

**9300. REVIEW OF DISCIPLINARY PROCEEDING BY NATIONAL ADJUDICATORY COUNCIL AND NASD BOARD; APPLICATION FOR COMMISSION REVIEW****9310. Appeal to or Review by National Adjudicatory Council****9311. Appeal by Any Party; Cross-Appeal****(a) Time to File Notice of Appeal**

A Respondent or the Department of Enforcement 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 Adjudicatory Council from a decision issued pursuant to Rule 9268 or Rule 9269 shall operate as a stay of that decision until the National Adjudicatory Council issues a decision pursuant to Rule 9349 or, in cases called for discretionary review by the NASD Board, until a decision is issued pursuant to Rule 9351.

**(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 Adjudicatory Council is requested; and
- (5) a brief statement of the findings, conclusions, or sanctions as to which exceptions are taken.

**(d) Notice of Cross-Appeal**

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

**(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 Adjudicatory Council**

#### **(a) Call for Review**

##### **(1) Rule 9268 Decision**

A decision issued pursuant to Rule 9268 may be subject to a call for review by any member of the National Adjudicatory Council or, pursuant to authority delegated from the National Adjudicatory Council, by any member of the Review Subcommittee. 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 Adjudicatory Council.

##### **(2) Rule 9269 Decision**

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

#### **(b) Effect**

Institution of review by a member of the National Adjudicatory Council on his or her own motion, a member of the Review Subcommittee on his or her own motion, or the General Counsel, on his or her own motion, shall operate as a stay of a final decision issued pursuant to Rule 9268 or Rule 9269 as to all Parties subject to the notice of review, until the National

Adjudicatory Council issues a decision pursuant to Rule 9349, or, in cases called for discretionary review by the NASD Board, until a decision is issued pursuant to Rule 9351.

**(c) Requirements**

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

Such notice of review shall contain:

(A) the name of the disciplinary proceeding;

(B) the disciplinary proceeding docket number; and

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

(2) The statement contained in the notice of review shall not limit the scope of the National Adjudicatory Council's authority under Rule 9346 to review any issues raised in the record. The National Adjudicatory Council, the Review Subcommittee, a Subcommittee or, if applicable, an Extended Proceeding Committee, or, for a disciplinary proceeding decided under Rule 9269, the General Counsel shall provide the Parties with notice of, and an opportunity to submit briefs on, any issue that shall be considered by the National Adjudicatory Council if such issue was not previously set forth in the notice of review.

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

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

(1) a member of the National Adjudicatory Council or the Review Subcommittee shall have the right to call for review a decision issued pursuant to Rule 9268 in accordance with Rule 9312(a)(1), except that the 45 day period during which a call for review may be made shall begin on the day the Association receives the last filed notice of withdrawal of appeal or, if applicable, the last filed notice of withdrawal of cross-appeal; and,

(2) 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 Adjudicatory Council****(a) Authority**

A Counsel to the National Adjudicatory Council shall be appointed by the General Counsel for each disciplinary case on appeal or review. A Counsel to the National Adjudicatory

Council shall have authority to take ministerial and administrative actions to further the efficient administration of a proceeding, including the authority to:

(1) direct the Office of Hearing Officers to complete and transmit a record of a disciplinary proceeding to the National Adjudicatory Council 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 Adjudicatory Council may make a motion to the National Adjudicatory Council, the Review Subcommittee, 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 Adjudicatory Council may designate, the Office of Hearing Officers shall assemble and prepare an index to the record, transmit the record and the index to the National Adjudicatory Council, and serve copies of the index upon all Parties. The Hearing Officer who participated in the disciplinary proceeding, or the Chief Hearing Officer, shall certify that the record transmitted to the National Adjudicatory Council is complete.

**9322. Extensions of Time, Postponements, Adjournments****(a) Availability**

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

paragraph (b), except that Counsel to the National Adjudicatory Council may postpone or adjourn a hearing only with the consent of the Parties.

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

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

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

**(1) Subcommittee**

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

**(2) Extended Proceeding Committee**

Upon consideration of the volume and complexity of the certified record, or other factors the National Adjudicatory Council or the Review Subcommittee deems material, the National Adjudicatory Council or the Review Subcommittee may determine that a disciplinary proceeding appealed or called for review shall be designated an Extended Proceeding and shall appoint an Extended Proceeding Committee to participate, subject to Rule 9345, in the appeal or review. The Extended Proceeding Committee shall be composed of two or more persons who shall be former Directors or former Governors. The Review Subcommittee shall have discretion to compensate any or all Panelists of an

Extended Proceeding Committee at the rate then in effect for arbitrators appointed under the Rule 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 Adjudicatory Council regarding the disposition of all matters on appeal, cross-appeal, or review. The recommendation shall be in the form of a written recommended decision.

**9332. Disqualification and Recusal**

**(a) Recusal, Withdrawal of Member or Panelist**

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

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

**(b) Motion for Disqualification**

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

- (1) when the Party learned of the facts believed to constitute the disqualification;

or

(2) when the Party was notified of the composition of the Subcommittee or, if applicable, the Extended Proceeding Committee or the assignment to the disciplinary proceeding of the Counsel to the National Adjudicatory Council.

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

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

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

**(1) National Adjudicatory Council**

If a Party files a motion to disqualify more than one member of the National Adjudicatory Council, the Chair or the Vice Chair of the National Adjudicatory Council

shall promptly determine whether disqualification is required, and shall issue a written ruling on the matter. In the event of such disqualification, the remaining members of the National Adjudicatory Council shall consider the review or appeal of the disciplinary matter.

**(2) Review Subcommittee**

If a Party files a motion to disqualify more than one member of the Review Subcommittee, the Chair or the Vice Chair of the National Adjudicatory Council shall promptly determine whether disqualification is required, and shall issue a written ruling on the matter. If members of the Review Subcommittee are disqualified, the Chair or Vice Chair of the National Adjudicatory Council shall appoint other members of the National Adjudicatory Council to serve on the Review Subcommittee for the limited purpose of considering the issues raised in the disciplinary proceeding in which the motion was made. The replacement members of the Review Subcommittee must have the same classification (Industry or Non-Industry) as the members being replaced.

**(3) Subcommittee; Extended Proceeding Committee**

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

**9340. Proceedings****9341. Oral Argument****(a) Request for Oral Argument**

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

**(b) Discretion to Proceed With or Without Oral Argument**

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 Adjudicatory Council may provide for a shorter notice period, except that Counsel to the National Adjudicatory Council 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 Adjudicatory Council in connection with the appeal, cross-appeal, or call for review.

**9344. Failure to Participate Below; Abandonment of Appeal****(a) Failure to Participate Below**

When an appealing Party did not participate in the disciplinary proceeding before a Hearing Officer, a Hearing Panel or, if applicable, an Extended Hearing Panel, but shows good cause for the failure to participate, the National Adjudicatory Council or the Review Subcommittee may dismiss the appeal and remand the matter for further proceedings, or may order that the appeal proceed. If the appealing Party did not participate in the disciplinary proceeding before a Hearing Officer, a Hearing Panel or, if applicable, an Extended Hearing Panel, and fails to show good cause for the failure to participate, the matter shall be considered by



the Subcommittee or, if applicable, the Extended Proceeding Committee, and the National Adjudicatory Council on the basis of the record and other documents, as provided in Rules 9346 and 9347. 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 Adjudicatory Council or the Review Subcommittee of the basis for seeking review or otherwise fails to provide information or submit a written brief in response to a request pursuant to Rules 9346 and 9347, the National Adjudicatory Council or the Review Subcommittee may dismiss the appeal as abandoned, and the decision of the Hearing Officer, the Hearing Panel or, if applicable, the Extended Hearing Panel, shall become the final disciplinary action of the Association. If a cross-appealing Party fails to advise the National Adjudicatory Council or the Review Subcommittee of the basis for seeking review or otherwise fails to provide information or submit a written brief in response to a request pursuant to Rules 9346 and 9347, the National Adjudicatory Council or the Review Subcommittee may dismiss the cross-appeal as abandoned. Upon a showing of good cause, the National Adjudicatory Council may withdraw any dismissal entered pursuant to this Rule.

**9345. Subcommittee or Extended Proceeding Committee Recommended Decision to National Adjudicatory Council**

A Subcommittee or, if applicable, an Extended Proceeding Committee, shall present a recommended decision in writing to the National Adjudicatory Council before the meeting of the National Adjudicatory Council at which the disciplinary proceeding shall be considered.

**9346. Evidence in National Adjudicatory Council Proceedings****(a) Scope of Review**

Except as otherwise set forth in this paragraph, the National Adjudicatory Council's review shall be limited to consideration of: (i) the record, as defined in Rule 9267, supplemented by briefs and other papers submitted to the Subcommittee or, if applicable, the Extended Proceeding Committee, and the National Adjudicatory Council; and (ii) any oral argument permitted under this Code. A Party may introduce additional evidence only with prior approval of the Subcommittee or, if applicable, the Extended Proceeding Committee, or the National Adjudicatory Council, upon a showing that extraordinary circumstances exist under paragraph (b). If an appealing Party shows good cause for failure to participate in the disciplinary proceeding below, the National Adjudicatory Council may hear evidence and consider the disciplinary proceeding pursuant to Rule 9344(a).

**(b) Leave to Introduce Additional Evidence**

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

introduce additional evidence. A Party shall demonstrate that there was good cause for failing to file the motion for leave to introduce additional evidence during the period prescribed.

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

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 Adjudicatory Council may permit the evidence to be introduced into the record on review, or the National Adjudicatory Council may remand the disciplinary proceeding for further proceedings consistent with its ruling or for further fact finding.

**(e) Requirements for Submitting Additional Documentary Evidence**

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

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

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

**(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 Adjudicatory Council Proceedings****(a) Briefs; Reply Briefs; Requirements**

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

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

**(b) Timely Filing of Briefs**

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

**9348. Powers of the National Adjudicatory Council on Review**

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

**9349. National Adjudicatory Council Formal Consideration; Decision****(a) Decision of National Adjudicatory Council, Including Remand**

In an appeal or review of a disciplinary proceeding governed by the Rule 9300 Series that is not withdrawn or dismissed prior to a decision on the merits, the National Adjudicatory Council, after considering all matters presented in the appeal or review and the written recommended decision of the Subcommittee or, if applicable, the Extended Proceeding Committee, may affirm, dismiss, modify or reverse the decision of the Hearing Panel or, if applicable, Extended Hearing Panel, with respect to each Respondent who has appealed or cross-appealed or is subject to a call for review. The National Adjudicatory Council may affirm, modify, reverse, increase, or reduce any sanction, or impose any other fitting sanction. Alternatively, the National Adjudicatory Council may remand the disciplinary proceeding with instructions. The National Adjudicatory Council 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 Adjudicatory Council shall provide its proposed written decision to the NASD Board. The NASD Board may call the disciplinary proceeding for review pursuant to Rule 9351. If the NASD Board does not call the disciplinary proceeding for review, the proposed written decision of the National Adjudicatory Council shall become final, and the National Adjudicatory Council shall serve its written decision on the Parties and provide a copy to each member of the Association with which a Respondent is associated. The decision shall constitute the final disciplinary action of the Association for purposes of SEC Rule 19d-1(c)(1), unless the National Adjudicatory Council remands the proceeding.

**9350. Discretionary Review by NASD Board**

**9351. Discretionary Review by NASD Board**

**(a) Call for Review by Governor**

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

**(b) 15 Day Period; Waiver**

(1) A Governor shall make his or her call for review not later than the next meeting of the NASD Board that is at least 15 days after the date on which the NASD Board receives the proposed written decision of the National Adjudicatory Council.

**(2) Waiver**

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

**(c) Review at Next Meeting**

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

**(d) Decision of NASD Board, Including Remand**

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



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

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.