

OMB APPROVAL	
OMB Number:	3235-0045
Expires:	June 30, 2010
Estimated average burden hours per response.....38	

Page 1 of 

SECURITIES AND EXCHANGE COMMISSION  
WASHINGTON, D.C. 20549  
Form 19b-4

File No. SR -  -   
Amendment No.

## Proposed Rule Change by Financial Industry Regulatory Authority

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

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

Exhibit 2 Sent As Paper Document Exhibit 3 Sent As Paper Document **Description**

Provide a brief description of the proposed rule change (limit 250 characters).

Proposed rule change to adopt NASD Rules 4000 through 10000 Series and the 12000 through 14000 Series as FINRA Rules in the new consolidated FINRA rulebook

**Contact Information**

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

First Name <input type="text" value="Philip"/>	Last Name <input type="text" value="Shaikun"/>
Title <input type="text" value="Associate Vice President and Associate General Counsel"/>	
E-mail <input type="text" value="philip.shaikun@finra.org"/>	
Telephone <input type="text" value="(202) 728-8451"/>	Fax <input type="text" value="(202) 728-8264"/>

**Signature**

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

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

Date <input type="text" value="05/23/2008"/>	Senior Vice President and Deputy General Counsel <input type="text"/>
By <input type="text" value="Patrice Gliniecki"/>	(Title) <input type="text" value="Senior Vice President and Deputy General Counsel"/>
(Name) <input type="text" value="Patrice Gliniecki"/>	

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

SECURITIES AND EXCHANGE COMMISSION  
WASHINGTON, D.C. 20549

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

**Form 19b-4 Information**

[Add](#) [Remove](#) [View](#)

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

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

[Add](#) [Remove](#) [View](#)

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

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

[Add](#) [Remove](#) [View](#)

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

Exhibit Sent As Paper Document



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

[Add](#) [Remove](#) [View](#)

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

Exhibit Sent As Paper Document



**Exhibit 4 - Marked Copies**

[Add](#) [Remove](#) [View](#)

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

**Exhibit 5 - Proposed Rule Text**

[Add](#) [Remove](#) [View](#)

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

**Partial Amendment**

[Add](#) [Remove](#) [View](#)

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

**1. Text of Proposed Rule Change**

(a) Pursuant to the provisions of Section 19(b)(1) of the Securities Exchange Act of 1934 (“SEA” or “Act”),<sup>1</sup> Financial Industry Regulatory Authority, Inc. (“FINRA”) (f/k/a National Association of Securities Dealers, Inc. (“NASD”)) is filing with the Securities and Exchange Commission (“SEC” or “Commission”) a proposed rule change to adopt the following NASD Rules (which are part of the existing FINRA rulebook)<sup>2</sup> as FINRA Rules in the new consolidated FINRA rulebook: the 4000 through 10000 Series and the 12000 through 14000 Series.

The text of the proposed rule change is attached as Exhibit 5.

(b) Upon Commission approval and effectiveness of the proposed rule change, the corresponding NASD rules will be eliminated from the existing FINRA rulebook.

(c) Not applicable.

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

At its meeting on February 7, 2008, the FINRA Board of Governors authorized the filing of the proposed rule change with the SEC. No other action by FINRA is necessary for the filing of the proposed rule change.

FINRA will announce the implementation date(s) of the proposed rule change in a Regulatory Notice to be published no later than 60 days following Commission approval.

---

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

<sup>2</sup> As further discussed herein, the FINRA rulebook currently consists of the NASD rules and certain incorporated NYSE rules.

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

(a) Purpose

**Background**

On July 30, 2007, NASD and NYSE consolidated their member firm regulation operations into a combined organization, FINRA. As part of the transaction, FINRA incorporated into its existing rulebook NYSE rules related to member firm conduct (“Incorporated NYSE Rules”). Thus, the current FINRA rulebook consists of two sets of rules: (1) NASD rules and (2) the Incorporated NYSE Rules (together referred to as the “Transitional Rulebook”).<sup>3</sup> The Incorporated NYSE Rules apply only to Dual Members.<sup>4</sup> The new consolidated rulebook (“Consolidated FINRA Rulebook”) will consist only of FINRA Rules and will apply to all FINRA members, unless such rules have a more limited application by their terms.

---

<sup>3</sup> Pursuant to Rule 17d-2 under the Act, NASD, NYSE and NYSE Regulation entered into an agreement to reduce regulatory duplication for firms that are members of both FINRA and the NYSE (“Dual Members”) by allocating regulatory responsibilities for the Incorporated NYSE Rules to FINRA. FINRA has assumed examination, enforcement and surveillance responsibilities under the agreement relating to compliance by Dual Members to the extent such responsibilities involve member firm regulation. See Securities Exchange Act Release No. 56148 (July 26, 2007), 72 FR 42146 (August 1, 2007).

<sup>4</sup> The Incorporated NYSE Rules continue to apply to persons affiliated with Dual Members to the same extent and in the same manner as they did before the consolidation. In applying the Incorporated NYSE Rules to Dual Members and such affiliated persons, FINRA has incorporated the related interpretative positions set forth in the NYSE Rule Interpretations Handbook and NYSE Information Memos.

The proposed rule change represents the first phase of the rulebook consolidation process.<sup>5</sup> During this process, FINRA members will be subject to both the Consolidated FINRA Rulebook, as it becomes populated with rules filed with and approved by the Commission, and the Transitional Rulebook. (The NYSE Incorporated Rules in the Transitional Rulebook will continue to apply only to Dual Members.) As the Consolidated FINRA Rulebook expands with SEC-approved final FINRA rules, the Transitional Rulebook will be reduced by the elimination of those rules, or sections thereof, that address the same subject matter of regulation. As a result, when the Consolidated FINRA Rulebook is completed, the Transitional Rulebook will have been eliminated in its entirety.

The proposed rule change would transfer from the Transitional Rulebook to the Consolidated FINRA Rulebook the NASD Rule 4000 through 14000 Series, with the exception of the Rule 11000 Series (Uniform Practice Code). As described in more detail below, the NASD Rule 4000 through 7000 Series generally involve regulatory requirements and fees for quoting, trading, reporting, clearing and comparing over-the-counter transactions. The NASD Rule 8000 Series involves investigations and sanctions. The NASD Rule 9000 Series involves disciplinary procedures. The NASD Rule 10000, 12000, 13000 and 14000 Series involve Dispute Resolution (arbitration and mediation) procedures. The proposed rule change would adopt these rule series in their entirety as FINRA rules as part of the Consolidated FINRA Rulebook, with certain non-material changes.

---

<sup>5</sup> FINRA issued an Information Notice on March 12, 2008 that describes the rulebook consolidation process in greater detail.

The rules proposed to be transferred as part of the proposed rule change would occupy the Rule 6000 through 10000 Series and the Rule 12000 through 14000 Series in the Consolidated FINRA Rulebook as set forth in a Table of Contents attached as Exhibit 2. The proposed rule change would reserve Rule Series 0100 through 5000 for future transfers and amendments to member conduct rules involving, among others, member application processes and associated person registration, transactions with customers, supervision, communications and disclosures, and financial responsibility.

Additionally, and with the exception of the Arbitration Code, the Consolidated FINRA Rulebook will no longer contain Interpretive Materials (“IMs”); rather, the IMs either will become stand alone rules or will be integrated into existing rule text or moved to a “Supplementary Material” section at the end of a rule. The “Supplementary Material” will set forth the same type of legally binding guidance and additional information that IMs provide today and will be filed with the SEC.

### **Rules to be Transferred**

The proposed rule change would adopt in their entirety the following NASD rules as FINRA rules in the Consolidated FINRA Rulebook, save minor changes, including: replacing references to NASD or the Association with FINRA; certain renumbering to effectuate a new organizational framework for the rulebook that groups and categorizes rules into more logical and related subject matter areas; and certain conforming changes to rule references, e.g., the Exchange Act, SEA Rules, the Securities Act and Securities Act Rules.

### **Marketplace Rules**

The NASD Rule 4000 through 7000 Series (Marketplace Rules) generally set forth the regulatory requirements and fees for quoting, trading, reporting, clearing and comparing, as applicable, over-the-counter transactions in NMS stocks, as defined in SEC Rule 600(b)(47) of Regulation NMS under the Act, OTC Equity Securities<sup>6</sup> and certain eligible debt securities. These rules would occupy the Rule 6000 Series (Quotation and Transaction Reporting Facilities) and Rule 7000 Series (Clearing, Transaction and Order Data Requirements, and Facility Charges) in the Consolidated FINRA Rulebook.

The following rule series to be transferred cover reporting, clearing and comparison, as applicable, of transactions in NMS stocks effected otherwise than on an exchange through FINRA's Trade Reporting Facilities ("TRFs"):<sup>7</sup> the NASD Rule 4000 and 6100 Series (relating to the FINRA/Nasdaq TRF), renumbered as the Rule 6300A and 7200A Series, respectively; the NASD Rule 4000C and 6000C Series (relating to the FINRA/NSX TRF), renumbered as the Rule 6300B and 7200B Series, respectively; and the NASD Rule 4000E and 6000E Series (relating to the FINRA/NYSE TRF), renumbered as the Rule 6300C and 7200C Series, respectively. For the most part, these rule series are identical, with relatively minor differences reflecting distinctions in TRF functionality. Each TRF rule set currently contains two definition sections: NASD Rules

---

<sup>6</sup> "OTC Equity Security" is defined in NASD Rule 6610 and generally encompasses those securities not traded on an exchange, including OTC Bulletin Board and Pink Sheets securities.

<sup>7</sup> The three TRFs are: the FINRA/Nasdaq TRF, the FINRA/NSX TRF and the FINRA/NYSE TRF. The relevant formation documents have been amended to change the name of each TRF from "NASD" to "FINRA," where necessary. The proposed rule change would reflect the name changes in the Consolidated FINRA Rulebook.

4200 and 4631 (relating to the FINRA/Nasdaq TRF), NASD Rules 4200C and 4631C (relating to the FINRA/NSX TRF) and NASD Rules 4200E and 4631E (relating to the FINRA/NYSE TRF). These definition sections would be combined for each TRF in Rules 6320A, 6320B and 6320C, respectively, of the Consolidated FINRA Rulebook.

The NASD Rule 4000A and 6100A Series, renumbered as the Rule 6200 and 7100 Series, respectively, cover quoting, reporting, clearing and comparison of transactions in NMS stocks effected otherwise than on an exchange through FINRA's Alternative Display Facility ("ADF"), which is both a trade reporting and quotation display and collection facility.

The NASD Rule 5000 Series relates to trading in NMS stocks effected otherwise than on an exchange and applies uniformly to transactions reported to the TRFs and ADF. This series would be transferred to the Consolidated FINRA Rulebook and renumbered as the Rule 6100 Series and renamed "Quoting and Trading in NMS Stocks," and certain rules relating to the TRFs and ADF would be combined and relocated to the Rule 6100 Series. Specifically, NASD Rules 4633, 4120A, 4633C and 4633E relating to halts in over-the-counter trading in NMS stocks would be combined to form Rule 6120 (Trading Halts). In addition, NASD IM-4632, IM-4632C and IM-4632E relating to timely transaction reporting would be combined to form Rule 6181 (Timely Transaction Reporting). Finally, NASD IM-6130, IM-6130C and IM-6130E relating to the reporting of short sales would be combined to form Rule 6182 (Trade Reporting of Short Sales).

NASD Rule 5000, renumbered as Rule 6110 (Trading Otherwise Than On An Exchange), requires members to report transactions in NMS stocks effected otherwise than on or through a national securities exchange to FINRA. This series also includes

rules relating to initial public offering transactions (NASD Rule 5110, renumbered as Rule 6130), members' obligations to provide information to FINRA upon request (NASD Rule 5130, renumbered as Rule 6150), the use of multiple Market Participant Symbols (MPIDs) for TRF participants (NASD Rule 5140 and IM-5140, renumbered as Rule 6160 and Supplementary Material thereunder), and FINRA's authority to provide exemptive relief from certain Regulation NMS-related trade reporting requirements (NASD Rule 5150, renumbered as Rule 6183). In addition, NASD Rule 5120 relating to prohibited trading practices would be renumbered as Rule 6140 and paragraph (i) of that rule would be amended to define "Stop Stock Transaction" and "Stop Stock Price." (Currently, NASD Rule 5120 cross-references those definitions in NASD Rule 4200.) Finally, NASD Rule 4613A(b) and IM-4613A-1 relating to the ADF would be relocated to this series as Rule 6170 (Primary and Additional MPIDs for Alternative Display Facility Participants) and Supplementary Material thereunder.

The NASD Rule 6000 Series comprises a number of more specific rule series, as described herein. As noted above, the NASD Rule 6100 Series covers reporting, clearing and comparison of over-the-counter transactions in NMS stocks through the FINRA/Nasdaq TRF. This rule series also covers reporting, clearing and comparison of transactions in OTC Equity Securities through FINRA's OTC Reporting Facility ("ORF"). A single rule series would no longer apply to these two facilities. Rather, the NASD Rule 6100 Series would be amended, as necessary, to form the Rule 7200A Series, applicable only to the FINRA/Nasdaq TRF (i.e., the references to the ORF, OTC Equity Securities and Direct Participation Program ("DPP") securities would be deleted). The NASD Rule 6100 Series also would be amended, as necessary, to form the Rule

7300 Series, applicable only to the ORF (i.e., the references to the FINRA/Nasdaq TRF and “designated securities,” as well as the provisions relating to the transaction fee transfer mechanism, which is only supported by the FINRA/Nasdaq TRF, would be deleted). Finally, the references to NASD Rule 6410 and the ITS/CAES System would be deleted, as those references inadvertently were not deleted from NASD Rule 6110 as part of a prior rule filing approved by the SEC.<sup>8</sup>

The NASD Rule 6200 Series, renumbered as the Rule 6700 Series, covers the reporting and dissemination, as applicable, of over-the-counter secondary market transactions in eligible debt securities to FINRA’s Trade Reporting and Compliance Engine (“TRACE”).

The NASD Rule 6500 Series covers the operation and use of FINRA’s OTC Bulletin Board (“OTCBB”) service, which is an electronic quotation medium for members to display quotations in OTCBB-eligible securities. This series will remain as the Rule 6500 Series in the Consolidated FINRA Rulebook.

The NASD Rule 6600 Series, renumbered as the Rule 6400 Series and renamed “Quoting and Trading in OTC Equity Securities,” sets forth the recording and reporting requirements applicable to certain quotations and unpriced indications of interest displayed on inter-dealer quotation systems and the requirements applicable to reporting transactions in OTC Equity Securities to the ORF.

NASD Rule 6620, which sets forth the reporting requirements applicable to transactions in OTC Equity Securities, would be renumbered as Rule 6622 and included

---

<sup>8</sup> See Securities Exchange Act Release No. 54537 (September 28, 2006), 71 FR 59173 (October 6, 2006) (Order Approving File No. SR-NASD-2006-091).

in a separate series, the Rule 6600 Series (OTC Reporting Facility). The Rule 6600 Series would comprise all rules applicable to trade reporting to the ORF, including the NASD Rule 6700 and 6900 Series, discussed below. New Rule 6610 would explain that members that report transactions in OTC Equity Securities and DPP securities to the ORF also must comply with the 7300 Series, as well as all other applicable rules and regulations. Additionally, new Rule 6621 would cross-reference the definitions set forth in Rule 6420, which are applicable to trading and quoting in OTC Equity Securities. NASD IM-4632, which is cross-referenced in NASD Rule 6620, would form Rule 6623 (Timely Transaction Reporting), and NASD IM-6130 would form Rule 6624 (Trade Reporting of Short Sales).

The NASD Rule 6700 Series, renumbered as the Rule 6630 Series, covers trade reporting to the ORF of debt and equity transactions in PORTAL securities, which are foreign and domestic securities that are eligible for resale under Securities Act Rule 144A. NASD Rule 6732, renumbered as Rule 6633, would be amended to delete from paragraph (a)(1) the reference to “paragraph (d).” That reference inadvertently was not deleted as part of a prior rule filing approved by the SEC.<sup>9</sup>

The NASD Rule 6900 Series, renumbered as the Rule 6640 Series, covers trade reporting to the ORF of secondary market transactions in DPP securities other than transactions executed on a national securities exchange. The definition of “OTC Reporting Facility” in Rule 6642 would be amended to clarify that the comparison function is not available for DPPs that are not eligible for clearance and settlement

---

<sup>9</sup>

Id.

through the National Securities Clearing Corporation (which mirrors this term's definition in NASD Rule 6610(k)).

The NASD Rule 6950 Series, renumbered as the Rule 7400 Series, sets forth member obligations to record and report to FINRA's Order Audit Trail System certain information with respect to orders in equity securities listed on the Nasdaq Stock Market and OTC equity securities. NASD Rule 6957 (Effective Date) would be deleted, as all requirements of the Order Audit Trail System are now effective.

The NASD Rule 7000 Series, renumbered as the Rule 7700 Series, covers applicable fees for use of the ORF, OTCBB and TRACE services. The Rule 7000A Series, renumbered as the Rule 7500 Series, covers charges for ADF services and equipment. The following rule series cover fees and market data revenue rebates for trade reporting, clearing and comparison, as applicable, through the TRFs: the NASD Rule 7000B Series, renumbered as the Rule 7600A Series (relating to the FINRA/Nasdaq TRF); the NASD Rule 7000C Series, renumbered as the Rule 7600B Series (relating to the FINRA/NSX TRF); and the NASD Rule 7000E Series, renumbered as the Rule 7600C Series (relating to the FINRA/NYSE TRF).

#### Investigations and Sanctions Rules

The NASD Rule 8000 Series generally covers investigations and sanctions and would be transferred substantively unchanged to the Consolidated FINRA Rulebook. It comprises several more specific rule series, as described herein. The NASD Rule 8100 Series has a definitional section and requirements regarding the availability of the

manual.<sup>10</sup> The NASD Rule 8200 Series permits FINRA to inspect members' books and records and requires members to provide information in connection with FINRA investigations, examinations or proceedings. The NASD Rule 8200 Series also provides for automated submission of certain trading data. The NASD Rule 8300 Series provides FINRA with authority to sanction members and their associated persons for violations of FINRA's rules, federal securities laws, and Municipal Securities Rulemaking Board's rules. NASD IM-8310-1 addresses the effect of a bar or suspension, revocation or cancellation of a person's registration. In addition, NASD IM-8310-2 and IM-8310-3 govern FINRA's release of certain information regarding members and their associated persons through FINRA BrokerCheck, as well as FINRA's release of certain disciplinary complaints, decisions and other information. These IMs would be renumbered in the Consolidated FINRA Rulebook as Rules 8311, 8312 and 8313.

#### Code of Procedure

The NASD Rule 9000 Series generally provides procedures for initiating and adjudicating various types of actions, including disciplinary, eligibility, expedited, and cease and desist proceedings. The NASD Rule 9100 Series, for instance, sets forth rules of general applicability to disciplinary and other proceedings that FINRA initiates against members and their associated persons. This rule series includes a definitional section,

---

<sup>10</sup> NASD Rule 8110 currently requires that members keep and maintain a copy of the manual in a readily accessible place and make it available to customers upon request. The proposed rule change would further clarify that members may comply with Rule 8110 by maintaining electronic access to the manual and providing customers with such access upon request. See also Securities Exchange Act Release No. 39470 (December 19, 1997), 62 FR 67927 (December 30, 1997) (Order Approving File No. SR-NASD-97-81) (seeking to, among other things, simplify NASD Rule 8110 to allow members to maintain an electronic version of the NASD manual as their required copy of the manual).

provisions for service, filing and notice of papers, rules relating to the conduct of parties, counsel and adjudicators, and the allowance of motions practice.<sup>11</sup> The NASD Rule 9200 Series delineates specific procedures for disciplinary proceedings. It includes provisions for filing complaints and answers, requesting and holding hearings, settlement procedures and issuing decisions. NASD IM-9216 sets forth violations eligible for disposition under the Minor Rule Violation Plan (“MRVP”) and would be renumbered as Rule 9217 in the Consolidated FINRA Rulebook – the only rule to be renumbered in the Rule 9000 Series.<sup>12</sup> The NASD Rule 9300 Series sets forth the procedures for disciplinary matters that are appealed to or called for review by the National Adjudicatory Council or called for review by the Board of Governors. The NASD Rule 9520 Series covers eligibility proceedings.<sup>13</sup> The proposed rule change would delete the NASD Rule 9530 Series – a

---

<sup>11</sup> NASD Rule 9144(b) (Separation of Adjudicators) would be amended to conform to changes made to the FINRA By-Laws as a result of the consolidation transaction to reflect that the Chair of the National Adjudicatory Council will no longer automatically occupy a seat on the Board of Governors. See Securities Exchange Act Release No. 56145 (July 26, 2007); 72 FR 42169 (August 1, 2007) (Order Approving SR-NASD-2007-023 (“SEC Approval Order”).

<sup>12</sup> NASD IM-9216 also would be amended to reflect that FINRA members may now be subject to a minor rule violation for a violation of a FINRA rule, in addition to addressing violations of the FINRA By-Laws, Schedules to the By-Laws, NASD rules, Incorporated NYSE Rules, SEA Rules and MSRB rules. In this regard, FINRA notes that it is filing a separate rule change addressing the application of the FINRA rules to those members subject to NASD IM-1013 (Membership Waive-In Process for Certain NYSE Member Organizations) (commonly referred to as the “waive-in firms”). The proposed rule change also would reorganize IM-9216 to group by type the provisions and rules specified therein (i.e., By-Law provisions, FINRA rules, NASD rules, SEA rules, MSRB rules and Incorporated NYSE Rules), and to present them in numerical order within each group. The proposed rule change would not add new substantive rules to the MRVP.

<sup>13</sup> NASD Rule 9526(d) (Call for Review) would be amended to conform to changes made to the FINRA By-Laws as a result of the consolidation transaction by

change that should have been effectuated in a previous rule filing.<sup>14</sup> The NASD Rule 9550 Series sets forth standards and procedures for expedited proceedings, which cover various situations, ranging from members' failing to pay arbitration awards to members' experiencing financial or operations difficulties.<sup>15</sup> The NASD Rule 9600 Series provides procedures for exemptions, while the NASD Rule 9700 Series sets forth procedures for grievances concerning automated systems. The Rule NASD 9800 Series governs temporary cease and desist orders.

Code of Arbitration Procedure

The NASD Rule 10000 Series sets forth the Code of Arbitration Procedure, including rules governing arbitration and mediation matters filed prior to April 16, 2007. This Code continues to be relevant to matters that were open on that date, until they are closed by award, settlement or otherwise.

---

eliminating reference to the Non-Industry classification of Governor. See SEC Approval Order, supra note 11.

<sup>14</sup> As part of a 2004 rule proposal approved by the SEC, FINRA moved the hearing provisions of the NASD Rule 9530 Series to NASD Rule 9559 and the remaining provisions to NASD Rule 9553. See Securities Exchange Act Release No. 49380 (March 9, 2004), 69 FR 12386 (March 16, 2004) (Order Approving File No. SR-NASD-2003-110). However, the corresponding rule text inadvertently was not deleted as part of that filing and remained in the NASD Manual. FINRA is thus proposing to delete the NASD Rule 9530 Series.

<sup>15</sup> As part of the rulebook consolidation process, FINRA is considering changes relating to FINRA's rules governing financial responsibility, including NASD Rules 9557 and 9559, which provide the notice and procedural framework applicable when a member is experiencing financial or operational difficulties. See Regulatory Notice 08-23 (May 14, 2008) (Proposed Consolidated FINRA Rules Governing Financial Responsibility). For administrative ease, the proposed rule change transfers NASD Rules 9557 and 9559 without substantive change to the Consolidated FINRA Rulebook. However, FINRA anticipates proposing changes to Rules 9557 and 9559 as part of a future filing governing the financial responsibility rules.

The NASD Rule 12000 through 14000 Series contains the revised Code of Arbitration Procedure, which is organized into three sections: the Customer, Industry and Mediation Codes. These three Codes apply to matters filed on or after April 16, 2007. The Rule 12000 Series contains the Code of Arbitration Procedure for Customer Disputes. The Rule 13000 Series contains the Code of Arbitration Procedure for Industry Disputes. The Rule 14000 Series contains the Code of Mediation Procedure.

#### Rules of General Applicability

FINRA notes that certain rules in the Transitional Rulebook have general application to the entirety of rules that govern FINRA members. For example, NASD Rule 0115 states that all rules apply to both members and their associated persons and that associated persons have the same duties and obligations as the member. And the definitions in NASD Rule 0120 apply to all rules, unless the context otherwise requires. Those rules of general applicability would apply equally to both the Transitional Rulebook and the Consolidated FINRA Rulebook.

#### Rule References

Because the Consolidated FINRA Rulebook will be populated over the course of multiple rule filings, certain remaining rules in the Transitional Rulebook will refer to NASD rules or Incorporated NYSE Rules that have been transferred to, or otherwise incorporated into, the Consolidated FINRA Rulebook under the proposed rule change or future filings. In those instances, FINRA intends for the reference to NASD rules or Incorporated NYSE Rules to be treated as a reference to the corresponding rules in the Consolidated FINRA Rulebook. Thus, for example, NASD IM-1013-1 states that firms admitted to FINRA membership pursuant to the IM are subject to, among others, the

NASD Rule 8000 and 9000 Series. Upon Commission approval and effectiveness of the proposed rule change, those members would remain subject to the 8000 and 9000 Series in the Consolidated FINRA Rulebook.<sup>16</sup> In the event that the referenced NASD Rule has been renumbered in the Consolidated FINRA Rulebook, members need to be cognizant of the rule's new number to ensure they are cross-referencing the correct rule in the Consolidated FINRA Rulebook. FINRA will be preparing a conversion chart that will map the eliminated legacy NASD and Incorporated NYSE Rules to the final FINRA rules.

Similarly, certain rules that would be transferred to the Consolidated FINRA Rulebook under the proposed rule change refer to remaining rules in the Transitional Rulebook. For the time being, the remaining rules in the Transitional Rulebook will be identified as "NASD Rules" or "NYSE Rules," as the case may be, in the Consolidated FINRA Rulebook and references to Consolidated FINRA Rulebook rules will not be qualified. Thus, for example, rules in the Consolidated FINRA Rulebook that refer to NASD Rule 2110 will specifically identify that rule as "NASD" Rule 2110 until such time as that rule is transferred to the Consolidated FINRA Rulebook.

As noted in Item 2 of this filing, FINRA will announce the implementation date(s) of the proposed rule change in a Regulatory Notice to be published no later than 60 days following Commission approval.

(b) Statutory Basis

---

<sup>16</sup> See also supra note 12 discussing application of the FINRA rules to the waive-in firms.

FINRA believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,<sup>17</sup> which requires, among other things, that FINRA 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; and Section 15A(b)(5) of the Act,<sup>18</sup> which requires, among other things, that FINRA rules provide for the equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons using any facility or system that FINRA operates or controls. The rules proposed to be transferred to the Consolidated FINRA Rulebook previously have been found to meet the statutory requirements, and FINRA believes those rules have since proven effective in achieving the statutory mandates.

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

FINRA does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

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

Written comments were neither solicited nor received

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

---

<sup>17</sup> 15 U.S.C. 78o-3(b)(6).

<sup>18</sup> 15 U.S.C. 78o-3(b)(5).

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

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

Not applicable.

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

Not applicable.

**9. Exhibits**

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

Exhibit 2. FINRA Consolidated Rulebook Table of Contents for the 6000 through 10000 Series and the 12000 through 14000 Series.

Exhibit 5. Text of the proposed rule change.

---

<sup>19</sup> 15 U.S.C. 78s(b)(2).

**EXHIBIT 1**

**SECURITIES AND EXCHANGE COMMISSION**  
(Release No. 34- ; File No. SR-FINRA-2008-021)

Self-Regulatory Organizations: Financial Industry Regulatory Authority, Inc.; Notice of Filing of Proposed Rule Change Relating to the Adoption of NASD Rules 4000 through 10000 Series and the 12000 through 14000 Series as FINRA Rules in the New Consolidated FINRA Rulebook.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“SEA” or “Act”)<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on , Financial Industry Regulatory Authority, Inc. (“FINRA”) (f/k/a 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 FINRA. 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**

FINRA is proposing to adopt the following NASD Rules (which are part of the existing FINRA rulebook)<sup>3</sup> as FINRA Rules in the new consolidated FINRA rulebook: the 4000 through 10000 Series and the 12000 through 14000 Series. The text of the proposed rule change is attached as Exhibit 5.

\* \* \* \* \*

---

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

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

<sup>3</sup> As further discussed herein, the FINRA rulebook currently consists of the NASD rules and certain incorporated NYSE rules.

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

In its filing with the Commission, FINRA included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. FINRA has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

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

1. Purpose

**Background**

On July 30, 2007, NASD and NYSE consolidated their member firm regulation operations into a combined organization, FINRA. As part of the transaction, FINRA incorporated into its existing rulebook NYSE rules related to member firm conduct (“Incorporated NYSE Rules”). Thus, the current FINRA rulebook consists of two sets of rules: (1) NASD rules and (2) the Incorporated NYSE Rules (together referred to as the “Transitional Rulebook”).<sup>4</sup> The Incorporated NYSE Rules apply only to Dual Members.<sup>5</sup>

---

<sup>4</sup> Pursuant to Rule 17d-2 under the Act, NASD, NYSE and NYSE Regulation entered into an agreement to reduce regulatory duplication for firms that are members of both FINRA and the NYSE (“Dual Members”) by allocating regulatory responsibilities for the Incorporated NYSE Rules to FINRA. FINRA has assumed examination, enforcement and surveillance responsibilities under the agreement relating to compliance by Dual Members to the extent such responsibilities involve member firm regulation. See Securities Exchange Act Release No. 56148 (July 26, 2007), 72 FR 42146 (August 1, 2007).

<sup>5</sup> The Incorporated NYSE Rules continue to apply to persons affiliated with Dual Members to the same extent and in the same manner as they did before the consolidation. In applying the Incorporated NYSE Rules to Dual Members and such affiliated persons, FINRA has incorporated the related interpretative positions set forth in the NYSE Rule Interpretations Handbook and NYSE

The new consolidated rulebook (“Consolidated FINRA Rulebook”) will consist only of FINRA Rules and will apply to all FINRA members, unless such rules have a more limited application by their terms.

The proposed rule change represents the first phase of the rulebook consolidation process.<sup>6</sup> During this process, FINRA members will be subject to both the Consolidated FINRA Rulebook, as it becomes populated with rules filed with and approved by the Commission, and the Transitional Rulebook. (The NYSE Incorporated Rules in the Transitional Rulebook will continue to apply only to Dual Members.) As the Consolidated FINRA Rulebook expands with SEC-approved final FINRA rules, the Transitional Rulebook will be reduced by the elimination of those rules, or sections thereof, that address the same subject matter of regulation. As a result, when the Consolidated FINRA Rulebook is completed, the Transitional Rulebook will have been eliminated in its entirety.

The proposed rule change would transfer from the Transitional Rulebook to the Consolidated FINRA Rulebook the NASD Rule 4000 through 14000 Series, with the exception of the Rule 11000 Series (Uniform Practice Code). As described in more detail below, the NASD Rule 4000 through 7000 Series generally involve regulatory requirements and fees for quoting, trading, reporting, clearing and comparing over-the-counter transactions. The NASD Rule 8000 Series involves investigations and sanctions. The NASD Rule 9000 Series involves disciplinary procedures. The NASD Rule 10000, 12000, 13000 and 14000 Series involve Dispute Resolution (arbitration and mediation)

---

Information Memos.

<sup>6</sup> FINRA issued an Information Notice on March 12, 2008 that describes the rulebook consolidation process in greater detail.

procedures. The proposed rule change would adopt these rule series in their entirety as FINRA rules as part of the Consolidated FINRA Rulebook, with certain non-material changes.

The rules proposed to be transferred as part of the proposed rule change would occupy the Rule 6000 through 10000 Series and the Rule 12000 through 14000 Series in the Consolidated FINRA Rulebook as set forth in a Table of Contents attached as Exhibit 2. The proposed rule change would reserve Rule Series 0100 through 5000 for future transfers and amendments to member conduct rules involving, among others, member application processes and associated person registration, transactions with customers, supervision, communications and disclosures, and financial responsibility.

Additionally, and with the exception of the Arbitration Code, the Consolidated FINRA Rulebook will no longer contain Interpretive Materials (“IMs”); rather, the IMs either will become stand alone rules or will be integrated into existing rule text or moved to a “Supplementary Material” section at the end of a rule. The “Supplementary Material” will set forth the same type of legally binding guidance and additional information that IMs provide today and will be filed with the SEC.

### **Rules to be Transferred**

The proposed rule change would adopt in their entirety the following NASD rules as FINRA rules in the Consolidated FINRA Rulebook, save minor changes, including: replacing references to NASD or the Association with FINRA; certain renumbering to effectuate a new organizational framework for the rulebook that groups and categorizes rules into more logical and related subject matter areas; and certain conforming changes

to rule references, e.g., the Exchange Act, SEA Rules, the Securities Act and Securities Act Rules.

**Marketplace Rules**

The NASD Rule 4000 through 7000 Series (Marketplace Rules) generally set forth the regulatory requirements and fees for quoting, trading, reporting, clearing and comparing, as applicable, over-the-counter transactions in NMS stocks, as defined in SEC Rule 600(b)(47) of Regulation NMS under the Act, OTC Equity Securities<sup>7</sup> and certain eligible debt securities. These rules would occupy the Rule 6000 Series (Quotation and Transaction Reporting Facilities) and Rule 7000 Series (Clearing, Transaction and Order Data Requirements, and Facility Charges) in the Consolidated FINRA Rulebook.

The following rule series to be transferred cover reporting, clearing and comparison, as applicable, of transactions in NMS stocks effected otherwise than on an exchange through FINRA's Trade Reporting Facilities ("TRFs"):<sup>8</sup> the NASD Rule 4000 and 6100 Series (relating to the FINRA/Nasdaq TRF), renumbered as the Rule 6300A and 7200A Series, respectively; the NASD Rule 4000C and 6000C Series (relating to the FINRA/NSX TRF), renumbered as the Rule 6300B and 7200B Series, respectively; and the NASD Rule 4000E and 6000E Series (relating to the FINRA/NYSE TRF),

---

<sup>7</sup> "OTC Equity Security" is defined in NASD Rule 6610 and generally encompasses those securities not traded on an exchange, including OTC Bulletin Board and Pink Sheets securities.

<sup>8</sup> The three TRFs are: the FINRA/Nasdaq TRF, the FINRA/NSX TRF and the FINRA/NYSE TRF. The relevant formation documents have been amended to change the name of each TRF from "NASD" to "FINRA," where necessary. The proposed rule change would reflect the name changes in the Consolidated FINRA Rulebook.

renumbered as the Rule 6300C and 7200C Series, respectively. For the most part, these rule series are identical, with relatively minor differences reflecting distinctions in TRF functionality. Each TRF rule set currently contains two definition sections: NASD Rules 4200 and 4631 (relating to the FINRA/Nasdaq TRF), NASD Rules 4200C and 4631C (relating to the FINRA/NSX TRF) and NASD Rules 4200E and 4631E (relating to the FINRA/NYSE TRF). These definition sections would be combined for each TRF in Rules 6320A, 6320B and 6320C, respectively, of the Consolidated FINRA Rulebook.

The NASD Rule 4000A and 6100A Series, renumbered as the Rule 6200 and 7100 Series, respectively, cover quoting, reporting, clearing and comparison of transactions in NMS stocks effected otherwise than on an exchange through FINRA's Alternative Display Facility ("ADF"), which is both a trade reporting and quotation display and collection facility.

The NASD Rule 5000 Series relates to trading in NMS stocks effected otherwise than on an exchange and applies uniformly to transactions reported to the TRFs and ADF. This series would be transferred to the Consolidated FINRA Rulebook and renumbered as the Rule 6100 Series and renamed "Quoting and Trading in NMS Stocks," and certain rules relating to the TRFs and ADF would be combined and relocated to the Rule 6100 Series. Specifically, NASD Rules 4633, 4120A, 4633C and 4633E relating to halts in over-the-counter trading in NMS stocks would be combined to form Rule 6120 (Trading Halts). In addition, NASD IM-4632, IM-4632C and IM-4632E relating to timely transaction reporting would be combined to form Rule 6181 (Timely Transaction Reporting). Finally, NASD IM-6130, IM-6130C and IM-6130E relating to the reporting of short sales would be combined to form Rule 6182 (Trade Reporting of Short Sales).

NASD Rule 5000, renumbered as Rule 6110 (Trading Otherwise Than On An Exchange), requires members to report transactions in NMS stocks effected otherwise than on or through a national securities exchange to FINRA. This series also includes rules relating to initial public offering transactions (NASD Rule 5110, renumbered as Rule 6130), members' obligations to provide information to FINRA upon request (NASD Rule 5130, renumbered as Rule 6150), the use of multiple Market Participant Symbols (MPIDs) for TRF participants (NASD Rule 5140 and IM-5140, renumbered as Rule 6160 and Supplementary Material thereunder), and FINRA's authority to provide exemptive relief from certain Regulation NMS-related trade reporting requirements (NASD Rule 5150, renumbered as Rule 6183). In addition, NASD Rule 5120 relating to prohibited trading practices would be renumbered as Rule 6140 and paragraph (i) of that rule would be amended to define "Stop Stock Transaction" and "Stop Stock Price." (Currently, NASD Rule 5120 cross-references those definitions in NASD Rule 4200.) Finally, NASD Rule 4613A(b) and IM-4613A-1 relating to the ADF would be relocated to this series as Rule 6170 (Primary and Additional MPIDs for Alternative Display Facility Participants) and Supplementary Material thereunder.

The NASD Rule 6000 Series comprises a number of more specific rule series, as described herein. As noted above, the NASD Rule 6100 Series covers reporting, clearing and comparison of over-the-counter transactions in NMS stocks through the FINRA/Nasdaq TRF. This rule series also covers reporting, clearing and comparison of transactions in OTC Equity Securities through FINRA's OTC Reporting Facility ("ORF"). A single rule series would no longer apply to these two facilities. Rather, the NASD Rule 6100 Series would be amended, as necessary, to form the Rule 7200A

Series, applicable only to the FINRA/Nasdaq TRF (i.e., the references to the ORF, OTC Equity Securities and Direct Participation Program (“DPP”) securities would be deleted). The NASD Rule 6100 Series also would be amended, as necessary, to form the Rule 7300 Series, applicable only to the ORF (i.e., the references to the FINRA/Nasdaq TRF and “designated securities,” as well as the provisions relating to the transaction fee transfer mechanism, which is only supported by the FINRA/Nasdaq TRF, would be deleted). Finally, the references to NASD Rule 6410 and the ITS/CAES System would be deleted, as those references inadvertently were not deleted from NASD Rule 6110 as part of a prior rule filing approved by the SEC.<sup>9</sup>

The NASD Rule 6200 Series, renumbered as the Rule 6700 Series, covers the reporting and dissemination, as applicable, of over-the-counter secondary market transactions in eligible debt securities to FINRA’s Trade Reporting and Compliance Engine (“TRACE”).

The NASD Rule 6500 Series covers the operation and use of FINRA’s OTC Bulletin Board (“OTCBB”) service, which is an electronic quotation medium for members to display quotations in OTCBB-eligible securities. This series will remain as the Rule 6500 Series in the Consolidated FINRA Rulebook.

The NASD Rule 6600 Series, renumbered as the Rule 6400 Series and renamed “Quoting and Trading in OTC Equity Securities,” sets forth the recording and reporting requirements applicable to certain quotations and unpriced indications of interest displayed on inter-dealer quotation systems and the requirements applicable to reporting transactions in OTC Equity Securities to the ORF.

---

<sup>9</sup> See Securities Exchange Act Release No. 54537 (September 28, 2006), 71 FR 59173 (October 6, 2006) (Order Approving File No. SR-NASD-2006-091).

NASD Rule 6620, which sets forth the reporting requirements applicable to transactions in OTC Equity Securities, would be renumbered as Rule 6622 and included in a separate series, the Rule 6600 Series (OTC Reporting Facility). The Rule 6600 Series would comprise all rules applicable to trade reporting to the ORF, including the NASD Rule 6700 and 6900 Series, discussed below. New Rule 6610 would explain that members that report transactions in OTC Equity Securities and DPP securities to the ORF also must comply with the 7300 Series, as well as all other applicable rules and regulations. Additionally, new Rule 6621 would cross-reference the definitions set forth in Rule 6420, which are applicable to trading and quoting in OTC Equity Securities. NASD IM-4632, which is cross-referenced in NASD Rule 6620, would form Rule 6623 (Timely Transaction Reporting), and NASD IM-6130 would form Rule 6624 (Trade Reporting of Short Sales).

The NASD Rule 6700 Series, renumbered as the Rule 6630 Series, covers trade reporting to the ORF of debt and equity transactions in PORTAL securities, which are foreign and domestic securities that are eligible for resale under Securities Act Rule 144A. NASD Rule 6732, renumbered as Rule 6633, would be amended to delete from paragraph (a)(1) the reference to “paragraph (d).” That reference inadvertently was not deleted as part of a prior rule filing approved by the SEC.<sup>10</sup>

The NASD Rule 6900 Series, renumbered as the Rule 6640 Series, covers trade reporting to the ORF of secondary market transactions in DPP securities other than transactions executed on a national securities exchange. The definition of “OTC Reporting Facility” in Rule 6642 would be amended to clarify that the comparison

---

<sup>10</sup> Id.

function is not available for DPPs that are not eligible for clearance and settlement through the National Securities Clearing Corporation (which mirrors this term's definition in NASD Rule 6610(k)).

The NASD Rule 6950 Series, renumbered as the Rule 7400 Series, sets forth member obligations to record and report to FINRA's Order Audit Trail System certain information with respect to orders in equity securities listed on the Nasdaq Stock Market and OTC equity securities. NASD Rule 6957 (Effective Date) would be deleted, as all requirements of the Order Audit Trail System are now effective.

The NASD Rule 7000 Series, renumbered as the Rule 7700 Series, covers applicable fees for use of the ORF, OTCBB and TRACE services. The Rule 7000A Series, renumbered as the Rule 7500 Series, covers charges for ADF services and equipment. The following rule series cover fees and market data revenue rebates for trade reporting, clearing and comparison, as applicable, through the TRFs: the NASD Rule 7000B Series, renumbered as the Rule 7600A Series (relating to the FINRA/Nasdaq TRF); the NASD Rule 7000C Series, renumbered as the Rule 7600B Series (relating to the FINRA/NSX TRF); and the NASD Rule 7000E Series, renumbered as the Rule 7600C Series (relating to the FINRA/NYSE TRF).

#### Investigations and Sanctions Rules

The NASD Rule 8000 Series generally covers investigations and sanctions and would be transferred substantively unchanged to the Consolidated FINRA Rulebook. It comprises several more specific rule series, as described herein. The NASD Rule 8100 Series has a definitional section and requirements regarding the availability of the

manual.<sup>11</sup> The NASD Rule 8200 Series permits FINRA to inspect members' books and records and requires members to provide information in connection with FINRA investigations, examinations or proceedings. The NASD Rule 8200 Series also provides for automated submission of certain trading data. The NASD Rule 8300 Series provides FINRA with authority to sanction members and their associated persons for violations of FINRA's rules, federal securities laws, and Municipal Securities Rulemaking Board's rules. NASD IM-8310-1 addresses the effect of a bar or suspension, revocation or cancellation of a person's registration. In addition, NASD IM-8310-2 and IM-8310-3 govern FINRA's release of certain information regarding members and their associated persons through FINRA BrokerCheck, as well as FINRA's release of certain disciplinary complaints, decisions and other information. These IMs would be renumbered in the Consolidated FINRA Rulebook as Rules 8311, 8312 and 8313.

#### Code of Procedure

The NASD Rule 9000 Series generally provides procedures for initiating and adjudicating various types of actions, including disciplinary, eligibility, expedited, and cease and desist proceedings. The NASD Rule 9100 Series, for instance, sets forth rules of general applicability to disciplinary and other proceedings that FINRA initiates against members and their associated persons. This rule series includes a definitional section,

---

<sup>11</sup> NASD Rule 8110 currently requires that members keep and maintain a copy of the manual in a readily accessible place and make it available to customers upon request. The proposed rule change would further clarify that members may comply with Rule 8110 by maintaining electronic access to the manual and providing customers with such access upon request. See also Securities Exchange Act Release No. 39470 (December 19, 1997), 62 FR 67927 (December 30, 1997) (Order Approving File No. SR-NASD-97-81) (seeking to, among other things, simplify NASD Rule 8110 to allow members to maintain an electronic version of the NASD manual as their required copy of the manual).

provisions for service, filing and notice of papers, rules relating to the conduct of parties, counsel and adjudicators, and the allowance of motions practice.<sup>12</sup> The NASD Rule 9200 Series delineates specific procedures for disciplinary proceedings. It includes provisions for filing complaints and answers, requesting and holding hearings, settlement procedures and issuing decisions. NASD IM-9216 sets forth violations eligible for disposition under the Minor Rule Violation Plan (“MRVP”) and would be renumbered as Rule 9217 in the Consolidated FINRA Rulebook – the only rule to be renumbered in the Rule 9000 Series.<sup>13</sup> The NASD Rule 9300 Series sets forth the procedures for disciplinary matters that are appealed to or called for review by the National Adjudicatory Council or called for review by the Board of Governors. The NASD Rule 9520 Series covers eligibility proceedings.<sup>14</sup> The proposed rule change would delete the NASD Rule 9530 Series – a

---

<sup>12</sup> NASD Rule 9144(b) (Separation of Adjudicators) would be amended to conform to changes made to the FINRA By-Laws as a result of the consolidation transaction to reflect that the Chair of the National Adjudicatory Council will no longer automatically occupy a seat on the Board of Governors. See Securities Exchange Act Release No. 56145 (July 26, 2007); 72 FR 42169 (August 1, 2007) (Order Approving SR-NASD-2007-023 (“SEC Approval Order”)).

<sup>13</sup> NASD IM-9216 also would be amended to reflect that FINRA members may now be subject to a minor rule violation for a violation of a FINRA rule, in addition to addressing violations of the FINRA By-Laws, Schedules to the By-Laws, NASD rules, Incorporated NYSE Rules, SEA Rules and MSRB rules. In this regard, FINRA notes that it is filing a separate rule change addressing the application of the FINRA rules to those members subject to NASD IM-1013 (Membership Waive-In Process for Certain NYSE Member Organizations) (commonly referred to as the “waive-in firms”). The proposed rule change also would reorganize IM-9216 to group by type the provisions and rules specified therein (i.e., By-Law provisions, FINRA rules, NASD rules, SEA rules, MSRB rules and Incorporated NYSE Rules), and to present them in numerical order within each group. The proposed rule change would not add new substantive rules to the MRVP.

<sup>14</sup> NASD Rule 9526(d) (Call for Review) would be amended to conform to changes made to the FINRA By-Laws as a result of the consolidation transaction by eliminating reference to the Non-Industry classification of Governor. See SEC Approval Order, supra note 12.

change that should have been effectuated in a previous rule filing.<sup>15</sup> The NASD Rule 9550 Series sets forth standards and procedures for expedited proceedings, which cover various situations, ranging from members' failing to pay arbitration awards to members' experiencing financial or operations difficulties.<sup>16</sup> The NASD Rule 9600 Series provides procedures for exemptions, while the NASD Rule 9700 Series sets forth procedures for grievances concerning automated systems. The Rule NASD 9800 Series governs temporary cease and desist orders.

Code of Arbitration Procedure

The NASD Rule 10000 Series sets forth the Code of Arbitration Procedure, including rules governing arbitration and mediation matters filed prior to April 16, 2007. This Code continues to be relevant to matters that were open on that date, until they are closed by award, settlement or otherwise.

The NASD Rule 12000 through 14000 Series contains the revised Code of Arbitration Procedure, which is organized into three sections: the Customer, Industry and

---

<sup>15</sup> As part of a 2004 rule proposal approved by the SEC, FINRA moved the hearing provisions of the NASD Rule 9530 Series to NASD Rule 9559 and the remaining provisions to NASD Rule 9553. See Securities Exchange Act Release No. 49380 (March 9, 2004), 69 FR 12386 (March 16, 2004) (Order Approving File No. SR-NASD-2003-110). However, the corresponding rule text inadvertently was not deleted as part of that filing and remained in the NASD Manual. FINRA is thus proposing to delete the NASD Rule 9530 Series.

<sup>16</sup> As part of the rulebook consolidation process, FINRA is considering changes relating to FINRA's rules governing financial responsibility, including NASD Rules 9557 and 9559, which provide the notice and procedural framework applicable when a member is experiencing financial or operational difficulties. See Regulatory Notice 08-23 (May 14, 2008) (Proposed Consolidated FINRA Rules Governing Financial Responsibility). For administrative ease, the proposed rule change transfers NASD Rules 9557 and 9559 without substantive change to the Consolidated FINRA Rulebook. However, FINRA anticipates proposing changes to Rules 9557 and 9559 as part of a future filing governing the financial responsibility rules.

Mediation Codes. These three Codes apply to matters filed on or after April 16, 2007.

The Rule 12000 Series contains the Code of Arbitration Procedure for Customer Disputes. The Rule 13000 Series contains the Code of Arbitration Procedure for Industry Disputes. The Rule 14000 Series contains the Code of Mediation Procedure.

#### Rules of General Applicability

FINRA notes that certain rules in the Transitional Rulebook have general application to the entirety of rules that govern FINRA members. For example, NASD Rule 0115 states that all rules apply to both members and their associated persons and that associated persons have the same duties and obligations as the member. And the definitions in NASD Rule 0120 apply to all rules, unless the context otherwise requires. Those rules of general applicability would apply equally to both the Transitional Rulebook and the Consolidated FINRA Rulebook.

#### Rule References

Because the Consolidated FINRA Rulebook will be populated over the course of multiple rule filings, certain remaining rules in the Transitional Rulebook will refer to NASD rules or Incorporated NYSE Rules that have been transferred to, or otherwise incorporated into, the Consolidated FINRA Rulebook under the proposed rule change or future filings. In those instances, FINRA intends for the reference to NASD rules or Incorporated NYSE Rules to be treated as a reference to the corresponding rules in the Consolidated FINRA Rulebook. Thus, for example, NASD IM-1013-1 states that firms admitted to FINRA membership pursuant to the IM are subject to, among others, the NASD Rule 8000 and 9000 Series. Upon Commission approval and effectiveness of the proposed rule change, those members would remain subject to the 8000 and 9000 Series

in the Consolidated FINRA Rulebook.<sup>17</sup> In the event that the referenced NASD Rule has been renumbered in the Consolidated FINRA Rulebook, members need to be cognizant of the rule's new number to ensure they are cross-referencing the correct rule in the Consolidated FINRA Rulebook. FINRA will be preparing a conversion chart that will map the eliminated legacy NASD and Incorporated NYSE Rules to the final FINRA rules.

Similarly, certain rules that would be transferred to the Consolidated FINRA Rulebook under the proposed rule change refer to remaining rules in the Transitional Rulebook. For the time being, the remaining rules in the Transitional Rulebook will be identified as "NASD Rules" or "NYSE Rules," as the case may be, in the Consolidated FINRA Rulebook and references to Consolidated FINRA Rulebook rules will not be qualified. Thus, for example, rules in the Consolidated FINRA Rulebook that refer to NASD Rule 2110 will specifically identify that rule as "NASD" Rule 2110 until such time as that rule is transferred to the Consolidated FINRA Rulebook.

As noted in Item 2 of this filing, FINRA will announce the implementation date(s) of the proposed rule change in a Regulatory Notice to be published no later than 60 days following Commission approval.

## 2. Statutory Basis

FINRA believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,<sup>18</sup> which requires, among other things, that FINRA rules must be designed to prevent fraudulent and manipulative acts and practices, to promote

---

<sup>17</sup> See also supra note 13 discussing application of the FINRA rules to the waive-in firms.

<sup>18</sup> 15 U.S.C. 78o-3(b)(6).

just and equitable principles of trade, and, in general, to protect investors and the public interest; and Section 15A(b)(5) of the Act,<sup>19</sup> which requires, among other things, that FINRA rules provide for the equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons using any facility or system that FINRA operates or controls. The rules proposed to be transferred to the Consolidated FINRA Rulebook previously have been found to meet the statutory requirements, and FINRA believes those rules have since proven effective in achieving the statutory mandates.

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

FINRA does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

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

Written comments were neither solicited nor received.

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

Within 35 days of the date of publication of this notice in the Federal Register or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

- (A) by order approve such proposed rule change, or

---

<sup>19</sup> 15 U.S.C. 78o-3(b)(5).

(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, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

**Electronic Comments:**

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-FINRA-2008-021 on the subject line.

**Paper Comments:**

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

All submissions should refer to File Number SR-FINRA-2008-021. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld

from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing also will be available for inspection and copying at the principal office of FINRA.

All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-FINRA-2008-021 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>20</sup>

Nancy M. Morris

Secretary

---

<sup>20</sup> 17 CFR 200.30-3(a)(12).

**EXHIBIT 2**

**TABLE OF CONTENTS**

**PROPOSED FINRA RULES 6000 - 10000 and 12000 - 14000 SERIES**

**Cross-references to current NASD rules in parentheses where renumbering to occur**

**6000. QUOTATION AND TRANSACTION REPORTING FACILITIES**

**6100. QUOTING AND TRADING IN NMS STOCKS**

6110. Trading Otherwise than on an Exchange (5000)

6120. Trading Halts (4633, 4120A, 4633C, 4633E)

6130. Transactions Related to Initial Public Offerings (5110)

6140. Other Trading Practices (5120)

6150. Obligation to Provide Information (5130)

6160. Multiple MPIDs for Trade Reporting Facility Participants (5140, IM-5140. *Use of Multiple MPIDs*)

6170. Primary and Additional MPIDs for Alternative Display Facility

Participants (4613A(b), IM-4613A-1)

**6180. Transaction Reporting**

6181. Timely Transaction Reporting (IM-4632-1, IM-4632C-1 and IM-4632E-1)

6182. Trade Reporting of Short Sales (IM-6130, IM-6130C, IM-6130E)

6183. Exemption From SEC Regulation NMS-Related Trade Reporting Requirements (5150)

**6200. ALTERNATIVE DISPLAY FACILITY**

6210. General (4100A)

6220. Definitions (4200A)

6230. Use of Alternative Display Facility Data Systems (4110A)

6240. Prohibition from Locking or Crossing Quotations in NMS Stocks (4130A)

6250. Quote and Order Access Requirements (4300A)

6260. Review of Direct or Indirect Access Complaints (4400A)

**6270. Quoting and Trading in ADF-Eligible Securities (4600A)**

6271. Registration as an ADF Market Maker or ADF ECN (4611A)

6272. Character of Quotations (4613A)

6273. Normal Business Hours (4617A)

6274. Clearance and Settlement (4618A)

6275. Withdrawal of Quotations (4619A)

6276. Voluntary Termination of Registration (4620A)

6277. Suspension and Termination of Quotations by FINRA Action  
(4621A)

6278. Termination of Alternative Display Facility Data System Service  
(4622A)

6279. Alternative Trading Systems (4623A)

**6280. Transaction Reporting**

6281. Reporting Transactions in ADF-Eligible Securities (4630A)

6282. Transactions Reported by Members to TRACS (4632A)

**6300. TRADE REPORTING FACILITIES**

**6300A. FINRA/NASDAQ TRADE REPORTING FACILITY**

6310A. General (4100)

6320A. Definitions (4200, 4631)

6330A. Use of FINRA/Nasdaq Trade Reporting Facility on a Test Basis (*4110*)

6340A. Reports (*4616*)

6350A. Clearance and Settlement (*4618*)

6360A. Suspension and Termination by FINRA Action (*4621*)

6370A. Termination of FINRA/Nasdaq Trade Reporting Facility Service (*4622*)

6380A. Transaction Reporting (*4632*)

## **6300B. FINRA/NSX TRADE REPORTING FACILITY**

6310B. General (*4100C*)

6320B. Definitions (*4200C, 4631C*)

6330B. Use of FINRA/NSX Trade Reporting Facility on a Test Basis (*4110C*)

6340B. Reports (*4616C*)

6350B. Clearance and Settlement (*4618C*)

6360B. Suspension and Termination by FINRA Action (*4621C*)

6370B. Termination of FINRA/NSX Trade Reporting Facility Service (*4622C*)

6380B. Transaction Reporting (*4632C*)

## **6300C. FINRA/NYSE TRADE REPORTING FACILITY**

6310C. General (*4100E*)

6320C. Definitions (*4200E, 4631E*)

6330C. Use of FINRA/NYSE Trade Reporting Facility on a Test Basis (*4110E*)

6340C. Reports (*4616E*)

6350C. Clearance and Settlement (*4618E*)

6360C. Suspension and Termination by FINRA Action (*4621E*)

6370C. Termination of FINRA/NYSE Trade Reporting Facility Service (*4622E*)

6380C. Transaction Reporting (4632E)

**6400. QUOTING AND TRADING IN OTC EQUITY SECURITIES**

6410. General (6600. *Over-The-Counter Equity Securities*)

6420. Definitions (6610)

6430. Recording of Quotation Information (6630)

6440. Submission of SEA Rule 15c2-11 Information on Non-Exchange-Listed  
Securities (6640)

6450. Minimum Quotation Size Requirements For OTC Equity Securities (6650)

6460. Trading and Quotation Halt in OTC Equity Securities (6660, *IM-6660-1*).

*Factors to be Considered When Initiating a Trading and Quotation Halt*

**6500. OTC BULLETIN BOARD SERVICE**

6510. Applicability (6510)

6520. Operation of the Service (6520)

6530. OTCBB-Eligible Securities (6530)

6540. Requirements Applicable to Market Makers (6540)

6550. Transaction Reporting (6550)

6560. Limit Order Protection (6541)

**6600. OTC REPORTING FACILITY**

**6610. General**

**6620. Reporting Transactions in OTC Equity Securities**

6621. Definitions (6610)

6622. Transaction Reporting (6620)

6623. Timely Transaction Reporting (*IM-4632-1*)

6624. Trade Reporting of Short Sales (*IM-6130*)

**6630. Reporting Transactions in PORTAL Securities**

6631. Definitions (*6710*)

6632. Limitations on Transactions in PORTAL Securities (*6731*)

6633. Reporting Debt and Equity Transactions in PORTAL Securities  
(*6732*)

6634. Arbitration (*6740*)

6635. FINRA Rules (*6750*)

**6640. Reporting Transactions in Direct Participation Program Securities**

6641. General (*6900. Reporting Transactions in Direct Participation Programs*)

6642. Definitions (*6910*)

6643. Transaction Reporting (*6920*)

**6700. TRADE REPORTING AND COMPLIANCE ENGINE (TRACE)**

6710. Definitions (*6210*)

6720. Participation in TRACE (*6220*)

6730. Transaction Reporting (*6230*)

6740. Termination of TRACE Service (*6240*)

6750. Dissemination of Transaction Information (*6250*)

6760. Managing Underwriter or Group of Underwriters Obligation To Obtain  
CUSIP and Provide Notice (*6260*)

**7000. CLEARING, TRANSACTION AND ORDER DATA REQUIREMENTS,  
AND FACILITY CHARGES**

**7100. ALTERNATIVE DISPLAY FACILITY/TRACS**

7110. Definitions (*6110A*)

7120. Participation in TRACS Trade Comparison Feature by Participants in the  
Alternative Display Facility (*6120A*)

7130. Trade Report Input (*6130A*)

7140. TRACS Processing (*6140A*)

7150. Obligation to Honor Trades (*6160A*)

7160. Audit Trail Requirements (*6170A*)

7170. Termination of TRACS Service (*6190A*)

**7200. TRADE REPORTING FACILITIES**

**7200A. FINRA/NASDAQ TRADE REPORTING FACILITY (*6100. Clearing and  
Comparison Rules*)**

7210A. Definitions (*6110*)

7220A. Trade Reporting Participation Requirements (*6120*)

7230A. Trade Report Input (*6130*)

7240A. Trade Report Processing (*6140*)

7250A. Obligation to Honor Trades (*6160*)

7260A. Audit Trail Requirements (*6170*)

7270A. Violation of Reporting Rules (*6180*)

7280A. Termination of Access (*6190*)

**7200B. FINRA/NSX TRADE REPORTING FACILITY (6100C. *Clearing and***

*Comparison Rules)*

7210B. Definitions (6110C)

7220B. Trade Reporting Participation Requirements (6120C)

7230B. Trade Report Input (6130C)

7240B. Trade Report Processing (6140C)

7250B. Obligation to Honor Trades (6160C)

7260B. Audit Trail Requirements (6170C)

7270B. Violation of Reporting Rules (6180C)

7280B. Termination of Access (6190C)

**7200C. FINRA/NYSE TRADE REPORTING FACILITY (6100E. *Clearing and***

*Comparison Rules)*

7210C. Definitions (6110E)

7220C. Trade Reporting Participation Requirements (6120E)

7230C. Trade Report Input (6130E)

7240C. Trade Report Processing (6140E)

7250C. Obligation to Honor Trades (6160E)

7260C. Audit Trail Requirements (6170E)

7270C. Violation of Reporting Rules (6180E)

7280C. Termination of Access (6190E)

**7300. OTC REPORTING FACILITY (6100 *Clearing and Comparison Rules*)**

7310. Definitions (6110)

7320. Trade Reporting Participation Requirements (6120)

- 7330. Trade Report Input (6130)
- 7340. Trade Report Processing (6140)
- 7350. Obligation to Honor Trades (6160)
- 7360. Audit Trail Requirements (6170)
- 7370. Violation of Reporting Rules (6180)
- 7380. Termination of Access (6190)

**7400. ORDER AUDIT TRAIL SYSTEM**

- 7410. Definitions (6951)
- 7420. Applicability (6952)
- 7430. Synchronization of Member Business Clocks (6953)
- 7440. Recording of Order Information (6954)
- 7450. Order Data Transmission Requirements (6955)
- 7460. Violation of Order Audit Trail System Rules (6956)
- 7470. Exemption to the Order Recording and Data Transmission Requirements (6958)
- 7480. Recordkeeping Requirements (3110(h))

**7500. CHARGES FOR ALTERNATIVE DISPLAY FACILITY SERVICES AND EQUIPMENT**

- 7510. System Services (7010A)
- 7520. Equipment Related Charges (7020A)
- 7530. Installation, Removal, Relocation or Maintenance (7040A)
- 7540. Other Services (7050A)
- 7550. Partial Month Charges (7060A)

7560. Late Fees (7080A)

7570. Minor Modifications in Charges (7100A)

**7600. CHARGES FOR TRADE REPORTING FACILITY SERVICES**

**7600A. CHARGES FOR FINRA/NASDAQ TRADE REPORTING FACILITY SERVICES**

7610A. Securities Transaction Credit (7001B)

7620A. FINRA/Nasdaq Trade Reporting Facility Reporting Fees (7002B)

7630A. Aggregation of Activity of Affiliated Members (7003B)

7640A. Late Fees (7004B)

**7600B. CHARGES FOR FINRA/NSX TRADE REPORTING FACILITY SERVICES**

7610B. Securities Transaction Credit (7001C)

7620B. FINRA/NSX Trade Reporting Facility Reporting Fees (7002C)

7630B. Fee for Submission of Non-Media Reports (7003C)

**7600C. CHARGES FOR FINRA/NYSE TRADE REPORTING FACILITY SERVICES**

7610C. Securities Transaction Credit (7001E)

7620C. FINRA/NYSE Trade Reporting Facility Reporting Fees (7002E)

**7700. CHARGES FOR OTC REPORTING FACILITY, OTC BULLETIN BOARD AND TRADE REPORTING AND COMPLIANCE ENGINE SERVICES**

7710. OTC Reporting Facility (7010)

7720. OTC Bulletin Board Service (7020)

7730. Trade Reporting and Compliance Engine (TRACE) (7030)

7740. Historical Research and Administrative Reports (7040)

**8000. INVESTIGATIONS AND SANCTIONS**

**8100. GENERAL PROVISIONS**

8110. Availability of Manual to Customers

8120. Definitions

**8200. INVESTIGATIONS**

8210. Provision of Information and Testimony and Inspection and Copying of

Books

8211. Automated Submission of Trading Data Requested by FINRA

8213. Automated Submission of Trading Data for Non-Exchange-Listed  
Securities Requested by FINRA

**8300. SANCTIONS**

**8310. Sanctions for Violation of the Rules**

8311. Effect of a Suspension, Revocation, Cancellation, or Bar (*IM-8310-1*)

8312. FINRA BrokerCheck Disclosure (*IM-8310-2*)

8313. Release of Disciplinary Complaints, Decisions and Other  
Information (*IM-8310-3*)

**8320. Payment of Fines, Other Monetary Sanctions, or Costs; Summary**

**Action for Failure to Pay**

**8330. Costs of Proceedings**

**9000. CODE OF PROCEDURE**

**9100. APPLICATION AND PURPOSE**

9110. Application

9120. Definitions

**9130. Service; Filing of Papers**

9131. Service of Complaint and Document Initiating a Proceeding

9132. Service of Orders, Notices, and Decisions by Adjudicator

9133. Service of Papers Other Than Complaints, Orders, Notices, or  
Decisions

9134. Methods of, Procedures for Service

9135. Filing of Papers with Adjudicator: Procedure

9136. Filing of Papers: Form

9137. Filing of Papers: Signature Requirement and Effect

9138. Computation of Time

**9140. Proceedings**

9141. Appearance and Practice; Notice of Appearance

9142. Withdrawal by Attorney or Representative

9143. Ex Parte Communications

9144. Separation of Functions

9145. Rules of Evidence; Official Notice

9146. Motions

9147. Rulings on Procedural Matters

9148. Interlocutory Review

**9150. Exclusion From Rule 9000 Series Proceeding**

**9160. Recusal or Disqualification**

**9200. DISCIPLINARY PROCEEDINGS**

9210. Complaint and Answer

9211. Authorization of Complaint

9212. Complaint Issuance — Requirements, Service, Amendment, Withdrawal, and Docketing

9213. Assignment of Hearing Officer and Appointment of Panelists to Hearing Panel or Extended Hearing Panel

9214. Consolidation or Severance of Disciplinary Proceedings

9215. Answer to Complaint

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

9217. Violations Appropriate for Disposition Under Plan Pursuant to SEA Rule 19d-1(c)(2) (*IM-9216*)

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

**Adjournments**

9221. Request for Hearing

9222. Extensions of Time, Postponements, and Adjournments

**9230. Appointment of Hearing Panel, Extended Hearing Panel**

9231. Appointment by the Chief Hearing Officer of Hearing Panel or Extended Hearing Panel or Replacement Hearing Officer

9232. Criteria for Selection of Panelists and Replacement Panelists

9233. Hearing Panel or Extended Hearing Panel: Recusal and Disqualification of Hearing Officers

9234. Hearing Panel or Extended Hearing Panel: Recusal and Disqualification of Panelists

9235. Hearing Officer Authority

**9240. Pre-hearing Conference and Submission**

9241. Pre-hearing Conference

9242. Pre-hearing Submission

**9250. Discovery**

9251. Inspection and Copying of Documents in Possession of Staff

9252. Requests for Information

9253. Production of Witness Statements

**9260. Hearing and Decision**

9261. Evidence and Procedure in Hearing

9262. Testimony

9263. Evidence: Admissibility

9264. Motion for Summary Disposition

9265. Record of Hearing

9266. Proposed Findings of Fact, Conclusions of Law, and Post-Hearing  
Briefs

9267. Record; Supplemental Documents Attached to Record; Retention

9268. Decision of Hearing Panel or Extended Hearing Panel

9269. Default Decisions

**9270. Settlement Procedure**

**9280. Contemptuous Conduct**

**9290. Expedited Disciplinary Proceedings**

**9300. REVIEW OF DISCIPLINARY PROCEEDING BY NATIONAL ADJUDICATORY COUNCIL AND FINRA BOARD; APPLICATION FOR SEC REVIEW**

9310. Appeal to or Review by National Adjudicatory Council

9311. Appeal by Any Party; Cross-Appeal

9312. Review Proceeding Initiated By Adjudicatory Council

9313. Counsel to National Adjudicatory Council

**9320. Transmission of Record; Extensions of Time, Postponements, Adjournments**

**Adjournments**

9321. Transmission of Record

9322. Extensions of Time, Postponements, Adjournments

**9330. Appointment of Subcommittee or Extended Proceeding Committee; Disqualification and Recusal**

9331. Appointment of Subcommittee or Extended Proceeding Committee

9332. Disqualification and Recusal

**9340. Proceedings**

9341. Oral Argument

9342. Failure to Appear at Oral Argument

9343. Disposition Without Oral Argument

9344. Failure to Participate Below; Abandonment of Appeal

9345. Subcommittee or Extended Proceeding Committee Recommended  
Decision to National Adjudicatory Council

9346. Evidence in National Adjudicatory Council Proceedings

9347. Filing of Papers in National Adjudicatory Council Proceedings

9348. Powers of the National Adjudicatory Council on Review

9349. National Adjudicatory Council Formal Consideration; Decision

**9350. Discretionary Review by FINRA Board**

9351. Discretionary Review by FINRA Board

**9360. Effectiveness of Sanctions**

**9370. Application to SEC for Review**

**9500. OTHER PROCEEDINGS**

**9520. Eligibility Proceedings**

9521. Purpose and Definitions

9522. Initiation of Eligibility Proceeding; Member Regulation  
Consideration

9523. Acceptance of Member Regulation Recommendations and  
Supervisory Plans by Consent Pursuant to SEA Rule 19h-1

9524. National Adjudicatory Council Consideration

9525. Discretionary Review by the FINRA Board

9526. Expedited Review

9527. Application to SEC for Review

**9550. Expedited Proceedings**

9551. Failure to Comply with Public Communication Standards

- 9552. Failure to Provide Information or Keep Information Current
- 9553. Failure to Pay FINRA Dues, Fees and Other Charges
- 9554. Failure to Comply with an Arbitration Award or Related Settlement
- 9555. Failure to Meet the Eligibility or Qualification Standards or  
Prerequisites for Access to Services
- 9556. Failure to Comply with Temporary and Permanent Cease and  
Desist Orders
- 9557. Procedures for Regulating Activities Under NASD Rules 3130 and  
3131 Regarding a Member Experiencing Financial or Operational  
Difficulties
- 9558. Summary Proceedings for Actions Authorized by Section  
15A(h)(3) of the Exchange Act
- 9559. Hearing Procedures for Expedited Proceedings Under the Rule  
9550 Series

**9600. PROCEDURES FOR EXEMPTIONS**

9610. Application

9620. Decision

9630. Appeal

**9700. PROCEDURES ON GRIEVANCES CONCERNING THE AUTOMATED  
SYSTEMS**

9710. Purpose

9720. Form of Application

9730. Request for Hearing

9740. Consideration of Applications

9750. Decision

9760. Call for Review by the National Adjudicatory Council

9770. Application to SEC for Review

**9800. TEMPORARY CEASE AND DESIST ORDERS**

9810. Initiation of Proceeding

9820. Appointment of Hearing Officer and Hearing Panel

9830. Hearing

9840. Issuance of Temporary Cease and Desist Order by Hearing Panel

9850. Review by Hearing Panel

9860. Violation of Temporary Cease and Desist Orders

9870. Application to SEC for Review

**10000. CODE OF ARBITRATION PROCEDURE**

**10100. ADMINISTRATIVE PROVISIONS**

IM-10100. Failure to Act Under Provisions of Code of Arbitration

Procedure

10101. Matters Eligible for Submission

10102. National Arbitration and Mediation Committee

10103. Director of Arbitration

10104. Composition and Appointment of Panels

IM-10104. Arbitrators' Honorarium

10105. Non-Waiver of FINRA Objects and Purposes

10106. Legal Proceedings

**10200. INDUSTRY AND CLEARING CONTROVERSIES**

- 10201. Required Submission
- 10202. Composition of Panels
- 10203. Simplified Industry Arbitration
- 10204. Applicability of Uniform Code
- 10205. Schedule of Fees for Industry and Clearing Controversies
- 10210. Statutory Employment Discrimination Claims
  - 10211. Special Arbitrator Qualifications for Employment Discrimination Disputes
- 10212. Composition of Panels
- 10213. Discovery
- 10214. Awards
- 10215. Attorneys' Fees
- 10216. Coordination of Claims Filed in Court and in Arbitration
- 10217. Fees

**10300. UNIFORM CODE OF ARBITRATION**

- 10301. Required Submission
- 10302. Simplified Arbitration
  - IM-10302. Related Counterclaim
- 10303. Hearing Requirements—Waiver of Hearing
- 10304. Time Limitation Upon Submission
- 10305. Dismissal of Proceedings
- 10306. Settlements

10307. Tolling of Time Limitation(s) for the Institution of Legal Proceedings and

Extension of Time Limitation(s) for Submission to Arbitration

10308. Selection of Arbitrators

10309. Composition of Panels

10310. Notice of Selection of Arbitrators

10311. Peremptory Challenge

10312. Disclosures Required of Arbitrators and Director's Authority to

Disqualify

10313. Disqualification or Other Disability of Arbitrators

10314. Initiation of Proceedings

10315. Determination of Hearing Location

10316. Representation by Counsel

10317. Attendance at Hearings

IM-I0317. Closing Arguments

10318. Failure to Appear

10319. Adjournments

10320. Acknowledgement of Pleadings

10321. General Provisions Governing Pre-Hearing Proceedings

10322. Subpoenas and Power to Direct Appearances

10323. Evidence

10324. Interpretation of Provisions of Code and Enforcement of Arbitrator

Rulings

10325. Determination of Arbitrators

- 10326. Record of Proceedings
- 10327. Oaths of the Arbitrators and Witnesses
- 10328. Amendments
- 10329. Reopening of Hearings
- 10330. Awards
- 10331. Incorporation by Reference
- 10332. Schedule of Fees for Customer Disputes
- 10333. Member Surcharge and Process Fees
- 10334. Direct Communication Between Parties and Arbitrators
- 10335. Temporary Injunctive Orders; Requests for Permanent Injunctive Relief

## **CODE OF ARBITRATION PROCEDURE FOR CUSTOMER DISPUTES**

### **12000. Code of Arbitration Procedure For Customer Disputes**

#### **Part I Interpretive Material, Definitions, Organization, and Authority**

IM-12000. Failure to Act Under Provisions of Code of Arbitration Procedure for  
Customer Disputes

- 12100. Definitions
- 12101. Applicability of Code and Incorporation by Reference
- 12102. National Arbitration and Mediation Committee
- 12103. Director of Dispute Resolution
- 12104. Effect of Arbitration on FINRA Regulatory Activities
- 12105. Agreement of the Parties

#### **Part II General Arbitration Rules**

- 12200. Arbitration Under an Arbitration Agreement or the Rules of FINRA

- 12201. Elective Arbitration
- 12202. Claims Against Inactive Members
- 12203. Denial of FINRA Forum
- 12204. Class Action Claims
- 12205. Shareholder Derivative Actions
- 12206. Time Limits
- 12207. Extension of Deadlines
- 12208. Representation of Parties
- 12209. Legal Proceedings
- 12210. Ex Parte Communications
- 12211. Direct Communications Between Parties and Arbitrators
- 12212. Sanctions
- 12213. Hearing Locations
- 12214. Payment of Arbitrators

### **Part III Initiating and Responding to Claims**

- 12300. Filing and Serving Documents
- 12301. Service on Associated Persons
- 12302. Filing an Initial Statement of Claim
- 12303. Answering the Statement of Claim
- 12304. Answering Counterclaims
- 12305. Answering Cross Claims
- 12306. Answering Third Party Claims
- 12307. Deficient Claims

- 12308. Loss of Defenses Due to Untimely or Incomplete Answer
- 12309. Amending Pleadings
- 12310. Answering Amended Claims
- 12311. Amendments to Amount in Dispute
- 12312. Multiple Claimants
- 12313. Multiple Respondents
- 12314. Combining Claims

#### **Part IV Appointment, Disqualification and Authority of Arbitrators**

- 12400. Neutral List Selection System and Arbitrator Rosters
- 12401. Number of Arbitrators
- 12402. Composition of Arbitration Panels
- 12403. Generating and Sending Lists to the Parties
- 12404. Striking and Ranking Arbitrators
- 12405. Combining Lists
- 12406. Appointment of Arbitrators; Discretion to Appoint Arbitrators Not on List
- 12407. Additional Parties
- 12408. Disclosures Required of Arbitrators
- 12409. Arbitrator Recusal
- 12410. Removal of Arbitrator by Director
- 12411. Replacement of Arbitrators
- 12412. Director's Discretionary Authority
- 12413. Jurisdiction of Panel and Authority to Interpret the Code
- 12414. Determinations of Arbitration Panel

**Part V Prehearing Procedures and Discovery**

- 12500. Initial Prehearing Conference
- 12501. Other Prehearing Conference
- 12502. Recording Prehearing Conferences
- 12503. Motions
- 12505. Cooperation of Parties in Discovery
- 12506. Document Production Lists
- 12507. Other Discovery Requests
- 12508. Objecting to Discovery Requests; Waiver of Objection
- 12509. Motions to Compel Discovery
- 12510. Depositions
- 12511. Discovery Sanctions
- 12512. Subpoenas
- 12513. Authority of Panel to Direct Appearances of Witnesses and  
Production of Documents Without Subpoenas
- 12514. Exchange of Documents and Witness Lists Before Hearing

**Part VI Hearings; Evidence; Closing the Record**

- 12600. Required Hearings
- 12601. Postponement of Hearings
- 12602. Attendance at Hearings
- 12603. Failure to Appear
- 12604. Evidence
- 12605. Witness Oath

12606. Record of Proceedings

12607. Order of Presentation of Evidence and Arguments

12608. Closing the Record

12609. Reopening the Record

### **Part VII Termination of an Arbitration Before Award**

12700. Dismissal of Proceedings Prior to Award

12701. Settlement

12702. Withdrawal of Claims

### **Part VIII Simplified Arbitration and Default Proceedings**

12800. Simplified Arbitration

12801. Default Proceedings

### **Part IX Fees and Awards**

12900. Fees Due When a Claim is Filed

12901. Member Surcharge

12902. Hearing Session Fees, and Other Costs and Expense

12903. Process Fees Paid by Members

12904. Awards

## **CODE OF ARBITRATION PROCEDURE FOR INDUSTRY DISPUTES**

### **13000. Code of Arbitration Procedure For Industry Disputes**

#### **Part I Interpretive Material, Definitions, Organization, and Authority**

IM-13000. Failure to Act Under Provisions of Code of Arbitration Procedure for

Industry Disputes

13100. Definitions

- 13101. Applicability of Code and Incorporation by Reference
- 13102. National Arbitration and Mediation Committee
- 13103. Director of Dispute Resolution
- 13104. Effect of Arbitration on FINRA Regulatory Activities
- 13105. Agreement of the Parties

## **Part II General Arbitration Rules**

- 13200. Required Arbitration
- 13201. Statutory Employment Discrimination Claims
- 13202. Claims Involving Registered Clearing Agencies
- 13203. Denial of FINRA Forum
- 13204. Class Action Claims
- 13205. Shareholder Derivative Actions
- 13206. Time Limits
- 13207. Extension of Deadlines
- 13208. Representation of Parties
- 13209. Legal Proceedings
- 13210. Ex Parte Communications
- 13211. Direct Communications Between Parties and Arbitrators
- 13212. Sanctions
- 13213. Hearing Locations
- 13214. Payment of Arbitrators

## **Part III Initiating and Responding to Claims**

- 13300. Filing and Serving Documents

- 13301. Service on Associated Persons
- 13302. Filing an Initial Statement of Claim
- 13303. Answering the Statement of Claim
- 13304. Answering Counterclaims
- 13305. Answering Cross Claims
- 13306. Answering Third Party Claims
- 13307. Deficient Claims
- 13308. Loss of Defenses Due to Untimely or Incomplete Answer
- 13309. Amending Pleadings
- 13310. Answering Amended Claims
- 13311. Amendments to Amount in Dispute
- 13312. Multiple Claimants
- 13313. Multiple Respondents
- 13314. Combining Claims

#### **Part IV Appointment, Disqualification and Authority of Arbitrators**

- 13400. Neutral List Selection System and Arbitrator Rosters
- 13401. Number of Arbitrators
- 13402. Composition of Arbitration Panels Not Involving a Statutory Discrimination Claim
- 13403. Generating and Sending Lists to the Parties
- 13404. Striking and Ranking Arbitrators
- 13405. Combining Lists
- 13406. Appointment of Arbitrators; Discretion to Appoint Arbitrators Not on List

13407. Additional Parties

13408. Disclosures Required of Arbitrators

13409. Arbitrator Recusal

13410. Removal of Arbitrator by Director

13411. Replacement of Arbitrators

13412. Director's Discretionary Authority

13413. Jurisdiction of Panel and Authority to Interpret the Code

13414. Determinations of Arbitration Panel

## **Part V Prehearing Procedures and Discovery**

13500. Initial Prehearing Conference

13501. Other Prehearing Conference

13502. Recording Prehearing Conferences

13503. Motions

13505. Cooperation of Parties in Discovery

13506. Discovery Requests

13507. Responding to Discovery Requests

13508. Objecting to Discovery Requests; Waiver of Objection

13509. Motions to Compel Discovery

13510. Depositions

13511. Discovery Sanctions

13512. Subpoenas

13513. Authority of Panel to Direct Appearances of Associated Persons and

Production of Documents Without Subpoenas

13514. Exchange of Documents and Witness Lists Before Hearing

**Part VI Hearings; Evidence; Closing the Record**

13600. Required Hearings

13601. Postponement of Hearings

13602. Attendance at Hearings

13603. Failure to Appear

13604. Evidence

13605. Witness Oath

13606. Record of Proceedings

13607. Order of Presentation of Evidence and Arguments

13608. Closing the Record

13609. Reopening the Record

**Part VII Termination of an Arbitration Before Award**

13700. Dismissal of Proceedings Prior to Award

13701. Settlement

13702. Withdrawal of Claims

**Part VIII Simplified Arbitration; Default Proceedings; Statutory Employment**

**Discrimination Claims; and Injunctive Relief**

13800. Simplified Arbitration

13801. Default Proceedings

13802. Statutory Employment Discrimination Claims

13803. Coordination of Statutory Employment Discrimination Claims Filed

in Court and in Arbitration

13804. Temporary Injunctive Orders; Requests for Permanent Injunctive Relief

**Part IX Fees and Awards**

13900. Fees Due When a Claim is Filed

13901. Member Surcharge

13902. Hearing Session Fees, and Other Costs and Expense

13903. Process Fees Paid by Members

13904. Awards

**CODE OF MEDIATION PROCEDURE**

**14000. Code of Mediation Procedure**

14100. Definitions

14101. Applicability of Code

14102. National Arbitration and Mediation Committee

14103. Director of Mediation

14104. Mediation under the Code

14105. Effect of Mediation on Arbitration Proceedings

14106. Representation of Parties

14107. Mediator Selection

14108. Limitation on Liability

14109. Mediation Ground Rules

14110. Mediation Fees

## **EXHIBIT 5**

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

\* \* \* \* \*

### **6300. TRADE REPORTING FACILITIES**

#### **[4000] 6300A. [The NASD] FINRA/NASDAQ TRADE REPORTING FACILITY**

##### **[4100] 6310A. General**

Members may use the [NASD] FINRA/Nasdaq Trade Reporting Facility to report transactions executed otherwise than on an exchange in all NMS stocks as defined in SE[C]A Rule 600(b)(47) of Regulation NMS (“designated securities”). Members that use the [NASD] FINRA/Nasdaq Trade Reporting Facility must comply with the [4000] Rule 6300A and [6100] 7200A Series, as well as all other applicable rules. The Rule [4000] 6300A and 7200A Series shall apply only to members using the [NASD] FINRA/Nasdaq Trade Reporting Facility.

##### **[4110] 6330A. Use of [NASD] FINRA/Nasdaq Trade Reporting Facility on a Test Basis**

[NASD] FINRA may at any time authorize the use of the [NASD] FINRA/Nasdaq Trade Reporting Facility on a test basis for whatever studies it considers necessary and appropriate.

##### **[4200] 6320A. Definitions**

(a) For purposes of the Rule [4000] 6300A Series, unless the context requires otherwise:

- (1) “Exchange Act” or “SEA” means the Securities Exchange Act of 1934.
- (2) “Designated securities” means all NMS stocks as defined in SE[C]A Rule 600(b)(47) of Regulation NMS.
- (3) “Member” means a broker or dealer admitted to [NASD] FINRA membership.
- (4) “Market Maker” means an “exchange market maker” or “OTC market maker,” as those terms are defined in SE[C]A Rule 600(b) of Regulation NMS, that is registered in a particular designated security as such with an exchange or a registered securities association or a facility thereof. A member is considered a Market Maker only in those designated securities for which it is registered as such.
- (5) “Nasdaq” means the NASDAQ Stock Market, LLC[.] and its facilities.
- (6) “Normal market hours” means 9:30 a.m. Eastern Time to 4:00 p.m. Eastern Time.
- (7) “Normal unit of trading” means 100 shares of a security unless, with respect to a particular security, [NASD] FINRA determines that a normal unit of trading shall constitute other than 100 shares.
- (8) “Otherwise than on an exchange” means a trade effected by a[n NASD] FINRA member otherwise than on or through the facilities of a national securities exchange. The determination of what constitutes a trade “on or through” a particular national securities exchange shall be determined by that

exchange in accordance with all applicable statutes, rules and regulations, and with any necessary SEC approval.

(9) "Round lot holder" means a holder of a normal unit of trading.

(10) "Stop Stock Price" means the specified price at which a member and another party agree a Stop Stock Transaction shall be executed, and which price is based upon the prices at which the security is trading at the time the order is received by the member, taking into consideration that the specified price may deviate from the current market prices to factor in the size of the order and the number of shares available at those prices.

(11) "Stop Stock Transaction" means any transaction that meets both of the following conditions:

(A) the transaction is the result of an order in which a member and another party agree that the order will be executed at a Stop Stock Price or better; and

(B) the order is executed at the Stop Stock Price or better.

(12) "Trade Reporting Facility Participant" or "Participant" means any member in good standing that uses the [NASD] FINRA/Nasdaq Trade Reporting Facility.

(13) Terms used in this Rule 6300A Series shall have the meaning as defined in FINRA By-Laws and rules, and SEA Rule 600 of Regulation NMS and the Joint Self-Regulatory Organization Plan Governing the Collection, Consolidation, and Dissemination of Quotation and Transaction Information for

Nasdaq-Listed Securities Traded on Exchanges on an Unlisted Trading Privilege Basis, unless otherwise defined herein.

**[4616] 6340A. Reports**

A Trade Reporting Facility Participant shall make such reports to [NASD] FINRA as may be prescribed from time to time by [NASD] FINRA.

**[4618] 6350A. Clearance and Settlement**

(a) A Trade Reporting Facility Participant shall clear and settle transactions in designated securities through the facilities of a registered clearing agency that uses a continuous net settlement system. This requirement may be satisfied by direct participation, use of direct clearing services, or by entry into a correspondent clearing arrangement with another member that clears trades through such an agency.

(b) Notwithstanding paragraph (a), transactions in designated securities may be settled “ex-clearing” provided that both parties to the transaction agree.

**[4621] 6360A. Suspension and Termination by [NASD] FINRA Action**

[NASD] FINRA may, pursuant to the procedures set forth in the Rule 9000 Series, suspend, condition, limit, prohibit or terminate a Trade Reporting Facility Participant’s ability to use [NASD] FINRA/Nasdaq Trade Reporting Facility services in one or more designated securities for violations of applicable requirements or prohibitions.

**[4622] 6370A. Termination of [NASD] FINRA/Nasdaq Trade Reporting Facility Service**

[NASD] FINRA may, upon notice, terminate [NASD] FINRA/Nasdaq Trade Reporting Facility service in the event that a Trade Reporting Facility Participant fails to

qualify under specified standards of eligibility or fails to pay promptly for services rendered.

**[4630. Reporting Transactions in Designated Securities]**

[This Rule 4630 Series applies to the reporting by members of transactions in designated securities to the NASD/Nasdaq Trade Reporting Facility.]

**[4631. Definitions]**

[Terms used in this Rule 4630 Series shall have the meaning as defined in NASD's By-Laws and Rules, and SEC Rule 600 and the Joint Self-Regulatory Organization Plan Governing the Collection, Consolidation, and Dissemination of Quotation and Transaction Information for Nasdaq-Listed Securities Traded on Exchanges on an Unlisted Trading Privilege Basis, unless otherwise defined herein.]

**[4632] 6380A. Transaction Reporting**

**(a) When and How Transactions are Reported**

(1) Trade Reporting Facility Participants shall, within 90 seconds after execution, transmit to the [NASD] FINRA/Nasdaq Trade Reporting Facility or if the [NASD] FINRA/Nasdaq Trade Reporting Facility is unavailable due to system or transmission failure, by telephone to the [NASD] FINRA/Nasdaq Trade Reporting Facility Operations Department, last sale reports of transactions in designated securities executed during normal market hours. Transactions not reported within 90 seconds after execution shall be designated as late.

(2) Transaction Reporting to the [NASD] FINRA/Nasdaq Trade Reporting Facility Outside Normal Market Hours

(A) Last sale reports of transactions in designated securities executed between 8:00 a.m. and 9:30 a.m. Eastern Time shall be reported within 90 seconds after execution and shall be designated with the unique trade report modifier, as specified by [NASD] FINRA, to denote their execution outside normal market hours. Such transactions not reported before 9:30 a.m. shall be reported after 4:00 p.m. and before 8:00 p.m. with the appropriate trade report modifier as specified by [NASD] FINRA.

(B) Last sale reports of transactions in designated securities executed between the hours of 4:00 p.m. and 8:00 p.m. Eastern Time shall be reported within 90 seconds after execution and be designated with the unique trade report modifier, as specified by [NASD] FINRA, to denote their execution outside normal market hours. Such transactions not reported before 8:00 p.m. shall be reported on an “as/of” basis the following business day (T+1) between 8:00 a.m. and 8:00 p.m.

(C) Last sale reports of transactions executed between midnight and 8:00 a.m. Eastern Time shall be reported between 8:00 a.m. and 9:30 a.m. Eastern Time on trade date with the unique trade report modifier, as specified by [NASD] FINRA, to denote their execution outside normal market hours. Such transactions not reported before 9:30 a.m. shall be reported after 4:00 p.m. and before 8:00 p.m. with the appropriate trade report modifier as specified by [NASD] FINRA.

(D) Last sale reports of transactions executed between 8:00 p.m. and midnight Eastern Time shall be reported the following business day

(T+1) between 8:00 a.m. and 8:00 p.m. Eastern Time and be designated “as/of” trades.

(3) Members shall time-stamp all trade tickets at the time of execution for transactions in designated securities. Execution time shall be reported to [NASD] FINRA on all last sale reports and shall be expressed in hours, minutes and seconds based on Eastern Time in military format, unless another provision of [NASD] FINRA rules requires that a different time be included on the report.

(4) Transactions not reported within 90 seconds after execution shall be designated as late. A pattern or practice of late reporting without exceptional circumstances may be considered conduct inconsistent with high standards of commercial honor and just and equitable principles of trade in violation of NASD Rule 2110.

(5) Members also shall append the applicable trade report modifiers as specified by [NASD] FINRA to all last sale reports, including reports of “as/of” trades:

(A) if the trade is executed during normal market hours and it is reported later than 90 seconds after execution;

(B) if the trade is a Seller’s Option Trade, denoting the number of days for delivery;

(C) if the trade is a Cash Trade;

(D) if the trade is a Next Day Trade;

(E) if the trade occurs at a price based on an average weighting or another special pricing formula;

(F) if the trade is a Stop Stock Transaction (as defined in Rule [4200] 6320A) (Note: the time at which the member and the other party agreed to the Stop Stock Price must be given in lieu of including the time of execution on the trade report and the designated modifier shall not be appended to a report of a Stop Stock Transaction if the Stop Stock Transaction is executed and reported within 90 seconds of the time the member and the other party agree to the Stop Stock Price);

(G) if the transaction report reflects a price different from the current market when the execution price is based on a prior reference point in time (Note: the transaction report shall include the prior reference time in lieu of the actual time the trade was executed and the designated modifier shall not be appended to a report of a transaction whose price is based on a prior reference point in time if the trade is executed and reported within 90 seconds from the prior reference point in time);

(H) to identify pre-opening and after-hours trades (executed between 8:00 a.m. and 9:30 a.m. Eastern time or between 4:00 p.m. and 8:00 p.m. Eastern time) reported more than 90 seconds after execution;

(I) if the trade would be a trade-through of a protected quotation, but for the trade being qualified for an exception or exemption from SEA Rule 611 of Regulation NMS [under the Act] (Note: to ensure consistency in the usage of SEA Rule 611 related modifiers by registered broker-dealers, this modifier will be used in conformity with the specifications approved by the Operating Committee of the relevant National Market

System Plans to identify trades executed pursuant to an exception or exemption from SEA Rule 611);

(J) if the trade would be a trade-through of a protected quotation, but for the trade being qualified for an exception or exemption from SEA Rule 611 of Regulation NMS [under the Act], members must, in addition to the modifier required in subparagraph (I) above, append an appropriate unique modifier, specified by [NASD] FINRA, that identifies the specific applicable exception or exemption from SEA Rule 611 that a member is relying upon (Note: to ensure consistency in the usage of SEA Rule 611 related modifiers by registered broker-dealers, these modifiers will be used in conformity with the specifications approved by the Operating Committee of the relevant National Market System Plans to identify trades executed pursuant to an exception or exemption from SEA Rule 611); and

(K) any other modifier as specified by [NASD] FINRA or the [Securities and Exchange Commission] SEC.

To the extent that any of the modifiers required by this [r]Rule conflict, [NASD] FINRA shall provide guidance regarding the priorities among modifiers and members shall report in accordance with such guidance, as applicable.

(6) The [NASD] FINRA/Nasdaq Trade Reporting Facility will append the appropriate modifier to indicate that a trade was executed outside normal market hours or that a report was submitted late to the [NASD] FINRA/Nasdaq Trade

Reporting Facility, where such report contains the time of execution, but does not contain the appropriate modifier.

(7) To identify pre-opening and after-hours trades reported late, the [NASD] FINRA/Nasdaq Trade Reporting Facility will convert the late modifier, as applicable, on any pre-opening or after-hours report submitted to the [NASD] FINRA/Nasdaq Trade Reporting Facility more than 90 seconds after execution.

(8) All members shall report as soon as practicable to the Market Regulation Department on Form T, last sale reports of transactions in designated securities for which electronic submission to the [NASD] FINRA/Nasdaq Trade Reporting Facility is not possible (e.g., the ticker symbol for the security is no longer available or a market participant identifier is no longer active).

Transactions that can be reported to the [NASD] FINRA/Nasdaq Trade Reporting Facility, whether on trade date or on a subsequent date on an [“as of”] “as/of” basis (T+N), shall not be reported on Form T.

**(b) Which Party Reports the Transaction**

(1) In transactions between two Market Makers, the member representing the sell side shall report the trade.

(2) In transactions between a Market Maker and a Non-Market Maker, the Market Maker shall report the trade.

(3) In transactions between two Non-Market Makers, the member representing the sell side shall report the trade.

(4) In transactions between a member and a non-member or customer, the member shall report the trade.

(5) In transactions conducted through a Reporting ECN (as defined in Rule [6110] 7210A) that are reported to the [NASD] FINRA/Nasdaq Trade Reporting Facility, the Reporting ECN shall ensure that transactions are reported in accordance with Rule [6130] 7230A(c).

**(c) Information To Be Reported**

Each last sale report shall contain the following information:

- (1) Stock symbol of the designated security;
- (2) Number of shares or bonds;
- (3) Price of the transaction as required by paragraph (d) below;
- (4) A symbol indicating whether the transaction is a buy, sell, sell short, or cross;
- (5) The time of execution expressed in hours, minutes and seconds based on Eastern Time in military format, unless another provision of [NASD] FINRA rules requires that a different time be included in the report; and
- (6) For any transaction in an order for which a member has recording and reporting obligations under Rules [6954] 7440 and [6955] 7450, the trade report must include an order identifier, meeting such parameters as may be prescribed by [NASD] FINRA, assigned to the order that uniquely identifies the order for the date it was received (see Rule [6954] 7440(b)(1)).

**(d) Procedures for Reporting Price and Volume**

Members that report transactions to the [NASD] FINRA/Nasdaq Trade Reporting Facility, pursuant to paragraph (b) above shall transmit last sale reports for all purchases and sales in designated securities in the following manner:

(1) For agency transactions, report the number of shares and the price excluding the commission charged.

**Example:**

SELL as agent 100 shares at 40 less a commission of \$12.50;

REPORT 100 shares at 40.

(2) For dual agency transactions, report the number of shares only once, and report the price excluding the commission charged.

**Example:**

SELL as agent 100 shares at 40 less a commission of \$12.50;

BUY as agent 100 shares at 40 plus a commission of \$12.50;

REPORT 100 shares at 40.

(3) (A) For principal transactions, except as provided below, report each purchase and sale transaction separately and report the number of shares or bonds and the price. For principal transactions that are executed at a price that includes a mark-up, mark-down or service charge, the price reported shall exclude the mark-up, mark-down or service charge. Such reported price shall be reasonably related to the prevailing market, taking into consideration all relevant circumstances including, but not limited to, market conditions with respect to the security, the number of shares or bonds involved in the transaction, the published bids and offers with size at the time of the execution (including the reporting firm's own quotation), the cost of execution and the expenses involved in clearing the transaction.

**Example:**

BUY as principal 100 shares from another member at 40 (no mark down included);

REPORT 100 shares at 40.

**Example:**

BUY as principal 100 shares from a customer at 39.90 which includes a \$0.10 mark-down from prevailing market at 40;

REPORT 100 shares at 40.

**Example:**

SELL as principal 100 shares to a customer at 40.10, which includes a \$0.10 mark-up from the prevailing market of 40;

REPORT 100 shares at 40.

**Example:**

BUY as principal 10,000 shares from a customer at 39.75, which includes a \$0.25 mark-down or service charge from the prevailing market of 40;

REPORT 10,000 shares at 40.

(B) Exception: A “riskless” principal transaction in which a member after having received an order to buy a security, purchases the security as principal at the same price to satisfy the order to buy or, after having received an order to sell, sells the security as principal at the same price to satisfy the order to sell, shall be reported to the [NASD]

FINRA/Nasdaq Trade Reporting Facility as one transaction in the same

manner as an agency transaction, excluding the mark-up or mark-down, commission-equivalent, or other fee. Alternatively, a member may report a riskless principal transaction by submitting the following report(s):

- (i) The member with the obligation to report the transaction pursuant to paragraph (b) above must submit a last sale report for the initial leg of the transaction.
- (ii) Where the initial leg of the transaction has been reported to [NASD] FINRA, regardless of whether a member has a reporting obligation pursuant to paragraph (b) above, the firm must submit, for the offsetting, “riskless” portion of the transaction, either:
  - a. a clearing-only report with a capacity indicator of “riskless principal,” if a clearing report is necessary to clear the transaction; or
  - b. a non-tape, non-clearing report with a capacity indicator of “riskless principal,” if a clearing report is not necessary to clear the transaction.

**Example:**

SELL as a principal 100 shares to another member at 40 to fill an existing order;

BUY as principal 100 shares from a customer at 40 minus a mark-down of \$12.50;

REPORT 100 shares at 40 by submitting a single trade report marked with a “riskless principal” capacity indicator to the [NASD] FINRA/Nasdaq Trade Reporting Facility or by submitting the following reports:

1. where required by this Rule, a tape report marked with a “principal” capacity indicator; and
2. either a non-tape, non-clearing report or a clearing-only report marked with a “riskless principal” capacity indicator.

In a riskless principal transaction in which a member purchases or sells the security on an exchange to satisfy a customer’s order, the trade will be reported by the exchange. A member may, however, submit to the [NASD] FINRA/Nasdaq Trade Reporting Facility a clearing only report or a non-tape, non-clearing report for the “riskless” leg of a riskless principal transaction where the initial leg has been reported on or through an exchange. Any such report submitted to the [NASD] FINRA/Nasdaq Trade Reporting Facility shall comply with all applicable requirements for trade reports set forth in this Rule [4632] 6380A.

**Example:**

BUY as principal 100 shares on an exchange at 40 to fill an existing order;

DO NOT REPORT this leg (will be reported by exchange).

SELL as principal 100 shares to a customer at 40 plus a mark-up of \$12.50.

A member MAY submit to the [NASD] FINRA/Nasdaq Trade Reporting Facility either a non-tape, non-clearing report or a clearing-only report for this leg marked with a “riskless principal” capacity indicator.

**(e) Transactions Not To Be Reported For Publication Purposes**

The following types of transactions shall not be reported to the [NASD] FINRA/Nasdaq Trade Reporting Facility for publication purposes:

- (1) transactions that are part of a primary distribution by an issuer or of a registered secondary distribution (other than “shelf distributions”) or of an unregistered secondary distribution;
- (2) transactions made in reliance on Section 4(2) of the Securities Act [of 1933];
- (3) transactions where the buyer and seller have agreed to trade at a price substantially unrelated to the current market for the security, e.g., to enable the seller to make a gift;
- (4) purchases or sales of securities effected upon the exercise of an option pursuant to the terms thereof or the exercise of any other right to acquire securities at a pre-established consideration unrelated to the current market;
- (5) transactions reported on or through an exchange;

- (6) the acquisition of securities by a member as principal in anticipation of making an immediate exchange distribution or exchange offering on an exchange; and
- (7) purchases of securities off the floor of an exchange pursuant to a tender offer.

**(f) Prohibition on Aggregation of Transaction Reports**

Individual executions of orders in a security at the same price may not be aggregated, for purposes of transaction reporting to the [NASD] FINRA/Nasdaq Trade Reporting Facility, into a single transaction report.

**(g) Reporting Cancelled Trades**

**(1) Obligation and Party Responsible for Reporting Cancelled Trades**

With the exception of trades cancelled in accordance with NASD Rule 11890, members shall report to the [NASD] FINRA/Nasdaq Trade Reporting Facility the cancellation of any trade previously submitted to the [NASD] FINRA/Nasdaq Trade Reporting Facility. The member responsible for submitting the original trade report shall submit the cancellation report in accordance with the procedures set forth in paragraph (g)(2).

**(2) Deadlines for Reporting Cancelled Trades**

(A) For trades executed between 9:30 a.m. and 4:00 p.m. Eastern Time and cancelled before 5:13:30 p.m. on the date of execution, the member responsible under paragraph (g)(1) shall report the cancellation within 90 seconds of the time the trade is cancelled.

(B) For trades executed between 9:30 a.m. and 4:00 p.m. Eastern Time and cancelled after 5:13:30 p.m., but before 5:15 p.m. on the date of execution, the member responsible under paragraph (g)(1) shall use its best efforts to report the cancellation not later than 5:15 p.m. on the date of execution, and otherwise it shall report the cancellation on the following business day by 8:00 p.m.

(C) For trades executed between 9:30 a.m. and 4:00 p.m. Eastern Time and cancelled after 5:15 p.m. on the date of execution, the member responsible under paragraph (g)(1) shall report the cancellation on the following business day by 8:00 p.m.

(D) For trades executed outside the hours of 9:30 a.m. to 4:00 p.m. Eastern Time and cancelled prior to 8:00 p.m. on the date of execution, the member responsible for reporting under paragraph (g)(1) shall report the cancellation by 8:00 p.m.

(E) For trades executed outside the hours of 9:30 a.m. to 4:00 p.m. Eastern Time and cancelled after 8:00 p.m. on the date of execution, the member responsible under paragraph (g)(1) shall report the cancellation on the following business day by 8:00 p.m.

(F) For any trade cancelled on any date after the date of execution, the member responsible under paragraph (g)(1) shall report the cancellation (i) by 8:00 p.m. on the date of cancellation if the trade is cancelled before 8:00 p.m., or (ii) by 8:00 p.m. on the following business day if the trade is cancelled at or after 8:00 p.m.

(G) For purposes of determining the deadline by which a trade cancellation must be reported pursuant to [sub]paragraph (g) of this rule the term “cancelled” shall mean the time at which (i) the member with the reporting responsibility informs its contra party, or is informed by its contra party, that a trade is being cancelled, (ii) the member with the reporting responsibility and its contra party agree to cancel a trade if neither party can unilaterally cancel the trade, or (iii) the member with the reporting responsibility takes an action to cancel the trade on its books and records, whichever event occurs first.

(h) A member may agree to allow a Participant to report and lock-in trades on its behalf, if both parties have completed an agreement to that effect as specified by [NASD] FINRA and submitted it to the [NASD] FINRA/Nasdaq Trade Reporting Facility. However, the member with the reporting obligation remains responsible for the transaction submitted on its behalf. Further, both the member with the reporting obligation and the member submitting the trade to the [NASD] FINRA/Nasdaq Trade Reporting Facility are responsible for ensuring that the information submitted is in compliance with all applicable rules and regulations.

### **6180. Transaction Reporting**

#### **[IM-4632-1] 6181. Timely Transaction Reporting**

[NASD] FINRA emphasizes the obligations of members to report securities transactions within 90 seconds after execution. All reportable transactions not reported within 90 seconds after execution shall be reported as late, and [NASD] FINRA routinely monitors members’ compliance with the 90-second requirement. If [NASD] FINRA

finds a pattern or practice of unexcused late reporting, that is, repeated reports of executions after 90 seconds without reasonable justification or exceptional circumstances, the member may be found to be in violation of NASD Rule 2110. Exceptional circumstances will be determined on a case-by-case basis and may include instances of system failure by a member or service bureau, or unusual market conditions, such as extreme volatility in a security, or in the market as a whole. Timely reporting of all transactions is necessary and appropriate for the fair and orderly operation of the marketplace, and [the NASD] FINRA will view noncompliance as a rule violation.

**[4633] 6120. Trading Halts**

**(a) Authority to Initiate Halts In Trading [of Designated Securities Reported to the NASD/Nasdaq Trade Reporting Facility] Otherwise Than on an Exchange in NMS Stocks**

[NASD] FINRA, pursuant to the procedures set forth in paragraph (b):

(1) shall halt trading otherwise than on an exchange in any NMS stock, as defined in SEA Rule 600(b)(47) of Regulation NMS, [reported to the NASD/Nasdaq Trade Reporting Facility in a designated security] whenever any market that has the authority to call a regulatory halt in the security imposes a trading halt, or suspends the listing, to:

- (A) permit dissemination of material news;
- (B) obtain information from the issuer relating to material news;
- (C) obtain information relating to the issuer's ability to meet listing qualification requirements; or

(D) obtain any other information that is necessary to protect investors and the public interest.

(2) shall halt trading otherwise than on an exchange in any NMS stock [reported to the NASD/Nasdaq Trade Reporting Facility in a designated security] when:

(A) extraordinary market activity in the security is occurring, such as the execution of a series of transactions for a significant dollar value at prices substantially unrelated to the current market for the security, as measured by the national best bid and offer, and

(B) [NASD] FINRA determines that such extraordinary market activity is likely to have a material effect on the market for the security; and

(C) (i) [NASD] FINRA determines that such extraordinary market activity is caused by the misuse or malfunction of an electronic quotation, communication, reporting, or execution system operated by, or linked to, [NASD] FINRA; or

(ii) After consultation with a national securities exchange trading the security, [NASD] FINRA determines that such extraordinary market activity is caused by the misuse or malfunction of an electronic quotation, communication, reporting, or execution system operated by, or linked to, such other national securities exchange.

(3) shall close the [NASD/Nasdaq Trade Reporting Facility] Alternative Display Facility (ADF) or any Trade Reporting Facility (TRF) to quotation and/or trade reporting activity, as applicable, whenever the [NASD/Nasdaq Trade Reporting Facility] ADF or such TRF is unable to transmit real-time trade reporting information to the applicable Securities Information Processor. If the [NASD/Nasdaq Trade Reporting Facility] ADF or any TRF closes trading pursuant to this subparagraph (3), members would not be prohibited from trading through other markets for which trading is not halted.

Members shall promptly notify [NASD] FINRA whenever they have knowledge of any matter related to [a designated security] an NMS stock or the issuer thereof that has not been adequately disclosed to the public or where they have knowledge of a regulatory problem relating to such security.

**(b) Commencement and Termination of a Trading Halt**

(1) In the event [NASD] FINRA determines that a basis exists under this Rule [4633(a)] 6120 to initiate a trading halt or close the [NASD/Nasdaq Trade Reporting Facility] ADF or any TRF, the commencement of the trading halt or closure will be effective simultaneously with appropriate notice.

(2) Trading shall resume upon appropriate notice that a trading halt or closure is no longer in effect.

**[4000A] 6200. [NASD] ALTERNATIVE DISPLAY FACILITY**

**[4100A] 6210. General**

[NASD] The Alternative Display Facility (also referred to as “ADF”) is the facility operated by [NASD] FINRA for members that choose to quote or effect trades in

ADF-eligible securities otherwise than on an exchange. The ADF collects and disseminates quotations and trade reports, and compares trades through TRACS Trade Comparison Service. Those [NASD] FINRA members that use ADF systems for quotation or trade reporting activities must comply with the Rule [4000A] 6200 and [Rule 6000A] 7100 Series, as well as all other applicable [NASD] FINRA [R]rules and the federal securities laws.

**[4110A] 6230. Use of [NASD] Alternative Display Facility Data Systems**

[NASD] FINRA may at any time authorize the use of [NASD's] Alternative Display Facility data systems on a test basis for whatever studies it considers necessary and appropriate.

**[4120A. Trading Halts]**

**[(a) Authority to Initiate Halts In Trading on the Alternative Display Facility]**

[Pursuant to the procedures set forth in paragraph (b), NASD shall:]

[(1) halt trading otherwise than on an exchange in the ADF in an ADF-eligible security whenever any market that has the authority to initiate a regulatory halt in the security imposes a trading halt, or suspends the listing, to:]

[(A) permit dissemination of material news;]

[(B) obtain information from the issuer relating to material news;]

[(C) obtain information relating to the issuer's ability to meet

listing qualification requirements; or]

[(D) obtain any other information that is necessary to protect investors and the public interest.]

[(2) halt trading otherwise than on an exchange in the ADF in an ADF-eligible security when:]

[(A) extraordinary market activity in the security is occurring, including but not limited to the execution of a series of transactions for a significant dollar value at prices substantially unrelated to the current market for the security, as measured by the national best bid and offer; and]

[(B) NASD determines that such extraordinary market activity is likely to have a material effect on the market for the security; and]

[(C) (i) NASD determines that such extraordinary market activity is caused by the misuse or malfunction of an electronic quotation, communication, reporting, or execution system operated by, or linked to, NASD; or]

[(ii) After consultation with a national securities exchange trading the security, NASD determines that such extraordinary market activity is caused by the misuse or malfunction of an electronic quotation, communication, reporting, or execution system operated by, or linked to, such other national securities exchange.]

[(3) close the ADF to quotation and trade reporting activity whenever the ADF is unable to transmit real-time quotation or trade reporting information to the applicable Securities Information Processor. If the ADF closes trading pursuant

to this subparagraph (3), members would not be prohibited from trading on other markets for which trading is not halted.]

[Members shall promptly notify NASD whenever they have knowledge of any matter related to a security or the issuer thereof that has not been adequately disclosed to the public or where they have knowledge of a regulatory problem relating to such security.]

**[(b) Commencement and Termination of a Trading Halt]**

[(1) In the event NASD determines that a basis exists under Rule 4120A(a) to initiate a trading halt or close the ADF, the commencement of the trading halt or closure will be effective simultaneously with appropriate notice.]

[(2) Trading shall resume upon appropriate notice that a trading halt or closure is no longer in effect.]

**[4130A] 6240. Prohibition from Locking or Crossing Quotations in NMS Stocks**

(a) Definitions. For purposes of these Rules, the following definitions shall apply:

(1) The terms “automated quotation,” “National Market System Plan” (NMS Plan), “intermarket sweep order,” “manual quotation,” “NMS stock,” “protected quotation,” and “trading center” shall have the meanings set forth in SEA Rule 600(b) of Regulation NMS [under the Securities Exchange Act of 1934].

(2) The term crossing quotation shall mean the display of a bid for an NMS stock at any time between 8:00 a.m. and 6:30 p.m. Eastern Time at a price that is higher than the price of an offer for such NMS stock previously

disseminated pursuant to an effective NMS Plan, or the display of an offer for an NMS stock at any time between 8:00 a.m. and 6:30 p.m. Eastern Time at a price that is lower than the price of a bid for such NMS stock previously disseminated pursuant to an effective NMS Plan.

(3) The term locking quotation shall mean the display of a bid for an NMS stock at any time between 8:00 a.m. and 6:30 p.m. Eastern Time at a price that equals the price of an offer for such NMS stock previously disseminated pursuant to an effective NMS Plan, or the display of an offer for an NMS stock at any time between 8:00 a.m. and 6:30 p.m. Eastern Time at a price that equals the price of a bid for such NMS stock previously disseminated pursuant to an effective NMS Plan.

(b) Prohibition. Except for quotations that fall within the provisions of paragraph (d) of this Rule, members shall reasonably avoid displaying, and shall not engage in a pattern or practice of displaying, any quotations that lock or cross a protected quotation, and any manual quotations that lock or cross a quotation previously disseminated pursuant to an effective NMS Plan.

(c) Manual quotations. [NASD] FINRA prohibits the display of manual quotations in the Alternative Display Facility, as specified in Rule [4300A] 6250. However, if a member displays a manual quotation in another [NASD] FINRA facility that locks or crosses a quotation previously disseminated pursuant to an effective NMS Plan, such member shall promptly either withdraw the manual quotation or route an intermarket sweep order to execute against the full displayed size of the locked or crossed quotation.

**(d) Exceptions.**

- (1) The locking or crossing quotation was displayed at a time when the trading center displaying the locked or crossed quotation was experiencing a failure, material delay, or malfunction of its systems or equipment.
- (2) The locking or crossing quotation was displayed at a time when a protected bid was higher than a protected offer in the NMS stock.
- (3) The locking or crossing quotation was an automated quotation, and the member displaying such automated quotation simultaneously routed an intermarket sweep order to execute against the full displayed size of any locked or crossed protected quotation.
- (4) The locking or crossing quotation was a manual quotation that locked or crossed another manual quotation, and the member displaying the locking or crossing manual quotation simultaneously routed an intermarket sweep order to execute against the full displayed size of the locked or crossed manual quotation.

**[4200A] 6220. Definitions**

(a) Unless the context requires otherwise, the terms used in the Rule [4000A] 6200 and Rule [6000A] 7100 Series shall have the meanings below. Terms not specifically defined below shall have the meaning in [NASD's] the FINRA By-Laws and [R]rules and SE[C]A Rule 600 of Regulation NMS.

- (1) “Exchange Act” or “SEA” means the Securities Exchange Act of 1934.
- (2) “ADF-eligible security” means an NMS stock as defined in SE[C]A Rule 600(b)(47) of Regulation NMS.

(3) “ADF Market Participant” or “Market Participant” means a Registered Reporting ADF Market Maker, or a Registered Reporting ADF ECN.

(4) “ADF Trading Center” means a Registered Reporting ADF Market Maker, or a Registered Reporting ADF ECN that is a “Trading Center,” as defined in SE[C]A Rule 600(b)(78) of Regulation NMS, and that is certified, pursuant to Rule [4300A] 6250, to display its quotations or orders through the ADF.

(5) “Certification Record” means the document that an ADF Trading Center must execute and continue to comply with, pursuant to Rule [4300A] 6250, to display its quotations through the ADF.

(6) “CQS security” is a security that is eligible for inclusion in the Consolidated Quotation Plan and reported to the Consolidated Tape in accordance with the Consolidated Tape Association Plan. These securities include all common stocks, preferred stocks, long-term warrants, and rights entitling the holder to acquire an eligible security, listed or admitted to unlisted trading privileges on the American Stock Exchange or the New York Stock Exchange, and securities listed on regional stock exchanges which have been designated by such regional exchange as eligible for reporting to the Consolidated Tape.

(7) “Initial Public Offering” shall mean a security is subject to an initial public offering if: (1) the offering of the security is registered under the Securities Act [of 1933]; and (2) the issuer of the security, immediately prior to filing the registration statement with respect to such offering, was not subject to the reporting requirements of Section 13 or 15(d) of the Exchange Act.

(8) "Nasdaq" means the NASDAQ Stock Market, LLC other than any facilities operated by The NASDAQ Stock Market, LLC on behalf of [NASD] FINRA.

(9) "Nasdaq security" means any security listed on The NASDAQ Stock Market, LLC.

(10) "Non-Registered Reporting Member" means a member of [NASD] FINRA that is not a Registered Reporting Member.

(11) "Normal unit of trading" means 100 shares of a security unless, with respect to a particular security, the market where the security is listed determines that a normal unit of trading shall constitute other than 100 shares. If a normal unit of trading is other than 100 shares, a special identifier shall be appended to the issuer's symbol.

(12) "Otherwise than on an exchange" means a trade effected by a[n NASD] FINRA member otherwise than on or through the facilities of a national securities exchange. The determination of what constitutes a trade "on or through" a particular national securities exchange shall be determined by that exchange in accordance with all applicable statutes, rules and regulations, and with any necessary SEC approval.

(13) "Registered Reporting ADF ECN" means a member of [NASD] FINRA that is an electronic communications network ("ECN") that elects to display orders in [NASD's] the ADF. A member shall cease being a Registered Reporting ADF ECN when it has withdrawn or voluntarily terminated its quotations on the ADF or when its quotations have been suspended or terminated

by action of [NASD] FINRA. This term also shall include a[n NASD] FINRA member that is an alternative trading system (“ATS”) that displays orders in the ADF.

(14) “Registered Reporting ADF Market Maker” means a member of [NASD] FINRA that is registered as a[n NASD] FINRA market maker in a particular designated security and, with respect to that security, holds itself out (by entering quotations in [NASD’s] the Alternative Display Facility) as being willing to buy and sell such security for its own account on a regular and continuous basis. A member is a Registered Reporting ADF Market Maker in only those designated securities for which it is registered as an ADF market maker. A member shall cease being a Registered Reporting ADF Market Maker in a designated security when it has withdrawn or voluntarily terminated its quotations in that security on the ADF or when its quotations have been suspended or terminated by action of [NASD] FINRA.

(15) “Registered Reporting Member” means a Registered Reporting ADF Market Maker or Registered Reporting ADF ECN.

(16) “SE[C]A Rule 100,” “SE[C]A Rule 101,” “SE[C]A Rule 103,” and “SE[C]A Rule 104” mean the rules adopted by the [Commission] SEC under Regulation M[, and any amendments thereto].

(17) “Stabilizing bid” means the terms “stabilizing” or to “stabilize” as defined in SE[C]A Rule 100.

(18) “Stop Stock Price” means the specified price at which a member and another party agree a Stop Stock Transaction shall be executed, and which price is

based upon the prices at which the security is trading at the time the order is received by the member, taking into consideration that the specified price may deviate from the current market prices to factor in the size of the order and the number of shares available at those prices.

(19) “Stop Stock Transaction” means any transaction that meets both of the following conditions:

- (A) the transaction is the result of an order in which a member and another party agree that the order will be executed at a Stop Stock Price or better; and.
- (B) the order is executed at the Stop Stock Price or better.

(20) “Underwriting Activity Report” is a report provided by the Market Regulation Department of [NASD] FINRA in connection with a distribution of securities subject to SE[C]A Rule 101 pursuant to NASD Rule 2710(b)(11).

(b) For purposes of Rules [4619A] 6275[,] and [4623A] 6279, the following terms shall have the meanings as defined in SE[C]A Rule 100: “affiliated purchaser,” “distribution,” “distribution participant,” “independent bid,” “net purchases,” “passive market maker,” “penalty bid,” “reference security,” “restricted period,” “subject security,” and “syndicate covering transaction.”

#### **[4300A] 6250. Quote and Order Access Requirements**

(a) For each security in which an ADF Trading Center displays a bid and offer (for Registered Reporting ADF Market Makers), or a bid and/or offer (for Registered Reporting ADF ECNs), in the ADF, it must:

- (1) Provide other ADF Trading Centers direct electronic access, as defined below;
- (2) Provide registered broker-dealers that are not ADF Trading Centers direct electronic access and allow for indirect electronic access, as defined below. In any event, an ADF Trading Center is prohibited from: (A) in any way directly or indirectly influencing or prescribing the prices that its customer broker-dealer may choose to impose for providing indirect access; and (B) precluding or discouraging indirect electronic access, including through the imposition of discriminatory pricing or quality of service with regard to a broker-dealer that is providing indirect electronic access;
- (3) Provide a level and cost of access to its quotations in an NMS stock displayed in the ADF that is substantially equivalent to the level and cost of access to quotations displayed by SRO trading facilities in that NMS stock;
- (4) Demonstrate that it has sufficient technology to automatically update its quotations and immediately respond to orders for execution directly against the individual ADF Trading Center's best bid or offer;
- (5) Ensure that it does not impose unfairly discriminatory terms that prevent or inhibit any person, through a registered broker-dealer, from obtaining efficient access to such quotations;
- (6) Provide at least 14 calendar days advance written notice, via facsimile, personal delivery, courier or overnight mail, to ADF Operations before denying any registered broker-dealer direct electronic access as defined below. The notice provided hereunder must be based on the good faith belief of an ADF Trading

Center that such denial of access is appropriate and does not violate any of the ADF Trading Center's obligations under [NASD] FINRA rules or the federal securities laws. Further, any notification or publication of an ADF Trading Center's intent to deny access will have no bearing on the merits of any claim between the ADF Trading Center and any affected registered broker-dealer, nor will it insulate the ADF Trading Center from liability for violations of [NASD] FINRA rules or the federal securities laws, such as SE[C]A Rule 602 of Regulation NMS. The 14-day period begins on the first business day that ADF Operations has receipt of the notice; and

(7) Comply with the minimum performance standards set forth in paragraph (e) of this [r]Rule and the terms agreed to in the Certification Record.

(b) Subject to the terms and conditions contained herein, all ADF Trading Centers that display quotations in [NASD's] the ADF must record each item of information described in paragraphs (b)(1) and (2) of this Rule for all orders they receive from another broker-dealer via direct or indirect electronic access, and report this information to [NASD] FINRA as specified below.

(1) ADF Trading Centers must record the following information for every order they receive from another broker-dealer via direct or indirect electronic access:

- (A) Unique Order Identifier
- (B) Order Entry Firm (OEID)
- (C) Order Side (Buy/Sell)
- (D) Order Quantity

- (E) Issue Identifier
- (F) Order Price
- (G) Order Negotiable Flag
- (H) Time In Force (i.e. regular hours, entire day, other)
- (I) Order Date
- (J) Order Time (expressed in hours, minutes and seconds based on Eastern Time in military format)
- (K) Minimal Acceptable Quantity (i.e. ANY, all or none (AON), volume)
- (L) Market Making Firm (MMID)
- (M) Trade-or-Move Flag
- (N) Any other modifier as specified by [NASD] FINRA or the [Securities and Exchange Commission] SEC

The information described in subparagraphs (A) through (N) must be reported to [NASD] FINRA within 10 seconds of receipt of the order.

(2) In addition to the information previously provided pursuant to paragraph (b)(1), ADF Trading Centers must record the following information, as applicable, for every order received via direct or indirect access from another broker-dealer that has been acted upon or responded to:

- (A) Unique Order Identifier (as provided in paragraph (b)(1)(A))
- (B) Order Response (e.g., E=Execute, D=Decline due to potential SE[C]A Rule 611 violation, O=Decline Other, X=Cancel, T=Timed out, P=Partial, I=Price improvement)

(C) Order Response Time (expressed in hours, minutes and seconds based on Eastern Time in military format)

(D) Quantity

(E) Price

The information described in subparagraphs (A) through (E) must be reported to [NASD] FINRA within 10 seconds of any response to or action taken regarding an order. In the event that a member receives and executes an order within 10 seconds, the member may submit a single report that contains the information required in paragraphs (b)(1) and (b)(2).

### **(3) Maintaining and Preserving Records**

(A) In addition to submitting the information described herein to [NASD] FINRA, each member shall maintain and preserve records of the information required to be recorded under this Rule for the period of time and accessibility specified in SE[C]A Rule 17a-4(b).

(B) The records required to be maintained and preserved under this Rule may be immediately produced or reproduced on “micrographic media” as defined in SE[C]A Rule 17a-4(f)(1)(i) or by means of “electronic storage media” as defined in SE[C]A Rule 17a-4(f)(1)(ii) that meet the conditions set forth in SE[C]A Rule 17a-4(f) and may be maintained and preserved for the required time in that form.

**(4) Orders Not Required To Be Recorded**

The recording and reporting requirements contained in paragraphs (a) and (b) of this Rule shall not apply to orders received via any system operated by a national securities exchange or national securities association such that the association or exchange operating the system has access to and regulates that order activity.

**(5) Method of Transmitting Data**

Members shall transmit this information in such form as prescribed by [NASD] FINRA.

**(6) Reporting Agent Agreements**

(A) “Reporting Agent” shall mean a third party that enters into any agreement with a member pursuant to which such third party agrees to fulfill such member’s obligations under this Rule.

(B) Any member may enter into an agreement with a Reporting Agent pursuant to which the Reporting Agent agrees to fulfill the obligations of such member under this Rule. Any such agreement shall be evidenced in writing, which shall specify the respective functions and responsibilities of each party to the agreement that are required to effect full compliance with the requirements of this Rule.

(C) All written documents evidencing an agreement described in subparagraph (6)(B) shall be maintained by each party to the agreement.

(D) Each member remains responsible for compliance with the requirements of this Rule, notwithstanding the existence of an agreement described in this paragraph.

**(7) Withdrawal of Quotations**

If an ADF Trading Center knows or has reason to believe that it or its Reporting Agent is not complying with the requirements of this Rule, the ADF Trading Center must withdraw its quotations from the ADF until such time that the member is satisfied that it is in compliance with the requirements of this Rule.

(c) ADF Trading Centers are required to specify as part of their Certification Record the method and terms by which they will comply with the requirements of this Rule. [NASD] FINRA will not allow an ADF Trading Center to display quotations in the ADF unless the method and terms provided by the ADF Trading Center are in compliance with this Rule and applicable provisions of SEC Regulation NMS. Acceptance by [NASD] FINRA of an ADF Trading Center's Certification Record does not relieve an ADF Trading Center of any of its on-going obligations. Moreover, [NASD's] FINRA's acceptance of such Certification Record, shall not constitute an estoppel as to [NASD] FINRA or bind [NASD] FINRA in any subsequent administrative, civil or disciplinary proceeding.

**(d) Definitions**

(1) "Direct electronic access" means the ability to deliver an order for execution directly against an individual ADF Trading Center's best bid or offer subject to applicable [NASD] FINRA rules and the federal securities laws, including SEC Regulation NMS. As described herein, ADF Trading Centers

must provide direct electronic access, in conformity with this [r]Rule, through the use of a communications service(s) that is deemed to be sufficient by [NASD] FINRA.

(2) “Indirect electronic access” means the ability to route an order through a[n NASD] FINRA member, subscriber broker-dealer, or customer broker-dealer of an ADF Trading Center that are not an affiliate of the ADF Trading Center, for execution against the ADF Trading Center’s best bid or offer subject to applicable [NASD] FINRA rules and the federal securities laws, including SEC Regulation NMS. An ADF Trading Center shall not impose unfairly discriminatory terms that prevent or inhibit any person from obtaining efficient access to such quotation through a[n NASD] FINRA member, subscriber broker-dealer, or customer broker-dealer. A[n NASD] FINRA member that is providing indirect electronic access shall remain responsible for orders routed through it as though the orders were the firm’s own orders.

**(e) Minimum Performance Standards**

(1) ADF Trading Centers must submit “Automated Quotations”, as defined in SE[C]A Rule 600(b)(3) of Regulation NMS to the ADF for posting. “Manual Quotations,” as defined in SE[C]A Rule 600(b)(37) of Regulation NMS, shall not be submitted to the ADF. As a precondition to becoming an ADF Trading Center, an ADF Trading Center must, among other things, certify to [NASD] FINRA their compliance with this paragraph based on reasonable forecasts of peak volume activity and the establishment of policies and procedures

to ensure only “Automated Quotations,” as defined in SE[C]A Rule 600(b)(3) of Regulation NMS, are submitted to the ADF.

(2) In the event that an ADF Trading Center experiences three (3) unexcused system outages during a period of five (5) business days, the ADF Trading Center may be suspended from quoting in the ADF in all or certain issues for a period of twenty (20) business days. With respect to an ADF Trading Center, a “system outage” shall mean an inability to post “Automated Quotations,” as defined by SE[C]A Rule 600(b)(3) of Regulation NMS, in the ADF or an inability to immediately and automatically respond to orders.

(3) Officers of [NASD] FINRA or its subsidiaries designated by the [President of NASD] Chief Executive Officer of FINRA shall, pursuant to the procedures set forth in paragraph (f) below, have the authority to review any system outage to determine whether the system outage should be excused. An officer may deem a system outage excused upon proof by the ADF Trading Center that the system outage resulted from circumstances not within the control of the ADF Trading Center. The burden shall rest with the ADF Trading Center to demonstrate that a system outage should be excused.

(4) An ADF Trading Center may contact [NASD] FINRA ADF Operations and request that a system outage be deemed excused, whether or not the system outage resulted from circumstances within the control of the ADF Trading Center; however, if [NASD] FINRA ADF Operations becomes aware of the system outage prior to the ADF Trading Center’s request for an excused system outage, [NASD] FINRA ADF Operations may, at its own discretion, deem

the system outage to be unexcused, based on the specific facts and circumstances surrounding the outage.

**(f) Procedures for Reviewing System Outages**

(1) Any ADF Trading Center that seeks to have a system outage reviewed pursuant to paragraph (e)(3) hereof, shall submit a written request, via facsimile or otherwise, to ADF Operations by close of the business day on which the system outage occurs, or the following business day if the system outage occurs outside of normal market hours.

(2) An ADF Trading Center that seeks review of a system outage shall supply any supporting information for a determination under paragraph (e)(3) to [NASD] FINRA staff by the close of business on the day following the system outage.

(3) An ADF Trading Center that seeks review of a system outage shall supply [NASD] FINRA staff with any information requested to make a determination pursuant to paragraph (e)(3).

(4) An officer shall, in accordance with paragraph (e)(3), make a determination whether a system outage is excused by the close of business on the day following the receipt of information supplied pursuant to paragraphs (f)(2) and (f)(3).

(5) An ADF Trading Center may appeal a determination made under paragraph (e)(3) to a three-member subcommittee comprised of current or former industry members of [NASD's] FINRA's Market Regulation Committee in writing, via facsimile or otherwise, by the close of business on the day a

determination is rendered pursuant to paragraph (e)(3). An appeal to the subcommittee shall operate as a stay of the determination made pursuant to paragraph (e)(3). Once a written appeal has been received, the ADF Trading Center may submit any additional supporting written documentation, via facsimile or otherwise, up until the time the appeal is considered by the subcommittee. The subcommittee shall render a determination by the close of business following the day a notice of appeal is received. The subcommittee's determination shall be final and binding.

**(g) Inactive Quoting**

In order to maintain ADF certification, Registered Reporting ADF ECNs must post at least one marketable quote/order through the ADF on each side of the market every 30 calendar days. A quote/order that is posted through the ADF will be presumptively a marketable quote/order if such quote/order is accessed (i.e., traded against) by another trading center or market participant (other than a subscriber of the Registered Reporting ADF ECN). A Registered Reporting ADF ECN that fails to post at least one marketable quote/order through the ADF on each side of the market every 30 calendar days, shall lose its ADF certification at the sole discretion of [NASD] FINRA staff. Registered Reporting ADF ECNs seeking to regain ADF certification shall be required to recertify pursuant to this [NASD] Rule [4300A] 6250.

**[4400A] 6260. Review of Direct or Indirect Access Complaints**

**(a) Authority to Receive Complaints**

(1) For the purposes of this Rule, a “direct or indirect access complaint” is a complaint against an ADF Trading Center, as defined in Rule [4200A] 6220,

that alleges a denial or limitation of access in contravention of Rule [4300A] 6250 or the federal securities laws.

(2) Any registered broker-dealer that wishes to file a direct or indirect access complaint shall submit a written complaint stating the pertinent facts that constitute the grounds for such complaint, via facsimile, e-mail, personal delivery, courier or overnight mail, to ADF Operations and simultaneously serve by the same means the ADF Trading Center in accordance with Rule 9134(b). Officers of [NASD] FINRA designated by [a President of NASD or one of its divisions] the Chief Executive Officer of FINRA shall have the authority to review and make a determination regarding direct or indirect access complaints.

(3) Based upon a review of the complaint and such investigation that the officer, in his or her sole discretion, may decide to conduct, the officer shall promptly determine whether there has been a denial of access by the ADF Trading Center. If the officer determines that there has been a denial of access in contravention of Rule [4300A] 6250 or the federal securities laws, the officer shall direct the ADF Trading Center to provide access to its ADF quotes and may limit participation in the ADF by such party if it does not comply promptly with the directive, including the withdrawal of the ADF Trading Center's quotations from the ADF until access is provided. [NASD] FINRA shall provide to the parties written notification of the determination by the close of business following the day the determination is rendered. The determination shall be sent to the facsimile number listed in the parties' contact questionnaire submitted to [NASD] FINRA pursuant to Article IV, Section 3 of [NASD's] the FINRA By-Laws or

another contact specifically designated by a party. The determination, and any directive to provide access or action to limit participation in the ADF, shall be effective when issued or as specified, and shall remain in effect during any review or appeal. The determination shall not constitute an estoppel as to [NASD] FINRA nor bind [NASD] FINRA in any subsequent administrative, civil, or disciplinary proceeding.

**(b) Procedures for Review of Determinations**

(1) Any registered broker-dealer, including an ADF Trading Center, that seeks review of a determination issued pursuant to paragraph (a) hereof, shall submit a written appeal setting forth the grounds for such review. The written appeal shall be submitted via facsimile, e-mail, personal delivery, courier or overnight mail, to [NASD] FINRA and served by the same means on the opposite party, in accordance with Rule 9134(b), by close of the next business day after receipt of the written determination. Written appeals that are not served upon [NASD] FINRA and the opposite party by the close of the next business day after receipt of the written determination will not qualify for further administrative consideration, without prejudice as to the rights of a party to submit the dispute to arbitration or another adjudicatory forum.

(2) Once a written appeal has been received in accordance with

[sub]paragraph (b)(1) above:

(A) the party seeking review shall have up to twenty-four (24) hours, or such longer period as specified by [NASD] FINRA staff, to submit to [NASD] FINRA and the opposite party via facsimile, personal

delivery, courier or overnight mail, any supporting written information concerning the appeal;

(B) after receipt of the foregoing supporting written information, the party served with the appeal shall have up to twenty-four (24) hours, or such longer period as specified by [NASD] FINRA staff, to submit any relevant written information to [NASD] FINRA and the party seeking review via facsimile, personal delivery, courier or overnight mail;

(C) if the party seeking review fails to serve the opposite party any written information required pursuant to this subparagraph, that party's written complaint will not qualify for further administrative consideration, without prejudice as to the rights of a party to submit the dispute to arbitration or another adjudicatory forum.

(3) Each registered broker-dealer and/or person associated with a registered broker-dealer involved in the review shall provide [NASD] FINRA with any information that it requests to resolve the matter on a timely basis notwithstanding the time parameters set forth in paragraph (b)(2) above. If a registered broker-dealer does not provide such requested information in a timely manner, [NASD] FINRA may, in its discretion, consider the matter based upon the information provided. Moreover, if the registered broker-dealer and/or person associated with a registered broker-dealer is a member or person associated with a member, failure to provide requested information can constitute a violation of [NASD] FINRA rules.

(4) All requests for information pursuant to this [r]Rule shall be sent by the specified means to a receiving location that, from time to time, may be designated by [NASD] FINRA.

**(c) Review by a Subcommittee of the Market Regulation Committee**

(1) If a party has applied for review of a determination, and the procedural requirements of [sub]paragraph (b) above have been satisfied, the determination shall be reviewed and a decision rendered by a three-member subcommittee comprised of current or former industry members of [NASD's] FINRA's Market Regulation Committee. Upon consideration of the record, and after such hearings as it may in its discretion order, the subcommittee, in accordance with the requirements set forth in Rule [4300A] 6250, shall affirm or reverse the determination of the [NASD] FINRA officer pursuant to paragraph (a)(3) above.

(2) The subcommittee shall provide written notification of its determination to the parties by the close of business following the day the determination is rendered. The subcommittee's determination shall not prejudice the rights of a party to submit the dispute to arbitration or another adjudicatory forum. The subcommittee's determination, including affirmation of any directive or action rendered in accordance with paragraph (a)(3), shall be effective when issued or as specified, constitute final [NASD] FINRA action, and remain in effect during any review or appeal. The subcommittee's determination shall not constitute an estoppel as to [NASD] FINRA nor bind [NASD] FINRA in any subsequent administrative, civil, or disciplinary proceeding.

**[4600A] 6270. Quoting and Trading in ADF-Eligible Securities**

**[4610A. Registration and Other Requirements]**

**[4611A] 6271. Registration as an ADF Market Maker or ADF ECN**

(a) Quotations and quotation sizes in ADF-eligible securities may be entered into the ADF only by a Registered Reporting ADF Market Maker or Registered Reporting ADF ECN or other entity approved by [NASD] FINRA to function in such a capacity. The ADF's protected quotation will be identified by [NASD] FINRA based upon price, size and time priority.

(b) A[n NASD] FINRA member seeking registration as a market maker or ECN in the ADF shall file an application with [NASD] FINRA specifying whether it is seeking registration in Nasdaq and/or CQS securities. The application shall certify the member's good standing with [NASD] FINRA and shall demonstrate compliance with the net capital and other financial responsibility provisions of the Exchange Act. A member's registration as an ADF market maker or ECN shall become effective upon receipt by the member of notice of approval of registration from [NASD] FINRA in the designated security type (i.e., Nasdaq and/or CQS).

**[4612A. Reserved]**

**[4613A] 6272. Character of Quotations**

**(a) Two-Sided Quotations**

(1) For each ADF-eligible security for which a member is a Registered Reporting ADF Market Maker, the member shall be willing to buy and sell such security for its own account on a continuous basis and shall enter and maintain

two-sided quotations through the ADF, subject to the procedures for excused withdrawal set forth in Rule [4619A] 6275.

(A) A Registered Reporting ADF Market Maker in an ADF-eligible security must display a quotation size for at least one normal unit of trading (or a larger multiple thereof) when it is not displaying a limit order in compliance with SE[C]A Rule 604 of Regulation NMS.

(B) Minimum Price Variation for Decimal-based Quotations  
The minimum quotation increment for securities authorized for decimal pricing as part of the SEC-approved Decimals Implementation Plan for the Equities and Options Markets shall be \$0.01. Quotations failing to meet this standard shall be rejected.

**[(b) Primary and Additional MPIDs]**

[(1) The first Market Participant Identifier (“MPID”) issued to an NASD Market Participant shall be referred to as the NASD Market Participant’s “Primary MPID.” For a pilot period ending January 30, 2009, a Registered Reporting ADF ECN may request the use of Additional MPIDs for displaying quotes/orders and reporting trades through TRACS for any ADF-Eligible Security (as defined in NASD Rule 4100A). A Registered Reporting ADF ECN that ceases to meet the obligations appurtenant to its Primary MPID in any security shall not be permitted to use Additional MPIDs for any purpose in that security.]

**[(c)] (b) Firm Quotations**

(1) Consistent with SE[C]A Rule 602(b)(2) of Regulation NMS, an ADF Trading Center that receives an offer to buy or sell from another broker-dealer

shall execute a transaction for at least a normal unit of trading at its displayed quotations as disseminated through the ADF at the time of receipt of any such offer. If an ADF Trading Center displays a quotation for a size greater than a normal unit of trading, it shall, upon receipt of an offer to buy or sell from another broker-dealer, execute a transaction at least at the size displayed.

(2) If an ADF Trading Center, upon receipt of an offer to buy or sell from another broker-dealer in any amount that is at least one normal unit of trading greater than its published quotation size as disseminated through [NASD's] the ADF at the time of receipt of any such offer, executes a transaction in an amount of shares less than the size of the offer, then such ADF Trading Center shall, immediately after such execution, display a revised quotation at a price that is inferior to its previous published quotation. The failure of an ADF Trading Center to execute the offer in an amount greater than its published quotation size shall not constitute a violation of [sub]paragraph (b)(1) of this [r]Rule.

**[(d)] (c) Quotations Reasonably Related to the Market**

A Registered Reporting ADF Market Maker shall enter and maintain quotations that are reasonably related to the prevailing market. In the event it appears that a Registered Reporting ADF Market Maker's quotations are no longer reasonably related to the prevailing market, [NASD] FINRA may require the Registered Reporting ADF Market Maker to re-enter its quotations. If a Registered Reporting ADF Market Maker whose quotations are no longer reasonably related to the prevailing market fails to re-enter its quotations, [NASD] FINRA may suspend the Registered Reporting ADF Market Maker's quotations in one or all securities.

**[IM-4613A-1 Procedures For Allocation of Multiple MPIDs]**

[NASD considers the issuance of, the display of, and the trade reporting with Additional MPIDs to be a privilege and not a right. NASD has developed the following method for allocating the privilege of receiving, displaying, and trade reporting with Additional MPIDs in an orderly, predictable, and fair manner. While NASD does not intend to place a numerical limit on the number of Additional MPIDs it may grant to Registered Reporting ADF ECNs, given the agent business model of ECNs, NASD does not anticipate the granting of many additional MPIDs to Registered Reporting ADF ECNs.]

[As described in Rule 4613A, NASD will automatically designate a Registered Reporting ADF ECN's first MPID as a "Primary MPID." Additional MPIDs will be designated as such. Registered Reporting ADF ECNs are required to use their Primary MPID in accordance with the requirements of NASD Rule 4613A as well as all existing requirements for the use of MPIDs in NASD systems and under NASD rules. Each of an ECN's MPID will be subject to the requirements of NASD Rule 4623A.]

[If it is determined that one or more Additional MPIDs are being used improperly, NASD staff retains full discretion to limit or withdraw its grant of the Additional MPID(s) for all purposes for all securities. In addition, if a Registered Reporting ADF ECN no longer fulfills the conditions appurtenant to its Primary MPID (e.g., by being placed into an unexcused withdrawal), it may not use an Additional MPID for any purpose in that security.]

[The first priority of NASD's method for allocating the privilege of displaying and trade reporting with Additional MPIDs is that each Registered Reporting ADF ECN

should be permitted to display quotations and report trades under a Primary MPID before any is permitted to display additional quotations under and report trades with Additional MPIDs. If all requests for Primary MPIDs have been satisfied, NASD will then register Additional MPIDs on a first-come-first-served basis, consistent with the procedures listed below.]

[A Registered Reporting ADF ECN shall contact NASD in writing setting forth the bona fide business and/or regulatory reasons for requesting an Additional MPID. NASD will consider the business and/or regulatory reasons demonstrated by the Registered Reporting ADF ECN and promptly respond to the Registered Reporting ADF ECN. If an Additional MPID is granted, it will be subject to the same requirements applicable to a Primary MPID. NASD staff retains full discretion to limit or withdraw the Additional MPID privileges of a Registered Reporting ADF ECN.]

[A Registered Reporting ADF ECN that posts a quotation through either a Primary MPID or Additional MPID and reports a trade to TRACS as a result of such a posted quotation must utilize the corresponding Primary MPID or Additional MPID for reporting purposes through which the quotation was originally posted (i.e., Registered Reporting ADF ECNs must use the same MPID for TRACS trade reporting as was used for ADF quotation posting).]

**[4614A. Reserved]**

**[4615A. Reserved]**

**[4616A. Reserved]**

**[4617A] 6273. Normal Business Hours**

An ADF Trading Center shall be open for business as of 9:30 a.m. Eastern Time and shall close no earlier than 4:00 p.m. Eastern Time. An ADF Trading Center may be open for business on a voluntary basis for any period of time between 8:00 a.m. Eastern Time and 9:30 a.m. Eastern Time or between 4:00 p.m. Eastern Time and 6:30 p.m. Eastern Time. An ADF Trading Center whose quotes are open before 9:30 a.m. Eastern Time or after 4:00 p.m. Eastern Time shall be obligated to comply, while its quotes are open, with all [NASD] FINRA [R]rules that are not by their express terms, or by an official interpretation of [NASD] FINRA, inapplicable to any part of the 8:00 a.m. to 9:30 a.m. Eastern Time or the 4:00 p.m. to 6:30 p.m. Eastern Time periods.

**[4618A] 6274. Clearance and Settlement**

(a) A member shall clear and settle transactions effected on the ADF in ADF-eligible securities that are eligible for net settlement through the facilities of a registered clearing agency that uses a continuous net settlement system. This requirement may be satisfied by direct participation, use of direct clearing services, or by entry into a correspondent clearing arrangement with another member that clears trades through such an agency.

(b) Notwithstanding paragraph (a), transactions in ADF-eligible securities may be settled “ex-clearing” provided that both parties to the transaction agree.

**[4619A] 6275. Withdrawal of Quotations**

(a) An ADF Trading Center that wishes to withdraw quotations in a security, other than instances when an ADF Trading Center is unable to submit automated quotations to the ADF, shall contact ADF Operations to obtain excused withdrawal status

prior to withdrawing its quotations. If an ADF Trading Center cannot submit automated quotations or is unable to immediately and automatically respond to orders, as required by Rule [4300A] 6250(e), the ADF Trading Center must immediately withdraw its quotations and promptly contact ADF Operations. An excused withdrawal of quotations may be granted by ADF Operations upon satisfying one of the conditions specified in this Rule.

(b) Excused withdrawal status based on circumstances beyond the ADF Trading Center's control may be granted for up to five (5) business days, unless extended by ADF Operations. Excused withdrawal status based on demonstrated legal or regulatory requirements, supported by appropriate documentation and accompanied by a representation that the condition necessitating the withdrawal of quotations is not permanent in nature, may, upon notification, be granted for not more than sixty (60) days (unless such request is required to be made pursuant to paragraph (d) below). Excused withdrawal status based on religious holidays may be granted only if notice is received by [NASD] FINRA one business day in advance and is approved by [NASD] FINRA. Excused withdrawal status based on vacation may be granted only if:

- (1) the request for withdrawal is received by [NASD] FINRA one business day in advance, and is approved by [NASD] FINRA; and
- (2) the request includes a list of the securities for which withdrawal is requested.

(c) Excused withdrawal status may be granted to a Registered Reporting ADF Market Maker that has withdrawn from an issue prior to the public announcement of a merger or acquisition and wishes to re-register in the issue pursuant to the same-day

registration procedures contained in Rule [4611A] 6271, above, provided the Registered Reporting ADF Market Maker has remained registered in one of the affected issues. The withdrawal of quotations because of pending news, a sudden influx of orders or price changes, or to effect transactions with competitors shall not constitute acceptable reasons for granting excused withdrawal status.

(d) Excused withdrawal status may be granted by ADF Operations to an ADF Trading Center that experiences a documented problem or failure impacting the operation or utilization of any automated system operated by or on behalf of the ADF Trading Center (chronic system failures within the control of the member will not constitute a problem or failure impacting a firm's automated system).

(e) Excused withdrawal status may be granted by ADF Operations to an ADF Trading Center that fails to maintain a clearing arrangement with a registered clearing agency or with a member of such an agency, thereby terminating its registration as an ADF Trading Center; provided however, that if [NASD] FINRA finds that the ADF Trading Center's failure to maintain a clearing arrangement is voluntary, the withdrawal of quotations will be considered voluntary and unexcused pursuant to Rule [4620A] 6276.

(f) Excused withdrawal status may be granted by ADF Operations to a Registered Reporting ADF Market Maker that is a distribution participant or an affiliated purchaser in order to comply with SE[C]A Rule 101 [under the Act] on the following conditions:

(1) A member acting as a manager (or in a similar capacity) of a distribution of a security that is a subject security or reference security under SEA Rule 101 and any member that is a distribution participant or an affiliated

purchaser in such a distribution that does not have a manager shall provide written notice to ADF Operations and the Market Regulation Department of [NASD] FINRA no later than the business day prior to the first entire trading session of the one-day or five-day restricted period under SE[C]A Rule 101, unless later notification is necessary under the specific circumstances.

(A) The notice required by [sub]paragraph (f)(1) of this Rule shall be provided by submitting a written request on behalf of each market maker that is a distribution participant or an affiliated purchaser to withdraw the market maker's quotations.

(B) The managing underwriter shall advise each Registered Reporting ADF Market Maker that it has been identified as a distribution participant or an affiliated purchaser to ADF Operations and that its quotations will be automatically withdrawn, unless a market maker that is a distribution participant (or an affiliated purchaser of a distribution participant) notifies ADF Operations as required by [sub]paragraph (f)(2), below.

(2) A Registered Reporting ADF Market Maker that has been identified to ADF Operations as a distribution participant (or an affiliated purchaser of a distribution participant) shall promptly notify ADF Operations and the manager of its intention not to participate in the prospective distribution in order to avoid having its quotations withdrawn.

(3) A member acting as a manager (or in a similar capacity) of a distribution subject to [sub]paragraph (f)(1) of this Rule shall submit a request to

ADF Operations and the Market Regulation Department of [NASD] FINRA to rescind the excused withdrawal status of distribution participants and affiliated purchasers, which request shall include the date and time of the pricing of the offering, the offering price, and the time the offering terminated, and, if not in writing, shall be confirmed in writing no later than the close of business the day the offering terminates. The request referenced in this subparagraph may be submitted on the Underwriting Activity Report or by other written means.

(g) A three-member subcommittee comprised of current or former industry members of [NASD's] FINRA's Market Regulation Committee shall have jurisdiction over proceedings brought by market makers seeking review of a denial of an excused withdrawal pursuant to this Rule, or the conditions imposed on their reentry.

**[4620A] 6276. Voluntary Termination of Registration**

A Registered Reporting ADF Market Maker may voluntarily terminate its registration in a security by (1) withdrawing its quotations from [NASD's] the Alternative Display Facility and not re-entering its quotations for five (5) minutes, or (2) failing to re-enter quotations within thirty (30) minutes of the end of a trading halt. A Registered Reporting ADF Market Maker that voluntarily terminates its registration in a security may not re-register as a market maker in that security for twenty (20) business days, absent an excused withdrawal specified in Rule [4619A] 6275. Withdrawal from participation as a Registered Reporting ADF Market Maker in [NASD's] the Alternative Display Facility shall constitute termination of registration as a market maker in that security for purposes of this Rule; provided, however, that a Registered Reporting ADF Market Maker that fails to maintain a clearing arrangement with a registered clearing

agency or with a member of such an agency and thereby terminates its registration as a market maker in Nasdaq securities may register as a market maker at any time after a clearing arrangement has been reestablished.

**[4621A] 6277. Suspension and Termination of Quotations by [NASD] FINRA**

**Action**

[NASD] FINRA may suspend, condition, limit, prohibit or terminate an ADF Trading Center's authority to enter quotations in one or more ADF-eligible securities for violations of applicable requirements or prohibitions.

**[4622A] 6278. Termination of [NASD] Alternative Display Facility Data System**

**Service**

[NASD] FINRA may, upon notice, terminate ADF Data System service in the event that an ADF Trading Center fails to qualify under specified standards of eligibility or fails to pay promptly for services rendered by [NASD] FINRA.

**[4623A] 6279. Alternative Trading Systems**

(a) [NASD] FINRA may provide a means to permit alternative trading systems (“ATSS”), as such term is defined in Regulation ATS, and electronic communications networks (“ECNs”), as such term is defined in SE[C]A Rule 600(b)(23) of Regulation NMS, to comply with the display requirements of SE[C]A Rule 301(b)(3) and the terms of the ECN display alternative provided for in SE[C]A Rule 602(b)(5)(ii)(A) and (B) (“ECN display alternatives”). [NASD] FINRA will not facilitate compliance with access requirements, which are the responsibility of ADF Trading Centers under Rule [4300A] 6250.

(b) An ATS or ECN that seeks to use [NASD] FINRA-provided means to comply with SE[C]A Rule 301(b)(3) and/or the ECN display alternatives, or to provide orders to the ADF voluntarily shall:

- (1) demonstrate to [NASD] FINRA that it is in compliance with Regulation ATS or that it qualifies as an ECN meeting the definition in the SE[C]A Rule;
- (2) be registered as a[n NASD] FINRA member;
- (3) agree to provide for [NASD's] FINRA's dissemination in the quotation data made available to quotation vendors the prices and sizes of [NASD] FINRA Registered Market Maker orders (and orders from other subscribers of the ATS or ECN, if the ATS or ECN so chooses or is required by SE[C]A Rule 301(b)(3) to display a subscriber's order in the ADF), at the highest buy price and the lowest sell price for each ADF-eligible security entered in and disseminated by the ATS or ECN; and prior to entering such prices and sizes, register with ADF Operations as a Registered Reporting ADF ECN; and
- (4) comply with Rule [4300A] 6250.

(c) When a[n NASD] FINRA member attempts to access electronically an ATS or ECN-displayed order by sending an order that is larger than the ATS' or ECN's ADF-displayed size and the ATS or ECN is displaying the order on a reserved size basis, the [NASD] FINRA member that operates the ATS or ECN shall execute such delivered order:

(1) up to the size of the delivered order, if the ATS or ECN order (including the reserved size and displayed portions) is the same size or larger than the delivered order; or

(2) up to the size of the ATS or ECN order (including the reserved size and displayed portions), if the delivered order is the same size or larger than the ATS or ECN order (including the reserved size and displayed portions).

No Registered Reporting ADF ECN operating through [NASD's] the ADF pursuant to this Rule is permitted to provide a reserved-size function unless the size of the order displayed through the ADF is 100 shares or greater. For purposes of this Rule, the term "reserved size" shall mean that a customer entering an order into an ATS or ECN has authorized the ATS or ECN to display publicly part of the full size of the customer's order with the remainder held in reserve on an undisplayed basis to be displayed in whole or in part as the displayed part is executed.

**[4624A. Reserved]**

**[4625A. Reserved]**

**6280. Transaction Reporting**

**[4630A] 6281. Reporting Transactions in ADF-Eligible Securities**

This Rule [4630A] 6280 Series governs the reporting by members of transactions in of ADF-eligible securities through [NASD's] FINRA's Trade Reporting and Comparison Service ("TRACS"). Transactions executed otherwise than on an exchange must be reported to ADF TRACS, in accordance with Rule [4632A] 6282 or other pertinent [NASD] FINRA [R]rules, unless they are reported to another reporting facility designated by the [Securities and Exchange Commission] SEC as being authorized to

accept trade reports for trades executed otherwise than on an exchange. Participation in the trade reporting function of TRACS is conditioned upon (a) execution of, and continuing compliance with, a TRACS trade reporting Participant Application Agreement and (b) maintenance of the physical security of the equipment on the premises of the member to prevent unauthorized entry of information into the trade reporting function of TRACS.

**[4631A. Reserved]**

**[4632A] 6282. Transactions Reported by Members to TRACS**

**(a) When and How Transactions are Reported to TRACS**

**(1) Transaction Reporting to TRACS During Normal Market Hours**

Members shall, within 90 seconds after execution, transmit to TRACS, or if TRACS is unavailable due to system or transmission failure, by telephone, facsimile or e-mail to ADF Operations, last sale reports of transactions in ADF-eligible securities executed between 9:30 a.m. and 4:00 p.m. Eastern Time otherwise than on an exchange. Transactions not reported within 90 seconds after execution shall be designated as late. A pattern or practice of late reporting without exceptional circumstances shall be considered conduct inconsistent with high standards of commercial honor and just and equitable principles of trade in violation of NASD Rule 2110.

**(2) Transaction Reporting to TRACS Outside Normal Market Hours**

(A) Last sale reports of transactions in ADF-eligible securities executed otherwise than on an exchange between 8:00 a.m. and 9:30 a.m. Eastern Time shall be reported within 90 seconds after execution and shall

be designated as “.T” trades to denote their execution outside normal market hours. Additionally, last sale reports of transactions in ADF-eligible securities executed between the hours of 4:00 p.m. and 6:30 p.m. Eastern Time shall be reported within 90 seconds after execution and shall be designated as “.T” trades to denote their execution outside normal market hours.

(B) Last sale reports of transactions in ADF-eligible securities executed otherwise than on an exchange outside the hours of 8:00 a.m. and 6:30 p.m. Eastern Time shall be reported as follows:

(i) Last sale reports of transactions executed otherwise than on an exchange between midnight and 8:00 a.m. Eastern Time shall be reported between 8:00 a.m. and 9:30 a.m. Eastern Time on trade date and be designated as “.T” trades to denote their execution outside normal market hours.

(ii) Last sale reports of transactions executed otherwise than on an exchange between 6:30 p.m. and midnight Eastern Time shall be reported on the next business day (T+1) between 8:00 a.m. and 6:30 p.m. Eastern Time, be designated “as/of” trades to denote their execution on a prior day and be designated as .T transactions to denote their execution outside of normal market hours.

**(3) All Trade Tickets Must be Time-Stamped**

Members shall time-stamp all trade tickets at the time of execution for transactions in ADF-eligible securities. Execution time shall be reported to

[NASD] FINRA on all last sale reports and shall be expressed in hours, minutes and seconds based on Eastern Time in military format, unless another provision of [NASD] FINRA rules requires that a different time be included on the report.

**(4) Other Modifiers Required to be Reported to TRACS**

Reporting Members also shall append the applicable trade report modifiers as specified by [NASD] FINRA to all last sale reports, including reports of “as/of” trades:

- (A) if the trade is executed during normal market hours and it is reported later than 90 seconds after execution;
- (B) if the trade is a Seller’s Option Trade, denoting the number of days for delivery;
- (C) if the trade is a Cash Trade;
- (D) if the trade is a Next Day Trade;
- (E) if the trade occurs at a price based on an average weighting or another special pricing formula;
- (F) if the trade is a Stop Stock Transaction (as defined in Rule [4200A] 6220) (Note: the time at which the member and the other party agreed to the Stop Stock Price must be given in lieu of including the time of execution on the trade report and the designated modifier shall not be appended to a report of a Stop Stock Transaction if the Stop Stock Transaction is executed and reported within 90 seconds of the time the member and the other party agree to the Stop Stock Price);

- (G) if the transaction report reflects a price different from the current market when the execution price is based on a prior reference point in time (Note: the transaction report shall include the prior reference time in lieu of the actual time the trade was executed and the designated modifier shall not be appended to a report of a transaction whose price is based on a prior reference point in time if the trade is executed and reported within 90 seconds from the prior reference point in time);
- (H) to identify pre-opening and after-hours trades (executed between 8:00 a.m. and 9:30 a.m. Eastern Time or between 4:00 p.m. and 6:30 p.m. Eastern Time) reported more than 90 seconds after execution;
- (I) if the trade would be a trade-through of a protected quotation, but for the trade being qualified for an exception or exemption from SE[C]A Rule 611 of Regulation NMS (Note: to ensure consistency in the usage of SE[C]A Rule 611 related modifiers by registered broker-dealers, this modifier will be used in conformity with the specifications approved by the Operating Committee of the relevant National Market System Plans to identify trades executed pursuant to an exception or exemption from SE[C]A Rule 611);
- (J) if the trade would be a trade-through of a protected quotation, but for the trade being qualified for an exception or exemption from SE[C]A Rule 611 of Regulation NMS, members must, in addition to the modifier required in subparagraph (I) above, append an appropriate unique modifier, specified by [NASD] FINRA, that identifies the specific

applicable exception or exemption from SE[C]A Rule 611 that a member is relying upon (Note: to ensure consistency in the usage of SE[C]A Rule 611 related modifiers by registered broker-dealers, these modifiers will be used in conformity with the specifications approved by the Operating Committee of the relevant National Market System Plans to identify trades executed pursuant to an exception or exemption from SE[C]A Rule 611); and

(K) any other modifier as specified by [NASD] FINRA or the [Securities and Exchange Commission] SEC.

**(5) Form T Reporting Obligations**

Members shall report as soon as practicable to the Market Regulation Department on Form T, last sale reports of transactions in ADF-eligible securities for which electronic submission to TRACS is not possible (e.g., the ticker symbol for the security is no longer available or an ADF Trading Center identifier is no longer active). Transactions that can be reported to TRACS, whether on trade date or on a subsequent date on an [“as of”] “as/of” basis (T+N), shall not be reported on Form T.

**(b) Which Party Reports Transaction**

- (1) In transactions between two Registered Reporting Members, the member representing the sell side shall report the trade using TRACS.
- (2) In transactions between a Registered Reporting Member and a Non-Registered Reporting Member, the Registered Reporting Member shall report the trade using TRACS.

- (3) In transactions between two Non-Registered Reporting Members, the member representing the sell side shall report the trade to TRACS.
- (4) In transactions between a member and a customer or non-member, the member shall report the trade using TRACS.

**(c) Information To Be Reported — Two Party Trade Reports**

- (1) A two party trade report is a last sale report that denotes a trade between one Reporting [NASD] FINRA Member and one Non-Reporting Member. The Reporting [NASD] FINRA Member is denoted as the (“MMID”) side of the trade report and the Non-Reporting Member is denoted as the (“OEID”) side of the report.
- (2) Each two party last sale report submitted by a reporting [NASD] FINRA Member should contain:
  - (A) Security identification symbol (SECID);
  - (B) Number of shares or bonds;
  - (C) Price of the transaction as required by paragraph (h) below;
  - (D) A designated symbol denoting whether the transaction, from the Reporting [NASD] FINRA Member’s perspective, is a buy, sell, sell short, or cross;
  - (E) If known, a designated symbol denoting whether the transaction, from the perspective of the Non-Reporting Member, is a buy, sell, or sell short;

- (F) A designated symbol denoting whether the transaction, from the perspective of the Reporting Member, is a principal, riskless principal, or agent;
- (G) If known, a designated symbol denoting whether the transaction, from the perspective of the Non-Reporting Member, is a principal, riskless principal, or agent;
- (H) For any transaction in an order for which a member has recording and reporting obligations under [NASD] Rules [6954] 7440 and [6955] 7450, the trade report must include an order identifier, meeting such parameters as may be prescribed by [NASD] FINRA, assigned to the order that uniquely identifies the order for the date it was received (see Rule [6954] 7440(b)(1));
- (I) Execution time expressed in hours, minutes and seconds based on Eastern Time in military format, unless another provision of [NASD] FINRA rules requires that a different time be included on the report;
- (J) The market participant identifier of the Reporting Member and the Non-Reporting Member;
- (K) Reporting Member clearing broker;
- (L) Reporting Member Executing Broker in case of a “give up;”
- (M) Non-Reporting Member Executing Broker;
- (N) Non-Reporting Member introducing broker in case of a “give up;”
- (O) Non-Reporting Member clearing broker;

- (P) A designated symbol denoting whether the trade report should be published;
- (Q) A designated symbol denoting whether the trade report should be compared in TRACS;
- (R) If the contra side to the trade report is a customer of the Reporting Member, the Reporting Member shall denote that the trade is an internalized trade with the designated symbol;
- (S) If the contra side to the trade report is a Non-[NASD]FINRA member, the Reporting Member shall indicate with the designated symbol that the contra side is a non-member.
- (T) For two party trade reports submitted pursuant to an Automated Give Up (“AGU”) arrangement or a Qualified Service Representative (“QSR”) Agreement, disclosure of the information set forth in subparagraphs (e)(2)(E) and (G) is mandatory.

(3) (A) In the event that the MMID side or the OEID side determines that any information provided pursuant to subparagraphs (e)(2)(D), (E), (F), (G), or (H)(i) is inaccurate or incomplete, the MMID side or OEID side, as applicable, must submit a trade report addendum within fifteen (15) minutes of the submission of the original trade report to correct or provide some or all of the following information:

- (i) Short sale indicator;
- (ii) Volume related to short sale indicator change;
- (iii) Capacity Indicator;

(iv) Volume related to capacity change; or

(v) Branch Sequence Number

(B) The trade report addendum feature of TRACS may also be

used by members to add or modify the User Assigned Reference Number.

(C) Each trade report addendum must contain the following

information:

(i) Reference number for the original trade report that is

being amended or modified;

(ii) OEID side or MMID side flag; and

(iii) MPID.

**(d) Information To Be Reported — Three Party Trade Reports**

(1) A three party trade report is a single last sale trade report that denotes one Reporting Member and two contra parties. The Reporting Member is denoted as the MMID side of the trade report and the two non-reporting sides are denoted as the OEID side of the trade report. In a three party report, the Reporting Member is the buyer to one OEID and the seller to the other OEID. Registered ECNs may submit three party trade reports. Riskless principal trades also may be submitted by reporting members as three party trade reports.

(2) Each Three Party Trade Report Submitted by a Reporting Member shall contain the following information:

**Transaction Information**

(A) Security Identification Symbol (SECID);

(B) Number of shares or bonds;

- (C) Price of the transaction as required by paragraph (h) below;
- (D) Execution time expressed in hours, minutes and seconds based on Eastern Time in military format, unless another provision of [NASD] FINRA rules requires that a different time must be included on the report;
- (E) The market participant identifier of the Reporting Member and the two Non-Reporting Members;
- (F) A designated symbol denoting whether the trade should be published;
- (G) For any transaction in an order for which a member has recording and reporting obligations under [NASD] Rules [6954] 7440 and [6955] 7450, the trade report must include an order identifier, meeting such parameters as may be prescribed by [NASD] FINRA, assigned to the order that uniquely identifies the order for the date it was received (see Rule [6954] 7440(b)(1)). This order number must associate both the buy side and sell side OATS Execution Reports to the TRACS report.

#### **MMID Side**

- (H) All three party trade reports from ECNs must be marked as agency cross transactions;
- (I) All three party trade reports from Non-ECNs must be denoted as riskless principal trade reports and shall include a designated symbol denoting whether the trade between the non-ECN and the buy-side OEID is a sell or sell short transaction;
- (J) Reporting Member clearing broker;

(K) Reporting Member Executing Broker in the case of a “give up”;

**Buy Side OEID**

(L) Buy Side OEID executing broker;

(M) Buy Side OEID introducing broker in case of a “give up”;

(N) Buy Side OEID clearing broker;

(O) If known, a designated symbol denoting whether the trade, from the Buy Side OEID’s perspective, is as principal, riskless principal, or agent;

(P) If the Buy Side OEID is a customer of the Reporting Member, the Reporting Member shall denote that the trade is an internalized trade with the designated symbol;

(Q) If the Buy Side OEID is a non-[NASD] FINRA member, the Reporting Member shall indicate with the designated symbol that the buy side OEID is a non-member;

(R) A designated symbol denoting whether the trade between the MMID and the Buy Side OEID shall be compared in TRACS;

**Sell Side OEID**

(S) Sell Side OEID executing broker;

(T) Sell Side OEID introducing broker in case of a “give up”;

(U) Sell Side OEID clearing broker;

(V) If known, a designated symbol denoting whether the trade, from the Sell Side OEID's perspective, is as principal, riskless principal, or agent;

(W) If known, a symbol denoting whether the trade, from the Sell Side OEID's perspective, is a sell or sell short transaction;

(X) If the Sell Side OEID is a customer of the Reporting Member, the Reporting Member shall denote that the trade is an internalized trade with the designated symbol;

(Y) If the Sell Side OEID is a non-[NASD] FINRA Member, the Reporting Member shall indicate with the designated symbol that the buy side OEID is a non-member;

(Z) A designated symbol denoting whether the trade between the MMID and the Sell Side OEID shall be compared in TRACS;

(AA) If the transaction between the Buy Side OEID and the Reporting Member is reported pursuant to an AGU arrangement or a QSR agreement, disclosure of the information set forth in [sub]paragraph (f)(2)(O) is mandatory; and

(BB) If the transaction between the Sell Side OEID and the Reporting Member is reported pursuant to an AGU arrangement or a QSR agreement, disclosure of the information set forth in subparagraphs (f)(2)(V) and (W) is mandatory.

(3) (A) In the event that the MMID side or the OEID side determines that any information provided pursuant to subparagraphs (f)(2)(G)(i), (I),

(O), (V), or (W) is inaccurate or incomplete, the MMID side or OEID side, as applicable, must submit a trade report addendum within fifteen (15) minutes of the submission of the original trade report to correct or provide some or all of the following information:

- (i) Short sale indicator;
- (ii) Volume related to short sale indicator change;
- (iii) Capacity Indicator;
- (iv) Volume related to capacity change; or
- (v) Branch Sequence Number

(B) The trade report addendum feature of TRACS may also be used by members to add or modify the User Assigned Reference Number.

(C) Each trade report addendum must contain the following information:

- (i) Reference number for the original trade report that is being amended or modified;
- (ii) OEID side or MMID side flag; and
- (iii) MPID.

**(e) Procedures for Reporting Price and Volume**

(1) Members that are required, or have the option, to report transactions pursuant to paragraph (d) above shall transmit last sale reports in the following manner:

(A) For agency transactions, report the number of shares (or bonds) and the price excluding the commission charged.

**Example:**

SELL as agent 100 shares at 40 less a commission of \$12.50;

REPORT 100 shares at 40.

(B) For dual agency transactions, report the number of shares (or bonds) only once, and report the price excluding the commission charged.

**Example:**

SELL as agent 100 shares at 40 less a commission of \$12.50;

BUY as agent 100 shares at 40 plus a commission of \$12.50;

REPORT 100 shares at 40.

(C) (i) For principal transactions, except as provided below, report each purchase and sale transaction separately and report the number of shares (or bonds) and the price. For principal transactions that are executed at a price that includes a mark-up, mark-down or service charge, the price reported shall exclude the mark-up, mark-down or service charge. Such reported price shall be reasonably related to the prevailing market, taking into consideration all relevant circumstances including, but not limited to, market conditions with respect to the security, the number of shares (or bonds) involved in the transaction, the published bids and offers with size at the time of the execution (including the reporting firm's own quotation), the cost of execution and the expenses involved in clearing the transaction.

**Example:**

BUY as principal 100 shares from another member at 40

(no mark-down included);

REPORT 100 shares at 40.

**Example:**

BUY as principal 100 shares from a customer at 39.85

which includes a .15 mark-down from prevailing market at

40;

REPORT 100 shares at 40.

**Example:**

SELL as principal 100 shares to a customer at 40.15, which

includes a .15 mark-up from the prevailing market of 40;

REPORT 100 shares at 40.

**Example:**

BUY as principal 10,000 shares from a customer at 39.75,

which includes a .25 mark-down or service charge from the

prevailing market of 40;

REPORT 10,000 shares at 40.

(ii) Exception: A “riskless” principal transaction in which a member after having received an order to buy a security, purchases the security as principal at the same price to satisfy the order to buy or, after having received an order to sell, sells the security as principal at the same price to satisfy the order to sell,

shall be reported to TRACS as one three party transaction, excluding the mark-up or mark-down, commission-equivalent, or other fee. Alternatively, a member may report a riskless principal transaction by submitting the following report(s):

- a. The member with the obligation to report the transaction pursuant to paragraph (d) above must submit a last sale report for the initial leg of the transaction.
- b. Where the initial leg of the transaction has been reported to [NASD] FINRA, regardless of whether a member has a reporting obligation pursuant to paragraph (d) above, the firm must submit, for the offsetting, “riskless” portion of the transaction, either:
  1. a clearing-only report with a capacity indicator of “riskless principal,” if a clearing report is necessary to clear the transaction; or
  2. a non-tape, non-clearing report with a capacity indicator of “riskless principal,” if a clearing report is not necessary to clear the transaction.

**Example:**

SELL as a principal 100 shares to another member at 40 to fill an existing order;

BUY as principal 100 shares from a customer at 40 minus a mark-down of \$12.50; REPORT 100 shares at 40 by submitting a single trade report marked with a “riskless principal” capacity indicator to TRACS or by submitting the following reports:

3. where required by this Rule, a tape report marked with a “principal” capacity indicator; and
4. either a non-tape, non-clearing report or a clearing-only report marked with a “riskless principal” capacity indicator.

In a riskless principal transaction in which a member purchases or sells the security on an exchange to satisfy a customer’s order, the trade will be reported by the exchange. A member may, however, submit to TRACS a clearing only report or a non-tape, non-clearing report for the “riskless” leg of a riskless principal transaction where the initial leg has been reported on or through an exchange.

Any such report submitted to TRACS shall comply with all applicable requirements for trade reports set forth in this Rule [4632A] 6282.

**Example:**

BUY as principal 100 shares on an exchange at 40

to fill an existing order;

DO NOT REPORT this leg (will be reported by

exchange).

SELL as principal 100 shares to a customer at 40

plus a mark-up of \$12.50.

A member MAY submit to TRACS either a non-

tape, non-clearing report or a clearing-only report for this

leg marked with a “riskless principal” capacity indicator.

(D) For transactions that are executed at a price different from the

current market when the execution is based on a prior reference point in

time, members shall append to the transaction report a trade report

modifier designated by [NASD] FINRA and shall include in the

transaction report the prior reference time.

**Example:**

At 9:45 a.m., a member discovers that a customer’s order to BUY

100 shares at the opening price has not been executed. The member

executes the customer’s order at 9:45 a.m. at the opening price (40).

Current market is 41.

REPORT 100 shares at 40 and append the .PRP modifier with the

time 9:30.

**(f) Prohibition on Aggregation of Transactions**

Individual executions of orders in a security at the same price may not be aggregated, for transaction reporting purposes, into a single transaction report.

**(g) Special Trade Indicator**

A Reporting Member shall append the designated symbol for special trades, step out trades, reversals, and [as-of] “as/of” trades.

**(h) Clearing Indicators**

A Reporting Member shall use a designated symbol to denote whether the trade is to be: (i) compared in TRACS; (ii) not compared in TRACS; (iii) compared in TRACS pursuant to an Automatic Give Up Agreement (“AGU”); or (iv) not compared in TRACS, but locked in pursuant to a Qualified Service Representation Agreement (“QSR”).

**(i) Transactions Not To Be Reported To [NASD] FINRA For Publication Purposes**

The following types of transactions effected by [NASD] FINRA members shall not be reported to TRACS for publication purposes:

- (1) transactions that are part of a primary distribution by an issuer or of a registered secondary distribution (other than “shelf distributions”) or of an unregistered secondary distribution;
- (2) transactions made in reliance on Section 4(2) of the Securities Act [of 1933];
- (3) transactions where the buyer and seller have agreed to trade at a price substantially unrelated to the current market for the security (e.g., to enable the seller to make a gift);

- (4) purchases or sales of securities effected upon the exercise of an option pursuant to the terms thereof or the exercise of any other right to acquire securities at a pre-established consideration unrelated to the current market;
- (5) transactions reported on or through an exchange;
- (6) the acquisition of securities by a member as principal in anticipation of making an immediate exchange distribution or exchange offering on an exchange; and
- (7) purchase of securities off the floor of an exchange pursuant to a tender offer.

**(j) Reporting Cancelled Trades**

**(1) Obligation and Party Responsible for Reporting Cancelled Trades**

Members shall report the cancellation of any trade through TRACS that was previously submitted to [NASD] FINRA through TRACS. The member responsible under the [4600A] 6280 [s]Series for submitting the original trade report shall submit the cancellation report in accordance with the procedures set forth in [4600A Series] paragraph (j)(2).

**(2) Deadlines for Reporting Cancelled Trades**

(A) For trades executed between 9:30 a.m. and 4:00 p.m. Eastern Time, the member responsible under paragraph (j)(1) shall use its best efforts to report the cancellation not later than 6:30 p.m. on the date of execution, and otherwise it shall report the cancellation on the following business day by 6:30 p.m.

(B) For trades executed outside the hours of 9:30 a.m. and 4:00 p.m. Eastern Time, the member responsible under paragraph (j)(1) shall use its best efforts to report the cancellation not later than 6:30 p.m. on the date of execution, and otherwise it shall report the cancellation on the following business day by 6:30 p.m.

(C) For purposes of determining the deadline by which a trade cancellation must be reported to [NASD] FINRA pursuant to [sub]paragraph (j) of this [r]Rule the term “cancelled” or “cancellation” shall mean the time at which (i) the member with the reporting responsibility informs its contra party, or is informed by its contra party, that a trade is being cancelled, (ii) the member with the reporting responsibility and its contra party agree to cancel a trade if neither party can unilaterally cancel the trade, or (iii) the member with the reporting responsibility takes an action to cancel the trade on its books and records, whichever event occurs first.

**[4000C] 6300B. [The NASD] FINRA/NSX TRADE REPORTING FACILITY**

**[4100C] 6310B. General**

Members may use the [NASD] FINRA/NSX Trade Reporting Facility to report transactions executed otherwise than on an exchange in all NMS stocks as defined in SEA Rule 600(b)(47) of Regulation NMS [under the Act] (“designated securities”). Members that use the [NASD] FINRA/NSX Trade Reporting Facility must comply with the Rule [4000C] 6300B and [6000C] 7200B Series, as well as all other applicable rules.

The Rule [4000C] 6300B and [6000C] 7200B Series shall apply only to members using the [NASD] FINRA/NSX Trade Reporting Facility.

**[4110C] 6330B. Use of [NASD] FINRA/NSX Trade Reporting Facility on a Test Basis**

[NASD] FINRA may at any time authorize the use of the [NASD] FINRA/NSX Trade Reporting Facility on a test basis for whatever studies it considers necessary and appropriate.

**[4200C] 6320B. Definitions**

(a) For purposes of the Rule [4000C] 6300B Series, unless the context requires otherwise:

(1) “Exchange Act” or “SEA” means the Securities Exchange Act of 1934.

(2) “Designated securities” means all NMS stocks as defined in SEA Rule 600(b)(47) of Regulation NMS [under the Act].

(3) “Member” means a broker or dealer admitted to [NASD] FINRA membership.

(4) “Market Maker” means an “exchange market maker” or “OTC market maker,” as those terms are defined in SEA Rule 600(b) of Regulation NMS [under the Act], that is registered in a particular designated security as such with an exchange or a registered securities association or a facility thereof. A member is considered a Market Maker only in those designated securities for which it is registered as such.

(5) "Normal market hours" means 9:30 a.m. Eastern Time to 4:00 p.m. Eastern Time.

(6) "Normal unit of trading" means 100 shares of a security unless, with respect to a particular security, [NASD] FINRA determines that a normal unit of trading shall constitute other than 100 shares.

(7) "NSX" means the National Stock Exchange and its facilities.

(8) "Otherwise than on an exchange" means a trade effected by an [NASD] FINRA member otherwise than on or through a national securities exchange. The determination of what constitutes a trade "on or through" a particular national securities exchange shall be determined by that exchange in accordance with all applicable statutes, rules and regulations, and with any necessary SEC approval.

(9) "Round lot holder" means a holder of a normal unit of trading.

(10) "Stop Stock Price" means the specified price at which a member and another party agree a Stop Stock Transaction shall be executed, and which price is based upon the prices at which the security is trading at the time the order is received by the member, taking into consideration that the specified price may deviate from the current market prices to factor in the size of the order and the number of shares available at those prices.

(11) "Stop Stock Transaction" means any transaction that meets both of the following conditions:

(A) the transaction is the result of an order in which a member and another party agree that the order will be executed at a Stop Stock Price or better; and

(B) the order is executed at the Stop Stock Price or better.

(12) "Trade Reporting Facility Participant" or "Participant" means any member of [NASD] FINRA in good standing that uses the [NASD] FINRA/NSX Trade Reporting Facility.

(13) Terms used in this Rule 6300B Series shall have the meaning as defined in the FINRA By-Laws and rules, SEA Rule 600(b) of Regulation NMS, and the Joint Self-Regulatory Organization Plan Governing the Collection, Consolidation, and Dissemination of Quotation and Transaction Information for Nasdaq-Listed Securities Traded on Exchanges on an Unlisted Trading Privilege Basis, unless otherwise defined herein.

**[4616C] 6340B. Reports**

A Trade Reporting Facility Participant shall make such reports to [NASD] FINRA as may be prescribed from time to time by [NASD] FINRA.

**[4618C] 6350B. Clearance and Settlement**

(a) A Trade Reporting Facility Participant shall clear and settle transactions in designated securities through the facilities of a registered clearing agency that uses a continuous net settlement system. This requirement may be satisfied by direct participation, use of direct clearing services, or by entry into a correspondent clearing arrangement with another member that clears trades through such an agency.

(b) Notwithstanding paragraph (a), transactions in designated securities may be settled “ex-clearing” provided that both parties to the transaction agree.

**[4621C] 6360B. Suspension and Termination by [NASD] FINRA Action**

[NASD] FINRA may, pursuant to the procedures set forth in the Rule 9000 Series, suspend, condition, limit, prohibit or terminate a Trade Reporting Facility Participant’s ability to use [NASD] FINRA/NSX Trade Reporting Facility services in one or more designated securities for violations of applicable requirements or prohibitions.

**[4622C] 6370B. Termination of [NASD] FINRA/NSX Trade Reporting Facility Service**

[NASD] FINRA may, upon notice, terminate [NASD] FINRA/NSX Trade Reporting Facility service in the event that a Trade Reporting Facility Participant fails to qualify under specified standards of eligibility or fails to pay promptly for services rendered.

**[4630C. Reporting Transactions in Designated Securities]**

[This Rule 4630C Series applies to the reporting by members of transactions in designated securities to the NASD/NSX Trade Reporting Facility.]

**[4631C. Definitions]**

[Terms used in this Rule 4630C Series shall have the meaning as defined in NASD’s By-Laws and Rules, Rule 600(b) of Regulation NMS under the Act, and the Joint Self-Regulatory Organization Plan Governing the Collection, Consolidation, and Dissemination of Quotation and Transaction Information for Nasdaq-Listed Securities Traded on Exchanges on an Unlisted Trading Privilege Basis, unless otherwise defined herein.]

**[4632C] 6380B. Transaction Reporting**

**(a) When and How Transactions are Reported**

(1) Trade Reporting Facility Participants shall, within 90 seconds after execution, transmit to the [NASD] FINRA/NSX Trade Reporting Facility or if the [NASD] FINRA/NSX Trade Reporting Facility is unavailable due to system or transmission failure, by telephone to the Operations Department, last sale reports of transactions in designated securities executed during normal market hours.

Transactions not reported within 90 seconds after execution shall be designated as late.

**(2) Transaction Reporting to the [NASD] FINRA/NSX Trade Reporting Facility Outside Normal Market Hours**

(A) Last sale reports of transactions in designated securities executed between 8:00 a.m. and 9:30 a.m. Eastern Time shall be reported within 90 seconds after execution and shall be designated with the unique trade report modifier, as specified by [NASD] FINRA, to denote their execution outside normal market hours. Such transactions not reported before 9:30 a.m. shall be reported after 4:00 p.m. and before 6:30 p.m. with the appropriate trade report modifier as specified by [NASD] FINRA.

(B) Last sale reports of transactions in designated securities executed between the hours of 4:00 p.m. and 6:30 p.m. Eastern Time shall be reported within 90 seconds after execution and be designated with the unique trade report modifier, as specified by [NASD] FINRA, to denote their execution outside normal market hours. Transactions not reported

before 6:30 p.m. shall be reported on an “as/of” basis the following business day (T+1) between 8:00 a.m. and 6:30 p.m. Eastern Time.

(C) Last sale reports of transactions executed between midnight and 8:00 a.m. Eastern Time shall be reported between 8:00 a.m. and 9:30 a.m. Eastern Time on trade date with the unique trade report modifier, as specified by [NASD] FINRA, to denote their execution outside normal market hours. Such transactions not reported before 9:30 a.m. shall be reported after 4:00 p.m. and before 6:30 p.m. with the appropriate trade report modifier as specified by [NASD] FINRA.

(D) Last sale reports of transactions executed between 6:30 p.m. and midnight Eastern Time shall be reported the following business day (T+1) between 8:00 a.m. and 6:30 p.m. Eastern Time and be designated “as/of” trades.

(3) Members shall time-stamp all trade tickets at the time of execution for transactions in designated securities. Execution time shall be reported to [NASD] FINRA on all last sale reports and shall be expressed in hours, minutes and seconds based on Eastern Time in military format, unless another provision of [NASD] FINRA rules requires that a different time be included on the report.

(4) Transactions not reported within 90 seconds after execution shall be designated as late. A pattern or practice of late reporting without exceptional circumstances may be considered conduct inconsistent with high standards of commercial honor and just and equitable principles of trade in violation of NASD Rule 2110.

(5) Members also shall append the applicable trade report modifiers as specified by [NASD] FINRA to all last sale reports, including reports of “as/of” trades:

- (A) if the trade is executed during normal market hours and it is reported later than 90 seconds after execution;
- (B) if the trade is a Seller’s Option Trade, denoting the number of days for delivery;
- (C) if the trade is a Cash Trade;
- (D) if the trade is a Next Day Trade;
- (E) if the trade occurs at a price based on an average weighting or another special pricing formula;
- (F) if the trade is a Stop Stock Transaction (as defined in Rule [4200C] 6320B) (Note: the time at which the member and the other party agreed to the Stop Stock Price must be given in lieu of including the time of execution on the trade report and the designated modifier shall not be appended to a report of a Stop Stock Transaction if the Stop Stock Transaction is executed and reported within 90 seconds of the time the member and the other party agree to the Stop Stock Price);
- (G) if the transaction report reflects a price different from the current market when the execution price is based on a prior reference point in time (Note: the transaction report shall include the prior reference time in lieu of the actual time the trade was executed and the designated modifier shall not be appended to a report of a transaction whose price is

based on a prior reference point in time if the trade is executed and reported within 90 seconds from the prior reference point in time);

(H) to identify pre-opening and after-hours trades (executed between 8:00 a.m. and 9:30 a.m. Eastern time or between 4:00 p.m. and 6:30 p.m. Eastern time) reported more than 90 seconds after execution;

(I) if the trade would be a trade-through of a protected quotation, but for the trade being qualified for an exception or exemption from SEA Rule 611 of Regulation NMS [under the Act] (Note: to ensure consistency in the usage of SEA Rule 611 related modifiers by registered broker-dealers, this modifier will be used in conformity with the specifications approved by the Operating Committee of the relevant National Market System Plans to identify trades executed pursuant to an exception or exemption from SEA Rule 611);

(J) if the trade would be a trade-through of a protected quotation, but for the trade being qualified for an exception or exemption from SEA Rule 611 of Regulation NMS [under the Act], members must, in addition to the modifier required in subparagraph (I) above, append an appropriate unique modifier, specified by [NASD] FINRA, that identifies the specific applicable exception or exemption from SEA Rule 611 that a member is relying upon (Note: to ensure consistency in the usage of SEA Rule 611 related modifiers by registered broker-dealers, these modifiers will be used in conformity with the specifications approved by the Operating

Committee of the relevant National Market System Plans to identify trades executed pursuant to an exception or exemption from SEA Rule 611); and

(K) any other modifier as specified by [NASD] FINRA or the

[Securities and Exchange Commission] SEC.

To the extent that any of the modifiers required by this [r]Rule conflict, [NASD] FINRA shall provide guidance regarding the priorities among modifiers and members shall report in accordance with such guidance, as applicable.

(6) The [NASD] FINRA/NSX Trade Reporting Facility will append the appropriate modifier to indicate that a trade was executed outside normal market hours or that a report was submitted late to the [NASD] FINRA/NSX Trade Reporting Facility, where such report contains the time of execution, but does not contain the appropriate modifier.

(7) To identify pre-opening and after-hours trades reported late, the [NASD] FINRA/NSX Trade Reporting Facility will convert the late modifier, as applicable, on any pre-opening or after-hours report submitted to the [NASD] FINRA/NSX Trade Reporting Facility more than 90 seconds after execution.

(8) Participants must use an alternative electronic mechanism, and comply with all rules applicable to such alternative mechanism, to report transactions to [NASD] FINRA in designated securities for which electronic submission to the [NASD] FINRA/NSX Trade Reporting Facility is not possible. Where last sale reports of transactions in designated securities cannot be submitted to [NASD] FINRA via an alternative electronic mechanism (e.g., the

ticker symbol for the security is no longer available or a market participant identifier is no longer active), members shall report such transactions as soon as practicable to the [NASD] FINRA Market Regulation Department on Form T. Transactions that can be reported to [NASD] FINRA electronically, whether on trade date or on a subsequent date on an [“as of”] “as/of” basis (T+N), shall not be reported on Form T.

**(b) Which Party Reports the Transaction**

- (1) In transactions between two Market Makers, the member representing the sell side shall report the trade.
- (2) In transactions between a Market Maker and a Non-Market Maker, the Market Maker shall report the trade.
- (3) In transactions between two Non-Market Makers, the member representing the sell side shall report the trade.
- (4) In transactions between a member and a non-member or customer, the member shall report the trade.
- (5) In transactions conducted through a Reporting ECN (as defined in Rule [6110C] 7210B) that are reported to the [NASD] FINRA/NSX Trade Reporting Facility, the Reporting ECN shall ensure that transactions are reported in accordance with Rule [6130C] 7230B(c).

**(c) Information To Be Reported**

Each last sale report shall contain the following information:

- (1) Stock symbol of the designated security;
- (2) Number of shares or bonds;

- (3) Price of the transaction as required by paragraph (d) below;
- (4) A symbol indicating whether the transaction is a buy, sell, sell short, or cross;
- (5) The time of execution expressed in hours, minutes and seconds based on Eastern Time in military format, unless another provision of [NASD] FINRA rules requires that a different time be included in the report; and
- (6) For any transaction in an order for which a member has recording and reporting obligations under Rules [6954] 7440 and [6955] 7450, the trade report must include an order identifier, meeting such parameters as may be prescribed by [NASD] FINRA, assigned to the order that uniquely identifies the order for the date it was received (see Rule [6954] 7440(b)(1)).

**(d) Procedures for Reporting Price and Volume**

Members that report transactions to the [NASD] FINRA/NSX Trade Reporting Facility, pursuant to paragraph (b) above shall transmit last sale reports for all purchases and sales in designated securities in the following manner:

- (1) For agency transactions, report the number of shares or bonds and the price excluding the commission charged.

**Example:**

SELL as agent 100 shares at 40 less a commission of \$12.50;

REPORT 100 shares at 40.

- (2) For dual agency transactions, report the number of shares or bonds only once, and report the price excluding the commission charged.

**Example:**

SELL as agent 100 shares at 40 less a commission of \$12.50;

BUY as agent 100 shares at 40 plus a commission of \$12.50;

REPORT 100 shares at 40.

(3) (A) For principal transactions, except as provided below, report each purchase and sale transaction separately and report the number of shares or bonds and the price. For principal transactions that are executed at a price that includes a mark-up, mark-down or service charge, the price reported shall exclude the mark-up, mark-down or service charge. Such reported price shall be reasonably related to the prevailing market, taking into consideration all relevant circumstances including, but not limited to, market conditions with respect to the security, the number of shares or bonds involved in the transaction, the published bids and offers with size at the time of the execution (including the reporting firm's own quotation), the cost of execution and the expenses involved in clearing the transaction.

**Example:**

BUY as principal 100 shares from another member at 40 (no mark-down included);

REPORT 100 shares at 40.

**Example:**

BUY as principal 100 shares from a customer at 39.90 which includes a \$0.10 mark-down from prevailing market at 40;

REPORT 100 shares at 40.

**Example:**

SELL as principal 100 shares to a customer at 40.10, which

includes a \$0.10 mark-up from the prevailing market of 40;

REPORT 100 shares at 40.

**Example:**

BUY as principal 10,000 shares from a customer at 39.75, which

includes a \$0.25 mark-down or service charge from the prevailing

market of 40;

REPORT 10,000 shares at 40.

(B) Exception: A “riskless” principal transaction in which a member after having received an order to buy a security, purchases the security as principal at the same price to satisfy the order to buy or, after having received an order to sell, sells the security as principal at the same price to satisfy the order to sell, shall be reported to the [NASD] FINRA/NSX Trade Reporting Facility as one transaction in the same manner as an agency transaction, excluding the mark-up or mark-down, commission-equivalent, or other fee. Alternatively, a member may report a riskless principal transaction to by submitting the following report(s):

(i) The member with the obligation to report the transaction pursuant to paragraph (b) above must submit a last sale report for the initial leg of the transaction.

(ii) Where the initial leg of the transaction has been reported to [NASD] FINRA, regardless of whether a member has a

reporting obligation pursuant to paragraph (b) above, the firm must submit, for the offsetting, “riskless” portion of the transaction, either:

- a. a clearing-only report with a capacity indicator of “riskless principal,” if a clearing report is necessary to clear the transaction; or
- b. a non-tape, non-clearing report with a capacity indicator of “riskless principal,” if a clearing report is not necessary to clear the transaction.

**Example:**

SELL as a principal 100 shares to another member

at 40 to fill an existing order;

BUY as principal 100 shares from a customer at 40 minus a mark-down of \$12.50;

REPORT 100 shares at 40 by submitting a single trade report marked with a “riskless principal” capacity indicator to the [NASD] FINRA/NSX

Trade Reporting Facility or by submitting the following reports:

1. where required by this Rule, a tape report marked with a “principal” capacity indicator; and

2. either a non-tape, non-clearing report or a clearing-only report marked with a “riskless principal” capacity indicator.

In a riskless principal transaction in which a member purchases or sells the security on an exchange to satisfy a customer’s order, the order will be reported by the exchange. A member may, however, submit to the [NASD] FINRA/NSX Trade Reporting Facility a clearing only report or a non-tape, non-clearing report for the “riskless” leg of a riskless principal transaction where the initial leg has been reported on or through an exchange. Any such report submitted to the [NASD] FINRA/NSX Trade Reporting Facility shall comply with all applicable requirements for trade reports set forth in this Rule [4632C] 6380B.

**Example:**

BUY as principal 100 shares on an exchange at 40 to fill an existing order;

DO NOT REPORT this leg (will be reported by exchange).

SELL as principal 100 shares to a customer at 40 plus a mark-up of \$12.50.

A member MAY submit to the [NASD] FINRA/NSX Trade Reporting Facility either a non-tape, non-clearing report or a clearing-only report for this leg marked with a “riskless principal” capacity indicator.

**(e) Transactions Not To Be Reported for Publication Purposes**

The following types of transactions shall not be reported to the [NASD]  
FINRA/NSX Trade Reporting Facility for publication purposes:

- (1) transactions that are part of a primary distribution by an issuer or of a registered secondary distribution (other than “shelf distributions”) or of an unregistered secondary distribution;
- (2) transactions made in reliance on Section 4(2) of the Securities Act [of 1933];
- (3) transactions where the buyer and seller have agreed to trade at a price substantially unrelated to the current market for the security, e.g., to enable the seller to make a gift;
- (4) purchases or sales of securities effected upon the exercise of an option pursuant to the terms thereof or the exercise of any other right to acquire securities at a pre-established consideration unrelated to the current market;
- (5) transactions reported on or through an exchange;
- (6) the acquisition of securities by a member as principal in anticipation of making an immediate exchange distribution or exchange offering on an exchange; and
- (7) purchases of securities off the floor of an exchange pursuant to a tender offer.

**(f) Reporting Cancelled Trades**

**(1) Obligation and Party Responsible for Reporting Cancelled Trades**

With the exception of trades cancelled in accordance with NASD Rule 11890, members shall report to the [NASD] FINRA/NSX Trade Reporting Facility the cancellation of any trade previously submitted to the [NASD] FINRA/NSX Trade Reporting Facility. The member responsible for submitting the original trade report shall submit the cancellation report in accordance with the procedures set forth in paragraph (f)(2).

**(2) Deadlines for Reporting Cancelled Trades**

(A) For trades executed between 9:30 a.m. and 4:00 p.m. Eastern Time and cancelled before 4:00 p.m. on the date of execution, the member responsible under paragraph (f)(1) shall report the cancellation within 90 seconds of the time the trade is cancelled.

(B) For trades executed between 9:30 a.m. and 4:00 p.m. Eastern Time and cancelled after 4:00 p.m. but before 6:30 p.m. on the date of execution, the member responsible under paragraph (f)(1) shall use its best efforts to report the cancellation not later than 6:30 p.m. on the date of execution, and otherwise it shall report the cancellation on the following business day by 6:30 p.m.

(C) For trades executed between 9:30 a.m. and 4:00 p.m. Eastern Time and cancelled after 6:30 p.m. on the date of execution, the member responsible under paragraph (f)(1) shall report the cancellation on the following business day by 6:30 p.m.

(D) For trades executed outside the hours of 9:30 a.m. to 4:00 p.m. Eastern Time and cancelled prior to 6:30 p.m. on the date of execution, the member responsible for reporting under paragraph (f)(1) shall report the cancellation by 6:30 p.m.

(E) For trades executed outside the hours of 9:30 a.m. to 4:00 p.m. Eastern Time and cancelled after 6:30 p.m. on the date of execution, the member responsible under paragraph (f)(1) shall report the cancellation on the following business day by 6:30 p.m.

(F) For any trade cancelled on any date after the date of execution, the member responsible under paragraph (f)(1) shall report the cancellation (i) by 6:30 p.m. on the date of cancellation if the trade is cancelled before 6:30 p.m., or (ii) by 6:30 p.m. on the following business day if the trade is cancelled at or after 6:30 p.m.

(G) For purposes of determining the deadline by which a trade cancellation must be reported pursuant to [sub]paragraph (f) of this [r]Rule the term “cancelled” shall mean the time at which (i) the member with the reporting responsibility informs its contra party, or is informed by its contra party, that a trade is being cancelled, (ii) the member with the reporting responsibility and its contra party agree to cancel a trade if neither party can unilaterally cancel the trade, or (iii) the member with the reporting responsibility takes an action to cancel the trade on its books and records, whichever event occurs first.

(g) A member may agree to allow a Participant to report and lock-in trades on its behalf, if both parties have completed an agreement to that effect (a “give up agreement”) as specified by [NASD] FINRA and submitted it to the [NASD] FINRA/NSX Trade Reporting Facility. However, the member with the reporting obligation remains responsible for the transaction submitted on its behalf. Further, both the member with the reporting obligation and the member submitting the trade to the [NASD] FINRA/NSX Trade Reporting Facility are responsible for ensuring that the information submitted is in compliance with all applicable rules and regulations.

**(h) Prohibition on Aggregation of Transaction Reports**

Individual executions of orders in a security at the same price may not be aggregated, for purposes of transaction reporting to the [NASD] FINRA/NSX TRF, into a single transaction report.

**[IM-4632C-1. Transaction Reporting]**

[NASD emphasizes the obligations of members to report securities transactions within 90 seconds after execution. All reportable transactions not reported within 90 seconds after execution shall be reported as late, and NASD routinely monitors members’ compliance with the 90-second requirement. If NASD finds a pattern or practice of unexcused late reporting, that is, repeated reports of executions after 90 seconds without reasonable justification or exceptional circumstances, the member may be found to be in violation of Rule 2110. Exceptional circumstances will be determined on a case-by-case basis and may include instances of system failure by a member or service bureau, or unusual market conditions, such as extreme volatility in a security, or in the market as a whole. Timely reporting of all transactions is necessary and appropriate for the fair and

orderly operation of the marketplace, and the NASD will view noncompliance as a rule violation.]

**[4633C. Trading Halts]**

**[(a) Authority to Initiate Halts In Trading of Designated Securities Reported to the NASD/NSX Trade Reporting Facility]**

[NASD, pursuant to the procedures set forth in paragraph (b):]

[(1) shall halt trading otherwise than on an exchange reported to the NASD/NSX Trade Reporting Facility in a designated security whenever any market that has the authority to call a regulatory halt in the security imposes a trading halt, or suspends the listing, to:]

[(A) permit dissemination of material news;]

[(B) obtain information from the issuer relating to material news;]

[(C) obtain information relating to the issuer's ability to meet listing qualification requirements; or]

[(D) obtain any other information that is necessary to protect investors and the public interest.]

[(2) shall halt trading otherwise than on an exchange reported to the NASD/NSX Trade Reporting Facility in a designated security when:]

[(A) extraordinary market activity in the security is occurring, such as the execution of a series of transactions for a significant dollar value at prices substantially unrelated to the current market for the security, as measured by the national best bid and offer, and]

[(B) NASD determines that such extraordinary market activity is likely to have a material effect on the market for the security; and]

[(C) (i) NASD determines that such extraordinary market activity is caused by the misuse or malfunction of an electronic quotation, communication, reporting, or execution system operated by, or linked to, NASD; or]

[(ii) After consultation with a national securities exchange trading the security, NASD determines that such extraordinary market activity is caused by the misuse or malfunction of an electronic quotation, communication, reporting, or execution system operated by, or linked to, such other national securities exchange.]

[(3) shall close the NASD/NSX Trade Reporting Facility to trade reporting activity whenever the NASD/NSX Trade Reporting Facility is unable to transmit real-time trade reporting information to the applicable Securities Information Processor. If the NASD/NSX Trade Reporting Facility closes trading pursuant to this subparagraph (3), members would not be prohibited from trading on other markets for which trading is not halted.]

[Members shall promptly notify NASD whenever they have knowledge of any matter related to a designated security or the issuer thereof that has not been adequately disclosed to the public or where they have knowledge of a regulatory problem relating to such security.]

**[(b) Commencement and Termination of a Trading Halt]**

[(1) In the event NASD determines that a basis exists under Rule 4633C(a) to initiate a trading halt or close the NASD/NSX Trade Reporting Facility, the commencement of the trading halt or closure will be effective simultaneously with appropriate notice.]

[(2) Trading shall resume upon appropriate notice that a trading halt or closure is no longer in effect.]

**[4000E] 6300C. [The NASD] FINRA/NYSE TRADE REPORTING FACILITY**

**[4100E] 6310C. General**

Members may use the [NASD] FINRA/NYSE Trade Reporting Facility to report transactions executed otherwise than on an exchange in all NMS stocks as defined in SEA Rule 600(b)(47) of Regulation NMS [under the Act] (“designated securities”).

Members that use the [NASD] FINRA/NYSE Trade Reporting Facility must comply with the Rule [4000E] 6300C and [6000E] 7200C Series, as well as all other applicable rules. The Rule [4000E] 6300C and [6000E] 7200C Series shall apply only to members using the [NASD] FINRA/NYSE Trade Reporting Facility.

**[4110E] 6330C. Use of [NASD] FINRA/NYSE Trade Reporting Facility on a Test Basis**

[NASD] FINRA may at any time authorize the use of the [NASD] FINRA/NYSE Trade Reporting Facility on a test basis for whatever studies it considers necessary and appropriate.

**[4200E] 6320C. Definitions**

(a) For purposes of the Rule [4000E] 6300C Series, unless the context requires otherwise:

(1) “Exchange Act” or “SEA” means the Securities Exchange Act of 1934.

(2) “Designated securities” means all NMS stocks as defined in SEA Rule 600(b)(47) of Regulation NMS [under the Act].

(3) “Member” means a broker or dealer admitted to [NASD] FINRA membership.

(4) “Market Maker” means an “exchange market maker” or “OTC market maker,” as those terms are defined in SEA Rule 600(b) of Regulation NMS [under the Act], that is registered in a particular designated security as such with an exchange or a registered securities association or a facility thereof. A member is considered a Market Maker only in those designated securities for which it is registered as such.

(5) “NYSE” means the NYSE Market, Inc.

(6) “Normal market hours” means 9:30 a.m. Eastern Time to 4:00 p.m. Eastern Time.

(7) “Normal unit of trading” means 100 shares of a security unless, with respect to a particular security, [NASD] FINRA determines that a normal unit of trading shall constitute other than 100 shares.

(8) “Otherwise than on an exchange” means a trade effected by an [NASD] FINRA member otherwise than on or through a national securities

exchange. The determination of what constitutes a trade “on or through” a particular national securities exchange shall be determined by that exchange in accordance with all applicable statutes, rules and regulations, and with any necessary SEC approval.

(9) “Round lot holder” means a holder of a normal unit of trading.

(10) “Stop Stock Price” means the specified price at which a member and another party agree a Stop Stock Transaction shall be executed, and which price is based upon the prices at which the security is trading at the time the order is received by the member, taking into consideration that the specified price may deviate from the current market prices to factor in the size of the order and the number of shares available at those prices.

(11) “Stop Stock Transaction” means any transaction that meets both of the following conditions:

(A) the transaction is the result of an order in which a member and another party agree that the order will be executed at a Stop Stock Price or better; and

(B) the order is executed at the Stop Stock Price or better.

(12) “Trade Reporting Facility Participant” or “Participant” means any member of [NASD] FINRA in good standing that uses the [NASD] FINRA/NYSE Trade Reporting Facility.

(13) Terms used in this Rule 6300C Series shall have the meaning as defined in the FINRA By-Laws and rules, SEA Rule 600(b) of Regulation NMS and the Joint Self-Regulatory Organization Plan Governing the Collection,

Consolidation, and Dissemination of Quotation and Transaction Information for Nasdaq-Listed Securities Traded on Exchanges on an Unlisted Trading Privilege Basis, unless otherwise defined herein.

**[4616E] 6340C. Reports**

A Trade Reporting Facility Participant shall make such reports to [NASD] FINRA as may be prescribed from time to time by [NASD] FINRA.

**[4618E] 6350C. Clearance and Settlement**

(a) A Trade Reporting Facility Participant shall clear and settle transactions in designated securities through the facilities of a registered clearing agency that uses a continuous net settlement system. This requirement may be satisfied by direct participation, use of direct clearing services, or by entry into a correspondent clearing arrangement with another member that clears trades through such an agency.

(b) Notwithstanding paragraph (a), transactions in designated securities may be settled “ex-clearing” provided that both parties to the transaction agree.

**[4621E] 6360C. Suspension and Termination by [NASD] FINRA Action**

[NASD] FINRA may, pursuant to the procedures set forth in the Rule 9000 Series, suspend, condition, limit, prohibit or terminate a Trade Reporting Facility Participant’s ability to use [NASD] FINRA/NYSE Trade Reporting Facility services in one or more designated securities for violations of applicable requirements or prohibitions.

**[4622E] 6370C. Termination of [NASD] FINRA /NYSE Trade Reporting Facility Service**

[NASD] FINRA may, upon notice, terminate [NASD] FINRA/NYSE Trade Reporting Facility service in the event that a Trade Reporting Facility Participant fails to qualify under specified standards of eligibility or fails to pay promptly for services rendered.

**[4630E. Reporting Transactions in Designated Securities]**

[This Rule 4630E Series applies to the reporting by members of transactions in designated securities to the NASD/NYSE Trade Reporting Facility.]

**[4631E. Definitions]**

[Terms used in this Rule 4630E Series shall have the meaning as defined in NASD's By-Laws and Rules, Rule 600(b) of Regulation NMS under the Act and the Joint Self-Regulatory Organization Plan Governing the Collection, Consolidation, and Dissemination of Quotation and Transaction Information for Nasdaq-Listed Securities Traded on Exchanges on an Unlisted Trading Privilege Basis, unless otherwise defined herein.]

**[4632E] 6380C. Transaction Reporting**

**(a) When and How Transactions are Reported**

- (1) Trade Reporting Facility Participants shall, within 90 seconds after execution, transmit to the [NASD] FINRA/NYSE Trade Reporting Facility or, if the [NASD] FINRA/NYSE Trade Reporting Facility is unavailable due to system or transmission failure, by telephone to the [NASD] FINRA/NYSE TRF Operations Department, last sale reports of transactions in designated securities

executed during normal market hours. Transactions not reported within 90 seconds after execution shall be designated as late.

**(2) Transaction Reporting to the [NASD] FINRA/NYSE Trade Reporting Facility Outside Normal Market Hours**

(A) Last sale reports of transactions in designated securities executed between 8:00 a.m. and 9:30 a.m. Eastern Time shall be reported within 90 seconds after execution and shall be designated with the unique trade report modifier, as specified by [NASD] FINRA, to denote their execution outside normal market hours. Such transactions not reported before 9:30 a.m. shall be reported after 4:00 p.m. and before 8:00 p.m. with the appropriate trade report modifier as specified by [NASD] FINRA.

(B) Last sale reports of transactions in designated securities executed between the hours of 4:00 p.m. and 8:00 p.m. Eastern Time shall be reported within 90 seconds after execution and be designated with the unique trade report modifier, as specified by [NASD] FINRA, to denote their execution outside normal market hours. Such transactions not reported before 8:00 p.m. shall be reported on an “as/of” basis the following business day (T+1) between 8:00 a.m. and 8:00 p.m.

(C) Last sale reports of transactions executed between midnight and 8:00 a.m. Eastern Time shall be reported between 8:00 a.m. and 9:30 a.m. Eastern Time on trade date with the unique trade report modifier, as specified by [NASD] FINRA, to denote their execution outside normal market hours. Such transactions not reported before 9:30 a.m. shall be

reported after 4:00 p.m. and before 8:00 p.m. with the appropriate trade report modifier as specified by [NASD] FINRA.

(D) Last sale reports of transactions executed between 8:00 p.m. and midnight Eastern Time shall be reported the following business day (T+1) between 8:00 a.m. and 8:00 p.m. Eastern Time and be designated “as/of” trades.

(3) Members shall time-stamp all trade tickets at the time of execution for transactions in designated securities. Execution time shall be reported to [NASD] FINRA on all last sale reports and shall be expressed in hours, minutes and seconds based on Eastern Time in military format, unless another provision of [NASD] FINRA rules requires that a different time be included on the report.

(4) Transactions not reported within 90 seconds after execution shall be designated as late. A pattern or practice of late reporting without exceptional circumstances may be considered conduct inconsistent with high standards of commercial honor and just and equitable principles of trade in violation of NASD Rule 2110.

(5) Members also shall append the applicable trade report modifiers as specified by [NASD] FINRA to all last sale reports, including reports of “as/of” trades:

(A) if the trade is executed during normal market hours and it is reported later than 90 seconds after execution;

(B) if the trade is a Seller’s Option Trade, denoting the number of days for delivery;

- (C) if the trade is a Cash Trade;
- (D) if the trade is a Next Day Trade;
- (E) if the trade occurs at a price based on an average weighting or another special pricing formula;
- (F) if the trade is a Stop Stock Transaction (as defined in Rule [4200E] 6320C) (Note: the time at which the member and the other party agreed to the Stop Stock Price must be given in lieu of including the time of execution on the trade report and the designated modifier shall not be appended to a report of a Stop Stock Transaction if the Stop Stock Transaction is executed and reported within 90 seconds of the time the member and the other party agree to the Stop Stock Price);
- (G) if the transaction report reflects a price different from the current market when the execution price is based on a prior reference point in time (Note: the transaction report shall include the prior reference time in lieu of the actual time the trade was executed and the designated modifier shall not be appended to a report of a transaction whose price is based on a prior reference point in time if the trade is executed and reported within 90 seconds from the prior reference point in time);
- (H) to identify pre-opening and after-hours trades (executed between 8:00 a.m. and 9:30 a.m. Eastern time or between 4:00 p.m. and 8:00 p.m. Eastern time) reported more than 90 seconds after execution;
- (I) if the trade would be a trade-through of a protected quotation, but for the trade being qualified for an exception or exemption from SEA

Rule 611 of Regulation NMS [under the Act] (Note: to ensure consistency in the usage of SEA Rule 611 related modifiers by registered broker-dealers, this modifier will be used in conformity with the specifications approved by the Operating Committee of the relevant National Market System Plans to identify trades executed pursuant to an exception or exemption from SEA Rule 611);

(J) if the trade would be a trade-through of a protected quotation, but for the trade being qualified for an exception or exemption from SEA Rule 611 of Regulation NMS [under the Act], members must, in addition to the modifier required in subparagraph (I) above, append an appropriate unique modifier, specified by [NASD] FINRA, that identifies the specific applicable exception or exemption from SEA Rule 611 that a member is relying upon (Note: to ensure consistency in the usage of SEA Rule 611 related modifiers by registered broker-dealers, these modifiers will be used in conformity with the specifications approved by the Operating Committee of the relevant National Market System Plans to identify trades executed pursuant to an exception or exemption from SEA Rule 611); and

(K) any other modifier as specified by [NASD] FINRA or the [Securities and Exchange Commission] SEC.

To the extent that any of the modifiers required by this [r]Rule conflict, [NASD] FINRA shall provide guidance regarding the priorities among modifiers and members shall report in accordance with such guidance, as applicable.

(6) The [NASD] FINRA/NYSE Trade Reporting Facility will append the appropriate modifier to indicate that a trade was executed outside normal market hours or that a report was submitted late to the [NASD] FINRA/NYSE Trade Reporting Facility, where such report contains the time of execution, but does not contain the appropriate modifier.

(7) To identify pre-opening and after-hours trades reported late, the [NASD] FINRA/NYSE Trade Reporting Facility will convert the late modifier, as applicable, on any pre-opening or after-hours report submitted to the [NASD] FINRA/NYSE Trade Reporting Facility more than 90 seconds after execution.

(8) Participants must use an alternative mechanism, and comply with all rules applicable to such alternative mechanism, to report transactions to [NASD] FINRA in designated securities for which electronic submission to the [NASD] FINRA/NYSE Trade Reporting Facility is not possible. Where last sale reports of transactions in designated securities cannot be submitted to [NASD] FINRA via an alternative electronic mechanism (e.g., the ticker symbol for the security is no longer available or a market participant identifier is no longer active), members shall report such transactions as soon as practicable to the [NASD] FINRA Market Regulation Department on Form T. Transactions that can be reported to [NASD] FINRA electronically, whether on trade date or on a subsequent date on an [“as of”] “as/of” basis (T+N), shall not be reported on Form T.

**(b) Which Party Reports the Transaction**

(1) In transactions between two Market Makers, the member representing the sell side shall report the trade.

(2) In transactions between a Market Maker and a Non-Market Maker, the Market Maker shall report the trade.

(3) In transactions between two Non-Market Makers, the member representing the sell side shall report the trade.

(4) In transactions between a member and a non-member or customer, the member shall report the trade.

(5) In transactions conducted through a Reporting ECN (as defined in Rule [6110E] 7210C) that are reported to the [NASD] FINRA/NYSE Trade Reporting Facility, the Reporting ECN shall ensure that transactions are reported in accordance with Rule [6130E] 7230C(c).

**(c) Information To Be Reported**

Each last sale report shall contain the following information:

(1) Stock symbol of the designated security;

(2) Number of shares or bonds;

(3) Price of the transaction as required by paragraph (d) below;

(4) A symbol indicating whether the transaction is a buy, sell, sell short, or cross;

(5) The time of execution expressed in hours, minutes and seconds based on Eastern Time in military format, unless another provision of [NASD] FINRA rules requires that a different time be included in the report; and

(6) For any transaction in an order for which a member has recording and reporting obligations under Rules [6954] 7440 and [6955] 7450, the trade report must include an order identifier, meeting such parameters as may be prescribed by

[NASD] FINRA, assigned to the order that uniquely identifies the order for the date it was received (see Rule [6954] 7440(b)(1)).

**(d) Procedures for Reporting Price and Volume**

Members that report transactions to the [NASD] FINRA/NYSE Trade Reporting Facility, pursuant to paragraph (b) above shall transmit last sale reports for all purchases and sales in designated securities in the following manner:

- (1) For agency transactions, report the number of shares or bonds and the price excluding the commission charged.

**Example:**

SELL as agent 100 shares at 40 less a commission of \$12.50;

REPORT 100 shares at 40.

- (2) For dual agency transactions, report the number of shares or bonds only once, and report the price excluding the commission charged.

**Example:**

SELL as agent 100 shares at 40 less a commission of \$12.50;

BUY as agent 100 shares at 40 plus a commission of \$12.50;

REPORT 100 shares at 40.

- (3) (A) For principal transactions, except as provided below, report each purchase and sale transaction separately and report the number of shares or bonds and the price. For principal transactions that are executed at a price that includes a mark-up, mark-down or service charge, the price reported shall exclude the mark-up, mark-down or service charge. Such reported price shall be reasonably related to the prevailing market, taking

into consideration all relevant circumstances including, but not limited to, market conditions with respect to the security, the number of shares or bonds involved in the transaction, the published bids and offers with size at the time of the execution (including the reporting firm's own quotation), the cost of execution and the expenses involved in clearing the transaction.

**Example:**

BUY as principal 100 shares from another member at 40 (no mark-down included);

REPORT 100 shares at 40.

**Example:**

BUY as principal 100 shares from a customer at 39.90 which includes a \$0.10 mark-down from prevailing market at 40;

REPORT 100 shares at 40.

**Example:**

SELL as principal 100 shares to a customer at 40.10, which includes a \$0.10 mark-up from the prevailing market of 40;

REPORT 100 shares at 40.

**Example:**

BUY as principal 10,000 shares from a customer at 39.75, which includes a \$0.25 mark-down or service charge from the prevailing market of 40;

REPORT 10,000 shares at 40.

(B) Exception: A “riskless” principal transaction in which a member after having received an order to buy a security, purchases the security as principal at the same price to satisfy the order to buy or, after having received an order to sell, sells the security as principal at the same price to satisfy the order to sell, shall be reported to the [NASD] FINRA/NYSE Trade Reporting Facility as one transaction in the same manner as an agency transaction, excluding the mark-up or mark-down, commission-equivalent, or other fee. Alternatively, a member may report a riskless principal transaction by submitting the following report(s):

- (i) The member with the obligation to report the transaction pursuant to paragraph (b) above must submit a last sale report for the initial leg of the transaction.
- (ii) Where the initial leg of the transaction has been reported to [NASD] FINRA, regardless of whether a member has a reporting obligation pursuant to paragraph (b) above, the firm must submit, for the offsetting, “riskless” portion of the transaction, either:
  - a. a clearing-only report with a capacity indicator of “riskless principal,” if a clearing report is necessary to clear the transaction; or
  - b. a non-tape, non-clearing report with a capacity indicator of “riskless principal,” if a clearing report is not necessary to clear the transaction.

**Example:**

SELL as a principal 100 shares to another member at 40 to fill an existing order;

BUY as principal 100 shares from a customer at 40 minus a mark-down of \$12.50;

REPORT 100 shares at 40 by submitting a single trade report marked with a “riskless principal” capacity indicator to the [NASD] FINRA/NYSE Trade Reporting Facility or by submitting the following reports:

[a] 1. where required by this Rule, a tape report marked with a “principal” capacity indicator; and

[b] 2. either a non-tape, non-clearing report or a clearing-only report marked with a “riskless principal” capacity indicator.

In a riskless principal transaction in which a member purchases or sells the security on an exchange to satisfy a customer’s order, the trade will be reported by the exchange. A member may, however, submit to the [NASD] FINRA/NYSE Trade Reporting Facility a clearing-only report or a non-tape, non-clearing report for the “riskless” leg of a riskless principal transaction where the initial leg has been reported on or through an exchange. Any such report submitted to the [NASD] FINRA/NYSE

Trade Reporting Facility shall comply with all applicable requirements for trade reports set forth in this Rule [4632E] 6380C.

**Example:**

BUY as principal 100 shares on an exchange at 40 to fill an existing order;

DO NOT REPORT this leg (will be reported by exchange).

SELL as principal 100 shares to a customer at 40 plus a mark-up of \$12.50.

A member MAY submit to the [NASD] FINRA/NYSE Trade Reporting Facility either a non-tape, non-clearing report or a clearing-only report for this leg marked with a “riskless principal” capacity indicator.

**(e) Transactions Not To Be Reported for Publication Purposes**

The following types of transactions shall not be reported to the [NASD] FINRA/NYSE Trade Reporting Facility for publication purposes:

- (1) transactions that are part of a primary distribution by an issuer or of a registered secondary distribution (other than “shelf distributions”) or of an unregistered secondary distribution;
- (2) transactions made in reliance on Section 4(2) of the Securities Act [of 1933];
- (3) transactions where the buyer and seller have agreed to trade at a price substantially unrelated to the current market for the security, e.g., to enable the seller to make a gift;

- (4) purchases or sales of securities effected upon the exercise of an option pursuant to the terms thereof or the exercise of any other right to acquire securities at a pre-established consideration unrelated to the current market;
- (5) transactions reported on or through an exchange;
- (6) the acquisition of securities by a member as principal in anticipation of making an immediate exchange distribution or exchange offering on an exchange; and
- (7) purchases of securities off the floor of an exchange pursuant to a tender offer.

**(f) Reporting Cancelled Trades**

**(1) Obligation and Party Responsible for Reporting Cancelled Trades**

With the exception of trades cancelled in accordance with NASD Rule 11890, members shall report to the [NASD] FINRA/NYSE Trade Reporting Facility the cancellation of any trade previously submitted to the [NASD] FINRA/NYSE Trade Reporting Facility. The member responsible for submitting the original trade report shall submit the cancellation report in accordance with the procedures set forth in paragraph (f)(2).

**(2) Deadlines for Reporting Cancelled Trades**

(A) For trades executed between 9:30 a.m. and 4:00 p.m. Eastern Time and cancelled before 4:00 p.m. on the date of execution, the member responsible under paragraph (f)(1) shall report the cancellation within 90 seconds of the time the trade is cancelled.

(B) For trades executed between 9:30 a.m. and 4:00 p.m. Eastern Time and cancelled after 4:00 p.m., but before 8:00 p.m. on the date of execution, the member responsible under paragraph (f)(1) shall use its best efforts to report the cancellation not later than 8:00 p.m. on the date of execution, and otherwise it shall report the cancellation on the following business day by 8:00 p.m.

(C) For trades executed between 9:30 a.m. and 4:00 p.m. Eastern Time and cancelled after 8:00 p.m. on the date of execution, the member responsible under paragraph (f)(1) shall report the cancellation on the following business day by 8:00 p.m.

(D) For trades executed outside the hours of 9:30 a.m. to 4:00 p.m. Eastern Time and cancelled prior to 8:00 p.m. on the date of execution, the member responsible for reporting under paragraph (f)(1) shall report the cancellation by 8:00 p.m.

(E) For trades executed outside the hours of 9:30 a.m. to 4:00 p.m. Eastern Time and cancelled after 8:00 p.m. on the date of execution, the member responsible under paragraph (f)(1) shall report the cancellation on the following business day by 8:00 p.m.

(F) For any trade cancelled on any date after the date of execution, the member responsible under paragraph (f)(1) shall report the cancellation (i) by 8:00 p.m. on the date of cancellation if the trade is cancelled before 6:30 p.m., or (ii) by 8:00 p.m. on the following business day if the trade is cancelled at or after 8:00 p.m.

(G) For purposes of determining the deadline by which a trade cancellation must be reported pursuant to [sub]paragraph (f) of this [r]Rule the term “cancelled” shall mean the time at which (i) the member with the reporting responsibility informs its contra party, or is informed by its contra party, that a trade is being cancelled, (ii) the member with the reporting responsibility and its contra party agree to cancel a trade if neither party can unilaterally cancel the trade, or (iii) the member with the reporting responsibility takes an action to cancel the trade on its books and records, whichever event occurs first.

(g) A member may agree to allow a Participant to report and lock-in trades on its behalf, if both parties have completed an agreement to that effect (a “give up agreement”) as specified by [NASD] FINRA and submitted it to the [NASD] FINRA/NYSE Trade Reporting Facility. However, the member with the reporting obligation remains responsible for the transaction submitted on its behalf. Further, both the member with the reporting obligation and the member submitting the trade to the [NASD] FINRA/NYSE Trade Reporting Facility are responsible for ensuring that the information submitted is in compliance with all applicable rules and regulations.

**(h) Prohibition on Aggregation of Transaction Reports**

Individual executions of orders in a security at the same price may not be aggregated, for purposes of transaction reporting to the [NASD] FINRA/NYSE TRF, into a single transaction report.

**[IM-4632E-1. Transaction Reporting]**

[NASD emphasizes the obligations of members to report securities transactions within 90 seconds after execution. All reportable transactions not reported within 90 seconds after execution shall be reported as late, and NASD routinely monitors members' compliance with the 90-second requirement. If NASD finds a pattern or practice of unexcused late reporting, that is, repeated reports of executions after 90 seconds without reasonable justification or exceptional circumstances, the member may be found to be in violation of Rule 2110. Exceptional circumstances will be determined on a case-by-case basis and may include instances of system failure by a member or service bureau, or unusual market conditions, such as extreme volatility in a security, or in the market as a whole. Timely reporting of all transactions is necessary and appropriate for the fair and orderly operation of the marketplace, and the NASD will view noncompliance as a rule violation.]

**[4633E. Trading Halts]**

**[(a) Authority to Initiate Halts In Trading of Designated Securities Reported to the NASD/NYSE Trade Reporting Facility]**

[NASD, pursuant to the procedures set forth in paragraph (b):]

[(1) shall halt trading otherwise than on an exchange reported to the NASD/NYSE Trade Reporting Facility in a designated security whenever any market that has the authority to call a regulatory halt in the security imposes a trading halt, or suspends the listing, to:]

[(A) permit dissemination of material news;]

[(B) obtain information from the issuer relating to material news;]

[(C) obtain information relating to the issuer's ability to meet listing qualification requirements; or]

[(D) obtain any other information that is necessary to protect investors and the public interest.]

[(2) shall halt trading otherwise than on an exchange reported to the NASD/NYSE Trade Reporting Facility in a designated security when:]

[(A) extraordinary market activity in the security is occurring, such as the execution of a series of transactions for a significant dollar value at prices substantially unrelated to the current market for the security, as measured by the national best bid and offer, and]

[(B) NASD determines that such extraordinary market activity is likely to have a material effect on the market for the security; and]

[(C) (i) NASD determines that such extraordinary market activity is caused by the misuse or malfunction of an electronic quotation, communication, reporting, or execution system operated by, or linked to, NASD; or]

[(ii) After consultation with a national securities exchange trading the security, NASD determines that such extraordinary market activity is caused by the misuse or malfunction of an electronic quotation, communication, reporting, or execution system operated by, or linked to, such other national securities exchange.]

[(3) shall close the NASD/NYSE Trade Reporting Facility to trade reporting activity whenever the NASD/NYSE Trade Reporting Facility is unable to transmit real-time trade reporting information to the applicable Securities Information Processor. If the NASD/NYSE Trade Reporting Facility closes trading pursuant to this subparagraph (3), members would not be prohibited from trading on other markets for which trading is not halted. Members shall promptly notify NASD whenever they have knowledge of any matter related to a designated security or the issuer thereof that has not been adequately disclosed to the public or where they have knowledge of a regulatory problem relating to such security.]

**[(b) Commencement and Termination of a Trading Halt]**

[(1) In the event NASD determines that a basis exists under Rule 4633E(a) to initiate a trading halt or close the NASD/NYSE Trade Reporting Facility, the commencement of the trading halt or closure will be effective simultaneously with appropriate notice.]

[(2) Trading shall resume upon appropriate notice that a trading halt or closure is no longer in effect.]

**6000. QUOTATION AND TRANSACTION REPORTING FACILITIES**

**6100. QUOTING AND TRADING IN NMS STOCKS**

**[5000] 6110. Trading Otherwise than on an Exchange**

Members are required to report transactions in [exchange-listed securities] NMS stocks, as defined in SEA Rule 600(b)(47) of Regulation NMS, effected otherwise than on or through a national securities exchange to [NASD] FINRA. For purposes of the

[5000] Rule 6100 Series, “otherwise than on an exchange” means a trade effected by a[n  
NASD] FINRA member otherwise than on or through a national securities exchange.

The determination of what constitutes a trade “on or through” a particular national securities exchange shall be determined by that exchange in accordance with all applicable statutes, rules and regulations, and with any necessary SEC approval.

**[5100. Reserved.]**

**[5110] 6130. Transactions Related to Initial Public Offerings**

No member or person associated with a member shall execute or cause to be executed, directly or indirectly, a transaction otherwise than on an exchange in a security subject to an initial public offering until such security has first opened for trading on the national securities exchange listing the security, as indicated by the dissemination of an opening transaction in the security by the listing exchange.

**[5120] 6140. Other Trading Practices**

(a) No member shall execute or cause to be executed or participate in an account for which there are executed purchases of any NMS [S]tock as defined in SE[C]A Rule 600(b)[(42)][(47) of Regulation NMS (“designated security”) at successively higher prices, or sales of any such security at successively lower prices, for the purpose of creating or inducing a false, misleading or artificial appearance of activity in such security or for the purpose of unduly or improperly influencing the market price for such security or for the purpose of establishing a price which does not reflect the true state of the market in such security.

(b) No member shall, for the purpose of creating or inducing a false or misleading appearance of activity in a designated security or creating or inducing a false or misleading appearance with respect to the market in such security:

- (1) execute any transaction in such security which involves no change in the beneficial ownership thereof; or
- (2) enter any order or orders for the purchase of such security with the knowledge that an order or orders of substantially the same size, and at substantially the same price, for the sale of any such security, has been or will be entered by or for the same or different parties; or
- (3) enter any order or orders for the sale of any such security with the knowledge that an order or orders of substantially the same size, and at substantially the same price, for the purchase of such security, has been or will be entered by or for the same or different parties.

(c) No member shall execute purchases or sales of any designated security for any account in which such member is directly or indirectly interested, which purchases or sales are excessive in view of the member's financial resources or in view of the market for such security.

(d) No member shall participate or have any interest, directly or indirectly, in the profits of a manipulative operation or knowingly manage or finance a manipulative operation.

- (1) Any pool, syndicate or joint account organized or used intentionally for the purpose of unfairly influencing the market price of a designated security shall be deemed to be a manipulative operation.

(2) The solicitation of subscriptions to or the acceptance of discretionary orders from any such pool, syndicate or joint account shall be deemed to be managing a manipulative operation.

(3) The carrying on margin of a position in such securities or the advancing of credit through loans to any such pool, syndicate or joint account shall be deemed to be financing a manipulative operation.

(e) No member shall make any statement or circulate and disseminate any information concerning any designated security which such member knows or has reasonable grounds for believing is false or misleading or would improperly influence the market price of such security.

(f) No member or person associated with a member shall, directly or indirectly, hold any interest or participation in any joint account for buying or selling a designated security, unless such joint account is promptly reported to [NASD] FINRA. The report should contain the following information for each account:

- (1) Name of the account, with names of all participants and their respective interests in profits and losses;
- (2) a statement regarding the purpose of the account;
- (3) name of the member carrying and clearing the account; and
- (4) a copy of any written agreement or instrument relating to the account.

(g) No member shall offer that a transaction or transactions to buy or sell a designated security will influence the closing transaction in that security.

(h) (1) A member may, but is not obligated to, accept a stop order in a designated security.

(A) A buy stop order is an order to buy which becomes a market order when a transaction takes place at or above the stop price.

(B) A sell stop order is an order to sell which becomes a market order when a transaction takes place at or below the stop price.

(2) A member may, but is not obligated to, accept stop limit orders in designated securities. When a transaction occurs at the stop price, the stop limit order to buy or sell becomes a limit order at the limit price.

(i) [Terms used in this Rule shall have the meaning as defined in Rule 4200.] For purposes of this Rule 6140, unless the context requires otherwise:

(1) “Stop Stock Price” means the specified price at which a member and another party agree a Stop Stock Transaction shall be executed, and which price is based upon the prices at which the security is trading at the time the order is received by the member, taking into consideration that the specified price may deviate from the current market prices to factor in the size of the order and the number of shares available at those prices.

(2) “Stop Stock Transaction” means any transaction that meets both of the following conditions:

(A) the transaction is the result of an order in which a member and another party agree that the order will be executed at a Stop Stock Price or better; and

(B) the order is executed at the Stop Stock Price or better.

**[5130] 6150. Obligation to Provide Information**

(a) A[n NASD] FINRA member operating in or participating in any [NASD] FINRA system or facility shall provide information orally, in writing, or electronically (if such information is, or is required to be, maintained in electronic form) to the staff of [NASD] FINRA when [NASD] FINRA staff makes an oral, written or electronically communicated request for information relating to a specific [NASD] FINRA rule, SEC rule, or provision of a joint industry plan (e.g., UTP, CTA[,] and CQA [and ITS]) (as promulgated and amended from time[-] to time).

(b) A failure to comply in a timely, truthful and/or complete manner with a request for information made pursuant to this [r]Rule may be deemed conduct inconsistent with just and equitable principles of trade.

**[5140] 6160. Multiple MPIDs for Trade Reporting Facility Participants**

(a) For a pilot period ending on January 30, 2009, any Trade Reporting Facility Participant that wishes to use more than one Market Participant Symbol (“MPID”) for purposes of reporting trades to a Trade Reporting Facility must submit a written request to, and obtain approval from, [NASD] FINRA Operations for such additional MPID(s).

(b) A Trade Reporting Facility Participant that posts a quotation on a FINRA system and reports to that FINRA system or another FINRA system a trade resulting from such posted quotation must utilize the same MPID for reporting purposes (e.g., a member that is both a Trade Reporting Facility Participant and a Registered Reporting ADF ECN must use the same MPID when reporting a trade that resulted from its posted quotation on ADF).

**••• Supplementary Material: -----**

**[IM-5140. Use of Multiple MPIDs]**

**.01** [NASD] FINRA considers the issuance of, and trade reporting with, multiple MPIDs to be a privilege and not a right. A Trade Reporting Facility Participant must identify the purpose(s) and system(s) for which the multiple MPIDs will be used. If [NASD] FINRA determines that the use of multiple MPIDs is detrimental to the marketplace, or that a Trade Reporting Facility Participant is using one or more additional MPIDs improperly or for other than the purpose(s) identified by the Participant, [NASD] FINRA staff retains full discretion to limit or withdraw its grant of the additional MPID(s) to such Trade Reporting Facility Participant for purposes of reporting trades to a Trade Reporting Facility.

[A Trade Reporting Facility Participant that posts a quotation on an NASD system and reports to that NASD system or another NASD system a trade resulting from such posted quotation must utilize the same MPID for reporting purposes (e.g., a member that is both a Trade Reporting Facility Participant and a Registered Reporting ADF ECN must use the same MPID when reporting a trade that resulted from its posted quotation on ADF).]

**6170. Primary and Additional MPIDs for Alternative Display Facility Participants**

(a) Terms used in this Rule 6170 shall have the same meaning as defined in Rule 6220.

(b) The first Market Participant Identifier (“MPID”) issued to a FINRA Market Participant shall be referred to as the FINRA Market Participant’s “Primary MPID.” For a pilot period ending January 30, 2009, a Registered Reporting ADF ECN may request the use of Additional MPIDs for displaying quotes/orders and reporting trades through

TRACS for any ADF-Eligible Security (as defined in Rule 6210). A Registered Reporting ADF ECN that ceases to meet the obligations appurtenant to its Primary MPID in any security shall not be permitted to use Additional MPIDs for any purpose in that security.

(c) A Registered Reporting ADF ECN that posts a quotation through either a Primary MPID or Additional MPID and reports a trade to TRACS as a result of such a posted quotation must utilize the corresponding Primary MPID or Additional MPID for reporting purposes through which the quotation was originally posted (i.e., Registered Reporting ADF ECNs must use the same MPID for TRACS trade reporting as was used for ADF quotation posting).

**••• Supplementary Material: -----**

.01 FINRA considers the issuance of, the display of, and the trade reporting with Additional MPIDs to be a privilege and not a right. FINRA has developed the following method for allocating the privilege of receiving, displaying, and trade reporting with Additional MPIDs in an orderly, predictable, and fair manner. While FINRA does not intend to place a numerical limit on the number of Additional MPIDs it may grant to Registered Reporting ADF ECNs, given the agent business model of ECNs, FINRA does not anticipate the granting of many additional MPIDs to Registered Reporting ADF ECNs.

.02 FINRA will automatically designate a Registered Reporting ADF ECN's first MPID as a "Primary MPID." Additional MPIDs will be designated as such. Registered Reporting ADF ECNs are required to use their Primary MPID in accordance with the requirements of this Rule as well as all existing requirements for the use of MPIDs in

FINRA systems and under FINRA rules. Each of an ECN's MPID will be subject to the requirements of Rule 6279.

.03 If it is determined that one or more Additional MPIDs are being used improperly, FINRA staff retains full discretion to limit or withdraw its grant of the Additional MPID(s) for all purposes for all securities. In addition, if a Registered Reporting ADF ECN no longer fulfills the conditions appurtenant to its Primary MPID (e.g., by being placed into an unexcused withdrawal), it may not use an Additional MPID for any purpose in that security.

.04 The first priority of FINRA's method for allocating the privilege of displaying and trade reporting with Additional MPIDs is that each Registered Reporting ADF ECN should be permitted to display quotations and report trades under a Primary MPID before any is permitted to display additional quotations under and report trades with Additional MPIDs. If all requests for Primary MPIDs have been satisfied, FINRA will then register Additional MPIDs on a first-come-first-served basis, consistent with the procedures listed below.

.05 A Registered Reporting ADF ECN shall contact FINRA in writing setting forth the bona fide business and/or regulatory reasons for requesting an Additional MPID. FINRA will consider the business and/or regulatory reasons demonstrated by the Registered Reporting ADF ECN and promptly respond to the Registered Reporting ADF ECN. If an Additional MPID is granted, it will be subject to the same requirements applicable to a Primary MPID. FINRA staff retains full discretion to limit or withdraw the Additional MPID privileges of a Registered Reporting ADF ECN.

**[5150] 6183. Exemption From SEC Regulation NMS-Related Trade Reporting Requirements**

Pursuant to the Rule 9600 Series, the staff for good cause shown after taking into consideration all relevant factors, may exempt, subject to specified terms and conditions, a member from the requirements under [NASD] FINRA [R]rules to report the applicable trade report modifiers related to SE[C]A Rule 611 of Regulation NMS [under the Act], if such exemption is consistent with the protection of investors and the public interest. The duration of any exemption granted pursuant to this Rule shall be determined by [NASD] FINRA and shall not exceed a period of six months. [NASD] FINRA intends to exercise the exemptive authority herein on a temporary basis and as such, this [r]Rule will automatically sunset one year after the Pilot Stocks Phase Date, currently scheduled to occur on July 9, 2007.

**[5300. Reserved]**

**[5400. Reserved]**

**[6000. NASD SYSTEMS AND PROGRAMS]**

**7200. TRADE REPORTING FACILITIES**

**[6100] 7200A. [Clearing and Comparison Rules] FINRA/NASDAQ TRADE**

**REPORTING FACILITY**

**[6110] 7210A. Definitions**

(a) The term “Browse” shall mean the function that permits a Participant to review (or query) for trades in the System identifying the Participant as a party to the transaction, subject to the specific uses contained in the System Users Guide.

(b) The term “Clearing Broker[/]-Dealer” or “Clearing Broker” shall mean the member firm that has been identified in the System as principal for clearing and settling a trade, whether for its own account or for a correspondent firm.

(c) The term “Correspondent Executing Broker[/]-Dealer” or “Correspondent Executing Broker” shall mean the member firm that has been identified in the System as having a correspondent relationship with a clearing firm whereby it executes trades and the clearing function is the responsibility of the clearing firm.

(d) The term “Introducing Broker[/]-Dealer” or “introducing broker” shall mean the member firm that has been identified in the System as a party to the transaction, but does not execute or clear trades.

(e) The terms “Participant,” “Reporting Order Entry Firm,” “Correspondent executing broker[/]-dealer,” “Correspondent executing broker,” “Introducing broker[/]-dealer,” “Introducing broker,” “Clearing broker[/]-dealer,” and “Clearing broker” shall also include, where appropriate, the Non-Member Clearing Organizations listed in Rule[s 6120] 7220A(a)(4) below and their qualifying members.

(f) The term “Parties to the Transaction” shall mean the executing brokers, Introducing Brokers and Clearing Brokers, if any.

(g) The term “Reportable Security” shall mean all designated securities as defined in Rule 6320A [4200, all eligible securities as defined in Rule 6410, all OTC Equity Securities as defined in Rule 6600, and all Direct Participation Programs as defined in Rule 6910].

(h) The term “Reportable System Transaction” shall mean those transactions in Reportable Securities that are eligible to be submitted using the System pursuant to

[NASD] FINRA rules. The term also shall include transactions in Reportable Securities that are for less than one round lot.

(i) The term “Reporting ECN” shall mean a member of [NASD] FINRA that is an electronic communications network or alternative trading system, as those terms are defined in SE[C]A Rule 600 of Regulation NMS, that is a participant of a registered clearing agency for clearing or comparison purposes or has a clearing arrangement with such a participant, to the extent that transactions executed through it are reported to the System.

(j) The term “Reporting Market Maker” shall mean a member of [NASD] FINRA that meets the definition of Market Maker in Rule [4200] 6320A and is a member of a registered clearing agency for clearing or comparison purposes or has a clearing arrangement with such a member.

(k) The term “Reporting Order Entry Firm” shall mean a member of [NASD] FINRA that is a firm that executes orders but does not act as a market maker in the instant transaction and is a member of a registered clearing agency for clearing or comparison purposes or has a clearing arrangement with such a member.

(l) The term “Reporting Party” shall mean the Participant that is required to input the trade information, according to the requirements of the trade report input rules applicable to the System contained in Rule [6130] 7230A.

(m) The term “System” shall mean the [NASD] FINRA/Nasdaq Trade Reporting Facility for purposes of trades in designated securities as defined in Rule 6320A [4200, the trade reporting service of the ITS/CAES System for purposes of eligible securities as defined in Rule 6410, and the OTC Reporting Facility for purposes of OTC Equity

Securities as defined in Rule 6600 and Direct Participation Programs as defined in Rule 6910].

(n) The term “Trade Reporting Participant” or “Participant” shall mean any member of [NASD] FINRA in good standing that uses the System.

**[6120] 7220A. Trade Reporting Participation Requirements**

**(a) Mandatory Participation for Clearing Agency Members**

(1) Participation in the System is mandatory for any member that has an obligation to report an over-the-counter transaction to [NASD] FINRA, unless the member has an alternative electronic mechanism pursuant to [NASD] FINRA rules for reporting and clearing such transaction. Such participation in the System shall include the reconciliation of all over the counter clearing agency eligible transactions.

(2) Participation in the System shall be conditioned upon the initial and continuing compliance with the following requirements:

(A) execution of, and continuing compliance with, a Participant Application Agreement;

(B) membership in, or maintenance of an effective clearing arrangement with a participant of, a clearing agency registered pursuant to the Exchange Act;

(C) compliance with all applicable rules and operating procedures of [NASD] FINRA and the [Commission] SEC;

(D) maintenance of the physical security of the equipment located on the premises of the participant to prevent unauthorized entry of information into the System; and

(E) acceptance and settlement of each trade that the System identifies as having been effected by such participant, or if settlement is to be made through a clearing member, guarantee or the acceptance and settlement of each System identified trade by the clearing member on the regularly scheduled settlement date.

(3) Participation in the System as a Clearing Broker shall be conditioned upon the Clearing Broker's initial and continuing compliance with the following requirements:

(A) execution of, and continuing compliance with, a Participant Application Agreement;

(B) membership in a clearing agency registered pursuant to the Exchange Act;

(C) compliance with all applicable rules and operating procedures of [NASD] FINRA and the [Commission] SEC;

(D) maintenance of the physical security of the equipment located on the premises of the Clearing Broker to prevent the unauthorized entry of information into the System; and

(E) acceptance and settlement of each trade that the System identifies as having been effected by itself or any of its correspondents on the regularly scheduled settlement date.

(4) (A) Upon compliance with the conditions specified in subparagraph (B) below, access to and participation in the System shall be granted to the following Non- Member Clearing Organizations:

- (i) West Canada Clearing Corporation; and
- (ii) The Canadian Depository for Securities.

(B) Non-Member Clearing Organization access to and participation in the System shall be conditioned upon the Organization's initial and continuing compliance with the following requirements:

- (i) execution of and continuing compliance with a Non-Member Clearing Organization Participation Application Agreement;
- (ii) a Non-Member Clearing Organization shall only have access to the System to operate as a service bureau for its members functioning as Reporting Order Entry Firms, Correspondent Executing Broker[ / ] - Dealers, Correspondent brokers, Clearing Broker[ / ] - Dealers, or Clearing Brokers, as those terms are defined in Rule [6110] 7210A;
- (iii) registration as a clearing agency pursuant to the Exchange Act, membership in a clearing agency registered pursuant to the Exchange Act, or maintenance of an effective clearing arrangement with a registered clearing agency;
- (iv) compliance with all applicable rules and operating procedures of [NASD] FINRA and the [Commission] SEC;

(v) maintenance of the physical security of the equipment located on the premises of the Non-Member Clearing Organization to prevent the unauthorized entry of information into the System; and

(vi) a Non-Member Clearing Organization may only participate in the System on behalf of its members who have:

- a. executed a Non-Member Access Participant Application Agreement and
- b. have been in continuing compliance with such agreement.

(C) A Non-Member Clearing Organization may permit its members functioning as Reporting Order Entry Firms to have direct access to the System, provided the member of the Non-Member Clearing Organization complies with the following requirements:

- (i) execution of a Non-Member Participant Application Agreement;
- (ii) membership in a Non-Member Clearing Organization listed in paragraph (a)(4)(A) above; and
- (iii) compliance with paragraph (a)(3)(C) through (E) above.

(D) A Non-Member Clearing Organization may permit its members functioning as Clearing Brokers to have direct access to the

System provided the member of the Non-Member Clearing Organization complies with the following requirements:

- (i) execution of a Non-Member Participant Application Agreement;
- (ii) membership in a Non-Member Clearing Organization listed in paragraph (a)(4)(A) above; and
- (iii) compliance with paragraph (a)(3)(C) through (E) above.

(5) Each Participant shall be obligated to inform [NASD] FINRA of non-compliance with any of the participation requirements set forth above.

**(b) Participant Obligations**

**(1) Access**

Upon execution and receipt by [NASD] FINRA of the [Trade Reporting Facility] Participant [a]Application [a]Agreement, as applicable, a Participant may commence input and validation of trade information in Reportable Securities. Participants may access the service through computer interface or such other service as may be designated by [NASD] FINRA during the hours of operation specified by [NASD] FINRA. Prior to such input, all Participants, including those that have trade report information submitted by any third party, must obtain from the System a unique identifying Market Participant Symbol (“MPID”), and use that identifier for trade reporting and audit trail purposes.

**(2) System Participant Obligations**

(A) Participants shall commence participation in the System by initially contacting the System Operation Center to verify authorization for submitting trade data to the System for Reportable Securities.

(B) A Participant that is a self-clearing firm shall be obligated to accept and clear each trade that the System identifies as having been effected by that Participant.

(C) A Participant that is an Introducing Broker or a Correspondent Executing Broker shall identify its Clearing Broker when it becomes a Participant and notify the System Operation Center if its Clearing Broker is to be changed; this will necessitate execution of a revised Participant Application Agreement.

(D) If at any time a Participant fails to maintain a clearing arrangement, it shall be removed from the System until such time as a clearing arrangement is reestablished and notice of such arrangement, with an amended Reporting Participant Application Agreement, is filed with [NASD] FINRA.

**(3) Clearing Broker Obligations**

(A) System Clearing Brokers shall be obligated to accept and clear as a party to the transaction each trade that the System identifies as having been effected by itself or any of its Correspondent Executing Brokers. Clearing Brokers may cease to act as principal for a Correspondent Executing Broker at any time provided that notification has been given to,

received and acknowledged by the System Operation Center and affirmative action has been completed by the Center to remove the Clearing Broker from the System for that Correspondent Executing Broker. The Clearing Broker's obligation to accept and clear trades for its correspondents shall not cease prior to the completion of all of the steps detailed in this subparagraph (3).

(B) If at any time a System Clearing Broker fails to maintain a clearing arrangement, it shall be removed from the System until such time as a clearing arrangement is reestablished, and notice of such arrangement, with an amended Participant Application Agreement, is filed with [NASD] FINRA.

**[6130] 7230A. Trade Report Input**

**(a) Reportable Transactions**

Members shall comply with the Rule [6100] 7200A Series when reporting transactions to the System, including executions of less than one round lot if those executions are to be compared and locked-in. All trades that are reportable transactions will be processed pursuant to an effective transaction reporting plan. Trades that are not already locked-in trades will be compared and locked-in through the System. [All transactions in Direct Participation Program securities shall be reported to the System pursuant to the Rule 6900 Series as set forth therein.]

**(b) When and How Trade Reports are Submitted**

Participants shall transmit trade reports to the System for transactions in Reportable Securities within 90 seconds after execution, or shall use the Browse function

to accept or decline trades within twenty (20) minutes after execution, according to the requirements of paragraph (c) of this Rule.

**(c) Which Party Inputs Trade Reports**

Participants shall, subject to the input requirements below, either input trade reports or use the Browse feature to accept or decline a trade within the applicable time-frames as specified in paragraph (b) of this Rule. Trade data input obligations are as follows:

- (1) in transactions between a Reporting Market Maker and a Reporting Order Entry Firm, the Reporting Market Maker shall be required to submit a trade report to the System;
- (2) in transactions between two Reporting Market Makers, the member representing the sell side shall be required to submit a trade report to the System;
- (3) in transactions between two Reporting Order Entry Firms, the member representing the sell side shall be required to submit a trade report to the System;
- (4) in transactions between a member and a non-member or customer, the member shall be required to submit a trade report to the System;
- (5) in transactions conducted through a Reporting ECN that are reported to the System, the Reporting ECN shall ensure that transactions are reported in accordance with one of the following methods:
  - (A) the Reporting ECN shall submit the trade reports to the System and identify itself as the Reporting Party;
  - (B) the Reporting ECN shall submit the trade reports to the System on behalf of the Reporting Party and identify the Reporting Party

in accordance with the rules for determining Reporting Parties reflected in subparagraphs (1), (2), (3), and (4) above; or

(C) the Reporting ECN shall require one of the parties, determined in accordance with the rules for determining Reporting Parties reflected in subparagraphs (1), (2), (3), and (4) above, to submit the trade reports to the System.

When a Reporting ECN reports transactions in accordance with subparagraph (A), the Reporting ECN shall be responsible for ensuring that the trade reports are accurate and contain all information required by [subsection] paragraph (d) of this [r]Rule for both the Reporting ECN and the identified non-reporting party.

When a Reporting ECN reports transactions in accordance with subparagraph (B), both the Reporting ECN and the party identified as the Reporting Party shall be responsible for ensuring that the trade reports are accurate and contain all information required by [subsection] paragraph (d) of this [r]Rule for both the Reporting ECN and the identified Reporting Party.

When a Reporting ECN requires reporting of transactions in accordance with subparagraph (C), the Reporting Party shall be responsible for ensuring the accuracy and completeness of the trade report.

A Reporting ECN shall provide written notice to [NASD] FINRA of the method of trade reporting used by the Reporting ECN for each of its subscribers, and may change the method of trade reporting used for a subscriber by providing advance written notice of the change to [NASD] FINRA;

(6) in transactions conducted through two Reporting ECNs or a Reporting ECN and an ECN that is not a Reporting ECN, a Reporting ECN shall be responsible for complying with the requirements of subparagraph (5) above for reporting a transaction executed through its facilities, and an ECN that routed an order to it for execution shall be deemed to be a Reporting Order Entry Firm and a member for purposes of the rules for determining reporting parties reflected in subparagraphs (1), (3), and (4) above; and

(7) in transactions conducted through a Reporting ECN in which neither of the parties is a member, the Reporting ECN shall report the transaction in accordance with the requirements of subparagraph (5)(A) above.

**(d) Trade Information To Be Input**

Each report to the System shall contain the following information:

- (1) Security identification symbol of the eligible security (SECID);
- (2) Number of shares;
- (3) Unit price, excluding commissions, mark-ups or mark-downs;
- (4) The time of execution expressed in hours, minutes and seconds based on Eastern Time in military format, unless another provision of [NASD's] FINRA rules requires that a different time be included on the report;
- (5) A symbol indicating whether the party submitting the trade report represents the Market Maker side or the Order Entry side;
- (6) A symbol indicating whether the transaction is a buy, sell, sell short, or cross;

- (7) A symbol indicating whether the trade is as principal, riskless principal, or agent;
- (8) Reporting side Clearing Broker (if other than normal Clearing Broker);
- (9) Reporting side executing broker as “give-up” (if any);
- (10) Contra side executing broker;
- (11) Contra side introducing broker in case of “give-up” trade;
- (12) Contra side Clearing Broker (if other than normal Clearing Broker).
- (13) For any transaction in an order for which a member has recording and reporting obligations under Rules [6954] 7440 and [6955] 7450, the trade report must include an order identifier, meeting such parameters as may be prescribed by [NASD] FINRA, assigned to the order that uniquely identifies the order for the date it was received (see Rule [6954] 7440(b)(1)).
- (14) For any transaction for which the [NASD] FINRA/Nasdaq Trade Reporting Facility is used to transfer a transaction fee between two [NASD] FINRA members, the trade report must comply with the requirements of Rule [6130] 7230A(h).

**(e) Aggregation of Transaction Reports for Clearing Purposes Only**

Individual executions of orders in a security at the same price and with the identical contra party may be aggregated into a single report and submitted to the System for purposes of clearing only; provided, however, that a Reporting Party may not withhold reporting a trade in anticipation of aggregating the transaction with other transactions.

**(f) Reporting Cancelled Trades**

**(1) Obligation and Party Responsible for Reporting Cancelled Trades**

With the exception of trades cancelled by [NASD] FINRA staff in accordance with NASD Rule 11890, members shall report to the System the cancellation of any trade previously submitted to the System. The member responsible under [NASD] FINRA [R]rules for submitting the original trade report shall submit the cancellation report in accordance with the requirements set forth in paragraph (f)(2).

**(2) Deadlines for Reporting Cancelled Trades**

Members shall comply with deadlines set forth in Rule[s 4632] 6380A [and 6620] for reporting cancelled trades.

**(g) Reporting Certain Transactions for Purposes of Regulatory Transaction Fee Assessment**

Reports submitted to the System for the following types of transactions that are assessed a regulatory transaction fee in accordance with Section 3 of Schedule A to the [NASD] FINRA By-Laws must comply with the requirements set forth below.

Transactions must be submitted to the System by 8:00 p.m. Eastern Time (or the end of the System reporting session that is in effect at that time).

**(1) Away From the Market Sales**

Reports of transactions where the buyer and seller have agreed to trade at a price substantially unrelated to the current market for the security, and consideration is given, shall include a modifier of .RA to designate the transaction as submitted for purposes of the regulatory transaction fee under Section 3 of

Schedule A to the [NASD] FINRA By-Laws. Transactions may be entered as clearing or non-clearing.

**(2) Exercises of OTC Options**

Reports of transactions effected pursuant to the exercise of an OTC option shall include a modifier of .RX to designate the transaction as submitted for purposes of the regulatory transaction fee under Section 3 of Schedule A to the [NASD] FINRA By-Laws. Transactions may be entered as clearing or non-clearing.

**(h) Inclusion of Transaction Fees in Clearing Reports Submitted to the [NASD] FINRA/Nasdaq Trade Reporting Facility**

[NASD] FINRA members may agree in advance to transfer a transaction fee charged by one member to another member on a transaction in NMS stocks, as defined in SEA Rule 600(b)(47) of Regulation NMS [under the Act], effected otherwise than on an exchange through the submission of a clearing report to the [NASD] FINRA/Nasdaq Trade Reporting Facility. Such report, inclusive of the transaction fee, will be submitted to the National Securities Clearing Corporation for processing. To facilitate the transfer of the transaction fee, the report submitted to the [NASD] FINRA/Nasdaq Trade Reporting Facility shall provide, in addition to all other information required to be submitted by any other rule, a total per share or contract price amount, inclusive of the transaction fee. Prior to submitting any such report, both members and their respective clearing firms, as applicable, must have executed an agreement, as specified by [NASD] FINRA, permitting the facilitation of the transfer of the transaction fee through the [NASD] FINRA/Nasdaq Trade Reporting Facility, as well as any other applicable

agreement, such as a give up agreement pursuant to Rule [4632] 6380A(h), and submitted the executed agreement(s) to the [NASD] FINRA/Nasdaq Trade Reporting Facility.

Such agreement(s) are considered member records for purposes of NASD Rule 3110(a) and must be made and preserved by both members in conformity with applicable [NASD] FINRA rules. Nothing in this paragraph shall relieve a member from its obligations under [NASD] FINRA rules and the federal securities laws, including but not limited to, NASD Rule 2230 and SE[C]A Rule 10b-10.

**Example:**

SELL 100 shares to another member at 10 plus a transaction fee of .01 per share; REPORT 100 shares at 10 (the per share price exclusive of the transaction fee) to the [NASD] FINRA/Nasdaq Trade Reporting Facility for publication and also report 10.01 (the per share price inclusive of the transaction fee) for purposes of clearance and settlement through the National Securities Clearing Corporation.

(i) Members shall not submit to the System any report (including but not limited to reports of step-outs and reversals) associated with a previously executed trade that was not reported to the System, unless such report is submitted, pursuant to Rule [4632] 6380A(d), to reflect the offsetting riskless portion of a riskless principal transaction.

**[IM-6130] 6182. Trade Reporting of Short Sales**

[Rule 6130 (d)(6) requires that] Pursuant to applicable trade reporting rules, members must indicate on [System] trade reports submitted to FINRA whether a transaction is a short sale transaction (“short sale reporting requirements”). [Rule 6130 explicitly requires members to file reports for transactions in all Reportable Securities, including transactions in exchange-listed, convertible debt, OTC Bulletin Board, and

OTC equity securities.] The short sale reporting requirements apply to transactions in all NMS stocks, as defined in SEA Rule 600(b)(47) of Regulation NMS. Thus, all short sale transactions in these securities reported to [the System] FINRA must carry a “short sale” indicator.

**[6140] 7240A. Trade Report Processing**

Locked-in trades may be determined in the System by matching the trade information submitted by the Reporting Parties through one of the following methods:

**(a) Trade by Trade Match**

Both parties to the trade submit transaction data and the System performs an on-line match;

**(b) Trade Acceptance**

The Reporting Party enters its version of the trade into the System and the contra party reviews the trade report and accepts or declines the trade. An acceptance results in a locked-in trade; a declined trade report is purged from the System at the end of trade date processing;

**(c) Aggregate Volume Match**

A batch type comparison will be run at the end of trade date and will aggregate volume of previously entered uncompered trade reports (if all other matching fields agree) in order to effect matching;

**(d) T+N Trade Processing**

T+N entries may be submitted until 5:15 p.m. each business day. At the end of daily matching, all declined trade entries will be purged from the System. The System will not purge any open trade (i.e. unmatched or unaccepted) at the end of its entry day,

but will carry-over such trades to the next business day for continued comparison and reconciliation. The System will automatically lock in and submit to DTCC as such any carried-over T to T+21 (calendar day) trade if it remains open as of 2:30 p.m. on the next business day. The System will not automatically lock in T+22 (calendar day) or older open “as/of” trades that were carried-over from the previous business day; these will be purged by the System at the end of the carry-over day if they remain open. Members may re-submit these T+22 or older “as/of” trades into the System on the next business day for continued comparison and reconciliation for up to one calendar year.

**[6160] 7250A. Obligation to Honor Trades**

If a Participant is reported by the System as a party to a trade that has been treated as locked-in and sent to DTCC, notwithstanding any other agreement to the contrary, that party shall be obligated to act as a principal to the trade and shall honor such trade on the scheduled settlement date.

**[6170] 7260A. Audit Trail Requirements**

The data elements specified in Rule [6130] 7230A(d) are critical to [NASD] FINRA’s compilation of a transaction audit trail for regulatory purposes. As such, all member firms utilizing the trade reporting service of the System have an ongoing obligation to input [6130] 7230A(d) information accurately and completely.

**[6180] 7270A. Violation of Reporting Rules**

Failure of a Participant or person associated with a Participant to comply with any of the rules or requirements of the System may be considered conduct inconsistent with high standards of commercial honor and just and equitable principles of trade, in violation of NASD Rule 2110.

**[6190] 7280A. Termination of Access**

[NASD] FINRA may, upon notice, terminate access to the trade reporting service of the System as to a Participant in the event that a Participant fails to abide by any of the rules or operating procedures of the trade reporting service of the System or [NASD] FINRA, or fails to honor contractual agreements entered into with [NASD] FINRA or its subsidiaries, or fails to pay promptly for services rendered by the trade reporting service of the System.

**[6200] 6700. TRADE REPORTING AND COMPLIANCE ENGINE (TRACE)**

**[6210] 6710. Definitions**

The terms used in this Rule [6200] 6700 Series shall have the same meaning as those defined in the FINRA[’s] By-Laws and [NASD’s] [R]rules unless otherwise specified.

(a) The term “TRACE-eligible security” shall mean all United States dollar denominated debt securities that are depository eligible securities under NASD Rule 11310(d); Investment Grade or Non-Investment Grade; issued by United States and/or foreign private issuers; and: (1) registered under the Securities Act [of 1933]; or (2) issued pursuant to Section 4(2) of the Securities Act [of 1933] and purchased or sold pursuant to Securities Act Rule 144A [of the Securities Act of 1933]. The term “TRACE-eligible security” excludes debt issued by government-sponsored entities, mortgage- or asset-backed securities, collateralized mortgage obligations, and money market instruments. For purposes of the Rule [6200] 6700 Series, the term “money market instrument” means a debt security that at issuance has a maturity of one year or less.

(b) The term “Trade Reporting and Compliance Engine” or “TRACE” shall mean the automated system developed by the [NASD] FINRA that, among other things, accommodates reporting and dissemination of transaction reports where applicable in TRACE-eligible securities.

(c) The term “reportable TRACE transaction” shall mean any secondary market transaction in a TRACE-eligible security except transactions exempt from reporting as specified in Rule [6230] 6730(e).

(d) The term “time of execution” for a transaction in a TRACE-eligible security shall be the time when the parties to the transaction agree to all of the terms of the transaction that are sufficient to calculate the dollar price of the trade. The time of execution for transactions involving TRACE-eligible securities that are trading “when issued” on a yield basis shall be when the yield for the transaction has been agreed to by the parties to the transaction. For a transaction in a TRACE-eligible security in which the actual yield for the transaction is established by determining the yield from one or more designated securities (e.g., a “benchmark security” such as a U.S. Treasury security maturing in 5 years, or a combination of such “benchmark securities”) and adding the agreed upon “yield spread” (e.g., 150 basis points above the benchmark security), the “time of execution” occurs when the yield has been agreed to by the parties to the transaction.

(e) The term “party to the transaction” shall mean an introducing broker-dealer, if any, an executing broker-dealer, or a customer. For purposes of this Rule, customer includes a broker-dealer that is not a[n NASD] FINRA member.

(f) The term “TRACE Participant” shall mean any [NASD] FINRA member that reports transactions to the TRACE system, directly or indirectly.

(g) The term “Introducing Broker” shall mean the [NASD] FINRA member that has been identified in the TRACE system as a party to the transaction, but does not execute or clear the transaction.

(h) The term “Investment Grade” shall mean a TRACE-eligible security that, if rated by only one nationally recognized statistical rating organization (“NRSRO”), is rated in one of the four highest generic rating categories; or if rated by more than one NRSRO, is rated in one of the four highest generic rating categories by all or a majority of such NRSROs; provided that if the NRSROs assign ratings that are evenly divided between (i) the four highest generic ratings and (ii) ratings lower than the four highest generic ratings, [NASD] FINRA will classify the TRACE-eligible security as Non-Investment Grade for purposes of TRACE. If a TRACE-eligible security is unrated, for purposes of TRACE, [NASD] FINRA may otherwise classify the TRACE-eligible security as an Investment Grade security and further classify it as being in one of the four highest generic rating categories.

(i) The term “Non-Investment Grade” shall mean a TRACE-eligible security that, if rated by only one NRSRO, is rated lower than one of the four highest generic rating categories; or if rated by more than one NRSRO, is rated lower than one of the four highest generic rating categories by all or a majority of such NRSROs. If a TRACE-eligible security is unrated, for purposes of TRACE, [NASD] FINRA may otherwise classify the TRACE-eligible security as a Non-Investment Grade security and further classify it as being in one of the generic rating categories below the four highest such

categories. If [NASD] FINRA does not have sufficient information to make a judgment regarding the classification of an unrated TRACE-eligible security, for purposes of TRACE, [NASD] FINRA will classify the TRACE-eligible security as having been rated B (or the equivalent rating of one or more NRSROs).<sup>1</sup>

(j) The term, “split-rated,” shall mean an Investment Grade or a Non-Investment Grade security that is assigned ratings by multiple NRSROs that, for an Investment Grade security, are not in the same generic Investment Grade rating category, or, for a Non-Investment Grade security, are not in the same generic Non-Investment Grade rating category. After determining if a security is Investment Grade or Non-Investment Grade, [NASD] FINRA will disregard any rating, if the security is Investment Grade, that is Non-Investment Grade, or, if the security is Non-Investment Grade, that is Investment Grade. With respect to an Investment Grade security, if multiple NRSROs assign ratings that are not in the same generic Investment Grade rating category, or, with respect to a Non-Investment Grade security, if multiple NRSROs assign ratings that are not in the same generic Non-Investment Grade rating category, [NASD] FINRA will classify the TRACE-eligible security for purposes of TRACE by the generic rating that a majority or, if no majority, a plurality of the NRSROs assigns the security, provided that (i) if the NRSROs assign ratings that are evenly divided between two generic rating categories, [NASD] FINRA will classify the TRACE-eligible security for purposes of TRACE by the lower of the ratings; or (ii) if each NRSRO assigns a different generic rating, [NASD] FINRA will classify the TRACE-eligible security for purposes of TRACE by the lower or lowest of the ratings.

---

<sup>1</sup> “B” is a rating of Standard & Poor’s, a division of the McGraw-Hill Companies, Inc. (“S&P”). S&P is a nationally recognized statistical rating organization. S&P’s ratings are proprietary to S&P and are protected by copyright and other intellectual property laws. S&P’s licenses ratings to [NASD] FINRA. Ratings may not be copied or otherwise reproduced, repackaged, further transmitted, transferred, disseminated, redistributed or resold, or stored for subsequent use for any such purpose, in whole or in part, in any form or manner or by any means whatsoever, by any person without S&P’s prior written consent.

**[6220] 6720. Participation in TRACE**

**(a) Mandatory Member Participation**

(1) Member participation in TRACE for trade reporting purposes is mandatory. Such mandatory participation obligates members to submit transaction reports in TRACE-eligible securities in conformity with the Rule [6200] 6700 Series.

(2) Participation in TRACE shall be conditioned upon the TRACE Participant’s initial and continuing compliance with the following requirements:

(A) Execution of, and continuing compliance with, a TRACE Participant application agreement and all applicable rules and operating procedures of [the Association] FINRA and the [Commission] SEC; and

(B) Maintenance of the physical security of the equipment located on the premises of the TRACE Participant to prevent unauthorized entry of information into TRACE.

(3) Each TRACE Participant shall be obligated to inform [the Association] FINRA of non-compliance with, or changes to, any of the participation requirements set forth above.

**(b) Participant Obligations in TRACE**

Upon execution and receipt by [the Association] FINRA of the TRACE Participant application agreement, a TRACE Participant may commence input of trade information in TRACE-eligible securities. TRACE Participants may access the service via a[n NASD] FINRA-approved facility during the hours of operation.

**[6230] 6730. Transaction Reporting**

**(a) When and How Transactions are Reported**

A member that is required to report transaction information pursuant to paragraph (b) below must report such transaction information within 15 minutes of the time of execution, except as otherwise provided below, or the transaction report will be “late.” The member must transmit the report to TRACE during the hours the TRACE system is open (“TRACE system hours”), which are 8:00 a.m. Eastern Time through 6:29:59 p.m. Eastern Time. Specific trade reporting obligations during a 24-hour cycle are set forth below.

**(1) Transactions Executed During TRACE System Hours**

Transactions in TRACE-eligible securities executed on a business day at or after 8:00 a.m. Eastern Time through 6:29:59 p.m. Eastern Time must be

reported within 15 minutes of the time of execution. If a transaction is executed on a business day less than 15 minutes before 6:30 p.m. Eastern Time, a member may report the transaction the next business day within 15 minutes after the TRACE system opens. If reporting the next business day, the member must indicate "as/of" and provide the actual transaction date.

**(2) Transactions Executed At or After 6:30 P.M. Through 11:59:59**

**P.M. Eastern Time**

Transactions in TRACE-eligible securities executed on a business day at or after 6:30 p.m. Eastern Time through 11:59:59 p.m. Eastern Time must be reported the next business day within 15 minutes after the TRACE system opens. The member must indicate "as/of" and provide the actual transaction date.

**(3) Transactions Executed At or After 12:00 A.M. Through 7:59:59**

**A.M. Eastern Time**

Transactions in TRACE-eligible securities executed on a business day at or after 12:00 a.m. Eastern Time through 7:59:59 a.m. Eastern Time must be reported the same day within 15 minutes after the TRACE system opens.

**(4) Transactions Executed on a Non-Business Day**

Transactions in TRACE-eligible securities executed on a Saturday, Sunday, or a federal or religious holiday on which the TRACE system is closed, at any time during that day (determined using Eastern Time), must be reported the next business day within 15 minutes after the TRACE system opens. The transaction must be reported as follows: the date of execution must be the first business day (the same day the report must be made); the execution time must be

“12:01:00 a.m. Eastern Time” (stated in military time as “00:01:00”); and the modifier, “special price,” must be selected. In addition, the transaction must not be designated “as/of”. When the reporting method chosen provides a “special price memo” field, the member must enter the actual date and time of the transaction in the field.

(5) Members have an ongoing obligation to report transaction information promptly, accurately, and completely. The member may employ an agent for the purpose of submitting transaction information; however, the primary responsibility for the timely, accurate, and complete reporting of transaction information remains the non-delegable duty of the member obligated to report the transaction.

(6) A member may be required to report as soon as practicable to the Market Regulation Department on a paper form, the transaction information required under Rule [6230] 6730 if electronic submission into TRACE is not possible. Transactions that can be reported into TRACE, including transactions executed on a Saturday, Sunday or holiday as provided in paragraph (a)(4) above, and trades that can be submitted on the trade date or on a subsequent date on an “as/of” basis, shall not be reported on a paper form.

**(b) Which Party Reports Transaction**

Trade data input obligations are as follows:

(1) In transactions between two members, both members shall submit a trade report to TRACE;

(2) In transactions involving a member and a non-member, including a customer, the member shall be required to submit a trade report to TRACE.

**(c) Transaction Information To Be Reported**

Each TRACE trade report shall contain the following information:

- (1) CUSIP number or [NASD] FINRA symbol;
- (2) Number of bonds as required by paragraph (d) below;
- (3) Price of the transaction (or the elements necessary to calculate price, which are contract amount and accrued interest) as required by paragraph (d) below;
- (4) A symbol indicating whether the transaction is a buy or a sell;
- (5) Date of Trade Execution(as/of trades only);
- (6) Contra-party's identifier;
- (7) Capacity — Principal or Agent (with riskless principal reported as principal) as required by paragraph (d) below;
- (8) Time of trade execution;
- (9) Reporting side executing broker as "give-up" (if any);
- (10) Contra side Introducing Broker in case of "give-up" trade;
- (11) Stated commission;
- (12) Such trade modifiers as required by either the TRACE rules or the TRACE users guide; and
- (13) The lower of yield to call or yield to maturity. A member is not required to report yield when the TRACE-eligible security is a security that is in default; a security for which the interest rate is floating; a security for which the

interest rate will be or may be increased (e.g., certain “step-up bonds”) or decreased (e.g., certain “step-down bonds”) and the amount of increase or decrease is an unknown variable; a pay-in-kind security (“PIK”); any other security where the principal or interest to be paid is an unknown variable or is an amount that is not currently ascertainable, or any other security that [the Association] FINRA designates if [the Association] FINRA determines that reporting yield would provide inaccurate or misleading information concerning the price of, or trading in, the security.

**(d) Procedures for Reporting Price, Capacity, Volume**

(1) For principal transactions, report the price, which must include the mark-up or mark-down. (However, if a price field is not available, report the contract amount and the accrued interest.) For agency transactions, report the price, which must exclude the commission. (However, if a price field is not available, report the contract amount and the accrued interest.) Then, report the commission, stated in points per bond, with 1 point equal to \$10.00 per bond.

(2) For agency and principal transactions, report the actual number of bonds traded, with \$1,000 par value equal to 1 bond. If a bond has a par value of less than \$1,000 (“baby bond”) or the par value is not an even multiple of \$1,000, report the fractional portion of \$1,000 in decimals.

(3) For in-house cross transactions, a member must report two transactions, which are the member’s purchase transaction and the member’s sale transaction.

**(4) (A) Special Price Modifier**

If a transaction is not executed at a price that reflects the current market price, select the modifier, “special price.” When the reporting method chosen provides a “special price memo” field, state why the transaction was executed at other than the current market price in the “special price memo” field (e.g., when a debt security is traded conventionally and in the current market does not have a due bill and/or a warrant attached, but in the transaction to be reported is traded with a due bill and/or warrant attached, the price of the transaction is a “special price”). Do not select the modifier, “special price,” where the transaction price is determined using a weighted average price.

**(B) Settlement Modifiers**

If a transaction is to be settled other than the regular way, report the settlement terms by selecting the appropriate modifier. If the parties agree to settlement on the same day the transaction is executed (i.e., cash settlement), select the modifier, “.c.” If a trade will be settled the next day, select the modifier, “.nd.” If a trade will be settled other than on the date of trade, the next day, or T+3, select the modifier, “.sNN,” and enter the appropriate number of days (e.g., if a trade will be settled in 5 business days, the reporting party will enter “.s05” in the data field).

**(C) Weighted Average Price Modifier**

If the price of the transaction is determined using a weighted average price method, select the modifier, “.w.” If one of the settlement

modifiers and the weighted average price modifier apply to the transaction, select the modifier, “.w” for weighted average price and do not report the applicable settlement modifier.

**(e) Transactions Exempt From Reporting**

The following types of transactions shall not be reported:

- (1) Transactions that are part of a primary distribution by an issuer.
- (2) Transactions in TRACE-eligible securities that are listed on a national securities exchange, when such transactions are executed on and reported to the exchange and the transaction information is disseminated publicly.
- (3) Transactions where the buyer and the seller have agreed to trade at a price substantially unrelated to the current market for the TRACE-eligible security (e.g., to allow the seller to make a gift).
- (4) For the duration of a two-year pilot program, effective upon the later of either: 1) approval of this [r]Rule by the [Commission] SEC, or 2) execution by [NASD] FINRA and the New York Stock Exchange (“NYSE”) of a data sharing agreement addressing data related to transactions covered by this Rule, transactions in TRACE-eligible securities that are executed on a facility of NYSE in accordance with NYSE Rules 1400 and 1401 and reported to NYSE in accordance with NYSE’s applicable trade reporting rules and disseminated publicly by NYSE.
- (5) Transactions resulting from the exercise or settlement of an option or a similar instrument, or the termination or settlement of a credit default swap, other type of swap, or a similar instrument.

**(f) Compliance With Reporting Obligations**

A pattern or practice of late reporting without exceptional circumstances may be considered conduct inconsistent with high standards of commercial honor and just and equitable principles of trade, in violation of NASD Rule 2110.

**[6240] 6740. Termination of TRACE Service**

[The Association] FINRA may, upon notice, terminate TRACE service to a member in the event that a member fails to abide by any of the rules or operating procedures of the TRACE service or [the Association] FINRA, or fails to honor contractual agreements entered into with [the Association] FINRA or its subsidiaries, or fails to pay promptly for services rendered by the TRACE service.

**[6250] 6750. Dissemination of Transaction Information**

**(a) Dissemination**

[NASD] FINRA will disseminate information on all transactions in TRACE-eligible securities immediately upon receipt of the transaction report, except as provided below.

**(b) Securities Act Rule 144A Securities**

[NASD] FINRA will not disseminate information on a transaction in a TRACE-eligible security that is effected pursuant to Securities Act Rule 144A [under the Securities Act of 1933].

**[6260] 6760. Managing Underwriter or Group of Underwriters Obligation To Obtain CUSIP and Provide Notice**

**(a) Members Required to Provide Information and Notice**

(1) In order to facilitate trade reporting and dissemination of secondary transactions in TRACE-eligible securities, the member that is the managing underwriter or the members that are the group of underwriters of a distribution or offering, excluding a secondary distribution or offering, of a debt security that, upon issuance will be a TRACE-eligible security (“new issue”), must obtain and provide information to the TRACE Operations Center as required below. If a managing underwriter is not appointed, the group of underwriters must provide the information required under this [r]Rule.

(2) The information must be provided by facsimile or e-mail.

**(b) Notices**

For such new issues, the managing underwriter or group of underwriters must provide to the TRACE Operations Center: (1) the CUSIP number; (2) the issuer name; (3) the coupon rate; (4) the maturity; (5) whether Securities Act Rule 144A applies; (6) a brief description of the issue (e.g., senior subordinated note, senior note); and, (7) information, as determined by [NASD] FINRA, to implement the provisions of Rule [6250] 6750(a) and such other information [NASD] FINRA deems necessary to properly implement the reporting and dissemination of a TRACE-eligible security, or if any of items (2) through (7) has not been determined, such other information as [NASD] FINRA deems necessary. The managing underwriter or group of underwriters must obtain the CUSIP number and provide it and the information listed as (2) through (7) not later than

5:00 p.m. Eastern Time on the business day preceding the day that the registration statement becomes effective, or, if registration is not required, the day before the securities will be priced. If an issuer notifies a managing underwriter or group of underwriters, or the issuer and the managing underwriter or group of underwriters determine, that the TRACE-eligible securities of the issuer shall be priced, offered and sold the same business day in an intra-day offering under Securities Act Rule 415 [of the Securities Act of 1933] or Section 4(2) of the Securities Act and Securities Act Rule 144A [of the Securities Act of 1933], the managing underwriter or group of underwriters shall provide the information not later than 5:00 p.m. Eastern Time on the day that the securities are priced and offered, provided that if such securities are priced and offered on or after 5:00 p.m. Eastern Time, the managing underwriter or group of underwriters shall provide the information not later than 5:00 p.m. Eastern Time on the next business day. The managing underwriter or group of underwriters must make a good faith determination that the security is a TRACE-eligible security before submitting the information to the TRACE Operations Center.

#### **6500. OTC BULLETIN BOARD® SERVICE**

##### **6510. Applicability**

These Rules shall be known as the “OTC Bulletin Board Rules” and govern the operation and use of the OTC Bulletin Board® service (OTCBB or “Service”) by broker[/-]dealers admitted to membership in [the Association] FINRA and their associated persons. Unless otherwise indicated, the requirements of the OTC Bulletin Board Rules are in addition to the requirements contained in the other FINRA [R]rules [of the Association], By-Laws, and Schedules to the By-Laws.

**6520.** No Change.

**6530. OTCBB-Eligible Securities**

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

- (a) any domestic equity security that satisfies the requirements of subparagraph (1) and either subparagraph (2) or (3) or (4) below:
  - (1) the security is not listed on a national securities exchange in the U.S., except that an equity security shall be considered eligible if it:
    - (A) is listed on one or more regional stock exchanges, and
    - (B) does not qualify for dissemination of transaction reports via the facilities of the Consolidated Tape; and
  - (2) the issuer of the security is required to file reports pursuant to Section 13 or 15(d) of the Exchange Act or the security is described in Section 12(g)(2)(B) of the Exchange Act, and, subject to a thirty calendar day grace period, the issuer of the security is current in its reporting obligations, or
  - (3) the security is described in Section 12(g)(2)(G) of the Exchange Act and, subject to a sixty calendar day grace period, the issuer of the security is current in its reporting obligations, or
  - (4) the issuer of the security is a bank or savings association (or a holding company for such an entity) that is not required to file reports with the [Commission] SEC pursuant to Section 13 or 15(d) of the Exchange Act and, subject to a sixty calendar day grace period, the issuer of the security is current

with all required filings with its appropriate Federal banking agency or State bank supervisor (as defined in 12 U.S.C. 1813).

(5) The grace periods set forth in paragraphs (a)(2), (a)(3) and (a)(4) above shall be calculated from the date notice is published on the OTCBB Daily List that the symbol of a delinquent issuer will be modified.

(b) any foreign equity security or American Depository Receipt (ADR) that meets all of the following criteria:

(1) the security is registered with the [Commission] SEC pursuant to Section 12 of the Exchange Act and the issuer of the security is current in its reporting obligations; or the security satisfies the requirements of paragraph (a)(2) or (3) or (4) above; and

(2) the security is not listed on a national securities exchange in the U.S., except that a foreign equity security or ADR shall meet this subparagraph (2) if it is:

(A) listed on one or more regional stock exchanges, and  
(B) does not qualify for dissemination of transaction reports via the facilities of the Consolidated Tape.

(c) No Change.

(d) any Direct Participation Program as defined in Rule [6910] 6642 that is not listed on a national securities exchange in the U.S. and that satisfies the requirements of paragraph (a)(2) or (3) or (4) above.

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

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

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

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

(f) (1) Upon determining that an issuer's security would be ineligible for quotation under this [r]Rule, [NASD] FINRA will send a notification to the address on the cover of the issuer's last periodic report. This notification will state the date upon which the security will be removed, following any applicable

grace period, unless the condition causing the ineligibility has been cured by that date. When a security becomes ineligible for quotation pursuant to paragraph (e) above, however, the issuer may not cure the condition that caused the ineligibility. In all cases, [NASD] FINRA will provide at least seven calendar days from the date the notification is mailed to the issuer to permit an aggrieved party to request review pursuant to paragraph (f)(2) below, before removal of the security.

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

(3) The decision of the Hearing Officer may be called for review by the Review Subcommittee of the National Adjudicatory Council as set forth in Rule 9760. This review will only consider whether the issuer's security, at the time of the initial review under paragraph (f)(2), was eligible for quotation in the Service and/or whether the issuer filed a complete report by the applicable due date taking into account any extensions pursuant to SEA Rule 12b-25 [under the Exchange Act]. There will be no discretion to grant extensions of time for ineligible securities to become eligible. The removal of the issuer's security from the Service will be stayed until the earlier of written notice that the National Adjudicatory Council's Review Subcommittee will not call the decision for review, the expiration of the time allowed to exercise a call for review under Rule 9760 or a decision is issued by the National Adjudicatory Council as set forth in Rule 9760. Notwithstanding any contrary provision in the Rule 9700 Series, a review under this paragraph (f)(3) will be based on the written record, unless additional hearings are ordered by the Subcommittee as set forth in Rule 9760. If any further hearings are ordered, the hearings may be conducted via telephone and [NASD] FINRA will provide the aggrieved party at least five business days notice of the hearing unless the aggrieved party waives such notice.

#### **6540. Requirements Applicable to Market Makers**

(a) Market-maker participation in the OTCBB is voluntary and open to any [NASD] FINRA member firm that satisfies the financial/operational requirements applicable to member firms engaged in over-the-counter market making; subscribes to the service designated by [NASD] FINRA that permits OTCBB quotations; and

demonstrates compliance with (or qualifies for an exception from) SE[C]A Rule 15c2-11 at the time of initiating (or resuming) the quotation of any OTCBB-eligible security in the Service. Rule [6640] 6440 sets forth the procedure for demonstrating compliance with SE[C]A Rule 15c2-11.

(b) An alternative trading system (ATS), as defined in SEA Rule 300(a) of Regulation ATS, [Rule 300(a),] or electronic communications network (ECN), as defined in SE[C]A Rule 600(b)(23) of Regulation NMS, shall be eligible to participate in the Service, provided however, that such ATS or ECN is a[n NASD] FINRA member and otherwise meets the requirements for participation set forth in the OTC Bulletin Board Rules. Where used in the OTC Bulletin Board Rules, the term “market maker” shall be construed to include a participating ATS or ECN.

(c) A participating ATS or ECN shall reflect non-subscriber access or post-transaction fees in the ATS’s or ECN’s posted quote in the OTC Bulletin Board montage.

(d) OTCBB-eligible securities that meet the frequency-of-quotation requirement for the so called “piggyback” exception in SE[C]A Rule 15c2-11(f)(3)(i) are identified in the Service as “active” securities. A member can commence market making in any active security by registering as a market maker through the service designated by [NASD] FINRA that permits OTCBB quotations. In all other instances, a member must follow the procedure contained in this Rule to become qualified as a market maker in a particular OTCBB-eligible security.<sup>1</sup>

**(1) Permissible Quotation Entries**

(A) A member firm that has qualified as a market maker in a particular OTCBB-eligible security may enter into the Service a priced bid

and/or offer, an unpriced indication of interest (including “bid wanted” and “offer wanted” indications) or a bid or offer accompanied by a modifier to reflect unsolicited customer interest. Every quotation entry must include the appropriate telephone number for the firm’s trading desk.

(B) A priced bid and/or offer entered into the Service for a domestic equity security must be firm up to the minimum quotation size specified in Rule [6650] 6450. This firmness requirement applies only during normal business hours, i.e., 9:30 a.m. to 4:00 p.m. Eastern Time.

(C) A priced bid and/or offer entered into the Service for a Direct Participation Program security shall be non-firm.<sup>2</sup> Moreover, a market maker is only permitted to update quotation entries in such securities twice daily, i.e., once between 8:30 a.m. and 9:30 a.m. Eastern Time, and once between noon and 12:30 p.m. Eastern Time.<sup>3</sup>

(D) Any member that intends to be a distribution participant in a distribution of securities subject to SE[C]A Rule 101, or is an affiliated purchaser in such distribution, and is entering quotations in an OTCBB-eligible security that is the subject security or reference security of such distribution shall, unless another member has assumed responsibility for compliance with this paragraph:

(i) provide written notice to Operations Department prior to the pricing of the distribution that includes the intended date and time of the pricing of the offering;

(ii) withdraw all quotations in the OTCBB-eligible security to comply with the applicable restricted period under SE[C]A Rule 101 and not enter a stabilizing bid pursuant to SE[C]A Rule 104 in the OTCBB;

(iii) provide written notice to the Corporate Financing Department of [NASD] FINRA of its intention to impose a penalty bid or to conduct syndicate covering transactions pursuant to SE[C]A Rule 104 prior to imposing the penalty bid or engaging in the first syndicate covering transaction. Such notice shall include information as to the date the penalty bid or first syndicate covering transaction will occur; and

(iv) provide written notice to the Market Regulation Department by the close of business on the day the offering terminates that includes the date and time of the pricing of the offering, the offering price, and the time the offering terminated.

(E) The written notice required by [sub]paragraphs (d)(1)(D)(i), (iii) and (iv) of this Rule may be submitted on the Underwriting Activity Report provided by the Market Regulation Department.

(F) For purposes of [sub]paragraph (d)(1)(D), SE[C]A Rules 100, 101, 103 and 104 are rules of the [Commission]SEC adopted under Regulation M and the following terms shall have the meanings as defined in SE[C]A Rule 100: “affiliated purchaser,” “distribution,” “distribution

participant,” “penalty bid,” “reference security,” “restricted period,” “stabilizing,” “subject security,” and “syndicate covering transaction.”

**(2) Impermissible Quotation Entries**

(A) No member or person associated with a member shall enter into the Service a priced bid and/or offer, an unpriced indication of interest (including “bid wanted” or “offer wanted” indications), or a bid or offer accompanied by a modifier to reflect unsolicited customer interest in any security that does not satisfy the requirements of Rule 6530.

(B) No member or person associated with a member shall enter into the Service a priced bid and/or offer, an unpriced indication of interest (including “bid wanted” or “offer wanted” indications), or a bid or offer accompanied by a modifier to reflect unsolicited customer interest in any security of an issuer that does not make filings with the [Commission] SEC through the Electronic Data Gathering, Analysis, and Retrieval (“EDGAR”) system (or in paper format, if specifically permitted by [Commission] SEC [R]rules) unless the member:

(i) notifies [NASD] FINRA of the issuer of the security’s schedule for the filing of all periodic reports or financial reports required pursuant to the Exchange Act or regulatory authority, respectively, and the identity of the regulatory authority with which such reports are filed, or ensures that such notice is provided; and

(ii) provides to [NASD] FINRA the issuer's periodic reports required pursuant to the Exchange Act, or the issuer's financial reports required by regulatory authority, prior to the expiration of the grace period described in Rule 6530(a)(3), or ensures that the required periodic reports are provided to [NASD] FINRA within that time period.

**(3) Voluntary Termination of Registration**

A market maker can voluntarily terminate its registration in an OTCBB-eligible security by withdrawing its quotations in that security from the Service. The firm may re-register to quote the security by satisfying the requirements specified above.

**(4) More Than One Trading Location**

In cases where a market maker has more than one trading location, a fifth-character, geographic indicator shall be appended to the market maker's identifier for that security. Indicators are established by [NASD] FINRA and published from time to time in the Nasdaq/CQS symbol directory.

**(5) Clearance and Settlement**

(A) A market maker shall clear and settle transactions in OTCBB-quoted securities through the facilities of a registered clearing agency that uses a continuous net settlement system. This requirement applies only to transactions in OTCBB securities that are clearing eligible.

(B) The foregoing requirement may be satisfied by direct participation, use of direct clearing services, or by entry into a

correspondent clearing arrangement with another member that clears trades through such an agency.

(C) Notwithstanding subparagraph (A) hereof, transactions in OTCBB-quoted securities may be settled “ex-clearing” provided that both parties to the transactions agree.

**(e) Compliance with Market Maker Requirements**

Failure of a member or a person associated with a member to comply with this Rule may be considered conduct inconsistent with high standards of commercial honor and just and equitable principles of trade, in violation of NASD Rule 2110.

---

<sup>1</sup>(1) On February 28, 1992, the [Commission] SEC granted [the Association] FINRA’s request to create a limited exemption from SE[C]A Rule 15c2-11 that permits a broker[/]-dealer to publish in or submit to a quotation medium quotations for a security immediately after such security is no longer authorized for quotation in The Nasdaq Stock Market, without having information specified by that Rule. This exemption is only available if all the following conditions are satisfied:

(a) the security’s removal was attributable solely to the issuer’s failure to satisfy the revised maintenance standards approved in Release No. 34-29638 (August 30, 1991), 56 F.R. 44108 (September 6, 1991);

(b) the security must have been quoted continuously in Nasdaq during the thirty calendar days preceding its delisting, exclusive of any trading halt not exceeding one day to permit the dissemination of material news concerning the security's issuer;

(c) the issuer must not be the subject of bankruptcy proceedings;

(d) the issuer must be current in its reporting pursuant to Section 13(a) or 15(d) of the Exchange Act; and

(e) a broker[/-]dealer relying upon this exemption must have been a market maker registered with [the Association] FINRA in the security during the thirty day period preceding its removal from Nasdaq.

(2) By letter dated December 20, 1993, the [Commission] SEC granted [the Association] FINRA's request for a limited exemption from SE[C]A Rule 15c2-11 [under the Act] for broker[/-]dealers that publish or submit quotations for publication in the OTCBB Service for certain OTC equity securities. This exemption is not available for American Depository Receipts or OTC equities issued by a foreign private issuer, within the meaning of SE[C]A Rule 3b-4. Regarding domestic OTC equities, the exemption is available to a broker[/-]dealer, subject to the

following conditions at the time such broker[/\_]-dealer submits or initiates quotations in the OTCBB:

- (a) The security is eligible for piggybacking pursuant to SE[C]A Rule 15c2-11(f)(3) in another inter-dealer quotation system;
- (b) A broker[/\_]-dealer relying upon this exemption must itself have published quotations in the security in that inter-dealer quotation system on at least 12 business days during the preceding 30 calendar days, with not more than four consecutive business days without quotations;
- (c) The issuer of the security is not the subject of bankruptcy proceedings;
- (d) The issuer of the security is not delinquent in any of its reporting obligations under the Exchange Act or rules thereunder, if subject to Section 13(a) or 15(d) of the Exchange Act; and
- (e) If at any time the [Commission] SEC subsequently suspends trading in a domestic OTC equity security pursuant to Section 12(k) of the Exchange Act, no broker or dealer will initiate or resume quotations in that security in the OTCBB unless the broker[/\_]-dealer complies with SE[C]A Rule 15c2-11.

<sup>2</sup> The non-firm or indicative nature of a priced entry is specifically identified on the montage of market maker quotations for this subset of OTCBB-eligible securities.

<sup>3</sup> Examples of entries that would be considered an update include a market maker inserting a new, non-firm priced quotation, substituting an unpriced indication for a non-firm priced entry, or an initial registration without a price.

**[6541] 6560. Limit Order Protection**

(a) Members shall be prohibited from “trading ahead” of customer limit orders that a member accepts in securities quoted on the OTCBB. Members handling customer limit orders, whether received from their own customers or from another member, are prohibited from trading at prices equal or superior to that of the customer limit order without executing the limit order. Members are under no obligation to accept limit orders from any customer.

(b) Members may avoid the obligation specified in paragraph (a) through the provision of price improvement. If a customer limit order is priced at or inside the current inside spread, however, the price improvement must be for a minimum of the lesser of \$0.01 or one-half (½) of the current inside spread. For purposes of this [r]Rule, the inside spread shall be defined as the difference between the best reasonably available bid and offer in the subject security.

(c) Notwithstanding [sub]paragraph (a) of this [r]Rule, a member may negotiate specific terms and conditions applicable to the acceptance of limit orders only with respect to such orders that are:

- (1) for customer accounts that meet the definition of an “institutional account” as that term is defined in NASD Rule 3110(c)(4); or
- (2) for 10,000 shares or more, and greater than \$20,000 in value.

**(d) Contemporaneous trades**

A member that trades through a held limit order must execute such limit order contemporaneously, or as soon as practicable, but in no case later than five minutes after the member has traded at a price more favorable than the customer’s price.

**(e) Application**

- (1) This [r]Rule shall apply, regardless of whether the subject security is additionally quoted in a separate quotation medium.
- (2) This [r]Rule shall apply from 9:30 a.m. to 4:00 p.m. Eastern Time.

**6550. Transaction Reporting**

Member firms that effect transactions in OTCBB-eligible securities shall report them pursuant to the requirements of the Rule [6600] 6620 Series, except for transactions in Direct Participation Program securities, which shall be reported pursuant to the requirements of the Rule [6900] 6640 Series.

**[6600] 6400. [Over-The-Counter] QUOTING AND TRADING IN OTC EQUITY SECURITIES**

**6410. General**

This Rule [6600] 6400 Series sets forth recording and reporting requirements for certain quotations and unpriced indications of interest displayed on inter-dealer quotation systems and the trade reporting requirements applicable to members’ transactions in equity securities for which real-time trade reporting is not otherwise required (hereinafter

referred to as “OTC Equity Securities”). Members shall use the OTC Reporting Facility for trade reporting in OTC Equity Securities in compliance with the Rule 6600 and 7300 Series, as well as all other applicable rules and regulations.

**[6610] 6420. Definitions**

- (a) Terms used in this Rule shall have the same meaning as those defined in the [Association's] FINRA By-Laws and [R]rules unless otherwise specified herein.
- (b) “Non-Market Maker” means a member of [the Association] FINRA that is not an OTC Market Maker with respect to a particular OTC Equity Security.
- (c) “Non-exchange-listed security” means any equity security that is not traded on any national securities exchange. The term “non-exchange-listed security” shall not include “restricted securities,” as defined by [SEC] Securities Act Rule 144(a)(3) [under the Securities Act of 1933], nor any securities designated in the PORTAL Market, the Rule [6700] 6630 Series.
- (d) “OTC Equity Security” means any non-exchange-listed security and certain exchange-listed securities that do not otherwise qualify for real-time trade reporting.
- (e) “OTC Market Maker” means a member of [the Association] FINRA that holds itself out as a market maker by entering proprietary quotations or indications of interest for a particular OTC Equity Security in any inter-dealer quotation system, including any system that the [Commission] SEC has qualified pursuant to Section 17B of the Exchange Act. A member is an OTC Market Maker only in those OTC Equity Securities in which it displays market making interest via an inter-dealer quotation system.

(f) “Priced entry” shall mean a quotation consisting of a bid, offer, or both at a specified price.

(g) “Quotation” shall mean any bid or offer at a specified price with respect to a non-exchange-listed security, or any indication of interest by a broker or dealer in receiving bids or offers from others for such a security, or any indication by a broker or dealer that it wishes to advertise its general interest in buying or selling a particular non-exchange-listed security.

(h) “Quotation medium” means any inter-dealer quotation system (except for the PORTAL Market) or any publication or electronic communications network or other device that is used by brokers or dealers to make known to others their interest in transactions in any non-exchange-listed security, including offers to buy or sell at a stated price or otherwise, or invitations of offers to buy or sell.

(i) “Stop Stock Price” means the specified price at which a member and another party agree a Stop Stock Transaction shall be executed, and which price is based upon the prices at which the security is trading at the time the order is received by the member, taking into consideration that the specified price may deviate from the current market prices to factor in the size of the order and the number of shares available at those prices.

(j) “Stop Stock Transaction” means any transaction that meets both of the following conditions:

- (1) the transaction is the result of an order in which a member and another party agree that the order shall be executed at a Stop Stock Price or better; and
- (2) the order is executed at the Stop Stock Price.

(k) “OTC Reporting Facility” means[, for the purposes of the Rule 6600 Series,] the service provided by [NASD] FINRA that accommodates reporting and dissemination of last sale reports in OTC Equity Securities. Regarding those OTC Equity Securities that are not eligible for clearance and settlement through the facilities of the National Securities Clearing Corporation, the OTC Reporting Facility comparison function will not be available. However, the OTC Reporting Facility will support the entry and dissemination of last sale data on such securities.

**[6620] 6622. Transaction Reporting**

**(a) When and How Transactions are Reported**

(1) OTC Market Makers shall, within 90 seconds after execution, transmit to the OTC Reporting Facility last sale reports of transactions in OTC Equity Securities executed between the hours of 9:30 a.m. and 4:00 p.m. Eastern Time. Transactions not reported within 90 seconds after execution shall be designated as late.

(2) Non-Market Makers shall, within 90 seconds after execution, transmit to the OTC Reporting Facility, or by telephone to the Operations Department if the OTC Reporting Facility is unavailable due to system or transmission failure, last sale reports of transactions in OTC Equity Securities executed between the hours of 9:30 a.m. and 4:00 p.m. Transactions not reported within 90 seconds after execution shall be designated as late.

**(3) Transaction Reporting Outside Normal Market Hours**

(A) Last sale reports of transactions in OTC Equity Securities executed between 8:00 a.m. and 9:30 a.m. Eastern Time shall be

transmitted to the OTC Reporting Facility within 90 seconds after execution and shall be designated as ".T" trades to denote their execution outside normal market hours. Transactions not reported within 90 seconds must be designated as .T trades. Transactions not reported before 9:30 a.m. shall be reported after 4:00 p.m. and before 8:00 p.m. as .T trades.

(B) Last sale reports of transactions in OTC Equity Securities executed between the hours of 4:00 p.m. and 8:00 p.m. Eastern Time shall be transmitted to the OTC Reporting Facility within 90 seconds after execution; trades executed and reported after 4:00 p.m. Eastern Time shall be designated as ".T" to denote their execution outside normal market hours. Transactions not reported within 90 seconds must be designated as .T trades. Transactions not reported before 8:00 p.m. shall be reported on an ["as of"] "as/of" basis the following day between 8:00 a.m. and 8:00 p.m.

(C) Last sale reports of transactions in OTC Equity Securities executed outside the hours of 8:00 a.m. and 8:00 p.m. Eastern Time shall be reported as follows:

(i) Last sale reports of transactions in American Depository Receipts (ADRs), Canadian issues, or domestic OTC Equity Securities that are executed between midnight and 8:00 a.m. Eastern Time shall be transmitted to the OTC Reporting Facility between 8:00 a.m. and 9:30 a.m. Eastern Time on trade date and be designated as ".T" trades to denote their execution outside normal

market hours. Transactions not reported before 9:30 a.m. shall be reported after 4:00 p.m. and before 8:00 p.m. as .T trades. The party responsible for reporting on trade date, the trade details to be reported, and the applicable procedures shall be governed, respectively, by paragraphs (b), (c), and (d) below;

(ii) Last sale reports of transactions in ADRs, Canadian issues, or domestic OTC Equity Securities that are executed between 8:00 p.m. and midnight Eastern Time shall be transmitted to the OTC Reporting Facility on the next business day (T+1) between 8:00 a.m. and 8:00 p.m. Eastern Time and be designated [“as of”] “as/of” trades to denote their execution on a prior day. The party responsible for reporting on T+1, the trade details to be reported, and the applicable procedures shall be governed, respectively, by paragraphs (b), (c), and (d) below; and

(iii) Last sale reports of transactions in foreign securities (excluding ADRs and Canadian issues) shall be transmitted to the OTC Reporting Facility on T+1 regardless of time of execution.<sup>1</sup> Such reports shall be made between 8:00 a.m. and 1:30 p.m. Eastern Time in the same manner as described in subparagraph (3)(C)(ii) above.

(4) All members shall report as soon as practicable to the Market Regulation Department on Form T, last sale reports of transactions in OTC Equity Securities for which electronic submission to the OTC Reporting Facility is not

possible (e.g., the ticker symbol for the security is no longer available or a market participant identifier is no longer active). Transactions that can be reported to the OTC Reporting Facility, whether on trade date or on a subsequent date on an [“as of”] “as/of” basis (T+N), shall not be reported on Form T.

(5) A pattern or practice of late reporting without exceptional circumstances may be considered conduct inconsistent with high standards of commercial honor and just and equitable principles of trade, in violation of NASD Rule 2110.

(6) All members shall append the .PRP trade report modifier to transaction reports that reflect a price different from the current market when the execution price is based on a prior reference point in time. The transaction report shall include the prior reference time in lieu of the actual time the trade was executed. The .PRP modifier shall not be appended to a report of a transaction whose price is based on a prior reference point in time if the trade is executed and reported within 90 seconds from the prior reference point in time.

(7) [NASD] FINRA will append the .T modifier or the .SLD modifier, as appropriate, to those reports submitted to the OTC Reporting Facility that contain the time of execution, but that do not contain the appropriate modifier.

(8) All members shall append the .W trade report modifier to reports of Stop Stock Transactions, as such term is defined in Rule [6610] 6420, and include the time at which the member and the other party agreed to the Stop Stock Price, as such term is defined in Rule [6610] 6420, in lieu of including the time of execution on the trade report. The .W modifier shall not be appended to a report

of a Stop Stock Transaction if the Stop Stock Transaction is executed and reported within 90 seconds of the time the member and the other party agree to the Stop Price.

(9) To identify late pre-opening and after-hours trades reported late, [NASD] FINRA will convert the .T modifier to .ST for any report submitted to the OTC Reporting Facility more than 90 seconds after execution.

**(b) Which Party Reports Transaction**

(1) In a transaction between two OTC Market Makers, only the member representing the sell side shall report the transaction.

(2) In a transaction between an OTC Market Maker and a Non-Market Maker, only the OTC Market Maker shall report the transaction.

(3) In a transaction between two Non-Market Makers, only the member representing the sell side shall report the transaction.

(4) In a transaction between a member and a customer, the member shall report the transaction.

(5) In a transaction conducted through a Reporting ECN (as defined in Rule [6110] 7310), the Reporting ECN shall ensure that the transactions are reported in accordance with Rule [6130] 7330(c), and the term “Reporting Market Maker” as used in such [r]Rule shall be construed to refer to an OTC Market Maker.

**(c) Information To Be Reported**

Each last sale report shall contain the following information:

(1) Symbol of the OTC Equity Security;

- (2) Number of shares;
- (3) Price of the transaction as required by paragraph (d) below; and
- (4) A symbol indicating whether the transaction is a buy, sell, sell short, or cross.

(5) The time of execution expressed in hours, minutes, and seconds based on Eastern Time, unless another provision of [the Association's] FINRA rules requires that a different time must be included on the report.

**(d) Procedures for Reporting Price and Volume**

Members that are required to report pursuant to paragraph (b) above shall transmit last sale reports for all purchases and sales in OTC Equity Securities in the following manner:

- (1) For agency transactions, report the number of shares and the price excluding the commission charged.
- (2) For dual agency transactions, report the number of shares only once, and report the price excluding the commission charged.
- (3) (A) For principal transactions, except as provided in subparagraph (B) hereof, report each purchase and sale transaction separately and report the number of shares and the price. For principal transactions that are executed at a price that includes a mark-up, mark-down or service charge, the price reported shall exclude the mark-up, mark-down or service charge. Such reported price shall be reasonably related to the prevailing market, taking into consideration all relevant circumstances including, but not limited to, market conditions with respect to the OTC Equity Security,

the number of shares involved in the transaction, the published bids and offers with size displayed in any inter-dealer quotation system at the time of the execution (including the reporting firm's own quotation), the cost of execution and the expenses involved in clearing the transaction.

(B) Exception: A "riskless" principal transaction in which a member, after having received an order to buy a security, purchases the security as principal at the same price to satisfy the order to buy or, after having received an order to sell, sells the security as principal at the same price to satisfy the order to sell, shall be reported as one transaction in the same manner as an agency transaction, excluding the mark-up or mark-down, commission-equivalent, or other fee. Alternatively, a member may report a riskless principal transaction by submitting the following report(s) to the OTC Reporting Facility:

(i) The member with the obligation to report the transaction pursuant to paragraph (b) above must submit a last sale report for the initial leg of the transaction.

(ii) Regardless of whether a member has a reporting obligation pursuant to paragraph (b) above, the firm must submit, for the offsetting, "riskless" portion of the transaction, either:

a. a clearing-only report with a capacity indicator of "riskless principal," if a clearing report is necessary to clear the transaction; or

b. a non-tape, non-clearing report with a capacity indicator of “riskless principal,” if a clearing report is not necessary to clear the transaction.

**Example:**

SELL as a principal 100 shares to another member at 40 to fill an existing order;

BUY as principal 100 shares from a customer at 40 minus a mark-down of \$12.50;

REPORT 100 shares at 40 by submitting to the OTC Reporting Facility either a single trade report marked with a “riskless principal” capacity indicator or by submitting the following reports:

- (1) where required by this Rule, a tape report marked with a “principal” capacity indicator; and
- (2) either a non-tape, non-clearing report or a clearing-only report marked with a “riskless principal” capacity indicator.

**(e) Transactions Not To Be Reported For Publication Purposes**

The following types of transactions shall not be reported for publication purposes:

- (1) Transactions that are part of a primary distribution by an issuer or a registered secondary distribution (other than “shelf distributions”) or of an unregistered secondary distribution;
- (2) Transactions made in reliance on Section 4(2) of the Securities Act [of 1933];

- (3) Transactions where the buyer and seller have agreed to trade at a price substantially unrelated to the current market for the security;
- (4) Purchases or sales of securities effected upon the exercise of an option pursuant to the terms thereof or the exercise of any other right to acquire securities at a pre-established consideration unrelated to the current market.

**(f) Reporting Cancelled Trades**

**(1) Obligation and Party Responsible for Reporting Cancelled Trades**

With the exception of trades cancelled in accordance with NASD Rule 11890, members shall report to the OTC Reporting Facility the cancellation of any trade previously submitted to the OTC Reporting Facility. The member responsible under Rule [6620] 6622 for submitting the original trade report shall submit the cancellation report in accordance with the procedures set forth in paragraph (f)(2).

**(2) Deadlines for Reporting Cancelled Trades**

(A) For trades executed between 9:30 a.m. and 4:00 p.m. Eastern Time and cancelled before 5:13:30 p.m. on the date of execution, the member responsible under paragraph (f)(1) shall report the cancellation within 90 seconds of the time the trade is cancelled.

(B) For trades executed between 9:30 a.m. and 4:00 p.m. Eastern Time and cancelled after 5:13:30 p.m., but before 5:15 p.m. on the date of execution, the member responsible under paragraph (f)(1) shall use its best efforts to report the cancellation not later than 5:15 p.m. on the date of

execution, and otherwise it shall report the cancellation on the following business day by 8:00 p.m.

(C) For trades executed between 9:30 a.m. and 4:00 p.m. Eastern Time and cancelled after 5:15 p.m. on the date of execution, the member responsible under paragraph (f)(1) shall report the cancellation on the following business day by 8:00 p.m.

(D) For trades executed outside the hours of 9:30 a.m. to 4:00 p.m. Eastern Time and cancelled prior to 8:00 p.m. on the date of execution, the member responsible for reporting under paragraph (f)(1) shall report the cancellation by 8:00 p.m.

(E) For trades executed outside the hours of 9:30 a.m. to 4:00 p.m. Eastern Time and cancelled after 8:00 p.m. on the date of execution, the member responsible under paragraph (f)(1) shall report the cancellation on the following business day by 8:00 p.m.

(F) For any trade cancelled on any date after the date of execution, the member responsible under paragraph (f)(1) shall report the cancellation (i) by 8:00 p.m. on the date of cancellation if the trade is cancelled before 8:00 p.m., or (ii) by 8:00 p.m. on the following business day if the trade is cancelled at or after 8:00 p.m.

(G) For purposes of determining the deadline by which a trade cancellation must be reported to the OTC Reporting Facility pursuant to [sub]paragraph (f) of this rule, the term “cancelled” shall mean the time at which (i) the member with the reporting responsibility informs its contra

party, or is informed by its contra party, that a trade is being cancelled, (ii) the member with the reporting responsibility and its contra party agree to cancel a trade if neither party can unilaterally cancel the trade, or (iii) the member with the reporting responsibility takes an action to cancel the trade on its books and records, whichever event occurs first.

**(g) Transactions in Foreign Equity Securities**

(1) For purposes of this paragraph, the term “foreign equity security” means any OTC Equity Security that is issued by a corporation or other entity incorporated or organized under the laws of any foreign country.

(2) Transactions in foreign equity securities shall be reported to the OTC Reporting Facility unless:

(A) the transaction is executed on and reported to a foreign securities exchange; or

(B) the transaction is executed over the counter in a foreign country and is reported to the regulator of securities markets for that country.

*[Cross Reference-IM-4632, Transaction Reporting]*

---

<sup>1</sup> Member firms that have the operational capability to report transactions in foreign securities (excluding ADRs and Canadian issues) within 90 seconds of execution, between the hours of 8:00 a.m. and 5:15 p.m. Eastern time, may do so at their

option. If a firm chooses this option, it need not report the same transaction(s) on T+1 as prescribed by subparagraph (3)(C)(ii).

**[6630] 6430. Recording of Quotation Information**

**(a) Quotation Recording Requirements**

(1) Subject to the terms and conditions contained herein, each OTC Market Maker that displays priced quotations (bid and/or offer) or unpriced indications of interest in OTC Equity Securities in an inter-dealer quotation system that permits quotation updates on a real-time basis shall record each item of information described in paragraph (b) of this Rule. This quote activity record must reflect all changes in an OTC Market Maker's priced quotation or quotation size displayed or unpriced indication of interest, and the time any such change was effected.

(2) Members shall record each item of information required to be recorded under this Rule in such form as is prescribed by [the Association] FINRA from time to time.

**(3) Maintaining and Preserving Records**

(A) Each member shall maintain and preserve records of the information required to be recorded under this Rule for the period of time and accessibility specified in SE[C]A Rule 17a-4(a).

(B) The records required to be maintained and preserved under this Rule may be immediately produced or reproduced on "micrographic media" as defined in SE[C]A Rule 17a-4(f)(1)(i) or by means of "electronic storage media" as defined in SE[C]A Rule 17a-4(f)(1)(ii) that

meet the conditions set forth in SE[C]A Rule 17a-4(f) and may be maintained and preserved for the required time in that form.

**(b) Information to be Recorded**

The quotation activity record required pursuant to paragraph (a) of this Rule shall contain, at a minimum, the following information for every priced quotation (bid and/or offer) or unpriced indication of interest displayed by the member during the trading day:

- (1) Submitting firm;
- (2) Inter-dealer quotation system or medium;
- (3) Trade date;
- (4) Time quotation displayed (expressed in hours, minutes and seconds);
- (5) Security name and symbol;
- (6) Bid and bid quotation size (if applicable);
- (7) Offer and offer quotation size (if applicable);
- (8) Prevailing Inside Bid; and
- (9) Prevailing Inside Offer

If no updates were entered to an OTC Market Maker's quotation or quotation size for any given trading day, the member must record the information in subparagraphs (b)(1) through (7).

**(c) Quotations Not Required To Be Recorded**

The recording requirements contained in paragraphs (a) and (b) of this Rule shall not apply to quotations of OTC Equity Securities that are displayed on an inter-dealer quotation system that is:

- (1) operated by a registered securities association or a national securities exchange; or
- (2) operated by a member of [the Association] FINRA.

**(d) Reporting Requirements**

- (1) General Requirement

Members shall report information required to be recorded under this Rule to [the Association] FINRA upon its request.

- (2) Method of Transmitting Data

Members shall transmit this information in such form prescribed by [the Association] FINRA.

**(e) Reporting Agent Agreements**

(1) “Reporting Agent” shall mean a third party that enters into any agreement with a member pursuant to which such third party agrees to fulfill such member’s obligations under this Rule.

(2) Any member may enter into an agreement with a Reporting Agent pursuant to which the Reporting Agent agrees to fulfill the obligations of such member under this Rule. Any such agreement shall be evidenced in writing, which shall specify the respective functions and responsibilities of each party to the agreement that are required to effect full compliance with the requirements of this Rule.

(3) All written documents evidencing an agreement described in paragraph (e)(2) shall be maintained by each party to the agreement.

(4) Each member remains responsible for compliance with the requirements of this Rule, notwithstanding the existence of an agreement described in this paragraph.

**(f) Withdrawal of Quotations or Unpriced Indications of Interest**

If a member knows or has reason to believe that it or its Reporting Agent is not complying with the requirements of this Rule, the member must withdraw its quotations or unpriced indications of interest until such time that the member is satisfied that its quotation data is being properly recorded and reported.

**[6640] 6440. Submission of SEA Rule 15c2-11 Information on Non-Exchange-Listed Securities**

(a) Except as provided in SE[C]A Rules 15c2-11(f)(1), (2), (3) and (5) and 15c2-11(h) [under the Act], no member shall initiate or resume the quotation of a non-exchange-listed security in any quotation medium unless the member has demonstrated compliance with this [r]Rule and the applicable requirements for information maintenance under SEA Rule 15c2-11. A member shall demonstrate compliance by making a filing with, and in the form required by, [the NASD] FINRA, which filing must be received at least three business days before the member's quotation is published or displayed in the quotation medium.

(b) The information to be filed shall contain one copy of all information required to be maintained under SE[C]A Rule 15c2-11(a)(1), (2), (3)(iii), (4)(ii), or (5), including any information that may be required by future amendments thereto. Members are not required to file with [NASD] FINRA copies of any information that is available through the SEC's Electronic Data Gathering, Analysis, and Retrieval ("EDGAR") system;

provided, however, that the filing with [NASD] FINRA shall contain identifying information for each issuer report or statement available through EDGAR that was relied upon in satisfying the member's obligations under this Rule and SE[C]A Rule 15c2-11(a), including the type of report, report date and any other information as may be requested by [NASD] FINRA. In addition, this filing shall identify the issuer, the issuer's predecessor in the event of a merger or reorganization within the previous 12 months, the type of non-exchange-listed security to be quoted (e.g., ADR, warrant, unit, or common stock), the quotation medium to be used, the member's initial or resumed quotation, and the particular subsection of SEA Rule 15c2-11 with which the member is demonstrating compliance. Additionally, if a member is initiating or resuming quotation of a non-exchange-listed security with a priced entry, the member's filing must specify the basis upon which that priced entry was determined and the factors considered in making that determination.

(c) If a member's initial or resumed quotation does not include a priced entry, a member shall supplement its prior filing under this Rule, in the form required by [the NASD] FINRA, before inserting a priced entry for the affected non-exchange-listed security in a quotation medium. The supplemental filing shall specify the basis upon which the proposed priced entry was determined and the factors considered in making that determination. The supplemental filing must be received by [the NASD] FINRA at least three business days before the member's priced entry first appears in a quotation medium.

(d) All filings made with [NASD] FINRA under this Rule must be reviewed and signed by a principal of the member firm.

**[6650] 6450. Minimum Quotation Size Requirements For OTC Equity Securities**

Every member firm that functions as a market maker in OTC Equity Securities by entering firm quotations into the OTC Bulletin Board Service (OTCBB) (or any other inter-dealer quotation system that permits quotation updates on a real-time basis) must honor those quotations for the minimum size defined in the table below. In this regard, it is the market maker's responsibility to determine the minimum size requirement applicable to its firm bid and/or offer in each of its registered securities (excluding OTC Equity Securities for which the OTCBB will not accept firm quotations). Depending on the price level of the bid or offer, a different minimum size can apply to each side of the market being quoted by the member firm in a given security.

Price (Bid or Offer)	Minimum Quote Size
0-.501	5,000
.51–1.00	2,500
1.01–10.00	500
10.01–100.00	200
100.01–200.00	100
200.01–500.00	25
500.01–1000.00	10
1000.01–2500.00	5
2500.01 +	1

---

<sup>1</sup> The OTCBB can accept bids/offers expressed in fractions as small as 1/256 or in decimals up to six places. In applying the price test for minimum quotation size, any increment beyond an upper limit in the right hand column will trigger application of the minimum quote size for the next tier. For example, a bid (or offer) of \$.505 must be firm for a size of 2,500 shares.

**[6660] 6460. Trading and Quotation Halt in OTC Equity Securities**

**(a) Authority for Initiating a Trading and Quotation Halt**

In circumstances in which it is necessary to protect investors and the public interest, [NASD] FINRA may direct members, pursuant to the procedures set forth in paragraph (b), to halt trading and quotations in OTC Equity Securities (as such term is defined in Rule [6610] 6420) if:

- (1) the OTC Equity Security or the security underlying an American Depository Receipt (“ADR”) that is an OTC Equity Security (“OTC ADR”) is listed on or registered with a foreign securities exchange or market, and the foreign securities exchange, market, or regulatory authority overseeing such issuer, exchange, or market, halts trading in such security for regulatory reasons because of public interest concerns (“Foreign Regulatory Halt”); provided, however, that [NASD] FINRA will not impose a trading and quotation halt if the Foreign Regulatory Halt was imposed solely for material news, a regulatory filing deficiency, or operational reasons;

(2) the OTC Equity Security or the security underlying an OTC ADR is a derivative or component of a security listed on or registered with a national securities exchange or foreign securities exchange or market ("listed security") and the national securities exchange, or foreign securities exchange or market imposes a trading halt in the listed security; or

(3) [NASD] FINRA determines that an extraordinary event has occurred or is ongoing that has had a material effect on the market for the OTC Equity Security or has caused or has the potential to cause major disruption to the marketplace and/or significant uncertainty in the settlement and clearance process.

**(b) Procedure for Initiating a Trading and Quotation Halt**

(1) When a halt is initiated under [sub]paragraph (a)(1) of this [r]Rule, upon receipt of information from a foreign securities exchange or market on which the OTC Equity Security or the security underlying the OTC ADR is listed or registered, or from a regulatory authority overseeing such issuer, exchange, or market, [NASD] FINRA will promptly evaluate the information and determine whether a trading and quotation halt in the OTC Equity Security is appropriate.

(2) Should [NASD] FINRA determine that a basis exists under this [r]Rule for initiating a trading and quotation halt, the commencement of the trading and quotation halt will be effective simultaneous with the issuance of appropriate public notice.

(3) Trading and quotations in the OTC market may resume when [NASD] FINRA determines that the basis for the halt no longer exists, or when ten business days have elapsed from the date [NASD] FINRA initiated the trading

and quotation halt in the security, whichever occurs first. [NASD] FINRA shall disseminate appropriate public notice that the trading and quotation halt is no longer in effect.

**(c) Violation of OTC Trading and Quotation Halt Rule**

If a security is subject to a trading and quotation halt initiated pursuant to this [r]Rule, it shall be deemed conduct inconsistent with just and equitable principles of trade and a violation of NASD Rule 2110 for a member:

(1) to effect, directly or indirectly, a trade in such security; or

(2) to publish a quotation, a priced bid and/or offer, an unpriced

indication of interest (including “bid wanted” and “offer wanted” indications), or a bid or offer accompanied by a modifier to reflect unsolicited customer interest, in any quotation medium. For purposes of this [r]Rule, “quotation medium” shall mean any: system of general circulation to brokers or dealers that regularly disseminates quotations of identified brokers or dealers; or publication, alternative trading system or other device that is used by brokers or dealers to disseminate quotations to others.

**••• Supplementary Material: -----**

**[IM-6660-1. Factors to be Considered When Initiating a Trading and Quotation Halt]**

**.01** [NASD] FINRA may impose a trading and quotation halt in an OTC Equity Security pursuant to Rule [6660] 6460(a)(3) where [NASD] FINRA determines, in its discretion, based on the facts and circumstances of the particular event, that halting trading in the security is the appropriate mechanism to protect investors and ensure a fair and orderly

marketplace. As a general matter, [NASD] FINRA does not favor imposing a trading and quotation halt in an OTC Equity Security and will exercise this authority in very limited circumstances.

**.02** In determining whether to impose a trading halt under Rule [6660] 6460(a)(3), [NASD] FINRA will consider several factors in making its determination, including but not limited to: (1) the material nature of the event; (2) the material facts surrounding the event are undisputed and not in conflict; (3) the event has caused widespread confusion in the trading of the security; (4) there has been a material negative effect on the market for the subject security; (5) the potential exists for a major disruption to the marketplace; (6) there is significant uncertainty in the settlement and clearance process for the security; and/or (7) such other factors as [NASD] FINRA deems relevant in making its determination. [NASD] FINRA may review all or some of these factors as it determines appropriate.

## **6600. OTC REPORTING FACILITY**

### **6610. General**

Members that report transactions in OTC Equity Securities and Direct Participation Program securities to the OTC Reporting Facility must comply with the Rule 6600 and 7300 Series, as well as all other applicable rules and regulations.

### **6620. Reporting Transactions in OTC Equity Securities**

#### **6621. Definitions**

Terms used in this Rule 6620 Series shall have the same meanings as defined in Rule 6420.

### **6623. Timely Transaction Reporting**

FINRA emphasizes the obligations of members to report securities transactions within 90 seconds after execution. All reportable transactions not reported within 90 seconds after execution shall be reported as late, and FINRA routinely monitors members' compliance with the 90-second requirement. If FINRA finds a pattern or practice of unexcused late reporting, that is, repeated reports of executions after 90 seconds without reasonable justification or exceptional circumstances, the member may be found to be in violation of NASD Rule 2110. Exceptional circumstances will be determined on a case-by-case basis and may include instances of system failure by a member or service bureau, or unusual market conditions, such as extreme volatility in a security, or in the market as a whole. Timely reporting of all transactions is necessary and appropriate for the fair and orderly operation of the marketplace, and FINRA will view noncompliance as a rule violation.

### **6624. Trade Reporting of Short Sales**

Pursuant to applicable trade reporting rules, members must indicate on trade reports submitted to FINRA whether a transaction is a short sale transaction (“short sale reporting requirements”). The short sale reporting requirements apply to transactions in all OTC Equity Securities, as defined in Rule 6420. Thus, all short sale transactions in these securities reported to FINRA must carry a “short sale” indicator.

**[6700] 6630. [Transaction] Reporting Transactions in PORTAL® Securities**

**[6710] 6631. Definitions**

For purposes of the Rule [6700] 6630 Series, unless the context requires otherwise:

(a) “Exchange Act” [or “Act”] means the Securities Exchange Act of 1934, as amended from time to time.

(b) “PORTAL®” or “PORTAL Market” means Nasdaq’s market for designated foreign and domestic securities that are eligible for resale under [SEC] Securities Act Rule 144A.

(c) “PORTAL equity security” means a PORTAL security that represents an ownership interest in a legal entity, including but not limited to any common, capital, ordinary, preferred stock, or warrant for any of the foregoing, shares of beneficial interest, or the equivalent thereof (regardless of whether voting or non-voting, convertible or non-convertible, exchangeable or non-exchangeable, exerciseable or non-exerciseable, callable or non-callable, redeemable or non-redeemable).

(d) “PORTAL debt security” means PORTAL securities that are United States dollar denominated debt securities issued by United States and/or foreign private corporations, but shall not include mortgage or asset backed securities, collateralized mortgage obligations, money market instruments, or municipal and municipal-derivative securities.

(e) “PORTAL Market system” or “PORTAL system” means any computer system(s) designated by [NASD] FINRA to accept trade reports on transactions in PORTAL equity and/or debt securities, or to display transaction, quotation, or other information on PORTAL securities.

(f) “PORTAL security” means a security that is currently designated by The Nasdaq Stock Market LLC for inclusion in the PORTAL Market.

(g) “PORTAL transaction report” means a report of a transaction in a PORTAL security submitted by a member through a designated PORTAL system.

(h) “Restricted security” means a security that meets the definition of that term contained in [SEC] Securities Act Rule 144(a)(3) [under the Securities Act]. A PORTAL security continues to be a restricted security even though it is eligible to be resold pursuant to the provisions of [SEC] Securities Act Rule 144, including [SEC] Securities Act Rule 144(k), but has not been so resold.

(i) “SEC” means the United States Securities and Exchange Commission.

(j) “[SEC] Securities Act Rule 144A” means [SEC] Rule 144A adopted under the Securities Act[, as amended from time to time].

(k) “Securities Act” means the Securities Act of 1933, as amended from time to time.

(l) “Time of execution” means the time when all of the terms of a transaction in a PORTAL security have been agreed to that are sufficient to calculate the dollar price of the transaction and a determination has been made that the transaction is in compliance with Securities Act Rule 144A or any other applicable exemption from registration under Section 5 of the Securities Act.

(m) “Transaction” or “trade” means the purchase or sale of a PORTAL security.

(n) “United States” or “U.S.” means the United States of America (including the States and the District of Columbia), its territories, its possessions and other areas subject to its jurisdiction.

**[6720. Reserved]**

**[6730. Requirements Applicable to NASD Members]**

**[6731] 6632. Limitations on Transactions in PORTAL Securities**

(a) No member shall sell a PORTAL security unless:

(1) the sale is to:

(A) an investor or member that the member reasonably believes is a “qualified institutional buyer” in a transaction exempt from registration under the Securities Act by reason of compliance with Securities Act Rule 144A;

(B) an investor or member in a transaction that is exempt from registration under the Securities Act by reason of compliance with an applicable exemption under the Securities Act other than Securities Act Rule 144A; or

(C) a member acting as an agent in a transaction that the member acting as agent determines is in compliance with subparagraphs (A) or (B) hereof, and the selling member determines is exempt from registration under the Securities Act by reason of compliance with [SEC] Securities Act Rule 144A or an applicable exemption under the Securities Act other than [SEC] Securities Act Rule 144A; and

(2) the member maintains in its files information demonstrating that the transaction is in compliance with Securities Act Rule 144A or with any other applicable exemption from registration under the Securities Act.

**[6732] 6633. Reporting Debt and Equity Transactions in PORTAL Securities**

(a) Transactions in a PORTAL equity security shall be reported to the OTC Reporting Facility in accordance with this Rule. Each PORTAL transaction report on a PORTAL equity security shall:

(1) include the information required by [paragraph (d) of] Rule [6620] 6622(c), including the time of execution;

(2) be submitted to the OTC Reporting Facility no later than 6:30 p.m. Eastern Time (or the end of the OTC Reporting Facility reporting session that is in effect at that time); and

(3) be submitted by the party as required by Rule [6620] 6622(b).

(b) Transactions in PORTAL debt securities shall be reported to the Trade Reporting And Compliance Engine Service in accordance with the Rule [6200] 6700 Series.

(c) The reporting requirements of this Rule shall apply to transactions in reliance on [SEC] Securities Act Rule 144 and sales to or purchases from a non-U.S. securities market.

(d) Members that submit PORTAL transaction reports shall be subject to any fees imposed by the particular PORTAL system through which the PORTAL transaction report is submitted, as set forth in the Rule [7000] 7700 Series.

**[6740] 6634. Arbitration**

The facilities of [NASD] FINRA Dispute Resolution[ Inc.] and the procedures of the Code of Arbitration Procedure shall be available to PORTAL participants to resolve disputes arising from PORTAL transactions and transfers or activities related thereto.

**[6750] 6635. [NASD] FINRA Rules**

(a) The following [NASD Rules and Interpretative Material thereunder] are specifically applicable to transactions and business activities relating to PORTAL securities:

- (1) NASD Rules 0113, 0114, 0115, 2110, 2120, 2230, 2240, 2250, 2260, 2270, 2310, 3370, and FINRA Rule 8210;
- (2) the Rule 8100 and [Rule] 8300 Series; and
- (3) NASD IM-2310-2, IM-2420-1, IM-2440, IM-3310, and IM-3320.

(b) The following [NASD rules and Interpretative Material thereunder] are specifically applicable to transactions and business activities relating to PORTAL securities, with the exceptions specified below:

- (1) NASD Rule 2320, except for paragraph (g), which requires that a member obtain quotations from three dealers to determine the best inter-dealer market for the subject security;
- (2) NASD Rule 2330, except for paragraph (d); and
- (3) NASD Rule 3110.

(c) The following [NASD Rules] are applicable to members and persons associated with members regardless of whether the member participates in transactions in PORTAL securities:

- (1) NASD Rules 0111, 0112, 0120, and 0121.
- (2) NASD Rules 2210, 3020, 3030, 3040, 3050, 3060, 3130, 3140, and 3340.

(d) The following [NASD Rules and Interpretative Material thereunder] are not applicable to transactions and business activities relating to PORTAL securities:

(1) NASD Rules 1130, 2450, 2520, 2710, 2730, 2740, 2750, 2790, 2810, 2820, 2830, 2860, 3210, and 3360.

**[6900] 6640. Reporting Transactions in Direct Participation Program[s] Securities**

**6641. General**

All secondary market transactions by members in Direct Participation Program securities other than transactions executed on a national securities exchange shall be reported to [the NASD] FINRA in accordance with the procedures set forth below. All trade tickets shall be time-stamped at the time of execution.

**6910] 6642. Definitions**

The following terms shall have the following meanings for purposes of the Rule

**[6900] 6640 Series**

(a) “OTC Reporting Facility” means the service that, among other things, accommodates reporting of transactions in direct participation programs (DPPs). The OTC Reporting Facility comparison function will not be available for those DPPs that are [both eligible for quotation in the OTC Bulletin Board and] not eligible for clearance and settlement through the facilities of the National Securities Clearing Corporation. However, the OTC Reporting Facility will support the entry and inclusion of transaction data on such securities for reporting purposes.

(b) “Date of execution” means the date when the parties to a transaction in a DPP have agreed to all of the essential terms of the transaction, including the price and number of the units to be traded.

(c) “Direct participation program” or DPP, means a program which provides for flow-through tax consequences regardless of the structure of the legal entity or vehicle for distribution including, but not limited to, oil and gas programs, real estate programs, agricultural programs, cattle programs, condominium securities, Subchapter S corporate offerings and all other programs of a similar nature, regardless of the industry represented by the program, or any combination thereof. A program may be composed of one or more legal entities or programs but when used herein, the term shall mean each of the separate entities or programs making up the overall program and/or the overall program itself. Excluded from this definition are real estate investment trusts, tax qualified pension and profit sharing plans pursuant to Sections 401 and 403(a) of the Internal Revenue Code and individual retirement plans under Section 408 of that Code, tax sheltered annuities pursuant to the provisions of Section 403(b) of the Internal Revenue Code, and any company, including separate accounts, registered pursuant to the Investment Company Act of 1940.

(d) “Riskless principal transaction” means a principal transaction where a member, after having received from a customer an order to buy, purchases the security as principal from another member or customer to satisfy the order to buy or, after having received from a customer an order to sell, sells the security as principal to another member or customer to satisfy the order to sell.

(e) “Time of execution” means the time when the parties to a transaction in a DPP have agreed to all of the essential terms of the transaction, including the price and number of the units to be traded.

**[6920] 6643. Transaction Reporting**

**(a) When and How Transactions are Reported**

(1) Reports of secondary market transactions in direct participation programs shall be transmitted to the OTC Reporting Facility on the next business day (“T+1”) after the date of execution between 8:00 a.m. and 1:30 p.m. Eastern Time, be designated [“as of”] “as/of” trades to denote their execution on a prior day, and be accompanied by the time of execution. The party responsible for reporting on T+1, the trade details to be reported, and the applicable procedures shall be governed, respectively, by paragraphs (b), (c), and (d) below. Member firms that have the operational capability to report transactions within 90 seconds of execution, between the hours of 8:00 a.m. and 8:00 p.m. Eastern Time, may do so at their option. If a firm chooses this option, it need not report the same transaction(s) on T+1 as prescribed above.

(2) All members shall report to the Market Regulation Department [in Rockville, Maryland] on Form T, reports of transactions in DPPs that were not transmitted to the OTC Reporting Facility, for whatever reason, either on the trade date or the next business day. Form T shall be used exclusively as a back-up mode whenever electronic entry of trade data is not feasible due to system malfunctions or other unusual conditions.

(3) A pattern or practice of late reporting without exceptional circumstances may be considered conduct inconsistent with high standards of commercial honor and just and equitable principles of trade, in violation of NASD Rule 2110.

**(b) Which Party Reports Transactions**

- (1) In transactions between two members, only the member representing the sell side shall report.
- (2) In transactions between a member and a customer, the member shall report.
- (3) In transactions conducted through a Reporting ECN (as defined in Rule [6110] 7310), the Reporting ECN shall ensure that the transactions are reported in accordance with Rule [6130] 7330(c); provided that for purposes of Rule [6130] 7330(c)(5) (B) and (C), the party with the reporting obligation shall be as set forth in Rule [6130] 7330(c)(3) and the term “Reporting Order Entry Firm” as used in such [r]Rule shall be construed to refer to any member.

**(c) Information To Be Reported**

Each transaction report shall contain the following information:

- (1) A symbol indicating whether the transaction is a buy, sell, or cross;
- (2) Number of units;
- (3) Symbol of the DPP;
- (4) Price of the transaction as required by paragraph (d) below;
- (5) A symbol indicating whether the transaction is as principal, riskless principal, or agent;
- (6) Time of execution; and
- (7) Contra broker.

**(d) Procedures for Reporting Price and Volume**

Members that are required to report pursuant to paragraph (b) above shall transmit transaction reports for all purchases and sales in DPPs in the following manner:

- (1) For agency transactions, report the number of units and the price excluding any commission or service charge.
- (2) For dual agency transactions, report the number of units only once, and report the price excluding any commission or service charge.
- (3) For principal transactions, except as provided under subparagraph (4) below, report each purchase and sale transaction separately and report the number of units and the price. For principal transactions that are executed at a price which includes a mark-up, markdown or service charge, the price reported shall exclude the mark-up, mark-down or service charge. Such reported price shall be reasonably related to the prevailing market, taking into such consideration all relevant circumstances including, but not limited to, market conditions with respect to the DPP, the number of units involved in the transaction, the published bids and offers with size displayed in any quotation system at the time of the execution (including the reporting firm's own quotation), the cost of execution and the expenses involved in clearing the transaction.
- (4) For riskless principal transactions, report as one transaction in the same manner as an agency transaction, excluding the mark-up, mark-down, or service charge.

**(e) Transactions Not Required To Be Reported**

The following transactions are not required to be reported under the foregoing procedures:

- (1) Transactions made in reliance on Section 4(2) of the Securities Act [of 1933];
- (2) Transactions where the buyer and seller have agreed to trade at a price substantially unrelated to the current market for the DPP, e.g., to enable the seller to make a gift; and
- (3) Transactions executed on a national securities exchange.

**[6950] 7400. ORDER AUDIT TRAIL SYSTEM**

**[6951] 7410. Definitions**

For purposes of the Rule [6950] 7400 Series:

- (a) Terms shall have the same meaning as those defined in the FINRA By-Laws and [R]rules [of the Association], unless otherwise specified.
- (b) “Bunched Order” shall mean two or more orders that are aggregated prior to execution.
- (c) “Customer” shall mean a person other than a broker or dealer.
- (d) “Nasdaq Market Center” shall mean the service provided by Nasdaq that, among other things, provides for the reporting of transactions in Nasdaq securities.
- (e) “Electronic Communication Network” shall mean any electronic system that widely disseminates to third parties orders entered therein by an exchange market maker or over-the-counter market maker, and permits such orders to be executed in whole or in part, and as further defined in SE[C]A Rule 600(b)(23) of Regulation NMS.

(f) “Electronic Order” shall mean an order captured by a member in an electronic order-routing or execution system.

(g) “Index Arbitrage Trade” shall mean an arbitrage trading strategy involving the purchase or sale of a “basket” or group of securities in conjunction with the purchase or sale, or intended purchase or sale, of one or more cash-settled options or futures contracts on index stock groups, or options on any such futures contracts in an attempt to profit by the price difference, as further defined in New York Stock Exchange Rule 80A.

(h) “Intermarket sweep order” shall have the same meaning as contained in SE[C]A Rule 600(b)(30) [adopted pursuant to the Act] of Regulation NMS.

(i) “Manual Order” shall mean an order that is captured by a member other than in an electronic order-routing or execution system.

(j) “Order” shall mean any oral, written, or electronic instruction to effect a transaction in an equity security listed on the Nasdaq Stock Market or an OTC equity security that is received by a member from another person for handling or execution, or that is originated by a department of a member for execution by the same or another member, other than any such instruction to effect a proprietary transaction originated by a trading desk in the ordinary course of a member’s market making activities.

(k) “Order Audit Trail System” shall mean the automated system owned and operated by [the Association] FINRA that is designed to capture order information in equity securities listed on the Nasdaq Stock Market and OTC equity securities reported by members for integration with trade and quotation information to provide [the Association] FINRA with an accurate time sequenced record of orders and transactions.

(l) “OTC equity security” shall mean any equity security that:

(1) is not listed on a national securities exchange; or  
(2) is listed on one or more regional stock exchanges and does not qualify for dissemination of transaction reports via the facilities of the Consolidated Tape.

For purposes of the Rule [6950] 7400 Series, the term OTC equity security shall not include direct participation programs, as defined in Rule [6910] 6642.

(m) “Program Trade” shall mean a trading strategy involving the related purchase or sale of a group of 15 or more securities having a total market value of \$1 million or more, as further defined in New York Stock Exchange Rule 80A.

(n) “Reporting Agent” shall mean a third party that enters into any agreement with a member pursuant to which the Reporting Agent agrees to fulfill such member’s obligations under Rule [6955] 7450.

(o) “Reporting Member” shall mean a member that receives or originates an order and has an obligation to record and report information under Rules [6954] 7440 and [6955] 7450. A member shall not be considered a Reporting Member in connection with an order, if the following conditions are met:

- (1) the member engages in a non-discretionary order routing process, pursuant to which it immediately routes, by electronic or other means, all of its orders to a single receiving Reporting Member;
- (2) the member does not direct and does not maintain control over subsequent routing or execution by the receiving Reporting Member;
- (3) the receiving Reporting Member records and reports all information required under Rules [6954] 7440 and [6955] 7450 with respect to the order; and

(4) the member has a written agreement with the receiving Reporting Member specifying the respective functions and responsibilities of each party to effect full compliance with the requirements of Rules [6954] 7440 and [6955] 7450.

**[6952] 7420. Applicability**

(a) Unless otherwise indicated, the requirements of the Rule [6950] 7400 Series are in addition to the requirements contained in the FINRA By-Laws and [R]ules [of the Association].

(b) Unless otherwise indicated, the requirements of the Rule [6950] 7400 Series shall apply to all brokers and dealers admitted to membership in [the Association] FINRA and to their associated persons.

(c) Unless otherwise indicated, the requirements of the Rule [6950] 7400 Series shall apply to all executed or unexecuted orders.

(d) (1) For purposes of this paragraph, the term “foreign equity security” shall mean any equity security that is issued by a corporation or other organization incorporated or organized under the laws of any foreign country.

(2) Unless otherwise indicated, the requirements of the Rule [6950] 7400 Series shall apply to an order involving an OTC equity security that is a foreign equity security only if the order results in a trade that is subject to the transaction reporting requirements in Rule [6620] 6622.

**[6953] 7430. Synchronization of Member Business Clocks**

Each member shall synchronize its business clocks that are used for purposes of recording the date and time of any event that must be recorded pursuant to the FINRA

By-Laws or other FINRA rules [of the Association], with reference to a time source as designated by [the Association] FINRA, and shall maintain the synchronization of such business clocks in conformity with such procedures as are prescribed by [the Association] FINRA.

**[6954] 7440. Recording of Order Information**

**(a) Procedures**

- (1) Subject to the terms and conditions contained in Rules [6952] 7420 through [6957] 7460, each Reporting Member shall:
  - (A) immediately following receipt or origination of an order, record each item of information described in paragraph (b) of this Rule that applies to such order, and record any additional information described in paragraph (b) of this Rule that applies to such order immediately after such information is received or becomes available; and
  - (B) immediately following the transmission of an order to another member, or from one department to another within the same member, record each item of information described in paragraph (c) of this Rule that applies with respect to such transmission; and
  - (C) immediately following the modification, cancellation, or execution of an order, record each item of information described in paragraph (d) of this Rule that applies with respect to such modification, cancellation, or execution.
- (2) Each required record of the time of an event shall be expressed in terms of hours, minutes, and seconds.

(3) Each Reporting Member shall, by the end of each business day, record each item of information required to be recorded under this Rule in such electronic form as is prescribed by [the Association] FINRA from time to time.

**(4) Maintaining and Preserving Records**

(A) Each Reporting Member shall maintain and preserve records of the information required to be recorded under this Rule for the period of time and accessibility specified in SE[C]A Rule 17a-4(b).

(B) The records required to be maintained and preserved under this Rule may be immediately produced or reproduced on “micrographic media” as defined in SE[C]A Rule 17a-4(f)(1)(i) or by means of “electronic storage media” as defined in SE[C]A Rule 17a-4(f)(1)(ii) that meet the conditions set forth in SE[C]A Rule 17a-4(f) and be maintained and preserved for the required time in that form.

**(b) Order Origination and Receipt**

Unless otherwise indicated, the following order information must be recorded under this Rule when an order is received or originated. For purposes of this Rule, the order origination or receipt time is the time the order is received from the customer.

- (1) an order identifier meeting such parameters as may be prescribed by [the Association] FINRA assigned to the order by the Reporting Member that uniquely identifies the order for the date it was received;
- (2) the identification symbol assigned by [the Association] FINRA to the security to which the order applies;

- (3) the market participant symbol assigned by [the Association] FINRA to the Reporting Member;
- (4) the identification of any department or the identification number of any terminal where an order is received directly from a customer;
- (5) where the order is originated by a Reporting Member, the identification of the department of the member that originates the order;
- (6) where the Reporting Member is a party to an agreement described in Rule [6955] 7450(c), the identification of the Reporting Agent;
- (7) the number of shares to which the order applies;
- (8) the designation of the order as a buy or sell order;
- (9) the designation of the order as a short sale order;
- (10) the designation of the order as a market order, limit order, stop order or stop limit order;
- (11) any limit or stop price prescribed in the order;
- (12) the date on which the order expires, and, if the time in force is less than one day, the time when the order expires;
- (13) the time limit during which the order is in force;
- (14) any request by a customer that an order not be displayed, or that a block size order be displayed, pursuant to SEA Rule 604(b) [under the Securities Exchange Act of 1934] of Regulation NMS;
- (15) special handling requests, specified by [the Association] FINRA for purposes of this Rule;

- (16) the date and time the order is originated or received by a Reporting Member;
- (17) an identification of the order as related to a Program Trade or an Index Arbitrage Trade; and
- (18) the type of account, i.e., retail, wholesale, employee, proprietary, or any other type of account designated by [the Association] FINRA, for which the order is submitted.

**(c) Order Transmittal**

Order information required to be recorded under this Rule when an order is transmitted includes the following.

- (1) When a Reporting Member transmits an order to a department within the member, the Reporting Member shall record:
  - (A) the order identifier assigned to the order by the Reporting Member,
  - (B) the market participant symbol assigned by [the Association] FINRA to the Reporting Member,
  - (C) the date the order was first originated or received by the Reporting Member,
  - (D) an identification of the department and nature of the department to which the order was transmitted,
  - (E) the date and time the order was received by that department,
  - (F) the number of shares to which the transmission applies, and
  - (G) any special handling requests.

(2) When a member electronically transmits an order to another member, other than an order transmitted electronically for execution on an Electronic Communications Network:

(A) the transmitting Reporting Member shall record:

(i) the order identifier assigned to the order by the Reporting Member and the routed order identifier, if different, which the transmitting Reporting Member also must provide to the receiving Reporting Member,

(ii) the market participant symbol assigned by [the Association] FINRA to the Reporting Member,

(iii) the market participant symbol assigned by [the Association] FINRA to the member to which the order is transmitted,

(iv) the date the order was first originated or received by the Reporting Member,

(v) the date and time the order is transmitted,

(vi) the number of shares to which the transmission applies, and

(vii) whether the order is an intermarket sweep order; and

(B) the receiving Reporting Member shall record, in addition to all other information items in Rule [6954] 7440(b) that apply with respect to such order:

(i) the routed order identifier assigned to the order by the member that transmits the order and

(ii) the market participant symbol assigned by [the Association] FINRA to the member that transmits the order.

(3) When a member electronically transmits an order for execution on an Electronic Communications Network:

(A) the transmitting Reporting Member shall record:

(i) the fact that the order was transmitted to an Electronic Communications Network,

(ii) the order identifier assigned to the order by the Reporting Member and the routed order identifier, if different, which the transmitting Reporting Member also must provide to the receiving Reporting Member,

(iii) the market participant symbol assigned by [the Association] FINRA to the Reporting Member,

(iv) the market participant symbol assigned by [the Association] FINRA to the member to which the order is transmitted,

(v) the date the order was first originated or received by the Reporting Member,

(vi) the date and time the order is transmitted,

(vii) the number of shares to which the transmission applies, and

- (viii) whether the order is an intermarket sweep order; and

(B) the receiving Reporting Member operating the Electronic Communications Network shall record:

- (i) the fact that the order was received by an Electronic Communications Network,
- (ii) the routed order identifier assigned to the order by the member that transmits the order,
- (iii) the market participant symbol assigned by [the Association] FINRA to the transmitting Reporting Member, and
- (iv) other information items in Rule [6954] 7440(b) that apply with respect to such order, which must include information items (1), (2), (3), (6), (7), (8), (10), (11), (12), (13), (15), and (16).

(4) When a member manually transmits an order to another member, other than to an Electronic Communications Network:

(A) the transmitting Reporting Member shall record:

- (i) the fact that the order was transmitted manually,
- (ii) the order identifier assigned to the order by the Reporting Member,
- (iii) the market participant symbol assigned by [the Association] FINRA to the Reporting Member,
- (iv) the market participant symbol assigned by [the Association] FINRA to the member to which the order is transmitted,

- (v) the date the order was first originated or received by the Reporting Member,
- (vi) the date and time the order is transmitted,
- (vii) the number of shares to which the transmission applies,
- (viii) for each order to be included in a bunched order, the bunched order route indicator assigned to the bunched order by the Reporting Member, and
- (ix) whether the order is an intermarket sweep order; and

(B) the receiving Reporting Member shall record, in addition to all other information items in Rule [6954] 7440(b) that apply with respect to such order:

- (i) the fact that the order was received manually and
- (ii) the market participant symbol assigned by [the Association] FINRA to the member that transmits the order.

(5) When a member manually transmits an order to an Electronic Communications Network:

(A) the transmitting Reporting Member shall record:

- (i) the fact that the order was transmitted manually,
- (ii) the order identifier assigned to the order by the Reporting Member,
- (iii) the market participant symbol assigned by [the Association] FINRA to the Reporting Member,

- (iv) the market participant symbol assigned by [the Association] FINRA to the member to which the order is transmitted,
- (v) the date the order was first originated or received by the Reporting Member,
- (vi) the date and time the order is transmitted,
- (vii) the number of shares to which the transmission applies,
- (viii) for each order to be included in a bunched order, the bunched order route indicator assigned to the bunched order by the Reporting Member, and
- (ix) whether the order is an intermarket sweep order; and

(B) the receiving Reporting Member shall record:

- (i) the fact that the order was received manually,
- (ii) the market participant symbol assigned by [the Association] FINRA to the transmitting Reporting Member, and
- (iii) other information items in Rule [6954] 7440(b) that apply with respect to such order, which must include information items (1), (2), (3), (6), (7), (8), (10), (11), (12), (13), (15), and (16).

(6) When a member transmits an order to a non-member, including but not limited to a national securities exchange, the Reporting Member shall record:

- (A) the fact that the order was transmitted to a non-member,

- (B) the order identifier assigned to the order by the Reporting Member,
- (C) the market participant symbol assigned by [the Association] FINRA to the Reporting Member,
- (D) the date the order was first originated or received by the Reporting Member,
- (E) the date and time the order is transmitted,
- (F) the number of shares to which the transmission applies,
- (G) for each manual order to be included in a bunched order, the bunched order route indicator assigned to the bunched order by the Reporting Member,
- (H) the routed order identifier or other unique identifier required by the non-member receiving the order, as applicable,
- (I) identification of the non-member where the trade was transmitted, and
- (J) whether the order is an intermarket sweep order.

**(d) Order Modifications, Cancellations, and Executions**

Order information required to be recorded under this Rule when an order is modified, canceled, or executed includes the following.

- (1) When a Reporting Member modifies or receives a modification to the terms of the order, the Reporting Member shall record, in addition to all other applicable information items (including a new order identifier) that would apply

as if the modified order were originated or received at the time of the modification:

- (A) the order identifier assigned to the order by the Reporting Member prior to the modification,
- (B) the date and time the modification was originated or received, and
- (C) the date the order was first originated or received by the Reporting Member.

(2) When the Reporting Member cancels or receives a cancellation of an order, in whole or part, the Reporting Member shall record:

- (A) the order identifier assigned to the order by the Reporting Member,
- (B) the market participant symbol assigned by [the Association] FINRA to the Reporting member,
- (C) the date the order was first originated or received by the Reporting Member,
- (D) the date and time the cancellation was originated or received,
- (E) if the open balance of an order is canceled after a partial execution, the number of shares canceled, and
- (F) whether the order was canceled on the instruction of a customer or the Reporting Member.

(3) When a Reporting Member executes an order, in whole or in part, the Reporting Member shall record:

- (A) the order identifier assigned to the order by the Reporting Member,
- (B) the market participant symbol assigned by [NASD] FINRA to the Reporting Member,
- (C) the date the order was first originated or received by the Reporting Member,
- (D) the Reporting Member's number assigned for purposes of identifying transaction data in the Nasdaq Market Center, ADF, Trade Reporting Facility or other system or service as may be designated by [NASD] FINRA,
- (E) the designation of the order as fully or partially executed,
- (F) the number of shares to which a partial execution applies and the number of unexecuted shares remaining,
- (G) the identification number of the terminal where the order was executed,
- (H) the date and time of execution;
- (I) the execution price,
- (J) the capacity in which the member executed the transaction (e.g., agency, principal or riskless principal), and
- (K) the national securities exchange or facility operated by a registered securities association where the trade was reported.

**[6955] 7450. Order Data Transmission Requirements**

**(a) General Requirement**

All applicable order information required to be recorded under Rule [6954] 7440 shall be transmitted to the Order Audit Trail System by each Reporting Member or by a Reporting Agent pursuant to an agreement described by paragraph (c) of this Rule.

**(b) Method of Transmitting Data**

(1) Order information shall be transmitted in electronic form, as may be prescribed by [the Association] FINRA from time to time, to a receiving location designated by [the Association] FINRA.

(2) Each Reporting Member shall transmit to the Order Audit Trail System a report containing each applicable item of order information identified in Rule [6954] 7440(b), (c), and (d) whenever an order is originated, received, transmitted to another department within the member or to another member, modified, canceled, or executed. Each report shall be transmitted on the day such event occurred; provided, however, that if any item of information identified in Rule [6954] 7440(b), (c), and (d) is not available on such day, then the report shall be transmitted on the day that all such items of information become available.

Order information reports may be aggregated into one or more transmissions, during such business hours as may be prescribed by [the Association] FINRA.

**(c) Reporting Agent Agreements**

(1) Any Reporting Member may enter into an agreement with a Reporting Agent pursuant to which the Reporting Agent agrees to fulfill the obligations of such Reporting Member under this Rule. Any such agreement shall be evidenced

in writing, which shall specify the respective functions and responsibilities of each party to the agreement that are required to effect full compliance with the requirements of this Rule.

- (2) All written documents evidencing an agreement described in subparagraph (l) shall be maintained by each party to the agreement.
- (3) Each Reporting Member remains primarily responsible for compliance with the requirements of this rule, notwithstanding the existence of an agreement described in this paragraph.

**[6956] 7460. Violation of Order Audit Trail System Rules**

Failure of a member or person associated with a member to comply with any of the requirements of Rule [6951] 7410 through Rule [6957] 7460 may be considered conduct that is inconsistent with high standards of commercial honor and just and equitable principles of trade, in violation of NASD Rule 2110.

**[6957. Effective Date]**

[The requirements of the Order Audit Trail System shall be effective in accordance with the following schedule:]

**[(a) Clocks]**

[The requirements of Rule 6953 shall be effective on August 7, 1998, for all computer system clocks and on July 1, 1999, for all mechanical clocks.]

**[(b) Electronic Orders]**

[With respect to electronic orders, the requirements of the Order Audit Trail System shall be effective on:]

[(1) March 1, 1999, for electronic orders received by Electronic Communications Networks and electronic orders received at the trading department of a member that is a market maker in the securities that are the subject of the orders, provided that market makers shall be required to report information item (18) specified in Rule 6954(b) only to the extent such item is available to the market maker and shall not be required to record and report information item (5) specified in Rule 6954(b) and information items (2)(A), (2)(B)(i), (3)(A), (4)(A), and (5)(A) specified in Rule 6954(c) with respect to such orders; and]

[(2) August 1, 1999, for all electronic orders, at which time all information items specified in Rules 6954(b), (c), and (d) shall be required to be recorded and reported with respect to such orders.]

**[(c) Manual Orders]**

[The requirements of the Order Audit Trail System shall be effective on July 10, 2006 for all manual orders, provided that firms shall be required to report information item (18) specified in Rule 6954(b) only to the extent such item is available to them.]

**[(d) Rule 3110]**

[The requirements of Rule 3110(h)(1)(A) and Rule 3110(h)(1)(B) shall be effective on March 1, 1999, and the requirements of Rule 3110(h)(1)(C) shall be effective 120 days after SEC approval of SR-NASD-00-23. The requirements of Rule 3110(h)(2) and Rule 3110(h)(3) shall be effective on March 1, 1999.]

**[6958] 7470. Exemption to the Order Recording and Data Transmission**

**Requirements**

(a) Pursuant to the Rule 9600 Series, the staff, for good cause shown after taking into consideration all relevant factors, may exempt, subject to specified terms and conditions, a member from the recording and order data transmission requirements of Rules [6954] 7440 and [6955] 7450, respectively, for manual orders, if such exemption is consistent with the protection of investors and the public interest, and the member meets the following criteria:

- (1) the member and current control affiliates and associated persons of the member have not been subject within the last five years to any final disciplinary action, and within the last ten years to any disciplinary action involving fraud;
- (2) the member has annual revenues of less than \$2 million;
- (3) the member does not conduct any market making activities in Nasdaq Stock Market equity securities;
- (4) the member does not execute principal transactions with its customers (with limited exception for principal transactions executed pursuant to error corrections); and
- (5) the member does not conduct clearing or carrying activities for other firms.

(b) An exemption provided pursuant to this Rule shall not exceed a period of two years. At or prior to the expiration of a grant of exemptive relief under this Rule, a member meeting the criteria set forth in paragraph (a) above may request, pursuant to the

Rule 9600 Series, a subsequent exemption, which will be considered at the time of the request, consistent with the protection of investors and the public interest.

(c) This Rule shall be in effect until July 10, 2011.

**7000. CLEARING, TRANSACTION AND ORDER DATA REQUIREMENTS, AND FACILITY CHARGES**

**[6000A. NASD ADF SYSTEMS AND PROGRAMS]**

**[6100A] 7100. [TRACS TRADE COMPARISON SERVICE] ALTERNATIVE DISPLAY FACILITY/TRACS**

**[6110A] 7110. Definitions**

(a) The term “ADF-eligible security” means an NMS stock as defined in SE[C]A Rule 600(b)(47) of Regulation NMS.

(b) The term “Browse” shall mean the function of TRACS that permits a Participant to review (or query) for trades in the system identifying the Participant as a party to the transaction, subject to the specific uses contained in the TRACS Users Guide.

(c) The term “Clearing Broker[/]-Dealer” or “Clearing Broker” shall mean the member firm that has been identified in the TRACS system as principal for clearing and settling a trade, whether for its own account or for a correspondent firm.

(d) The term “Correspondent Executing Broker[/]-Dealer” or “Correspondent Executing Broker” shall mean the member firm that has been identified in the TRACS system as having a correspondent relationship with a clearing firm whereby it executes trades and the clearing function is the responsibility of the clearing firm.

(e) The term “Introducing Broker[/]-Dealer” or “introducing broker” shall mean the member firm that has been identified in the TRACS system as a party to the transaction, but does not execute or clear trades.

(f) The term “Participant” shall mean any member of [NASD] FINRA in good standing that uses the TRACS system as a Registered Reporting ADF Market Maker or Registered Reporting ADF ECN as defined in Rule [4200A] 6220, according to the requirements of Rule [4611A] 6271 and other pertinent [NASD] FINRA [R]rules, an Order Entry Firm, or a clearing broker[/]-dealer, correspondent executing broker[/]-dealer, or introducing broker[/]-dealer.

(g) The term “Parties to the Transaction” shall mean the executing brokers, introducing brokers and clearing brokers, if any.

(h) The term “Reportable TRACS Transaction” shall mean those transactions in a ADF-eligible security that are required, or are eligible, to be submitted utilizing TRACS pursuant to the Rule [4630A] 6280 Series. The term also shall include transactions in ADF-eligible securities that are for less than one round lot, and those transactions that are to be compared and locked-in for settlement.

(i) The term “Reporting Party” or “Reporting Member” shall mean the TRACS Participant that is required to input the trade information, according to the requirements in [NASD] the Rule [4630A] 6280 Series.

(j) The term “Trade Reporting and Comparison Service” or “TRACS” shall mean the automated system owned and operated by [NASD] FINRA as part of the Alternative Display Facility that reports trades and compares trade information entered by TRACS participants and submits “locked-in” trades to Depository Trust Clearing Corporation

(DTCC) for clearance and settlement; transmits reports of the transactions automatically to the Securities Information Processor, if required, for dissemination to the public and the industry; and provides participants with monitoring capabilities to facilitate participation in a “locked-in” trading environment.

(k) The term “TRACS ECN” shall mean a member of [NASD] FINRA that is a Registered Reporting ADF ECN that elects to display orders in the ADF and is a member of a registered clearing agency for clearing or comparison purposes or has a clearing arrangement with such a member.

(l) The term “TRACS Market Maker” shall mean a member of [NASD] FINRA that is a Registered Reporting ADF Market Maker and is a member of a registered clearing agency for clearing or comparison purposes or has a clearing arrangement with such a member.

(m) The term “TRACS Order Entry Firm” shall mean a member of [NASD] FINRA that is a firm that executes orders but does not act as a market maker in the instant transaction and is a member of a registered clearing agency for clearing or comparison purposes or has a clearing arrangement with such a member.

**[6120A] 7120. Participation in TRACS Trade Comparison Feature by Participants in the Alternative Display Facility**

The following Rules [6120A] 7120 through [6190A] 7170 apply to members that effect transactions in ADF-eligible securities through the ADF.

**(a) Mandatory Participation for Clearing Agency Members**

(1) Participation in TRACS trade comparison feature is mandatory for any [NASD] FINRA member that effects transactions in ADF-eligible securities

through the ADF, which are not locked-in and sent directly to Deposit Trust Clearing Corporation (“DTCC”) by that member, unless the member reports the trade to another reporting facility designated by the SEC as being authorized to accept trade reports for trades executed otherwise than on an exchange. All members, whether or not they must participate in the TRACS trade comparison feature, must comply with the trade reporting requirements described in pertinent [NASD] FINRA rules.

(2) Participation in the TRACS trade comparison feature as a Market Maker shall be conditioned upon the TRACS Market Maker’s initial and continuing compliance with the following requirements:

- (A) execution of, and continuing compliance with, a TRACS trade comparison Participant Application Agreement;
- (B) membership in, or maintenance of, an effective clearing arrangement with a member of a clearing agency registered pursuant to the Exchange Act;
- (C) registration as a Registered Reporting ADF Market Maker for ADF-eligible securities pursuant to Rule [4611A] 6271 and compliance with all applicable rules and operating procedures of [NASD] FINRA and the [Commission] SEC;
- (D) maintenance of the physical security of the equipment located on the premises of the TRACS Market Maker to prevent unauthorized entry of information into the TRACS trade comparison feature; and

(E) acceptance and settlement of each trade that the TRACS trade comparison feature identifies as having been effected by such TRACS Market Maker, or if settlement is to be made through a clearing member, guarantee of the acceptance and settlement of each TRACS identified trade by the clearing member on the regularly scheduled settlement date.

(3) Participation in the TRACS trade comparison feature as an Order Entry Firm shall be conditioned upon the Order Entry Firm's initial and continuing compliance with the following requirements:

(A) execution of, and continuing compliance with, a TRACS trade comparison Participant Application Agreement;

(B) membership in, or maintenance of, an effective clearing arrangement with a member of a clearing agency registered pursuant to the Exchange Act;

(C) compliance with all applicable rules and operating procedures of [NASD] FINRA and the [Commission] SEC;

(D) maintenance of the physical security of the equipment located on the premises of the TRACS Order Entry Firm to prevent the unauthorized entry of information into the TRACS trade comparison feature; and

(E) acceptance and settlement of each trade that the TRACS trade comparison feature identifies as having been effected by such TRACS Order Entry Firm, or if settlement is to be made through a clearing member, guarantee of the acceptance and settlement of each TRACS

identified trade by the clearing member on the regularly scheduled settlement date.

(4) Participation in the TRACS trade comparison feature as a Clearing Broker shall be conditioned upon the Clearing Broker's initial and continuing compliance with the following requirements:

(A) execution of, and continuing compliance with, a TRACS trade comparison Participant Application Agreement;

(B) membership in a clearing agency registered pursuant to the Exchange Act;

(C) compliance with all applicable rules and operating procedures of [NASD] FINRA and the [Commission] SEC;

(D) maintenance of the physical security of the equipment located on the premises of the TRACS Clearing Broker to prevent the unauthorized entry of information into the TRACS trade comparison feature; and

(E) acceptance and settlement of each trade that the TRACS trade comparison feature identifies as having been effected by itself or any of its correspondents on the regularly scheduled settlement date.

(5) Participation in the TRACS trade comparison feature as a TRACS ECN shall be conditioned upon the ECN's initial and continuing compliance with the following requirements:

(A) execution of, and continuing compliance with, a TRACS trade comparison Participant Application Agreement;

- (B) membership in, or maintenance of an effective clearing arrangement with a member of, a clearing agency registered pursuant to the Exchange Act;
- (C) compliance with all applicable rules and operating procedures of [NASD] FINRA and the [Commission] SEC;
- (D) maintenance of the physical security of the equipment located on the premises of the ECN to prevent the unauthorized entry of information into the TRACS trade comparison feature; and
- (E) acceptance and settlement of each trade that the TRACS trade comparison feature identifies as having been effected by such TRACS ECN, or if settlement is to be made through a clearing member, guarantee of the acceptance and settlement of each TRACS identified trade by the clearing member on the regularly scheduled settlement date.

(6) Each TRACS trade comparison Participant shall be obligated to inform [NASD] FINRA of non-compliance with any of the participation requirements set forth above.

**(b) Participant Obligations in TRACS**

**(1) Access to TRACS**

Upon execution and receipt by [NASD] FINRA of the TRACS trade comparison Participant Application Agreement, a TRACS trade comparison Participant may commence input and validation of trade information in ADF-eligible securities. TRACS trade comparison Participants may access the service via [NASD] FINRA terminals or Workstations or through computer interface

during the hours of operation specified in the TRACS Users Guide. Prior to such input, all TRACS comparison Participants, including those that have trade report information submitted to [NASD] FINRA by any third party, must obtain from [NASD] FINRA a unique identifying Market Participant Symbol (“MMID” or “MPID”), and use that identifier for trade reporting and audit trail purposes.

**(2) Market Maker Obligations**

(A) TRACS Market Makers shall commence participation in the TRACS trade comparison feature by initially contacting the TRACS Operation Center to verify authorization for submitting trade data to the TRACS system for ADF-eligible securities.

(B) A TRACS Market Maker that is a self-clearing firm shall be obligated to accept and clear each trade that the TRACS trade comparison feature identifies as having been effected by that Market Maker.

(C) A TRACS Market Maker that is an introducing broker or a correspondent executing broker shall identify its clearing broker when it becomes a TRACS trade comparison participant and notify the TRACS Operation Center if its clearing broker is to be changed; this will necessitate execution of a revised TRACS trade comparison Participant Application Agreement.

(D) If at any time a TRACS Market Maker fails to maintain a clearing arrangement, it shall be removed from the TRACS trade comparison feature, and be precluded from participation as a Market Maker in ADF until such time as a clearing arrangement is reestablished

and notice of such arrangement, with an amended TRACS trade comparison Participant Application Agreement, is filed with [NASD] FINRA. If, however, [NASD] FINRA finds that the TRACS Market Maker's failure to maintain a clearing arrangement is voluntary, the withdrawal of quotations will be considered voluntary and unexcused pursuant to Rule [4619A] 6275.

**(3) Order Entry Firm Obligations**

(A) TRACS Order Entry Firms shall commence participation in the TRACS trade comparison feature by initially contacting the TRACS Operation Center to verify authorization for submitting trade data to the TRACS system for ADF-eligible securities.

(B) A TRACS Order Entry Firm that is a self-clearing firm shall be obligated to accept and clear each trade that the TRACS trade comparison feature identifies as having been effected by the Order Entry Firm.

(C) A TRACS Order Entry Firm that is an introducing broker or a correspondent executing broker shall identify its clearing broker when it becomes a TRACS trade comparison Participant and notify the TRACS Operations Center if its clearing broker is to be changed; this change will necessitate execution of a revised TRACS trade comparison Participant Application Agreement.

(D) If at any time a TRACS Order Entry Firm fails to maintain a clearing arrangement, it shall be removed from the TRACS trade

comparison feature until such time as a clearing arrangement is reestablished, and notice of such arrangement, with an amended TRACS trade comparison Participant Application Agreement, is filed with [NASD] FINRA.

**(4) Clearing Broker Obligation**

TRACS clearing brokers shall be obligated to accept and clear as a party to the transaction each trade that the system identifies as having been effected by itself or any of its correspondent executing brokers. Clearing brokers may cease to act as principal for a correspondent executing broker at any time provided that notification has been given to, received and acknowledged by the TRACS Operations Center and affirmative action has been completed by the Center to remove the clearing broker from the TRACS trade comparison feature for that correspondent executing broker. The clearing broker's obligation to accept and clear trades for its correspondents shall not cease prior to the completion of all of the steps detailed in this subparagraph (4).

**(5) ECN Obligations**

(A) TRACS ECNs shall commence participation in the TRACS trade comparison feature by initially contacting the TRACS Operations Center to verify authorization for submitting trade data to the TRACS trade comparison feature for ADF-eligible securities.

(B) A TRACS ECN that is a self-clearing firm shall be obligated to accept and clear each trade that the TRACS trade comparison feature identifies as having been effected by the ECN.

(C) A TRACS ECN that is an introducing broker or a correspondent executing broker shall identify its clearing broker when it becomes a TRACS trade comparison Participant and notify the TRACS Operations Center if its clearing broker is to be changed; this change will necessitate execution of a revised TRACS trade comparison Participant Application Agreement.

(D) If at any time a TRACS ECN fails to maintain a clearing arrangement, it shall be removed from the TRACS trade comparison feature until such time as a clearing arrangement is reestablished, and notice of such arrangement, with an amended TRACS trade comparison Participant Application Agreement, is filed with [NASD] FINRA.

**[6130A] 7130. Trade Report Input**

**(a) Reportable TRACS Transactions**

Members shall utilize TRACS to report transactions that are required to be reported to [NASD] FINRA through the ADF pursuant to the Rule [4630A] 6280 Series, including executions of less than one round lot if those executions are to be compared and locked-in. TRACS also will process trades that are submitted on an automatic locked-in basis for transmission to NSCC. All trades that are reportable transactions pursuant to [NASD] the Rule [4630A] 6280 Series will be transmitted to the applicable securities information processor; however, only those trades that are subject to regular way settlement and are not already locked-in trades will be compared and locked-in through TRACS. Trades that are reported as other than regular way settlement (i.e., Cash, Next-Day, Seller's Option) will not be compared in TRACS or reported to DTCC.

**(b) When and How Trade Reports are Submitted to TRACS**

- (1) TRACS trade comparison Participants who are Reporting Members that choose to submit a trade for comparison shall transmit to TRACS the information required by the Rule [4630A] 6280 Series, as applicable, within 90 seconds of execution.
- (2) A TRACS trade comparison Participant who is a Non-Reporting Member to a transaction shall, within twenty (20) minutes after execution accept (or decline, if applicable) a transaction submitted by the Reporting Member for comparison through TRACS. A Non-Reporting Member has an obligation to ensure that the information that it transmits or accepts in TRACS is timely, accurate and complete. Therefore, if a Non-Reporting Member accepts a transaction in TRACS transmitted by the Reporting Member for comparison through TRACS, then the Non-Reporting Member shall be deemed to have adopted all of the data elements required by Rule [4632A] 6282, as applicable, concerning the Non-Reporting Member's side of the transaction, absent any subsequent modification of the trade through TRACS.
- (3) Trades not required to be reported for public dissemination may still be compared and locked-in through TRACS.
- (4) Reporting Members may conduct the following functions in TRACS pursuant to TRACS specifications established by [NASD] FINRA: (i) MMID Trade Entry; (ii) Trade Cancellation; and (iii) Trade Break.

(5) Non-Reporting Members may conduct the following functions in TRACS pursuant to TRACS specifications established by [NASD] FINRA: (i) Trade Accept; (ii) Trade Decline; and (iii) Trade Break.

(6) A party entering a trade report into the TRACS trade comparison feature shall use a designated symbol to denote whether the party is submitting the trade report as the Reporting Member or the Non-Reporting Member.

**(c) Reporting Certain Transactions for Purposes of Regulatory Transaction Fee Assessment**

Reports submitted to TRACS for the following types of transactions that are assessed a regulatory transaction fee in accordance with Section 3 of Schedule A to the [NASD] FINRA By-Laws must comply with the requirements set forth below.

Transactions must be submitted to TRACS by 6:30 p.m. Eastern Time (or the end of the TRACS reporting session that is in effect at that time).

**(1) Away From the Market Sales**

Transactions where the buyer and seller have agreed to trade at a price substantially unrelated to the current market for the security, and consideration is given, shall be reported to TRACS with a modifier of .RA to designate the transaction as submitted for purposes of the regulatory transaction fee under Section 3 of Schedule A to the [NASD] FINRA By-Laws. Transactions may be entered as clearing or non-clearing.

**(2) Exercises of OTC Options**

Transactions effected pursuant to the exercise of an OTC option shall be reported to TRACS with a modifier of .RX to designate the transaction as

submitted for purposes of the regulatory transaction fee under Section 3 of Schedule A to the [NASD] FINRA By-Laws. Transactions may be entered as clearing or non-clearing.

(d) Members shall not submit to TRACS any report (including but not limited to reports of step-outs and reversals) associated with a previously executed trade that was not reported to TRACS, unless such report is submitted, pursuant to Rule [4632A] 6282(e), to reflect the offsetting riskless portion of a riskless principal transaction.

**[6140A] 7140. TRACS Processing**

Locked-in trades may be determined through the TRACS trade comparison feature through one of the following methods:

**(a) Trade Acceptance**

The Reporting Party enters its version of the trade into the system and the contra party reviews the trade report and accepts or declines the trade. An acceptance results in a locked-in trade; a declined trade report is purged from the TRACS system at the end of trade date processing;

**(b) T+N Trade Processing**

T+N entries may be submitted until 6:30 p.m. each business day. At the end of daily matching, all declined trade entries will be purged from the TRACS system. TRACS will not purge any open trade (i.e. unmatched or unaccepted) at the end of its entry day, but will carry-over such trades to the next business day for continued comparison and reconciliation. TRACS will automatically lock in and submit to NSCC as such any carried-over T to T+21 (calendar day) trade if it remains open as of 2:30 p.m. on the next business day. TRACS will not automatically lock in T+22 (calendar day) or

older open [“as-of”] “as/of” trades that were carried-over from the previous business day; these trades will be purged by TRACS at the end of the carry-over day if such trades remain open. Members may re-submit these T+22 or older [“as-of”] “as/of” trades into TRACS on the next business day for continued comparison and reconciliation for up to one calendar year.

**[6150A. Reserved]**

**[6160A] 7150. Obligation to Honor Trades**

If a TRACS trade comparison Participant is reported by TRACS as a party to a trade that has been treated as locked-in and sent to DTCC, notwithstanding any other agreement to the contrary, that party shall be obligated to act as a principal to the trade and shall honor such trade on the scheduled settlement date.

**[6170A] 7160. Audit Trail Requirements**

The data elements specified in the Rule [4600A] 6280 Series are critical to [NASD] FINRA’s compilation of a transaction audit trail for regulatory purposes. As such, all member firms using the TRACS Service have an ongoing obligation to input such information accurately and completely.

**[6180A. Reserved]**

**[6190A] 7170. Termination of TRACS Service**

[NASD] FINRA may, upon notice, terminate TRACS service as to a Participant in the event that a TRACS Participant fails to abide by any of the rules or operating procedures of the TRACS service or [NASD] FINRA, or fails to honor contractual agreements entered into with [NASD] FINRA or its subsidiaries, or fails to pay promptly for services rendered by the TRACS Service.

**[6000C. NASD/NSX TRADE REPORTING FACILITY SYSTEMS AND  
PROGRAMS]**

**[6100C] 7200B. [Clearing and Comparison Rules] FINRA/NSX TRADE  
REPORTING FACILITY**

**[6110C] 7210B. Definitions**

- (a) The term “Clearing Broker[/]-Dealer” or “Clearing Broker” shall mean the member firm that has been identified in the System as principal for clearing and settling a trade, whether for its own account or for a correspondent firm.
- (b) The term “Correspondent Executing Broker[/]-Dealer” or “Correspondent Executing Broker” shall mean the member firm that has been identified in the System as having a correspondent relationship with a clearing firm whereby it executes trades and the clearing function is the responsibility of the clearing firm.
- (c) The term “Introducing Broker[/]-Dealer” or “Introducing Broker” shall mean the member firm that has been identified in the System as a party to the transaction, but does not execute or clear trades.
- (d) The term “Parties to the Transaction” shall mean the executing brokers, Introducing Brokers and Clearing Brokers, if any.
- (e) The term “Reportable Security” shall mean all designated securities as defined in Rule [4200C] 6320B.
- (f) The term “Reportable System Transaction” shall mean those transactions in Reportable Securities that are eligible to be submitted using the System pursuant to [NASD] FINRA rules. The term also shall include transactions in Reportable Securities that are for less than one round lot.

(g) The term “Reporting ECN” shall mean a member of [NASD] FINRA that is an electronic communications network or alternative trading system, as those terms are defined in SEA Rule 600 of Regulation NMS [under the Act], that is a participant of a registered clearing agency for clearing or comparison purposes or has a clearing arrangement with such a participant, to the extent that transactions executed through it are reported to the System.

(h) The term “Reporting Market Maker” shall mean a member of [NASD] FINRA that meets the definition of Market Maker in Rule [4200C] 6320B and is a member of a registered clearing agency for clearing or comparison purposes or has a clearing arrangement with such a member.

(i) The term “Reporting Order Entry Firm” shall mean a member of [NASD] FINRA that is a firm that executes orders but does not act as a market maker in the instant transaction and is a member of a registered clearing agency for clearing or comparison purposes or has a clearing arrangement with such a member.

(j) The term “Reporting Party” shall mean the Participant that is required to input the trade information, according to the requirements of the trade report input rules applicable to the System contained in Rule [6130C] 7230B.

(k) The term “System” shall mean the [NASD] FINRA/NSX Trade Reporting Facility for purposes of trades in designated securities as defined in Rule [4200C] 6320B.

(l) The term “Trade Reporting Participant” or “Participant” shall mean any member of [NASD] FINRA in good standing that uses the System.

**[6120C] 7220B. Trade Reporting Participation Requirements**

**(a) Participation Requirements**

- (1) Only members of [NASD] FINRA in good standing may participate in the System.
- (2) Participation in the System shall be conditioned upon the initial and continuing compliance with the following requirements:
  - (A) execution of, and continuing compliance with, a Participant Application Agreement;
  - (B) membership in, or maintenance of an effective clearing arrangement with a participant of, a clearing agency registered pursuant to the Exchange Act;
  - (C) compliance with all applicable rules and operating procedures of [NASD] FINRA and the [Commission] SEC;
  - (D) maintenance of the physical security of the equipment located on the premises of the participant to prevent unauthorized entry of information into the System; and
  - (E) acceptance and settlement of each trade that the System identifies as having been effected by such participant, or if settlement is to be made through a clearing member, guarantee or the acceptance and settlement of each System identified trade by the clearing member on the regularly scheduled settlement date.

(3) Participation in the System as a Clearing Broker shall be conditioned upon the Clearing Broker's initial and continuing compliance with the following requirements:

- (A) execution of, and continuing compliance with, a Participant Application Agreement;
- (B) membership in a clearing agency registered pursuant to the Exchange Act;
- (C) compliance with all applicable rules and operating procedures of [NASD] FINRA and the [Commission] SEC;
- (D) maintenance of the physical security of the equipment located on the premises of the Clearing Broker to prevent the unauthorized entry of information into the System; and
- (E) acceptance and settlement of each trade that the System identifies as having been effected by itself or any of its correspondents on the regularly scheduled settlement date.

(4) Each Participant shall be obligated to inform [NASD] FINRA of non-compliance with any of the participation requirements set forth above.

**(b) Participant Obligations**

**(1) Access**

Upon execution and receipt by the [NASD] FINRA/NSX Trade Reporting Facility of a Participant Application Agreement, a Participant may commence input and validation of trade information in Reportable Securities. Participants may access the service through computer interface or such other service as may

be designated by the [NASD] FINRA/NSX Trade Reporting Facility during the hours of operation specified by the [NASD] FINRA/NSX Trade Reporting Facility. Prior to such input, all Participants, including those that have trade report information submitted by any third party, must obtain from [NASD] FINRA Operations a unique identifying Market Participant Symbol (“MPID”), and use that identifier for trade reporting and audit trail purposes.

**(2) System Participant Obligations**

- (A) Participants shall commence participation in the System by initially contacting the System Operation Center to verify authorization for submitting trade data to the System for Reportable Securities.
- (B) A Participant that is a self-clearing firm shall be obligated to accept and clear each trade that the System identifies as having been effected by that Participant.
- (C) A Participant that is an Introducing Broker or a Correspondent Executing Broker shall identify its Clearing Broker when it becomes a Participant and notify the System Operation Center if its Clearing Broker is to be changed; this may necessitate execution of a revised Participant Application Agreement.
- (D) If at any time a Participant fails to maintain a clearing arrangement, it shall be removed from the System until such time as a clearing arrangement is reestablished and notice of such arrangement, with an amended Participant Application Agreement, is filed, as applicable.

**(3) Clearing Broker Obligations**

(A) System Clearing Brokers shall be obligated to accept and clear as a party to the transaction each trade that the System identifies as having been effected by itself or any of its Correspondent Executing Brokers. Clearing Brokers may cease to act as principal for a Correspondent Executing Broker at any time provided that notification has been given to, received and acknowledged by the System Operation Center and affirmative action has been completed by the Center to remove the Clearing Broker from the System for that Correspondent Executing Broker. The Clearing Broker's obligation to accept and clear trades for its correspondents shall not cease prior to the completion of all of the steps detailed in this subparagraph (3).

(B) If at any time a System Clearing Broker fails to maintain a clearing arrangement, it shall be removed from the System until such time as a clearing arrangement is reestablished, and notice of such arrangement, with an amended Participant Application Agreement, is filed, as applicable.

**[6130C] 7230B. Trade Report Input**

**(a) Reportable Transactions**

Members shall comply with the Rule [6100C] 7200B Series when reporting transactions to the System, including executions of less than one round lot. All trades that are reportable transactions will be processed pursuant to an effective transaction reporting plan. Trades that are not already locked-in trades will not be accepted by the

System. Participants must use an alternative electronic mechanism to report and clear these trades.

**(b) When and How Trade Reports are Submitted**

Participants shall transmit trade reports to the System for transactions in Reportable Securities within 90 seconds after execution, according to the requirements of paragraph (c) of this Rule.

**(c) Which Party Inputs Trade Reports**

Participants shall, subject to the input requirements below, input trade reports. Trade data input obligations are as follows:

- (1) in transactions between a Reporting Market Maker and a Reporting Order Entry Firm, the Reporting Market Maker shall be required to submit a trade report to the System;
- (2) in transactions between two Reporting Market Makers, the member representing the sell side shall be required to submit a trade report to the System;
- (3) in transactions between two Reporting Order Entry Firms, the member representing the sell side shall be required to submit a trade report to the System;
- (4) in transactions between a member and a non-member or customer, the member shall be required to submit a trade report to the System;
- (5) in transactions conducted through a Reporting ECN that are reported to the System, the Reporting ECN shall ensure that transactions are reported in accordance with one of the following methods:
  - (A) the Reporting ECN shall submit the trade reports to the System and identify itself as the Reporting Party;

(B) the Reporting ECN shall submit the trade reports to the System on behalf of the Reporting Party and identify the Reporting Party in accordance with the rules for determining Reporting Parties reflected in subparagraphs (1), (2), (3), and (4) above; or

(C) the Reporting ECN shall require one of the parties, determined in accordance with the rules for determining Reporting Parties reflected in subparagraphs (1), (2), (3), and (4) above, to submit the trade reports to the System.

When a Reporting ECN reports transactions in accordance with subparagraph (A), the Reporting ECN shall be responsible for ensuring that the trade reports are accurate and contain all information required by [subsection] paragraph (d) of this [r]Rule for both the Reporting ECN and the identified non-reporting party.

When a Reporting ECN reports transactions in accordance with subparagraph (B), both the Reporting ECN and the party identified as the Reporting Party shall be responsible for ensuring that the trade reports are accurate and contain all information required by [subsection] paragraph (d) of this [r]Rule for both the Reporting ECN and the identified Reporting Party.

When a Reporting ECN requires reporting of transactions in accordance with subparagraph (C), the Reporting Party shall be responsible for ensuring the accuracy and completeness of the trade report.

A Reporting ECN shall provide written notice to [NASD] FINRA of the method of trade reporting used by the Reporting ECN for each of its subscribers, and may change the method of trade reporting used for a subscriber by providing advance written notice of the change to [NASD] FINRA;

(6) in transactions conducted through two Reporting ECNs or a Reporting ECN and an ECN that is not a Reporting ECN, a Reporting ECN shall be responsible for complying with the requirements of subparagraph (5) above for reporting a transaction executed through its facilities, and an ECN that routed an order to it for execution shall be deemed to be a Reporting Order Entry Firm and a member for purposes of the rules for determining Reporting Parties reflected in subparagraphs (1), (3), and (4) above; and

(7) in transactions conducted through a Reporting ECN in which neither of the parties is a member, the Reporting ECN shall report the transaction in accordance with the requirements of subparagraph (5)(A) above.

**(d) Trade Information To Be Input**

Each report to the System shall contain the following information:

- (1) Security identification symbol of the eligible security (SECID);
- (2) Number of shares or bonds;
- (3) Unit price, excluding commissions, mark-ups or mark-downs;
- (4) The time of execution expressed in hours, minutes and seconds based

on Eastern Time in military format, unless another provision of [NASD's] FINRA rules requires that a different time be included on the report;

- (5) A symbol indicating whether the party submitting the trade report represents the Market Maker side or the Order Entry side;
- (6) A symbol indicating whether the transaction is a buy, sell, sell short, or cross;
- (7) A symbol indicating whether the trade is as principal, riskless principal, or agent;
- (8) Reporting side Clearing Broker (if other than normal Clearing Broker);
- (9) Reporting side executing broker in the case of a give up agreement, as defined in Rule [4632C] 6380B(g);
- (10) Contra side executing broker;
- (11) Contra side Introducing Broker in the case of a give up agreement, as defined in Rule [4632C] 6380B(g);
- (12) Contra side Clearing Broker (if other than normal Clearing Broker); and
- (13) For any transaction in an order for which a member has recording and reporting obligations under Rules [6954] 7440 and [6955] 7450, the trade report must include an order identifier, meeting such parameters as may be prescribed by [NASD] FINRA, assigned to the order that uniquely identifies the order for the date it was received (see Rule [6954] 7440(b)(1)).

**(e) Reporting Cancelled Trades**

**(1) Obligation and Party Responsible for Reporting Cancelled Trades**

With the exception of trades cancelled by [NASD] FINRA staff in accordance with NASD Rule 11890, members shall report to the System the cancellation of any trade previously submitted to the System. The member responsible under [NASD] FINRA [R]rules for submitting the original trade report shall submit the cancellation report in accordance with the requirements set forth in paragraph (e)(2).

**(2) Deadlines for Reporting Cancelled Trades**

Members shall comply with deadlines set forth in Rule [4632C] 6380B for reporting cancelled trades.

**(f) Reporting Certain Transactions for Purposes of Regulatory Transaction**

**Fee Assessment**

Reports submitted to the System for the following types of transactions that are assessed a regulatory transaction fee in accordance with Section 3 of Schedule A to the [NASD] FINRA By-Laws must comply with the requirements set forth below.

Transactions must be submitted to the System by 6:30 p.m. Eastern Time (or the end of the System reporting session that is in effect at that time).

**(1) Away From the Market Sales**

Reports of transactions where the buyer and seller have agreed to trade at a price substantially unrelated to the current market for the security, and consideration is given, shall include a modifier of .RA to designate the transaction as submitted for purposes of the regulatory transaction fee under Section 3 of

Schedule A to the [NASD] FINRA By-Laws. Transactions may be entered as clearing or non-clearing.

**(2) Exercises of OTC Options**

Reports of transactions effected pursuant to the exercise of an OTC option shall include a modifier of .RX to designate the transaction as submitted for purposes of the regulatory transaction fee under Section 3 of Schedule A to the [NASD] FINRA By-Laws. Transactions may be entered as clearing or non-clearing.

**(g) Prohibition on Aggregation of Transaction Reports**

Individual executions of orders in a security at the same price may not be aggregated for System reporting purposes.

(h) Members shall not submit to the System any report (including but not limited to reports of step-outs and reversals) associated with a previously executed trade that was not reported to the System, unless such report is submitted, pursuant to Rule [4632C] 6380B(d), to reflect the offsetting riskless portion of a riskless principal transaction.

**[IM-6130C. Trade Reporting of Short Sales]**

[Rule 6130C(d)(6) requires that members indicate on System reports whether a transaction is a short sale transaction (“short sale reporting requirements”). Rule 6130C applies to members that submit reports to the NASD/NSX Trade Reporting Facility for transactions in all exchange-listed securities. Thus, all short sale transactions in these securities reported to the System must carry a “short sale” indicator.]

**[6140C] 7240B. Trade Report Processing**

All trades submitted to the System must be locked-in trades prior to entry into the System.

**[6160C] 7250B. Obligation to Honor Trades**

If a Participant is reported by the System as a party to a trade that has been treated as locked-in and sent to DTCC, notwithstanding any other agreement to the contrary, that party shall be obligated to act as a principal to the trade and shall honor such trade on the scheduled settlement date.

**[6170C] 7260B. Audit Trail Requirements**

The data elements specified in Rule [6130C] 7230B(d) are critical to [NASD] FINRA's compilation of a transaction audit trail for regulatory purposes. As such, all member firms utilizing the trade reporting service of the System have an ongoing obligation to input [6130C] 7230B(d) information accurately and completely.

**[6180C] 7270B. Violation of Reporting Rules**

Failure of a Participant or person associated with a Participant to comply with any of the rules or requirements of the System may be considered conduct inconsistent with high standards of commercial honor and just and equitable principles of trade, in violation of NASD Rule 2110.

**[6190C] 7280B. Termination of Access**

[NASD] FINRA may, upon notice, terminate access to the trade reporting service of the System as to a Participant in the event that a Participant fails to abide by any of the rules or operating procedures of the trade reporting service of the System or [NASD] FINRA, or fails to honor contractual agreements entered into with [NASD] FINRA or its

subsidiaries, or fails to pay promptly for services rendered by the trade reporting service of the System.

**[6000E. NASD/NYSE TRADE REPORTING FACILITY SYSTEMS AND PROGRAMS]**

**[6100E] 7200C. [Clearing and Comparison Rules] FINRA/NYSE TRADE REPORTING FACILITY**

**[6110E] 7210C. Definitions**

- (a) The term “Clearing Broker[/]-Dealer” or “Clearing Broker” shall mean the member firm that has been identified in the System as principal for clearing and settling a trade, whether for its own account or for a correspondent firm.
- (b) The term “Correspondent Executing Broker[/]-Dealer” or “Correspondent Executing Broker” shall mean the member firm that has been identified in the System as having a correspondent relationship with a clearing firm whereby it executes trades and the clearing function is the responsibility of the clearing firm.
- (c) The term “Introducing Broker[/]-Dealer” or “Introducing Broker” shall mean the member firm that has been identified in the System as a party to the transaction, but does not execute or clear trades.
- (d) The term “Parties to the Transaction” shall mean the executing brokers, Introducing Brokers and Clearing Brokers, if any.
- (e) The term “Reportable Security” shall mean all designated securities as defined in Rule [4200E] 6320C.
- (f) The term “Reportable System Transaction” shall mean those transactions in Reportable Securities that are eligible to be submitted using the System pursuant to

[NASD] FINRA rules. The term also shall include transactions in Reportable Securities that are for less than one round lot.

(g) The term “Reporting ECN” shall mean a member of [NASD] FINRA that is an electronic communications network or alternative trading system, as those terms are defined in SEA Rule 600 of Regulation NMS [under the Act], that is a participant of a registered clearing agency for clearing or comparison purposes or has a clearing arrangement with such a participant, to the extent that transactions executed through it are reported to the System.

(h) The term “Reporting Market Maker” shall mean a member of [NASD] FINRA that meets the definition of Market Maker in Rule [4200E] 6320C and is a member of a registered clearing agency for clearing or comparison purposes or has a clearing arrangement with such a member.

(i) The term “Reporting Order Entry Firm” shall mean a member of [NASD] FINRA that is a firm that executes orders but does not act as a market maker in the instant transaction and is a member of a registered clearing agency for clearing or comparison purposes or has a clearing arrangement with such a member.

(j) The term “Reporting Party” shall mean the Participant that is required to input the trade information, according to the requirements of the trade report input rules applicable to the System contained in Rule [6130E] 7230C.

(k) The term “System” shall mean the [NASD] FINRA/NYSE Trade Reporting Facility for purposes of trades in designated securities as defined in Rule [4200E] 6320C.

(l) The term “Trade Reporting Participant” or “Participant” shall mean any member of [NASD] FINRA in good standing that uses the System.

**[6120E] 7220C. Trade Reporting Participation Requirements**

**(a) Participation Requirements**

- (1) Only members of [NASD] FINRA in good standing may participate in the [NASD] FINRA/NYSE Trade Reporting Facility.
- (2) Participation in the System shall be conditioned upon the initial and continuing compliance with the following requirements:
  - (A) execution of, and continuing compliance with, a Participant Application Agreement;
  - (B) membership in, or maintenance of an effective clearing arrangement with a participant of, a clearing agency registered pursuant to the Exchange Act;
  - (C) compliance with all applicable rules and operating procedures of [NASD] FINRA and the [Commission] SEC;
  - (D) maintenance of the physical security of the equipment located on the premises of the participant to prevent unauthorized entry of information into the System; and
  - (E) acceptance and settlement of each trade that the System identifies as having been effected by such participant, or if settlement is to be made through a clearing member, guarantee or the acceptance and settlement of each System identified trade by the clearing member on the regularly scheduled settlement date.

(3) Participation in the System as a Clearing Broker shall be conditioned upon the Clearing Broker's initial and continuing compliance with the following requirements:

- (A) execution of, and continuing compliance with, a Participant Application Agreement;
- (B) membership in a clearing agency registered pursuant to the Exchange Act;
- (C) compliance with all applicable rules and operating procedures of [NASD] FINRA and the [Commission] SEC;
- (D) maintenance of the physical security of the equipment located on the premises of the Clearing Broker to prevent the unauthorized entry of information into the System; and
- (E) acceptance and settlement of each trade that the System identifies as having been effected by itself or any of its correspondents on the regularly scheduled settlement date.

(4) Each Participant shall be obligated to inform [NASD] FINRA of non-compliance with any of the participation requirements set forth above.

**(b) Participant Obligations**

**(1) Access**

Upon execution and receipt by the [NASD] FINRA/NYSE Trade Reporting Facility of a Participant Application Agreement, a Participant may commence input and validation of trade information in Reportable Securities. Participants may access the service through computer interface or such other

service as may be designated by the [NASD] FINRA/NYSE Trade Reporting Facility during the hours of operation specified by the [NASD] FINRA/NYSE Trade Reporting Facility. Prior to such input, all Participants, including those that have trade report information submitted by any third party, must obtain from [NASD] FINRA Operations a unique identifying Market Participant Symbol (“MPID”), and use that identifier for trade reporting and audit trail purposes.

**(2) System Participant Obligations**

(A) Participants shall commence participation in the System by initially contacting the System Operation Center to verify authorization for submitting trade data to the System for Reportable Securities.

(B) A Participant that is a self-clearing firm shall be obligated to accept and clear each trade that the System identifies as having been effected by that Participant.

(C) A Participant that is an Introducing Broker or a Correspondent Executing Broker shall identify its Clearing Broker when it becomes a Participant and notify the System Operation Center if its Clearing Broker is to be changed; this may necessitate execution of a revised Participant Application Agreement.

(D) If at any time a Participant fails to maintain a clearing arrangement, it shall be removed from the System until such time as a clearing arrangement is reestablished and notice of such arrangement, with an amended Participant Application Agreement, is filed, as applicable.

**(3) Clearing Broker Obligations**

(A) System Clearing Brokers shall be obligated to accept and clear as a party to the transaction each trade that the System identifies as having been effected by itself or any of its Correspondent Executing Brokers. Clearing Brokers may cease to act as principal for a Correspondent Executing Broker at any time provided that notification has been given to, received and acknowledged by the System Operation Center and affirmative action has been completed by the Center to remove the Clearing Broker from the System for that Correspondent Executing Broker. The Clearing Broker's obligation to accept and clear trades for its correspondents shall not cease prior to the completion of all of the steps detailed in this subparagraph (3).

(B) If at any time a System Clearing Broker fails to maintain a clearing arrangement, it shall be removed from the System until such time as a clearing arrangement is reestablished, and notice of such arrangement, with an amended Participant Application Agreement, is filed, as applicable.

**[6130E] 7230C. Trade Report Input**

**(a) Reportable Transactions**

Members shall comply with the Rule [6100E] 7200C Series when reporting transactions to the System, including executions of less than one round lot. All trades that are reportable transactions will be processed pursuant to an effective transaction

reporting plan. Trades that are not already locked-in trades will not be accepted by the System. Members must use an alternative mechanism to report and clear these trades.

**(b) When and How Trade Reports are Submitted**

Participants shall transmit trade reports to the System for transactions in Reportable Securities within 90 seconds after execution.

**(c) Which Party Inputs Trade Reports**

Participants shall, subject to the input requirements below, input trade reports. Trade data input obligations are as follows:

- (1) in transactions between a Reporting Market Maker and a Reporting Order Entry Firm, the Reporting Market Maker shall be required to submit a trade report to the System;
- (2) in transactions between two Reporting Market Makers, the member representing the sell side shall be required to submit a trade report to the System;
- (3) in transactions between two Reporting Order Entry Firms, the member representing the sell side shall be required to submit a trade report to the System;
- (4) in transactions between a member and a non-member or customer, the member shall be required to submit a trade report to the System;
- (5) in transactions conducted through a Reporting ECN that are reported to the System, the Reporting ECN shall ensure that transactions are reported in accordance with one of the following methods:
  - (A) the Reporting ECN shall submit the trade reports to the System and identify itself as the Reporting Party;

(B) the Reporting ECN shall submit the trade reports to the System on behalf of the Reporting Party and identify the Reporting Party in accordance with the rules for determining Reporting Parties reflected in subparagraphs (1), (2), (3), and (4) above; or

(C) the Reporting ECN shall require one of the parties, determined in accordance with the rules for determining Reporting Parties reflected in subparagraphs (1), (2), (3), and (4) above, to submit the trade reports to the System.

When a Reporting ECN reports transactions in accordance with subparagraph (A), the Reporting ECN shall be responsible for ensuring that the trade reports are accurate and contain all information required by [subsection] paragraph (d) of this [r]Rule for both the Reporting ECN and the identified non-reporting party.

When a Reporting ECN reports transactions in accordance with subparagraph (B), both the Reporting ECN and the party identified as the Reporting Party shall be responsible for ensuring that the trade reports are accurate and contain all information required by [subsection] paragraph (d) of this [r]Rule for both the Reporting ECN and the identified Reporting Party.

When a Reporting ECN requires reporting of transactions in accordance with subparagraph (C), the Reporting Party shall be responsible for ensuring the accuracy and completeness of the trade report.

A Reporting ECN shall provide written notice to [NASD] FINRA of the method of trade reporting used by the Reporting ECN for each of its subscribers and may change the method of trade reporting used for a subscriber by providing advance written notice of the change to [NASD] FINRA;

(6) in transactions conducted through two Reporting ECNs or a Reporting ECN and an ECN that is not a Reporting ECN, a Reporting ECN shall be responsible for complying with the requirements of subparagraph (5) above for reporting a transaction executed through its facilities, and an ECN that routed an order to it for execution shall be deemed to be a Reporting Order Entry Firm and a member for purposes of the rules for determining Reporting Parties reflected in subparagraphs (1), (3), and (4) above; and

(7) in transactions conducted through a Reporting ECN in which neither of the parties is a member, the Reporting ECN shall report the transaction in accordance with the requirements of subparagraph (5)(A) above.

**(d) Trade Information To Be Input**

Each report to the System shall contain the following information:

- (1) Security Identification Symbol of the eligible security (SECID);
- (2) Number of shares or bonds;
- (3) Unit price, excluding commissions, mark-ups or mark-downs;
- (4) The time of execution expressed in hours, minutes and seconds based

on Eastern Time in military format, unless another provision of [NASD's] FINRA rules requires that a different time be included on the report;

- (5) A symbol indicating whether the party submitting the trade report represents the Market Maker side or the Order Entry side;
- (6) A symbol indicating whether the transaction is a buy, sell, sell short, or cross;
- (7) A symbol indicating whether the trade is as principal, riskless principal, or agent;
- (8) Reporting side Clearing Broker (if other than normal Clearing Broker);
- (9) Reporting side executing broker in the case of a give up agreement, as defined in Rule [4632E] 6380C(g);
- (10) Contra side executing broker;
- (11) Contra side Introducing Broker in the case of a give up agreement, as defined in Rule [4632E] 6380C(g);
- (12) Contra side Clearing Broker (if other than normal Clearing Broker); and
- (13) For any transaction in an order for which a member has recording and reporting obligations under Rules [6954] 7440 and [6955] 7450, the trade report must include an order identifier, meeting such parameters as may be prescribed by [NASD] FINRA, assigned to the order that uniquely identifies the order for the date it was received (see Rule [6954] 7440(b)(1)).

**(e) Reporting Cancelled Trades**

**(1) Obligation and Party Responsible for Reporting Cancelled Trades**

With the exception of trades cancelled by [NASD] FINRA staff in accordance with NASD Rule 11890, members shall report to the System the cancellation of any trade previously submitted to the System. The member responsible under [NASD] FINRA [R]rules for submitting the original trade report shall submit the cancellation report in accordance with the requirements set forth in paragraph (e)(2).

**(2) Deadlines for Reporting Cancelled Trades**

Members shall comply with deadlines set forth in Rule [4632E] 6380C for reporting cancelled trades.

**(f) Reporting Certain Transactions for Purposes of Regulatory Transaction**

**Fee Assessment**

Reports submitted to the System for the following types of transactions that are assessed a regulatory transaction fee in accordance with Section 3 of Schedule A to the [NASD] FINRA By-Laws must comply with the requirements set forth below.

Transactions must be submitted to the System by 8:00 p.m. Eastern Time (or the end of the System reporting session that is in effect at that time).

**(1) Away From the Market Sales**

Reports of transactions where the buyer and seller have agreed to trade at a price substantially unrelated to the current market for the security, and consideration is given, shall include a modifier of .RA to designate the transaction as submitted for purposes of the regulatory transaction fee under Section 3 of

Schedule A to the [NASD] FINRA By-Laws. Transactions may be entered as clearing or non-clearing.

**(2) Exercises of OTC Options**

Reports of transactions effected pursuant to the exercise of an OTC option shall include a modifier of .RX to designate the transaction as submitted for purposes of the regulatory transaction fee under Section 3 of Schedule A to the [NASD] FINRA By-Laws. Transactions may be entered as clearing or non-clearing.

**(g) Prohibition on Aggregation of Transaction Reports**

Individual executions of orders in a security at the same price may not be aggregated for System reporting purposes.

(h) Members shall not submit to the System any report (including but not limited to reports of step-outs and reversals) associated with a previously executed trade that was not reported to the System, unless such report is submitted, pursuant to Rule [4632E] 6380C(d), to reflect the offsetting riskless portion of a riskless principal transaction.

**[IM-6130E. Trade Reporting of Short Sales]**

[Rule 6130E(d)(6) requires that members indicate on System reports whether a transaction is a short sale transaction (“short sale reporting requirements”). Rule 6130E applies to members that submit reports to the NASD/NYSE Trade Reporting Facility not just for NGM securities transactions, but for transactions in all exchange-listed securities. Thus, all short sale transactions in these securities reported to the System must carry a “short sale” indicator.]

**[6140E] 7240C. Trade Report Processing**

All trades submitted to the System must be locked-in trades prior to entry into the System.

**[6160E] 7250C. Obligation to Honor Trades**

If a Participant is reported by the System as a party to a trade that has been treated as locked-in and sent to DTCC, notwithstanding any other agreement to the contrary, that party shall be obligated to act as a principal to the trade and shall honor such trade on the scheduled settlement date.

**[6170E] 7260C. Audit Trail Requirements**

The data elements specified in Rule [6130E] 7230C(d) are critical to [NASD's] FINRA's compilation of a transaction audit trail for regulatory purposes. As such, all member firms utilizing the trade reporting service of the System have an ongoing obligation to input [6130E] 7230C(d) information accurately and completely.

**[6180E] 7270C. Violation of Reporting Rules**

Failure of a Participant or person associated with a Participant to comply with any of the rules or requirements of the System may be considered conduct inconsistent with high standards of commercial honor and just and equitable principles of trade, in violation of NASD Rule 2110.

**[6190E] 7280C. Termination of Access**

[NASD] FINRA may, upon notice, terminate access to the trade reporting service of the System as to a Participant in the event that a Participant fails to abide by any of the rules or operating procedures of the trade reporting service of the System or [NASD] FINRA, or fails to honor contractual agreements entered into with [NASD] FINRA or its

subsidiaries or the Participant Application Agreement, or fails to pay promptly for services rendered by the trade reporting service of the System.

## **7300. OTC REPORTING FACILITY**

### **7310. Definitions**

(a) The term “Browse” shall mean the function that permits a Participant to review (or query) for trades in the System identifying the Participant as a party to the transaction, subject to the specific uses contained in the System Users Guide.

(b) The term “Clearing Broker-Dealer” or “Clearing Broker” shall mean the member firm that has been identified in the System as principal for clearing and settling a trade, whether for its own account or for a correspondent firm.

(c) The term “Correspondent Executing Broker-Dealer” or “Correspondent Executing Broker” shall mean the member firm that has been identified in the System as having a correspondent relationship with a clearing firm whereby it executes trades and the clearing function is the responsibility of the clearing firm.

(d) The term “Introducing Broker-Dealer” or “introducing broker” shall mean the member firm that has been identified in the System as a party to the transaction, but does not execute or clear trades.

(e) The terms “Participant,” “Reporting Order Entry Firm,” “Correspondent executing broker-dealer,” “Correspondent executing broker,” “Introducing broker-dealer,” “Introducing broker,” “Clearing broker-dealer,” and “Clearing broker” shall also include, where appropriate, the Non-Member Clearing Organizations listed in Rule 7320(a)(4) below and their qualifying members.

(f) The term “Parties to the Transaction” shall mean the executing brokers, Introducing Brokers and Clearing Brokers, if any.

(g) The term “Reportable Security” shall mean all OTC Equity Securities as defined in Rule 6420 and all Direct Participation Programs as defined in Rule 6642.

(h) The term “Reportable System Transaction” shall mean those transactions in Reportable Securities that are eligible to be submitted using the System pursuant to FINRA rules. The term also shall include transactions in Reportable Securities that are for less than one round lot.

(i) The term “Reporting ECN” shall mean a member of FINRA that is an electronic communications network or alternative trading system, as those terms are defined in SEA Rule 600 of Regulation NMS, that is a participant of a registered clearing agency for clearing or comparison purposes or has a clearing arrangement with such a participant, to the extent that transactions executed through it are reported to the System.

(j) The term “Reporting Market Maker” shall mean a member of FINRA that meets the definition of OTC Market Maker in Rule 6420 and is a member of a registered clearing agency for clearing or comparison purposes or has a clearing arrangement with such a member.

(k) The term “Reporting Order Entry Firm” shall mean a member of FINRA that is a firm that executes orders but does not act as a market maker in the instant transaction and is a member of a registered clearing agency for clearing or comparison purposes or has a clearing arrangement with such a member.

(l) The term “Reporting Party” shall mean the Participant that is required to input the trade information, according to the requirements of the trade report input rules applicable to the System contained in Rule 7330.

(m) The term “System” shall mean the OTC Reporting Facility for purposes of trades in OTC Equity Securities as defined in Rule 6420 and Direct Participation Programs as defined in Rule 6642.

(n) The term “Trade Reporting Participant” or “Participant” shall mean any member of FINRA in good standing that uses the System.

## **7320. Trade Reporting Participation Requirements**

### **(a) Mandatory Participation for Clearing Agency Members**

(1) Participation in the System is mandatory for any member that has an obligation to report an over-the-counter transaction to FINRA, unless the member has an alternative electronic mechanism pursuant to FINRA rules for reporting and clearing such transaction. Such participation in the System shall include the reconciliation of all over the counter clearing agency eligible transactions.

(2) Participation in the System shall be conditioned upon the initial and continuing compliance with the following requirements:

(A) execution of, and continuing compliance with, a Participant Application Agreement;

(B) membership in, or maintenance of an effective clearing arrangement with a participant of, a clearing agency registered pursuant to the Exchange Act;

(C) compliance with all applicable rules and operating procedures of FINRA and the SEC;

(D) maintenance of the physical security of the equipment located on the premises of the participant to prevent unauthorized entry of information into the System; and

(E) acceptance and settlement of each trade that the System identifies as having been effected by such participant, or if settlement is to be made through a clearing member, guarantee or the acceptance and settlement of each System identified trade by the clearing member on the regularly scheduled settlement date.

(3) Participation in the System as a Clearing Broker shall be conditioned upon the Clearing Broker's initial and continuing compliance with the following requirements:

(A) execution of, and continuing compliance with, a Participant Application Agreement;

(B) membership in a clearing agency registered pursuant to the Exchange Act;

(C) compliance with all applicable rules and operating procedures of FINRA and the SEC;

(D) maintenance of the physical security of the equipment located on the premises of the Clearing Broker to prevent the unauthorized entry of information into the System; and

(E) acceptance and settlement of each trade that the System identifies as having been effected by itself or any of its correspondents on the regularly scheduled settlement date.

(4) (A) Upon compliance with the conditions specified in subparagraph (B) below, access to and participation in the System shall be granted to the following Non- Member Clearing Organizations:

(i) West Canada Clearing Corporation; and

(ii) The Canadian Depository for Securities.

(B) Non-Member Clearing Organization access to and participation in the System shall be conditioned upon the Organization's initial and continuing compliance with the following requirements:

(i) execution of and continuing compliance with a Non-Member Clearing Organization Participation Application Agreement;

(ii) a Non-Member Clearing Organization shall only have access to the System to operate as a service bureau for its members functioning as Reporting Order Entry Firms, Correspondent Executing Broker-Dealers, Correspondent brokers, Clearing Broker-Dealers, or Clearing Brokers, as those terms are defined in Rule 7310;

(iii) registration as a clearing agency pursuant to the Exchange Act, membership in a clearing agency registered

pursuant to the Exchange Act, or maintenance of an effective clearing arrangement with a registered clearing agency;

(iv) compliance with all applicable rules and operating procedures of FINRA and the SEC;

(v) maintenance of the physical security of the equipment located on the premises of the Non-Member Clearing Organization to prevent the unauthorized entry of information into the System;  
and

(vi) a Non-Member Clearing Organization may only participate in the System on behalf of its members who have:

a. executed a Non-Member Access Participant

Application Agreement and

b. have been in continuing compliance with such agreement.

(C) A Non-Member Clearing Organization may permit its members functioning as Reporting Order Entry Firms to have direct access to the System, provided the member of the Non-Member Clearing Organization complies with the following requirements:

(i) execution of a Non-Member Participant Application Agreement;

(ii) membership in a Non-Member Clearing Organization listed in paragraph (a)(4)(A) above; and

(iii) compliance with paragraph (a)(3)(C) through (E)  
above.

(D) A Non-Member Clearing Organization may permit its  
members functioning as Clearing Brokers to have direct access to the  
System provided the member of the Non-Member Clearing Organization  
complies with the following requirements:

(i) execution of a Non-Member Participant Application  
Agreement;  
(ii) membership in a Non-Member Clearing Organization  
listed in paragraph (a)(4)(A) above; and  
(iii) compliance with paragraph (a)(3)(C) through (E)  
above.

(5) Each Participant shall be obligated to inform FINRA of non-  
compliance with any of the participation requirements set forth above.

**(b) Participant Obligations**

**(1) Access**  
Upon execution and receipt by FINRA of the Participant Application  
Agreement, as applicable, a Participant may commence input and validation of  
trade information in Reportable Securities. Participants may access the service  
through computer interface or such other service as may be designated by FINRA  
during the hours of operation specified by FINRA. Prior to such input, all  
Participants, including those that have trade report information submitted by any  
third party, must obtain from the System a unique identifying Market Participant

Symbol (“MPID”), and use that identifier for trade reporting and audit trail purposes.

**(2) System Participant Obligations**

(A) Participants shall commence participation in the System by initially contacting the System Operation Center to verify authorization for submitting trade data to the System for Reportable Securities.

(B) A Participant that is a self-clearing firm shall be obligated to accept and clear each trade that the System identifies as having been effected by that Participant.

(C) A Participant that is an Introducing Broker or a Correspondent Executing Broker shall identify its Clearing Broker when it becomes a Participant and notify the System Operation Center if its Clearing Broker is to be changed; this will necessitate execution of a revised Participant Application Agreement.

(D) If at any time a Participant fails to maintain a clearing arrangement, it shall be removed from the System until such time as a clearing arrangement is reestablished and notice of such arrangement, with an amended Reporting Participant Application Agreement, is filed with FINRA.

**(3) Clearing Broker Obligations**

(A) System Clearing Brokers shall be obligated to accept and clear as a party to the transaction each trade that the System identifies as having been effected by itself or any of its Correspondent Executing Brokers.

Clearing Brokers may cease to act as principal for a Correspondent Executing Broker at any time provided that notification has been given to, received and acknowledged by the System Operation Center and affirmative action has been completed by the Center to remove the Clearing Broker from the System for that Correspondent Executing Broker. The Clearing Broker's obligation to accept and clear trades for its correspondents shall not cease prior to the completion of all of the steps detailed in this subparagraph (3).

(B) If at any time a System Clearing Broker fails to maintain a clearing arrangement, it shall be removed from the System until such time as a clearing arrangement is reestablished, and notice of such arrangement, with an amended Participant Application Agreement, is filed with FINRA.

### **7330. Trade Report Input**

#### **(a) Reportable Transactions**

Members shall comply with the Rule 7300 Series when reporting transactions to the System, including executions of less than one round lot if those executions are to be compared and locked-in. All trades that are reportable transactions will be processed pursuant to an effective transaction reporting plan. Trades that are not already locked-in trades will be compared and locked-in through the System. All transactions in Direct Participation Program securities shall be reported to the System pursuant to the Rule 6640 Series as set forth therein.

**(b) When and How Trade Reports are Submitted**

Participants shall transmit trade reports to the System for transactions in Reportable Securities within 90 seconds after execution, or shall use the Browse function to accept or decline trades within twenty (20) minutes after execution, according to the requirements of paragraph (c) of this Rule.

**(c) Which Party Inputs Trade Reports**

Participants shall, subject to the input requirements below, either input trade reports or use the Browse feature to accept or decline a trade within the applicable time-frames as specified in paragraph (b) of this Rule. Trade data input obligations are as follows:

- (1) in transactions between a Reporting Market Maker and a Reporting Order Entry Firm, the Reporting Market Maker shall be required to submit a trade report to the System;
- (2) in transactions between two Reporting Market Makers, the member representing the sell side shall be required to submit a trade report to the System;
- (3) in transactions between two Reporting Order Entry Firms, the member representing the sell side shall be required to submit a trade report to the System;
- (4) in transactions between a member and a non-member or customer, the member shall be required to submit a trade report to the System;
- (5) in transactions conducted through a Reporting ECN that are reported to the System, the Reporting ECN shall ensure that transactions are reported in accordance with one of the following methods:

(A) the Reporting ECN shall submit the trade reports to the System and identify itself as the Reporting Party;

(B) the Reporting ECN shall submit the trade reports to the System on behalf of the Reporting Party and identify the Reporting Party in accordance with the rules for determining Reporting Parties reflected in subparagraphs (1), (2), (3), and (4) above; or

(C) the Reporting ECN shall require one of the parties, determined in accordance with the rules for determining Reporting Parties reflected in subparagraphs (1), (2), (3), and (4) above, to submit the trade reports to the System.

When a Reporting ECN reports transactions in accordance with subparagraph (A), the Reporting ECN shall be responsible for ensuring that the trade reports are accurate and contain all information required by paragraph (d) of this Rule for both the Reporting ECN and the identified non-reporting party.

When a Reporting ECN reports transactions in accordance with subparagraph (B), both the Reporting ECN and the party identified as the Reporting Party shall be responsible for ensuring that the trade reports are accurate and contain all information required by paragraph (d) of this Rule for both the Reporting ECN and the identified Reporting Party.

When a Reporting ECN requires reporting of transactions in accordance with subparagraph (C), the Reporting Party shall be responsible for ensuring the accuracy and completeness of the trade report.

A Reporting ECN shall provide written notice to FINRA of the method of trade reporting used by the Reporting ECN for each of its subscribers, and may change the method of trade reporting used for a subscriber by providing advance written notice of the change to FINRA;

(6) in transactions conducted through two Reporting ECNs or a Reporting ECN and an ECN that is not a Reporting ECN, a Reporting ECN shall be responsible for complying with the requirements of subparagraph (5) above for reporting a transaction executed through its facilities, and an ECN that routed an order to it for execution shall be deemed to be a Reporting Order Entry Firm and a member for purposes of the rules for determining reporting parties reflected in subparagraphs (1), (3), and (4) above; and

(7) in transactions conducted through a Reporting ECN in which neither of the parties is a member, the Reporting ECN shall report the transaction in accordance with the requirements of subparagraph (5)(A) above.

**(d) Trade Information To Be Input**

Each report to the System shall contain the following information:

(1) Security identification symbol of the eligible security (SECID);

(2) Number of shares;

(3) Unit price, excluding commissions, mark-ups or mark-downs;

(4) The time of execution expressed in hours, minutes and seconds based on Eastern Time in military format, unless another provision of FINRA rules requires that a different time be included on the report;

(5) A symbol indicating whether the party submitting the trade report represents the Market Maker side or the Order Entry side;

(6) A symbol indicating whether the transaction is a buy, sell, sell short, or cross;

(7) A symbol indicating whether the trade is as principal, riskless principal, or agent;

(8) Reporting side Clearing Broker (if other than normal Clearing Broker);

(9) Reporting side executing broker as “give-up” (if any);

(10) Contra side executing broker;

(11) Contra side introducing broker in case of “give-up” trade;

(12) Contra side Clearing Broker (if other than normal Clearing Broker).

(13) For any transaction in an order for which a member has recording and reporting obligations under Rules 7440 and 7450, the trade report must include an order identifier, meeting such parameters as may be prescribed by FINRA, assigned to the order that uniquely identifies the order for the date it was received (see Rule 7440(b)(1)).

**(e) Aggregation of Transaction Reports for Clearing Purposes Only**

Individual executions of orders in a security at the same price and with the identical contra party may be aggregated into a single report and submitted to the System for purposes of clearing only; provided, however, that a Reporting Party may not withhold reporting a trade in anticipation of aggregating the transaction with other transactions.

**(f) Reporting Cancelled Trades**

**(1) Obligation and Party Responsible for Reporting Cancelled Trades**

With the exception of trades cancelled by FINRA staff in accordance with NASD Rule 11890, members shall report to the System the cancellation of any trade previously submitted to the System. The member responsible under FINRA rules for submitting the original trade report shall submit the cancellation report in accordance with the requirements set forth in paragraph (f)(2).

**(2) Deadlines for Reporting Cancelled Trades**

Members shall comply with deadlines set forth in Rule 6622 for reporting cancelled trades.

**(g) Reporting Certain Transactions for Purposes of Regulatory Transaction Fee Assessment**

**Fee Assessment**

Reports submitted to the System for the following types of transactions that are assessed a regulatory transaction fee in accordance with Section 3 of Schedule A to the FINRA By-Laws must comply with the requirements set forth below. Transactions must be submitted to the System by 8:00 p.m. Eastern Time (or the end of the System reporting session that is in effect at that time).

**(1) Away From the Market Sales**

Reports of transactions where the buyer and seller have agreed to trade at a price substantially unrelated to the current market for the security, and consideration is given, shall include a modifier of .RA to designate the transaction as submitted for purposes of the regulatory transaction fee under Section 3 of

Schedule A to the FINRA By-Laws. Transactions may be entered as clearing or non-clearing.

**(2) Exercises of OTC Options**

Reports of transactions effected pursuant to the exercise of an OTC option shall include a modifier of .RX to designate the transaction as submitted for purposes of the regulatory transaction fee under Section 3 of Schedule A to the FINRA By-Laws. Transactions may be entered as clearing or non-clearing.

(h) Members shall not submit to the System any report (including but not limited to reports of step-outs and reversals) associated with a previously executed trade that was not reported to the System, unless such report is submitted, pursuant to Rule 6622(d), to reflect the offsetting riskless portion of a riskless principal transaction.

**7340. Trade Report Processing**

Locked-in trades may be determined in the System by matching the trade information submitted by the Reporting Parties through one of the following methods:

**(a) Trade by Trade Match**

Both parties to the trade submit transaction data and the System performs an on-line match;

**(b) Trade Acceptance**

The Reporting Party enters its version of the trade into the System and the contra party reviews the trade report and accepts or declines the trade. An acceptance results in a locked-in trade; a declined trade report is purged from the System at the end of trade date processing;

**(c) Aggregate Volume Match**

A batch type comparison will be run at the end of trade date and will aggregate volume of previously entered uncompered trade reports (if all other matching fields agree) in order to effect matching;

**(d) T+N Trade Processing**

T+N entries may be submitted until 5:15 p.m. each business day. At the end of daily matching, all declined trade entries will be purged from the System. The System will not purge any open trade (i.e. unmatched or unaccepted) at the end of its entry day, but will carry-over such trades to the next business day for continued comparison and reconciliation. The System will automatically lock in and submit to DTCC as such any carried-over T to T+21 (calendar day) trade if it remains open as of 2:30 p.m. on the next business day. The System will not automatically lock in T+22 (calendar day) or older open “as/of” trades that were carried-over from the previous business day; these will be purged by the System at the end of the carry-over day if they remain open. Members may re-submit these T+22 or older “as/of” trades into the System on the next business day for continued comparison and reconciliation for up to one calendar year.

**7350. Obligation to Honor Trades**

If a Participant is reported by the System as a party to a trade that has been treated as locked-in and sent to DTCC, notwithstanding any other agreement to the contrary, that party shall be obligated to act as a principal to the trade and shall honor such trade on the scheduled settlement date.

### **7360. Audit Trail Requirements**

The data elements specified in Rule 7330(d) are critical to FINRA's compilation of a transaction audit trail for regulatory purposes. As such, all member firms utilizing the trade reporting service of the System have an ongoing obligation to input 7330(d) information accurately and completely.

### **7370. Violation of Reporting Rules**

Failure of a Participant or person associated with a Participant to comply with any of the rules or requirements of the System may be considered conduct inconsistent with high standards of commercial honor and just and equitable principles of trade, in violation of NASD Rule 2110.

### **7380. Termination of Access**

FINRA may, upon notice, terminate access to the trade reporting service of the System as to a Participant in the event that a Participant fails to abide by any of the rules or operating procedures of the trade reporting service of the System or FINRA, or fails to honor contractual agreements entered into with FINRA or its subsidiaries, or fails to pay promptly for services rendered by the trade reporting service of the System.

## **[7000] 7700. CHARGES FOR OTC REPORTING FACILITY, OTC BULLETIN BOARD AND TRADE REPORTING AND COMPLIANCE ENGINE SERVICES**

### **[7010] 7710. OTC Reporting Facility**

The following charges shall be paid by the participant for trade reporting to the OTC Reporting Facility:

Transaction Related Charges:	
Reporting of transactions in OTC Equity Securities (as defined in Rule [6610(d)] <u>6420</u> ) not subject to comparison through the OTC Reporting Facility	\$0.029/side
Comparison	\$0.0144/side per 100 shares (minimum 400 shares; maximum 7,500 shares)
Late Report—T+N	\$0.288/side
Query	\$0.50/query
Corrective Transaction Charge	\$0.25/Cancel, Error, Inhibit, Kill, or 'No' portion of No/Was transaction, paid by reporting side; \$0.25/Break, Decline transaction, paid by each party

**[7020] 7720. OTC Bulletin Board Service**

The following charge shall apply to a broker[/]-dealer that displays quotations or trading interest in the OTC Bulletin Board service:

Position Charge	\$6.00/security/month
-----------------	-----------------------

**[7030] 7730. Trade Reporting and Compliance Engine (TRACE)**

The following charges shall be paid by participants for the use of the Trade Reporting and Compliance Engine (“TRACE”):

System Fees	Transaction Reporting Fees	Market Data Fees
Level I Trade Report Only Web Browser Access — \$20/month per user ID	Trades up to and including \$200,000 par value — \$0.475/trade;	BTDS Professional Real-Time Data Display — \$60/month per terminal, or a flat fee of \$7,500/month entitling Professionals to make unlimited internal use of Real-Time TRACE transaction data on any number of interrogation or display devices
Level II Full Service Web Browser Access — \$80/month per user ID, except that the charge for the first such user ID shall be \$50/month	Trades between \$201,000 and \$999,999 par value — \$0.002375 times the number of bonds traded/trade;	Trades of \$1,000,000 par value or more — \$2.375/trade
CTCI/Third Party — \$25/month/per firm	Cancel/Correct — \$1.50/trade	Vendor Real-Time Data Feed — \$1,500/month for receipt of

		continuous Real-Time TRACE transaction data, except for qualifying Tax-Exempt Organizations, or \$250/month for daily receipt of Snapshot Real-Time TRACE transaction data
	[“As of”] <u>“As/of”</u> Trade Late — \$3/trade	Vendor Real-Time Data Feed — \$400/month for Real-Time TRACE transaction data for qualifying Tax-Exempt Organizations
		BTDS Non-Professional Real-Time Data Display — No charge

### **(a) System Related Fees**

There are three methods by which a member may report corporate bond transactions that are reportable to [NASD] FINRA pursuant to the Rule [6200] 6700 Series. A member may choose among the following methods to report data to [NASD] FINRA: (1) a TRACE web browser; (2) a Computer-to-Computer Interface (“CTCI”) (either one dedicated solely to TRACE or a multi-purpose line); or (3) a third-party reporting intermediary. Fees will be charged based on the reporting methodology selected by the member.

**(1) Web Browser Access**

The charge to be paid by a member that elects to report TRACE data to [NASD] FINRA via a TRACE web browser shall be as follows: \$20 per month, per user ID for Level I Web Trade Report Only Browser Access and \$80 per month, per user ID for Level II Full Service Web Browser Access, except that the charge for the first such user ID for Level II Full Service Web Browser Access shall be \$50 per month.

**(2) Computer-to-Computer Interface Access**

The charge to be paid by a member that elects to report TRACE data to [NASD] FINRA via a CTCI line shall be \$25 per month, per firm, regardless of whether the line is or is not dedicated exclusively for TRACE.<sup>1</sup>

**(3) Third Party Access — Indirect Reporting**

A member may elect to report TRACE data indirectly to [NASD] FINRA via third-party reporting intermediaries, such as vendors, service bureaus, clearing firms, or the National Securities Clearing Corporation (“NSCC”). The charge to be paid by a member shall be \$25 per month, per firm. Nothing in this Rule shall prevent such third-party intermediaries from charging additional fees for their services.

**(b) Transaction Reporting Fees**

For each transaction in corporate bonds that is reportable to [NASD] FINRA pursuant to the Rule [6200] 6700 Series, the following charges shall be assessed against the member responsible for reporting the transaction:

**(1) Trade Reporting Fee**

A member shall be charged a Trade Reporting Fee based upon a sliding scale ranging from \$0.475 to \$2.375 per transaction based on the size of the reported transaction. Trades up to and including \$200,000 par value will be charged a \$0.475 fee per trade; trades between \$201,000 par value and \$999,999 par value will be charged a fee of \$0.002375 multiplied by the number of bonds traded per trade; and trades of \$1,000,000 par value or more will be charged a fee of \$2.375 per trade.

**(2) Cancel or Correct Trade Fee**

A member shall be charged a Cancel or Correct Trade Fee of \$1.50 per canceled or corrected transaction.

**(3) [“As of”] “As/of” Trade Late Fee**

A member shall be charged an [“As of”] “As/of” Trade Late Fee of \$3.00 per transaction for those transactions that are not timely reported [“As of”] “As/of” as required by these rules.

**(c) Market Data Fees**

Professionals and Non-Professionals may subscribe to receive Real-Time TRACE transaction data disseminated by [NASD] FINRA in one or more of the following ways for the charges specified, as applicable. Members, vendors and other redistributors shall be required to execute appropriate agreements with [NASD] FINRA.

**(1) Professional Fees**

Professionals may subscribe for the following:

(A) Bond Trade Dissemination Service (“BTDS”) Professional Real-Time Data Display Fee of \$60 per month, per terminal charge for each interrogation or display device receiving Real-Time TRACE transaction data, or a flat fee of \$7,500 per month entitling Professionals to make unlimited internal use of Real-Time TRACE transaction data on any number of interrogation or display devices.

(B) Vendor Real-Time Data Feed Fee of \$1,500 per month for receipt of continuous Real-Time TRACE transaction data for any person or organization (other than a Tax-Exempt Organization) that receives a Real-Time TRACE transaction data feed, or \$250 per month for daily receipt of Snapshot Real-Time TRACE transaction data which shall consist of one TRACE price per security per day. These fees entitles use in one or more of the following ways: internal operational and processing systems, internal monitoring and surveillance systems, internal price validation, internal portfolio valuation services, internal analytical programs leading to purchase/sale or other trading decisions, and other related activities, and the repackaging of market data for delivery and dissemination outside the organization, such as indices or other derivative products. (These fees do not include per terminal charges for each interrogation or display device receiving Real-Time TRACE transaction data.)<sup>2</sup>

(C) Vendor Real-Time Data Feed Fee of \$400 per month for Real-Time TRACE transaction data received by a Tax-Exempt Organization as

defined in Rule [7030] 7730(c) for the Tax-Exempt Organization to use solely to provide Non-Professionals access to Real-Time TRACE transaction data at no charge.

(D) A natural person otherwise subject to market data fees under Rule [7030] 7730(c) is not subject to such fees when he or she accesses and uses TRACE transaction data solely for his or her personal, non-commercial use.

**(2) Non-Professional Fees**

There shall be no charge paid by a Non-Professional for receiving all or any portion of Real-Time TRACE transaction data disseminated through TRACE.

**(3) Definitions**

(A) “Non-Professional” — As used in Rule [7030] 7730(c) a “Non-Professional” is a natural person who uses TRACE transaction data solely for his or her personal, non-commercial use. A Non-Professional subscriber must agree to certain terms of use of the TRACE data, including that he or she receive and use the TRACE transaction data solely for his or her personal, non-commercial use. As used in Rule [7030] 7730(c) a “Non-Professional” is not:

- i. registered nor qualified in any capacity with the [Commission] SEC, the Commodity Futures Trading Commission, any state securities agency, any securities exchange or association, or any commodities or futures contract market or association, nor an employee of the above and, with respect to any person

identified in this subparagraph i., uses TRACE transaction data for other than personal, non-commercial use;

ii. engaged as an “investment adviser” as that term is defined in Section 202 (a)(11) of the Investment Advisers Act of 1940 (whether or not registered or qualified under that Act), nor an employee of the above and, with respect to any person identified in this subparagraph ii., uses TRACE transaction data for other than personal, non-commercial use;

iii. employed by a bank, insurance company or other organization exempt from registration under federal or state securities laws to perform functions that would require registration or qualification if such functions were performed for an organization not so exempt, nor any other employee of a bank, insurance company or such other organization referenced above and, with respect to any person identified in this subparagraph iii., uses TRACE transaction data for other than personal, non-commercial use; nor

iv. engaged in, nor has the intention to engage in, any redistribution of all or any portion of the TRACE transaction data.

(B) “Tax-Exempt Organization” as used in Rule [7030] 7730(c) means an organization that is described in Section 501(c) of the Internal Revenue Code (26 U.S.C. §501(c)); has received recognition of the exemption from federal income taxes from the Internal Revenue Service;

and obtains and uses Real-Time TRACE transaction data solely for redistribution to Non-Professionals, as defined for purposes of Rule [7030] 7730(c), at no charge.

(C) “Real-Time” as used in Rule [7030] 7730(c) shall mean that period of time starting from the time of dissemination by [NASD] FINRA of transaction data on a TRACE-eligible security, and ending no more than four hours thereafter.

**(4) Other Requests for Data**

[NASD] FINRA may impose and collect charges for data [NASD] FINRA supplied upon request, where there is no provision elsewhere in this Rule [7030] 7730(c) for charges for such service or sale.

---

<sup>1</sup> Charges that may be imposed by third parties, such as CTCI line providers, are not included in these fees.

<sup>2</sup> Under the Vendor Real-Time Data Feed Fee and service, Real-Time TRACE transaction data may not be used in any interrogation display devices or any systems that permit end users to determine individual transaction pricing.

**[7040] 7740. Historical Research and Administrative Reports**

(a) The charge to be paid by the purchaser of an Historical Research Report regarding OTC Bulletin Board security or other OTC security through the OTCBB.com website shall be determined in accordance with the following schedule:

	Number of fields of information in the report		
	1–10	11–15	16 or more
<b>A. Issues Summary Statistics</b>			
For a security for a day	\$10	\$15	\$20
For a security for a month, quarter, or year	\$20	\$30	\$40
For all issues for a day	\$50	\$75	\$100
For all issues for a month, quarter, or year	\$100	\$150	\$200
<b>B. Intra-Day Quote and Intra-Day Time and Sales Data</b>			
For a security and/or a market participant for a day	\$15	\$25	\$35
For all market participants for a day or for all securities for a day	\$30	\$40	\$50
(For purposes of this report, market participants are those entities qualified to participate in the OTC Bulletin Board Service pursuant to [NASD] Rule 6540(a) and (b)).			

C. [NASD] FINRA may, in its discretion, choose to make a report that purchasers wish to obtain every trading day available on a subscription discount basis. In such cases, the price for a subscription to receive a report every trading day in a month shall be the applicable rate to receive the report for a day times 20; the price for a subscription to receive the report for every trading day in a quarter shall be the applicable rate to receive the report every day times 60; and the price for a subscription to receive a report every trading day in a year shall be the applicable rate to receive the report for a day times 240.

D. All OTCBB Issuers Directory		\$250	
--------------------------------	--	-------	--

(b) Administrative Reports — \$25 per user, per month.

**[7000A] 7500. CHARGES FOR [ADF] ALTERNATIVE DISPLAY FACILITY SERVICES AND EQUIPMENT**

**[7010A] 7510. System Services**

**(a) Trade Reporting and Comparison Service**

The following charges shall be paid by ADF participants for use of the Trade Reporting and Comparison Service (TRACS):

Transaction	
Related Charges:	
Comparison	\$0.014/side per 100 shares (minimum 400 shares; maximum 7,500 shares)

Automated Give-Up	\$0.029/side(if the associated publicly disseminated trade is not reported to the media through the ADF)
Qualified Special Representative	\$0.029/side (if the associated publicly disseminated trade is not reported to the media through the ADF)
Late Report — T+N	\$0.30/side unless the trade is executed outside normal ADF operating hours of 8:00 a.m. to 6:30 p.m. and the member's average publicly disseminated trades reported to the media through the ADF per day during the billing period is 150,000 or greater
Corrective Transaction Charge	\$0.25/ Break, Decline, Reversal transaction, paid by each party

### **(b) Quotation Updates**

The following quotation update charges will apply based on the average daily number of publicly disseminated trades reported to the media through the ADF during the billing period. A “quotation update” includes any change to the price or size of a displayed quotation.

<b>Average Trades Reported through the ADF Per Day</b>	<b>Quotation Update Charge</b>	<b>Quotes Updates Provided at No Charge</b>
Less than 1	\$.02 per quotation update	None

Between 1 and 100,000	\$01 per quotation update	5 quotation updates per trade
Between 100,001 and 125,000	\$005 per quotation update	20 quotation updates per trade
Between 125,001 and 150,000	\$005 per quotation update	25 quotation updates per trade
Greater than 150,000	No Charge	N/A

**[7020A] 7520. Equipment Related Charges**

The charge for using ADF terminal software shall be \$275 per month for each terminal and \$550 per month for each server.

**[7030A. Reserved]**

**[7040A] 7530. Installation, Removal, Relocation or Maintenance**

ADF subscribers shall pay a minimum charge of \$5,000 for installation costs associated with connecting to the ADF. Upon installation, removal, relocation or maintenance of terminal and related equipment, or combination thereof, the subscriber shall pay charges incurred by [NASD] FINRA or its subsidiaries above the \$5,000 minimum, on behalf of the subscriber for the work being performed by the maintenance organization retained by [NASD] FINRA or its subsidiaries. Upon payment of \$5,000 under this provision, members will receive a credit of up to \$5,000 to be used toward charges imposed under Rule [7010A] 7510(a) and (b).

**[7050A] 7540. Other Services**

**(a) Daily Reports to Newspapers**

Reports for regular public release, such as a list of closing quotations or market summary information for newspaper publication, shall be produced in a format acceptable to most publishers without charge. Should such information be transmitted to another location at the request of any firm, a charge may be imposed for such services by [NASD] FINRA or a subsidiary.

**(b) Other Requests for Data**

[NASD] FINRA or a subsidiary may impose and collect compensatory charges for data supplied upon request, where there is no provision elsewhere in this Rule [7000A] 7500 Series for charges for such service or sale.

**(c) Testing Services**

(1) Subscribers that conduct tests of their computer-to-computer (CTCI) or digital interface (DIS/CHIPS) with the central processing facilities of Alternative Display Facility shall pay the following charges:

\$285/hour	For CTCI/DIS/CHIPS testing between 9:00 a.m. and 5:00 p.m. Eastern Time on business days;
\$333/hour	For testing at all other times on business days, or on weekends and holidays.

(2) The foregoing fees shall not apply to testing occasioned by:

(A) new or enhanced services and/or software provided by ADF

or

(B) modifications to software and/or services initiated by ADF in response to a contingency.

**[7060A] 7550. Partial Month Charges**

The charges for the month of commencement or termination of service will be prorated based on the number of trade days in that month.

**[7070A. Reserved]**

**[7080A] 7560. Late Fees**

(a) All charges imposed by [NASD] FINRA that are past due 45 days or more will be subject to a late fee computed by taking the summation of one and one-half percent (1 ½%) of the amount past due for the first month plus one and one-half percent (1 ½%) of the amount past due for any month thereafter, compounded by late fees assessed for previous months.

(b) To illustrate how late fees are assessed, if an account is past due \$1,000 for 45 days, the late fee would be \$30.22. This charge reflects a charge of \$15 for the first month past due ( $\$1,000 \times 1 \frac{1}{2}\%$ ) and \$15.22 for the second month past due ( $\$1,015 \times 1 \frac{1}{2}\%$ ).

**[7100A] 7570. Minor Modifications in Charges**

(a) To compensate for minor variations in annual net income, the Board of Governors of [NASD] FINRA may increase or decrease the total charges in this Schedule by 10% from the base charges as adopted on July 24, 2002 upon filing such change with the [Commission] SEC pursuant to Section 19(b)(3) of the Exchange Act.

(b) To facilitate the development of new information services and uses under appropriate terms and conditions, arrangements of limited duration, geography and/or

scope may be entered into with Broker[/]-Dealers, Vendors and other persons which may modify or dispense with some or all of the charges contained in this Rule or the terms and conditions contained in standard agreements. The arrangements contemplated will permit the testing and pilot operation of proposed new information services and uses to evaluate their impact on and to develop the technical, cost and market research information necessary to formulate permanent charges, terms and conditions for filing with and approval by the [Commission] SEC.

**7600. CHARGES FOR TRADE REPORTING FACILITY SERVICES**

**[7000B] 7600A. CHARGES FOR [NASD] FINRA/NASDAQ TRADE REPORTING FACILITY SERVICES**

**[7001B] 7610A. Securities Transaction Credit**

[NASD] FINRA members that trade securities listed on the NYSE (“Tape A”), Amex and regional exchanges (“Tape B”), or Nasdaq (“Tape C”) in over-the-counter transactions reported to the [NASD] FINRA/Nasdaq Trade Reporting Facility may receive from the [NASD] FINRA/Nasdaq Trade Reporting Facility transaction credits based on the transactions attributed to them. A transaction is attributed to a member if the member is identified as the executing party in a trade report submitted to the [NASD] FINRA/Nasdaq Trade Reporting Facility that the [NASD] FINRA/Nasdaq Trade Reporting Facility submits to the Consolidated Tape Association or the Nasdaq Securities Information Processor. A[n NASD] FINRA member may earn credits from any of three pools maintained by the [NASD] FINRA/Nasdaq Trade Reporting Facility, each of which represents the revenue paid by the Consolidated Tape Association or the Nasdaq Securities Information Processor with respect to the [NASD] FINRA/Nasdaq Trade

Reporting Facility for each of Tape A, Tape B, and Tape C transactions. A[n NASD]  
FINRA member may earn credits from the pools according to the pro rata share of  
 revenue attributable to over-the-counter transactions reported to the [NASD]  
FINRA/Nasdaq Trade Reporting Facility by the member in each of Tape A, Tape B, and  
 Tape C for each calendar quarter. Credits will be paid on a quarterly basis. The  
 percentage of attributable revenue shared with a particular member will be determined as  
 follows:

**Tape A**

Percentage Market Share	Percent of attributable revenue shared
Greater than or equal to 0.25%	100%
Less than 0.25% but greater than or equal to 0.15%	80%
Less than 0.15% but greater than or equal to 0.10%	50%
Less than 0.10%	0%

**Tape B**

Percentage Market Share	Percent of attributable revenue shared
Greater than or equal to 0.50%	100%
Less than 0.50% but greater than or equal to 0.25%	80%
Less than 0.25% but greater than or equal to 0.10%	50%

Less than 0.10%	0%
-----------------	----

**Tape C**

Percentage Market Share	Percent of attributable revenue shared
Greater than or equal to 0.75%	100%
Less than 0.75% but greater than or equal to 0.25%	80%
Less than 0.25% but greater than or equal to 0.10%	50%
Less than 0.10%	0%

For purposes of this Rule, "Market Share" means a percentage calculated by dividing the total number of shares represented by trades reported by a [n NASD] FINRA member to the [NASD]FINRA/Nasdaq TRF during a given calendar quarter by the total number of shares represented by all trades reported to the Consolidated Tape Association or the Nasdaq Securities Information Processor, as applicable, during that quarter.

Market Share is calculated separately for each tape.

**[7002B] 7620A. [NASD] FINRA/Nasdaq Trade Reporting Facility Reporting Fees**

The following charges shall be paid by participants for use of the [NASD] FINRA/Nasdaq Trade Reporting Facility. In the case of trades where the same market participant is on both sides of a trade report, applicable fees assessed on a "per side" basis will be assessed once, rather than twice.

Transaction Related Charges:	
Reporting of transactions in Nasdaq-listed securities not subject to comparison through the [NASD] <u>FINRA</u> /Nasdaq Trade Reporting Facility	No charge
Reporting of transactions in stocks reported to the Consolidated Tape Association not subject to comparison through the [NASD] <u>FINRA</u> /Nasdaq Trade Reporting Facility (“CTA Covered Transactions”)	
Average daily volume of media transaction reports for CTA Covered Transactions during the month that are submitted or introduced by such participant to the [NASD] <u>FINRA</u> /Nasdaq Trade Reporting Facility, in which the participant is identified as the reporting party:	Fee per side for reports of CTA Covered Transactions to which such participant is a party:
0 to 5,000	\$0.029
More than 5,000	\$0.029 for a number of reports equal to 5,000 times the number of trading days in the month

	\$0.00 for all remaining reports
Reporting of all other transactions not subject to comparison through the [NASD]  <u>FINRA/Nasdaq Trade Reporting Facility</u>	\$0.029/side
Clearing report to transfer a transaction fee charged by one member to another member pursuant to Rule [6130] <u>7230A(h)</u>	\$0.03/side
Comparison	\$0.0144/side per 100 shares  (minimum 400 shares;  maximum 7,500 shares)
Late Report—T+N	\$0.288/side
Query	\$0.50/query
Corrective Transaction Charge	\$0.25/Cancel, Error, Inhibit, Kill, or 'No' portion of No/Was transaction, paid by reporting side; \$0.25/Break, Decline transaction, paid by each party

**[7003B] 7630A. Aggregation of Activity of Affiliated Members**

(a) For purposes of applying any provision of the Rule [7000B] 7600A Series that reflects a charge assessed, or credit provided, by the [NASD] FINRA/Nasdaq Trade Reporting Facility, a member may request that the [NASD] FINRA/Nasdaq Trade Reporting Facility aggregate its activity with the activity of its affiliates. A member requesting aggregation of affiliate activity shall be required to certify to [NASD] FINRA the affiliate status of entities whose activity it seeks to aggregate prior to receiving approval for aggregation, and shall be required to inform [NASD] FINRA immediately of any event that causes an entity to cease to be an affiliate. In addition, [NASD] FINRA reserves the right to request information to verify the affiliate status of an entity.

(b) For purposes of applying any provision of the Rule [7000B] 7600A Series that reflects a charge assessed, or credit provided, by the [NASD] FINRA/Nasdaq Trade Reporting Facility, references to an entity (including references to a “member,” a “participant,” or a “Trade Reporting Facility Participant”) shall be deemed to include the entity and its affiliates that have been approved for aggregation.

(c) For purposes of this Rule [7003B] 7630A, the terms set forth below shall have the following meanings:

- (1) An “affiliate” of a member shall mean any wholly owned subsidiary, parent, or sister of the member that is also a member.
- (2) A “wholly owned subsidiary” shall mean a subsidiary of a member, 100% of whose voting stock or comparable ownership interest is owned by the member, either directly or indirectly through other wholly owned subsidiaries.

(3) A “parent” shall mean an entity that directly or indirectly owns 100% of the voting stock or comparable ownership interest of a member.

(4) A “sister” shall mean an entity, 100% of whose voting stock or comparable ownership interest is owned by a parent that also owns 100% of the voting stock or comparable ownership interest of a member.

**[7004B] 7640A. Late Fees**

(a) All charges imposed by the [NASD] FINRA/Nasdaq Trade Reporting Facility that are past due 45 days or more will be subject to a late fee computed by taking the summation of one and one-half percent (1 ½%) of the amount past due for the first month plus one and one-half percent (1 ½%) of the amount past due for any month thereafter, compounded by late fees assessed for previous months.

(b) To illustrate how late fees are assessed, if an account is past due \$1,000 for 45 days, the late fee would be \$30.22. This charge reflects a charge of \$15 for the first month past due ( $\$1,000 \times 1 \frac{1}{2}\%$ ) and \$15.22 for the second month past due ( $\$1,015 \times 1 \frac{1}{2}\%$ ).

**[7000C] 7600B. CHARGES FOR [NASD] FINRA/NSX TRADE REPORTING FACILITY SERVICES**

**[7001C] 7610B. Securities Transaction Credit**

(a) [NASD] FINRA members that trade securities listed on the NYSE (“Tape A”), Amex and regional exchanges (“Tape B”), or Nasdaq (“Tape C”) in over-the-counter transactions reported to the [NASD] FINRA/NSX Trade Reporting Facility may receive from the [NASD] FINRA/NSX Trade Reporting Facility transaction credits based on the transactions attributed to them. A transaction is attributed to a member if the

member is identified as the executing party in a trade report submitted to the [NASD] FINRA/NSX Trade Reporting Facility that the [NASD] FINRA/NSX Trade Reporting Facility submits to the Consolidated Tape Association or the Nasdaq Securities Information Processor. A[n NASD] FINRA member may earn credits from any of three pools maintained by the [NASD] FINRA/NSX Trade Reporting Facility. The Tape A, Tape B, and Tape C pools represent 75% of the gross revenue paid by the Consolidated Tape Association or the Nasdaq Securities Information Processor with respect to the [NASD] FINRA/NSX Trade Reporting Facility for Tape A, Tape B, and Tape C transactions. Subject to paragraph (b) below, a[n NASD] FINRA member may earn credits from the pools according to the pro rata share of revenue attributable to over-the-counter transactions reported to the [NASD] FINRA/NSX Trade Reporting Facility by the member in Tape A, Tape B, and Tape C for each calendar quarter. To the extent that Tape A, Tape B or Tape C revenue is subject to any adjustment, credits provided may be adjusted accordingly.

(b) No [NASD] FINRA member shall be eligible to receive a securities transaction credit under Rule [7001C] 7610B(a) for any calendar quarter in which the total transaction credit payable to such member is less than \$250.

**[7002C] 7620B. [NASD] FINRA/NSX Trade Reporting Facility Reporting Fees**

Except as otherwise provided in this Rule [7000C] 7600B Series, there will be no charge for use of the [NASD] FINRA/NSX Trade Reporting Facility to report locked-in transactions in exchange-listed securities effected otherwise than on an exchange.

**[7003C] 7630B. Fee for Submission of Non-Media Reports**

With respect to each billing cycle, a[n NASD] FINRA member shall be charged a fee in the amount of \$0.0075 for each non-media report that the member submitted to the [NASD] FINRA/NSX Trade Reporting Facility. For purposes of this Rule, a non-media report is any report submitted by the member to the [NASD] FINRA/NSX Trade Reporting Facility that is not submitted by the [NASD] FINRA/NSX Trade Reporting Facility to the Consolidated Tape Association or the Nasdaq Securities Information Processor.

**[7000E] 7600C. CHARGES FOR [NASD] FINRA/NYSE TRADE REPORTING FACILITY SERVICES**

**[7001E] 7610C. Securities Transaction Credit**

[NASD] FINRA members that trade securities listed on the NYSE (“Tape A”), Amex and regional exchanges (“Tape B”), or Nasdaq (“Tape C”) in over-the-counter transactions reported to the [NASD] FINRA/NYSE Trade Reporting Facility may receive from the [NASD] FINRA/NYSE Trade Reporting Facility transaction credits based on the transactions attributed to them. A transaction is attributed to a member if the member is identified as the executing party in a trade report submitted to the [NASD] FINRA/NYSE Trade Reporting Facility that the [NASD] FINRA/NYSE Trade Reporting Facility submits to the Consolidated Tape Association or the Nasdaq Securities Information Processor. A[n NASD] FINRA member may earn credits from any of three pools maintained by the [NASD] FINRA/NYSE Trade Reporting Facility. The Tape A, Tape B, and Tape C pools represent 100% of the gross revenue paid by the Consolidated Tape Association or the Nasdaq Securities Information Processor with respect to the

[NASD] FINRA/NYSE Trade Reporting Facility for Tape A, Tape B, and Tape C transactions. A[n NASD] FINRA member may earn credits from the pools according to the pro rata share of revenue attributable to over-the-counter transactions reported to the [NASD] FINRA/NYSE Trade Reporting Facility by the member in Tape A, Tape B, and Tape C for each calendar quarter. To the extent that Tape A, Tape B or Tape C revenue is subject to any adjustment, credits provided may be adjusted accordingly.

**[7002E] 7620C. [NASD] FINRA/NYSE Trade Reporting Facility Reporting Fees**

There will be no charge for use of the [NASD] FINRA/NYSE Trade Reporting Facility to report locked-in transactions in exchange-listed securities effected otherwise than on an exchange.

\* \* \* \* \*

## **8000. INVESTIGATIONS AND SANCTIONS**

### **8100. GENERAL PROVISIONS**

#### **8110. Availability of Manual to Customers**

Members shall [keep and maintain] make available a current copy of the [NASD] FINRA Manual [in a readily accessible place and shall make it available] for examination by customers upon request. Members may comply with this Rule by maintaining electronic access to the FINRA Manual and providing customers with such access upon request.

#### **8120. Definitions**

- (a) Unless otherwise provided, terms used in the Rule 8000 Series shall have the meaning as defined in NASD Rule 0120.
- (b) No Change.

## **8200. INVESTIGATIONS**

### **8210. Provision of Information and Testimony and Inspection and Copying of Books**

#### **(a) Authority of Adjudicator and [Association] FINRA Staff**

For the purpose of an investigation, complaint, examination, or proceeding authorized by the [NASD] FINRA By-Laws or [the] [R]ules [of the Association], an Adjudicator or [Association] FINRA staff shall have the right to:

- (1) require a member, person associated with a member, or person subject to [the Association's] FINRA's jurisdiction to provide information orally, in writing, or electronically (if the requested information is, or is required to be,

maintained in electronic form) and to testify at a location specified by [Association] FINRA staff, under oath or affirmation administered by a court reporter or a notary public if requested, with respect to any matter involved in the investigation, complaint, examination, or proceeding; and

(2) No Change.

**(b) Other SROs and Regulators**

[Association] FINRA staff also may exercise the authority set forth in paragraph (a) for the purpose of an investigation, complaint, examination, or proceeding conducted by another domestic or foreign self-regulatory organization, association, securities or contract market, or regulator of such markets with which [the Association] FINRA has entered into an agreement providing for the exchange of information and other forms of material assistance solely for market surveillance, investigative, enforcement, or other regulatory purposes.

(c) No Change.

**(d) Notice**

A notice under this Rule shall be deemed received by the member or person to whom it is directed by mailing or otherwise transmitting the notice to the last known business address of the member or the last known residential address of the person as reflected in the Central Registration Depository. If the Adjudicator or [Association] FINRA staff responsible for mailing or otherwise transmitting the notice to the member or person has actual knowledge that the address in the Central Registration Depository is out of date or inaccurate, then a copy of the notice shall be mailed or otherwise transmitted to:

(1) the last known business address of the member or the last known residential address of the person as reflected in the Central Registration Depository[,]; and

(2) any other more current address of the member or the person known to the Adjudicator or [Association] FINRA staff who is responsible for mailing or otherwise transmitting the notice.

**(e) Electronic Interface**

In carrying out its responsibilities under this Rule, [the Association] FINRA may, as appropriate, establish programs for the submission of information to [the Association] FINRA on a regular basis through a direct or indirect electronic interface between [the Association] FINRA and members.

**(f) Inspection and Copying**

A witness, upon proper identification, may inspect the official transcript of the witness' own testimony. Upon written request, a person who has submitted documentary evidence or testimony in [an Association] a FINRA investigation may procure a copy of the person's documentary evidence or the transcript of the person's testimony upon payment of the appropriate fees, except that prior to the issuance of a complaint arising from the investigation, [the Association] FINRA staff may for good cause deny such request.

**8211. Automated Submission of Trading Data Requested by [the Association]**

**FINRA**

(a) A member shall submit the trade data specified below in automated format as may be prescribed by [the Association] FINRA from time to time. This information shall

be supplied with respect to any transaction or transactions that are the subject of a request for information made by [the Association] FINRA.

- (b) No Change.
- (c) If the transaction was effected or caused to be effected by the member for any customer account, such member shall submit or cause to be submitted the following information:
  - (1) The data described in [sub]paragraphs (b)(1) through (8) above;
  - (2) The customer name, address(es), branch office number, registered representative number, whether order was solicited or unsolicited, date account opened, employer name, and the tax identification number(s); and
  - (3) If the transaction was effected for another member, whether the other member was acting as principal or agent.
- (d) In addition to the above trade data, a member shall submit such other information in such automated format as may from time to time be required by [the Association] FINRA.
- (e) Pursuant to the Rule 9600 Series, [the Association] FINRA may exempt a member from the requirement that the data prescribed in paragraphs (b) through (d) above be submitted to [the Association] FINRA in an automated format for good cause shown.

**[8212. Reserved]**

**8213. Automated Submission of Trading Data for Non-Exchange-Listed Securities**

**Requested by [the Association] FINRA**

Each member shall submit trade data specified in Rule 8211 in automated format as may be prescribed by [the Association] FINRA from time to time with respect to any transaction or transactions involving non-[E]exchange-[L]listed securities as defined in the Rule [6600] 6400 Series that are the subject of a request for information made by [the Association] FINRA. Pursuant to the Rule 9600 Series, [the Association] FINRA may exempt a member from the requirement that the data prescribed in paragraphs (b) through (d) of Rule 8211 be submitted to [the Association] FINRA in an automated format for good cause shown.

**[8220. Reserved]**

**8300. SANCTIONS**

**8310. Sanctions for Violation of the Rules**

**(a) Imposition of Sanction**

After compliance with the Rule 9000 Series, [the Association] FINRA may impose one or more of the following sanctions on a member or person associated with a member for each violation of the federal securities laws, rules or regulations thereunder, the rules of the Municipal Securities Rulemaking Board, or FINRA [R]rules [of the Association], or may impose one or more of the following sanctions on a member or person associated with a member for any neglect or refusal to comply with an order, direction, or decision issued under the FINRA [R]rules [of the Association]:

(1) through (7) No Change.

(b) No Change.

**[IM-8310-1] 8311. Effect of a Suspension, Revocation, Cancellation, or Bar**

If [the Association] FINRA or the [Commission] SEC issues an order that imposes a suspension, revocation, or cancellation of the registration of a person associated with a member or bars a person from further association with any member, a member shall not allow such person to remain associated with it in any capacity, including a clerical or ministerial capacity. If [the Association] FINRA or the [Commission] SEC suspends a person associated with a member, the member also shall not pay or credit any salary, or any commission, profit, or other remuneration that results directly or indirectly from any securities transaction, that the person associated with a member might have earned during the period of suspension.

**[IM-8310-2] 8312. [NASD] FINRA BrokerCheck Disclosure**

- (a) In response to a written inquiry, electronic inquiry, or telephonic inquiry via a toll-free telephone listing, [NASD] FINRA shall release information regarding a current or former member, an associated person, or a person who was associated with a member within the preceding two years, through [NASD] FINRA BrokerCheck.
- (b) Except as otherwise provided in paragraph (c) below, [NASD] FINRA shall release:
  - (1) through (3) No Change.
  - (4) the most recently submitted comment, if any, provided to [NASD] FINRA by the person who is covered by BrokerCheck, in the form and in accordance with the procedures established by [NASD] FINRA, for inclusion with the information provided through BrokerCheck. Only comments that relate to the information provided through BrokerCheck will be included;

(5) information as to qualifications examinations passed by the person and date passed. [NASD] FINRA will not release information regarding examination scores or failed examinations;

(6) in response to telephonic inquiries via the BrokerCheck toll-free telephone listing, whether a particular member is subject to the provisions of NASD Rule 3010(b)(2) ("Taping Rule");

(7) through (8) No Change.

(c) [NASD] FINRA shall not release:

(1) information reported as a Social Security number, residential history, or physical description, information that [NASD] FINRA is otherwise prohibited from releasing under Federal law, or information that is provided solely for use by regulators. [NASD] FINRA reserves the right to exclude, on a case-by-case basis, information that contains confidential customer information, offensive or potentially defamatory language or information that raises significant identity theft, personal safety or privacy concerns that are not outweighed by investor protection concerns;

(2) through (5) No Change.

(6) the most recent information reported on a Registration Form, if:

(A) [NASD] FINRA has determined that the information was reported in error by a member, regulator or other appropriate authority;

(B) No Change.

(7) No Change.

(d) Upon written request, [NASD] FINRA may provide a compilation of information about [NASD] FINRA members, subject to terms and conditions established by [NASD] FINRA and after execution of a licensing agreement prepared by [NASD] FINRA. [NASD] FINRA may charge commercial users of such information reasonable fees as determined by [NASD] FINRA. Such compilations shall consist solely of information selected by [NASD] FINRA from Forms BD and BDW and shall be limited to information that is otherwise publicly available from the [Commission] SEC.

**[IM-8310-3] 8313. Release of Disciplinary Complaints, Decisions and Other Information**

(a) [NASD] FINRA shall, in response to a request, release to the requesting party a copy of any identified disciplinary complaint or disciplinary decision issued by [NASD] FINRA or any subsidiary or Committee thereof; provided, however, that each copy of:

(1) a disciplinary complaint shall be accompanied by the following statement: “The issuance of a disciplinary complaint represents the initiation of a formal proceeding by [NASD] FINRA in which findings as to the allegations in the complaint have not been made and does not represent a decision as to any of the allegations contained in the complaint. Because this complaint is unadjudicated, you may wish to contact the respondent before drawing any conclusions regarding the allegations in the complaint.”;

(2) a disciplinary decision that is released prior to the expiration of the time period provided under the Rule 9000 Series for appeal or call for review within [NASD] FINRA or while such an appeal or call for review is pending, shall be accompanied by a statement that the findings and sanctions imposed in

the decision may be increased, decreased, modified, or reversed by [NASD]  
FINRA;

(3) a final decision of [NASD] FINRA that is released prior to the time period provided under the Exchange Act for appeal to the [Commission] SEC or while such an appeal is pending, shall be accompanied by a statement that the findings and sanctions of [NASD] FINRA are subject to review and modification by the [Commission] SEC; and

(4) a final decision of [NASD] FINRA that is released after the decision is appealed to the [Commission] SEC shall be accompanied by a statement as to whether the effectiveness of the sanctions has been stayed pending the outcome of proceedings before the [Commission] SEC.

(b)(1) [NASD] FINRA shall release to the public information with respect to any disciplinary complaint initiated by the Department of Enforcement or the Department of Market Regulation of [NASD] FINRA, the [NASD] FINRA Regulation[, Inc.] Board of Directors, or the [NASD] FINRA Board of Governors containing an allegation of a violation of a designated statute, rule or regulation of the [Commission] SEC, [NASD] FINRA, or Municipal Securities Rulemaking Board, as determined by the [NASD] FINRA Regulation[, Inc.] Board of Directors (a “Designated Rule”); and may also release such information with respect to any disciplinary complaint or group of disciplinary complaints that involve a significant policy or enforcement determination where the release of information is deemed by [the President of NASD Regulatory Policy and Oversight] FINRA’s Chief Executive Officer or such other senior officer as the Chief Executive Officer may designate to be in the public interest.

(2) No Change.

(c)(1) [NASD] FINRA 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] FINRA's Chief Executive Officer or such other senior officer as the Chief Executive Officer may designate to be in the public interest. [NASD] FINRA also may release to the public information with respect to any decision issued pursuant to the Rule 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] FINRA determines otherwise. [NASD] FINRA 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] FINRA also shall release to the public information with respect to any temporary cease and desist order issued pursuant to the Rule 9800 Series. [NASD] FINRA may release to the public information on any disciplinary or other decision issued pursuant to the 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) [NASD] FINRA shall release to the public, in unredacted form, information with respect to any disciplinary decision issued pursuant to the Rule 9300 Series that does not meet one or more of the criteria in [IM-8310-3(c)(1)] Rule 8313(c)(1) for the release of information to the public, provided that the underlying decision issued pursuant to the Rule 9200 Series meets one or more of the criteria in [IM-8310-3(c)(1)] Rule 8313(c)(1) for the release of information to the public, and information regarding such decision has been released to the public in unredacted form.

(B) In the event there is more than one respondent in a disciplinary decision issued pursuant to the Rule 9000 Series, and sanctions imposed on one or more, but not all, of the respondents meets one or more of the criteria in [IM-8310-3(c)(1)] Rule 8313(c)(1) for the release of information to the public, [NASD] FINRA shall release to the public, in unredacted form, information with respect to the respondent(s) who meet such criteria, and may release to the public, in redacted form, information with respect to the respondent(s) who do not meet such criteria. Notwithstanding the foregoing, [NASD] FINRA shall release to the public, in unredacted form, information with respect to any respondent in a disciplinary decision issued pursuant to the Rule 9300 Series if the sanctions imposed on such respondent in the underlying decision issued

pursuant to the Rule 9200 Series meet one or more of the criteria for release of information to the public, and information with respect to that respondent has been released in unredacted form.

(2) No Change.

(d) If a decision issued pursuant to the Rule 9000 Series other than by the National Adjudicatory Council is not appealed to or called for review by the National Adjudicatory Council, the decision shall become effective on a date set by [NASD] FINRA but not before the expiration of 45 days after the date of decision.

(e) No Change.

(f) If a decision issued pursuant to the Rule 9000 Series is called for review by the [NASD] FINRA Board of Governors, the decision shall be stayed pending a final determination and decision by the Board.

(g) If a decision of [NASD] FINRA imposing monetary sanctions of \$10,000 or more or a penalty of expulsion, revocation, suspension and/or barring of a member from being associated with all members is appealed to the [Commission] SEC, notice thereof shall be given to the membership and to the press as soon as possible after receipt by [NASD] FINRA of notice from the [Commission] SEC of such appeal and [NASD] FINRA's notice shall state whether the effectiveness of the Board's decision has been stayed pending the outcome of proceedings before the [Commission] SEC.

(h) In the event an appeal to the courts is filed from a decision by the [Commission] SEC in a case previously appealed to it from a decision of [NASD] FINRA, involving the imposition of monetary sanctions of \$10,000 or more or a penalty of expulsion, revocation, suspension and/or barring of a member from being associated

with all members, notice thereof shall be given to the membership as soon as possible after receipt by [NASD] FINRA of a formal notice of appeal. Such notice shall include a statement whether the order of the [Commission] SEC has been stayed.

(i) Any order issued by the [Commission] SEC of revocation or suspension of a member's broker[/]-dealer registration with the [Commission] SEC; or the suspension or expulsion of a member from [NASD] FINRA; or the suspension or barring of a member or person associated with a member from association with all broker[/]-dealers or membership; or the imposition of monetary sanctions of \$10,000 or more shall be released to the public through a notice containing the effective date thereof sent as soon as possible after receipt by [NASD] FINRA of the order of the [Commission] SEC.

(j) Cancellations of membership or registration pursuant to the [NASD's] FINRA By-Laws[,] and [R]rules [and Interpretative Material] shall be released to the public as soon after the effective date of the cancellation as possible.

(k) Releases to the public referred to in paragraphs (b) and (c) above shall identify the [NASD] FINRA [R]rules and By-Laws or the SEC [R]rules violated, and shall describe the conduct constituting such violation. Releases may also identify the member with which an individual was associated at the time the violations occurred if such identification is determined by [NASD] FINRA to be in the public interest.

(l) [NASD] FINRA shall release to the public, in the form issued by the National Adjudicatory Council, information with respect to any decision issued by the National Adjudicatory Council pursuant to NASD Rule 1015. In its discretion, the National Adjudicatory Council may have redacted certain information from such decisions prior to their issuance.

**8320. Payment of Fines, Other Monetary Sanctions, or Costs; Summary Action for Failure to Pay**

**(a) Payment to Treasurer**

All fines and other monetary sanctions shall be paid to the Treasurer of [the Association] FINRA and shall be used for the general corporate purposes.

**(b) Summary Suspension or Expulsion**

After seven days notice in writing, [the Association] FINRA may summarily suspend or expel from membership a member that fails to:

(1) through (2) No Change.

**(c) Summary Revocation of Registration**

After seven days notice in writing, [the Association] FINRA may summarily revoke the registration of a person associated with a member if such person fails to pay promptly a fine or other monetary sanction imposed pursuant to Rule 8310 or a cost imposed pursuant to Rule 8330 when such fine, monetary sanction, or cost becomes finally due and payable.

\* \* \* \* \*

**9000. CODE OF PROCEDURE**

**9100. APPLICATION AND PURPOSE**

**9110. Application**

**(a) Proceedings**

The Rule 9000 Series is the Code of Procedure and includes proceedings for disciplining a member or person associated with a member; proceedings for regulating the activities of a member experiencing financial or operational difficulties; proceedings

for summary or non-summary suspensions, cancellations, bars, prohibitions, or limitations; and proceedings for obtaining relief from the eligibility requirements of the [NASD] FINRA By-Laws and FINRA [the R]rules [of the Association]. The Rule 9100 Series is of general applicability to all proceedings set forth in the Rule 9000 Series, unless a Rule specifically provides otherwise.

(b) No Change.

**(c) Incorporation of Defined Terms and Cross References**

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

**9120. Definitions**

(a) **"Adjudicator"**

The term "Adjudicator" means:

- (1) a body, board, committee, group, or natural person that presides over a proceeding and renders a decision;
- (2) a body, board, committee, group, or natural person that presides over a proceeding and renders a recommended or proposed decision which is acted upon by an Adjudicator described in paragraph (a)(1); or
- (3) a natural person who serves on a body, board, committee, or group described in paragraphs (a)(1) or (2).

The term includes a Review Subcommittee as defined in paragraph [(z)] (aa), a Subcommittee as defined in paragraph [(bb)] (cc), an Extended Proceeding Committee as

defined in paragraph (l), and a Statutory Disqualification Committee as defined in paragraph [(aa)] (bb).

**(b) “Chief Hearing Officer”**

The term “Chief Hearing Officer” means the Hearing Officer designated by the [President of NASD Regulation] Chief Executive Officer of FINRA to manage the Office of Hearing Officers, or his or her delegatee.

(c) No Change.

**(d) “Counsel to the National Adjudicatory Council”**

The term “Counsel to the National Adjudicatory Council” means an attorney of the Office of the General Counsel of [NASD Regulation] FINRA who is responsible for advising the National Adjudicatory Council, the Review Subcommittee, a Subcommittee, or an Extended Proceeding Committee regarding a disciplinary proceeding on appeal or review before the National Adjudicatory Council.

**(e) “Department of Enforcement”**

The term “Department of Enforcement” means the Department of Enforcement of [NASD Regulation] FINRA.

**(f) “Director”**

The term “Director” means a member of the Board of Directors of [NASD] FINRA Regulation.

**(g) “District Committee”**

The term “District Committee” means a district committee elected pursuant to the [NASD] FINRA Regulation By-Laws or a resolution of the [NASD] FINRA Regulation Board.

(h) through (l) No Change.

**[(t)] (m) “[NASD] FINRA Board”**

The term [NASD] “FINRA Board” means the Board of Governors of [the NASD] FINRA.

**[(u)] (n) [NASD] “FINRA Regulation Board”**

The term [NASD] “FINRA Regulation Board” means the Board of Directors of [NASD] FINRA Regulation.

**[(v)] (o) “Office of Disciplinary Affairs”**

The term “Office of Disciplinary Affairs” means the Office of Disciplinary Affairs for [NASD Regulation] FINRA.

**[(m)] (p) “General Counsel”**

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

**[(n)] (q) “Governor”**

The term “Governor” means a member of the Board of Governors of [the NASD] FINRA.

**[(o)] (r) “Head of Enforcement”**

The term “Head of Enforcement” means the individual designated by the [President of NASD Regulation] Chief Executive Officer of FINRA to manage the Department of Enforcement, or his or her delegatee in the Department of Enforcement.

**[(p)] (s) “Hearing Officer”**

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

**[(q)] (t) 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 9520 Series or the Rule 9550 Series to conduct a proceeding.

**[(r)] (u) “Interested [Association] FINRA Staff”**

The term “Interested [Association] FINRA Staff” means, in the context of:

- (1) a disciplinary proceeding under the Rule 9200 Series and the Rule 9300 Series:
  - (A) through (B) No Change.
  - (C) a[n Association] FINRA employee who directly participated in the authorization of the complaint;
  - (D) a[n Association] FINRA employee who directly participated in an examination, investigation, prosecution, or litigation related to a specific disciplinary proceeding, and a district director or department head to whom such employee reports;

(E) through (F) No Change.

(2) a proceeding under the Rule 9520 Series or Rule 9550 Series:

(A) No Change.

(B) a[n Association] FINRA employee who reports, directly or indirectly, to such person;

(C) a[n Association] FINRA employee who directly participated in the authorization or initiation of the proceeding; or

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

(3) a proceeding under the Rule 9600 Series:

(A) No Change.

(B) a[n Association] FINRA employee who reports, directly or indirectly, to such person;

(C) a[n Association] FINRA employee who directly participated in the exemption proceeding; or

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

**[(s)] (v) “Market Regulation Committee”**

The term “Market Regulation Committee” means the committee of [NASD]  
FINRA designated to consider the federal securities laws and the rules and regulations  
adopted thereunder and various [NASD] FINRA [R]rules and policies relating to:

- (1) the quotations of securities;
- (2) the execution of transactions;
- (3) the reporting of transactions; and
- (4) trading practices, including rules prohibiting manipulation and insider

trading, and trading-related rules such as the NASD Rule[s] 3300[,] Series and  
FINRA Rules [4000, 4000A, 5000, 6000 and 6000A] 6000, 7100, 7200, 7300 and  
7400 Series.

(w) No Change.

**(x) “Party”**

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

(1) through (2) No Change.

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

- (4) No Change.

(y) No Change.

**(z) “Respondent”**

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

**(aa) “Review Subcommittee”**

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

**(bb) “Statutory Disqualification Committee”**

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

(cc) No Change.

**9130. Service; Filing of Papers**

**9131. Service of Complaint and Document Initiating a Proceeding**

(a) No Change.

(b) No Change.

**(c) Filing Requirement**

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

\* \* \* \* \*

**9133. Service of Papers Other Than Complaints, Orders, Notices, or Decisions**

(a) through (b) No Change.

**(c) Filing Requirement**

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

(d) No Change.

\* \* \* \* \*

**9135. Filing of Papers with Adjudicator: Procedure**

**(a) When to File**

Papers that are required to be filed with an Adjudicator within a time limit specified by the Adjudicator or within a time limit set forth in the Rules shall be deemed timely if received within the time limit, unless otherwise ordered by an Adjudicator, except complaints, which shall be deemed timely filed upon mailing or delivery to the Office of Hearing Officers. Other papers that are required to be filed shall be deemed timely if, on the same day such papers are served, they are also hand-delivered, mailed via U.S. Postal service first class mail, or sent by courier to [the Association] FINRA.

(b) through (c) No Change.

\*\*\*\*\*

**9143. Ex Parte Communications**

**(a) Prohibited Communications**

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

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

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

**(b) Disclosure of Prohibited Communication**

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

(1) through (3) No Change.

**(c) Remedies**

Upon receipt of a communication made or knowingly caused to be made by any Party, any counsel or representative to a Party, or any Interested [Association] FINRA Staff in violation of [sub]paragraph (a)(1), [the Association] FINRA or an Adjudicator may, to the extent consistent with the interests of justice, the policies underlying the

Exchange Act, and the [Association's] FINRA [R]rules, order the Party responsible for the communication, or the Party who may benefit from the ex parte communication made, to show cause why the Party's claim or interest in the proceeding should not be dismissed, denied, disregarded, or otherwise adversely affected by reason of such ex parte communication. All participants to a proceeding may respond to any allegations or contentions contained in a prohibited ex parte communication placed in the record. Such responses shall be placed in the record.

(d) No Change.

(e) No Change.

#### **9144. Separation of Functions**

##### **(a) Interested [Association] FINRA Staff**

Except as counsel or a witness in a proceeding or as provided in the Rule 9550 Series, Interested [Association] FINRA 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] FINRA Staff regarding a decision or otherwise participating in a decision of Interested [Association] FINRA Staff, including the decision to issue a complaint and a decision whether to appeal or cross-appeal a disciplinary proceeding to the National Adjudicatory Council.

##### **(b) Separation of Adjudicators**

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

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

(c) No Change.

**9145. Rules of Evidence; Official Notice**

(a) No Change.

**(b) Official Notice**

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

**9146. Motions**

(a) through (j) No Change.

**(k) Motion For Protective Order**

(1) A Party, a person who is the owner, subject, or creator of a Document subject to production under Rule 8210 or any other Rule which may be introduced as evidence in a disciplinary proceeding, or a witness who testifies at a hearing in a disciplinary proceeding may file a motion requesting a protective order to limit disclosure or prohibit from disclosure to other Parties, witnesses or other persons, except the Department of Enforcement and the Department of Market Regulation

and other [Association] FINRA staff, Documents or testimony that contain confidential information. The motion shall include a general summary or extract of the Documents or testimony without revealing confidential details. If the movant seeks a protective order against disclosure to other Parties, copies of the Documents shall not be served on the other Parties. Unless the Documents are unavailable, the movant shall file for in camera inspection a sealed copy of the Documents for which the order is sought. If the movant is not a Party, the motion shall be served on each Party by the movant using a method in Rule 9134(a) and filed with the Adjudicator. A motion for a protective order shall be granted only upon a finding that disclosure of the Document or testimony would have a demonstrated adverse business effect on the movant or would involve an unreasonable breach of the movant's personal privacy.

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

Association] FINRA is subject to a subpoena requiring that the Documents or testimony be produced.

(l) No Change.

**9147. Rulings on Procedural Matters**

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

\* \* \* \* \*

**9150. Exclusion From Rule 9000 Series Proceeding**

(a) No Change.

**(b) Other Proceedings Not Precluded**

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

**9160. Recusal or Disqualification**

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

**(a) [NASD] FINRA Board**

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

(b) through (d) No Change.

**(e) Panelist of Hearing Panel or Extended Hearing Panel**

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

**(f) Hearing Officer**

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

**9200. DISCIPLINARY PROCEEDINGS**

**9210. Complaint and Answer**

**9211. Authorization of Complaint**

**(a) Complaint**

(1) If the Department of Enforcement or the Department of Market Regulation believes that any [NASD] FINRA member or associated person is violating or has violated any rule, regulation, or statutory provision, including the federal securities laws and the regulations thereunder, which [the Association] FINRA has jurisdiction to enforce, the Department of Enforcement or the Department of Market Regulation may request authorization from the Office of Disciplinary Affairs to issue a complaint.

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

(b) No Change.

**9212. Complaint Issuance — Requirements, Service, Amendment, Withdrawal, and Docketing**

(a) through (c) No Change.

**(d) Disciplinary Proceeding Docket**

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

\* \* \* \* \*

**9216. Acceptance, Waiver, and Consent; Plan Pursuant to SE[C]A Rule 19d-1(c)(2)**

**(a) Acceptance, Waiver, and Consent Procedures**

(1) Notwithstanding Rule 9211, if the Department of Enforcement or the Department of Market Regulation has reason to believe a violation has occurred and the member or associated person does not dispute the violation, the

Department of Enforcement or the Department of Market Regulation may prepare and request that the member or associated person execute a letter accepting a finding of violation, consenting to the imposition of sanctions, and agreeing to waive such member's or associated person's right to a hearing before a Hearing Panel or, if applicable, an Extended Hearing Panel, and any right of appeal to the National Adjudicatory Council, the [Commission] SEC, and the courts, or to otherwise challenge the validity of the letter, if the letter is accepted. The letter shall describe the act or practice engaged in or omitted, the rule, regulation, or statutory provision violated, and the sanction or sanctions to be imposed. Unless the letter states otherwise, the effective date of any sanction(s) imposed will be a date to be determined by [the Association] FINRA staff.

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

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

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

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

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

(4) If the letter is accepted by the National Adjudicatory Council, the Review Subcommittee, or the Office of Disciplinary Affairs, it shall be deemed

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

**(b) Procedure for Violation Under Plan Pursuant to SE[C]A Rule 19d-1(c)(2)**

(1) Notwithstanding Rule 9211, [NASD Regulation] FINRA or the National Adjudicatory Council may, subject to the requirements set forth in [sub]paragraphs (b)(2) through (b)(4) and in SE[C]A Rule 19d-1(c)(2), impose a fine (not to exceed \$2,500) and/or a censure on any member or associated person with respect to any rule listed in [IM-9216] Rule 9217. If the Department of Enforcement or the Department of Market Regulation has reason to believe a violation has occurred and if the member or associated person does not dispute the violation, the Department of Enforcement or the Department of Market Regulation may prepare and request that the member or associated person execute a minor rule violation plan letter accepting a finding of violation, consenting to the imposition of sanctions, and agreeing to waive such member's or associated person's right to a hearing before a Hearing Panel or, if applicable, an Extended Hearing Panel, and any right of appeal to the National Adjudicatory Council, the

[Commission] SEC, and the courts, or to otherwise challenge the validity of the letter, if the letter is accepted. The letter shall describe the act or practice engaged in or omitted, the rule, regulation, or statutory provision violated, and the sanction or sanctions to be imposed. Unless the letter states otherwise, the effective date of any sanction(s) imposed will be a date to be determined by [the Association] FINRA staff.

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

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

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

violation plan letter, including acceptance or rejection of such minor rule violation plan letter.

(B) If a minor rule violation plan letter is rejected, the member or person associated with a member shall be bound by the waivers made under [sub]paragraphs (b)(1) and (b)(2)(A) for conduct by persons or bodies occurring during the period beginning on the date the minor rule violation plan letter was executed and submitted and ending upon the rejection of the minor rule violation plan letter.

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

(4) If the letter is accepted by the National Adjudicatory Council, the Review Subcommittee, or the Office of Disciplinary Affairs, it shall be deemed final and [the Association] FINRA shall report the violation to the [Commission] SEC as required by the [Commission] SEC pursuant to a plan approved under SE[C]A Rule 19d-1(c)(2). If the letter is rejected by the Review Subcommittee or the National Adjudicatory Council, [NASD Regulation] FINRA may take any other appropriate disciplinary action with respect to the alleged violation or violations. If the letter is rejected, the member or associated person shall not be

prejudiced by the execution of the minor rule violation plan letter under [sub]paragraph (b)(1) and the letter may not be introduced into evidence in connection with the determination of the issues set forth in any complaint or in any other proceeding.

**[IM-9216] 9217. Violations Appropriate for Disposition Under Plan Pursuant to SE[C]A Rule 19d-1(c)(2)**

Any member of FINRA that is also a member of the New York Stock Exchange LLC (“NYSE”) (“Dual Member”) (including any persons affiliated with such member) may be subject to a fine under [NASD]Rule 9216(b) with respect to any rule or By-Law provision listed in this [IM-9216] Rule that applies to such member or person. However, any Dual Member that was not also a member of NASD as of July 30, 2007 and that does not engage in any activities that otherwise would [have] require[d] it to be a[n NASD] FINRA member (and its affiliated persons that are not otherwise subject to NASD rules) shall only be subject to a fine under [NASD] Rule 9216(b) with respect to the following rules or By-Law provisions listed in this [IM-9216] Rule: any FINRA By-Law or Schedule to the By-Laws, FINRA rule, SEA rule, or NYSE rule[, SEC Exchange Act rule, NASD By-Law or Schedule to the By-Laws, or the NASD Rule 8000 Series].

Any member of FINRA that is not also a member of the NYSE (and its associated persons that are not otherwise subject to NYSE rules) may be subject to a fine under [NASD] Rule 9216(b) with respect to any rule or By-Laws provision listed in this [IM-9216] Rule, with the exception of the NYSE rules.

- Article IV of the FINRA By-Laws — Failure to timely submit amendments to Form BD.

- Article V of the FINRA By-Laws — Failure to timely submit amendments to Form U4.

- Article V of the FINRA By-Laws — Failure to timely submit amendments to Form U5.
  - Rules 6282, 6380A, 6550, 6622, 6730, 7130, 7160, 7230A, and 7260A
    - Transaction reporting in equity and debt securities.

- Rules 7440 and 7450 — Failure to submit data in accordance with the Order Audit Trail System (“OATS”).

- Rules 8211 and 8213 — Failure to submit trading data as requested.
- NASD Rule 1120 — Failure to comply with the Firm Element of the continuing education requirements.

- NASD Rules 2210, 2211, and 2220, and IM-2210-1, -2210-2, -2210-3, -2210-4, -2210-5, -2210-7, and -2210-8 — Communications with the public.

- NASD Rule 3010(b) — Failure to timely file reports pursuant to the Taping Rule.

- NASD Rule 3070 — Failure to timely file reports.
- [ - NASD Rule 3360 — Failure to timely file reports of short positions on Form NS-1.]

- NASD Rule 3110 — Failure to keep and preserve books, accounts, records, memoranda, and correspondence in conformance with all applicable laws, rules, regulations and statements of policy promulgated thereunder, and with NASD [R]rules.

- NASD Rule 3360 — Failure to timely file reports of short positions on Form NS-1.

[ - NASD Rules 8211 and 8213 — Failure to submit trading data as requested.]

[ - Article IV of the NASD By-Laws — Failure to timely submit amendments to Form BD.]

[ - Article V of the NASD By-Laws — Failure to timely submit amendments to Form U4.]

[ - Article V of the NASD By-Laws — Failure to timely submit amendments to Form U5.]

[ - NASD Rule 1120 — Failure to comply with the Firm Element of the continuing education requirements.]

[ - NASD Rule 3010(b) — Failure to timely file reports pursuant to the Taping Rule.]

[ - NASD Rule 3070 — Failure to timely file reports.]

[ - NASD Rules 4632, 4632A, 6130, 6170, 6130A, 6170A, 6230, 6550, and 6620 — Transaction reporting in equity and debt securities.]

- [NASD Rules 6954 and 6955 — Failure to submit data in accordance with the Order Audit Trail System (“OATS”).]

- NASD Rule 11870 — Failure to abide by Customer Account Transfer Contracts.

- Failure to provide or update contact information as required by FINRA or NASD [R]rules.

[- SEC Exchange Act Rule 604 — Failure to properly display limit orders.]

[- SEC Exchange Act Rule 602(b)(5) — Failure to properly update published quotations in certain Electronic Communication Networks (“ECNs”).]

- SEA[C Exchange Act] Rule 17a-5 — Failure to timely file FOCUS reports and annual audit reports.

- SEA[C Exchange Act] Rule 17a-10 — Failure to timely file Schedule I.
- SEA Rule 602(b)(5) — Failure to properly update published quotations in certain Electronic Communication Networks (“ECNs”).

- SEA Rule 604 — Failure to properly display limit orders.
- MSRB Rule A-14 — Failure to timely pay annual fee.
- MSRB Rule G-12 — Failure to abide by uniform practice rules.
- MSRB Rule G-14 — Failure to submit reports.
- MSRB Rule G-36 — Failure to timely submit reports.
- MSRB Rule G-37 — Failure to timely submit reports for political contributions.

- MSRB Rule G-38 — Failure to timely submit reports detailing consultant activities.

- NYSE Rule 134(c) and (e) — Failure to comply with specified QT procedures and time periods.

- NYSE Rules 312(a), (b) & (c), 313, 345.12, 345.17, 346(c), 351, 421, and 440F & G — Reporting rule violations.

[- NYSE Rules 345.11, 410, 432(a), 440, 440I, and 472(c) — Record retention rule violations.]

- NYSE Rules 312(h) & (i), 342(c), 342.10, 346(e) and (f), 382(a), and 791(c) — Failure to obtain approval rule violations.

- NYSE Rules 342(b), (d) & 342.13, 311(b)(5), and 344 — Failure of a member organization to have individuals responsible and qualified for the positions of Financial Principal, Operations Principal, Compliance Official, Branch Office Manager and Supervisory Analyst.

- NYSE Rule 343 — Requirements relating to member organization office sharing arrangements.

- NYSE Rule 345(a) — Failure of a member organization to have individuals responsible and qualified for the positions of Securities Lending Supervisor and Securities Trader Supervisor.

- NYSE Rules 345.11, 410, 432(a), 440, 440I, and 472(c) — Record retention rule violations.

- NYSE Rule 346(b) — Failure to obtain employer's prior written consent for engaging in an outside activity.

- NYSE Rule 352(b) and (c) — Guaranteeing a customer's account against loss or sharing in profits or losses.

- NYSE Rule 387 — Requirements for customer COD/POD transactions.

- NYSE Rule 392 — Notification requirements.

- NYSE Rule 401A — Failure to acknowledge customer complaint within 15 business days.

- NYSE Rule 407 — Requirements for transactions of employees of the Exchange, members or member organizations.
- NYSE Rule 407A — Reporting and notification requirements for members.
- NYSE Rule 408(a) — Requirement that written authorization be obtained for discretionary power in a customer's account.
- NYSE Rule 411(b) — Requirements to bundle multiple odd-lot orders in the same stock, which aggregate to 100 shares or more, to aggregate the orders into round-lot orders.
- NYSE Rule 412 and the interpretations thereunder — Failure to transfer a customer securities account in accordance with requirements.
- NYSE Rule 416A — Failure to promptly provide or promptly update required membership profile information through the Electronic Filing Platform (“EFP”), or failure to electronically certify that required membership profile information is complete and accurate.
- NYSE Rule 445(4) — Failure to designate and identify an Anti-Money Laundering contact person or persons.
- NYSE Rules 704 and 705 — Options position limits and exercise limits.
- NYSE Rules 720 and 722(b) — Failure of a member organization to have individuals responsible and qualified for the positions of Registered Options Principal, Senior Registered Options Principal and Compliance Registered Options Principal.

- NYSE Rule 726 — Options disclosure document and prospectus delivery requirement violations.
- NYSE Rule 780(b)(i) — Requirement for members and member organizations to indicate final decisions of holders of equity options either to exercise or not to exercise expiring equity options by a specific time.
- NYSE Rule 780(f) — Requirement for members and member organizations to make, keep and file with the Exchange records concerning final exercise decisions made with respect to options in certain circumstances.
- NYSE Rule 780.10(b) — Requirement to deliver “exercise advice”.
- NYSE Rule 781 — Allocation of exercise assignment notice violations.

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

**9221. Request for Hearing**

**(a) Respondent Request for Hearing.**

With the filing of any Respondent's answer, such Respondent may:

- (1) request a hearing;
- (2) propose an appropriate location for the hearing; and
- (3) propose, if the complaint alleges at least one cause of action involving a violation of a statute or rule described in Rule 9120([s]y), that the Chief Hearing Officer select a Market Regulation Committee Panelist for a Hearing Panel or, if applicable, an Extended Hearing Panel as described in Rule 9231.

If a Respondent requests a hearing, a hearing shall be granted. A Respondent who fails to request a hearing with the filing of his or her answer waives the right to a hearing unless a Hearing Officer, Hearing Panel, or, if

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

(b) through (d) No Change.

**9222. Extensions of Time, Postponements, and Adjournments**

(a) No Change.

**(b) Limitations on Postponements, Adjournments, and Extensions**

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

**(1) Additional Considerations**

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

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

**(2) Time Limit**

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

**9230. Appointment of Hearing Panel, Extended Hearing Panel**

**9231. Appointment by the Chief Hearing Officer of Hearing Panel or Extended Hearing Panel or Replacement Hearing Officer**

(a) No Change.

**(b) Hearing Panel**

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

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

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

(B) previously served on the National Adjudicatory Council;

(C) previously served on a disciplinary subcommittee of the

National Adjudicatory Council or the National Business Conduct

Committee, including a Subcommittee, an Extended Proceeding

Committee, or their predecessor subcommittees; or,

(D) previously served as a Director or a Governor, but does not

serve currently in any of these positions.

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

**(c) Extended Hearing Panel**

Upon consideration of the complexity of the issues involved, the probable length of the hearing, or other factors that the Chief Hearing Officer deems material, the Chief Hearing Officer may determine that a matter shall be designated an Extended Hearing, and that such matter shall be considered by an Extended Hearing Panel. The Extended Hearing Panel shall be composed of a Hearing Officer and two Panelists, except as provided in Rule 9234(a), (c), (d), or (e). The Hearing Officer will serve as the chair of the Extended Hearing Panel. The Panelists shall be associated with a FINRA member [of the Association], or retired therefrom. The Chief Hearing Officer shall have discretion to compensate any or all Panelists of an Extended Hearing Panel at the rate then in effect for arbitrators appointed under the Rule [10000]12000 Series.

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

(2) If the complaint alleges at least one cause of action involving a violation of a statute or a rule described in Rule 9120([s]y), the Chief Hearing

Officer may select as a Panelist a person who currently serves on the Market Regulation Committee or who previously served on the Market Regulation Committee not earlier than four years before the date the complaint was served upon the Respondent who was the first served Respondent in the disciplinary proceeding for which the Hearing Panel or the Extended Hearing Panel is being appointed.

(d) through (e) No Change.

**9232. Criteria for Selection of Panelists and Replacement Panelists**

(a) No Change.

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

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

(c) through (d) No Change.

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

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

\* \* \* \* \*

**9250. Discovery**

**9251. Inspection and Copying of Documents in Possession of Staff**

**(a) Documents to be Available for Inspection and Copying**

(1) Unless otherwise provided by this Rule, or by order of the Hearing Officer, the Department of Enforcement or the Department of Market Regulation shall make available for inspection and copying by any Respondent, Documents prepared or obtained by Interested [Association] FINRA Staff in connection with the investigation that led to the institution of proceedings. Such Documents include but are not limited to:

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

(2) The Department of Enforcement or the Department of Market Regulation shall promptly inform the Hearing Officer and each other Party if, after the issuance of a complaint, requests for information under Rule 8210 are issued under the same investigative file number under which the investigation leading to the institution of disciplinary proceedings was conducted. If Interested

[Association] FINRA Staff receives Documents pursuant to a request for information under Rule 8210 after Documents have been made available to a Respondent for inspection and copying as set forth in paragraph (a), and if such Documents are material and relevant to the disciplinary proceeding in which such Respondent is a Party, the additional Documents shall be made available to the Respondent not later than 14 days after the Interested [Association] FINRA Staff receives such Documents. If a hearing on the merits is scheduled to begin, Interested [Association] FINRA Staff shall make the additional Documents available to the Respondent not less than ten days before the hearing. If Interested [Association] FINRA Staff receives such Documents ten or fewer days before a hearing on the merits is scheduled to begin or after such hearing begins, Interested [Association] FINRA Staff shall make the additional Documents available immediately to the Respondent.

(3) Nothing in [sub]paragraph (a)(1) shall limit the discretion of the Department of Enforcement or the Department of Market Regulation to make available any other Document or the authority of the Hearing Officer to order the production of any other Document.

**(b) Documents That May Be Withheld**

(1) The Department of Enforcement or the Department of Market

Regulation may withhold a Document if:

(A) the Document is privileged or constitutes attorney work

product;

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

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

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

(2) Nothing in [sub]paragraph (b)(1) authorizes the Department of Enforcement or the Department of Market Regulation to withhold a Document, or a part thereof, that contains material exculpatory evidence.

**(c) Withheld Document List**

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

(d) No Change.

**(e) Place and Time of Inspection and Copying**

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

**(f) Copying Costs**

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

**(g) Failure to Make Documents Available — Harmless Error**

In the event that a Document required to be made available to a Respondent pursuant to this Rule is not made available by the Department of Enforcement or the Department of Market Regulation, no rehearing or amended decision of a proceeding already heard or decided shall be required unless the Respondent establishes that the failure to make the Document available was not harmless error. The Hearing Officer, or, upon appeal or review, a Subcommittee, an Extended Proceeding Committee, or the National Adjudicatory Council, shall determine whether the failure to make the document available was not harmless error, applying applicable [Association] FINRA, [Commission] SEC, and federal judicial precedent.

**9252. Requests for Information**

**(a) Content and Timing of Requests**

A Respondent who requests that [the Association] FINRA invoke Rule 8210 to compel the production of Documents or testimony at the hearing shall do so in writing and serve copies on all Parties. Such request shall: be submitted to the Hearing Officer no later than 21 days before the scheduled hearing date; describe with specificity the Documents, the category or type of Documents, or the testimony sought; state why the Documents, the category or type of Documents, or the testimony are material; describe

the requesting Party's previous efforts to obtain the Documents, the category or type of Documents, or the testimony through other means; and state whether the custodian of each Document, or the custodian of the category or type of Documents, or each proposed witness is subject to [the Association] FINRA's jurisdiction.

**(b) Standards for Issuance**

A request that [the Association] FINRA compel the production of Documents or testimony shall be granted only upon a showing that: the information sought is relevant, material, and non-cumulative; the requesting Party has previously attempted in good faith to obtain the desired Documents and testimony through other means but has been unsuccessful in such efforts; and each of the persons from whom the Documents and testimony are sought is subject to [the Association] FINRA's jurisdiction. In addition, the Hearing Officer shall consider whether the request is unreasonable, oppressive, excessive in scope, or unduly burdensome, and whether the request should be denied, limited, or modified.

**(c) No Change.**

**9253. Production of Witness Statements**

**(a) Availability**

Notwithstanding the provisions of Rule 9251(b),

(1) A Respondent in a disciplinary proceeding may file a motion requesting that the Department of Enforcement or the Department of Market Regulation produce for inspection and copying any statement of any person called or to be called as a witness by the Department of Enforcement or the Department of Market Regulation that pertains, or is expected to pertain, to his or her direct

testimony and which is “a stenographic, mechanical, electrical, or other recording, or a transcription thereof, which is a substantially verbatim recital of an oral statement made by said witness and recorded contemporaneously with the making of such oral statement,” as that phrase is used in 18 U.S.C. § 3500(e)(2).

(2) A Respondent in a disciplinary proceeding may also file a motion requesting that the Department of Enforcement or the Department of Market Regulation produce for inspection and copying any contemporaneously written statement made by an Interested [Association] FINRA Staff member during a routine examination or inspection about the substance of oral statements made by a non-[Association] FINRA person when (a) either the Interested [Association] FINRA Staff member or non-[Association] FINRA person is called as a witness by the Department of Enforcement or the Department of Market Regulation, and (b) that portion of the statement for which production is sought directly relates to the Interested [Association] FINRA Staff member’s testimony or the testimony of the non-[Association] FINRA witness.

**(b) Failure to Produce — Harmless Error**

In the event that a statement required to be made available for inspection and copying by a Respondent is not provided by the Department of Enforcement or the Department of Market Regulation, there shall be no rehearing of a proceeding already heard, or issuance of an amended decision in a proceeding already decided, unless the Respondent establishes that the failure to provide the statement was not harmless error. The Hearing Officer, or upon appeal or review, a Subcommittee, an Extended Proceeding Committee, or the National Adjudicatory Council, shall determine whether the failure to

provide any statement was not harmless error, applying applicable [Association] FINRA, [Commission] SEC, and federal judicial precedent.

\* \* \* \* \*

**9262. Testimony**

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

\* \* \* \* \*

**9267. Record; Supplemental Documents Attached to Record; Retention**

(a) No Change.

**(b) Supplemental Documents Attached To Record; Retention**

(1) No Change.

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

(c) No Change.

**9268. Decision of Hearing Panel or Extended Hearing Panel**

(a) No Change.

**(b) Contents of Decision**

The decision shall include:

(1) through (5) No Change.

(6) a statement describing any sanction imposed, the reasons therefor, and the date upon which such sanction shall become effective. Unless otherwise provided in the decision, the sanction(s) shall become effective on a date to be determined by [Association] FINRA staff.

(c) No Change.

**(d) Service, Notice, [A]and Dissemination Requirements**

The Office of Hearing Officers shall promptly serve the decision of the Hearing Panel, or the Extended Hearing Panel, and any dissenting opinion on the Parties; publish notice of the decision and any dissenting opinion in the Central Registration Depository; and provide a copy of the decision and any dissenting opinion to each FINRA member [of the Association] with which a Respondent is associated.

**(e) Appeal or Review**

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

**9269. Default Decisions**

(a) through (c) No Change.

**(d) Final Disciplinary Action of [the Association] FINRA; Effectiveness of Sanctions**

If a default decision is not appealed pursuant to Rule 9311 or called for review pursuant to Rule 9312 within 25 days after the date the Office of Hearing Officers serves it on the Parties, the default decision shall become the final disciplinary action of [the Association] FINRA for purposes of SE[C]A Rule 19d-1(c)(1). Unless otherwise

provided in the default decision, the sanctions shall become effective on a date to be determined by [the Association] FINRA staff, except that a bar or expulsion shall become effective immediately upon the default decision becoming the final disciplinary action of [the Association] FINRA. [The Association] FINRA shall serve the decision on a Respondent by courier, facsimile or other means reasonably likely to obtain prompt service when the sanction is a bar or an expulsion.

## **9270. Settlement Procedure**

(a) through (b) No Change.

### **(c) Content and Signature Requirements**

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

(1) through (3) No Change.

(4) a statement consenting to findings of fact and violations consistent with the statements contained in the offer of settlement required by [sub]paragraphs (c)(2) and (c)(3);

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

(6) the effective date of any sanction(s) imposed, or a statement that the effective date of the sanction(s) will be a date to be determined by [the Association] FINRA staff.

**(d) Waiver**

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

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

(B) any right of such Respondent to claim bias or pre-judgment of the Chief Hearing Officer, Hearing Officer, a Hearing Panel or, if applicable, an Extended Hearing Panel, a Panelist on a Hearing Panel, or, if applicable, an Extended Hearing Panel, the General Counsel, the National Adjudicatory Council, or any member of the National Adjudicatory Council, in connection with such person's or body's participation in discussions regarding the terms and conditions of the offer of settlement and the order of acceptance, or other consideration of the offer of settlement and order of acceptance, including acceptance, or rejection of such offer of settlement and order of acceptance; and

(C) any right of such Respondent to claim that a person or body violated the ex parte prohibitions of Rule 9143 or the separation of functions prohibitions of Rule 9144, in connection with such person's or body's participation in discussions regarding the terms and conditions of

the offer of settlement and the order of acceptance, or other consideration of the offer of settlement and order of settlement, including acceptance or rejection of such offer of settlement and order of acceptance.

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

(e) through (f) No Change.

**(g) Final Disciplinary Action of [Association] FINRA**

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

(h) through (j) No Change.

**9280. Contemptuous Conduct**

(a) No Change.

**(b) Sanctions Other Than Exclusion**

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

(1) Such orders may include:

(A) an order providing that the matters on which the order is made or any other designated facts shall be taken to be established for the

purposes of the disciplinary proceeding in accordance with the claim of the Party obtaining the order;

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

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

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

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

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

opportunity to be heard, may impose other appropriate sanctions. These sanctions may include any of the sanctions provided for in [sub]paragraphs (b)(1)(A) through (C).

(c) through (d) No Change.

\* \* \* \* \*

**9300. REVIEW OF DISCIPLINARY PROCEEDING BY NATIONAL ADJUDICATORY COUNCIL AND [NASD] FINRA BOARD; APPLICATION FOR [COMMISSION] SEC REVIEW**

**9310. Appeal to or Review by National Adjudicatory Council**

**9311. Appeal by Any Party; Cross-Appeal**

**(a) No Change.**

**(b) Effect**

An appeal to the National Adjudicatory Council from a decision issued pursuant to Rule 9268 or Rule 9269 shall operate as a stay of that decision until the National Adjudicatory Council issues a decision pursuant to Rule 9349 or, in cases called for discretionary review by the [NASD] FINRA Board, until a decision is issued pursuant to Rule 9351. Any such appeal, however, will not stay a decision, or that part of a decision, that imposes a permanent cease and desist order.

**(c) No Change.**

**(d) Notice of Cross-Appeal**

A Party who is served with a notice of appeal may file a written notice of cross-appeal and serve the notice of cross-appeal on the Parties. The notice of cross-appeal shall be filed within five days after service of the notice of appeal. The notice of cross-

appeal shall be signed by the Party cross-appealing, or his or her counsel, and shall contain the information set forth in [sub]paragraphs (c)(1), (c)(2), (c)(4), and (c)(5), and the name of the Party on whose behalf the cross-appeal is made.

(e) through (f) No Change.

**9312. Review Proceeding Initiated By Adjudicatory Council**

(a) No Change.

**(b) Effect**

Institution of review by a member of the National Adjudicatory Council on his or her own motion, a member of the Review Subcommittee on his or her own motion, or the General Counsel, on his or her own motion, shall operate as a stay of a final decision issued pursuant to Rule 9268 or Rule 9269 as to all Parties subject to the notice of review, until the National Adjudicatory Council issues a decision pursuant to Rule 9349, or, in cases called for discretionary review by the [NASD] FINRA Board, until a decision is issued pursuant to Rule 9351. Institution of any such review, however, will not stay a decision, or that part of a decision, that imposes a permanent cease and desist order.

(c) No Change.

**(d) Effect of Withdrawal of Notice of Appeal, Cross-Appeal**

If the review of a disciplinary proceeding by the National Adjudicatory Council is terminated before the National Adjudicatory Council issues a decision on the merits because all appealing Parties file a notice of withdrawal of appeal and no Party previously filed a notice of cross-appeal, or all Parties who previously filed a notice of cross-appeal file a notice of withdrawal of cross-appeal:

(1) a member of the National Adjudicatory Council or the Review Subcommittee shall have the right to call for review a decision issued pursuant to Rule 9268 in accordance with Rule 9312(a)(1), except that the 45 day period during which a call for review may be made shall begin on the day [the Association] FINRA receives the last filed notice of withdrawal of appeal or, if applicable, the last filed notice of withdrawal of cross-appeal; and,

(2) the General Counsel shall have the right to call for review a decision issued pursuant to Rule 9269 in accordance with Rule 9312(a)(2), except that the 25-day period during which a call for review may be made shall begin on the day [the Association] FINRA receives the last filed notice of withdrawal of appeal or, if applicable, the last filed notice of withdrawal of cross-appeal.

\* \* \* \* \*

#### **9344. Failure to Participate Below; Abandonment of Appeal**

(a) No Change.

##### **(b) Abandonment of Appeal**

If an appealing Party fails to advise the National Adjudicatory Council or the Review Subcommittee of the basis for seeking review or otherwise fails to provide information or submit a written brief in response to a request pursuant to Rules 9346 and 9347, the National Adjudicatory Council or the Review Subcommittee may dismiss the appeal as abandoned, and the decision of the Hearing Officer, the Hearing Panel or, if applicable, the Extended Hearing Panel, shall become the final disciplinary action of [the Association] FINRA. If a cross-appealing Party fails to advise the National Adjudicatory Council or the Review Subcommittee of the basis for seeking review or otherwise fails to

provide information or submit a written brief in response to a request pursuant to Rules 9346 and 9347, the National Adjudicatory Council or the Review Subcommittee may dismiss the cross-appeal as abandoned. Upon a showing of good cause, the National Adjudicatory Council may withdraw any dismissal entered pursuant to this Rule.

\* \* \* \* \*

**9346. Evidence in National Adjudicatory Council Proceedings**

(a) through (g) No Change.

**(h) Testimony**

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

\* \* \* \* \*

**9349. National Adjudicatory Council Formal Consideration; Decision**

(a) through (b) No Change.

**(c) Issuance of Decision After Expiration of Call for Review Period**

The National Adjudicatory Council shall provide its proposed written decision to the [NASD] FINRA Board. The [NASD] FINRA Board may call the disciplinary proceeding for review pursuant to Rule 9351. If the [NASD] FINRA Board does not call the disciplinary proceeding for review, the proposed written decision of the National Adjudicatory Council shall become final, and the National Adjudicatory Council shall serve its written decision on the Parties and provide a copy to each member of [the Association] FINRA with which a Respondent is associated. The decision shall constitute the final disciplinary action of [the Association] FINRA for purposes of

SE[C]A Rule 19d-1(c)(1), unless the National Adjudicatory Council remands the proceeding.

**9350. Discretionary Review by [NASD] FINRA Board**

**9351. Discretionary Review by [NASD] FINRA Board**

**(a) Call for Review by Governor**

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

**(b) 15 Day Period; Waiver**

(1) A Governor shall make his or her call for review not later than the next meeting of the [NASD] FINRA Board that is at least 15 days after the date on which the [NASD] FINRA Board receives the proposed written decision of the National Adjudicatory Council.

**(2) Waiver**

By a unanimous vote of the [NASD] FINRA Board, the [NASD] FINRA Board may shorten the period in subparagraph (1) to less than 15 days. By an affirmative vote of the majority of the [NASD] FINRA Board then in office, the [NASD] FINRA Board may, during the 15 day period in subparagraph (1), vote to extend the period in subparagraph (1) to more than 15 days.

**(c) Review at Next Meeting**

If a Governor calls a disciplinary proceeding for review within the period prescribed in paragraph (b), the [NASD] FINRA Board shall review the disciplinary proceeding not later than the next meeting of the [NASD] FINRA Board. The [NASD] FINRA Board may order the Parties (excluding any Respondent who did not appeal or

cross-appeal, or as to whom the issues appealed or called for review do not apply) to file briefs in connection with the review proceedings pursuant to this Rule.

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

After review, the [NASD] FINRA Board may affirm, modify, or reverse the proposed written decision of the National Adjudicatory Council. The [NASD] FINRA Board may affirm, modify, reverse, increase, or reduce any sanction, or impose any other fitting sanction. Alternatively, the [NASD] FINRA Board may remand the disciplinary proceeding with instructions. The [NASD] FINRA Board shall prepare a written decision that includes all of the elements described in Rule 9349(b)(1) through (6).

**(e) Issuance of Decision After Expiration of Call for Review Period**

The [NASD] FINRA Board shall issue and serve its written decision on the Parties and provide a copy to each member of [the Association] FINRA with which a Respondent is associated. The decision shall constitute the final disciplinary action of [the Association] FINRA for purposes of SE[C]A Rule 19d-1(c)(1), unless the [NASD] FINRA Board remands the proceeding.

**9360. Effectiveness of Sanctions**

Unless otherwise provided in the decision issued under Rule 9349 or Rule 9351, a sanction (other than a bar, an expulsion, or a permanent cease and desist order) specified in a decision constituting final disciplinary action of [the Association] FINRA for purposes of SE[C]A Rule 19d-1(c)(1) shall become effective on a date to be determined by [Association] FINRA staff. A bar, an expulsion, or a permanent cease and desist order shall become effective upon service of the decision constituting final disciplinary action of [the Association] FINRA, unless otherwise specified therein. [The Association]

FINRA shall serve the decision on a Respondent by courier, facsimile or other means reasonably likely to obtain prompt service when the sanction is a bar, an expulsion, or a permanent cease and desist order.

**9370. Application to [Commission] SEC for Review**

**(a) Appeal to [Commission] SEC; Effect**

A Respondent aggrieved by final disciplinary action pursuant to the Rule 9200 Series or the Rule 9300 Series may apply for review by the [Commission] SEC pursuant to Section 19(d)(2) of the Exchange Act. The filing with the [Commission] SEC of an application for review by the [Commission] SEC shall stay the effectiveness of any sanction, other than a bar or an expulsion, imposed in a decision constituting final disciplinary action of [the Association] FINRA for purposes of SE[C]A Rule 19d-1(c)(1).

**(b) [Association] FINRA Notification to Member**

[The Association] FINRA shall promptly notify any [Association] FINRA member with which a Respondent is associated if the Respondent files an application for review to the [Commission] SEC.

\* \* \* \* \*

**9500. OTHER PROCEEDINGS**

**[9610. Reserved]**

**9520. Eligibility Proceedings**

**9521. Purpose and Definitions**

**(a) Purpose**

The Rule 9520 Series sets forth procedures for a person to become or remain associated with a member, notwithstanding the existence of a statutory disqualification as

defined in Article III, Section 4 of the [NASD] FINRA By-Laws and for a current member or person associated with a member to obtain relief from the eligibility or qualification requirements of the [NASD] FINRA By-Laws and [the] FINRA [R]rules [of the Association]. Such actions hereinafter are referred to as “eligibility proceedings.”

**(b) Definitions**

- (1) The term “Application” means [NASD Regulation] FINRA’s Form MC-400 for individuals or Form MC-400A for members, filed with the [Central Registration Depository/Public Disclosure] Department of Registration and Disclosure (“RAD”).
- (2) The term “disqualified member” means a broker, dealer, municipal securities broker or dealer, government securities broker or dealer, or member that is or becomes subject to a disqualification or is otherwise ineligible for membership under Article III, Section 3 of the [NASD] FINRA By-Laws.
- (3) The term “disqualified person” means an associated person or person seeking to become an associated person who is or becomes subject to a disqualification or is otherwise ineligible for association under Article III, Section 3 of the [NASD] FINRA By-Laws.
- (4) The term “sponsoring member” means the member or applicant for membership pursuant to NASD Rule 1013 that is sponsoring the association or continued association of a disqualified person to be admitted, readmitted, or permitted to continue in association.

**9522. Initiation of Eligibility Proceeding; Member Regulation Consideration**

**(a) Initiation by [Association] FINRA**

**(1) Issuance of Notice of Disqualification or Ineligibility**

If [Association] FINRA staff has reason to believe that a disqualification exists or that a member or person associated with a member otherwise fails to meet the eligibility requirements of [the Association] FINRA, [Association] FINRA staff shall issue a written notice to the member or applicant for membership under NASD Rule 1013. The notice shall specify the grounds for such disqualification or ineligibility.

**(2) Notice Regarding a Member**

A notice issued to a disqualified member shall state that the disqualified member may apply for relief by filing an application or, in the case of a matter set forth in Rule 9522(e)(1), a written request for relief, within ten business days after service of the notice. If the member fails to file the application or, where appropriate, the written request for relief, within the 10-day period, the membership of the member shall be canceled, unless the Department of Member Regulation grants an extension for good cause shown.

**(3) Notice Regarding an Associated Person**

A notice issued regarding a disqualified person to a member or applicant for membership under NASD Rule 1013 shall state that such member or applicant for membership may file an application on behalf of itself and such person or, in the case of a matter set forth in Rule 9522(e)(1), a written request for relief, within ten business days after service of the notice. If the member fails to file the

application or, where appropriate, the written request for relief, within the 10-day period, the registration of the disqualified person shall be revoked, unless the Department of Member Regulation grants an extension for good cause shown.

**(4) Service**

A notice issued under this [section] paragraph (a) shall be served by facsimile or pursuant to Rules 9131 and 9134.

**(b) Obligation of Member to Initiate Proceeding**

A member shall file an application or, in the case of a matter set forth in Rule 9522(e)(1), a written request for relief, with [the Central Registration Depository/Public Disclosure] RAD, if the member determines prior to receiving a notice under paragraph (a) that:

(1) it has become a disqualified member;

(2) a person associated with such member or whose association is

proposed by an applicant for membership under NASD Rule 1013 has become a disqualified person; or

(3) the member or applicant for membership under NASD Rule 1013

wishes to sponsor the association of a person who is a disqualified person.

**(c) Withdrawal of Application**

A member may withdraw its application or written request for relief prior to a hearing by filing a written notice with [the Central Registration Depository/Public Disclosure] RAD pursuant to Rules 9135, 9136, and 9137. A member may withdraw its application after the start of a hearing but prior to the issuance of a decision by the

National Adjudicatory Council with prior written consent of the National Adjudicatory Council.

**(d) Ex Parte Communications**

The prohibitions against ex parte communications set forth in Rule 9143 shall become effective under the Rule 9520 Series when [Association] FINRA staff has initiated the eligibility proceeding and [Association] FINRA staff has knowledge that a member intends to file an application or written request for relief pursuant to the Rule 9520 Series.

**(e) Member Regulation Consideration**

**(1) Matters that may be Approved by the Department of Member Regulation without the Filing of an Application**

The Department of Member Regulation, as it deems consistent with the public interest and the protection of investors, may grant a written request for relief from the eligibility requirements by a disqualified member or a sponsoring member without the filing of an application by such disqualified member or sponsoring member if a disqualified member or disqualified person is subject to one or more of the following conditions but is not otherwise subject to disqualification:

- (A) a disqualified member or disqualified person is subject to a disqualification based on an injunction that was entered ten or more years prior to the proposed admission or continuance by order, judgment, or decree of any court of competent jurisdiction from acting as an investment adviser, underwriter, broker, dealer, municipal securities dealer,

government securities broker, government securities dealer, transfer agent, foreign person performing a function substantially equivalent to any of the above, entity or person required to be registered under the Commodity Exchange Act, or any substantially equivalent foreign statute or regulation, or as an affiliated person or employee of any investment company, bank, insurance company, foreign entity substantially equivalent to any of the above, or entity or person required to be registered under the Commodity Exchange Act or any substantially equivalent foreign statute or regulation, or from engaging in or continuing any conduct or practice in connection with any such activity, or in connection with the purchase or sale of any security.

- (B) a sponsoring member makes a request to change the supervisor of a disqualified person; or
- (C) a disqualified member or sponsoring member is a member of both [the Association] FINRA and another self-regulatory organization; and:
  - (i) the other self-regulatory organization intends to file a Notice under SE[C]A Rule 19h-1 approving the membership continuance of the disqualified member or, in the case of a sponsoring member, the proposed association or continued association of the disqualified person; and
  - (ii) the Department of Member Regulation concurs with that determination.

**(2) Matters that may be Approved by the Department of Member**

**Regulation after the Filing of an Application**

The Department of Member Regulation, as it deems consistent with the public interest and the protection of investors, may approve an application filed by a disqualified member or sponsoring member if a disqualified member or disqualified person is subject to one or more of the following conditions but is not otherwise subject to disqualification (other than a matter set forth in [sub]paragraph (e)(1)):

(A) The disqualified person is already a participant in, a member of, or a person associated with a member of, a self-regulatory organization (other than [the Association] FINRA), and the terms and conditions of the proposed admission to [the Association] FINRA are the same in all material respects as those imposed or not disapproved in connection with such person's prior admission or continuance pursuant to an order of the [Commission] SEC under SE[C]A Rule 19h-1 or other substantially equivalent written communication;

(B) The Department of Member Regulation finds, after reasonable inquiry, that except for the identity of the employer concerned, the terms and conditions of the proposed admission or continuance are the same in all material respects as those imposed or not disapproved in connection with a prior admission or continuance of the disqualified person pursuant to an order of the [Commission] SEC under SE[C]A Rule 19h-1 or other substantially equivalent written communication, and that there is no

intervening conduct or other circumstance that would cause the employment to be inconsistent with the public interest or the protection of investors;

(C) The disqualification previously was a basis for the institution of an administrative proceeding pursuant to a provision of the federal securities laws, and was considered by the [Commission] SEC in determining a sanction against such disqualified person in the proceeding; and the [Commission] SEC concluded in such proceeding that it would not restrict or limit the future securities activities of such disqualified person in the capacity now proposed, or, if it imposed any such restrictions or limitations for a specified time period, such time period has elapsed; [or]

(D) The disqualification consists of a court order or judgment of injunction or conviction, and such order or judgment:

(i) expressly includes a provision that, on the basis of such order or judgment, the [Commission] SEC will not institute a proceeding against such person pursuant to Section 15(b) or 15B of the Exchange Act or that the future securities activities of such persons in the capacity now proposed will not be restricted or limited; or

(ii) includes such restrictions or limitations for a specified time period and such time period has elapsed; or

(E) The disqualified person's functions are purely clerical and/or ministerial in nature.

**(3) Rights of Disqualified Member, Sponsoring Member, Disqualified Person, and Department of Member Regulation**

(A) In the event the Department of Member Regulation does not approve a written request for relief from the eligibility requirements pursuant to [sub]paragraph (e)(1), the disqualified member or sponsoring member may file an application, and such member shall have the right to proceed under Rule 9523 or 9524, as applicable. The Department of Member Regulation may require a disqualified member or sponsoring member to file an application with [the Central Registration Depository/Public Disclosure]RAD, notwithstanding the provisions of [sub]paragraph (e)(1).

(B) In the event the Department of Member Regulation does not approve an application pursuant to [sub]paragraph (e)(2), the disqualified member or sponsoring member shall have the right to proceed under Rule 9523 or 9524, as applicable.

**9523. Acceptance of Member Regulation Recommendations and Supervisory Plans by Consent Pursuant to SE[C]A Rule 19h-1**

(a) No Change.

(b)(1) If a disqualified member, sponsoring member, and/or disqualified person submitted an executed letter consenting to a supervisory plan, by the submission of such letter, the disqualified member, sponsoring member and/or disqualified person waive:

(A) the right to a hearing before a Hearing Panel and any right of appeal to the National Adjudicatory Council, the [Commission] SEC, and the courts, or otherwise challenge the validity of the supervisory plan, if the supervisory plan is accepted.

(B) any right of the disqualified member, sponsoring member, and/or disqualified person to claim bias or prejudgment by the Department of Member Regulation, the General Counsel, the National Adjudicatory Council, or any member of the National Adjudicatory Council, in connection with such person's or body's participation in discussions regarding the terms and conditions of the Department of Member Regulation's recommendation or the supervisory plan, or other consideration of the recommendation or supervisory plan, including acceptance or rejection of such recommendation or supervisory plan; and

(C) any right of the disqualified member, sponsoring member, and/or disqualified person to claim that a person violated the ex parte prohibitions of Rule 9143 or the separation of functions prohibitions of Rule 9144, in connection with such person's or body's participation in discussions regarding the terms and conditions of the recommendation or supervisory plan, or other consideration of the recommendation or supervisory plan, including acceptance or rejection of such recommendation or supervisory plan.

(2) If a recommendation or supervisory plan is rejected, the disqualified member, sponsoring member, and/or disqualified person shall be bound by the

waivers made under [sub]paragraph (b)(1) for conduct by persons or bodies occurring during the period beginning on the date the supervisory plan was submitted and ending upon the rejection of the supervisory plan and shall have the right to proceed under this rule and Rule 9524, as applicable.

(c) If the disqualified member, sponsoring member, and/or disqualified person execute the letter consenting to the supervisory plan, it shall be submitted to the Office of General Counsel by the Department of Member Regulation with a proposed Notice under SE[C]A Rule 19h-1, where required. The Office of General Counsel shall forward the supervisory plan and proposed Notice under SE[C]A Rule 19h-1, if any, to the Chairman of the Statutory Disqualification Committee, acting on behalf of the National Adjudicatory Council. The Chairman of the Statutory Disqualification Committee may accept or reject the recommendation of the Department of Member Regulation and the supervisory plan or refer them to the National Adjudicatory Council for acceptance or rejection by the National Adjudicatory Council.

(d) If the recommendation and supervisory plan is accepted by the National Adjudicatory Council or the Chairman of the Statutory Disqualification Committee, it shall be deemed final and, where required, the proposed Notice under SE[C]A Rule 19h-1 will be filed by [the Association] FINRA. If the recommendation and supervisory plan are rejected by the Chairman of the Statutory Disqualification Committee or the National Adjudicatory Council, [NASD Regulation] FINRA may take any other appropriate action with respect to the disqualified member, sponsoring member, and/or disqualified person. If the recommendation and supervisory plan are rejected, the disqualified member, sponsoring member, and/or disqualified person shall not be prejudiced by the execution

of the letter consenting to the supervisory plan under [sub]paragraph (a) and the letter may not be introduced into evidence in any proceeding.

**9524. National Adjudicatory Council Consideration**

**(a) Hearing Panel Consideration**

(1) through (2) No Change.

**(3) Transmission of Documents**

(A) Upon receipt of an application, [the Central Registration Depository] RAD shall gather all of the information necessary to process the application, including (i) [the Central Registration Depository] RAD records for the disqualified member, sponsoring member, and/or disqualified person, as the case may be, and the proposed supervisor; and (ii) all of the information submitted by the disqualified member or sponsoring member in support of the application. [The Central Registration Depository] RAD will prepare an index of these documents, and simultaneously provide this index and copies of the documents to the disqualified member or sponsoring member, as the case may be, the Office of the General Counsel, and the Department of Member Regulation. Such documents shall be served on the disqualified member or sponsoring member, as the case may be, by mail, facsimile, or overnight courier as soon as practicable. The Department of Member Regulation shall serve its recommendation and its supporting documents on the Office of General Counsel and the disqualified member or sponsoring member, as the case may be, within ten business days of the hearing, unless the Parties agree

otherwise. The disqualified member or sponsoring member, as the case may be, shall serve its documents on the Office of General Counsel and the Department of Member Regulation within ten business days of the hearing, unless the Parties agree otherwise. The Office of General Counsel shall forward all documents transmitted to it pursuant to this [sub]paragraph (a)(3) to the Hearing Panel.

(B) Not less than ten business days before the hearing, the Department of Member Regulation, which shall act as a Party in the eligibility proceeding, and the disqualified member or sponsoring member, as the case may be, shall serve proposed exhibit and witness lists on each other and the Office of General Counsel. The exhibit and witness lists shall be served by facsimile or overnight courier.

(C) At any time prior to the issuance of its recommendation, the Hearing Panel may order the Parties to supplement the record with any additional information that the Hearing Panel deems necessary.

(4) through (7) No Change.

**(8) Custodian of the Record**

The custodian of the record shall be the Office of General Counsel of [NASD Regulation] FINRA.

**(9) 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] FINRA's decision becomes final or, if applicable,

upon the conclusion of any review by the [Commission] SEC or the federal courts.

**(10) Recommendation**

On the basis of the record, the Hearing Panel shall present a recommended decision in writing on the request for relief to the Statutory Disqualification Committee. After considering the record and recommendation of the Hearing Panel, the Statutory Disqualification Committee shall present its recommended decision in writing to the National Adjudicatory Council.

**(b) Decision**

**(1) Decision of the National Adjudicatory Council**

After considering all matters presented in the request for relief, the Statutory Disqualification Committee's recommended decision, the public interest, and the protection of investors, the National Adjudicatory Council may grant or deny the request for relief, and, if relief is granted, impose conditions on the disqualified member, sponsoring member, and/or disqualified person, as the case may be. At any time prior to the issuance of its recommendation, the National Adjudicatory Council may order the Parties to supplement the record with any additional information that the National Adjudicatory Council deems necessary. Alternatively, the National Adjudicatory Council may remand the eligibility proceeding. The National Adjudicatory Council shall prepare a proposed written decision pursuant to subparagraph (2).

**(2) Contents of Decision**

The decision shall include:

- (A) a description of the origin of the eligibility proceeding and the nature of the disqualification;
- (B) a description of the prospective business or employment requested to be engaged in; and
- (C) a statement in support of the disposition of the request for relief, which, if granted, includes any of the applicable elements under SE[C]A Rule 19h-1(e) and a description of any conditions that are imposed on the disqualified member, sponsoring member, or disqualified person, as the case may be.

**(3) Issuance of Decision After Expiration of Call for Review Period**

The National Adjudicatory Council shall provide its proposed written decision to the [NASD] FINRA Board. The [NASD] FINRA Board may call the eligibility proceeding for review pursuant to Rule 9525. If the [NASD] FINRA Board does not call the eligibility proceeding for review, the proposed written decision of the National Adjudicatory Council shall become final, and the National Adjudicatory Council shall serve its written decision on the disqualified member, sponsoring member, and/or disqualified person, as the case may be, and the Department of Member Regulation pursuant to Rules 9132 and 9134. The decision shall constitute final action of [the Association] FINRA, unless the National Adjudicatory Council remands the eligibility proceeding. A decision to deny re-entry or continued association shall be effective immediately. A decision to approve shall be effective after the [Commission] SEC issues an

acknowledgment letter or, in cases involving [Commission] SEC ordered sanctions, an order.

**9525. Discretionary Review by the [NASD] FINRA Board**

**(a) Call for Review by Governor**

A Governor may call an eligibility proceeding for review by the [NASD] FINRA Board if the call for review is made within the period prescribed in 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] FINRA Board that is at least 15 days after the date on which the [NASD] FINRA Board receives the proposed written decision of the National Adjudicatory Council. By a unanimous vote of the [NASD] FINRA Board, the [NASD] FINRA Board may shorten the period to less than 15 days. By an affirmative vote of the majority of the [NASD] FINRA Board then in office, the [NASD] FINRA Board may, during the 15 day period, vote to extend the period to more than 15 days.

**(c) Review at Next Meeting**

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

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

After review, the [NASD] FINRA Board may affirm, modify, or reverse the proposed written decision of the National Adjudicatory Council. Alternatively, the

[NASD] FINRA Board may remand the eligibility proceeding with instructions. The [NASD] FINRA Board shall prepare a written decision that includes all of the elements described in Rule 9524(b)(2).

**(e) Issuance of Decision**

The [NASD] FINRA Board shall issue and serve its written decision on the disqualified member, sponsoring member, and/or disqualified person, as the case may be, and the Department of Member Regulation pursuant to Rules 9132 and 9134. The decision shall constitute the final action of [the Association] FINRA, unless the [NASD] FINRA Board remands the proceeding. A decision to deny re-entry or continued association shall be effective immediately. A decision to approve shall be effective after the [Commission] SEC issues an acknowledgment letter or, in cases involving [Commission] SEC-ordered sanctions, an order.

**9526. Expedited Review**

**(a) Direction by Executive Committee**

Notwithstanding Rules 9524 and 9525, the [NASD] FINRA Board Executive Committee, upon request of the Statutory Disqualification Committee, may direct an expedited review of a recommended written decision of the Statutory Disqualification Committee if the [NASD] FINRA Board Executive Committee determines that expedited review is necessary for the protection of investors.

**(b) No Change.**

**(c) No Call for Review**

If no Governor calls the proceeding for review within the time prescribed, the decision shall become final, and the Statutory Disqualification Committee shall serve the

decision on the disqualified member, sponsoring member, and/or disqualified person, as the case may be, and the Department of Member Regulation pursuant to Rules 9132 and 9134. The decision shall constitute final action of [the Association] FINRA. The decision shall be effective upon approval by the [Commission] SEC.

**(d) Call for Review**

If a Governor calls the eligibility proceeding for review within the prescribed time, 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] FINRA 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 recommended written decision of the Statutory Disqualification Committee or remand the eligibility proceeding with instructions. The review panel shall prepare, issue, and serve its decision pursuant to Rule 9525(d) and (e).

**9527. Application to [Commission] SEC for Review**

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

**[9530. Suspension or Cancellation for Failure to Pay Dues, Fees and Other Charges]**

**[9531. Notice]**

**[(a) Notice]**

[Association staff may issue a written notice suspending or canceling the membership of a member or the registration of a person who has failed to pay a fee, due, assessment, other charge, or submit a required report or information related to such payment.]

**[(b) Service of Notice]**

[Association staff shall serve the notice via personal service, facsimile or overnight courier and shall file a copy of the notice with the Office of Hearing Officers.]

**[(c) Effective Date of Notice]**

[A notice issued and served under this Rule shall become effective 15 days after the date of service of the notice.]

**[9532. Hearing]**

**[(a) Request for Hearing]**

[Within five days after the date of service of a notice issued under Rule 9531, 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 Officer]**

[If a hearing is requested, the Chief Hearing Officer shall appoint a Hearing Officer to conduct the hearing and decide whether the member or the person's registration should be suspended or canceled.]

**[(2) Parties]**

[The Parties shall be the member or person to whom the notice was issued and the NASD Treasurer.]

**[(3) Time of Hearing]**

[The hearing shall be held within 45 days after the date of service of the notice under Rule 9531. 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.]

**[(4) Transmission of Documents]**

[Not later than seven days before the hearing, the NASD Treasurer 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 9531 and provide copies of the same to the Hearing Officer.]

**[(5) Counsel]**

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

**[(6) 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.]

**[(7) 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.]

**[(8) 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 Officer renders his or her decision.]

**[(9) 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*.]

**[(10) Record]**

[The record shall consist of all documents that were considered in connection with the decision to issue a notice under Rule 9531, the notice issued

under Rule 9531, the request for hearing filed under Rule 9532, the transcript of the hearing, and each document or other item of evidence presented to or considered by the Hearing Officer. The Office of Hearing Officers shall be the custodian of the record.]

**[(11) 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 9531 shall become final. Upon a showing of good cause, the Hearing Officer may withdraw a dismissal entered pursuant to this subparagraph.]

**[9533. Decision]**

[The Hearing Officer may suspend or cancel the membership of a member or the registration of a person for failure to pay a due, fee, assessment, other charge, or for failure to submit a required report or information related to such payment. The Hearing Officer shall prepare a proposed written decision, and if the Hearing Officer determines that a suspension or cancellation should be imposed, the proposed written decision shall state the grounds for the suspension or cancellation, and in the case of a suspension, the conditions for terminating the suspension. The written decision served under this Rule shall become effective upon service and shall constitute final action of the Association].

**[9534. Notice to Membership]**

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

**[9535. Termination of Suspension]**

[A suspended member or person may file a written request for termination of the suspension on the ground of full compliance with the notice issued under Rule 9531 or, if applicable, the conditions of a decision under Rule 9533, with the Office of Hearing Officers. The Office of Hearing Officers shall respond to the request in writing within five days after receipt of the request. The Office of Hearing Officers shall send the written response via overnight courier or facsimile.]

**[9536. Copies of Notices and Decisions to Member]**

[A copy of a notice or decision under the Rule 9530 Series that is served on a person associated with a member shall be served on such member.]

**[9537. Other Action Not Foreclosed]**

[Action by the Association under the Rule 9530 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 NASD Rules 2210(c)(5) and 2220(c)(2), [NASD] FINRA staff may issue a written notice requiring a member to file advertising, educational material or sales literature with the [NASD] FINRA Advertising Regulation Department at least ten days prior to use if [NASD] FINRA staff determines that the member has departed from the standards of NASD Rule 2210 or NASD Rule 2220.

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

[NASD] FINRA 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] FINRA action. The notice shall state when the [NASD] FINRA 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] FINRA 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 Notice of Pre-Use Filing Requirement**

Pursuant to NASD 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] FINRA 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] FINRA 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] FINRA department or office that issued the notice or, if another [NASD] FINRA 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] FINRA 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] FINRA's Jurisdiction if Corrective Action is Not Taken**

If a member, person associated with a member or person subject to [NASD] FINRA's jurisdiction fails to provide any information, report, material, data, or testimony requested or required to be filed pursuant to the [NASD] FINRA By-Laws or [the NASD] FINRA [R]rules, or fails to keep its membership application or supporting documents current, [NASD] FINRA 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] FINRA 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] FINRA action. The notice shall state when the [NASD] FINRA 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] FINRA 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) No Change.**

**(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] FINRA 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] FINRA department or office that issued the notice or, if another [NASD] FINRA 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] FINRA 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] FINRA action. Contested offers of settlement shall not be considered in proceedings initiated under this Rule.

**(h) No Change.**

**(i) Notice to Membership**

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

**9553. Failure to Pay [NASD] FINRA 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] FINRA's jurisdiction fails to pay any fees, dues, assessment or other charge required to be paid under the [NASD] FINRA By-Laws or [R]rules, or to submit a required report or information related to such payment, [NASD] FINRA 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] FINRA 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] FINRA action. The notice shall state when the [NASD] FINRA 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] FINRA 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) No Change.

**(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] FINRA 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] FINRA 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] FINRA department or office that issued the notice or, if another [NASD] FINRA 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] FINRA 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] FINRA shall provide notice of any final [NASD] FINRA action taken pursuant to this Rule in the next Regulatory Notice [to Members] Disciplinary and Other [NASD] FINRA 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] FINRA'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] FINRA By-Laws, [NASD] FINRA 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] FINRA 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] FINRA action. The notice shall state when the [NASD] FINRA 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] FINRA 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) **No Change.**

**(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] FINRA 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] FINRA 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] FINRA department or office that issued the notice or, if another [NASD] FINRA 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] FINRA 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] FINRA shall provide notice of any final [NASD] FINRA action taken pursuant to this Rule in the next Regulatory Notice [to Members] Disciplinary and Other [NASD] FINRA 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] FINRA By-Laws or [R]rules, [NASD] FINRA 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] FINRA or a member thereof or cannot be permitted to continue to have access to services offered by [NASD] FINRA or a member thereof with safety to investors, creditors, members, or [NASD] FINRA, [NASD] FINRA staff may provide written notice to such member or person limiting or prohibiting access to services offered by [NASD] FINRA or a member thereof.

**(b) Service of Notice**

[NASD] FINRA 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] FINRA action. The notice shall state when the [NASD] FINRA 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] FINRA 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, 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] FINRA 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] FINRA 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] FINRA 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] FINRA 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] FINRA 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] FINRA department or office that issued the notice or, if

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

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

**(a) Notice of Suspension, Cancellation or Bar**

If a member, person associated with a member or person subject to [NASD's] FINRA'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 NASD Chairman and CEO] FINRA's Chief Executive Officer or [NASD's Senior Executive Vice President for Regulatory Policy and Programs] such other senior officer as the Chief Executive Officer may designate [—] 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] FINRA 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] FINRA pursuant to Article 4, Section III of the [NASD's] FINRA By-Laws, except that, if [NASD] FINRA staff has actual knowledge that an entity's contact questionnaire facsimile number is out of date, duplicate copies shall be sent to the entity by overnight courier or personal delivery in conformity with paragraphs (a)(1) and (3) and (b)(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) 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] FINRA 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] FINRA 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 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] FINRA 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] FINRA 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] FINRA department

or office that issued the notice or, if another [NASD] FINRA 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] FINRA 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] FINRA shall provide notice of any final [NASD] FINRA action taken pursuant to this Rule in the next Regulatory Notice [to Members] Disciplinary and Other [NASD] FINRA Action Section.

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

**(a) Notice of Restriction**

[NASD] FINRA staff may issue a notice directing a member to restrict its business activities, either by limiting or ceasing to conduct those activities, if [NASD] FINRA staff has reason to believe that a condition specified in NASD Rule 3130 or [Rule] 3131 exists.

**(b) Service of Notice**

[NASD] FINRA 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] FINRA pursuant to Article 4, Section III of the [NASD's] FINRA By-Laws, except that, if [NASD] FINRA staff has actual knowledge that an entity's contact questionnaire

facsimile number is out of date, duplicate copies shall be sent to the entity by overnight courier or personal delivery in conformity with paragraphs (a)(1) and (3) and (b)(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] FINRA action. The notice shall state when the [NASD] FINRA 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] FINRA 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) No Change.**

**(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] FINRA action.

**(f) Failure to Request Hearing**

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

**(g) Order to Enforce Sanctions**

If [NASD] FINRA staff determines that a member has failed to comply with any restrictions imposed by a decision or an effective notice under this Rule that have not been stayed, [NASD] FINRA 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 Restrictions or the Reduction or Removal of Restrictions**

**(1) Additional Restrictions**

If a member continues to experience financial or operational difficulty specified in NASD Rule 3130 or 3131, notwithstanding an effective notice, order or decision under this Rule, [NASD] FINRA [S]staff may impose additional

restrictions 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 restrictions 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 Restrictions**

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

**(i) Notice to Membership**

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

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

**(a) Notice of Initiation of Summary Proceedings**

[The President of NASD Regulatory Policy and Oversight] FINRA's Chief Executive Officer or [the Executive Vice President for NASD Regulatory Policy and Programs] such other senior officer as the Chief Executive Officer may designate may provide written authorization to [NASD] FINRA 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] FINRA'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] FINRA staff determines and so notifies the [Commission] SEC that the member cannot be permitted to continue to do business as a member with safety to investors, creditors, other members, or [NASD] FINRA; or

(3) limits or prohibits any person with respect to access to services offered by [NASD] FINRA if paragraphs (a)(1) or (2) of this Rule or the provisions of Section 15A(h)(3) of the Exchange 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] FINRA's Chief Executive Officer or [the Executive Vice President for NASD Regulatory Policy and Programs] such other senior officer as the Chief Executive Officer may designate 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] FINRA, and so notifies the [Commission] SEC.

**(b) Service of Notice**

[NASD] FINRA 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] FINRA pursuant to Article 4, Section III of the [NASD's] FINRA By-Laws, except that, if [NASD] FINRA staff has actual knowledge that an entity's contact questionnaire facsimile number is out of date, duplicate copies shall be sent to the entity by overnight courier or personal delivery in conformity with paragraphs (a)(1) and (3) and (b)(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) 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] FINRA action. The notice shall state when the [NASD] FINRA 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] FINRA 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.

**(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] FINRA 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) 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] FINRA 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] FINRA department or office that issued the notice or, if another [NASD] FINRA 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] FINRA 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] FINRA shall provide notice of any final [NASD] FINRA action taken pursuant to this Rule in the next Regulatory Notice [to Members] Disciplinary and Other [NASD] FINRA 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] FINRA'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) 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, except that the effectiveness of a notice of a limitation or prohibition on access to services offered by [NASD] FINRA 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] FINRA or a member thereof shall not be stayed pending resolution of the case.

(f) through (g) No Change.

**(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] FINRA 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] FINRA until the date upon which [NASD] FINRA serves a final decision or, if applicable, upon the conclusion of any review by the SEC[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) through (l) No Change.

**(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] FINRA 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) No Change.

**(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] FINRA 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] FINRA member with which the respondent is associated.

(5) The timelines established by paragraphs (o)(1)–(4) confer no substantive rights on the parties.

(p) No Change.

**(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] FINRA action.

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

(6) The timelines established by paragraphs (q)(1) – (5) confer no substantive rights on the parties.

**(r) Notice to Membership**

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

**(s) Application to [Commission] SEC for Review**

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

**9600. PROCEDURES FOR EXEMPTIONS**

**9610. Application**

**(a) Where to File**

A member seeking exemptive relief as permitted under NASD Rules 1021, 1050, 1070, 2210, 2315, 2320, 2340, 2520, 2710, 2720, 2790, 2810, 2850, 2851, 2860, Interpretive Material 2860-1, 3010(b)(2), 3020, 3150, 3210, 3230, 11870, 11900, or Rules [5150, 6958] 6183, 7470, 8211, or 8213, [11870, or 11900,] or Municipal Securities Rulemaking Board Rule G-37 shall file a written application with the

appropriate department or staff of [NASD] FINRA and provide a copy of the application to the Office of General Counsel of [NASD] FINRA.

(b) through (c) No Change.

**9620. Decision**

After considering an application, [NASD] FINRA staff shall issue a written decision setting forth its findings and conclusions. The decision shall be served on the Applicant pursuant to Rules 9132 and 9134. After the decision is served on the Applicant, the application and decision shall be publicly available unless [NASD] FINRA staff determines that the Applicant has shown good cause for treating the application or decision as confidential in whole or in part.

**9630. Appeal**

**(a) Notice**

An Applicant may file a written notice of appeal within 15 calendar days after service of a decision issued under Rule 9620. The notice of appeal shall be filed with the Office of General Counsel of [NASD Regulation] FINRA, with a copy of the notice also provided to the appropriate department or staff of [NASD] FINRA. The notice of appeal shall contain a brief statement of the findings and conclusions as to which exception is taken. Appeals of decisions issued by [NASD] FINRA staff pursuant to Rule 9620 shall be decided by the National Adjudicatory Council, except with respect to exemptive relief under NASD Rule 1070 (Qualification Examinations and Waiver of Requirements), which shall be decided by the Waiver Subcommittee of the National Adjudicatory Council. If the Applicant does not want the decision on the appeal to be publicly available in whole or in part, the Applicant also shall include in its notice of appeal a

detailed statement, including supporting facts, showing good cause for treating the decision as confidential in whole or in part. The notice of appeal shall be signed by the Applicant.

(b) through (c) No Change.

**(d) Oral Argument**

(1) Subject to subparagraph (2) below, following the filing of a notice of appeal, the National Adjudicatory Council or Review Subcommittee may order oral argument and may designate a Subcommittee to hear such oral argument. The Subcommittee may consider any new evidence if the Applicant can show good cause for not including it in its application, and the Subcommittee will recommend to the National Adjudicatory Council a disposition of all matters on appeal.

(2) With respect to exemptive relief requested under NASD Rule 1070, the Waiver Subcommittee of the National Adjudicatory Council may order oral argument and consider any new evidence if the Applicant can show good cause for not including it in its application.

**(e) Decision**

(1) Subject to subparagraph (2) below, after considering all matters on appeal, and, as applicable, the Subcommittee's recommendation, the National Adjudicatory Council shall affirm, modify, or reverse the decision issued under Rule 9620. The National Adjudicatory Council shall issue a written decision setting forth its findings and conclusions and serve the decision on the Applicant.

The decision shall be served pursuant to Rules 9132 and 9134. The decision shall be effective upon service and shall constitute final action of [NASD] FINRA.

(2) With respect to exemptive relief requested under NASD Rule 1070, after considering all matters on appeal, the Waiver Subcommittee of the National Adjudicatory Council shall affirm, modify, or reverse the decision issued under Rule 9620. The Waiver Subcommittee shall issue a written decision setting forth its findings and conclusions and serve the decision on the Applicant. The decision shall be served pursuant to Rules 9132 and 9134. The decision shall be effective upon service and shall constitute final action of [NASD] FINRA. The Waiver Subcommittee shall retain the discretion to refer the appeal to the National Adjudicatory Council, in which case the National Adjudicatory Council shall act on such appeal pursuant to its authority under this 9600 Series.

## **9700. PROCEDURES ON GRIEVANCES CONCERNING THE AUTOMATED SYSTEMS**

### **9710. Purpose**

The purpose of this Rule 9700 Series is to provide, where justified, redress for persons aggrieved by the operations of any automated quotation, execution, or communication system owned or operated by [NASD] FINRA, or any subsidiary thereof, and approved by the [Commission] SEC, not otherwise provided for by the [NASD] FINRA [R]rules.

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

All applications shall be in writing, and shall specify in reasonable detail the nature of and basis for the redress requested. If the application consists of several

allegations, each allegation shall be stated separately. All applications must be signed and shall be directed to [NASD] FINRA's Office of Hearing Officers relating to automated quotation, execution or communications system owned or operated by [NASD] FINRA.

**9730. Request for Hearing**

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

**9740. Consideration of Applications**

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

**9750. Decision**

Decisions on applications shall be in writing and a copy shall be sent to the National Adjudicatory Council's Review Subcommittee (as defined in Rule 9120(aa)). If not called for review in accordance with Rule 9760, the Hearing Officer shall issue its decision after being notified by the National Adjudicatory Council's Review Subcommittee that the decision will not be called for review or upon expiration of the time allowed for call for review. The Hearing Officer shall promptly provide a copy of the written decision to the applicant, which shall be effective as of the time of such

issuance. The written decision shall contain the reasons supporting the Hearing Officer's conclusions. The Hearing Officer's decision shall constitute final [NASD] FINRA action.

**9760. Call for Review by the National Adjudicatory Council**

The National Adjudicatory Council's Review Subcommittee (as defined in Rule 9120(aa)) may call for review a proposed decision that was prepared pursuant to Rule 9750 within 21 days after receipt of the decision from the Office of Hearing Officers. If the Review Subcommittee calls the proceeding for review within the prescribed time, a Subcommittee (as defined in Rule 9120(cc)) 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 in accordance with 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. 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 applicant via overnight courier or facsimile. The National Adjudicatory Council may affirm, modify or reverse the decision of the Hearing Officer. In addition, the National Adjudicatory Council may remand the matter to the Office of Hearing Officers for further consideration of specified matters. In any such proceeding a record shall be kept. The National Adjudicatory Council's written decision shall constitute final [NASD] FINRA action. The institution of a call for review by the National Adjudicatory Council shall stay the effectiveness of the Hearing Officer's decision.

**9770. Application to [Commission] SEC for Review**

Any decision issued under Rule 9750 or Rule 9760, as applicable, shall constitute final [NASD] FINRA action. A person aggrieved by any final [NASD] FINRA action issued pursuant to Rule 9750 or Rule 9760 may make application for review to the [Commission] SEC in accordance with the Exchange Act.

**9800. TEMPORARY CEASE AND DESIST ORDERS**

**9810. Initiation of Proceeding**

**(a) Department of Enforcement or Department of Market Regulation**

With the prior written authorization of [NASD] FINRA's [Chairman and CEO] Chief Executive Officer or [NASD's Senior Executive Vice President for Regulatory Policy and Programs] such other senior officer as the Chief Executive Officer may designate, the Department of Enforcement or the Department of Market Regulation may initiate a temporary cease and desist proceeding with respect to alleged violations of Section 10(b) of the [Securities] Exchange Act [of 1934] and SE[C]A Rule 10b-5 thereunder; SE[C]A Rules 15g-1 through 15g-9; NASD Rule 2110 (if the alleged violation is unauthorized trading, or misuse or conversion of customer assets, or based on violations of Section 17(a) of the Securities Act of 1933); NASD Rule 2120; or NASD Rule 2330 (if the alleged violation is misuse or conversion of customer assets). The Department of Enforcement or the Department of Market Regulation shall initiate the proceeding by serving a notice on a member or associated person (hereinafter "Respondent") and filing a copy thereof with the Office of Hearing Officers. The Department of Enforcement or the Department of Market Regulation shall serve the notice by personal service, overnight commercial courier, or facsimile. If service is made

by facsimile, the Department of Enforcement or the Department of Market Regulation shall send an additional copy of the notice by overnight commercial courier. The notice shall be effective upon service.

(b) through (c) No Change.

\* \* \* \* \*

**9830. Hearing**

(a) through (c) No Change.

**(d) Witnesses**

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

(e) through (f) No Change.

**(g) Record and Evidence Not Admitted**

The record shall consist of the notice initiating the proceeding, the declaration, and the proposed order described in Rule 9810(b); the transcript of the hearing; all evidence considered by the Hearing Panel; and any other document or item accepted into the record by the Hearing Officer or the Hearing Panel. The Office of Hearing Officers shall be the custodian of the record. Proffered evidence that is not accepted into the record by the Hearing Panel shall be retained by the custodian of the record until the date when [the NASD] FINRA's decision becomes final or, if applicable, upon the conclusion of any review by the [Commission] SEC or the federal courts.

(h) No Change.

\* \* \* \* \*

**9860. Violation of Temporary Cease and Desist Orders**

A Respondent who violates a temporary cease and desist order imposed under this Rule Series may have its association or membership suspended or canceled under Rule 9556. [NASD] FINRA's [Chairman and CEO] Chief Executive Officer or [NASD's Senior Executive Vice President for Regulatory Policy and Programs] such other senior officer as the Chief Executive Officer may designate must authorize the initiation of any such proceeding in writing.

**9870. Application to [Commission] SEC for Review**

Temporary cease and desist orders issued pursuant to this Rule Series constitute final and immediately effective disciplinary sanctions imposed by [the Association] FINRA. The right to have any action under this Rule Series reviewed by the [Commission] SEC is governed by Section 19 of the Exchange Act. The filing of an application for review shall not stay the effectiveness of the temporary cease and desist order, unless the [Commission] SEC otherwise orders.

\* \* \* \* \*

**10000. CODE OF ARBITRATION PROCEDURE**

**10100. ADMINISTRATIVE PROVISIONS**

**IM-10100. Failure to Act Under Provisions of Code of Arbitration Procedure**

It may be deemed conduct inconsistent with just and equitable principles of trade and a violation of NASD Rule 2110 for a member or a person associated with a member to:

- (a) fail to submit a dispute for arbitration under the [NASD] Code of Arbitration Procedure as required by that Code;
- (b) fail to comply with any injunctive order issued pursuant to Rule 10335;
- (c) fail to appear or to produce any document in his possession or control as directed pursuant to provisions of the [NASD] Code of Arbitration Procedure;
- (d) fail to honor an award, or comply with a written and executed settlement agreement, obtained in connection with an arbitration submitted for disposition pursuant to the procedures specified by [the National Association of Securities Dealers, Inc.] FINRA, the New York, American, Boston, Cincinnati, Chicago, or Philadelphia Stock Exchanges, the Pacific Exchange, Inc., the Chicago Board Options Exchange, the Municipal Securities Rulemaking Board, or pursuant to the rules applicable to the arbitration of disputes before the American Arbitration Association or other dispute resolution forum selected by the parties where timely motion has not been made to vacate or modify such award pursuant to applicable law; or
- (e) fail to comply with a written and executed settlement agreement, obtained in connection with a mediation submitted for disposition pursuant to the procedures specified by [the National Association of Securities Dealers, Inc.] FINRA.

All awards shall be honored by a cash payment to the prevailing party of the exact dollar amount stated in the award. Awards may not be honored by crediting the prevailing party's account with the dollar amount of the award, unless authorized by the express terms of the award or consented to in writing by the parties. Awards shall be honored upon receipt thereof, or within such other time period as may be prescribed by the award.

Action by members requiring associated persons to waive the arbitration of disputes contrary to the provisions of the Code of Arbitration Procedure shall constitute conduct that is inconsistent with just and equitable principles of trade and a violation of NASD Rule 2110.

#### **10101. Matters Eligible for Submission**

This Code of Arbitration Procedure is prescribed and adopted pursuant to Article VII, Section 1(a)(iv) of the FINRA By-Laws [of the Association] for the arbitration of any dispute, claim, or controversy arising out of or in connection with the business of any FINRA member [of the Association], or arising out of the employment or termination of employment of associated person(s) with any member, with the exception of disputes involving the insurance business of any member which is also an insurance company:

- (a) through (c) No Change.
- (d) between or among members, registered clearing agencies with which [the Association] FINRA has entered into an agreement to utilize the [Association's] FINRA arbitration facilities and procedures, and participants, pledgees, or other persons using the facilities of a registered clearing agency, as these terms are defined under the rules of such a registered clearing agency.

**10102. National Arbitration and Mediation Committee**

(a) The [NASD] FINRA Dispute Resolution Board of Directors, following the annual election of its members by the [NASD] FINRA Board of Governors, shall appoint a National Arbitration and Mediation Committee of such size and composition, including representation from the public at large, as it shall deem appropriate and in the public interest. The Chairman of the Committee shall be named by the Chairman of the [NASD] FINRA Dispute Resolution Board. The said Committee shall establish and maintain rosters of neutrals composed of persons from within and without the securities industry.

(b) The Committee shall have the authority to recommend to the [NASD] FINRA Dispute Resolution Board appropriate Rules, regulations, and procedures to govern the conduct of all arbitration matters, mediation, and other dispute resolution before [the Association] FINRA. All Rules, regulations, and procedures and amendments thereto presented by the Committee must be by a majority vote of all the members of the said Committee. It also shall have such other power and authority as is necessary to effectuate the purposes of this Code.

(c) No Change.

**10103. Director of Arbitration**

The FINRA Board of Governors [of the Association] shall appoint a Director of Arbitration (Director) who shall be charged with the performance of all administrative duties and functions in connection with matters submitted for arbitration pursuant to this Code. The Director shall be directly responsible to the National Arbitration and Mediation Committee and shall report to it at periodic intervals established by the Committee and at such other times as called upon by the Committee to do so. The duties

and functions of the Director may be delegated by the Director, as appropriate. In the event of the incapacitation, resignation, removal, or other permanent or indefinite inability of the Director to perform the duties and responsibilities of the Director, the President or an Executive Vice President of [the Association] FINRA Dispute Resolution may appoint an interim Director.

#### **10104. Composition and Appointment of Panels**

Except as otherwise specifically provided in Rule 10308, the Director shall compose and appoint panels of arbitrators from the existing pool of arbitrators of [the Association] FINRA to conduct the arbitration of any matter which shall be eligible for submission under this Code.

#### **IM-10104. Arbitrators' Honorarium**

- (a) All persons selected to serve as arbitrators pursuant to the [Association's] Code of Arbitration Procedure shall be paid an honorarium for each hearing session (including a prehearing conference) in which they participate.
- (b) through (d) No Change.
- (e) Payment for Deciding Discovery-Related Motions Without a Hearing Session
  - (1) [NASD] FINRA will pay each arbitrator an honorarium of \$200 to decide a discovery-related motion without a hearing session. This paragraph does not apply to cases administered under Rules 10203 and 10302.
  - (2) For purposes of paragraph (e)(1), a discovery-related motion and any replies or other correspondence relating to the motion shall be considered to be a single motion.

- (3) The panel will allocate the cost of the honoraria under paragraph (e)(1) to the parties pursuant to Rules 10205(c) and 10332(c).
- (f) No Change.

#### **10105. Non-Waiver of [Association] FINRA Objects and Purposes**

The submission of any matter to arbitration under this Code shall in no way limit or preclude any right, action or determination by [the Association] FINRA which it would otherwise be authorized to adopt, administer or enforce. If any matter comes to the attention of an arbitrator during and in connection with the arbitrator's participation in a proceeding, either from the record of the proceeding or from material or communications related to the proceeding, that the arbitrator has reason to believe may constitute a violation of [the Association's] FINRA Rules or the federal securities laws, the arbitrator may initiate a referral of the matter to [the Association] FINRA for disciplinary investigation; provided, however, that any such referral should only be initiated by an arbitrator after the matter before him has been settled or otherwise disposed of, or after an award finally disposing of the matter has been rendered pursuant to Rule 10330 of the Code.

\* \* \* \* \*

#### **10200. INDUSTRY AND CLEARING CONTROVERSIES**

##### **10201. Required Submission**

- (a) through (b) No Change.
- (c) Any dispute, claim or controversy involving an act or failure to act by a clearing member; a registered clearing agency; or participants, pledgees, or other persons using the facilities of a registered clearing agency, under the rules of any registered

clearing agency with which [the Association] FINRA has entered into an agreement to utilize the [Association's] FINRA arbitration facilities and procedures shall be arbitrated in accordance with such agreement and the rules of such registered clearing agency.

\* \* \* \* \*

#### **10205. Schedule of Fees for Industry and Clearing Controversies**

(a) At the time of filing a Claim, Counterclaim, Third-Party Claim, or Cross-Claim in an industry or clearing controversy which is required to be submitted to arbitration before [the Association] FINRA as set forth in Rule 10201, above, a party who is a member shall pay a non-refundable filing fee and shall remit a hearing session deposit to [the Association] FINRA in the amounts stated in paragraph (k) unless such fee or deposit is specifically waived by the Director of Arbitration. A party who is an associated person shall pay a non-refundable filing fee and shall pay a hearing session deposit in the amounts specified for customer claimants in Rule 10332. If the associated person is a joint claimant with a member, the member shall pay a non-refundable filing fee and shall pay a hearing session deposit in the amounts specified in paragraph (k) of this Rule. Where multiple hearing sessions are required, the arbitrator(s) may require any of the parties to make additional hearing deposits for each additional hearing session. In no event shall the amount deposited by all parties per hearing session exceed the amount of the largest initial hearing deposit made by any party under paragraph (k) below.

(b) through (e) No Change.

(f) [The Association] FINRA shall retain the total initial amount deposited as hearing session deposits by all the parties in any matter submitted and settled or

withdrawn within eight business days of the first scheduled hearing session other than a pre-hearing conference.

(g) Any matter submitted and thereafter settled or withdrawn subsequent to the commencement of the first hearing session, including a pre-hearing conference with an arbitrator, shall be subject to an assessment of forum fees and costs incurred pursuant to Rules 10319, 10321, 10322, and 10326 based on hearing sessions held and scheduled within eight business days after [the Association] FINRA receives notice that the matter has been settled or withdrawn. The arbitrator(s) shall determine by whom such fees and costs shall be borne.

(h) In each industry or clearing controversy which is required to be submitted to arbitration before [the Association] FINRA as set forth in Rule 10201, above, where interim injunctive relief is requested or where a court has issued a temporary injunction and a party requests expedited proceedings, a total non-refundable surcharge of \$2,500 shall be paid by the party or parties requesting the expedited proceedings as provided in Rule 10335. For purposes of this Rule, where expedited proceedings are mandated by Rule 10335(g), the party that sought and was granted injunctive relief by a court shall be deemed a party requesting expedited proceedings. These surcharge fees shall be in addition to all other non-refundable filing fees, hearing deposits, or costs which may be required. The arbitrator may determine that a party shall reimburse another party for any non-refundable surcharge it has paid.

(i) through (k) No Change.

\* \* \* \* \*

**10216. Coordination of Claims Filed in Court and in Arbitration**

**(a) Option to Combine Related Claims in Court**

(1) (A) If a current or former associated person of a member files a statutory discrimination claim in court against a member or its associated persons, and asserts related claims in arbitration at [the Association] FINRA against some or all of the same parties, a respondent who is named in both proceedings shall have the option to move to compel the claimant to bring the related arbitration claims in the same court proceeding in which the statutory discrimination claim is pending, to the full extent to which the court will accept jurisdiction over the related claims.

(B) The respondent shall notify the claimant in writing, before the time to answer under Rule 10314 has expired, that it is exercising this option and shall file a copy of such notification with the Director. If the respondent files an answer without having exercised this option, it shall have waived its right to move to compel the claimant to assert related claims in court, except as provided in paragraph (b).

(2) (A) If a member or current or former associated person of a member ("party") has a pending claim in arbitration against a current or former associated person of a member and the current or former associated person thereafter asserts a related statutory employment discrimination claim in court against the party, the party shall have the option to assert its pending arbitration claims and any counterclaims in court.

(B) The party shall notify the current or former associated person in writing, before filing an answer to the complaint in court, that it is exercising this option and shall file a copy of such notification with the Director. If the party files an answer in court without having exercised this option, it shall have waived its right to assert the pending arbitration claim in court.

(C) The party may not exercise this option after the first hearing has begun on the arbitration claim.

(b) through (e) No Change.

**(f) Motion to Compel Arbitration**

If a member or a current or former associated person of a member files in court a claim against a member or a current or former associated person of a member that includes matters that are subject to mandatory arbitration, either by the rules of [the Association] FINRA or by private agreement, the defending party may move to compel arbitration of the claims that are subject to mandatory arbitration.

(g) No Change.

\* \* \* \* \*

**10300. UNIFORM CODE OF ARBITRATION**

**10301. Required Submission**

(a) Any dispute, claim, or controversy eligible for submission under the Rule 10100 Series between a customer and a member and/or associated person arising in connection with the business of such member or in connection with the activities of such associated persons shall be arbitrated under this Code, as provided by any duly executed

and enforceable written agreement or upon the demand of the customer. A claim involving a member in the following categories shall be ineligible for submission to arbitration under the Code unless the customer agrees in writing to arbitrate the claim after it has arisen:

(1)[.] A member whose membership is terminated, suspended, canceled, or revoked;

(2)[.] A member that has been expelled from [the NASD] FINRA; or

(3)[.] A member that is otherwise defunct.

(b) Under this Code, the Director of Arbitration, upon approval of the Executive Committee of the National Arbitration and Mediation Committee, or the National Arbitration and Mediation Committee, shall have the right to decline the use of its arbitration facilities in any dispute, claim, or controversy, where, having due regard for the purposes of [the Association] FINRA and the intent of this Code, such dispute, claim, or controversy is not a proper subject matter for arbitration.

(c) Claims which arise out of transactions in a readily identifiable market may, with the consent of the Claimant, be referred to the arbitration forum for that market by [the Association] FINRA.

(d) Class Action Claims

(1) A claim submitted as a class action shall not be eligible for arbitration under this Code at [the Association] FINRA.

(2) Any claim filed by a member or members of a putative or certified class action is also ineligible for arbitration at [the Association] FINRA if the claim is encompassed by a putative or certified class action filed in federal or state

court, or is ordered by a court to an arbitral forum not sponsored by a self-regulatory organization for classwide arbitration. However, such claims shall be eligible for arbitration in accordance with paragraph (a) or pursuant to the parties' contractual agreement, if any, if a claimant demonstrates that it has elected not to participate in the putative or certified class action or, if applicable, has complied with any conditions for withdrawing from the class prescribed by the court.

Disputes concerning whether a particular claim is encompassed by a putative or certified class action shall be referred by the Director of Arbitration to a panel of arbitrators in accordance with Rule 10302 or Rule 10308, as applicable. Either party may elect instead to petition the court with jurisdiction over the putative or certified class action to resolve such disputes. Any such petition to the court must be filed within ten business days of receipt of notice that the Director of Arbitration is referring the dispute to a panel of arbitrators.

(3) No member or associated person shall seek to enforce any agreement to arbitrate against a customer, other member or person associated with a member who has initiated in court a putative class action or is a member of a putative or certified class with respect to any claims encompassed by the class action unless and until:

- (A) the class certification is denied;
- (B) the class is decertified;
- (C) the customer, other member or person associated with a member is excluded from the class by the court; or

(D) the customer, other member or person associated with a member elects not to participate in the putative or certified class action or, if applicable, has complied with any conditions for withdrawing from the class prescribed by the court.

(4) No member or associated person shall be deemed to have waived any of its rights under this Code or under any agreement to arbitrate to which it is party except to the extent stated in this paragraph.

**10302. Simplified Arbitration**

(a) through (k) No Change.  
(l) Except as otherwise provided herein, the general arbitration rules of [the Association] FINRA shall be applicable to proceedings instituted under this Rule.

\* \* \* \* \*

**10306. Settlements**

(a) through (b) No Change.  
(c) The terms of a settlement agreement do not need to be disclosed to [the Association] FINRA. However, if the parties fail to agree on the allocation of outstanding fees, the fees shall be divided equally among all parties.

**10307. Tolling of Time Limitation(s) for the Institution of Legal Proceedings and Extension of Time Limitation(s) for Submission to Arbitration**

(a) Where permitted by applicable law, the time limitations which would otherwise run or accrue for the institution of legal proceedings shall be tolled where a duly executed Submission Agreement is filed by the Claimant(s). The tolling shall

continue for such period as [the Association] FINRA shall retain jurisdiction upon the matter submitted.

(b) No Change.

\* \* \* \* \*

**10312. Disclosures Required of Arbitrators and Director's Authority to Disqualify**

(a) through (c) No Change.

(d) Removal by Director

(1) The Director may remove an arbitrator based on information that is required to be disclosed pursuant to this Rule.

(2) After the commencement of the earlier of (A) the first pre-hearing conference or (B) the first hearing, the Director may remove an arbitrator based only on information not known to the parties when the arbitrator was selected. The Director's authority under this subparagraph (2) may be exercised only by the Director or the President of [NASD] FINRA Dispute Resolution.

(3) The Director will grant a party's request to disqualify an arbitrator if it is reasonable to infer, based on information known at the time of the request, that the arbitrator is biased, lacks impartiality, or has an interest in the outcome of the arbitration. The interest or bias must be direct, definite, and capable of reasonable demonstration, rather than remote or speculative.

(e) No Change.

\* \* \* \* \*

#### **10314. Initiation of Proceedings**

Except as otherwise provided herein, an arbitration proceeding under this Code shall be instituted as follows:

##### **(a) Statement of Claim**

(1) The Claimant shall file with the Director of Arbitration an executed Submission Agreement, a Statement of Claim of the controversy in dispute, together with the documents in support of the Claim, and the required deposit. Sufficient additional copies of the Submission Agreement and the Statement of Claim and supporting documents shall be provided to the Director of Arbitration for each party and each arbitrator. The Statement of Claim shall specify the relevant facts and the remedies sought. The Director of Arbitration shall endeavor to serve promptly by mail or otherwise on the Respondent(s) one (1) copy of the Submission Agreement and one (1) copy of the Statement of Claim.

(2) A Claimant or counsel (referred to herein collectively as "Claimant") may use the online claim notification and filing procedure to complete part of the arbitration claim filing process through the Internet. To commence this process, a Claimant may complete a Claim Information Form that can be accessed through [an NASD] the FINRA Web site. In completing the Claim Information Form, the Claimant may attach an electronic version of the Statement of Claim to the form, provided it does not exceed 50 pages. Once this online form has been completed, [an NASD] a FINRA Dispute Resolution Tracking Form will be generated and displayed for the Claimant to reproduce as necessary. The Claimant shall then file with the Director of Arbitration the rest of the materials required in subparagraph

(1), above, along with a hard copy of the [NASD] FINRA Dispute Resolution Tracking Form.

(b) through (d) No Change.

**(e) Default Procedures**

(1) A Respondent, Cross-Respondent, or Third-Party Respondent that fails to file an Answer within 45 calendar days from receipt of service of a Claim, unless the time to answer has been extended pursuant to paragraph (b)(5), may be subject to default procedures, as provided in this paragraph, if it is:

- (A) a member whose membership has been terminated, suspended, canceled, or revoked;
- (B) a member that has been expelled from [the NASD] FINRA;
- (C) a member that is otherwise defunct; or
- (D) an associated person whose registration is terminated, revoked, or suspended.

(2) If all Claimants elect to use these default procedures, the Claimant(s) shall notify the Director in writing and shall send a copy of such notification to all other parties at the same time and in the same manner as the notification was sent to the Director.

(3) If the case meets the requirements for proceeding under default procedures, the Director shall notify all parties.

(4) The Director shall appoint a single arbitrator pursuant to Rule 10308 to consider the Statement of Claim and other documents presented by the Claimant(s). The arbitrator may request additional information from the

Claimant(s) before rendering an award. No hearing shall be held, and the default award shall have no effect on any non-defaulting party.

(5) The Claimant(s) may not amend the claim to increase the relief requested after the Director has notified the parties that the claim will proceed under default procedures.

(6) An arbitrator may not make an award based solely on the non-appearance of a party. The party who appears must present a sufficient basis to support the making of an award in that party's favor. The arbitrator may not award damages in an amount greater than the damages requested in the Statement of Claim, and may not award any other relief that was not requested in the Statement of Claim.

(7) If the Respondent files an Answer after the Director has notified the parties that the claim will proceed under default procedures but before an award has been rendered, the proceedings under this paragraph shall be terminated and the case will proceed under the regular procedures.

### **10315. Determination of Hearing Location**

(a) No Change.

#### **(b) Foreign Hearing Location**

(1) If the Director and all parties agree, parties may have their hearing in a foreign hearing location and conducted by foreign arbitrators, provided that the foreign arbitrators have:

(A) met [NASD] FINRA background qualifications for arbitrators;

(B) received training on [NASD] FINRA arbitration rules and procedures; and

(C) satisfied at least the same training and testing requirements as those arbitrators who serve in U. S. locations of [NASD] FINRA.

(2) The parties shall pay an additional surcharge for each day of hearings held in a foreign hearing location. The amount of the surcharge will be determined by the Director and must be agreed to by the parties before the foreign hearing location may be used. This surcharge shall be specified in the agreement to use a foreign hearing location and shall be apportioned equally among the parties, unless they agree otherwise. The foreign arbitrators shall have the authority to apportion this surcharge as provided in Rules 10205 and 10332.

\* \* \* \* \*

### **IM-10317. Closing Arguments**

In response to recent questions concerning the order of closing argument in arbitration proceedings conducted under the auspices of [the National Association of Securities Dealers, Inc.] FINRA, it is the practice in these proceedings to allow claimants to proceed first in closing argument, with rebuttal argument being permitted. Claimants may reserve their entire closing for rebuttal. The hearing procedures may, however, be varied in the discretion of the arbitrators, provided all parties are allowed a full and fair opportunity to present their respective cases.

\* \* \* \* \*

### **10322. Subpoenas and Power to Direct Appearances**

(a) through (e) No Change.

(f) An arbitrator shall be empowered without resort to the subpoena process to direct the appearance of any person employed by or associated with any member of [the Association] FINRA and/or the production of any records in the possession or control of such persons or members. Unless an arbitrator directs otherwise, the party requesting the appearance of a person or the production of documents under this Rule shall bear all reasonable costs of such appearance and/or production.

\* \* \* \* \*

### **10331. Incorporation by Reference**

This Code shall be deemed a part of and incorporated by reference in every agreement to arbitrate under [the Rules of the Association] NASD or FINRA rules including a duly executed Submission Agreement.

### **10332. Schedule of Fees for Customer Disputes**

(a) At the time of filing a Claim, Counterclaim, Third-Party Claim or Cross-Claim, a party shall pay a non-refundable filing fee and shall remit a hearing session deposit to [the Association] FINRA in the amounts indicated in the schedules below unless such fee or deposit is specifically waived by the Director of Arbitration.

Where multiple hearing sessions are required, the arbitrators may require any of the parties to make additional hearing deposits for each additional hearing session. In no event shall the amount deposited by all parties per hearing session exceed the amount of the largest initial hearing deposit made by any party under the schedules below.

(b) through (e) No Change.

(f) [The Association] FINRA shall retain the total initial amount deposited as hearing session deposits by all the parties in any matter submitted and settled or

withdrawn within eight business days of the first scheduled hearing session other than a pre-hearing conference.

(g) Any matter submitted and thereafter settled or withdrawn subsequent to the commencement of the first hearing session, including a pre-hearing conference with an arbitrator, shall be subject to an assessment of forum fees and costs incurred pursuant to Rules 10319, 10321, 10322, and 10326 based on hearing sessions held and scheduled within eight business days after [the Association] FINRA receives notice that the matter has been settled or withdrawn. The arbitrator(s) shall determine by whom such forum fees and costs shall be borne.

(h) through (k) No Change.

\* \* \* \* \*

**10335. Temporary Injunctive Orders; Requests for Permanent Injunctive Relief**

**(a) Temporary Injunctive Orders**

(1) In industry or clearing disputes required to be submitted to arbitration pursuant to Rule 10201, parties may seek a temporary injunctive order, as defined in paragraph (a)(2) of this Rule, from a court of competent jurisdiction. Parties to a pending arbitration may seek a temporary injunctive order from a court of competent jurisdiction even if another party has already filed a claim arising from the same dispute in arbitration pursuant to this paragraph, provided that an arbitration hearing on a request for permanent injunctive relief pursuant to paragraph (b) of this Rule has not yet begun.

(2) For purposes of this Rule, temporary injunctive order means a temporary restraining order, preliminary injunction or other form of initial, temporary injunctive relief.

(3) A party seeking a temporary injunctive order from a court with respect to an industry or clearing dispute required to be submitted to arbitration pursuant to Rule 10201 shall simultaneously file with the Director a Statement of Claim requesting permanent injunctive and all other relief with respect to the same dispute in the manner specified under this Code. The party seeking temporary injunctive relief shall also serve the Statement of Claim requesting permanent injunctive and all other relief on all other parties in the same manner and at the same time as the Statement of Claim is filed with the Director. Filings and service under this Rule shall be made by facsimile, overnight delivery service or messenger. Service shall be made on all parties at the same time and in the same manner, unless the parties agree otherwise. A party obtaining a court-issued temporary injunctive order shall notify the Director and the other parties of the issuance of the order within one business day.

(4) Unless otherwise stated, for purposes of computation of time under any paragraph of this Rule, any reference to days means calendar days, including Saturdays, Sundays or any [NASD] FINRA holiday. However, if a party must provide notice or a response to the Director and the day on which that notice or response to the Director must be given falls on a Saturday, Sunday or any [NASD] FINRA holiday, then the time period is extended until the next business day.

**(b) Hearing on Request for Permanent Injunctive Relief**

**(1) Scheduling of Hearing**

If a court issues a temporary injunctive order, an arbitration hearing on the request for permanent injunctive relief shall begin within 15 days of the date the court issues the temporary injunctive order. If the 15th day falls on a Saturday, Sunday, or [NASD] FINRA holiday, the 15-day period shall expire on the next business day. Unless the parties agree otherwise, a hearing lasting more than one day shall be held on consecutive days when reasonably possible. The Director shall provide to all parties notice of the date, time and place of the hearing at least three days prior to the beginning of the hearing.

(2) through (6) No Change.

(c) through (d) No Change.

\* \* \* \* \*

**12000. [NASD] CODE OF ARBITRATION PROCEDURE FOR CUSTOMER  
DISPUTES**

**PART I INTERPRETIVE MATERIAL, DEFINITIONS, ORGANIZATION AND  
AUTHORITY**

**IM-12000. Failure to Act Under Provisions of Code of Arbitration Procedure for  
Customer Disputes**

It may be deemed conduct inconsistent with just and equitable principles of trade and a violation of NASD Rule 2110 for a member or a person associated with a member to:

(a) fail to submit a dispute for arbitration under the Code as required by the Code;

- (b) fail to comply with any injunctive order issued pursuant to the Code;
- (c) fail to appear or to produce any document in his possession or control as directed pursuant to provisions of the Code;
- (d) fail to honor an award, or comply with a written and executed settlement agreement, obtained in connection with an arbitration submitted for disposition pursuant to the procedures specified by [NASD] FINRA, the New York, American, Boston, Cincinnati, Chicago, or Philadelphia Stock Exchanges, the Pacific Exchange, Inc., the Chicago Board Options Exchange, the Municipal Securities Rulemaking Board, or pursuant to the rules applicable to the arbitration of disputes before the American Arbitration Association or other dispute resolution forum selected by the parties where timely motion has not been made to vacate or modify such award pursuant to applicable law; or
- (e) fail to comply with a written and executed settlement agreement, obtained in connection with a mediation submitted for disposition pursuant to the procedures specified by [NASD] FINRA.

All awards shall be honored by a cash payment to the prevailing party of the exact dollar amount stated in the award. Awards may not be honored by crediting the prevailing party's account with the dollar amount of the award, unless authorized by the express terms of the award or consented to in writing by the parties. Awards shall be honored upon receipt thereof, or within such other time period as may be prescribed by the award.

It may be deemed conduct inconsistent with just and equitable principles of trade and a violation of Rule 2110 for a member to require associated persons to waive the arbitration of disputes contrary to the provisions of the Code of Arbitration Procedure.

**12100. Definitions**

Unless otherwise defined in the Code, terms used in the Rules and interpretive material, if defined in the [NASD] FINRA By-Laws, shall have the meaning as defined in the [NASD] FINRA By-Laws.

(a) through (b) No Change.

**(c) Board**

The term “Board” means the Board of Directors of [NASD] FINRA Dispute Resolution, Inc.

(d) through (e) No Change.

**(f) Code**

The term “Code” means the Code of Arbitration Procedure for Customer Disputes. For disputes involving only industry parties, see the [NASD] Code of Arbitration Procedure for Industry Disputes.

(g) through (i) No Change.

**(j) Day**

Except as otherwise provided, the term “day” means calendar day. If a deadline specified in the Code falls on a Saturday, Sunday or any [NASD] FINRA holiday, the deadline is extended until the next business day.

**(k) Director**

The term "Director" means the Director of [NASD] FINRA Dispute Resolution.

Unless the Code provides that the Director may not delegate a specific function, the term includes [NASD] FINRA staff to whom the Director has delegated authority.

(l) through (n) No Change.

**(o) Member**

For purposes of the Code, the term "member" means any broker or dealer admitted to membership in [NASD] FINRA, whether or not the membership has been terminated or cancelled; and any broker or dealer admitted to membership in a self-regulatory organization that, with [NASD] FINRA consent, has required its members to arbitrate pursuant to the Code and/or to be treated as members of [NASD] FINRA for purposes of the Code, whether or not the membership has been terminated or cancelled.

(p) through (q) No Change

**(r) Person Associated with a Member**

The term "person associated with a member" means:

(1) A natural person registered under the Rules of [NASD] FINRA; or  
(2) A sole proprietor, partner, officer, director, or branch manager of a member, or a natural person occupying a similar status or performing similar functions, or a natural person engaged in the investment banking or securities business who is directly or indirectly controlling or controlled by a member, whether or not any such person is registered or exempt from registration with [NASD] FINRA under the By-Laws or the Rules of [NASD] FINRA.

For purposes of the Code, a person formerly associated with a member is a person associated with a member.

(s) through (x) No Change.

**(y) Uniform Submission Agreement**

The term “Uniform Submission Agreement” means the [NASD] FINRA Uniform Submission Agreement. The [NASD] FINRA Uniform Submission Agreement is a document that parties must sign at the outset of an arbitration in which they agree to submit to arbitration under the Code.

\* \* \* \* \*

**12102. National Arbitration and Mediation Committee**

(a) Pursuant to Section III of the Plan of Allocation and Delegation of Functions by [NASD] FINRA to Subsidiaries (“Delegation Plan”), the Board shall appoint a National Arbitration and Mediation Committee (“NAMC”).

(1) The NAMC shall consist of no fewer than 10 and no more than 25 members. At least 50 percent of the NAMC shall be Non-Industry members.

(2) The Chairperson of the Board shall name the chairperson of the NAMC.

(b) through (c) No Change.

**12103. Director of Dispute Resolution**

(a) through (b) No Change.

(c) The President of [NASD] FINRA Dispute Resolution may perform the Director’s duties. If the Director is unable to perform his or her duties, the President of [NASD] FINRA Dispute Resolution may appoint an interim Director.

**12104. Effect of Arbitration on [NASD] FINRA Regulatory Activities**

(a) Submitting a dispute to arbitration under the Code does not limit or preclude any right, action or determination by [NASD] FINRA that it would otherwise be authorized to adopt, administer or enforce.

(b) Only at the conclusion of an arbitration, any arbitrator may refer to [NASD] FINRA for disciplinary investigation any matter that has come to the arbitrator's attention during and in connection with the arbitration, either from the record of the proceeding or from material or communications related to the arbitration, which the arbitrator has reason to believe may constitute a violation of NASD['s] or FINRA rules, the federal securities laws, or other applicable rules or laws.

\* \* \* \* \*

**PART II GENERAL ARBITRATION RULES**

**12200. Arbitration Under An Arbitration Agreement or the Rules of [NASD] FINRA**

Parties must arbitrate a dispute under the Code if:

- Arbitration under the Code is either:
  - (1) Required by a written agreement, or
  - (2) Requested by the customer;
- The dispute is between a customer and a member or associated person of a member; and
  - The dispute arises in connection with the business activities of the member or the associated person, except disputes involving the insurance business activities of a member that is also an insurance company.

\* \* \* \* \*

**12202. Claims Against Inactive Members**

A claim by or against a member in one of the following categories is ineligible for arbitration under the Code unless the customer agrees in writing to arbitrate after the claim arises:

- A member whose membership is terminated, suspended, cancelled or revoked;
- A member that has been expelled from [NASD] FINRA; or
- A member that is otherwise defunct.

**12203. Denial of [NASD] FINRA Forum**

(a) The Director may decline to permit the use of the [NASD] FINRA arbitration forum if the Director determines that, given the purposes of [NASD] FINRA and the intent of the Code, the subject matter of the dispute is inappropriate, or that accepting the matter would pose a risk to the health or safety of arbitrators, staff, or parties or their representatives. Only the Director or the President of [NASD] FINRA Dispute Resolution may exercise the Director's authority under this rule.

(b) No Change.

**12204. Class Action Claims**

(a) No Change.

(b) Any claim that is based upon the same facts and law, and involves the same defendants as in a court-certified class action or a putative class action, or that is ordered by a court for class-wide arbitration at a forum not sponsored by a self-regulatory organization, shall not be arbitrated under the Code, unless the party bringing the claim files with [NASD] FINRA one of the following:

- (1) a copy of a notice filed with the court in which the class action is pending that the party will not participate in the class action or in any recovery that may result from the class action, or has withdrawn from the class according to any conditions set by the court; or
- (2) a notice that the party will not participate in the class action or in any recovery that may result from the class action.

(c) through (d) No Change.

\* \* \* \* \*

#### **12206. Time Limits**

(a) through (b) No Change.

##### **(c) Effect of Rule on Time Limits for Filing Claim in Court**

The rule does not extend applicable statutes of limitations; nor shall the six-year time limit on the submission of claims apply to any claim that is directed to arbitration by a court of competent jurisdiction upon request of a member or associated person. However, where permitted by applicable law, when a claimant files a statement of claim in arbitration, any time limits for the filing of the claim in court will be tolled while [NASD] FINRA retains jurisdiction of the claim.

(d) No Change.

\* \* \* \* \*

#### **12213. Hearing Locations**

##### **(a) U.S. Hearing Location**

(1) The Director will decide which of [NASD] FINRA's hearing locations will be the hearing location for the arbitration. Generally, the Director will select

the hearing location closest to the customer's residence at the time of the events giving rise to the dispute.

(2) Before arbitrator lists are sent to the parties under Rule 12403, the parties may agree in writing to a hearing location other than the one selected by the Director.

(3) The Director may change the hearing location upon motion of a party, as set forth in Rule 12503.

(4) After the panel is appointed, the panel may decide a motion relating to changing the hearing location.

**(b) Foreign Hearing Location**

(1) If the Director and all parties agree, parties may have their hearing in a foreign hearing location and conducted by foreign arbitrators, provided that the foreign arbitrators have:

(A) met [NASD] FINRA background qualifications for arbitrators;  
(B) received training on [NASD] FINRA arbitration rules and procedures; and

(C) satisfied at least the same training and testing requirements as those arbitrators who serve in U. S. locations of [NASD] FINRA.

(2) The parties shall pay an additional surcharge for each day of hearings held in a foreign hearing location. The amount of the surcharge will be determined by the Director and must be agreed to by the parties before the foreign hearing location may be used. This surcharge shall be specified in the agreement to use a foreign hearing location and shall be apportioned equally among the

parties, unless they agree otherwise. The foreign arbitrators shall have the authority to apportion this surcharge as provided in Rule 12902(c).

**12214. Payment of Arbitrators**

(a) Except as provided in paragraph (b) and in Rule 12800, [NASD] FINRA will pay the panel an honorarium, as follows:

- \$200 to each arbitrator for each hearing session in which he or she participates;
- an additional \$75 per day to the chairperson for each hearing on the merits;
- \$50 for travel to a hearing session that is postponed pursuant to Rule 12601; and
- \$100 for each arbitrator if a hearing session other than a prehearing conference is postponed within three business days before a scheduled hearing session pursuant to Rules 12601(a)(2) and (b)(2).

(b) No Change.

(c) Payment for Deciding Discovery-Related Motions Without a Hearing Session

(1) [NASD] FINRA will pay each arbitrator an honorarium of \$200 to decide a discovery-related motion without a hearing session. This paragraph does not apply to cases administered under Rule 12800.

(2) For purposes of paragraph (c)(1), a discovery-related motion and any replies or other correspondence relating to the motion shall be considered to be a single motion.

(3) The panel will allocate the cost of the honoraria under paragraph (c)(1) to the parties pursuant to Rule 12902(c).

(d) No Change.

\* \* \* \* \*

## **PART IV APPOINTMENT, DISQUALIFICATION, AND AUTHORITY OF ARBITRATORS**

### **12400. Neutral List Selection System and Arbitrator Rosters**

#### **(a) Neutral List Selection System**

The Neutral List Selection System is a computer system that generates, on a random basis, lists of arbitrators from [NASD] FINRA's rosters of arbitrators for the selected hearing location for each proceeding. The parties will select their panel through a process of striking and ranking the arbitrators on lists generated by the Neutral List Selection System.

#### **(b) Arbitrator Rosters**

[NASD] FINRA maintains the following roster of arbitrators:

- A roster of non-public arbitrators as defined in Rule 12100 (p);
- A roster of public arbitrators as defined in Rule 12100 (u); and
- A roster of arbitrators who are eligible to serve as chairperson of a

panel as described in paragraph (c). Arbitrators who are eligible to serve as chairperson will also be included in the roster of public arbitrators, but will only appear on one list in a case.

**(c) Eligibility for Chairperson Roster**

In customer disputes, chairpersons must be public arbitrators. Arbitrators are eligible for the chairperson roster if they have completed chairperson training provided by [NASD] FINRA or have substantially equivalent training or experience and:

- Have a law degree and are a member of a bar of at least one jurisdiction and have served as an arbitrator through award on at least two arbitrations administered by a self-regulatory organization in which hearings were held; or
- Have served as an arbitrator through award on at least three arbitrations administered by a self-regulatory organization in which hearings were held.

\* \* \* \* \*

**12403. Generating and Sending Lists to the Parties**

**(a) Generating Lists**

(1) If the panel consists of one arbitrator, the Neutral List Selection System will generate a list of eight public arbitrators from the [NASD] FINRA chairperson roster.

(2) If the panel consists of three arbitrators, the Neutral List Selection System will generate:

- A list of eight arbitrators from the [NASD] FINRA non-public arbitrator roster;
- A list of eight arbitrators from the [NASD] FINRA public arbitrator roster; and

- A list of eight public arbitrators from the [NASD] FINRA chairperson roster.

(3) If the panel consists of three arbitrators, the Neutral List Selection System will generate the chairperson list first. Chair-qualified arbitrators who were not selected for the chairperson list will be eligible for selection on the public list. An individual arbitrator cannot appear on both the chairperson list and the public list for the same case.

(4) The Neutral List Selection System will exclude arbitrators from the lists based upon current conflicts of interest identified within the Neutral List Selection System.

(b) No Change.

\* \* \* \* \*

**12406. Appointment of Arbitrators; Discretion to Appoint Arbitrators Not on List**

(a) through (c) No Change.

(d) Appointment of arbitrators occurs when the Director sends notice to the parties of the names of the arbitrators on the panel. Before making any decision as an arbitrator or attending a hearing session, the arbitrators must execute [NASD] FINRA's arbitrator oath or affirmation.

\* \* \* \* \*

**12410. Removal of Arbitrator by Director**

(a) No Change.

**(b) After First Hearing Session Begins**

After the first hearing session begins, the Director may remove an arbitrator based only on information required to be disclosed under Rule 12408 that was not previously known by the parties. The Director may exercise this authority upon request of a party or on the Director's own initiative. Only the Director or the President of [NASD] FINRA Dispute Resolution may exercise the Director's authority under this paragraph (b).

\* \* \* \* \*

## **PART V PREHEARING PROCEDURES AND DISCOVERY**

\* \* \* \* \*

### **12503. Motions**

#### **(a) Motions**

- (1) A party may make motions in writing, or orally during any hearing session. Before making a motion, a party must make an effort to resolve the matter that is the subject of the motion with the other parties. Every motion, whether written or oral, must include a description of the efforts made by the moving party to resolve the matter before making the motion.
- (2) Written motions are not required to be in any particular form, and may take the form of a letter, legal motion, or any other form that the panel decides is acceptable. Written motions must be served directly on each other party, at the same time and in the same manner. Written motions must also be filed with the Director, with additional copies for each arbitrator, at the same time and in the same manner in which they are served on the parties.
- (3) Written motions must be served at least 20 days before a scheduled hearing, unless the panel decides otherwise.

(4) Motions to amend a pleading after panel appointment pursuant to Rule 12309(b) must be accompanied by copies of the proposed amended pleading when the motion is served on the other parties and filed with the Director. If the panel grants the motion, the amended pleading does not have to be served again, unless the panel determines otherwise. If a party moves to amend a pleading to add a party, the motion must be served on all parties, including the party to be added, and the party to be added may respond to the motion in accordance with [paragraph] Rule 12309(c) without waiving any rights or objections under the Code.

(b) through (c) No Change.

**[12504. Reserved]**

\* \* \* \* \*

**12506. Document Production Lists**

**(a) Applicability of Document Production Lists**

When the Director serves the statement of claim, the Director will provide the [NASD] FINRA Discovery Guide and Document Production Lists to the parties. Document Production Lists 1 and 2 describe the documents that are presumed to be discoverable in all arbitrations between a customer and a member or associated person. Other Document Production Lists may also apply, depending on the specific cause(s) of action alleged.

(b) through (c) No Change.

\* \* \* \* \*

**12513. Authority of Panel to Direct Appearances of Associated Person Witnesses and Production of Documents Without Subpoenas**

(a) Upon motion of a party, the panel may order the following without the use of subpoenas:

- The appearance of any employee or associated person of a member of [NASD] FINRA; or
- The production of any documents in the possession or control of such persons or members.

(b) No Change.

\* \* \* \* \*

**PART VI HEARINGS; EVIDENCE; CLOSING THE RECORD**

\* \* \* \* \*

**12601. Postponement of Hearings**

(a) No Change

(b) Postponement Fees

(1) Except as otherwise provided, a postponement fee will be charged for each postponement agreed to by the parties, or granted upon request of one or more parties. The fee will equal the applicable hearing session fee under Rule 12902. The panel may allocate the fee among the party or parties that agreed to or requested the postponement. The panel may also assess part or all of any postponement fees against a party that did not request the postponement, if the panel determines that the non-requesting party caused or contributed to the need for the postponement. The panel may waive the fees.

(2) If a postponement request is made by one or more parties and granted within three business days before a scheduled hearing session, the party or parties making the request shall pay an additional fee of \$100 per arbitrator. If more than one party requests the postponement, the arbitrators shall allocate the \$100 per arbitrator fee among the requesting parties. The arbitrators may allocate all or portion of the \$100 per arbitrator fee to the non-requesting party or parties, if the arbitrators determine that the non-requesting party or parties caused or contributed to the need for the postponement. In the event that a request results in the postponement of consecutively scheduled hearing sessions, the additional fee will be assessed only for the first of the consecutively scheduled hearing sessions. In the event that an extraordinary circumstance prevents a party or parties from making a timely postponement request, arbitrators may use their discretion to waive the fee, provided verification of such circumstance is received.

(3) No postponement fee will be charged if a hearing is postponed:

- Because the parties agree to submit the matter to mediation at [NASD] FINRA;
- By the panel in its own discretion; or
- By the Director in extraordinary circumstances.

(c) No Change.

\* \* \* \* \*

## **PART VII TERMINATION OF AN ARBITRATION BEFORE AWARD**

\* \* \* \* \*

**12701. Settlement**

(a) Parties to an arbitration may agree to settle their dispute at any time. Parties who settle must notify the Director. The Director will continue to administer the arbitration, and fees may continue to accrue, until the Director receives written notice of the settlement. The parties do not need to disclose the terms of the settlement agreement to the Director or to [NASD] FINRA Dispute Resolution, but members and associated persons may have reporting obligations under the rules of [NASD] FINRA.

(b) No Change.

\* \* \* \* \*

**PART VIII SIMPLIFIED ARBITRATION AND DEFAULT PROCEEDINGS**

**12800. Simplified Arbitration**

(a) No Change.

**(b) Single Arbitrator**

All arbitrations administered under this rule will be decided by a single public arbitrator appointed from the [NASD's] FINRA chairperson roster in accordance with the Neutral List Selection System, unless the parties agree in writing otherwise.

(c) through (e) No Change.

**(f) Arbitrator Honoraria**

[NASD] FINRA will pay the arbitrator an honorarium of \$125 for each arbitration administered under this rule.

## **12801. Default Proceedings**

### **(a) Applicability of Rule**

A claimant may request default proceedings against any respondent that falls within one of the following categories and fails to file an answer within the time provided by the Code.

- A member whose membership has been terminated, suspended, canceled, or revoked;
- A member that has been expelled from the [NASD] FINRA;
- A member that is otherwise defunct; or
- An associated person whose registration is terminated, revoked, or suspended.

(b) through (f) No Change.

## **PART IX FEES AND AWARDS**

### **12900. Fees Due When a Claim Is Filed**

(a) through (b) No Change.

### **(c) Partial Refund of Filing Fee**

(1) If a claim is settled or withdrawn more than 10 days before the date that the hearing on the merits under Rule 12600 is scheduled to begin, a party paying a filing fee will receive a partial refund of the filing fee in the amount indicated in the schedule below, less any other fees or costs assessed against the party under the Code, including any hearing session fees assessed under Rule 12902. No refund will be paid if [the NASD] FINRA receives notice that a claim

is settled or withdrawn within 10 days of the date that the hearing on the merits under Rule 12600 is scheduled to begin.

**Partial Refund for Settlement or Withdrawal More Than 10 Days Before Hearing  
on the Merits**

<b>Amount of Claim</b>	<b>Refund</b>
(exclusive of interest and expenses)	
\$.01 to \$1,000	\$25
\$1,000.01 to \$2,500	\$50
\$2,500.01 to \$5,000	\$125
\$5,000.01 to \$10,000	\$250
\$10,000.01 to \$25,000	\$300
\$25,000.01 to \$50,000	\$450
\$50,000.01 to \$100,000	\$750
\$100,000.01 to \$500,000	\$1,125
Over \$500,000	\$1,200
Non-monetary/Not specified	\$1,000

(2) If the claim does not request or specify money damages, and the Director determines that the hearing session fee should be a different amount than the amount specified in the schedule in Rule 12902, the amount of the refund will be the amount of the hearing session fee determined by the Director, less any fees or costs assessed against the party under the Code, including any hearing session fees assessed under Rule 12902.

(d) No Change.

\* \* \* \* \*

**12902. Hearing Session Fees, and Other Costs and Expenses**

(a) through (c) No Change.

**(d) Assessment of Hearing Session Fees, Costs, and Expenses in Case of Settlement or Withdrawal**

If a claim is settled or withdrawn:

- The parties will be subject to an assessment of hearing session fees for hearing sessions already held.
- If [NASD] FINRA receives a settlement or withdrawal notice 10 days or fewer prior to the date that the hearing on the merits under Rule 12600 is scheduled to begin, parties that paid a filing fee under Rule 12900 will not be entitled to any refund of the filing fee.
- The parties will also be responsible for any fee or costs incurred under Rules 12502, 12513, 12601, or 12606 in connection with such hearings. If a case is settled or withdrawn and the parties' agreement fails to allocate such fees and costs, the fees and costs will be allocated as provided by Rule 12701(b).

(e) No Change.

\* \* \* \* \*

**13000. [NASD] CODE OF ARBITRATION PROCEDURE FOR INDUSTRY  
DISPUTES**  
**PART I INTERPRETIVE MATERIAL, DEFINITIONS, ORGANIZATION AND  
AUTHORITY**

**IM-13000. Failure to Act Under Provisions of Code of Arbitration Procedure for  
Industry Disputes**

It may be deemed conduct inconsistent with just and equitable principles of trade and a violation of NASD Rule 2110 for a member or a person associated with a member to:

- (a) fail to submit a dispute for arbitration under the Code as required by the Code;
- (b) fail to comply with any injunctive order issued pursuant to the Code;
- (c) fail to appear or to produce any document in his possession or control as directed pursuant to provisions of the Code;
- (d) fail to honor an award, or comply with a written and executed settlement agreement, obtained in connection with an arbitration submitted for disposition pursuant to the procedures specified by [NASD] FINRA, the New York, American, Boston, Cincinnati, Chicago, or Philadelphia Stock Exchanges, the Pacific Exchange, Inc., the Chicago Board Options Exchange, the Municipal Securities Rulemaking Board, or pursuant to the rules applicable to the arbitration of disputes before the American Arbitration Association or other dispute resolution forum selected by the parties where timely motion has not been made to vacate or modify such award pursuant to applicable law; or

(e) fail to comply with a written and executed settlement agreement, obtained in connection with a mediation submitted for disposition pursuant to the procedures specified by [NASD] FINRA.

All awards shall be honored by a cash payment to the prevailing party of the exact dollar amount stated in the award. Awards may not be honored by crediting the prevailing party's account with the dollar amount of the award, unless authorized by the express terms of the award or consented to in writing by the parties. Awards shall be honored upon receipt thereof, or within such other time period as may be prescribed by the award.

It may be deemed conduct inconsistent with just and equitable principles of trade and a violation of Rule 2110 for a member to require associated persons to waive the arbitration of disputes contrary to the provisions of the Code of Arbitration Procedure.

### **13100. Definitions**

Unless otherwise defined in the Code, terms used in the Code and interpretive material, if defined in the [NASD] FINRA By-Laws, shall have the meaning as defined in the [NASD] FINRA By-Laws.

(a) through (b) No Change.

#### **(c) Board**

The term "Board" means the Board of Directors of [NASD] FINRA Dispute Resolution, Inc.

(d) through (e) No Change.

#### **(f) Code**

The term "Code" means the Code of Arbitration Procedure for Industry Disputes. For disputes involving customers, see the [NASD] Code of Arbitration Procedure for Customer Disputes.

(g) through (i) No Change.

**(j) Day**

Except as otherwise provided, the term "day" means calendar day. If a deadline specified in the Code falls on a Saturday, Sunday or any [NASD] FINRA holiday, the deadline is extended until the next business day.

**(k) Director**

The term "Director" means the Director of [NASD] FINRA Dispute Resolution. Unless the Code provides that the Director may not delegate a specific function, the term includes [NASD] FINRA staff to whom the Director has delegated authority.

(l) through (n) No Change.

**(o) Member**

For purposes of the Code, the term "member" means any broker or dealer admitted to membership in [NASD] FINRA, whether or not the membership has been terminated or cancelled; and any broker or dealer admitted to membership in a self-regulatory organization that, with [NASD] FINRA consent, has required its members to arbitrate pursuant to the Code and/or to be treated as members of [NASD] FINRA for purposes of the Code, whether or not the membership has been terminated or cancelled.

(p) through (q) No Change.

**(r) Person Associated with a Member**

The term "person associated with a member" means:

(1) A natural person registered under the Rules of [NASD] FINRA; or  
(2) A sole proprietor, partner, officer, director, or branch manager of a member, or a natural person occupying a similar status or performing similar functions, or a natural person engaged in the investment banking or securities business who is directly or indirectly controlling or controlled by a member, whether or not any such person is registered or exempt from registration with [NASD] FINRA under the By-Laws or the Rules of [NASD] FINRA.

For purposes of the Code, a person formerly associated with a member is a person associated with a member.

(s) through (t) No Change.

**(u) Public Arbitrator**

The term "public arbitrator" means a person who is otherwise qualified to serve as an arbitrator and:

(1) through (4) No Change.

(5) is not an attorney, accountant, or other professional whose firm derived \$50,000 or more in annual revenue in the past two years from professional services rendered to any persons or entities listed in paragraph [13100](p)(1) relating to any customer disputes concerning an investment account or transaction, including but not limited to, law firm fees, accounting firm fees, and consulting fees;

(6) through (8) No Change.

(v) through (aa) No Change.

**(bb) Uniform Submission Agreement**

The term “Uniform Submission Agreement” means the [NASD] FINRA Uniform Submission Agreement. The [NASD] FINRA Uniform Submission Agreement is a document that parties must sign at the outset of an arbitration in which they agree to submit to arbitration under the Code.

\* \* \* \* \*

**13102. National Arbitration and Mediation Committee**

(a) Pursuant to Section III of the Plan of Allocation and Delegation of Functions by [NASD] FINRA to Subsidiaries (“Delegation Plan”), the Board shall appoint a National Arbitration and Mediation Committee (“NAMC”).

- (1) The NAMC shall consist of no fewer than 10 and no more than 25 members. At least 50 percent of the NAMC shall be Non-Industry members.
- (2) The Chairperson of the Board shall name the chairperson of the NAMC.

(b) through (c) No Change.

**13103. Director of Dispute Resolution**

(a) through (b) No Change.

(c) The President of [NASD] FINRA Dispute Resolution may perform the Director’s duties. If the Director is unable to perform his or her duties, the President of [NASD] FINRA Dispute Resolution may appoint an interim Director.

**13104. Effect of Arbitration on [NASD] FINRA Regulatory Activities**

(a) Submitting a dispute to arbitration under the Code does not limit or preclude any right, action or determination by [NASD] FINRA that it would otherwise be authorized to adopt, administer or enforce.

(b) Only at the conclusion of an arbitration, any arbitrator may refer to [NASD] FINRA for disciplinary investigation any matter that has come to the arbitrator's attention during and in connection with the arbitration, either from the record of the proceeding or from material or communications related to the arbitration, which the arbitrator has reason to believe may constitute a violation of NASD['s] or FINRA rules, the federal securities laws, or other applicable rules or laws.

\* \* \* \* \*

**PART II GENERAL ARBITRATION RULES**

\* \* \* \* \*

**13202. Claims Involving Registered Clearing Agencies**

If a registered clearing agency has entered into an agreement to use [NASD's] FINRA's arbitration facilities and procedures, any dispute, claim or controversy involving that registered clearing agency, or participants, pledges or other persons using the facilities of the registered clearing agency will be arbitrated in accordance with such agreement and the rules of the registered clearing agency.

**13203. Denial of [NASD] FINRA Forum**

(a) The Director may decline to permit the use of the [NASD] FINRA arbitration forum if the Director determines that, given the purposes of [NASD] FINRA and the intent of the Code, the subject matter of the dispute is inappropriate, or that accepting the

matter would pose a risk to the health or safety of arbitrators, staff, or parties or their representatives. Only the Director or the President of [NASD] FINRA Dispute Resolution may exercise the Director's authority under this rule.

(b) No Change.

**13204. Class Action Claims**

(a) No Change.

(b) Any claim that is based upon the same facts and law, and involves the same defendants as in a court-certified class action or a putative class action, or that is ordered by a court for class-wide arbitration at a forum not sponsored by a self-regulatory organization, shall not be arbitrated under the Code, unless the party bringing the claim files with [NASD] FINRA one of the following:

(1) a copy of a notice filed with the court in which the class action is pending that the party will not participate in the class action or in any recovery that may result from the class action, or has withdrawn from the class according to any conditions set by the court; or

(2) a notice that the party will not participate in the class action or in any recovery that may result from the class action.

(c) through (d) No Change.

\* \* \* \* \*

**13206. Time Limits**

(a) through (b) No Change.

**(c) Effect of Rule on Time Limits for Filing Claim in Court**

The rule does not extend applicable statutes of limitations; nor shall the six-year time limit on the submission of claims apply to any claim that is directed to arbitration by a court of competent jurisdiction upon request of a member or associated person. However, where permitted by applicable law, when a claimant files a statement of claim in arbitration, any time limits for the filing of the claim in court will be tolled while [NASD] FINRA retains jurisdiction of the claim.

(d) No Change.

\* \* \* \* \*

### **13213. Hearing Locations**

#### **(a) U.S. Hearing Location**

(1) The Director will decide which of [NASD's] FINRA's hearing locations will be the hearing location for the arbitration. In cases involving an associated person, the Director will generally select the hearing location closest to where the associated person was employed at the time of the dispute. In cases involving members only or more than one associated person, the Director will consider a variety of factors, including:

- The parties' signed agreement to arbitrate, if any;
- Which party initiated the transaction or business in issue; and
- The location of essential witnesses and documents.

(2) Before arbitrator lists are sent to the parties under Rule 13403, the parties may agree in writing to a hearing location other than the one selected by the Director.

(3) The Director may change the hearing location upon motion of a party, as set forth in Rule 13503.

(4) After the panel is appointed, the panel may decide a motion relating to changing the hearing location.

**(b) Foreign Hearing Location**

(1) If the Director and all parties agree, parties may have their hearing in a foreign hearing location and conducted by foreign arbitrators, provided that the foreign arbitrators have:

- (A) met [NASD] FINRA background qualifications for arbitrators;
- (B) received training on [NASD] FINRA arbitration rules and procedures; and
- (C) satisfied at least the same training and testing requirements as those arbitrators who serve in U. S. locations of [NASD] FINRA.

(2) The parties shall pay an additional surcharge for each day of hearings held in a foreign hearing location. The amount of the surcharge will be determined by the Director and must be agreed to by the parties before the foreign hearing location may be used. This surcharge shall be specified in the agreement to use a foreign hearing location and shall be apportioned equally among the parties, unless they agree otherwise. The foreign arbitrators shall have the authority to apportion this surcharge as provided in Rule 13902(c).

**13214. Payment of Arbitrators**

(a) Except as provided in paragraph (b) and Rule 13800, [NASD] FINRA will pay the panel an honorarium, as follows:

- \$200 to each arbitrator for each hearing session in which he or she participates;
- an additional \$75 per day to the chairperson for each hearing on the merits;
- \$50 for travel to a hearing session that is postponed pursuant to Rule 13601; and
  - \$100 for each arbitrator if a hearing session other than a prehearing conference is postponed within three business days before a scheduled hearing session pursuant to Rules 13601(a)(2) and (b)(2).

(b) No Change.

(c) Payment for Deciding Discovery-Related Motions Without a Hearing Session

- (1) [NASD] FINRA will pay each arbitrator an honorarium of \$200 to decide a discovery-related motion without a hearing session. This paragraph does not apply to cases administered under Rule 13800.
- (2) For purposes of paragraph (c)(1), a discovery-related motion and any replies or other correspondence relating to the motion shall be considered to be a single motion.
- (3) The panel will allocate the cost of the honoraria under paragraph (c)(1) to the parties pursuant to Rule 13902(c).

(d) No Change.

\* \* \* \* \*

## **PART IV APPOINTMENT, DISQUALIFICATION, AND AUTHORITY OF ARBITRATORS**

### **13400. Neutral List Selection System and Arbitrator Rosters**

#### **(a) Neutral List Selection System**

The Neutral List Selection System is a computer system that generates, on a random basis, lists of arbitrators from [NASD's] FINRA's rosters of arbitrators for the selected hearing location for each proceeding. The parties will select their panel through a process of striking and ranking the arbitrators on lists generated by the Neutral List Selection System.

#### **(b) Arbitrator Rosters**

[NASD] FINRA maintains the following roster of arbitrators:

- A roster of non-public arbitrators as defined in Rule 13100 (p);
- A roster of public arbitrators as defined in Rule 13100 (u); and
- A roster of arbitrators who are eligible to serve as chairperson of a

panel as described in paragraph (c). Arbitrators who are eligible to serve as chairperson will also be included in the roster of non-public or public arbitrators, depending on composition of the panel under Rule 13402, but will only appear on one list in a case.

#### **(c) Eligibility for Chairperson Roster**

Arbitrators are eligible to serve as chairperson of panels submitted for arbitration under the Code if they have completed chairperson training provided by [NASD] FINRA or have substantially equivalent training or experience and:

- Have a law degree and are a member of a bar of at least one jurisdiction and have served as an arbitrator through award on at least two arbitrations administered by a self-regulatory organization in which hearings were held; or
- Have served as an arbitrator through award on at least three arbitrations administered by a self-regulatory organization in which hearings were held.

\* \* \* \* \*

### **13403. Generating and Sending Lists to the Parties**

For disputes involving statutory employment discrimination claims, see Rule 13802.

#### **(a) Disputes Between or Among Members, or Employment Disputes Between or Among Member Firms and Associated Persons Relating Exclusively To Employment Contracts, Promissory Notes, or Receipt of Commissions**

(1) If the panel consists of one arbitrator, the Neutral List Selection System will generate a list of eight non-public arbitrators from the [NASD's] FINRA non-public chairperson roster.

(2) If the panel consists of three non-public arbitrators, the Neutral List Selection System will generate:

- A list of 16 arbitrators from the [NASD's] FINRA non-public roster; and
- A list of eight non-public arbitrators from the [NASD's] FINRA non-public chairperson roster.

(3) If the panel consists of three arbitrators, the Neutral List Selection System will generate the non-public chairperson list first. Chair-qualified arbitrators who were not selected for the non-public chairperson list will be eligible for selection on the non-public list. An individual arbitrator cannot appear on both the non-public chairperson list and the non-public list for the same case.

(4) The Neutral List Selection System will exclude arbitrators from the lists based upon current conflicts of interest identified within the Neutral List Selection System.

**(b) Other Disputes Between or Among Members and Associated Persons**

(1) If the panel consists of one arbitrator, the Neutral List Selection System will generate a list of eight public arbitrators from [NASD's] the FINRA public chairperson roster.

(2) If the panel consists of three arbitrators, the Neutral List Selection System will generate:

- A list of eight arbitrators from the [NASD's] FINRA non-public arbitrator roster;
- A list of eight arbitrators from the [NASD's] FINRA public arbitrator roster; and
- A list of eight public arbitrators from the [NASD's] FINRA public chairperson roster.

(3) If the panel consists of three arbitrators, the Neutral List Selection System will generate the public chairperson list first. Chair-qualified arbitrators

who were not selected for the public chairperson list will be eligible for selection on the public list. An individual arbitrator cannot appear on both the public chairperson list and the public list for the same case.

(4) The Neutral List Selection System will exclude arbitrators from the lists based upon current conflicts of interest identified within the Neutral List Selection System.

(c) No Change.

\* \* \* \* \*

**13406. Appointment of Arbitrators; Discretion to Appoint Arbitrators Not on List**

For disputes involving statutory employment discrimination claims, see Rule 13802.

(a) through (c) No Change.

(d) Appointment of arbitrators occurs when the Director sends notice to the parties of the names of the arbitrators on the panel. Before making any decision as an arbitrator or attending a hearing session, the arbitrators must execute [NASD's] FINRA's arbitrator oath or affirmation.

\* \* \* \* \*

**13410. Removal of Arbitrator by Director**

(a) No Change.

**(b) After First Hearing Session Begins**

After the first hearing session begins, the Director may remove an arbitrator based only on information required to be disclosed under Rule 13408 that was not previously known by the parties. The Director may exercise this authority upon request of a party or

on the Director's own initiative. Only the Director or the President of [NASD] FINRA Dispute Resolution may exercise the Director's authority under this paragraph (b).

\* \* \* \* \*

## **PART V PREHEARING PROCEDURES AND DISCOVERY**

\* \* \* \* \*

### **[13504. Reserved]**

\* \* \* \* \*

### **13513. Authority of Panel to Direct Appearances of Associated Person Witnesses and Production of Documents Without Subpoenas**

- (a) Upon motion of a party, the panel may order the following without the use of subpoenas:
  - The appearance of any employee or associated person of a member of [NASD] FINRA; or
  - The production of any documents in the possession or control of such persons or members.
- (b) No Change.

\* \* \* \* \*

## **PART VI HEARINGS; EVIDENCE; CLOSING THE RECORD**

\* \* \* \* \*

### **13601. Postponement of Hearings**

- (a) No Change.
- (b) **Postponement Fees**

(1) Except as otherwise provided, a postponement fee will be charged for each postponement agreed to by the parties, or granted upon request of one or more parties. The fee will equal the applicable hearing session fee under Rule 13902. The panel may allocate the fee among the party or parties that agreed to or requested the postponement. The panel may also assess part or all of any postponement fees against a party that did not request the postponement, if the panel determines that the non-requesting party caused or contributed to the need for the postponement. The panel may waive the fees.

(2) If a postponement request is made by one or more parties and granted within three business days before a scheduled hearing session, the party or parties making the request shall pay an additional fee of \$100 per arbitrator. If more than one party requests the postponement, the arbitrators shall allocate the \$100 per arbitrator fee among the requesting parties. The arbitrators may allocate all or portion of the \$100 per arbitrator fee to the non-requesting party or parties, if the arbitrators determine that the non-requesting party or parties caused or contributed to the need for the postponement. In the event that a request results in the postponement of consecutively scheduled hearing sessions, the additional fee will be assessed only for the first of the consecutively scheduled hearing sessions. In the event that an extraordinary circumstance prevents a party or parties from making a timely postponement request, arbitrators may use their discretion to waive the fee, provided verification of such circumstance is received.

(3) No postponement fee will be charged if a hearing is postponed:

- Because the parties agree to submit the matter to mediation at [NASD] FINRA;
  - By the panel in its own discretion; or
  - By the Director in extraordinary circumstances.

(c) No Change.

\* \* \* \* \*

## **PART VII TERMINATION OF AN ARBITRATION BEFORE AWARD**

\* \* \* \* \*

### **13701. Settlement**

(a) Parties to an arbitration may agree to settle their dispute at any time. Parties who settle must notify the Director. The Director will continue to administer the arbitration, and fees may continue to accrue, until the Director receives written notice of the settlement. The parties do not need to disclose the terms of the settlement agreement to the Director or to [NASD] FINRA Dispute Resolution, but members and associated persons may have reporting obligations under the rules of [NASD] FINRA.

(b) No Change.

\* \* \* \* \*

## **PART VIII SIMPLIFIED ARBITRATION; DEFAULT PROCEEDINGS; STATUTORY EMPLOYMENT DISCRIMINATION CLAIMS; AND INJUNCTIVE RELIEF**

### **13800. Simplified Arbitration**

(a) No Change.

(b) Single Arbitrator

All arbitrations administered under this rule will be decided by a single arbitrator appointed from the [NASD's] FINRA chairperson roster in accordance with the Neutral List Selection System, unless the parties agree in writing otherwise.

(c) through (e) No Change.

**(f) Arbitrator Honoraria**

[NASD] FINRA will pay the arbitrator an honorarium of \$125 for each arbitration administered under this rule.

**13801. Default Proceedings**

**(a) Applicability of Rule**

A claimant may request default proceedings against any respondent that falls within one of the following categories and fails to file an answer within the time provided by the Code.

- A member whose membership has been terminated, suspended, canceled, or revoked;
- A member that has been expelled from the [NASD] FINRA;
- A member that is otherwise defunct; or
- An associated person whose registration is terminated, revoked, or suspended.

(b) through (f) No Change.

**13802. Statutory Employment Discrimination Claims**

(a) through (b) No Change.

**(c) Composition of Panel**

**(1) One Arbitrator**

If the panel consists of one arbitrator, the arbitrator will be a public arbitrator who will meet the qualifications in paragraph (c)(3), unless the parties agree in writing otherwise.

**(2) Three Arbitrators**

If the panel consists of three arbitrators, the arbitrators will all be public arbitrators, one of whom will meet the qualifications in paragraph (c)(3), unless the parties agree in writing otherwise. The arbitrator who meets the criteria in paragraph (c)(3) will serve as chairperson of the panel.

**(3) Special Statutory Discrimination Claim Qualifications**

A single arbitrator or chairperson of a three-arbitrator panel in a case involving a statutory discrimination claim must have the following qualifications:

- (A) law degree (Juris Doctor or equivalent);
- (B) membership in the Bar of any jurisdiction;
- (C) substantial familiarity with employment law; and
- (D) ten or more years of legal experience, of which at least five

years must be in either:

- law practice;
- law school teaching;
- government enforcement of equal employment opportunity statutes;
- experience as a judge, arbitrator, or mediator; or
- experience as an equal employment opportunity officer or in-house counsel of a corporation.

In addition, a chair or single arbitrator with the above experience may not have represented primarily the views of employers or of employees within the last five years. For purposes of this rule, the term "primarily" shall be interpreted to mean 50% or more of the arbitrator's business or professional activities within the last five years.

**(4) Waiver of Special Qualifications**

If all parties agree, after a dispute arises, they may waive any of the qualifications set forth in subparagraph (3)(A) or (B) above.

**(d) Fees**

(1) For any claim of statutory employment discrimination submitted to arbitration that is subject to a predispute arbitration agreement, a party who is a current or former associated person shall pay a non-refundable filing fee according to the schedule of fees set forth in Rule 13900(a), provided that:

(A) In no event shall such a person pay more than \$200 for a filing fee; and

(B) A member that is a party to such an arbitration proceeding under this rule shall pay the remainder of all applicable arbitration fees set forth in Rules 13900, 13901, 13902(a), 13902(b) and 13903.

(2) The arbitration fees described in subparagraph (1)(B) are not subject to allocation in the award. The panel, however, may assess to a party who is a current or former associated person those costs incurred under Rules 13502, 13510, 13512, 13513, [13524] 13514, 13601, and 13606.

(e) through (f) No Change.

**13803. Coordination of Statutory Employment Discrimination Claims Filed in Court and in Arbitration**

**(a) Option to Combine Related Claims in Court**

(1) (A) If a current or former associated person files a statutory discrimination claim in court against a member or its associated persons, and asserts related claims in arbitration at [NASD] FINRA against some or all of the same parties, a respondent who is named in both proceedings may, upon motion, compel the claimant to bring the related arbitration claims in the same court proceeding in which the statutory discrimination claim is pending, to the full extent to which the court will accept jurisdiction over the related claims.

(B) The respondent must notify the claimant in writing, before the respondent's time to answer has expired, that it is exercising this option and must file a copy of such notification with the Director. If the respondent files an answer without having exercised this option, it shall have waived its right to compel the claimant to assert related claims in court, except as provided in paragraph (b).

(2) (A) If a member or current or former associated person ("party") has a pending claim in arbitration against a current or former associated person and the current or former associated person thereafter asserts a related statutory discrimination claim in court against the party, the party shall have the option to assert its pending arbitration claims and any counterclaims in court.

(B) The party must notify the current or former associated person in writing, before filing an answer to the complaint in court, that it is exercising this option and must file a copy of such notification with the Director. If the party files an answer in court without having exercised this option, it shall have waived its right to assert the pending arbitration claim in court.

(C) The party may not exercise this option after the first hearing has begun on the arbitration claim.

(b) through (e) No Change.

**(f) Motion to Compel Arbitration**

If a member or a current or former associated person files in court a claim against a member or a current or former associated person that includes matters that are subject to mandatory arbitration, either by the rules of [NASD] FINRA or by private agreement, the defending party may, upon motion, compel arbitration of the claims that are subject to mandatory arbitration.

**13804. Temporary Injunctive Orders; Requests for Permanent Injunctive Relief**

(a) No Change.

**(b) Hearing on Request for Permanent Injunctive Relief**

**(1) Scheduling of Hearing**

If a court issues a temporary injunctive order, an arbitration hearing on the request for permanent injunctive relief will begin within 15 days of the date the court issues the temporary injunctive order. If the 15th day falls on a Saturday, Sunday, or [NASD] FINRA holiday, the 15-day period shall expire on the next

business day. Unless the parties agree otherwise, a hearing lasting more than one day will be held on consecutive days when reasonably possible. The Director will provide to all parties notice of the date, time and place of the hearing at least three days prior to the beginning of the hearing.

**(2) Composition of Arbitration Panel**

The hearing on the request for permanent injunctive relief will be heard by a panel of three arbitrators. The composition of the panel will be determined in accordance with Rule 13402.

**(3) Selection of Arbitrators and Chairperson**

(A) (i) In cases in which all of the members of the panel are non-public, the Director will generate and provide to the parties a list of seven arbitrators from [NASD's] the FINRA roster of non-public arbitrators. The Director will send to the parties the employment history for the past 10 years for each listed arbitrator and other background information. At least three of the arbitrators listed shall be lawyers with experience litigating cases involving injunctive relief.

(ii) Each party may exercise one strike to the arbitrators on the list. Within three days of receiving the list, each party shall inform the Director which arbitrator, if any, it wishes to strike, and shall rank the remaining arbitrators in order of preference. The Director shall consolidate the parties' rankings, and shall appoint

arbitrators based on the order of rankings on the consolidated list, subject to the arbitrators' availability and disqualification.

(B) (i) In cases in which the panel consists of a majority of public arbitrators, the Director will generate and provide to the parties a list of nine arbitrators from [NASD's] the FINRA roster of arbitrators. The Director shall send to the parties employment history for the past 10 years for each listed arbitrator and other background information. At least a majority of the arbitrators listed shall be public arbitrators, and at least four of the arbitrators listed shall be lawyers with experience litigating cases involving injunctive relief.

(ii) Each party may exercise two strikes to the arbitrators on the list. Within three days of receiving the list, each party shall inform the Director which arbitrators, if any, it wishes to strike, and shall rank the remaining arbitrators in order of preference. The Director will combine the parties' rankings, and will appoint arbitrators based on the order of rankings on the combined list, subject to the arbitrators' availability and disqualification.

(C) (i) Each party must inform the Director of its preference of chairperson of the panel by the close of business on the next business day after receiving notice of the panel members.

(ii) If the parties do not agree on a chairperson within that time, the Director shall select the chairperson. In cases in which

the panel consists of a majority of public arbitrators, the Director will select a public arbitrator as chairperson. Whenever possible, the Director will select as chairperson the lawyer with experience litigating cases involving injunctive relief whom the parties have ranked the highest.

(D) The Director may exercise discretionary authority and make any decision that is consistent with the purposes of this rule and the Code to facilitate the appointment of panels and the selection of chairperson.

**(4) Applicable Legal Standard**

The legal standard for granting or denying a request for permanent injunctive relief is that of the state where the events upon which the request is based occurred, or as specified in an enforceable choice of law agreement between the parties.

**(5) Effect of Pending Temporary Injunctive Order**

Upon a full and fair presentation of the evidence from all relevant parties on the request for permanent injunctive relief, the panel may prohibit the parties from seeking an extension of any court-issued temporary injunctive order remaining in effect, or, if appropriate, order the parties jointly to move to modify or dissolve any such order. In the event that a panel's order conflicts with a pending court order, the panel's order will become effective upon expiration of the pending court order.

**(6) Fees, Costs and Expenses, and Arbitrator Honorarium**

(A) The parties shall jointly bear reasonable travel-related costs and expenses incurred by arbitrators who are required to travel to a hearing location other than their primary hearing location(s) in order to participate in the hearing on the request for permanent injunctive relief. The panel may reallocate such costs and expenses among the parties in the award.

(B) Each party seeking a temporary injunctive order in court pursuant to this rule must pay a non-refundable surcharge of \$2,500 at the time the party files its statement of claim and request for permanent injunctive relief. In the award, the panel may decide that one or more parties must reimburse a party for part or all of the surcharge. The surcharge is in addition to all other non-refundable filing fees or costs that are required under the Code.

(C) Notwithstanding any other provision in the Code, the chairperson of the panel hearing a request for permanent injunctive relief pursuant to this rule shall receive an honorarium of \$375 for each single session, and \$700 for each double session, of the hearing. Each other member of the panel shall receive an honorarium of \$300 for each single session, and \$600 for each double session, of the hearing. The parties shall equally pay the difference between these amounts and the amounts panel members and the chairperson receive under the Code pursuant to Rule 13214. The panel may reallocate such amount among the parties in the award.

(c) No Change.

## **PART IX FEES AND AWARDS**

### **13900. Fees Due When a Claim Is Filed**

(a) through (b) No Change.

**(c) Partial Refund of Filing Fee**

(1) If a claim is settled or withdrawn more than 10 days before the date that the hearing on the merits under Rule 13600 is scheduled to begin, a party paying a filing fee will receive a partial refund of the filing fee in the amount indicated in the schedule below, less any other fees or costs assessed against the party under the Code, including any hearing session fees assessed under Rule 13902. No refund will be paid if [the NASD] FINRA receives notice that a claim is settled or withdrawn within 10 days of the date that the hearing on the merits under Rule 13600 is scheduled to begin.

**Partial Refund for Settlement or Withdrawal More Than 10 Days**

**Before Hearing on the Merits**

<b>Amount of Claim</b>	<b>Refund</b>
(exclusive of interest and expenses)	
\$.01 to \$1,000	\$25
\$1,000.01 to \$2,500	\$50
\$2,500.01 to \$5,000	\$125
\$5,000.01 to \$10,000	\$250
\$10,000.01 to \$25,000	\$300
\$25,000.01 to \$50,000	\$450
\$50,000.01 to \$100,000	\$750
\$100,000.01 to \$500,000	\$1,125
Over \$500,000	\$1,200

Non-monetary/Not specified	\$1,000
<p>(2) If the claim does not request or specify money damages, and the Director determines that the hearing session fee should be a different amount than the amount specified in the schedule in Rule 13902, the amount of the refund will be the amount of the hearing session fee determined by the Director, less any fees or costs assessed against the party under the Code, including any hearing session fees assessed under Rule 13902.</p>	

(d) No Change.

\* \* \* \* \*

## **13902. Hearing Session Fees, and Other Costs and Expenses**

(a) through (c) No Change.

### **(d) Assessment of Hearing Session Fees, Costs, and Expenses in Case of Settlement or Withdrawal**

If a claim is settled or withdrawn:

- The parties will be subject to an assessment of hearing session fees for hearing sessions already held.
- If [NASD] FINRA receives a settlement or withdrawal notice 10 days or fewer prior to the date that the hearing on the merits under Rule 13600 is scheduled to begin, parties that paid a filing fee under Rule 13900 will not be entitled to any refund of the filing fee.
- The parties will also be responsible for any fee or costs incurred under Rules 13502, 13513, 13601, or 13606 in connection with such hearings. If a case

is settled or withdrawn and the parties' agreement fails to allocate such fees and costs, the fees and costs will be allocated as provided by Rule 13701(b).

(e) No Change.

\* \* \* \* \*

## **14000. [NASD] CODE OF MEDIATION PROCEDURE**

### **14100. Definitions**

Unless otherwise defined in the Code, terms used in the Code and interpretive material, if defined in the [NASD] FINRA By-Laws, shall have the meaning as defined in the [NASD] FINRA By-Laws.

#### **(a) Board**

The term "Board" means the Board of Directors of [NASD] FINRA Dispute Resolution, Inc.

#### **(b) Code**

The term "Code" means the [NASD] Code of Mediation Procedure.

#### **(c) Director**

The term "Director" in the Rule 14000 Series refers to the Director of Mediation at [NASD] FINRA Dispute Resolution. Unless the Code or any other [NASD] FINRA rule provides otherwise, the term includes [NASD] FINRA staff to whom the Director of Mediation has delegated authority.

(d) No Change.

#### **(e) NAMC**

The term "NAMC" means the National Arbitration and Mediation Committee of the Board [of Directors of NASD Dispute Resolution, Inc].

**(f) [NASD] FINRA**

Unless the Code specifies otherwise, the term “[NASD] FINRA” includes [NASD, Inc.] FINRA, and [NASD] FINRA Dispute Resolution, Inc.

**(g) [NASD] FINRA Customer Code**

The term “[NASD] Customer Code” means the [NASD] Code of Arbitration Procedure for Customer Disputes.

**(h) [NASD] FINRA Industry Code**

The term “[NASD] Industry Code” means the [NASD] Code of Arbitration Procedure for Industry Disputes.

**(i) Submission Agreement**

The term “Submission Agreement” means the [NASD] FINRA Mediation Submission Agreement. The [NASD] FINRA Mediation Submission Agreement is a document that parties must sign at the outset of a mediation in which they agree to submit to mediation under the Code.

**14101. Applicability of Code**

The Code applies to any matter submitted to mediation at [NASD] FINRA.

**14102. National Arbitration and Mediation Committee**

(a) Pursuant to Section III of the Plan of Allocation and Delegation of Functions by [NASD] FINRA to Subsidiaries (“Delegation Plan”), the Board shall appoint a National Arbitration and Mediation Committee (“NAMC”).

(1) The NAMC shall consist of no fewer than ten and no more than 25 members. At least 50 percent of the NAMC shall be Non-Industry members.

(2) The Chairperson of the Board shall name the Chairperson of the NAMC.

(b) through (c) No Change.

\* \* \* \* \*

**14104. Mediation under the Code**

(a) Mediation under the Code is voluntary, and requires the written agreement of all parties. No party may be compelled to participate in a mediation or to settle a matter by [NASD] FINRA, or by any mediator appointed to mediate a matter pursuant to the Code.

(b) If all parties agree, any matter that is eligible for arbitration under the [NASD] Customer Code or [NASD] Industry Code, or any part of any such matter, or any dispute related to such matter, including procedural issues, may be submitted for mediation under the Code.

(c) through (d) No Change.

**14105. Effect of Mediation on Arbitration Proceedings**

(a) Unless the parties agree otherwise, the submission of a matter for mediation will not stay or otherwise delay the arbitration of a matter pending at [NASD] FINRA. If all parties agree to stay an arbitration in order to mediate the matter, the arbitration will be stayed, notwithstanding any provision to the contrary in this Code or any other [NASD] rule.

(b) If mediation is conducted through [NASD] FINRA, no postponement fees will be charged for staying the arbitration in order to mediate.

\* \* \* \* \*

**14107. Mediator Selection**

- (a) No Change.
- (b) For any mediator assigned or selected from a list provided by [NASD] FINRA, the parties will be provided with information relating to the mediator's employment, education, and professional background, as well as information on the mediator's experience, training, and credentials as a mediator.
- (c) Any mediator selected or assigned to mediate a matter shall comply with the provisions of [NASD] Customer Code Rule 12408 or [NASD] Industry Code Rule 13408, unless, with respect to a mediator selected from a source other than a list provided by [NASD] FINRA, the parties elect to waive such disclosure.
- (d) No mediator may serve as an arbitrator of any matter pending in [NASD] FINRA arbitration in which he served as a mediator; nor may the mediator represent any party or participant to the mediation in any subsequent [NASD] FINRA arbitration relating to the subject matter of the mediation.

**14108. Limitation on Liability**

[NASD] FINRA, its employees, and any mediator named to mediate a matter under the Code shall not be liable for any act or omission in connection with a mediation administered under the Code.

**14109. Mediation Ground Rules**

- (a) through (f) No Change.
- (g) Mediation is intended to be private and confidential.
  - (1) The parties and the mediator agree not to disclose, transmit, introduce, or otherwise use opinions, suggestions, proposals, offers, or admissions obtained

or disclosed during the mediation by any party or the mediator as evidence in any action at law, or other proceeding, including a lawsuit or arbitration, unless authorized in writing by all other parties to the mediation or compelled by law, except that the fact that a mediation has occurred shall not be considered confidential.

(2) Notwithstanding the foregoing, the parties agree and acknowledge that the provisions of this paragraph shall not operate to shield from disclosure to [NASD] FINRA or any other regulatory authority, documentary or other information that [NASD] FINRA or other regulatory authority would be entitled to obtain or examine in the exercise of its regulatory responsibilities.

(3) The mediator will not transmit or otherwise disclose confidential information provided by one party to any other party unless authorized to do so by the party providing the confidential information.

#### **14110. Mediation Fees**

##### **(a) Filing Fees: Cases Filed Directly in Mediation**

Each party to a matter submitted directly to a mediation administered under the Code must pay an administrative fee to [NASD] FINRA in the amounts indicated in the schedule below, unless such fee is specifically waived by the Director.

Amount in Controversy	Customer and Associated Person Fee	Member Fee
\$ .01-\$25,000	\$ 50	\$150
\$25,000.01-\$100,000	\$150	\$300

Over \$100,000	\$300	\$500
----------------	-------	-------

**(b) Filing Fees: Cases Initially Filed in Arbitration**

When a matter is initially filed in arbitration and subsequently submitted to mediation under the Code, each party must pay an administrative fee to [NASD] FINRA in the amounts indicated in the schedule below, unless such fee is specifically waived by the Director.

Amount in Controversy	Customer and Associated Person Fee	Member Fee
\$.01-\$25,000	\$ 0	\$ 0
\$25,000.01-\$100,000	\$100	\$150
Over \$100,000	\$250	\$500

**(c) Mediator Fees and Expenses**

The parties to a mediation administered under the Code must pay all of the mediator's charges, including the mediator's travel and other expenses. The charges shall be specified in the Submission Agreement and shall be apportioned equally among the parties unless they agree otherwise. Each party shall deposit with [NASD] FINRA its proportional share of the anticipated mediator charges and expenses, as determined by the Director, prior to the first mediation session.