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February 3, 2004

Katherine A. England
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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. 3 – Proposed Uniform Hearing Procedures for and Consolidation of Rules Applicable to Expedited Proceedings

Dear Ms. England:

NASD hereby submits Amendment No. 3 to SR-NASD-2003-110. NASD is amending the proposal to clarify certain provisions at the request of Securities and Exchange Commission staff. In brief, Amendment No. 3 provides that:

- Notices will indicate that hearing officers can impose any appropriate sanctions;
- Certain timelines do not provide any substantive rights to parties;
- If service of a notice is by facsimile and NASD staff knows that the fax number on file with NASD is incorrect, NASD staff shall serve the notice via overnight or personal delivery;
- Service is complete upon sending the notice by facsimile, mailing the notice by overnight courier or delivering it in person, except that, where duplicate service is required, service is complete upon sending the duplicate service;
- An immediately effective summary suspension or other limitation under the proposed summary proceedings rule will remain in effect unless the respondent shows good cause for a stay; and
- Where two consolidated matters contain different timelines under Rule 9559, the Chief Hearing Officer or Hearing Officer assigned to the matter has discretion to determine which timeline is appropriate under the facts and circumstances of the case. Where one of the consolidated matters includes a summary action brought under Rule

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9558, the limitation, prohibition or suspension specified in the notice shall not be stayed pending resolution of the case unless the Chief Hearing Officer or Hearing Officer assigned to the matter orders otherwise for good cause shown. Where one of the consolidated matters includes an action brought under Rule 9555 with respect to services to which the member or person does not have access, the effectiveness of a notice of a limitation or prohibition on access to services offered by NASD or a member thereof shall not be stayed pending resolution of the case.

The proposed rule language provided in Attachment A incorporates these changes and amends the proposed rule language previously filed with the Commission in Amendment No. 2 to SR-NASD-2003-110 on November 17, 2003, and published in the Federal Register on December 16, 2003.¹

If you have any questions, please feel free to contact me at the above telephone number. The fax number of the Office of General Counsel is (202) 728-8264.

Very truly yours,

James S. Wrona

cc: Joseph Morra, Esq.
Ian Patel, Esq.
Division of Market Regulation
Securities and Exchange Commission

Attachment

¹ See Notice of Filing of Proposed Rule Change and Amendments Nos. 1 and 2 by NASD Relating to Uniform Hearing Procedures for and Consolidation of Rules Applicable to Expedited Proceedings, Release No. 34-48887 (Dec. 5, 2003) (SR-NASD-2003-110), 68 FR 70066 (Dec. 16, 2003). The comment period closed on January 6, 2004. No comments were submitted.

Attachment A

Amendment No. 3 to SR-NASD-2003-110 (Proposed Uniform Hearing Procedures for and Consolidation of Rules Applicable to Expedited Proceedings)

The base rule text is that of Amendment No. 2. The proposed revised rule language of Amendment No. 3 is underlined and the deleted text of Amendment No. 2 is in brackets.

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Rule 9551. Failure to Comply with Public Communication Standards

(a) through (b) No change.

(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. 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. In addition, the notice shall explain that, pursuant to Rules 8310(a) and 9559(n), a Hearing Officer or, if applicable, Hearing Panel, may approve, modify or withdraw any and all sanctions or limitations imposed by the notice, and may impose any other fitting sanction.

(d) through (g) No change.

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9552. Failure to Provide Information or Keep Information Current

(a) through (b) No change.

(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. In addition, the notice shall explain that, pursuant to Rules 8310(a) and 9559(n), a Hearing Officer or, if applicable, Hearing Panel, may approve, modify or withdraw any and all sanctions or limitations imposed by the notice, and may impose any other fitting sanction.

(d) through (i) No Change.

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

(a) through (b) No change.

(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. In addition, the notice shall explain that, pursuant to Rules

8310(a) and 9559(n), a Hearing Officer or, if applicable, Hearing Panel, may approve, modify or withdraw any and all sanctions or limitations imposed by the notice, and may impose any other fitting sanction.

(d) through (h) No change.

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

(a) through (b) No change.

(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. In addition, the notice shall explain that, pursuant to Rules 8310(a) and 9559(n), a Hearing Officer or, if applicable, Hearing Panel, may approve, modify or withdraw any and all sanctions or limitations imposed by the notice, and may impose any other fitting sanction.

(d) through (h) No change.

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

(a) through (b) No change.

(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. In addition, the notice shall explain that, pursuant to Rules 8310(a) and 9559(n), a Hearing Officer or, if applicable, Hearing Panel, may approve, modify or withdraw any and all sanctions or limitations imposed by the notice, and may impose any other fitting sanction.

(d) through (h) No change.

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

(a) No Change.

(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 deliver. 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] sent to the entity by overnight courier or personal delivery in conformity with paragraphs (a)(1) and (3) and (b)(1) and (2) of Rule 9134.

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. 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.

Service is complete upon sending the notice by facsimile, mailing the notice by overnight courier or delivering it in person, except that, where duplicate service is required, service is complete upon sending the duplicate service.

(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. In addition, the notice shall explain that, pursuant to Rules 8310(a) and 9559(n), a Hearing Officer or, if applicable, Hearing Panel, may approve, modify or withdraw any and all sanctions or limitations imposed by the notice, and may impose any other fitting sanction.

(d) through (h) No change.

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

(a) No change.

(b) Service of Notice

NASD staff shall serve the member subject to a notice issued under this Rule by facsimile, overnight courier or personal deliver. 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] sent to the entity by 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, except that, where duplicate service is required, service is complete upon sending the duplicate service.

(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. In addition, the notice shall explain that, pursuant to Rules

8310(a) and 9559(n), a Hearing Officer or, if applicable, Hearing Panel, may approve, modify or withdraw any and all sanctions or limitations imposed by the notice, and may impose any other fitting sanction.

(d) through (i) No change.

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

(a) No change.

(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 deliver. 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] sent to the entity by overnight courier or personal delivery in conformity with paragraphs (a)(1) and (3) and (b)(1) and (2) of Rule 9134. 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. 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. Service is complete upon sending the notice by facsimile, mailing the notice by overnight courier or delivering it in person, except that, where duplicate service is required, service is complete upon sending the duplicate service.

(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. In addition, the notice shall explain that, pursuant to Rules 8310(a) and 9559(n), a Hearing Officer or, if applicable, Hearing Panel, may approve, modify or withdraw any and all sanctions or limitations imposed by the notice, and may impose any other fitting sanction.

(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, after a timely written request for a hearing and written request for a stay, the Chief Hearing Officer or Hearing Officer assigned to the matter finds good cause exists to stay the limitation, prohibition or suspension [stayed by a timely request for a hearing pursuant to Rule 9559].

(e) Request for a Hearing and Stay

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.

A member or person subject to a notice issued under this Rule may, concurrent with or after filing a request for a hearing, file with the Office of Hearing Officers a written request for a stay of the limitation, prohibition or suspension specified in the notice. A request for a stay must set forth with specificity any and all relevant facts and arguments supporting the request for a stay.

(f) through (h) No change.

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

(a) through (b) No change.

(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 Rules 9551 through 9557 [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. A timely request for a hearing shall not stay the effectiveness of a notice issued under Rule 9558, unless the Chief Hearing Officer or the Hearing Officer assigned to the matter orders otherwise for good cause shown.

(d) No change.

(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. Where two consolidated matters contain different timelines under this Rule, the Chief Hearing Officer or Hearing Officer assigned to the matter has discretion to determine which timeline is appropriate under the facts and circumstances of the case. Where one of the consolidated matters includes an action brought under Rule 9558, the limitation, prohibition or suspension specified in the notice shall not be stayed pending resolution of the case unless the Chief Hearing Officer or Hearing Officer assigned to the matter orders otherwise for good cause shown. Where one of the consolidated matters includes an action brought under Rule 9555 with respect to services to which the member or person does not have access, the effectiveness of a notice of a limitation or prohibition on access to services offered by NASD or a member thereof shall not be stayed pending resolution of the case.

(f) Timing of Hearing

(1) through (2) No change.

(3) The timelines established by paragraphs (f)(1) and (2) confer no substantive rights on the parties [respondents].

(g) through (n) No change.

(o) Timing of Decision

(1) through (4) No change.

(5) The timelines established by paragraphs (o)(1)-(4) confer no substantive rights on the parties [respondents].

(p) No change.

(q) Call for Review by the National Adjudicatory Council

(1) through (5) No change.

(6) The timelines established by paragraphs (q)(1)-(5) confer no substantive rights on the parties [respondents].

(r) through (s) No change.

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