

activities and an exchange offer (not a merger transaction) registered with the SEC is subject to filing only if there is a member acting as a dealer manager, thereby clarifying that filing is not required where the member's role in the transaction is limited to providing financial advice. In addition, as recommended by the second commentor, the provision was amended to clarify that filing is not required if the exchange offer comes within the exemption from filing in subparagraph (b)(7)(F) for listed securities and securities of an issuer that qualify to register on Forms S-3, F-3, or F-10. Consistent with this latter change, proposed subparagraph (b)(8)(I) of Rule 2710 that would exempt from the Rule mergers (not exchange offers) registered with the SEC, was also amended to clarify that such a merger is nonetheless subject to filing if the merger involves the securities of a member or the parent of a member (as provided in subparagraph (b)(9)(I)).

Also consistent with the request of the second commentor for greater clarity in the operation of the filing requirements, new subparagraph (a)(3) was added to Rule 2720 to clarify that any exchange offer, merger and acquisition transaction, or similar corporate reorganization exempt from registration under Sections 3(a)(4), 3(a)(9), and 3(a)(11) where the member is actively soliciting securityholders or registered with the SEC where a member is acting as dealer manager, will be required to be filed with the Corporate Financing Department and is subject to compliance with the requirements of the Rule if the issuance of securities is by a member or parent of a member. In addition, by reference to subparagraph (b)(9)(I) of Rule 2710, the new subparagraph of the Conflicts Rule provides that any exchange offer, merger or acquisition transaction, or similar corporate reorganization involving an issuance of securities that results in the direct or indirect public ownership of a member will be required to be filed under Rule 2720. In order to make clear, moreover, that the exemption in subparagraph (b)(8) of Rule 2710 for offerings of securities issued in a spin-off or in a merger registered with the SEC are also exempt from Rule 2720, paragraph (o) of Rule 2720 is proposed to be amended to reference the exemptions from Rule 2720 that are provided in Rule 2710.

Finally, to address the concerns of the first commentor regarding the role of the qualified independent underwriter in an exchange offer, merger and acquisition transaction, or similar corporate reorganization subject to the Conflicts

Rule, subparagraph (c) of Rule 2720 is proposed to be amended to add a provision that requires that the exchange value of the securities being offered in the transaction not be less than that recommended by the qualified independent underwriter.

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

Within 35 days of the 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 the proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

### IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. § 552, will be available for inspection and copying at the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to file No. SR-NASD-97-38 and should be submitted by August 6, 1997.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 97-18605 Filed 7-15-97; 8:45 am]

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-38831; File No. SR-NASD-97-28]

### Self-Regulatory Organizations; Notice of Filing of Amendment No. 2 to a Proposed Rule Change by the National Association of Securities Dealers, Inc., Relating to Procedures for Limitations on Operations, Suspensions, Cancellations, Bars, Denials of Access, Eligibility Proceedings and Exemptions

July 11, 1997.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")<sup>1</sup> and Rule 19b-4<sup>2</sup> thereunder, notice is hereby given that on July 10, 1997, the National Association of Securities Dealers, Inc. ("NASD") filed with the Securities and Exchange Commission ("SEC" or "Commission") Amendment No. 2 to the proposed rule change, as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization.<sup>3</sup> The Commission is publishing this notice to solicit comments on Amendment No. 2 from interested persons.

#### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The NASD is proposing to amend the proposed rule change filed in SR-NASD-97-28. The Amendment contains revisions to the proposed Rule 9400 and 9500 Series of the Code of Procedure of the NASD and a proposed Rule 9600 Series setting forth procedures for applying for exemptions. As amended, the proposed Rule 9400-9500 Rule Series sets forth procedures for limitations on operations, suspensions, cancellations, bars, denials of access to NASD services, and eligibility proceedings. As noted in the Original Proposal, the NASD proposes to rescind the Rule 9500 and 9600 Series. The Association is requesting permanent approval of the proposed rule change as set forth in this

<sup>1</sup> 15 U.S.C. § 78s(b)(1).

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

<sup>3</sup> The proposed rule change, including Amendment No. 1, was previously noticed in the **Federal Register**. See Exchange Act Release No. 38545 (April 24, 1997), 62 FR 25226 (May 8, 1997) (the "Original Proposal"). Two comment letters were received on the Original Proposal. See letter from Faith Colish, Attorney, Faith Colish P.C., to Jonathan G. Katz, Secretary, Commission, dated June 9, 1997; letter from George S. Frazza, Chair, Section of Business Law and Barry F. McNeil, Chair, Section of Litigation, American Bar Association, to Jonathan G. Katz, Secretary, Commission, date June 17, 1997.

Amendment. Attached as Exhibit A is the amended text of the proposed rule change. Proposed new language is in italics; proposed deletions are in brackets.

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

In its filing with the Commission, the self-regulatory organization 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. The self-regulatory organization 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

*a. Introduction:* The NASD is amending the Original Proposal relating to the Rule 9400 and 9500 Series to request permanent approval of the Rule 9400 and 9500 Series as proposed in this amendment, consolidate and reorganize certain procedures, provide additional procedural rights and specificity for each proceeding, and conform the proposed Rule 9400 and 9500 Series to the proposed Rule 9200 and 9300 Series. Further, the NASD is proposing a new Rule 9600 Series that would require members to apply to the staff in the first instance for an exemption under various rules and provide a right of appeal to the National Business Conduct Committee.

The Original Proposal requested temporary approval for five separate procedures for: (1) Regulating the activities of members experiencing financial or operating difficulty (proposed Rule 9410); (2) approval of a change in business operations that will result in a change in exemptive status under SEC Rule 15c3-3 (proposed rule 9420); (3) summary suspension (proposed Rule 9510); (4) non-summary suspension, cancellation, and bar (proposed Rule 9520); and (5) eligibility proceedings (proposed Rule 9530). The Original Proposal also indicated that the NASD would comprehensively review the Rule 9400 and 9500 Series and consider submitting a revision to its proposal based on that review.

As a result of its review, the NASD now proposes to amend its Original Proposal to reduce the number of

separate proceedings from five to three, and seeks permanent approval of these three procedures. First, the NASD is proposing that the Rule 9410 Series for limitations on operations remain as a separate rule. Second, the NASD is proposing to eliminate the Rule 9420 Series as a separate rule series and instead require a member that wishes to change its exemptive status under SEC Rule 15c3-3 to apply for a change to its membership agreement if such agreement covers the member's exemptive status, or file a notice and application for approval of a material change in the member's business operations if the membership agreement does not specifically address the member's exemptive status. Procedures for applying for a change to a membership agreement or for approval of a material change in business operations are set forth in the proposed rule 1010 Series. The NASD will inform the membership of this change in procedure in a notice to members. Third, the NASD proposes to consolidate the Exchange Act summary suspension proceedings (proposed Rule 9510), non-summary suspension, cancellation, and bar proceedings (proposed Rule 9520), and new denial of access procedures in the revised Rule 9510 Series. Finally, eligibility proceedings remain in a separate rule series and are renumbered as the Rule 9520 Series.

The NASD also proposes to amend the Rule 9400 and Rule 9500 Series to provide members, associated persons, and others with enhanced procedural protections in the conduct of these proceedings and to expedite the hearing and review processes, especially under the proposed Rule 9510 Series. The amendments to the proposed rules include a variety of new provisions regarding the time in which a hearing requested by a member must be held (proposed Rule 9413(c) and 9514(d)); the disclosure of documents by NASD staff to the member prior to hearing (proposed Rules 9413(d), 9514(e) and 9523(a)); and the rights of parties at a hearing (proposed Rules 9413(e), 9514(f) and 9523(a)). Some of the more significant proposed changes are discussed below.

*b. Proposed Rule 9410 Series:* The original proposal did not provide for timely notice to the member of the date, time, and location of the hearing. As amended, proposed Rule 9413(c) now provides that the Department of Member Regulation must provide written notice of such information to the member at least five business days prior to the hearing.

Similarly, no provision was made in the Original Proposal for disclosure to the member, prior to the hearing, of the Department of Member Regulation's documents. The NASD now proposes that not less than five business days prior to the hearing, the member shall receive all documents considered by the Department of Member Regulation in imposing the limitations on the member's business activities, except any document that meets the criteria of Rule 9251(b)(1) (A), (B), or (C). That Rule describes certain documents that are privileged, constitute attorney work product, or otherwise relate to confidential investigatory or examination techniques. As a matter of practice, the NASD does not turn over such documents in any of its proceedings. As noted in the original proposal, proposed Rule 9251 is based on SEC Rule of Practice 230, 17 C.F.R. 201.230. The proposed rule also provides for the exchange of proposed exhibit and witness lists (proposed Rule 9413(d)).

The NASD also proposes to amend the Rule 9410 Series to set forth the contents of the record (proposed Rule 9413(f)); designate the obligations of the custodian of the record (proposed Rules 9413(g) and 9414(a)(4)); and a requirement that the Department issue a written decision (proposed Rule 9413(i)). If a decision imposes limitations, the decision must state the grounds for the limitations and the conditions for terminating such limitations (proposed Rule 9413(i)).

The appeal and review procedures for the Rule 9410 Series are largely unchanged from the original proposal. Amendment No. 2 adds a new provision that additional relevant and material evidence may be considered by the Subcommittee of the National Business Conduct Committee (proposed Rule 9414(b)(4)).

In the original proposal, proposed Rule 9417(b), Enforcement of Sanctions, did not provide the time in which a hearing must be held if requested by a member. The NASD proposes to provide that the hearing must be held within ten days after service of the Department of Member Regulation's order imposing sanctions. The NASD also proposes to amend proposed Rule 9417 to provide that a request for hearing shall not stay the effectiveness of the order imposing sanctions.

Proposed Rule 9418 clarifies that if additional limitations are imposed, the member may apply for relief by filing a written application for hearing under rule 9413, and that Rules 9413 through 9417 apply to such a request.

*c. Proposed Rule 9510 Series:* The original proposal proposed separate rules for summary suspension as authorized by Section 15A(h)(3) of the Exchange Act (proposed Rule 9510) and non-summary suspension, cancellation, and bar proceedings (proposed Rule 9520). The NASD now proposes to consolidate these procedures under the proposed Rule 9510 Series and add new denial of access procedures. The proposed amendments make clear, however, the different bases for summary and non-summary procedures (proposed Rule 9511).

The proposed amendments are intended to expedite these proceedings by providing that computation of time under the Rule 9510 Series at all times includes intermediate Saturdays, Sundays, and holidays. In contrast, proposed Rule 9138 includes such days unless the period is ten days or less. In addition, to conform with proposed Rule 9143 and the proposed amendment to the Rule 9410 Series, *ex parte* rules apply when NASD staff has knowledge that a member, associated person, or other person intends to request a hearing under proposed Rule 9514.

Although the procedures for hearing and review have been consolidated, the different procedures for the initiation of summary and non-summary proceedings (proposed Rules 9512 and 9513) remain largely unchanged from the original proposal.

To expedite these proceedings, the request for hearing must be filed within seven days after service of the notice initiating the proceeding (proposed Rule 9514(a)). As amended, proposed Rule 9514(b) also provides for the designation of a department or office of the NASD to act as a party in the proceeding and for the appointment of a Hearing Panel.

To conform with the proposed Rule 9410 Series, the proposed Rule 9510 Series provides for the time in which the hearing must be held; written notice of the location, date, and time of the hearing; transmission of the NASD's documents; and exchange of proposed exhibit and witness lists prior to the hearing (proposed Rule 9514 (d) and (e)). With respect to the transmission of the NASD's documents, the NASD does not anticipate that a notice of summary suspension will be based solely on documents that meet the exclusion criteria of Rule 9251(b)(1)(A)-(C). In all cases, the notice of summary suspension must include the factual basis for the NASD's action and those facts may be derived from documents that meet the criteria of Rule 9251(b)(1)(A)-(C). Provisions to proposed Rule 9413 also define the contents of the record and

designate a custodian of the record (proposed Rule 9514(f)(4) and (5)). The provision defining the contents of the decision issued by the hearing panel (proposed Rule 9514(g)(3)) has been amended to conform with proposed Rule 9268, which describes the initial decision in a disciplinary proceeding.

The NASD also has added a procedure for reinstatement after a non-summary suspension or limitation. This procedure is similar to the procedure set forth in proposed Rule 8225. A member or person who is subject to a summary suspension, limitation, or prohibition or a non-summary prohibition under the proposed Rule 9510 Series could not use this reinstatement procedure; such member or person would have to reapply for membership, registration, or access under other Rules of the NASD.

The NASD also has specifically provided for the imposition of costs in denial of access proceedings, which are not otherwise covered by Rule 8330.

Finally, certain existing cross-references to the Rule 9700 Series in other NASD rules must be changed to reflect that the Rule 9510 Series will now provide procedures for denials of access. That is, the reference to the Rule 9700 Series in NASD Rules 4730 and 5360 will be replaced with a reference to the Rule 9510 Series. The NASD proposes to eliminate the references to the Rule 9700 Series in Rule 5265 because procedures for resolving matters arising under this rule are provided for under the Uniform Practice Code, as set forth in the Rule 11000 Series.

*d. Proposed Rule 9520 Series:* The rules for eligibility proceedings are now renumbered as the proposed Rule 9520 Series. The length of time for a member to file a written application for relief is extended from seven to ten days (proposed Rule 9522(a)). The Amendment also provides for notice of the location, date, and time of the hearing and the transmission of the NASD's documents and exchange of exhibit and witness lists prior to hearing (proposed Rule 9523(a)). The Amendment also provides for the content of the record and the designation of the custodian of the record (proposed Rule 9523(a)(6) and (7)).

In keeping with other procedures in the proposed Rule 9000 Series, the NASD is amending proposed Rule 9522 to provide that applications for relief and notices of withdrawal of such applications be filed with the adjudicator, the National Business Conduct Committee, rather than the Department of Member Regulation, which acts as a Party in the proceeding.

In addition, because departments and offices other than the Department of Member Regulation may be involved in issuing a notice of disqualification (e.g., the Membership Department, which maintains the Central Registration Depository), the NASD is amending proposed Rule 9522 to provide that "Association staff" rather than "the Department of Member Regulation" may issue a notice of disqualification.

*e. Proposed Rule 9600 Series:* As part of the NASD's settlement with the Commission, the NASD agreed to provide autonomy and independence to the regulatory staff of the NASD and its subsidiaries such that the staff: (i) Has sole discretion as to what matters to investigate and prosecute; (ii) has sole discretion to handle all other regulatory matters; (iii) prepares rule proposals, rule interpretations, and other policy matters with any consultations with interested NASD constituencies made in a fair and evenhanded manner; and (iv) is generally insulated from the commercial interests of its members and the Nasdaq market.

As part of the implementation of the requirement in the settlement to provide autonomy and independence to the regulatory staff in certain matters, the NASD is proposing a new Rule 9600 Series that would require members to apply to the staff in the first instance for an exemption under various rules and provide a right of appeal to the National Business Conduct Committee.

The proposed rule change is also consistent with amendments recently filed with the Commission which, among other things, propose to revise the Rules of the NASD to create greater authority for NASD Regulation staff regarding applications for membership and the investigation of complaints, and to provide enhanced procedural rights and safeguards for new applicants and those subject to a complaint.

The proposed Rule 9600 Series would require a member seeking an exemption from certain NASD rules to file a written application with the Office of General Counsel of NASD Regulation. Presently, under various rules, certain quasi-adjudicative or exemptive authority has been granted to various standing committees.

The proposed rules provide that any written application for an exemption must contain the member's name and address, the name of a person associated with the member who will serve as the primary contact for the application, the rule from which the member is seeking an exemption, and a detailed statement of the grounds for granting the exemption. If the member does not want the application or the decision on the

application to be publicly available in whole or in part, the member also must include in its application a detailed statement, including supporting facts, showing good cause for treating the application or decision as confidential in whole or in part.

The proposed rules would require NASD Regulation staff, after considering an application, to issue a written decision setting forth its findings and conclusions to be served on the applicant pursuant to Rules 9132 and 9134. After the decision is served on the applicant, the application and decision will be made publicly available unless NASD Regulation staff determines that the applicant has shown good cause for treating the application or decision as confidential in whole or in part.

The proposed rules permit an applicant to appeal the decision by filing a written notice of appeal within 15 calendar days after service of a decision issued under proposed Rule 9620. The notice of appeal must contain a brief statement of the findings and conclusions as to which exception is taken. The National Business Conduct Committee may order oral argument. If the applicant does not want the National Business Conduct Committee's decision on appeal to be publicly available in whole or in part, the applicant must 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 must be signed by the applicant. Where the failure to promptly review a decision to deny a request for exemption would unduly or unfairly harm the applicant, the National Business Conduct Committee shall provide expedited review. An applicant may withdraw its notice of appeal at any time by filing a written notice of withdrawal of appeal with the National Business Conduct Committee.

The proposed rules require the National Business Conduct Committee, following the filing of a notice of appeal, to designate a Subcommittee to hear an oral argument, if ordered, consider any new evidence that the applicant can show good cause for not including in its application, and recommend to the National Business Conduct Committee a disposition of all matters on appeal.

The proposed rules require the National Business Conduct Committee, after considering all matters on appeal and the Subcommittee's recommendation, to affirm, modify, or reverse the decision issued under the proposed Rule 9620. The National Business Conduct Committee must issue a written decision setting forth its

findings and conclusions and serve the decision on the applicant. The decision must be served pursuant to Rules 9132 and 9134. The decision will be effective upon service and constitutes final action of the NASD.

The proposed rules also make conforming changes to those particular rules under which exemptions are currently granted, clarifying that the authority for granting such exemptions rests with NASD Regulation staff in the first instance. Currently, this includes rules relating to registration requirements, categories of principal registration, qualification examinations and waiver requirements, customer account statements, margin accounts, underwriting terms and arrangements for corporate financing matters, conflicts of interest involving distributions of securities of members and affiliates, direct participation programs, position limits for index warrants, exercise limits for index warrants, position limits for options, position limits for index options, exercise limits for options, securities categorized as "failed to receive" and "failed to deliver," short sales, customer account transfer contracts, clearance of corporate debt securities, free-riding and withholding, and Municipal Securities Rulemaking Board Rule G-37.

In addition, the proposed rules create new authority under Rule 2210 to permit the Advertising Regulation Department to grant exemptions from the pre-filing requirements of paragraph (c) of that Rule in order to reflect existing practice. The need for such authority under Rule 2210 arises when, for example, members are the subject of a buyout or reorganization, or form a subsidiary firm, and the successor entity is substantially similar to the predecessor entity, retains the same control persons, and continues to produce the same securities products that were previously filed with the Department. In such situations, the dangers toward which the pre-filing requirements are directed have already been eliminated.

The proposed amendments do not affect certain existing functions of committees when the interests represented are fundamentally different, or when the issues presented are highly technical and do not require a highly formal process (See Rules 11110 and 2340(d), which will continue to authorize certain functions for the Financial Responsibility and Operations Committees, and Rules 10102, 10104, and 10301(b), which will continue to authorize certain functions for the National Arbitration and Mediation Committee).

*f. Rule 9800 Series:* The Rule 9800 Series contains procedures for committee review of staff decisions regarding corporate financing and direct participation program matters. The deletion of the Rule 9800 Series is consistent with the changes proposed herein to Rules 2710 (Corporate Financing Rule), 2720 (Distributions of Securities of Members and Affiliates) and 2810 (Direct Participation Programs) to subject corporate financing and direct participation program matters to the new procedures for granting exemptions.

## 2. Statutory Basis

The NASD believes the proposed rule change is consistent with Section 15A(b) (6)-(8) of the Act, 15 U.S.C. § 78o-3(b) (6)-(8). The NASD believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act, which require that the NASD adopt and amend its rules to promote just and equitable principles of fair trade, and generally provide for the protection of investors and the public interest, in that the proposed rule change preserves the independence of NASD Regulation staff regarding procedures for exemptions, promotes fairness by creating procedural regularity and predictability intended to optimize evenhanded results and minimize disparate results, and clarifies and streamlines the process for granting exemptions by articulating the application and decision process and by clearly defining appeal rights. Section 15A(b)(7) mandates that a national securities association establish rules providing that "its members and persons associated with its members shall be appropriately disciplined for violation of any provision of this title, the rules or regulations thereunder, the rules of the Municipal Securities Rulemaking Board, or the rules of the association, by expulsion, suspension, limitation of activities, functions, and operations, fine, censure, being suspended or barred from being associated with a member, or any other fitting sanction." Section 15A(b)(8) mandates that a national securities association establish rules providing for "a fair procedure for the disciplining of members and persons associated with members, the denial of membership to any person seeking membership therein, the barring of any person from becoming associated with a member thereof, and the prohibition or limitation by the association of any person with respect to access to services offered by the association or a member thereof." The NASD believes the proposed rule

changes will further the goals of Sections 15A(b) (6), (7), and (8).

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

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

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

The NASD has neither solicited nor received written comments.

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

Within 35 days of the 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 periods 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 the proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

**IV. Solicitation of Comments**

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written statements should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. § 552, will be available for inspection and copying at the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. Comments also may be submitted electronically at the following E-mail address: rule-comments@sec.gov. File Number SR-NASD-97-28 should be included on the subject line if E-mail is used to submit a comment letter. Electronically submitted comment letters will be posted on the

Commission's Internet web site (<http://www.sec.gov>).

All submissions should refer to File Number SR-NASD-97-28, Amendment No. 2, and should be submitted by August 6, 1997.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>4</sup>

**Margaret H. McFarland,**  
*Deputy Secretary.*

**Exhibit A**

Proposed new language is in italics; proposed deletions are in brackets.

**9400. Limitation[s and Approval] Procedures Under Rules 3130[,] and 3131[, and 3140]**

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

9411. Purpose

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

9412. Notice of Limitations

The Department of Member Regulation [hereinafter "Department" in the Rule 9410 Series] may issue a notice directing a member to limit its business activities if the Department of Member Regulation has reason to believe that any condition specified in Rule 3130 or 3131 exists. The notice shall specify the grounds on which such action is being taken, the nature of the limitations to be imposed, the effective date of the limitations, [and] a fitting sanction that will be imposed if the member fails to comply with the limitation set forth in the notice, *and the conditions for terminating such limitations.* The effective date of the limitations shall be at least seven days after the date of service of the notice. The notice also shall inform the member that it may request a hearing before the Department of Member Regulation under Rule 9413. The Department of Member Regulation shall serve the notice [pursuant to Rules 9131 and 9134] *by facsimile or overnight commercial courier.*

9413. Department of Member Regulation Consideration

(a) Request for Hearing

A member aggrieved by a notice issued under Rule 9412 may file a written request for a hearing before the Department of Member Regulation. The

request shall state the specific grounds for withdrawing or modifying the limitations specified in the notice. The request shall be filed pursuant to Rules 9135, 9136, and 9137 within five days after service of the notice under Rule 9412.

[(b) Hearing]

[If a member requests a hearing under paragraph (a), the Department shall conduct a hearing within 14 days after service of the notice under Rule 9412. The member shall be entitled to be heard in person, to be represented by an attorney, and to submit any relevant evidence. The hearing shall be recorded and a transcript prepared by a court reporter. The member may purchase a copy of the transcript from the court reporter. Any corrections to the transcript shall be submitted within three days after the hearing or within three days after receipt of the transcript, whichever is later.]

(b) Stay

*A request for hearing shall stay the notice of limitations served under Rule 9412 unless the National Business Conduct Committee orders otherwise.*

(c) Time of Hearing

*If a member requests a hearing under paragraph (a), the Department of Member Regulation shall conduct a hearing within 14 days after service of the notice under Rule 9412. Not less than five business days before the hearing, the Department of Member Regulation shall provide written notice to the member of the location, date, and time of the hearing by facsimile or overnight commercial courier.*

(d) Transmission of Documents

*(1) Not less than five business days before the hearing, the Department of Member Regulation shall provide to the member by facsimile or overnight commercial courier all documents that were considered in imposing the limitations on business activities set forth in the notice served under Rule 9412, unless a document meets the criteria of Rule 9251(b)(1) (A), (B), or (C). A document that meets such criteria shall not constitute part of the record, but shall be retained by the Association until the date upon which the Association serves a final decision or, if applicable, upon conclusion of any review by the Commission or the federal courts.*

*(2) Not less than five business days before the hearing, the Department of Member Regulation and the member shall exchange proposed exhibit and witness lists. The exhibit and witness*

<sup>4</sup> 17 CFR 200.30-3(a)(12).

lists shall be served by facsimile or by overnight commercial courier.

(e) *Hearing and Rights of Member*

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

(f) *Record*

The record shall consist of:

- (1) the notice issued pursuant to Rule 9412;
- (2) all documents transmitted to the member under Rule 9413(d);
- (3) the request for hearing filed pursuant to Rule 9413(a);
- (4) any other submissions by the member and the Department of Member Regulation at the hearing;
- (5) any evidence considered at the hearing; and
- (6) the transcript of the hearing and any corrections thereto.

(g) *Custodian of the Record*

The custodian of the record shall be the Department of Member Regulation.

(h) *Evidence Not Admitted*

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

[(c)](i) *Decision*

Within seven days after the hearing, the Department of Member Regulation shall issue a written decision approving, modifying, or withdrawing the limitations specified in the notice. If the decision imposes limitations, the decision shall state the grounds for the limitations, the conditions for terminating such limitations, and provide for a fitting sanction to be imposed under Rule [9417] 9416 if the member fails to comply with the limitations. The Department of Member

Regulation shall promptly serve the decision [pursuant to Rules 9132 and 9134. The decision] by facsimile or overnight commercial courier. The limitations imposed shall become effective upon service of the decision.

[(d)] (j) *Failure To Request Hearing*

If a member does not request a hearing under paragraph (a), the limitations specified in the notice shall become effective on the date specified in the notice. Unless the National Business Conduct Committee calls the notice for review under Rule 9414(a)(2), the limitations specified in the notice shall remain in effect until the Department of Member Regulation reduces or removes [or modifies] the limitations pursuant to Rule 9418(b).

9414. National Business Conduct Committee Review

(a) *Initiation of a Review*

(1) *Application by Member*

A member aggrieved by a decision issued under Rule 9413 may file a written application for review by the National Business Conduct Committee. The application shall state the specific grounds for the review and whether oral argument is requested. The application shall be filed pursuant to Rules 9135, 9136, and 9137 within seven days after service of the decision. The member may withdraw its application for review at any time by filing a written notice with the National Business Conduct Committee pursuant to Rules 9135, 9136, and 9137.

(2) *Motion of National Business Conduct Committee*

A decision issued under Rule 9413 shall be subject to a call for review by any member of the National Business Conduct Committee or the Review Subcommittee described in Rule 9312(a)(1) within 30 days after service of the decision. If a member that receives a notice under Rule 9412 does not request a hearing under Rule 9413, the notice shall be subject to a call for review by any member of the National Business Conduct Committee or the Review Subcommittee[,] within 30 days after the effective date of the notice. If the National Business Conduct Committee or the Review Subcommittee calls a decision or notice for review, a written notice of review shall be served promptly on the member pursuant to Rules 9132 and 9134. The notice of review shall state the specific grounds for the review and whether an oral argument is ordered. If a decision is called for review by a member of the National Business Conduct Committee

or the Review Subcommittee, [the decision shall be reviewed by] the National Business Conduct Committee shall review the decision.

(3) *Stay*

Unless otherwise ordered by the National Business Conduct Committee, the initiation of a review under this paragraph shall stay the decision of the Department of Member Regulation or an uncontested notice until a decision constituting final action of the Association is issued.

(4) *Transmission of the Record*

If a review is initiated under this paragraph, the Department of Member Regulation shall assemble and prepare an index of the record, transmit the record and index to the National Business Conduct Committee, certify to the National Business Conduct Committee that the record is complete, and serve a copy of the record and index on the member.

[(4)] (5) *Ex Parte Communications*

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

(b) *Subcommittee Consideration*

(1) *Appointment of Subcommittee*

The National Business Conduct Committee shall appoint a Subcommittee to participate in the review. The Subcommittee shall be composed of two or more members. One member shall be a member of the National Business Conduct Committee, and the remaining member or members shall be current or former Directors of the NASD Regulation Board or former Governors of the NASD Board.

(2) *Oral Argument*

If oral argument is timely requested by the member, oral argument shall be held before the Subcommittee within 14 days after service of the decision under Rule 9413. If oral argument is ordered by the Subcommittee, oral argument shall be held before the Subcommittee within [seven] 14 days after service of the order under paragraph (a)(2). The member shall be entitled to be represented by an attorney. The oral argument shall be recorded and a transcript prepared by a court reporter.

The member may purchase a copy of the transcript from the court reporter at prescribed rates. [Any corrections to the

transcript shall be submitted within three days after the oral argument or within three days after receipt of the transcript, whichever is later.] *A witness may purchase a copy of the transcript of his or her own testimony from the court reporter at prescribed rates. Proposed corrections to the transcript may be submitted by affidavit to the Subcommittee within a reasonable time determined by the Subcommittee. Upon notice to the participants in the hearing, the Subcommittee may order corrections to the transcript as requested or sua sponte.*

### (3) Review on Record

[If oral argument is not requested or ordered, the] *The Subcommittee shall conduct its review on the basis of the record [and], any written submissions by the [Parties.] member and the Department of Member Regulation, and the decision issued pursuant to Rule 9413(i). If oral argument is requested or ordered, the Subcommittee also may consider any submissions or additional arguments by the member and the Department of Member Regulation.*

### (4) Additional Evidence

*The Subcommittee may consider any additional relevant and material evidence if the member shows good cause for not previously submitting such evidence. If additional evidence is accepted by the Subcommittee, the evidence shall be included in the record. Proffered evidence that is not accepted into the record by the Subcommittee shall be retained until the date when the Association's decision becomes final, or, if applicable, upon the conclusion of any review by the Commission or the federal courts.*

### (5) Recommendation

*The Subcommittee shall present a recommended decision in writing to the National Business Conduct Committee and all other Directors not later than seven days before the meeting of the National Business Conduct Committee at which the proceeding shall be considered.*

### (c) Decision

#### (1) Decision of National Business Conduct Committee, Including Remand

*After considering all matters presented in the review and the written recommended decision of the Subcommittee, the National Business Conduct Committee may affirm, modify, or reverse the [Department's] Department of Member Regulation's decision or remand the proceeding with instructions. The National Business Conduct Committee shall prepare a*

*proposed written decision pursuant to subparagraph (2).*

#### (2) Contents of Decision

*The decision shall include:*

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

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

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

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

*(E) if any limitations are imposed[,]: (i) a description of the limitations and a statement describing a fitting sanction that will be imposed under Rule 9417 if the member fails to comply with any of the limitations; and*

*(ii) the conditions for terminating the limitations.*

#### (3) Issuance of Decision After Expiration of Call for Review Period

*The National Business Conduct Committee shall provide its proposed written decision to the NASD Regulation Board, and, if the proceeding is not called for review by the NASD Regulation Board, to the NASD Board. The NASD Regulation Board may call the proceeding for review pursuant to Rule 9415. The NASD Board may call the proceeding for review pursuant to Rule 9416. If neither the NASD Regulation Board nor the NASD Board calls the proceeding for review, the proposed written decision of the National Business Conduct Committee shall become final, and the National Business Conduct Committee shall serve its written decision *on the member and the Department of Member Regulation* pursuant to Rules 9132 and 9134. *The decision shall be effective upon service.* The decision shall constitute the final action of the Association, unless the National Business Conduct Committee remands the proceeding.*

#### 9415. Discretionary Review by the NASD Regulation Board

##### (a) Call for Review by Director

*A Director may call a proceeding for review by the NASD Regulation Board if the call for review is made within the period prescribed in paragraph (b).*

##### (b) Seven Day Period; Waiver

*After receiving the proposed written decision of the National Business Conduct Committee pursuant to Rule*

*9414, a Director shall have not less than seven days to determine if the proceeding should be called for review. A Director shall call a proceeding for review by notifying the General Counsel of NASD Regulation. By a unanimous vote of the NASD Regulation Board, the NASD Regulation Board may shorten the period to less than seven days. By an affirmative vote of the majority of the NASD Regulation Board then in office, the NASD Regulation Board may, during the seven day period, vote to extend the period to more than seven days.*

##### (c) Review at Next Meeting

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

##### (d) Decision of NASD Regulation Board, Including Remand

*After review, the NASD Regulation Board may affirm, modify, or reverse the proposed written decision of the National Business Conduct Committee or remand the proceeding with instructions. The NASD Regulation Board shall prepare a proposed written decision that includes all of the elements described in Rule 9414(c)(2).*

##### (e) Issuance of Decision After Expiration of Call for Review Period

*The NASD Regulation Board shall provide its proposed written decision to the NASD Board. The NASD Board may call the proceeding for review pursuant to Rule 9416. If the NASD Board does not call the proceeding for review, the proposed written decision of the NASD Regulation Board shall become final, and the NASD Regulation Board shall serve its written decision *on the member and the Department of Member Regulation* pursuant to Rules 9132 and 9134. *The decision shall be effective upon service.* The decision shall constitute the final action of the Association, unless the NASD Regulation Board remands the proceeding.*

#### 9416. Discretionary Review by the NASD Board

##### (a) Call for Review by Governor

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

## (b) Seven Day Period; Waiver

## (1) Proceeding Called for Review by NASD Regulation Board

If the NASD Regulation Board reviewed the proceeding under Rule 9415, a Governor shall make his or her call for review not later than the next meeting of the NASD Board that is at least seven days after the date on which the NASD Board receives the proposed written decision of the NASD Regulation Board.

## (2) Proceeding Not Called for Review by NASD Regulation Board

If no Director of the NASD Regulation Board called the proceeding for review under Rule 9415, a Governor shall make his or her call for review not later than the next meeting of the NASD Board that is at least seven days after the date on which the NASD Board receives the proposed written decision of the National Business Conduct Committee.

## (3) Waiver

By a unanimous vote of the NASD Board, the NASD Board may shorten the period in subparagraph (1) or (2) to less than seven days. By an affirmative vote of the majority of the NASD Board then in office, the NASD Board may, during the seven day period in subparagraph (1) or (2), vote to extend the period in subparagraph (1) or (2) to more than seven days.

## (c) Review at Next Meeting

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

## (d) Decision of NASD Board, Including Remand

After review, the NASD Board may affirm, modify, or reverse: (1) the proposed written decision of the NASD Regulation Board, or (2) if the NASD Regulation Board did not call [a] the proceeding for review under Rule 9415, the proposed written decision of the National Business Conduct Committee. Alternatively, the NASD Board may remand the proceeding with instructions. The NASD Board shall prepare a written decision that includes all of the elements described in Rule 9414(c)(2).

## (e) Issuance of Decision

The NASD Board shall issue and serve its written decision *on the member and the Department of Member*

*Regulation* pursuant to Rules 9132 and 9134. *The decision shall be effective upon service.* The decision shall constitute the final action of the Association, unless the NASD Board remands the proceeding.

## 9417. Enforcement of Sanctions

## (a) Order

If the Department of Member Regulation determines that a member has failed to comply with any limitations imposed by a decision [under Rule 9413, 9414, 9415, or 9416,] or an effective notice under [Rule 9413(d),] *the Rule 9410 Series that has not been stayed*, the Department of Member Regulation shall issue an order [to be served pursuant to Rules 9132 and 9134] imposing the sanctions set forth in the decision or notice and specifying the effective date and time of such sanctions. *The Department of Member Regulation shall serve the order on the member by facsimile or overnight commercial courier.*

## (b) Hearing

(1) A member aggrieved by an order issued under paragraph (a) may file a written request for a hearing before the Department of Member Regulation. The request shall be filed pursuant to Rules 9135, 9136, and 9137 within [four days] *seven days (including intermediate Saturdays, Sundays, and Federal holidays)* after service of the order. *The hearing shall be held within ten days after service of the order under paragraph (a).*

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

(3) The hearing shall be recorded and a transcript prepared by a court reporter. The member may purchase a copy of the transcript from the court reporter *at prescribed rates.* [Any corrections to the transcript shall be submitted within two days after the hearing or within two days after receipt of the transcript, whichever is later.] *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 Department of Member Regulation within a reasonable time determined by the Department of Member Regulation. Upon notice to the participants in the hearing, the Department of Member Regulation may order corrections to the transcript as requested or sua sponte.*

## (c) No Stay of Sanctions

*Unless otherwise ordered by the National Business Conduct Committee,*

*a request for a hearing pursuant to this Rule shall not stay the effectiveness of the order issued under paragraph (a).*

## [(c)] (d) Decision

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

## 9418. Additional Limitations; [Modification] Reduction or Removal of Limitations

## (a) Additional Limitations

If a member continues to experience financial or operational difficulty specified in Rule 3130 or 3131, notwithstanding an effective notice or decision under the Rule 9410 Series, the Department of Member Regulation may impose additional limitations by issuing a notice under Rule 9412. *The notice shall state that the member may apply for relief from the additional limitations by filing a written application for a hearing under Rule 9413 and that the procedures in Rules 9413 through 9417 shall be applicable. An application for a hearing also shall include a detailed statement of the member's objections to the additional limitations.*

## (b) [Modification] Reduction or Removal of Limitations

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

## 9419. Application to Commission for Review; Other Action Not Foreclosed

(a) [Any person aggrieved by final action pursuant to the Rule 9410 Series may apply for review by the Commission under] *The right to have any action taken by the Association pursuant to this Rule Series reviewed by the Commission is governed by Section 19 of the Act. The filing of an application for review shall not stay the effectiveness of [final] the action taken by the Association, unless the Commission otherwise orders.*

(b) Action by the Association under the Rule 9410 Series shall not foreclose action by the Association under any other Rule.

[9420. Approval of Change in Business Operations That Will Result in a Change in Exemptive Status under SEC Rule 15c3-3]

[9421. Purpose]

[The Rule 9420 Series sets forth procedures for Rule 3140, which requires the Association's approval of a change in a member's business activities that will result in a change in the member's exemptive status under SEC Rule 15c3-3.]

[9422. Department of Member Regulation Consideration]

[(a) Application]

[A member shall apply for approval of a change in its business operation that will result in a change in its exemptive status under SEC Rule 15c3-3 by filing a written application with the Department of Member Regulation (hereinafter "Department" in the 9420 Rule Series) at the district office in the district in which it has its principal place of business. The application shall address the criteria set forth in Rule 3140 and shall be filed pursuant to Rules 9135, 9136, and 9137.]

[(b) Decision]

[Within 21 days after receipt of the application, the Department shall issue a decision approving or denying the application in whole or in part. If the decision denies the application in whole or in part, the decision shall set forth the specific grounds for such action. The decision shall provide a fitting sanction to be imposed in accordance with Rule 9426 if the member fails to comply with any limitations imposed. The Department shall serve the decision pursuant to Rules 9132 and 9134.]

[9423. National Business Conduct Committee Review]

[(a) Initiation of Review]

[(1) Application by Member]

[A member aggrieved by a decision issued under Rule 9422 may file a written application for review by the National Business Conduct Committee. The application shall state the specific grounds for the review and whether oral argument is requested. The application shall be filed pursuant to Rules 9135, 9136, and 9137 within seven days after service of the decision. The member may withdraw its application at any time by filing a written notice with the National Business Conduct Committee pursuant to Rules 9135, 9136, and 9137.]

[(2) Motion of National Business Conduct Committee]

[A decision issued under Rule 9422 shall be subject to a call for review by any member of the National Business Conduct Committee or the Review Subcommittee described in Rule 9312(a)(1) within 30 days after service of the decision. If the National Business Conduct Committee or the Review Subcommittee calls a decision for review, a written notice of review shall be served promptly on the member pursuant to Rules 9132 and 9134. The written notice of review shall state the specific grounds for the review and whether oral argument is ordered. If a decision is called for review by any member of the National Business Conduct Committee or the Review Subcommittee, the decision shall be reviewed by the National Business Conduct committee.]

[(3) No Stay of Action]

[Unless otherwise ordered by the National Business Conduct Committee, the initiation of a review under this paragraph shall not stay the decision of the Department.]

[(4) Ex Parte Communications]

[The prohibitions against ex parte communications in Rule 9143 shall become effective under the Rule 9420 Series when Association staff has knowledge that a member intends to file a written application for review or that the National Business Conduct Committee intends to review a decision on its own motion under this Rule.]

[(b) Subcommittee Consideration]

[(1) Appointment of Subcommittee]

[The National Business Conduct Committee shall appoint a Subcommittee to participate in the review. The Subcommittee shall be composed of two or more members. One member shall be a member of the National Business Conduct Committee, and the remaining member or members shall be current or former Directors of the NASD Regulation Board or former Governors of the NASD Board.]

[(2) Oral Argument]

[If oral argument is requested by the member, oral argument shall be held before the Subcommittee within 14 days after service of the decision under Rule 9422. If oral argument is ordered by the Subcommittee, oral argument shall be held before the Subcommittee within seven days after service of the order. The oral argument shall be recorded and a transcript prepared by a court reporter. The member may purchase a copy of the

transcript from the court reporter. Any corrections to the transcript shall be submitted within three days after the oral argument or within three days after receipt of the transcript, whichever is later.]

[(3) Review on Record]

[If oral argument is not requested or ordered, the Subcommittee shall conduct its review on the basis of the record and any written submissions by the Parties.]

[(4) Additional Evidence]

[The Subcommittee may consider additional evidence if the member shows good cause for not previously submitting such evidence.]

[(5) Recommendation]

[The Subcommittee shall present a recommended decision in writing to the National Business Conduct Committee and all other Directors not later than seven days before the meeting of the National Business Conduct Committee at which the proceeding shall be considered.]

[(c) Decision]

[(1) Decision of National Business Conduct Committee, Including Remand.]

After considering all matters presented in the review and the written recommended decision of the Subcommittee, the National Business Conduct Committee may affirm, modify, or reverse the Department's decision or remand the proceeding with instructions. The National Business Conduct Committee shall prepare a proposed written decision pursuant to subparagraph (2).]

[(2) Contents of Decision]

[The decision shall include:

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

(B) a description of the principal issues regarding the change in the member's exemptive status raised in the review and a statement supporting the disposition of such issues;

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

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

(E) if any limitations are imposed, a description of the limitations and a statement describing a fitting sanction that will be imposed under Rule 9426 if the member fails to comply with any of the limitations.]

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

[The National Business Conduct Committee shall provide its proposed written decision to the NASD Regulation Board, and, if the proceeding is not called for review by the NASD Regulation Board, to the NASD Board. The NASD Regulation Board may call the proceeding for review pursuant to Rule 9424. The NASD Board may call the proceeding for review pursuant to Rule 9425. If neither the NASD Regulation Board nor the NASD Board calls the proceeding for review, the proposed written decision of the National Business Conduct Committee shall become final, and the National Business Conduct Committee shall serve its written decision pursuant to Rules 9132 and 9134. The decision shall constitute the final action of the Association, unless the National Business Conduct Committee remands the proceeding.]

[9424. Discretionary Review by the NASD Regulation Board]

[(a) Call for Review by Director]

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

[(b) Seven Day Period; Waiver]

[After receiving the proposed written decision of the National Business Conduct Committee pursuant to Rule 9423, a Director shall have not less than seven days to determine if the proceeding should be called for review. A Director shall call a proceeding for review by notifying the General Counsel of NASD Regulation. By a unanimous vote of the NASD Regulation Board, the NASD Regulation Board may shorten the period to less than seven days. By an affirmative vote of the majority of the NASD Regulation Board then in office, the NASD Regulation Board may, during the seven day period, vote to extend the period to more than seven days.]

[(c) Review at Next Meeting]

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

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

[After review, the NASD Regulation Board may affirm, modify, or reverse the

proposed written decision of the National Business Conduct Committee or remand the proceeding with instructions. The NASD Regulation Board shall prepare a proposed written decision that includes all of the elements described in Rule 9423(c)(2).]

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

[The NASD Regulation Board shall provide its proposed written decision to the NASD Board. The NASD Board may call the proceeding for review pursuant to Rule 9425. If the NASD Board does not call the proceeding for review, the proposed written decision of the NASD Regulation Board shall become final, and the NASD Regulation Board shall serve its written decision pursuant to Rules 9132 and 9134. The decision shall constitute the final action of the Association, unless the NASD Regulation Board remands the proceeding.]

[9425. Discretionary Review by NASD Board]

[(a) Call for Review by Governor]

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

[(b) Seven Day Period; Waiver]

[(1) Proceeding Called for Review by NASD Regulation Board]

[If the NASD Regulation Board reviewed the proceeding under Rule 9424, a Governor shall make his or her call for review not later than the next meeting of the NASD Board that is at least seven days after the date on which the NASD Board receives the proposed written decision of the NASD Regulation Board.]

[(2) Proceeding Not Called for Review by NASD Regulation Board]

[If no Director of the NASD Regulation Board called the proceeding for review under Rule 9424, a Governor shall make his or her call for review not later than the next meeting of the NASD Board that is at least seven days after the date on which the NASD Board receives the proposed written decision of the National Business Conduct Committee.]

[(3) Waiver]

[By a unanimous vote of the NASD Board, the NASD Board may shorten the period in subparagraph (1) or (2) to less than seven days. By an affirmative vote of the majority of the NASD Board then in office, the NASD Board may, during the seven day period in subparagraph (1) or (2), vote to extend the period in

subparagraph (1) or (2) to more than seven days.]

[(c) Review at Next Meeting]

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

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

[After review, the NASD Board may affirm, modify, or reverse: (1) the proposed written decision of the NASD Regulation Board, or (2) if the NASD Regulation Board did not call a proceeding for review under Rule 9424, the proposed written decision of the National Business Conduct Committee. Alternatively, the NASD Board may remand the proceeding with instructions. The NASD Board shall prepare a written decision that includes all of the elements described in Rule 9423(c)(2).]

[(e) Issuance of Decision]

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

[9426. Enforcement of Sanctions]

[(a) Order]

[If the Department determines that a member has failed to comply with limitations imposed by a decision under Rule 9422, 9423, 9424, or 9425, the Department shall issue an order to be served pursuant to Rules 9132 and 9134 imposing the sanctions set forth in the decision and specifying the effective date and time of such sanctions.]

[(b) Hearing]

[A member aggrieved by an order issued under paragraph (a) may file a written request for a hearing before the Department. The request shall be filed pursuant to Rule 9135, 9136, and 9137 within four days after service of the order. The member shall be entitled to be heard in person, to be represented by an attorney, and to submit any relevant evidence. The hearing shall be recorded and a transcript prepared by a court reporter. The member may purchase a copy of the transcript from the court reporter. Any corrections to the transcript shall be submitted within two days after the hearing or within two days after receipt of the transcript, whichever is later.]

## [(c) Decision]

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

## [9427. Application to Commission for Review]

[Any person aggrieved by final action pursuant to the Rule 9420 Series may apply for review by the Commission under Section 19 of the Act. The filing of an application for review shall not stay the effectiveness of final action by the Association, unless the Commission otherwise orders.]

**9500. Suspension, Cancellation, Bar, Denial of Access, and Eligibility Procedures**

## [9510. Procedures for Summary Suspension by NASD]

## [9511. Purpose]

[Section 15A(h)(3) of the Act authorizes a registered securities association to summarily: (1) Suspend a member or person associated with a member 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) suspend a member who is in such financial or operating difficulty that the association determines and so notifies the Commission that the member cannot be permitted to continue to do business as a member with safety to investors, creditors, other members, or the association, or (3) limit or prohibit any person with respect to access to services offered by the association if (1) or (2) applies to such person or, in the case of a person who is not a member, if the association determines that such person does not meet the qualification requirements or other prerequisites for such access and such person cannot be permitted to continue to have such access with safety to investors, creditors, members, or the association.

Summary suspension procedures for the grounds listed in Section 15A(h)(3) of the Act are set forth in the Rule 9510 Series. Other procedures for suspending the membership of a member, suspending the registration of an associated person, or suspending a person from association with any member are found in Rules 8220, 8320, and 9520.]

## [9512. Notice]

## [(a) Authorization]

[The NASD Board may authorize the President of NASD Regulation or Nasdaq to issue a written notice that:

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

(3) Limits or prohibits any person with respect to access to services offered by the Association if subparagraph (1) or (2) applies to such person or, in the case of a person who is not a member, if the NASD Board determines that such person does not meet the qualification requirements or other prerequisites for such access and such person cannot be permitted to continue to have such access with safety to investors, creditors, members, or the Association.]

## [(b) Contents and Service of Notice]

[A notice issued under this Rule shall state the specific grounds for the summary suspension and state that the member or associated person may file a written request for a hearing under Rule 9513. The notice shall be served by facsimile or pursuant to Rules 9131 and 9134. A copy of a notice served on a person who is associated with a member shall be served on such member pursuant to Rule 9134.]

## [(c) Effective Date]

[A summary suspension shall be effective on the date and time specified in the notice.]

## [9513. Hearing and Decision]

## [(a) Request]

## [(1) Request by Member or Associated Person]

[A member or associated person subject to a summary suspension may file a written request for a hearing with the NASD Board. The request shall state the specific grounds for reversing the summary suspension. The request shall be filed pursuant to Rules 9135, 9136, and 9137 within ten days after service of the notice under Rule 9512. The member or associated person may withdraw its request for a hearing by

filing a written notice with the NASD Board pursuant to Rules 9135, 9136, and 9137.]

## [(2) Failure To File Request]

[If the member or associated person subject to a summary suspension does not file a written request for a hearing under subparagraph (1), the notice of summary suspension shall constitute final action by the Association.]

## [(3) No Stay of Summary Suspension]

[A request for a hearing shall not stay the effectiveness of a summary suspension under Rule 9512.]

## [(b) Hearing Panel Consideration]

## [(1) Appointment of Hearing Panel]

[If a member or associated person subject to a summary suspension files a written request for a hearing, a hearing shall be held before a Hearing Panel within 15 days after service of the notice under Rule 9512. The Hearing Panel shall be composed of two or more members. One member shall be a Governor of the NASD Board, and the remaining member or members shall be current or former members of the NASD Regulation Board, the Nasdaq Board, or the NASD Board.]

## [(2) Rights of Member or Associated Person]

[A member or associated person subject to a summary suspension shall be entitled to be heard in person, to be represented by an attorney, and to submit any relevant evidence.]

## [(3) 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.]

## [(4) Recordation of Hearing]

[The hearing shall be recorded and a transcript prepared by a court reporter. The member or associated person may purchase a copy of the transcript from the court reporter. Any corrections to the transcript shall be submitted within three days after the hearing or within three days after receipt of the transcript, whichever is later.]

## [(c) Decision]

## [(1) Decision of the Hearing Panel]

[The Hearing Panel shall affirm, modify, or reverse the summary suspension. The Hearing Panel shall prepare a proposed written decision pursuant to subparagraph (2).]

**[(2) Contents of Decision]**

[The decision shall include a statement describing the investigative or other origin of the proceeding, the grounds for issuing the notice under Rule 9512, and a rationale for the disposition of the proceeding, and, if a suspension continues to be imposed, the specific grounds for imposing such sanction and the terms of the suspension.]

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

[The Hearing Panel shall provide its proposed written decision to the NASD Board. The NASD Board may call the proceeding for review pursuant to Rule 9514. If the NASD Board does not call the proceeding for review, the proposed written decision of the Hearing Panel shall become final, and the Hearing Panel shall serve its written decision pursuant to Rules 9132 and 9134. The decision shall constitute final action of the Association.]

**[9514. Discretionary Review by the NASD Board]****[(a) Call for Review by Governor]**

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

**[(b) Seven Day Period; Waiver]**

[After receiving the proposed written decision of the Hearing Panel pursuant to Rule 9513, a Governor shall have not less than seven days to determine if the decision should be called for review. A Governor shall call the proceeding for review by notifying the General Counsel of the NASD. By a unanimous vote of the NASD Board, the NASD Board may shorten the period to less than seven days. By an affirmative vote of the majority of the NASD Board then in office, the NASD Board may, during the seven day period, vote to extend the period in to more than seven days.]

**[(c) Review at Next Meeting]**

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

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

[After review, the NASD Board may affirm, modify, or reverse the proposed written decision of the Hearing Panel.

Alternatively, the NASD Board may remand the proceeding with instructions. The NASD Board shall prepare a written decision that includes all of the elements of Rule 9513(c)(2).]

**[(e) Issuance of Decision]**

[The NASD Board shall issue and serve its decision pursuant to Rules 9132 and 9134. The decision shall constitute the final action of the Association, unless the NASD Board remands the proceeding.]

**[9515. Application to Commission for Review]**

[Any person aggrieved by final action pursuant to the Rule 9510 Series may apply for review by the Commission under Section 19 of the Act. The filing of an application for review by the Commission shall not stay the effectiveness of final action by the Association, unless the Commission otherwise orders.]

**[9516. Other Action Not Foreclosed]**

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

***9510. Procedures for Summary and Non-Summary Suspension, Cancellation, Bar, Limitation, or Prohibition******9511. Purpose and Computation of Time******(a) Purpose***

*(1) The purpose of the Rule 9510 Series is to set forth procedures for certain suspensions, cancellations, bars, and limitations and prohibitions on access to the Association's services authorized by the Act and the NASD By-Laws. Pursuant to Section 15A(h)(3) of the Act, the Association may summarily:*

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

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

*(C) limit or prohibit any person with respect to access to services offered by the Association if subparagraph (A) or (B) applies to such person, or in the case of a person who is not a member, if the Association determines that such*

*person does not meet the qualification requirements or other prerequisites for such access and such person cannot be permitted to continue to have such access with safety to investors, creditors, members, or the Association.*

*(2) The Association also may take the following actions, after notice and opportunity for hearing:*

*(A) cancel the membership of a member that becomes ineligible for continuance in membership, or that continues to be associated with an ineligible person, or suspend or bar a person from continuing to be associated with a member because such person is or becomes ineligible for association under Article II, Section 3 of the NASD By-Laws;*

*(B) suspend or cancel the membership of a member or the registration of a person for failure to pay fees, dues, assessments, or other charges; failure to submit a required report or information related to such payment; or failure to comply with arbitration award or a settlement agreement related to an arbitration or mediation under Article V, Section 2 of the NASD By-Laws;*

*(C) cancel the membership of a member for failure to file or submit on request any report, document, or other information required to be filed with or requested by the Association under Article VI, Section 2 of the NASD By-Laws; and*

*(D) limit or prohibit any member, associated person, or other person with respect to access to services offered by the Association or a member thereof if the Association determines that such person does not meet the qualification requirements or other prerequisites for such access or such person cannot be permitted to continue to have such access with safety to investors, creditors, members, or the Association.*

*(3) Other procedures for suspending the membership of a member, suspending the registration of an associated person, or suspending a person from association with any member are found in the Rule 8220 Series and Rule 8320. Procedures for listing qualification matters are found in the Rule 9700 Series; the Rule 9510 Series does not apply to listing qualification matters.*

***(b) Computation of Time***

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

**9512. Initiation of Proceedings for Summary Suspension, Limitation, or Prohibition**

**(a) Authorization**

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

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

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

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

**(b) Contents and Service of Notice**

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

**(c) Effective Date**

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

**9513. Initiation of Proceeding for Non-Summary Suspension, Cancellation, Bar, Limitation, or Prohibition**

**(a) Notice**

Association staff shall initiate a proceeding authorized under Section 3 of Article II, Section 2 of Article V, or Section 2 of Article VI of the NASD By-Laws, or Rule 9511(a)(2)(D), by issuing

a written notice to the member, associated person, or other person. The notice shall specify the grounds for and effective date of the cancellation, suspension, bar, limitation, or prohibition and shall state that the member, associated person, or other person may file a written request for a hearing under Rule 9514. The notice shall be served by facsimile or overnight commercial courier.

**(b) Effective Date**

For any cancellation, suspension, or bar under Section 3 of Article II of the NASD By-Laws, the effective date shall be at least seven days after service of the notice on the member or associated person. For any cancellation or suspension under Section 2 of Article V or Section 2 of Article VI of the NASD By-Laws, the effective date shall be at least 15 days after service of the notice on the member or associated person. For any limitation or prohibition on access to services offered by the Association or a member thereof pursuant to Rule 9511(a)(2)(D), the effective date shall be upon receipt of the notice with respect to services to which the member, associated person, or other person does not have access and shall be at least seven days after service of the notice with respect to services to which the member, associated person, or other person already has access.

**9514. Hearing and Decision**

**(a) Request**

**(1) Request by Member, Associated Person, or Other Person**

A member, associated person, or other person who is subject to a notice issued under Rule 9512(a) or 9513(a) may file a written request for a hearing with the Association. The request shall state either the specific grounds for reversing the summary suspension, limitation, or prohibition or for opposing the cancellation, suspension, bar, limitation, or prohibition. The request shall be filed pursuant to Rules 9135, 9136, and 9137 within seven days after service of the notice under Rule 9512 or 9513. The member, associated person, or other person may withdraw its request for a hearing at any time by filing a written notice with the Association pursuant to Rules 9135, 9136, and 9137.

**(2) Failure To File Request**

If the member, associated person, or other person subject to the notice issued under Rule 9512(a) or 9513(a) does not file a written request for a hearing under subparagraph (1), the notice shall

constitute final action by the Association.

**(3) Ex Parte Communications**

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

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

If a member, associated person, or other person subject to a notice under Rule 9512 or 9513 files a written request for a hearing, an appropriate department or office of the Association shall be designated as a Party in the proceeding, and a Hearing Panel shall be appointed.

(1) If the President of NASD Regulation or NASD Regulation staff issued the notice initiating the proceeding under Rule 9512(a) or 9513(a), the President of NASD Regulation shall designate an appropriate NASD Regulation department or office as a Party, and the NASD Regulation Board shall appoint a Hearing Panel. The Hearing Panel shall be composed of two or more members. One member shall be a Director of NASD Regulation, and the remaining member or members shall be a current or former Director of NASD Regulation or a former Governor of the NASD. The President of NASD Regulation may not serve on the Hearing Panel.

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

**(c) Stays**

**(1) Summary Suspension, Limitation, or Prohibition**

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

**(2) Non-Summary Cancellation, Suspension, Bar, Limitation, or Prohibition**

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

**(d) Time of Hearing****(1) Summary Suspension**

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

**(2) Non-Summary Suspension, Cancellation, Bar, Limitation or Prohibition**

If a member, associated person, or other person who is subject to a notice issued under Rule 9513(a) files a written request for a hearing, a hearing shall be held within 21 days after the filing of the request for hearing. The Hearing Panel may, during the initial 21 day period, extend the time in which the hearing shall be held by an additional 21 days on its own motion or at the request of a Party. Not less than five days before the hearing, the Hearing Panel shall provide written notice to the Parties of the location, date, and time of the hearing by facsimile or overnight commercial courier.

**(e) Transmission of Documents**

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

(2) Not less than five days before the hearing, the Parties shall exchange

proposed exhibit and witness lists. The exhibit and witness lists shall be served by facsimile or by overnight commercial courier.

**(f) Hearing Panel Consideration****(1) Rights of Parties**

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

**(2) Witnesses**

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

**(3) Recordation of Hearing**

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

**(4) Record**

The record shall consist of: (1) The notice issued under Rule 9512 or 9513; (2) all documents transmitted by the Association under Rule 9514(e)(1); (3) the request for hearing; (4) any other submissions by the Parties; (5) any evidence considered at the hearing; and (6) the transcript of the hearing and any corrections thereto.

**(5) Custodian of the Record**

If the President of NASD Regulation or NASD Regulation staff initiated the proceeding under Rule 9512 or 9513, the Office of the General Counsel of NASD Regulation shall be the custodian of the record. If the President of Nasdaq or Nasdaq staff initiated the proceeding under Rule 9512 or 9513, the Office of the General Counsel of Nasdaq shall be the custodian of the record.

**(6) Evidence Not Admitted**

Evidence that is proffered but not admitted during the hearing shall not be part of the record, but shall be retained by the custodian of the record until the date when the Association's decision becomes final or, if applicable, upon the

conclusion of any review by the Commission or the federal courts.

**(g) Decision of the Hearing Panel****(1) Summary Suspension, Limitation, or Prohibition**

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

**(2) Non-Summary Suspension, Cancellation, Bar, Limitation, or Prohibition**

Based on its review if the record, the Hearing Panel shall decide whether a cancellation, suspension, bar, limitation, or prohibition shall be imposed or continue to be imposed. The Hearing panel shall prepare a proposed written decision pursuant to subparagraph (3).

**(3) Contents of Decision**

The decision shall include:

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

(B) A statement describing the investigative or other origin of the proceeding;

(C) The grounds for issuing the notice under Rule 9512 or 9513;

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

(E) A statement in support of the disposition of the principal issues raised in the proceedings; and

(F) If a summary suspension, limitation, or prohibition continues to be imposed, the specific grounds for imposing such suspension, limitation, or prohibition, and the terms of the suspension, limitation, or prohibition, or, if a non-summary suspension, cancellation, bar, limitation, or prohibition is to be imposed or continue to be imposed, the effective date, time, and terms of the suspension, cancellation, bar, limitation, or prohibition.

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

The Hearing Panel shall provide its proposed written decision to the NASD Board. The NASD Board may call the proceeding for review pursuant to Rule 9515. If the NASD Board does not call the proceeding for review, the proposed written decision of the Hearing Panel shall become final, and the Hearing Panel shall serve its written decision on the Parties pursuant to Rules 9132 and

9134. The decision shall be effective upon service and shall constitute the final action of the Association.

9515. Discretionary Review by the NASD Board

(a) Call for Review by Governor

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

(b) Seven Day Period; Waiver

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

(c) Review at Next Meeting

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

(d) Decision of the NASD Board, Including Remand

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

(e) Issuance of Decision

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

9516. Reinstatement

A member, associated person, or other person who has been suspended or limited by a final action of the Association after a non-summary proceeding under the Rule 9510 Series may file a written request for reinstatement on the ground of full compliance with the conditions of the suspension or limitation. The request shall be filed with the department or office of the Association that acted as a Party in the proceeding. The head of the

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

9517. Copies of Notices and Decisions to Members

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

9518. Application to Commission for Review

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

9519. Other Action Not Foreclosed; Costs

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

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

[9520. Non-Summary Suspension, Cancellation, and Bar Procedures]

[9521. Purpose]

[(a) The rule 9520 Series sets forth procedures for the Association to:

(1) Cancel the membership of a member that becomes ineligible for continuance in membership, or that continues to be associated with an ineligible person, or suspend or bar a person from continuing to be associated with a member because such person is or becomes ineligible for association under Article III, Section 3 of the NASD By-Laws;

(2) Suspend or cancel the membership of a member or the registration of a person for failure to pay fees, dues,

assessments, or other charges; failure to submit a required report or information related to such payment; or failure to comply with an arbitration award or a settlement agreement related to an arbitration or mediation under Article VI, Section 3 of the NASD By-Laws; and

(3) Cancel the membership of a member for failure to file or submit on request any report, document, or other information required to be filed with or requested by the Association under Article VII, Section 2 of the NASD By-Laws.]

[(b) Procedures for summarily suspending a member or associated person on grounds set forth in Section 15A(h)(2) of the Act are found in the Rule 9510 Series. Other procedures for suspending a member or associated person for failure to submit required information or failure to pay fines, monetary sanctions, or costs are found in Rules 8220 and 8320, respectively.]

[9522. Initiation of Proceeding]

[(a) Notice]

[Association of staff shall initiate a proceeding authorized under Section 3 of Article III, Section 3 of Article VI, or Section 2 of Article VII of the NASD By-Laws by sending a written notice to the member or associated person. The notice shall specify the grounds for and effective date of the cancellation, suspension, or bar and shall state that the member or associated person may file a written request for a hearing. The notice shall be served by facsimile or pursuant to Rule 9131 and 9134.]

[(b) Copy of Notice to Member]

[A copy of a notice served on a person associated with a member shall be served on such member pursuant to Rule 9134.]

[(c) Effective Date]

[For any cancellation, suspension, or bar under Section 3 of Article III of the NASD By-Laws, the effective date shall be at least seven days after service of the notice on the member or associated person. For any cancellation or suspension under Section 3 of Article VI or Section 2 of Article VII of the NASD By-Laws, the effective date shall be at least 15 days after service of the notice on the member or associated person.]

[9523. Hearing Panel Consideration]

[(a) Request for Hearing]

[A member or associated person who receives a notice under Rule 9522(a) may file a written request for a hearing with the NASD Regulation Board. The request shall be filed pursuant to Rules 9135, 9136, and 9137 before the

effective date set forth in the notice. The request shall state the grounds for opposing the cancellation, suspension, or bar. The member or associated person may withdraw its request at any time by filing a written notice with the NASD Regulation Board pursuant to Rules 9135, 9136, and 9137.]

[(b) Stay of Action]

[Unless otherwise ordered by the NASD Regulation Board, a request for a hearing under paragraph (a) shall stay the notice issued under Rule 9522.]

[(c) Appointment of Hearing Panel]

[If a member or associated person files a request for a hearing, the NASD Regulation Board shall appoint a Hearing Panel to conduct a hearing. The Hearing Panel shall be composed of two or more current or former Directors of the NASD Regulation Board.]

[(d) Rights of Member]

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

[(e) 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.]

[(f) Recordation of Hearing]

[The hearing shall be recorded and a transcript prepared by a court reporter. The member or associated person may purchase a copy of the transcript from the court reporter. Any corrections to the transcript shall be submitted within three days after the hearing or within three days after receipt of the transcript, whichever is later.]

[(g) Decision]

[(1) Decision of Hearing Panel]

[The Hearing Panel shall decide whether a cancellation, suspension, or bar shall be imposed. The Hearing Panel shall prepare a proposed written decision pursuant to subparagraph (2).]

[(2) Contents of Decision]

[The decision shall include:]

(A) An identification of the article of the NASD By-Laws that authorizes the proceedings;

(B) A statement describing the origin of the proceeding;

(C) A statement of the nature of the ineligibility or the failure to take action that is at issue;

(D) A statement of findings of fact and conclusions as to any violations of the By-Laws;

(E) A rationale for the disposition of the proceeding; and,

(F) If a suspension, cancellation, or bar is imposed, the effective date and time and the terms of the sanction.]

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

[The Hearing Panel shall provide its proposed written decision to the NASD Board. The NASD Board may call the proceeding for review pursuant to Rule 9524. If the NASD Board does not call the proceeding for review, the proposed written decision of the Hearing Panel shall become final, and the Hearing Panel shall serve its written decision pursuant to Rules 9132 and 9134. The decision shall constitute final action of the Association.]

[9524. Discretionary Review by NASD Board]

[(a) Call for Review by Governor]

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

[(b) Seven Day Period; Waiver]

[After receiving the proposed written decision of the Hearing Panel pursuant to Rule 9523, a Governor shall have not less than seven days to determine if the decision should be called for review. A Governor shall call a proceeding for review by notifying the General Counsel of the NASD. By a unanimous vote of the NASD Board, the NASD Board may shorten the period to less than seven days. By an affirmative vote of the majority of the NASD Board then in office, the NASD Board may, during the seven day period, vote to extend the period to more than seven days.]

[(c) Review at Next Meeting]

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

[(d) Decision and Final Action of the Association]

[After review, the NASD Board may affirm, modify, or reverse the decision of the Hearing Panel or remand the proceeding with instructions. The NASD Board shall prepare a written decision that includes all of the elements of Rule 9523(g)(2).]

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

[The NASD Board shall issue and serve its decision pursuant to Rules 9132 and 9134. The decision shall constitute final action of the Association, unless the NASD Board remands the proceeding.]

[9525. Application to Commission for Review]

[Any person aggrieved by final action pursuant to the Rule 9520 Series may apply for review by the Commission under Section 19 of the Act. The filing of an application for review shall not stay the effectiveness of final action by the Association, unless the Commission otherwise orders.]

[9526. Other Action Not Foreclosed]

[Action by the Association under the Rule 9520 Series shall not foreclose action by the Association under any other Rule.]

[9530] 9520. Eligibility Proceedings

[9531] 9521. Purpose

The Rule [9530] 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 Section 3(a)(39) of the Act and for a current member or person associated with [any] a member to obtain relief from the eligibility or qualification requirements of the NASD By-Laws and the Rules of the Association. Such actions hereinafter are referred to as "eligibility proceedings."

[9532] 9522. Initiation of Eligibility Proceedings

(a) Notice of Disqualification or Ineligibility

(1) Issuance

If [the Department of Member Regulation (hereinafter "Department" in the Rule 9530 Series)] *Association staff* has reason to believe that a statutory disqualification exists or that a member or person associated with a member otherwise fails to meet the eligibility requirements of the Association, [the Department] *Association staff* shall issue a written notice to the member or associated person. The notice shall specify the grounds for such disqualification or ineligibility.

(2) Notice to Member

A notice issued to a member that is subject to a statutory disqualification or is otherwise ineligible for membership shall state that the member may apply for relief by filing a written application for relief with the [Department] *National*

*Business Conduct Committee* within [seven] *ten* days after service of the notice.

(3) Notice to Associated Person

A notice issued to an associated person who is subject to a statutory disqualification or is otherwise ineligible for association shall state that [the member with which the person is or may become associated] *a member* may apply for relief on behalf of itself and such person by filing a written application for relief with the [Department] *National Business Conduct Committee* within [seven] *ten* days after service of the notice.

(4) Service

A notice issued under this section shall be served by facsimile or pursuant to Rules 9131 and 9134.

(b) Application by Member

A member shall file a written application for relief from the eligibility requirements of the Association with the [Department] *National Business Conduct Committee* if the member:

- (1) Determines that it is subject to a statutory disqualification or otherwise is no longer eligible for membership;
- (2) Determines that a person associated with it is subject to a statutory disqualification or otherwise is no longer eligible for association with the member; or
- (3) Wishes to sponsor the association of a person who is subject to a statutory disqualification or otherwise is ineligible for association with a member.

(c) Form of Application for Relief

A written application for relief shall be submitted on Form MC400 and shall include a detailed statement demonstrating why the requested relief should be granted.

(d) Withdrawal of Application

A member may withdraw its application for relief at any time by filing a written notice with the [Department] *National Business Conduct Committee* pursuant to Rules 9135, 9136, and 9137.

(e) Ex Parte Communications

The prohibitions against ex parte communications set forth in Rule 9143 shall become effective under the Rule [9530] *9520* Series when [the Department of Member Regulation] *Association staff* has initiated the eligibility proceeding and Association staff has knowledge that a member intends to file a written application for relief with the [Department] *National Business Conduct Committee*.

[9533] *9523*. National Business Conduct Committee Consideration

(a) Hearing Panel Consideration

(1) Appointment of Hearing Panel

If a member files an application for relief, the National Business Conduct Committee shall appoint a Hearing Panel composed of two or more members, who shall be current or former Directors of the NASD Regulation Board or former Governors of the NASD Board. The Hearing Panel shall conduct a hearing and recommend a decision on the request for relief.

(2) Notice of Hearing

*Not less than fourteen days before the hearing, the member shall be notified via facsimile or commercial courier of the location, time, and date of the hearing.*

(3) Transmission of Documents

*(i) If Association staff initiated the eligibility proceeding by issuing a notice under Rule 9522(a), Association staff shall provide to the member and its current or prospective associated person all documents that were relied on in issuing the notice. Such documents shall be served on the member and its current or prospective associated person by facsimile or commercial courier not less than ten days before the hearing.*

*(ii) Not less than ten days before the hearing, the Department of Member Regulation, who shall act as a Party in the eligibility proceeding, and the member and its current or prospective associated person shall exchange proposed exhibit and witness lists. The exhibit and witness lists shall be served by facsimile or commercial courier.*

[(2)] (4) Rights of Member, Current or Prospective Associated Person, and Department of Member Regulation

The member, [and] its current or prospective associated person, [as applicable.] *and the Department of Member Regulation* shall be entitled to be heard in person, to be represented by an attorney, and to submit any relevant evidence.

[(3)] (5) Recordation of Hearing

The hearing shall be recorded and a transcript prepared by a court reporter. The member *and the current or prospective associated person* may purchase a copy of the transcript from the court reporter *at prescribed rates*. [Any corrections to the transcript shall be submitted within three days after the hearing or within three days after receipt of the transcript, whichever is later.] *A witness may purchase a copy of the transcript of his or her own*

*testimony from the court reporter at prescribed rates. Proposed corrections to the transcript may be submitted by affidavit to the Hearing Panel within a reasonable time determined by the Hearing Panel. Upon notice to the participants in the hearing, the Hearing Panel may order corrections to the transcript as requested or sua sponte.*

(6) Record

*The record shall consist of: (1) The notice issued pursuant to Rule 9522(a), if applicable; (2) all documents relied upon in issuing the notice under Rule 9522(a), if applicable; (3) the application for relief filed pursuant to Rule 9522(b); (4) any other submissions by the member, the current or prospective associated person, and the Department of Member Regulation; (5) any evidence considered at the hearing; and (6) the transcript of the hearing and any corrections thereto.*

(7) Custodian of the Record

*The custodian of the record shall be the Office of General Counsel of NASD Regulation.*

(8) 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 Association's decision becomes final or, if applicable, upon the conclusion of any review by the Commission or the federal courts.*

[(4)] (9) Recommendation

[The] *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 Business Conduct Committee and all other Directors not later than seven days before the meeting of the National Business Conduct Committee at which the eligibility proceeding shall be considered.*

(b) Decision

(1) Decision of the National Business Conduct Committee

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 Business Conduct Committee may grant or deny the request for relief, and, if relief is

granted, impose conditions on the member and its current or prospective associated person. Alternatively, the National Business Conduct Committee may remand the eligibility proceeding. The National Business Conduct Committee 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 SEC Rule 19h-1(e) and a description of any conditions that are imposed on the member and current or prospective associated person.

(3) Issuance of Decision After Expiration of Call for Review Period

The National Business Conduct Committee shall provide its proposed written decision to the NASD Regulation Board, and, if the eligibility proceeding is not called for review by the NASD Regulation Board, to the NASD Board. The NASD Regulation Board may call the eligibility proceeding for review pursuant to Rule [9534] 9524. The NASD Board may call the eligibility proceeding for review pursuant to Rule [9535] 9525. If neither the NASD Regulation Board nor the NASD Board calls the eligibility proceeding for review, the proposed written decision of the National Business Conduct Committee shall become final, and the National Business Conduct Committee shall serve its written decision *on the member, the current or prospective associated person, and Department of Member Regulation* pursuant to Rules 9132 and 9134. *The decision shall be effective upon service.* The decision shall constitute final action of the Association, unless the National Business Conduct Committee remands the eligibility proceeding.

[9534] 9524. Discretionary Review by the NASD Regulation Board

(a) Call for Review by Director

A Director may call an eligibility proceeding for review by the NASD Regulation Board[,] if the call for review is made within the period prescribed in paragraph (b).

(b) Seven Day Period; Waiver

After receiving the proposed written decision of the National Business Conduct Committee pursuant to Rule [9533] 9523, a Director shall have not less than seven days to determine if the eligibility proceeding should be called for review. A Director shall call an eligibility proceeding for review by notifying the General Counsel of NASD Regulation. By a unanimous vote of the NASD Regulation Board, the NASD Regulation Board may shorten the period to less than seven days. By an affirmative vote of the majority of the NASD Regulation Board then in office, the NASD Regulation Board may, during the seven day period, vote to extend the period to more than seven days.

(c) Review at Next Meeting

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

(d) Decision of NASD Regulation Board, Including Remand

After review, the NASD Regulation Board may affirm, modify, or reverse the proposed written decision of the National Business Conduct Committee. Alternatively, the NASD Regulation Board may remand the eligibility proceeding with instructions. The NASD Regulation Board shall prepare a proposed written decision that includes all of the elements described in Rule [9533(b)(2)] 9523(b)(2).

(e) Issuance of Decision After Expiration of Call for Review Period

The NASD Regulation Board shall provide its proposed written decision to the NASD Board. The NASD Board may call the eligibility proceeding for review pursuant to Rule [9535] 9525. If the NASD Board does not call the eligibility proceeding for review, the proposed written decision of the NASD Regulation Board shall become final, and the NASD Regulation Board shall serve its written decision *on the member, the current or prospective associated person, and Department of Member Regulation* pursuant to Rules 9132 and 9134. *The decision shall be effective upon service.* The decision shall constitute the final action of the Association, unless the NASD Regulation Board remands the eligibility proceeding.

[9535] 9525. Discretionary Review by the NASD Board

(a) Call for Review by Governor

A Governor may call an eligibility proceeding for review by the NASD Board if the call for review is made within the period prescribed in paragraph (b).

(b) Seven Day Period; Waiver

(1) Eligibility Proceeding Called for Review by NASD Regulation Board

If the NASD Regulation Board reviewed the eligibility proceeding under Rule [9534] 9524, a Governor shall make his or her call for review not later than the next meeting of the NASD Board that is at least seven days after the date on which the NASD Board receives the proposed written decision of the NASD Regulation Board.

(2) Eligibility Proceeding Not Called for Review by NASD Regulation Board

If no Director of the NASD Regulation Board called the eligibility proceeding for review under Rule [9534] 9524, a Governor shall make his or her call for review no later than the next meeting of the NASD Board that is at least seven days after the date on which the NASD Board receives the proposed written decision of the National Business Conduct Committee.

(3) Waiver

By a unanimous vote of the NASD Board, the NASD Board may shorten the period in subparagraph (1) or (2) to less than seven days. By an affirmative vote of the majority of the NASD Board then in office, the NASD Board may, during the seven day period in subparagraph (1) or (2), vote to extend the period in subparagraph (1) to (2) to more than seven days.

(c) Review at Next Meeting

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

(d) Decision of NASD Board, Including Remand

After review, the NASD Board may affirm, modify, or reverse: (1) The proposed written decision of the NASD Regulation Board, or (2) if the NASD Regulation Board did not call an eligibility proceeding for review under Rule [9534] 9524, the proposed written decision of the National Business

Conduct Committee. Alternatively, the NASD Board may remand the eligibility proceeding with instructions. The NASD Board shall prepare a written decision that includes all of the elements described in Rule [9533(b)(2)] 9523(b)(2).

(e) Issuance of Decision

The NASD Board shall issue and serve its written decision on the member, the current or prospective associated person, and Department of Member Regulation pursuant to Rules 9132 and 9134. The decision shall be effective upon service. The decision shall constitute the final action of the Association, unless the NASD Board remands the proceeding.

[9536] 9526. Application to Commission for Review

[Any person aggrieved by final] The right to have any action taken pursuant to [the] this Rule [9530] Series [may apply for review] reviewed by the Commission [under] is governed by Section 19 of the Act. The filing of an application for review shall not stay the effectiveness of final action by the Association, unless the Commission otherwise orders.

9600. Procedures for Exemptions

9610. Application

(a) File With General Counsel

A member seeking an exemption from Rule 1021, 1022, 1070, 2210, 2340, 2520, 2710, 2720, 2810, 2850, 2851, 2860. Interpretive Material 2860-1, 3210, 3350, 11870, or 11900, Interpretive Material 2110-1, or Municipal Securities Rulemaking Board Rule G-37 shall file a written application with the Office of General Counsel of NASD Regulation.

(b) Content

An application filed pursuant to this Rule shall contain the member's name and address, the name of a person associated with the member who will serve as the primary contact for the application, the Rule from which the member is seeking an exemption, and a detailed statement of the grounds for granting the exemption. If the member does not want the application or the decision on the application to be publicly available in whole or in part, the member also shall include in its application a detailed statement, including supporting facts, showing good cause for treating the application or decision as confidential in whole or in part.

(c) Applicant

A member that files an application under this Rule is referred to as "Applicant" hereinafter in the Rule 9600 Series.

9620. Decision

After considering an application, NASD Regulation 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 Regulation 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 contain a brief statement of the findings and conclusions as to which exception is taken. The National Business Conduct Committee may order oral argument. If the Applicant does not want the National Business Conduct Committee's 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) Expedited Review

Where the failure to promptly review a decision to deny a request for exemption would unduly or unfairly harm the applicant, the National Business Conduct Committee shall provide expedited review.

(c) Withdrawal of Appeal

An Applicant may withdraw its notice of appeal at any time by filing a written notice of withdrawal of appeal with the National Business Conduct Committee.

(d) Appointment of Subcommittee

Following the filing of a notice of appeal, the National Business Conduct Committee shall designate a Subcommittee to hear an oral argument, if ordered, consider any new evidence that the Applicant can show good cause for not including in its application, and recommend to the National Business Conduct Committee a disposition of all matters on appeal.

(e) Decision

After considering all matters on appeal and the Subcommittee's recommendation, the National Business Conduct Committee shall affirm, modify, or reverse the decision issued under Rule 9620. The National Business Conduct Committee 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 the Association.

\* \* \* \* \*

**Conforming Rule Changes**

Rule 1021. Registration Requirements

(e)(2) Pursuant to the Rule 9600 Series, the [President of the] Association[, upon written request,] may waive the provisions of subparagraph (1)[, above,] in situations [which] that indicate conclusively that only one person associated with an applicant for membership should be required to register as a principal.

1022. Categories of Principal Registration

(b)(4) Pursuant to the Rule 9600 Series, the Association may exempt a member[, or an applicant for membership in the Association[, may upon written request, be exempted by the President of the Association, or his delegate,] from the requirement to have a Limited Principal—Financial and Operations if:

(A) It has been expressly exempted by the Commission from SEC Rule 15c3-1(b)(1)(iii);

(B) It is subject to the provisions of SEC Rule 15c3-1(a)(2) or to Section 402.2(c) of the rules of the Treasury Department.

1070. Qualification Examinations and Waiver of Requirements

(e) Pursuant to the Rule 9600 Series, the [President of the] Association may, in exceptional cases and where good cause is shown, waive the applicable Qualification Examination [upon written request by the member,] and accept other standards as evidence of an applicant's qualifications for registration. Advanced age, physical infirmity or experience in fields ancillary to the investment banking or securities business will not individually of themselves constitute sufficient grounds to waive a Qualification Examination.

2210. Communications With the Public  
(c) Filing Requirements and Review Procedures

(8) *Exemptions.* Pursuant to the Rule 9600 Series, the Association may exempt a member or person associated with a member from the pre-filing requirements of this paragraph for good cause shown.

2340. Customer Account Statements

(d) Pursuant to the Rule 9600 Series, the Association[, acting through its Operations Committee] may[, pursuant to a written request for good cause shown,] exempt any member from the provisions of this Rule for good cause shown.

2520. Margin Accounts

(c)(5)(C) Joint Accounts in Which the Carrying Organization or a Partner or Stockholder Therein Has an Interest

In the case of a joint account carried by a member in which such member, or any partner, or stockholder (other than a holder of freely transferable stock only) of such member participates with others, each participant other than the carrying member shall maintain an equity with respect to such interest pursuant to the margin provisions of this paragraph as if such interest were in a separate account.

Pursuant to the Rule 9600 Series, [T]he Association [will consider requests for exemption from the] may grant an exemption from the provisions of [this] paragraph (c)(5)(C)[, provided] if the account is:

(i) [The account is] confined exclusively to transactions and positions in exempted securities;

(ii) [The account is] maintained as a Market Functions Account conforming to the conditions of Section 220.12(e) (Odd-lot dealers) of Regulation T of the Board of Governors of the Federal Reserve System; or

(iii) [The account is] maintained as a Market Functions Account conforming to the conditions of Section 220.12(c) (Underwritings and Distributions) of Regulation T of the Board of Governors of the Federal Reserve System and each other participant margins his share of such account on such basis as the Association may prescribe.

2710. Corporate Financing Rule—  
Underwriting Terms and Arrangements

(d) *Exemptions.* Pursuant to the Rule 9600 Series, the Association may exempt a member or person associated with a member from the provisions of this Rule for good cause shown.

2720. Distribution of Securities of Members and Affiliates—Conflicts of Interest

(p) Requests for Exemption from Rule 2720

Pursuant to the Rule 9600 Series, [T]he Association [Corporate Financing Committee of the Board of Governors, upon written request,] may in exceptional and unusual circumstances, taking into consideration all relevant factors, exempt a member unconditionally or on specified terms from any or all of the provisions of this Rule which it deems appropriate. [Unless waived by the party requesting an exemption, a hearing shall be held upon a request before the Corporate Financing Committee, or a Subcommittee thereof designated for that purpose.]

2810. Direct Participation Programs

(c) *Exemptions.* Pursuant to the Rule 9600 Series, the Association may exempt a member or person associated with a member from the provisions of this Rule for good cause shown.

2850. Position Limits

(a) Except with the prior written approval of the Association pursuant to the Rule 9600 Series for good cause shown in each instance, no member shall effect for any account in which such member has an interest, or for the account of any partner, officer, director or employee thereof, or for the account of any customer, a purchase or sale transaction in an index warrant listed on Nasdaq or on a national securities exchange if the member has reason to believe that as a result of such transaction the member, or partner, officer, director or employee thereof, or customer would, acting alone or in concert with others, directly or indirectly, hold or control an aggregate position in an index warrant position on the same side of the market, combining such index warrant position with positions in index warrants overlying the same index on the same side of the market, in excess of the position limits established by the Association, in the case of Nasdaq-listed index warrants, or on the exchange on which the warrant is listed.

2851. Exercise Limits

(a) Except with the prior written approval of the Association pursuant to the Rule 9600 Series for good cause shown, in each instance, no member or person associated with a member shall exercise, for any account in which such member or person associated with a member has an interest, or for the account of any partner, officer, director

or employee thereof, or for the account of any customer, a long position in any index warrant if as a result thereof such member or partner, officer, director or employee thereof or customer, acting alone or in concert with others, directly or indirectly;

(1) Has or will have exercised within any five (5) consecutive business days a number of index warrants overlying the same index in excess for the limits for index warrant positions contained in Rule 2850; or

(2) Has or will have exceeded the applicable exercise limit fixed from time to time by an exchange for an index warrant not dealt in on Nasdaq.

(b) The Association, pursuant to the Rule 9600 Series for good cause shown, may institute other limitations concerning the exercise of index warrants from time to time [by action of the Association]. Reasonable notice shall be given of each new limitation fixed by the Association. These exercise limitations are separate and distinct from any other exercise limitations imposed by the issuers of index warrants.

2860. Options

(b) Requirements

(3) Position Limits

(A) Stock Options—Except in highly unusual circumstances, and with the prior written approval of the Association pursuant to the Rule 9600 Series for good cause shown in each instance, no member shall effect for any account in which such member has an interest, or for the account of any partner, officer, director or employee thereof, or for the account of any customer, an opening transaction through Nasdaq, the over-the-counter market or on any exchange in a stock option contract of any class of stock options if the member has reason to believe that as a result of such transaction the member or partner, officer, director or employee thereof, or customer would, acting alone or in concert with others, directly or indirectly, hold or control or be obligated in respect of an aggregate position in excess of:

(i) 4,500 option contracts of the put class and the call class on the same side of the market covering the same underlying security, combining for purposes of this position limit long positions in put options with short positions in call options, and short positions in put options with long positions in call options; or

(ii) 7,500 options contracts of the put class and the call class on the same side of the market covering the same

underlying security, providing that the 7,500 contract position limit shall only be available for option contracts on securities which underlie or qualify to underlie Nasdaq or exchange-traded options qualifying under applicable rules for a position limit of 7,500 option contracts; or

(iii) 10,500 option contracts of the put class and the call class on the same side of the market covering the same underlying security providing that the 10,500 contract position limit shall only be available for option contracts on securities which underlie or qualify to underlie Nasdaq or exchange-traded options qualifying under applicable rules for a position limit of 10,500 option contracts; or

(iv) 20,000 options contracts of the put and the call class on the same side of the market covering the same underlying security, providing that the 20,000 contract position limit shall only be available for option contracts on securities which underlie or qualify to underlie Nasdaq or exchange-traded options qualifying under applicable rules for a position limit of 20,000 option contracts; or

(v) 25,000 options contracts of the put and the call class on the same side of the market covering the same underlying security, providing that the 25,000 contract position limit shall only be available for option contracts on securities which underlie or qualify to underlie Nasdaq or exchange-traded options qualifying under applicable rules for a position limit of 25,000 option contracts; or

(vi) Such other number of stock options contracts as may be fixed from time to time by the Association as the position limit for one or more classes or series of options provided that reasonable notice shall be given of each new position limit fixed by the Association.

(vii) Equity Option Hedge Exemption.

a. The following positions, where each option contract is "hedged" by 100 shares of stock or securities readily convertible into or economically equivalent to such stock, or, in the case of an adjusted option contract, the same number of shares represented by the adjusted contract, shall be exempted from established limits contained in (i) through (vi) above:

1. Long call and short stock;
2. Short call and long stock;
3. Long put and long stock;
4. Short put and short stock.

b. Except as provided under the OTC Collar Exemption contained in paragraph (b)(3)(A)(viii), in no event may the maximum allowable position, inclusive of options contracts hedged

pursuant to the equity option position limit hedge exemption in subparagraph a. above, exceed three times the applicable position limit established in paragraph (b)(3)(A) (i)-(v).

c. The Equity Option Hedge Exemption is a pilot program authorized by the Commission through December 31, 1997.

(viii) OTC Collar Aggregation Exemption

a. For purposes of this paragraph (b), the term OTC collar shall mean a conventional equity option position comprised of short (long) calls and long (short) puts overlying the same security that hedge a corresponding long (short) position in that security.

b. Notwithstanding the aggregation provisions for short (long) call positions and long (short) put positions contained in subparagraphs (i) through (v) above, the conventional options positions involved in a particular OTC collar transaction established pursuant to the position limit hedge exemption in subparagraph (vii) need not be aggregated for position limit purposes, provided the following conditions are satisfied:

1. The conventional options can only be exercised if they are in-the-money;
2. Neither conventional option can be sold, assigned, or transferred by the holder without the prior written consent of the writer;
3. The conventional options must be European-style (i.e., only exercisable upon expiration) and expire on the same date;
4. The strike price of the short call can never be less than the strike price of the long put; and
5. Neither side of any particular OTC collar transaction can be in-the-money when that particular OTC collar is established.

6. The size of the conventional options in excess of the applicable basic position limit for the options established pursuant to subparagraph (A) (i)-(v) above must be hedged on a one-to-one basis with the requisite long or short stock position for the duration of the collar, although the same long or short stock position can be used to hedge both legs of the collar.

c. For multiple OTC collars on the same security meeting the conditions set forth in subparagraph b. above, all of the short (long) call options that are part of such collars must be aggregated and all of the long (short) put options that are part of such collars must be aggregated, but the short (long) calls need not be aggregated with the long (short) puts.

d. Except as provided above in subparagraph b. and c., in no event may a member fail to aggregate any

conventional or standardized options contract of the put class and the call class overlying the same equity security on the same side of the market with conventional option positions established in connection with an OTC collar.

e. Nothing in this subparagraph (vii) changes the applicable position limit for a particular equity security.

#### IM-2860-1. Position Limits

##### (B) Index Options

(i) Except in highly unusual circumstances, and with the prior written approval of the Association *Pursuant to the Rule 9600 Series for good cause shown* in each instance, no members shall effect for any account in which such member has an interest, or for the account of any partner, officer, director or employee thereof, or for the account of any customer, an opening transaction in an option contract of any class of index options displayed on Nasdaq or dealt in on an exchange if the member has reason to believe that as a result of such transaction the member or partner, officer, director or employee thereof, or customer, would, acting alone or in concert with others directly or indirectly, hold or control or be obligated in respect of an aggregate position in excess of position limits established by the Association, in the case of Nasdaq index options, or the exchange on which the option trades.

##### (4) Exercise Limits

Except in highly unusual circumstances, and with the prior written approval of the Association[,] *pursuant to the Rule 9600 Series for good cause shown* in each instance, no member or person associated with a member shall exercise, for any account in which such member or person associated with a member has an interest, or for the account of any partner, officer, director or employee thereof or for the account of any customer, any option contract if as a result thereof such member or partner, officer, director or employee thereof or customer, acting along or in concert with others, director or indirectly, has or will have exercised within any five (5) consecutive business days a number of option contracts of a particular class of options in excess of the limits for options positions in paragraph (b)(3). The Association may institute other limitations concerning the exercise of option contracts from time to time by action of the Association. Reasonable notice shall be given of each new limitation filed by the Association.

## 3210. Securities "Failed to Receive" and "Failed to Deliver"

(b) Pursuant to the Rule 9600 Series, [F]or good cause shown and in exceptional circumstances, the Association may exempt a member or a person associated with a member [a member may request exemption] from the provisions of this Rule [by written request to the District Director of the District in which his principal office is located].

## 3350. Short Sale Rule

(j) Pursuant to the Rule 9600 Series or on the Association's [Upon application or on its] own motion, the Association may exempt either unconditionally, or on specified terms and conditions, any transaction or class of transactions from the provisions of this Rule.

## 11870. Customer Account Transfer Contracts

## (j) Exemptions.

(1) Pursuant to the Rule 9600 Series, The Association may exempt from the provisions of this Rule, either unconditionally or on specified terms and conditions, (A) any member or (B) any type of account, security or financial instrument.

## 11900. Clearance of Corporate Debt Securities

Each member or its agent that is a participant in a registered clearing agency, for purposes of clearing over-the-counter securities transactions, shall use the facilities of a registered clearing agency for the clearance of eligible transactions between members in corporate debt securities. Pursuant to the Rule 9600 Series, the Association may exempt any transaction or class or transactions in corporate debt securities from the provision of this Rule as may be necessary to accommodate special circumstances related to the clearance of such transactions or class of transactions.

\* \* \* \* \*

**[9800. Corporate Financing and Direct Participation Program Matters]**

## [9810. Purpose]

[The purpose of this Rule 9800 Series is to provide a procedure for review of determination by the Association's staff regarding compliance with Rules of the Association relating to corporate financing and direct participation program matters by which any member is aggrieved.]

## [9820. Application by Aggrieved Member]

[Any member aggrieved by a determination rendered pursuant to any Rule or regulation of the Association relating to underwriting terms or arrangements may make application for review of such determination. In exceptional or unusual circumstances, a member may request conditionally or unconditionally an exemption from such Rules or regulations. Applications for review will be accepted only with respect to offerings for which a registration statement or similar document has been filed with the appropriate federal or state regulatory agency; provided, however, that a hearing committee may waive the requirement for filing prior to review upon finding that such review is appropriate under the circumstances.]

## [9830. Application for Review]

[Any member making application for review pursuant to Rule 9820 (hereinafter referred to as "applicant") shall request such review in writing and shall specify in reasonable detail the source and nature of the grievance and the relief requested. The applicant shall state whether a hearing is requested and shall sign the written application.]

## [9840. Notice of Hearing]

[Any applicant shall have a right to a hearing before a hearing committee constituted as provided in Rule 9850. The hearing committee may request a hearing on its own motion. A hearing shall be scheduled as soon as practicable, at a location determined by the hearing committee. Written notice of the hearing shall be sent to the applicant stating the date, time, and location of the hearing.]

## [9850. Hearing Committee and Procedure]

[(a) Any hearing shall be before an individual designated by the Association, who shall be current or past members of the appropriate standing committee of the Board of Governors, i.e. the "hearing committee." Any applicant shall be entitled to appear at, and participate in, the hearing, to be represented by counsel, and to submit any relevant testimony or evidence. Representatives of the Association shall be entitled to appear at, participate in, the hearing, to be represented by counsel, and to submit any relevant testimony or evidence. Upon agreement of the applicant, representatives of the Association, and the hearing committee, a hearing may be conducted by means of telephonic or

other linkage which permits all parties to participate simultaneously in the proceeding.]

[(b) In the event that the applicant waives a hearing before the appropriate hearing committee, the hearing committee shall review the matter on the record before it. Any applicant and the Association shall be entitled to submit any relevant written testimony or evidence to the hearing committee.]

## [9860. Requirement for Written Determination]

[The hearing committee shall render a determination as to all issues which the committee finds to be relevant as soon as practicable following conclusion of the hearing or, in cases in which a hearing is not requested, completion of the committee's review of the record. The hearing committee may determine whether the proposed underwriting or other terms and arrangements in connection with or relating to the distribution of the securities, or the terms and conditions related thereto, taking into consideration all elements of compensation and all of the relevant surrounding factors and circumstances, are fair and reasonable and in compliance with applicable Rules and regulations. The determination of the hearing committee shall be issued in writing, and a copy shall be sent to each applicant.]

## [9870. Review by Committee of Board]

[(a) Any member aggrieved by a determination of a hearing committee shall have a right to have that determination reviewed by the appropriate standing committee of the Board of Governors.]

[(b) Any member seeking a review of a determination of a hearing committee shall submit a written request for such review to the Association within fifteen (15) business days following issuance of the hearing committee's written determination. Any such member shall submit with the written request for review a written statement specifying the portion of the hearing committee's determination for which review is requested and the relief sought. Any such member may submit written testimony or evidence for consideration by the committee. Representatives of the Association may also submit written testimony or evidence to the committee.]

[(c) Pursuant to a request duly made, the appropriate standing committee of the Board of Governors will review the determination of a hearing committee, giving consideration to all parts of the record which the Board committee finds relevant. The Board committee shall

render a determination as to all issues which the committee finds to be relevant. The determination of the Board committee shall be issued in writing, and a copy shall be sent to each member requesting review.]

[9880. Nature of Determination]

[Any determination by a hearing committee or standing committee rendered shall constitute the opinion of that committee as to compliance with applicable Association Rules, interpretations or policies and shall be advisory in nature only. Such determination shall not be subject to review by the Board of Governors. No such determination shall constitute a finding of a violation of any Rule, interpretation or policy. A finding of a violation shall be made only by a District Business Conduct Committee.]

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-38827; File No. SR-NSCC-97-06]

### Self-Regulatory Organizations; National Securities Clearing Corporation; Notice of Filing and Order Granting Accelerated Approval of a Proposed Rule Change To Increase the Size of the Board of Directors

July 9, 1997.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),<sup>1</sup> notice is hereby given that on May 15, 1997, the National Securities Clearing Corporation ("NSCC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II below, which items have been prepared primarily by NSCC. The Commission is publishing this notice and order to solicit comments from interested persons and to grant accelerated approval of the proposed rule change.

#### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change will amend NSCC's shareholders agreement and by-laws to increase NSCC's board of directors by one member and to create a new category of director.

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

In its filing with the Commission, NSCC 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. NSCC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.<sup>2</sup>

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

The purpose of the proposed rule change is to increase the size of NSCC's board from twenty to twenty-one directors and to create a new "Industry Director" category. Article II, Section 2.1 of NSCC's by-laws, "Number and Classification of Directors," currently provides for a board of twenty directors. NSCC's shareholders agreement currently provides for three categories of directors. "Shareholder Directors" represent each of NSCC's three shareholders: the New York Stock Exchange, the American Stock Exchange, and the National Association of Securities Dealers. The "Management Director," typically NSCC's President, represents management. "Participant Directors" represent and are selected from NSCC's participants.<sup>3</sup>

NSCC's board has determined that it would be in the beneficial interest of NSCC to create one new board seat to be filled by a senior level securities industry official designated by the board. Because such a seat would not necessarily fall within any of the existing director categories, NSCC proposes that its shareholders agreement and by-laws be amended to accommodate this new director category.<sup>4</sup>

NSCC believes the proposed rule change is consistent with the requirements of Section 17A(b)(3)(F)<sup>5</sup> of the Act because it allows NSCC's board

<sup>2</sup> The Commission has modified the text of the summaries prepared by NSCC.

<sup>3</sup> Currently, there are three Shareholder Directors, one Management Director, and sixteen Participant Directors. Securities Exchange Act Release No. 36570 (December 11, 1995), 60 FR 64466 (order approving proposed rule change to amend by-laws to add an additional board member).

<sup>4</sup> As with all new director positions created after 1977, the Industry Director will be assigned to one of the board's three classes. Assignments are apportioned so that the classes are as nearly equal in number as possible.

<sup>5</sup> 15 U.S.C. 78q-1(b)(3)(F).

to benefit from the participation of an experienced securities industry official in the administration of NSCC's affairs.

##### (B) Self-Regulatory Organization's Statement on Burden on Competition

NSCC does not believe that the proposed rule change will impact or impose a burden on competition.

##### (C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments have been solicited or received. NSCC will notify the Commission of any written comments received by NSCC.

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

Section 17A(b)(3)(F)<sup>6</sup> of the Act requires that the rules of a clearing agency must be designed to foster cooperation and coordination with persons engaged in the clearance and settlement of securities transactions. The Commission understands that initially the new Industry Director category will be filled by an officer of DTC, which should result in NSCC and DTC being better able to coordinate their activities. Thus, the Commission believes that NSCC's proposal is consistent with Section 17A(b)(3)(F) of the Act.

NSCC requests the Commission find good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice of the filing. The Commission finds good cause exists for approving the proposed rule change prior to the thirtieth day after the date of publication of notice of the filing because accelerated approval will permit NSCC's board to appoint the new Industry Director at the next shareholder's meeting which is scheduled for July 15, 1997.

#### IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the

<sup>6</sup> *Id.*

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