

Proposed Rule Change by National Association of Securities Dealers  
Pursuant to Rule 19b-4 under the Securities Exchange Act of 1934

Initial <input checked="" type="checkbox"/>	Amendment <input type="checkbox"/>	Withdrawal <input type="checkbox"/>	Section 19(b)(2) <input checked="" type="checkbox"/>	Section 19(b)(3)(A) <input type="checkbox"/>	Section 19(b)(3)(B) <input type="checkbox"/>
Pilot <input type="checkbox"/>			Rule		
Extension of Time Period for Commission Action <input type="checkbox"/>		Date Expires <input type="text"/>	<input type="checkbox"/> 19b-4(f)(1)	<input type="checkbox"/> 19b-4(f)(4)	
			<input type="checkbox"/> 19b-4(f)(2)	<input type="checkbox"/> 19b-4(f)(5)	
			<input type="checkbox"/> 19b-4(f)(3)	<input type="checkbox"/> 19b-4(f)(6)	

Exhibit 2 Sent As Paper Document <input type="checkbox"/>	Exhibit 3 Sent As Paper Document <input type="checkbox"/>
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**Description**  
Provide a brief description of the proposed rule change (limit 250 characters).

Proposed Rule Change to Streamline Reviews under the NASD Rule 9700 Series Applicable to General Grievances Related to NASD Automated Systems.

**Contact Information**  
Provide the name, telephone number and e-mail address of the person on the staff of the self-regulatory organization prepared to respond to questions and comments on the proposed rule change.

First Name  Last Name   
 Title   
 E-mail   
 Telephone  Fax

**Signature**  
Pursuant to the requirements of the Securities Exchange Act of 1934,

has duly caused this filing to be signed on its behalf by the undersigned thereunto duly authorized officer.

Date   
 By  Vice President and Associate General Counsel  
 (Name) (Title)

NOTE: Clicking the button at right will digitally sign and lock this form. A digital signature is as legally binding as a physical signature, and once signed, this form cannot be changed.

SECURITIES AND EXCHANGE COMMISSION  
WASHINGTON, D.C. 20549

For complete Form 19b-4 instructions please refer to the EFFS website.

**Form 19b-4 Information**

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The self-regulatory organization must provide all required information, presented in a clear and comprehensible manner, to enable the public to provide meaningful comment on the proposal and for the Commission to determine whether the proposal is consistent with the Act and applicable rules and regulations under the Act.

**Exhibit 1 - Notice of Proposed Rule Change**

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The Notice section of this Form 19b-4 must comply with the guidelines for publication in the Federal Register as well as any requirements for electronic filing as published by the Commission (if applicable). The Office of the Federal Register (OFR) offers guidance on Federal Register publication requirements in the Federal Register Document Drafting Handbook, October 1998 Revision. For example, all references to the federal securities laws must include the corresponding cite to the United States Code in a footnote. All references to SEC rules must include the corresponding cite to the Code of Federal Regulations in a footnote. All references to Securities Exchange Act Releases must include the release number, release date, Federal Register cite, Federal Register date, and corresponding file number (e.g., SR-[SRO]-xx-xx). A material failure to comply with these guidelines will result in the proposed rule change being deemed not properly filed. See also Rule 0-3 under the Act (17 CFR 240.0-3)

**Exhibit 2 - Notices, Written Comments, Transcripts, Other Communications**

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Exhibit Sent As Paper Document

Copies of notices, written comments, transcripts, other communications. If such documents cannot be filed electronically in accordance with Instruction F, they shall be filed in accordance with Instruction G.

**Exhibit 3 - Form, Report, or Questionnaire**

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Exhibit Sent As Paper Document

Copies of any form, report, or questionnaire that the self-regulatory organization proposes to use to help implement or operate the proposed rule change, or that is referred to by the proposed rule change.

**Exhibit 4 - Marked Copies**

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The full text shall be marked, in any convenient manner, to indicate additions to and deletions from the immediately preceding filing. The purpose of Exhibit 4 is to permit the staff to identify immediately the changes made from the text of the rule with which it has been working.

**Exhibit 5 - Proposed Rule Text**

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The self-regulatory organization may choose to attach as Exhibit 5 proposed changes to rule text in place of providing it in Item I and which may otherwise be more easily readable if provided separately from Form 19b-4. Exhibit 5 shall be considered part of the proposed rule change.

**Partial Amendment**

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If the self-regulatory organization is amending only part of the text of a lengthy proposed rule change, it may, with the Commission's permission, file only those portions of the text of the proposed rule change in which changes are being made if the filing (i.e. partial amendment) is clearly understandable on its face. Such partial amendment shall be clearly identified and marked to show deletions and additions.

**1. Text of Proposed Rule Change**

(a) Pursuant to the provisions of Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”),<sup>1</sup> the National Association of Securities Dealers, Inc. (“NASD”) is filing with the Securities and Exchange Commission (“SEC” or “Commission”) a proposed rule change to amend the NASD Rule 9700 Series to streamline the existing procedural rules applicable to general grievances related to NASD automated systems.

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

\* \* \* \* \*

**6530. OTCBB-Eligible Securities**

A member shall be permitted to quote the following categories of securities in the Service:

(a) through (d) No Change.

(e)(1) Notwithstanding the foregoing paragraphs, a member shall not be permitted to quote a security if:

(A)[(1)] while quoted on the OTCBB, the issuer of the security has failed to file a complete required annual or quarterly report by the due date for such report (including, if applicable, any extensions permitted by SEC Rule 12b-25) three times in the prior two-year period; or

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<sup>1</sup> 15 U.S.C. 78s(b)(1).

(B)[(2)] the security has been removed from the OTCBB due to the issuer's failure to satisfy paragraph (a)(2), (3) or (4), above, two times in the prior two-year period.

(2) If an issuer's security becomes ineligible for quotation on the OTCBB pursuant to paragraph (e)(1)(A) above, the security will be removed from quotation on the OTCBB without the benefit of any grace period for the third delinquency, except that NASD will provide seven calendar days from the date notification is mailed to the issuer pursuant to paragraph (f)(1) to permit an aggrieved party to request a review of the determination by a Hearing Officer (as defined in Rule 9120(p))[hearing panel] pursuant to paragraph (f) below. Following the removal of an issuer's security pursuant to this paragraph (e), such security shall not be eligible for quotation until the issuer has timely filed in a complete form all required annual and quarterly reports due in a one-year period. For purposes of this paragraph, a report filed within any applicable extensions permitted by Rule 12b-25 under the Exchange Act will be considered timely filed. Furthermore, filings for reporting periods ending before October 1, 2005 will not be considered for purposes of this paragraph (e).

(f)(1) Upon determining that an issuer's security would be ineligible for quotation under this rule, NASD will send a notification to the address on the cover of the issuer's last periodic report. This notification will state the date upon which the security will be removed, following any applicable grace period, unless the condition causing the ineligibility has been cured by that date. When a security becomes ineligible for quotation pursuant to paragraph (e) above, however, the issuer may not cure the

condition that caused the ineligibility. In all cases, NASD will provide at least seven calendar days from the date the notification is mailed to the issuer to permit an aggrieved party to request review pursuant to paragraph (f)(2) below, before removal of the security.

(2) Pursuant to the Rule 9700 Series, as modified herein, an aggrieved party may request a review by a H[hearing panel]Officer of the determination that an issuer's security is ineligible for quotation under this rule. NASD must receive the request for review at least two business days prior to the scheduled removal of the security, together with a \$4,000 hearing fee payable to NASD to cover the cost of review. A request for review under this paragraph (f)(2) will stay the removal of the issuer's security from the Service until the H[hearing panel]Officer issues a decision under Rule 9750. The H[hearing panel]Officer will consider only the issues of whether the issuer's security is then eligible for quotation in the Service and/or whether the issuer filed a complete report by the applicable due date taking into account any extensions pursuant to Rule 12b-25 under the Exchange Act. The H[hearing panel]Officer shall not have discretion to grant any extensions of time for ineligible securities to become eligible. Notwithstanding any contrary provision in the Rule 9700 Series, hearings will be conducted via telephone and NASD will provide the aggrieved party at least five business days notice of the hearing unless the aggrieved party waives such notice.

[(3) The aggrieved party may request a review of a hearing panel's decision under Rule 9760. Such a request for review must be accompanied by a \$4,000 fee payable to NASD to cover the cost of review. This review will only consider whether the issuer's

security, at the time of the initial review under paragraph (f)(2), was eligible for quotation in the Service and/or whether the issuer filed a complete report by the applicable due date taking into account any extensions pursuant to Rule 12b-25 under the Exchange Act. A request for review under this paragraph (f)(3) shall not stay the removal of the issuer's security from the Service and there will be no discretion to grant extensions of time for ineligible securities to become eligible. Notwithstanding any contrary provision in the Rule 9700 Series, a review under this paragraph (f)(3) will be based on the written record, unless additional hearings are ordered. If any further hearings are ordered, the hearings will be conducted via telephone and NASD will provide the aggrieved party at least five business days notice of the hearing unless the aggrieved party waives such notice.]

\* \* \* \* \*

## **9120. Definitions**

**(a) through (o) No Change.**

**(p) "Hearing Officer"**

The term "Hearing Officer" means an employee of NASD who is an attorney and who is appointed by the Chief Hearing Officer to act in an adjudicative role and fulfill various adjudicative responsibilities and duties described in the Rule 9200 Series regarding disciplinary proceedings, the Rule 9550 Series regarding expedited proceedings, the Rule 9700 Series relating to grievances concerning NASD automated systems, and the Rule 9800 Series regarding temporary cease and desist proceedings brought against members and associated persons.

(q) through (cc) No Change.

\* \* \* \* \*

## **9700. Procedures on Grievances Concerning the Automated Systems**

### **9710. Purpose**

The purpose of this Rule 9700 Series is to provide, where justified, redress for persons aggrieved by the operations of any automated quotation, execution, or communication system owned or operated by NASD, or any subsidiary thereof, and approved by the Commission, not otherwise provided for by NASD Rules[the Code of Procedure as set forth in the Rule 9000 Series, or the Uniform Practice Code as set forth in the Rule 11000 Series].

### **9720. Form of Application**

All applications shall be in writing, and shall specify in reasonable detail the nature of and basis for the redress requested. If the application consists of several allegations, each allegation shall be stated separately. All applications must be signed and shall be directed to NASD's Office of Hearing Officers relating to automated quotation, execution or communications system owned or operated by NASD.

### **9730. Request for Hearing**

Upon request, the applicant shall be granted a hearing after reasonable notice. In the absence of such request for a hearing, NASD's Office of Hearing Officers may, in its

discretion, have any application set down for hearing or consider the matter on the basis of the application and supporting documents.

**9740. Consideration of Applications**

All applications shall be considered by a Hearing Officer (as defined in Rule 9120(p)) appointed by the Chief Hearing Officer (as defined in Rule 9120(b))[hearing panel designated by the Board of Governors]. Unless otherwise specified in NASD rules, [T]he applicant shall be entitled to be heard in person or telephonically and by counsel and to submit any relevant matter. In any such proceeding a record shall be kept.

**9750. Decision**

Decisions on applications shall be in writing and a copy shall be sent by mail to the applicant. The Hearing Officer[hearing panel] may communicate its determination to the applicant prior to the issuance of a written decision, which shall be effective as of the time of such communication. The written decision shall contain the reasons supporting the Hearing Officer's[hearing panel's] conclusions.

**9760. [Review by the Committee]**

[The decision shall be subject to review by a committee designated by the Board of Governors that is comprised of at least 50% non-industry committee members (the "Committee") on its own motion within 45 calendar days after issuance of the written decision. Any such decision shall also be subject to review upon application of any person aggrieved thereby, filed within 15 calendar days after issuance. The institution of

a review, whether on application or on the initiative of the Committee, shall not operate as a stay of the decision.]

**[9770. Findings of the Committee on Review]**

[Upon consideration of the record, and after such further hearings as it shall order, the Committee shall affirm, modify, reverse, dismiss, or remand the decision. The Committee shall set forth specific grounds upon which its determination is based.]

**[9780. Discretionary Review by the Board]**

[Determinations of the Committee may be reviewed by the NASD Board of Governors solely upon the request of one or more Governors not later than the NASD Board meeting next following the Committee's decision but which is 15 calendar days or more following the decision of the Committee. Notwithstanding the preceding sentence, the NASD Board may determine it is advisable to call for review any decision of the Committee within the 15 calendar day period following the decision of the Committee. Such review, which may be undertaken solely at the discretion of the Board, shall be in accordance with resolutions of the Board governing the review of Committee determinations. The Board shall affirm, modify or reverse the determinations of the Committee or remand the matter to the Committee with appropriate instructions. The institution of discretionary review by the Board shall not operate as a stay of the decision.]

**[9790.] Application to Commission for Review**

Any decision issued under Rule 9750 [not appealed under Rule 9760 or called for review under Rule 9760 or Rule 9780] shall constitute[become the] final NASD action [upon expiration of the time allowed for appeal or call for review]. In any case where a person feels aggrieved by any final NASD action[ issued pursuant to Rule 9770 or Rule 9780], the person may make application for review to the Commission in accordance with the Act.

\* \* \* \* \*

(b) Not applicable.

(c) Not applicable.

**2. Procedures of the Self-Regulatory Organization**

The proposed rule change was approved by the Board of Directors of NASD Regulation, Inc. at its meeting on April 18, 2007, which authorized the filing of the rule change with the SEC. The Board of Governors of NASD also had an opportunity to review the proposed rule change at its meeting on April 19, 2007. No other action by NASD is necessary for the filing of the proposed rule change. Section 1(a)(ii) of Article VII of the NASD By-Laws permits the Board of Governors of NASD to adopt amendments to NASD Rules without recourse to the membership for approval.

NASD will announce the effective date of the proposed rule change in a Notice to Members to be published no later than 60 days following Commission approval. The effective date will be 30 days following publication of the Notice to Members announcing Commission approval.

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

(a) Purpose

The NASD Rule 9700 Series, Procedures on Grievances Concerning the Automated Systems, provides redress, where justified, for persons aggrieved by the operations of any automated quotation, execution or communication system owned or operated by NASD that is not otherwise provided for under the NASD Code of Procedure (Rule 9000 Series) or the Uniform Practice Code (Rule 11000 Series). NASD established the Rule 9700 Series to insure adequate procedural protections to users of NASD systems.<sup>2</sup> Although by its terms the Rule 9700 Series has potentially broader application, it historically has been used only for appeals of staff Over-the-Counter Bulletin Board (OTCBB) eligibility determinations under Rule 6530.<sup>3</sup>

Currently under the Rule 9700 Series, a party that believes it has been aggrieved by the operation of an NASD automated system may request a review by a hearing panel. In accordance with the Rule 9700 Series, the aggrieved party may also request a review

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<sup>2</sup> See Securities Exchange Act Release No. 27867, 55 FR 12978 (April 6, 1990) (order approving SR-NASD-90-6).

<sup>3</sup> The OTCBB is a facility for the publication of quotations in eligible OTC equity securities of issuers that are subject to the filing of financial reports with the SEC (or other appropriate regulator) and are current in their reporting. NASD staff monitors the submission of such periodic reports to determine an issuer's initial and continued eligibility for quotation on the OTCBB and, pursuant to Rule 6530, restricts the quoting of securities of issuers that are late or delinquent in filing periodic reports.

of the hearing panel's decision by a Committee designated by the Board.<sup>4</sup> With respect to OTCBB eligibility reviews, both of these reviews pursuant to the Rule 9700 Series are solely to determine whether the issuer filed a complete report by the applicable due date and, thus, its security is eligible for continued quotation. There is no discretion to grant extensions of time for ineligible securities to become eligible or any other form of relief.

Given the mechanical nature of these reviews, NASD now is proposing to amend the Rule 9700 Series to streamline the review process. Specifically, reviews under the Rule 9700 Series would be adjudicated by a Hearing Officer appointed by NASD's Office of Hearing Officers (OHO).<sup>5</sup> The decision of the Hearing Officer would constitute final NASD action on the matter, but an aggrieved party would continue to have the right to appeal the Hearing Officer's decision to the SEC.<sup>6</sup> NASD believes that this abbreviated review process is appropriate given the narrow and straightforward issue presented and OHO's experience in adjudicating matters. NASD further believes the streamlined review process strikes an appropriate balance between the need to ensure fairness to aggrieved parties and the need for expedited action in these instances.

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<sup>4</sup> Currently, the Nasdaq Listing and Hearing Review Council (NLHRC) has authority to review hearing panel decisions and has only ever had one such review, which upheld the decision of the hearing panel. NLHRC decisions may be called for further review by NASD's Board solely upon the request of one or more Governors. Finally, an aggrieved party also has the right to appeal a decision to the SEC.

<sup>5</sup> For purposes of the proposed rule change, the term "Hearing Officer" will have the meaning set forth in Rule 9120(p).

<sup>6</sup> A Hearing Officer currently acts as the sole adjudicator in expedited actions involving (1) a failure to pay NASD dues, fees or other charges and (2) a failure to pay an arbitration award or related settlement, pursuant to Rules 9553 and 9554, respectively.

NASD also is proposing to make conforming and non-substantive changes to Rules 6530 and 9120 to reflect the amended review process contained in the Rule 9700 Series. There are no proposed changes to other aspects of the review process relating to OTCBB eligibility determinations under Rule 6530 (e.g., notifications and time periods for requesting review, the scope of review and the applicable fees for such review).<sup>7</sup>

Lastly, NASD also is proposing to make a technical change to the text of Rule 9710. As noted above, Rule 9710 provides that the scope of the Rule 9700 Series is to provide redress, where justified, for persons aggrieved by the operations of any automated quotation, execution or communication system owned or operated by NASD that is not otherwise provided for under the NASD Code of Procedure (Rule 9000 Series) or the Uniform Practice Code (Rule 11000 Series). There are certain appeal and procedural rights contained in NASD Rules other than the Rule 9000 Series or the Rule 11000 Series. For example, within the Alternative Display Facility (ADF) Rules (the Rule 4000A Series), there are certain appeals rights and procedures relating to ADF related grievances (e.g., ADF Trading Center excused withdrawals reviews under Rule 4619A). In such cases, given the language in Rule 9710, there may be confusion whether the Rule 9700 Series or the Rule 4000A Series governs such disputes. Therefore, NASD

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<sup>7</sup> In accordance with Rule 6530, an aggrieved party requesting a review of an OTCBB eligibility determination by a Hearing Officer will continue to be required to pay a \$4,000 fee for such review. Given that OHO would act as the sole adjudicator in these proceedings, there would be no further NASD level of review and, thus, the additional \$4,000 fee currently provided for in Rule 6530(f)(3) would be deleted.

Also in accordance with Rule 6530, a request for review will stay the OTCBB security's removal until the Hearing Officer makes a determination.

is proposing to amend the text of Rule 9710 to clarify that the scope of the Rule 9700 Series is to address general grievances not otherwise provided for by any other NASD Rules. NASD believes this clarification will alleviate any potential confusion in this regard and is consistent with the history and intent of the Rule 9700 Series.

As noted above, NASD will announce the effective date of the proposed rule change in a Notice to Members to be published no later than 60 days following Commission approval. The effective date will be 30 days following publication of the Notice to Members announcing Commission approval.

(b) Statutory Basis

NASD believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,<sup>8</sup> which requires, among other things, that NASD 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. NASD believes that the proposed rule change strikes an appropriate balance between the need to ensure fairness to aggrieved parties and the need for expedited action in these instances.

**4. Self-Regulatory Organization's Statement on Burden on Competition**

NASD 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.

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

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<sup>8</sup> 15 U.S.C. 78o-3(b)(6).

Written comments were neither solicited nor received.

**6. Extension of Time Period for Commission Action**

NASD does not consent at this time to an extension of the time period for Commission action specified in Section 19(b)(2) of the Act.<sup>9</sup>

**7. Basis for Summary Effectiveness Pursuant to Section 19(b)(3) or for Accelerated Effectiveness Pursuant to Section 19(b)(2)**

Not applicable.

**8. Proposed Rule Change Based on Rules of Another Self-Regulatory Organization or of the Commission**

Not applicable.

**9. Exhibits**

Exhibit 1. Completed notice of proposed rule change for publication in the Federal Register.

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<sup>9</sup> 15 U.S.C. 78s(b)(2).

**EXHIBIT 1**

**SECURITIES AND EXCHANGE COMMISSION**

(Release No. 34- ; File No. SR-NASD-2007-052)

Self-Regulatory Organizations: National Association of Securities Dealers, Inc.; Notice of Filing of Proposed Rule Change to Streamline Reviews under the NASD Rule 9700 Series Applicable to General Grievances Related to NASD Automated Systems

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on , the National Association of Securities Dealers, Inc. (“NASD”) 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. 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 is proposing to amend the NASD Rule 9700 Series to streamline the existing procedural rules applicable to general grievances related to NASD automated systems.

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

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<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

**6530. OTCBB-Eligible Securities**

A member shall be permitted to quote the following categories of securities in the Service:

(a) through (d) No Change.

(e)(1) Notwithstanding the foregoing paragraphs, a member shall not be permitted to quote a security if:

(A)[(1)] while quoted on the OTCBB, the issuer of the security has failed to file a complete required annual or quarterly report by the due date for such report (including, if applicable, any extensions permitted by SEC Rule 12b-25) three times in the prior two-year period; or

(B)[(2)] the security has been removed from the OTCBB due to the issuer's failure to satisfy paragraph (a)(2), (3) or (4), above, two times in the prior two-year period.

(2) If an issuer's security becomes ineligible for quotation on the OTCBB pursuant to paragraph (e)(1)(A) above, the security will be removed from quotation on the OTCBB without the benefit of any grace period for the third delinquency, except that NASD will provide seven calendar days from the date notification is mailed to the issuer pursuant to paragraph (f)(1) to permit an aggrieved party to request a review of the determination by a Hearing Officer (as defined in Rule 9120(p))[hearing panel] pursuant to paragraph (f) below. Following the removal of an issuer's security pursuant to this paragraph (e), such security shall not be eligible for quotation until the issuer has timely filed in a complete form all required annual and quarterly reports due in a one-year

period. For purposes of this paragraph, a report filed within any applicable extensions permitted by Rule 12b-25 under the Exchange Act will be considered timely filed. Furthermore, filings for reporting periods ending before October 1, 2005 will not be considered for purposes of this paragraph (e).

(f)(1) Upon determining that an issuer's security would be ineligible for quotation under this rule, NASD will send a notification to the address on the cover of the issuer's last periodic report. This notification will state the date upon which the security will be removed, following any applicable grace period, unless the condition causing the ineligibility has been cured by that date. When a security becomes ineligible for quotation pursuant to paragraph (e) above, however, the issuer may not cure the condition that caused the ineligibility. In all cases, NASD will provide at least seven calendar days from the date the notification is mailed to the issuer to permit an aggrieved party to request review pursuant to paragraph (f)(2) below, before removal of the security.

(2) Pursuant to the Rule 9700 Series, as modified herein, an aggrieved party may request a review by a H[hearing panel]Officer of the determination that an issuer's security is ineligible for quotation under this rule. NASD must receive the request for review at least two business days prior to the scheduled removal of the security, together with a \$4,000 hearing fee payable to NASD to cover the cost of review. A request for review under this paragraph (f)(2) will stay the removal of the issuer's security from the Service until the H[hearing panel]Officer issues a decision under Rule 9750. The H[hearing panel]Officer will consider only the issues of whether the issuer's security is then eligible for quotation in the Service and/or whether the issuer filed a complete report by the applicable due date taking into account any extensions pursuant to Rule 12b-25

under the Exchange Act. The H[hearing [panel]Officer shall not have discretion to grant any extensions of time for ineligible securities to become eligible. Notwithstanding any contrary provision in the Rule 9700 Series, hearings will be conducted via telephone and NASD will provide the aggrieved party at least five business days notice of the hearing unless the aggrieved party waives such notice.

[(3) The aggrieved party may request a review of a hearing panel's decision under Rule 9760. Such a request for review must be accompanied by a \$4,000 fee payable to NASD to cover the cost of review. This review will only consider whether the issuer's security, at the time of the initial review under paragraph (f)(2), was eligible for quotation in the Service and/or whether the issuer filed a complete report by the applicable due date taking into account any extensions pursuant to Rule 12b-25 under the Exchange Act. A request for review under this paragraph (f)(3) shall not stay the removal of the issuer's security from the Service and there will be no discretion to grant extensions of time for ineligible securities to become eligible. Notwithstanding any contrary provision in the Rule 9700 Series, a review under this paragraph (f)(3) will be based on the written record, unless additional hearings are ordered. If any further hearings are ordered, the hearings will be conducted via telephone and NASD will provide the aggrieved party at least five business days notice of the hearing unless the aggrieved party waives such notice.]

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**9120. Definitions**

**(a) through (o) No Change.**

**(p) "Hearing Officer"**

The term “Hearing Officer” means an employee of NASD who is an attorney and who is appointed by the Chief Hearing Officer to act in an adjudicative role and fulfill various adjudicative responsibilities and duties described in the Rule 9200 Series regarding disciplinary proceedings, the Rule 9550 Series regarding expedited proceedings, the Rule 9700 Series relating to grievances concerning NASD automated systems, and the Rule 9800 Series regarding temporary cease and desist proceedings brought against members and associated persons.

(q) through (cc) No Change.

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## **9700. Procedures on Grievances Concerning the Automated Systems**

### **9710. Purpose**

The purpose of this Rule 9700 Series is to provide, where justified, redress for persons aggrieved by the operations of any automated quotation, execution, or communication system owned or operated by NASD, or any subsidiary thereof, and approved by the Commission, not otherwise provided for by NASD Rules[the Code of Procedure as set forth in the Rule 9000 Series, or the Uniform Practice Code as set forth in the Rule 11000 Series].

### **9720. Form of Application**

All applications shall be in writing, and shall specify in reasonable detail the nature of and basis for the redress requested. If the application consists of several allegations, each allegation shall be stated separately. All applications must be signed and shall be

directed to NASD's Office of Hearing Officers relating to automated quotation, execution or communications system owned or operated by NASD.

**9730. Request for Hearing**

Upon request, the applicant shall be granted a hearing after reasonable notice. In the absence of such request for a hearing, NASD's Office of Hearing Officers may, in its discretion, have any application set down for hearing or consider the matter on the basis of the application and supporting documents.

**9740. Consideration of Applications**

All applications shall be considered by a Hearing Officer (as defined in Rule 9120(p)) appointed by the Chief Hearing Officer (as defined in Rule 9120(b))[hearing panel designated by the Board of Governors]. Unless otherwise specified in NASD rules, [T]the applicant shall be entitled to be heard in person or telephonically and by counsel and to submit any relevant matter. In any such proceeding a record shall be kept.

**9750. Decision**

Decisions on applications shall be in writing and a copy shall be sent by mail to the applicant. The Hearing Officer[hearing panel] may communicate its determination to the applicant prior to the issuance of a written decision, which shall be effective as of the time of such communication. The written decision shall contain the reasons supporting the Hearing Officer's[hearing panel's] conclusions.

**9760. [Review by the Committee]**

[The decision shall be subject to review by a committee designated by the Board of Governors that is comprised of at least 50% non-industry committee members (the “Committee”) on its own motion within 45 calendar days after issuance of the written decision. Any such decision shall also be subject to review upon application of any person aggrieved thereby, filed within 15 calendar days after issuance. The institution of a review, whether on application or on the initiative of the Committee, shall not operate as a stay of the decision.]

**[9770. Findings of the Committee on Review]**

[Upon consideration of the record, and after such further hearings as it shall order, the Committee shall affirm, modify, reverse, dismiss, or remand the decision. The Committee shall set forth specific grounds upon which its determination is based.]

**[9780. Discretionary Review by the Board]**

[Determinations of the Committee may be reviewed by the NASD Board of Governors solely upon the request of one or more Governors not later than the NASD Board meeting next following the Committee’s decision but which is 15 calendar days or more following the decision of the Committee. Notwithstanding the preceding sentence, the NASD Board may determine it is advisable to call for review any decision of the Committee within the 15 calendar day period following the decision of the Committee. Such review, which may be undertaken solely at the discretion of the Board, shall be in accordance with resolutions of the Board governing the review of Committee determinations. The Board shall affirm, modify or reverse the determinations of the

Committee or remand the matter to the Committee with appropriate instructions. The institution of discretionary review by the Board shall not operate as a stay of the decision.]

**[9790.] Application to Commission for Review**

Any decision issued under Rule 9750 [not appealed under Rule 9760 or called for review under Rule 9760 or Rule 9780] shall constitute[become the] final NASD action [upon expiration of the time allowed for appeal or call for review]. In any case where a person feels aggrieved by any final NASD action[ issued pursuant to Rule 9770 or Rule 9780], the person may make application for review to the Commission in accordance with the Act.

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**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 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 has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

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

1. Purpose

The NASD Rule 9700 Series, Procedures on Grievances Concerning the Automated Systems, provides redress, where justified, for persons aggrieved by the operations of any automated quotation, execution or communication system owned or

operated by NASD that is not otherwise provided for under the NASD Code of Procedure (Rule 9000 Series) or the Uniform Practice Code (Rule 11000 Series). NASD established the Rule 9700 Series to insure adequate procedural protections to users of NASD systems.<sup>3</sup> Although by its terms the Rule 9700 Series has potentially broader application, it historically has been used only for appeals of staff Over-the-Counter Bulletin Board (OTCBB) eligibility determinations under Rule 6530.<sup>4</sup>

Currently under the Rule 9700 Series, a party that believes it has been aggrieved by the operation of an NASD automated system may request a review by a hearing panel. In accordance with the Rule 9700 Series, the aggrieved party may also request a review of the hearing panel's decision by a Committee designated by the Board.<sup>5</sup> With respect to OTCBB eligibility reviews, both of these reviews pursuant to the Rule 9700 Series are solely to determine whether the issuer filed a complete report by the applicable due date and, thus, its security is eligible for continued quotation. There is no discretion to grant extensions of time for ineligible securities to become eligible or any other form of relief.

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<sup>3</sup> See Securities Exchange Act Release No. 27867, 55 FR 12978 (April 6, 1990) (order approving SR-NASD-90-6).

<sup>4</sup> The OTCBB is a facility for the publication of quotations in eligible OTC equity securities of issuers that are subject to the filing of financial reports with the SEC (or other appropriate regulator) and are current in their reporting. NASD staff monitors the submission of such periodic reports to determine an issuer's initial and continued eligibility for quotation on the OTCBB and, pursuant to Rule 6530, restricts the quoting of securities of issuers that are late or delinquent in filing periodic reports.

<sup>5</sup> Currently, the Nasdaq Listing and Hearing Review Council (NLHRC) has authority to review hearing panel decisions and has only ever had one such review, which upheld the decision of the hearing panel. NLHRC decisions may be called for further review by NASD's Board solely upon the request of one or more Governors. Finally, an aggrieved party also has the right to appeal a decision to the SEC.

Given the mechanical nature of these reviews, NASD now is proposing to amend the Rule 9700 Series to streamline the review process. Specifically, reviews under the Rule 9700 Series would be adjudicated by a Hearing Officer appointed by NASD's Office of Hearing Officers (OHO).<sup>6</sup> The decision of the Hearing Officer would constitute final NASD action on the matter, but an aggrieved party would continue to have the right to appeal the Hearing Officer's decision to the SEC.<sup>7</sup> NASD believes that this abbreviated review process is appropriate given the narrow and straightforward issue presented and OHO's experience in adjudicating matters. NASD further believes the streamlined review process strikes an appropriate balance between the need to ensure fairness to aggrieved parties and the need for expedited action in these instances.

NASD also is proposing to make conforming and non-substantive changes to Rules 6530 and 9120 to reflect the amended review process contained in the Rule 9700 Series. There are no proposed changes to other aspects of the review process relating to OTCBB eligibility determinations under Rule 6530 (e.g., notifications and time periods for requesting review, the scope of review and the applicable fees for such review).<sup>8</sup>

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<sup>6</sup> For purposes of the proposed rule change, the term "Hearing Officer" will have the meaning set forth in Rule 9120(p).

<sup>7</sup> A Hearing Officer currently acts as the sole adjudicator in expedited actions involving (1) a failure to pay NASD dues, fees or other charges and (2) a failure to pay an arbitration award or related settlement, pursuant to Rules 9553 and 9554, respectively.

<sup>8</sup> In accordance with Rule 6530, an aggrieved party requesting a review of an OTCBB eligibility determination by a Hearing Officer will continue to be required to pay a \$4,000 fee for such review. Given that OHO would act as the sole adjudicator in these proceedings, there would be no further NASD level of review and, thus, the additional \$4,000 fee currently provided for in Rule 6530(f)(3) would be deleted.

Lastly, NASD also is proposing to make a technical change to the text of Rule 9710. As noted above, Rule 9710 provides that the scope of the Rule 9700 Series is to provide redress, where justified, for persons aggrieved by the operations of any automated quotation, execution or communication system owned or operated by NASD that is not otherwise provided for under the NASD Code of Procedure (Rule 9000 Series) or the Uniform Practice Code (Rule 11000 Series). There are certain appeal and procedural rights contained in NASD Rules other than the Rule 9000 Series or the Rule 11000 Series. For example, within the Alternative Display Facility (ADF) Rules (the Rule 4000A Series), there are certain appeals rights and procedures relating to ADF related grievances (e.g., ADF Trading Center excused withdrawals reviews under Rule 4619A). In such cases, given the language in Rule 9710, there may be confusion whether the Rule 9700 Series or the Rule 4000A Series governs such disputes. Therefore, NASD is proposing to amend the text of Rule 9710 to clarify that the scope of the Rule 9700 Series is to address general grievances not otherwise provided for by any other NASD Rules. NASD believes this clarification will alleviate any potential confusion in this regard and is consistent with the history and intent of the Rule 9700 Series.

As noted above, NASD will announce the effective date of the proposed rule change in a Notice to Members to be published no later than 60 days following Commission approval. The effective date will be 30 days following publication of the Notice to Members announcing Commission approval.

2. Statutory Basis

NASD believes that the proposed rule change is consistent with the provisions of

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Also in accordance with Rule 6530, a request for review will stay the OTCBB security's removal until the Hearing Officer makes a determination.

Section 15A(b)(6) of the Act,<sup>9</sup> which requires, among other things, that NASD 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. NASD believes that the proposed rule change strikes an appropriate balance between the need to ensure fairness to aggrieved parties and the need for expedited action in these instances.

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

NASD 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.

**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**

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<sup>9</sup> 15 U.S.C. 78o-3(b)(6).

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments:

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-NASD-2007-052 on the subject line.

Paper Comments:

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-1090.

All submissions should refer to File Number SR-NASD-2007-052. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (<http://www.sec.gov/rules/sro.shtml>). 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 also will be available for inspection and copying at the principal office of NASD.

All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-NASD-2007-052 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>10</sup>

Nancy M. Morris

Secretary

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<sup>10</sup> 17 CFR 200.30-3(a)(12).