

August 17, 1998

BY ELECTRONIC MAIL AND HAND DELIVERY

Katherine A. England
Assistant Director
Division of Market Regulation
Securities and Exchange Commission
450 Fifth Street, N.W.
Washington, D.C. 20549
Mail Stop 10-1

Re: **SR-NASD-98-57; Amendment No. 1; Proposed Change to NASD Membership and Registration, Investigation and Sanctions, Conduct and Code of Procedure Rules**

Dear Ms. England:

NASD Regulation, Inc. ("NASD Regulation") hereby submits Amendment No. 1 to the above-numbered rule filing. The attached proposed SEC Notice of Filing of Proposed Rule Change replaces, in entirety, the one filed on August 7, 1998.

If you have any questions, please call Eric Moss, Office of the General Counsel, at 728-8982.

Very truly yours,

Joan C. Conley
Secretary

Attachment

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34- ; File No. SR-NASD-NASD-98-57)

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by National Association of Securities Dealers, Inc. Relating to Amendments to NASD Membership and Registration, Investigation and Sanctions, Conduct and Code of Procedure Rules

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on , NASD Regulation, Inc. ("NASD Regulation") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by NASD Regulation. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. SELF-REGULATORY ORGANIZATION'S STATEMENT OF THE TERMS OF SUBSTANCE OF THE PROPOSED RULE CHANGE

NASD Regulation is proposing to amend Rules 0120, 2210, 2220, 2320, 8210, the Rule 8220 Series, IM-8310-2, 9212, 9215, 9241, 9269, 9270, 9312, 9346, 9360, the Rule 9500 Series, and 9610 of the National Association of Securities Dealers, Inc. ("NASD" or "Association") to permit the Department of Enforcement to amend complaints, without Hearing Officer approval, prior to the filing of responsive pleadings; to clarify and consolidate default provisions and shorten the call period for default decisions to 25 days; to require the Office of the General Counsel to issue decisions in settled cases; to change the trigger date for which the timing of motions to introduce new evidence is keyed; to permit Advertising Department staff to impose advertising pre-use filing requirements on members; to consolidate procedures for cancellation or suspension for failure to provide requested information; to simplify and expedite certain non-summary procedures in the Rule

9500 Series; and for other purposes. Below is the text of the proposed rule change. Proposed new language is in italics; proposed deletions are in brackets.

* * *

0100. GENERAL PROVISIONS

0120. Definitions

* * *

(m) “National Adjudicatory Council [Business Conduct Committee]”

The term “National Adjudicatory Council [Business Conduct Committee]” means the committee of [the Board of Directors of] NASD Regulation which may be authorized and directed to act for the Board of Directors of NASD Regulation in a manner consistent with the By-Laws of NASD Regulation, the Rules of the Association, and the Delegation Plan with respect to (1) an appeal or review of a disciplinary proceeding; (2) a statutory disqualification decision; (3) a review of a membership proceeding; (4) a review of an offer of settlement, a letter of acceptance, waiver, and consent, and a minor rule violation plan letter; (5) the exercise of exemptive authority; and (6) such other proceedings or actions authorized by the Rules of the Association.

* * *

2000. BUSINESS CONDUCT

* * *

2200. COMMUNICATIONS WITH CUSTOMERS AND THE PUBLIC

2210. Communications With The Public

* * *

(c) Filing Requirements and Review Procedures

* * *

(4)(A) Notwithstanding the foregoing provisions, [any District Business Conduct Committee of the Association] the Department, upon review of a member's advertising and/or sales literature, and after determining that the member has departed and there is a reasonable likelihood that the member will again depart from the standards of this Rule, may require that such member file all advertising and/or sales literature, or the portion of such member's material which is related to any specific types or classes of securities or services, with the Department [and/or the District Committee], at least ten days prior to use. The member must provide with each filing the actual or anticipated date of first use.

(B) The [Committee] Department shall notify the member in writing of the types of material to be filed and the length of time such requirement is to be in effect. The requirement shall not exceed one year, however, and shall not take effect until 30 days after the member receives the written notice, during which time the member may request a hearing [before the District Business Conduct Committee] under Rule 9514, and any such hearing shall be held in reasonable conformity with the hearing and appeal procedures of the [Code of Procedure as contained in the] Rule [9000] 9510 Series.

* * *

2220. Options Communications with the Public

* * *

(c) Association Approval Requirements and Review Procedures

(1) In addition to the approval required by paragraph (b) of this Rule, every advertisement and all educational material of a member or member organization pertaining to options shall be submitted to the Advertising/Investment Companies Regulation Department of the Association ("Department") at least ten days prior to use (or such shorter period as the Association may allow in particular instances) for approval and, if changed or expressly disapproved by the Association, shall be withheld from circulation until any changes specified by the Association have been made or, in the event of disapproval, until the advertisement or educational material has been resubmitted for, and has received, Association approval.

(2)(A) Notwithstanding the foregoing provision, [any District Business Conduct Committee of the Association] the Department, upon review of a member's options advertisements, educational material and/or sales literature, and after determining that the member will again depart from the standards of this Rule, may require that such member file all options advertisements, educational material and/or sales literature, or the portions of such member's material that is related to any specific types or classes of securities or services, with the [Association and/or the District Committee] Department, at least ten days prior to use.

(B) The [Committee] Department shall notify the member in writing of the types of material to be filed and the length of time such requirement is to be in effect. The requirement shall not exceed one year, however, and shall not take effect until 30 days after the member receives the

written notice, during which time the member may request a hearing [before the District Business Conduct Committee] under Rule 9514, and any such hearing shall be in conformity with the hearing and appeal procedures of the [Code of Procedure, as set forth in the] Rule [9000] 9510 Series.

* * *

2320. Best Execution and Interpositioning

(a) In any transaction for or with a customer, a member and persons associated with a member shall use reasonable diligence to ascertain the best inter-dealer market for the subject security and buy or sell in such market so that the resultant price to the customer is as favorable as possible under prevailing market conditions. Among the factors that [which] will be considered [by the Business Conduct Committees] in determining whether a member has used [applying the standard of] "reasonable diligence" [in this area] are:

* * *

(g)(1) In any transaction for or with a customer pertaining to the execution of an order in a non-Nasdaq security (as defined in the Rule 6700 Series), a member or person associated with a member, shall contact and obtain quotations from three dealers (or all dealers if three or less) to determine the best inter-dealer market for the subject security.

(2) Pursuant to the Rule 9600 Series, [T]the staff, for good cause shown [upon written request,] after taking into consideration all relevant factors, may exempt any transaction or classes of transactions, either unconditionally or on specified terms, from any or all of the provisions of this paragraph if it determines that such exemption is consistent with the purpose of this Rule, the protection of investors, and the public interest. [Any decision whether to grant such an exemption may be appealed to the National Business Conduct Committee.]

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

(a) Authority of Adjudicator and Association Staff

For the purpose of an investigation, complaint, examination, or proceeding authorized by the NASD By-Laws or the Rules of the Association, an Adjudicator or Association staff shall have the right to:

(1) require a member, person associated with a member, or person subject to the Association's jurisdiction to provide information orally, in writing, or electronically (if the requested information is, or is required to be, maintained in electronic form) and to testify at a location specified by Association staff, under oath or affirmation administered by a court reporter or a notary public if requested, with respect to any matter involved in the investigation, complaint, examination, or proceeding; and

(2) No change.

8220. Suspension or Cancellation for Failure to Provide Requested Information

8221. Notice

(a) Notice to Member

If a member fails to provide any information, report, material, data, or testimony requested pursuant to the NASD By-Laws or the Rules of the Association, or fails to keep its membership application or supporting documents current, the [National Adjudicatory Council] Department of Enforcement may provide written notice to such member specifying the nature of the failure and

stating that the failure to take such action within 20 days after service of the notice constitutes grounds for suspension or cancellation [from] of membership.

(b) Notice to Person Associated with Member

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

(c) Service of Notice

The [National Adjudicatory Council] Department of Enforcement shall serve the member or person associated with a member with such notice via personal service or overnight commercial courier.

8222. Hearing

(a) Request for Hearing

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

(b) Hearing Procedures

(1) Appointment of Subcommittee

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

(2) Time of Hearing

The hearing shall be held within [20] 30 days after the date of service of the notice issued under Rule 8221. Not later than seven days before the hearing, the subcommittee shall serve the member or person associated with a member with written notice of the date and time of the hearing via overnight commercial courier or facsimile and notify the [appropriate department or office of NASD Regulation] Department of Enforcement of the date and time of the hearing. [The appropriate department or office of NASD Regulation (hereinafter "appropriate department or office" in the Rule 8220 Series) shall be the department or office that issued the request for the information, report, material, data, or testimony that the member or associated person failed to provide, or in the case of a member that failed to keep its membership application or supporting documents current, the Department of Member Regulation.]

(3) Transmission of Documents

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

(4) Counsel

The member or person associated with a member and the [appropriate department or office] Department of Enforcement may be represented by counsel at a hearing conducted under this Rule.

(5) Evidence

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

(6) Witnesses

No change.

(7) Additional Information

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

(8) Transcript

No change.

(9) Record

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

(10) Failure to Appear at Hearing

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

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

8223. Decision

(a) Subcommittee

(1) Proposed Written Decision

The subcommittee may suspend or cancel the membership of a member or suspend the association of a person with a member for failure to take the action required by the notice issued under Rule 8221. The subcommittee shall prepare a proposed written decision, and if the subcommittee determines that a suspension should be imposed, the proposed written decision shall state the grounds for the suspension or cancellation and the conditions for terminating the suspension. The subcommittee shall provide its proposed written decision to the NASD Board of Governors.

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

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

(b) NASD Board of Governors

(1) Call For Review by Governor

A Governor may call the suspension or cancellation proceeding for review if the call for review is made not later than ten days after the Governor receives the subcommittee's proposed written decision. By a unanimous vote of the NASD Board of Governors, the

NASD Board of Governors may shorten the call for review period to less than ten days.

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

(2) Review and Decision

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

(c) Effective Date

No change.

8224. Notice to Membership

The Association shall provide notice of a suspension or cancellation under the Rule 8220 Series and the grounds therefor in the next membership supplement.

8225. Termination of Suspension

(a) Filing of Request

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

(b) Response by Department of Enforcement

The head of the [appropriate department or office] Department of Enforcement shall respond to the request in writing within five days after receipt of the request.

(1) Request Granted

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

(2) Request Denied

If the head of the department or office denies the request, the suspended member or person associated with a member may file a written request for relief with the [National Adjudicatory Council] NASD Regulation Office of General Counsel. If the member or person associated with a member files the written request for relief within 30 days after

service of the decision under Rule 8223, [The National Adjudicatory Council] the review panel constituted under Rule 8223 shall respond to the request for relief in writing within ten days after receipt of the request. If the member or person associated with a member files the written request for relief more than 30 days after service of the decision under Rule 8223, the National Adjudicatory Council shall respond to the request for relief in writing within ten days after receipt of the request. The review panel's or National Adjudicatory Council's response shall be served on the member or person associated with a member via overnight commercial courier or facsimile.

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8300. SANCTIONS

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IM-8310-2. Release of Disciplinary Information

* * *

(d)(1) The Association shall release to the public information with respect to any disciplinary decision issued pursuant to the Rule 9000 Series imposing a suspension, cancellation or expulsion of a member; or suspension or revocation of the registration of a person associated with a member; or suspension or barring of a member or person associated with a member from association with all members; or imposition of monetary sanctions of \$10,000 or more upon a member or person associated with a member; or containing an allegation of a violation of a Designated Rule; and may also release such information with respect to any disciplinary decision or group of decisions that involve a significant policy or enforcement determination where the release of information is deemed by the President of NASD Regulation, Inc. to be in the public interest. The

Association also may release to the public information with respect to any disciplinary decision issued pursuant to the Rule 8220 Series imposing a suspension or cancellation of the member or a suspension of the association of a person with a member, unless the National Adjudicatory Council determines otherwise. The National Adjudicatory Council may, in its discretion, determine to waive the requirement to release information with respect to a disciplinary decision under those extraordinary circumstances where the release of such information would violate fundamental notions of fairness or work an injustice.

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9000. CODE OF PROCEDURE

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9200. DISCIPLINARY PROCEEDINGS

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

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

No change.

(b) Amendments to Complaint

The Department of Enforcement may file and serve an amended complaint that includes new matters of fact or law at any time before the Respondent answers the complaint. After the Respondent answers, u[U]pon motion by the Department of Enforcement, the Hearing Officer may permit the Department of Enforcement to amend the complaint to include new matters of fact or law, [at any time] after considering whether the Department of Enforcement has shown good cause for the amendment [shown by the Department of Enforcement] and whether any Respondent will

suffer any unfair prejudice if the amendment is allowed [to any Respondent, permit the Department of Enforcement to amend a complaint to include new matters of fact or law].

* * *

9215. Answer to Complaint

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(f) Failure to Answer, Default

If a Respondent does not file an answer or make any other filing or request related to the complaint with the Office of Hearing Officers within the time required, the Department of Enforcement shall send a second notice to such Respondent requiring an answer within 14 days after service of the second notice. The second notice shall state that failure of the Respondent to reply within the period specified shall allow the Hearing Officer, in the exercise of his or her discretion, pursuant to Rule 9269 to: (1) treat as admitted by the Respondent the allegations in the complaint; and (2) issue [enter] a default decision against the Respondent [pursuant to Rule 9269]. If the Respondent fails to file an [no] answer [is filed] with the Office of Hearing Officers within the time required, the Hearing Officer may issue [allegations of the complaint may be considered admitted by such Respondent and] a default decision against the Respondent pursuant to Rule 9269 [may be issued by the Hearing Officer. A Respondent may, for good cause shown, move the National Adjudicatory Council to set aside a default].

* * *

9241. Pre-hearing Conference

(a) through (e)

No change.

(f) Failure to Appear: Default

The Hearing Officer may issue a default decision, pursuant to Rule 9269, against a[A] Party that [who] fails to appear, in person or through counsel or a representative, at a pre-hearing conference of which the Party [he or she] has [been duly] due notice [notified, may be deemed in default pursuant to Rule 9269. A Party may, for good cause shown, file a motion to set aside the default].

* * *

9269. Default Decisions[Failure to Appear at Hearing; Defaults]

(a) Issuance of Default Decisions[Failure to Appear May Result in Default Decision]

(1) The Hearing Officer may issue a default decision against a Respondent that fails to answer the complaint within the time afforded under Rule 9215, or a Party that fails to appear at a pre-hearing conference held pursuant to Rule 9241 of which the Party has due notice, or a [A] Party that [who] fails to appear at [a] any hearing that a Party is required to attend under the Rule 9200 Series of which the Party [he or she has been] has due notice [been duly notified may be deemed to be in default].

(2) If the defaulting Party is the Respondent, [As a consequence of the default], the Hearing Officer may deem the allegations against [a non-appearing] that Respondent [may be deemed] admitted [and a default decision entered by the Hearing Officer]. If the [non-appearing Party] defaulting Party is the Department of Enforcement, the Hearing Officer may issue a default decision ordering that the complaint be dismissed with prejudice.

(3) [In addition, t]The Hearing Officer may order that a Party that fails to appear at the pre-hearing conference or the hearing to [the non-appearing Party] pay the costs incurred by other Parties in connection with their appearance [at the hearing].

(b) Contents of Decision [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.]The contents of a default decision shall conform to the requirements of Rule 9268(b).

(c) Review of Default Decision

A Party may, for good cause shown, file a motion to set aside a default, dismissal, and the imposition of costs. Upon a showing of good cause, either the Review Subcommittee or the National Adjudicatory Council may enter such an order.

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

If a default decision is not appealed pursuant to Rule 9311 or called for review pursuant to Rule 9312 within 25 days after the date the Office of Hearing Officers serves it on the Parties, the default decision shall become the final disciplinary action of the Association for purposes of SEC Rule 19d-1(c)(1). Unless otherwise provided in the default decision, the sanctions shall become effective 30 days after the default decision becomes the final disciplinary action of the Association, except that a bar or expulsion shall become effective immediately upon the default decision becoming the final disciplinary action of the Association.

* * *

9270. Settlement Procedure

* * *

(e) Uncontested Offers of Settlement

(1) through (2)

No change.

(3) If the offer of settlement and order of acceptance are accepted by the National Adjudicatory Council, the Review Subcommittee, or the General Counsel, they shall become final and [the National Adjudicatory Council, the Review Subcommittee or] the General Counsel shall [communicate the acceptance to the Hearing Officer who shall thereafter] issue the order and notify the Office of Hearing Officers.

(f) Contested Offers of Settlement

* * *

(3) If the offer of settlement and order of acceptance are accepted by the National Adjudicatory Council or the Review Subcommittee, the General Counsel [National Adjudicatory Council or the Review Subcommittee shall communicate the acceptance to the Hearing Officer who] shall [thereafter] issue the order and notify the Office of Hearing Officers.

* * *

9312. Review Proceeding by National Adjudicatory Council

(a) Call for Review

(1) Rule 9268 Decision

No change.

(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 25 [45] days after the date of service of the decision. If called for review, such decision shall be reviewed by the National Adjudicatory Council.

* * *

9346. Evidence in National Adjudicatory Council Proceedings

(a) Scope of Review

No change.

(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 the Office of Hearing Officers transmits to the National Adjudicatory Council and serves upon all Parties the index to the record, pursuant to Rule 9321 [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.

9360. Effectiveness of Sanctions

Unless otherwise provided in the decision issued under Rule 9349 or Rule 9351, a[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.

* * *

9500. [SUSPENSION, CANCELLATION, BAR, DENIAL OF ACCESS, AND ELIGIBILITY,] OTHER [PROCEDURES] PROCEEDINGS

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

9511. Purpose and Computation of Time

(a) Purpose

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

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

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

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

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

[(A) cancel the membership of a member that becomes ineligible for continuance in membership, or that continues to be associated with an ineligible person, or suspend or bar a person from continuing to be associated with a member because such person is or becomes ineligible for association under Article III, Section 3 of the NASD By-Laws;]

[(B) suspend or cancel the membership of a member or the registration of a person for failure to pay fees, dues, assessments, or other charges; failure to submit

a required report or information related to such payment; or failure to comply with an arbitration award or a settlement agreement related to an arbitration or mediation under Article VI, Section 3 of the NASD By-Laws;]

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

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

[(3) Other procedures for suspending the membership of a member, suspending the registration of an associated person, or suspending a person from association with any member are found in the Rule 8220 Series and Rule 8320. Procedures for listing qualification matters are found in the Rule 9700 Series; the Rule 9510 Series does not apply to listing qualification matters.]

The Rule 9510 Series sets forth procedures for: (1) summary proceedings authorized by Section 15A(h)(3) of the Act; and (2) non-summary proceedings to impose (A) a suspension or cancellation for failure to comply with an arbitration award or a settlement agreement related to an arbitration or mediation pursuant to Article VI, Section 3 of the NASD By-Laws; (B) a suspension

or cancellation of a member, or a limitation or prohibition on any member, associated person, or other person with respect to access to services offered by the Association or a member thereof, if the Association determines that such member or person does not meet the qualification requirements or other prerequisites for such access or such member or person cannot be permitted to continue to have such access with safety to investors, creditors, members, or the Association; or (C) an advertising pre-use filing requirement.

(b) Computation of Time

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

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

No change.

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

(a) Notice

Association staff [shall] may initiate a proceeding authorized under [Section 3 of Article III, Section 3 of Article VI, or Section 2 of Article VII of the NASD By-Laws, or] Rule 9511(a)(2)[(D)] (A) or (B), by issuing a written notice to the member, associated person, or other person. The notice shall specify the grounds for and effective date of the cancellation, suspension, bar, limitation, or prohibition and shall state that the member, associated person, or other person

may file a written request for a hearing under Rule 9514. The notice shall be served by facsimile or overnight commercial courier.

(b) Effective Date

[For any cancellation, suspension, or bar under Section 3 of Article III of the NASD By-Laws, the effective date shall be at least seven days after service of the notice on the member or associated person.] For any cancellation or suspension [under Section 3 of Article VI or Section 2 of Article VII of the NASD By-Laws] pursuant to Rule 9511(a)(2)(A), the effective date shall be at least 15 days after service of the notice on the member or associated person. For any action pursuant to Rule 9511(a)(2)(B), the effective date shall be at least seven days after service of the notice on the member or person, except that the effective date for a notice of a limitation or prohibition on access to services offered by the Association or a member thereof [pursuant to Rule 9511(a)(2)(D), the effective date shall be upon receipt of the notice] with respect to services to which the member, associated person, or other person does not have access [and shall be at least seven days after service of the notice with respect to services to which the member, associated person, or other person already has access] shall be upon receipt of the notice.

9514. Hearing and Decision

(a) Request

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

A member, associated person, or other person who is subject to a notice issued under Rule 2210, 2220, 9512(a), or 9513(a) may file a written request for a hearing with the Association. The request shall state [either] the specific grounds for [reversing the summary suspension, limitation, or prohibition or for opposing the cancellation, suspension,

bar, limitation, or prohibition] setting aside the notice. The request shall be filed pursuant to Rules 9135, 9136, and 9137 within seven days after service of the notice under Rule 9512 or 9513, or, with respect to notice of a pre-use filing requirement under Rule 2210(c)(4) and Rule 2220(c)(2), within 30 days of such notice. The member, associated person, or other person may withdraw its request for a hearing at any time by filing a written notice with the Association pursuant to Rules 9135, 9136, and 9137.

(2) Failure to File Request

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

(3) Ex Parte Communications

No change.

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

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

(1) If the President of NASD Regulation or NASD Regulation staff issued the notice initiating the proceeding under Rule 2210, 2220, 9512(a), or 9513(a), the President of NASD Regulation shall designate an appropriate NASD Regulation department or office as a Party. For proceedings initiated under Rule 9513(a) concerning failure to comply with an arbitration award or a settlement agreement related to an NASD arbitration or

mediation, the Chief Hearing Officer shall appoint a Hearing Panel composed of a Hearing Officer. For any other proceedings initiated under Rule 2210, 2220, 9512(a), or 9513(a) by the President of NASD Regulation or NASD Regulation staff, the NASD Regulation Board shall appoint a Hearing Panel composed of two or more members; one member shall be a Director of NASD Regulation, and the remaining member or members shall be current or former Directors of NASD Regulation or Governors. The President of NASD Regulation may not serve on a Hearing Panel.

(2) No change.

(c) Stays

(1) Summary Proceeding [Suspension, Limitation, or Prohibition]

No change.

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

Unless the NASD Board orders otherwise, a request for a hearing shall stay the notice issued under Rule 2210, 2220, or 9513, except that a request for a hearing shall not stay a notice of a limitation or prohibition on services offered by the Association or a member thereof with respect to services to which a member, associated person, or other person does not have access.

(d) Time of Hearing

(1) Summary [Suspension] Proceeding

No change.

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

Proceeding

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

(e) Transmission of Documents

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

(2) No change.

(f) Hearing Panel Consideration

(1) - (3) No change.

(4) Record

The record shall consist of: (1) the notice issued under Rule 2210, 2220, 9512, or 9513; (2) all documents transmitted by the Association under Rule 9514(e)(1); (3) the request for hearing; (4) any other submissions by the Parties; (5) any evidence considered at the hearing; and (6) the transcript of the hearing and any corrections thereto.

(5) Custodian of the Record

If the President of NASD Regulation or NASD Regulation staff initiated the proceeding under Rule 2210, 2220, 9512, or 9513, the Office of the General Counsel of NASD Regulation shall be the custodian of the record, except that the Office of Hearing Officers shall be the custodian of record for proceedings initiated under Rule 9513(a) concerning failure to comply with an arbitration award or a settlement agreement related to an NASD arbitration or mediation. If the President of Nasdaq or Nasdaq staff initiated the proceeding under Rule 9512 or 9513, the Office of the General Counsel of Nasdaq shall be the custodian of the record.

(6) Evidence Not Admitted

No change.

(g) Decision of the Hearing Panel

(1) Summary [Suspension, Limitation, or Prohibition] Proceeding

No change.

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

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

(3) Contents of Decision

The decision shall include:

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

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

(C) the grounds for issuing the notice under Rule 2210, 2220, 9512, or 9513;

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

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

(F) if a summary suspension, limitation, or prohibition continues to be imposed, the specific grounds for imposing such suspension, limitation, or prohibition, and the terms of the suspension, limitation, or prohibition[.]; or, if a

non-summary suspension, cancellation, bar, limitation, [or] prohibition or pre-use filing requirement is to be imposed or continue to be imposed, [the] its effective date, time, and terms [of the suspension, cancellation, bar, limitation, or prohibition].

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

No change.

9515. Discretionary Review by the NASD Board

No change.

9516. Reinstatement

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

* * *

9520. Eligibility Proceedings

9521. Purpose

No change.

9522. Initiation of Eligibility Proceeding[s]

(a) [Notice of Disqualification or Ineligibility] Initiation by Association

(1) Issuance of Notice of Disqualification or Ineligibility

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

(2) Notice to Member

A notice issued to a member that is subject to a statutory disqualification or is otherwise ineligible for membership shall state that the member may apply for relief by filing a written application for relief pursuant to paragraph (c) with the National Adjudicatory Council within ten days after service of the notice. If the member fails to file the written application for relief within the 10-day period, the membership of the member shall be canceled, unless the Department of Member Regulation grants an extension for good cause shown.

(3) Notice to Associated Person

A notice issued to an associated person who is subject to a statutory disqualification or is otherwise ineligible for association shall state that a member may apply for relief on behalf of itself and such person by filing a written application for relief pursuant to paragraph (c) with the National Adjudicatory Council within ten days after service of the notice. If the member fails to file the written application for relief within the 10-day period, the registration

of the associated person shall be revoked, unless the Department of Member Regulation grants an extension for good cause shown.

(4) Service

No change.

(b) [Application by] Obligation of Member to Initiate Proceeding

A member shall file a written application for relief from the eligibility requirements of the Association pursuant to paragraph (c) with the National Adjudicatory Council if the member determines prior to receiving a notice under paragraph (a) that:

- (1) [determines that it] the member is subject to a statutory disqualification or otherwise is no longer eligible for membership;
- (2) [determines that] a person associated with [it] such member is subject to a statutory disqualification or otherwise is no longer eligible for association with the member;
- or
- (3) the member wishes to sponsor the association of a person who is subject to a statutory disqualification or otherwise is ineligible for association with a member.

* * *

9525. Expedited Review

(a) Direction by Executive Committee

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

(b) Call for Review Period

If a recommended decision is subject to expedited review, a Governor may call the eligibility proceeding for review within seven days after receipt of the recommended written decision.

(c) No Call for Review

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

(d) Call for Review

If a Governor calls the eligibility proceeding for review within the prescribed time, a review panel shall meet and conduct a review not later than 14 days after the call for review. The review panel shall be composed of the NASD Board Executive Committee, except that the Governor who calls the proceeding for review shall serve on the review panel in lieu of a member of the Executive Committee who has the same classification (Industry, Non-Industry, or Public) as such Governor. The review panel may affirm, modify, or reverse the recommended written decision of the Statutory Disqualification Committee or remand the eligibility proceeding with instructions. The review panel shall prepare, issue, and serve its decision pursuant to Rule 9524(d) and (e).

9526. Application to Commission for Review

No change.

* * *

9530. Suspension or Cancellation for Failure to Pay Dues

9531. Notice

(a) Notice

Association staff may issue a written notice suspending or canceling the membership of a member or the registration of a person who has failed to pay a fee, due, assessment, other charge, or submit a required report or information related to such payment.

(b) Service of Notice

Association staff shall serve the notice by facsimile or overnight commercial courier and shall file a copy of the notice with the Office of Hearing Officers.

(c) Effective Date of Notice

A notice issued and served under this Rule shall become effective 15 days after the date of service of the notice.

9532. Hearing

(a) Request for Hearing

Within five days after the date of service of a notice issued under Rule 9531, the member or person served with such notice may file with the Office of Hearing Officers a written request for a hearing. The request shall state with specificity why the member or person believes that the notice should be set aside. The request for the hearing shall stay the effective date of the notice.

(b) Hearing Procedures

(1) Appointment of Hearing Officer

If a hearing is requested, the Chief Hearing Officer shall appoint a Hearing Officer to conduct the hearing and decide whether the member or the person's registration should be suspended or canceled.

(2) Parties

The Parties shall be the member or person to whom the notice was issued and the NASD Treasurer.

(3) Time of Hearing

The hearing shall be held within 45 days after the date of service of the notice under Rule 9531. Not later than seven days before the hearing, the Hearing Officer shall serve the Parties with written notice of the date and time of the hearing.

(4) Transmission of Documents

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

(5) Counsel

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

(6) Evidence

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

(7) Witnesses

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

(8) Additional Information

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

(9) Transcript

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

(10) Record

The record shall consist of all documents that were considered in connection with the decision to issue a notice under Rule 9531, the notice issued under Rule 9531, the request for hearing filed under Rule 9532, the transcript of the hearing, and each document

or other item of evidence presented to or considered by the Hearing Officer. The Office of Hearing Officers shall be the custodian of the record.

(11) Failure to Appear at Hearing

If a member or person fails to appear at a hearing for which he has notice, the Hearing Officer may dismiss the request for a hearing as abandoned, and the notice issued under Rule 9531 shall become final. Upon a showing of good cause, the Hearing Officer may withdraw a dismissal entered pursuant to this subparagraph.

9533. Decision

The Hearing Officer may suspend or cancel the membership of a member or the registration of a person for failure to pay a due, fee, assessment, other charge, or for failure to submit a required report or information related to such payment. The Hearing Officer shall prepare a proposed written decision, and if the Hearing Officer determines that a suspension or cancellation should be imposed, the proposed written decision shall state the grounds for the suspension or cancellation, and in the case of a suspension, the conditions for terminating the suspension. The written decision served under this Rule shall become effective upon service and shall constitute final action of the Association.

9534. Notice to Membership

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

9535. Termination of Suspension

A suspended member or person may file a written request for termination of the suspension on the ground of full compliance with the notice issued under Rule 9531 or, if applicable, the

conditions of a decision under Rule 9533, with the Office of Hearing Officers. The Office of Hearing Officers shall respond to the request in writing within five days after receipt of the request. The Office of Hearing Officers shall send the written response via overnight commercial courier or facsimile.

9536. Copies of Notices and Decisions to Member

A copy of a notice or decision under the Rule 9530 Series that is served on a person associated with a member shall be served on such member.

9537. Other Action Not Foreclosed

Action by the Association under the Rule 9530 Series shall not foreclose action by the Association under any other Rule.

* * *

9600. Procedures for Exemptions

9610. Application

(a) Where to File

A member seeking an exemption from Rule 1021, 1022, 1070, 2210, 2320, 2340, 2520, 2710, 2720, 2810, 2850, 2851, 2860, Interpretive Material 2860-1, 3010, 3210, 3350, 8211, 8212, 8213, 11870, or 11900, Interpretive Material 2110-1, or Municipal Securities Rulemaking Board Rule G-37 shall file a written application with the appropriate department or staff of the Association and provide a copy of the application to the Office of General Counsel of NASD Regulation.

* * *

II. SELF-REGULATORY ORGANIZATION'S STATEMENT OF THE PURPOSE OF, AND STATUTORY BASIS FOR, THE PROPOSED RULE CHANGE

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

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

(a) **Purpose**

The proposed amendments to Rules 0120, 2210, 2220, 2320, 8210, the Rule 8220 Series, IM-8310-2, 9212, 9215, 9241, 9269, 9270, 9312, 9346, 9360, the Rule 9500 Series, and 9610 of the NASD are being made to permit the Department of Enforcement to amend complaints, without Hearing Officer approval, prior to the filing of responsive pleadings; to clarify and consolidate default provisions and shorten the call period for default decisions to 25 days; to require the Office of the General Counsel to issue decisions in settled cases; to change the trigger date for which the timing of motions to introduce new evidence is keyed; to permit Advertising Department staff to impose advertising pre-use filing requirements on members; to consolidate procedures for cancellation or suspension for failure to provide requested information; to simplify and expedite certain non-summary procedures in Rule 9500 series; and for other purposes.

Rule 0120

The purpose of the proposed change is to amend definition Rule 0120(m) to reflect that the National Adjudicatory Council (“NAC”) has replaced the National Business Conduct Committee as

the committee of NASD Regulation that acts on behalf of the NASD Regulation Board of Directors with respect to disciplinary and related matters.

The NAC replaced the National Business Conduct Committee pursuant to a corporate reorganization. The revisions to the corporate structure were approved on November 14, 1997. Securities Exchange Act Release No. 39326 (November 14, 1997), 62 FR 62385 (November 21, 1997) (File No. SR-NASD-97-71). Proposed changes to the rules describing the NAC's functions in disciplinary proceedings and related matters were approved on December 19, 1997. Securities Exchange Act Release No. 39470 (December 19, 1997), 62 FR 67927 (December 30, 1997) (File No. SR-NASD-97-81).

Rules 2210 and 2220

Rules 2210(c)(4) and 2220(c) authorize the NASD to require members to file advertisements, sales literature, and education material with the Association before using it in certain instances. The Rules currently provide that the District Business Conduct Committees may impose pre-use filing requirements and may conduct a hearing if a member opposes a pre-use filing requirement. These provisions are inconsistent with the Securities Exchange Act Release No. 37538 (August 8, 1996), SEC's Order Instituting Public Proceedings Pursuant to Section 19(h)(1) of the Securities Exchange Act of 1934, Making Findings and Imposing Remedial Sanctions, In the Matter of National Association of Securities Dealers, Inc., Administrative Proceeding File No. 3-9056 ("Order"). Therefore, NASD Regulation has not utilized these procedures since August 1996. Consistent with the Order, the proposed rule change would vest authority to impose a pre-use filing requirement solely with NASD Regulation staff, specifically the Advertising/Investment Companies Regulation Department. Any hearing requested regarding such requirement would be conducted

under the non-summary proceedings set forth in the Rule 9510 Series, rather than by a District Business Conduct Committee.

Rule 2320 and 9610

The proposed amendments to Rule 2320 clarify that a request for exemptive relief under Rule 2320 is subject to the same procedural rules, the Rule 9600 Series, to which all other requests for exemptive relief are subject. A conforming change is proposed to Rule 9610.

Rule 8210

Rule 8210 would be amended to clarify that Association staff may specify the location at which a member, associated person, or other person subject to the Association's jurisdiction must testify for the purpose of an investigation, complaint, examination, or proceeding. A few members and persons have questioned the Association's authority to specify such a location; the proposed rule change clarifies the Association's authority to do so.

Rule 8220

Currently, the Rule 8220 Series and the Rule 9510 Series both set forth procedures for suspending or canceling a member or associated person for failure to provide requested information to the Association. The proposed rule change consolidates the provisions of the Rule 8220 Series and the Rule 9510 Series into the Rule 8220 Series.

Currently, the Rule 8220 Series authorizes the NAC to initiate a suspension proceeding for failure to provide requested information, and the Rule 9510 Series authorizes Association staff to initiate a cancellation proceeding for failure to provide requested information. Under the proposed rule change, the Department of Enforcement of NASD Regulation would be authorized to initiate a suspension or cancellation proceeding if a member or associated person failed to provide requested

information;¹ the Department of Enforcement also would act as a Party in the subsequent proceedings. This authority is consistent with the Department's authority in regular disciplinary proceedings, as set forth in the Rule 9200 Series.

Several hearing procedures would be amended under the proposed rule change. First, the member or associated person who received a notice initiating a cancellation or suspension would file a request for a hearing directly with the NASD Regulation Office of General Counsel, rather than the NAC. The Office of General Counsel is responsible for arranging such hearings.

Second, the proposed rule change would expand the pool of persons who could serve on the subcommittee conducting the hearing to include current and former members of the NAC, the NASD Regulation Board, and the NASD Board. At least one subcommittee member would have to be a current member of the NAC.

Third, the proposed rule change would expand the period in which a hearing must be held from 20 to 30 days. NASD Regulation has determined that 20 days is not a sufficient period both to find panelists who are available and coordinate the schedules of all panelists, Parties, and their attorneys. Lengthening this time period does not prejudice the member or person because once a hearing is requested, a suspension or cancellation cannot not take effect until after the proceeding is completed.

¹ Consistent with Article VII, Section 2 of the NASD By-Laws and the Delegation Plan, the Department of Enforcement would exercise the Board's authority to cancel or suspend the membership of any member or suspend the association of any person associated with a member for failure to file, or to submit on request, any report, document or other information requirement to be filed with or requested by the NASD.

Fourth, Rule 8222(b)(3) would be amended to include a provision of current Rule 9514(e), which provides that the Association may withhold certain documents enumerated in Rule 9251 that are privileged or constitute attorney work product or are otherwise related to an examination, inspection, or investigation. Finally, the proposed rule change would add a new requirement that if the subcommittee conducting the hearing required that additional information be filed, then such information would have to be distributed promptly to all parties and in all cases not less than one business day before the subcommittee rendered its decision.

Proposed Rule 8223(b) revises the call for review process by placing the authority to conduct a review with a review panel, rather than the full NASD Board. As under the current rule, any Governor could call the proceeding for review. Under the proposed rule change, a review panel would conduct the review, rather than the full Board. The review panel would be composed on the NASD Board Executive Committee, except that the Governor who called the proceeding for review would serve on the review panel in lieu of an Executive Committee member who has the same classification (Industry, Non-Industry, or Public) as that Governor. The procedures for selecting the Executive Committee member to be excused would be designed in such a way that the same Governor of a particular classification is not excused from every review panel. NASD Regulation proposes this change because it will allow the suspension or cancellation proceeding to be concluded more quickly. The NASD Board Executive Committee is a smaller body designed to meet on an as-needed basis and can convene more easily than the Board. The review panel in most cases could conveniently arrange its review around Executive Committee meetings because most of

the participants would be the same. Under the current rule, a review generally would be deferred to the next Board meeting two months later.²

The review panel composition also is consistent with the Order in that a respondent in the proceeding will still have the benefit of a balanced body conducting the review. Under the NASD By-Laws, as revised to be consistent with the Order, the NASD Board Executive Committee must reflect the percentages of Non-Industry and Public Governors on the Board. Those percentages would be maintained on the review panel by having the Governor initiating the call for review serve as a substitute for an Executive Committee member of the same classification.

The reinstatement provisions set forth in proposed Rule 8225 are amended by providing that requests to terminate a suspension should be filed with the Department of Enforcement. If the Department denies the request, then a further request for relief may be filed with the review panel that rendered the decision in the underlying proceeding, as long as the request for relief is filed within 30 days after service of the decision. The review panel would be most familiar with the decision and issues during this period. If the request for relief is filed more than 30 days after service of the decision, then the NAC would act on the request for relief. This would ensure that the review panel's responsibilities conclude shortly after its decision is rendered and do not continue for an indefinite period.

References throughout the Rule Series to service by commercial courier are revised to require service by overnight commercial courier to ensure that service is effected quickly.

Interpretive Material 8310-2

Interpretive Material 8310-2 provides for the release of disciplinary information to the public. The proposed rule change would amend this Interpretation to permit the NASD to release

² The NASD Board generally meets every two months.

information about suspensions and cancellations imposed under the Rule 8220 Series, unless the NAC determines otherwise. For example, the NAC may determine not to release such information if a member subject to a suspension quickly cures the failure to provide information and the suspension is quickly lifted.

Rule 9212

The proposed change to Rule 9212 is to enable the Department of Enforcement to amend complaints, without hearing officer approval, prior to the filing of responsive pleadings. Rule 9212 currently requires the Department of Enforcement to move to amend any complaint, and a Hearing Officer to grant such a motion before the complaint may be amended. Generally such motions are routinely granted if the motion is filed before responsive pleadings are filed. The requirement of making such motions and obtaining Hearing Officer approval can be eliminated without imposing any unfairness to respondents. This change is consistent with most judicial practice.

Rules 9215, 9241, 9269 and 9312

The proposed amendments to Rules 9215, 9241, 9269 and 9312 are designed to clarify and consolidate the NASD Code of Procedure (“Code”) default provisions, and to shorten the call period for default decisions to 25 days.

The current rules relating to default decisions are set forth in Rules 9215, 9241, 9269 and 9312. Rule 9269, the one rule exclusively devoted to defaults, concerns only defaults as a result of failing to appear at a hearing. Defaults also and indeed more frequently occur as a result of failing to file any answer at all. The proposed amendments consolidate many of the default provisions in Rule 9269. Accordingly, Rule 9269 will cover defaults resulting from failing to answer complaints or appear at pre-hearing conferences or at hearings.

These amendments also make non-substantive changes that clarify the existing rules. The changes clarify that the default decisions issued by Hearing Officers should contain the same contents as decisions issued in litigated cases. The amendments also clarify that either the Review Subcommittee or the NAC may set aside a default judgment. Furthermore, the changes clarify that defaults need to be appealed within 25 days after the service of the decision, and that sanctions are effective 30 days after service of the decision (other than bars and suspensions which are effective immediately). These time periods are already set forth in Rules 9360 and 9311(a), respectively.

In addition, the proposed changes to Rule 9312 shorten the period when the General Counsel may call a default decision for review. The rules currently give the General Counsel 45 days to determine whether to call a default decision for review, which is the same call period for litigated decisions. Twenty-five days, however, is the period proposed for appealing a default decision. The additional 20 days for the call decision currently allowed in the Code is appropriate for litigated decisions where the NAC or the Review Subcommittee may prefer to see if a case will be appealed before making its call determination. Appeals of default decisions are infrequent, and the call decisions generally are made within the 25 day period. Shortening the call period for default decisions thus is practicable, and will have the benefit of putting into effect default decisions (which often involve bars and expulsions) sooner.

Rule 9270

The purpose of amending Rule 9270 is to establish that the issuance of decisions, in settled cases, is to be done by the General Counsel. Rule 9270 currently requires that decisions relating to accepted offers of settlement be issued by the Office of Hearing Officers. Returning decisions relating to offers of settlement, however, to the Hearing Officers after acceptance by the NAC, the

Review Subcommittee or the General Counsel serves no useful purpose and only introduces additional delay and the possibility of error. Moreover, issuance by the Office of Hearing Officers makes it appear that Hearing Officers have approved the settlements when they have no authority to do so.

Rule 9346

The change proposed to Rule 9346(b) would impose the requirement that motions to introduce new evidence in appealed or called cases be made within 30 days of service of the index to the record under Rule 9321. Rule 9346(b) currently requires that motions to introduce new evidence in these cases be made within 30 days of service of the notice of appeal (or within 35 days of service of notice of a call for review). Because motions to introduce new evidence generally can best be made after the parties have received copies of the official index to the record, it is logical to key the timing of such motions to the parties' receipt of the index.

Rule 9360

Under the proposed amendments to Rule 9360, sanctions generally continue to become effective 30 days after the date of service of the decision constituting final disciplinary action. However, the date would no longer be established by the Chief Hearing Officer. This change is proposed because the Chief Hearing Officer plays no part in the final stages of a disciplinary proceeding appealed or called for review. Also, the proposed amendments to Rule 9360 incorporate references to Rules 9349 and 9351 into Rule 9360. This change is made to clarify the applicability of Rule 9360.

Rule 9500 Series Generally

The purpose of the proposed rule change to the Rule 9500 Series is to simplify and consolidate certain procedures. The Rule 9510 Series would be amended by deleting certain non-summary proceedings and consolidating them with other rules or by replacing them with simple procedures in a separate rule series. NASD Regulation believes that such changes are necessary because most of the non-summary proceedings involve subject matters that do not warrant an initial adjudication by Board-level panelists as provided in the current Rule 9510 Series; an initial adjudication by staff or NAC is more appropriate.

Rule 9510

The Rule 9510 Series would be simplified by deleting certain non-summary proceedings and consolidating them with other rules or by replacing the current procedures with simpler procedures in a separate rule series. As noted above, the provisions of the Rule 9510 Series and the Rule 8220 Series, which both relate to failure to provide requested information, would be consolidated into the Rule 8220 Series. Similarly, the non-summary proceedings for statutory disqualification matters would be deleted from the Rule 9510 Series, and the Rule 9520 Series, which governs regular statutory disqualification matters, would be amended by adding new procedures for expediting the review of a statutory disqualification proceeding when necessary to protect investors.³ Finally, non-summary proceedings for failure to pay fees, dues, assessments,

³ Under the current Rule 9510 series, non-summary proceedings may be used for canceling the membership of a member that becomes ineligible for continuance in membership, or that continue to be associated with an ineligible person, or suspending or barring a person from continuing to be associated with a member because such person is or becomes ineligible for association under Article III, Section 3 of the NASD By-Laws. NASD Regulation has interpreted this provision to apply to both statutory disqualification matters and to failures to meet membership qualification requirements, e.g., failure to have two principals or obtain a waiver of such requirement in accordance with Rule 1021(e). Under the proposed rule change, all statutory disqualification matters would be governed by the Rule 9520 Series. Non-summary proceedings could still be initiated for failure to meet membership qualification requirements, as set forth in proposed Rule 9511(a)(2)(B).

and other charges would be deleted from the Rule 9510 Series, and new procedures providing for a hearing by a Hearing Officer would be added as a new Rule 9530 Series.

The proposed rule change would amend Rule 9511, which sets forth the purpose of the Rule 9510 Series, to reflect these changes and to remove redundant provisions that appear in Rules 9512 and 9513. As revised, Rule 9511 would provide that the Rule Series governs: (1) summary proceedings authorized by Section 15A(h)(3) of the Act; and (2) non-summary proceedings to impose (A) a suspension or cancellation for failure to comply with an arbitration award or a settlement agreement related to an arbitration or mediation pursuant to Article VI, Section 3 of the NASD By-Laws; (B) a suspension or cancellation of a member, or a limitation or prohibition on any member, associated person, or other person with respect to access to services offered by the Association or a member thereof, if the Association determines that such person does not meet the qualification requirements or other prerequisites for such access or such person cannot be permitted to continue to have such access with safety to investors, creditors, members, or the Association; or (C) an advertising pre-use filing requirement pursuant to Rules 2210 and 2220.⁴

Rule 9513 would be amended to provide that the Association may, rather than shall, initiate non-summary proceedings; this amendment reflects NASD Regulation's prosecutorial discretion. Rule 9513 also would be amended to make technical corrections to cross-references to Rule 9511.

The proposed rule change revises the hearing and decision provisions of Rule 9514. First, proposed Rule 9514(a)(1) contains a non-substantive, simplifying amendment that provides that a member or person who requests a hearing must set forth the specific grounds for setting aside the

⁴ In a summary proceeding, the Association may impose a suspension, limitation, or prohibition prior to holding a hearing. In a non-summary proceeding, a respondent is given notice and an opportunity for a hearing prior to the Association taking any action against a respondent. The proposed rule change simplifies the titles of various rule provisions by referring to a "summary proceeding" or a "non-summary proceeding," rather listing the various types of action that the Association may take in each type of proceeding.

notice, rather than listing in the Rule each type of action that the member would seek to reverse or oppose at the hearing. Second, the Rule would be amended to provide that a member that received a notice of an advertising pre-use filing requirement under Rule 2210 or 2220 would have 30 days to request a hearing. Under the current Rule, which does not address pre-use filing requirements, a member or person has seven days to request a hearing in a non-summary proceeding. NASD Regulation proposes to provide additional time in the case of advertising pre-use filing requirements because members may need additional time to consider whether to comply with or contest the requirements. Third, the custodian of record provision under Rule 9514(f)(5) authorizes the Office of Hearing Officers to act as custodian for non-summary proceedings for a failure to comply with an arbitration award or settlement agreement related to an NASD arbitration or mediation. Under Rule 9514(b)(1), Hearing Officers serve as the adjudicators in such proceedings, and as such, the Office of Hearing Officers is a more appropriate custodian than the NASD Regulation Office of General Counsel. Finally, cross-references to Rule 2210 and 2220 are added to Rule 9514.

Rule 9516 would be amended to provide that a request for reinstatement could be made after either a summary or a non-summary proceeding under the Rule 9510 Series. Currently, reinstatement is available only after a non-summary proceeding.

Rule 9520

The Rule 9520 Series, which concerns statutory disqualifications, is amended to clarify certain procedures and to expedite statutory disqualification proceedings if necessary to protect investors. Rule 9522(a) is amended to clarify that although a statutory disqualification proceeding may be initiated by the Association, a member has an independent obligation to initiate such a proceeding if it wishes to continue to associate a statutorily disqualified person. The Rule is further

amended to provide that if a member does not respond to a statutory disqualification notice issued by the Association by filing a request for relief within ten days, the member's membership may be canceled and the associated person's registration may be revoked, unless the NAC grants an extension of time to respond for good cause shown.

NASD Regulation proposes to amend Rule 9525 to provide for an expedited review of statutory disqualification proceedings if the Statutory Disqualification Committee requests an expedited review and the NASD Board Executive Committee determines that such action is necessary for the protection of investors. In such a case, any Governor could call the proceeding for review. If such a call were made, a review panel would conduct a review.

As in proposed Rule 8223(b)(2), the review panel would be composed of the NASD Board Executive Committee, except that the Governor who called the proceeding for review would serve on the review panel in lieu of an Executive Committee member who has the same classification (Industry, Non-Industry, or Public) as such Governor. The procedures for selecting the member of the Executive Committee member who will be excused will be designed in such a way that the same Governor of a particular classification is not excused from every review panel. NASD Regulation proposes this change because it will allow the eligibility proceeding to be concluded more quickly for the protection of investors, rather than having to wait to conduct the review at the next Board meeting.

Rule 9530

The proposed Rule 9530 Series sets forth procedures for suspending or canceling the membership of a member or the registration of an associated person who fails to pay fees, dues, assessments, or other charges. Procedures for such a cancellation or suspension are currently set forth in the Rule 9510 Series. Under the proposed rule change, the NASD Treasurer would be authorized to initiate such proceedings by sending a notice to the member or associated person. The hearing would be conducted by a Hearing Officer, who would be authorized to suspend or cancel the membership of a member or the registration of a person. The hearing procedures are modeled on the proposed Rule 8220 Series.

The proposed rule change does not include a call for review because the issues to be resolved in this type of proceeding are narrow and largely administrative. NASD Regulation has determined that it would be more efficient to have one Hearing Officer conduct the hearing and render a final decision. Hearing Officers are well-suited to resolve the issues presented in hearings for failure to pay fees due to their training and experience in the NASD's disciplinary proceedings under the Rule 9200 Series and in non-summary proceedings for failure to pay arbitration awards under the Rule 9510 Series.

(b) Statutory Basis

NASD Regulation believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act, which requires, among other things, that the Association rules must be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest. The NASD believes that the proposed rule changes are consistent with Section 15A(b)(7) in that they further the statutory mandate that the Association establish rules providing that its members and persons

associated with its members shall be appropriately disciplined for violation of any provision of this title, the rules or regulations thereunder, the rules of the Municipal Securities Rulemaking Board, or the rules of the Association. The rule changes are consistent with Section 15A(b)(8) in that they further the statutory goals of providing a fair procedure for disciplining members and persons associated with members.

(B) Self-Regulatory Organization's Statement on Burden on Competition

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

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

Written comments were neither solicited nor received.

III. DATE OF EFFECTIVENESS OF THE PROPOSED RULE CHANGE AND TIMING FOR COMMISSION ACTION

Within 35 days of the date of publication of this notice in the Federal Register or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will: (A) by order approve such proposed rule change, or (B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. SOLICITATION OF COMMENTS

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in

accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to the file number in the caption above and should be submitted by **[insert date 21 days from the date of publication]**.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority, 17 CFR 200.30-3(a)(12).

Jonathan G. Katz
Secretary