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Note: The Rule 9700 Series, although not published here, remains in effect as published in the Manual.

9000. CODE OF PROCEDURE

9100. Application and Purpose

9110. Application

(a) Proceedings

The Rule 9000 Series is the Code of Procedure and includes proceedings for disciplining a member or person associated with a member; proceedings for regulating the activities of a member experiencing financial or operational difficulties; proceedings for summary or non-summary suspensions, cancellations, bars, prohibitions, or limitations; and proceedings for obtaining relief from the eligibility requirements of the NASD By-Laws and the Rules of the Association. The Rule 9100 Series is of general applicability to all proceedings set forth in Rule 9000 Series, except the proceedings set forth in the Rule 9700 Series, unless a Rule specifically provides otherwise.

(b) Rights, Duties, and Obligations of Members and Associated Persons

Unless otherwise specified, a person associated with a member shall have the same rights as a member and shall be subject to the same duties and obligations under the Code of Procedure.

(c) Incorporation of Defined Terms and Cross References

Unless otherwise provided, terms used in the Rule 9000 Series shall have the meaning as defined in Rule 0120 and Rule 9120. References within the Rule 9000 Series to Association offices or departments refer to offices so designated by the NASD, NASD Regulation or Nasdaq.

9120. Definitions**(a) "Adjudicator"**

The term "Adjudicator" means: (1) a body, board, committee, group, or natural person that presides over a proceeding and renders a decision; (2) a body, board, committee, group, or natural person that presides over a proceeding and renders a recommended or proposed decision which is acted upon by an Adjudicator described in (1); or (3) a natural person who serves on a body, board, committee, or group described in (1) or (2). The term includes a Review Subcommittee as defined in paragraph (z), a Subcommittee as defined in paragraph (bb), an Extended Proceeding Committee as defined in paragraph (l), and a Statutory Disqualification Committee as defined in paragraph (aa).

(b) "Chief Hearing Officer"

The term "Chief Hearing Officer" means the Hearing Officer designated by the President of NASD Regulation to manage the Office of Hearing Officers, or his or her delegatee.

(c) "Code"

The term "Code" refers to the Code of Procedure.

(d) "Counsel to the National Adjudicatory Council "

The term "Counsel to the National Adjudicatory Council" means an attorney of the Office of the General Counsel of NASD Regulation who is responsible for advising the National

Adjudicatory Council, the Review Subcommittee, a Subcommittee, or an Extended Proceeding Committee regarding a disciplinary proceeding on appeal or review before the National Adjudicatory Council.

(e) "Department of Enforcement"

The term "Department of Enforcement" means the Department of Enforcement or its delegatee, the Department of Market Regulation, except that the term excludes the Department of Market Regulation with respect to the actions of: (1) authorizing a complaint under Rule 9211; (2) determining the terms of a letter of acceptance, waiver, and consent or the terms of a minor rule violation plan letter under Rule 9216; (3) determining whether to contest an offer of settlement under Rule 9270; and (4) authorizing the filing of an appeal under Rule 9311.

(f) "Director"

The term "Director" means a member of the Board of Directors of NASD Regulation.

(g) "District Committee"

The term "District Committee" means a district committee elected pursuant to the NASD Regulation By-Laws or a resolution of the NASD Regulation Board.

(h) "Document"

The term "Document" means a writing, drawing, graph, chart, photograph, recording, or any other data compilation, including data stored by computer, from which information can be obtained.

(i) "Extended Hearing"

The term "Extended Hearing" means a disciplinary proceeding described in Rule 9231(c).

(j) "Extended Hearing Panel"

The term "Extended Hearing Panel" means an Adjudicator that is constituted under Rule 9231(c) to conduct a disciplinary proceeding that is classified as an "Extended Hearing" and is governed by the Rule 9200 Series.

(k) "Extended Proceeding"

The term "Extended Proceeding" means a disciplinary proceeding described in Rule 9331(a)(2).

(l) "Extended Proceeding Committee"

The term "Extended Proceeding Committee" means an appellate Adjudicator that is constituted under Rule 9331 to participate in the National Adjudicatory Council's consideration of a disciplinary proceeding that is classified as an "Extended Proceeding" and governed by the Rule 9300 Series.

(m) "General Counsel"

The term "General Counsel" means the General Counsel of NASD Regulation, or his or her delegatee, who shall be a person who reports to the General Counsel of NASD Regulation and is an Associate General Counsel, an Assistant General Counsel, or a person who has substantially the same or equivalent duties and responsibilities as an Associate General Counsel or an Assistant General Counsel.

(n) "Governor"

The term "Governor" means a member of the Board of Governors of the NASD.

(o) "Head of Enforcement"

The term "Head of Enforcement" means the individual designated by the President of NASD Regulation to manage the Department of Enforcement, or his or her delegatee in the Department of Enforcement.

(p) "Hearing Officer"

The term "Hearing Officer" means an employee of NASD Regulation 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 brought against members and associated persons.

(q) "Hearing Panel"

The term "Hearing Panel" means an Adjudicator that is constituted under Rule 9231 to conduct a disciplinary proceeding governed by the Rule 9200 Series or that is constituted under the Rule 9500 Series to conduct a proceeding.

(r) "Interested Association Staff"

The term "Interested Association Staff" means, in the context of:

(1) a disciplinary proceeding under the Rule 9200 Series and the Rule 9300

Series:

(A) the Head of Enforcement;

(B) an employee of the Department of Enforcement who reports, directly or indirectly, to the Head of Enforcement;

(C) an Association employee who directly participated in the authorization of the complaint; or

(D) an Association employee who directly participated in an examination, investigation, prosecution, or litigation related to a specific disciplinary proceeding, and a district director or department head to whom such employee reports;

(2) a proceeding under the Rule 9410 Series:

(A) the head of the Department of Member Regulation;

(B) a Department of Member Regulation employee who reports, directly or indirectly, to the head of the Department of Member Regulation;

(C) an Association employee who directly participated in the authorization of or the initial decision in the proceeding; or

(D) an Association employee who directly participated in an examination, investigation, prosecution, or litigation related to a specific proceeding, and a district director or department head to whom such employee reports; or

(3) a proceeding under the Rule 9510 or 9520 Series:

(A) the head of the department or office that issues the notice or is designated as a Party;

(B) an Association employee who reports, directly or indirectly, to such person;

(C) an Association employee who directly participated in the initiation of the proceeding; or

(D) an Association employee who directly participated in an examination, investigation, prosecution, or litigation related to a specific proceeding, and a district director or department head to whom such employee reports; or

(4) a proceeding under the Rule 9600 Series:

(A) the head of the department or office that issues the decision granting or denying an exemption or is designated as a Party;

(B) an Association employee who reports, directly or indirectly, to such person;

(C) an Association employee who directly participated in the exemption proceeding; or

(D) an Association employee who directly participated in an examination, investigation, prosecution, or litigation related to a specific exemption proceeding, and a district director or department head to whom such employee reports.

(s) "Market Regulation Committee"

The term "Market Regulation Committee" means the committee of NASD Regulation designated to consider the federal securities laws and the rules and regulations adopted thereunder and various Rules of the Association and policies relating to:

- (1) the quotations of securities;
- (2) the execution of transactions;
- (3) the reporting of transactions; and

(4) trading practices, including rules prohibiting manipulation and insider trading, and those Rules designated as Trading Rules (Rule 3300 Series), the Nasdaq Stock Market Rules (Rule 4000 Series), other Nasdaq and NASD Market Rules (Rule 5000 Series), NASD Systems and Programs Rules (Rule 6000 Series), and Charges for Services and Equipment Rules (Rule 7000 Series).

(t) "NASD Board"

The term "NASD Board" means the Board of Governors of the NASD.

(u) "NASD Regulation Board"

The term "NASD Regulation Board" means the Board of Directors of NASD Regulation.

(v) "Panelist"

The term "Panelist," as used in the Rule 9200 Series, means a member of a Hearing Panel or Extended Hearing Panel who is not a Hearing Officer. As used in the Rule 9300 Series, the term means a current or former Director or a former Governor who is appointed to serve on a Subcommittee or an Extended Proceeding Committee.

(w) "Party"

With respect to a particular proceeding, the term "Party" means:

(1) in the Rule 9200 Series and the Rule 9300 Series, the Department of Enforcement or a Respondent;

(2) in the Rule 9410 Series and the Rule 9520 Series, the Department of Member Regulation or

(A) a member that is the subject of a notice under Rule 9412;

(B) a member that is the subject of a notice or files an application under Rule 9522;

(3) in the Rule 9510 Series, the department or office designated under Rule 9514(b) or a member or person that is the subject of a notice under Rule 9512 or Rule 9513; or

(4) in the Rule 9600 Series, the department or office designated under Rule 9620 to issue the decision granting or denying an exemption or a member that seeks the exemption under Rule 9610.

(x) "Primary District Committee"

The term "Primary District Committee" means, in a disciplinary proceeding under the Rule 9200 Series, the District Committee designated by the Chief Hearing Officer pursuant to Rule 9232 to provide one or more of the Panelists to a Hearing Panel or, if applicable, to an Extended Hearing Panel, for such disciplinary proceeding.

(y) "Respondent"

The term "Respondent" means, in a disciplinary proceeding governed by the Rule 9200 Series and in an appeal or review governed by the Rule 9300 Series, an NASD member or associated person against whom a complaint is issued.

(z) "Review Subcommittee"

The term "Review Subcommittee" means a body appointed by the National Adjudicatory Council pursuant to Article V of the NASD Regulation By-Laws.

(aa) "Statutory Disqualification Committee"

The term "Statutory Disqualification Committee" means a Subcommittee of the National Adjudicatory Council that makes a recommended decision to grant or deny an application for relief from the eligibility requirements of the Association to the National Adjudicatory Council pursuant to the Rule 9520 Series.

(bb) "Subcommittee"

The term "Subcommittee" means an Adjudicator that is:

(1) constituted under Rule 9331(a) to participate in the National Adjudicatory Council's consideration of an appeal or a review of a disciplinary proceeding pursuant to the Rule 9300 Series;

(2) constituted under the Rule 9410 Series or Rule 9630 to conduct a review proceeding.

9130. Service; Filing of Papers**9131. Service of Complaint and Document Initiating a Proceeding****(a) Service on Each Party**

A complaint shall be served on each Party by the Department of Enforcement. A document initiating a proceeding shall be served on each Party by the Party or person initiating such proceeding or his or her counsel or representative.

(b) How Served

A complaint or document initiating a proceeding shall be served pursuant to Rule 9134.

(c) Filing Requirement

A complaint that is served upon a Respondent and each document initiating a proceeding that is served upon a Party, along with the certificate of service executed in connection with the service upon such Respondent or Party, shall be filed with the Association pursuant to Rule 9135.

9132. Service of Orders, Notices, and Decisions by Adjudicator**(a) Service on Each Party**

An order, notice, or decision issued by a Hearing Officer, Hearing Panel or Extended Hearing Panel under the Rule 9200 Series shall be served on each Party, or each Party's counsel, or other person the Party designates to represent him or her in a proceeding by the Office of Hearing Officers. An order, notice, or decision issued by any other Adjudicator shall be served by that Adjudicator.

(b) How Served

An order, notice, or decision shall be served pursuant to Rule 9134.

(c) Service Upon Counsel or Other Person Acting In Representative Capacity

Whenever service is required to be made upon a person represented by counsel or a representative who has filed a notice of appearance pursuant to Rule 9141, service shall be made upon counsel or the representative. The Adjudicator, at its discretion, may also order that service be made upon the person.

9133. Service of Papers Other Than Complaints, Orders, Notices, or Decisions**(a) Service on Each Party**

Other than a complaint, order, notice, or decision, any paper, including an answer and a motion, shall be served on each Party by the Party on whose behalf such paper was prepared or by his or her counsel or representative.

(b) How Served

The paper shall be served pursuant to Rule 9134.

(c) Filing Requirement

The paper that is served upon a Party, along with the certificate of service executed in connection with the service upon such Party, shall be filed with the Association pursuant to Rule 9135.

(d) Service upon Counsel or Other Person Acting in Representative Capacity

Whenever service is required to be made upon a person represented by counsel or a representative who has filed a notice of appearance pursuant to Rule 9141, service shall be made upon counsel or the representative. The Adjudicator, at its discretion, may also order that service be made upon the person.

9134. Methods of, Procedures for Service**(a) Methods**

The following methods of service are permitted:

(1) Personal Service

Personal service may be accomplished by handing a copy of the papers to the person required to be served; leaving a copy at the person's office with an employee or

other person in charge thereof; or leaving a copy at the person's dwelling or usual place of abode with a person of suitable age and discretion then residing therein;

(2) Service by Mail by U.S. Postal Service

Service by mail may be accomplished by mailing the papers through the U.S. Postal Service by using first class mail, first class certified mail, first class registered mail, or Express Mail, except that a complaint shall be served upon a Respondent by U.S. Postal Service first class certified mail or Express Mail; or

(3) Service by Commercial Courier

Service by commercial courier may be accomplished by sending the papers through a commercial courier service that generates a written confirmation of receipt or of attempts at delivery.

(b) Procedures

(1) Service on Natural Persons

Papers served on a natural person may be served at the natural person's residential address, as reflected in the Central Registration Depository, if applicable. When a Party or other person responsible for serving such person has actual knowledge that the natural person's Central Registration Depository address is out of date, duplicate copies shall be served on the natural person at the natural person's last known residential address and the business address in the Central Registration Depository of the entity with which the natural person is employed or affiliated. Papers may also be served at the business address of the entity with which the natural person is employed or affiliated, as reflected in the Central Registration Depository, or at a business address, such as a branch office, at which

the natural person is employed, or at which the natural person is physically present during a normal business day. If a natural person is represented by counsel or a representative, papers served on the natural person, excluding a complaint or a document initiating a proceeding, shall be served on the counsel or representative.

(2) Service on Entities

Papers served on an entity shall be made by service on an officer, partner of a partnership, managing or general agent, a contact employee as set forth on Form BD, or any other agent authorized by appointment or by law to accept service. Such papers shall be served at the entity's business address as reflected in the Central Registration Depository, if applicable; provided, however, that when the Party or other person responsible for serving such entity has actual knowledge that an entity's Central Registration Depository address is out of date, duplicate copies shall be served at the entity's last known address. If an entity is represented by counsel or a representative, papers served on such entity, excluding a complaint or document initiating a proceeding, shall be served on such counsel or representative.

(3) When Service Is Complete

Personal service and service by commercial courier or express delivery are complete upon delivery. Service by mail is complete upon mailing.

9135. Filing of Papers with Adjudicator: Procedure

(a) When to File

Papers that are required to be filed with an Adjudicator within a time limit specified by the Adjudicator or within a time limit set forth in the Rules shall be deemed timely if received within

the time limit, unless otherwise ordered by an Adjudicator. Other papers that are required to be filed shall be deemed timely if, on the same day such papers are served, they are also hand-delivered, mailed via U.S. Postal service first class mail, or sent by courier to the Association.

(b) Where to File

All papers required to be filed pursuant to the Rule 9200 Series and any notice of appeal or review required to be filed pursuant to the Rule 9300 Series shall be filed with the Office of Hearing Officers. All other papers required to be filed pursuant to the Rule 9000 Series shall be filed where specified in the Rule, or if not specified in the Rule, with the Adjudicator, unless the Adjudicator orders otherwise.

(c) Certificate of Service

Papers filed with an Adjudicator or the Office of Hearing Officers shall be accompanied by a certificate of service stating the name of the person or persons served, the date on which service is made, the method of service and, if service is not made in person, the address to which service is made. Such certificate shall be executed by the person who made the service. If the method of service on a Party is different from the method of service on any other Party, the certificate shall state why such different method was used.

9136. Filing of Papers: Form

(a) Specifications

Papers filed in connection with any proceeding under the Rule 9200 Series and the Rule 9300 Series shall:

(1) be on unglazed white paper measuring 8 ½ x 11 inches, but to the extent that the reduction of a larger document would render it illegible, such document may be filed on larger paper;

(2) be typewritten or printed in either 10 or 12 point typeface or otherwise reproduced by a process that produces a permanent and plainly legible copy;

(3) include at the head of the paper, or on a title page, the title of the proceeding, the names of the Parties, the subject of the particular paper or pleading, and the number assigned to the proceeding;

(4) be paginated at the bottom of the page and with all margins at least one inch wide;

(5) be double-spaced, with double-spaced footnotes and single-spaced indented quotations; and

(6) be stapled, clipped, or otherwise fastened in the upper left corner, but not bound.

(b) Signature Required

All papers shall be signed and dated pursuant to Rule 9137.

(c) Number of Copies

A signed original and three copies of all papers shall be filed with the Adjudicator.

(d) Form of Briefs

A brief containing more than ten pages shall include a table of contents, and an alphabetized table of cases, statutes, and other authorities cited, with references to the pages of the brief wherein they are cited.

(e) Scandalous or Impertinent Matter

Any scandalous or impertinent matter contained in any brief, pleading, or other filing, or in connection with any oral presentation in a proceeding may be stricken on order of an Adjudicator.

Any matter stricken by an Adjudicator by this Rule shall be marked "Stricken" and preserved. Matters stricken in a proceeding governed by the Rule 9200 Series shall be preserved under Rule 9267(b).

9137. Filing of Papers: Signature Requirement and Effect**(a) General Requirements**

Following the issuance of a complaint in a disciplinary proceeding, or the initiation of another proceeding, every filing of a Party represented by counsel or a representative shall be signed by at least one counsel or representative of record in his or her name and shall state the business address and telephone number of such counsel or representative. A Party who appears on his or her own behalf shall sign his or her individual name and state his or her address and telephone number on every filing.

(b) Effect of Signature

(1) The signature of a counsel, representative, or Party shall constitute a certification that:

(A) the person signing the filing has read the filing;

(B) to the best of his or her knowledge, information, and belief, formed after reasonable inquiry, the filing is well grounded in fact and is warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law; and

(C) the filing is not made for any improper purpose, such as to harass, cause unnecessary delay, or needlessly to increase the cost of adjudication.

(2) If a filing is not signed, an Adjudicator may strike the filing, unless it is signed promptly after the omission is called to the attention of the person making the filing.

9138. Computation of Time

(a) Calendar Day

In the Rule 9000 Series, "day" means calendar day.

(b) Formula

In computing any period of time, the day of the act, event, or default from which the period of time designated in the Code begins to run shall not be included. The last day of the period so computed shall be included, unless it is a Saturday, Sunday, or Federal holiday, in which event the period runs until the end of the next day that is not a Saturday, Sunday, or Federal holiday. Intermediate Saturdays, Sundays, and Federal holidays shall be excluded from the computation when the period prescribed is ten days or less, not including any additional time for service by mail allowed by paragraph (c).

(c) Additional Time For Service by Mail

If service is made by U.S. Postal Service first class, certified, or registered mail, three days shall be added to the prescribed period for response.

9140. Proceedings**9141. Appearance and Practice; Notice of Appearance****(a) Representing Oneself**

In any proceeding, a person may appear on his or her own behalf. When a person first makes any filing or otherwise appears on his or her own behalf before an Adjudicator in a proceeding, he or she shall file with the Adjudicator, or otherwise state on the record, and keep current, an address at which any notice or other written communication required to be served upon or furnished to him or her may be sent and a telephone number where he or she may be reached during business hours.

(b) Representing Others

A person shall not be represented before an Adjudicator, except as provided in this paragraph. Subject to the prohibitions of Rules 9150 and 9280, a person may be represented in any proceeding by an attorney at law admitted to practice before the highest court of any state of the United States, the District of Columbia, or any commonwealth, territory, or possession of the United States. A member of a partnership may represent the partnership; and a bona fide officer of a corporation, trust, or association may represent the corporation, trust, or association. When a person first makes any filing or otherwise appears in a representative capacity before an Adjudicator in a proceeding, that person shall file with the Adjudicator, and keep current a Notice of Appearance. The Notice of Appearance is a written notice stating the name of the proceeding; the representative's name, business address, and telephone number; and the name and address of the person or persons represented. Any individual appearing or practicing in a representative

capacity before an Adjudicator may be required to file a power of attorney with the Adjudicator showing his or her authority to act in such capacity.

9142. Withdrawal by Attorney or Representative

An attorney for a Party or other person authorized to represent others by Rule 9141 may withdraw by giving notice to the Adjudicator. The notice shall be in writing, set forth the good cause for withdrawal, and, unless circumstances do not permit, be given at least 30 days prior to withdrawal.

9143. Ex Parte Communications

(a) Prohibited Communications

Unless on notice and opportunity for all Parties to participate, or to the extent required for the disposition of ex parte matters as authorized by the Rule 9000 Series:

(1) No Party, or counsel to or representative of a Party, or Interested Association Staff shall make or knowingly cause to be made an ex parte communication relevant to the merits of a proceeding to an Adjudicator who is participating in a decision with respect to that proceeding, or to an Association employee who is participating or advising in the decision of an Adjudicator with respect to that proceeding; and

(2) No Adjudicator who is participating in a decision with respect to a proceeding, or no Association employee who is participating or advising in the decision of an Adjudicator with respect to a proceeding shall make or knowingly cause to be made to a Party, a counsel or representative to a Party, or Interested Association Staff an ex parte communication relevant to the merits of that proceeding.

(b) Disclosure of Prohibited Communication

An Adjudicator who is participating in a decision with respect to a proceeding, or an Association employee who is participating or advising in the decision of an Adjudicator, who receives, makes, or knowingly causes to be made a communication prohibited by this Rule shall place in the record of the proceeding:

- (1) all such written communications;
- (2) memoranda stating the substance of all such oral communications; and
- (3) all written responses and memoranda stating the substance of all oral responses to all such communications.

(c) Remedies

Upon receipt of a communication made or knowingly caused to be made by any Party, any counsel or representative to a Party, or any Interested Association Staff in violation of subparagraph (a)(1), the Association or an Adjudicator may, to the extent consistent with the interests of justice, the policies underlying the Act, and the Association's Rules, order the Party responsible for the communication, or the Party who may benefit from the ex parte communication made, to show cause why the Party's claim or interest in the proceeding should not be dismissed, denied, disregarded, or otherwise adversely affected by reason of such ex parte communication. All participants to a proceeding may respond to any allegations or contentions contained in a prohibited ex parte communication placed in the record. Such responses shall be placed in the record.

(d) Timing

In a disciplinary proceeding governed by the Rule 9200 Series and the Rule 9300 Series, the prohibitions of this Rule shall apply beginning with the authorization of a complaint as provided in Rule 9211, unless the person responsible for the communication has knowledge that the complaint shall be authorized, in which case the prohibitions shall apply beginning at the time of his or her acquisition of such knowledge.

(e) Waiver of Ex Parte Prohibition**(1) Offer of Settlement**

If a Respondent submits an offer of settlement under Rule 9270, the submission constitutes a waiver by such Respondent of any claim that the prohibitions against ex parte communications were violated by a person or body in connection with such person's or body's participation in discussions regarding the terms and conditions of the offer of settlement and the order of acceptance, or other consideration of the offer of settlement and order of acceptance, including acceptance or rejection of such offer of settlement and order of acceptance.

(2) Letter of Acceptance, Waiver, and Consent

If a member or a person associated with a member submits an executed letter of acceptance, waiver, and consent under Rule 9216(a), the submission constitutes a waiver by such member or person associated with a member of any claim that the prohibitions against ex parte communications were violated by a person or body in connection with such person's or body's participation in discussions regarding the terms and conditions of the letter of acceptance, waiver, and consent, or other consideration of the letter of

acceptance, waiver, and consent, including acceptance or rejection of such letter of acceptance, waiver, and consent.

(3) Minor Rule Violation Plan Letter

If a member or a person associated with a member submits an executed minor rule violation plan letter under Rule 9216(b), the submission constitutes a waiver by such member or person associated with a member of any claim that the prohibitions against ex parte communications by a person or body in connection with such person's or body's participation in discussions regarding the terms and conditions of the minor rule violation plan letter, or other consideration of the minor rule violation plan letter, including acceptance or rejection of such minor rule plan violation letter.

9144. Separation of Functions

(a) Interested Association Staff

Except as counsel or a witness in a proceeding or as provided in the Rule 9400 Series, Interested Association Staff is prohibited from advising an Adjudicator regarding a decision or otherwise participating in a decision of an Adjudicator. An Adjudicator is prohibited from advising Interested Association Staff regarding a decision or otherwise participating in a decision of Interested Association Staff, including the decision to issue a complaint and a decision whether to appeal or cross-appeal a disciplinary proceeding to the National Adjudicatory Council.

(b) Separation of Adjudicators

A Hearing Officer, including the Chief Hearing Officer, or a Panelist of a Hearing Panel or an Extended Hearing Panel, is prohibited from participating in: a decision whether to issue a complaint pursuant to Rule 9211; a decision whether to appeal or cross-appeal a disciplinary

proceeding to the National Adjudicatory Council pursuant to Rule 9311; and a discussion or decision relating to a call for review, a review, or an appeal pursuant to the Rule 9300 Series. Except for the Chair of the National Adjudicatory Council, a Governor is prohibited from participating in a discussion or a decision relating to the above referenced acts with the Review Subcommittee or the Adjudicators referenced above.

(c) Waiver of Prohibitions of Separation of Functions

(1) Offer of Settlement

If a Respondent submits an offer of settlement under Rule 9270, the submission constitutes a waiver by such Respondent of any claim of violation of paragraph (a) or (b) by a person or body in connection with such person's or body's participation in discussions regarding the terms and conditions of the offer of settlement and the order of acceptance, or other consideration of the offer of settlement and order of acceptance, including acceptance or rejection of such offer of settlement and order of acceptance.

(2) Letter of Acceptance, Waiver, and Consent

If a member or a person associated with a member submits an executed letter of acceptance, waiver, and consent under Rule 9216(a), the submission constitutes a waiver by such member or person associated with a member of any claim of violation of paragraph (a) or (b) by a person or body in connection with such person's or body's participation in discussions regarding the terms and conditions of the letter of acceptance, waiver, and consent, or other consideration of the proposed letter of acceptance, waiver, and consent, including acceptance or rejection of such letter of acceptance, waiver, and consent.

(3) Minor Rule Violation Plan Letter

If a member or a person associated with a member submits an executed minor rule violation plan letter under Rule 9216(b), the submission constitutes a waiver by such member or person associated with a member of any claim of violation of paragraph (a) or (b) by a person or body in connection with such person's or body's participation in discussions regarding the terms and conditions of the minor rule violation plan letter or other consideration of the minor rule violation plan letter, including acceptance or rejection of such minor rule violation plan letter.

9145. Rules of Evidence; Official Notice**(a) Rules of Evidence**

The formal rules of evidence shall not apply in a proceeding brought under the Rule 9000 Series.

(b) Official Notice

In a proceeding governed by the Rule 9000 Series, an Adjudicator may take official notice of such matters as might be judicially noticed by a court, or of other matters within the specialized knowledge of the Association as an expert body. Before an Adjudicator proposes to take official notice of a matter, it shall permit a Party the opportunity to oppose or otherwise comment upon the proposal to take official notice.

9146. Motions**(a) General Requirement for Motions**

A Party may make a written or oral motion, subject to limitations set forth below. A Party or other person may make a motion under Rule 9146(k), subject to limitations set forth below.

(b) Adjudicator May Require a Written Motion

If a Party makes an oral motion, an Adjudicator may order that such motion be set forth in writing, after considering the facts and circumstances, including whether:

- (1) the hearing or conference in which the Party makes such motion is being recorded; and
- (2) the opposing Parties shall be fully informed and shall have adequate notice and opportunity to respond to such motion.

(c) Specificity

All motions shall state the specific relief requested and the basis therefor.

(d) Time For Filing Opposition or Other Response to Motion

Unless otherwise ordered by an Adjudicator, any Party may file an opposition or other response to a written motion and the opposition or response shall be filed within 14 days after service of the motion. If no response is filed within the response period, the Party failing to respond shall be deemed to have waived any objection to the granting of the motion. A Party shall be afforded an opportunity to respond to an oral motion at the time the oral motion is made, unless the Adjudicator orders that the Party shall be granted additional time to respond.

(e) Oral Argument

An Adjudicator may allow oral argument on motions. Oral argument may take place in person or by telephone.

(f) Frivolous Motions

An Adjudicator may deny dilatory, repetitive, or frivolous motions without awaiting a response.

(g) No Stay

Unless otherwise ordered by an Adjudicator, the filing of a motion does not stay a proceeding.

(h) Reply

The moving Party shall have no right to reply to the opposition or other response of the other Parties unless an Adjudicator permits a reply to be filed. Unless otherwise ordered by an Adjudicator, a movant's reply submission shall be filed within five days after the Adjudicator serves the order granting the motion to file a reply or a Party serves the opposition or other response to which the Adjudicator previously ordered that a reply could be filed.

(i) Page Limit, Format Requirements

Unless otherwise ordered by an Adjudicator, submissions in support of or in opposition to motions shall not exceed ten double-spaced pages, including double-spaced footnotes, exclusive of pages containing any table of contents, table of authorities, or addenda.

(j) Disposition of Procedural Motions; Disposition of Motions for Summary Disposition

(1) In the Rule 9200 Series, a motion on a procedural matter may be decided by a Hearing Officer. A motion for summary disposition of a cause of action set forth in a complaint shall be decided by a majority vote of the Hearing Panel or, if applicable, the Extended Hearing Panel.

(2) In the Rule 9300 Series, a motion on a procedural matter may be decided by Counsel to the National Adjudicatory Council, the Review Subcommittee, a Subcommittee or, if applicable, an Extended Proceeding Committee, or the National Adjudicatory Council. A motion for disposition of a cause of action shall be decided by

the National Adjudicatory Council, except that a motion to dismiss a case for abandonment made under Rule 9344 may be decided by the Review Subcommittee.

(3) In the Rule 9400 Series and the Rule 9500 Series, a motion shall be decided by an Adjudicator.

(k) Motion For Protective Order

(1) A Party, a person who is the owner, subject, or creator of a Document subject to production under Rule 8210 or any other Rule which may be introduced as evidence in a disciplinary proceeding, or a witness who testifies at a hearing in a disciplinary proceeding may file a motion requesting a protective order to limit disclosure or prohibit from disclosure to other Parties, witnesses or other persons, except the Department of Enforcement and other Association staff, Documents or testimony that contain confidential information. The motion shall include a general summary or extract of the Documents or testimony without revealing confidential details. If the movant seeks a protective order against disclosure to other Parties, copies of the Documents shall not be served on the other Parties. Unless the Documents are unavailable, the movant shall file for in camera inspection a sealed copy of the Documents for which the order is sought. If the movant is not a Party, the motion shall be served on each Party by the movant using a method in Rule 9134(a) and filed with the Adjudicator. A motion for a protective order shall be granted only upon a finding that disclosure of the Document or testimony would have a demonstrated adverse business effect on the movant or would involve an unreasonable breach of the movant's personal privacy.

(2) If a protective order is granted, the order shall set forth the restrictions on use and disclosure of such Document or testimony. An Adjudicator does not have the authority to issue a protective order that would limit in any manner the use by the staff of the Association of such Documents or testimony in the Association staff's performance of their regulatory and self-regulatory responsibilities and functions, including the transmittal, without restriction to the recipient, of such Documents or testimony to state, federal, or foreign regulatory authorities or other self-regulatory organizations. An Adjudicator does not have the authority to issue a protective order that purports to protect from production such Documents or testimony in the event that the Association is subject to a subpoena requiring that the Documents or testimony be produced.

(l) General

All motions, oppositions or responses, replies, and any other filings made in a proceeding shall comply with Rules 9133, 9134, 9135, 9136 and 9137.

9147. Rulings On Procedural Matters

The NASD Board, the National Adjudicatory Council, a Hearing Officer, or any other Adjudicator shall have full authority, except as otherwise provided by the Code, to rule on a procedural motion and any other procedural or administrative matter arising during the course of a proceeding conducted pursuant to the Code, subject to the rights of review or appeal provided by the Code.

9148. Interlocutory Review

Except as provided in Rule 9280, there shall be no interlocutory review of a ruling or order issued by any Adjudicator in a proceeding governed by the Code. If an Adjudicator grants

interlocutory review of a ruling or order, such review shall not stay a proceeding, except under Rule 9280 or as otherwise ordered by the Adjudicator.

9150. Exclusion From Rule 9000 Series Proceeding

(a) Exclusion

An Adjudicator may exclude an attorney for a Party or other person authorized to represent others by Rule 9141 from acting as counsel, acting in any representative capacity, or otherwise appearing in a particular Rule 9000 Series proceeding for contemptuous conduct under Rule 9280 or unethical or improper professional conduct in that proceeding. If an attorney for a Party, or other person authorized to represent others by Rule 9141, is excluded from a disciplinary hearing or conference, or any portion thereof, such attorney or person may seek review by the National Adjudicatory Council of such exclusion under Rule 9280(c).

(b) Other Proceedings Not Precluded

Prohibiting an attorney or other person authorized to represent others by Rule 9141 from practicing or appearing in an Association proceeding shall not preclude the Association from initiating other proceedings against such person.

9160. Recusal or Disqualification

No person shall participate as an Adjudicator in a matter governed by the Code as to which he or she has a conflict of interest or bias, or circumstances otherwise exist where his or her fairness might reasonably be questioned. In any such case the person shall recuse himself or herself, or shall be disqualified as follows:

(a) NASD Board

The Chair of the NASD Board shall have authority to order the disqualification of a Governor, and a majority of the NASD Board excluding the Chair of the NASD Board, shall have authority to order the disqualification of the Chair;

(b) National Adjudicatory Council, Review Subcommittee, or Certain Subcommittees

The Chair of the National Adjudicatory Council shall have authority to order the disqualification of a member of the National Adjudicatory Council or the Review Subcommittee, a member of a Subcommittee appointed pursuant to the Rule 9410 Series or the Rule 9600 Series, a Hearing Panel appointed pursuant to the Rule 9520 Series, and the Statutory Disqualification Committee; and the Vice Chair of the National Adjudicatory Council shall have authority to order the disqualification of the Chair of the National Adjudicatory Council;

(c) Rule 9331 Subcommittee or Extended Proceeding Committee

Disqualification of a Panelist of a Subcommittee or Extended Proceeding Committee appointed under the Rule 9300 Series shall be governed by Rule 9332;

(d) Rule 9514 Hearing Panel

The NASD Regulation Board or Nasdaq Board shall have authority to order the disqualification of a member of a Hearing Panel appointed by such Board under Rule 9514(b);

(e) Panelist of Hearing Panel or Extended Hearing Panel

Disqualification of a Panelist of a Hearing Panel or Extended Hearing Panel appointed under the Rule 9200 Series shall be governed by Rule 9234;

(f) Hearing Officer

Disqualification of a Hearing Officer of a Hearing Panel or an Extended Hearing Panel shall be governed by Rule 9233; and

(g) NASD Regulation Staff As Adjudicator

The President of NASD Regulation shall have authority to order the disqualification of a member of the staff of the Department of Member Regulation participating in a Rule 9410 Series decision.

9200. DISCIPLINARY PROCEEDINGS**9210. Complaint and Answer****9211. Authorization of Complaint****(a) Complaint**

(1) If the Department of Enforcement believes that any NASD member or associated person is violating or has violated any rule, regulation, or statutory provision, including the federal securities laws and the regulations thereunder, which the Association has jurisdiction to enforce, the Department of Enforcement may authorize a complaint.

(2) The NASD Regulation Board and the NASD Board each shall have the authority to direct the Department of Enforcement to authorize and issue a complaint when, on the basis of information and belief, either of such boards is of the opinion that any NASD member or associated person is violating or has violated any rule, regulation, or statutory provision, including the federal securities laws and the regulations thereunder, which the Association has jurisdiction to enforce.

(b) Commencement of Disciplinary Proceeding

A disciplinary proceeding shall begin when the complaint is served and filed.

9212. Complaint Issuance -- Requirements, Service, Amendment, Withdrawal, and Docketing**(a) Form, Content, Notice, Docketing, and Service**

(1) If a complaint is authorized, the Department of Enforcement shall issue the complaint. Each complaint shall be in writing and signed by the Department of Enforcement. The complaint shall specify in reasonable detail the conduct alleged to constitute the violative activity and the rule, regulation, or statutory provision the Respondent is alleged to be violating or to have violated. If the complaint consists of several causes of action, each cause shall be stated separately. Complaints shall be served by the Department of Enforcement on each Party pursuant to Rules 9131 and 9134, and filed at the time of service with the Office of Hearing Officers pursuant to Rules 9135, 9136, and 9137.

(2) At the time of issuance of a complaint, the Department of Enforcement may propose:

(A) an appropriate location for the hearing; and

(B) if the complaint alleges at least one cause of action involving a violation of a statute or a rule described in Rule 9120 (s), that the Chief Hearing Officer select a Market Regulation Committee Panelist for the Hearing Panel, or, if applicable, the Extended Hearing Panel as described in Rule 9231.

(b) Amendments to Complaint

Upon motion by the Department of Enforcement, the Hearing Officer may, at any time after considering good cause shown by the Department of Enforcement and any unfair prejudice to any Respondent, permit the Department of Enforcement to amend a complaint to include new matters of fact or law.

(c) Withdrawal of Complaint

With prior leave of the Hearing Officer, the Department of Enforcement may withdraw a complaint. If the Department of Enforcement withdraws the complaint before the earlier of (1) the Hearing Panel's or, if applicable, the Extended Hearing Panel's, issuance of a ruling on a motion for summary disposition, or (2) the start of the hearing on the merits, the withdrawal of the complaint by the Department of Enforcement shall be without prejudice and the Department of Enforcement shall be permitted to refile a case based on allegations concerning the same facts and circumstances that are set forth in the withdrawn complaint. If the Department of Enforcement requests to withdraw such complaint after the occurrence of either of the two events set forth in (1) and (2) in this paragraph, the Hearing Panel or, if applicable, the Extended Hearing Panel, after considering the facts and circumstances of the request, shall determine whether the withdrawal shall be granted with prejudice.

(d) Disciplinary Proceeding Docket

The Office of Hearing Officers shall promptly record each complaint filed with it in the Association's disciplinary proceeding docket, and record in the disciplinary proceeding docket each event, filing, and change in the status of a disciplinary proceeding.

9213. Assignment of Hearing Officer and Appointment of Panelists to Hearing Panel or Extended Hearing Panel**(a) Assignment of Hearing Officer**

As soon as practicable after the Department of Enforcement has filed a complaint with the Office of Hearing Officers, the Chief Hearing Officer shall assign a Hearing Officer to preside over the disciplinary proceeding and shall serve the Parties with notice of the Hearing Officer's assignment pursuant to Rule 9132.

(b) Appointment of Panelists

As soon as practicable after assigning a Hearing Officer to preside over a disciplinary proceeding, the Chief Hearing Officer shall appoint Panelists pursuant to Rules 9231 and 9232 to a Hearing Panel or, if the Chief Hearing Officer determines that an Extended Hearing Panel should be appointed, to an Extended Hearing Panel.

9214. Consolidation of Disciplinary Proceedings**(a) Initiated by Chief Hearing Officer**

The Chief Hearing Officer may order the consolidation of two or more disciplinary proceedings, upon his or her own motion, under circumstances where such consolidation would further the efficiency of the disciplinary process, and where the subject complaints involve common questions of law or fact, or one or more of the same Respondents. In determining whether to order the consolidation of such disciplinary proceedings, the Chief Hearing Officer shall consider: (1) whether the same or similar evidence reasonably would be expected to be offered at each of the hearings; (2) whether the proposed consolidation would conserve the time and resources of the Parties; and (3) whether any unfair prejudice would be suffered by one or more Parties as a result of the consolidation. If the Chief Hearing Officer proposes to

consolidate two or more disciplinary proceedings, the Chief Hearing Officer shall serve upon the Parties notice of the proposed consolidation of disciplinary proceedings, together with a copy of each relevant complaint and any answer that has been filed thereto, pursuant to Rule 9132. The Parties shall have 14 days after service to file a response, stating any arguments in favor of or opposition to consolidation.

(b) Initiated by a Party

A Party may file a motion to consolidate two or more disciplinary proceedings if such consolidation would further the efficiency of the disciplinary process, if the subject complaints involve common questions of law or fact or one or more of the same Respondents, or if one or more of the factors favoring consolidation set forth in paragraph (a) appear to be present. If a Party moves to consolidate two or more disciplinary proceedings, the Party shall file such motion, together with a copy of each relevant complaint and any answer thereto that has been filed, with the Office of Hearing Officers, and, pursuant to Rule 9133, shall serve the same upon the Parties in each of the cases proposed to be consolidated. The Parties shall have 14 days after service to file a response, stating any arguments in favor of or opposition to consolidation, and shall serve the response upon the Parties in each of the cases proposed to be consolidated. The Chief Hearing Officer shall issue an order approving or denying the request for consolidation.

(c) Impact on Hearing Panel or Extended Hearing Panel

If the Chief Hearing Officer issues an order to consolidate two or more disciplinary proceedings for which Hearing Panels or, if applicable, Extended Hearing Panels, have been appointed, the Chief Hearing Officer's order shall specify which Hearing Panel or, if applicable, Extended Hearing Panel, shall preside over the consolidated disciplinary proceeding, or shall

appoint a new Hearing Panel or, if applicable, Extended Hearing Panel, to preside, based on the criteria set forth in Rules 9231 and 9232.

9215. Answer to Complaint

(a) Form, Service, Notice

Pursuant to Rule 9133, each Respondent named in a complaint shall serve an answer to the complaint on all other Parties within 25 days after service of the complaint on such Respondent, and at the time of service shall file such answer with the Office of Hearing Officers pursuant to Rules 9135, 9136 and 9137. The Hearing Officer assigned to a disciplinary proceeding pursuant to Rule 9213 may extend such period for good cause. Upon the receipt of a Respondent's answer, the Office of Hearing Officers shall promptly send written notice of the receipt of such answer to all Parties.

(b) Content, Affirmative Defenses

Unless otherwise ordered by the Hearing Officer, an answer shall specifically admit, deny, or state that the Respondent does not have and is unable to obtain sufficient information to admit or deny, each allegation in the complaint. When a Respondent intends to deny only part of an allegation, the Respondent shall specify so much of it as is admitted and deny only the remainder. A statement of lack of information shall be deemed a denial. Any allegation not denied in whole or in part shall be deemed admitted. Any affirmative defense shall be asserted in the answer.

(c) Motion for More Definite Statement

A Respondent may file with an answer a motion for a more definite statement of specified matters of fact or law to be considered or determined. Such motion shall state why each such matter of fact or law should be required to be made more definite. If the motion is granted, the

order granting such motion shall set the periods for filing such a statement and any answer thereto.

(d) Amendments to Answer

Upon motion by a Respondent, the Hearing Officer may, after considering good cause shown by the Respondent and any unfair prejudice which may result to any other Party, permit an answer to be amended.

(e) Extension of Time to Answer Amended Complaint

If a complaint is amended pursuant to Rule 9212(b), the time for filing an answer or amended answer shall be extended to 14 days after service of the amended complaint. If any Respondent has already filed an answer, such Respondent shall have 14 days after service of the amended complaint, unless otherwise ordered by the Hearing Officer, within which to file an amended answer.

(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, to: (1) treat as admitted by the Respondent the allegations in the complaint; and (2) enter a default decision against the Respondent pursuant to Rule 9269. If no answer is filed with the Office of Hearing Officers within the time required, the allegations of the complaint may be considered admitted by such Respondent and a default decision may be issued by the Hearing

Officer. A Respondent may, for good cause shown, move the National Adjudicatory Council to set aside a default.

9216. Acceptance, Waiver, and Consent; Plan Pursuant to SEC Rule 19d-1(c)(2)

(a) Acceptance, Waiver, and Consent Procedures

(1) Notwithstanding Rule 9211, if the Department of Enforcement has reason to believe a violation has occurred and the member or associated person does not dispute the violation, the Department of Enforcement may prepare and request that the member or associated person execute a letter accepting a finding of violation, consenting to the imposition of sanctions, and agreeing to waive such member's or associated person's right to a hearing before a Hearing Panel or, if applicable, an Extended Hearing Panel, and any right of appeal to the National Adjudicatory Council, the Commission, and the courts, or to otherwise challenge the validity of the letter, if the letter is accepted. The letter shall describe the act or practice engaged in or omitted, the rule, regulation, or statutory provision violated, and the sanction or sanctions to be imposed.

(2)(A) If a member or person associated with a member submits an executed letter of acceptance, waiver, and consent, by the submission such member or person associated with a member also waives:

(i) any right of such member or person associated with a member to claim bias or prejudgment of the General Counsel, the National Adjudicatory Council, or any member of the National Adjudicatory Council, in connection with such person's or body's participation in discussions regarding the terms and conditions of the letter of acceptance,

waiver, and consent, or other consideration of the letter of acceptance, waiver, and consent, including acceptance or rejection of such letter of acceptance, waiver, and consent; and

(ii) any right of such member or person associated with a member to claim that a person violated the ex parte prohibitions of Rule 9143 or the separation of functions prohibitions of Rule 9144, in connection with such person's or body's participation in discussions regarding the terms and conditions of the letter of acceptance, waiver, and consent, or other consideration of the letter of acceptance, waiver, and consent, including acceptance or rejection of such letter of acceptance, waiver, and consent.

(B) If a letter of acceptance, waiver, and consent is rejected, the member or associated person shall be bound by the waivers made under subparagraphs (a)(1) and (a)(2)(A) for conduct by persons or bodies occurring during the period beginning on the date the letter of acceptance, waiver, and consent was executed and submitted and ending upon the rejection of the letter of acceptance, waiver, and consent.

(3) If the member or associated person executes the letter of acceptance, waiver, and consent, it shall be submitted to the National Adjudicatory Council. The Review Subcommittee or the General Counsel may accept such letter or refer it to the National Adjudicatory Council for acceptance or rejection by the National Adjudicatory Council. The Review Subcommittee may reject such letter or refer it to the National Adjudicatory Council for acceptance or rejection by the National Adjudicatory Council.

(4) If the letter is accepted by the National Adjudicatory Council, the Review Subcommittee, or the General Counsel, it shall be deemed final and shall constitute the complaint, answer, and decision in the matter. If the letter is rejected by the Review Subcommittee or the National Adjudicatory Council, NASD Regulation may take any other appropriate disciplinary action with respect to the alleged violation or violations. If the letter is rejected, the member or associated person shall not be prejudiced by the execution of the letter of acceptance, waiver, and consent under subparagraph (a)(1) and the letter may not be introduced into evidence in connection with the determination of the issues set forth in any complaint or in any other proceeding.

(b) Procedure for Violation Under Plan Pursuant to SEC Rule 19d-1(c)(2)

(1) Notwithstanding Rule 9211, NASD Regulation or the National Adjudicatory Council may, subject to the requirements set forth in subparagraphs (b)(2) through (b)(4) and in SEC Rule 19d-1(c)(2), impose a fine (not to exceed \$2,500) and/or a censure on any member or associated person with respect to any rule listed in IM-9216. If the Department of Enforcement has reason to believe a violation has occurred and if the member or associated person does not dispute the violation, the Department of Enforcement may prepare and request that the member or associated person execute a minor rule violation plan letter accepting a finding of violation, consenting to the imposition of sanctions, and agreeing to waive such member's or associated person's right to a hearing before a Hearing Panel or, if applicable, an Extended Hearing Panel, and any right of appeal to the National Adjudicatory Council, the Commission, and the courts, or to otherwise challenge the validity of the letter, if the letter is accepted. The letter shall

describe the act or practice engaged in or omitted, the rule, regulation, or statutory provision violated, and the sanction or sanctions to be imposed.

(2) (A) If a member or person associated with a member submits an executed minor rule violation plan letter, by the submission such member or person associated with a member also waives:

(i) any right of such member or person associated with a member to claim bias or prejudice of the General Counsel, the National Adjudicatory Council, or any member of the National Adjudicatory Council, in connection with such person's or body's participation in discussions regarding the terms and conditions of the minor rule violation plan letter or other consideration of the minor rule violation plan letter, including acceptance or rejection of such minor rule violation plan letter; and

(ii) any right of such member or person associated with a member to claim that a person violated the ex parte prohibitions of Rule 9143 or the separation of functions prohibitions of Rule 9144, in connection with such person's or body's participation in discussions regarding the terms and conditions of the minor rule violation plan letter or other consideration of the minor rule violation plan letter, including acceptance or rejection of such minor rule violation plan letter.

(B) If a minor rule violation plan letter is rejected, the member or person associated with a member shall be bound by the waivers made under

subparagraphs (b)(1) and (b)(2)(A) for conduct by persons or bodies occurring during the period beginning on the date the minor rule violation plan letter was executed and submitted and ending upon the rejection of the minor rule violation plan letter.

(3) If the member or associated person executes the minor rule violation plan letter, it shall be submitted to the National Adjudicatory Council. The Review Subcommittee or the General Counsel may accept such letter or refer it to the National Adjudicatory Council for acceptance or rejection by the National Adjudicatory Council. The Review Subcommittee may reject such letter or refer it to the National Adjudicatory Council for acceptance or rejection by the National Adjudicatory Council.

(4) If the letter is accepted by the National Adjudicatory Council, the Review Subcommittee, or the General Counsel, it shall be deemed final and the Association shall report the violation to the Commission as required by the Commission pursuant to a plan approved under SEC Rule 19d-1(c)(2). If the letter is rejected by the Review Subcommittee or the National Adjudicatory Council, NASD Regulation may take any other appropriate disciplinary action with respect to the alleged violation or violations. If the letter is rejected, the member or associated person shall not be prejudiced by the execution of the minor rule violation plan letter under subparagraph (b)(1) and the letter may not be introduced into evidence in connection with the determination of the issues set forth in any complaint or in any other proceeding.

IM-9216. Violations Appropriate for Disposition Under Plan Pursuant to SEC Rule 19d-1(c)(2)

- Rule 2210(b) and (c) and Rule 2220(b) and (c) -- Failure to have advertisements and sales literature approved by a principal prior to use; failure to maintain separate files of advertisements and sales literature containing required information; and failure to file advertisements with the Association within the required time limits.
- Rule 3360 -- Failure to timely file reports of short positions on Form NS-1.
- Rule 3110 -- Failure to keep and preserve books, accounts, records, memoranda, and correspondence in conformance with all applicable laws, rules, regulations and statements of policy promulgated thereunder, and with the Rules of the Association.
- Rule 8211, Rule 8212, and Rule 8213--Failure to submit trading data as requested.

9220. Request for Hearing; Extensions of Time, Postponements, Adjournments

9221. Request for Hearing

(a) Respondent Request for Hearing.

With the filing of any Respondent's answer, such Respondent may: (1) request a hearing; (2) propose an appropriate location for the hearing; and (3) propose, if the complaint alleges at least one cause of action involving a violation of a statute or rule described in Rule 9120(s), that the Chief Hearing Officer select a Market Regulation Committee Panelist for a Hearing Panel or, if applicable, an Extended Hearing Panel as described in Rule 9231. If a Respondent requests a hearing, a hearing shall be granted. A Respondent who fails to request a hearing with the filing of his or her answer waives the right to a hearing unless a Hearing Officer, Hearing Panel, or, if

applicable, an Extended Hearing Panel, grants, for good cause shown, a later filed motion by such Respondent requesting a hearing.

(b) Hearing Officer Order Requiring Hearing

In the absence of a request for a hearing from any Respondent, the Hearing Officer may order any complaint set down for hearing.

(c) Authority of Hearing Panel, Extended Hearing Panel to Order Hearing

If all Respondents waive a hearing, and the Hearing Officer does not order a hearing on his or her own motion, the Hearing Panel or, if applicable, the Extended Hearing Panel, may order a hearing or may consider the matter on the record, as defined in Rule 9267. If fewer than all Respondents waive a hearing, the Hearing Officer, the Hearing Panel, or, if applicable, the Extended Hearing Panel, may, in the exercise of its discretion, order that a hearing be held as to all Respondents. Alternatively, the Hearing Officer, the Hearing Panel, or, if applicable, the Extended Hearing Panel, may conduct a hearing as to only those Respondents who requested a hearing and consider the matter on the record as to those Respondents who waived a hearing.

(d) Notice of Hearing

The Hearing Officer shall issue a notice stating the date, time, and place of the hearing, and whether the hearing shall be held before a Hearing Panel or an Extended Hearing Panel, and shall serve such notice on the Parties at least 28 days before the hearing, unless (1) in the discretion of the Hearing Officer, he or she determines that extraordinary circumstances require a shorter notice period, or (2) the Parties waive the notice period.

9222. Extensions of Time, Postponements, and Adjournments**(a) Availability**

At any time prior to the issuance of the decision of the Hearing Panel or, if applicable, the Extended Hearing Panel, the Hearing Officer may, for good cause shown, extend or shorten any time limits prescribed by the Code for the filing of any papers and may, consistent with paragraph (b), postpone or adjourn any hearing.

(b) Limitations on Postponements, Adjournments, and Extensions

A hearing shall begin at the time and place ordered, unless the Hearing Officer, for good cause shown, changes the place of the hearing, postpones the commencement of the hearing, or adjourns a convened hearing for a reasonable period of time, subject to the limitations in subparagraph (b)(2).

(1) Additional Considerations

In considering a motion for the postponement of the start of a hearing or, adjournment once a hearing has begun, the Hearing Officer shall consider:

- (A) the length of the proceeding to date;
- (B) the number of postponements, adjournments, or extensions already granted;
- (C) the stage of the proceedings at the time of the request;
- (D) potential harm to the investing public if an extension of time, adjournment, or postponement is granted; and
- (E) such other matters as justice may require.

(2) Time Limit

Postponements, adjournments, or extensions of time for filing papers shall not exceed 28 days unless the Hearing Officer states on the record or provides by written order the reasons a longer period is necessary.