

EXHIBIT 5

Exhibit 5 shows the text of the proposed rule change. Proposed new language is underlined; proposed deletions are in brackets.

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9000. CODE OF PROCEDURE

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9120. Definitions

(a) through (s) No Change.

(t) “Interested FINRA Staff”

The term “Interested FINRA Staff” means, in the context of:

(1) a disciplinary proceeding under the Rule 9200 Series and the Rule 9300 Series:

(A) through (B) No Change.

(C) a FINRA employee who directly participated in the authorization of the complaint; or

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

[(E) the Head of the Department of Market Regulation; or]

[(F) an employee of the Department of Market Regulation who reports, directly or indirectly, to the Head of the Department of Market Regulation;]

(2) through (3) No Change.

(4) a proceeding under the Rule 9800 Series:

(A) through (B) No Change.

(C) a FINRA employee who directly participated in the authorization of the notice that initiates a temporary cease and desist proceeding; or

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

[(E) the Head of the Department of Market Regulation; or]

[(F) an employee of the Department of Market Regulation who reports, directly or indirectly, to the Head of the Department of Market Regulation.]

(u) through (w) No Change.

(x) “Party”

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

(1) in the Rule 9200 Series, the Rule 9300 Series, and the Rule 9800 Series, the Department of Enforcement or [the Department of Market Regulation or] a Respondent;

(2) in the Rule 9520 Series, the Department of Enforcement[Member Regulation] or a member that is the subject of a notice or files an application under Rule 9522;

(3) through (4) No Change.

(y) through (dd) No Change.

9130. Service; Filing of Papers

9131. Service of Complaint

(a) Service on Each Party

Except as provided below, a complaint shall be served on each Party by 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 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) through (c) No Change.

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9140. Proceedings

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9146. Motions

(a) through (j) No Change.

(k) Motion For Protective Order

(1) A Party, a person who is the owner, subject, or creator of a Document subject to production under Rule 8210 or any other Rule which may be introduced as evidence in a disciplinary proceeding, or a witness who testifies at a hearing in a disciplinary proceeding may file a motion requesting a protective order to limit disclosure or prohibit from disclosure to other Parties, witnesses or other persons, except the Department of Enforcement [and the Department of Market

Regulation] and other FINRA staff, Documents or testimony that contain confidential information. The motion shall include a general summary or extract of the Documents or testimony without revealing confidential details. If the movant seeks a protective order against disclosure to other Parties, copies of the Documents shall not be served on the other Parties. Unless the Documents are unavailable, the movant shall file for in camera inspection a sealed copy of the Documents for which the order is sought. If the movant is not a Party, the motion shall be served on each Party by the movant using a method in Rule 9134(a) and filed with the Adjudicator. A motion for a protective order shall be granted only upon a finding that disclosure of the Document or testimony would have a demonstrated adverse business effect on the movant or would involve an unreasonable breach of the movant's personal privacy.

(2) No Change.

(1) No Change.

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9200. DISCIPLINARY PROCEEDINGS

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9211. Authorization of Complaint

(a) Complaint

(1) If the Department of Enforcement[or the Department of Market Regulation] believes that any FINRA member or associated person is violating or has violated any rule, regulation, or statutory provision, including the federal securities laws and the regulations thereunder, which FINRA has jurisdiction to

enforce, the Department of Enforcement[or the Department of Market Regulation] may request authorization from the Office of Disciplinary Affairs to issue a complaint.

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

(b) No Change.

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 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] 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, 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 a violation of a statute or a rule described in Rule 9120(u), that the Chief Hearing Officer select a Market Regulation Committee Panelist for the Hearing Panel, or, if applicable, the Extended Hearing Panel as described in Rule 9231.

(b) Amendments to Complaint

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 the Department of Enforcement[or the Department of Market Regulation], the Hearing Officer may permit 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 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, the Department of Enforcement[or the Department of Market Regulation] may withdraw a complaint. If 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 the Department of Enforcement[or the Department of Market Regulation] shall be without prejudice and 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 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.

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 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.

(b) No Change.

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9215. Answer to Complaint

(a) through (e) No Change.

(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, 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.

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 the Department of Enforcement[or the Department of Market Regulation] has reason to believe a violation has occurred and the member or associated person does not dispute the violation, the Department of Enforcement[or the Department of Market Regulation] may prepare and request that the member or associated person execute a letter

accepting a finding of violation, consenting to the imposition of sanctions, and agreeing to waive such member's or associated person's right to a hearing before a Hearing Panel or, if applicable, an Extended Hearing Panel, and any right of appeal to the National Adjudicatory Council, the 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 FINRA staff.

(2) through (4) No Change.

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

(1) Notwithstanding Rule 9211, FINRA or the National Adjudicatory Council 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 or associated person with respect to any rule listed in Rule 9217. If the Department of Enforcement[or the Department of Market Regulation] has reason to believe a violation has occurred and if the member or associated person does not dispute the violation, the Department of Enforcement [or the Department of Market Regulation] may prepare and request that the member or associated person execute a minor rule violation plan letter accepting a finding of violation, consenting to the imposition of sanctions, and agreeing to waive such member's or associated person's right to a hearing before a Hearing Panel or, if applicable, an Extended Hearing Panel, and any right of appeal to the

National Adjudicatory Council, the 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 FINRA staff.

(2) through (4) No Change.

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9251. Inspection and Copying of Documents in Possession of Staff

(a) Documents to be Available for Inspection and Copying

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

(A) through (E) No Change.

(2) The Department of Enforcement[or the Department of Market Regulation] shall promptly inform the Hearing Officer and each other Party if, after the issuance of a complaint, requests for information under Rule 8210 are issued under the same investigative file number under which the investigation leading to the institution of disciplinary proceedings was conducted. If Interested FINRA Staff receives Documents pursuant to a request for information under

Rule 8210 after Documents have been made available to a Respondent for inspection and copying as set forth in paragraph (a), and if such Documents are material and relevant to the disciplinary proceeding in which such Respondent is a Party, the additional Documents shall be made available to the Respondent not later than 14 days after the Interested FINRA Staff receives such Documents. If a hearing on the merits is scheduled to begin, Interested FINRA Staff shall make the additional Documents available to the Respondent not less than ten days before the hearing. If Interested FINRA Staff receives such Documents ten or fewer days before a hearing on the merits is scheduled to begin or after such hearing begins, Interested FINRA 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] 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] may withhold a Document if:

(A) through (D) No Change.

(2) The Department of Enforcement[or the Department of Market Regulation] 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] to withhold a Document, or a part thereof, that contains material exculpatory evidence.

(c) Withheld Document List

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

(d) 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, 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, 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) through (2) No Change.

(e) through (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 the Department of Enforcement[or the Department of Market Regulation], no rehearing or amended decision of a proceeding already heard or decided shall be required unless the Respondent establishes that the failure to make the Document available was not harmless error. The Hearing Officer, or, upon appeal or review, a Subcommittee, an Extended Proceeding Committee, or the National Adjudicatory Council, shall determine whether the failure to make the document available was not harmless error, applying applicable FINRA, SEC, and federal judicial precedent.

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9253. Production of Witness Statements

(a) Availability

Notwithstanding the provisions of Rule 9251(b),

(1) A Respondent in a disciplinary proceeding may file a motion requesting that the Department of Enforcement[or the Department of Market Regulation] produce for inspection and copying any statement of any person called or to be called as a witness by the Department of Enforcement[or the Department of Market Regulation] that pertains, or is expected to pertain, to his or

her direct testimony and which is “a stenographic, mechanical, electrical, or other recording, or a transcription thereof, which is a substantially verbatim recital of an oral statement made by said witness and recorded contemporaneously with the making of such oral statement,” as that phrase is used in 18 U.S.C. § 3500(e)(2).

(2) A Respondent in a disciplinary proceeding may also file a motion requesting that the Department of Enforcement[or the Department of Market Regulation] produce for inspection and copying any contemporaneously written statement made by an Interested FINRA Staff member during a routine examination or inspection about the substance of oral statements made by a non-FINRA person when (a) either the Interested FINRA Staff member or non-FINRA person is called as a witness by the Department of Enforcement[or the Department of Market Regulation,] and (b) that portion of the statement for which production is sought directly relates to the Interested FINRA Staff member's testimony or the testimony of the non-FINRA witness.

(b) Failure to Produce — Harmless Error

In the event that a statement required to be made available for inspection and copying by a Respondent is not provided by the Department of Enforcement[or the Department of Market Regulation], there shall be no rehearing of a proceeding already heard, or issuance of an amended decision in a proceeding already decided, unless the Respondent establishes that the failure to provide the statement was not harmless error. The Hearing Officer, or upon appeal or review, a Subcommittee, an Extended Proceeding Committee, or the National Adjudicatory Council, shall determine whether the failure to

provide any statement was not harmless error, applying applicable FINRA, SEC, and federal judicial precedent.

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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 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 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) through (e) No Change.

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9269. Default Decisions

(a) Issuance of Default Decisions

(1) No Change.

(2) If the defaulting Party is the Respondent, the Hearing Officer may deem the allegations against that Respondent admitted. If the Defaulting Party is 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) through (4) No Change.

(b) through (d) No Change.

9270. Settlement Procedure

(a) through (d) No Change.

(e) Uncontested Offers of Settlement

If a Respondent makes an offer of settlement and the Department of Enforcement [or the Department of Market Regulation] does not oppose it, the offer of settlement is uncontested. If an offer of settlement is determined to be uncontested by the Department of Enforcement[or the Department of Market Regulation] before a hearing on the merits has begun, 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 National Adjudicatory Council with its recommendation. If an offer of settlement is determined to be uncontested by the Department of Enforcement[or the Department of Market Regulation] after a hearing on the merits has begun, 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 for acceptance or rejection. If accepted by the Hearing Panel or, if applicable, Extended Hearing Panel, the offer of settlement and the order of acceptance shall be forwarded to the National Adjudicatory Council to accept or reject.

(1) through (2) No Change.

(3) If the offer of settlement and order of acceptance are accepted by the National Adjudicatory Council, the Review Subcommittee, or the Office of Disciplinary Affairs, they shall become final and the Director of the Office of Disciplinary Affairs shall issue the order and notify the Office of Hearing Officers. The Department of Enforcement[or the Department of Market Regulation] shall provide a copy of an issued order of acceptance to each FINRA member with which a Respondent is associated.

(f) Contested Offers of Settlement

If a Respondent makes an offer of settlement and the Department of Enforcement [or the Department of Market Regulation] opposes it, the offer of settlement is contested. When the Department of Enforcement[or the Department of Market Regulation] opposes an offer of settlement, the Respondent's written offer and the Department of Enforcement's[or the Department of Market Regulation's] written opposition shall be submitted to a Hearing Panel or, if applicable, an Extended Hearing Panel. The Hearing Panel or, if applicable, the Extended Hearing Panel, may order the Department of Enforcement[or the Department of Market Regulation] and the Respondent to attend a settlement conference.

(1) through (3) No Change.

(g) through (j) No Change.

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

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9311. Appeal by Any Party; Cross-Appeal

(a) Time to File Notice of Appeal

A Respondent or the Department of Enforcement[or the Department of Market Regulation] may file a written notice of appeal within 25 days after service of a decision issued pursuant to Rule 9268 or Rule 9269.

(b) through (f) No Change.

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9800. TEMPORARY AND PERMANENT CEASE AND DESIST ORDERS

9810. Initiation of Proceeding

(a) Department of Enforcement[or Department of Market Regulation]

With the prior written authorization of FINRA's Chief Executive Officer or such other senior officers as the Chief Executive Officer may designate, the Department of Enforcement[or the Department of Market Regulation] may initiate: (1) 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; FINRA 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); FINRA Rule 2020; or FINRA Rule 4330 (if the alleged violation is misuse or conversion of customer assets) (“TCDO Proceeding”) or (2) a permanent cease and desist proceeding with respect to alleged violations of Supplementary Material .03 to Rule 5210 (PCDO Proceeding”). The Department of Enforcement[or the Department of Market Regulation] shall initiate the proceeding by serving a notice on a member or associated person (hereinafter “Respondent”) (or upon counsel representing the Respondent, 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 Respondent) and filing a copy thereof with the Office of Hearing Officers. The Department of Enforcement[or the Department of Market Regulation] shall serve the notice by personal service, overnight commercial courier, facsimile, or email. If service is made by facsimile or email, the Department of Enforcement[or the Department of Market Regulation] shall send an additional copy of the notice by personal service or overnight commercial courier. Service is complete upon sending the notice by facsimile or email, sending the notice by overnight courier or delivering it in person, except that, where duplicate service is required, service is complete when the duplicate service is complete. The notice shall be effective when service is complete.

(b) Contents of Notice

The notice shall set forth the rule or statutory provision that the Respondent is alleged to have violated and that 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 the Department of Enforcement[or the Department of

Market Regulation] is requesting the Respondent to be required to take action, refrain from taking action or both. The notice shall be accompanied by:

(1) No Change.

(2) a memorandum of points and authorities setting forth the legal theories upon which the Department of Enforcement[or the Department of Market Regulation] relies; and

(3) No Change.

(c) No Change.

(d) Filing of Underlying Complaint for Temporary Cease and Desist Orders

If 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 TCDO Proceeding and alleging violations of the rule or statutory provision specified in the notice described in paragraph (b), the Department of Enforcement[or the Department of Market Regulation] shall serve and file such a complaint with the notice initiating the TCDO Proceeding. Service of the complaint can be made in accordance with the service provisions in paragraph (a).

9820. Appointment of Hearing Officer and Hearing Panel

(a) As soon as practicable after the Department of Enforcement[or the Department of Market Regulation] files a copy of the notice initiating a TCDO Proceeding or a PCDO Proceeding with the Office of Hearing Officers, the Chief Hearing Officer shall assign a Hearing Officer to preside over the proceeding. The Chief Hearing Officer shall appoint two Panelists to serve on a Hearing Panel with the Hearing Officer.

Each Panelist shall be associated with a member of FINRA or retired therefrom. The Chief Hearing Officer shall select as a Panelist a person who:

(1) through (6) No Change.

(b) No Change.

9830. Hearing

(a) No Change.

(b) Service of Notice of Hearing

The Office of Hearing Officers shall serve a notice of date, time, and place of the hearing on the Department of Enforcement[or the Department of Market Regulation] and the Respondent (or upon counsel representing the Respondent, 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 Respondent) not later than seven days before the hearing, unless otherwise ordered by the Hearing Officer. Service shall be made by personal service, overnight commercial courier, facsimile, or email. If service is made by facsimile or email, the Office of Hearing Officers shall send an additional copy of the notice by personal service or overnight commercial courier. Service is complete upon sending the notice by facsimile or email, sending the notice by overnight courier or delivering it in person, except that, where duplicate service is required, service is complete when the duplicate service is complete. The notice shall be effective when service is complete.

(c) through (g) No Change.

(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 in a TCDO Proceeding or a permanent cease and desist order in a PCDO Proceeding without further proceedings. If 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 proceeding be dismissed.

9840. Issuance of Order by Hearing Panel

(a) Basis for Issuance of a Temporary Cease and Desist Order in a TCDO Proceeding

The Hearing Panel shall issue a written decision stating whether a temporary cease and desist order shall be imposed. The Hearing Panel shall issue the decision not later than ten days after receipt of the hearing transcript, unless otherwise extended by the Chief Hearing Officer or Deputy Chief Hearing Officer for good cause shown. A temporary cease and desist order shall be imposed if the Hearing Panel finds:

(1) that the Department of Enforcement[or Department of Market Regulation] has made a showing of a likelihood of success on the merits; and

(2) No Change.

(b) through (e) No Change.

(f) Service and Dissemination Requirements

The Office of Hearing Officers shall serve the Hearing Panel's decision and any temporary or permanent cease and desist order on the Department of Enforcement[or the Department of Market Regulation] and the Respondent (or upon counsel representing the

Respondent or 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 Respondent) by personal service, overnight commercial courier, facsimile, or email. If service is made by facsimile or email, the Office of Hearing Officers shall send an additional copy of the Hearing Panel's decision and any temporary or permanent cease and desist order by personal service or overnight commercial courier. Service is complete upon sending the notice by facsimile or email, sending the notice by overnight courier, or delivering it in person, except that, where duplicate service is required, service is complete when the duplicate service is complete. The temporary or permanent cease and desist order shall be effective when service is complete. The Office of Hearing Officers shall provide a copy of a temporary or permanent cease and desist order to each FINRA member with which a Respondent is associated.

(g) No Change.

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