

9230. Appointment of Hearing Panel, Extended Hearing Panel**9231. Appointment by the Chief Hearing Officer of Hearing Panel or Extended Hearing Panel****(a) Appointment**

The Chief Hearing Officer shall appoint a Hearing Panel or an Extended Hearing Panel to conduct the disciplinary proceeding and issue a decision.

(b) Hearing Panel

The Hearing Panel shall be composed of a Hearing Officer and two Panelists, except as provided in Rule 9234 (a), (c), (d), or (e). The Hearing Officer shall serve as the chair of the Hearing Panel. Each Panelist shall be associated with a member of the Association or retired therefrom.

(1) Except as provided in (2), the Chief Hearing Officer shall select as a Panelist a person who:

(A) currently serves or previously served on a District Committee;

(B) previously served on the National Adjudicatory Council;

(C) previously served on a disciplinary subcommittee of the National Adjudicatory Council or the National Business Conduct Committee, including a Subcommittee, an Extended Proceeding Committee, or their predecessor subcommittees; or,

(D) previously served as a Director, a director of the Nasdaq Board of Directors, or a Governor, but does not serve currently in any of these positions.

(2) If the complaint alleges at least one cause of action involving a violation of a statute or a rule described in Rule 9120(s), the Chief Hearing Officer may select as a Panelist a person who currently serves on the Market Regulation Committee or who previously served on the Market Regulation Committee not earlier than four years before the date the complaint was served upon the Respondent who was the first served Respondent in the disciplinary proceeding for which the Hearing Panel or the Extended Hearing Panel is being appointed.

(c) Extended Hearing Panel

Upon consideration of the complexity of the issues involved, the probable length of the hearing, or other factors that the Chief Hearing Officer deems material, the Chief Hearing Officer may determine that a matter shall be designated an Extended Hearing, and that such matter shall be considered by an Extended Hearing Panel. The Extended Hearing Panel shall be composed of a Hearing Officer and two Panelists, except as provided in Rule 9234(a), (c), (d), or (e). The Hearing Officer will serve as the chair of the Extended Hearing Panel. The Panelists shall be associated with a member of the Association, or retired therefrom. The Chief Hearing Officer shall have discretion to compensate any or all Panelists of an Extended Hearing Panel at the rate then in effect for arbitrators appointed under the Rule 10000 Series.

(1) Except as provided in (2), the Chief Hearing Officer shall select as a Panelist a person who meets the criteria set forth in paragraph (b)(1).

(2) If the complaint alleges at least one cause of action involving a violation of a statute or a rule described in Rule 9120(s), the Chief Hearing Officer may select as a Panelist a person who currently serves on the Market Regulation Committee or who

previously served on the Market Regulation Committee not earlier than four years before the date the complaint was served upon the Respondent who was the first served Respondent in the disciplinary proceeding for which the Hearing Panel or the Extended Hearing Panel is being appointed.

(d) Observer

A person who is qualified to serve as a Panelist may be designated by the Chief Hearing Officer to serve as an observer to a Hearing Panel or an Extended Hearing Panel. If the Chief Hearing Officer designates more than two people to serve as observers to a Hearing Panel or an Extended Hearing Panel, the Chief Hearing Officer shall obtain the consent of the Parties. An observer may attend any hearing of a disciplinary proceeding and observe the proceeding, but may not vote or participate in any other manner in the hearing or the deliberations of the Hearing Panel or the Extended Hearing Panel, or participate in the administration of the disciplinary proceeding.

9232. Criteria for Selection of Panelists and Replacement Panelists

(a) Chief Hearing Officer Selection Alternatives

Following a determination of whether a Hearing Panel or an Extended Hearing Panel should be appointed, the Chief Hearing Officer shall determine:

- (1) which District Committee shall be the Primary District Committee from which Panelists may be selected; and
- (2) whether one of the Panelists may be selected from the Market Regulation Committee.

(b) Criteria for Selection of Panelist from Market Regulation Committee

The Chief Hearing Officer may select one but not more than one Panelist from the Market Regulation Committee, as provided in Rule 9231, to serve in a disciplinary proceeding if the complaint alleges at least one cause of action involving a violation of a statute or a rule described in Rule 9120(s).

(c) Criteria for Designation of Primary District Committee

The Chief Hearing Officer shall designate a District Committee as the Primary District Committee based upon relevant facts and circumstances of the case, including but not limited to:

- (1) the location of a Respondent's principal office if the Respondent is or was a member firm;
- (2) the location of a Respondent's office at the time of the alleged misconduct if the Respondent is or was an associated person;
- (3) the location of the office of a member or an associated person, or a former member or associated person, where the alleged misconduct occurred;
- (4) the location of witnesses at the time of the filing of the complaint, especially the location of witnesses who are or were customers of a Respondent;
- (5) the location, at the time of the alleged misconduct, of the main, branch, or other office in which supervisory personnel, who are or were responsible for the supervision of a Respondent, were employed; and
- (6) the location, at the time of the alleged misconduct, of the main, branch, or other office in which supervisory personnel, who are or were responsible for the

supervision of the office, division, function, or segment of the member where the alleged misconduct occurred, were employed.

(d) Criteria for Appointment of a Panelist

After the Chief Hearing Officer designates the Primary District Committee, the Chief Hearing Officer shall select Panelists from the current members of the Primary District Committee, the other categories of persons eligible to serve as Panelists as set forth in Rule 9231(b)(1)(A) through (D) or, if applicable, in Rule 9231(c), who are located in the same geographic area as the Primary District Committee, and, if applicable, from the current or former members of the Market Regulation Committee, based upon the following criteria:

(1) expertise;

(2) the absence of any conflict of interest or bias, and any appearance thereof;

(3) availability; and,

(4) the frequency with which a person has served as a Panelist on a Hearing Panel or an Extended Hearing Panel during the past two years, favoring the selection of a person as a Panelist who has never served or served infrequently as a Panelist during the period.

(e) Appointment of Panelists from Other than Primary District Committee

Designation of the Primary District Committee does not preclude the Chief Hearing Officer from selecting one or more Panelists from other categories of eligible Panelists if the Chief Hearing Officer determines that one or more persons from other categories of eligible Panelists more clearly meet the criteria of paragraph (d)(1) through (4) and the public interest or the administration of NASD Regulation's regulatory and enforcement program would be enhanced by the selection of such Panelists.

9233. Hearing Panel or Extended Hearing Panel: Recusal and Disqualification of Hearing Officers**(a) Recusal, Withdrawal of Hearing Officer**

If at any time a Hearing Officer determines that he or she has a conflict of interest or bias or circumstances otherwise exist where his or her fairness might reasonably be questioned, the Hearing Officer shall notify the Chief Hearing Officer and the Chief Hearing Officer shall issue and serve on the Parties a notice stating that the Hearing Officer has withdrawn from the matter. In the event that a Hearing Officer withdraws, is incapacitated, or otherwise is unable to continue service after being appointed, the Chief Hearing Officer shall appoint a replacement Hearing Officer.

(b) Motion for Disqualification

A Party may move for the disqualification of a Hearing Officer. A motion shall be based upon a reasonable, good faith belief that a conflict of interest or bias exists or circumstances otherwise exist where the Hearing Officer's fairness might reasonably be questioned, and shall be accompanied by an affidavit setting forth in detail the facts alleged to constitute grounds for disqualification, and the dates on which the Party learned of those facts. Such motions shall be filed not later than 15 days after the later of:

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

or

(2) when the Party was notified of the assignment of the Hearing Officer.

(c) Disposition of Disqualification Motion

A motion for disqualification of a Hearing Officer shall be decided by the Chief Hearing Officer who shall promptly investigate whether disqualification is required and issue a written ruling on the motion. In the event of a disqualification of the Hearing Officer, the Chief Hearing Officer shall appoint a replacement Hearing Officer.

9234. Hearing Panel or Extended Hearing Panel: Recusal and Disqualification of Panelists**(a) Recusal, Withdrawal of Panelist**

If at any time a Panelist of a Hearing Panel or an Extended Hearing Panel determines that he or she has a conflict of interest or bias or circumstances otherwise exist where his or her fairness might reasonably be questioned, the Panelist shall notify the Hearing Officer and the Hearing Officer shall issue and serve on the Parties a notice stating that the Panelist has withdrawn from the matter. In the event that a Panelist withdraws, is incapacitated, or otherwise is unable to continue service after being appointed, the Chief Hearing Officer may, in the exercise of discretion, determine whether to appoint a replacement Panelist. In the event that both Panelists withdraw, are incapacitated, or otherwise are unable to continue service after being appointed, the Chief Hearing Officer shall appoint two replacement Panelists.

(b) Disqualification: Motion of Party; Order of Chief Hearing Officer

(1) A Party may file a motion to disqualify a Panelist of a Hearing Panel or an Extended Hearing Panel. A motion shall be based upon a reasonable, good faith belief that a conflict of interest or bias exists or circumstances otherwise exist where the Panelist's fairness might reasonably be questioned, and shall be accompanied by an

affidavit setting forth in detail the facts alleged to constitute grounds for disqualification, and (2) the dates on which the Party learned of those facts.

(2) Such motions shall be filed not later than 15 days after the later of:

(A) when the Party learned of the facts believed to constitute the disqualification; or

(B) when the Party was notified of the appointment of the Panelist.

(3) The Chief Hearing Officer may order the disqualification of a Panelist of a Hearing Panel or an Extended Hearing Panel if the Chief Hearing Officer determines that a conflict of interest or bias exists or circumstances otherwise exist where the Panelist's fairness might reasonably be questioned, and shall state the facts constituting the grounds for disqualification.

(c) Disposition of Disqualification Motion: Challenge to Single Member of Hearing Panel

If a Party files a motion to disqualify a Panelist of a Hearing Panel or an Extended Hearing Panel, the Hearing Officer shall promptly investigate whether disqualification is required and shall issue a written ruling on the motion. In the event a Panelist is disqualified, the Chief Hearing Officer may, in the exercise of discretion, appoint a replacement Panelist.

(d) Disposition of Disqualification Motion: Challenge to Both Panelists of Hearing Panel or Extended Hearing Panel

If a Party files a motion to disqualify both Panelists of a Hearing Panel or an Extended Hearing Panel, the Hearing Officer shall promptly investigate whether disqualification is required and shall issue a written ruling on the motion. In the event one Panelist is disqualified, the Chief Hearing Officer may, in the exercise of discretion, appoint a replacement Panelist. In the event

both Panelists are disqualified, the Chief Hearing Officer shall promptly appoint two persons as replacement Panelists.

(e) Disposition of Disqualification Motion: Challenge to Both Panelists of Hearing Panel or Extended Hearing Panel and Hearing Officer

If a Party files a motion to disqualify both Panelists of a Hearing Panel or an Extended Hearing Panel, and the Hearing Officer, the Chief Hearing Officer shall promptly investigate whether disqualification is required and shall issue a written ruling on the motion. In the event a Panelist is disqualified, the Chief Hearing Officer may, in the exercise of discretion, appoint a replacement Panelist. In the event both Panelists are disqualified, the Chief Hearing Officer shall promptly appoint two persons as replacement Panelists. In the event a Hearing Officer and a Panelist are disqualified, the Chief Hearing Officer shall promptly appoint a replacement Hearing Officer. In the event both Panelists and the Hearing Officer are disqualified, the Chief Hearing Officer shall promptly appoint a replacement Hearing Officer and two persons as replacement Panelists.

(f) Criteria for Replacement Panelist

If the Chief Hearing Officer appoints a replacement Panelist by operation of this Rule, the Chief Hearing Officer shall do so using the criteria set forth in Rule 9232.

9235. Hearing Officer Authority

(a) Hearing Officer Authority

The Hearing Officer shall be selected by the Chief Hearing Officer and shall have authority to do all things necessary and appropriate to discharge his or her duties. In addition to the powers exercised by all members of the Hearing Panel or, if applicable, the Extended Hearing Panel, the powers of the Hearing Officer include, but are not limited to:

- (1) holding pre-hearing and other conferences and requiring the attendance at any such conference of at least one representative of each Party who has authority to negotiate the resolution of issues in controversy;
- (2) regulating the course of the hearing;
- (3) ordering the Parties to present oral arguments at any stage of the disciplinary proceeding;
- (4) resolving any and all procedural and evidentiary matters, discovery requests, and other non-dispositive motions, subject to any limitations set forth elsewhere in the Code;
- (5) reopening any hearing, upon notice to all Parties, prior to the issuance of the decision of the Hearing Panel or, if applicable, the Extended Hearing Panel;
- (6) creating and maintaining the official record of the disciplinary proceeding; and
- (7) drafting a decision that represents the views of the majority of the Hearing Panel or, if applicable, the Extended Hearing Panel.

(b) Authority in the Absence of Hearing Officer

If the Hearing Officer appointed to a case is temporarily unavailable or unable for any reason to discharge his or her duties in a particular proceeding under conditions not requiring the appointment of a replacement Hearing Officer, the Chief Hearing Officer or the Deputy Chief Hearing Officer in his or her discretion may exercise the necessary authority in the same manner as if he or she had been appointed Hearing Officer in the particular proceeding.

9240. Pre-hearing Conference and Submission**9241. Pre-hearing Conference****(a) Purposes**

The purposes of a pre-hearing conference include, but are not limited to:

- (1) expediting the disposition of the proceeding;
- (2) establishing procedures to manage the proceeding efficiently; and
- (3) improving the quality of the hearing through more thorough preparation.

(b) Procedure

On his or her own motion or at the request of a Party, the Hearing Officer may, in his or her discretion, order counsel or any Party to meet for a pre-hearing conference. Such conferences also may be held with one or more persons participating by telephone or other remote means.

(c) Subjects to be Discussed

At a pre-hearing conference, the Hearing Officer may consider and take action with respect to any or all of the following:

- (1) simplification and clarification of the issues;
- (2) exchange of witness and exhibit lists and copies of exhibits;
- (3) stipulations, admissions of fact, and stipulations concerning the contents, authenticity, or admissibility into evidence of documents;
- (4) matters of which official notice may be taken;
- (5) the schedule for exchanging pre-hearing motions or briefs, if any;
- (6) the method of service and filing of papers by the Parties;
- (7) determination of hearing dates;

- (8) amendments to the complaint or answers thereto;
- (9) production of documents as set forth in Rule 9251; and
- (10) such other matters as may aid in the orderly and expeditious disposition of the proceeding.

(d) Scheduling

An initial pre-hearing conference, unless determined by the Hearing Officer to be unnecessary or premature, shall be held within 21 days after filing of an answer, or after the expiration of the second period provided for filing an answer as set forth in Rule 9215(f). When a complaint names multiple Respondents, the 21-day period shall commence from the later of (i) the date on which the last timely answer was filed, or (ii) if one or more Respondents have failed to answer, from the expiration of the second period provided for filing an answer under Rule 9215(f).

(e) Pre-hearing Order

At or following the conclusion of any conference held pursuant to this Rule, the Hearing Officer shall enter a written ruling or order that recites any agreements reached and any procedural determinations made by the Hearing Officer.

(f) Failure to Appear: Default

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

9242. Pre-hearing Submission**(a) Requirement to Furnish Information**

Prior to a hearing before a Hearing Panel or, if applicable, an Extended Hearing Panel, the Hearing Officer, in the exercise of his or her discretion, may order a Party to furnish to all other Parties and the Hearing Panel or, if applicable, the Extended Hearing Panel, such information as deemed appropriate, including any or all of the following:

- (1) an outline or narrative summary of a Party's case or defense;
- (2) the legal theories upon which a Party shall rely;
- (3) a list and copies of documents that a Party intends to introduce at the hearing;
- (4) a list of witnesses who shall testify on a Party's behalf, including the witnesses' names, occupations, addresses, and a brief summary of their expected testimony; and,
- (5) if a witness shall be called to testify as an expert, a statement of the expert's qualifications, a listing of other proceedings in which the expert has given expert testimony, a list of the expert's publications, and copies of those publications that are not readily available to the other Parties and the Hearing Panel or, if applicable, the Extended Hearing Panel.

9250. Discovery**9251. Inspection and Copying of Documents in Possession of Staff****(a) Documents to be Available for Inspection and Copying**

- (1) Unless otherwise provided by this Rule, or by order of the Hearing Officer, the Department of Enforcement shall make available for inspection and copying by any Respondent, Documents prepared or obtained by Interested Association Staff in

connection with the investigation that led to the institution of proceedings. Such Documents include but are not limited to:

- (A) requests for information issued pursuant to Rule 8210;
- (B) every other written request directed to persons not employed by the Association to provide Documents or to be interviewed;
- (C) the Documents provided in response to any such requests described in (A) and (B) above;
- (D) all transcripts and transcript exhibits; and
- (E) all other Documents obtained from persons not employed by the Association.

(2) The Department of Enforcement shall promptly inform the Hearing Officer and each other Party if, after the issuance of a complaint, requests for information under Rule 8210 are issued under the same investigative file number under which the investigation leading to the institution of disciplinary proceedings was conducted. If Interested Association Staff receives Documents pursuant to a request for information under Rule 8210 after Documents have been made available to a Respondent for inspection and copying as set forth in paragraph (a), and if such Documents are material and relevant to the disciplinary proceeding in which such Respondent is a Party, the additional Documents shall be made available to the Respondent not later than 14 days after the Interested Association Staff receives such Documents. If a hearing on the merits is scheduled to begin, Interested Association Staff shall make the additional Documents available to the Respondent not less than ten days before the hearing. If Interested

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

(3) Nothing in subparagraph (a)(1) shall limit the discretion of the Department of Enforcement to make available any other Document or the authority of the Hearing Officer to order the production of any other Document.

(b) Documents That May Be Withheld

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

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

(B) the Document is an examination or inspection report, an internal memorandum, or other note or writing prepared by an Association employee that shall not be offered in evidence;

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

Association, a federal, state, or foreign regulatory authority, or a self-regulatory organization; or

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

(2) Nothing in subparagraph (b)(1) authorizes the Department of Enforcement to withhold a Document, or a part thereof, that contains material exculpatory evidence.

(c) Withheld Document List

The Hearing Officer may require the Department of Enforcement to submit to the Hearing Officer a list of Documents withheld pursuant to subparagraphs (b)(1)(A) through (D) or to submit to the Hearing Officer any Document withheld. Upon review, the Hearing Officer may order the Department of Enforcement to make the list or any Document withheld available to the other Parties for inspection and copying. A motion to require the Department of Enforcement to produce a list of Documents withheld pursuant to paragraph (b) shall be based upon some reason to believe that a Document is being withheld in violation of the Code.

(d) Timing of Inspection and Copying

The Hearing Officer shall determine the schedule of production of documents pursuant to this Rule. Unless otherwise ordered by the Hearing Officer, the Department of Enforcement shall commence making Documents available to a Respondent for inspection and copying pursuant to this Rule not later than 21 days after service of the Respondent's answer or, if there are multiple Respondents, not later than 21 days after the last timely answer is filed. If a Respondent in a

multi-Respondent case fails to answer, the Department of Enforcement shall make Documents available to all other Respondents not later than the later of:

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

(2) the expiration of the second period provided for filing an answer as set forth in Rule 9215(f).

(e) Place and Time of Inspection and Copying

Documents subject to inspection and copying pursuant to this Rule shall be made available to the Respondent for inspection and copying at the Association office where they are ordinarily maintained, or at such other Association office as the Hearing Officer, in his or her discretion, shall designate, or as the Parties otherwise agree. A Respondent shall be given access to the Documents at the Association's offices during normal business hours. A Respondent shall not be given custody of the Documents or be permitted to remove the Documents from the Association's offices.

(f) Copying Costs

A Respondent may obtain a photocopy of all Documents made available for inspection. A Respondent shall be responsible for the cost of photocopying. Unless otherwise ordered, charges for copies made at the request of a Respondent shall be at a rate to be established by the NASD Regulation Board.

(g) Failure to Make Documents Available -- Harmless Error

In the event that a Document required to be made available to a Respondent pursuant to this Rule is not made available by the Department of Enforcement, no rehearing or amended decision of a proceeding already heard or decided shall be required unless the Respondent

establishes that the failure to make the Document available was not harmless error. The Hearing Officer, or, upon appeal or review, a Subcommittee, an Extended Proceeding Committee, or the National Adjudicatory Council, shall determine whether the failure to make the document available was not harmless error, applying applicable Association, Commission, and federal judicial precedent.

9252. Requests for Information

(a) Content and Timing of Requests

A Respondent who requests that the Association invoke Rule 8210 to compel the production of Documents or testimony at the hearing shall do so in writing and serve copies on all Parties. Such request shall: be submitted to the Hearing Officer no later than 21 days before the scheduled hearing date; describe with specificity the Documents, the category or type of Documents, or the testimony sought; state why the Documents, the category or type of Documents, or the testimony are material; describe the requesting Party's previous efforts to obtain the Documents, the category or type of Documents, or the testimony through other means; and state whether the custodian of each Document, or the custodian of the category or type of Documents, or each proposed witness is subject to the Association's jurisdiction.

(b) Standards for Issuance

A request that the Association compel the production of Documents or testimony shall be granted only upon a showing that: the information sought is relevant, material, and non-cumulative; the requesting Party has previously attempted in good faith to obtain the desired Documents and testimony through other means but has been unsuccessful in such efforts; and each of the persons from whom the Documents and testimony are sought is subject to the

Association's jurisdiction. In addition, the Hearing Officer shall consider whether the request is unreasonable, oppressive, excessive in scope, or unduly burdensome, and whether the request should be denied, limited, or modified.

(c) Limitations on Requests

If, after consideration of all the circumstances, the Hearing Officer determines that a request submitted pursuant to this Rule is unreasonable, oppressive, excessive in scope, or unduly burdensome, he or she shall deny the request, or grant it only upon such conditions as fairness requires. In making the foregoing determination, the Hearing Officer may inquire of the other Parties whether they shall stipulate to the facts sought to be proved by the Documents or testimony sought. If the Hearing Officer grants the request, the Hearing Officer shall order that requested Documents be produced to all Parties not less than ten days before the hearing, and order that witnesses whose testimony was requested appear and testify at the hearing. If the Hearing Officer grants the request ten or fewer days before a hearing on the merits is scheduled to begin or after such hearing begins, the Documents or testimony shall be produced immediately to all Parties.

9253. Production of Witness Statements

(a) Availability

A Respondent in a disciplinary proceeding may file a motion requesting that the Department of Enforcement produce for inspection and copying any statement of any person called or to be called as a witness by the Department of Enforcement that pertains, or is expected to pertain, to his or her direct testimony and that would be required to be produced pursuant to the Jencks Act, 18 U.S.C. § 3500. The production shall be made at a time and place fixed by the

Hearing Officer and shall be made available to all Parties. Such production shall be made under conditions intended to preserve the items to be inspected or copied.

(b) Failure to Produce -- Harmless Error

In the event that a statement required to be made available for inspection and copying by a Respondent is not provided by the Department of Enforcement, there shall be no rehearing of a proceeding already heard, or issuance of an amended decision in a proceeding already decided, unless the Respondent establishes that the failure to provide the statement was not harmless error.

The Hearing Officer, or upon appeal or review, a Subcommittee, an Extended Proceeding Committee, or the National Adjudicatory Council, shall determine whether the failure to provide any statement was not harmless error, applying applicable Association, Commission, and federal judicial precedent.

9260. Hearing and Decision

9261. Evidence and Procedure in Hearing

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

No later than ten days before the hearing, or at such earlier date as may be specified by the Hearing Officer, each Party shall submit to all other Parties and to the Hearing Officer copies of documentary evidence and the names of the witnesses each Party intends to present at the hearing.

(b) Party's Right to Be Heard

If a hearing is held, a Party shall be entitled to be heard in person, by counsel, or by the Party's representative.

(c) Request to Submit Additional Evidence

Notwithstanding paragraph (a), a Party, for good cause shown, may seek to submit any additional evidence at the hearing as the Hearing Officer, in his or her discretion, determines may be relevant and necessary for a complete record.

9262. Testimony

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

9263. Evidence: Admissibility**(a) Criteria for Receiving and Excluding Evidence**

The Hearing Officer shall receive relevant evidence, and may exclude all evidence that is irrelevant, immaterial, unduly repetitious, or unduly prejudicial.

(b) Objections

Objections to the admission or exclusion of evidence shall be made on the record and shall succinctly state the grounds relied upon. Excluded material shall be deemed a supplemental document, which shall be attached to the record and retained under Rule 9267.

9264. Motion for Summary Disposition**(a) Pre-hearing**

After a Respondent's answer has been filed and Documents have been made available to that Respondent for inspection and copying pursuant to Rule 9251, the Respondent or the Department of Enforcement, without leave of the Hearing Officer, may make a motion for summary disposition of any or all the causes of action in the complaint with respect to that Respondent. All pre-hearing motions for summary disposition and supporting papers shall be filed

at least 21 days before the time set for the hearing, or at such earlier time as ordered by the Hearing Officer. Notwithstanding the provisions of Rule 9146(d), any opposition or response to a pre-hearing motion for summary disposition shall be filed at least seven days before the time set for the hearing.

(b) After Commencement of Hearing on Merits

After a hearing on the merits has commenced, a Respondent may make a motion for summary disposition of any or all of the causes of action in the complaint with respect to that Respondent only with leave of the Hearing Officer.

(c) Form of Papers

A motion for summary disposition pursuant to paragraph (a) shall be accompanied by the following: a statement of undisputed facts; a supporting memorandum of points and authorities; and affidavits or declarations that set forth such facts as would be admissible at the hearing and show affirmatively that the affiant is competent to testify to the matters stated therein. A memorandum of points and authorities in support or opposition shall not exceed 35 pages.

(d) Rulings on Motion

The Hearing Panel or, if applicable, the Extended Hearing Panel, shall promptly grant or deny the motion for summary disposition or shall defer decision on the motion. The Hearing Panel or, if applicable, the Extended Hearing Panel, may grant the motion for summary disposition if there is no genuine issue with regard to any material fact and the Party that files the motion is entitled to summary disposition as a matter of law. If a Party files a motion under paragraph (a), the facts alleged in the pleadings of the Party against whom the motion is made shall be taken as true, except as modified by stipulations or admissions made by the non-moving

Party, by uncontested affidavits or declarations, or by facts officially noticed pursuant to Rule 9145. If a Party opposing a motion for summary disposition made under paragraph (a) cannot present, by affidavit prior to the hearing, facts essential to justify the Party's opposition to the motion, the Hearing Panel or, if applicable, the Extended Hearing Panel, may deny the motion for summary disposition or defer the decision on the motion.

9265. Record of Hearing

(a) Recordation

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

(b) Availability of a Transcript

A transcript of a pre-hearing conference and a transcript of a hearing shall be available to a Party for purchase from the court reporter at prescribed rates. A witness may purchase from the court reporter a transcript of his or her own testimony.

(c) Transcript Correction

Prior to the filing of post-hearing briefs or proposed findings and conclusions, or within such earlier time as ordered by the Hearing Officer, a Party or witness may seek to correct his or her transcript. A proposed correction of the transcript shall be submitted to the Hearing Officer by affidavit. Upon notice to all Parties to the disciplinary proceeding, the Hearing Officer may order the correction to the transcript as requested or sua sponte.

9266. Proposed Findings of Fact, Conclusions of Law, and Post-Hearing Briefs**(a) Discretion of Hearing Officer to Require Proposed Findings of Fact, Conclusions of Law, and Post-Hearing Briefs**

At the discretion of the Hearing Officer, the Parties may be ordered to file proposed findings of facts and conclusions of law, or post-hearing briefs, or both. The Hearing Officer may order that such proposed findings and conclusions be filed together with, or as part of, post-hearing briefs.

(b) Reference to Record Required

Proposed findings of fact or other statements of fact in briefs shall be supported by specific references to the record.

(c) Period for Filing

In any case in which the Hearing Officer ordered the filing of proposed findings or conclusions of law, or post-hearing briefs, the Hearing Officer shall, after consultation with the Parties, prescribe the period within which proposed findings and conclusions of law and post-hearing briefs are to be filed. Such period shall be reasonable under all the circumstances but the total period allowed for the filing of post-hearing submissions shall not exceed 60 days after the conclusion of the hearing unless the Hearing Officer, for good cause shown, permits a different period and sets forth in an order the reasons why a longer period is necessary.

(d) Form, Length of Papers

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

9267. Record; Supplemental Documents Attached to Record; Retention**(a) Contents of the Record, Retention**

The record shall consist of:

- (1) the complaint, answers, each notice of hearing, pre-hearing order, and any amendments thereto;
- (2) each application, motion, submission, and other paper, and any amendments, motions, objections, and exceptions to or regarding them;
- (3) each transcript of a pre-hearing conference and of a hearing, and each stipulation, transcript of testimony, Document, and other item admitted into evidence;
- (4) each written communication accepted at the discretion of the Hearing Officer;
- (5) with respect to a motion to disqualify a Hearing Officer under Rule 9233 or a Panelist under Rule 9234, each affidavit or transcript of testimony taken and the ruling made in connection with the request;
- (6) all proposed findings and conclusions;
- (7) each written ruling, order, and decision issued by the Chief Hearing Officer, Hearing Officer, Hearing Panel or, if applicable, Extended Hearing Panel; and,
- (8) any other Document or item accepted into the record by the Hearing Officer, the Hearing Panel or, if applicable, the Extended Hearing Panel.

(b) Supplemental Documents Attached To Record; Retention

- (1) A supplemental Document attached to the record is any Document submitted to the Hearing Officer that did not become part of the record, including:

(A) a Document not admitted by the Hearing Officer, Hearing Panel or, if applicable, the Extended Hearing Panel;

(B) any matter stricken from any filing or stricken during an oral presentation, including any matter stricken from any filing or stricken during any oral presentation because the Adjudicator determined it was scandalous or impertinent as provided in Rule 9136(e); and

(C) a list of Documents, if any, that a Respondent unsuccessfully sought by motion to inspect and copy under Rule 9251(c).

(2) A supplemental Document attached to the record shall not constitute part of the record, but shall be retained until the date upon which the Association's decision becomes final disciplinary action or, if applicable, upon the conclusion of any review by the Commission or the federal courts.

(c) Substitution of Copies

Parties may submit to the Hearing Officer for substitution a true copy of a Document in the record.

9268. Decision of Hearing Panel or Extended Hearing Panel

(a) Majority Decision

Within 60 days after the final date allowed for filing proposed findings of fact, conclusions of law, and post-hearing briefs, or by a date established at the discretion of the Chief Hearing Officer, the Hearing Officer shall prepare a written decision that reflects the views of the Hearing Panel or, if applicable, the Extended Hearing Panel, as determined by majority vote.

(b) Contents of Decision

The decision shall include:

- (1) a statement describing the investigative or other origin of the disciplinary proceeding;
- (2) the specific statutory or rule provisions that were alleged to have been violated;
- (3) a statement setting forth the findings of fact with respect to any act or practice the Respondent was alleged to have committed or omitted;
- (4) the conclusions of the Hearing Panel, or Extended Hearing Panel, as to whether the Respondent violated any provision alleged in the complaint;
- (5) a statement of the Hearing Panel, or the Extended Hearing Panel, in support of the disposition of the principal issues raised in the proceeding; and
- (6) a statement describing any sanction imposed, the reasons therefor, and the date upon which such sanction shall become effective.

(c) Dissenting Opinion

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

(d) Service, Notice, And Dissemination Requirements

The Office of Hearing Officers shall promptly serve the decision of the Hearing Panel, or the Extended Hearing Panel, and any dissenting opinion on the Parties; publish notice of the decision and any dissenting opinion in the Central Registration Depository; and provide a copy of

the decision and any dissenting opinion to each member of the Association with which a Respondent is associated.

(e) Appeal or Review

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

9269. Failure to Appear at Hearing; Default

(a) Failure to Appear May Result in Default Decision

A Party who fails to appear at a hearing of which he or she has been duly notified may be deemed to be in default. As a consequence of the default, the allegations against a non-appearing Respondent may be deemed admitted and a default decision entered by the Hearing Officer. If the non-appearing Party is the Department of Enforcement, the Hearing Officer may order that the complaint be dismissed with prejudice. In addition, the Hearing Officer may order that the non-appearing Party pay the costs incurred by other Parties in connection with their appearance at the hearing.

(b) Request to Set Aside Default

A Party may, for good cause shown, file a motion to set aside a default, dismissal, and the imposition of costs.

9270. Settlement Procedure

(a) When Offer Allowed; No Stay of Proceeding

A Respondent who is notified that a proceeding has been instituted against him or her may propose in writing an offer of settlement at any time. If a Respondent proposes an offer of

settlement before the hearing on the merits has begun, the making of an offer of settlement shall not stay the proceeding, unless otherwise decided by the Hearing Officer. If a Respondent proposes an offer of settlement after the hearing on the merits has begun, the making of an offer of settlement shall not stay the proceeding, unless otherwise decided by the Hearing Panel or, if applicable, the Extended Hearing Panel.

(b) Settlement Offer Shall Conform to Rule

A Respondent who makes an offer of settlement shall do so in conformity with the provisions of this Rule and shall not make such an offer of settlement frivolously or propose a sanction inconsistent with the seriousness of the violations to be found.

(c) Content and Signature Requirements

An offer of settlement shall be in writing and signed by the person making the offer, and, if the person is represented by counsel or a representative, signed also by the counsel or representative. The offer of settlement shall contain in reasonable detail:

- (1) a statement describing the investigative or other origin of the disciplinary action;
- (2) the specific statutory or rule provisions that the member or associated person is alleged to have violated;
- (3) a statement containing the acts or practices which the member or associated person is alleged to have engaged in or omitted;
- (4) a statement consenting to findings of fact and violations consistent with the statements contained in the offer of settlement required by subparagraphs (c)(2) and (c)(3); and,

(5) a proposed sanction to be imposed that is consistent with the Association's then current sanction guidelines or, if inconsistent with the sanction guidelines, a detailed statement supporting the proposed sanction.

(d) Waiver

(1) If a Respondent submits an offer of settlement, by the submission such Respondent waives:

(A) any right of such Respondent to a hearing before a Hearing Panel or, if applicable, an Extended Hearing Panel, and any right of appeal to the National Adjudicatory Council, the Commission, and the courts, or any right otherwise to challenge or contest the validity of the order issued, if the offer of settlement and order of acceptance are accepted;

(B) any right of such Respondent to claim bias or prejudgment of the Chief Hearing Officer, Hearing Officer, a Hearing Panel or, if applicable, an Extended Hearing Panel, a Panelist on a Hearing Panel, or, if applicable, an Extended Hearing Panel, the General Counsel, the National 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 offer of settlement and the order of acceptance, or other consideration of the offer of settlement and order of acceptance, including acceptance, or rejection of such offer of settlement and order of acceptance; and

(C) any right of such Respondent to claim that a person or body violated the ex parte prohibitions of Rule 9143 or the separation of functions prohibitions

of Rule 9144, in connection with such person's or body's participation in 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 settlement, including acceptance or rejection of such offer of settlement and order of acceptance.

(2) If an offer of settlement and an order of acceptance are rejected, the Respondent shall be bound by the waivers made in this paragraph (d) for conduct by persons or bodies occurring during the period beginning from the date the offer of settlement was submitted and ending upon the rejection of the offer of settlement and order of acceptance.

(e) Uncontested Offers of Settlement

If a Respondent makes an offer of settlement and the Department of Enforcement does not oppose it, the offer of settlement is uncontested. If an offer of settlement is determined to be uncontested by the Department of Enforcement before a hearing on the merits has begun, the Department of Enforcement shall transmit the uncontested offer of settlement and a proposed order of acceptance to the National Adjudicatory Council with its recommendation. If an offer of settlement is determined to be uncontested by the Department of Enforcement after a hearing on the merits has begun, the Department of Enforcement shall transmit the offer of settlement and a proposed order of acceptance to the Hearing Panel or, if applicable, the Extended Hearing Panel for acceptance or rejection. If accepted by the Hearing Panel or, if applicable, Extended Hearing Panel, the offer of settlement and the order of acceptance shall be forwarded to the National Adjudicatory Council to accept or reject.

(1) A proposed order of acceptance shall make findings of fact, including a statement of the rule, regulation, or statutory provision violated, and impose sanctions consistent with the terms of the offer of settlement.

(2) Before an offer of settlement and an order of acceptance shall become effective, they shall be submitted to and accepted by the National Adjudicatory Council. The Review Subcommittee or the General Counsel may accept such offer of settlement and order of acceptance or refer them to the National Adjudicatory Council for acceptance or rejection by the National Adjudicatory Council. The Review Subcommittee may reject such offer of settlement and order of acceptance or refer them to the National Adjudicatory Council for acceptance or rejection by the National Adjudicatory Council.

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

(f) Contested Offers of Settlement

If a Respondent makes an offer of settlement and the Department of Enforcement opposes it, the offer of settlement is contested. When the Department of Enforcement opposes an offer of settlement, the Respondent's written offer and the Department of Enforcement's written opposition shall be submitted to a Hearing Panel or, if applicable, an Extended Hearing Panel.

The Hearing Panel or, if applicable, the Extended Hearing Panel, may order the Department of Enforcement and the Respondent to attend a settlement conference.

(1) If a contested offer of settlement is approved by the Hearing Panel or, if applicable, Extended Hearing Panel, the Hearing Officer shall draft an order of acceptance of the offer of settlement. The order of acceptance shall make findings of fact, including a statement of the rule, regulation, or statutory provision violated, and impose sanctions consistent with the terms of the offer of settlement. The offer of settlement, any written opposition thereto, and the order of acceptance shall be forwarded to the National Adjudicatory Council to accept or reject.

(2) Before an offer of settlement and order of acceptance shall become effective, they shall be submitted to, and accepted by, the National Adjudicatory Council. The Review Subcommittee may accept or reject such offer of settlement and order of acceptance or refer them to the National Adjudicatory Council for acceptance or rejection by the National Adjudicatory Council.

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

(g) Final Disciplinary Action of Association

The proceeding shall conclude as of the date the order of acceptance is issued. The order of acceptance shall constitute final disciplinary action of the Association. The sanction shall take effect as set forth in the order.

(h) Rejection of Offer of Settlement

If an uncontested offer of settlement or an order of acceptance is rejected by the Hearing Panel or, if applicable, the Extended Hearing Panel, the Review Subcommittee, or the National Adjudicatory Council, the Respondent shall be notified in writing and the offer of settlement and proposed order of acceptance shall be deemed withdrawn. If a contested offer of settlement or an order of acceptance is rejected by the Hearing Panel or, if applicable, the Extended Hearing Panel, the Review Subcommittee, or the National Adjudicatory Council, the Respondent shall be notified in writing and the offer of settlement and proposed order of acceptance shall be deemed withdrawn. The rejected offer and proposed order of acceptance shall not constitute a part of the record in any proceeding against the Respondent making the offer.

(i) Disciplinary Proceeding With Multiple Respondents

When a disciplinary proceeding names multiple Respondents, settlement offers may be accepted or rejected as to any one or all of the Respondents submitting offers. The proceedings shall thereafter be terminated as to those Respondents whose offers of settlement are accepted, but such Respondents may be required to participate in any hearing conducted as to those Respondents that did not submit offers of settlement or whose offers of settlement were rejected.

(j) No Prejudice from Rejected Offer of Settlement

If an offer of settlement is rejected by a Hearing Panel or, if applicable, an Extended Hearing Panel, the Review Subcommittee, or the National Adjudicatory Council, the Respondent shall not be prejudiced by the offer, which may not be introduced into evidence in connection with the determination of the issues involved in the pending complaint or in any other proceeding.

9280. Contemptuous Conduct**(a) Persons Subject to Sanctions**

If a Party, attorney for a Party, or other person authorized to represent others by Rule 9141, engages in conduct in violation of an order of a Hearing Officer, a Hearing Panel or, if applicable, an Extended Hearing Panel, or other contemptuous conduct during a proceeding, a Hearing Officer, Hearing Panel or, if applicable, an Extended Hearing Panel, may:

(1) subject the Party, attorney for a Party, or other person authorized to represent others by Rule 9141, to the sanctions set forth in paragraph (b); and

(2) exclude an attorney for a Party, or other person authorized to represent others by Rule 9141, under Rule 9150.

(b) Sanctions Other Than Exclusion

A Hearing Officer, Hearing Panel or, if applicable, an Extended Hearing Panel, may make such orders as are just in regard to a Party, an attorney for a Party, or other person authorized to represent others by Rule 9141.

(1) Such orders may include:

(A) an order providing that the matters on which the order is made or any other designated facts shall be taken to be established for the purposes of the disciplinary proceeding in accordance with the claim of the Party obtaining the order;

(B) an order providing that the disobedient Party may not support or oppose designated claims or defenses, or may not introduce designated matters in evidence;

(C) an order providing that pleadings or a specified part of the pleading shall be stricken, or an order providing that the proceeding shall be stayed until the Party subject to the order obeys it;

(D) in lieu of any of the foregoing orders or in addition thereto, an order providing that contemptuous conduct includes the failure to obey any order; and

(E) an order as provided in subparagraphs (A), (B), and (C) where a Party has failed to comply with an order to produce a person for examination, unless the Party failing to comply shows that such Party is unable to produce such person for examination.

(2) A Party that without substantial justification fails to disclose information required by the Rule 9240 Series and the Rule 9250 Series or otherwise required by order of the Hearing Officer, Hearing Panel or, if applicable, the Extended Hearing Panel, shall not, unless such failure is harmless, be permitted to use as evidence at a hearing, in a motion or in any other filing of papers, or in oral argument, any witness or information not so disclosed. In addition to, or in lieu of this sanction, the Hearing Officer, Hearing Panel or, if applicable, the Extended Hearing Panel, on motion and after affording an opportunity to be heard, may impose other appropriate sanctions. These sanctions may include any of the sanctions provided for in subparagraphs (b)(1)(A) through (C).

(c) National Adjudicatory Council Review of Exclusions

If an attorney for a Party, or other person authorized to represent others by Rule 9141, is excluded from a disciplinary hearing or conference, or any portion thereof, such attorney or other person may seek review of the exclusion by filing a motion to vacate with the National

Adjudicatory Council. Such motion to vacate shall be filed and served on all Parties within five days after service of the exclusion order. Any response shall be filed with the National Adjudicatory Council and served on all Parties within five days after the service of the motion to vacate. The National Adjudicatory Council or the Review Subcommittee shall consider such motion on an expedited basis and promptly issue a written order. The filing of a motion to vacate shall stay all aspects of the disciplinary proceeding until at least seven days after service of the order of the National Adjudicatory Council or the Review Subcommittee. The review proceedings shall be conducted on the basis of the written record without oral argument.

(d) Adjournment

The hearing, conferences, or other activities relating to the disciplinary proceeding shall be stayed pending the review by the National Adjudicatory Council or the Review Subcommittee of an exclusion order in paragraph (c). In the event that the National Adjudicatory Council or the Review Subcommittee upholds an exclusion of an attorney or other person authorized to represent others by Rule 9141, the Hearing Officer may, upon motion by a Party represented by an attorney or other person subject to an order of exclusion, grant an adjournment to allow the retention of new counsel or selection of a new representative. In determining whether to grant an adjournment or the length of an adjournment, the Hearing Officer shall consider whether there are other counsel or representatives of record on behalf of the Party, the availability of other counsel or other members of an excluded attorney's firm, or the availability of other representatives for the Party, and any other relevant factors.