



**Martha Redding**  
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August 17, 2015

**VIA E-MAIL**

Brent J. Fields  
Secretary  
Securities and Exchange Commission  
100 F Street, N.E.  
Washington, DC 20549-1090

Re: SR-NYSE-2015-35

Dear Mr. Fields:

NYSE LLC; filed the attached Amendment No. 1 to the above-referenced filing on August 14, 2015.

Sincerely,

A handwritten signature in blue ink, appearing to be "BJF", written in a cursive style.

Encl. (Amendment No. 1 to SR-NYSE-2015-35)

Required fields are shown with yellow backgrounds and asterisks.

Page 1 of \* 99      SECURITIES AND EXCHANGE COMMISSION      File No.\* SR - 2015 - \* 35  
 WASHINGTON, D.C. 20549      Form 19b-4      Amendment No. (req. for Amendments \*) 1

Filing by New York Stock Exchange  
 Pursuant to Rule 19b-4 under the Securities Exchange Act of 1934

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

Notice of proposed change pursuant to the Payment, Clearing, and Settlement Act of 2010 Section 806(e)(1) <input type="checkbox"/> Section 806(e)(2) <input type="checkbox"/>	Security-Based Swap Submission pursuant to the Securities Exchange Act of 1934 Section 3C(b)(2) <input type="checkbox"/>
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Exhibit 2 Sent As Paper Document <input type="checkbox"/>	Exhibit 3 Sent As Paper Document <input type="checkbox"/>
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**Description**

Provide a brief description of the action (limit 250 characters, required when Initial is checked \*).

Proposal to amend certain NYSE disciplinary rules to facilitate the reintegration of certain regulatory functions from Financial Industry Regulatory Authority Inc

**Contact Information**

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

First Name \* David      Last Name \* De Gregorio  
 Title \* Senior Counsel NYSE Group Inc  
 E-mail \* [REDACTED]  
 Telephone \* (212) 656-4166      Fax (212) 656-8101

**Signature**

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

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

(Title \*)  
 Assistant Secretary

Date 08/14/2015  
 By Martha Redding  
 (Name \*)

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

Martha Redding [REDACTED]

SECURITIES AND EXCHANGE COMMISSION  
WASHINGTON, D.C. 20549

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

**Form 19b-4 Information \***

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

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

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

**Exhibit 1A- Notice of Proposed Rule Change, Security-Based Swap Submission, or Advance Notice by Clearing Agencies**

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

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

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Exhibit Sent As Paper Document

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

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

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Exhibit Sent As Paper Document

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

**Exhibit 4 - Marked Copies**

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

**Exhibit 5 - Proposed Rule Text**

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

**Partial Amendment**

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

1. Text of the Proposed Rule Change

- (a) Pursuant to the provisions of Section 19(b)(1) of the Securities Exchange Act of 1934 (the “Exchange Act” or the “Act”)<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> New York Stock Exchange LLC (“NYSE” or the “Exchange”) proposes to amend certain of its disciplinary rules to facilitate the reintegration of certain regulatory functions from Financial Industry Regulatory Authority, Inc. (“FINRA”). This Amendment No. 1 supersedes the original filing in its entirety.

A notice of the proposed rule change for publication in the Federal Register is attached hereto as Exhibit 1, and the text of the proposed rule change is attached as Exhibit 5.

- (b) The Exchange does not believe that the proposed rule change will have any direct effect, or any significant indirect effect, on any other Exchange rule in effect at the time of this filing.
- (c) Not applicable.

2. Procedures of the Self-Regulatory Organization

Senior management has approved the proposed rule change pursuant to authority delegated to it by the board of directors of the Exchange (the “Board”). No further action is required under the Exchange’s governing documents. Therefore, the Exchange’s internal procedures with respect to the proposed rule change are complete.

The person on the Exchange staff prepared to respond to questions and comments on the proposed rule change is:

David De Gregorio  
Senior Counsel  
NYSE Group Inc.  
(212) 656-4166

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

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

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

(a) Purpose

The Exchange proposes to amend certain of its disciplinary rules to permit the reintegration of certain regulatory functions from FINRA as of January 1, 2016.

**Background of Proposed Rule Change**

On June 14, 2010, the NYSE, NYSE Regulation, Inc. (“NYSE Regulation”),<sup>3</sup> and FINRA entered into a Regulatory Services Agreement (“RSA”), whereby FINRA was retained to perform the market surveillance and enforcement functions that had previously been performed by NYSE, through its wholly-owned subsidiary NYSE Regulation. Pursuant to the RSA, FINRA has been performing Exchange enforcement-related regulatory services, including investigating and enforcing violations of Exchange rules, and conducting disciplinary proceedings arising out of such enforcement actions, including those relating to NYSE-only rules and against dual members and non-FINRA members. To facilitate FINRA’s performance of these functions, the Exchange amended its rules to provide that Exchange rules that refer to NYSE Regulation or its staff, Exchange staff, and Exchange departments should be understood to also refer to FINRA staff and FINRA departments acting on behalf of the Exchange pursuant to the RSA.<sup>4</sup>

In 2013, the Exchange adopted new disciplinary rules that are, with certain exceptions, substantially the same as the text of the FINRA Rule 8000 Series and Rule 9000 Series, which set forth rules for conducting investigations and enforcement actions.<sup>5</sup> Those rules were implemented on July 1, 2013<sup>6</sup> and,

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<sup>3</sup> NYSE Regulation, a not-for-profit subsidiary of the Exchange, performs the Exchange’s regulatory functions pursuant to a delegation agreement. See note 7, infra. The Exchange recently filed to, among other things, terminate the delegation agreement, establish a regulatory oversight committee (“ROC”) as a committee of the board of directors of the Exchange, and reintegrate its regulatory and market functions. See Release No. 75288 (June 24, 2015), 80 FR 37316 (June 30, 2015) (SR-NYSE-2015-27) (the “NYSE ROC Filing”). The amendments proposed herein are consistent with, and not dependent on approval of, the NYSE ROC Filing.

<sup>4</sup> See Rule 0. Notwithstanding the RSA, the Exchange retains ultimate legal responsibility for, and control of, the Exchange’s regulatory functions performed by FINRA. See Securities Exchange Act Release No. 62355 (June 22, 2010), 75 FR 36729 (June 28, 2010) (SR-NYSE-2010-46).

<sup>5</sup> See Securities Exchange Act Release Nos. 68678 (January 16, 2013), 78 FR 5213

among other things: (1) identify FINRA’s Department of Enforcement and Department of Market Regulation as the departments permitted to commence disciplinary proceedings, when authorized by FINRA’s Office of Disciplinary Affairs (“ODA”); (2) identify ODA as the office permitted to accept or reject a letter of acceptance, waiver, and consent (“AWC”) or minor rule violation plan letter on behalf of the Board; and (3) identify ODA as the office permitted to accept or reject an offer of settlement if not opposed by FINRA’s Department of Enforcement or Department of Market Regulation. Those rules do not, however, specify whether Exchange staff or departments, or staff of the Exchange’s wholly-owned subsidiary NYSE Regulation, to which the Exchange currently delegates certain regulatory functions,<sup>7</sup> may perform the functions described in the rules.

In October 2014, the Exchange announced that, upon expiration of the current RSA on December 31, 2015, certain market surveillance, investigation and enforcement functions performed on behalf of the Exchange would be reintegrated.<sup>8</sup> Accordingly, effective January 1, 2016, the Exchange will perform

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(January 24, 2013) (SR-NYSE-2013-02), 69045 (March 5, 2013), 78 FR 15394 (March 11, 2013) (SR-NYSE-2013-02), and 69963 (July 10, 2013), 78 FR 42573 (July 16, 2013) (SR-NYSE-2013-49).

<sup>6</sup> See NYSE Information Memorandum 13-8 (May 24, 2013).

<sup>7</sup> The Exchange currently delegates to NYSE Regulation certain responsibilities and functions of the Exchange, including taking “action to assure compliance with the rules, interpretations, policies and procedures of [the Exchange], the federal securities laws, or other laws, rules and regulations that [the Exchange] has the authority to administer or enforce, through examination, surveillance, investigation, enforcement, disciplinary and other programs.” Delegation Agreement by and among New York Stock Exchange LLC, NYSE Regulation, Inc. and NYSE Market, Inc. (the “Delegation Agreement”), Section II, A.2. The Exchange, however, retains ultimate responsibility for such delegated responsibilities and functions. See Securities Exchange Act Release No. 53382, 71 FR 11251, 11264 (February 27, 2006) (SR-NYSE-2005-77). Actions taken by NYSE Regulation pursuant to delegated authority remain subject to review, approval or rejection by the board of directors of the Exchange. The one exception is that actions taken by NYSE Regulation upon review of disciplinary decisions by the NYSE Regulation board of directors is not subject to review, approval or rejection by the Exchange and constitutes a final action of the Exchange. See Delegation Agreement, Section I. The Exchange is not proposing in this filing any changes to its rules that impact the review of disciplinary decisions by the NYSE Regulation board of directors.

<sup>8</sup> It is anticipated that FINRA, under a new RSA currently being negotiated, would continue to conduct, inter alia, the registration, testing and examination of broker-dealer members of the Exchange, and certain cross-market surveillance and related investigation and enforcement activities.

certain of the market surveillance, investigation and enforcement functions FINRA was retained to perform in 2010. The proposed changes to the disciplinary rules in the present filing are necessary to permit the Exchange to perform certain regulatory functions currently performed on the Exchange's behalf by FINRA.

The Exchange proposes the following changes to facilitate the reintegration of certain regulatory functions from FINRA by providing that investigative and enforcement functions of the Exchange under the Rule 8000 and 9000 Series would be performed by personnel and departments reporting to the Chief Regulatory Officer of the Exchange<sup>9</sup> or by FINRA personnel and departments:

- (1) amend Rule 9120 to include two new defined terms: "Enforcement," referring to any department reporting to the CRO of the Exchange with responsibility for investigating or imposing sanctions on a member organization or covered person, in addition to FINRA's departments of Enforcement and Market Regulation; and "Regulatory Staff," referring to any officer or employee reporting directly or indirectly to the CRO of the Exchange, in addition to FINRA staff acting on behalf of the Exchange in connection with the Rule 8000 and 9000 Series;
- (2) amend Rules 9120, 9131, 9146, 9211, 9212, 9213, 9215, 9216, 9251, 9253, 9264, 9269, 9270, 9551, 9552, 9554, 9556, 9810, 9820 and 9830 to replace references to Exchange and FINRA departments and personnel with references to "Enforcement" and "Regulatory Staff";
- (3) amend Rules 8210 and 9110 to provide that in performing functions under the disciplinary code, the CRO and Regulatory Staff shall function independently of the commercial interests of the Exchange and of the member organizations;
- (4) amend Rules 9141 and 9242 to prohibit former Regulatory Staff from appearing in a proceeding under the Rule 9000 Series and from providing expert testimony in a proceeding under the Rule 9000 Series within one year of termination, respectively;
- (5) amend Rules 9211, 9216 and 9270 to provide that the CRO would be responsible for authorizing complaints; approving letters of acceptance, waiver, and consent; approving minor rule violation plan letters; and approving offers of settlement in place of FINRA's ODA; and
- (6) amend Rules 476, 8120, 9001, 9110, 9217, 9232, 9310 and 9810 to make

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<sup>9</sup> NYSE Regulation staff report to the Chief Executive Officer of NYSE Regulation, who is also the Chief Regulatory Officer ("CRO") of the Exchange.

certain technical changes and correct a typographical error.

The Exchange proposes that the changes described herein would be operative on January 1, 2016, following the reintegration of certain regulatory functions from FINRA as described below.

Replacement of References to Exchange and FINRA Departments and Personnel with References to Enforcement and Regulatory Staff

The Exchange proposes to amend Rules 9120, 9131, 9146, 9211, 9212, 9213, 9215, 9216, 9251, 9253, 9264, 9269, 9270, 9551, 9552, 9554, 9556, 9810, 9820 and 9830 to replace references to Exchange and FINRA departments and personnel with references to the defined terms “Enforcement” and “Regulatory Staff.”

The proposed amendments would allow disciplinary actions to be investigated and prosecuted on the Exchange’s behalf by officers or employees reporting to the CRO beginning on January 1, 2016, while still enabling FINRA staff to continue to perform investigative and disciplinary activities that FINRA is authorized to perform on the Exchange’s behalf.

More specifically, the Exchange proposes to make the following amendments:

- Rule 9120 (Definitions) sets forth the definitions applicable to the disciplinary code. The Exchange proposes to add definitions of “Enforcement,” referring to any department reporting to the CRO of the Exchange with responsibility for investigating or imposing sanctions on a member organization or covered person, in addition to FINRA’s departments of Enforcement and Market Regulation; and “Regulatory Staff,” referring to any officer or employee reporting, directly or indirectly, to the CRO of the Exchange, in addition to FINRA staff acting on behalf of the Exchange in connection with the Rule 8000 and 9000 Series.<sup>10</sup>

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<sup>10</sup> Certain rules in the Rule 8000 and 9000 Series currently refer to “Exchange staff,” a term which includes NYSE employees, NYSE Regulation staff that administers rules under the Delegation Agreement, and authorized FINRA staff pursuant to Rules 0 and 1. The proposed definition of “Regulatory Staff” provides that for purposes of the Rule 8000 Series and Rule 9000 Series (except for Rule 9557), the term “Exchange staff” shall have the same meaning as “Regulatory Staff.”

The Exchange also proposes to delete the definitions of “Head of Enforcement” (Rule 9120(q)) and “Head of Market Regulation” (Rule 9120(r)), which refer to the FINRA department heads.<sup>11</sup>

Similarly, the Exchange proposes to replace the reference to the “Department of Enforcement or the Department of Market Regulation” in Rule 9120(y) (definition of the term “Party”) with “Enforcement.”

The Exchange further proposes to streamline the definition of “Interested Staff” (Rule 9120(u)) to eliminate references to Exchange and FINRA departments and staff, and provide that “Interested Staff” under any proceeding brought under the Code of Procedure means Regulatory Staff or Exchange staff who (i) report, directly or indirectly, to any Enforcement employee, or to the head of any department or office that issues a notice or decision or is designated as a Party under the Rule 9000 Series, (ii) directly participated in the authorization or initiation of a complaint or proceeding, or (iii) directly participated in the proceeding, or directly participated in an examination, investigation, prosecution, or litigation related to a proceeding, as well as any person(s) who supervise such staff. Thus, as in the current definition, the new definition of “Interested Staff” in a particular matter encompasses supervisory personnel up to the most senior level, including the CRO, when staff reporting to such supervisory personnel directly participated in the matter.

Finally, the Exchange proposes to renumber the remaining definitions in Rule 9120.

- Rule 9131 (Service of Complaint) provides that the “Department of Enforcement or the Department of Market Regulation” shall serve a complaint on both a party and counsel for a party. The Exchange proposes to replace these references with “Enforcement.” The proposed change would enable Enforcement to serve disciplinary complaints beginning January 1, 2016.
- Rule 9146 (Motions) governs motion practice under the disciplinary rules. The Exchange proposes to amend Rule 9146(k)(1) to replace a reference to the “Department of Enforcement and the Department of Market Regulation and other Exchange staff” with “Regulatory Staff.” The Exchange also proposes to replace a reference to “Exchange staff” in subsection (k)(2) with “Regulatory Staff.” The proposed changes would

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<sup>11</sup> The Exchange also proposes to delete the definition of ODA (Rule 9120(v)) and replace all references to ODA in the Exchange’s rules with “CRO,” for the reasons discussed in “Substitution of CRO for ODA in Rules 9211, 9216 and 9270,” infra.

identify the staff that may receive or use documents subject to a protective order.

- Rule 9211 (Authorization of Complaint) sets forth the process for authorizing issuance of a complaint against a member organization or covered person. The Exchange proposes to replace references to the “Department of Enforcement or the Department of Market Regulation” with “Enforcement” in Rules 9211(a)(1) and (a)(2). The Exchange proposes to add the phrase “has reason to believe” in subsection (a)(1) with reference to Enforcement to make the construction consistent with other disciplinary rules (e.g., Rule 9216). The proposed change would enable the Exchange, in addition to FINRA, to authorize and issue disciplinary complaints beginning January 1, 2016. As discussed below, the Exchange also proposes to amend Rule 9211 to provide that the Exchange’s CRO would authorize issuance of a complaint.
- Rule 9212 (Complaint Issuance) sets forth the requirements of the complaint. In subsection (a)(1), the Exchange proposes to delete the first sentence as redundant, and to delete two references to “Department of Enforcement or the Department of Market Regulation.” The proposed change would permit “authorized Enforcement staff” to sign a complaint that would be served by “Enforcement.”

The Exchange also proposes to replace “Department of Enforcement or the Department of Market Regulation” with “Enforcement” in Rule 9212(a)(2) to permit, in addition to the relevant FINRA departments, any department reporting to the CRO that meets the definition of “Enforcement” to propose a hearing location or that the Chief Hearing Officer select a Floor-Based Panelist as provided for therein.

Similarly, the Exchange proposes to replace “Department of Enforcement or the Department of Market Regulation” with “Enforcement” in Rule 9212(b) and Rule 9212(c)(1) and (2) to enable any department reporting to the CRO that meets the definition of “Enforcement,” in addition to the relevant FINRA departments, to amend and withdraw complaints.

- Rule 9213(a) (Assignment of Hearing Officer) provides for the appointment of a Hearing Officer and Panelists by the Chief Hearing Officer as soon as practicable after the filing of a complaint by the “Department of Enforcement or the Department of Market Regulation.” The Exchange proposes to replace this reference with “Enforcement” to include complaints filed by any department reporting to the CRO that meets the definition of “Enforcement,” in addition to the relevant FINRA departments.

- Rule 9215(f) (Answer to Complaint) sets forth the requirements for answering a complaint. The Exchange proposes to replace “Department of Enforcement or the Department of Market Regulation” with “Enforcement” in Rule 9215(f) to enable any department reporting to the CRO that meets the definition of “Enforcement,” in addition to the relevant FINRA departments, to send a second notice if a respondent does not file an answer or timely respond to the complaint.
- Rule 9216(a) (Acceptance, Waiver, and Consent Procedures) sets forth the procedures by which a respondent can execute an AWC letter prior to the issuance of a complaint. Under the current rule, FINRA’s Department of Enforcement or Department of Market Regulation prepares and requests that a member organization or covered person execute an AWC letter, and “Exchange staff” may determine the effective date of sanctions unless the letter states otherwise. The Exchange proposes to replace “Department of Enforcement or the Department of Market Regulation” in Rule 9216(a)(1) with “Enforcement” to permit any department reporting to the CRO that meets the definition of “Enforcement,” in addition to the relevant FINRA departments, to prepare and request execution of AWC letters. The Exchange also proposes to replace “Exchange staff” with “Regulatory Staff” to identify the staff that may determine the effective date of sanctions.

Rule 9216(b) (Procedure for Violation Under Plan Pursuant to SEA Rule 19d-1(c)(2)) sets forth the procedures for executing a minor rule violation plan letter.<sup>12</sup> Under the current rule, FINRA’s Department of Enforcement or Department of Market Regulation may prepare and request that a member organization or covered person execute a minor rule violation plan letter, and “Exchange staff” may determine the effective date of sanctions unless the letter states otherwise. The Exchange proposes to replace references to “the Department of Enforcement or the Department of Market Regulation” in Rule 9216(b)(1) with “Enforcement” so that any department reporting to the CRO that meets the definition of “Enforcement,” in addition to FINRA, may prepare and request such letters. The Exchange also proposes to replace “Exchange staff” with “Regulatory Staff” to identify the staff that may determine the effective date of sanctions.

- Rule 9251 (Inspection and Copying of Documents in Possession of Staff) requires that documents prepared or obtained in connection with an

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A minor rule violation plan letter under the Exchange’s rules permits a fine not to exceed \$2,500 and/or a censure to be imposed with respect to certain specifically enumerated rules. See Rules 9216(b)(1) and 9217.

investigation be made available to a respondent. The Exchange proposes to amend subsections (a) (documents that must be made available for inspection and copying), (b) (documents withheld from inspection and copying), (c) (list of documents withheld), (d) (timing of inspection and copying), and (g) (failure to make documents available) to replace references to “the Department of Enforcement or the Department of Market Regulation” with “Enforcement” to bring departments reporting to the CRO that meet the definition of “Enforcement” within the scope of this rule.

- Rule 9253 (Production of Witness Statements) sets forth the procedures for filing motions to obtain witness statements. The Exchange proposes to amend Rule 9253(a) and (b) to replace “Department of Enforcement or the Department of Market Regulation” with “Enforcement” to bring departments reporting to the CRO that meet the definition of “Enforcement” within the scope of this Rule.
- Rule 9264 (Motion for Summary Disposition) sets forth the procedures for filing summary disposition motions. The Exchange proposes to replace “Department of Enforcement or the Department of Market Regulation” with “Enforcement” to bring departments reporting to the CRO that meet the definition of “Enforcement” within the scope of this Rule.
- Rule 9269 (Default Decisions) sets forth the process for issuance and review of default decisions. The Exchange proposes to replace “Department of Enforcement or the Department of Market Regulation” in subsection (a)(2) with “Enforcement” in order to bring departments reporting to the CRO that meet the definition of “Enforcement” within the scope of this Rule. The Exchange also proposes to replace “Exchange staff” with “Regulatory Staff” in subsection (d) to identify the staff that may determine the effective date of certain sanctions.
- Rule 9270 (Settlement Procedure) governs offers of settlement. The Exchange proposes to replace “the Department of Enforcement or the Department of Market Regulation” in subsections (e) and (f) with “Enforcement” in order to permit a department reporting to the CRO that meets the definition of “Enforcement” to consider offers of settlement by respondents. The Exchange also proposes to replace “Exchange staff” with “Regulatory Staff” in subsection (c)(5) to identify the staff that may determine the effective date of sanctions when provided in an offer of settlement.<sup>13</sup>

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As discussed below, the Exchange further proposes to amend Rule 9270 to have certain offers of settlement submitted to the CRO and not ODA.

- Rule 9551 (Failure to Comply with Public Communication Standards) governs expedited proceedings relating to a member organization's departure from the public communication standards of Rule 2210. The Exchange proposes to replace "Exchange staff" with "Regulatory Staff" to identify the staff that initiates and otherwise participates in such proceedings.
- Rule 9552 (Failure to Provide Information or Keep Information Current) sets forth procedures for expedited proceedings relating to a member organization or covered person's failure to provide information or keep information current. The Exchange proposes to replace "Exchange staff" with "Regulatory Staff" to identify the staff that initiates and otherwise participates in such proceedings.
- Rule 9554 (Failure to Comply with an Arbitration Award or Related Settlement or an Order of Restitution or Settlement Providing for Restitution) governs expedited proceedings relating to noncompliance with an arbitration award, settlement agreement, or restitution order. The Exchange proposes to replace "Exchange staff" with "Regulatory Staff" to identify the staff that initiates and otherwise participates in such proceedings.
- Rule 9556 (Failure to Comply with Temporary and Permanent Cease and Desist Orders) governs expedited proceedings relating to noncompliance with a temporary or permanent cease and desist order. The Exchange proposes to replace "Exchange staff" with "Regulatory Staff" to identify the staff that initiates and otherwise participates in such proceedings.
- Rule 9810 (Initiation of Proceeding) sets forth procedures for initiating temporary cease and desist proceedings. The Exchange proposes to replace "Department of Enforcement or the Department of Market Regulation" with "Enforcement" in the title and the text of the rule to permit a department reporting to the CRO that meets the definition of "Enforcement" to initiate such proceedings.
- The Exchange proposes to replace references to "Department of Enforcement or the Department of Market Regulation" with "Enforcement" in Rule 9820 (Appointment of Hearing Officer and Hearing Panel), which governs the appointment of Hearing Officers and Panelists for temporary cease and desist proceedings, to bring departments reporting to the CRO that meet the definition of "Enforcement" within the scope of this Rule.
- Rule 9830 (Hearing) sets forth hearing procedures for temporary cease and desist proceedings. The Exchange proposes to amend Rule 9830(b) and

(h) to replace “Department of Enforcement or the Department of Market Regulation” with “Enforcement” to permit service of a notice in a temporary cease and desist proceeding on a department reporting to the CRO that meets the definition of “Enforcement,” and to describe available remedies in the event Enforcement fails to appear at a hearing.

#### Independence of the CRO and Staff in the Disciplinary Process

The Exchange proposes to amend Rules 8210 and 9110 to add rule text providing that in performing functions under the disciplinary code, the CRO and Regulatory Staff would function independently of the commercial interests of the Exchange and the commercial interests of the member organizations. This requirement is already being met and is consistent with longstanding policies and practices at the Exchange. The proposed change would also be consistent with rules currently in effect for the equities and options markets of the Exchange’s affiliate NYSE Arca, Inc., and would reflect the Exchange’s ongoing commitment to performing its regulatory functions under its disciplinary rules in an independent and impartial manner.<sup>14</sup>

#### One Year Revolving Door Restriction and Prohibition on Serving as Expert Witness

Rule 9141 governs appearances in a proceeding. The Exchange proposes to amend Rule 9141 by adding a new section (c) that would prohibit former Regulatory Staff from making an appearance before an Adjudicator on behalf of any other person in any proceeding under the Rule 9000 Series within one year immediately following termination of employment with the Exchange or FINRA. The rule text is broader than FINRA’s counterpart rule in that it covers not only former FINRA staff but also former Regulatory Staff that reported to the CRO, and covers both officers and employees. The rule text is otherwise substantially the same as the text of FINRA Rule 9141(c), which the Exchange declined to adopt in 2013.<sup>15</sup> At the time, the Exchange did not believe it was necessary to bar former employees from such appearances because its employees were not conducting disciplinary functions and their appearance would not create the same type of potential conflict of interest. Once Regulatory Staff reporting to the CRO again directly perform market surveillance, investigation and enforcement functions following expiration of the current RSA, that would no longer be the case and the Exchange therefore believes that such a prohibition would help prevent potential conflicts or appearance of conflicts of interest.

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<sup>14</sup> See Arca Equities Rule 10.2(a); Arca Options Rule 10.2(a).

<sup>15</sup> See Securities Exchange Act Release No. 69045, 78 FR at 15395 n.14.

Similarly, the Exchange proposes to amend Rule 9242, which governs pre-hearing submissions, to add a new section (b) prohibiting former Regulatory Staff from providing expert testimony on behalf of any other person in any proceeding under the Rule 9000 Series within one year immediately following termination of employment with the Exchange or FINRA. The Exchange also proposes that nothing in proposed Rule 9242(b) would prohibit former Regulatory Staff from testifying as a witness on behalf of the Exchange or FINRA. The rule text is broader than FINRA's counterpart rule in that it covers not only former FINRA staff but also former Regulatory Staff that reported to the CRO, and covers both officers and employees. The rule text is otherwise substantially the same as the text of FINRA Rule 9242(b), which the Exchange declined to adopt in 2013 for the same reasons it did not adopt the one year prohibition of FINRA Rule 9141(c). Given the Exchange's anticipated resumption of certain regulatory functions, the Exchange believes that a prohibition on former Regulatory Staff providing expert testimony would help prevent potential conflicts or appearance of conflicts of interest. The Exchange also believes that, consistent with FINRA Rule 9242(b), permitting a former Regulatory Staff member to testify as a witness on behalf of the Exchange does not pose potential conflicts of interest.

#### Substitution of CRO for ODA in Rules 9211, 9216 and 9270

The Exchange proposes that the CRO rather than FINRA's ODA would be responsible for: (1) authorizing issuance of a complaint; (2) accepting or rejecting AWC letters and minor rule violation plan letters; and (3) accepting or rejecting uncontested offers of settlement.

The Exchange believes that providing for the CRO to authorize issuance of complaints and approve settlements would be consistent with the Exchange's reintegration of regulatory functions and the rules of other SROs.<sup>16</sup> The proposed change is also consistent with certain powers the CRO currently has under the disciplinary rules.<sup>17</sup> Moreover, as noted above, by rule the CRO would be

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<sup>16</sup> See e.g., BATS Exchange Rules 8.4 and 8.8; Chicago Stock Exchange Article 12, Rules 1(b) and (d) (providing that the CRO shall direct written charges and approve or reject offers of settlement). The International Securities Exchange ("ISE"), Miami International Securities Exchange ("MIAX") and BOX Options Exchange ("BOX") also provide that complaints are to be approved by the CRO. Each also requires offers of settlement to be authorized by the CRO if a hearing panel has not yet been appointed, and requires letters of consent to be authorized by the CRO and approved by a business conduct committee. See ISE Rules 1603, 1604 and 1609; MIAX Rules 1003, 1004 and 1009; BOX Rules 12030, 12040 and 12090.

<sup>17</sup> In adopting FINRA's disciplinary rules, the Exchange provided that the CRO, rather than FINRA's CEO, would authorize the initiation of temporary cease and desist proceedings and the initiation of suspension or cancellation proceedings for

required to operate independently of the commercial interests of the Exchange and of member organizations.

To accomplish these changes, the Exchange proposes to amend Rules 9211, 9216 and 9270 as follows:

- Rule 9211(a)(1) and (a)(2) would be amended to replace “Office of Disciplinary Affairs” with “CRO.” This proposed change would identify the CRO rather than ODA as being responsible for authorizing Enforcement to issue a complaint.
- Rule 9216(a)(3) and (a)(4) would be amended to replace references to “Office of Disciplinary Affairs” with “CRO.” The proposed change would permit the CRO to accept or reject an AWC letter and, if accepted, to be deemed final.
- Rule 9216(a)(4) would be amended to provide that if the CRO rejects an AWC letter, the Exchange may take other appropriate disciplinary action with respect to the alleged violation or violations. This is consistent with the current rule as it relates to an AWC letter that is rejected by FINRA’s ODA.
- Rule 9216(b)(3) and (b)(4) would be amended to replace “Office of Disciplinary Affairs” with “CRO.” This proposed change would allow an executed minor rule violation plan letter to be submitted to the CRO, which, on behalf of the SRO Board, may accept or reject it. If accepted, it would be deemed final; if the CRO rejects the letter, the Exchange may take other appropriate disciplinary action with respect to the alleged violation or violations. This is consistent with the current rule as it relates to a minor rule violation plan letter that is accepted or rejected by ODA.
- Finally, Rule 9270(e), (f), (h), and (j) would also be amended to replace “Office of Disciplinary Affairs” with “CRO.” The proposed change to subsection (f) would provide that uncontested offers of settlement would be transmitted to the CRO and, if accepted under proposed Rule 9270(f)(3), would be issued and become final. Under proposed Rule 9270(h), if the CRO does not accept an uncontested offer of settlement, the respondent would be notified in writing and the offer of settlement and

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a violation of a temporary cease and desist order. The Exchange also retained the ability of the CRO to resolve certain procedural matters in connection with settlements under Rule 9270(d). See Securities Exchange Act Release No. 69045, 78 FR at 15394, 15398-15400 & n.24.

proposed order of acceptance would be deemed withdrawn.<sup>18</sup> Under proposed Rule 9270(j), an offer of settlement rejected by the CRO would not prejudice a respondent and would not be introduced into evidence in connection with the determination of the issues involved in the pending complaint or in any other proceeding. This is consistent with the current rule as it relates to an offer of settlement that is not accepted by ODA.

Miscellaneous Amendments to Rules 476, 8120, 9001, 9110, 9217, 9232, 9310 and 9810

The Exchange proposes several miscellaneous amendments to make certain technical changes and correct a typographical error.

First, the Exchange proposes to insert a reference to the Rule 8000 Series in Rule 476 in order to clarify that both the Rule 8000 Series and the Rule 9000 Series would apply to proceedings for which no Charge Memorandum was filed with the hearing board under Rule 476(d) prior to July 1, 2013 and for which no written Stipulation and Consent was submitted to a Hearing Officer prior to July 1, 2013.<sup>19</sup> The Exchange proposes the same change to Rule 9001, which specifies the effective date of the Rule 9000 Series.

Second, the Exchange proposes to delete the last sentence in Rule 476 as obsolete. By its terms, that sentence relates only to orders issued on or before July 1, 2013.

Third, the Exchange proposes to add a reference to the term “Regulatory Staff” in Rule 8120, because, as set forth above, that new defined term is referenced in certain proposed changes to the Rule 8000 Series.

Fourth, the Exchange proposes to delete the last sentence in Rule 9110(c) as obsolete.

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<sup>18</sup> Because the Exchange does not have sanction guidelines, the CRO, Hearing Panel, or Extended Hearing Panel, as applicable, would consider Exchange precedent or such other precedent as it deemed appropriate in determining whether or not to accept a settlement offer under Rule 9270. See Securities Exchange Act Release No. 68678 at 43 n.38 (January 16, 2013), 78 FR 5213 at 5229 n.39 (January 24, 2013) (SR-NYSE-2013-02).

<sup>19</sup> Rule 476 is the Exchange’s legacy disciplinary rule that applies to a Charge Memorandum filed under Rule 476(d) prior to July 1, 2013 or for which a written Stipulation and Consent was submitted prior to July 1, 2013. See Securities Exchange Act Release Nos. 68678, 78 FR at 5213 and 69045, 78 FR at 15394.

Fifth, the Exchange proposes to correct a typographical error in Rule 9217, which sets forth the rules eligible for minor rule plan fines, by adding a dash in the rule text describing Rule 123C.

Sixth, the Exchange proposes to amend Rule 9232(b), which governs appointment of panelists, to provide that the Board shall from time to time appoint a Hearing Board as set forth in the rule. Under the current rule, the Chairman of the Board, subject to Board approval, has this responsibility. The Exchange believes that because the approval of the Board is required for appointment of the Hearing Board, it is not necessary to specify that the Chairman of the Exchange Board would appoint the Hearing Board subject to such approval.

Seventh, the Exchange proposes two technical, clarifying amendments to Rule 9310. The Exchange proposes to amend Rule 9310 to provide that none of the persons referenced in the Rule, *i.e.*, Board directors, members of the Committee for Review, and the parties, may request Board review of a decision concerning an Exchange member that is an affiliate. Under the current Rule, only the parties are prohibited from requesting Board review of a decision in such circumstances.<sup>20</sup>

Finally, the Exchange proposes to add the phrase “Service and Filing of Notice” to the title of Rule 9810(a) in order to identify the subject matter covered by the rule.

(b) Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,<sup>21</sup> in general, and furthers the objectives of Section 6(b)(5) of the Act,<sup>22</sup> in particular, in that it is designed to promote just and equitable principles of trade and to remove impediments to and perfect the mechanism of a free and open market and a national market system. In addition, the Exchange believes that the proposed rule change furthers the objectives of Section 6(b)(7) of the Act,<sup>23</sup> in particular, in that it provides fair procedures 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

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<sup>20</sup> A decision with respect to an Exchange member that is an affiliate of the Exchange constitutes final Exchange disciplinary action pursuant to SEC Rule 19d-1(c)(1) and may not be reviewed by the Board. See Rule 9268(e)(2).

<sup>21</sup> 15 U.S.C. 78f(b).

<sup>22</sup> 15 U.S.C. 78f(b)(5).

<sup>23</sup> 15 U.S.C. 78f(b)(7).

Exchange of any person with respect to access to services offered by the Exchange or a member thereof. In addition, the Exchange believes that the proposed rule change furthers the objectives of Section 6(b)(3) of the Act,<sup>24</sup> in particular, in that it supports the fair representation of members in the administration of the Exchange's affairs.

The Exchange believes that eliminating references to FINRA departments and replacing them with "Enforcement," a new defined term that includes any department reporting to the CRO of the Exchange with responsibility for investigating or imposing sanctions on a member organization or covered person, in addition to FINRA's departments of Enforcement and Market Regulation, in Rules 9120, 9131, 9146, 9211, 9212, 9213, 9215, 9216, 9251, 9253, 9264, 9269, 9270, 9810, 9820 and 9830 would facilitate the Exchange's ability to directly conduct investigations and bring disciplinary actions for matters it will be conducting after the reintegration of certain functions next year. The Exchange believes that defining "Regulatory Staff" as including any officer or employee reporting directly or indirectly to the CRO of the Exchange in addition to FINRA staff acting on behalf of the Exchange in connection with the Rule 8000 and 9000 Series, in Rules 9120, 9146, 9216, 9269, 9270, 9551, 9552, 9554, and 9556 would similarly facilitate the Exchange's ability to directly conduct investigations and bring disciplinary actions, as well as FINRA.

Because the substance of the rules would remain unchanged, the Exchange believes that the proposed change would provide fair procedures 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 Exchange of any person with respect to access to services offered by the Exchange or a member thereof. Further, removing references to Exchange and FINRA offices and departments in the Exchange's Rules that are unnecessary in light of Rule 0 removes impediments to and perfects a national market system because it would reduce potential confusion that may result from retaining different designations in the Exchange's rulebook. Removing potentially confusing conflicting designations would also further the goal of transparency and add consistency to the Exchange's Rules.

The Exchange believes that adding rule text to Rules 8210 and 9110 stating that the CRO and Regulatory Staff would function independently of the commercial interests of the Exchange and the commercial interests of member organizations in performing functions under the disciplinary rules would further ensure the integrity and independence of the disciplinary process and further provide fair procedures for the disciplining of members and persons associated with members. For the same reasons, addition of the proposed rule text would protect investors

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15 U.S.C. 78f(b)(3).

and the public interest and would therefore be consistent with Section 6(b)(5) of the Exchange Act.

The Exchange believes that prohibiting former Regulatory Staff from representing respondents and providing expert testimony in Exchange disciplinary matters within one year immediately following termination of employment would provide greater harmonization between Exchange and FINRA rules of similar purpose. As previously noted, the proposed rule text is based on FINRA's current rule text, which already has been approved by the Commission. As such, the proposed rule change would foster cooperation and coordination with persons engaged in facilitating transactions in securities and will remove impediments to and perfect the mechanism of a free and open market and a national market system.

The Exchange also believes that making the CRO responsible for authorizing complaints and approving AWC letters, minor rule violation plan letters and offers of settlement in place of FINRA's ODA is fair and reasonable, and provides adequate procedural protections. In particular, requiring approval of complaints and settlements by an independent CRO will serve as an appropriate check on the authority of the investigative and enforcement staff at both the Exchange and FINRA to bring and resolve such actions.

Further, the Exchange believes that by having decisions regarding initiating and resolving formal disciplinary actions and resolving minor rule violations made by an individual with the most direct expertise relevant to the NYSE's markets,<sup>25</sup> the proposal promotes efficiency and consistency and aligns the Exchange's process with other SROs. As noted above, the proposed change is consistent with the reintegration of regulatory functions by the Exchange and the practices at other SROs where CROs authorize issuance of complaints and approve settlements.

Finally, making technical amendments and correcting a typographical error in Rules 476, 8120, 9001, 9110, 9217, 9232, 9310 and 9810 removes impediments to and perfects the mechanism of a free and open market by removing confusion that may result from having incorrect or redundant material in the Exchange's rulebook. The Exchange believes that eliminating incorrect or redundant material would not be inconsistent with the public interest and the protection of investors because investors will not be harmed and in fact would benefit from increased transparency, thereby reducing potential confusion. Removing such references will also remove impediments to and perfects the mechanism of a free and open market by ensuring that persons subject to the Exchange's jurisdiction, regulators, and the investing public can more easily navigate and understand the Exchange's rulebook. The Exchange believes that eliminating incorrect or redundant material would not be inconsistent with the public interest and the protection of investors because investors will not be harmed and in fact would benefit from increased

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See, e.g., Securities Exchange Act Release No. 69045, 78 FR at 15401.

transparency, thereby reducing potential confusion. Removing such references will also further the goal of transparency and add clarity to the Exchange's rules.

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

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The proposed rule change is not intended to address competitive issues but rather to enable the Exchange to directly investigate and initiate disciplinary actions following and facilitate the reintegration of certain regulatory functions from FINRA.

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

Written comments on the proposed rule change were neither solicited nor received.

6. Extension of Time Period for Commission Action

The Exchange does not consent to an extension of the time period specified in Section 19(b)(2)<sup>26</sup> of the Exchange Act.

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

Not applicable.

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

The proposed change to Rule 9141 adding a new subsection (c) is based on FINRA Rule 9141(c). The proposed change to Rule 9242 adding a new subsection (b) is based on FINRA Rule 9242(b).

9. Security-Based Swap Submissions Filed Pursuant to Section 3C of the Act

Not applicable.

10. Advanced Notices Filed Pursuant to Section 806(e) of the Payment, Clearing and Settlement Supervision Act

Not applicable.

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<sup>26</sup> 15 U.S.C. 78s(b)(2).

11. Exhibits

Exhibit 1 – Form of Notice of Proposed Rule Change for Publication in the Federal Register

Exhibit 4 – Text of newly proposed rule change with comparison of previously proposed text of rule change

Exhibit 5 – Text of the Proposed Rule Change

## SECURITIES AND EXCHANGE COMMISSION

(Release No. 34- ; File No. SR-NYSE-2015-35, Amendment No. 1)

[Date]

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing of Proposed Rule Change Amending Certain of Its Disciplinary Rules to Facilitate the Reintegration of Certain Regulatory Functions from Financial Industry Regulatory Authority, Inc.

Pursuant to Section 19(b)(1)<sup>1</sup> of the Securities Exchange Act of 1934 (the “Act”)<sup>2</sup> and Rule 19b-4 thereunder,<sup>3</sup> notice is hereby given that, on August 14, 2015, New York Stock Exchange LLC (“NYSE” or the “Exchange”) filed with the Securities and Exchange Commission (the “Commission”) the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

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

The Exchange proposes to amend certain of its disciplinary rules to facilitate the reintegration of certain regulatory functions from Financial Industry Regulatory Authority, Inc. (“FINRA”). This Amendment No. 1 supersedes the original filing in its entirety. The text of the proposed rule change is available on the Exchange’s website at [www.nyse.com](http://www.nyse.com), at the principal office of the Exchange, and at the Commission’s Public Reference Room.

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

<sup>2</sup> 15 U.S.C. 78a.

<sup>3</sup> 17 CFR 240.19b-4.

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 those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

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

1. Purpose

The Exchange proposes to amend certain of its disciplinary rules to permit the reintegration of certain regulatory functions from FINRA as of January 1, 2016.

**Background of Proposed Rule Change**

On June 14, 2010, the NYSE, NYSE Regulation, Inc. (“NYSE Regulation”),<sup>4</sup> and FINRA entered into a Regulatory Services Agreement (“RSA”), whereby FINRA was retained to perform the market surveillance and enforcement functions that had previously been performed by NYSE, through its wholly-owned subsidiary NYSE Regulation. Pursuant to the RSA, FINRA has been performing Exchange enforcement-

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<sup>4</sup> NYSE Regulation, a not-for-profit subsidiary of the Exchange, performs the Exchange’s regulatory functions pursuant to a delegation agreement. See note 7, infra. The Exchange recently filed to, among other things, terminate the delegation agreement, establish a regulatory oversight committee (“ROC”) as a committee of the board of directors of the Exchange, and reintegrate its regulatory and market functions. See Release No. 75288 (June 24, 2015), 80 FR 37316 (June 30, 2015) (SR-NYSE-2015-27) (the “NYSE ROC Filing”). The amendments proposed herein are consistent with, and not dependent on approval of, the NYSE ROC Filing.

related regulatory services, including investigating and enforcing violations of Exchange rules, and conducting disciplinary proceedings arising out of such enforcement actions, including those relating to NYSE-only rules and against dual members and non-FINRA members. To facilitate FINRA's performance of these functions, the Exchange amended its rules to provide that Exchange rules that refer to NYSE Regulation or its staff, Exchange staff, and Exchange departments should be understood to also refer to FINRA staff and FINRA departments acting on behalf of the Exchange pursuant to the RSA.<sup>5</sup>

In 2013, the Exchange adopted new disciplinary rules that are, with certain exceptions, substantially the same as the text of the FINRA Rule 8000 Series and Rule 9000 Series, which set forth rules for conducting investigations and enforcement actions.<sup>6</sup> Those rules were implemented on July 1, 2013<sup>7</sup> and, among other things: (1) identify FINRA's Department of Enforcement and Department of Market Regulation as the departments permitted to commence disciplinary proceedings, when authorized by FINRA's Office of Disciplinary Affairs ("ODA"); (2) identify ODA as the office permitted to accept or reject a letter of acceptance, waiver, and consent ("AWC") or minor rule violation plan letter on behalf of the Board; and (3) identify ODA as the office permitted to accept or reject an offer of settlement if not opposed by FINRA's

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<sup>5</sup> See Rule 0. Notwithstanding the RSA, the Exchange retains ultimate legal responsibility for, and control of, the Exchange's regulatory functions performed by FINRA. See Securities Exchange Act Release No. 62355 (June 22, 2010), 75 FR 36729 (June 28, 2010) (SR-NYSE-2010-46).

<sup>6</sup> See Securities Exchange Act Release Nos. 68678 (January 16, 2013), 78 FR 5213 (January 24, 2013) (SR-NYSE-2013-02), 69045 (March 5, 2013), 78 FR 15394 (March 11, 2013) (SR-NYSE-2013-02), and 69963 (July 10, 2013), 78 FR 42573 (July 16, 2013) (SR-NYSE-2013-49).

<sup>7</sup> See NYSE Information Memorandum 13-8 (May 24, 2013).

Department of Enforcement or Department of Market Regulation. Those rules do not, however, specify whether Exchange staff or departments, or staff of the Exchange's wholly-owned subsidiary NYSE Regulation, to which the Exchange currently delegates certain regulatory functions,<sup>8</sup> may perform the functions described in the rules.

In October 2014, the Exchange announced that, upon expiration of the current RSA on December 31, 2015, certain market surveillance, investigation and enforcement functions performed on behalf of the Exchange would be reintegrated.<sup>9</sup> Accordingly, effective January 1, 2016, the Exchange will perform certain of the market surveillance, investigation and enforcement functions FINRA was retained to perform in 2010. The proposed changes to the disciplinary rules in the present filing are necessary to permit the Exchange to perform certain regulatory functions currently performed on the Exchange's

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<sup>8</sup> The Exchange currently delegates to NYSE Regulation certain responsibilities and functions of the Exchange, including taking "action to assure compliance with the rules, interpretations, policies and procedures of [the Exchange], the federal securities laws, or other laws, rules and regulations that [the Exchange] has the authority to administer or enforce, through examination, surveillance, investigation, enforcement, disciplinary and other programs." Delegation Agreement by and among New York Stock Exchange LLC, NYSE Regulation, Inc. and NYSE Market, Inc. (the "Delegation Agreement"), Section II, A.2. The Exchange, however, retains ultimate responsibility for such delegated responsibilities and functions. See Securities Exchange Act Release No. 53382, 71 FR 11251, 11264 (February 27, 2006) (SR-NYSE-2005-77). Actions taken by NYSE Regulation pursuant to delegated authority remain subject to review, approval or rejection by the board of directors of the Exchange. The one exception is that actions taken by NYSE Regulation upon review of disciplinary decisions by the NYSE Regulation board of directors is not subject to review, approval or rejection by the Exchange and constitutes a final action of the Exchange. See Delegation Agreement, Section I. The Exchange is not proposing in this filing any changes to its rules that impact the review of disciplinary decisions by the NYSE Regulation board of directors.

<sup>9</sup> It is anticipated that FINRA, under a new RSA currently being negotiated, would continue to conduct, inter alia, the registration, testing and examination of broker-dealer members of the Exchange, and certain cross-market surveillance and related investigation and enforcement activities.

behalf by FINRA.

The Exchange proposes the following changes to facilitate the reintegration of certain regulatory functions from FINRA by providing that investigative and enforcement functions of the Exchange under the Rule 8000 and 9000 Series would be performed by personnel and departments reporting to the Chief Regulatory Officer of the Exchange<sup>10</sup> or by FINRA personnel and departments:

- (1) amend Rule 9120 to include two new defined terms: “Enforcement,” referring to any department reporting to the CRO of the Exchange with responsibility for investigating or imposing sanctions on a member organization or covered person, in addition to FINRA’s departments of Enforcement and Market Regulation; and “Regulatory Staff,” referring to any officer or employee reporting directly or indirectly to the CRO of the Exchange, in addition to FINRA staff acting on behalf of the Exchange in connection with the Rule 8000 and 9000 Series;
- (2) amend Rules 9120, 9131, 9146, 9211, 9212, 9213, 9215, 9216, 9251, 9253, 9264, 9269, 9270, 9551, 9552, 9554, 9556, 9810, 9820 and 9830 to replace references to Exchange and FINRA departments and personnel with references to “Enforcement” and “Regulatory Staff”;
- (3) amend Rules 8210 and 9110 to provide that in performing functions under the disciplinary code, the CRO and Regulatory Staff shall function independently of the commercial interests of the Exchange and of the member organizations;

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<sup>10</sup> NYSE Regulation staff report to the Chief Executive Officer of NYSE Regulation, who is also the Chief Regulatory Officer (“CRO”) of the Exchange.

- (4) amend Rules 9141 and 9242 to prohibit former Regulatory Staff from appearing in a proceeding under the Rule 9000 Series and from providing expert testimony in a proceeding under the Rule 9000 Series within one year of termination, respectively;
- (5) amend Rules 9211, 9216 and 9270 to provide that the CRO would be responsible for authorizing complaints; approving letters of acceptance, waiver, and consent; approving minor rule violation plan letters; and approving offers of settlement in place of FINRA's ODA; and
- (6) amend Rules 476, 8120, 9001, 9110, 9217, 9232, 9310 and 9810 to make certain technical changes and correct a typographical error.

The Exchange proposes that the changes described herein would be operative on January 1, 2016, following the reintegration of certain regulatory functions from FINRA as described below.

Replacement of References to Exchange and FINRA Departments and Personnel with References to Enforcement and Regulatory Staff

The Exchange proposes to amend Rules 9120, 9131, 9146, 9211, 9212, 9213, 9215, 9216, 9251, 9253, 9264, 9269, 9270, 9551, 9552, 9554, 9556, 9810, 9820 and 9830 to replace references to Exchange and FINRA departments and personnel with references to the defined terms "Enforcement" and "Regulatory Staff."

The proposed amendments would allow disciplinary actions to be investigated and prosecuted on the Exchange's behalf by officers or employees reporting to the CRO beginning on January 1, 2016, while still enabling FINRA staff to continue to perform investigative and disciplinary activities that FINRA is authorized to perform on the

Exchange's behalf.

More specifically, the Exchange proposes to make the following amendments:

- Rule 9120 (Definitions) sets forth the definitions applicable to the disciplinary code. The Exchange proposes to add definitions of "Enforcement," referring to any department reporting to the CRO of the Exchange with responsibility for investigating or imposing sanctions on a member organization or covered person, in addition to FINRA's departments of Enforcement and Market Regulation; and "Regulatory Staff," referring to any officer or employee reporting, directly or indirectly, to the CRO of the Exchange, in addition to FINRA staff acting on behalf of the Exchange in connection with the Rule 8000 and 9000 Series.<sup>11</sup>

The Exchange also proposes to delete the definitions of "Head of Enforcement" (Rule 9120(q)) and "Head of Market Regulation" (Rule 9120(r)), which refer to the FINRA department heads.<sup>12</sup>

Similarly, the Exchange proposes to replace the reference to the "Department of Enforcement or the Department of Market Regulation" in

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<sup>11</sup> Certain rules in the Rule 8000 and 9000 Series currently refer to "Exchange staff," a term which includes NYSE employees, NYSE Regulation staff that administers rules under the Delegation Agreement, and authorized FINRA staff pursuant to Rules 0 and 1. The proposed definition of "Regulatory Staff" provides that for purposes of the Rule 8000 Series and Rule 9000 Series (except for Rule 9557), the term "Exchange staff" shall have the same meaning as "Regulatory Staff."

<sup>12</sup> The Exchange also proposes to delete the definition of ODA (Rule 9120(v)) and replace all references to ODA in the Exchange's rules with "CRO," for the reasons discussed in "Substitution of CRO for ODA in Rules 9211, 9216 and 9270," infra.

Rule 9120(y) (definition of the term “Party”) with “Enforcement.”

The Exchange further proposes to streamline the definition of “Interested Staff” (Rule 9120(u)) to eliminate references to Exchange and FINRA departments and staff, and provide that “Interested Staff” under any proceeding brought under the Code of Procedure means Regulatory Staff or Exchange staff who (i) report, directly or indirectly, to any Enforcement employee, or to the head of any department or office that issues a notice or decision or is designated as a Party under the Rule 9000 Series, (ii) directly participated in the authorization or initiation of a complaint or proceeding, or (iii) directly participated in the proceeding, or directly participated in an examination, investigation, prosecution, or litigation related to a proceeding, as well as any person(s) who supervise such staff. Thus, as in the current definition, the new definition of “Interested Staff” in a particular matter encompasses supervisory personnel up to the most senior level, including the CRO, when staff reporting to such supervisory personnel directly participated in the matter.

Finally, the Exchange proposes to renumber the remaining definitions in Rule 9120.

- Rule 9131 (Service of Complaint) provides that the “Department of Enforcement or the Department of Market Regulation” shall serve a complaint on both a party and counsel for a party. The Exchange proposes to replace these references with “Enforcement.” The proposed change would enable Enforcement to serve disciplinary complaints beginning

January 1, 2016.

- Rule 9146 (Motions) governs motion practice under the disciplinary rules. The Exchange proposes to amend Rule 9146(k)(1) to replace a reference to the “Department of Enforcement and the Department of Market Regulation and other Exchange staff” with “Regulatory Staff.” The Exchange also proposes to replace a reference to “Exchange staff” in subsection (k)(2) with “Regulatory Staff.” The proposed changes would identify the staff that may receive or use documents subject to a protective order.
- Rule 9211 (Authorization of Complaint) sets forth the process for authorizing issuance of a complaint against a member organization or covered person. The Exchange proposes to replace references to the “Department of Enforcement or the Department of Market Regulation” with “Enforcement” in Rules 9211(a)(1) and (a)(2). The Exchange proposes to add the phrase “has reason to believe” in subsection (a)(1) with reference to Enforcement to make the construction consistent with other disciplinary rules (e.g., Rule 9216). The proposed change would enable the Exchange, in addition to FINRA, to authorize and issue disciplinary complaints beginning January 1, 2016. As discussed below, the Exchange also proposes to amend Rule 9211 to provide that the Exchange’s CRO would authorize issuance of a complaint.
- Rule 9212 (Complaint Issuance) sets forth the requirements of the complaint. In subsection (a)(1), the Exchange proposes to delete the first

sentence as redundant, and to delete two references to “Department of Enforcement or the Department of Market Regulation.” The proposed change would permit “authorized Enforcement staff” to sign a complaint that would be served by “Enforcement.”

The Exchange also proposes to replace “Department of Enforcement or the Department of Market Regulation” with “Enforcement” in Rule 9212(a)(2) to permit, in addition to the relevant FINRA departments, any department reporting to the CRO that meets the definition of “Enforcement” to propose a hearing location or that the Chief Hearing Officer select a Floor-Based Panelist as provided for therein.

Similarly, the Exchange proposes to replace “Department of Enforcement or the Department of Market Regulation” with “Enforcement” in Rule 9212(b) and Rule 9212(c)(1) and (2) to enable any department reporting to the CRO that meets the definition of “Enforcement,” in addition to the relevant FINRA departments, to amend and withdraw complaints.

- Rule 9213(a) (Assignment of Hearing Officer) provides for the appointment of a Hearing Officer and Panelists by the Chief Hearing Officer as soon as practicable after the filing of a complaint by the “Department of Enforcement or the Department of Market Regulation.” The Exchange proposes to replace this reference with “Enforcement” to include complaints filed by any department reporting to the CRO that meets the definition of “Enforcement,” in addition to the relevant FINRA departments.

- Rule 9215(f) (Answer to Complaint) sets forth the requirements for answering a complaint. The Exchange proposes to replace “Department of Enforcement or the Department of Market Regulation” with “Enforcement” in Rule 9215(f) to enable any department reporting to the CRO that meets the definition of “Enforcement,” in addition to the relevant FINRA departments, to send a second notice if a respondent does not file an answer or timely respond to the complaint.
- Rule 9216(a) (Acceptance, Waiver, and Consent Procedures) sets forth the procedures by which a respondent can execute an AWC letter prior to the issuance of a complaint. Under the current rule, FINRA’s Department of Enforcement or Department of Market Regulation prepares and requests that a member organization or covered person execute an AWC letter, and “Exchange staff” may determine the effective date of sanctions unless the letter states otherwise. The Exchange proposes to replace “Department of Enforcement or the Department of Market Regulation” in Rule 9216(a)(1) with “Enforcement” to permit any department reporting to the CRO that meets the definition of “Enforcement,” in addition to the relevant FINRA departments, to prepare and request execution of AWC letters. The Exchange also proposes to replace “Exchange staff” with “Regulatory Staff” to identify the staff that may determine the effective date of sanctions.  
  
Rule 9216(b) (Procedure for Violation Under Plan Pursuant to SEA Rule 19d-1(c)(2)) sets forth the procedures for executing a minor rule violation

plan letter.<sup>13</sup> Under the current rule, FINRA’s Department of Enforcement or Department of Market Regulation may prepare and request that a member organization or covered person execute a minor rule violation plan letter, and “Exchange staff” may determine the effective date of sanctions unless the letter states otherwise. The Exchange proposes to replace references to “the Department of Enforcement or the Department of Market Regulation” in Rule 9216(b)(1) with “Enforcement” so that any department reporting to the CRO that meets the definition of “Enforcement,” in addition to FINRA, may prepare and request such letters. The Exchange also proposes to replace “Exchange staff” with “Regulatory Staff” to identify the staff that may determine the effective date of sanctions.

- Rule 9251 (Inspection and Copying of Documents in Possession of Staff) requires that documents prepared or obtained in connection with an investigation be made available to a respondent. The Exchange proposes to amend subsections (a) (documents that must be made available for inspection and copying), (b) (documents withheld from inspection and copying), (c) (list of documents withheld), (d) (timing of inspection and copying), and (g) (failure to make documents available) to replace references to “the Department of Enforcement or the Department of Market Regulation” with “Enforcement” to bring departments reporting to

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A minor rule violation plan letter under the Exchange’s rules permits a fine not to exceed \$2,500 and/or a censure to be imposed with respect to certain specifically enumerated rules. See Rules 9216(b)(1) and 9217.

the CRO that meet the definition of “Enforcement” within the scope of this rule.

- Rule 9253 (Production of Witness Statements) sets forth the procedures for filing motions to obtain witness statements. The Exchange proposes to amend Rule 9253(a) and (b) to replace “Department of Enforcement or the Department of Market Regulation” with “Enforcement” to bring departments reporting to the CRO that meet the definition of “Enforcement” within the scope of this Rule.
- Rule 9264 (Motion for Summary Disposition) sets forth the procedures for filing summary disposition motions. The Exchange proposes to replace “Department of Enforcement or the Department of Market Regulation” with “Enforcement” to bring departments reporting to the CRO that meet the definition of “Enforcement” within the scope of this Rule.
- Rule 9269 (Default Decisions) sets forth the process for issuance and review of default decisions. The Exchange proposes to replace “Department of Enforcement or the Department of Market Regulation” in subsection (a)(2) with “Enforcement” in order to bring departments reporting to the CRO that meet the definition of “Enforcement” within the scope of this Rule. The Exchange also proposes to replace “Exchange staff” with “Regulatory Staff” in subsection (d) to identify the staff that may determine the effective date of certain sanctions.
- Rule 9270 (Settlement Procedure) governs offers of settlement. The Exchange proposes to replace “the Department of Enforcement or the

Department of Market Regulation” in subsections (e) and (f) with “Enforcement” in order to permit a department reporting to the CRO that meets the definition of “Enforcement” to consider offers of settlement by respondents. The Exchange also proposes to replace “Exchange staff” with “Regulatory Staff” in subsection (c)(5) to identify the staff that may determine the effective date of sanctions when provided in an offer of settlement.<sup>14</sup>

- Rule 9551 (Failure to Comply with Public Communication Standards) governs expedited proceedings relating to a member organization’s departure from the public communication standards of Rule 2210. The Exchange proposes to replace “Exchange staff” with “Regulatory Staff” to identify the staff that initiates and otherwise participates in such proceedings.
- Rule 9552 (Failure to Provide Information or Keep Information Current) sets forth procedures for expedited proceedings relating to a member organization or covered person’s failure to provide information or keep information current. The Exchange proposes to replace “Exchange staff” with “Regulatory Staff” to identify the staff that initiates and otherwise participates in such proceedings.
- Rule 9554 (Failure to Comply with an Arbitration Award or Related Settlement or an Order of Restitution or Settlement Providing for Restitution) governs expedited proceedings relating to noncompliance

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<sup>14</sup> As discussed below, the Exchange further proposes to amend Rule 9270 to have certain offers of settlement submitted to the CRO and not ODA.

with an arbitration award, settlement agreement, or restitution order. The Exchange proposes to replace “Exchange staff” with “Regulatory Staff” to identify the staff that initiates and otherwise participates in such proceedings.

- Rule 9556 (Failure to Comply with Temporary and Permanent Cease and Desist Orders) governs expedited proceedings relating to noncompliance with a temporary or permanent cease and desist order. The Exchange proposes to replace “Exchange staff” with “Regulatory Staff” to identify the staff that initiates and otherwise participates in such proceedings.
- Rule 9810 (Initiation of Proceeding) sets forth procedures for initiating temporary cease and desist proceedings. The Exchange proposes to replace “Department of Enforcement or the Department of Market Regulation” with “Enforcement” in the title and the text of the rule to permit a department reporting to the CRO that meets the definition of “Enforcement” to initiate such proceedings.
- The Exchange proposes to replace references to “Department of Enforcement or the Department of Market Regulation” with “Enforcement” in Rule 9820 (Appointment of Hearing Officer and Hearing Panel), which governs the appointment of Hearing Officers and Panelists for temporary cease and desist proceedings, to bring departments reporting to the CRO that meet the definition of “Enforcement” within the scope of this Rule.
- Rule 9830 (Hearing) sets forth hearing procedures for temporary cease and

desist proceedings. The Exchange proposes to amend Rule 9830(b) and (h) to replace “Department of Enforcement or the Department of Market Regulation” with “Enforcement” to permit service of a notice in a temporary cease and desist proceeding on a department reporting to the CRO that meets the definition of “Enforcement,” and to describe available remedies in the event Enforcement fails to appear at a hearing.

#### Independence of the CRO and Staff in the Disciplinary Process

The Exchange proposes to amend Rules 8210 and 9110 to add rule text providing that in performing functions under the disciplinary code, the CRO and Regulatory Staff would function independently of the commercial interests of the Exchange and the commercial interests of the member organizations. This requirement is already being met and is consistent with longstanding policies and practices at the Exchange. The proposed change would also be consistent with rules currently in effect for the equities and options markets of the Exchange’s affiliate NYSE Arca, Inc., and would reflect the Exchange’s ongoing commitment to performing its regulatory functions under its disciplinary rules in an independent and impartial manner.<sup>15</sup>

#### One Year Revolving Door Restriction and Prohibition on Serving as Expert Witness

Rule 9141 governs appearances in a proceeding. The Exchange proposes to amend Rule 9141 by adding a new section (c) that would prohibit former Regulatory Staff from making an appearance before an Adjudicator on behalf of any other person in any proceeding under the Rule 9000 Series within one year immediately following termination of employment with the Exchange or FINRA. The rule text is broader than

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<sup>15</sup> See Arca Equities Rule 10.2(a); Arca Options Rule 10.2(a).

FINRA's counterpart rule in that it covers not only former FINRA staff but also former Regulatory Staff that reported to the CRO, and covers both officers and employees. The rule text is otherwise substantially the same as the text of FINRA Rule 9141(c), which the Exchange declined to adopt in 2013.<sup>16</sup> At the time, the Exchange did not believe it was necessary to bar former employees from such appearances because its employees were not conducting disciplinary functions and their appearance would not create the same type of potential conflict of interest. Once Regulatory Staff reporting to the CRO again directly perform market surveillance, investigation and enforcement functions following expiration of the current RSA, that would no longer be the case and the Exchange therefore believes that such a prohibition would help prevent potential conflicts or appearance of conflicts of interest.

Similarly, the Exchange proposes to amend Rule 9242, which governs pre-hearing submissions, to add a new section (b) prohibiting former Regulatory Staff from providing expert testimony on behalf of any other person in any proceeding under the Rule 9000 Series within one year immediately following termination of employment with the Exchange or FINRA. The Exchange also proposes that nothing in proposed Rule 9242(b) would prohibit former Regulatory Staff from testifying as a witness on behalf of the Exchange or FINRA. The rule text is broader than FINRA's counterpart rule in that it covers not only former FINRA staff but also former Regulatory Staff that reported to the CRO, and covers both officers and employees. The rule text is otherwise substantially the same as the text of FINRA Rule 9242(b), which the Exchange declined to adopt in 2013 for the same reasons it did not adopt the one year prohibition of FINRA Rule

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<sup>16</sup> See Securities Exchange Act Release No. 69045, 78 FR at 15395 n.14.

9141(c). Given the Exchange's anticipated resumption of certain regulatory functions, the Exchange believes that a prohibition on former Regulatory Staff providing expert testimony would help prevent potential conflicts or appearance of conflicts of interest. The Exchange also believes that, consistent with FINRA Rule 9242(b), permitting a former Regulatory Staff member to testify as a witness on behalf of the Exchange does not pose potential conflicts of interest.

Substitution of CRO for ODA in Rules 9211, 9216 and 9270

The Exchange proposes that the CRO rather than FINRA's ODA would be responsible for: (1) authorizing issuance of a complaint; (2) accepting or rejecting AWC letters and minor rule violation plan letters; and (3) accepting or rejecting uncontested offers of settlement.

The Exchange believes that providing for the CRO to authorize issuance of complaints and approve settlements would be consistent with the Exchange's reintegration of regulatory functions and the rules of other SROs.<sup>17</sup> The proposed change is also consistent with certain powers the CRO currently has under the disciplinary rules.<sup>18</sup> Moreover, as noted above, by rule the CRO would be required to operate

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<sup>17</sup> See e.g., BATS Exchange Rules 8.4 and 8.8; Chicago Stock Exchange Article 12, Rules 1(b) and (d) (providing that the CRO shall direct written charges and approve or reject offers of settlement). The International Securities Exchange ("ISE"), Miami International Securities Exchange ("MIAX") and BOX Options Exchange ("BOX") also provide that complaints are to be approved by the CRO. Each also requires offers of settlement to be authorized by the CRO if a hearing panel has not yet been appointed, and requires letters of consent to be authorized by the CRO and approved by a business conduct committee. See ISE Rules 1603, 1604 and 1609; MIAX Rules 1003, 1004 and 1009; BOX Rules 12030, 12040 and 12090.

<sup>18</sup> In adopting FINRA's disciplinary rules, the Exchange provided that the CRO, rather than FINRA's CEO, would authorize the initiation of temporary cease and desist proceedings and the initiation of suspension or cancellation proceedings for

independently of the commercial interests of the Exchange and of member organizations.

To accomplish these changes, the Exchange proposes to amend Rules 9211, 9216 and 9270 as follows:

- Rule 9211(a)(1) and (a)(2) would be amended to replace “Office of Disciplinary Affairs” with “CRO.” This proposed change would identify the CRO rather than ODA as being responsible for authorizing Enforcement to issue a complaint.
- Rule 9216(a)(3) and (a)(4) would be amended to replace references to “Office of Disciplinary Affairs” with “CRO.” The proposed change would permit the CRO to accept or reject an AWC letter and, if accepted, to be deemed final.
- Rule 9216(a)(4) would be amended to provide that if the CRO rejects an AWC letter, the Exchange may take other appropriate disciplinary action with respect to the alleged violation or violations. This is consistent with the current rule as it relates to an AWC letter that is rejected by FINRA’s ODA.
- Rule 9216(b)(3) and (b)(4) would be amended to replace “Office of Disciplinary Affairs” with “CRO.” This proposed change would allow an executed minor rule violation plan letter to be submitted to the CRO, which, on behalf of the SRO Board, may accept or reject it. If accepted, it

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a violation of a temporary cease and desist order. The Exchange also retained the ability of the CRO to resolve certain procedural matters in connection with settlements under Rule 9270(d). See Securities Exchange Act Release No. 69045, 78 FR at 15394, 15398-15400 & n.24.

would be deemed final; if the CRO rejects the letter, the Exchange may take other appropriate disciplinary action with respect to the alleged violation or violations. This is consistent with the current rule as it relates to a minor rule violation plan letter that is accepted or rejected by ODA.

- Finally, Rule 9270(e), (f), (h), and (j) would also be amended to replace “Office of Disciplinary Affairs” with “CRO.” The proposed change to subsection (f) would provide that uncontested offers of settlement would be transmitted to the CRO and, if accepted under proposed Rule 9270(f)(3), would be issued and become final. Under proposed Rule 9270(h), if the CRO does not accept an uncontested offer of settlement, the respondent would be notified in writing and the offer of settlement and proposed order of acceptance would be deemed withdrawn.<sup>19</sup> Under proposed Rule 9270(j), an offer of settlement rejected by the CRO would not prejudice a respondent and would not be introduced into evidence in connection with the determination of the issues involved in the pending complaint or in any other proceeding. This is consistent with the current rule as it relates to an offer of settlement that is not accepted by ODA.

Miscellaneous Amendments to Rules 476, 8120, 9001, 9110, 9217, 9232, 9310 and 9810

The Exchange proposes several miscellaneous amendments to make certain

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<sup>19</sup> Because the Exchange does not have sanction guidelines, the CRO, Hearing Panel, or Extended Hearing Panel, as applicable, would consider Exchange precedent or such other precedent as it deemed appropriate in determining whether or not to accept a settlement offer under Rule 9270. See Securities Exchange Act Release No. 68678 at 43 n.38 (January 16, 2013), 78 FR 5213 at 5229 n.39 (January 24, 2013) (SR-NYSE-2013-02).

technical changes and correct a typographical error.

First, the Exchange proposes to insert a reference to the Rule 8000 Series in Rule 476 in order to clarify that both the Rule 8000 Series and the Rule 9000 Series would apply to proceedings for which no Charge Memorandum was filed with the hearing board under Rule 476(d) prior to July 1, 2013 and for which no written Stipulation and Consent was submitted to a Hearing Officer prior to July 1, 2013.<sup>20</sup> The Exchange proposes the same change to Rule 9001, which specifies the effective date of the Rule 9000 Series.

Second, the Exchange proposes to delete the last sentence in Rule 476 as obsolete. By its terms, that sentence relates only to orders issued on or before July 1, 2013.

Third, the Exchange proposes to add a reference to the term “Regulatory Staff” in Rule 8120, because, as set forth above, that new defined term is referenced in certain proposed changes to the Rule 8000 Series.

Fourth, the Exchange proposes to delete the last sentence in Rule 9110(c) as obsolete.

Fifth, the Exchange proposes to correct a typographical error in Rule 9217, which sets forth the rules eligible for minor rule plan fines, by adding a dash in the rule text describing Rule 123C.

Sixth, the Exchange proposes to amend Rule 9232(b), which governs appointment of panelists, to provide that the Board shall from time to time appoint a Hearing Board as set forth in the rule. Under the current rule, the Chairman of the Board, subject to Board approval, has this responsibility. The Exchange believes that because the approval of the

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<sup>20</sup> Rule 476 is the Exchange’s legacy disciplinary rule that applies to a Charge Memorandum filed under Rule 476(d) prior to July 1, 2013 or for which a written Stipulation and Consent was submitted prior to July 1, 2013. See Securities Exchange Act Release Nos. 68678, 78 FR at 5213 and 69045, 78 FR at 15394.

Board is required for appointment of the Hearing Board, it is not necessary to specify that the Chairman of the Exchange Board would appoint the Hearing Board subject to such approval.

Seventh, the Exchange proposes two technical, clarifying amendments to Rule 9310. The Exchange proposes to amend Rule 9310 to provide that none of the persons referenced in the Rule, *i.e.*, Board directors, members of the Committee for Review, and the parties, may request Board review of a decision concerning an Exchange member that is an affiliate. Under the current Rule, only the parties are prohibited from requesting Board review of a decision in such circumstances.<sup>21</sup>

Finally, the Exchange proposes to add the phrase “Service and Filing of Notice” to the title of Rule 9810(a) in order to identify the subject matter covered by the rule.

## 2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,<sup>22</sup> in general, and furthers the objectives of Section 6(b)(5) of the Act,<sup>23</sup> in particular, in that it is designed to promote just and equitable principles of trade and to remove impediments to and perfect the mechanism of a free and open market and a national market system. In addition, the Exchange believes that the proposed rule change furthers the objectives of Section 6(b)(7) of the Act,<sup>24</sup> in particular, in that it provides fair procedures for the disciplining of members and persons associated with members, the

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<sup>21</sup> A decision with respect to an Exchange member that is an affiliate of the Exchange constitutes final Exchange disciplinary action pursuant to SEC Rule 19d-1(c)(1) and may not be reviewed by the Board. See Rule 9268(e)(2).

<sup>22</sup> 15 U.S.C. 78f(b).

<sup>23</sup> 15 U.S.C. 78f(b)(5).

<sup>24</sup> 15 U.S.C. 78f(b)(7).

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 Exchange of any person with respect to access to services offered by the Exchange or a member thereof. In addition, the Exchange believes that the proposed rule change furthers the objectives of Section 6(b)(3) of the Act,<sup>25</sup> in particular, in that it supports the fair representation of members in the administration of the Exchange's affairs.

The Exchange believes that eliminating references to FINRA departments and replacing them with "Enforcement," a new defined term that includes any department reporting to the CRO of the Exchange with responsibility for investigating or imposing sanctions on a member organization or covered person, in addition to FINRA's departments of Enforcement and Market Regulation, in Rules 9120, 9131, 9146, 9211, 9212, 9213, 9215, 9216, 9251, 9253, 9264, 9269, 9270, 9810, 9820 and 9830 would facilitate the Exchange's ability to directly conduct investigations and bring disciplinary actions for matters it will be conducting after the reintegration of certain functions next year. The Exchange believes that defining "Regulatory Staff" as including any officer or employee reporting directly or indirectly to the CRO of the Exchange in addition to FINRA staff acting on behalf of the Exchange in connection with the Rule 8000 and 9000 Series, in Rules 9120, 9146, 9216, 9269, 9270, 9551, 9552, 9554, and 9556 would similarly facilitate the Exchange's ability to directly conduct investigations and bring disciplinary actions, as well as FINRA.

Because the substance of the rules would remain unchanged, the Exchange

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<sup>25</sup> 15 U.S.C. 78f(b)(3).

believes that the proposed change would provide fair procedures 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 Exchange of any person with respect to access to services offered by the Exchange or a member thereof. Further, removing references to Exchange and FINRA offices and departments in the Exchange's Rules that are unnecessary in light of Rule 0 removes impediments to and perfects a national market system because it would reduce potential confusion that may result from retaining different designations in the Exchange's rulebook. Removing potentially confusing conflicting designations would also further the goal of transparency and add consistency to the Exchange's Rules.

The Exchange believes that adding rule text to Rules 8210 and 9110 stating that the CRO and Regulatory Staff would function independently of the commercial interests of the Exchange and the commercial interests of member organizations in performing functions under the disciplinary rules would further ensure the integrity and independence of the disciplinary process and further provide fair procedures for the disciplining of members and persons associated with members. For the same reasons, addition of the proposed rule text would protect investors and the public interest and would therefore be consistent with Section 6(b)(5) of the Exchange Act.

The Exchange believes that prohibiting former Regulatory Staff from representing respondents and providing expert testimony in Exchange disciplinary matters within one year immediately following termination of employment would provide greater harmonization between Exchange and FINRA rules of similar purpose. As previously

noted, the proposed rule text is based on FINRA's current rule text, which already has been approved by the Commission. As such, the proposed rule change would foster cooperation and coordination with persons engaged in facilitating transactions in securities and will remove impediments to and perfect the mechanism of a free and open market and a national market system.

The Exchange also believes that making the CRO responsible for authorizing complaints and approving AWC letters, minor rule violation plan letters and offers of settlement in place of FINRA's ODA is fair and reasonable, and provides adequate procedural protections. In particular, requiring approval of complaints and settlements by an independent CRO will serve as an appropriate check on the authority of the investigative and enforcement staff at both the Exchange and FINRA to bring and resolve such actions.

Further, the Exchange believes that by having decisions regarding initiating and resolving formal disciplinary actions and resolving minor rule violations made by an individual with the most direct expertise relevant to the NYSE's markets,<sup>26</sup> the proposal promotes efficiency and consistency and aligns the Exchange's process with other SROs. As noted above, the proposed change is consistent with the reintegration of regulatory functions by the Exchange and the practices at other SROs where CROs authorize issuance of complaints and approve settlements.

Finally, making technical amendments and correcting a typographical error in Rules 476, 8120, 9001, 9110, 9217, 9232, 9310 and 9810 removes impediments to and perfects the mechanism of a free and open market by removing confusion that may result

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<sup>26</sup> See, e.g., Securities Exchange Act Release No. 69045, 78 FR at 15401.

from having incorrect or redundant material in the Exchange's rulebook. The Exchange believes that eliminating incorrect or redundant material would not be inconsistent with the public interest and the protection of investors because investors will not be harmed and in fact would benefit from increased transparency, thereby reducing potential confusion. Removing such references will also remove impediments to and perfects the mechanism of a free and open market by ensuring that persons subject to the Exchange's jurisdiction, regulators, and the investing public can more easily navigate and understand the Exchange's rulebook. The Exchange believes that eliminating incorrect or redundant material would not be inconsistent with the public interest and the protection of investors because investors will not be harmed and in fact would benefit from increased transparency, thereby reducing potential confusion. Removing such references will also further the goal of transparency and add clarity to the Exchange's rules.

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

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The proposed rule change is not intended to address competitive issues but rather to enable the Exchange to directly investigate and initiate disciplinary actions following and facilitate the reintegration of certain regulatory functions from FINRA.

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

No written comments were solicited or received with respect to the proposed rule change.

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

Within 45 days of the date of publication of this notice in the Federal Register

or up to 90 days (i) as the Commission may designate 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 or disapprove 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, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

##### Electronic comments:

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-NYSE-2015-35 on the subject line.

##### Paper comments:

- Send paper comments in triplicate to Brent J. Fields, Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-1090.

All submissions should refer to File Number SR-NYSE-2015-35. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet website (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed

with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Section, 100 F Street, NE, Washington, DC 20549-1090. Copies of the filing will also be available for inspection and copying at the NYSE's principal office and on its Internet website at [www.nyse.com](http://www.nyse.com). All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-NYSE-2015-35 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>27</sup>

Robert W. Errett  
Deputy Secretary

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<sup>27</sup> 17 CFR 200.30-3(a)(12).

Additions: Underlined  
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Rules of New York Stock Exchange LLC

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**Rule 476. Disciplinary Proceedings Involving Charges Against Members, Member Organizations, Principal Executives, Approved Persons, Employees, or Others**

Rule 476 shall apply only to a proceeding for which a Charge Memorandum has been filed with the hearing board under Rule 476(d) prior to July 1, 2013 or for which a written Stipulation and Consent has been submitted to a Hearing Officer prior to July 1, 2013 and shall continue to apply until such proceeding is final; otherwise, the Rule 8000 Series and Rule 9000 Series shall apply. Notwithstanding the preceding sentence, after July 1, 2013, the offenses under Rule 476(a) shall be subject to the Rule 9000 Series procedures.[ The Exchange may issue a written notice of suspension for non-payment of a fine under Rule 476(k) until July 1, 2013; thereafter, Rule 8320 shall apply.]

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**Rule 8000. INVESTIGATIONS AND SANCTIONS**

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**Rule 8100. GENERAL PROVISIONS**

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**Rule 8120. Definitions**

(a) No Change

(b) The terms "Adjudicator,"[ and] "covered person" and "Regulatory Staff" shall have the meaning as defined in Rule 9120.

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**Rule 8200. INVESTIGATIONS**

**Rule 8210. Provision of Information and Testimony and Inspection and Copying of Books**

**(a) Authority of Adjudicator and Exchange Staff**

For the purpose of an investigation, complaint, examination, or proceeding authorized by Exchange rules, an Adjudicator or Exchange staff shall have the right to:

**(1) – (2)** No Change

In performing the functions of investigation, complaint, examination, or proceeding authorized by Exchange rules, the CRO and Regulatory Staff shall function independently of the commercial interests of the Exchange and the commercial interests of the member organizations.

**(b) – (g)** No Change

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**Rule 9000. CODE OF PROCEDURE**

**Rule 9001. Effective Date of Rule 9000 Series**

Rule 476 shall apply only to a proceeding for which a Charge Memorandum has been filed with the hearing board under Rule 476(d) prior to July 1, 2013 or for which a written Stipulation and Consent has been submitted to a Hearing Officer prior to July 1, 2013 and shall continue to apply until such proceeding is final; otherwise, the Rule 8000 Series and Rule 9000 Series shall apply. Notwithstanding the preceding sentence, after July 1, 2013, the offenses under Rule 476(a) shall be subject to the Rule 9000 Series procedures.

**Rule 9100. APPLICATION AND PURPOSE**

**Rule 9110. Application**

**(a) Proceedings**

The Rule 9000 Series is the Code of Procedure and includes proceedings for disciplining a member organization or covered person; proceedings for regulating the activities of a member organization experiencing financial or operational difficulties; proceedings for summary or non-summary suspensions, cancellations, bars, prohibitions, or limitations; and proceedings for obtaining relief from the eligibility requirements of the Exchange's rules. The Rule 9100 Series is of general applicability to all proceedings set forth in the Rule 9000 Series, unless a Rule specifically provides otherwise. In performing the functions under the Code, the CRO and Regulatory Staff shall function independently of the commercial interests of the Exchange and the commercial interests of the member organizations.

**(b)** No Change

**(c) Incorporation of Defined Terms and Cross References**

Unless otherwise provided and where applicable, terms used in the Rule 9000 Series shall have the meaning as defined in Rule 9120 and applicable rules of the Exchange.  
[References within the Rule 9000 Series to Exchange offices or departments refer to offices so designated by the Exchange.]

**Rule 9120. Definitions**

**(a) – (l) No Change**

**(m) "Enforcement"**

The term "Enforcement" refers to (A) any department reporting to the CRO of the Exchange with responsibility for investigating or, when appropriate after compliance with the Rule 9000 Series, imposing sanctions on a member organization or covered person; (B) the Department of Enforcement of FINRA; and (C) the Department of Market Regulation of FINRA.

**(m)n "Exchange"**

The term "Exchange" shall have the meaning as defined in Rule 1.

**(n)o "Extended Hearing"**

The term "Extended Hearing" means a disciplinary proceeding described in Rule 9231(c).

**(o)p "Extended Hearing Panel"**

The term "Extended Hearing Panel" means an Adjudicator that is constituted under Rule 9231(c) to conduct a disciplinary proceeding that is classified as an "Extended Hearing" and is governed by the Rule 9200 Series.

**(p)q "Floor-Based Panelist"**

The term "Floor-Based Panelist" means a Panelist selected in accordance with Rule 9232(c) who is, or if retired, was, active on the Floor of the Exchange.

**(q) "Head of Enforcement"**

The term "Head of Enforcement" means the individual that manages the Department of Enforcement, or his or her delegatee in the Department of Enforcement.

**(r) "Head of Market Regulation"**

The term "Head of Market Regulation" means the individual that manages the Department of Market Regulation, or his or her delegatee in the Department of Market Regulation.]

**([s]r) "Hearing Officer"**

The term "Hearing Officer" means an employee of FINRA who is an attorney and who is appointed by the Chief Hearing Officer to act in an adjudicative role and fulfill various adjudicative responsibilities and duties described in the Rule 9200 Series regarding disciplinary proceedings, the Rule 9550 Series regarding expedited proceedings, and the Rule 9800 Series regarding temporary cease and desist proceedings brought against member organizations and covered persons.

**([t]s) "Hearing Panel"**

The term "Hearing Panel" means an Adjudicator that is constituted under Rule 9231 to conduct a disciplinary proceeding governed by the Rule 9200 Series or that is constituted under the Rule 9520 Series or the Rule 9550 Series to conduct a proceeding.

**([u]t) "Interested Staff"**

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

**(1)** a disciplinary] any proceeding under the Code of Procedure, [Rule 9200 Series and the Rule 9300 Series:

- (A) the Head of Enforcement;
- (B) an employee of the Department of Enforcement who reports, directly or indirectly, to the Head of Enforcement;
- (C) an Exchange employee who directly participated in the authorization of the complaint;
- (D) an Exchange employee who directly participated in an examination, investigation, prosecution, or litigation related to a specific disciplinary proceeding, and a district director or department head to whom such employee reports;
- (E) the Head of Market Regulation; or
- (F) an employee of the Department of Market Regulation who reports, directly or indirectly, to the Head of Market Regulation]Regulatory Staff or Exchange staff who:

(A) report, directly or indirectly, to any Enforcement employee, or to the head of any department or office that issues a notice or decision or is designated as a Party under the Rule 9000 Series; or

(B)(i) directly participated in the authorization or initiation of a complaint or proceeding, (ii) directly participated in the proceeding, or ~~who~~ (iii) directly participated in an examination, investigation, prosecution, or litigation related to a specific proceeding, and any person(s) who supervise such staff.;

(2) a proceeding under the Rule 9520 Series or Rule 9550 Series:

(A) the head of the department or office that issues the notice or is designated as a Party;

(B) an Exchange employee who reports, directly or indirectly, to such person;

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

(D) an Exchange employee who directly participated in an examination, investigation, prosecution, or litigation related to a specific proceeding, and a district director or department head to whom such employee reports; or

(3) a proceeding under the Rule 9600 Series:

(A) the head of the department or office that issues the decision granting or denying an exemption or is designated as a Party;

(B) an Exchange employee who reports, directly or indirectly, to such person;

(C) an Exchange employee who directly participated in the exemption proceeding; or

(D) an Exchange employee who directly participated in an examination, investigation, prosecution, or litigation related to a specific exemption proceeding, and a district director or department head to whom such employee reports.

(v) **"Office of Disciplinary Affairs"**

The term "Office of Disciplinary Affairs" means the Office of Disciplinary Affairs for FINRA.]

([w]u) **"Office of Hearing Officers"**

The term "Office of Hearing Officers" means the Office of Hearing Officers for FINRA.

([x]y) **"Panelist"**

The term "Panelist," as used in the Rule 9200 Series, means a member of a Hearing Panel or Extended Hearing Panel who is not a Hearing Officer.

**([y]w) "Party"**

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

- (1) in the Rule 9200 Series and the Rule 9300 Series, and the Rule 9800 Series, Enforcement[the Department of Enforcement or the Department of Market Regulation] or a Respondent;
- (2) in the Rule 9520 Series, the Department of Member Regulation or a member organization that is the subject of a notice or files an application under Rule 9522;
- (3) in the Rule 9550 Series, the Exchange department or office that issued the notice or, if another Exchange department or office is named as the party handling the matter on behalf of the issuing department or office, the Exchange department or office that is so designated or a member organization or covered person that is the subject of a notice under the Rule 9550 Series; or
- (4) in the Rule 9600 Series, the department or office designated under Rule 9620 to issue the decision granting or denying an exemption or a member organization that seeks the exemption under Rule 9610.

**(x) "Regulatory Staff"**

The term "Regulatory Staff," and for purposes of the Rule 8000 Series and Rule 9000 Series (except for Rule 9557), the term "Exchange staff," refers to (A) any officer or employee reporting, directly or indirectly, to the CRO of the Exchange; and (B) FINRA staff acting on behalf of the Exchange in connection with the Rule 8000 Series and Rule 9000 Series.

**([z]y) "Respondent"**

The term "Respondent" means, in a disciplinary proceeding governed by the Rule 9200 Series and in a review governed by the Rule 9300 Series, a member organization or a covered person against whom a complaint is issued.

**Rule 9130. Service; Filing of Papers**

**Rule 9131. Service of Complaint**

**(a) Service on Each Party**

Except as provided below, a complaint shall be served on each Party by Enforcement[the Department of Enforcement or the Department of Market Regulation]. When counsel for

a Party or other person authorized to represent others under Rule 9141 agrees to accept service of the complaint, then Enforcement[the Department of Enforcement or Department of Market Regulation] may serve the complaint on counsel for a Party or other person authorized to represent others under Rule 9141 as specified in Rule 9134(a).

(b) - (c) No Change

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### **Rule 9141. Appearance and Practice; Notice of Appearance**

(a) - (b) No Change

### **(c) [Reserved.]One Year Revolving Door Restriction**

No former Regulatory Staff shall, within a period of one year immediately following termination of employment with the Exchange or FINRA, make an appearance before an Adjudicator on behalf of any other person in a proceeding under the Rule 9000 Series.

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### **Rule 9146. Motions**

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### **(k) Motion For Protective Order**

(1) A Party, a person who is the owner, subject, or creator of a Document subject to production under Rule 8210 or any other Rule which may be introduced as evidence in a disciplinary proceeding, or a witness who testifies at a hearing in a disciplinary proceeding may file a motion requesting a protective order to limit disclosure or prohibit from disclosure to other Parties, witnesses or other persons, except Regulatory Staff[the Department of Enforcement and the Department of Market Regulation and other Exchange staff], Documents or testimony that contain confidential information. The motion shall include a general summary or extract of the Documents or testimony without revealing confidential details. If the movant seeks a protective order against disclosure to other Parties, copies of the Documents shall not be served on the other Parties. Unless the Documents are unavailable, the movant shall file for in camera inspection a sealed copy of the Documents for which the order is sought. If the movant is not a Party, the motion shall be served on each Party by the movant using a method in Rule 9134(a) and filed with the Adjudicator. A motion for a protective order shall be granted only upon a finding that disclosure of the Document or testimony would have a demonstrated adverse business effect on the movant or would involve an unreasonable breach of the movant's personal privacy.

(2) If a protective order is granted, the order shall set forth the restrictions on use and disclosure of such Document or testimony. An Adjudicator does not have the authority to issue a protective order that would limit in any manner the use by [Exchange staff]Regulatory Staff of such Documents or testimony in the staff's performance of their regulatory and self-regulatory responsibilities and functions, including the transmittal, without restriction to the recipient, of such Documents or testimony to state, federal, or foreign regulatory authorities or other self-regulatory organizations. An Adjudicator does not have the authority to issue a protective order that purports to protect from production such Documents or testimony in the event that the Exchange is subject to a subpoena requiring that the Documents or testimony be produced.

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## **Rule 9200. DISCIPLINARY PROCEEDINGS**

### **Rule 9210. Complaint and Answer**

#### **Rule 9211. Authorization of Complaint**

##### **(a) Complaint**

(1) If [the Department of Enforcement or the Department of Market Regulation believes]Enforcement has reason to believe that any member organization or covered person is violating or has violated any rule, regulation, or statutory provision, including the federal securities laws and the regulations thereunder, which the Exchange has jurisdiction to enforce, Enforcement[the Department of Enforcement or the Department of Market Regulation] may request authorization from the CRO[Office of Disciplinary Affairs] to issue a complaint.

(2) The Exchange Board of Directors shall have the authority to direct the CRO[Office of Disciplinary Affairs] to authorize and Enforcement[the Department of Enforcement or the Department of Market Regulation] to issue a complaint when, on the basis of information and belief, the Exchange Board of Directors is of the opinion that any member organization or covered person is violating or has violated any rule, regulation, or statutory provision, including the federal securities laws and the regulations thereunder, which the Exchange has jurisdiction to enforce.

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

##### **(a) Form, Content, Notice, Docketing, and Service**

(1) [If a complaint is authorized, the Department of Enforcement or the Department of Market Regulation shall issue the complaint. ]Each complaint shall be in writing and

signed by authorized Enforcement staff[the Department of Enforcement or the Department of Market Regulation]. The complaint shall specify in reasonable detail the conduct alleged to constitute the violative activity and the rule, regulation, or statutory provision the Respondent is alleged to be violating or to have violated. If the complaint consists of several causes of action, each cause shall be stated separately. Complaints shall be served by [the Department of Enforcement or the Department of Market Regulation] Enforcement on each Party pursuant to Rules 9131 and 9134, and filed at the time of service with the Office of Hearing Officers pursuant to Rules 9135, 9136, and 9137.

(2) At the time of issuance of a complaint, Enforcement[the Department of Enforcement or the Department of Market Regulation] may propose:

(A) an appropriate location for the hearing; and

(B) if the complaint alleges at least one cause of action involving activities on the Floor of the Exchange, that the Chief Hearing Officer select a Floor-Based Panelist for the Hearing Panel, or, if applicable, the Extended Hearing Panel as described in Rule 9231.

#### **(b) Amendments to Complaint**

Enforcement[The Department of Enforcement or the Department of Market Regulation] may file and serve an amended complaint once as a matter of course at any time before the Respondent answers the complaint. Otherwise, upon motion by Enforcement [the Department of Enforcement or the Department of Market Regulation], the Hearing Officer may permit Enforcement[the Department of Enforcement or the Department of Market Regulation] to amend the complaint, including amendments so as to make the complaint conform to the evidence presented, after considering whether Enforcement[the Department of Enforcement or the Department of Market Regulation] has shown good cause for the amendment and whether any Respondent will suffer any unfair prejudice if the amendment is allowed. Amendments to complaints will be freely granted when justice so requires.

#### **(c) Withdrawal of Complaint**

With prior leave of the Hearing Officer, Enforcement[the Department of Enforcement or the Department of Market Regulation] may withdraw a complaint. If Enforcement[the Department of Enforcement or the Department of Market Regulation] withdraws the complaint before the earlier of

(1) the Hearing Panel's or, if applicable, the Extended Hearing Panel's, issuance of a ruling on a motion for summary disposition, or

(2) the start of the hearing on the merits, the withdrawal of the complaint by Enforcement[the Department of Enforcement or the Department of Market

Regulation] shall be without prejudice and Enforcement[the Department of Enforcement or the Department of Market Regulation] shall be permitted to refile a case based on allegations concerning the same facts and circumstances that are set forth in the withdrawn complaint.

If Enforcement[the Department of Enforcement or the Department of Market Regulation] requests to withdraw such complaint after the occurrence of either of the two events set forth in (1) and (2) in this paragraph, the Hearing Panel or, if applicable, the Extended Hearing Panel, after considering the facts and circumstances of the request, shall determine whether the withdrawal shall be granted with prejudice.

**(d) No Change**

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

**(a) Assignment of Hearing Officer**

As soon as practicable after Enforcement[the Department of Enforcement or the Department of Market Regulation] has filed a complaint with the Office of Hearing Officers, the Chief Hearing Officer shall assign a Hearing Officer to preside over the disciplinary proceeding and shall serve the Parties with notice of the Hearing Officer's assignment pursuant to Rule 9132.

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**Rule 9215. Answer to Complaint**

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**(f) Failure to Answer, Default**

If a Respondent does not file an answer or make any other filing or request related to the complaint with the Office of Hearing Officers within the time required, Enforcement[the Department of Enforcement or the Department of Market Regulation] shall send a second notice to such Respondent requiring an answer within 14 days after service of the second notice. The second notice shall state that failure of the Respondent to reply within the period specified shall allow the Hearing Officer, in the exercise of his or her discretion, pursuant to Rule 9269 to:

**(1)** treat as admitted by the Respondent the allegations in the complaint; and

**(2)** issue a default decision against the Respondent. If the Respondent fails to file an answer with the Office of Hearing Officers within the time required, the Hearing Officer may issue a default decision against the Respondent pursuant to Rule 9269.

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

**(a) Acceptance, Waiver, and Consent Procedures**

(1) Notwithstanding Rule 9211, if Enforcement[the Department of Enforcement or the Department of Market Regulation] has reason to believe a violation has occurred and the member organization or covered person does not dispute the violation, Enforcement[the Department of Enforcement or the Department of Market Regulation] may prepare and request that the member organization or covered person execute a letter accepting a finding of violation, consenting to the imposition of sanctions, and agreeing to waive such member organization's or covered person's right to a hearing before a Hearing Panel or, if applicable, an Extended Hearing Panel, and any right to review by the Exchange Board of Directors, the SEC, and the courts, or to otherwise challenge the validity of the letter, if the letter is accepted. The letter shall describe the act or practice engaged in or omitted, the rule, regulation, or statutory provision violated, and the sanction or sanctions to be imposed. Unless the letter states otherwise, the effective date of any sanction(s) imposed will be a date to be determined by [Exchange staff]Regulatory Staff.

(2) No Change

(3) If the member organization or covered person executes the letter of acceptance, waiver, and consent, it shall be submitted to the [Office of Disciplinary Affairs]CRO. The [Office of Disciplinary Affairs]CRO may, on behalf of the Exchange Board of Directors, accept or reject such letter.

(4) If the letter is accepted by the CRO[Office of Disciplinary Affairs], it shall be deemed final and shall constitute the complaint, answer, and decision in the matter. If the letter is rejected by the CRO[Office of Disciplinary Affairs], the Exchange may take any other appropriate disciplinary action with respect to the alleged violation or violations. If the letter is rejected, the member organization or covered person shall not be prejudiced by the execution of the letter of acceptance, waiver, and consent under paragraph (a)(1) and the letter may not be introduced into evidence in connection with the determination of the issues set forth in any complaint or in any other proceeding.

**(b) Procedure for Violation Under Plan Pursuant to SEA Rule 19d-1(c)(2)**

(1) Notwithstanding Rule 9211, the Exchange may, subject to the requirements set forth in paragraphs (b)(2) through (b)(4) and in SEA Rule 19d-1(c)(2), impose a fine (not to exceed \$2,500) and/or a censure on any member organization or covered person with respect to any rule listed in Rule 9217. If Enforcement[the Department of Enforcement or the Department of Market Regulation] has reason to believe a violation has occurred and if the member organization or covered person does not dispute the violation, Enforcement[the Department of Enforcement or the Department of Market Regulation] may prepare and request that the member organization or covered person execute a minor rule violation plan letter accepting a finding of violation, consenting to

the imposition of sanctions, and agreeing to waive such member organization's or covered person's right to a hearing before a Hearing Panel or, if applicable, an Extended Hearing Panel, and any right of review by the Exchange Board of Directors, the SEC, and the courts, or to otherwise challenge the validity of the letter, if the letter is accepted. The letter shall describe the act or practice engaged in or omitted, the rule, regulation, or statutory provision violated, and the sanction or sanctions to be imposed. Unless the letter states otherwise, the effective date of any sanction(s) imposed will be a date to be determined by [Exchange staff] Regulatory Staff.

(2) No Change

(3) If the member organization or covered person executes the minor rule violation plan letter, it shall be submitted to the CRO[Office of Disciplinary Affairs]. The CRO[Office of Disciplinary Affairs], on behalf of the SRO Board, may accept or reject such letter.

(4) If the letter is accepted by the CRO[Office of Disciplinary Affairs], it shall be deemed final and the Exchange shall report the violation to the SEC as required by the SEC pursuant to a plan approved under SEA Rule 19d-1(c)(2). If the letter is rejected by the CRO[Office of Disciplinary Affairs], the Exchange may take any other appropriate disciplinary action with respect to the alleged violation or violations. If the letter is rejected, the member organization or covered person shall not be prejudiced by the execution of the minor rule violation plan letter under paragraph (b)(1) and the letter may not be introduced into evidence in connection with the determination of the issues set forth in any complaint or in any other proceeding.

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

Any member organization or covered person may be subject to a fine under Rule 9216(b) with respect to any rules listed below.

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- Rule 123C - Failure to adhere to entry and cancellation procedures for limit-at-the-close and market-at-the-close orders.

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**Rule 9232. Criteria for Selection of Panelists, Replacement Panelists, and Floor-Based Panelists**

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(b) The [Chairman of the Exchange Board of Directors, subject to the approval of the

]Exchange Board of Directors shall from time to time appoint a hearing board to be composed of such number of members and former allied members of the Exchange who are not members of the Exchange Board of Directors and registered employees and nonregistered employees of member organizations. Former members, allied members, or registered and non-registered employees of member organizations who have retired from the securities industry may be appointed to the hearing board. The members of the hearing board shall be appointed annually and shall serve at the pleasure of the Exchange Board of Directors.

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#### **Rule 9242. Pre-hearing Submission**

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#### **(b) [Reserved.]Prohibition on Serving as Expert Witness**

No former Regulatory Staff shall, within a period of one year immediately following termination of employment with the Exchange or FINRA, provide expert testimony on behalf of any other person in any proceeding under the Rule 9000 Series. Nothing in this Rule shall prohibit former Regulatory Staff from testifying as a witness on behalf of the Exchange or FINRA.

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#### **Rule 9250. Discovery**

#### **Rule 9251. Inspection and Copying of Documents in Possession of Staff**

#### **(a) Documents to be Available for Inspection and Copying**

(1) Unless otherwise provided by this Rule, or by order of the Hearing Officer, Enforcement[the Department of Enforcement or the Department of Market Regulation] shall make available for inspection and copying by any Respondent, Documents prepared or obtained by Interested Staff in connection with the investigation that led to the institution of proceedings. Such Documents include but are not limited to:

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

(E) all other Documents obtained from persons not employed by the Exchange.

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

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

**(b) Withheld Documents**

(1) [The Department of Enforcement or the Department of Market Regulation]Enforcement may withhold a Document if:

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

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

(C) the Document would disclose:

(i) an examination, investigatory or enforcement technique or guideline of the Exchange, a federal, state, or foreign regulatory authority, or a self-regulatory organization;

(ii) the identity of a source, including a federal, state, or foreign regulatory authority or a self-regulatory organization that furnished information or was furnished information on a confidential basis regarding an investigation, an examination, an enforcement proceeding, or any other type of civil or criminal enforcement action;  
or

(iii) an examination, an investigation, an enforcement proceeding, or any other type of civil or criminal enforcement action under consideration by, or initiated by, the Exchange, a federal, state, or foreign regulatory authority, or a self-regulatory organization; or

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

(2) [The Department of Enforcement or the Department of Market Regulation]Enforcement shall withhold a Document if the Document is prohibited from disclosure by federal law.

(3) Nothing in paragraph (b)(1) authorizes [the Department of Enforcement or the Department of Market Regulation]Enforcement to withhold a Document, or a part thereof, that contains material exculpatory evidence.

**(c) Withheld Document List**

The Hearing Officer may require Enforcement[the Department of Enforcement or the Department of Market Regulation] to submit to the Hearing Officer a list of Documents withheld pursuant to paragraph (b) or to submit to the Hearing Officer any Document withheld. Upon review, the Hearing Officer may order Enforcement[the Department of Enforcement or the Department of Market Regulation] to make the list or any Document withheld available to the other Parties for inspection and copying unless federal law prohibits disclosure of the Document or its existence. A motion to require Enforcement[the Department of Enforcement or the Department of Market Regulation] to produce a list of Documents withheld pursuant to paragraph (b) shall be based upon some reason to believe that a Document is being withheld in violation of the Code.

**(d) Timing of Inspection and Copying**

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

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

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

(e) - (f) No Change

**(g) Failure to Make Documents Available — Harmless Error**

In the event that a Document required to be made available to a Respondent pursuant to this Rule is not made available by Enforcement[the Department of Enforcement or the Department of Market Regulation], no rehearing or amended decision of a proceeding already heard or decided shall be required unless the Respondent establishes that the failure to make the Document available was not harmless error. The Hearing Officer, or, upon review under Rule 9310, the Exchange Board of Directors, shall determine whether the failure to make the document available was not harmless error, applying applicable Exchange, FINRA, SEC, and federal judicial precedent.

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**Rule 9253. Production of Witness Statements**

**(a) Availability**

Notwithstanding the provisions of Rule 9251(b),

(1) A Respondent in a disciplinary proceeding may file a motion requesting that Enforcement[the Department of Enforcement or the Department of Market Regulation] produce for inspection and copying any statement of any person called or to be called as a witness by Enforcement[the Department of Enforcement or the Department of Market Regulation] that pertains, or is expected to pertain, to his or her direct testimony and which is "a stenographic, mechanical, electrical, or other recording, or a transcription thereof, which is a substantially verbatim recital of an oral statement made by said witness and recorded contemporaneously with the making of such oral statement," as that phrase is used in 18 U.S.C. §3500(e)(2).

(2) A Respondent in a disciplinary proceeding may also file a motion requesting that Enforcement[the Department of Enforcement or the Department of Market Regulation] produce for inspection and copying any contemporaneously written statement made by an Interested Staff member during a routine examination or inspection about the substance of oral statements made by a non-Exchange person when

(A) either the Interested Staff member or non-Exchange person is called as a witness by Enforcement[the Department of Enforcement or the Department of Market Regulation], and

(B) that portion of the statement for which production is sought directly relates to the Interested Staff member's testimony or the testimony of the non-Exchange witness.

**(b) Failure to Produce — Harmless Error**

In the event that a statement required to be made available for inspection and copying by a Respondent is not provided by Enforcement[the Department of Enforcement or the Department of Market Regulation], there shall be no rehearing of a proceeding already heard, or issuance of an amended decision in a proceeding already decided, unless the Respondent establishes that the failure to provide the statement was not harmless error. The Hearing Officer, or upon review under Rule 9310, the Exchange Board of Directors, shall determine whether the failure to provide any statement was not harmless error, applying applicable Exchange, FINRA, SEC, and federal judicial precedent.

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

After a Respondent's answer has been filed and Documents have been made available to that Respondent for inspection and copying pursuant to Rule 9251, the Respondent or Enforcement[the Department of Enforcement or the Department of Market Regulation], without leave of the Hearing Officer, may make a motion for summary disposition of any or all the causes of action in the complaint with respect to that Respondent, as well as any defense raised in a Respondent's answer. All pre-hearing motions for summary disposition and supporting papers shall be filed at least 21 days before the time set for the hearing, or at such earlier time as ordered by the Hearing Officer. Notwithstanding the provisions of Rule 9146(d), any opposition or response to a pre-hearing motion for summary disposition shall be filed at least seven days before the time set for the hearing.

**(b) After Commencement of Hearing on Merits**

After a hearing on the merits has commenced, a Respondent or Enforcement[the Department of Enforcement or the Department of Market Regulation] may make a motion for summary disposition of any or all of the causes of action in the complaint with respect to that Respondent or defenses raised in that Respondent's answer only with leave of the Hearing Officer.

**(c) – (e) No Change**

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**Rule 9269. Default Decisions****(a) Issuance of Default Decisions**

(1) The Hearing Officer may issue a default decision against a Respondent that fails to answer the complaint within the time afforded under Rule 9215, or a Party that fails to appear at a pre-hearing conference held pursuant to Rule 9241 of which the Party has due notice, or a Party that fails to appear at any hearing that the Party is required to attend under the Rule 9200 Series of which the Party has due notice.

(2) If the defaulting Party is the Respondent, the Hearing Officer may deem the allegations against that Respondent admitted. If the Defaulting Party is Enforcement[the Department of Enforcement or the Department of Market Regulation], the Hearing Officer may issue a default decision ordering that the complaint be dismissed with prejudice.

(3) The Hearing Officer may order a Party that fails to appear at the prehearing conference or the hearing to pay the costs incurred by other Parties in connection with their appearance.

(b) – (c) No Change

**(d) Final Disciplinary Action of the Exchange; Effectiveness of Sanctions**

If a request for a review of a default decision is not filed pursuant to Rule 9310 within 25 days after the date the Office of Hearing Officers serves it on the Parties, the default decision shall become the final disciplinary action of the Exchange for purposes of SEA Rule 19d-1(c)(1). Unless otherwise provided in the default decision, the sanctions shall become effective on a date to be determined by [Exchange staff]Regulatory Staff, except that a bar or expulsion shall become effective immediately upon the default decision becoming the final disciplinary action of the Exchange. The decision shall be served on a Respondent by courier or other means reasonably likely to obtain prompt service when the sanction is a bar or an expulsion.

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**Rule 9270. Settlement Procedure**

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**(c) Content and Signature Requirements**

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

(1) a statement describing the investigative or other origin of the disciplinary action;

(2) the specific statutory or rule provisions that the member organization or covered person is alleged to have violated;

(3) a statement containing the acts or practices which the member organization or covered person is alleged to have engaged in or omitted;

(4) a statement consenting to findings of fact and violations consistent with the statements contained in the offer of settlement required by paragraphs (c)(2) and (c)(3); and

(5) a description of the proposed sanction and the effective date of any sanction(s) imposed, or a statement that the effective date of the sanction(s) will be a date to be determined by [Exchange staff]Regulatory Staff.

(d) No Change

**(e) Contested Offers of Settlement Deemed Rejected**

If a Respondent makes an offer of settlement and [the Department of Enforcement or the Department of Market Regulation]Enforcement opposes it, the offer of settlement is contested. A contested offer of settlement shall be deemed rejected, shall not be transmitted to the Office of Hearing Officers, [Office of Disciplinary Affairs]CRO, or Hearing Panel or Extended Hearing Panel, and shall not constitute a part of the record in any proceeding against the Respondent making the offer.

**(f) Uncontested Offers of Settlement**

If a Respondent makes an offer of settlement and [the Department of Enforcement or the Department of Market Regulation]Enforcement does not oppose it, the offer of settlement is uncontested. If an offer of settlement is determined to be uncontested by Enforcement[the Department of Enforcement or the Department of Market Regulation] before a hearing on the merits has begun, Enforcement[the Department of Enforcement or the Department of Market Regulation] shall transmit the uncontested offer of settlement and a proposed order of acceptance to the CRO[Office of Disciplinary Affairs] with its recommendation. If an offer of settlement is determined to be uncontested by [the Department of Enforcement or the Department of Market Regulation]Enforcement after a hearing on the merits has begun, Enforcement[the Department of Enforcement or the Department of Market Regulation] shall transmit the offer of settlement and a proposed order of acceptance to the Hearing Panel or, if applicable, the Extended Hearing Panel to be accepted or not accepted.

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

(2) Before an offer of settlement and an order of acceptance shall become effective, they shall be submitted to and accepted by the [Office of Disciplinary Affairs]CRO, the Hearing Panel, or if applicable, Extended Hearing Panel. The [Office of Disciplinary

Affairs]CRO, Hearing Panel, or if applicable, Extended Hearing Panel, may or may not accept such offer of settlement and order of acceptance.

(3) If the offer of settlement and order of acceptance are accepted by the [Office of Disciplinary Affairs]CRO, the Hearing Panel or, if applicable, Extended Hearing Panel, they shall be issued and become final.

(g) No Change

**(h) Uncontested Offer of Settlement Not Accepted**

If an uncontested offer of settlement or an order of acceptance is not accepted by the [Office of Disciplinary Affairs]CRO, the Hearing Panel or the Extended Hearing Panel, the Respondent shall be notified in writing and the offer of settlement and proposed order of acceptance shall be deemed withdrawn. An offer and a proposed order of acceptance that are not accepted shall not constitute a part of the record in any proceeding against the Respondent making the offer.

**(i) Disciplinary Proceeding With Multiple Respondents**

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

**(j) No Prejudice from Rejected Offer of Settlement**

If an offer of settlement is rejected by the [Office of Disciplinary Affairs]CRO, a Hearing Panel or Extended Hearing Panel, the Respondent shall not be prejudiced by the offer, which may not be introduced into evidence in connection with the determination of the issues involved in the pending complaint or in any other proceeding.

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**Rule 9300. REVIEW OF DISCIPLINARY PROCEEDING BY EXCHANGE BOARD OF DIRECTORS**

**Rule 9310. Review by Exchange Board of Directors**

**(a) Request for Review**

(1) Any Party, any Director, and any member of the committee of NYSE Regulation to which is delegated the authority to review disciplinary decisions on behalf of the Exchange Board of Directors may require a review by the Exchange Board of Directors

of any determination or penalty, or both, imposed by a Hearing Panel or Extended Hearing Panel under the Rule 9200 Series, except that [neither Party]none of the aforementioned persons may request a review by the Exchange Board of Directors of a decision concerning an Exchange member organization that is an affiliate. A request for review shall be made by filing with the Secretary of the Exchange a written request therefor, which states the basis and reasons for such review, within 25 days after notice of the determination and/or penalty is served upon the Respondent. The Secretary of the Exchange shall give notice of any such request for review to the Parties.

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## **Rule 9500. OTHER PROCEEDINGS**

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### **Rule 9550. Expedited Proceedings**

### **Rule 9551. Failure to Comply with Public Communication Standards**

#### **(a) Notice of Pre-Use Filing Requirement**

Pursuant to Rule 2210(c)(1)(B), [Exchange staff]Regulatory Staff may issue a written notice requiring a member organization to file communications with the Exchange's Advertising Regulation Department at least ten days prior to use if [Exchange staff]Regulatory Staff determines that the member organization has departed from the standards of Rule 2210.

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

Except as provided below, [Exchange staff]Regulatory Staff shall serve the member organization with such notice in accordance with Rule 9134. When counsel for the member organization or other person authorized to represent others under Rule 9141 agrees to accept service of such notice, then [Exchange staff]Regulatory Staff may serve notice on counsel or other person authorized to represent others under Rule 9141 as specified in Rule 9134.

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### **Rule 9552. Failure to Provide Information or Keep Information Current**

#### **(a) Notice of Suspension of a Member Organization or Covered Person if Corrective Action is Not Taken**

If a member organization or covered person fails to provide any information, report, material, data, or testimony requested or required to be filed pursuant to the Exchange's Rules, or fails to keep its membership application or supporting documents current, [Exchange staff]Regulatory Staff may provide written notice to such member organization or covered person specifying the nature of the failure and stating that the failure to take corrective action within 21 days after service of the notice will result in

suspension of membership of the member organization or of association of the covered person with any member organization.

**(b) Service of Notice of Suspension**

Except as provided below, [Exchange staff]Regulatory Staff shall serve the member organization or covered person with such notice in accordance with Rule 9134. A copy of a notice under this Rule that is served on a covered person associated with a member organization also shall be served on such member organization. When counsel for the member organization or covered person, or other person authorized to represent others under Rule 9141 agrees to accept service of such notice, then [Exchange staff]Regulatory Staff may serve notice on counsel or other person authorized to represent others under Rule 9141 as specified in Rule 9134.

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**Rule 9554. Failure to Comply with an Arbitration Award or Related Settlement or an Order of Restitution or Settlement Providing for Restitution**

**(a) Notice of Suspension or Cancellation**

If a member organization or covered person fails to comply with an arbitration award or a settlement agreement related to an arbitration or mediation under the Exchange's Rules, or an Exchange order of restitution or Exchange settlement agreement providing for restitution, [Exchange staff]Regulatory Staff may provide written notice to such covered person or member organization stating that the failure to comply within 21 days of service of the notice will result in a suspension or cancellation of membership or a suspension from associating with any member organization. When a member organization or covered person fails to comply with an arbitration award or a settlement agreement related to an arbitration or mediation involving a customer, a claim of inability to pay is no defense.

**(b) Service of Notice of Suspension or Cancellation**

Except as provided below, [Exchange staff]Regulatory Staff shall serve the member organization or covered person with such notice in accordance with Rule 9134. A copy of a notice under this Rule that is served on a covered person associated with a member organization also shall be served on such member organization. When counsel for the member organization or covered person, or other person authorized to represent others under Rule 9141 agrees to accept service of such notice, then [Exchange staff]Regulatory Staff may serve notice on counsel or other person authorized to represent others under Rule 9141 as specified in Rule 9134.

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

**(a) Notice of Suspension, Cancellation or Bar**

If a member organization or covered person fails to comply with a temporary or permanent cease and desist order issued under the Rule 9200, 9300 or 9800 Series, [Exchange staff]Regulatory Staff, after receiving written authorization from the Exchange's CRO or such other senior officer as the CRO may designate, may issue a notice to such member organization or covered person stating that the failure to comply with the temporary or permanent cease and desist order within seven days of service of the notice will result in a suspension or cancellation of membership or a suspension or bar from associating with any member organization.

**(b) Service of Notice**

[Exchange staff]Regulatory Staff shall serve the member organization or covered person subject to a notice issued under this Rule (or upon counsel representing the member organization or covered person, or other person authorized to represent others under Rule 9141, when counsel or other person authorized to represent others under Rule 9141 agrees to accept service for the member organization or covered person) by overnight courier or personal delivery. Papers served on a member organization, covered person or counsel for such member organization or covered person, or other person authorized to represent others under Rule 9141 by overnight courier or personal delivery shall conform to paragraphs (a)(1) and (3) and, with respect to a member organization or covered person, (b)(1) and (2) of Rule 9134. A copy of a notice under this Rule that is served on a covered person associated with a member organization also shall be served on such member organization. Service is complete upon mailing the notice by overnight courier or delivering it in person.

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**Rule 9800. TEMPORARY CEASE AND DESIST ORDERS****Rule 9810. Initiation of Proceeding****(a) [Department of Enforcement or Department of Market Regulation]Enforcement; Service and Filing of Notice**

With the prior written authorization of the Exchange's CRO or such other senior officers as the CRO may designate, Enforcement[the Department of Enforcement or the Department of Market Regulation] may initiate a temporary cease and desist proceeding with respect to alleged violations of Section 10(b) of the Exchange Act and SEA Rule 10b-5 thereunder; SEA Rules 15g-1 through 15g-9; NYSE Rule 2010 (if the alleged violation is unauthorized trading, or misuse or conversion of customer assets, or based on violations of Section 17(a) of the Securities Act); or NYSE Rule 2020. [The Department of Enforcement or the Department of Market Regulation]Enforcement shall initiate the proceeding by serving a notice on a member organization or covered person (hereinafter "Respondent") and filing a copy thereof with the Office of Hearing Officers. Enforcement[The Department of Enforcement or the Department of Market

Regulation] shall serve the notice by personal service or overnight commercial courier. The notice shall be effective upon service.

**(b) Contents of Notice**

The notice shall set forth the rule or statutory provision that the Respondent is alleged to have violated and that Enforcement[the Department of Enforcement or the Department of Market Regulation] is seeking to have the Respondent ordered to cease violating. The notice also shall state whether Enforcement[the Department of Enforcement or the Department of Market Regulation] is requesting the Respondent to be required to take action or to refrain from taking action. The notice shall be accompanied by:

(1) a declaration of facts, signed by a person with knowledge of the facts contained therein, that specifies the acts or omissions that constitute the alleged violation; and

(2) a proposed order that contains the required elements of a temporary cease and desist order (except the date and hour of the order's issuance), which are set forth in Rule 9840(b).

**(c) Filing of Underlying Complaint**

If Enforcement[the Department of Enforcement or the Department of Market Regulation] has not issued a complaint under Rule 9211 against the Respondent relating to the subject matter of the temporary cease and desist proceeding and alleging violations of the rule or statutory provision specified in the notice described in paragraph (b), Enforcement[the Department of Enforcement or the Department of Market Regulation] shall serve and file such a complaint with the notice initiating the temporary cease and desist proceeding.

**Rule 9820. Appointment of Hearing Officer and Hearing Panel**

(a) As soon as practicable after Enforcement[the Department of Enforcement or the Department of Market Regulation] files a copy of the notice initiating a temporary cease and desist proceeding with the Office of Hearing Officers, the Chief Hearing Officer shall assign a Hearing Officer to preside over the temporary cease and desist proceeding. The Chief Hearing Officer shall appoint two Panelists to serve on a Hearing Panel with the Hearing Officer. The Panelists shall be appointed pursuant to Rule 9231.

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**Rule 9830. Hearing**

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**(b) Service of Notice of Hearing**

The Office of Hearing Officers shall serve a notice of date, time, and place of the hearing on Enforcement[the Department of Enforcement or the Department of Market Regulation] and the Respondent not later than seven days before the hearing, unless otherwise ordered by the Hearing Officer. Service shall be made by personal service or overnight commercial courier. The notice shall be effective upon service.

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**(h) Failure to Appear at Hearing**

If a Respondent fails to appear at a hearing for which it has notice, the allegations in the notice and accompanying declaration may be deemed admitted, and the Hearing Panel may issue a temporary cease and desist order without further proceedings.

If Enforcement[the Department of Enforcement or Department of Market Regulation] fails to appear at a hearing for which it has notice, the Hearing Panel may order that the temporary cease and desist proceeding be dismissed.

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**EXHIBIT 5**

Additions underlined  
Deletions [bracketed]

Rules of New York Stock Exchange LLC

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**Rule 476. Disciplinary Proceedings Involving Charges Against Members, Member Organizations, Principal Executives, Approved Persons, Employees, or Others**

Rule 476 shall apply only to a proceeding for which a Charge Memorandum has been filed with the hearing board under Rule 476(d) prior to July 1, 2013 or for which a written Stipulation and Consent has been submitted to a Hearing Officer prior to July 1, 2013 and shall continue to apply until such proceeding is final; otherwise, the Rule 8000 Series and Rule 9000 Series shall apply. Notwithstanding the preceding sentence, after July 1, 2013, the offenses under Rule 476(a) shall be subject to the Rule 9000 Series procedures.[ The Exchange may issue a written notice of suspension for non-payment of a fine under Rule 476(k) until July 1, 2013; thereafter, Rule 8320 shall apply.]

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**Rule 8000. INVESTIGATIONS AND SANCTIONS**

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**Rule 8100. GENERAL PROVISIONS**

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**Rule 8120. Definitions**

(a) No Change

(b) The terms "Adjudicator,"[ and] "covered person" and "Regulatory Staff" shall have the meaning as defined in Rule 9120.

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**Rule 8200. INVESTIGATIONS**

**Rule 8210. Provision of Information and Testimony and Inspection and Copying of Books**

**(a) Authority of Adjudicator and Exchange Staff**

For the purpose of an investigation, complaint, examination, or proceeding authorized by Exchange rules, an Adjudicator or Exchange staff shall have the right to:

**(1) – (2)** No Change

In performing the functions of investigation, complaint, examination, or proceeding authorized by Exchange rules, the CRO and Regulatory Staff shall function independently of the commercial interests of the Exchange and the commercial interests of the member organizations.

**(b) – (g)** No Change

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**Rule 9000. CODE OF PROCEDURE**

**Rule 9001. Effective Date of Rule 9000 Series**

Rule 476 shall apply only to a proceeding for which a Charge Memorandum has been filed with the hearing board under Rule 476(d) prior to July 1, 2013 or for which a written Stipulation and Consent has been submitted to a Hearing Officer prior to July 1, 2013 and shall continue to apply until such proceeding is final; otherwise, the Rule 8000 Series and Rule 9000 Series shall apply. Notwithstanding the preceding sentence, after July 1, 2013, the offenses under Rule 476(a) shall be subject to the Rule 9000 Series procedures.

**Rule 9100. APPLICATION AND PURPOSE**

**Rule 9110. Application**

**(a) Proceedings**

The Rule 9000 Series is the Code of Procedure and includes proceedings for disciplining a member organization or covered person; proceedings for regulating the activities of a member organization experiencing financial or operational difficulties; proceedings for summary or non-summary suspensions, cancellations, bars, prohibitions, or limitations; and proceedings for obtaining relief from the eligibility requirements of the Exchange's rules. The Rule 9100 Series is of general applicability to all proceedings set forth in the Rule 9000 Series, unless a Rule specifically provides otherwise. In performing the functions under the Code, the CRO and Regulatory Staff shall function independently of the commercial interests of the Exchange and the commercial interests of the member organizations.

**(b)** No Change

**(c) Incorporation of Defined Terms and Cross References**

Unless otherwise provided and where applicable, terms used in the Rule 9000 Series shall have the meaning as defined in Rule 9120 and applicable rules of the Exchange.

[References within the Rule 9000 Series to Exchange offices or departments refer to offices so designated by the Exchange.]

**Rule 9120. Definitions**

**(a) – (l)** No Change

**(m) "Enforcement"**

The term "Enforcement" refers to (A) any department reporting to the CRO of the Exchange with responsibility for investigating or, when appropriate after compliance with the Rule 9000 Series, imposing sanctions on a member organization or covered person; (B) the Department of Enforcement of FINRA; and (C) the Department of Market Regulation of FINRA.

**(m)n "Exchange"**

The term "Exchange" shall have the meaning as defined in Rule 1.

**(n)o "Extended Hearing"**

The term "Extended Hearing" means a disciplinary proceeding described in Rule 9231(c).

**(o)p "Extended Hearing Panel"**

The term "Extended Hearing Panel" means an Adjudicator that is constituted under Rule 9231(c) to conduct a disciplinary proceeding that is classified as an "Extended Hearing" and is governed by the Rule 9200 Series.

**(p)q "Floor-Based Panelist"**

The term "Floor-Based Panelist" means a Panelist selected in accordance with Rule 9232(c) who is, or if retired, was, active on the Floor of the Exchange.

**(q) "Head of Enforcement"**

The term "Head of Enforcement" means the individual that manages the Department of Enforcement, or his or her delegatee in the Department of Enforcement.

**(r) "Head of Market Regulation"**

The term "Head of Market Regulation" means the individual that manages the Department of Market Regulation, or his or her delegatee in the Department of Market Regulation.]

**([s]r) "Hearing Officer"**

The term "Hearing Officer" means an employee of FINRA who is an attorney and who is appointed by the Chief Hearing Officer to act in an adjudicative role and fulfill various adjudicative responsibilities and duties described in the Rule 9200 Series regarding disciplinary proceedings, the Rule 9550 Series regarding expedited proceedings, and the Rule 9800 Series regarding temporary cease and desist proceedings brought against member organizations and covered persons.

**([t]s) "Hearing Panel"**

The term "Hearing Panel" means an Adjudicator that is constituted under Rule 9231 to conduct a disciplinary proceeding governed by the Rule 9200 Series or that is constituted under the Rule 9520 Series or the Rule 9550 Series to conduct a proceeding.

**([u]t) "Interested Staff"**

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

**(1)** a disciplinary] any proceeding under the Code of Procedure, [Rule 9200 Series and the Rule 9300 Series:

- (A) the Head of Enforcement;
- (B) an employee of the Department of Enforcement who reports, directly or indirectly, to the Head of Enforcement;
- (C) an Exchange employee who directly participated in the authorization of the complaint;
- (D) an Exchange employee who directly participated in an examination, investigation, prosecution, or litigation related to a specific disciplinary proceeding, and a district director or department head to whom such employee reports;
- (E) the Head of Market Regulation; or
- (F) an employee of the Department of Market Regulation who reports, directly or indirectly, to the Head of Market Regulation]Regulatory Staff or Exchange staff who:

(A) report, directly or indirectly, to any Enforcement employee, or to the head of any department or office that issues a notice or decision or is designated as a Party under the Rule 9000 Series; or

(B)(i) directly participated in the authorization or initiation of a complaint or proceeding, (ii) directly participated in the proceeding, or (iii) directly participated in an examination, investigation, prosecution, or litigation related to a specific proceeding, and any person(s) who supervise such staff.[;

(2) a proceeding under the Rule 9520 Series or Rule 9550 Series:

(A) the head of the department or office that issues the notice or is designated as a Party;

(B) an Exchange employee who reports, directly or indirectly, to such person;

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

(D) an Exchange employee who directly participated in an examination, investigation, prosecution, or litigation related to a specific proceeding, and a district director or department head to whom such employee reports; or

(3) a proceeding under the Rule 9600 Series:

(A) the head of the department or office that issues the decision granting or denying an exemption or is designated as a Party;

(B) an Exchange employee who reports, directly or indirectly, to such person;

(C) an Exchange employee who directly participated in the exemption proceeding; or

(D) an Exchange employee who directly participated in an examination, investigation, prosecution, or litigation related to a specific exemption proceeding, and a district director or department head to whom such employee reports.

(v) **"Office of Disciplinary Affairs"**

The term "Office of Disciplinary Affairs" means the Office of Disciplinary Affairs for FINRA.]

([w]u) **"Office of Hearing Officers"**

The term "Office of Hearing Officers" means the Office of Hearing Officers for FINRA.

([x]y) **"Panelist"**

The term "Panelist," as used in the Rule 9200 Series, means a member of a Hearing Panel or Extended Hearing Panel who is not a Hearing Officer.

**([y]w) "Party"**

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

- (1) in the Rule 9200 Series and the Rule 9300 Series, and the Rule 9800 Series, Enforcement[the Department of Enforcement or the Department of Market Regulation] or a Respondent;
- (2) in the Rule 9520 Series, the Department of Member Regulation or a member organization that is the subject of a notice or files an application under Rule 9522;
- (3) in the Rule 9550 Series, the Exchange department or office that issued the notice or, if another Exchange department or office is named as the party handling the matter on behalf of the issuing department or office, the Exchange department or office that is so designated or a member organization or covered person that is the subject of a notice under the Rule 9550 Series; or
- (4) in the Rule 9600 Series, the department or office designated under Rule 9620 to issue the decision granting or denying an exemption or a member organization that seeks the exemption under Rule 9610.

**(x) "Regulatory Staff"**

The term "Regulatory Staff," and for purposes of the Rule 8000 Series and Rule 9000 Series (except for Rule 9557), the term "Exchange staff," refers to (A) any officer or employee reporting, directly or indirectly, to the CRO of the Exchange; and (B) FINRA staff acting on behalf of the Exchange in connection with the Rule 8000 Series and Rule 9000 Series.

**([z]y) "Respondent"**

The term "Respondent" means, in a disciplinary proceeding governed by the Rule 9200 Series and in a review governed by the Rule 9300 Series, a member organization or a covered person against whom a complaint is issued.

**Rule 9130. Service; Filing of Papers**

**Rule 9131. Service of Complaint**

**(a) Service on Each Party**

Except as provided below, a complaint shall be served on each Party by Enforcement[the Department of Enforcement or the Department of Market Regulation]. When counsel for

a Party or other person authorized to represent others under Rule 9141 agrees to accept service of the complaint, then Enforcement[the Department of Enforcement or Department of Market Regulation] may serve the complaint on counsel for a Party or other person authorized to represent others under Rule 9141 as specified in Rule 9134(a).

(b) - (c) No Change

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### **Rule 9141. Appearance and Practice; Notice of Appearance**

(a) - (b) No Change

#### **(c) [Reserved.]One Year Revolving Door Restriction**

No former Regulatory Staff shall, within a period of one year immediately following termination of employment with the Exchange or FINRA, make an appearance before an Adjudicator on behalf of any other person in a proceeding under the Rule 9000 Series.

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### **Rule 9146. Motions**

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#### **(k) Motion For Protective Order**

(1) A Party, a person who is the owner, subject, or creator of a Document subject to production under Rule 8210 or any other Rule which may be introduced as evidence in a disciplinary proceeding, or a witness who testifies at a hearing in a disciplinary proceeding may file a motion requesting a protective order to limit disclosure or prohibit from disclosure to other Parties, witnesses or other persons, except Regulatory Staff[the Department of Enforcement and the Department of Market Regulation and other Exchange staff], Documents or testimony that contain confidential information. The motion shall include a general summary or extract of the Documents or testimony without revealing confidential details. If the movant seeks a protective order against disclosure to other Parties, copies of the Documents shall not be served on the other Parties. Unless the Documents are unavailable, the movant shall file for in camera inspection a sealed copy of the Documents for which the order is sought. If the movant is not a Party, the motion shall be served on each Party by the movant using a method in Rule 9134(a) and filed with the Adjudicator. A motion for a protective order shall be granted only upon a finding that disclosure of the Document or testimony would have a demonstrated adverse business effect on the movant or would involve an unreasonable breach of the movant's personal privacy.

(2) If a protective order is granted, the order shall set forth the restrictions on use and disclosure of such Document or testimony. An Adjudicator does not have the authority to issue a protective order that would limit in any manner the use by [Exchange staff]Regulatory Staff of such Documents or testimony in the staff's performance of their regulatory and self-regulatory responsibilities and functions, including the transmittal, without restriction to the recipient, of such Documents or testimony to state, federal, or foreign regulatory authorities or other self-regulatory organizations. An Adjudicator does not have the authority to issue a protective order that purports to protect from production such Documents or testimony in the event that the Exchange is subject to a subpoena requiring that the Documents or testimony be produced.

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## **Rule 9200. DISCIPLINARY PROCEEDINGS**

### **Rule 9210. Complaint and Answer**

### **Rule 9211. Authorization of Complaint**

#### **(a) Complaint**

(1) If [the Department of Enforcement or the Department of Market Regulation believes]Enforcement has reason to believe that any member organization or covered person is violating or has violated any rule, regulation, or statutory provision, including the federal securities laws and the regulations thereunder, which the Exchange has jurisdiction to enforce, Enforcement[the Department of Enforcement or the Department of Market Regulation] may request authorization from the CRO[Office of Disciplinary Affairs] to issue a complaint.

(2) The Exchange Board of Directors shall have the authority to direct the CRO[Office of Disciplinary Affairs] to authorize and Enforcement[the Department of Enforcement or the Department of Market Regulation] to issue a complaint when, on the basis of information and belief, the Exchange Board of Directors is of the opinion that any member organization or covered person is violating or has violated any rule, regulation, or statutory provision, including the federal securities laws and the regulations thereunder, which the Exchange has jurisdiction to enforce.

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

#### **(a) Form, Content, Notice, Docketing, and Service**

(1) [If a complaint is authorized, the Department of Enforcement or the Department of Market Regulation shall issue the complaint. ]Each complaint shall be in writing and

signed by authorized Enforcement staff[the Department of Enforcement or the Department of Market Regulation]. The complaint shall specify in reasonable detail the conduct alleged to constitute the violative activity and the rule, regulation, or statutory provision the Respondent is alleged to be violating or to have violated. If the complaint consists of several causes of action, each cause shall be stated separately. Complaints shall be served by [the Department of Enforcement or the Department of Market Regulation] Enforcement on each Party pursuant to Rules 9131 and 9134, and filed at the time of service with the Office of Hearing Officers pursuant to Rules 9135, 9136, and 9137.

(2) At the time of issuance of a complaint, Enforcement[the Department of Enforcement or the Department of Market Regulation] may propose:

(A) an appropriate location for the hearing; and

(B) if the complaint alleges at least one cause of action involving activities on the Floor of the Exchange, that the Chief Hearing Officer select a Floor-Based Panelist for the Hearing Panel, or, if applicable, the Extended Hearing Panel as described in Rule 9231.

**(b) Amendments to Complaint**

Enforcement[The Department of Enforcement or the Department of Market Regulation] may file and serve an amended complaint once as a matter of course at any time before the Respondent answers the complaint. Otherwise, upon motion by Enforcement [the Department of Enforcement or the Department of Market Regulation], the Hearing Officer may permit Enforcement[the Department of Enforcement or the Department of Market Regulation] to amend the complaint, including amendments so as to make the complaint conform to the evidence presented, after considering whether Enforcement[the Department of Enforcement or the Department of Market Regulation] has shown good cause for the amendment and whether any Respondent will suffer any unfair prejudice if the amendment is allowed. Amendments to complaints will be freely granted when justice so requires.

**(c) Withdrawal of Complaint**

With prior leave of the Hearing Officer, Enforcement[the Department of Enforcement or the Department of Market Regulation] may withdraw a complaint. If Enforcement[the Department of Enforcement or the Department of Market Regulation] withdraws the complaint before the earlier of

(1) the Hearing Panel's or, if applicable, the Extended Hearing Panel's, issuance of a ruling on a motion for summary disposition, or

(2) the start of the hearing on the merits, the withdrawal of the complaint by Enforcement[the Department of Enforcement or the Department of Market

Regulation] shall be without prejudice and Enforcement[the Department of Enforcement or the Department of Market Regulation] shall be permitted to refile a case based on allegations concerning the same facts and circumstances that are set forth in the withdrawn complaint.

If Enforcement[the Department of Enforcement or the Department of Market Regulation] requests to withdraw such complaint after the occurrence of either of the two events set forth in (1) and (2) in this paragraph, the Hearing Panel or, if applicable, the Extended Hearing Panel, after considering the facts and circumstances of the request, shall determine whether the withdrawal shall be granted with prejudice.

**(d) No Change**

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

**(a) Assignment of Hearing Officer**

As soon as practicable after Enforcement[the Department of Enforcement or the Department of Market Regulation] has filed a complaint with the Office of Hearing Officers, the Chief Hearing Officer shall assign a Hearing Officer to preside over the disciplinary proceeding and shall serve the Parties with notice of the Hearing Officer's assignment pursuant to Rule 9132.

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**Rule 9215. Answer to Complaint**

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**(f) Failure to Answer, Default**

If a Respondent does not file an answer or make any other filing or request related to the complaint with the Office of Hearing Officers within the time required, Enforcement[the Department of Enforcement or the Department of Market Regulation] shall send a second notice to such Respondent requiring an answer within 14 days after service of the second notice. The second notice shall state that failure of the Respondent to reply within the period specified shall allow the Hearing Officer, in the exercise of his or her discretion, pursuant to Rule 9269 to:

**(1)** treat as admitted by the Respondent the allegations in the complaint; and

**(2)** issue a default decision against the Respondent. If the Respondent fails to file an answer with the Office of Hearing Officers within the time required, the Hearing Officer may issue a default decision against the Respondent pursuant to Rule 9269.

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

**(a) Acceptance, Waiver, and Consent Procedures**

(1) Notwithstanding Rule 9211, if Enforcement[the Department of Enforcement or the Department of Market Regulation] has reason to believe a violation has occurred and the member organization or covered person does not dispute the violation, Enforcement[the Department of Enforcement or the Department of Market Regulation] may prepare and request that the member organization or covered person execute a letter accepting a finding of violation, consenting to the imposition of sanctions, and agreeing to waive such member organization's or covered person's right to a hearing before a Hearing Panel or, if applicable, an Extended Hearing Panel, and any right to review by the Exchange Board of Directors, the SEC, and the courts, or to otherwise challenge the validity of the letter, if the letter is accepted. The letter shall describe the act or practice engaged in or omitted, the rule, regulation, or statutory provision violated, and the sanction or sanctions to be imposed. Unless the letter states otherwise, the effective date of any sanction(s) imposed will be a date to be determined by [Exchange staff]Regulatory Staff.

(2) No Change

(3) If the member organization or covered person executes the letter of acceptance, waiver, and consent, it shall be submitted to the [Office of Disciplinary Affairs]CRO. The [Office of Disciplinary Affairs]CRO may, on behalf of the Exchange Board of Directors, accept or reject such letter.

(4) If the letter is accepted by the CRO[Office of Disciplinary Affairs], it shall be deemed final and shall constitute the complaint, answer, and decision in the matter. If the letter is rejected by the CRO[Office of Disciplinary Affairs], the Exchange may take any other appropriate disciplinary action with respect to the alleged violation or violations. If the letter is rejected, the member organization or covered person shall not be prejudiced by the execution of the letter of acceptance, waiver, and consent under paragraph (a)(1) and the letter may not be introduced into evidence in connection with the determination of the issues set forth in any complaint or in any other proceeding.

**(b) Procedure for Violation Under Plan Pursuant to SEA Rule 19d-1(c)(2)**

(1) Notwithstanding Rule 9211, the Exchange may, subject to the requirements set forth in paragraphs (b)(2) through (b)(4) and in SEA Rule 19d-1(c)(2), impose a fine (not to exceed \$2,500) and/or a censure on any member organization or covered person with respect to any rule listed in Rule 9217. If Enforcement[the Department of Enforcement or the Department of Market Regulation] has reason to believe a violation has occurred and if the member organization or covered person does not dispute the violation, Enforcement[the Department of Enforcement or the Department of Market Regulation] may prepare and request that the member organization or covered person execute a minor rule violation plan letter accepting a finding of violation, consenting to

the imposition of sanctions, and agreeing to waive such member organization's or covered person's right to a hearing before a Hearing Panel or, if applicable, an Extended Hearing Panel, and any right of review by the Exchange Board of Directors, the SEC, and the courts, or to otherwise challenge the validity of the letter, if the letter is accepted. The letter shall describe the act or practice engaged in or omitted, the rule, regulation, or statutory provision violated, and the sanction or sanctions to be imposed. Unless the letter states otherwise, the effective date of any sanction(s) imposed will be a date to be determined by [Exchange staff]Regulatory Staff.

**(2) No Change**

**(3)** If the member organization or covered person executes the minor rule violation plan letter, it shall be submitted to the CRO[Office of Disciplinary Affairs]. The CRO[Office of Disciplinary Affairs], on behalf of the SRO Board, may accept or reject such letter.

**(4)** If the letter is accepted by the CRO[Office of Disciplinary Affairs], it shall be deemed final and the Exchange shall report the violation to the SEC as required by the SEC pursuant to a plan approved under SEA Rule 19d-1(c)(2). If the letter is rejected by the CRO[Office of Disciplinary Affairs], the Exchange may take any other appropriate disciplinary action with respect to the alleged violation or violations. If the letter is rejected, the member organization or covered person shall not be prejudiced by the execution of the minor rule violation plan letter under paragraph (b)(1) and the letter may not be introduced into evidence in connection with the determination of the issues set forth in any complaint or in any other proceeding.

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

Any member organization or covered person may be subject to a fine under Rule 9216(b) with respect to any rules listed below.

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- Rule 123C - Failure to adhere to entry and cancellation procedures for limit-at-the-close and market-at-the-close orders.

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**Rule 9232. Criteria for Selection of Panelists, Replacement Panelists, and Floor-Based Panelists**

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(b) The [Chairman of the Exchange Board of Directors, subject to the approval the ]Exchange Board of Directors shall from time to time appoint a hearing board to be composed of such number of members and former allied members of the Exchange who are not members of the Exchange Board of Directors and registered employees and nonregistered employees of member organizations. Former members, allied members, or registered and non-registered employees of member organizations who have retired from the securities industry may be appointed to the hearing board. The members of the hearing board shall be appointed annually and shall serve at the pleasure of the Exchange Board of Directors.

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#### **Rule 9242. Pre-hearing Submission**

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#### **(b) [Reserved.] Prohibition on Serving as Expert Witness**

No former Regulatory Staff shall, within a period of one year immediately following termination of employment with the Exchange or FINRA, provide expert testimony on behalf of any other person in any proceeding under the Rule 9000 Series. Nothing in this Rule shall prohibit former Regulatory Staff from testifying as a witness on behalf of the Exchange or FINRA.

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#### **Rule 9250. Discovery**

#### **Rule 9251. Inspection and Copying of Documents in Possession of Staff**

##### **(a) Documents to be Available for Inspection and Copying**

(1) Unless otherwise provided by this Rule, or by order of the Hearing Officer, Enforcement[the Department of Enforcement or the Department of Market Regulation] shall make available for inspection and copying by any Respondent, Documents prepared or obtained by Interested Staff in connection with the investigation that led to the institution of proceedings. Such Documents include but are not limited to:

- (A) requests for information issued pursuant to Rule 8210;
- (B) every other written request directed to persons not employed by the Exchange to provide Documents or to be interviewed;
- (C) the Documents provided in response to any such requests described in (A) and (B) above;

(D) all transcripts and transcript exhibits; and

(E) all other Documents obtained from persons not employed by the Exchange.

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

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

**(b) Withheld Documents**

(1) [The Department of Enforcement or the Department of Market Regulation]Enforcement may withhold a Document if:

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

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

(C) the Document would disclose:

(i) an examination, investigatory or enforcement technique or guideline of the Exchange, a federal, state, or foreign regulatory authority, or a self-regulatory organization;

(ii) the identity of a source, including a federal, state, or foreign regulatory authority or a self-regulatory organization that furnished information or was furnished information on a confidential basis regarding an investigation, an examination, an

enforcement proceeding, or any other type of civil or criminal enforcement action;  
or

(iii) an examination, an investigation, an enforcement proceeding, or any other type of civil or criminal enforcement action under consideration by, or initiated by, the Exchange, a federal, state, or foreign regulatory authority, or a self-regulatory organization; or

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

(2) [The Department of Enforcement or the Department of Market Regulation]Enforcement shall withhold a Document if the Document is prohibited from disclosure by federal law.

(3) Nothing in paragraph (b)(1) authorizes [the Department of Enforcement or the Department of Market Regulation]Enforcement to withhold a Document, or a part thereof, that contains material exculpatory evidence.

**(c) Withheld Document List**

The Hearing Officer may require Enforcement[the Department of Enforcement or the Department of Market Regulation] to submit to the Hearing Officer a list of Documents withheld pursuant to paragraph (b) or to submit to the Hearing Officer any Document withheld. Upon review, the Hearing Officer may order Enforcement[the Department of Enforcement or the Department of Market Regulation] to make the list or any Document withheld available to the other Parties for inspection and copying unless federal law prohibits disclosure of the Document or its existence. A motion to require Enforcement[the Department of Enforcement or the Department of Market Regulation] to produce a list of Documents withheld pursuant to paragraph (b) shall be based upon some reason to believe that a Document is being withheld in violation of the Code.

**(d) Timing of Inspection and Copying**

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

- (1) 21 days after the filing date of the last timely answer, or
- (2) the expiration of the second period provided for filing an answer as set forth in Rule 9215(f).

(e) - (f) No Change

**(g) Failure to Make Documents Available — Harmless Error**

In the event that a Document required to be made available to a Respondent pursuant to this Rule is not made available by Enforcement[the Department of Enforcement or the Department of Market Regulation], no rehearing or amended decision of a proceeding already heard or decided shall be required unless the Respondent establishes that the failure to make the Document available was not harmless error. The Hearing Officer, or, upon review under Rule 9310, the Exchange Board of Directors, shall determine whether the failure to make the document available was not harmless error, applying applicable Exchange, FINRA, SEC, and federal judicial precedent.

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**Rule 9253. Production of Witness Statements**

**(a) Availability**

Notwithstanding the provisions of Rule 9251(b),

(1) A Respondent in a disciplinary proceeding may file a motion requesting that Enforcement[the Department of Enforcement or the Department of Market Regulation] produce for inspection and copying any statement of any person called or to be called as a witness by Enforcement[the Department of Enforcement or the Department of Market Regulation] that pertains, or is expected to pertain, to his or her direct testimony and which is "a stenographic, mechanical, electrical, or other recording, or a transcription thereof, which is a substantially verbatim recital of an oral statement made by said witness and recorded contemporaneously with the making of such oral statement," as that phrase is used in 18 U.S.C. §3500(e)(2).

(2) A Respondent in a disciplinary proceeding may also file a motion requesting that Enforcement[the Department of Enforcement or the Department of Market Regulation] produce for inspection and copying any contemporaneously written statement made by an Interested Staff member during a routine examination or inspection about the substance of oral statements made by a non-Exchange person when

(A) either the Interested Staff member or non-Exchange person is called as a witness by Enforcement[the Department of Enforcement or the Department of Market Regulation], and

(B) that portion of the statement for which production is sought directly relates to the Interested Staff member's testimony or the testimony of the non-Exchange witness.

**(b) Failure to Produce — Harmless Error**

In the event that a statement required to be made available for inspection and copying by a Respondent is not provided by Enforcement[the Department of Enforcement or the Department of Market Regulation], there shall be no rehearing of a proceeding already heard, or issuance of an amended decision in a proceeding already decided, unless the Respondent establishes that the failure to provide the statement was not harmless error. The Hearing Officer, or upon review under Rule 9310, the Exchange Board of Directors, shall determine whether the failure to provide any statement was not harmless error, applying applicable Exchange, FINRA, SEC, and federal judicial precedent.

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**Rule 9264. Motion for Summary Disposition**

**(a) Pre-hearing**

After a Respondent's answer has been filed and Documents have been made available to that Respondent for inspection and copying pursuant to Rule 9251, the Respondent or Enforcement[the Department of Enforcement or the Department of Market Regulation], without leave of the Hearing Officer, may make a motion for summary disposition of any or all the causes of action in the complaint with respect to that Respondent, as well as any defense raised in a Respondent's answer. All pre-hearing motions for summary disposition and supporting papers shall be filed at least 21 days before the time set for the hearing, or at such earlier time as ordered by the Hearing Officer. Notwithstanding the provisions of Rule 9146(d), any opposition or response to a pre-hearing motion for summary disposition shall be filed at least seven days before the time set for the hearing.

**(b) After Commencement of Hearing on Merits**

After a hearing on the merits has commenced, a Respondent or Enforcement[the Department of Enforcement or the Department of Market Regulation] may make a motion for summary disposition of any or all of the causes of action in the complaint with respect to that Respondent or defenses raised in that Respondent's answer only with leave of the Hearing Officer.

**(c) – (e) No Change**

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**Rule 9269. Default Decisions**

**(a) Issuance of Default Decisions**

(1) The Hearing Officer may issue a default decision against a Respondent that fails to answer the complaint within the time afforded under Rule 9215, or a Party that fails to appear at a pre-hearing conference held pursuant to Rule 9241 of which the Party has due notice, or a Party that fails to appear at any hearing that the Party is required to attend under the Rule 9200 Series of which the Party has due notice.

(2) If the defaulting Party is the Respondent, the Hearing Officer may deem the allegations against that Respondent admitted. If the Defaulting Party is Enforcement[the Department of Enforcement or the Department of Market Regulation], the Hearing Officer may issue a default decision ordering that the complaint be dismissed with prejudice.

(3) The Hearing Officer may order a Party that fails to appear at the prehearing conference or the hearing to pay the costs incurred by other Parties in connection with their appearance.

(b) – (c) No Change

**(d) Final Disciplinary Action of the Exchange; Effectiveness of Sanctions**

If a request for a review of a default decision is not filed pursuant to Rule 9310 within 25 days after the date the Office of Hearing Officers serves it on the Parties, the default decision shall become the final disciplinary action of the Exchange for purposes of SEA Rule 19d-1(c)(1). Unless otherwise provided in the default decision, the sanctions shall become effective on a date to be determined by [Exchange staff]Regulatory Staff, except that a bar or expulsion shall become effective immediately upon the default decision becoming the final disciplinary action of the Exchange. The decision shall be served on a Respondent by courier or other means reasonably likely to obtain prompt service when the sanction is a bar or an expulsion.

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**Rule 9270. Settlement Procedure**

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**(c) Content and Signature Requirements**

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

(1) a statement describing the investigative or other origin of the disciplinary action;

(2) the specific statutory or rule provisions that the member organization or covered person is alleged to have violated;

(3) a statement containing the acts or practices which the member organization or covered person is alleged to have engaged in or omitted;

(4) a statement consenting to findings of fact and violations consistent with the statements contained in the offer of settlement required by paragraphs (c)(2) and (c)(3); and

(5) a description of the proposed sanction and the effective date of any sanction(s) imposed, or a statement that the effective date of the sanction(s) will be a date to be determined by [Exchange staff]Regulatory Staff.

(d) No Change

**(e) Contested Offers of Settlement Deemed Rejected**

If a Respondent makes an offer of settlement and [the Department of Enforcement or the Department of Market Regulation]Enforcement opposes it, the offer of settlement is contested. A contested offer of settlement shall be deemed rejected, shall not be transmitted to the Office of Hearing Officers, [Office of Disciplinary Affairs]CRO, or Hearing Panel or Extended Hearing Panel, and shall not constitute a part of the record in any proceeding against the Respondent making the offer.

**(f) Uncontested Offers of Settlement**

If a Respondent makes an offer of settlement and [the Department of Enforcement or the Department of Market Regulation]Enforcement does not oppose it, the offer of settlement is uncontested. If an offer of settlement is determined to be uncontested by Enforcement[the Department of Enforcement or the Department of Market Regulation] before a hearing on the merits has begun, Enforcement[the Department of Enforcement or the Department of Market Regulation] shall transmit the uncontested offer of settlement and a proposed order of acceptance to the CRO[Office of Disciplinary Affairs] with its recommendation. If an offer of settlement is determined to be uncontested by [the Department of Enforcement or the Department of Market Regulation]Enforcement after a hearing on the merits has begun, Enforcement[the Department of Enforcement or the Department of Market Regulation] shall transmit the offer of settlement and a proposed order of acceptance to the Hearing Panel or, if applicable, the Extended Hearing Panel to be accepted or not accepted.

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

(2) Before an offer of settlement and an order of acceptance shall become effective, they shall be submitted to and accepted by the [Office of Disciplinary Affairs]CRO, the Hearing Panel, or if applicable, Extended Hearing Panel. The [Office of Disciplinary Affairs]CRO, Hearing Panel, or if applicable, Extended Hearing Panel, may or may not accept such offer of settlement and order of acceptance.

(3) If the offer of settlement and order of acceptance are accepted by the [Office of Disciplinary Affairs]CRO, the Hearing Panel or, if applicable, Extended Hearing Panel, they shall be issued and become final.

(g) No Change

**(h) Uncontested Offer of Settlement Not Accepted**

If an uncontested offer of settlement or an order of acceptance is not accepted by the [Office of Disciplinary Affairs]CRO, the Hearing Panel or the Extended Hearing Panel, the Respondent shall be notified in writing and the offer of settlement and proposed order of acceptance shall be deemed withdrawn. An offer and a proposed order of acceptance that are not accepted shall not constitute a part of the record in any proceeding against the Respondent making the offer.

**(i) Disciplinary Proceeding With Multiple Respondents**

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

**(j) No Prejudice from Rejected Offer of Settlement**

If an offer of settlement is rejected by the [Office of Disciplinary Affairs]CRO, a Hearing Panel or Extended Hearing Panel, the Respondent shall not be prejudiced by the offer, which may not be introduced into evidence in connection with the determination of the issues involved in the pending complaint or in any other proceeding.

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**Rule 9300. REVIEW OF DISCIPLINARY PROCEEDING BY EXCHANGE BOARD OF DIRECTORS**

**Rule 9310. Review by Exchange Board of Directors**

**(a) Request for Review**

(1) Any Party, any Director, and any member of the committee of NYSE Regulation to which is delegated the authority to review disciplinary decisions on behalf of the Exchange Board of Directors may require a review by the Exchange Board of Directors of any determination or penalty, or both, imposed by a Hearing Panel or Extended Hearing Panel under the Rule 9200 Series, except that [neither Party]none of the aforementioned persons may request a review by the Exchange Board of Directors of a decision concerning an Exchange member organization that is an affiliate. A request for review shall be made by filing with the Secretary of the Exchange a written request therefor, which states the basis and reasons for such review, within 25 days after notice of the determination and/or penalty is served upon the Respondent. The Secretary of the Exchange shall give notice of any such request for review to the Parties.

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## **Rule 9500. OTHER PROCEEDINGS**

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### **Rule 9550. Expedited Proceedings**

#### **Rule 9551. Failure to Comply with Public Communication Standards**

##### **(a) Notice of Pre-Use Filing Requirement**

Pursuant to Rule 2210(c)(1)(B), [Exchange staff]Regulatory Staff may issue a written notice requiring a member organization to file communications with the Exchange's Advertising Regulation Department at least ten days prior to use if [Exchange staff]Regulatory Staff determines that the member organization has departed from the standards of Rule 2210.

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

Except as provided below, [Exchange staff]Regulatory Staff shall serve the member organization with such notice in accordance with Rule 9134. When counsel for the member organization or other person authorized to represent others under Rule 9141 agrees to accept service of such notice, then [Exchange staff]Regulatory Staff may serve notice on counsel or other person authorized to represent others under Rule 9141 as specified in Rule 9134.

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#### **Rule 9552. Failure to Provide Information or Keep Information Current**

##### **(a) Notice of Suspension of a Member Organization or Covered Person if Corrective Action is Not Taken**

If a member organization or covered person fails to provide any information, report, material, data, or testimony requested or required to be filed pursuant to the Exchange's Rules, or fails to keep its membership application or supporting documents current,

[Exchange staff]Regulatory Staff may provide written notice to such member organization or covered person specifying the nature of the failure and stating that the failure to take corrective action within 21 days after service of the notice will result in suspension of membership of the member organization or of association of the covered person with any member organization.

**(b) Service of Notice of Suspension**

Except as provided below, [Exchange staff]Regulatory Staff shall serve the member organization or covered person with such notice in accordance with Rule 9134. A copy of a notice under this Rule that is served on a covered person associated with a member organization also shall be served on such member organization. When counsel for the member organization or covered person, or other person authorized to represent others under Rule 9141 agrees to accept service of such notice, then [Exchange staff]Regulatory Staff may serve notice on counsel or other person authorized to represent others under Rule 9141 as specified in Rule 9134.

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**Rule 9554. Failure to Comply with an Arbitration Award or Related Settlement or an Order of Restitution or Settlement Providing for Restitution**

**(a) Notice of Suspension or Cancellation**

If a member organization or covered person fails to comply with an arbitration award or a settlement agreement related to an arbitration or mediation under the Exchange's Rules, or an Exchange order of restitution or Exchange settlement agreement providing for restitution, [Exchange staff]Regulatory Staff may provide written notice to such covered person or member organization stating that the failure to comply within 21 days of service of the notice will result in a suspension or cancellation of membership or a suspension from associating with any member organization. When a member organization or covered person fails to comply with an arbitration award or a settlement agreement related to an arbitration or mediation involving a customer, a claim of inability to pay is no defense.

**(b) Service of Notice of Suspension or Cancellation**

Except as provided below, [Exchange staff]Regulatory Staff shall serve the member organization or covered person with such notice in accordance with Rule 9134. A copy of a notice under this Rule that is served on a covered person associated with a member organization also shall be served on such member organization. When counsel for the member organization or covered person, or other person authorized to represent others under Rule 9141 agrees to accept service of such notice, then [Exchange staff]Regulatory Staff may serve notice on counsel or other person authorized to represent others under Rule 9141 as specified in Rule 9134.

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

### **(a) Notice of Suspension, Cancellation or Bar**

If a member organization or covered person fails to comply with a temporary or permanent cease and desist order issued under the Rule 9200, 9300 or 9800 Series, [Exchange staff]Regulatory Staff, after receiving written authorization from the Exchange's CRO or such other senior officer as the CRO may designate, may issue a notice to such member organization or covered person stating that the failure to comply with the temporary or permanent cease and desist order within seven days of service of the notice will result in a suspension or cancellation of membership or a suspension or bar from associating with any member organization.

### **(b) Service of Notice**

[Exchange staff]Regulatory Staff shall serve the member organization or covered person subject to a notice issued under this Rule (or upon counsel representing the member organization or covered person, or other person authorized to represent others under Rule 9141, when counsel or other person authorized to represent others under Rule 9141 agrees to accept service for the member organization or covered person) by overnight courier or personal delivery. Papers served on a member organization, covered person or counsel for such member organization or covered person, or other person authorized to represent others under Rule 9141 by overnight courier or personal delivery shall conform to paragraphs (a)(1) and (3) and, with respect to a member organization or covered person, (b)(1) and (2) of Rule 9134. A copy of a notice under this Rule that is served on a covered person associated with a member organization also shall be served on such member organization. Service is complete upon mailing the notice by overnight courier or delivering it in person.

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## **Rule 9800. TEMPORARY CEASE AND DESIST ORDERS**

### **Rule 9810. Initiation of Proceeding**

#### **(a) [Department of Enforcement or Department of Market Regulation]Enforcement; Service and Filing of Notice**

With the prior written authorization of the Exchange's CRO or such other senior officers as the CRO may designate, Enforcement[the Department of Enforcement or the Department of Market Regulation] may initiate a temporary cease and desist proceeding with respect to alleged violations of Section 10(b) of the Exchange Act and SEA Rule 10b-5 thereunder; SEA Rules 15g-1 through 15g-9; NYSE Rule 2010 (if the alleged violation is unauthorized trading, or misuse or conversion of customer assets, or based on violations of Section 17(a) of the Securities Act); or NYSE Rule 2020. [The Department of Enforcement or the Department of Market Regulation]Enforcement shall initiate the

proceeding by serving a notice on a member organization or covered person (hereinafter "Respondent") and filing a copy thereof with the Office of Hearing Officers. Enforcement[The Department of Enforcement or the Department of Market Regulation] shall serve the notice by personal service or overnight commercial courier. The notice shall be effective upon service.

**(b) Contents of Notice**

The notice shall set forth the rule or statutory provision that the Respondent is alleged to have violated and that Enforcement[the Department of Enforcement or the Department of Market Regulation] is seeking to have the Respondent ordered to cease violating. The notice also shall state whether Enforcement[the Department of Enforcement or the Department of Market Regulation] is requesting the Respondent to be required to take action or to refrain from taking action. The notice shall be accompanied by:

- (1) a declaration of facts, signed by a person with knowledge of the facts contained therein, that specifies the acts or omissions that constitute the alleged violation; and
- (2) a proposed order that contains the required elements of a temporary cease and desist order (except the date and hour of the order's issuance), which are set forth in Rule 9840(b).

**(c) Filing of Underlying Complaint**

If Enforcement[the Department of Enforcement or the Department of Market Regulation] has not issued a complaint under Rule 9211 against the Respondent relating to the subject matter of the temporary cease and desist proceeding and alleging violations of the rule or statutory provision specified in the notice described in paragraph (b), Enforcement[the Department of Enforcement or the Department of Market Regulation] shall serve and file such a complaint with the notice initiating the temporary cease and desist proceeding.

**Rule 9820. Appointment of Hearing Officer and Hearing Panel**

(a) As soon as practicable after Enforcement[the Department of Enforcement or the Department of Market Regulation] files a copy of the notice initiating a temporary cease and desist proceeding with the Office of Hearing Officers, the Chief Hearing Officer shall assign a Hearing Officer to preside over the temporary cease and desist proceeding. The Chief Hearing Officer shall appoint two Panelists to serve on a Hearing Panel with the Hearing Officer. The Panelists shall be appointed pursuant to Rule 9231.

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**Rule 9830. Hearing**

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**(b) Service of Notice of Hearing**

The Office of Hearing Officers shall serve a notice of date, time, and place of the hearing on Enforcement[the Department of Enforcement or the Department of Market Regulation] and the Respondent not later than seven days before the hearing, unless otherwise ordered by the Hearing Officer. Service shall be made by personal service or overnight commercial courier. The notice shall be effective upon service.

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**(h) Failure to Appear at Hearing**

If a Respondent fails to appear at a hearing for which it has notice, the allegations in the notice and accompanying declaration may be deemed admitted, and the Hearing Panel may issue a temporary cease and desist order without further proceedings.

If Enforcement[the Department of Enforcement or Department of Market Regulation] fails to appear at a hearing for which it has notice, the Hearing Panel may order that the temporary cease and desist proceeding be dismissed.

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