

August 29, 2003

Katherine A. England
Assistant Director
Division of Market Regulation
Securities and Exchange Commission
450 Fifth Street, N.W.
Washington, D.C. 20549-1001

Re: File No. SR-NASD-2003-110, Amendment No. 1 – Proposed Uniform Hearing Procedures for and Consolidation of Rules Applicable to Expedited Proceedings

Dear Ms. England:

Pursuant to Rule 19b-4, enclosed please find Amendment No. 1 to the above-numbered rule filing. Also enclosed is a 3-1/2" disk containing Amendment No. 1 in Microsoft Word 7.0 to facilitate production of the Federal Register release.

Amendment No. 1 corrects various technical errors in the original rule filing and provides additional explanations for certain aspects of the proposed rule change. Amendment No. 1 completely replaces and supersedes the original rule filing.

If you have any questions, please contact James S. Wrona, Associate General Counsel, Office of General Counsel, Regulatory Policy and Oversight, NASD, at (202) 728-8270, e-mail jim.wrona@nasd.com. The fax number of the Office of General Counsel is (202) 728-8264.

Very truly yours,

Barbara Z. Sweeney
Senior Vice President
and Corporate Secretary

Enclosures

File No. SR-NASD-2003-110
Consists of 188 Pages
August 29, 2003

SECURITIES AND EXCHANGE COMMISSION

Washington, D.C.

Form 19b-4

Proposed Rule Change

by

NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.

Pursuant to Rule 19b-4 under the
Securities Exchange Act of 1934

1. Text of Proposed Rule Change

(a) Pursuant to the provisions of Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”), the National Association of Securities Dealers, Inc. (“NASD”) is filing with the Securities and Exchange Commission (“SEC” or “Commission”) a proposed rule change to create a new rule series, the proposed Rule 9550 Series, to consolidate, clarify and streamline those existing procedural rules that have an expedited proceeding component. Below is the text of the proposed rule change, which includes the proposed Rule 9550 Series, as well as related modifications to portions of other rules affected by the proposed rule series.¹ Proposed new language is underlined; proposed deletions are in brackets.

* * * * *

0116. Application of Rules of the Association to Exempted Securities

(a) No Change.

(b) Unless otherwise indicated within a particular provision, the following Rules of the Association and Interpretative Materials thereunder are applicable to transactions and business activities relating to exempted securities, except municipal securities,

¹ Among various rules impacted by NASD's proposed expedited proceedings rule change (File No. SR-NASD-2003-110) is Rule 2210(c) regarding member communications with the public. On May 9, 2003, the SEC approved certain NASD proposed changes to NASD Rule 2210(c). See SEC Approval Order of NASD Proposed Rule Change Concerning Member Communications with the Public, Release No. 34-47820 (May 9, 2003) (File No. SR-NASD-00-12), 68 Federal Register 27116 (May 19, 2003). Although approved, the change to Rule 2210(c) will not become effective until November 3, 2003. In the proposed expedited proceedings rule change (File No. SR-NASD-2003-110), NASD used the language in the recently approved Rule 2110(c), not the language of current Rule 2210(c). As discussed in Part 2(a) of this rule filing (Procedures of the Self-Regulatory Organization), NASD's proposed expedited proceedings rule change (File No. SR-NASD-2003-110), if approved by the SEC, would not become effective until November 3, 2003, the date when the recently approved Rule 2210(c) will be effective.

conducted by members and associated persons: 2110, 2120, 2210, IM-2210-1, IM-2210-2, IM-2210-3, 2250, 2270, 2310, IM-2310-2, IM-2310-3, 2320, 2330, IM-2330, 2340, 2430, 2450, 2510, 2520, 2521, 2522, IM-2522, 2770, 2780, 2820(g), 2910, 3010, 3020, 3030, 3040, 3050, 3060, 3070, 3110, IM-3110, 3120, 3130, IM-3130, 3131, 3140, 3230, 3310, IM-3310, 3320, IM-3320, 3330, 8110, 8120, 8210, [8221, 8222, 8223, 8224, 8225, 8226, 8227], 8310, IM-8310-1, IM-8310-2, 8320, [and] 8330, and 9552.

* * * * *

2210. Communications with the Public

(a) through (b) No Change.

(c) Filing Requirements and Review Procedures

(1) through (4) No Change.

(5) Requirement for Certain Members to File Material Prior to Use

(A) No Change.

(B) Notwithstanding the foregoing provisions, the Department, upon review of a member's advertising and/or sales literature, and after determining that the member has departed from the standards of this Rule, may require that such member file all advertising and/or sales literature, or the portion of such member's material which is related to any specific types or classes of securities or services, with the Department, at least 10 business days prior to use. The Department will notify the member in writing of the types of material to be filed and the length of time such requirement is to be in effect. Any filing requirement imposed under this

paragraph will take effect 21 [30] calendar days after service of [the member receives] the written notice, during which time the member may request a [appeal pursuant to the] hearing [and appeal] under Rules 9551 and 9559 [procedures of the Code of Procedure contained in the Rule 9510 Series].

(6) through (10) No Change.

(d) through (e) No Change.

* * * * *

2220. Options Communications with the Public

(a) through (b) No Change.

(c) Association Approval Requirements and Review Procedures

(1) No Change.

(2) (A) No Change.

(B) The Department shall notify the member in writing of the types of material to be filed and the length of time such requirement is to be in effect. The requirement shall not exceed one year, however, and shall not take effect until 21[30] calendar days after service of [the member receives] the written notice, during which time the member may request a hearing under Rules [9514] 9551 and 9559[, and any such hearing shall be held in reasonable conformity with the hearing and appeal procedures of the Rule 9510 Series].

(3) through (5) No Change.

(d) No Change.

* * * * *

3110. Books and Records

(a) through (h) No Change.

Cross References - Rule 2860(b)(17), Options, Maintenance of Records

- Rule 8210, Reports and Inspection of Books for Purpose of Investigating Complaints

- [Rule 8220, Suspension of Members for Failure to Furnish Information Duly Requested]

Rule 9552. Failure to Provide Information or Keep Information Current

- IM-2310-2, Fair Dealing with Customers

* * * * *

8220. [Suspension for Obstructing Investigations] Reserved

This rule series was amended and incorporated into new NASD Rule 9552 by SR-NASD-2003-110.

[8221. Notice]

[(a) Notice to Member]

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

[(b) Notice to Person Associated with Member]

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

[(c) Service of Notice]

[The Department of Enforcement or the Department of Market Regulation shall serve the member or person associated with a member with such notice via personal service or overnight courier or by facsimile at the location described in Rule 9134(b). Service by overnight courier shall be accomplished by sending the papers through an overnight courier service that generates a written confirmation of receipt or of attempts at delivery.]

[8222. Hearing]

[(a) Request for Hearing]

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

are insufficient grounds for suspension or any other reason for setting aside the notice issued by the under Rule 8221.]

[(b) Hearing Procedures]

[(1) Appointment of Subcommittee]

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

[(2) Time of Hearing]

[The hearing shall be held within 30 days after the date of service of the notice issued under Rule 8221. Not later than seven days before the hearing, the subcommittee shall serve the member or person associated with a member with written notice of the date and time of the hearing via overnight courier or facsimile and notify the Department of Enforcement or the Department of Market Regulation of the date and time of the hearing.]

[(3) Transmission of Documents]

[Not later than seven days before the hearing, the Department of Enforcement or the Department of Market Regulation shall serve the member or person associated with a member via overnight courier with all documents that were considered in connection with the decision to issue a notice under Rule 8221,

unless a document meets the criteria of Rule 9251(b) (1)(A), (B), or (C). A document that meets such criteria shall not constitute part of the record, but shall be retained by the Association until the date upon which the Association serves a final decision or, if applicable, upon the conclusion of any review by the Commission or the federal courts. The Department of Enforcement or the Department of Market Regulation shall provide a copy of the documents transmitted to the member or person associated with a member to the subcommittee.]

[(4) Counsel]

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

[(5) Evidence]

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

[(6) Witnesses]

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

[(7) Additional Information]

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

[(8) Transcript]

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

[(9) Record]

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

[(10) Failure to Appear at Hearing]

[If a member or person associated with a member fails to appear at a hearing for which it has notice, the subcommittee may dismiss the request for a hearing as abandoned, and the notice issued under Rule 8221 shall become the final action of the Association. Upon a showing of good cause, the subcommittee may withdraw a dismissal entered pursuant to this subparagraph.]

[8223. Decision]

[(a) Subcommittee]

[(1) Proposed Written Decision]

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

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

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

[(b) NASD Board of Governors]

[(1) Call For Review by Governor]

[A Governor may call the suspension or proceeding for review if the call for review is made not later than ten days after the Governor receives the subcommittee's proposed written decision. By a unanimous vote of the NASD Board of Governors, the NASD Board of Governors may shorten the call for review period to less than ten days. By an affirmative vote of the majority of the NASD Board of Governors then in office, the NASD Board of Governors may, during the ten day period, vote to extend the period to more than ten days.]

[(2) Review and Decision]

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

imposed, state the grounds for the suspension and the conditions for terminating the suspension.]

[(c) Effective Date]

[A final written decision served under this Rule shall become effective upon service and shall constitute final action of the Association.]

[8224. Notice to Membership]

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

[8225. Termination of Suspension]

[(a) Filing of Request]

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

[(b) Response by Association Staff]

[The head of the department of the Association that filed the notice under Rule 8221 shall respond to the request in writing within five days after receipt of the request.]

[(1) Request Granted]

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

[(2) Request Denied]

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

[8226. Copies of Notices and Decisions to Member]

[A copy of a notice or decision under the Rule 8220 Series that is served on a person associated with a member shall be served on such member.]

[8227. Other Action Not Foreclosed]

[Action by the Association under the Rule 8220 Series shall not foreclose action by the Association under any other Rule.]

* * * * *

IM-8310-2. Release of Disciplinary and Other Information Through the Public Disclosure Program

(a) through (c) No Change.

(d) (1) NASD shall release to the public information with respect to any disciplinary decision issued pursuant to the Rule 9000 Series imposing a suspension, cancellation or expulsion of a member; or suspension or revocation of the registration of a person associated with a member; or suspension or barring of a member or person associated with a member from association with all members; or imposition of monetary sanctions of \$10,000 or more upon a member or person associated with a member; or containing an allegation of a violation of a Designated Rule; and may also release such information with respect to any disciplinary decision or group of decisions that involve a significant policy or enforcement determination where the release of information is deemed by the President of NASD Regulatory Policy and Oversight to be in the public interest. NASD also may release to the public information with respect to any [disciplinary] decision issued pursuant to the Rule [8220] 9550 Series imposing a suspension or cancellation of the member or a suspension or bar of the association of a person with a member, unless NASD [the National Adjudicatory Council] determines otherwise. NASD [The National Adjudicatory Council] may, in its discretion, determine to waive the requirement to release information with respect to a disciplinary or other decision under those extraordinary circumstances where the release of such information would violate fundamental notions of fairness or work

an injustice. NASD [The Association] also shall release to the public information with respect to any temporary cease and desist order issued pursuant to the Rule 9800 Series. NASD may release to the public information on any disciplinary or other decision issued pursuant to the Rule [8220 or Rule] 9000 Series, not specifically enumerated in this paragraph, regardless of sanctions imposed, so long as the names of the parties and other identifying information is redacted.

(A) through (B) No Change.

(2) No Change.

(e) through (l) No Change.

* * * * *

9120. Definitions

(a) through (o) No Change.

(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, the Rule 9550 Series regarding expedited proceedings, and the Rule 9800 Series regarding temporary cease and desist 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 95[00]20 Series or the Rule 9550 Series to conduct a proceeding.

(r) "Interested Association Staff"

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

(1) No Change.

[(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]

(2[3]) a proceeding under the Rule [9510 or] 9520 Series or Rule 9550

Series:

(A) through (B) No Change.

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

(D) No Change.

(3[4]) a proceeding under the Rule 9600 Series:

(A) through (D) No Change.

(s) through (w) No Change.

(x) "Party"

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

(1) No Change.

(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] 9550 Series, the NASD department or office that issued the notice or, if another NASD department or office is named as the party handling the matter on behalf of the issuing department or office, the NASD department or office that is so designated [department or office designated under Rule 9514(b)] or a member or person that is the subject of a notice under the Rule [9512 or Rule 9513]9550 Series; or

(4) No Change.

(y) through (bb) No Change.

(cc) "Subcommittee"

The term "Subcommittee" means an Adjudicator that is:

(1) No Change.

(2) constituted under [the] Rule 9559(q) [9410 Series] or Rule 9630 to conduct a review proceeding.

* * * * *

9144. Separation of Functions

(a) Interested Association Staff

Except as counsel or a witness in a proceeding or as provided in the Rule [9400]9550 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) through (c) No Change.

* * * * *

9146. Motions

(a) through (i) No Change.

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

Disposition

(1) through (2) No Change.

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

(k) through (l) No Change.

* * * * *

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) No Change.

(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 9559(q) [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) No Change.

(d) [Rule 9514 Hearing Panel]Reserved

[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) through (f) No Change.

[(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.]

* * * * *

9400. [LIMITATION PROCEDURES UNDER RULES 3130 AND 3131] Reserved

This rule series was amended and incorporated into new NASD Rule 9557 by SR-NASD-2003-110.

[9410. Procedures for Regulating Activities of a Member Experiencing Financial or Operational Difficulties]

[9411. Purpose]

[The Rule 9410 Series sets forth procedures for regulating the activities of a member that is experiencing the financial or operational difficulties specified in Rule 3130 or 3131.]

[9412. Notice of Limitations]

[The Department of Member Regulation may issue a notice directing a member to limit its business activities if the Department of Member Regulation has reason to believe that any condition specified in Rule 3130 or 3131 exists. The notice shall specify the grounds on which such action is being taken, the nature of the limitations to be imposed, the effective date of the limitations, a fitting sanction that will be imposed if the member fails to comply with the limitations set forth in the notice, and the conditions for terminating such limitations. The effective date of the limitations shall be at least seven

days after the date of service of the notice. The notice also shall inform the member that it may request a hearing before the Department of Member Regulation under Rule 9413. The Department of Member Regulation shall serve the notice by facsimile or overnight courier.]

[9413. Hearing Panel Review]

[(a) Request for a Hearing]

[A member subject to a notice issued under Rule 9412 may file a written request for hearing before a Hearing Panel with the Office of Hearing Officers. The request shall state the specific grounds for withdrawing or modifying the limitations specified in the notice. The request shall be filed pursuant to Rules 9135, 9136, and 9137 within five days after service of the notice under Rule 9412. The member may withdraw its request at any time by filing a written notice with the Office of Hearing Officers pursuant to Rules 9135, 9136, and 9137. The time limits set forth herein are to be strictly construed and cannot be modified except for good cause shown.]

[(b) Appointment of Hearing Panel]

[The Chief Hearing Officer shall assign a Hearing Officer to preside over the matter, and appoint Panelists pursuant to Rule 9231 and 9232 to the Hearing Panel. As soon as practicable after assignment, the Chief Hearing Officer shall serve the Parties with notice of the Hearing Panel.]

[(c) Stay]

[Unless otherwise ordered by the NASD Board Executive Committee, the initiation of a review under this paragraph shall stay the decision of the Department of

Member Regulation or an uncontested notice until a decision constituting final action of the Association is issued.]

[(d) Transmission of Documents]

[(1) Not less than five business days before the hearing, the Department of Member Regulation shall file with the Office of Hearing Officers four copies of the record which shall consist of the notice issued under Rule 9412 and all correspondence between the Department of Member Regulation and the Member. The Department of Member Regulation shall simultaneously serve a copy of the record on the member by facsimile or overnight courier.]

[(2) Not less than five business days before the hearing, the Department of Member Regulation and the member shall exchange proposed exhibits and also exchange lists of all potential witnesses, including a brief description of the proposed testimony. The exhibits and the list of potential witnesses shall be served by facsimile or by overnight courier.]

[(e) Time of Hearing]

[If a member requests a hearing under paragraph (a), the Hearing Panel shall conduct a hearing within 14 days after service of the notice under Rule 9412. Not less than five business days before the hearing, the Office of Hearing Officers shall provide written notice to the member of the location, date, and time of the hearing by facsimile or overnight courier.]

[(f) Hearing and Rights of Member]

[The member shall be entitled to be heard in person, to be represented by an attorney, and to submit any relevant evidence. The hearing shall be recorded and a transcript prepared by a court reporter. The member may purchase a copy of the transcript from the court reporter at prescribed rates. A witness may purchase a copy of the transcript of his or her own testimony from the court reporter at prescribed rates. Proposed corrections to the transcript may be submitted by affidavit to the Office of Hearing Officers within a reasonable time determined by the Office of Hearing Officers. Upon notice to the participants in the hearing, the Department of Member Regulation may order corrections to the transcript as requested or sua sponte.]

[(g) Record of the Proceeding]

[The record shall consist of:]

[(1) the notice issued pursuant to Rule 9412;]

[(2) the request for hearing filed pursuant to Rule 9413;]

[(3) any other submissions by the member and the Department of Member Regulation at the hearing;]

[(4) any evidence considered at the hearing;]

[(5) the transcript of the hearing and any corrections thereto; and]

[(6) all documents transmitted to the member under Rule 9413(d).]

[(h) Custodian of the Record]

[The custodian of the record shall be the Office of Hearing Officers.]

[(i) Evidence Not Admitted]

[Evidence that is proffered but not admitted during the hearing shall not be part of the record, but shall be retained by the custodian of the record until the date when the Association's decision becomes final or, if applicable, upon the conclusion of any review by the Commission or the federal courts.]

[(j) Failure to Request Hearing]

[If a member does not request a hearing under paragraph (a), the limitations specified in the notice shall become effective on the date specified in the notice. Unless the Executive Committee calls the notice for review under Rule 9415, the limitations specified in the notice shall remain in effect until the Department of Member Regulation reduces or removes the limitations pursuant to Rule 9417(b).]

[(k) Decision]

[(1) Within seven days after the hearing, the Hearing Panel shall issue a written decision approving, modifying, or withdrawing the limitations specified in the notice. If the decision imposes limitations, the decision shall state the grounds for the limitations, the conditions for terminating such limitations, and provide for a fitting sanction to be imposed under Rule 9416 if the member fails to comply with the limitations. The Office of Hearing Officers shall promptly serve the decision by facsimile or overnight courier pursuant to Rules 9132 and 9134. The limitations imposed shall become effective upon service of the decision]

[(2) Contents of Decision]

[The decision shall include:]

[(A) a description of the Department of Member Regulation's decision, including its rationale;]

[(B) a description of the principal issues regarding the imposition of limitations raised in the review and a statement supporting the disposition of such issues;]

[(C) a summary of the evidence on each issue;]

[(D) a statement of whether the Department of Member Regulation's decision is affirmed, modified, or reversed, and a rationale therefor; and]

[(E) if any limitations are imposed:]

[(i) a description of the limitations and a statement describing a fitting sanction that will be imposed under Rule 9416 if the member fails to comply with any of the limitations; and]

[(ii) the conditions for terminating the limitations.]

[(I) Issuance of Decision After Expiration of Call for Review Period]

[The Hearing Panel shall provide its proposed written decision to the NASD Board Executive Committee. The NASD Board Executive Committee may call the proceeding for review pursuant to Rule 9415. If the NASD Board Executive Committee does not call the proceeding for review, the proposed written decision of the Hearing Panel shall constitute the final action of the Association.]

[(m) Ex Parte Communications]

[The prohibitions against ex parte communications in Rule 9143 shall become effective under the Rule 9410 Series when Association staff has knowledge that a member intends to file a written application for review or that the NASD Board Executive Committee intends to review a decision on its own motion under this Rule.]

[9414. Reserved]

[9415. Discretionary Review by the NASD Board Executive Committee]

[(a) Call for Review by NASD Board Executive Committee]

[A member of the NASD Board Executive Committee may call a proceeding for review by the NASD Board Executive Committee if the call for review is made within the period prescribed in paragraph (b).]

[(b) 15 Day Period; Waiver]

[A member of the NASD Board Executive Committee shall make his or her call for review not later than the next meeting of the NASD Board Executive Committee that is at least 15 days after the date on which the NASD Board Executive Committee receives the proposed written decision of the Hearing Panel. By a unanimous vote of the NASD Board Executive Committee, the NASD Board Executive Committee may shorten the period to less than 15 days. By an affirmative vote of the majority of the NASD Board Executive Committee then in office, the NASD Board Executive Committee may, during the 15 day period, vote to extend the period to more than 15 days.]

[(c) Review at Next Meeting]

[If an NASD Board Executive Committee member calls a proceeding for review within the period prescribed in paragraph (b), the NASD Board Executive Committee shall review the proceeding not later than the next meeting of the NASD Board Executive Committee. The NASD Board Executive Committee may order the filing of briefs in connection with its review proceedings pursuant to this Rule.]

[(d) Decision of NASD Board Executive Committee, Including Remand]

[After review, the NASD Board Executive Committee may affirm, modify, or reverse the proposed written decision of the Hearing Panel. Alternatively, the NASD Board Executive Committee may remand the proceeding with instructions. The NASD Board Executive Committee shall prepare a written decision that includes all of the elements described in Rule 9414(k)(2).]

[(e) Issuance of Decision]

[The NASD Board Executive Committee shall issue and serve its written decision on the member and the Department of Member Regulation pursuant to Rules 9132 and 9134. The decision shall be effective upon service. The decision shall constitute the final action of the Association, unless the NASD Board Executive Committee remands the proceeding.]

[9416. Enforcement of Sanctions]

[(a) Order]

[If the Department of Member Regulation determines that a member has failed to comply with any limitations imposed by a decision or an effective notice under the Rule

9410 Series that has not been stayed, the Department of Member Regulation shall issue an order imposing the sanctions set forth in the decision or notice and specifying the effective date and time of such sanctions. The Department of Member Regulation shall serve the order on the member by facsimile or overnight courier.]

[(b) Hearing]

[(1) A member subject to an order issued under paragraph (a) may file a written request for a hearing before a Hearing Panel with the Office of Hearing Officers. The request shall be filed pursuant to Rules 9135, 9136, and 9137 within seven days (including intermediate Saturdays, Sundays, and Federal holidays) after service of the order. The Chief Hearing Officer shall assign a Hearing Officer to preside over the matter, and appoint Panelists pursuant to Rule 9231 and 9232 to the Hearing Panel. As soon as practicable after assignment, the Office of Hearing Officers shall serve the Parties with notice of the Hearing Panel. The hearing shall be held within ten days after service of the order under paragraph (a).]

[(2) The member shall be entitled to be heard in person, to be represented by an attorney, and to submit any relevant evidence.]

[(3) The hearing shall be recorded and a transcript prepared by a court reporter. The member may purchase a copy of the transcript from the court reporter at prescribed rates. A witness may purchase a copy of the transcript of his or her own testimony from the court reporter at prescribed rates. Proposed corrections to the transcript may be submitted by affidavit to the Office of Hearing Officers within a reasonable time determined by the Office of Hearing Officers.]

Upon notice to the participants in the hearing, the Office of Hearing Officers may order corrections to the transcript as requested or sua sponte.]

[(c) No Stay of Sanctions]

[Unless otherwise ordered by the NASD Board Executive Committee, a request for a hearing pursuant to this Rule shall not stay the effectiveness of the order issued under paragraph (a).]

[(d) Decision]

[Within four days after the hearing, the Hearing Panel shall affirm, modify, or reverse the order issued under paragraph (a). The Office of Hearing Officers shall serve the decision on the member pursuant to Rules 9132 and 9134. The decision shall become effective upon service and shall constitute final action of the Association.]

[9417. Additional Limitations; Reduction or Removal of Limitations]

[(a) Additional Limitations]

[If a member continues to experience financial or operational difficulty specified in Rule 3130 or 3131, notwithstanding an effective notice or decision under the Rule 9410 Series, the Department of Member Regulation may impose additional limitations by issuing a notice under Rule 9412. The notice shall state that the member may apply for relief from the additional limitations by filing a written application for a hearing under Rule 9413 and that the procedures in Rules 9413 through 9416 shall be applicable. An application for a hearing also shall include a detailed statement of the member's objections to the additional limitations.]

[(b) Reduction or Removal of Limitations]

[If the Department of Member Regulation determines that any limitations previously imposed under the Rule 9410 Series should be reduced or removed, the Department of Member Regulation shall serve a written notice on the member pursuant to Rules 9132 and 9134.]

[9418. Application to Commission for Review]

[The right to have any action taken by the Association pursuant to this Rule Series reviewed by the Commission is governed by Section 19 of the Act. The filing of an application for review shall not stay the effectiveness of the action taken by the Association, unless the Commission otherwise orders.]

[9419. Other Action Not Foreclosed]

[Action by the Association under the Rule 9410 Series shall not foreclose action by the Association under any other Rule.]

* * * * *

9500. OTHER PROCEEDINGS

9510. [Summary and Non-Summary Proceedings] Reserved

This rule series was amended and incorporated into new NASD Rule 9550 Series by SR-NASD-2003-110. Summary Proceedings under Rule 9511(a)(1) for actions authorized under Section 15A(h)(3) of the Act are now located at Rule 9558 (Summary Proceedings for Actions Authorized by Section 15A(h)(3) of the Act). Non-summary proceedings under Rule 9511(a)(2)(A) for failure to comply with an arbitration award or related settlement agreement are now located at Rule 9554 (Failure to Comply with an

Arbitration Award or Related Settlement). Non-summary proceedings under Rule 9511(a)(2)(B) for failure to meet the qualification requirements or other prerequisites for access to NASD or member services is now located at Rule 9555 (Failure to Meet the Eligibility or Qualification Standards or Prerequisites for Access to Services). Non-summary proceedings under Rule 9511(a)(2)(C) for failure to comply with public communication standards are now located at Rule 9551 (Failure to Comply with Public Communication Standards). Non-summary proceedings under Rule 9511(a)(2)(D) for failure to comply with a temporary or permanent cease and desist order are now located at Rule 9556 (Failure to Comply with a Temporary or Permanent Cease and Desist Order).

[9511. Purpose and Computation of Time]

[(a) Purpose]

[The Rule 9510 Series sets forth procedures for: (1) summary proceedings authorized by Section 15A(h)(3) of the Act; and (2) non-summary proceedings to impose (A) a suspension or cancellation for failure to comply with an arbitration award or a settlement agreement related to an arbitration or mediation pursuant to Article VI, Section 3 of the NASD By-Laws; (B) a suspension or cancellation of a member, or a limitation or prohibition on any member, associated person, or other person with respect to access to services offered by the Association or a member thereof, if the Association determines that such member or person does not meet the qualification requirements or other prerequisites for such access or such member or person cannot be permitted to continue to have such access with safety to investors, creditors, members, or the Association; (C) an advertising

pre-use filing requirement; or (D) a suspension or cancellation of the membership of a member or the registration of a person for failure to comply with a permanent cease and desist order entered pursuant to a decision issued under the Rule 9200 Series or Rule 9300 Series or a temporary cease and desist order entered pursuant to a decision issued under the Rule 9800 Series.]

[(b) Computation of Time]

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

[9512. Initiation of Summary Proceeding]

[(a) Authorization]

[(1) The NASD Board may authorize the President of NASD Regulation to issue on a case-by-case basis a written notice that:]

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

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

[(2) The NASD Board may authorize the President of NASD Regulation or the President of Nasdaq to issue on a case-by-case basis a written notice that summarily limits or prohibits any person with respect to access to services offered by the Association if paragraph (a)(1) applies to such person or, in the case of a person who is not a member, if the NASD Board determines that such person does not meet the qualification requirements or other prerequisites for such access and such person cannot be permitted to continue to have such access with safety to investors, creditors, members, or the Association.]

[(b) Contents and Service of Notice]

[A notice issued under this subsection shall state the specific grounds and include the factual basis for the summary suspension, limitation, or prohibition and state that the member, associated person, or other person may file a written request for a hearing under Rule 9514. The notice shall be served by facsimile or overnight courier.]

[(c) Effective Date]

[A summary suspension, limitation, or prohibition shall be effective upon service of the notice under paragraph (b).]

[9513. Initiation of Non-Summary Proceeding]

[(a) Notice]

[Association staff may initiate a proceeding authorized under Rule 9511(a)(2)(A) or (B), by issuing a written notice to the member, associated person, or other person. Association staff may initiate a proceeding authorized under Rule 9511(a)(2)(D), after receiving written authorization from the President of NASD Regulatory Policy and

Oversight or the Executive Vice President for NASD Regulatory Policy and Programs, by issuing a written notice to the member or associated person. The notice shall specify the grounds for and effective date of the cancellation, suspension, bar, limitation, or prohibition and shall state that the member, associated person, or other person may file a written request for a hearing under Rule 9514. In addition, if the proceeding is authorized under Rule 9511(a)(2)(D), the notice shall specifically identify the provision of the permanent or temporary cease and desist order that is alleged to have been violated, and shall contain a statement of facts specifying the alleged violation. The notice shall be served by facsimile or overnight commercial courier.]

[(b) Effective Date]

[For any cancellation or suspension pursuant to Rule 9511(a)(2)(A), the effective date shall be at least 15 days after service of the notice on the member or associated person. For any action pursuant to Rule 9511(a)(2)(B) or (D), the effective date shall be at least seven days after service of the notice on the member or person, except that the effective date for a notice of a limitation or prohibition on access to services offered by the Association or a member thereof with respect to services to which the member, associated person, or other person does not have access shall be upon receipt of the notice.]

[9514. Hearing and Decision]

[(a) Request]

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

[A member, associated person, or other person who is subject to a notice issued under Rule 2210, 2220, 9512(a), or 9513(a) may file a written request for a

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

[(2) Failure to File Request]

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

[(3) Ex Parte Communications]

[The prohibition against ex parte communications in Rule 9143 shall become effective under the Rule 9510 Series when Association staff has knowledge that a member, associated person, or other person intends to request a hearing under this paragraph.]

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

[If a member, associated person, or other person subject to a notice under Rule 2210, 2220, 9512, or 9513 files a written request for a hearing, an appropriate department

or office of the Association shall be designated as a Party in the proceeding, and a Hearing Panel shall be appointed.]

[(1) If the President of NASD Regulation or NASD Regulation staff issued the notice initiating the proceeding under Rule 2210, 2220, 9512(a), or 9513(a), the President of NASD Regulation shall designate an appropriate NASD Regulation department or office as a Party. For proceedings initiated under Rule 9513(a) concerning failure to comply with an arbitration award or a settlement agreement related to an NASD arbitration or mediation, the Chief Hearing Officer shall appoint a Hearing Panel composed of a Hearing Officer. For any other proceedings initiated under Rule 2210, 2220, 9512(a), or 9513(a) by the President of NASD Regulation or NASD Regulation staff, the NASD Regulation Board shall appoint a Hearing Panel composed of two or more members; one member shall be a Director of NASD Regulation, and the remaining member or members shall be current or former Directors of NASD Regulation or Governors. The President of NASD Regulation may not serve on a Hearing Panel.]

[(2) If the President of Nasdaq or Nasdaq staff issued the notice under Rule 9512(a) or 9513(a), the President of Nasdaq shall designate an appropriate Nasdaq department or office as a Party, and the Nasdaq Board shall appoint a Hearing Panel. The Hearing Panel shall be composed of two or more members. One member shall be a director of Nasdaq, and the remaining member or members shall be current or former directors of Nasdaq or Governors. The President of Nasdaq may not serve on the Hearing Panel.]

[(3) A Hearing Officer appointed pursuant to this provision shall have authority to do all things necessary and appropriate to discharge his or her duties as set forth under Rule 9235.]

[(c) Stays]

[(1) Summary Proceeding]

[Unless the NASD Board orders otherwise, a request for a hearing shall not stay the effectiveness of a summary suspension, limitation, or prohibition under Rule 9512.]

[(2) Non-Summary Proceeding]

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

[(d) Time of Hearing]

[(1) Summary Proceeding]

[If a member, associated person, or other person who is subject to a notice issued under Rule 9512(a) files a written request for a hearing, a hearing shall be held within seven days after the filing of the request for hearing. Not less than five days before the hearing, the Hearing Panel shall provide written notice to the Parties of the location, date, and time of the hearing by facsimile or overnight courier.]

[(2) Non-Summary Proceeding]

[If a member, associated person, or other person who is subject to a notice issued under Rule 2210, 2220, or 9513(a) files a written request for a hearing, a hearing shall be held within 40 days after the filing of the request for hearing. The Hearing Panel may, during the initial 40 day period, extend the time in which the hearing shall be held by an additional 30 days on its own motion or at the request of a Party. Not less than five days before the hearing, the Hearing Panel shall provide written notice to the Parties of the location, date, and time of the hearing by facsimile or overnight courier.]

[(e) Transmission of Documents]

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

[(2) Not less than five days before the hearing, the Parties shall exchange proposed exhibit and witness lists. The exhibit and witness lists shall be served by facsimile or by overnight courier.]

[(f) Hearing Panel Consideration]

[(1) Rights of Parties]

[The Parties shall be entitled to be heard in person, to be represented by an attorney, and to submit any relevant evidence.]

[(2) Witnesses]

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

[(3) Recordation of Hearing]

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

[(4) Record]

[The record shall consist of: (1) the notice issued under Rule 2210, 2220, 9512, or 9513; (2) all documents transmitted by the Association under Rule 9514(e)(1); (3) the request for hearing; (4) any other submissions by the Parties;

(5) any evidence considered at the hearing; and (6) the transcript of the hearing and any corrections thereto.]

[(5) Custodian of the Record]

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

[(6) Evidence Not Admitted]

[Evidence that is proffered but not admitted during the hearing shall not be part of the record, but shall be retained by the custodian of the record until the date when the Association's decision becomes final or, if applicable, upon the conclusion of any review by the Commission or the federal courts.]

[(g) Decision of the Hearing Panel]

[(1) Summary Proceeding]

[Based on its review of the record, the Hearing Panel shall affirm, modify, or reverse the summary suspension, limitation, or prohibition. The Hearing Panel shall prepare a proposed written decision pursuant to subparagraph (3).]

[(2) Non-Summary Proceeding]

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

[(3) Contents of Decision]

[The decision shall include:]

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

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

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

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

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

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

or pre-use filing requirement is to be imposed or continue to be imposed, its effective date, time, and terms.]

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

[The Hearing Panel shall provide its proposed written decision to the NASD Board. The NASD Board may call the proceeding for review pursuant to Rule 9515. If the NASD Board does not call the proceeding for review, the proposed written decision of the Hearing Panel shall become final, and the Hearing Panel shall serve its written decision on the Parties pursuant to Rules 9132 and 9134. The decision shall be effective upon service and shall constitute the final action of the Association.]

[9515. Discretionary Review by the NASD Board]

[(a) Call for Review by Governor]

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

[(b) 15 Day Period; Waiver]

[A Governor shall make his or her call for review not later than the next meeting of the NASD Board that is at least 15 days after the date on which the NASD Board receives the proposed written decision of the Hearing Panel. By a unanimous vote of the NASD Board, the NASD Board may shorten this period. By an affirmative vote of the majority of the NASD Board then in office, the NASD Board may, during the period, vote to extend the period.]

[(c) Review at Next Meeting]

[If a Governor calls a proceeding for review within the period prescribed by paragraph (b), the NASD Board shall review the decision not later than the next meeting of the NASD Board. The NASD Board may order the filing of briefs in connection with its review proceedings pursuant to this Rule.]

[(d) Decision of the NASD Board, Including Remand]

[After review, the NASD Board may affirm, modify, or reverse the proposed written decision of the Hearing Panel. Alternatively, the NASD Board may remand the proceeding with instructions. The NASD Board shall prepare a written decision that includes all of the elements of Rule 9514(g)(3).]

[(e) Issuance of Decision]

[The NASD Board shall issue and serve its written decision on the Parties pursuant to Rules 9132 and 9134. The decision shall be effective upon service. The decision shall constitute the final action of the Association, unless the NASD Board remands the proceeding.]

[9516. Reinstatement]

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

receipt of the request. If the head of the department or office denies the request, the member or person may file a written request for relief with the Review Subcommittee. The Review Subcommittee shall respond to the request in writing within 14 days after receipt of the request. The Review Subcommittee shall serve its response by facsimile or overnight courier.]

[9517. Copies of Notices and Decisions to Members]

[A copy of a notice initiating a proceeding, a notice of a hearing, or any other notice or decision that is served on a person associated with a member under the Rule 9510 Series shall be served simultaneously on such member by the same method of service provided for in the applicable rule.]

[9518. Application to Commission for Review]

[The right to have any action pursuant to this Rule Series reviewed by the Commission is governed by Section 19 of the Act. The filing of an application for review by the Commission shall not stay the effectiveness of final action by the Association, unless the Commission otherwise orders.]

[9519. Other Action Not Foreclosed; Costs]

[(a) Action by the Association under the Rule 9510 Series shall not foreclose action by the Association under any other Rule.]

[(b) The Association may impose on a member, associated person, or other person such costs of a denial of access proceeding as the Association deems fair and appropriate under the circumstances. Costs relating to other proceedings under the Rule 9510 Series may be imposed under Rule 8330.]

* * * * *

[9540. Failure to Provide Information or Meet the Eligibility and Qualification Standards]

[9541. Notice]

[(a) Notice to Member for Failure to Provide Information]

[If a member fails to provide any information, report, material, data, or testimony requested or required to be filed pursuant to the NASD By-Laws or the Rules of the Association, or fails to keep its membership application or supporting documents current, the Association staff may provide written notice to such member specifying the nature of the failure and stating that the failure to take corrective action within 20 days after service of the notice constitutes grounds for suspension of membership.]

[(b) Notice to Person Associated with Member for Failure to Provide Information]

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

[(c) Notice to Member for Failure to Meet the Eligibility and Qualification Standards]

[If a member becomes ineligible for continuance in membership because it does not meet the eligibility and qualification standards set forth in Article III of the By-Laws, the Association staff may provide written notice to such member stating that the failure to become eligible for continuance in membership within 20 days after service of the notice constitutes grounds for cancellation of membership.]

[(d) Service of Notice]

[The Association staff shall serve the member or person associated with a member with such notice via personal service or overnight courier or by facsimile at the location described in Rule 9134(b). Service by overnight courier shall be accomplished by sending the papers through an overnight courier service that generates a written confirmation of receipt or of attempts at delivery.]

[(e) Effective Date of Notice]

[A notice issued and served under this Rule shall become effective 20 days after the date of service of the notice, unless stayed by a request for a hearing pursuant to Rule 9542(a).]

[9542. Hearing]

[(a) Request for Hearing]

[Within five days after the date of service of a notice issued under Rule 9541, the member or person served with such notice may file with the Office of Hearing Officers a written request for a hearing. The request shall state with specificity why the member or

person believes that the notice should be set aside. The request for the hearing shall stay the effective date of the notice.]

[(b) Hearing Procedures]

[(1) Appointment of Hearing Panel]

[If a hearing is requested, based upon a notice issued under Rule 9541(a) or (b), the Chief Hearing Officer shall assign a Hearing Officer to preside over the matter, and appoint Panelists pursuant to Rules 9231 and 9232 to the Hearing Panel. As soon as practicable after the assignment, the Chief Hearing Officer shall serve the Parties with notice of the Hearing Panel. Recusals and disqualifications of Hearing Officers and Hearing Panels shall be governed by Rules 9233 and 9234.]

[(2) Appointment of a Hearing Officer]

[If a hearing is requested, based upon a notice issued under Rule 9541(c), the Chief Hearing Officer shall assign a Hearing Officer to conduct the hearing. As soon as practicable after the assignment, the Chief Hearing Officer shall serve the Parties with notice of the Hearing Officer. Recusals and disqualifications of Hearing Officers shall be governed by Rule 9233.]

[(3) Parties]

[The Parties shall be the member or person to whom the notice was issued and the head of the department or office that issued the notice under Rule 9541.]

[(4) Time of Hearing]

[The hearing shall be held within 45 days after the date of service of the notice under Rule 9541. Not later than seven days before the hearing, the Hearing

Officer shall serve the Parties with written notice of the date and time of the hearing.]

[(5) Transmission of Documents]

[Not later than seven days before the hearing, the head of the department or office that issued the notice under Rule 9541 shall serve the member or person associated with a member, either personally or via overnight courier, with all documents that were considered in connection with the decision to issue a notice under Rule 9541 and provide copies of the same to the Hearing Officer.]

[(6) Counsel]

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

[(7) Evidence]

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

[(8) Witnesses]

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

[(9) Additional Information]

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

[(10) Transcript]

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

[(11) Record]

[The record shall consist of all documents that were considered in connection with the decision to issue a notice under Rule 9541, the notice issued under Rule 9541, the request for hearing filed under Rule 9542, the transcript of the hearing, and each document or other item of evidence presented to or considered by the Hearing Panel. The Office of Hearing Officers shall be the custodian of the record.]

[(12) Evidence Not Admitted]

[Evidence that is proffered but not admitted during the hearing shall not be part of the record, but shall be retained by the custodian of the record until the date when the Association's decision becomes final or, if applicable, upon the conclusion of any review by the Commission or the federal courts.]

[(13) Failure to Appear at Hearing]

[If a member or person fails to appear at a hearing for which he has notice, the Hearing Officer may dismiss the request for a hearing as abandoned, and the notice issued under Rule 9541 shall become final. Upon a showing of good cause, the Hearing Officer may withdraw a dismissal entered pursuant to this subparagraph.]

[9543. Decision]

[(a) Failure to Provide Information]

[The Hearing Panel may impose any fitting sanction, including fines, suspensions, expulsions and bars, based upon the failure to provide any information, report, material, data, or testimony requested or required to be filed pursuant to the NASD By-Laws or the Rules of the Association, or failure to keep a membership application or supporting documents current. The Hearing Panel shall prepare a written decision, and if the Hearing Panel determines that a sanction should be imposed, the written decision shall state the grounds for the sanction, and in the case of a suspension, the conditions for terminating the suspension. A Party sanctioned under this Rule will have the right to appeal such a decision to the National Adjudicatory Council, and the decision will be subject to an

NASD Board call for review, in accordance with the Rule 9300 Series. If not timely appealed or called for review, the Hearing Panel decision shall constitute final disciplinary action of the Association for purposes of SEC Rule 19d-1(c)(1).]

[(b) Failure to Meet the Eligibility and Qualification Standards]

[The Hearing Officer may cancel the membership of any member who is ineligible for continuance in membership because it does not meet the eligibility and qualification standards set forth in Article III of the By-Laws. The Hearing Officer shall prepare a written decision, and if the Hearing Officer determines that a cancellation should be imposed, the written decision shall state the grounds for the cancellation. A member canceled under this Rule will have the right to appeal such a decision to the National Adjudicatory Council, and the decision will be subject to an NASD Board call for review, in accordance with the Rule 9300 Series. If not timely appealed or called for review, the Hearing Officer decision shall constitute final disciplinary action of the Association for purposes of SEC Rule 19d-1(c)(1).]

[9544. Defaults]

[Respondents may file motions for reinstatement with the head of the department that issued the original pre-suspension notice under Rules 9541(a) or (b) within six months of the date of the original pre-suspension notice. If such a motion is filed, a Hearing Panel will be convened under Rule 9542, and the Hearing Panel may impose any fitting sanction. Respondents who are suspended pursuant to Rules 9541(a) or (b) and who fail to request hearing to challenge the suspensions within six months of receipt of the pre-suspension notice issued under Rules 9541(a) or (b) will automatically be barred or expelled.]

[9545. Notice to Membership]

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

[9546. Copies of Notices and Decisions to Member]

[A copy of a notice or decision under the Rule 9540 Series that is served on a person associated with a member shall be served on such member.]

[9547. Other Action Not Foreclosed]

[Action by the Association under the Rule 9540 Series shall not foreclose action by the Association under any other Rule.]

* * * * *

9550. Expedited Proceedings

9551. Failure to Comply with Public Communication Standards

(a) Notice of Pre-Use Filing Requirement

Pursuant to Rules 2210(c)(5) and 2220(c)(2), NASD staff may issue a written notice requiring a member to file advertising, educational material or sales literature with the NASD Advertising Regulation Department at least ten days prior to use if NASD staff determines that the member has departed from the standards of Rule 2210 or Rule 2220.

(b) Service of Notice of Pre-Use Filing Requirement

NASD staff shall serve the member with such notice in accordance with Rule 9134.

(c) Contents of Notice

A notice issued under this Rule shall state the specific grounds and include the factual basis for the NASD action. The notice shall state when the NASD action will take effect and explain what the respondent must do to avoid such action. The notice shall state that the respondent may file a written request for a hearing with the Office of Hearing Officers pursuant to Rule 9559. The notice also shall inform the respondent of the applicable deadline for filing a request for a hearing and shall state that a request for a hearing must set forth with specificity any and all defenses to the NASD action.

(d) Effective Date of Notice of Pre-Use Filing Requirement

Pursuant to Rules 2210(c)(5) and 2220(c)(2), the pre-use filing requirement referenced in a notice issued and served under this Rule shall become effective 21 days after service of the notice, unless stayed by a request for a hearing pursuant to Rule 9559.

(e) Request for Hearing

A member served with a notice under this Rule may file with the Office of Hearing Officers a written request for a hearing pursuant to Rule 9559. A request for a hearing shall be made before the effective date of the notice, as indicated in paragraph (d) of this Rule. A request for a hearing must set forth with specificity any and all defenses to the NASD action.

(f) Failure to Request Hearing

If a member does not timely request a hearing, the pre-use filing requirements specified in the notice shall become effective 21 days after service of the notice and the notice shall constitute final NASD action.

(g) Request for Modification or Termination of Pre-Use Filing Requirement

A member that is subject to a pre-use filing requirement under this Rule may file a written request for modification or termination of the requirement. Such request shall be filed with the head of the NASD department or office that issued the notice or, if another NASD department or office is named as the party handling the matter on behalf of the issuing department or office, with the head of the NASD department or office that is so designated. The head of the appropriate department or office may grant relief for good cause shown.

9552. Failure to Provide Information or Keep Information Current

(a) Notice of Suspension of Member, Person Associated with a Member or Person Subject to NASD's Jurisdiction if Corrective Action is Not Taken

If a member, person associated with a member or person subject to NASD's jurisdiction fails to provide any information, report, material, data, or testimony requested or required to be filed pursuant to the NASD By-Laws or the NASD Rules, or fails to keep its membership application or supporting documents current, NASD staff may provide written notice to such member or person specifying the nature of the failure and stating that the failure to take corrective action within 21 days after service of the notice will result in suspension of membership or of association of the person with any member.

(b) Service of Notice of Suspension

NASD staff shall serve the member or person with such notice in accordance with Rule 9134. A copy of a notice under this Rule that is served on a person associated with a member also shall be served on such member.

(c) Contents of Notice

A notice issued under this Rule shall state the specific grounds and include the factual basis for the NASD action. The notice shall state when the NASD action will take effect and explain what the respondent must do to avoid such action. The notice shall state that the respondent may file a written request for a hearing with the Office of Hearing Officers pursuant to Rule 9559. The notice also shall inform the respondent of the applicable deadline for filing a request for a hearing and shall state that a request for a hearing must set forth with specificity any and all defenses to the NASD action.

(d) Effective Date of Suspension

The suspension referenced in a notice issued and served under this Rule shall become effective 21 days after service of the notice, unless stayed by a request for a hearing pursuant to Rule 9559.

(e) Request for Hearing

A member or person served with a notice under this Rule may file with the Office of Hearing Officers a written request for a hearing pursuant to Rule 9559. A request for a hearing shall be made before the effective date of the notice, as indicated in paragraph (d) of this Rule. A request for a hearing must set forth with specificity any and all defenses to the NASD action.

(f) Request for Termination of the Suspension

A member or person subject to a suspension pursuant to this Rule may file a written request for termination of the suspension on the ground of full compliance with the notice or decision. Such request shall be filed with the head of the NASD department or

office that issued the notice or, if another NASD department or office is named as the party handling the matter on behalf of the issuing department or office, with the head of the NASD department or office that is so designated. The head of the appropriate department or office may grant relief for good cause shown.

(g) Settlement Procedure

Uncontested offers of settlement shall be permitted under this Rule and shall conform to the requirements of Rule 9270, except that, if an uncontested offer of settlement, made under Rule 9270(e) after a hearing on the merits has begun, is accepted by the Hearing Officer, the Hearing Officer shall issue the order of acceptance, which shall constitute final NASD action. Contested offers of settlement shall not be considered in proceedings initiated under this Rule.

(h) Defaults

A member or person who is suspended under this Rule and fails to request termination of the suspension within six months of issuance of the original notice of suspension will automatically be expelled or barred.

(i) Notice to Membership

NASD shall provide notice of any final NASD action taken under this Rule in the next Notice to Members Disciplinary and Other NASD Action Section.

9553. Failure to Pay NASD Dues, Fees and Other Charges

(a) Notice of Suspension, Cancellation or Bar

If a member, person associated with a member or person subject to NASD's jurisdiction fails to pay any fees, dues, assessment or other charge required to be paid

under the NASD By-Laws or Rules, or to submit a required report or information related to such payment, NASD staff may issue a written notice to such member or person stating that the failure to comply within 21 days of service of the notice will result in a suspension or cancellation of membership or a suspension or bar from associating with any member.

(b) Service of Notice of Suspension, Cancellation or Bar

NASD staff shall serve the member or person with such notice in accordance with Rule 9134. A copy of a notice under this Rule that is served on a person associated with a member also shall be served on such member.

(c) Contents of Notice

A notice issued under this Rule shall state the specific grounds and include the factual basis for the NASD action. The notice shall state when the NASD action will take effect and explain what the respondent must do to avoid such action. The notice shall state that the respondent may file a written request for a hearing with the Office of Hearing Officers pursuant to Rule 9559. The notice also shall inform the respondent of the applicable deadline for filing a request for a hearing and shall state that a request for a hearing must set forth with specificity any and all defenses to the NASD action.

(d) Effective Date of Suspension, Cancellation or Bar

The suspension, cancellation or bar referenced in a notice issued and served under this Rule shall become effective 21 days after service of the notice, unless stayed by a request for a hearing pursuant to Rule 9559.

(e) Request for Hearing

A member or person served with a notice under this Rule may file with the Office of Hearing Officers a written request for a hearing pursuant to Rule 9559. A request for a hearing shall be made before the effective date of the notice, as indicated in paragraph (d) of this Rule. A request for a hearing must set forth with specificity any and all defenses to the NASD action.

(f) Failure to Request Hearing

If a member or person does not timely request a hearing, the suspension, cancellation or bar specified in the notice shall become effective 21 days after service of the notice and the notice shall constitute final NASD action.

(g) Request for Termination of the Suspension

A member or person subject to a suspension under this Rule may file a written request for termination of the suspension on the ground of full compliance with the notice or decision. Such request shall be filed with the head of the NASD department or office that issued the notice or, if another NASD department or office is named as the party handling the matter on behalf of the issuing department or office, with the head of the NASD department or office that is so designated. The appropriate head of the department or office may grant relief for good cause shown.

(h) Notice to Membership

NASD shall provide notice of any final NASD action taken pursuant to this Rule in the next Notice to Members Disciplinary and Other NASD Action Section.

9554. Failure to Comply with an Arbitration Award or Related Settlement

(a) Notice of Suspension, Cancellation or Bar

If a member, person associated with a member or person subject to NASD's jurisdiction fails to comply with an arbitration award or a settlement agreement related to an arbitration or mediation under Article VI, Section 3 of the NASD By-Laws, NASD staff may provide written notice to such member or person stating that the failure to comply within 21 days of service of the notice will result in a suspension or cancellation of membership or a suspension or bar from associating with any member.

(b) Service of Notice of Suspension, Cancellation or Bar

NASD staff shall serve the member or person with such notice in accordance with Rule 9134. A copy of a notice under this Rule that is served on a person associated with a member also shall be served on such member.

(c) Contents of Notice

A notice issued under this Rule shall state the specific grounds and include the factual basis for the NASD action. The notice shall state when the NASD action will take effect and explain what the respondent must do to avoid such action. The notice shall state that the respondent may file a written request for a hearing with the Office of Hearing Officers pursuant to Rule 9559. The notice also shall inform the respondent of the applicable deadline for filing a request for a hearing and shall state that a request for a hearing must set forth with specificity any and all defenses to the NASD action.

(d) Effective Date of Suspension, Cancellation or Bar

The suspension, cancellation or bar referenced in a notice issued and served under this Rule shall become effective 21 days after service of the notice, unless stayed by a request for a hearing pursuant to Rule 9559.

(e) Request for Hearing

A member or person served with a notice under this Rule may file with the Office of Hearing Officers a written request for a hearing pursuant to Rule 9559. A request for a hearing shall be made before the effective date of the notice, as indicated in paragraph (d) of this Rule. A request for a hearing must set forth with specificity any and all defenses to the NASD action.

(f) Failure to Request Hearing

If a member or person does not timely request a hearing, the suspension, cancellation or bar specified in the notice shall become effective 21 days after the service of the notice and the notice shall constitute final NASD action.

(g) Request for Termination of the Suspension

A member or person subject to a suspension under this Rule may file a written request for termination of the suspension on the ground of full compliance with the notice or decision. Such request shall be filed with the head of the NASD department or office that issued the notice or, if another NASD department or office is named as the party handling the matter on behalf of the issuing department or office, with the head of the NASD department or office that is so designated. The appropriate head of the department or office may grant relief for good cause shown.

(h) Notice to Membership

NASD shall provide notice of any final NASD action taken pursuant to this Rule in the next Notice to Members Disciplinary and Other NASD Action Section.

9555. Failure to Meet the Eligibility or Qualification Standards or Prerequisites for Access to Services

(a) Notice to Member or Person of Suspension, Cancellation, Bar, or Limitation or Prohibition on Access to Services

(1) If a member or an associated person does not meet the eligibility or qualification standards set forth in the NASD By-Laws or Rules, NASD staff may provide written notice to such member or person stating that the failure to become eligible or qualified will result in a suspension or cancellation of membership or a suspension or bar from associating with any member.

(2) If a member, associated person, or other person does not meet the prerequisites for access to services offered by NASD or a member thereof or cannot be permitted to continue to have access to services offered by NASD or a member thereof with safety to investors, creditors, members, or NASD, NASD staff may provide written notice to such member or person limiting or prohibiting access to services offered by NASD or a member thereof.

(b) Service of Notice

NASD staff shall serve the member or person with such notice in accordance with Rule 9134. A copy of a notice under this Rule that is served on a person associated with a member also shall be served on such member.

(c) Contents of Notice

A notice issued under this Rule shall state the specific grounds and include the factual basis for the NASD action. The notice shall state when the NASD action will take effect and explain what the respondent must do to avoid such action. The notice shall state that the respondent may file a written request for a hearing with the Office of Hearing Officers pursuant to Rule 9559. The notice also shall inform the respondent of the applicable deadline for filing a request for a hearing and shall state that a request for a hearing must set forth with specificity any and all defenses to the NASD action.

(d) Effective Date of Limitation, Prohibition, Suspension, Cancellation or Bar

The limitation, prohibition, suspension, cancellation or bar referenced in a notice issued under this Rule shall become effective 14 days after service of the notice, except that the effective date for a notice of a limitation or prohibition on access to services offered by NASD or a member thereof with respect to services to which the member or person does not have access shall be upon service of the notice. A request for a hearing, pursuant to Rule 9559, shall stay the effectiveness of the notice, except that the effectiveness of a notice of a limitation or prohibition on access to services offered by NASD or a member thereof with respect to services to which the member or person does not have access shall not be stayed by a request for a hearing.

(e) Request for Hearing

A member or person served with a notice under this Rule may file with the Office of Hearing Officers a written request for a hearing pursuant to Rule 9559. A request for a

hearing shall be made within 14 days after service of the notice. A request for a hearing must set forth with specificity any and all defenses to the NASD action.

(f) Failure to Request Hearing

If a member or person does not timely request a hearing, the limitation, prohibition, suspension, cancellation or bar specified in the notice shall become effective 14 days after service of the notice, except that the effective date for a notice of a limitation or prohibition on access to services offered by NASD or a member thereof with respect to services to which the member or person does not have access shall be upon service of the notice. The notice shall constitute final NASD action if the member or person does not request a hearing within 14 days after service of the notice.

(g) Request for Termination of the Limitation, Prohibition or Suspension

A member or person subject to a limitation, prohibition or suspension under this Rule may file a written request for termination of the limitation, prohibition or suspension on the ground of full compliance with the notice or decision. Such request shall be filed with the head of the NASD department or office that issued the notice or, if another NASD department or office is named as the party handling the matter on behalf of the issuing department or office, with the head of the NASD department or office that is so designated. The appropriate head of the department or office may grant relief for good cause shown.

(h) Notice to Membership

NASD shall provide notice of any final NASD action taken pursuant to this Rule in the next Notice to Members Disciplinary and Other NASD Action Section.

9556. Failure to Comply with Temporary and Permanent Cease and Desist Orders

(Rule 9556, and amendments adopted by SR-NASD-98-80 to Rule 8310, IM-8310-2(d)(1), 9120(x), 9241(c), 9290, 9311(b), 9312(b), 9360 and the Rule 9800 Series, shall expire on June 23, 2005, unless extended or permanently adopted by the Association pursuant to SEC approval at or before such date.)

(a) Notice of Suspension, Cancellation or Bar

If a member, person associated with a member or person subject to NASD's jurisdiction fails to comply with a temporary or permanent cease and desist order issued under the Rule 9200, 9300 or 9800 Series, NASD staff—after receiving written authorization from the President of NASD Regulatory Policy and Oversight or the Executive Vice President for NASD Regulatory Policy and Programs—may issue a notice to such member or person stating that the failure to comply with the temporary or permanent cease and desist order within seven days of service of the notice will result in a suspension or cancellation of membership or a suspension or bar from associating with any member.

(b) Service of Notice

NASD staff shall serve the member or person subject to a notice issued under this Rule by facsimile, overnight courier or personal delivery. Papers served on a member or person by overnight courier or personal delivery shall conform to paragraphs (a)(1) and (3) and (b)(1) and (2) of Rule 9134. Papers served on a member by facsimile shall be sent to the facsimile number listed in the member's contact questionnaire submitted to NASD pursuant to Article 4, Section III of NASD's By-Laws, except that, if NASD staff has

actual knowledge that an entity's contact questionnaire facsimile number is out of date, duplicate copies shall be served at the entity's last known facsimile number. Papers served on a person by facsimile shall be sent to the person's last known facsimile number and shall also be served by either overnight courier or personal delivery in conformity with paragraphs (a)(1) and (3) and (b)(1) and (2) of Rule 9134. Service is complete upon sending the notice by facsimile, mailing the notice by overnight courier or delivering it in person. A copy of a notice under this Rule that is served on a person associated with a member also shall be served on such member.

(c) Contents of Notice

The notice shall explicitly identify the provision of the permanent or temporary cease and desist order that is alleged to have been violated and shall contain a statement of facts specifying the alleged violation. The notice shall state when the NASD action will take effect and explain what the respondent must do to avoid such action. The notice shall state that the respondent may file a written request for a hearing with the Office of Hearing Officers pursuant to Rule 9559. The notice also shall inform the respondent of the applicable deadline for filing a request for a hearing and shall state that a request for a hearing must set forth with specificity any and all defenses to the NASD action.

(d) Effective Date of Suspension, Cancellation or Bar

The suspension, cancellation or bar referenced in a notice issued and served under this Rule shall become effective seven days after service of the notice, unless stayed by a request for a hearing pursuant to Rule 9559.

(e) Request for a Hearing

A member served with a notice under this Rule may file with the Office of Hearing Officers a written request for a hearing pursuant to Rule 9559. A request for a hearing shall be made before the effective date of the notice, as indicated in paragraph (d) of this Rule. A request for a hearing must set forth with specificity any and all defenses to the NASD action.

(f) Failure to Request Hearing

If a member or person does not timely request a hearing, the suspension, cancellation or bar specified in the notice shall become effective seven days after the service of the notice and the notice shall constitute final NASD action.

(g) Request for Termination of the Suspension

A member or person subject to a suspension under this Rule may file a written request for termination of the suspension on the ground of full compliance with the notice or decision. Such request shall be filed with the head of the NASD department or office that issued the notice or, if another NASD department or office is named as the party handling the matter on behalf of the issuing department or office, with the head of the NASD department or office that is so designated. The appropriate head of the department or office may grant relief for good cause shown.

(h) Notice to Membership

NASD shall provide notice of any final NASD action taken pursuant to this Rule in the next Notice to Members Disciplinary and Other NASD Action Section.

9557. Procedures for Regulating Activities Under Rules 3130 and 3131 Regarding a Member Experiencing Financial or Operational Difficulties

(a) Notice of Limitation

NASD staff may issue a notice directing a member to limit its business activities if NASD staff has reason to believe that any condition specified in Rule 3130 or 3131 exists.

(b) Service of Notice

NASD staff shall serve the member subject to a notice issued under this Rule by facsimile, overnight courier or personal delivery. Papers served on a member by overnight courier or personal delivery shall conform to paragraphs (a)(1) and (3) and (b)(2) of Rule 9134. Papers served on a member by facsimile shall be sent to the facsimile number listed in the member's contact questionnaire submitted to NASD pursuant to Article 4, Section III of NASD's By-Laws, except that, if NASD staff has actual knowledge that an entity's contact questionnaire facsimile number is out of date, duplicate copies shall be served at the entity's last known facsimile number. Service is complete upon sending the notice by facsimile, mailing the notice by overnight courier or delivering it in person.

(c) Contents of Notice

A notice issued under this Rule shall state the specific grounds and include the factual basis for the NASD action. The notice shall state when the NASD action will take effect and explain what the respondent must do to avoid such action. The notice shall state that the respondent may file a written request for a hearing with the Office of Hearing Officers pursuant to Rule 9559. The notice also shall inform the respondent of

the applicable deadline for filing a request for a hearing and shall state that a request for a hearing must set forth with specificity any and all defenses to the NASD action.

(d) Effective Date of Limitation

The limitation referenced in a notice issued and served under this Rule shall become effective seven days after service of the notice, unless stayed by a request for a hearing pursuant to Rule 9559.

(e) Request for a Hearing

A member served with a notice under this Rule may file with the Office of Hearing Officers a written request for a hearing pursuant to Rule 9559. A request for a hearing shall be made before the effective date of the notice, as indicated in paragraph (d) of this Rule. A request for a hearing must set forth with specificity any and all defenses to the NASD action.

(f) Failure to Request Hearing

If a member does not timely request a hearing, the limitations specified in the notice shall become effective seven days after service of the notice. The limitations specified in the notice shall remain in effect until the head of the NASD department or office that issued the notice or, if another NASD department or office is named as the party handling the matter on behalf of the issuing department or office, the head of the NASD department or office that is so designated reduces or removes the limitations pursuant to paragraph (h) of this Rule.

(g) Order to Enforce Sanctions

If NASD staff determines that a member has failed to comply with any limitations imposed by a decision or an effective notice under this Rule that has not been stayed, NASD staff shall issue an order imposing the sanctions set forth in the decision or notice and specifying the effective date and time of such sanctions. The order shall inform the member that it may apply for relief from the sanctions imposed by the order by filing a written request for a hearing before the Office of Hearing Officers under Rule 9559. The procedures delineated in this Rule shall be applicable.

(h) Additional Limitations or the Reduction or Removal of Limitations

(1) Additional Limitations

If a member continues to experience financial or operational difficulty specified in Rule 3130 or 3131, notwithstanding an effective notice, order or decision under this Rule, NASD Staff may impose additional limitations by issuing a notice under paragraph (b) of this Rule. The notice shall inform the member that it may apply for relief from the additional limitations by filing a written request for a hearing before the Office of Hearing Officers under Rule 9559. The procedures delineated in this Rule shall be applicable to such a notice.

(2) Reduction or Removal of Limitations

If NASD staff determines that any limitations previously imposed under this Rule should be reduced or removed, NASD staff shall serve a written notice on the member pursuant to Rule 9134.

(i) Notice to Membership

NASD shall provide notice of any final NASD action taken pursuant to this Rule in the next Notice to Members Disciplinary and Other NASD Action Section.

9558. Summary Proceedings for Actions Authorized by Section 15A(h)(3) of the Act

(a) Notice of Initiation of Summary Proceedings

The President of NASD Regulatory Policy and Oversight or the Executive Vice President for NASD Regulatory Policy and Programs may provide written authorization to NASD staff to issue on a case-by-case basis a written notice that summarily:

(1) suspends a member, person associated with a member or person subject to NASD's jurisdiction who has been and is expelled or suspended from any self-regulatory organization or barred or suspended from being associated with a member of any self-regulatory organization;

(2) suspends a member who is in such financial or operating difficulty that NASD staff determines and so notifies the Commission that the member cannot be permitted to continue to do business as a member with safety to investors, creditors, other members, or NASD; or

(3) limits or prohibits any person with respect to access to services offered by NASD if paragraphs (1) or (2) of this Rule or the provisions of Section 15A(h)(3) of the Act applies to such person or, in the case of a person who is not a member, if the President of NASD Regulatory Policy and Oversight or the Executive Vice President for NASD Regulatory Policy and Programs determines that such person does not meet the qualification requirements or other

prerequisites for such access and such person cannot be permitted to continue to have such access with safety to investors, creditors, members, or NASD, and so notifies the Commission.

(b) Service of Notice

NASD staff shall serve the member or person subject to a notice issued under this Rule by facsimile, overnight courier or personal delivery. Papers served on a member or person by overnight courier or personal delivery shall conform to paragraphs (a)(1) and (3) and (b)(1) and (2) of Rule 9134. Papers served on a member by facsimile shall be sent to the facsimile number listed in the member's contact questionnaire submitted to NASD pursuant to Article 4, Section III of NASD's By-Laws, except that, if NASD staff has actual knowledge that an entity's contact questionnaire facsimile number is out of date, duplicate copies shall be served at the entity's last known facsimile number. Papers served on a person by facsimile shall be sent to the person's last known facsimile number and shall also be served by either overnight courier or personal delivery in conformity with paragraphs (a)(1) and (3) and (b)(1) and (2) of Rule 9134. Service is complete upon sending the notice by facsimile, mailing the notice by overnight courier or delivering it in person. A copy of a notice under this Rule that is served on a person associated with a member also shall be served on such member.

(c) Contents of Notice

A notice issued under this Rule shall state the specific grounds and include the factual basis for the NASD action. The notice shall state when the NASD action will take effect and explain what the respondent must do to avoid such action. The notice shall

state that the respondent may file a written request for a hearing with the Office of Hearing Officers pursuant to Rule 9559. The notice also shall inform the respondent of the applicable deadline for filing a request for a hearing and shall state that a request for a hearing must set forth with specificity any and all defenses to the NASD action.

(d) Effective Date of Limitation, Prohibition or Suspension

The limitation, prohibition or suspension referenced in a notice issued and served under this Rule is immediately effective. The limitation, prohibition or suspension specified in the notice shall remain in effect unless stayed by a timely request for a hearing pursuant to Rule 9559.

(e) Request for a Hearing

A member or person subject to a notice issued under this Rule may file with the Office of Hearing Officers a written request for a hearing pursuant to Rule 9559. A request for a hearing shall be made within seven days after service of the notice issued under this Rule. A request for a hearing must set forth with specificity any and all defenses to the NASD action.

(f) Failure to Request Hearing

If a member or person subject to a notice issued under this Rule does not timely request a hearing within the time period specified in paragraph (e) of this Rule, the notice shall constitute final NASD action.

(g) Request for Termination of the Limitation, Prohibition or Suspension

A member or person subject to a limitation, prohibition or suspension under this Rule may file a written request for termination of the limitation, prohibition or suspension

on the ground of full compliance with the notice or decision. Such request shall be filed with the head of the NASD department or office that issued the notice or, if another NASD department or office is named as the party handling the matter on behalf of the issuing department or office, with the head of the NASD department or office that is so designated. The appropriate head of the department or office may grant relief for good cause shown.

(h) Notice to Membership

NASD shall provide notice of any final NASD action taken pursuant to this Rule in the next Notice to Members Disciplinary and Other NASD Action Section.

9559. Hearing Procedures for Expedited Proceedings Under the Rule 9550 Series

(a) Applicability

The hearing procedures under this Rule shall apply to a member, person associated with a member, person subject to NASD's jurisdiction or other person who is served with a notice issued under the Rule 9550 Series and who timely requests a hearing. For purposes of this Rule, such members or persons shall be referred to as respondents.

(b) Computation of Time

Rule 9138 shall govern the computation of time in proceedings brought under the Rule 9550 Series, except that intermediate Saturdays, Sundays and Federal holidays shall be included in the computation in proceedings brought under Rules 9556 through 9558.

(c) Stays

Unless the Chief Hearing Officer or the Hearing Officer assigned to the matter orders otherwise for good cause shown, a timely request for a hearing shall stay the

effectiveness of a notice issued under the Rule 9550 Series, except that the effectiveness of a notice of a limitation or prohibition on access to services offered by NASD or a member thereof under Rule 9555 with respect to services to which the member or person does not have access shall not be stayed by a request for a hearing.

(d) Appointment and Authority of Hearing Officer and/or Hearing Panel

(1) For proceedings initiated under Rules 9553 and 9554, the Chief Hearing Officer shall appoint a Hearing Officer to preside over and act as the sole adjudicator for the matter.

(2) For proceedings initiated under Rules 9551, 9552, 9555, 9556, 9557 and 9558, the Chief Hearing Officer shall appoint a Hearing Panel composed of a Hearing Officer and two Panelists. The Hearing Officer shall serve as the chair of the Hearing Panel. The Chief Hearing Officer shall select as Panelists persons who meet the qualifications delineated in Rules 9231 and 9232.

(3) Rules 9231(e), 9233 and 9234 shall govern disqualification, recusal or withdrawal of a Hearing Officer or, if applicable, Hearing Panelist.

(4) A Hearing Officer appointed pursuant to this provision shall have authority to do all things necessary and appropriate to discharge his or her duties as set forth under Rules 9235 and 9280.

(5) Hearings under the Rule 9550 Series shall be held by telephone conference, unless the Hearing Officer orders otherwise for good cause shown.

(6) For good cause shown, or with the consent of all of the parties to a proceeding, the Hearing Officer or, if applicable, the Hearing Panel may extend or shorten any time limits prescribed by this Rule.

(e) Consolidation or Severance of Proceedings

Rule 9214 shall govern the consolidation or severance of proceedings, except that, where one of the notices that are the subject of consolidation under this Rule requires that a hearing be held before a Hearing Panel, the hearing of the consolidated matters shall be held before a Hearing Panel.

(f) Time of Hearing

(1) A hearing shall be held within 14 days after a respondent subject to a notice issued under Rules 9556 through 9558 files a written request for a hearing with the Office of Hearing Officers.

(2) A hearing shall be held within 60 days after a respondent subject to a notice issued under Rules 9551 through 9555 files a written request for a hearing with the Office of Hearing Officers.

(g) Notice of Hearing

The Hearing Officer shall issue a notice stating the date, time, and place of the hearing as follows:

(1) At least seven days prior to the hearing in the case of an action brought pursuant to Rules 9556 through 9558 and

(2) At least 21 days prior to the hearing in the case of an action brought pursuant to Rules 9551 through 9555.

(h) Transmission of Documents

(1) Not less than seven days before the hearing in an action brought under Rules 9556 through 9558 and not less than 40 days before the hearing in an action brought under Rules 9551 through 9555, NASD staff shall provide to the respondent who requested the hearing, by facsimile or overnight courier, all documents that were considered in issuing the notice unless a document meets the criteria of Rule 9251(b)(1)(A), (B) or (C). A document that meets such criteria shall not constitute part of the record, but shall be retained by NASD until the date upon which NASD serves a final decision or, if applicable, upon the conclusion of any review by the Securities and Exchange Commission or the federal courts.

(2) Not less than three days before the hearing in an action brought under Rules 9556 through 9558 and not less than 14 days before the hearing in an action brought under Rules 9551 through 9555, the parties shall exchange proposed exhibit and witness lists. The exhibit and witness lists shall be served by facsimile or by overnight courier.

(i) Evidence

Formal rules of evidence shall not apply to a hearing under this Rule Series. Rules 9262 and 9263 shall govern testimony and the admissibility of evidence.

(j) Additional Information

The Hearing Officer or, if applicable, the Hearing Panel may direct the Parties to submit additional information.

(k) Record of Hearing

Rule 9265 shall govern the requirements for the record of the hearing.

(l) Record of Proceeding

Rule 9267 shall govern the record of the proceeding.

(m) Failure to Appear at a Pre-Hearing Conference or Hearing or to Comply with a Hearing Officer Order Requiring the Production of Information

Failure of any respondent to appear before the Hearing Officer or, if applicable, the Hearing Panel at any status conference, pre-hearing conference or hearing, or to comply with any order of the Hearing Officer or, if applicable, Hearing Panel requiring production of information to support any defense to the notice that respondent has raised, shall be considered an abandonment of the respondent's defense and waiver of any opportunity for a hearing provided by the Rule 9550 Series. In such cases, the notice issued under the Rule 9550 Series shall be deemed to be final NASD action. The Hearing Officer or, if applicable, the Hearing Panel may permit the hearing to go forward as to those parties who appear and otherwise comply with this Rule.

(n) Sanctions, Costs and Remands

(1) The Hearing Officer or, if applicable, the Hearing Panel may approve, modify or withdraw any and all sanctions or limitations imposed by the notice. The Hearing Officer or, if applicable, the Hearing Panel also may impose any other fitting sanction, pursuant to Rule 8310(a).

(2) The Hearing Officer or, if applicable, the Hearing Panel may impose costs pursuant to Rule 8330.

(3) The Hearing Officer or, if applicable, the Hearing Panel may remand the matter to the department or office that issued the notice for further consideration of specified matters.

(o) Timing of Decision

(1) Proceedings initiated under Rules 9553 and 9554

Within 60 days of the date of the close of the hearing, the Hearing Officer shall prepare a written decision and provide it to the National Adjudicatory Council's Review Subcommittee.

(2) Proceedings initiated under Rules 9556 through 9558

Within 21 days of the date of the close of the hearing, the Hearing Officer shall prepare a written decision that reflects the views of the Hearing Panel, as determined by majority vote, and provide it to the National Adjudicatory Council's Review Subcommittee.

(3) Proceedings initiated under Rules 9551, 9552 and 9555

Within 60 days of the date of the close of the hearing, the Hearing Officer shall prepare a written decision that reflects the views of the Hearing Panel, as determined by majority vote, and provide it to the National Adjudicatory Council's Review Subcommittee.

(4) If not timely called for review by the National Adjudicatory Council's Review Subcommittee pursuant to paragraph (q) of this Rule, the Hearing Officer's or, if applicable, the Hearing Panel's written decision shall constitute final NASD action. The Office of Hearing Officers shall promptly serve the decision of the

Hearing Officer or, if applicable, the Hearing Panel on the Parties and provide a copy to each NASD member with which the respondent is associated

(p) Contents of Decision

The decision shall include:

- (1) a statement describing the investigative or other origin of the notice issued under the Rule 9550 Series;
- (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 Officer or, if applicable, Hearing Panel as to whether the respondent violated any provision alleged in the notice;
- (5) a statement of the Hearing Officer or, if applicable, Hearing Panel in support of the disposition of the principal issues raised in the proceeding; and
- (6) a statement describing any sanction or limitation imposed, the reasons therefore, and the date upon which such sanction or limitation shall become effective.

(q) Call for Review by the National Adjudicatory Council

- (1) The National Adjudicatory Council's Review Subcommittee may call for review a decision issued under the Rule 9550 Series within 21 days after receipt of the decision from the Office of Hearing Officers. Rule 9313(a) is incorporated by reference.

(2) If the Review Subcommittee calls the proceeding for review within the prescribed time, a Subcommittee of the National Adjudicatory Council shall meet and conduct a review not later than 40 days after the call for review. The Subcommittee shall be composed pursuant to Rule 9331(a)(1). The Subcommittee may elect to hold a hearing or decide the matter on the basis of the record made before the Hearing Officer or, if applicable, the Hearing Panel. Not later than 60 days after the call for review, the Subcommittee shall make its recommendation to the National Adjudicatory Council. Not later than 60 days after receipt of the Subcommittee's recommendation, the National Adjudicatory Council shall serve a final written decision on the parties via overnight courier or facsimile. The National Adjudicatory Council may affirm, modify or reverse the decision of the Hearing Officer or, if applicable, the Hearing Panel. The National Adjudicatory Council also may impose any other fitting sanction, pursuant to Rule 8310(a), and may impose costs, pursuant to 8330. In addition, the National Adjudicatory Council may remand the matter to the Office of Hearing Officers for further consideration of specified matters.

(3) For good cause shown, or with the consent of all of the parties to a proceeding, the Review Subcommittee, the National Adjudicatory Council Subcommittee or the National Adjudicatory Council may extend or shorten any time limits prescribed by this Rule.

(4) The National Adjudicatory Council's written decision shall constitute final NASD action.

(5) The National Adjudicatory Council shall promptly serve the decision on the Parties and provide a copy of the decision to each NASD member with which the respondent is associated.

(r) Notice to Membership

NASD shall provide notice of any final NASD action in the next Notice to Members Disciplinary and Other NASD Action Section.

(s) Application to Commission for Review

The right to have any action pursuant to this Rule reviewed by the Securities and Exchange Commission is governed by Section 19(f) of the Securities Exchange Act. The filing of an application for review by the Securities and Exchange Commission shall not stay the effectiveness of final NASD action, unless the Securities and Exchange Commission otherwise orders.

* * * * *

9800. TEMPORARY CEASE AND DESIST ORDERS

(The entire Rule 9800 Series, and related amendments adopted by SR-NASD-98-80 to Rules 8310, IM-8310-2(d)(1), 9120(x), 9241(c), 9290, 9311(b), 9312(b), 9360, [9511(a), 9513(a) and 9513(b)] and 9556, shall expire on June 23, 2005, unless extended or permanently adopted by the Association pursuant to SEC approval at or before such date.)

* * * * *

(b) Not applicable.

(c) Not applicable.

2. Procedures of the Self-Regulatory Organization

(a) The Board of Directors of NASD Regulation, Inc. approved the proposed rule change at its meeting on November 20, 2002, and authorized the filing of the rule change with the SEC. The NASD Board of Governors also approved the proposed rule change at its meeting on November 21, 2002, and authorized the filing of the rule change with the SEC. Counsel for The Nasdaq Stock Market and NASD Dispute Resolution were provided an opportunity to consult with respect to the proposed rule change, pursuant to the Plan of Allocation and Delegation of Functions by NASD to its Subsidiaries. No other action by NASD is necessary for the filing of the proposed rule change. Section 1(a)(ii) of Article VII of the NASD By-Laws permits the NASD Board of Governors to adopt and amend NASD rules without recourse to the membership for approval.

NASD will announce the effective date of the proposed rule change in a Notice to Members to be published no later than 60 days following Commission approval. The effective date will be 60 days following publication of the Notice to Members announcing Commission approval, provided, however, that in no case will the effective date be sooner than November 3, 2003.

(b) Questions regarding this rule filing may be directed to James S. Wrona, Associate General Counsel, Office of General Counsel, Regulatory Policy and Oversight, NASD, at (202) 728-8270.

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

(a) Purpose

NASD proposes to modify certain NASD rules that have an expedited proceeding component to make them more understandable and uniform and to make the overall process for actions covered by such rules more efficient. Existing NASD rules recognize that expedited treatment is needed for certain types of actions. These actions fall into two general categories: those that involve misconduct capable of causing further harm to the investing public, other members or the integrity of the markets and those that can be appropriately expedited for administrative ease. Unlike disciplinary actions that may concern complex sales-practice violations, the expedited actions that are affected by this proposal generally involve straightforward issues unrelated to complicated securities transactions (e.g., whether the respondent paid an arbitration award or NASD fee, provided information requested by NASD staff, or complied with the net capital requirements).²

² In most instances, the issues raised by these types of proceedings are uncomplicated and the defenses are limited. For example, in a case involving a respondent's failure to pay an arbitration award, the issue presented is whether the member or person has paid the award. A respondent cannot collaterally attack the actual arbitration award. *See John G. Pearce*, 52 S.E.C. 796, 798, 1996 SEC LEXIS 1329, at *5 (1996) ("To permit a party dissatisfied with an arbitral award to attack it collaterally for legal flaws in a subsequent disciplinary proceeding would subvert the salutary objective that the NASD's [arbitration] resolution seeks to promote."); *see also James Anthony Morrill*, 51 S.E.C. 1162, 1164 n.6, 1994 SEC LEXIS 1766, at *6 (1994) (same). Similarly, in an action for failure to provide information, the issue presented is whether the respondent provided information requested by NASD. It is well settled that respondents must fully and promptly cooperate with NASD, *see Mark Allen Elliott*, 51 S.E.C. 1148, 1150, 1994 SEC LEXIS 1765, at *5-6 (1994), and respondents cannot second guess NASD information requests or impose conditions on responding. *See Joseph Patrick Hannan*, 53 S.E.C. 854, 859, 1998 SEC LEXIS 1955, at *11 (1998) ("[A]n NASD member may not 'second guess' or 'impose conditions on' the NASD's request for information."); *Michael David Borth*, 51 S.E.C. 178, 181, 1992 SEC LEXIS 3248, at *7 (1992) ("The Rules do not permit second guessing the NASD's requests" or permit a respondent "to shift his responsibility to others...."). The issues also are

However, the present NASD rules that have provisions for fast-track procedures vary considerably in some respects and overlap in others, at times without any clear rationale. The proposed rule change, discussed in detail below, streamlines and clarifies the existing expedited rules and makes them more uniform. At the same time, the modifications, which do not abrogate any substantive rights held by members or associated persons, continue to ensure that expedited actions are fair to all parties. The current rules that have been renumbered and otherwise affected by the proposed rule change are as follows:

- Rule 8220 Series (Suspension for Obstructing Investigations);³
- Rule 9410 Series (Procedures for Regulating Activities of a Member Experiencing Financial or Operational Difficulties);⁴
- Rule 9510 Series (Summary and Non-Summary Proceedings);⁵

very narrow in a net capital case. Indeed, "[t]he gravamen of the charge is the conduct of business by the firm while its net capital is deficient. The cause of the deficiency does not bear on this issue." *Charters & Co. of Miami*, 43 S.E.C. 175, 177, 1966 SEC LEXIS 189, at *6 (1966). See also *Litwin Securities, Inc.*, 52 S.E.C. 1339, 1344-45, 1997 SEC LEXIS 1146, at *16 (1997) (holding that intent is irrelevant to whether a respondent violated the net-capital requirements).

³ The Rule 8220 Series (Suspension for Obstructing Investigations) is now located at proposed Rule 9552 (Failure to Provide Information or Keep Information Current).

⁴ The Rule 9410 Series (Procedures for Regulating Activities of a Member Experiencing Financial or Operational Difficulties) is now located at proposed Rule 9557 (Procedures for Regulating Activities Under Rules 3130 and 3131 Regarding a Member Experiencing Financial or Operational Difficulties). NASD recently submitted to the SEC proposed revisions to its rules regarding the regulation of activities of members experiencing financial and/or operational difficulties, including the Rule 9410 Series. See SR-NASD-2003-74 (filed April 15, 2003). NASD will amend this proposed rule change as appropriate in the event SR-NASD-2003-74 is adopted before this proposed rule change is approved.

⁵ The Rule 9510 Series (Summary and Non-Summary Proceedings) has been separated into a number of individual proposed rules. Summary proceedings under Rule 9511(a)(1) for actions authorized under Section 15A(h)(3) of the Act are now located at proposed Rule 9558 (Summary Proceedings for Actions Authorized by Section 15A(h)(3) of the Act). Non-summary proceedings under Rule 9511(a)(2)(A) for failure to comply with an arbitration award or related settlement agreement are now located at proposed Rule 9554 (Failure to Comply with an

- Rule 9530 Series (Suspension or Cancellation for Failure to Pay Dues, Fees and Other Charges);⁶ and
- Rule 9540 Series (Failure to Provide Information or Meet the Eligibility and Qualification Standards).⁷

The first major improvement to the expedited proceedings provisions is that they are reorganized into a single rule series, the proposed Rule 9550 Series, and each type of action is clearly labeled. At present, the various types of expedited proceedings are scattered throughout NASD's rules, in many instances without clear headings,⁸ increasing the likelihood of confusion for interested parties and adjudicators. Going forward, interested parties will simply need to review the Rule 9550 Series, with its clearly marked subheadings, to ascertain their rights and obligations with regard to expedited actions.

Arbitration Award or Related Settlement). Non-summary proceedings under Rule 9511(a)(2)(B) for failure to meet the qualification requirements or other prerequisites for access to NASD or member services is now located at proposed Rule 9555 (Failure to Meet the Eligibility or Qualification Standards or Prerequisites for Access to Services). Non-summary proceedings under Rule 9511(a)(2)(C) for failure to adhere to certain public communication standards are now located at proposed Rule 9551 (Failure to Comply with Public Communication Standards). Finally, non-summary proceedings under Rule 9511(a)(2)(D) for failure to comply with a temporary or permanent cease and desist order are now located at proposed Rule 9556 (Failure to Comply with a Temporary or Permanent Cease and Desist Order). It should be noted that proposed Rule 9556, along with the Rule 9800 Series and related amendments adopted by SR-NASD-98-80, will expire on June 23, 2005, unless extended or permanently adopted by NASD pursuant to SEC approval at or before such date.

⁶ The Rule 9530 Series (Suspension or Cancellation for Failure to Pay Dues, Fees and Other Charges) is now located at proposed Rule 9553 (Failure to Pay NASD Dues, Fees and Other Charges).

⁷ The Rule 9540 Series (Failure to Provide Information or Meet the Eligibility and Qualification Standards) has been combined with two proposed rules. Rules 9541(a) and (b) regarding failure to provide information is now located at proposed Rule 9552 (Failure to Provide Information or Keep Information Current). Rule 9541(c) regarding failure to meet the eligibility and qualification standards is now located at proposed Rule 9555 (Failure to Meet the Eligibility or Qualification Standards or Prerequisites for Access to Services).

⁸ For instance, Rule 9511(a)(2) covers four distinct and unrelated types of conduct without any description in the title beyond "non-summary proceedings."

The proposed amendments also consolidate some current expedited rules that have similar or overlapping provisions. For instance, current Rules 8221(a) and (b) and 9541(a) and (b) have identical provisions that allow NASD staff to issue a notice of suspension if a member or associated person "fails to provide any information, report, material, data, or testimony." These provisions are consolidated into a single rule, proposed Rule 9552, under the amendments. Similarly, current Rules 9511(a)(2)(B) and 9541(c) both cover situations where a member or associated person fails to meet eligibility or qualification standards. These provisions are now consolidated and clarified under the amendments as proposed Rule 9555. The consolidation of these various rules will alleviate the current confusion over which rule to use in a particular situation.

The proposed amendments, moreover, separate into individual rules some provisions whose grouping together has caused confusion. The proposed amendments, for example, separate the four "non-summary" actions currently located in Rule 9511(a)(2) for failure to pay an arbitration award, failure to meet eligibility or qualification standards, failure to comply with certain public communication standards and failure to comply with a cease and desist order. These provisions were not logically connected to one another and are separated into individual rules under the proposed amendments.⁹ The substance of the four provisions remains intact, however. NASD proposes to separate these four provisions into individual rules so that their headings clearly denote the

⁹ As discussed above, current Rule 9511(a)(2)(A) for failure to comply with an arbitration award is now located at proposed Rule 9554. Current Rule 9511(a)(2)(B) for failure to meet eligibility or qualification standards is now located at proposed Rule 9555. Current Rule 9511(a)(2)(C) for failure to comply with certain public communication standards is now located at proposed Rule 9551. Finally, current Rule 9511(a)(2)(D) for failure to comply with a temporary or permanent cease and desist order is now located at proposed Rule 9556.

substance of the actions. The previous heading of "non-summary" proceedings was confusing because there are a number of rules that have an expedited component that could be viewed as "non-summary" in nature.

In addition, the proposed rule change modifies the authorization provision for initiating certain summary proceedings. Pursuant to Section 15A(h)(3) of the Act, existing NASD Rule 9512 allows NASD to summarily suspend or limit the activities of a member or associated person when, for example, another self-regulatory organization has expelled, barred or suspended the member or associated person or the member is in such financial or operating difficulty that it cannot be permitted to continue to do business as a member with safety to investors, creditors, other members or NASD. Currently, NASD may only invoke Rule 9512 with NASD Board authorization.¹⁰ The rule change will allow the President of NASD Regulatory Policy and Oversight or the Executive Vice President for NASD Regulatory Policy and Programs (rather than the Board) to authorize the issuance of summary proceeding notices, which begin the summary proceeding process. NASD would only initiate a summary proceeding under circumstances demanding quick action. This modification to the authorization provision will avoid the logistical difficulties of having to obtain the necessary authorization from the Board on short notice, while at the same time ensuring that such decisions are made at the highest NASD staff levels.¹¹

¹⁰ The present requirement that the NASD Board must authorize such actions is set forth in NASD's rules and not the Act.

¹¹ This change makes the authorization provision for summary proceedings consistent with the authorization provision for temporary cease and desist orders under Rule 9810(a).

Unlike the current summary provision, moreover, the modified provision provides that a respondent's request for a hearing generally will result in a stay of the action.¹²

The proposed amendments also reorganize the hearing provisions of these various rules into a single rule within the new Rule 9550 Series. The new hearing rule, proposed Rule 9559, creates a uniform, efficient and manageable expedited procedure consistent with NASD's obligations to the investing public, the securities markets and NASD members. Under the proposal, a respondent may request a hearing at any time prior to the effective date of the action contained in the notice issued pursuant to the new Rule 9550 Series. Under the present scheme, some rules have five-day periods while others have seven-day periods to request hearings,¹³ even though the notices often do not become effective for much longer periods of time.¹⁴ This new provision ties the periods together, giving respondents more time to request a hearing without altering the expedited nature of the proceedings.

The proposed Rule 9550 Series also simplifies the actual hearing process in a number of ways. First, the rule series channels all requests for hearings to the Office of Hearing Officers ("OHO"). At present, various expedited proceedings are held before

¹² As mentioned *supra*, the summary proceedings provisions have been renumbered and will be located at proposed Rule 9558.

¹³ Compare Rules 8222(a) (a respondent must request a hearing within *five* days of the service of the notice); 9413(a) (same); 9532(a) (same); 9542(a) (same) with Rule 9514(a)(1) (a respondent must request a hearing within *seven* days of the service of the notice).

¹⁴ See, e.g., Rules 8221-22 (respondent must request hearing within five days of service of notice but the notice of suspension does not become effective for 20 days); Rules 9531-32 (respondent must request hearing within five days of the notice but the notice of suspension or cancellation does not become effective until 15 days after service of the notice); Rule 9541-42 (respondent must request hearing within five days of service of notice but the notice of suspension does not become effective for 20 days).

different adjudicative bodies—e.g., NASD Board hearing panels, National Adjudicatory Council ("NAC") hearing panels, OHO hearing panels, Hearing Officers—with little justification. This practice has proven to be cumbersome. Under the proposed amendments, respondents file a written request for a hearing with OHO. For actions involving a failure to pay an arbitration award or NASD fees, a Hearing Officer from OHO will act as the sole adjudicator, as is the current practice. For all other matters involving expedited proceedings, an OHO-appointed hearing panel, consisting of a hearing officer and two hearing panelists, will act as the adjudicative body.¹⁵ Second, the amendments allow adjudicators to conduct hearings by telephone. Third, the proposed rule series will allow various expedited actions to be consolidated, eliminating the need for parties to litigate related matters in separate venues.¹⁶ In brief, the fairness of the process will not be impaired—and the efficiency will be improved—by these changes.

Furthermore, the proposed Rule 9550 Series provides respondents with greater protection by mandating that the action be stayed while the matter is pending, save for limited circumstances. The current rules with expedited components take different approaches as to whether a request for a hearing stays the action.¹⁷ In general, under the

¹⁵ The Chief Hearing Officer will select as Panelists persons who meet the qualifications delineated in NASD Rule 9231(b).

¹⁶ It is not uncommon for a firm to experience multiple, related problems, for example, a financial crisis, issues about the qualifications of the FINOP, and a failure to provide information in response to NASD staff's queries about the problems. Under the current rules, NASD staff would be required to initiate multiple proceedings to address the issues.

¹⁷ *Compare* Rule 8220 Series (request for a hearing does not stay the action); Rule 9514 (c)(1) (request for a hearing does not stay the action); *with* Rule 9413(c)(request for a hearing does stay the action); Rule 9514(c)(2) (request for a hearing does stay action as to certain alleged violations but does not as to others); Rule 9532(a) (request for a hearing does stay the action); Rule 9542(a) (request for a hearing does stay the action).

proposed Rule 9550 Series, a request for a hearing automatically stays the action, unless the Hearing Officer orders otherwise (e.g., where there is a threat of harm to the public or other members if the suspension or limitation is not immediately effective). In the ordinary case, this provision will allow respondents to be heard before the suspension, bar or expulsion takes effect. However, the streamlined procedures for final NASD action, discussed below, ensure that the action will not be stayed for a prolonged period (as can now happen due, in part, to the infrequency of NAC and NASD Board meetings and the difficulty of using special mailing ballots). NASD believes that the rule change strikes an appropriate balance between the need to ensure fairness to respondents and the need for swift action in appropriate cases.

As indicated above, the proposed Rule 9550 Series streamlines the procedures for final NASD action. In general, hearings must be conducted and matters resolved within a specified, shortened timeframe once a respondent requests a hearing.¹⁸ The use of such deadlines is consistent with the SEC's recent adoption of amendments to its Rules of Practice that impose binding completion dates in certain SEC administrative

¹⁸ For instance, proposed Rule 9559(f) requires that hearings for failure to comply with cease and desist orders, summary proceedings and members experiencing financial or operational difficulties be held within 14 days, and hearings for all other actions be held within 60 days of a request for a hearing. In addition, under proposed Rule 9559(o), OHO must issue a decision in cases involving a failure to comply with cease and desist orders, a summary proceeding or a member experiencing financial or operational difficulty within 21 days and in all other cases within 60 days of the date of the close of the hearing. However, the Hearing Officer or, if applicable, hearing panel is given flexibility to manage the progress of the case. In some instances, parties legitimately may need more time to explore the issues in the case, gather and provide detailed documentation, make preparations for witnesses, draft and file motions, etc. For good cause shown, or with the consent of all of the parties to a proceeding, the Hearing Officer or, if applicable, the hearing panel may extend or shorten any time limits prescribed by the rule. The proposed rule changes thus give adjudicators the discretion to adapt to the circumstances of each case.

proceedings.¹⁹ The deadlines also are consistent with both the SEC's and NASD's emphasis on "real-time enforcement."

Once the hearing panel or Hearing Officer issues the initial decision, the NAC's Review Subcommittee has the ability to call the matter for review in a condensed timeframe. As is currently the case with most expedited rules, respondents will not have the right to appeal the matter to the NAC,²⁰ and the NASD Board will not have the ability to call the matter for review. Thus, the hearing panel or Hearing Officer decision, if not called for review by the NAC, is the NASD's final action. However, the respondent would have the ability to appeal a hearing panel or Hearing Officer decision to the SEC.²¹ These

¹⁹ See SEC Adoption of Amendments to Rules of Practice, 68 FR 35787 (June 17, 2003). In the release, the SEC stated, "Based upon [our] experience with non-binding completion dates, the Commission has determined that timely completion of proceedings can be achieved more successfully through the adoption of mandatory deadlines and procedures designed to meet these deadlines." *Id.*

²⁰ Under many of the existing rules with expedited components, respondents may not appeal the matter to an NASD appellate body, such as the NAC. For example, the NAC appoints the original, "trial level" hearing panel in actions under the Rule 8220 Series (failure to provide information). The NASD Board appoints the hearing panel in actions under the Rule 9510 Series (summary and non-summary proceedings). Under neither rule series does a respondent have any right of appeal to an internal, NASD appellate body. Similarly, an OHO appointed hearing panel's decision in actions under the Rule 9410 Series (member experiencing financial or operational difficulties) and Rule 9530 (failure to pay fees) is not appealable to the NAC or any other internal, NASD appellate body under the existing system.

²¹ As is currently the case, a respondent's appeal of an expedited action to the SEC would be governed by Section 19(f) of the Act. See *William J. Gallagher*, Exchange Act Release No. 47501, 2003 SEC LEXIS 599, at *5 (Mar. 14, 2003) (reviewing appeal involving failure to pay arbitration award under Section 19(f) of the Act and explaining that the SEC need only to find that "the 'specific grounds' on which the SRO based its action 'exist in fact'"). Of course, an adjudicator's determination regarding a request for extraordinary relief (e.g., a motion for leave to file a late request for a hearing) is not appealable to the SEC. See *Warren B. Minton, Jr.*, Exchange Act Rel. No. 46709, 2002 SEC LEXIS 2712, at *9-10 (Oct. 23, 2002) ("[W]e do not have jurisdiction to review the NASD's denial of Minton's motion to vacate the default.... [T]he NASD merely rejected Minton's collateral attack on the NASD's [previous] action.... [E]ven if an applicant is adversely affected by the NASD's denial of a motion to set aside a default, that fact 'does not transform the denial into a reviewable NASD order.'"); *Gary A. Fox*, Exchange Act Rel. No. 46511, 2002 SEC LEXIS 2381, at *3-5 (Sept. 18, 2002) ("[W]e are precluded from considering an applicant's application for review if that applicant failed to follow the NASD's

provisions ensure that respondents have a right to a full and fair hearing before OHO and that the NAC has the ability to call matters for review when appropriate, while eliminating time-consuming review that can significantly delay the effectiveness of the subject action without necessarily adding benefit to the decision-making process in these uncomplicated matters.²²

Finally, NASD no longer refers to itself or its subsidiary, NASD Regulation, Inc., using its full corporate name, "the Association," "the NASD" or "NASD Regulation, Inc." Instead, NASD uses "NASD" unless otherwise appropriate for corporate or regulatory reasons. Accordingly, the proposed rule change replaces several references to "the Association" and "the NASD" in the text of the proposed rule change with the name "NASD" and deletes several references to "NASD Regulation, Inc." Although we are proposing to delete the name "NASD Regulation, Inc." NASD Regulation, Inc. will continue to perform the functions described in the rule.

(b) Statutory Basis

The proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act, which requires, among other things, that NASD's rules must be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest. The proposed rule change also is consistent with the provisions of Section 15A(b)(7) of the

procedures.... Fox failed to respond to NASD requests for information, failed to respond to the ... notice of his suspension, and failed to apply for reinstatement within the time required.... [W]e are [thus] precluded from considering Fox's application for review.").

²² See *supra* note 2 and accompanying text.

Act, which provides that NASD members, or persons associated with its members, are appropriately disciplined for violations of any provisions of the Act or NASD's rules.

As discussed above, expedited proceedings are addressed in a number of existing NASD rules, and there are many differences among these rules. For instance, they use different triggering events, timing mechanisms and hearing tribunals, at times without a clear reason for such differences. Member firms and the public will benefit from more uniform, understandable and streamlined procedures for these actions.

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

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

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

Written comments were neither solicited nor received.

6. Extension of Time Period for Commission Action

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

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

Not applicable.

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

Not applicable.

9. Exhibits

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

Pursuant to the requirements of the Securities Exchange Act of 1934, NASD has duly caused this filing to be signed on its behalf by the undersigned thereunto duly authorized.

NASD

BY: _____
Barbara Z. Sweeney , Senior Vice President and
Corporate Secretary

Date: August 29, 2003

EXHIBIT 1

SECURITIES AND EXCHANGE COMMISSION

(Release No. 34- ; File No. SR-NASD-2003-110)

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change and Amendment No. 1 to Proposed Rule Change by National Association of Securities Dealers, Inc. Relating to Uniform Hearing Procedures for and Consolidation of Rules Applicable to Expedited Proceedings

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)¹ and Rule 19b-4 thereunder,² notice is hereby given that on [leave space] , the National Association of Securities Dealers, Inc. (“NASD”), filed with the Securities and Exchange Commission (“SEC” or “Commission”) the proposed rule change as described in Items I, II, and III below, which Items have been prepared by NASD. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

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

NASD is proposing to create a new rule series, the proposed Rule 9550 Series, to consolidate, clarify and streamline those existing procedural rules that have an expedited proceeding component. Below is the text of the proposed rule change, which includes the proposed Rule 9550 Series, as well as related modifications to portions of other rules

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

affected by the proposed rule series.³ Proposed new language is in italics; proposed deletions are in brackets.

* * * * *

0116. Application of Rules of the Association to Exempted Securities

(a) No Change.

(b) Unless otherwise indicated within a particular provision, the following Rules of the Association and Interpretative Materials thereunder are applicable to transactions and business activities relating to exempted securities, except municipal securities, conducted by members and associated persons: 2110, 2120, 2210, IM-2210-1, IM-2210-2, IM-2210-3, 2250, 2270, 2310, IM-2310-2, IM-2310-3, 2320, 2330, IM-2330, 2340, 2430, 2450, 2510, 2520, 2521, 2522, IM-2522, 2770, 2780, 2820(g), 2910, 3010, 3020, 3030, 3040, 3050, 3060, 3070, 3110, IM-3110, 3120, 3130, IM-3130, 3131, 3140, 3230, 3310, IM-3310, 3320, IM-3320, 3330, 8110, 8120, 8210, [8221, 8222, 8223, 8224, 8225, 8226, 8227], 8310, IM-8310-1, IM-8310-2, 8320, [and] 8330, and 9552.

* * * * *

2210. Communications with the Public

(a) through (b) No Change.

³ Among various rules impacted by NASD's proposed expedited proceedings rule change (File No. SR-NASD-2003-110) is Rule 2210(c) regarding member communications with the public. On May 9, 2003, the SEC approved certain NASD proposed changes to NASD Rule 2210(c). See SEC Approval Order of NASD Proposed Rule Change Concerning Member Communications with the Public, Release No. 34-47820 (May 9, 2003) (File No. SR-NASD-00-12), 68 Federal Register 27116 (May 19, 2003). Although approved, the change to Rule 2210(c) will not become effective until November 3, 2003. In the proposed expedited proceedings rule change (File No. SR-NASD-2003-110), NASD used the language in the recently approved Rule 2110(c), not the language of current Rule 2210(c). NASD's proposed expedited proceedings rule change (File No. SR-NASD-2003-110), if approved, would not become effective until November 3, 2003, the date when the recently approved Rule 2210(c) will be effective.

(c) Filing Requirements and Review Procedures

(1) through (4) No Change.

(5) Requirement for Certain Members to File Material Prior to Use

(A) No Change.

(B) Notwithstanding the foregoing provisions, the Department, upon review of a member's advertising and/or sales literature, and after determining that the member has departed from the standards of this Rule, may require that such member file all advertising and/or sales literature, or the portion of such member's material which is related to any specific types or classes of securities or services, with the Department, at least 10 business days prior to use. The Department will notify the member in writing of the types of material to be filed and the length of time such requirement is to be in effect. Any filing requirement imposed under this paragraph will take effect 21 [30] calendar days after service of [the member receives] the written notice, during which time the member may request a [appeal pursuant to the] hearing [and appeal] under Rules 9551 and 9559 [procedures of the Code of Procedure contained in the Rule 9510 Series].

(6) through (10) No Change.

(d) through (e) No Change.

* * * * *

2220. Options Communications with the Public

(a) through (b) No Change.

(c) Association Approval Requirements and Review Procedures

(1) No Change.

(2) (A) No Change.

(B) The Department shall notify the member in writing of the types of material to be filed and the length of time such requirement is to be in effect. The requirement shall not exceed one year, however, and shall not take effect until 21[30] calendar days after service of [the member receives] the written notice, during which time the member may request a hearing under Rules [9514] 9551 and 9559[, and any such hearing shall be held in reasonable conformity with the hearing and appeal procedures of the Rule 9510 Series].

(3) through (5) No Change.

(d) No Change.

* * * * *

3110. Books and Records

(a) through (h) No Change.

Cross References - Rule 2860(b)(17), Options, Maintenance of Records

- Rule 8210, Reports and Inspection of Books for Purpose of Investigating Complaints

- [Rule 8220, Suspension of Members for Failure to Furnish Information Duly

Requested]

Rule 9552. Failure to Provide Information or Keep Information Current

- IM-2310-2, Fair Dealing with Customers

* * * * *

8220. [Suspension for Obstructing Investigations] Reserved

This rule series was amended and incorporated into new NASD Rule 9552 by SR-NASD-2003-110.

[8221. Notice]

[(a) Notice to Member]

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

[(b) Notice to Person Associated with Member]

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

[(c) Service of Notice]

[The Department of Enforcement or the Department of Market Regulation shall serve the member or person associated with a member with such notice via personal service or overnight courier or by facsimile at the location described in Rule 9134(b). Service by overnight courier shall be accomplished by sending the papers through an overnight courier service that generates a written confirmation of receipt or of attempts at delivery.]

[8222. Hearing]

[(a) Request for Hearing]

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

[(b) Hearing Procedures]

[(1) Appointment of Subcommittee]

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

of the National Adjudicatory Council and one or more current or former members of the National Adjudicatory Council or former Governor or Director.]

[(2) Time of Hearing]

[The hearing shall be held within 30 days after the date of service of the notice issued under Rule 8221. Not later than seven days before the hearing, the subcommittee shall serve the member or person associated with a member with written notice of the date and time of the hearing via overnight courier or facsimile and notify the Department of Enforcement or the Department of Market Regulation of the date and time of the hearing.]

[(3) Transmission of Documents]

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

[(4) Counsel]

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

[(5) Evidence]

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

[(6) Witnesses]

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

[(7) Additional Information]

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

[(8) Transcript]

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

[(9) Record]

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

[(10) Failure to Appear at Hearing]

[If a member or person associated with a member fails to appear at a hearing for which it has notice, the subcommittee may dismiss the request for a hearing as abandoned, and the notice issued under Rule 8221 shall become the final action of the Association. Upon a showing of good cause, the subcommittee may withdraw a dismissal entered pursuant to this subparagraph.]

[8223. Decision]

[(a) Subcommittee]

[(1) Proposed Written Decision]

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

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

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

[(b) NASD Board of Governors]

[(1) Call For Review by Governor]

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

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

[(2) Review and Decision]

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

[(c) Effective Date]

[A final written decision served under this Rule shall become effective upon service and shall constitute final action of the Association.]

[8224. Notice to Membership]

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

[8225. Termination of Suspension]

[(a) Filing of Request]

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

[(b) Response by Association Staff]

[The head of the department of the Association that filed the notice under Rule 8221 shall respond to the request in writing within five days after receipt of the request.]

[(1) Request Granted]

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

[(2) Request Denied]

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

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

[8226. Copies of Notices and Decisions to Member]

[A copy of a notice or decision under the Rule 8220 Series that is served on a person associated with a member shall be served on such member.]

[8227. Other Action Not Foreclosed]

[Action by the Association under the Rule 8220 Series shall not foreclose action by the Association under any other Rule.]

* * * * *

IM-8310-2. Release of Disciplinary and Other Information Through the Public

Disclosure Program

(a) through (c) No Change.

(d) (1) NASD shall release to the public information with respect to any disciplinary decision issued pursuant to the Rule 9000 Series imposing a suspension, cancellation or expulsion of a member; or suspension or revocation of the registration of a person associated with a member; or suspension or barring of

a member or person associated with a member from association with all members; or imposition of monetary sanctions of \$10,000 or more upon a member or person associated with a member; or containing an allegation of a violation of a Designated Rule; and may also release such information with respect to any disciplinary decision or group of decisions that involve a significant policy or enforcement determination where the release of information is deemed by the President of NASD Regulatory Policy and Oversight to be in the public interest. NASD also may release to the public information with respect to any [disciplinary] decision issued pursuant to the Rule [8220] 9550 Series imposing a suspension or cancellation of the member or a suspension or bar of the association of a person with a member, unless NASD [the National Adjudicatory Council] determines otherwise. NASD [The National Adjudicatory Council] may, in its discretion, determine to waive the requirement to release information with respect to a disciplinary or other decision under those extraordinary circumstances where the release of such information would violate fundamental notions of fairness or work an injustice. NASD [The Association] also shall release to the public information with respect to any temporary cease and desist order issued pursuant to the Rule 9800 Series. NASD may release to the public information on any disciplinary or other decision issued pursuant to the Rule [8220 or Rule] 9000 Series, not specifically enumerated in this paragraph, regardless of sanctions imposed, so long as the names of the parties and other identifying information is redacted.

(A) through (B) No Change.

(2) No Change.

(e) through (l) No Change.

* * * * *

9120. Definitions

(a) through (o) No Change.

(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, the Rule 9550 Series regarding expedited proceedings, and the Rule 9800 Series regarding temporary cease and desist 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 95[00]20 Series or the Rule 9550 Series to conduct a proceeding.

(r) "Interested Association Staff"

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

(1) No Change.

[(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]

(2[3]) a proceeding under the Rule [9510 or] 9520 Series or Rule 9550

Series:

(A) through (B) No Change.

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

(D) No Change.

(3[4]) a proceeding under the Rule 9600 Series:

(A) through (D) No Change.

(s) through (w) No Change.

(x) "Party"

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

(1) No Change.

(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] 9550 Series, the NASD department or office that issued the notice or, if another NASD department or office is named as the party handling the matter on behalf of the issuing department or office, the NASD department or office that is so designated [department or office designated under Rule 9514(b)] or a member or person that is the subject of a notice under the Rule [9512 or Rule 9513]9550 Series; or

(4) No Change.

(y) through (bb) No Change.

(cc) "Subcommittee"

The term "Subcommittee" means an Adjudicator that is:

(1) No Change.

(2) constituted under [the] Rule 9559(q) [9410 Series] or Rule 9630 to conduct a review proceeding.

* * * * *

9144. Separation of Functions

(a) Interested Association Staff

Except as counsel or a witness in a proceeding or as provided in the Rule [9400]9550 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) through (c) No Change.

* * * * *

9146. Motions

(a) through (i) No Change.

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

Disposition

(1) through (2) No Change.

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

(k) through (l) No Change.

* * * * *

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) No Change.

(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 9559(q) [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) No Change.

(d) [Rule 9514 Hearing Panel]Reserved

[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) through (f) No Change.

[(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.]

* * * * *

9400. [LIMITATION PROCEDURES UNDER RULES 3130 AND 3131] Reserved

This rule series was amended and incorporated into new NASD Rule 9557 by SR-NASD-2003-110.

[9410. Procedures for Regulating Activities of a Member Experiencing Financial or Operational Difficulties]

[9411. Purpose]

[The Rule 9410 Series sets forth procedures for regulating the activities of a member that is experiencing the financial or operational difficulties specified in Rule 3130 or 3131.]

[9412. Notice of Limitations]

[The Department of Member Regulation may issue a notice directing a member to limit its business activities if the Department of Member Regulation has reason to believe that any condition specified in Rule 3130 or 3131 exists. The notice shall specify the grounds on which such action is being taken, the nature of the limitations to be imposed, the effective date of the limitations, a fitting sanction that will be imposed if the member fails to comply with the limitations set forth in the notice, and the conditions for terminating such limitations. The effective date of the limitations shall be at least seven

days after the date of service of the notice. The notice also shall inform the member that it may request a hearing before the Department of Member Regulation under Rule 9413. The Department of Member Regulation shall serve the notice by facsimile or overnight courier.]

[9413. Hearing Panel Review]

[(a) Request for a Hearing]

[A member subject to a notice issued under Rule 9412 may file a written request for hearing before a Hearing Panel with the Office of Hearing Officers. The request shall state the specific grounds for withdrawing or modifying the limitations specified in the notice. The request shall be filed pursuant to Rules 9135, 9136, and 9137 within five days after service of the notice under Rule 9412. The member may withdraw its request at any time by filing a written notice with the Office of Hearing Officers pursuant to Rules 9135, 9136, and 9137. The time limits set forth herein are to be strictly construed and cannot be modified except for good cause shown.]

[(b) Appointment of Hearing Panel]

[The Chief Hearing Officer shall assign a Hearing Officer to preside over the matter, and appoint Panelists pursuant to Rule 9231 and 9232 to the Hearing Panel. As soon as practicable after assignment, the Chief Hearing Officer shall serve the Parties with notice of the Hearing Panel.]

[(c) Stay]

[Unless otherwise ordered by the NASD Board Executive Committee, the initiation of a review under this paragraph shall stay the decision of the Department of

Member Regulation or an uncontested notice until a decision constituting final action of the Association is issued.]

[(d) Transmission of Documents]

[(1) Not less than five business days before the hearing, the Department of Member Regulation shall file with the Office of Hearing Officers four copies of the record which shall consist of the notice issued under Rule 9412 and all correspondence between the Department of Member Regulation and the Member. The Department of Member Regulation shall simultaneously serve a copy of the record on the member by facsimile or overnight courier.]

[(2) Not less than five business days before the hearing, the Department of Member Regulation and the member shall exchange proposed exhibits and also exchange lists of all potential witnesses, including a brief description of the proposed testimony. The exhibits and the list of potential witnesses shall be served by facsimile or by overnight courier.]

[(e) Time of Hearing]

[If a member requests a hearing under paragraph (a), the Hearing Panel shall conduct a hearing within 14 days after service of the notice under Rule 9412. Not less than five business days before the hearing, the Office of Hearing Officers shall provide written notice to the member of the location, date, and time of the hearing by facsimile or overnight courier.]

[(f) Hearing and Rights of Member]

[The member shall be entitled to be heard in person, to be represented by an attorney, and to submit any relevant evidence. The hearing shall be recorded and a transcript prepared by a court reporter. The member may purchase a copy of the transcript from the court reporter at prescribed rates. A witness may purchase a copy of the transcript of his or her own testimony from the court reporter at prescribed rates. Proposed corrections to the transcript may be submitted by affidavit to the Office of Hearing Officers within a reasonable time determined by the Office of Hearing Officers. Upon notice to the participants in the hearing, the Department of Member Regulation may order corrections to the transcript as requested or sua sponte.]

[(g) Record of the Proceeding]

[The record shall consist of:]

[(1) the notice issued pursuant to Rule 9412;]

[(2) the request for hearing filed pursuant to Rule 9413;]

[(3) any other submissions by the member and the Department of Member Regulation at the hearing;]

[(4) any evidence considered at the hearing;]

[(5) the transcript of the hearing and any corrections thereto; and]

[(6) all documents transmitted to the member under Rule 9413(d).]

[(h) Custodian of the Record]

[The custodian of the record shall be the Office of Hearing Officers.]

[(i) Evidence Not Admitted]

[Evidence that is proffered but not admitted during the hearing shall not be part of the record, but shall be retained by the custodian of the record until the date when the Association's decision becomes final or, if applicable, upon the conclusion of any review by the Commission or the federal courts.]

[(j) Failure to Request Hearing]

[If a member does not request a hearing under paragraph (a), the limitations specified in the notice shall become effective on the date specified in the notice. Unless the Executive Committee calls the notice for review under Rule 9415, the limitations specified in the notice shall remain in effect until the Department of Member Regulation reduces or removes the limitations pursuant to Rule 9417(b).]

[(k) Decision]

[(1) Within seven days after the hearing, the Hearing Panel shall issue a written decision approving, modifying, or withdrawing the limitations specified in the notice. If the decision imposes limitations, the decision shall state the grounds for the limitations, the conditions for terminating such limitations, and provide for a fitting sanction to be imposed under Rule 9416 if the member fails to comply with the limitations. The Office of Hearing Officers shall promptly serve the decision by facsimile or overnight courier pursuant to Rules 9132 and 9134. The limitations imposed shall become effective upon service of the decision]

[(2) Contents of Decision]

[The decision shall include:]

[(A) a description of the Department of Member Regulation's decision, including its rationale;]

[(B) a description of the principal issues regarding the imposition of limitations raised in the review and a statement supporting the disposition of such issues;]

[(C) a summary of the evidence on each issue;]

[(D) a statement of whether the Department of Member Regulation's decision is affirmed, modified, or reversed, and a rationale therefor; and]

[(E) if any limitations are imposed:]

[(i) a description of the limitations and a statement describing a fitting sanction that will be imposed under Rule 9416 if the member fails to comply with any of the limitations; and]

[(ii) the conditions for terminating the limitations.]

[(I) Issuance of Decision After Expiration of Call for Review Period]

[The Hearing Panel shall provide its proposed written decision to the NASD Board Executive Committee. The NASD Board Executive Committee may call the proceeding for review pursuant to Rule 9415. If the NASD Board Executive Committee does not call the proceeding for review, the proposed written decision of the Hearing Panel shall constitute the final action of the Association.]

[(m) Ex Parte Communications]

[The prohibitions against ex parte communications in Rule 9143 shall become effective under the Rule 9410 Series when Association staff has knowledge that a member intends to file a written application for review or that the NASD Board Executive Committee intends to review a decision on its own motion under this Rule.]

[9414. Reserved]

[9415. Discretionary Review by the NASD Board Executive Committee]

[(a) Call for Review by NASD Board Executive Committee]

[A member of the NASD Board Executive Committee may call a proceeding for review by the NASD Board Executive Committee if the call for review is made within the period prescribed in paragraph (b).]

[(b) 15 Day Period; Waiver]

[A member of the NASD Board Executive Committee shall make his or her call for review not later than the next meeting of the NASD Board Executive Committee that is at least 15 days after the date on which the NASD Board Executive Committee receives the proposed written decision of the Hearing Panel. By a unanimous vote of the NASD Board Executive Committee, the NASD Board Executive Committee may shorten the period to less than 15 days. By an affirmative vote of the majority of the NASD Board Executive Committee then in office, the NASD Board Executive Committee may, during the 15 day period, vote to extend the period to more than 15 days.]

[(c) Review at Next Meeting]

[If an NASD Board Executive Committee member calls a proceeding for review within the period prescribed in paragraph (b), the NASD Board Executive Committee shall review the proceeding not later than the next meeting of the NASD Board Executive Committee. The NASD Board Executive Committee may order the filing of briefs in connection with its review proceedings pursuant to this Rule.]

[(d) Decision of NASD Board Executive Committee, Including Remand]

[After review, the NASD Board Executive Committee may affirm, modify, or reverse the proposed written decision of the Hearing Panel. Alternatively, the NASD Board Executive Committee may remand the proceeding with instructions. The NASD Board Executive Committee shall prepare a written decision that includes all of the elements described in Rule 9414(k)(2).]

[(e) Issuance of Decision]

[The NASD Board Executive Committee shall issue and serve its written decision on the member and the Department of Member Regulation pursuant to Rules 9132 and 9134. The decision shall be effective upon service. The decision shall constitute the final action of the Association, unless the NASD Board Executive Committee remands the proceeding.]

[9416. Enforcement of Sanctions]

[(a) Order]

[If the Department of Member Regulation determines that a member has failed to comply with any limitations imposed by a decision or an effective notice under the Rule

9410 Series that has not been stayed, the Department of Member Regulation shall issue an order imposing the sanctions set forth in the decision or notice and specifying the effective date and time of such sanctions. The Department of Member Regulation shall serve the order on the member by facsimile or overnight courier.]

[(b) Hearing]

[(1) A member subject to an order issued under paragraph (a) may file a written request for a hearing before a Hearing Panel with the Office of Hearing Officers. The request shall be filed pursuant to Rules 9135, 9136, and 9137 within seven days (including intermediate Saturdays, Sundays, and Federal holidays) after service of the order. The Chief Hearing Officer shall assign a Hearing Officer to preside over the matter, and appoint Panelists pursuant to Rule 9231 and 9232 to the Hearing Panel. As soon as practicable after assignment, the Office of Hearing Officers shall serve the Parties with notice of the Hearing Panel. The hearing shall be held within ten days after service of the order under paragraph (a).]

[(2) The member shall be entitled to be heard in person, to be represented by an attorney, and to submit any relevant evidence.]

[(3) The hearing shall be recorded and a transcript prepared by a court reporter. The member may purchase a copy of the transcript from the court reporter at prescribed rates. A witness may purchase a copy of the transcript of his or her own testimony from the court reporter at prescribed rates. Proposed corrections to the transcript may be submitted by affidavit to the Office of Hearing Officers within a reasonable time determined by the Office of Hearing Officers.]

Upon notice to the participants in the hearing, the Office of Hearing Officers may order corrections to the transcript as requested or sua sponte.]

[(c) No Stay of Sanctions]

[Unless otherwise ordered by the NASD Board Executive Committee, a request for a hearing pursuant to this Rule shall not stay the effectiveness of the order issued under paragraph (a).]

[(d) Decision]

[Within four days after the hearing, the Hearing Panel shall affirm, modify, or reverse the order issued under paragraph (a). The Office of Hearing Officers shall serve the decision on the member pursuant to Rules 9132 and 9134. The decision shall become effective upon service and shall constitute final action of the Association.]

[9417. Additional Limitations; Reduction or Removal of Limitations]

[(a) Additional Limitations]

[If a member continues to experience financial or operational difficulty specified in Rule 3130 or 3131, notwithstanding an effective notice or decision under the Rule 9410 Series, the Department of Member Regulation may impose additional limitations by issuing a notice under Rule 9412. The notice shall state that the member may apply for relief from the additional limitations by filing a written application for a hearing under Rule 9413 and that the procedures in Rules 9413 through 9416 shall be applicable. An application for a hearing also shall include a detailed statement of the member's objections to the additional limitations.]

[(b) Reduction or Removal of Limitations]

[If the Department of Member Regulation determines that any limitations previously imposed under the Rule 9410 Series should be reduced or removed, the Department of Member Regulation shall serve a written notice on the member pursuant to Rules 9132 and 9134.]

[9418. Application to Commission for Review]

[The right to have any action taken by the Association pursuant to this Rule Series reviewed by the Commission is governed by Section 19 of the Act. The filing of an application for review shall not stay the effectiveness of the action taken by the Association, unless the Commission otherwise orders.]

[9419. Other Action Not Foreclosed]

[Action by the Association under the Rule 9410 Series shall not foreclose action by the Association under any other Rule.]

* * * * *

9500. OTHER PROCEEDINGS

9510. [Summary and Non-Summary Proceedings] Reserved

This rule series was amended and incorporated into new NASD Rule 9550 Series by SR-NASD-2003-110. Summary Proceedings under Rule 9511(a)(1) for actions authorized under Section 15A(h)(3) of the Act are now located at Rule 9558 (Summary Proceedings for Actions Authorized by Section 15A(h)(3) of the Act). Non-summary proceedings under Rule 9511(a)(2)(A) for failure to comply with an arbitration award or related settlement agreement are now located at Rule 9554 (Failure to Comply with an

Arbitration Award or Related Settlement). Non-summary proceedings under Rule 9511(a)(2)(B) for failure to meet the qualification requirements or other prerequisites for access to NASD or member services is now located at Rule 9555 (Failure to Meet the Eligibility or Qualification Standards or Prerequisites for Access to Services). Non-summary proceedings under Rule 9511(a)(2)(C) for failure to comply with public communication standards are now located at Rule 9551 (Failure to Comply with Public Communication Standards). Non-summary proceedings under Rule 9511(a)(2)(D) for failure to comply with a temporary or permanent cease and desist order are now located at Rule 9556 (Failure to Comply with a Temporary or Permanent Cease and Desist Order).

[9511. Purpose and Computation of Time]

[(a) Purpose]

[The Rule 9510 Series sets forth procedures for: (1) summary proceedings authorized by Section 15A(h)(3) of the Act; and (2) non-summary proceedings to impose (A) a suspension or cancellation for failure to comply with an arbitration award or a settlement agreement related to an arbitration or mediation pursuant to Article VI, Section 3 of the NASD By-Laws; (B) a suspension or cancellation of a member, or a limitation or prohibition on any member, associated person, or other person with respect to access to services offered by the Association or a member thereof, if the Association determines that such member or person does not meet the qualification requirements or other prerequisites for such access or such member or person cannot be permitted to continue to have such access with safety to investors, creditors, members, or the Association; (C) an advertising

pre-use filing requirement; or (D) a suspension or cancellation of the membership of a member or the registration of a person for failure to comply with a permanent cease and desist order entered pursuant to a decision issued under the Rule 9200 Series or Rule 9300 Series or a temporary cease and desist order entered pursuant to a decision issued under the Rule 9800 Series.]

[(b) Computation of Time]

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

[9512. Initiation of Summary Proceeding]

[(a) Authorization]

[(1) The NASD Board may authorize the President of NASD Regulation to issue on a case-by-case basis a written notice that:]

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

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

[(2) The NASD Board may authorize the President of NASD Regulation or the President of Nasdaq to issue on a case-by-case basis a written notice that summarily limits or prohibits any person with respect to access to services offered by the Association if paragraph (a)(1) applies to such person or, in the case of a person who is not a member, if the NASD Board determines that such person does not meet the qualification requirements or other prerequisites for such access and such person cannot be permitted to continue to have such access with safety to investors, creditors, members, or the Association.]

[(b) Contents and Service of Notice]

[A notice issued under this subsection shall state the specific grounds and include the factual basis for the summary suspension, limitation, or prohibition and state that the member, associated person, or other person may file a written request for a hearing under Rule 9514. The notice shall be served by facsimile or overnight courier.]

[(c) Effective Date]

[A summary suspension, limitation, or prohibition shall be effective upon service of the notice under paragraph (b).]

[9513. Initiation of Non-Summary Proceeding]

[(a) Notice]

[Association staff may initiate a proceeding authorized under Rule 9511(a)(2)(A) or (B), by issuing a written notice to the member, associated person, or other person. Association staff may initiate a proceeding authorized under Rule 9511(a)(2)(D), after receiving written authorization from the President of NASD Regulatory Policy and

Oversight or the Executive Vice President for NASD Regulatory Policy and Programs, by issuing a written notice to the member or associated person. The notice shall specify the grounds for and effective date of the cancellation, suspension, bar, limitation, or prohibition and shall state that the member, associated person, or other person may file a written request for a hearing under Rule 9514. In addition, if the proceeding is authorized under Rule 9511(a)(2)(D), the notice shall specifically identify the provision of the permanent or temporary cease and desist order that is alleged to have been violated, and shall contain a statement of facts specifying the alleged violation. The notice shall be served by facsimile or overnight commercial courier.]

[(b) Effective Date]

[For any cancellation or suspension pursuant to Rule 9511(a)(2)(A), the effective date shall be at least 15 days after service of the notice on the member or associated person. For any action pursuant to Rule 9511(a)(2)(B) or (D), the effective date shall be at least seven days after service of the notice on the member or person, except that the effective date for a notice of a limitation or prohibition on access to services offered by the Association or a member thereof with respect to services to which the member, associated person, or other person does not have access shall be upon receipt of the notice.]

[9514. Hearing and Decision]

[(a) Request]

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

[A member, associated person, or other person who is subject to a notice issued under Rule 2210, 2220, 9512(a), or 9513(a) may file a written request for a

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

[(2) Failure to File Request]

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

[(3) Ex Parte Communications]

[The prohibition against ex parte communications in Rule 9143 shall become effective under the Rule 9510 Series when Association staff has knowledge that a member, associated person, or other person intends to request a hearing under this paragraph.]

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

[If a member, associated person, or other person subject to a notice under Rule 2210, 2220, 9512, or 9513 files a written request for a hearing, an appropriate department

or office of the Association shall be designated as a Party in the proceeding, and a Hearing Panel shall be appointed.]

[(1) If the President of NASD Regulation or NASD Regulation staff issued the notice initiating the proceeding under Rule 2210, 2220, 9512(a), or 9513(a), the President of NASD Regulation shall designate an appropriate NASD Regulation department or office as a Party. For proceedings initiated under Rule 9513(a) concerning failure to comply with an arbitration award or a settlement agreement related to an NASD arbitration or mediation, the Chief Hearing Officer shall appoint a Hearing Panel composed of a Hearing Officer. For any other proceedings initiated under Rule 2210, 2220, 9512(a), or 9513(a) by the President of NASD Regulation or NASD Regulation staff, the NASD Regulation Board shall appoint a Hearing Panel composed of two or more members; one member shall be a Director of NASD Regulation, and the remaining member or members shall be current or former Directors of NASD Regulation or Governors. The President of NASD Regulation may not serve on a Hearing Panel.]

[(2) If the President of Nasdaq or Nasdaq staff issued the notice under Rule 9512(a) or 9513(a), the President of Nasdaq shall designate an appropriate Nasdaq department or office as a Party, and the Nasdaq Board shall appoint a Hearing Panel. The Hearing Panel shall be composed of two or more members. One member shall be a director of Nasdaq, and the remaining member or members shall be current or former directors of Nasdaq or Governors. The President of Nasdaq may not serve on the Hearing Panel.]

[(3) A Hearing Officer appointed pursuant to this provision shall have authority to do all things necessary and appropriate to discharge his or her duties as set forth under Rule 9235.]

[(c) Stays]

[(1) Summary Proceeding]

[Unless the NASD Board orders otherwise, a request for a hearing shall not stay the effectiveness of a summary suspension, limitation, or prohibition under Rule 9512.]

[(2) Non-Summary Proceeding]

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

[(d) Time of Hearing]

[(1) Summary Proceeding]

[If a member, associated person, or other person who is subject to a notice issued under Rule 9512(a) files a written request for a hearing, a hearing shall be held within seven days after the filing of the request for hearing. Not less than five days before the hearing, the Hearing Panel shall provide written notice to the Parties of the location, date, and time of the hearing by facsimile or overnight courier.]

[(2) Non-Summary Proceeding]

[If a member, associated person, or other person who is subject to a notice issued under Rule 2210, 2220, or 9513(a) files a written request for a hearing, a hearing shall be held within 40 days after the filing of the request for hearing. The Hearing Panel may, during the initial 40 day period, extend the time in which the hearing shall be held by an additional 30 days on its own motion or at the request of a Party. Not less than five days before the hearing, the Hearing Panel shall provide written notice to the Parties of the location, date, and time of the hearing by facsimile or overnight courier.]

[(e) Transmission of Documents]

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

[(2) Not less than five days before the hearing, the Parties shall exchange proposed exhibit and witness lists. The exhibit and witness lists shall be served by facsimile or by overnight courier.]

[(f) Hearing Panel Consideration]

[(1) Rights of Parties]

[The Parties shall be entitled to be heard in person, to be represented by an attorney, and to submit any relevant evidence.]

[(2) Witnesses]

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

[(3) Recordation of Hearing]

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

[(4) Record]

[The record shall consist of: (1) the notice issued under Rule 2210, 2220, 9512, or 9513; (2) all documents transmitted by the Association under Rule 9514(e)(1); (3) the request for hearing; (4) any other submissions by the Parties;

(5) any evidence considered at the hearing; and (6) the transcript of the hearing and any corrections thereto.]

[(5) Custodian of the Record]

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

[(6) Evidence Not Admitted]

[Evidence that is proffered but not admitted during the hearing shall not be part of the record, but shall be retained by the custodian of the record until the date when the Association's decision becomes final or, if applicable, upon the conclusion of any review by the Commission or the federal courts.]

[(g) Decision of the Hearing Panel]

[(1) Summary Proceeding]

[Based on its review of the record, the Hearing Panel shall affirm, modify, or reverse the summary suspension, limitation, or prohibition. The Hearing Panel shall prepare a proposed written decision pursuant to subparagraph (3).]

[(2) Non-Summary Proceeding]

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

[(3) Contents of Decision]

[The decision shall include:]

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

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

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

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

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

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

or pre-use filing requirement is to be imposed or continue to be imposed, its effective date, time, and terms.]

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

[The Hearing Panel shall provide its proposed written decision to the NASD Board. The NASD Board may call the proceeding for review pursuant to Rule 9515. If the NASD Board does not call the proceeding for review, the proposed written decision of the Hearing Panel shall become final, and the Hearing Panel shall serve its written decision on the Parties pursuant to Rules 9132 and 9134. The decision shall be effective upon service and shall constitute the final action of the Association.]

[9515. Discretionary Review by the NASD Board]

[(a) Call for Review by Governor]

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

[(b) 15 Day Period; Waiver]

[A Governor shall make his or her call for review not later than the next meeting of the NASD Board that is at least 15 days after the date on which the NASD Board receives the proposed written decision of the Hearing Panel. By a unanimous vote of the NASD Board, the NASD Board may shorten this period. By an affirmative vote of the majority of the NASD Board then in office, the NASD Board may, during the period, vote to extend the period.]

[(c) Review at Next Meeting]

[If a Governor calls a proceeding for review within the period prescribed by paragraph (b), the NASD Board shall review the decision not later than the next meeting of the NASD Board. The NASD Board may order the filing of briefs in connection with its review proceedings pursuant to this Rule.]

[(d) Decision of the NASD Board, Including Remand]

[After review, the NASD Board may affirm, modify, or reverse the proposed written decision of the Hearing Panel. Alternatively, the NASD Board may remand the proceeding with instructions. The NASD Board shall prepare a written decision that includes all of the elements of Rule 9514(g)(3).]

[(e) Issuance of Decision]

[The NASD Board shall issue and serve its written decision on the Parties pursuant to Rules 9132 and 9134. The decision shall be effective upon service. The decision shall constitute the final action of the Association, unless the NASD Board remands the proceeding.]

[9516. Reinstatement]

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

receipt of the request. If the head of the department or office denies the request, the member or person may file a written request for relief with the Review Subcommittee. The Review Subcommittee shall respond to the request in writing within 14 days after receipt of the request. The Review Subcommittee shall serve its response by facsimile or overnight courier.]

[9517. Copies of Notices and Decisions to Members]

[A copy of a notice initiating a proceeding, a notice of a hearing, or any other notice or decision that is served on a person associated with a member under the Rule 9510 Series shall be served simultaneously on such member by the same method of service provided for in the applicable rule.]

[9518. Application to Commission for Review]

[The right to have any action pursuant to this Rule Series reviewed by the Commission is governed by Section 19 of the Act. The filing of an application for review by the Commission shall not stay the effectiveness of final action by the Association, unless the Commission otherwise orders.]

[9519. Other Action Not Foreclosed; Costs]

[(a) Action by the Association under the Rule 9510 Series shall not foreclose action by the Association under any other Rule.]

[(b) The Association may impose on a member, associated person, or other person such costs of a denial of access proceeding as the Association deems fair and appropriate under the circumstances. Costs relating to other proceedings under the Rule 9510 Series may be imposed under Rule 8330.]

* * * * *

[9540. Failure to Provide Information or Meet the Eligibility and Qualification Standards]

[9541. Notice]

[(a) Notice to Member for Failure to Provide Information]

[If a member fails to provide any information, report, material, data, or testimony requested or required to be filed pursuant to the NASD By-Laws or the Rules of the Association, or fails to keep its membership application or supporting documents current, the Association staff may provide written notice to such member specifying the nature of the failure and stating that the failure to take corrective action within 20 days after service of the notice constitutes grounds for suspension of membership.]

[(b) Notice to Person Associated with Member for Failure to Provide Information]

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

[(c) Notice to Member for Failure to Meet the Eligibility and Qualification Standards]

[If a member becomes ineligible for continuance in membership because it does not meet the eligibility and qualification standards set forth in Article III of the By-Laws, the Association staff may provide written notice to such member stating that the failure to become eligible for continuance in membership within 20 days after service of the notice constitutes grounds for cancellation of membership.]

[(d) Service of Notice]

[The Association staff shall serve the member or person associated with a member with such notice via personal service or overnight courier or by facsimile at the location described in Rule 9134(b). Service by overnight courier shall be accomplished by sending the papers through an overnight courier service that generates a written confirmation of receipt or of attempts at delivery.]

[(e) Effective Date of Notice]

[A notice issued and served under this Rule shall become effective 20 days after the date of service of the notice, unless stayed by a request for a hearing pursuant to Rule 9542(a).]

[9542. Hearing]

[(a) Request for Hearing]

[Within five days after the date of service of a notice issued under Rule 9541, the member or person served with such notice may file with the Office of Hearing Officers a written request for a hearing. The request shall state with specificity why the member or

person believes that the notice should be set aside. The request for the hearing shall stay the effective date of the notice.]

[(b) Hearing Procedures]

[(1) Appointment of Hearing Panel]

[If a hearing is requested, based upon a notice issued under Rule 9541(a) or (b), the Chief Hearing Officer shall assign a Hearing Officer to preside over the matter, and appoint Panelists pursuant to Rules 9231 and 9232 to the Hearing Panel. As soon as practicable after the assignment, the Chief Hearing Officer shall serve the Parties with notice of the Hearing Panel. Recusals and disqualifications of Hearing Officers and Hearing Panels shall be governed by Rules 9233 and 9234.]

[(2) Appointment of a Hearing Officer]

[If a hearing is requested, based upon a notice issued under Rule 9541(c), the Chief Hearing Officer shall assign a Hearing Officer to conduct the hearing. As soon as practicable after the assignment, the Chief Hearing Officer shall serve the Parties with notice of the Hearing Officer. Recusals and disqualifications of Hearing Officers shall be governed by Rule 9233.]

[(3) Parties]

[The Parties shall be the member or person to whom the notice was issued and the head of the department or office that issued the notice under Rule 9541.]

[(4) Time of Hearing]

[The hearing shall be held within 45 days after the date of service of the notice under Rule 9541. Not later than seven days before the hearing, the Hearing

Officer shall serve the Parties with written notice of the date and time of the hearing.]

[(5) Transmission of Documents]

[Not later than seven days before the hearing, the head of the department or office that issued the notice under Rule 9541 shall serve the member or person associated with a member, either personally or via overnight courier, with all documents that were considered in connection with the decision to issue a notice under Rule 9541 and provide copies of the same to the Hearing Officer.]

[(6) Counsel]

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

[(7) Evidence]

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

[(8) Witnesses]

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

[(9) Additional Information]

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

[(10) Transcript]

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

[(11) Record]

[The record shall consist of all documents that were considered in connection with the decision to issue a notice under Rule 9541, the notice issued under Rule 9541, the request for hearing filed under Rule 9542, the transcript of the hearing, and each document or other item of evidence presented to or considered by the Hearing Panel. The Office of Hearing Officers shall be the custodian of the record.]

[(12) Evidence Not Admitted]

[Evidence that is proffered but not admitted during the hearing shall not be part of the record, but shall be retained by the custodian of the record until the date when the Association's decision becomes final or, if applicable, upon the conclusion of any review by the Commission or the federal courts.]

[(13) Failure to Appear at Hearing]

[If a member or person fails to appear at a hearing for which he has notice, the Hearing Officer may dismiss the request for a hearing as abandoned, and the notice issued under Rule 9541 shall become final. Upon a showing of good cause, the Hearing Officer may withdraw a dismissal entered pursuant to this subparagraph.]

[9543. Decision]

[(a) Failure to Provide Information]

[The Hearing Panel may impose any fitting sanction, including fines, suspensions, expulsions and bars, based upon the failure to provide any information, report, material, data, or testimony requested or required to be filed pursuant to the NASD By-Laws or the Rules of the Association, or failure to keep a membership application or supporting documents current. The Hearing Panel shall prepare a written decision, and if the Hearing Panel determines that a sanction should be imposed, the written decision shall state the grounds for the sanction, and in the case of a suspension, the conditions for terminating the suspension. A Party sanctioned under this Rule will have the right to appeal such a decision to the National Adjudicatory Council, and the decision will be subject to an

NASD Board call for review, in accordance with the Rule 9300 Series. If not timely appealed or called for review, the Hearing Panel decision shall constitute final disciplinary action of the Association for purposes of SEC Rule 19d-1(c)(1).]

[(b) Failure to Meet the Eligibility and Qualification Standards]

[The Hearing Officer may cancel the membership of any member who is ineligible for continuance in membership because it does not meet the eligibility and qualification standards set forth in Article III of the By-Laws. The Hearing Officer shall prepare a written decision, and if the Hearing Officer determines that a cancellation should be imposed, the written decision shall state the grounds for the cancellation. A member canceled under this Rule will have the right to appeal such a decision to the National Adjudicatory Council, and the decision will be subject to an NASD Board call for review, in accordance with the Rule 9300 Series. If not timely appealed or called for review, the Hearing Officer decision shall constitute final disciplinary action of the Association for purposes of SEC Rule 19d-1(c)(1).]

[9544. Defaults]

[Respondents may file motions for reinstatement with the head of the department that issued the original pre-suspension notice under Rules 9541(a) or (b) within six months of the date of the original pre-suspension notice. If such a motion is filed, a Hearing Panel will be convened under Rule 9542, and the Hearing Panel may impose any fitting sanction. Respondents who are suspended pursuant to Rules 9541(a) or (b) and who fail to request hearing to challenge the suspensions within six months of receipt of the pre-suspension notice issued under Rules 9541(a) or (b) will automatically be barred or expelled.]

[9545. Notice to Membership]

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

[9546. Copies of Notices and Decisions to Member]

[A copy of a notice or decision under the Rule 9540 Series that is served on a person associated with a member shall be served on such member.]

[9547. Other Action Not Foreclosed]

[Action by the Association under the Rule 9540 Series shall not foreclose action by the Association under any other Rule.]

* * * * *

9550. Expedited Proceedings

9551. Failure to Comply with the Public Communication Standards

(a) Notice of Pre-Use Filing Requirement

Pursuant to Rules 2210(c)(5) and 2220(c)(2), NASD staff may issue a written notice requiring a member to file advertising, educational material or sales literature with the NASD Advertising Regulation Department at least ten days prior to use if NASD staff determines that the member has departed from the standards of Rule 2210 or Rule 2220.

(b) Service of Notice of Pre-Use Filing Requirement

NASD staff shall serve the member with such notice in accordance with Rule 9134.

(c) Contents of Notice

A notice issued under this Rule shall state the specific grounds and include the factual basis for the NASD action. The notice shall state when the NASD action will take effect and explain what the respondent must do to avoid such action. The notice shall state that the respondent may file a written request for a hearing with the Office of Hearing Officers pursuant to Rule 9559. The notice also shall inform the respondent of the applicable deadline for filing a request for a hearing and shall state that a request for a hearing must set forth with specificity any and all defenses to the NASD action.

(d) Effective Date of Notice of Pre-Use Filing Requirement

Pursuant to Rules 2210(c)(5) and 2220(c)(2), the pre-use filing requirement referenced in a notice issued and served under this Rule shall become effective 21 days after service of the notice, unless stayed by a request for a hearing pursuant to Rule 9559.

(e) Request for Hearing

A member served with a notice under this Rule may file with the Office of Hearing Officers a written request for a hearing pursuant to Rule 9559. A request for a hearing shall be made before the effective date of the notice, as indicated in paragraph (d) of this Rule. A request for a hearing must set forth with specificity any and all defenses to the NASD action.

(f) Failure to Request Hearing

If a member does not timely request a hearing, the pre-use filing requirements specified in the notice shall become effective 21 days after service of the notice and the notice shall constitute final NASD action.

(g) Request for Modification or Termination of Pre-Use Filing Requirement

A member that is subject to a pre-use filing requirement under this Rule may file a written request for modification or termination of the requirement. Such request shall be filed with the head of the NASD department or office that issued the notice or, if another NASD department or office is named as the party handling the matter on behalf of the issuing department or office, with the head of the NASD department or office that is so designated. The head of the appropriate department or office may grant relief for good cause shown.

9552. Failure to Provide Information or Keep Information Current

(a) Notice of Suspension of Member, Person Associated with a Member or Person Subject to NASD's Jurisdiction if Corrective Action is Not Taken

If a member, person associated with a member or person subject to NASD's jurisdiction fails to provide any information, report, material, data, or testimony requested or required to be filed pursuant to the NASD By-Laws or the NASD Rules, or fails to keep its membership application or supporting documents current, NASD staff may provide written notice to such member or person specifying the nature of the failure and stating that the failure to take corrective action within 21 days after service of the notice will result in suspension of membership or of association of the person with any member.

(b) Service of Notice of Suspension

NASD staff shall serve the member or person with such notice in accordance with Rule 9134. A copy of a notice under this Rule that is served on a person associated with a member also shall be served on such member.

(c) Contents of Notice

A notice issued under this Rule shall state the specific grounds and include the factual basis for the NASD action. The notice shall state when the NASD action will take effect and explain what the respondent must do to avoid such action. The notice shall state that the respondent may file a written request for a hearing with the Office of Hearing Officers pursuant to Rule 9559. The notice also shall inform the respondent of the applicable deadline for filing a request for a hearing and shall state that a request for a hearing must set forth with specificity any and all defenses to the NASD action.

(d) Effective Date of Suspension

The suspension referenced in a notice issued and served under this Rule shall become effective 21 days after service of the notice, unless stayed by a request for a hearing pursuant to Rule 9559.

(e) Request for Hearing

A member or person served with a notice under this Rule may file with the Office of Hearing Officers a written request for a hearing pursuant to Rule 9559. A request for a hearing shall be made before the effective date of the notice, as indicated in paragraph (d) of this Rule. A request for a hearing must set forth with specificity any and all defenses to the NASD action.

(f) Request for Termination of the Suspension

A member or person subject to a suspension pursuant to this Rule may file a written request for termination of the suspension on the ground of full compliance with the notice or decision. Such request shall be filed with the head of the NASD department or

office that issued the notice or, if another NASD department or office is named as the party handling the matter on behalf of the issuing department or office, with the head of the NASD department or office that is so designated. The head of the appropriate department or office may grant relief for good cause shown.

(g) Settlement Procedure

Uncontested offers of settlement shall be permitted under this Rule and shall conform to the requirements of Rule 9270, except that, if an uncontested offer of settlement, made under Rule 9270(e) after a hearing on the merits has begun, is accepted by the Hearing Officer, the Hearing Officer shall issue the order of acceptance, which shall constitute final NASD action. Contested offers of settlement shall not be considered in proceedings initiated under this Rule.

(h) Defaults

A member or person who is suspended under this Rule and fails to request termination of the suspension within six months of issuance of the original notice of suspension will automatically be expelled or barred.

(i) Notice to Membership

NASD shall provide notice of any final NASD action taken under this Rule in the next Notice to Members Disciplinary and Other NASD Action Section.

9553. Failure to Pay NASD Dues, Fees and Other Charges

(a) Notice of Suspension, Cancellation or Bar

If a member, person associated with a member or person subject to NASD's jurisdiction fails to pay any fees, dues, assessment or other charge required to be paid

under the NASD By-Laws or Rules, or to submit a required report or information related to such payment, NASD staff may issue a written notice to such member or person stating that the failure to comply within 21 days of service of the notice will result in a suspension or cancellation of membership or a suspension or bar from associating with any member.

(b) Service of Notice of Suspension, Cancellation or Bar

NASD staff shall serve the member or person with such notice in accordance with Rule 9134. A copy of a notice under this Rule that is served on a person associated with a member also shall be served on such member.

(c) Contents of Notice

A notice issued under this Rule shall state the specific grounds and include the factual basis for the NASD action. The notice shall state when the NASD action will take effect and explain what the respondent must do to avoid such action. The notice shall state that the respondent may file a written request for a hearing with the Office of Hearing Officers pursuant to Rule 9559. The notice also shall inform the respondent of the applicable deadline for filing a request for a hearing and shall state that a request for a hearing must set forth with specificity any and all defenses to the NASD action.

(d) Effective Date of Suspension, Cancellation or Bar

The suspension, cancellation or bar referenced in a notice issued and served under this Rule shall become effective 21 days after service of the notice, unless stayed by a request for a hearing pursuant to Rule 9559.

(e) Request for Hearing

A member or person served with a notice under this Rule may file with the Office of Hearing Officers a written request for a hearing pursuant to Rule 9559. A request for a hearing shall be made before the effective date of the notice, as indicated in paragraph (d) of this Rule. A request for a hearing must set forth with specificity any and all defenses to the NASD action.

(f) Failure to Request Hearing

If a member or person does not timely request a hearing, the suspension, cancellation or bar specified in the notice shall become effective 21 days after service of the notice and the notice shall constitute final NASD action.

(g) Request for Termination of the Suspension

A member or person subject to a suspension under this Rule may file a written request for termination of the suspension on the ground of full compliance with the notice or decision. Such request shall be filed with the head of the NASD department or office that issued the notice or, if another NASD department or office is named as the party handling the matter on behalf of the issuing department or office, with the head of the NASD department or office that is so designated. The appropriate head of the department or office may grant relief for good cause shown.

(h) Notice to Membership

NASD shall provide notice of any final NASD action taken pursuant to this Rule in the next Notice to Members Disciplinary and Other NASD Action Section.

9554. Failure to Comply with an Arbitration Award or Related Settlement

(a) Notice of Suspension, Cancellation or Bar

If a member, person associated with a member or person subject to NASD's jurisdiction fails to comply with an arbitration award or a settlement agreement related to an arbitration or mediation under Article VI, Section 3 of the NASD By-Laws, NASD staff may provide written notice to such member or person stating that the failure to comply within 21 days of service of the notice will result in a suspension or cancellation of membership or a suspension or bar from associating with any member.

(b) Service of Notice of Suspension, Cancellation or Bar

NASD staff shall serve the member or person with such notice in accordance with Rule 9134. A copy of a notice under this Rule that is served on a person associated with a member also shall be served on such member.

(c) Contents of Notice

A notice issued under this Rule shall state the specific grounds and include the factual basis for the NASD action. The notice shall state when the NASD action will take effect and explain what the respondent must do to avoid such action. The notice shall state that the respondent may file a written request for a hearing with the Office of Hearing Officers pursuant to Rule 9559. The notice also shall inform the respondent of the applicable deadline for filing a request for a hearing and shall state that a request for a hearing must set forth with specificity any and all defenses to the NASD action.

(d) Effective Date of Suspension, Cancellation or Bar

The suspension, cancellation or bar referenced in a notice issued and served under this Rule shall become effective 21 days after service of the notice, unless stayed by a request for a hearing pursuant to Rule 9559.

(e) Request for Hearing

A member or person served with a notice under this Rule may file with the Office of Hearing Officers a written request for a hearing pursuant to Rule 9559. A request for a hearing shall be made before the effective date of the notice, as indicated in paragraph (d) of this Rule. A request for a hearing must set forth with specificity any and all defenses to the NASD action.

(f) Failure to Request Hearing

If a member or person does not timely request a hearing, the suspension, cancellation or bar specified in the notice shall become effective 21 days after the service of the notice and the notice shall constitute final NASD action.

(g) Request for Termination of the Suspension

A member or person subject to a suspension under this Rule may file a written request for termination of the suspension on the ground of full compliance with the notice or decision. Such request shall be filed with the head of the NASD department or office that issued the notice or, if another NASD department or office is named as the party handling the matter on behalf of the issuing department or office, with the head of the NASD department or office that is so designated. The appropriate head of the department or office may grant relief for good cause shown.

(h) Notice to Membership

NASD shall provide notice of any final NASD action taken pursuant to this Rule in the next Notice to Members Disciplinary and Other NASD Action Section.

9555. Failure to Meet the Eligibility or Qualification Standards or Prerequisites for Access to Services

(a) Notice to Member or Person of Suspension, Cancellation, Bar, or Limitation or Prohibition on Access to Services

(1) If a member or an associated person does not meet the eligibility or qualification standards set forth in the NASD By-Laws or Rules, NASD staff may provide written notice to such member or person stating that the failure to become eligible or qualified will result in a suspension or cancellation of membership or a suspension or bar from associating with any member.

(2) If a member, associated person, or other person does not meet the prerequisites for access to services offered by NASD or a member thereof or cannot be permitted to continue to have access to services offered by NASD or a member thereof with safety to investors, creditors, members, or NASD, NASD staff may provide written notice to such member or person limiting or prohibiting access to services offered by NASD or a member thereof.

(b) Service of Notice

NASD staff shall serve the member or person with such notice in accordance with Rule 9134. A copy of a notice under this Rule that is served on a person associated with a member also shall be served on such member.

(c) Contents of Notice

A notice issued under this Rule shall state the specific grounds and include the factual basis for the NASD action. The notice shall state when the NASD action will take effect and explain what the respondent must do to avoid such action. The notice shall state that the respondent may file a written request for a hearing with the Office of Hearing Officers pursuant to Rule 9559. The notice also shall inform the respondent of the applicable deadline for filing a request for a hearing and shall state that a request for a hearing must set forth with specificity any and all defenses to the NASD action.

(d) Effective Date of Limitation, Prohibition, Suspension, Cancellation or Bar

The limitation, prohibition, suspension, cancellation or bar referenced in a notice issued under this Rule shall become effective 14 days after service of the notice, except that the effective date for a notice of a limitation or prohibition on access to services offered by NASD or a member thereof with respect to services to which the member or person does not have access shall be upon service of the notice. A request for a hearing, pursuant to Rule 9559, shall stay the effectiveness of the notice, except that the effectiveness of a notice of a limitation or prohibition on access to services offered by NASD or a member thereof with respect to services to which the member or person does not have access shall not be stayed by a request for a hearing.

(e) Request for Hearing

A member or person served with a notice under this Rule may file with the Office of Hearing Officers a written request for a hearing pursuant to Rule 9559. A request for a

hearing shall be made within 14 days after service of the notice. A request for a hearing must set forth with specificity any and all defenses to the NASD action.

(f) Failure to Request Hearing

If a member or person does not timely request a hearing, the limitation, prohibition, suspension, cancellation or bar specified in the notice shall become effective 14 days after service of the notice, except that the effective date for a notice of a limitation or prohibition on access to services offered by NASD or a member thereof with respect to services to which the member or person does not have access shall be upon service of the notice. The notice shall constitute final NASD action if the member or person does not request a hearing within 14 days after service of the notice.

(g) Request for Termination of the Limitation, Prohibition or Suspension

A member or person subject to a limitation, prohibition or suspension under this Rule may file a written request for termination of the limitation, prohibition or suspension on the ground of full compliance with the notice or decision. Such request shall be filed with the head of the NASD department or office that issued the notice or, if another NASD department or office is named as the party handling the matter on behalf of the issuing department or office, with the head of the NASD department or office that is so designated. The appropriate head of the department or office may grant relief for good cause shown.

(h) Notice to Membership

NASD shall provide notice of any final NASD action taken pursuant to this Rule in the next Notice to Members Disciplinary and Other NASD Action Section.

9556. Failure to Comply with Temporary and Permanent Cease and Desist Orders

(Rule 9556, and amendments adopted by SR-NASD-98-80 to Rule 8310, IM-8310-2(d)(1), 9120(x), 9241(c), 9290, 9311(b), 9312(b), 9360 and the Rule 9800 Series, shall expire on June 23, 2005, unless extended or permanently adopted by the Association pursuant to SEC approval at or before such date.)

(a) Notice of Suspension, Cancellation or Bar

If a member, person associated with a member or person subject to NASD's jurisdiction fails to comply with a temporary or permanent cease and desist order issued under the Rule 9200, 9300 or 9800 Series, NASD staff—after receiving written authorization from the President of NASD Regulatory Policy and Oversight or the Executive Vice President for NASD Regulatory Policy and Programs—may issue a notice to such member or person stating that the failure to comply with the temporary or permanent cease and desist order within seven days of service of the notice will result in a suspension or cancellation of membership or a suspension or bar from associating with any member.

(b) Service of Notice

NASD staff shall serve the member or person subject to a notice issued under this Rule by facsimile, overnight courier or personal delivery. Papers served on a member or person by overnight courier or personal delivery shall conform to paragraphs (a)(1) and (3) and (b)(1) and (2) of Rule 9134. Papers served on a member by facsimile shall be sent to the facsimile number listed in the member's contact questionnaire submitted to NASD pursuant to Article 4, Section III of NASD's By-Laws, except that, if NASD staff has

actual knowledge that an entity's contact questionnaire facsimile number is out of date, duplicate copies shall be served at the entity's last known facsimile number. Papers served on a person by facsimile shall be sent to the person's last known facsimile number and shall also be served by either overnight courier or personal delivery in conformity with paragraphs (a)(1) and (3) and (b)(1) and (2) of Rule 9134. Service is complete upon sending the notice by facsimile, mailing the notice by overnight courier or delivering it in person. A copy of a notice under this Rule that is served on a person associated with a member also shall be served on such member.

(c) Contents of Notice

The notice shall explicitly identify the provision of the permanent or temporary cease and desist order that is alleged to have been violated and shall contain a statement of facts specifying the alleged violation. The notice shall state when the NASD action will take effect and explain what the respondent must do to avoid such action. The notice shall state that the respondent may file a written request for a hearing with the Office of Hearing Officers pursuant to Rule 9559. The notice also shall inform the respondent of the applicable deadline for filing a request for a hearing and shall state that a request for a hearing must set forth with specificity any and all defenses to the NASD action.

(d) Effective Date of Suspension, Cancellation or Bar

The suspension, cancellation or bar referenced in a notice issued and served under this Rule shall become effective seven days after service of the notice, unless stayed by a request for a hearing pursuant to Rule 9559.

(e) Request for a Hearing

A member served with a notice under this Rule may file with the Office of Hearing Officers a written request for a hearing pursuant to Rule 9559. A request for a hearing shall be made before the effective date of the notice, as indicated in paragraph (d) of this Rule. A request for a hearing must set forth with specificity any and all defenses to the NASD action.

(f) Failure to Request Hearing

If a member or person does not timely request a hearing, the suspension, cancellation or bar specified in the notice shall become effective seven days after the service of the notice and the notice shall constitute final NASD action.

(g) Request for Termination of the Suspension

A member or person subject to a suspension under this Rule may file a written request for termination of the suspension on the ground of full compliance with the notice or decision. Such request shall be filed with the head of the NASD department or office that issued the notice or, if another NASD department or office is named as the party handling the matter on behalf of the issuing department or office, with the head of the NASD department or office that is so designated. The appropriate head of the department or office may grant relief for good cause shown.

(h) Notice to Membership

NASD shall provide notice of any final NASD action taken pursuant to this Rule in the next Notice to Members Disciplinary and Other NASD Action Section.

9557. Procedures for Regulating Activities Under Rules 3130 and 3131 Regarding a Member Experiencing Financial or Operational Difficulties

(a) Notice of Limitation

NASD staff may issue a notice directing a member to limit its business activities if NASD staff has reason to believe that any condition specified in Rule 3130 or 3131 exists.

(b) Service of Notice

NASD staff shall serve the member subject to a notice issued under this Rule by facsimile, overnight courier or personal delivery. Papers served on a member by overnight courier or personal delivery shall conform to paragraphs (a)(1) and (3) and (b)(2) of Rule 9134. Papers served on a member by facsimile shall be sent to the facsimile number listed in the member's contact questionnaire submitted to NASD pursuant to Article 4, Section III of NASD's By-Laws, except that, if NASD staff has actual knowledge that an entity's contact questionnaire facsimile number is out of date, duplicate copies shall be served at the entity's last known facsimile number. Service is complete upon sending the notice by facsimile, mailing the notice by overnight courier or delivering it in person.

(c) Contents of Notice

A notice issued under this Rule shall state the specific grounds and include the factual basis for the NASD action. The notice shall state when the NASD action will take effect and explain what the respondent must do to avoid such action. The notice shall state that the respondent may file a written request for a hearing with the Office of Hearing Officers pursuant to Rule 9559. The notice also shall inform the respondent of

the applicable deadline for filing a request for a hearing and shall state that a request for a hearing must set forth with specificity any and all defenses to the NASD action.

(d) Effective Date of Limitation

The limitation referenced in a notice issued and served under this Rule shall become effective seven days after service of the notice, unless stayed by a request for a hearing pursuant to Rule 9559.

(e) Request for a Hearing

A member served with a notice under this Rule may file with the Office of Hearing Officers a written request for a hearing pursuant to Rule 9559. A request for a hearing shall be made before the effective date of the notice, as indicated in paragraph (d) of this Rule. A request for a hearing must set forth with specificity any and all defenses to the NASD action.

(f) Failure to Request Hearing

If a member does not timely request a hearing, the limitations specified in the notice shall become effective seven days after service of the notice. The limitations specified in the notice shall remain in effect until the head of the NASD department or office that issued the notice or, if another NASD department or office is named as the party handling the matter on behalf of the issuing department or office, the head of the NASD department or office that is so designated reduces or removes the limitations pursuant to paragraph (h) of this Rule.

(g) Order to Enforce Sanctions

If NASD staff determines that a member has failed to comply with any limitations imposed by a decision or an effective notice under this Rule that has not been stayed, NASD staff shall issue an order imposing the sanctions set forth in the decision or notice and specifying the effective date and time of such sanctions. The order shall inform the member that it may apply for relief from the sanctions imposed by the order by filing a written request for a hearing before the Office of Hearing Officers under Rule 9559. The procedures delineated in this Rule shall be applicable.

(h) Additional Limitations or the Reduction or Removal of Limitations

(1) Additional Limitations

If a member continues to experience financial or operational difficulty specified in Rule 3130 or 3131, notwithstanding an effective notice, order or decision under this Rule, NASD Staff may impose additional limitations by issuing a notice under paragraph (b) of this Rule. The notice shall inform the member that it may apply for relief from the additional limitations by filing a written request for a hearing before the Office of Hearing Officers under Rule 9559. The procedures delineated in this Rule shall be applicable to such a notice.

(2) Reduction or Removal of Limitations

If NASD staff determines that any limitations previously imposed under this Rule should be reduced or removed, NASD staff shall serve a written notice on the member pursuant to Rule 9134.

(i) Notice to Membership

NASD shall provide notice of any final NASD action taken pursuant to this Rule in the next Notice to Members Disciplinary and Other NASD Action Section.

9558. Summary Proceedings for Actions Authorized by Section 15A(h)(3) of the Act

(a) Notice of Initiation of Summary Proceedings

The President of NASD Regulatory Policy and Oversight or the Executive Vice President for NASD Regulatory Policy and Programs may provide written authorization to NASD staff to issue on a case-by-case basis a written notice that summarily:

(1) suspends a member, person associated with a member or person subject to NASD's jurisdiction who has been and is expelled or suspended from any self-regulatory organization or barred or suspended from being associated with a member of any self-regulatory organization;

(2) suspends a member who is in such financial or operating difficulty that NASD staff determines and so notifies the Commission that the member cannot be permitted to continue to do business as a member with safety to investors, creditors, other members, or NASD; or

(3) limits or prohibits any person with respect to access to services offered by NASD if paragraphs (1) or (2) of this Rule or the provisions of Section 15A(h)(3) of the Act applies to such person or, in the case of a person who is not a member, if the President of NASD Regulatory Policy and Oversight or the Executive Vice President for NASD Regulatory Policy and Programs determines that such person does not meet the qualification requirements or other

prerequisites for such access and such person cannot be permitted to continue to have such access with safety to investors, creditors, members, or NASD, and so notifies the Commission.

(b) Service of Notice

NASD staff shall serve the member or person subject to a notice issued under this Rule by facsimile, overnight courier or personal delivery. Papers served on a member or person by overnight courier or personal delivery shall conform to paragraphs (a)(1) and (3) and (b)(1) and (2) of Rule 9134. Papers served on a member by facsimile shall be sent to the facsimile number listed in the member's contact questionnaire submitted to NASD pursuant to Article 4, Section III of NASD's By-Laws, except that, if NASD staff has actual knowledge that an entity's contact questionnaire facsimile number is out of date, duplicate copies shall be served at the entity's last known facsimile number. Papers served on a person by facsimile shall be sent to the person's last known facsimile number and shall also be served by either overnight courier or personal delivery in conformity with paragraphs (a)(1) and (3) and (b)(1) and (2) of Rule 9134. Service is complete upon sending the notice by facsimile, mailing the notice by overnight courier or delivering it in person. A copy of a notice under this Rule that is served on a person associated with a member also shall be served on such member.

(c) Contents of Notice

A notice issued under this Rule shall state the specific grounds and include the factual basis for the NASD action. The notice shall state when the NASD action will take effect and explain what the respondent must do to avoid such action. The notice shall

state that the respondent may file a written request for a hearing with the Office of Hearing Officers pursuant to Rule 9559. The notice also shall inform the respondent of the applicable deadline for filing a request for a hearing and shall state that a request for a hearing must set forth with specificity any and all defenses to the NASD action.

(d) Effective Date of Limitation, Prohibition or Suspension

The limitation, prohibition or suspension referenced in a notice issued and served under this Rule is immediately effective. The limitation, prohibition or suspension specified in the notice shall remain in effect unless stayed by a timely request for a hearing pursuant to Rule 9559.

(e) Request for a Hearing

A member or person subject to a notice issued under this Rule may file with the Office of Hearing Officers a written request for a hearing pursuant to Rule 9559. A request for a hearing shall be made within seven days after service of the notice issued under this Rule. A request for a hearing must set forth with specificity any and all defenses to the NASD action.

(f) Failure to Request Hearing

If a member or person subject to a notice issued under this Rule does not timely request a hearing within the time period specified in paragraph (e) of this Rule, the notice shall constitute final NASD action.

(g) Request for Termination of the Limitation, Prohibition or Suspension

A member or person subject to a limitation, prohibition or suspension under this Rule may file a written request for termination of the limitation, prohibition or suspension

on the ground of full compliance with the notice or decision. Such request shall be filed with the head of the NASD department or office that issued the notice or, if another NASD department or office is named as the party handling the matter on behalf of the issuing department or office, with the head of the NASD department or office that is so designated. The appropriate head of the department or office may grant relief for good cause shown.

(h) Notice to Membership

NASD shall provide notice of any final NASD action taken pursuant to this Rule in the next Notice to Members Disciplinary and Other NASD Action Section.

9559. Hearing Procedures for Expedited Proceedings Under the Rule 9550 Series

(a) Applicability

The hearing procedures under this Rule shall apply to a member, person associated with a member, person subject to NASD's jurisdiction or other person who is served with a notice issued under the Rule 9550 Series and who timely requests a hearing. For purposes of this Rule, such members or persons shall be referred to as respondents.

(b) Computation of Time

Rule 9138 shall govern the computation of time in proceedings brought under the Rule 9550 Series, except that intermediate Saturdays, Sundays and Federal holidays shall be included in the computation in proceedings brought under Rules 9556 through 9558.

(c) Stays

Unless the Chief Hearing Officer or the Hearing Officer assigned to the matter orders otherwise for good cause shown, a timely request for a hearing shall stay the

effectiveness of a notice issued under the Rule 9550 Series, except that the effectiveness of a notice of a limitation or prohibition on access to services offered by NASD or a member thereof under Rule 9555 with respect to services to which the member or person does not have access shall not be stayed by a request for a hearing.

(d) Appointment and Authority of Hearing Officer and/or Hearing Panel

(1) For proceedings initiated under Rules 9553 and 9554, the Chief Hearing Officer shall appoint a Hearing Officer to preside over and act as the sole adjudicator for the matter.

(2) For proceedings initiated under Rules 9551, 9552, 9555, 9556, 9557 and 9558, the Chief Hearing Officer shall appoint a Hearing Panel composed of a Hearing Officer and two Panelists. The Hearing Officer shall serve as the chair of the Hearing Panel. The Chief Hearing Officer shall select as Panelists persons who meet the qualifications delineated in Rules 9231 and 9232.

(3) Rules 9231(e), 9233 and 9234 shall govern disqualification, recusal or withdrawal of a Hearing Officer or, if applicable, Hearing Panelist.

(4) A Hearing Officer appointed pursuant to this provision shall have authority to do all things necessary and appropriate to discharge his or her duties as set forth under Rules 9235 and 9280.

(5) Hearings under the Rule 9550 Series shall be held by telephone conference, unless the Hearing Officer orders otherwise for good cause shown.

(6) For good cause shown, or with the consent of all of the parties to a proceeding, the Hearing Officer or, if applicable, the Hearing Panel may extend or shorten any time limits prescribed by this Rule.

(e) Consolidation or Severance of Proceedings

Rule 9214 shall govern the consolidation or severance of proceedings, except that, where one of the notices that are the subject of consolidation under this Rule requires that a hearing be held before a Hearing Panel, the hearing of the consolidated matters shall be held before a Hearing Panel.

(f) Time of Hearing

(1) A hearing shall be held within 14 days after a respondent subject to a notice issued under Rules 9556 through 9558 files a written request for a hearing with the Office of Hearing Officers.

(2) A hearing shall be held within 60 days after a respondent subject to a notice issued under Rules 9551 through 9555 files a written request for a hearing with the Office of Hearing Officers.

(g) Notice of Hearing

The Hearing Officer shall issue a notice stating the date, time, and place of the hearing as follows:

(1) At least seven days prior to the hearing in the case of an action brought pursuant to Rules 9556 through 9558 and

(2) At least 21 days prior to the hearing in the case of an action brought pursuant to Rules 9551 through 9555.

(h) Transmission of Documents

(1) Not less than seven days before the hearing in an action brought under Rules 9556 through 9558 and not less than 40 days before the hearing in an action brought under Rules 9551 through 9555, NASD staff shall provide to the respondent who requested the hearing, by facsimile or overnight courier, all documents that were considered in issuing the notice unless a document meets the criteria of Rule 9251(b)(1)(A), (B) or (C). A document that meets such criteria shall not constitute part of the record, but shall be retained by NASD until the date upon which NASD serves a final decision or, if applicable, upon the conclusion of any review by the Securities and Exchange Commission or the federal courts.

(2) Not less than three days before the hearing in an action brought under Rules 9556 through 9558 and not less than 14 days before the hearing in an action brought under Rules 9551 through 9555, the parties shall exchange proposed exhibit and witness lists. The exhibit and witness lists shall be served by facsimile or by overnight courier.

(i) Evidence

Formal rules of evidence shall not apply to a hearing under this Rule Series. Rules 9262 and 9263 shall govern testimony and the admissibility of evidence.

(j) Additional Information

The Hearing Officer or, if applicable, the Hearing Panel may direct the Parties to submit additional information.

(k) Record of Hearing

Rule 9265 shall govern the requirements for the record of the hearing.

(l) Record of Proceeding

Rule 9267 shall govern the record of the proceeding.

(m) Failure to Appear at a Pre-Hearing Conference or Hearing or to Comply with a Hearing Officer Order Requiring the Production of Information

Failure of any respondent to appear before the Hearing Officer or, if applicable, the Hearing Panel at any status conference, pre-hearing conference or hearing, or to comply with any order of the Hearing Officer or, if applicable, Hearing Panel requiring production of information to support any defense to the notice that respondent has raised, shall be considered an abandonment of the respondent's defense and waiver of any opportunity for a hearing provided by the Rule 9550 Series. In such cases, the notice issued under the Rule 9550 Series shall be deemed to be final NASD action. The Hearing Officer or, if applicable, the Hearing Panel may permit the hearing to go forward as to those parties who appear and otherwise comply with this Rule.

(n) Sanctions, Costs and Remands

(1) The Hearing Officer or, if applicable, the Hearing Panel may approve, modify or withdraw any and all sanctions or limitations imposed by the notice. The Hearing Officer or, if applicable, the Hearing Panel also may impose any other fitting sanction, pursuant to Rule 8310(a).

(2) The Hearing Officer or, if applicable, the Hearing Panel may impose costs pursuant to Rule 8330.

(3) The Hearing Officer or, if applicable, the Hearing Panel may remand the matter to the department or office that issued the notice for further consideration of specified matters.

(o) Timing of Decision

(1) Proceedings initiated under Rules 9553 and 9554

Within 60 days of the date of the close of the hearing, the Hearing Officer shall prepare a written decision and provide it to the National Adjudicatory Council's Review Subcommittee.

(2) Proceedings initiated under Rules 9556 through 9558

Within 21 days of the date of the close of the hearing, the Hearing Officer shall prepare a written decision that reflects the views of the Hearing Panel, as determined by majority vote, and provide it to the National Adjudicatory Council's Review Subcommittee.

(3) Proceedings initiated under Rules 9551, 9552 and 9555

Within 60 days of the date of the close of the hearing, the Hearing Officer shall prepare a written decision that reflects the views of the Hearing Panel, as determined by majority vote, and provide it to the National Adjudicatory Council's Review Subcommittee.

(4) If not timely called for review by the National Adjudicatory Council's Review Subcommittee pursuant to paragraph (q) of this Rule, the Hearing Officer's or, if applicable, the Hearing Panel's written decision shall constitute final NASD action. The Office of Hearing Officers shall promptly serve the decision of the

Hearing Officer or, if applicable, the Hearing Panel on the Parties and provide a copy to each NASD member with which the respondent is associated

(p) Contents of Decision

The decision shall include:

(1) a statement describing the investigative or other origin of the notice issued under the Rule 9550 Series;

(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 Officer or, if applicable, Hearing Panel as to whether the respondent violated any provision alleged in the notice;

(5) a statement of the Hearing Officer or, if applicable, Hearing Panel in support of the disposition of the principal issues raised in the proceeding; and

(6) a statement describing any sanction or limitation imposed, the reasons therefore, and the date upon which such sanction or limitation shall become effective.

(q) Call for Review by the National Adjudicatory Council

(1) The National Adjudicatory Council's Review Subcommittee may call for review a decision issued under the Rule 9550 Series within 21 days after receipt of the decision from the Office of Hearing Officers. Rule 9313(a) is incorporated by reference.

(2) If the Review Subcommittee calls the proceeding for review within the prescribed time, a Subcommittee of the National Adjudicatory Council shall meet and conduct a review not later than 40 days after the call for review. The Subcommittee shall be composed pursuant to Rule 9331(a)(1). The Subcommittee may elect to hold a hearing or decide the matter on the basis of the record made before the Hearing Officer or, if applicable, the Hearing Panel. Not later than 60 days after the call for review, the Subcommittee shall make its recommendation to the National Adjudicatory Council. Not later than 60 days after receipt of the Subcommittee's recommendation, the National Adjudicatory Council shall serve a final written decision on the parties via overnight courier or facsimile. The National Adjudicatory Council may affirm, modify or reverse the decision of the Hearing Officer or, if applicable, the Hearing Panel. The National Adjudicatory Council also may impose any other fitting sanction, pursuant to Rule 8310(a), and may impose costs, pursuant to 8330. In addition, the National Adjudicatory Council may remand the matter to the Office of Hearing Officers for further consideration of specified matters.

(3) For good cause shown, or with the consent of all of the parties to a proceeding, the Review Subcommittee, the National Adjudicatory Council Subcommittee or the National Adjudicatory Council may extend or shorten any time limits prescribed by this Rule.

(4) The National Adjudicatory Council's written decision shall constitute final NASD action.

(5) The National Adjudicatory Council shall promptly serve the decision on the Parties and provide a copy of the decision to each NASD member with which the respondent is associated.

(r) Notice to Membership

NASD shall provide notice of any final NASD action in the next Notice to Members Disciplinary and Other NASD Action Section.

(s) Application to Commission for Review

The right to have any action pursuant to this Rule reviewed by the Securities and Exchange Commission is governed by Section 19(f) of the Securities Exchange Act. The filing of an application for review by the Securities and Exchange Commission shall not stay the effectiveness of final NASD action, unless the Securities and Exchange Commission otherwise orders.

* * * * *

9800. TEMPORARY CEASE AND DESIST ORDERS

(The entire Rule 9800 Series, and related amendments adopted by SR-NASD-98-80 to Rules 8310, IM-8310-2(d)(1), 9120(x), 9241(c), 9290, 9311(b), 9312(b), 9360, [9511(a), 9513(a) and 9513(b)] and 9556, shall expire on June 23, 2005, unless extended or permanently adopted by the Association pursuant to SEC approval at or before such date.)

* * * * *

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

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

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

(a) Purpose

NASD proposes to modify certain NASD rules that have an expedited proceeding component to make them more understandable and uniform and to make the overall process for actions covered by such rules more efficient. Existing NASD rules recognize that expedited treatment is needed for certain types of actions. These actions fall into two general categories: those that involve misconduct capable of causing further harm to the investing public, other members or the integrity of the markets and those that can be appropriately expedited for administrative ease. Unlike disciplinary actions that may concern complex sales-practice violations, the expedited actions that are affected by this proposal generally involve straightforward issues unrelated to complicated securities transactions (e.g., whether the respondent paid an arbitration award or NASD fee, provided information requested by NASD staff, or complied with the net capital requirements).⁴

⁴ In most instances, the issues raised by these types of proceedings are uncomplicated and the defenses are limited. For example, in a case involving a respondent's failure to pay an arbitration

However, the present NASD rules that have provisions for fast-track procedures vary considerably in some respects and overlap in others, at times without any clear rationale. The proposed rule change, discussed in detail below, streamlines and clarifies the existing expedited rules and makes them more uniform. At the same time, the modifications, which do not abrogate any substantive rights held by members or associated persons, continue to ensure that expedited actions are fair to all parties. The current rules that have been renumbered and otherwise affected by the proposed rule change are as follows:

- Rule 8220 Series (Suspension for Obstructing Investigations);⁵
- Rule 9410 Series (Procedures for Regulating Activities of a Member Experiencing Financial or Operational Difficulties);⁶

award, the issue presented is whether the member or person has paid the award. A respondent cannot collaterally attack the actual arbitration award. *See John G. Pearce*, 52 S.E.C. 796, 798, 1996 SEC LEXIS 1329, at *5 (1996) ("To permit a party dissatisfied with an arbitral award to attack it collaterally for legal flaws in a subsequent disciplinary proceeding would subvert the salutary objective that the NASD's [arbitration] resolution seeks to promote."); *see also James Anthony Morrill*, 51 S.E.C. 1162, 1164 n.6, 1994 SEC LEXIS 1766, at *6 (1994) (same). Similarly, in an action for failure to provide information, the issue presented is whether the respondent provided information requested by NASD. It is well settled that respondents must fully and promptly cooperate with NASD, *see Mark Allen Elliott*, 51 S.E.C. 1148, 1150, 1994 SEC LEXIS 1765, at *5-6 (1994), and respondents cannot second guess NASD information requests or impose conditions on responding. *See Joseph Patrick Hannan*, 53 S.E.C. 854, 859, 1998 SEC LEXIS 1955, at *11 (1998) ("[A]n NASD member may not 'second guess' or 'impose conditions on' the NASD's request for information."); *Michael David Borth*, 51 S.E.C. 178, 181, 1992 SEC LEXIS 3248, at *7 (1992) ("The Rules do not permit second guessing the NASD's requests" or permit a respondent "to shift his responsibility to others...."). The issues also are very narrow in a net capital case. Indeed, "[t]he gravamen of the charge is the conduct of business by the firm while its net capital is deficient. The cause of the deficiency does not bear on this issue." *Charters & Co. of Miami*, 43 S.E.C. 175, 177, 1966 SEC LEXIS 189, at *6 (1966). *See also Litwin Securities, Inc.*, 52 S.E.C. 1339, 1344-45, 1997 SEC LEXIS 1146, at *16 (1997) (holding that intent is irrelevant to whether a respondent violated the net-capital requirements).

⁵ The Rule 8220 Series (Suspension for Obstructing Investigations) is now located at proposed Rule 9552 (Failure to Provide Information or Keep Information Current).

⁶ The Rule 9410 Series (Procedures for Regulating Activities of a Member Experiencing Financial or Operational Difficulties) is now located at proposed Rule 9557 (Procedures for Regulating Activities Under Rules 3130 and 3131 Regarding a Member Experiencing Financial or

- Rule 9510 Series (Summary and Non-Summary Proceedings);⁷
- Rule 9530 Series (Suspension or Cancellation for Failure to Pay Dues, Fees and Other Charges);⁸ and
- Rule 9540 Series (Failure to Provide Information or Meet the Eligibility and Qualification Standards).⁹

The first major improvement to the expedited proceedings provisions is that they are reorganized into a single rule series, the proposed Rule 9550 Series, and each type of

Operational Difficulties). NASD recently submitted to the SEC proposed revisions to its rules regarding the regulation of activities of members experiencing financial and/or operational difficulties, including the Rule 9410 Series. *See* SR-NASD-2003-74 (filed April 15, 2003). NASD will amend this proposed rule change as appropriate in the event SR-NASD-2003-74 is adopted before this proposed rule change is approved.

⁷ The Rule 9510 Series (Summary and Non-Summary Proceedings) has been separated into a number of individual proposed rules. Summary proceedings under Rule 9511(a)(1) for actions authorized under Section 15A(h)(3) of the Act are now located at proposed Rule 9558 (Summary Proceedings for Actions Authorized by Section 15A(h)(3) of the Act). Non-summary proceedings under Rule 9511(a)(2)(A) for failure to comply with an arbitration award or related settlement agreement are now located at proposed Rule 9554 (Failure to Comply with an Arbitration Award or Related Settlement). Non-summary proceedings under Rule 9511(a)(2)(B) for failure to meet the qualification requirements or other prerequisites for access to NASD or member services is now located at proposed Rule 9555 (Failure to Meet the Eligibility or Qualification Standards or Prerequisites for Access to Services). Non-summary proceedings under Rule 9511(a)(2)(C) for failure to adhere to certain public communication standards are now located at proposed Rule 9551 (Failure to Comply with the Public Communication Standards). Finally, non-summary proceedings under Rule 9511(a)(2)(D) for failure to comply with a temporary or permanent cease and desist order are now located at proposed Rule 9556 (Failure to Comply with a Temporary or Permanent Cease and Desist Order). It should be noted that proposed Rule 9556, along with the Rule 9800 Series and related amendments adopted by SR-NASD-98-80, will expire on June 23, 2005, unless extended or permanently adopted by NASD pursuant to SEC approval at or before such date.

⁸ The Rule 9530 Series (Suspension or Cancellation for Failure to Pay Dues, Fees and Other Charges) is now located at proposed Rule 9553 (Failure to Pay NASD Dues, Fees and Other Charges).

⁹ The Rule 9540 Series (Failure to Provide Information or Meet the Eligibility and Qualification Standards) has been combined with two proposed rules. Rules 9541(a) and (b) regarding failure to provide information is now located at proposed Rule 9552 (Failure to Provide Information or Keep Information Current). Rule 9541(c) regarding failure to meet the eligibility and qualification standards is now located at proposed Rule 9555 (Failure to Meet the Eligibility or Qualification Standards or Prerequisites for Access to Services).

action is clearly labeled. At present, the various types of expedited proceedings are scattered throughout NASD's rules, in many instances without clear headings,¹⁰ increasing the likelihood of confusion for interested parties and adjudicators. Going forward, interested parties will simply need to review the Rule 9550 Series, with its clearly marked subheadings, to ascertain their rights and obligations with regard to expedited actions.

The proposed amendments also consolidate some current expedited rules that have similar or overlapping provisions. For instance, current Rules 8221(a) and (b) and 9541(a) and (b) have identical provisions that allow NASD staff to issue a notice of suspension if a member or associated person "fails to provide any information, report, material, data, or testimony." These provisions are consolidated into a single rule, proposed Rule 9552, under the amendments. Similarly, current Rules 9511(a)(2)(B) and 9541(c) both cover situations where a member or associated person fails to meet eligibility or qualification standards. These provisions are now consolidated and clarified under the amendments as proposed Rule 9555. The consolidation of these various rules will alleviate the current confusion over which rule to use in a particular situation.

The proposed amendments, moreover, separate into individual rules some provisions whose grouping together has caused confusion. The proposed amendments, for example, separate the four "non-summary" actions currently located in Rule 9511(a)(2) for failure to pay an arbitration award, failure to meet eligibility or qualification standards, failure to comply with certain public communication standards and failure to comply with a cease and desist order. These provisions were not logically connected to

¹⁰ For instance, Rule 9511(a)(2) covers three distinct and unrelated types of conduct without any description in the title beyond "non-summary proceedings."

one another and are separated into individual rules under the proposed amendments.¹¹

The substance of the four provisions remains intact, however. NASD proposes to separate these four provisions into individual rules so that their headings clearly denote the substance of the actions. The previous heading of "non-summary" proceedings was confusing because there are a number of rules that have an expedited component that could be viewed as "non-summary" in nature.

In addition, the proposed rule change modifies the authorization provision for initiating certain summary proceedings. Pursuant to Section 15A(h)(3) of the Act, existing NASD Rule 9512 allows NASD to summarily suspend or limit the activities of a member or associated person when, for example, another self-regulatory organization has expelled, barred or suspended the member or associated person or the member is in such financial or operating difficulty that it cannot be permitted to continue to do business as a member with safety to investors, creditors, other members or NASD. Currently, NASD may only invoke Rule 9512 with NASD Board authorization.¹² The rule change will allow the President of NASD Regulatory Policy and Oversight or the Executive Vice President for NASD Regulatory Policy and Programs (rather than the Board) to authorize the issuance of summary proceeding notices, which begin the summary proceeding process. NASD would only initiate a summary proceeding under circumstances demanding quick

¹¹ As discussed above, current Rule 9511(a)(2)(A) for failure to comply with an arbitration award is now located at proposed Rule 9554. Current Rule 9511(a)(2)(B) for failure to meet eligibility or qualification standards is now located at proposed Rule 9555. Current Rule 9511(a)(2)(C) for failure to comply with certain public communication standards is now located at proposed Rule 9551. Finally, current Rule 9511(a)(2)(D) for failure to comply with a temporary or permanent cease and desist order is now located at proposed Rule 9556.

¹² The present requirement that the NASD Board must authorize such actions is set forth in NASD's rule and not the Act.

action. This modification to the authorization provision will avoid the logistical difficulties of having to obtain the necessary authorization from the Board on short notice, while at the same time ensuring that such decisions are made at the highest NASD staff levels.¹³ Unlike the current summary provision, moreover, the modified provision provides that a respondent's request for a hearing generally will result in a stay of the action.¹⁴

The proposed amendments also reorganize the hearing provisions of these various rules into a single rule within the new Rule 9550 Series. The new hearing rule, proposed Rule 9559, creates a uniform, efficient and manageable expedited procedure consistent with NASD's obligations to the investing public, the securities markets and NASD members. Under the proposal, a respondent may request a hearing at any time prior to the effective date of the action contained in the notice issued pursuant to the new Rule 9550 Series. Under the present scheme, some rules have five-day periods while others have seven-day periods to request hearings,¹⁵ even though the notices often do not become effective for much longer periods of time.¹⁶ This new provision ties the periods together,

¹³ This change makes the authorization provision for summary proceedings consistent with the authorization provision for temporary cease and desist orders under Rule 9810(a).

¹⁴ As mentioned *supra*, the summary proceedings provisions have been renumbered and will be located at proposed Rule 9558.

¹⁵ Compare Rules 8222(a) (a respondent must request a hearing within *five* days of the service of the notice); 9413(a) (same); 9532(a) (same); 9542(a) (same) with Rule 9514(a)(1) (a respondent must request a hearing within *seven* days of the service of the notice).

¹⁶ See, e.g., Rules 8221-22 (respondent must request hearing within five days of service of notice but the notice of suspension does not become effective for 20 days); Rules 9531-32 (respondent must request hearing within five days of the notice but the notice of suspension or cancellation does not become effective until 15 days after service of the notice); Rule 9541-42 (respondent must request hearing within five days of service of notice but the notice of suspension does not become effective for 20 days).

giving respondents more time to request a hearing without altering the expedited nature of the proceedings.

The proposed Rule 9550 Series also simplifies the actual hearing process in a number of ways. First, the rule series channels all requests for hearings to the Office of Hearing Officers ("OHO"). At present, various expedited proceedings are held before different adjudicative bodies—e.g., NASD Board hearing panels, National Adjudicatory Council ("NAC") hearing panels, OHO hearing panels, Hearing Officers—with little justification. This practice has proven to be cumbersome. Under the proposed amendments, respondents file a written request for a hearing with OHO. For actions involving a failure to pay an arbitration award or NASD fees, a Hearing Officer from OHO will act as the sole adjudicator, as is the current practice. For all other matters involving expedited proceedings, an OHO-appointed hearing panel, consisting of a hearing officer and two hearing panelists, will act as the adjudicative body.¹⁷ Second, the amendments allow adjudicators to conduct hearings by telephone. Third, the proposed rule series will allow various expedited actions to be consolidated, eliminating the need for parties to litigate related matters in separate venues.¹⁸ In brief, the fairness of the process will not be impaired—and the efficiency will be improved—by these changes.

Furthermore, the proposed Rule 9550 Series provides respondents with greater protection by mandating that the action be stayed while the matter is pending, save for

¹⁷ The Chief Hearing Officer will select as Panelists persons who meet the qualifications delineated in NASD Rule 9231(b).

¹⁸ It is not uncommon for a firm to experience multiple, related problems, for example, a financial crisis, issues about the qualifications of the FINOP, and a failure to provide information in response to NASD staff's queries about the problems. Under the current rules, NASD staff would be required to initiate multiple proceedings to address the issues.

limited circumstances. The current rules with expedited components take different approaches as to whether a request for a hearing stays the action.¹⁹ In general, under the proposed Rule 9550 Series, a request for a hearing automatically stays the action, unless the Hearing Officer orders otherwise (e.g., where there is a threat of harm to the public or other members if the suspension or limitation is not immediately effective). In the ordinary case, this provision will allow respondents to be heard before the suspension, bar or expulsion takes effect. However, the streamlined procedures for final NASD action, discussed below, ensure that the action will not be stayed for a prolonged period (as can now happen due, in part, to the infrequency of NAC and NASD Board meetings and the difficulty of using special mailing ballots). NASD believes that the rule change strikes an appropriate balance between the need to ensure fairness to respondents and the need for swift action in appropriate cases.

As indicated above, the proposed Rule 9550 Series streamlines the procedures for final NASD action. In general, hearings must be conducted and matters resolved within a specified, shortened timeframe once a respondent requests a hearing.²⁰ The use of such

¹⁹ Compare Rule 8220 Series (request for a hearing does not stay the action); Rule 9514 (c)(1) (request for a hearing does not stay the action); *with* Rule 9413(c)(request for a hearing does stay the action); Rule 9514(c)(2) (request for a hearing does stay action as to certain alleged violations but does not as to others); Rule 9532(a) (request for a hearing does stay the action); Rule 9542(a) (request for a hearing does stay the action).

²⁰ For instance, proposed Rule 9559(f) requires that hearings for failure to comply with cease and desist orders, summary proceedings and members experiencing financial or operational difficulties be held within 14 days, and hearings for all other actions be held within 60 days of a request for a hearing. In addition, under proposed Rule 9559(o), OHO must issue a decision in cases involving a failure to comply with cease and desist orders, a summary proceeding or a member experiencing financial or operational difficulty within 21 days and in all other cases within 60 days of the date of the close of the hearing. However, the Hearing Officer or, if applicable, hearing panel is given flexibility to manage the progress of the case. In some instances, parties legitimately may need more time to explore the issues in the case, gather and provide detailed documentation, make preparations for witnesses, draft and file motions, etc. For

deadlines is consistent with the SEC's recent adoption of amendments to its Rules of Practice that impose binding completion dates in certain SEC administrative proceedings.²¹ The deadlines also are consistent with both the SEC's and NASD's emphasis on "real-time enforcement."

Once the hearing panel or Hearing Officer issues the initial decision, the NAC's Review Subcommittee has the ability to call the matter for review in a condensed timeframe. As is currently the case with most expedited rules, respondents will not have the right to appeal the matter to the NAC,²² and the NASD Board will not have the ability to call the matter for review. Thus, the hearing panel or Hearing Officer decision, if not called for review by the NAC, is the NASD's final action. However, the respondent would have the ability to appeal a hearing panel or Hearing Officer decision to the SEC.²³ These

good cause shown, or with the consent of all of the parties to a proceeding, the Hearing Officer or, if applicable, the hearing panel may extend or shorten any time limits prescribed by the rule. The proposed rule changes thus give adjudicators the discretion to adapt to the circumstances of each case.

²¹ See SEC Adoption of Amendments to Rules of Practice, 68 FR 35787 (June 17, 2003). In the release, the SEC stated, "Based upon [our] experience with non-binding completion dates, the Commission has determined that timely completion of proceedings can be achieved more successfully through the adoption of mandatory deadlines and procedures designed to meet these deadlines." *Id.*

²² Under many of the existing rules with expedited components, respondents may not appeal the matter to an NASD appellate body, such as the NAC. For example, the NAC appoints the original, "trial level" hearing panel in actions under the Rule 8220 Series (failure to provide information). The NASD Board appoints the hearing panel in actions under the Rule 9510 Series (summary and non-summary proceedings). Under neither rule series does a respondent have any right of appeal to an internal, NASD appellate body. Similarly, an OHO appointed hearing panel's decision in actions under the Rule 9410 Series (member experiencing financial or operational difficulties) and Rule 9530 (failure to pay fees) is not appealable to the NAC or any other internal, NASD appellate body under the existing system.

²³ As is currently the case, a respondent's appeal of an expedited action to the SEC would be governed by Section 19(f) of the Act. See *William J. Gallagher*, Exchange Act Release No. 47501, 2003 SEC LEXIS 599, at *5 (Mar. 14, 2003) (reviewing appeal involving failure to pay arbitration award under Section 19(f) of the Act and explaining that the SEC need only to find that "the 'specific grounds' on which the SRO based its action 'exist in fact'"). Of course, an

provisions ensure that respondents have a right to a full and fair hearing before OHO and that the NAC has the ability to call matters for review when appropriate, while eliminating time-consuming review that can significantly delay the effectiveness of the subject action without necessarily adding benefit to the decision-making process in these uncomplicated matters.²⁴

Finally, NASD no longer refers to itself or its subsidiary, NASD Regulation, Inc., using its full corporate name, "the Association," "the NASD" or "NASD Regulation, Inc." Instead, NASD uses "NASD" unless otherwise appropriate for corporate or regulatory reasons. Accordingly, the proposed rule change replaces several references to "the Association" and "the NASD" in the text of the proposed rule change with the name "NASD" and deletes several references to "NASD Regulation, Inc." Although we are proposing to delete the name "NASD Regulation, Inc." NASD Regulation, Inc. will continue to perform the functions described in the rule.

(b) Statutory Basis

The proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act, which requires, among other things, that NASD's rules must be designed to

adjudicator's determination regarding a request for extraordinary relief (e.g., a motion for leave to file a late request for a hearing) is not appealable to the SEC. *See Warren B. Minton, Jr.*, Exchange Act Rel. No. 46709, 2002 SEC LEXIS 2712, at *9-10 (Oct. 23, 2002) ("[W]e do not have jurisdiction to review the NASD's denial of Minton's motion to vacate the default.... [T]he NASD merely rejected Minton's collateral attack on the NASD's [previous] action.... [E]ven if an applicant is adversely affected by the NASD's denial of a motion to set aside a default, that fact 'does not transform the denial into a reviewable NASD order.'"); *Gary A. Fox*, Exchange Act Rel. No. 46511, 2002 SEC LEXIS 2381, at *3-5 (Sept. 18, 2002) ("[W]e are precluded from considering an applicant's application for review if that applicant failed to follow the NASD's procedures.... Fox failed to respond to NASD requests for information, failed to respond to the ... notice of his suspension, and failed to apply for reinstatement within the time required.... [W]e are [thus] precluded from considering Fox's application for review.").

²⁴ *See supra* note 4 and accompanying text.

prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest. The proposed rule change also is consistent with the provisions of Section 15A(b)(7) of the Act, which provides that NASD members, or persons associated with its members, are appropriately disciplined for violations of any provisions of the Act or NASD's rules.

As discussed above, expedited proceedings are addressed in a number of existing NASD rules, and there are many differences among these rules. For instance, they use different triggering events, timing mechanisms and hearing tribunals, at times without a clear reason for such differences. Member firms and the public will benefit from more uniform, understandable and streamlined procedures for these actions.

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

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

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

Written comments were neither solicited nor received.

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

Within 35 days of the date of publication of this notice in the Federal Register or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

A. by order approve such proposed rule change, or

B. institute proceedings to determine whether the proposed rule change should be disapproved.

IV. SOLICITATION OF COMMENTS

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of NASD. All submissions should refer to the file number in the caption above and should be submitted by [insert date 21 days from the date of publication].

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

Margaret H. McFarland
Deputy Secretary