable, an

Extended Proceeding Committee, or Counsel to the National Business Conduct

Committee, for good cause shown, postpones, adjourns, or changes the location of

the oral argument, except that Counsel to the National Business Conduct

Committee 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, a Subcommittee or, if

applicable, an Extended Proceeding Committee, or Counsel to the National

Business Conduct Committee shall consider, in addition to any other relevant

factors:

(1) the length of time the disciplinary proceeding has been

pending to date, and the timeliness of the request for a postponement, an adjournment, or an extension;

(2) the number of postponements, adjournments, or extensions

already granted;

(3) the stage of the proceedings at the time of the request;

(4) the prejudice to the other Parties;

(5) the potential harm to the investing public if an extension of

time, an adjournment, or a postponement is granted; and

(6) any other matter that justice may require.

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

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 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 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 or the

Review Subcommittee deems material, the National Business Conduct

Committee 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 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 10000

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 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, a

Panelist of a Subcommittee or an Extended Proceeding Committee, or a Counsel

to the National Business Conduct Committee determines that the member, the

Panelist, or the Counsel to the National Business Conduct Committee 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 might reasonably be questioned, the member, the Panelist, or the

Counsel to National Business Conduct Committee shall notify the Chair or the

Vice-Chair of the National Business Conduct Committee, and the Chair or the

Vice-Chair of the National Business Conduct Committee shall issue and serve on

the Parties a notice stating that the member, the Panelist, or the Counsel to the

National Business Conduct Committee 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 shall appoint a replacement Panelist. In

the event that a Counsel to the National Business Conduct Committee 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.

(b) Motion for Disqualification

A Party may move for the disqualification of a member of the National

Business Conduct Committee, a Panelist of a Subcommittee or an Extended Proceeding Committee, or a Counsel to the National Business Conduct

Committee. 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 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.

(c) Disposition of Disqualification Motions: Challenges to Single

Member of National Business Conduct Committee, Single Panelist of Subcommittee or Extended Hearing Committee, Counsel to the National Business Conduct Committee

Motions for disqualification of a member of the National Business

Conduct Committee, a Panelist of a Subcommittee or an Extended Proceeding

Committee, or a Counsel to the National Business Conduct Committee shall be

decided by the Chair or Vice-Chair of the National Business Conduct Committee,

who shall promptly determine whether disqualification is required and issue a

written ruling on the motion. If a Panelist is disqualified, the Chair or the Vice-

Chair of the National Business Conduct Committee shall appoint a replacement

Panelist. If a Counsel is disqualified, the General Counsel shall assign a

replacement Counsel to the National Business Conduct Committee.

(d) Disposition of Disqualification Motions: Challenges to Multiple

Panelists

(1) National Business Conduct Committee

If a Party files a motion to disqualify more than one member of the

National Business Conduct Committee, the Chair or the Vice-Chair of the

National Business Conduct Committee 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 shall consider the review or appeal

of the disciplinary matter.

(2) 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 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 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 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

In the absence of a request for oral argument, the Subcommittee or, if applicable, the Extended Proceeding Committee, in its discretion, may order that a matter be set down for oral argument or may consider the matter on the basis of the record.

(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 may provide

for a shorter notice period, except that Counsel to the National Business Conduct

Committee may provide for a shorter notice period only with the consent of the

Parties.

(d) Attendance Required

The Parties shall make oral arguments before the Subcommittee or, if

applicable, the Extended Proceeding Committee. Unless otherwise agreed to by

all of the Parties, all Panelists comprising the Subcommittee or, if applicable, the

Extended Proceeding Committee, shall be present for the oral argument.

(e) Time Limits

Unless the Subcommittee or, if applicable, the Extended Proceeding

Committee, orders otherwise for good cause shown, each Party's oral argument

before the Subcommittee or, if applicable, the Extended Proceeding Committee,

shall be limited to a total of 30 minutes.

(f) Recordation; Transcript Correction

(1) Oral arguments shall be recorded by a court reporter and a

transcript shall be prepared.

(2) A transcript of a hearing shall be available to a Party for purchase from the court reporter at prescribed rates. A witness may purchase a transcript of his or her own testimony from the court reporter.

(3) Prior to the filing of post-hearing briefs or within such earlier

time as reasonably ordered by the Subcommittee or, if applicable, the

Extended Proceeding Committee, a Party or witness may seek to correct

his or her transcript. A proposed correction of the transcript shall be

submitted by affidavit to the Subcommittee or, if applicable, the Extended

Proceeding Committee. Upon notice to all Parties to the disciplinary

proceeding, the Subcommittee or, if applicable, the Extended Proceeding

Committee may order the correction to the transcript as requested or sua

sponte.

9342. Failure to Appear at Oral Argument

A Party who requests oral argument but fails to appear after being duly

notified shall be deemed to have waived any opportunity for oral argument

provided under the Rule 9300 Series. The Subcommittee or, if applicable, the

Extended Proceeding Committee, shall permit argument to go forward as to those

Parties who appear. The Subcommittee or, if applicable, the Extended Proceeding

Committee, in the exercise of its discretion, may consider the matter on the basis

of the record without oral argument as to those Parties who failed to appear.

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 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 may dismiss the appeal and remand the matter for further

proceedings, or may hear evidence and consider the matter. 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 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 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) 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 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) may dismiss the cross-

appeal as abandoned. Upon a showing of good cause, the National Business

Conduct Committee may withdraw any dismissal entered pursuant to this Rule.

9345. Subcommittee or Extended Proceeding Committee Recommended Decision to National Business Conduct Committee

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 before the meeting of

the National Business Conduct Committee at which the disciplinary proceeding

shall be considered.

9346. Evidence in National Business Conduct Committee Proceedings

(a) Scope of Review

Except as otherwise set forth in this paragraph, the National Business

Conduct Committee'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; 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, 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 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 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 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

A Party may file an opposition to a motion, as provided in Rule 9146(d), for leave to introduce new evidence, and may move for leave to introduce rebuttal evidence in response to the proposed new evidence. A Party who moves to introduce rebuttal evidence in response to the proposed new evidence of another Party shall describe each item of proposed rebuttal evidence and explain why the evidence is material to the proceeding, and shall file and serve such motion.

(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 may permit

the evidence to be introduced into the record on review, or the National Business

Conduct Committee 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 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,

and to all Parties at such time as the Subcommittee or, if applicable, the Extended

Proceeding Committee, the National Business Conduct Committee, or Counsel to

the National Business Conduct Committee 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 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 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.

(g) Rules of Evidence Not Applicable

The formal rules of evidence shall not apply.

(h) Testimony

A person who is subject to the jurisdiction of the Association shall testify

under oath or affirmation. The oath or affirmation shall be administered by a

court reporter or a notary public.

9347. Filing of Papers in National Business Conduct Committee 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, or

Counsel to the National Business Conduct Committee, 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, or Counsel to the National Business Conduct Committee in a scheduling order. Unless the Subcommittee or, if applicable, the Extended

Proceeding Committee, the National Business Conduct Committee, or Counsel to

the National Business Conduct Committee 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 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 on Review

In any appeal or review proceeding pursuant to the Rule 9300 Series, the

National Business Conduct Committee may affirm, dismiss, modify, or reverse

with respect to each finding, or remand the disciplinary proceeding with

instructions. The National Business Conduct Committee may affirm, modify,

reverse, increase, or reduce any sanction, or impose any other fitting sanction.

9349. National Business Conduct Committee Formal Consideration;

Decision

(a) Decision of National Business Conduct Committee, 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, 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 may affirm, modify, reverse, increase, or reduce any sanction, or

impose any other fitting sanction. Alternatively, the National Business Conduct

Committee may remand the disciplinary proceeding with instructions. The National Business Conduct Committee shall prepare a proposed written decision

pursuant to paragraph (b).

(b) Contents of Decision

The decision shall include:

(1) a statement describing the investigative or other origin of the

disciplinary proceeding;

(2) the specific statutory or rule provisions that were alleged to

have been violated;

(3) a statement setting forth the findings of fact with respect to any

act or practice the Respondent was alleged to have committed or omitted;

(4) the conclusions as to whether the Respondent violated any

provision alleged in the complaint;

(5) a statement in support of the disposition of the principal issues

raised in the proceeding; and

(6) a statement describing any sanction imposed, the reasons

therefor, and, pursuant to Rule 9360, the date upon which such sanction

shall become effective.

(c) 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 disciplinary proceeding is not called for review by the NASD Regulation Board, to the NASD

Board. The NASD Regulation Board may call the disciplinary proceeding for

review pursuant to Rule 9351. 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 Boards

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. If the NASD Board does not call the disciplinary

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 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 remands the proceeding.

9352. Discretionary Review by NASD Board

(a) Call for Review by Governor

A Governor may call a disciplinary proceeding for review by the NASD

Board if the call for review is made within the period prescribed in paragraph (b).

(b) Seven Day Period; Waiver

(1) 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 days after the date on which the NASD Board receives the proposed

written decision of the NASD Regulation Board.

(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) 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 disciplinary proceeding for review within the period

prescribed in paragraph (b), the NASD Board shall review the disciplinary

proceeding not later than the next meeting of the NASD Board. The NASD

Board may order the Parties (excluding any Respondent who did not appeal,

cross-appeal, or as to whom the issues appealed or called for review do not apply)

to file briefs in connection with 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 a disciplinary proceeding for review under Rule

9351, the proposed written decision of the National Business Conduct Committee.

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).

(e) Issuance of Decision

The NASD Board shall issue and 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 Board remands the proceeding.

9360. Effectiveness of Sanctions

A sanction (other than a bar or an expulsion) specified in a decision

constituting final disciplinary action of the Association for purposes of SEC Rule

19d-1(c)(1) shall become effective on a date established by the Chief Hearing

Officer, which shall not be earlier than 30 days after the date of service of the

decision constituting final disciplinary action. A bar or an expulsion shall become

effective upon service of the decision constituting final disciplinary action of the

Association for purposes of SEC Rule 19d-1(c)(1), unless otherwise specified

therein. The Association shall take reasonable steps to obtain personal service of

a Respondent when the sanction is a bar or an expulsion.

9370. Application to Commission for Review

(a) Appeal to Commission; Effect

A Respondent aggrieved by final disciplinary action pursuant to the Rule

9200 Series or the Rule 9300 Series may apply for review by the Commission

pursuant to Section 19(d)(2) of the Act. The filing with the Commission of an

application for review by the Commission shall stay the effectiveness of any

sanction, other than a bar or an expulsion, imposed in a decision constituting final

disciplinary action of the Association for purposes of SEC Rule 19d-1(c)(1).

(b) Association Notification to Member

The Association shall promptly notify any Association member with

which a Respondent is associated if the Respondent files an application for review

to the Commission.

