

Additions underlined.  
Deletions [bracketed].

Rules of NYSE Chicago, Inc.

\* \* \* \* \*

## **RULE 2 TRADING PERMITS**

### **Rule 2.0. Disciplinary Jurisdiction**

- (a) A Participant or Participant Firm, or a person associated with a Participant or Participant Firm, or any other person or organization subject to the jurisdiction of the Exchange (the "Respondent"), who is alleged to have violated or aided and abetted a violation of any provision of the Exchange Act or the rules and regulations promulgated thereunder, or any by-law or rule of the Exchange or any interpretation thereof or resolution of the Board regulating the conduct of business on the Exchange shall be subject to the disciplinary jurisdiction of the Exchange under the Rule 10.8000 and 10.9000 Series, and after notice and opportunity for a hearing may be appropriately disciplined by: expulsion; suspension; limitation of activities, functions and operation; fine; censure; suspension or bar from association with a Participant or Participant Firm or any other fitting sanction, in accordance with the provisions of the Rule 10.8000 and 10.9000 Series. A Participant or Participant Firm may be charged with any violation committed by its employees or other person associated with such Participant or Participant Firm, as though such violation were its own.
- (b) A Participant or Participant Firm that resigns or has its membership canceled or revoked, and a person who is no longer a covered person as defined in Rule 10.9120 or a covered person whose registration has been revoked or canceled, shall continue to be subject to the Exchange's disciplinary jurisdiction as set forth in Rule 10.8130.
- (c) The Board of Directors may authorize any officer, on behalf of the Exchange, subject to the approval of the Board of Directors, to enter into one or more agreements with another self-regulatory organization to provide regulatory services to the Exchange to assist the Exchange in discharging its obligations under Section 6 and Section 19(g) of the Securities Exchange Act of 1934. Any action taken by another self-regulatory organization, or its employees or authorized agents, acting on behalf of the Exchange pursuant to a regulatory services agreement shall be deemed to be an action taken by the Exchange; provided, however, that nothing in this provision shall affect the oversight of such other self-regulatory organization by the Securities and Exchange Commission. Notwithstanding the fact that the Exchange may enter into one or more regulatory services agreements, the Exchange shall retain ultimate legal responsibility for, and control of, its self-regulatory responsibilities, and any such regulatory services agreement shall so provide.

\* \* \* \* \*

## **RULE 10 DISCIPLINARY PROCEEDINGS; SUSPENSION, CANCELLATION AND REINSTATEMENT, OTHER HEARINGS AND APPEALS**

Article 12 shall apply only to an investigation or proceeding instituted under Article 12, Rule 1 prior to [insert date] and will continue to apply until such proceeding is final. Article 12 shall also continue to apply to any Participant, Participant Firm or covered person over whom the Exchange asserted jurisdiction by providing written notice of the commencement of an inquiry under Article 12, Rule 7(b) prior to [insert date]. Otherwise, the Rule 10.8000 Series and Rule 10.9000 Series will apply.

### **RULE 10.8000. INVESTIGATIONS AND SANCTIONS**

#### **Rule 10.8001. Effective Date of Rule 10.8000 Series**

The Rule 10.8000 Series shall become effective on [insert date], except as otherwise provided in Rule 10.8130(d).

### **RULE 10.8100. GENERAL PROVISIONS**

#### **Rule 10.8110. Availability of Rules for Customers**

Participants and Participant Firms shall make available a current copy of the Exchange rules for examination by customers upon request. Participants and Participant Firms may comply with this Rule by maintaining electronic access to the Exchange rules and providing customers with such access upon request.

#### **Rule 10.8120. Definitions**

(a) Unless otherwise provided, terms used in the Rule 10.8000 Series shall have the same meaning as in applicable Exchange rules.

(b) The terms "Adjudicator," "covered person," and "Regulatory Staff" shall have the same meaning as in Rule 10.9120.

#### **Rule 10.8130. Retention of Jurisdiction**

(a) A Participant or Participant Firm that resigns or has its membership canceled or revoked shall continue to be subject to the filing of a complaint under Exchange rules based upon conduct which commenced prior to the effective date of the Participant's or Participant Firm's resignation from the Exchange or the cancellation or revocation of its membership. Any such complaint, however, shall be filed within two years after the effective date of resignation, cancellation, or revocation.

(b) A person whose status as a covered person has been terminated and who is no longer a covered person of any Participant or Participant Firm or a covered person whose registration has been revoked or canceled shall continue to be subject to the filing of a

complaint under Exchange rules based upon conduct that commenced prior to the termination, revocation, or cancellation or upon such person's failure, while subject to the jurisdiction of the Exchange as provided herein, to provide information requested by the Exchange pursuant to Exchange rules, but any such complaint shall be filed within:

(1) two years after the effective date of termination of registration pursuant to Article 6, Rule 2; Article 16, Rule 1; and Article 17, Rule 1 provided, however that any amendment to a notice of termination filed pursuant to such rules that is filed within two years of the original notice that discloses that such person may have engaged in conduct actionable under any applicable statute, rule, or regulation shall operate to recommence the running of the two-year period under this Rule;

(2) two years after the effective date of revocation or cancellation of registration pursuant to Exchange rules; or

(3) in the case of an unregistered person, two years after the date upon which such person ceased to be a covered person of the Participant or Participant Firm.

(c) A person whose status as a covered person is terminated and is no longer a covered person of any Participant or Participant Firm shall continue to be subject to a proceeding to suspend his or her ability to associate with a Participant or Participant Firm based on such person's failure to comply with an arbitration award or a written and executed settlement agreement obtained in connection with an arbitration or mediation submitted for disposition pursuant to Exchange rules, provided that such proceeding is instituted within two years after the date of entry of such award or settlement.

(d) Article 12 shall continue to apply to any Participant, Participant Firm or covered person over whom the Exchange asserted jurisdiction by providing written notice of the commencement of an inquiry pursuant to Article 12, Rule 7(b) prior to [insert date].

## **RULE 10.8200. INVESTIGATIONS**

### **Rule 10.8210. 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) require a Participant, Participant Firm or covered person to provide information orally, in writing, or electronically (if the requested information is, or is required to be, maintained in electronic form) and

to testify at a location specified by Exchange staff, under oath or affirmation administered by a court reporter or a notary public if requested, with respect to any matter involved in the investigation, complaint, examination, or proceeding; and

(2) inspect and copy the books, records, and accounts of such Participant, Participant Firm or covered person with respect to any matter involved in the investigation, complaint, examination, or proceeding that is in such Participant's or Participant Firm's or covered person's possession, custody or control.

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 Participants and Participant Firms. No member of the Board of Directors or non-Regulatory Staff may interfere with or attempt to influence the process or resolution of any pending investigation or disciplinary proceeding.

#### **(b) Other SROs and Regulators**

(1) Exchange staff may enter into an agreement with a domestic federal agency, or subdivision thereof, or foreign regulator to share any information in the Exchange's possession for any regulatory purpose set forth in such agreement, provided that the agreement must require the other regulator, in accordance with the terms of the agreement, to treat any shared information confidentially and to assert such confidentiality and other applicable privileges in response to any requests for such information from third parties.

Any such agreement with a foreign regulator must also meet the following conditions:

(A) the other regulator party to the agreement must have jurisdiction over common regulatory matters; and

(B) the agreement must require the other regulator to reciprocate and share with the Exchange information of regulatory interest or concern to the Exchange.

(2) Exchange staff may exercise the authority set forth in paragraph (a) for the purpose of an investigation, complaint, examination, or proceeding conducted by another domestic or foreign self-regulatory organization, association, securities or contract market, or regulator of such markets with which the Exchange has entered into an agreement providing for the exchange of information and other forms of material

assistance solely for market surveillance, investigative, enforcement, or other regulatory purposes.

**(c) Requirement to Comply**

No Participant, Participant Firm or covered person shall fail to provide information or testimony or to permit an inspection and copying of books, records, or accounts pursuant to this Rule.

**(d) Notice**

A notice under this Rule shall be deemed received by the Participant, Participant Firm or covered person (including a currently or formerly registered person) to whom it is directed by mailing or otherwise transmitting the notice to the last known business address of the Participant or Participant Firm or the last known residential address of the covered person as reflected in the Central Registration Depository. With respect to a person who is currently associated with a Participant or Participant Firm in an unregistered capacity, a notice under this Rule shall be deemed received by the person by mailing or otherwise transmitting the notice to the last known business address of the Participant or Participant Firm as reflected in the Central Registration Depository. With respect to a person subject to the Exchange's jurisdiction who was formerly associated with a Participant or Participant Firm in an unregistered capacity, a notice under this Rule shall be deemed received by the person upon personal service, as set forth in Rule 10.9134(a)(1).

If the Adjudicator or Exchange staff responsible for mailing or otherwise transmitting the notice to the Participant, Participant Firm or a covered person has actual knowledge that the address in the Central Registration Depository is out of date or inaccurate, then a copy of the notice shall be mailed or otherwise transmitted to:

(1) the last known business address of the Participant or Participant Firm or the last known residential address of the covered person as reflected in the Central Registration Depository; and

(2) any other more current address of the Participant, Participant Firm or covered person known to the Adjudicator or Exchange staff who is responsible for mailing or otherwise transmitting the notice.

If the Adjudicator or Exchange staff responsible for mailing or otherwise transmitting the notice to the Participant, Participant Firm or covered person knows that the Participant, Participant Firm or covered person is represented by counsel regarding the investigation, complaint, examination, or proceeding that is the subject of the notice, then the notice shall be served upon counsel by mailing or otherwise transmitting the notice to the counsel in lieu of the Participant, Participant Firm or covered person, and any notice served upon counsel shall be deemed received by the Participant, Participant Firm or covered person.

**(e) Electronic Interface**

In carrying out its responsibilities under this Rule, the Exchange may, as appropriate, establish programs for the submission of information to the Exchange on a regular basis through a direct or indirect electronic interface between the Exchange and a Participant or Participant Firm.

**(f) Inspection and Copying**

A witness, upon proper identification, may inspect the official transcript of the witness' own testimony. Upon written request, a person who has submitted documentary evidence or testimony in an Exchange investigation may procure a copy of the person's documentary evidence or the transcript of the person's testimony upon payment of the appropriate fees, except that prior to the issuance of a complaint arising from the investigation, Exchange staff may for good cause deny such request.

**(g) Encryption of Information Provided in Electronic Form**

(1) Any Participant, Participant Firm or covered person who, in response to a request pursuant to this Rule, provides the requested information on a portable media device must ensure that such information is encrypted.

(2) For purposes of this Rule, a "portable media device" is a storage device for electronic information, including but not limited to a flash drive, CD-ROM, DVD, portable hard drive, laptop computer, disc, diskette, or any other portable device for storing and transporting electronic information.

(3) For purposes of this Rule, "encrypted" means the transformation of data into a form to which meaning cannot be assigned without the use of a confidential process or key. To ensure that encrypted information is secure, a Participant, Participant Firm or covered person providing encrypted information to Exchange staff pursuant to this Rule shall (a) use an encryption method that meets industry standards for strong encryption, and (b) provide the confidential process or key regarding the encryption to Exchange staff in a communication separate from the encrypted information itself.

**Commentary:**

.01 Books and Records Relating to Investigations. This rule requires Participants, Participant Firms and covered persons to provide Exchange staff and adjudicators with requested books, records and accounts. In specifying the books, records and accounts "of such Participant, Participant Firm or covered person," paragraph (a) of the rule refers to books, records and accounts that the broker-dealer or its covered persons makes or keeps relating to its operation as a broker-dealer or relating to the person's association with the Participant or Participant Firm. This includes but is not limited to records relating to an Exchange investigation of outside business activities, private securities transactions or possible violations of just and equitable principles of trade, as well as other Exchange

rules and the federal securities laws. It does not ordinarily include books and records that are in the possession, custody or control of a Participant, Participant Firm or covered person, but whose bona fide ownership is held by an independent third party and the records are unrelated to the business of the Participant, Participant Firm or covered person. The rule requires, however, that a Participant, Participant Firm or covered person must make available its books, records or accounts when these books, records or accounts are in the possession of another person or entity, such as a professional service provider, but the Participant, Participant Firm or covered person controls or has a right to demand them.

#### **Rule 10.8211. Automated Submission of Trading Data Requested by the Exchange**

(a) A Participant or Participant Firm shall submit the trade data specified below in automated format as may be prescribed by the Exchange from time to time. This information shall be supplied with respect to any transaction or transactions that are the subject of a request for information made by the Exchange.

(b) If the transaction was a proprietary transaction effected or caused to be effected by the Participant or Participant Firm for any account in which such Participant, Participant Firm or covered person is directly or indirectly interested, such Participant or Participant Firm shall submit or cause to be submitted the following information:

(1) Clearing house number, or alpha symbol as used by the Participant or Participant Firm submitting the data;

(2) Clearing house number(s), or alpha symbol(s) as may be used from time to time, of the Participant(s) or Participant Firm(s) on the opposite side of the transaction;

(3) Identifying symbol assigned to the security;

(4) Date transaction was executed;

(5) Number of shares, or quantity of bonds or options contracts for each specific transaction and whether each transaction was a purchase, sale, short sale, or, if an options contract, whether open long or short or close long or short;

(6) Transaction price;

(7) Account number; and

(8) Market center where transaction was executed.

(c) If the transaction was effected or caused to be effected by the Participant or Participant Firm for any customer account, such Participant or Participant Firm shall submit or cause to be submitted the following information:

(1) The data described in paragraphs (b)(1) through (8) above;

(2) The customer name, address(es), branch office number, registered representative number, whether order was solicited or unsolicited, date account opened, employer name, and the tax identification number(s); and

(3) If the transaction was effected for another Participant or Participant Firm, whether the other Participant or Participant Firm was acting as principal or agent.

(d) In addition to the above trade data, a Participant or Participant Firm shall submit such other information in such automated format as may from time to time be required by the Exchange.

(e) Pursuant to the Rule 10.9600 Series, the Exchange may exempt a Participant or Participant Firm from the requirement that the data prescribed in paragraphs (b) through (d) above be submitted to the Exchange in an automated format for good cause shown.

**Rule 10.8212. Reserved.**

**Rule 10.8213. Reserved.**

**RULE 10.8300. SANCTIONS**

**Rule 10.8310. Sanctions for Violation of the Rules**

**(a) Imposition of Sanction**

After compliance with the Rule 10.9000 Series, the Exchange may impose one or more of the following sanctions on a Participant, Participant Firm or covered person for each violation of the federal securities laws, rules or regulations thereunder or Exchange rules, or may impose one or more of the following sanctions on a Participant, Participant Firm or covered person for any neglect or refusal to comply with an order, direction, or decision issued under Exchange rules:

(1) censure a Participant, Participant Firm or covered person;

(2) impose a fine upon a Participant, Participant Firm or covered person;



(3) suspend the membership of Participant or Participant Firm, or suspend the registration of a covered person for a definite period or a period contingent on the performance of a particular act;

(4) expel a Participant or Participant Firm, cancel the membership of a Participant or Participant Firm or revoke or cancel the registration of a covered person;

(5) suspend or bar a Participant, Participant Firm or covered person from association with all Participants or Participant Firms;

(6) impose a temporary or permanent cease and desist order against a Participant, Participant Firm or covered person; or

(7) impose any other fitting sanction.

**(b) Assent to Sanction**

Each party to a proceeding resulting in a sanction shall be deemed to have assented to the imposition of the sanction unless such party files a written application for review or relief pursuant to the Rule 10.9000 Series.

**Rule 10.8311. Effect of a Suspension, Revocation, Cancellation, Bar or Other Disqualification**

(a) If a person is subject to a suspension, revocation, or cancellation of registration, bar from association with a Participant or Participant Firm (each a "sanction") or other disqualification, a Participant or Participant Firm shall not allow such person to be associated with it in any capacity that is inconsistent with the sanction imposed or disqualified status, including a clerical or ministerial capacity. A Participant or Participant Firm also shall not pay or credit to any person subject to a sanction or disqualification, during the period of the sanction or disqualification or any period thereafter, any salary, commission, profit, or any other remuneration that the person might accrue during the period of the sanction or disqualification. However, a Participant or Participant Firm may make payments or credits to a person subject to a sanction that are consistent with the scope of activities permitted under the sanction where the sanction solely limits a covered person from conducting specified activities (such as a suspension from acting in a principal capacity) or a disqualified person has been approved (or is otherwise permitted pursuant to Exchange rules and the federal securities laws) to associate with a Participant or Participant Firm.

(b) Notwithstanding paragraph (a) of this Rule, a Participant or Participant Firm may pay to a person that is subject to a sanction or disqualification described in paragraph (a) of this Rule, any remuneration pursuant to an insurance or medical plan, indemnity agreement relating to legal fees, or as required by an arbitration award or court judgment.

**Commentary:**

**.01 Remuneration Accrued Prior to Effective Date of Sanction or Disqualification.** Notwithstanding this Rule, a Participant or Participant Firm may pay or credit to a person that is the subject of a sanction or disqualification, salary, commission, profit or any other remuneration that the Participant or Participant Firm can evidence accrued to the person prior to the effective date of such sanction or disqualification; provided, however, the Participant or Participant Firm may not pay any salary, commission, profit or any other remuneration that accrued to the person that relates to or results from the activity giving rise to the sanction or disqualification, and any such payment or credit must comply with applicable federal securities laws.

**Rule 10.8312. Reserved.****Rule 10.8313. Release of Disciplinary Complaints, Decisions and Other Information****(a) General Standards**

(1) The Exchange shall release to the public a copy of, and at the Exchange's discretion information with respect to, any disciplinary complaint or disciplinary decision issued by the Exchange, as defined in paragraph (e) of this Rule under the Rule 10.9000 Series, other than minor rule violations, on its website. The Exchange shall, in response to a request, release to the requesting party a copy of any identified disciplinary complaint or disciplinary decision issued by the Exchange, as defined in paragraph (e) of this Rule.

(2) The Exchange shall release to the public a copy of, and at the Exchange's discretion information with respect to, any statutory disqualification decision, notification, or notice issued by the Exchange pursuant to the Rule 10.9520 Series that will be filed with the SEC and any temporary cease and desist order or decision issued by the Exchange pursuant to the Rule 10.9800 Series.

(3) The Exchange shall release to the public information with respect to any suspension, cancellation, expulsion, or bar that constitutes final Exchange action imposed pursuant to Rules 10.9552, 10.9554, 10.9555, 10.9556, 10.9558 and 10.9560, and information with respect to any suspension imposed pursuant to Rule 10.9557. The Exchange shall release to the public a copy of, and information with respect to, any decision issued pursuant to Rule 10.9559 that constitutes final Exchange action. The Exchange shall release to the public information with respect to the summary suspension or expulsion of a Participant or Participant Firm or the summary revocation of the registration of a covered person for a failure to pay fines, other monetary sanctions, or costs pursuant to Rule 10.8320.

(4) The Exchange may release to the public a copy of, and information with respect to, any decision or notice issued pursuant to the Rule 10.9600 Series, and any other decision appealable to the SEC under Exchange Act Section 19(d).

**(b) Release Specifications**

(1) Copies of, and information with respect to, any disciplinary complaint released to the public pursuant to paragraph (a) of this Rule shall indicate that a disciplinary complaint represents the initiation of a formal proceeding by the Exchange in which findings as to the allegations in the complaint have not been made and does not represent a decision as to any of the allegations contained in the complaint.

(2) Copies of, and information with respect to, any disciplinary decision or other decision, order, notification, or notice released to the public pursuant to paragraph (a) of this Rule prior to the expiration of the time period provided for an appeal or call for review as permitted under Exchange rules or the Exchange Act, or while such an appeal or call for review is pending, shall indicate that the findings and sanctions imposed therein are subject to review and modification by the Exchange or the SEC.

**(c) Discretion to Redact Certain Information or Waive Publication**

(1) Notwithstanding paragraph (a) of this Rule, the Exchange reserves the right to redact, on a case-by-case basis, information that contains confidential customer information, including customer identities, or information that raises significant identity theft, personal safety, or privacy concerns that are not outweighed by investor protection concerns.

(2) Notwithstanding paragraph (a) of this Rule, the Exchange may determine, in its discretion, to waive the requirement to release a copy of, or information with respect to, any disciplinary complaint, disciplinary decision or other decision, order, notification, or notice under those extraordinary circumstances where the release of such information would violate fundamental notions of fairness or work an injustice.

**(d) Notice of Appeals of Exchange Decisions to the SEC**

The Exchange shall provide notice to the public if a disciplinary decision of the Exchange is appealed to the SEC and the notice shall state whether the effectiveness of the decision has been stayed pending the outcome of proceedings before the SEC.

**(e) Definitions**

(1) For the purpose of this Rule, the term "disciplinary complaint" shall mean any complaint issued pursuant to the Rule 10.9200 Series or any notice served pursuant to Rule 10.9560.

(2) For the purpose of this Rule, the term "disciplinary decision" shall mean any decision issued pursuant to the Rule 10.9000 Series, including, decisions issued by a Hearing Officer, Hearing Panel, Extended Hearing Panel, or the Board of Directors, orders accepting offers of settlement, and Letters of Acceptance, Waiver and Consent and suspension orders pursuant to Rule 10.9560; provided, however, such term does not include decisions issued pursuant to the Rule 10.9550 Series, Rule 10.9600 Series, or Rule 10.9800 Series, or decisions, notifications, or notices issued pursuant to the Rule 10.9520 Series, which are addressed by paragraphs (a)(2), (a)(3) and (a)(4) of this Rule.

Minor rule violation letters issued pursuant to Rules 10.9216 and 10.9217 are not subject to this Rule.

**Rule 10.8320. Payment of Fines, Other Monetary Sanctions, or Costs; Summary Action for Failure to Pay**

**(a) Payment to Treasurer**

All fines and other monetary sanctions shall be paid to the Treasurer of the Exchange.

**(b) Summary Suspension or Expulsion**

After seven days' notice in writing, the Exchange may summarily suspend or expel from membership a Participant or Participant Firm that fails to:

(1) pay promptly a fine or other monetary sanction imposed pursuant to Rule 10.8310 or a cost imposed pursuant to Rule 10.8330 when such fine, monetary sanction, or cost becomes finally due and payable; or

(2) terminate immediately the association of a covered person who fails to pay promptly a fine or other monetary sanction imposed pursuant to Rule 10.8310 or a cost imposed pursuant to Rule 10.8330 when such fine, monetary sanction, or cost becomes finally due and payable.

**(c) Summary Revocation of Registration**

After seven days notice in writing, the Exchange may summarily revoke the registration of a covered person if such person fails to pay promptly a fine or other monetary sanction imposed pursuant to Rule 10.8310 or a cost imposed pursuant to Rule 10.8330 when such fine, monetary sanction, or cost becomes finally due and payable.

**(d) Transition**

The Exchange may exercise the authority set forth in paragraphs (b) and (c) above with respect to non-payment of a fine, monetary sanction, or cost assessed in a disciplinary action initiated under Article 12 for which a decision was issued on or after [insert date].

**Rule 10.8330. Costs of Proceedings**

A Participant or Participant Firm or covered person disciplined pursuant to Rule 10.8310 shall bear such costs of the proceeding as the Adjudicator deems fair and appropriate under the circumstances.

**RULE 10.9000. CODE OF PROCEDURE**

**Rule 10.9001. Effective Date of Rule 10.9000 Series**

The Rule 10.9000 Series shall become effective on [insert date], except as otherwise provided in Rule 10.8130(d).

**RULE 10.9100. APPLICATION AND PURPOSE**

**Rule 10.9110. Application**

**(a) Proceedings**

The Rule 10.9000 Series is the Code of Procedure and includes proceedings for disciplining a Participant or Participant Firm or covered person; proceedings for regulating the activities of a Participant or Participant Firm 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 10.9100 Series is of general applicability to all proceedings set forth in the Rule 10.9000 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 Participants and Participant Firms. No member of the Board of Directors or non-Regulatory Staff may interfere with or attempt to influence the process or resolution of any pending investigation or disciplinary proceeding.

**(b) Rights, Duties, and Obligations of Participants, Participant Firms and Covered Persons**

Unless otherwise specified, a covered person shall have the same rights as a Participant or Participant Firm and shall be subject to the same duties and obligations under the Code of Procedure.

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

Unless otherwise provided and where applicable, terms used in the Rule 10.9000 Series shall have the same meaning as in Rule 10.9120 and applicable rules of the Exchange.

**Rule 10.9120. Definitions**

**(a) "Adjudicator"**

The term "Adjudicator" means:

- (1) a body, board, committee, group, or natural person that presides over a proceeding and renders a decision;

(2) a body, board, committee, group, or natural person that presides over a proceeding and renders a recommended or proposed decision which is acted upon by an Adjudicator described in paragraph (a)(1); or

(3) a natural person who serves on a body, board, committee, or group described in paragraphs (a)(1) or (2).

**(b) Reserved**

**(c) "Chief Hearing Officer"**

The term "Chief Hearing Officer" means the Hearing Officer that manages the Office of Hearing Officers, or his or her delegatee.

**(d) "Chief Regulatory Officer" or "CRO"**

The term "Chief Regulatory Officer" or "CRO" means the Chief Regulatory Officer of the Exchange, or his or her delegatee.

**(e) "Code"**

The term "Code" refers to the Code of Procedure.

**(f) "Counsel to the Exchange Board of Directors"**

The term "Counsel to the Exchange Board of Directors" means an attorney from the Exchange Office of General Counsel who is responsible for advising the Exchange Board of Directors regarding a disciplinary proceeding on review before the Exchange Board of Directors.

**(g) "Covered Person"**

The term "covered person" means an Associated Person as defined in Article 1, Rule 1(d) and any other person subject to the jurisdiction of the Exchange.

**(h) "Department of Enforcement"**

The term "Department of Enforcement" means the Department of Enforcement of FINRA.

**(i) Reserved.**

**(j) "Department of Member Regulation"**

The term "Department of Member Regulation" means the Department of Member Regulation of FINRA.

**(k) "Director"**

The term "Director" means a member of the Board of Directors of the Exchange.

**(l) "Document"**

The term "Document" means a writing, drawing, graph, chart, photograph, recording, or any other data compilation, including data stored by computer, from which information can be obtained.

**(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 10.9000 Series, imposing sanctions on a Participant or Participant Firm or covered person; and (B) the Department of Enforcement of FINRA.

**(n) Reserved**

**(o) "Extended Hearing"**

The term "Extended Hearing" means a disciplinary proceeding described in Rule 10.9231(c).

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

The term "Extended Hearing Panel" means an Adjudicator that is constituted under Rule 10.9231(c) to conduct a disciplinary proceeding that is classified as an "Extended Hearing" and is governed by the Rule 10.9200 Series.

**(q) Reserved**

**(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 10.9200 Series regarding disciplinary proceedings, the Rule 10.9550 Series regarding expedited proceedings, and the Rule 10.9800 Series regarding temporary cease and desist proceedings brought against Participants, Participant Firms and covered persons.

**(s) "Hearing Panel"**

The term "Hearing Panel" means an Adjudicator that is constituted under Rule 10.9231 to conduct a disciplinary proceeding governed by the Rule 10.9200 Series, that is constituted under the Rule 10.9520 Series or the Rule 10.9550 Series to conduct a proceeding, or that is constituted under the Rule 10.9800 Series to conduct a temporary cease and desist proceeding.

**(t) "Interested Staff"**

The term "Interested Staff" means, in the context of any proceeding under the Code of Procedure, Regulatory Staff or staff who:

(A) report, directly or indirectly, to any Enforcement employee, or to the head of any department or office that issues a notice, petition or decision or is designated as a Party under the Rule 10.9000 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(s) such staff.

**(u) "Office of Hearing Officers"**

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

**(v) "Panelist"**

The term "Panelist," as used in the Rule 10.9200 Series, the Rule 10.9550 Series, and the Rule 10.9800 Series, means a member of a Hearing Panel or Extended Hearing Panel who is not a Hearing Officer.

**(w) "Party"**

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

(1) in the Rule 10.9200 Series and the Rule 10.9300 Series, and the Rule 10.9800 Series, Enforcement or a Respondent;

(2) in the Rule 10.9520 Series, the Department of Member Regulation or a Participant, Participant Firm or covered person that is the subject of a notice or files an application under Rule 10.9522;

(3) in the Rule 10.9550 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



Participant, Participant Firm or covered person that is the subject of a notice under the Rule 10.9550 Series; or

(4) in the Rule 10.9600 Series, the department or office designated under Rule 10.9620 to issue the decision granting or denying an exemption or a Participant or Participant Firm that seeks the exemption under Rule 10.9610.

**(x) "Regulatory Staff"**

The term "Regulatory Staff," and for purposes of the Rule 10.8000 Series and Rule 10.9000 Series (except for Rule 10.9557), 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 10.8000 Series and Rule 10.9000 Series.

**(y) "Respondent"**

The term "Respondent" means, in a disciplinary proceeding governed by the Rule 10.9200 Series and in a review governed by the Rule 10.9300 Series, a Participant, Participant Firm or a covered person against whom a complaint is issued. In a proceeding governed by the Rule 10.9800 Series, the term "Respondent" means a Participant, Participant Firm or covered person that has been served a notice initiating a cease and desist proceeding.

**Rule 10.9130. Service; Filing of Papers**

**Rule 10.9131. Service of Complaint**

**(a) Service on Each Party**

Except as provided below, a complaint shall be served on each Party by Enforcement. When counsel for a Party or other person authorized to represent others under Rule 10.9141 agrees to accept service of the complaint, then Enforcement may serve the complaint on counsel for a Party or other person authorized to represent others under Rule 10.9141 as specified in Rule 10.9134(a).

**(b) How Served**

A complaint or document initiating a proceeding shall be served pursuant to Rule 10.9134.

**(c) Filing Requirement**

A complaint that is served upon a Respondent and each document initiating a proceeding that is served upon a Party, along with the certificate of service executed in connection

with the service upon such Respondent or Party, shall be filed with FINRA pursuant to Rule 10.9135.

**Rule 10.9132. Service of Orders, Notices, and Decisions by Adjudicator**

**(a) Service on Each Party**

An order, notice, or decision issued by a Hearing Officer, Hearing Panel or Extended Hearing Panel under the Rule 10.9200 Series shall be served on each Party, or each Party's counsel, or other person the Party designates to represent him or her in a proceeding by the Office of Hearing Officers. An order, notice, or decision issued by any other Adjudicator shall be served by that Adjudicator.

**(b) How Served**

An order, notice, or decision shall be served pursuant to Rule 10.9134.

**(c) Service Upon Counsel or Other Person Acting In Representative Capacity**

Whenever service is required to be made upon a person represented by counsel or a representative who has filed a notice of appearance pursuant to Rule 10.9141, service shall be made upon counsel or the representative. The Adjudicator, at its discretion, may also order that service be made upon the person.

**Rule 10.9133. Service of Papers Other Than Complaints, Orders, Notices, or Decisions**

**(a) Service on Each Party**

Other than a complaint, order, notice, or decision, any paper, including an answer and a motion, shall be served on each Party by the Party on whose behalf such paper was prepared or by his or her counsel or representative.

**(b) How Served**

The paper shall be served pursuant to Rule 10.9134.

**(c) Filing Requirement**

The paper that is served upon a Party, along with the certificate of service executed in connection with the service upon such Party, shall be filed with FINRA pursuant to Rule 10.9135.

**(d) Service upon Counsel or Other Person Acting in Representative Capacity**

Whenever service is required to be made upon a person represented by counsel or a representative who has filed a notice of appearance pursuant to Rule 10.9141, service shall be made upon counsel or the representative. The Adjudicator, at its discretion, may also order that service be made upon the person.

### **Rule 10.9134. Methods of, Procedures for Service**

#### **(a) Methods**

The following methods of service are permitted:

##### **(1) Personal Service**

Personal service may be accomplished by handing a copy of the papers to the person required to be served; leaving a copy at the person's office with an employee or other person in charge thereof; or leaving a copy at the person's dwelling or usual place of abode with a person of suitable age and discretion then residing therein;

##### **(2) Service by Mail by U.S. Postal Service**

Service by mail may be accomplished by mailing the papers through the U.S. Postal Service by using first class mail, first class certified mail, first class registered mail, or Express Mail, except that a complaint shall be served upon a Respondent by U.S. Postal Service first class certified mail or Express Mail; or

##### **(3) Service by Courier**

Service by courier may be accomplished by sending the papers through a courier service that generates a written confirmation of receipt or of attempts at delivery.

#### **(b) Procedures**

##### **(1) Service on Natural Persons**

Papers served on a natural person may be served at the natural person's residential address, as reflected in the Central Registration Depository, if applicable. When a Party or other person responsible for serving such person has actual knowledge that the natural person's Central Registration Depository address is out of date, duplicate copies shall be served on the natural person at the natural person's last known residential address and the business address in the Central Registration Depository of the entity with which the natural person is employed or affiliated. Papers may also be served at the business address of the

entity with which the natural person is employed or affiliated, as reflected in the Central Registration Depository, or at a business address, such as a branch office, at which the natural person is employed, or at which the natural person is physically present during a normal business day. The Hearing Officer may waive the requirement of serving documents (other than complaints) at the addresses listed in the Central Registration Depository if there is evidence that these addresses are no longer valid, and there is a more current address available. If a natural person is represented by counsel or a representative, papers served on the natural person, excluding a complaint or a document initiating a proceeding, shall be served on the counsel or representative.

### **(2) Service on Entities**

Papers served on an entity shall be made by service on an officer, partner of a partnership, managing or general agent, a contact employee as set forth on Form BD, or any other agent authorized by appointment or by law to accept service. Such papers shall be served at the entity's business address as reflected in the Central Registration Depository, if applicable; provided, however, that when the Party or other person responsible for serving such entity has actual knowledge that an entity's Central Registration Depository address is out of date, duplicate copies shall be served at the entity's last known address. If an entity is represented by counsel or a representative, papers served on such entity, excluding a complaint or document initiating a proceeding, shall be served on such counsel or representative.

### **(3) When Service Is Complete**

Personal service and service by courier or express delivery are complete upon delivery. Service by mail is complete upon mailing.

## **Rule 10.9135. Filing of Papers with Adjudicator: Procedure**

### **(a) When to File**

Papers that are required to be filed with an Adjudicator within a time limit specified by the Adjudicator or within a time limit set forth in the Rules shall be deemed timely if received within the time limit, unless otherwise ordered by an Adjudicator, except complaints, which shall be deemed timely filed upon mailing, delivery by electronic mail, or delivery to the Office of Hearing Officers. Other papers that are required to be filed shall be deemed timely if, on the same day such papers are served, they are also hand-delivered, mailed via U.S. Postal service first class mail, delivered by electronic mail, or sent by courier to FINRA.

**(b) Where to File**

All papers required to be filed pursuant to the Rule 10.9200 Series shall be filed with the Office of Hearing Officers. All other papers required to be filed pursuant to the Rule 10.9000 Series shall be filed where specified in the Rule, or if not specified in the Rule, with the Adjudicator, unless the Adjudicator orders otherwise.

**(c) Certificate of Service**

Papers filed with an Adjudicator or the Office of Hearing Officers shall be accompanied by a certificate of service stating the name of the person or persons served, the date on which service is made, the method of service and, if service is not made in person, the address to which service is made. Such certificate shall be executed by the person who made the service. If the method of service on a Party is different from the method of service on any other Party, the certificate shall state why such different method was used.

**Rule 10.9136. Filing of Papers: Form**

**(a) Specifications**

Papers filed in connection with any proceeding under the Rule 10.9200 Series and the Rule 10.9300 Series shall:

- (1) be on unglazed white paper measuring 8 1/2 x 11 inches, but to the extent that the reduction of a larger document would render it illegible, such document may be filed on larger paper;
- (2) be typewritten or printed in either 10 or 12 point typeface or otherwise reproduced by a process that produces a permanent and plainly legible copy;
- (3) include at the head of the paper, or on a title page, the title of the proceeding, the names of the Parties, the subject of the particular paper or pleading, and the number assigned to the proceeding;
- (4) be paginated at the bottom of the page and with all margins at least one inch wide;
- (5) be double-spaced, with single-spaced footnotes and single-spaced indented quotations; and
- (6) be stapled, clipped, or otherwise fastened in the upper left corner, but not bound.

**(b) Signature Required**

All papers shall be signed and dated pursuant to Rule 10.9137.

**(c) Number of Copies**

A signed original and one copy of all papers shall be filed with the Adjudicator unless otherwise ordered.

**(d) Form of Briefs**

A brief containing more than ten pages shall include a table of contents, and an alphabetized table of cases, statutes, and other authorities cited, with references to the pages of the brief wherein they are cited.

**(e) Scandalous or Impertinent Matter**

Any scandalous or impertinent matter contained in any brief, pleading, or other filing, or in connection with any oral presentation in a proceeding may be stricken on order of an Adjudicator. Any matter stricken by an Adjudicator by this Rule shall be marked "Stricken" and preserved. Matters stricken in a proceeding governed by the Rule 10.9200 Series shall be preserved under Rule 10.9267(b).

**Rule 10.9137. Filing of Papers: Signature Requirement and Effect**

**(a) General Requirements**

Following the issuance of a complaint in a disciplinary proceeding, or the initiation of another proceeding, every filing of a Party represented by counsel or a representative shall be signed by at least one counsel or representative of record in his or her name and shall state the business address and telephone number of such counsel or representative. A Party who appears on his or her own behalf shall sign his or her individual name and state his or her address and telephone number on every filing.

**(b) Effect of Signature**

(1) The signature of a counsel, representative, or Party shall constitute a certification that:

(A) the person signing the filing has read the filing;

(B) to the best of his or her knowledge, information, and belief, formed after reasonable inquiry, the filing is well grounded in fact and is warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law; and

(C) the filing is not made for any improper purpose, such as to harass, cause unnecessary delay, or needlessly to increase the cost of adjudication.

(2) If a filing is not signed, an Adjudicator may strike the filing, unless it is signed promptly after the omission is called to the attention of the person making the filing.

### **Rule 10.9138. Computation of Time**

#### **(a) Calendar Day**

In the Rule 10.9000 Series, "day" means calendar day.

#### **(b) Formula**

In computing any period of time, the day of the act, event, or default from which the period of time designated in the Code begins to run shall not be included. The last day of the period so computed shall be included, unless it is a Saturday, Sunday, or Federal holiday, in which event the period runs until the end of the next day that is not a Saturday, Sunday, or Federal holiday. Intermediate Saturdays, Sundays, and Federal holidays shall be excluded from the computation when the period prescribed is ten days or less, not including any additional time for service by mail allowed by paragraph (c).

#### **(c) Additional Time For Service by Mail**

If service is made by U.S. Postal Service first class, certified, or registered mail, three days shall be added to the prescribed period for response.

### **Rule 10.9140. Proceedings**

### **Rule 10.9141. Appearance and Practice; Notice of Appearance**

#### **(a) Representing Oneself**

In any proceeding, a person may appear on his or her own behalf. When a person first makes any filing or otherwise appears on his or her own behalf before an Adjudicator in a proceeding, he or she shall file with the Adjudicator, or otherwise state on the record, and keep current, an address at which any notice or other written communication required to be served upon or furnished to him or her may be sent and a telephone number where he or she may be reached during business hours.

#### **(b) Representing Others**

A person shall not be represented before an Adjudicator, except as provided in this paragraph. Subject to the prohibitions of Rules 10.9150 and 10.9280, a person may be

represented in any proceeding by an attorney at law admitted to practice before the highest court of any state of the United States, the District of Columbia, or any commonwealth, territory, or possession of the United States. A member of a partnership may represent the partnership; and a bona fide officer of a corporation, trust, or association may represent the corporation, trust, or association. When a person first makes any filing or otherwise appears in a representative capacity before an Adjudicator in a proceeding, that person shall file with the Adjudicator, and keep current a notice of appearance. The notice of appearance is a written notice stating the name of the proceeding; the representative's name, business address, and telephone number; and the name and address of the person or persons represented. Any individual appearing or practicing in a representative capacity before an Adjudicator may be required to file a power of attorney with the Adjudicator showing his or her authority to act in such capacity.

### **(c) 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 10.9000 Series.

### **Rule 10.9142. Withdrawal by Attorney or Representative**

An attorney for a Party or other person authorized to represent others by Rule 10.9141 seeking to withdraw his or her appearance shall file a motion to withdraw. The motion shall set forth the good cause for withdrawal and state the name, current address, and telephone number of the Party no longer being represented.

### **Rule 10.9143. Ex Parte Communications**

#### **(a) Prohibited Communications**

Unless on notice and opportunity for all Parties to participate, or to the extent required for the disposition of ex parte matters as authorized by the Rule 10.9000 Series:

(1) No Party, or counsel to or representative of a Party, or Interested Staff shall make or knowingly cause to be made an ex parte communication relevant to the merits of a proceeding to an Adjudicator who is participating in a decision with respect to that proceeding, or to an Exchange employee who is participating or advising in the decision of an Adjudicator with respect to that proceeding; and

(2) No Adjudicator who is participating in a decision with respect to a proceeding, or no Exchange employee who is participating or advising in the decision of an Adjudicator with respect to a proceeding shall make or knowingly cause to be made to a Party, a counsel or



representative to a Party, or Interested Staff an ex parte communication relevant to the merits of that proceeding.

### **(b) Disclosure of Prohibited Communication**

An Adjudicator who is participating in a decision with respect to a proceeding, or an Exchange employee who is participating or advising in the decision of an Adjudicator, who receives, makes, or knowingly causes to be made a communication prohibited by this Rule shall place in the record of the proceeding:

(1) all such written communications;

(2) memoranda stating the substance of all such oral communications;  
and

(3) all written responses and memoranda stating the substance of all oral responses to all such communications.

### **(c) Remedies**

Upon receipt of a communication made or knowingly caused to be made by any Party, any counsel or any representative to a Party, or any Interested Staff in violation of paragraph (a)(1), the Exchange or an Adjudicator may, to the extent consistent with the interests of justice, the policies underlying the Act, and Exchange rules, order the Party responsible for the communication, or the Party who may benefit from the ex parte communication made, to show cause why the Party's claim or interest in the proceeding should not be dismissed, denied, disregarded, or otherwise adversely affected by reason of such ex parte communication. All participants to a proceeding may respond to any allegations or contentions contained in a prohibited ex parte communication placed in the record. Such responses shall be placed in the record.

### **(d) Timing**

In a disciplinary proceeding governed by the Rule 10.9200 Series and the Rule 10.9300 Series, the prohibitions of this Rule shall apply beginning with the authorization of a complaint as provided in Rule 10.9211, unless the person responsible for the communication has knowledge that the complaint shall be authorized, in which case the prohibitions shall apply beginning at the time of his or her acquisition of such knowledge.

### **(e) Waiver of Ex Parte Prohibition**

#### **(1) Offer of Settlement**

If a Respondent submits an offer of settlement under Rule 10.9270, the submission constitutes a waiver by such Respondent of any claim that the prohibitions against ex parte communications were violated by a

person or body in connection with such person's or body's participation in discussions regarding the terms and conditions of the offer of settlement and the order of acceptance, or other consideration of the offer of settlement and order of acceptance, including acceptance or rejection of such offer of settlement and order of acceptance.

### **(2) Letter of Acceptance, Waiver, and Consent**

If a Participant, Participant Firm or covered person submits an executed letter of acceptance, waiver, and consent under Rule 10.9216(a), the submission constitutes a waiver by such Participant, Participant Firm or covered person of any claim that the prohibitions against ex parte communications were violated by a person or body in connection with such person's or body's participation in discussions regarding the terms and conditions of the letter of acceptance, waiver, and consent, or other consideration of the letter of acceptance, waiver, and consent, including acceptance or rejection of such letter of acceptance, waiver, and consent.

### **(3) Minor Rule Violation Letter**

If a Participant, Participant Firm or covered person submits an executed minor rule violation letter under Rule 10.9216(b), the submission constitutes a waiver by such Participant, Participant Firm or covered person of any claim that the prohibitions against ex parte communications by a person or body in connection with such person's or body's participation in discussions regarding the terms and conditions of the minor rule violation letter, or other consideration of the minor rule violation letter, including acceptance or rejection of such minor rule plan violation letter, has been violated.

## **Rule 10.9144. Separation of Functions**

### **(a) Interested Staff**

Except as counsel or a witness in a proceeding or as provided in the Rule 10.9550 Series, Interested Staff is prohibited from advising an Adjudicator regarding a decision or otherwise participating in a decision of an Adjudicator. An Adjudicator is prohibited from advising Interested Staff regarding a decision or otherwise participating in a decision of Interested Staff, including the decision to issue a complaint and a decision whether to request a review of a disciplinary proceeding by the Exchange Board of Directors.

### **(b) Separation of Adjudicators**

A Hearing Officer, including the Chief Hearing Officer, or a Panelist of a Hearing Panel or an Extended Hearing Panel, is prohibited from participating in: a decision whether to issue a complaint pursuant to Rule 10.9211 and a decision whether to file a request for a review by the Exchange Board of Directors pursuant to Rule 10.9310. A Director is prohibited from participating in a discussion or a decision relating to the above referenced acts with the Adjudicators referenced above.

### **(c) Waiver of Prohibitions of Separation of Functions**

#### **(1) Offer of Settlement**

If a Respondent submits an offer of settlement under Rule 10.9270, the submission constitutes a waiver by such Respondent of any claim of violation of paragraph (a) or (b) by a person or body in connection with such person's or body's participation in discussions regarding the terms and conditions of the offer of settlement and the order of acceptance, or other consideration of the offer of settlement and order of acceptance, including acceptance or rejection of such offer of settlement and order of acceptance.

#### **(2) Letter of Acceptance, Waiver, and Consent**

If a Participant, Participant Firm or covered person submits an executed letter of acceptance, waiver, and consent under Rule 10.9216(a), the submission constitutes a waiver by such Participant, Participant Firm or covered person of any claim of violation of paragraph (a) or (b) by a person or body in connection with such person's or body's participation in discussions regarding the terms and conditions of the letter of acceptance, waiver, and consent, or other consideration of the proposed letter of acceptance, waiver, and consent, including acceptance or rejection of such letter of acceptance, waiver, and consent.

#### **(3) Minor Rule Violation Letter**

If a Participant, Participant Firm or covered person submits an executed minor rule violation letter under Rule 10.9216(b), the submission constitutes a waiver by such Participant, Participant Firm or covered person of any claim of violation of paragraph (a) or (b) by a person or body in connection with such person's or body's participation in discussions regarding the terms and conditions of the minor rule violation letter or other consideration of the minor rule violation letter, including acceptance or rejection of such minor rule violation letter.

### **Rule 10.9145. Rules of Evidence; Official Notice**

**(a) Rules of Evidence**

The formal rules of evidence shall not apply in a proceeding brought under the Rule 10.9000 Series.

**(b) Official Notice**

In a proceeding governed by the Rule 10.9000 Series, an Adjudicator may take official notice of such matters as might be judicially noticed by a court, or of other matters within the specialized knowledge of the Exchange as an expert body. Before an Adjudicator proposes to take official notice of a matter, it shall permit a Party the opportunity to oppose or otherwise comment upon the proposal to take official notice.

**Rule 10.9146. Motions**

**(a) General Requirement for Motions**

A Party may make a written or oral motion, subject to limitations set forth below. A Party or other person may make a motion under Rule 10.9146(k), subject to limitations set forth below.

**(b) Adjudicator May Require a Written Motion**

If a Party makes an oral motion, an Adjudicator may order that such motion be set forth in writing, after considering the facts and circumstances, including whether:

- (1) the hearing or conference in which the Party makes such motion is being recorded; and
- (2) the opposing Parties are fully informed and have been provided adequate notice and an opportunity to respond to such motion.

**(c) Specificity**

All motions shall state the specific relief requested and the basis therefor.

**(d) Time For Filing Opposition or Other Response to Motion**

Unless otherwise ordered by an Adjudicator, any Party may file an opposition or other response to a written motion and the opposition or response shall be filed within 14 days after service of the motion. If no response is filed within the response period, the Party failing to respond shall be deemed to have waived any objection to the granting of the motion. A Party shall be afforded an opportunity to respond to an oral motion at the time the oral motion is made, unless the Adjudicator orders that the Party shall be granted additional time to respond.

**(e) Oral Argument**

An Adjudicator may allow oral argument on motions. Oral argument may take place in person or by telephone.

**(f) Frivolous Motions**

An Adjudicator may deny dilatory, repetitive, or frivolous motions without awaiting a response.

**(g) No Stay**

Unless otherwise ordered by an Adjudicator, the filing of a motion does not stay a proceeding.

**(h) Reply**

The moving Party shall have no right to reply to the opposition or other response of the other Parties unless an Adjudicator permits a reply to be filed. Unless otherwise ordered by an Adjudicator, a movant's reply submission shall be filed within five days after the Adjudicator serves the order granting the motion to file a reply or a Party serves the opposition or other response to which the Adjudicator previously ordered that a reply could be filed.

**(i) Page Limit, Format Requirements**

Unless otherwise ordered by an Adjudicator, submissions in support of or in opposition to motions shall not exceed ten double-spaced pages, including double-spaced footnotes, exclusive of pages containing any table of contents, table of authorities, or addenda.

**(j) Disposition of Procedural Motions; Disposition of Motions for Summary Disposition**

(1) In the Rule 10.9200 Series, a motion on a procedural matter may be decided by a Hearing Officer. A motion for summary disposition of a cause of action set forth in a complaint shall be decided by a majority vote of the Hearing Panel or, if applicable, the Extended Hearing Panel.

(2) In the Rule 10.9300 Series, a motion on a procedural matter may be decided by the Exchange Board of Directors.

(3) In the Rule 10.9500 Series, a motion shall be decided by an Adjudicator.

**(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 10.8210 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, 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 10.9134(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 Regulatory Staff of such Documents or testimony in the staff's performance of its 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.

### **(l) General**

All motions, oppositions or responses, replies, and any other filings made in a proceeding shall comply with Rules 10.9133, 10.9134, 10.9135, 10.9136 and 10.9137.

### **Rule 10.9147. Rulings On Procedural Matters**

The Exchange Board of Directors, a Hearing Officer, or any other Adjudicator shall have full authority, except as otherwise provided by the Code, to rule on a procedural motion and any other procedural or administrative matter arising during the course of a

proceeding conducted pursuant to the Code, subject to the rights of review provided by the Code.

**Rule 10.9148. Interlocutory Review**

Except as provided in Rule 10.9280, there shall be no interlocutory review of a ruling or order issued by any Adjudicator in a proceeding governed by the Code. If an Adjudicator grants interlocutory review of a ruling or order, such review shall not stay a proceeding, except under Rule 10.9280 or as otherwise ordered by the Adjudicator.

**Rule 10.9150. Exclusion From Rule 10.9000 Series Proceeding**

**(a) Exclusion**

An Adjudicator may exclude an attorney for a Party or other person authorized to represent others by Rule 10.9141 from acting as counsel, acting in any representative capacity, or otherwise appearing in a particular Rule 10.9000 Series proceeding for contemptuous conduct under Rule 10.9280 or unethical or improper conduct in that proceeding. If an attorney for a Party, or other person authorized to represent others by Rule 10.9141, is excluded from a disciplinary hearing or conference, or any portion thereof, such attorney or person may seek review by the Exchange Board of Directors of such exclusion under Rule 10.9280(c).

**(b) Other Proceedings Not Precluded**

Prohibiting an attorney or other person authorized to represent others by Rule 10.9141 from practicing or appearing in an Exchange proceeding shall not preclude the Exchange from initiating other proceedings against such person.

**Rule 10.9160. Recusal or Disqualification**

No person shall participate as an Adjudicator in a matter governed by the Code as to which he or she has a conflict of interest or bias, or circumstances otherwise exist where his or her fairness might reasonably be questioned. In any such case the person shall recuse himself or herself, or shall be disqualified as follows:

**(a) Exchange Board of Directors**

The Chair of the Exchange Board of Directors shall have authority to order the disqualification of a Director, and a majority of members of the Board of Directors, excluding the Chair of the Exchange Board of Directors, shall have authority to order the disqualification of the Chair.

**(b) Reserved.**

**(c) Reserved.**

**(d) Reserved.**

**(e) Panelist of Hearing Panel or Extended Hearing Panel**

Disqualification of a Panelist of a Hearing Panel or Extended Hearing Panel appointed under the Rule 10.9200 Series shall be governed by Rule 10.9234.

**(f) Hearing Officer**

Disqualification of a Hearing Officer of a Hearing Panel or an Extended Hearing Panel shall be governed by Rule 10.9233.

**RULE 10.9200. DISCIPLINARY PROCEEDINGS**

**Rule 10.9210. Complaint and Answer**

**Rule 10.9211. Authorization of Complaint**

**(a) Complaint**

(1) If Enforcement has reason to believe that any Participant, Participant Firm 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 may request authorization from the CRO to issue a complaint.

(2) The Exchange Board of Directors shall have the authority to direct the CRO to authorize and Enforcement to issue a complaint when, on the basis of information and belief, the Exchange Board of Directors is of the opinion that any Participant, Participant Firm 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.

**(b) Commencement of Disciplinary Proceeding**

A disciplinary proceeding shall begin when the complaint is served and filed.

**Rule 10.9212. Complaint Issuance — Requirements, Service, Amendment, Withdrawal, and Docketing**

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

(1) Each complaint shall be in writing and signed by authorized Enforcement staff. 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 Enforcement on each Party pursuant to Rules 10.9131 and 10.9134, and filed at the time of service with the Office of Hearing Officers pursuant to Rules 10.9135, 10.9136, and 10.9137.

(2) At the time of issuance of a complaint, Enforcement may propose an appropriate location for the hearing.

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

Enforcement 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 Hearing Officer may permit Enforcement to amend the complaint, including amendments so as to make the complaint conform to the evidence presented, after considering whether Enforcement 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 may withdraw a complaint. If Enforcement 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 shall be without prejudice and Enforcement 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 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) Disciplinary Proceeding Docket**

The Office of Hearing Officers shall promptly record each complaint filed with it in the Exchange's disciplinary proceeding docket, and record in the disciplinary proceeding docket each event, filing, and change in the status of a disciplinary proceeding.

**Rule 10.9213. 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 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 10.9132.

**(b) Appointment of Panelists**

As soon as practicable after assigning a Hearing Officer to preside over a disciplinary proceeding, the Chief Hearing Officer shall appoint Panelists pursuant to Rules 10.9231 and 10.9232 to a Hearing Panel or, if the Chief Hearing Officer determines that an Extended Hearing Panel should be appointed, to an Extended Hearing Panel.

**Rule 10.9214. Consolidation or Severance of Disciplinary Proceedings**

**(a) Consolidation Initiated by Chief Hearing Officer**

The Chief Hearing Officer may order the consolidation of two or more disciplinary proceedings, upon his or her own motion, under circumstances where such consolidation would further the efficiency of the disciplinary process, and where the subject complaints involve common questions of law or fact, or one or more of the same Respondents. In determining whether to order the consolidation of such disciplinary proceedings, the Chief Hearing Officer shall consider:

- (1) whether the same or similar evidence reasonably would be expected to be offered at each of the hearings;
- (2) whether the proposed consolidation would conserve the time and resources of the Parties; and
- (3) whether any unfair prejudice would be suffered by one or more Parties as a result of the consolidation.

If the Chief Hearing Officer proposes to consolidate two or more disciplinary proceedings, the Chief Hearing Officer shall serve upon the Parties notice of the proposed consolidation of disciplinary proceedings, together with a copy of each relevant complaint and any answer that has been filed thereto, pursuant to Rule 10.9132. The Parties shall have 14 days after service to file a response, stating any arguments in favor of or opposition to consolidation.

**(b) Consolidation Initiated by a Party**

A Party may file a motion to consolidate two or more disciplinary proceedings if such consolidation would further the efficiency of the disciplinary process, if the subject complaints involve common questions of law or fact or one or more of the same Respondents, or if one or more of the factors favoring consolidation set forth in paragraph (a) appears to be present. If a Party moves to consolidate two or more disciplinary proceedings, the Party shall file such motion, together with a copy of each relevant complaint and any answer thereto that has been filed, with the Office of Hearing Officers, and, pursuant to Rule 10.9133, shall serve the same upon the Parties in each of the cases proposed to be consolidated. The Parties shall have 14 days after service to file a response, stating any arguments in favor of or in opposition to consolidation, and shall serve the response upon the Parties in each of the cases proposed to be consolidated. The Chief Hearing Officer shall issue an order approving or denying the request for consolidation.

**(c) Impact on Hearing Panel or Extended Hearing Panel**

If the Chief Hearing Officer issues an order to consolidate two or more disciplinary proceedings for which Hearing Panels or, if applicable, Extended Hearing Panels, have been appointed, the Chief Hearing Officer's order shall specify which Hearing Panel or, if applicable, Extended Hearing Panel, shall preside over the consolidated disciplinary proceeding, or shall appoint a new Hearing Panel or, if applicable, Extended Hearing Panel, to preside, based on the criteria set forth in Rules 10.9231 and 10.9232.

**(d) Severance Initiated by Chief Hearing Officer**

The Chief Hearing Officer may order the severance of a disciplinary proceeding into two or more disciplinary proceedings, upon his or her own motion. In determining whether to order the severance of such disciplinary proceedings, the Chief Hearing Officer shall consider:

- (1) whether the same or similar evidence reasonably would be expected to be offered at each of the possible hearings;
- (2) whether the severance would conserve the time and resources of the Parties; and
- (3) whether any unfair prejudice would be suffered by one or more Parties if the severance is (not) ordered.

If the Chief Hearing Officer proposes to sever a disciplinary proceeding, the Chief Hearing Officer shall serve upon the Parties notice of the proposed severance of disciplinary proceedings pursuant to Rule 10.9132. The Parties shall have 14 days after service to file a response, stating any arguments in favor of or opposition to severance.

**(e) Severance Initiated by a Party**

A Party may file a motion to sever a disciplinary proceeding if one or more of the factors favoring severance set forth in paragraph (d) appears to be present. If a Party moves to sever a disciplinary proceeding, the Party shall file such motion with the Office of Hearing Officers, and, pursuant to Rule 10.9133, shall serve the same upon each of the parties to the action proposed to be severed. The Parties shall have 14 days after service to file a response, stating any arguments in favor of or opposition to severance, and shall serve the response upon the Parties in the case proposed to be severed. The Chief Hearing Officer shall issue an order approving or denying the request for severance.

#### **(f) Impact on Hearing Panel or Extended Hearing Panel of Severance**

If the Chief Hearing Officer issues an order to sever a disciplinary proceeding for which a Hearing Panel or, if applicable, Extended Hearing Panel, has been appointed, the Chief Hearing Officer's order shall specify whether the same Hearing Panel or, if applicable, Extended Hearing Panel, shall preside over the severed disciplinary proceedings, or shall appoint a new Hearing Panel(s) or, if applicable, Extended Hearing Panel(s), to preside over any or all of the severed proceedings, based on the criteria set forth in Rules 10.9231 and 10.9232.

#### **Rule 10.9215. Answer to Complaint**

##### **(a) Form, Service, Notice**

Pursuant to Rule 10.9133, each Respondent named in a complaint shall serve an answer to the complaint on all other Parties within 25 days after service of the complaint on such Respondent, and at the time of service shall file such answer with the Office of Hearing Officers pursuant to Rules 10.9135, 10.9136 and 10.9137. The Hearing Officer assigned to a disciplinary proceeding pursuant to Rule 10.9213 may extend such period for good cause. Upon the receipt of a Respondent's answer, the Office of Hearing Officers shall promptly send written notice of the receipt of such answer to all Parties.

##### **(b) Content, Affirmative Defenses**

Unless otherwise ordered by the Hearing Officer, an answer shall specifically admit, deny, or state that the Respondent does not have and is unable to obtain sufficient information to admit or deny, each allegation in the complaint. When a Respondent intends to deny only part of an allegation, the Respondent shall specify so much of it as is admitted and deny only the remainder. A statement of lack of information shall be deemed a denial. Any allegation not denied in whole or in part shall be deemed admitted. Any affirmative defense shall be asserted in the answer.

##### **(c) Motion for More Definite Statement**

A Respondent may file with an answer a motion for a more definite statement of specified matters of fact or law to be considered or determined. Such motion shall state why each such matter of fact or law should be required to be made more definite. If the

motion is granted, the order granting such motion shall set the periods for filing such a statement and any answer thereto.

**(d) Amendments to Answer**

Upon motion by a Respondent, the Hearing Officer may, after considering good cause shown by the Respondent and any unfair prejudice which may result to any other Party, permit an answer to be amended.

**(e) Extension of Time to Answer Amended Complaint**

If a complaint is amended pursuant to Rule 10.9212(b), the time for filing an answer or amended answer shall be the greater of the original time period within which the Respondent is required to respond, or 14 days after service of the amended complaint. If any Respondent has already filed an answer, such Respondent shall have 14 days after service of the amended complaint, unless otherwise ordered by the Hearing Officer, within which to file an amended answer.

**(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 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 10.9269 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 10.9269.

**Rule 10.9216. Acceptance, Waiver, and Consent; Procedure for Imposition of Fines for Minor Violation(s) of Rules**

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

- (1) Notwithstanding Rule 10.9211, if Enforcement has reason to believe a violation has occurred and the Participant, Participant Firm or covered person does not dispute the violation, Enforcement may prepare and request that the Participant, Participant Firm or covered person execute a letter accepting a finding of violation, consenting to the imposition of sanctions, and agreeing to waive such Participant's,

Participant Firm'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(s) to be imposed. Unless the letter states otherwise, the effective date of any sanction(s) imposed will be a date to be determined by Regulatory Staff.

(2)(A) If a Participant, Participant Firm or covered person submits an executed letter of acceptance, waiver, and consent, by the submission such Participant, Participant Firm or covered person also waives:

(i) any right to claim bias or prejudgment of the CRO, the Exchange Board of Directors, Counsel to the Exchange Board of Directors, or any Director, in connection with such person's or body's participation in discussions regarding the terms and conditions of the letter of acceptance, waiver, and consent, or other consideration of the letter of acceptance, waiver, and consent, including acceptance or rejection of such letter of acceptance, waiver, and consent; and

(ii) any right to claim that a person violated the ex parte prohibitions of Rule 10.9143 or the separation of functions prohibitions of Rule 10.9144, in connection with such person's or body's participation in discussions regarding the terms and conditions of the letter of acceptance, waiver, and consent, or other consideration of the letter of acceptance, waiver, and consent, including acceptance or rejection of such letter of acceptance, waiver, and consent.

(B) If a letter of acceptance, waiver, and consent is rejected, the Participant, Participant Firm or covered person shall be bound by the waivers made under paragraphs (a)(1) and (a)(2)(A) for conduct by persons or bodies occurring during the period beginning on the date the letter of acceptance, waiver, and consent was executed and submitted and ending upon the rejection of the letter of acceptance, waiver, and consent.

(3) If the Participant, Participant Firm or covered person executes the letter of acceptance, waiver, and consent, it shall be submitted to the CRO. The CRO may accept or reject such letter. If the letter is rejected by the CRO, the Participant, Participant Firm or covered person who executed the letter shall be notified in writing and the letter shall be deemed withdrawn.

(4) If the letter is accepted by the CRO, it shall be sent to each Director and each member of the Committee for Review via courier, express delivery or electronic means, and shall be deemed final and shall constitute the complaint, answer, and decision in the matter, 10 days after it is sent to each Director and each member of the Committee for Review, unless review by the Exchange Board of Directors is requested pursuant to Rule 10.9310(a)(1)(B)(i). If the letter is rejected by the CRO, the Exchange may take any other appropriate disciplinary action with respect to the alleged violation or violations. If the letter is rejected, the Participant, Participant Firm 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 Imposition of Fines for Minor Violation(s) of Rules**

(1) Notwithstanding Rule 10.9211, the Exchange may, subject to the requirements set forth in paragraphs (b)(2) through (b)(4), impose a fine in accordance with the fine amounts and fine levels set forth in Rule 10.9217 and/or a censure on any Participant, Participant Firm or covered person with respect to any rule listed in Rule 10.9217. If Enforcement has reason to believe a violation has occurred and if the Participant, Participant Firm or covered person does not dispute the violation, Enforcement may prepare and request that the Participant, Participant Firm or covered person execute a minor rule violation letter accepting a finding of violation, consenting to the imposition of sanctions, and agreeing to waive such Participant's, Participant Firm'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 Regulatory Staff.

(2)(A) If a Participant, Participant Firm or covered person submits an executed minor rule violation letter, by the submission such Participant, Participant Firm or covered person also waives:

(i) any right to claim bias or prejudgment of the CRO, the Exchange Board of Directors, Counsel to the Exchange Board of Directors, or any Director, in connection with such person's or body's participation in discussions regarding the

terms and conditions of the minor rule violation letter or other consideration of the minor rule violation letter, including acceptance or rejection of such minor rule violation letter; and

(ii) any right to claim that a person violated the ex parte prohibitions of Rule 10.9143 or the separation of functions prohibitions of Rule 10.9144, in connection with such person's or body's participation in discussions regarding the terms and conditions of the minor rule violation letter or other consideration of the minor rule violation letter, including acceptance or rejection of such minor rule violation letter.

(B) If a minor rule violation letter is rejected, the Participant, Participant Firm or covered person shall be bound by the waivers made under paragraphs (b)(1) and (b)(2)(A) for conduct by persons or bodies occurring during the period beginning on the date the minor rule violation letter was executed and submitted and ending upon the rejection of the minor rule violation letter.

(3) If the Participant, Participant Firm or covered person executes the minor rule violation letter, it shall be submitted to the CRO. The CRO, on behalf of the SRO Board, may accept or reject such letter.

(4) If the letter is accepted by the CRO, it shall be deemed final. Any fine imposed pursuant to this Rule and not contested shall not be publicly reported, except as may be required by Rule 19d-1 under the Securities Exchange Act of 1934, and as may be required by any other regulatory authority. If the letter is rejected by the CRO, the Exchange may take any other appropriate disciplinary action with respect to the alleged violation or violations. If the letter is rejected, the Participant, Participant Firm or covered person shall not be prejudiced by the execution of the minor rule violation 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.

**Rule 10.9217. Violations Appropriate for Disposition Under Rule 10.9216(b)**

(a) Any Participant, Participant Firm or covered person may be subject to a fine, not to exceed \$5,000, under Rule 10.9216(b) with respect to any rules listed below. The fine amounts and fine levels set forth below shall apply to the fines imposed.

(b) Regulatory Staff designated by the Exchange shall have the authority to impose a fine pursuant to this Rule.



(c) Any person or organization found in violation of a minor rule is not required to report such violation on SEC Form BD or Form U-4 if the sanction imposed consists of a fine not exceeding \$2,500 and the sanctioned person or organization has not sought an adjudication, including a hearing, or otherwise exhausted the administrative remedies available with respect to the matter. Any fine imposed in excess of \$2,500 is subject to current rather than quarterly reporting to the Commission pursuant to Rule 19d-1 under the Act.

(d) Nothing in this Rule shall require the Exchange to impose a fine for a violation of any rule under this Minor Rule Plan. If the Exchange determines that any violation is not minor in nature, the Exchange may, at its discretion, proceed under the Rule 10.9000 Series rather than under this Rule.

### **List of Rule Violations and Fines Applicable Thereto**

Any Participant, Participant Firm or covered person may be subject to a fine under Rule 10.9216(b) with respect to any rules listed below.

(e) Exchange Rules and Policies subject to a Minor Rule Violation

### **Reporting and Record Retention Violations**

1. Notice of Death or Retirement of Partner, Officer or Director (Article 3, Rule 9)
2. Filing Requirements/Parties Bound by Rules of Exchange (Article 3, Rule 4)
3. Failure to Notify Exchange of Request to Withdraw Capital Contribution (Article 3, Rule 6(b))
4. Failure to Request Exchange Approval of Transfer of Equity Securities of Participant Firm (Article 3, Rule 11)
5. Reporting of Loans (Article 3, Rule 12)
6. Record of Margin Calls and Receipt of Margin (Article 10, Rule 2)
7. Record of Orders and Executions (Article 11, Rule 3)
8. Designation of E-mail Addresses (Article 3, Rule 13)
9. Failure to provide Exchange with Information (Article 6, Rule 7)
10. Financial and Operational Reports (Article 7, Rule 4)
11. Notification of Change in Bond Coverage (Article 7, Rule 6)
12. Filing Requirements on Change of Examining Authority (Article 7, Rule 7)
13. Registration and Approval of Participant Personnel (Article 6, Rule 2(a) & (b))
14. Failure to Comply with Supervision Requirements (Article 6, Rule 5(a) & (b))
15. Written Supervisory Procedures (Article 6, Rule 5(c))
16. Impede or delay an Exchange Examination, Inquiry or Investigation (Article 6, Rule 9)
17. Failure to Report Short Positions (Article 7, Rule 9)
18. Furnishing of Records (Article 11, Rule 1)
19. Maintenance of Books & Records (Article 11, Rule 2)
20. Participant Communications (Article 11, Rule 4)
21. Registration of Market Makers and Market Maker Authorized Traders (Article 16, Rules 1 and 3)

- 22. Market Maker Reporting of Position Information (Article 16, Rule 6)
- 23. Institutional Broker Registration and Appointment (Article 17, Rule 1)
- 24. Consolidated Audit Compliance Rule (Rule 6.6800 Series)

### **Minor Trading Rule Violations**

- 1. Reporting of Transactions (Article 9, Rule 13)
- 2. Violations of the Rule Relating to Conduct on Exchange Premises or Involving Participants or Exchange Employees (Article 8, Rule 16)
- 3. Failure by Participants to Comply with Rules Relating to Short Sales (Article 9, Rule 23)
- 4. Failure to Comply with Minimum Order Increments (Article 20, Rule 4 or Rule 7.6)
- 5. Institutional Broker Responsibilities for Entry of Orders into an Automated System (Article 17, Rule 3(a))
- 6. Institutional Broker Responsibilities for Handling Orders within an Integrated System (Article 17, Rule 3(b))
- 7. Trading Ahead of Customer Orders (Article 9, Rule 17)
- 8. Failure to Comply with the Firm Quote Rule (Reg. NMS Rule 602)
- 9. Institutional Broker Obligations in Handling Orders (Best Execution) (Article 17, Rule 3(d))
- 10. Short Sales (Rule 7.16)
- 11. Failure to comply with Authorized Trader requirements (Rule 7.30)

These fines are intended to apply to minor violations. For more serious violations, other disciplinary action may be sought.

### **(f) Recommended Fine Schedule**

### **Reporting and Record Retention Violations**

<b><u>Rule Violation</u></b>	<b><u>Fine for First Violation*</u></b>	<b><u>Fine for Second Violation*</u></b>	<b><u>Fine for Third and Subsequent Violation*</u></b>
<u>1. Notice of death or retirement of partner, officer or director (Article 3, Rule 9)</u>	<u>\$250</u>	<u>\$750</u>	<u>\$1500</u>
<u>2. Filing Requirements / Parties Bound by Rules of the Exchange (Article 3, Rule 4)</u>	<u>\$250</u>	<u>\$750</u>	<u>\$1500</u>

<u>3. Failure to Notify Exchange of Request to Withdraw Capital contribution</u> (Article 3, Rule 6(b))	<u>\$250</u>	<u>\$750</u>	<u>\$1500</u>
<u>4. Failure to Request Exchange Approval of Transfer of Equity Securities of a Participant Firm</u> (Article 3, Rule 11)	<u>\$250</u>	<u>\$750</u>	<u>\$1500</u>
<u>5. Reporting of loans</u> (Article 3, Rule 12)	<u>\$250</u>	<u>\$750</u>	<u>\$1500</u>
<u>6. Record of margin calls and receipt of margin</u> (Article 10, Rule 2)	<u>\$250</u>	<u>\$750</u>	<u>\$1500</u>
<u>7. Records of orders and executions</u> (Article 11, Rule 3)	<u>\$250</u>	<u>\$750</u>	<u>\$1500</u>
<u>8. Designation of E-mail Addresses</u> (Article 3, Rule 13)	<u>\$250</u>	<u>\$750</u>	<u>\$1500</u>
<u>9. Failure to provide information to the Exchange</u> (Article 6, Rule 7)	<u>\$500</u>	<u>\$1000</u>	<u>\$2500</u>
<u>10. Financial and Operational Reports</u> (Article 7, Rule 4)	<u>\$250</u>	<u>\$750</u>	<u>\$1500</u>
<u>11. Notification of change in bond coverage</u> (Article 7, Rule 6)	<u>\$250</u>	<u>\$750</u>	<u>\$1500</u>
<u>12. Filing requirements on change of examining authority</u> (Article 7, Rule 7)	<u>\$250</u>	<u>\$750</u>	<u>\$1500</u>
<u>13. Registration and approval of Participant Personnel</u> (Article 6, Rule 2(a) & (b))	<u>\$250</u>	<u>\$750</u>	<u>\$1500</u>

<u>14. Failure to Comply with Supervision Requirements (Article 6, Rule 5(a) &amp; (b))</u>	<u>\$500</u>	<u>\$1000</u>	<u>\$2500</u>
<u>15. Written Supervisory Procedures (Article 6, Rule 5(c))</u>	<u>\$500</u>	<u>\$1000</u>	<u>\$2500</u>
<u>16. Impede or delay an Exchange examination, inquiry or investigation (Article 6, Rule 9)</u>	<u>\$500</u>	<u>\$1000</u>	<u>\$2500</u>
<u>17. Failure to report short positions (Article 7, Rule 9)</u>	<u>\$250</u>	<u>\$750</u>	<u>\$1500</u>
<u>18. Furnishing of records (Article 11, Rule 1)</u>	<u>\$500</u>	<u>\$1000</u>	<u>\$2500</u>
<u>19. Maintenance of books &amp; records (Article 11, Rule 2)</u>	<u>\$250</u>	<u>\$750</u>	<u>\$1500</u>
<u>20. Participant Communications (Article 11, Rule 4)</u>	<u>\$250</u>	<u>\$750</u>	<u>\$1500</u>
<u>21. Registration of Market Maker and Market Maker Authorized Traders (Article 16, Rules 1 and 3)</u>	<u>\$250</u>	<u>\$750</u>	<u>\$1500</u>
<u>22. Reporting of Position Information by Market Makers (Article 16, Rule 6)</u>	<u>\$250</u>	<u>\$750</u>	<u>\$1500</u>
<u>23. Institutional Broker registration and appointment (Article 17, Rule 1)</u>	<u>\$250</u>	<u>\$750</u>	<u>\$1500</u>
<u>24. Consolidated Audit Compliance Rule (Rule 6.6800 Series)**</u>			

\*\* For failures to comply with the Consolidated Audit Trail Compliance Rule requirements of the Rule 6.6800 Series, the Exchange may impose a minor rule violation fine of up to \$2,500. For more serious violations, other disciplinary action may be sought.

### **Minor Trading Rule Violations**

<u>1. Reporting of transactions (Article 9, Rule 13)</u>	<u>\$250</u>	<u>\$750</u>	<u>\$1500</u>
<u>2. Violations of the rule relating to conduct on Exchange premises or involving Participants or Exchange employees (Article 8, Rule 16)</u>	<u>\$250</u>	<u>\$750</u>	<u>\$1500</u>
<u>3. Failure by Participants to comply with rules relating to short sales (Article 9, Rule 23)</u>	<u>\$250</u>	<u>\$750</u>	<u>\$1500</u>
<u>4. Failure to comply with minimum order increments (Article 20, Rule 4)</u>	<u>\$250</u>	<u>\$750</u>	<u>\$1500</u>
<u>5. Institutional Broker responsibilities for entry of orders into an automated system (Article 17, Rule 3(a))</u>	<u>\$250</u>	<u>\$750</u>	<u>\$1500</u>
<u>6. Institutional Broker responsibilities for handling orders within an integrated system (Article 17, Rule 3(b))</u>	<u>\$500</u>	<u>\$1000</u>	<u>\$2500</u>
<u>7. Trading ahead of customer orders (Article 9, Rule 17)</u>	<u>\$1000</u>	<u>\$2500</u>	<u>\$5000</u>
<u>8. Failure to comply with the firm quote rule (Reg NMS Rule 602)</u>	<u>\$500</u>	<u>\$1000</u>	<u>\$2500</u>
<u>9. Institutional Broker obligations in handling orders (best execution)</u>	<u>\$500</u>	<u>\$1000</u>	<u>\$2500</u>

<u>(Article 17, Rule 3(d))</u>			
<u>10. Short Sales (Rule 7.16)</u>	<u>\$500</u>	<u>\$1000</u>	<u>\$2500</u>
<u>11. Failure to comply with Authorized Trader requirements (Rule 7.30)</u>	<u>\$1,000</u>	<u>\$2,500</u>	<u>\$3,500</u>

\*The number of violations shall be calculated on a 24-month rolling basis.

**Rule 10.9220. Request for Hearing; Extensions of Time, Postponements, Adjournments**

**Rule 10.9221. Request for Hearing**

**(a) Respondent Request for Hearing.**

With the filing of any Respondent's answer, such Respondent may:

- (1) request a hearing; and
- (2) propose an appropriate location for the hearing.

If a Respondent requests a hearing, a hearing shall be granted. A Respondent who fails to request a hearing with the filing of his or her answer waives the right to a hearing unless a Hearing Officer, Hearing Panel, or, if applicable, an Extended Hearing Panel, grants, for good cause shown, a later filed motion by such Respondent requesting a hearing.

**(b) Hearing Officer Order Requiring Hearing**

In the absence of a request for a hearing from any Respondent, the Hearing Officer may order any complaint set down for hearing.

**(c) Authority of Hearing Panel, Extended Hearing Panel to Order Hearing**

If all Respondents waive a hearing, and the Hearing Officer does not order a hearing on his or her own motion, the Hearing Panel or, if applicable, the Extended Hearing Panel, may order a hearing or may consider the matter on the record, as defined in Rule 10.9267. If fewer than all Respondents waive a hearing, the Hearing Officer, the Hearing Panel, or, if applicable, the Extended Hearing Panel, may, in the exercise of its discretion, order that a hearing be held as to all Respondents. Alternatively, the Hearing Officer, the Hearing Panel, or, if applicable, the Extended Hearing Panel, may conduct a hearing as to

only those Respondents who requested a hearing and consider the matter on the record as to those Respondents who waived a hearing.

**(d) Notice of Hearing**

The Hearing Officer shall issue a notice stating the date, time, and place of the hearing, and whether the hearing shall be held before a Hearing Panel or an Extended Hearing Panel, and shall serve such notice on the Parties at least 28 days before the hearing, unless:

- (1) in the discretion of the Hearing Officer, he or she determines that extraordinary circumstances require a shorter notice period; or
- (2) the Parties waive the notice period.

**Rule 10.9222. Extensions of Time, Postponements, and Adjournments**

**(a) Availability**

At any time prior to the issuance of the decision of the Hearing Panel or, if applicable, the Extended Hearing Panel, the Hearing Officer may, for good cause shown, extend or shorten any time limits prescribed by the Code for the filing of any papers and may, consistent with paragraph (b), postpone or adjourn any hearing.

**(b) Limitations on Postponements, Adjournments, and Extensions**

A hearing shall begin at the time and place ordered, unless the Hearing Officer, for good cause shown, changes the place of the hearing, postpones the commencement of the hearing, or adjourns a convened hearing for a reasonable period of time, subject to the limitations in paragraph (b)(2).

**(1) Additional Considerations**

In considering a motion for the postponement of the start of a hearing or, adjournment once a hearing has begun, the Hearing Officer shall consider:

- (A) the length of the proceeding to date;
- (B) the number of postponements, adjournments, or extensions already granted;
- (C) the stage of the proceedings at the time of the request;
- (D) potential harm to the investing public if an extension of time, adjournment, or postponement is granted; and

(E) such other matters as justice may require.

**(2) Time Limit**

Postponements, adjournments, or extensions of time for filing papers shall not exceed 28 days unless the Hearing Officer states on the record or provides by written order the reasons a longer period is necessary.

**Rule 10.9230. Appointment of Hearing Panel, Extended Hearing Panel**

**Rule 10.9231. Appointment by the Chief Hearing Officer of Hearing Panel or Extended Hearing Panel or Replacement Hearing Officer**

**(a) Appointment**

The Chief Hearing Officer shall appoint a Hearing Panel or an Extended Hearing Panel to conduct the disciplinary proceeding and issue a decision.

**(b) Hearing Panel**

The Hearing Panel shall be composed of a Hearing Officer and two Panelists, except as provided in paragraph (e) and in Rule 10.9234(a), (c), (d), or (e). The Hearing Officer shall serve as the chair of the Hearing Panel. The Chief Hearing Officer shall appoint Panelists pursuant to the criteria in Rule 10.9232.

**(c) Extended Hearing Panel**

Upon consideration of the complexity of the issues involved, the probable length of the hearing, or other factors that the Chief Hearing Officer deems material, the Chief Hearing Officer may determine that a matter shall be designated an Extended Hearing, and that such matter shall be considered by an Extended Hearing Panel. The Extended Hearing Panel shall be composed of a Hearing Officer and two Panelists, except as provided in Rule 10.9234(a), (c), (d), or (e). The Hearing Officer will serve as the chair of the Extended Hearing Panel. The Chief Hearing Officer shall have discretion to compensate any or all Panelists of an Extended Hearing Panel at the rate then in effect for FINRA arbitrators. The Chief Hearing Officer shall select as a Panelist a person who meets the criteria set forth in Rule 10.9232.

**(d) Observer**

A person who is qualified to serve as a Panelist may be designated by the Chief Hearing Officer to serve as an observer to a Hearing Panel or an Extended Hearing Panel. If the Chief Hearing Officer designates more than two people to serve as observers to a Hearing Panel or an Extended Hearing Panel, the Chief Hearing Officer shall obtain the consent of the Parties. An observer may attend any hearing of a disciplinary proceeding and observe the proceeding, but may not vote or participate in any other manner in the



hearing or the deliberations of the Hearing Panel or the Extended Hearing Panel, or participate in the administration of the disciplinary proceeding.

**(e) Appointment of Replacement Hearing Officer**

In the event that a Hearing Officer withdraws, is incapacitated, or otherwise is unable to continue service after being appointed, the Chief Hearing Officer shall appoint a replacement Hearing Officer. To ensure fairness to the parties and expedite completion of the proceeding when a replacement Hearing Officer is appointed after the hearing has commenced, the replacement Hearing Officer has discretion to exercise the following powers:

(1) Allow the Hearing Panelists to resolve the issues in the proceeding and issue a decision without the participation of the replacement Hearing Officer in the decision. The replacement Hearing Officer may advise the Hearing Panelists regarding legal issues, and shall exercise the powers of the Hearing Officer under Rule 10.9235(a), including preparing and signing the decision on behalf of the Hearing Panel, in accordance with Rule 10.9268; or

(2) Certify familiarity with the record and participate in the resolution of the issues in the case and in the issuance of the decision. In exercising this power, the replacement Hearing Officer may recall any witness before the Hearing Panel.

**Rule 10.9232. Criteria for Selection of Panelists and Replacement Panelists**

(a) Each Panelist shall be a person of integrity and judgment and, other than the Hearing Officer, shall be a member of the Exchange hearing board as provided in paragraph (b). At least one Panelist shall be engaged in securities activities differing from that of the Respondent or, if retired, was so engaged in differing activities at the time of retirement.

(b) The Exchange Board of Directors shall from time to time appoint a hearing board to be composed of such number of Participants and Participant Firms of the Exchange that are not members of the Exchange Board of Directors and registered employees and nonregistered employees of Participants or Participant Firms. Former Participants and registered and non-registered employees of Participants or Participant Firms 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.

**(c) Criteria for Appointment of a Panelist**

The Chief Hearing Officer shall select Panelists from the current members of the Exchange hearing board based upon the following criteria:

(1) expertise;

(2) the absence of any conflict of interest or bias, and any appearance thereof;

(3) availability; and,

(4) the frequency with which a person has served as a Panelist on a Hearing Panel during the past two years, favoring the selection of a person as a Panelist who has never served or served infrequently as a Panelist during the period.

**Rule 10.9233. Hearing Panel or Extended Hearing Panel: Recusal and Disqualification of Hearing Officers**

**(a) Recusal, Withdrawal of Hearing Officer**

If at any time a Hearing Officer determines that he or she has a conflict of interest or bias or circumstances otherwise exist where his or her fairness might reasonably be questioned, the Hearing Officer shall notify the Chief Hearing Officer and the Chief Hearing Officer shall issue and serve on the Parties a notice stating that the Hearing Officer has withdrawn from the matter. In the event that a Hearing Officer withdraws, is incapacitated, or otherwise is unable to continue service after being appointed, the Chief Hearing Officer shall appoint a replacement Hearing Officer. In such a case, the replacement Hearing Officer shall proceed according to Rule 10.9231(e).

**(b) Motion for Disqualification**

A Party may move for the disqualification of a Hearing Officer. A motion shall be based upon a reasonable, good faith belief that a conflict of interest or bias exists or circumstances otherwise exist where the Hearing Officer's fairness might reasonably be questioned, and shall be accompanied by an affidavit setting forth in detail the facts alleged to constitute grounds for disqualification, and the dates on which the Party learned of those facts. Such motions shall be filed not later than 15 days after the later of:

(1) when the Party learned of the facts believed to constitute the disqualification; or

(2) when the Party was notified of the assignment of the Hearing Officer.

**(c) Disposition of Disqualification Motion**

A motion for disqualification of a Hearing Officer shall be decided by the Chief Hearing Officer who shall promptly investigate whether disqualification is required and issue a

written ruling on the motion. In the event of a disqualification of the Hearing Officer, the Chief Hearing Officer shall appoint a replacement Hearing Officer.

**Rule 10.9234. Hearing Panel or Extended Hearing Panel: Recusal and Disqualification of Panelists**

**(a) Recusal, Withdrawal of Panelist**

If at any time a Panelist of a Hearing Panel or an Extended Hearing Panel determines that he or she has a conflict of interest or bias or circumstances otherwise exist where his or her fairness might reasonably be questioned, the Panelist shall notify the Hearing Officer and the Hearing Officer shall issue and serve on the Parties a notice stating that the Panelist has withdrawn from the matter. In the event that a Panelist withdraws, is incapacitated, or otherwise is unable to continue service after being appointed, the Chief Hearing Officer may, in the exercise of discretion, determine whether to appoint a replacement Panelist. In the event that both Panelists withdraw, are incapacitated, or otherwise are unable to continue service after being appointed, the Chief Hearing Officer shall appoint two replacement Panelists.

**(b) Disqualification: Motion of Party; Order of Chief Hearing Officer**

(1) A Party may file a motion to disqualify a Panelist of a Hearing Panel or an Extended Hearing Panel. A motion shall be based upon a reasonable, good faith belief that a conflict of interest or bias exists or circumstances otherwise exist where the Panelist's fairness might reasonably be questioned, and shall be accompanied by an affidavit setting forth in detail the facts alleged to constitute grounds for disqualification, and the dates on which the Party learned of those facts.

(2) Such motions shall be filed not later than 15 days after the later of:

(A) when the Party learned of the facts believed to constitute the disqualification; or

(B) when the Party was notified of the appointment of the Panelist.

(3) The Chief Hearing Officer may order the disqualification of a Panelist of a Hearing Panel or an Extended Hearing Panel if the Chief Hearing Officer determines that a conflict of interest or bias exists or circumstances otherwise exist where the Panelist's fairness might reasonably be questioned, and shall state the facts constituting the grounds for disqualification.

**(c) Disposition of Disqualification Motion: Challenge to Single Member of Hearing Panel**

If a Party files a motion to disqualify a Panelist of a Hearing Panel or an Extended Hearing Panel, the Hearing Officer shall promptly investigate whether disqualification is required and shall issue a written ruling on the motion. In the event a Panelist is disqualified, the Chief Hearing Officer may, in the exercise of discretion, appoint a replacement Panelist.

**(d) Disposition of Disqualification Motion: Challenge to Both Panelists of Hearing Panel or Extended Hearing Panel**

If a Party files a motion to disqualify both Panelists of a Hearing Panel or an Extended Hearing Panel, the Hearing Officer shall promptly investigate whether disqualification is required and shall issue a written ruling on the motion. In the event one Panelist is disqualified, the Chief Hearing Officer may, in the exercise of discretion, appoint a replacement Panelist. In the event both Panelists are disqualified, the Chief Hearing Officer shall promptly appoint two persons as replacement Panelists.

**(e) Disposition of Disqualification Motion: Challenge to Both Panelists of Hearing Panel or Extended Hearing Panel and Hearing Officer**

If a Party files a motion to disqualify both Panelists of a Hearing Panel or an Extended Hearing Panel, and the Hearing Officer, the Chief Hearing Officer shall promptly investigate whether disqualification is required and shall issue a written ruling on the motion. In the event a Panelist is disqualified, the Chief Hearing Officer may, in the exercise of discretion, appoint a replacement Panelist. In the event both Panelists are disqualified, the Chief Hearing Officer shall promptly appoint two persons as replacement Panelists. In the event a Hearing Officer and a Panelist are disqualified, the Chief Hearing Officer shall promptly appoint a replacement Hearing Officer. In the event both Panelists and the Hearing Officer are disqualified, the Chief Hearing Officer shall promptly appoint a replacement Hearing Officer and two persons as replacement Panelists.

**(f) Criteria for Replacement Panelist**

If the Chief Hearing Officer appoints a replacement Panelist by operation of this Rule, the Chief Hearing Officer shall do so using the criteria set forth in Rule 10.9232.

**Rule 10.9235. Hearing Officer Authority**

**(a) Hearing Officer Authority**

The Hearing Officer shall be selected by the Chief Hearing Officer and shall have authority to do all things necessary and appropriate to discharge his or her duties. In addition to the powers exercised by all members of the Hearing Panel or, if applicable,

the Extended Hearing Panel, the powers of the Hearing Officer include, but are not limited to:

(1) holding pre-hearing and other conferences and requiring the attendance at any such conference of at least one representative of each Party who has authority to negotiate the resolution of issues in controversy;

(2) regulating the course of the hearing;

(3) ordering the Parties to present oral arguments at any stage of the disciplinary proceeding;

(4) resolving any and all procedural and evidentiary matters, discovery requests, and other non-dispositive motions, subject to any limitations set forth elsewhere in the Code;

(5) reopening any hearing, upon notice to all Parties, prior to the issuance of the decision of the Hearing Panel or, if applicable, the Extended Hearing Panel;

(6) creating and maintaining the official record of the disciplinary proceeding; and

(7) drafting a decision that represents the views of the majority of the Hearing Panel or, if applicable, the Extended Hearing Panel.

**(b) Authority in the Absence of Hearing Officer**

If the Hearing Officer appointed to a case is temporarily unavailable or unable for any reason to discharge his or her duties in a particular proceeding under conditions not requiring the appointment of a replacement Hearing Officer, the Chief Hearing Officer or the Deputy Chief Hearing Officer in his or her discretion may exercise the necessary authority in the same manner as if he or she had been appointed Hearing Officer in the particular proceeding.

**Rule 10.9240. Pre-hearing Conference and Submission**

**Rule 10.9241. Pre-hearing Conference**

**(a) Purposes**

The purposes of a pre-hearing conference include, but are not limited to:

(1) expediting the disposition of the proceeding;

(2) establishing procedures to manage the proceeding efficiently; and

(3) improving the quality of the hearing through more thorough preparation.

**(b) Procedure**

On his or her own motion or at the request of a Party, the Hearing Officer may, in his or her discretion, order counsel or any Party to meet for a pre-hearing conference. Such conferences also may be held with one or more persons participating by telephone or other remote means.

**(c) Subjects to be Discussed**

At a pre-hearing conference, the Hearing Officer shall schedule an expedited proceeding as required by Rule 10.9290, and may consider and take action with respect to any or all of the following:

(1) simplification and clarification of the issues;

(2) exchange of witness and exhibit lists and copies of exhibits;

(3) stipulations, admissions of fact, and stipulations concerning the contents, authenticity, or admissibility into evidence of documents;

(4) matters of which official notice may be taken;

(5) the schedule for exchanging pre-hearing motions or briefs, if any;

(6) the method of service and filing of papers by the Parties;

(7) determination of hearing dates;

(8) amendments to the complaint or answers thereto;

(9) production of documents as set forth in Rule 10.9251;

(10) designation of relevant portions of transcripts from investigative testimony or other proceedings and the inclusion of an index for such testimony; and

(11) such other matters as may aid in the orderly and expeditious disposition of the proceeding.

**(d) Scheduling**

An initial pre-hearing conference, unless determined by the Hearing Officer to be unnecessary or premature, shall be held within 21 days after filing of an answer, or after the expiration of the second period provided for filing an answer as set forth in Rule 10.9215(f). When a complaint names multiple Respondents, the 21-day period shall commence from the later of:

- (1) the date on which the last timely answer was filed, or
- (2) if one or more Respondents has failed to answer, from the expiration of the second period provided for filing an answer under Rule 10.9215(f).

#### **(e) Pre-hearing Order**

At or following the conclusion of any conference held pursuant to this Rule, the Hearing Officer shall enter a written ruling or order that recites any agreements reached and any procedural determinations made by the Hearing Officer.

#### **(f) Failure to Appear: Default**

The Hearing Officer may issue a default decision, pursuant to Rule 10.9269, against a Party that fails to appear, in person or through counsel or a representative, at a prehearing conference of which the Party has due notice.

#### **Rule 10.9242. Pre-hearing Submission**

##### **(a) Requirement to Furnish Information**

Prior to a hearing before a Hearing Panel or, if applicable, an Extended Hearing Panel, the Hearing Officer, in the exercise of his or her discretion, may order a Party to furnish to all other Parties and the Hearing Panel or, if applicable, the Extended Hearing Panel, such information as deemed appropriate, including any or all of the following:

- (1) an outline or narrative summary of a Party's case or defense;
- (2) the legal theories upon which a Party shall rely;
- (3) a list and copies of documents that a Party intends to introduce at the hearing;
- (4) a list of witnesses who shall testify on a Party's behalf, including the witnesses' names, occupations, addresses, and a brief summary of their expected testimony; and,
- (5) if a witness shall be called to testify as an expert, a statement of the expert's qualifications, a listing of other proceedings in which the

expert has given expert testimony, a list of the expert's publications, and copies of those publications that are not readily available to the other Parties and the Hearing Panel or, if applicable, the Extended Hearing Panel.

**(b) 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 10.9000 Series. Nothing in this Rule shall prohibit former Regulatory Staff from testifying as a witness on behalf of the Exchange or FINRA.

**Rule 10.9250. Discovery**

**Rule 10.9251. 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 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 10.8210;

(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) Enforcement shall promptly inform the Hearing Officer and each other Party if, after the issuance of a complaint, requests for information under Rule 10.8210 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 10.8210 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 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) 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) Enforcement shall withhold a Document if the Document is prohibited from disclosure by federal law.

(3) Nothing in paragraph (b)(1) authorizes Enforcement to withhold a Document, or a part thereof, that contains material exculpatory evidence.

### **(c) Withheld Document List**

The Hearing Officer may require Enforcement 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 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 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 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 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 10.9215(f).

### **(e) Place and Time of Inspection and Copying**

Documents subject to inspection and copying pursuant to this Rule shall be made available to the Respondent for inspection and copying at the Exchange office where they are ordinarily maintained, or at such other office as the Hearing Officer, in his or her discretion, shall designate, or as the Parties otherwise agree. A Respondent shall be given access to the Documents during normal business hours. A Respondent shall not be given custody of the Documents or be permitted to remove the Documents from the Exchange's offices.

**(f) Copying Costs**

A Respondent may obtain a photocopy of all Documents made available for inspection. A Respondent shall be responsible for the cost of photocopying. Unless otherwise ordered, charges for copies made at the request of a Respondent shall be at a rate to be established by the Exchange.

**(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, 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 10.9310, 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.

**Rule 10.9252. Requests for Information****(a) Content and Timing of Requests**

A Respondent who requests that the Exchange invoke Rule 10.8210 to compel the production of Documents or testimony at the hearing shall do so in writing and serve copies on all Parties. Such request shall: be submitted to the Hearing Officer no later than 21 days before the scheduled hearing date; describe with specificity the Documents, the category or type of Documents, or the testimony sought; state why the Documents, the category or type of Documents, or the testimony are material; describe the requesting Party's previous efforts to obtain the Documents, the category or type of Documents, or the testimony through other means; and state whether the custodian of each Document, or the custodian of the category or type of Documents, or each proposed witness is subject to the Exchange's jurisdiction.

**(b) Standards for Issuance**

A request that the Exchange compel the production of Documents or testimony shall be granted only upon a showing that: the information sought is relevant, material, and non-cumulative; the requesting Party has previously attempted in good faith to obtain the desired Documents and testimony through other means but has been unsuccessful in such efforts; and each of the persons from whom the Documents and testimony are sought is subject to the Exchange's jurisdiction. In addition, the Hearing Officer shall consider whether the request is unreasonable, oppressive, excessive in scope, or unduly burdensome, and whether the request should be denied, limited, or modified.

**(c) Limitations on Requests**

If, after consideration of all the circumstances, the Hearing Officer determines that a request submitted pursuant to this Rule is unreasonable, oppressive, excessive in scope, or unduly burdensome, he or she shall deny the request, or grant it only upon such conditions as fairness requires. In making the foregoing determination, the Hearing Officer may inquire of the other Parties whether they shall stipulate to the facts sought to be proved by the Documents or testimony sought. If the Hearing Officer grants the request, the Hearing Officer shall order that requested Documents be produced to all Parties not less than ten days before the hearing, and order that witnesses whose testimony was requested appear and testify at the hearing. If the Hearing Officer grants the request ten or fewer days before a hearing on the merits is scheduled to begin or after such hearing begins, the Documents or testimony shall be produced immediately to all Parties.

### **Rule 10.9253. Production of Witness Statements**

#### **(a) Availability**

Notwithstanding the provisions of Rule 10.9251(b),

(1) A Respondent in a disciplinary proceeding may file a motion requesting that Enforcement produce for inspection and copying any statement of any person called or to be called as a witness by Enforcement 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 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, 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, 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 10.9310, 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.

### **Rule 10.9260. Hearing and Decision**

### **Rule 10.9261. Evidence and Procedure in Hearing**

#### **(a) Submission of Documentary Evidence and List of Witnesses Before Hearing**

No later than ten days before the hearing, or at such earlier date as may be specified by the Hearing Officer, each Party shall submit to all other Parties and to the Hearing Officer copies of documentary evidence and the names of the witnesses each Party intends to present at the hearing. The documentary evidence submitted by the Parties prior to the hearing pursuant to this paragraph shall not become part of the record, unless the Hearing Officer, Hearing Panel, or Extended Hearing Panel orders some or all of it included pursuant to Rule 10.9267(a)(8). The Hearing Officer may order each Party to refrain from submitting its documentary evidence to the Hearing Officer.

#### **(b) Party's Right to Be Heard**

If a hearing is held, a Party shall be entitled to be heard in person, by counsel, or by the Party's representative.

#### **(c) Request to Submit Additional Evidence**

Notwithstanding paragraph (a), a Party, for good cause shown, may seek to submit any additional evidence at the hearing as the Hearing Officer, in his or her discretion, determines may be relevant and necessary for a complete record.

### **Rule 10.9262. Testimony**

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

### **Rule 10.9263. Evidence: Admissibility**

#### **(a) Criteria for Receiving and Excluding Evidence**

The Hearing Officer shall receive relevant evidence, and may exclude all evidence that is irrelevant, immaterial, unduly repetitious, or unduly prejudicial.

**(b) Objections**

Objections to the admission or exclusion of evidence shall be made on the record and shall succinctly state the grounds relied upon. Excluded material shall be deemed a supplemental document, which shall be attached to the record and retained under Rule 10.9267.

**Rule 10.9264. 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 10.9251, the Respondent or Enforcement, 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 10.9146(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 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) Case Not Fully Adjudicated on Motion**

If on motion under this rule a decision is not rendered upon the whole case or for all the relief asked and a hearing is necessary, the Hearing Panel or, if applicable, the Extended Hearing Panel, at the hearing of the motion, by examining the pleadings and the evidence before it and by questioning counsel, shall, if practicable, ascertain what material facts exist without substantial controversy and what material facts are actually and in good faith controverted. It shall thereupon make an order specifying the facts that appear without substantial controversy, and directing such further proceedings in the action as are just. Upon the hearing of the action the facts so specified shall be deemed established, and the hearing shall be conducted accordingly.

**(d) Form of Papers**

A motion for summary disposition pursuant to paragraph (a) shall be accompanied by the following: a statement of undisputed facts; a supporting memorandum of points and authorities; and affidavits or declarations that set forth such facts as would be admissible

at the hearing and show affirmatively that the affiant is competent to testify to the matters stated therein. A memorandum of points and authorities in support or opposition shall not exceed 35 pages.

### **(e) Rulings on Motion**

The Hearing Officer may promptly deny or defer decisions on any motion for summary disposition, however, only the Hearing Panel or, if applicable, the Extended Hearing Panel, may grant a motion for summary disposition, except the Hearing Officer may grant motions for summary disposition with respect to questions of jurisdiction. The Hearing Panel or, if applicable, the Extended Hearing Panel, may grant the motion for summary disposition if there is no genuine issue with regard to any material fact and the Party that files the motion is entitled to summary disposition as a matter of law. If a Party files a motion under paragraph (a), the facts alleged in the pleadings of the Party against whom the motion is made shall be taken as true, except as modified by stipulations or admissions made by the non-moving Party, by uncontested affidavits or declarations, or by facts officially noticed pursuant to Rule 10.9145. If a Party opposing a motion for summary disposition made under paragraph (a) cannot present, by affidavit prior to the hearing, facts essential to justify the Party's opposition to the motion, the Hearing Panel or, if applicable, the Extended Hearing Panel, may deny the motion for summary disposition or defer the decision on the motion.

### **Rule 10.9265. Record of Hearing**

#### **(a) Recordation**

A hearing shall be recorded by a court reporter and a transcript shall be prepared. Unless otherwise ordered by a Hearing Officer, a pre-hearing conference shall be recorded by a court reporter and a transcript shall be prepared.

#### **(b) Availability of a Transcript**

A transcript of a pre-hearing conference and a transcript of a hearing shall be available to a Party for purchase from the court reporter at prescribed rates. A witness may purchase from the court reporter a transcript of his or her own testimony.

#### **(c) Transcript Correction**

Prior to the filing of post-hearing briefs or proposed findings and conclusions, or within such earlier time as ordered by the Hearing Officer, a Party or witness may seek to correct his or her transcript. A proposed correction of the transcript shall be submitted to the Hearing Officer by affidavit. Upon notice to all Parties to the disciplinary proceeding, the Hearing Officer may order the correction to the transcript as requested or sua sponte.

### **Rule 10.9266. Proposed Findings of Fact, Conclusions of Law, and Post-Hearing Briefs**

**(a) Discretion of Hearing Officer to Require Proposed Findings of Fact, Conclusions of Law, and Post-Hearing Briefs**

At the discretion of the Hearing Officer, the Parties may be ordered to file proposed findings of facts and conclusions of law, or post-hearing briefs, or both. The Hearing Officer may order that such proposed findings and conclusions be filed together with, or as part of, post-hearing briefs.

**(b) Reference to Record Required**

Proposed findings of fact or other statements of fact in briefs shall be supported by specific references to the record.

**(c) Period for Filing**

In any case in which the Hearing Officer ordered the filing of proposed findings or conclusions of law, or post-hearing briefs, the Hearing Officer shall, after consultation with the Parties, prescribe the period within which proposed findings and conclusions of law and post-hearing briefs are to be filed. Such period shall be reasonable under all the circumstances but the total period allowed for the filing of post-hearing submissions shall not exceed 60 days after the conclusion of the hearing unless the Hearing Officer, for good cause shown, permits a different period and sets forth in an order the reasons why a longer period is necessary.

**(d) Form, Length of Papers**

Unless the Hearing Officer orders otherwise, each post-hearing submission shall not exceed 25 pages, exclusive of cover sheets, tables of contents, and tables of authorities.

**Rule 10.9267. Record; Supplemental Documents Attached to Record; Retention**

**(a) Contents of the Record, Retention**

The record shall consist of:

- (1) the complaint, answers, each notice of hearing, pre-hearing order, and any amendments thereto;
- (2) each application, motion, submission, and other paper, and any amendments, motions, objections, and exceptions to or regarding them;
- (3) each transcript of a pre-hearing conference and of a hearing, and each stipulation, transcript of testimony, Document, and other item admitted into evidence;



(4) each written communication accepted at the discretion of the Hearing Officer;

(5) with respect to a motion to disqualify a Hearing Officer under Rule 10.9233 or a Panelist under Rule 10.9234, each affidavit or transcript of testimony taken and the ruling made in connection with the request;

(6) all proposed findings and conclusions;

(7) each written ruling, order, and decision issued by the Chief Hearing Officer, Hearing Officer, Hearing Panel or, if applicable, Extended Hearing Panel; and,

(8) any other Document or item accepted into the record by the Hearing Officer, the Hearing Panel or, if applicable, the Extended Hearing Panel.

**(b) Supplemental Documents Attached To Record; Retention**

(1) A supplemental Document attached to the record is any Document submitted to the Hearing Officer that did not become part of the record, including:

(A) a Document not admitted by the Hearing Officer, Hearing Panel or, if applicable, the Extended Hearing Panel;

(B) any matter stricken from any filing or stricken during an oral presentation, including any matter stricken from any filing or stricken during any oral presentation because the Adjudicator determined it was scandalous or impertinent as provided in Rule 10.9136(e); and

(C) a list of Documents, if any, that a Respondent unsuccessfully sought by motion to inspect and copy under Rule 10.9251(c).

(2) A supplemental Document attached to the record shall not constitute part of the record, but shall be retained until the date upon which the Exchange's decision becomes final disciplinary action or, if applicable, upon the conclusion of any review by the SEC or the federal courts.

**(c) Substitution of Copies**

Parties may submit to the Hearing Officer for substitution a true copy of a Document in the record.

**Rule 10.9268. Decision of Hearing Panel or Extended Hearing Panel**

**(a) Majority Decision**

Within 60 days after the final date allowed for filing proposed findings of fact, conclusions of law, and post-hearing briefs, or by a date established at the discretion of the Chief Hearing Officer, the Hearing Officer shall prepare a written decision that reflects the views of the Hearing Panel or, if applicable, the Extended Hearing Panel, as determined by majority vote.

**(b) Contents of Decision**

The decision shall include:

- (1) a statement describing the investigative or other origin of the disciplinary proceeding, if not otherwise contained in the record;
- (2) the specific statutory or rule provisions that were alleged to have been violated;
- (3) a statement setting forth the findings of fact with respect to any act or practice the Respondent was alleged to have committed or omitted;
- (4) the conclusions of the Hearing Panel, or Extended Hearing Panel, as to whether the Respondent violated any provision alleged in the complaint;
- (5) a statement of the Hearing Panel, or the Extended Hearing Panel, in support of the disposition of the principal issues raised in the proceeding;
- (6) a statement describing any sanction imposed, the reasons therefor, and the date upon which such sanction shall become effective. Unless otherwise provided in the decision, the sanction(s) shall become effective pursuant to paragraph (f) of this Rule; and
- (7) a statement, when the sanctions include a permanent cease and desist order, that is consistent with the requirements of Rule 10.9291(a) concerning the content, scope, and form of a permanent cease and desist order.

**(c) Dissenting Opinion**

Within 65 days after the final date allowed for filing proposed findings of fact and conclusions of law, and post-hearings briefs, or by a date established at the discretion of

the Chief Hearing Officer, the Hearing Officer or any Panelist may prepare a written dissenting opinion.

**(d) Service, Notice, and Dissemination Requirements**

The Office of Hearing Officers shall promptly serve the decision of the Hearing Panel, or the Extended Hearing Panel, and any dissenting opinion on the Parties; publish notice of the decision and any dissenting opinion in the Central Registration Depository; and provide a copy of the decision and any dissenting opinion to each Participant or Participant Firm with which a Respondent is associated.

**(e) Review**

(1) If a request for review is not timely filed pursuant to Rule 10.9310, the majority decision shall constitute final disciplinary action of the Exchange for purposes of Exchange Act Rule 19d-1(c)(1).

(2) A majority decision with respect to an affiliate of the Exchange as such term is defined in Rule 12b-2 under the Exchange Act shall constitute final disciplinary action of the Exchange for purposes of SEC Rule 19d-1(c)(1) and may not be reviewed pursuant to Rule 10.9310.

**(f) Effectiveness of Sanctions**

Unless otherwise provided in the majority decision issued under paragraph (a) of this Rule:

(1) a sanction (other than a bar or an expulsion) specified in a decision constituting final disciplinary action of the Exchange for purposes of Exchange Act Rule 19d-1(c)(1) shall become effective on a date to be determined by the Exchange; and

(2) a bar or an expulsion specified in a decision shall become effective immediately upon the decision becoming the final disciplinary action of the Exchange for purposes of Exchange Act Rule 19d-1(c)(1).

**Rule 10.9269. 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 10.9215, or a Party that fails to appear at a pre-hearing conference held pursuant to Rule 10.9241 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 10.9200 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 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.

(4) The Office of Hearing Officers shall provide a copy of the default decision to each Participant or Participant Firm with which a Respondent is associated.

#### **(b) Contents of Decision**

The contents of a default decision shall conform to the requirements of Rule 10.9268(b).

#### **(c) Review of Default Decision**

A Party may, for good cause shown, file a motion to set aside a default, dismissal, and the imposition of costs. Upon a showing of good cause, the Hearing Officer that entered the original order shall decide the motion. If the Hearing Officer that issued the original order is not available, the Chief Hearing Officer shall appoint another Hearing Officer to decide the motion.

#### **(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 10.9310 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 Exchange Act Rule 19d-1(c)(1). Unless otherwise provided in the default decision, the sanctions shall become effective on a date to be determined by 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.

### **Rule 10.9270. Settlement Procedure**

#### **(a) When Offer Allowed; No Stay of Proceeding**

A Respondent who is notified that a proceeding has been instituted against him or her may propose in writing an offer of settlement at any time. If a Respondent proposes an offer of settlement before the hearing on the merits has begun, the making of an offer of settlement shall not stay the proceeding, unless otherwise decided by the Hearing Officer. If a Respondent proposes an offer of settlement after the hearing on the merits has begun, the making of an offer of settlement shall not stay the proceeding, unless otherwise decided by the Hearing Panel or, if applicable, the Extended Hearing Panel.

**(b) Settlement Offer Shall Conform to Rule**

A Respondent who makes an offer of settlement shall do so in conformity with the provisions of this Rule and shall not make such an offer of settlement frivolously or propose a sanction inconsistent with the seriousness of the violations to be found.

**(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 Participant, Participant Firm or covered person is alleged to have violated;
- (3) a statement containing the acts or practices which the Participant, Participant Firm 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);
- (5) a proposed sanction to be imposed that is consistent with the Exchange's then current sanction guidelines, if applicable, or, if inconsistent with the sanction guidelines, a detailed statement supporting the proposed sanction;
- (6) 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 Regulatory Staff; and
- (7) if applicable, a proposed permanent cease and desist order to be imposed that is consistent with the requirements of Rule 10.9291(a)

concerning the content, scope, and form of a permanent cease and desist order.

**(d) Waiver**

(1) If a Respondent submits an offer of settlement, by the submission such Respondent waives:

(A) any right of such Respondent to a hearing before a Hearing Panel or, if applicable, an Extended Hearing Panel, and any right of review by the Exchange Board of Directors, the SEC, and the courts, or any right otherwise to challenge or contest the validity of the order issued, if the offer of settlement and order of acceptance are accepted;

(B) any right of such Respondent to claim bias or prejudgment of the Chief Hearing Officer, Hearing Officer, a Hearing Panel or, if applicable, an Extended Hearing Panel, a Panelist on a Hearing Panel, or, if applicable, an Extended Hearing Panel, the CRO, the Exchange Board of Directors, Counsel to the Exchange Board of Directors, or any Director, in connection with such person's or body's participation in discussions regarding the terms and conditions of the offer of settlement and the order of acceptance, or other consideration of the offer of settlement and order of acceptance, including acceptance, or rejection of such offer of settlement and order of acceptance; and

(C) any right of such Respondent to claim that a person or body violated the ex parte prohibitions of Rule 10.9143 or the separation of functions prohibitions of Rule 10.9144, in connection with such person's or body's participation in discussions regarding the terms and conditions of the offer of settlement and the order of acceptance, or other consideration of the offer of settlement and order of settlement, including acceptance or rejection of such offer of settlement and order of acceptance.

(2) If an offer of settlement and an order of acceptance are rejected, the Respondent shall be bound by the waivers made in this paragraph (d) for conduct by persons or bodies occurring during the period beginning from the date the offer of settlement was submitted and ending upon the rejection of the offer of settlement and order of acceptance.

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

If a Respondent makes an offer of settlement and 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, 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 Enforcement does not oppose it, the offer of settlement is uncontested. If an offer of settlement is determined to be uncontested by Enforcement before a hearing on the merits has begun, Enforcement shall transmit the uncontested offer of settlement and a proposed order of acceptance to the CRO with its recommendation. If an offer of settlement is determined to be uncontested by Enforcement after a hearing on the merits has begun, Enforcement 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 rejected.

(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 (including, if applicable, a permanent cease and desist order) 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 CRO, the Hearing Panel, or if applicable, Extended Hearing Panel. The 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 CRO, the Hearing Panel or, if applicable, Extended Hearing Panel, they shall be issued and shall be sent to each Director and each member of the Committee for Review via courier, express delivery or electronic means. The offer of settlement and order of acceptance shall become final 10 days after they are sent to each Director and each member of the Committee for Review, unless review by the Exchange Board of Directors is requested pursuant to Rule 10.9310(a)(1). Enforcement shall provide a copy of an issued order of acceptance to each Participant or Participant Firm with which a Respondent is associated.

#### **(g) Final Disciplinary Action of the Exchange**

The proceeding shall conclude as of the date the order of acceptance is final. The final order of acceptance shall constitute final disciplinary action of the Exchange. The sanction shall take effect as set forth in the order.

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

If an uncontested offer of settlement or an order of acceptance is not accepted by the 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 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.

**Rule 10.9280. Contemptuous Conduct**

**(a) Persons Subject to Sanctions**

If a Party, attorney for a Party, or other person authorized to represent others by Rule 10.9141, engages in conduct in violation of an order of a Hearing Officer, a Hearing Panel or, if applicable, an Extended Hearing Panel, or other contemptuous conduct during a proceeding, a Hearing Officer, Hearing Panel or, if applicable, an Extended Hearing Panel, may:

(1) subject the Party, attorney for a Party, or other person authorized to represent others by Rule 10.9141, to the sanctions set forth in paragraph (b); and

(2) exclude an attorney for a Party, or other person authorized to represent others by Rule 10.9141, under Rule 10.9150.

**(b) Sanctions Other Than Exclusion**

A Hearing Officer, Hearing Panel or, if applicable, an Extended Hearing Panel, may make such orders as are just in regard to a Party, an attorney for a Party, or other person authorized to represent others by Rule 10.9141.



(1) Such orders may include:

(A) an order providing that the matters on which the order is made or any other designated facts shall be taken to be established for the purposes of the disciplinary proceeding in accordance with the claim of the Party obtaining the order;

(B) an order providing that the disobedient Party may not support or oppose designated claims or defenses, or may not introduce designated matters in evidence;

(C) an order providing that pleadings or a specified part of the pleading shall be stricken, or an order providing that the proceeding shall be stayed until the Party subject to the order obeys it;

(D) in lieu of any of the foregoing orders or in addition thereto, an order providing that contemptuous conduct includes the failure to obey any order; and

(E) an order as provided in subparagraphs (A), (B), and (C) where a Party has failed to comply with an order to produce a person for examination, unless the Party failing to comply shows that such Party is unable to produce such person for examination.

(2) A Party that without substantial justification fails to disclose information required by the Rule 10.9240 Series and the Rule 10.9250 Series or otherwise required by order of the Hearing Officer, Hearing Panel or, if applicable, the Extended Hearing Panel, shall not, unless such failure is harmless, be permitted to use as evidence at a hearing, in a motion or in any other filing of papers, or in oral argument, any witness or information not so disclosed. In addition to, or in lieu of this sanction, the Hearing Officer, Hearing Panel or, if applicable, the Extended Hearing Panel, on motion and after affording an opportunity to be heard, may impose other appropriate sanctions. These sanctions may include any of the sanctions provided for in paragraphs (b)(1)(A) through (C).

**(c) Review of Exclusions**

If an attorney for a Party, or other person authorized to represent others by Rule 10.9141, is excluded from a disciplinary hearing or conference, or any portion thereof, such attorney or other person may seek review of the exclusion by filing a motion to vacate with the Chief Hearing Officer. Such motion to vacate shall be filed and served on all Parties within five days after service of the exclusion order. Any response shall be filed with the Chief Hearing Officer and served on all Parties within five days after the service

of the motion to vacate. The Chief Hearing Officer shall consider such motion on an expedited basis and promptly issue a written order. The filing of a motion to vacate shall stay all aspects of the disciplinary proceeding until at least seven days after service of the order of the Chief Hearing Officer. The review proceedings shall be conducted on the basis of the written record without oral argument.

#### **(d) Adjournment**

The hearing, conferences, or other activities relating to the disciplinary proceeding shall be stayed pending the review by the Chief Hearing Officer of an exclusion order in paragraph (c). In the event that the Chief Hearing Officer upholds an exclusion of an attorney or other person authorized to represent others by Rule 10.9141, the Hearing Officer may, upon motion by a Party represented by an attorney or other person subject to an order of exclusion, grant an adjournment to allow the retention of new counsel or selection of a new representative. In determining whether to grant an adjournment or the length of an adjournment, the Hearing Officer shall consider whether there are other counsel or representatives of record on behalf of the Party, the availability of other counsel or other members of an excluded attorney's firm, or the availability of other representatives for the Party, and any other relevant factors.

#### **Rule 10.9290. Expedited Disciplinary Proceedings**

For any disciplinary proceeding, the subject matter of which also is subject to a temporary cease and desist proceeding initiated pursuant to Rule 10.9810 or a temporary cease and desist order, hearings shall be held and decisions shall be rendered at the earliest possible time. An expedited hearing schedule shall be determined at a pre-hearing conference held in accordance with Rule 10.9241.

#### **Rule 10.9291. Permanent Cease and Desist Orders**

##### **(a) Content, Scope and Form Requirements**

When a decision issued under Rule 10.9268 or Rule 10.9269 or an order of acceptance issued under Rule 10.9270 imposes a permanent cease and desist order, it shall:

(1) order a Respondent (and any successor of a Respondent, where the Respondent is a Participant or Participant Firm) to cease and desist permanently from violating a specific rule or statutory provision;

(2) set forth the violation; and

(3) describe in reasonable detail the act or acts the Respondent (and any successor of a Respondent, where the Respondent is a Participant or Participant Firm) shall take or refrain from taking.

##### **(b) Delivery Requirement**

Where a Respondent is a Participant or Participant Firm, Respondent shall deliver a copy of a permanent cease and desist order, within one business day of receiving it, to its covered persons.

## **RULE 10.9300. REVIEW OF DISCIPLINARY PROCEEDING BY EXCHANGE BOARD OF DIRECTORS**

### **Rule 10.9310. Review by Exchange Board of Directors**

#### **(a) Request for Review**

(1)(A) Any Party, any Director, and any member of the Committee for Review 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 10.9200 Series, except that none of the aforementioned persons may request a review by the Exchange Board of Directors of a decision concerning an affiliate of the Exchange as such term is defined in Rule 12b-2 under the Exchange Act. 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. However, any request for review of an offer of settlement determined to be uncontested after a hearing on the merits has begun under Rule 10.9270(f) that has been accepted by a Hearing Panel or Extended Hearing Panel shall be governed by Rule 10.9310(a)(1)(B)(i) below. The Secretary of the Exchange shall give notice of any such request for review to the Parties.

(B) In addition to the provisions for review by the Exchange Board of Directors set forth in Rule 10.9310(a)(1)(A):

(i) Any Director and any member of the Committee for Review may require a review by the Exchange Board of Directors of any determination or penalty, or both, imposed in connection with a letter of acceptance, waiver, and consent under Rule 10.9216 or an offer of settlement determined to be uncontested before a hearing on the merits has begun under Rule 10.9270(f), except that none of the aforementioned persons may request a review by the Exchange Board of Directors of a determination or penalty concerning an affiliate of the Exchange as such term is defined in Rule 12b-2 under the Exchange Act. 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 10 days after a letter of acceptance, waiver, and consent or an offer of settlement has been sent to each Director

and each member of the Committee for Review pursuant to Rule 10.9216(a)(4) or Rule 10.9270(f)(3). The Secretary of the Exchange shall give notice of any such request for review to the Parties.

(ii) Any Party may require a review by the Exchange Board of Directors of any rejection by the CRO of a letter of acceptance, waiver, and consent under Rule 10.9216 or an offer of settlement determined to be uncontested before a hearing on the merits has begun under Rule 10.9270(f), except that no Party may request a review by the Exchange Board of Directors of a rejection of a letter of acceptance, waiver, and consent or an offer of settlement concerning an affiliate of the Exchange as such term is defined in Rule 12b-2 under the Exchange Act. 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 notification pursuant to Rule 10.9216(a)(3) or Rule 10.9270(h) that a letter of acceptance, waiver, and consent, or an uncontested offer of settlement or an order of acceptance is not accepted by the CRO. The Secretary of the Exchange shall give notice of any such request for review to the Parties.

(2) In connection with any review under paragraph (a)(1)(A), the Secretary of the Exchange shall direct the Office of Hearing Officers to complete and transmit a record of the disciplinary proceeding in accordance with Rule 10.9267. Within 21 days after the Secretary of the Exchange gives notice of a request for review to the Parties, or at such later time as the Secretary of the Exchange may designate, the Office of Hearing Officers shall assemble and prepare an index to the record, transmit the record and the index to the Secretary of the Exchange, and serve copies of the index upon all Parties. The Hearing Officer who participated in the disciplinary proceeding, or the Chief Hearing Officer, shall certify that the record transmitted to the Secretary of the Exchange is complete.

#### **(b) Review by Exchange Board of Directors**

Any review by the Exchange Board of Directors shall be based on oral arguments and written briefs and shall be limited to consideration of the record before the Hearing Panel or Extended Hearing Panel. Upon review, and with the advice of the Committee for Review, the Exchange Board of Directors, by the affirmative vote of a majority of the Exchange Board of Directors then in office, may sustain any determination or penalty imposed, (including the terms of any permanent cease and desist order), or both, may modify or reverse any such determination, and may increase, decrease or eliminate any such penalty, or impose any penalty permitted under the Exchange's rules, as it deems

appropriate. Unless the Exchange Board of Directors otherwise specifically directs, the determination and penalty, if any, of the Exchange Board of Directors after review shall be final and conclusive subject to the provisions for review of the Securities Exchange Act of 1934.

**(c) Remand**

Notwithstanding the foregoing, if either Party upon review applies to the Exchange Board of Directors for leave to adduce additional evidence, and shows to the satisfaction of the Exchange Board of Directors that the additional evidence is material and that there were reasonable grounds for failure to adduce it before the Hearing Panel or Extended Hearing Panel, the Exchange Board of Directors may remand the case for further proceedings, in whatever manner and on whatever conditions the Exchange Board of Directors considers appropriate.

**(d) Chief Executive Officer**

Notwithstanding any other provisions of this Rule 10.9000 Series, the Chief Executive Officer may not require a review by the Exchange Board of Directors under this Rule and shall be recused from deliberations and actions of the Exchange Board of Directors with respect to matters to be reviewed by the Exchange Board of Directors under this Rule.

**RULE 10.9500. OTHER PROCEEDINGS**

**Rule 10.9520. Eligibility Proceedings**

**Rule 10.9521. Purpose and Definitions**

**(a) Purpose**

The Rule 10.9520 Series sets forth procedures for a covered person to become or remain associated with a Participant or Participant Firm notwithstanding the existence of a statutory disqualification as defined in Section 3(a)(39) of the Exchange Act and for a current Participant, Participant Firm or covered person to obtain relief from the eligibility or qualification requirements of the Exchange's Rules. Such actions hereinafter are referred to as "eligibility proceedings."

**(b) Definitions**

(1) The term "Application" means FINRA's Form MC-400 for covered persons or Form MC-400A for Participants or Participant Firms filed with FINRA's Department of Registration and Disclosure ("RAD").

(2) The term "disqualified Participant" or "disqualified Participant Firm" means a broker, dealer, municipal securities broker or dealer, government securities broker or dealer, or Participant that is or

becomes subject to a disqualification or is otherwise ineligible for membership under Exchange rules.

(3) The term "disqualified person" means a covered person or person seeking to become a covered person who is or becomes subject to a disqualification as defined in Section 3(a)(39) of the Exchange Act or is otherwise ineligible for association under Exchange rules.

(4) The term "sponsoring Participant" or "sponsoring Participant Firm" means the Participant, Participant Firm or applicant for membership pursuant to Exchange rules that is sponsoring the association or continued association of a disqualified person to be admitted, readmitted, or permitted to continue in association.

## **Rule 10.9522. Initiation of Eligibility Proceeding; Member Regulation Consideration**

### **(a) Initiation by the Exchange**

#### **(1) Issuance of Notice of Disqualification or Ineligibility**

If Exchange staff has reason to believe that a disqualification exists or that a Participant, Participant Firm or covered person otherwise fails to meet the eligibility requirements of the Exchange, Exchange staff shall issue a written notice to the Participant, Participant Firm or applicant for membership under Exchange rules. The notice shall specify the grounds for such disqualification or ineligibility. Exchange staff shall not issue such written notice to Participants, Participant Firms or applicants for membership under Exchange rules with respect to disqualifications arising solely from findings or orders specified in Section 15(b)(4)(D), (E), or (H) of the Exchange Act or arising under Section 3(a)(39)(E) of the Exchange Act, unless the Participant, Participant Firm or applicant for membership under Exchange rules is required to file an application pursuant to an Regulatory Bulletin entitled "Eligibility Proceedings: Exchange Rule 10.9520 Series to Establish Procedures Applicable to Participants, Participant Firms and Covered Persons Subject to Certain Statutory Disqualifications" (the "SD Information Memo").

#### **(2) Notice Regarding a Participant or Participant Firm**

A notice issued to a disqualified Participant or Participant Firm shall state that the disqualified Participant or Participant Firm may apply for relief by filing an application or, in the case of a matter set forth in Rule 10.9522(e)(1), a written request for relief, within ten business days after service of the notice. If the Participant or Participant Firm

fails to file the application or, where appropriate, the written request for relief, within the 10-day period, the membership of the Participant or Participant Firm shall be canceled, unless the Department of Member Regulation grants an extension for good cause shown.

### **(3) Notice Regarding a Covered Person**

A notice issued regarding a disqualified person to a Participant, Participant Firm or applicant for membership under Exchange rules shall state that such Participant, Participant Firm or applicant for membership may file an application on behalf of itself and such covered person or, in the case of a matter set forth in Rule 10.9522(e)(1), a written request for relief, within ten business days after service of the notice. If the Participant or Participant Firm fails to file the application or, where appropriate, the written request for relief, within the 10-day period, the registration of the disqualified person shall be revoked, unless the Department of Member Regulation grants an extension for good cause shown.

### **(4) Service**

A notice issued under this paragraph (a) shall be served pursuant to Rules 10.9131 and 10.9134.

## **(b) Obligation of Participant or Participant Firm to Initiate Proceeding**

(1) A Participant or Participant Firm shall file an application or, in the case of a matter set forth in Rule 10.9522(e)(1), a written request for relief, with RAD, if the Participant or Participant Firm determines prior to receiving a notice under paragraph (a) that:

(A) it has become a disqualified Participant or Participant Firm;

(B) a covered person or a person whose association is proposed by an applicant for membership under Exchange rules has become a disqualified person; or

(C) the Participant, Participant Firm or applicant for membership under Exchange rules wishes to sponsor the association of a covered person who is a disqualified person.

(2) For any disqualifications arising solely from findings or orders specified in Section 15(b)(4)(D), (E), or (H) of the Exchange Act or arising under Section 3(a)(39)(E) of the Exchange Act, a Participant or Participant Firm shall not file an application unless instructed to do so by the SD Information Memo.

**(c) Withdrawal of Application**

A Participant or Participant Firm may withdraw its application or written request for relief prior to a hearing by filing a written notice with RAD pursuant to Rules 10.9135, 10.9136, and 10.9137. A Participant or Participant Firm may withdraw its application after the start of a hearing but prior to the issuance of a decision by the Exchange Board of Directors by filing a written notice with RAD and the CRO pursuant to Rules 10.9135, 10.9136, and 10.9137.

**(d) Ex Parte Communications**

The prohibitions against ex parte communications set forth in Rule 10.9143 shall become effective under the Rule 10.9520 Series when Exchange staff has initiated the eligibility proceeding and Exchange staff has knowledge that a Participant or Participant Firm intends to file an application or written request for relief pursuant to the Rule 10.9520 Series.

**(e) Member Regulation Consideration****(1) Matters that may be Approved by the Department of Member Regulation without the Filing of an Application**

The Department of Member Regulation, as it deems consistent with the public interest and the protection of investors, is authorized to approve a written request for relief from the eligibility requirements by a disqualified Participant or Participant Firm or a sponsoring Participant or Participant Firm without the filing of an application by such disqualified Participant or Participant Firm or sponsoring Participant or Participant Firm if a disqualified Participant or Participant Firm or disqualified person is subject to one or more of the following conditions but is not otherwise subject to disqualification:

(A) a disqualified Participant or Participant Firm or disqualified person is subject to a disqualification based on an injunction that was entered ten or more years prior to the proposed admission or continuance by order, judgment, or decree of any court of competent jurisdiction from acting as an investment adviser, underwriter, broker, dealer, municipal securities dealer, government securities broker, government securities dealer, transfer agent, foreign person performing a function substantially equivalent to any of the above, entity or person required to be registered under the Commodity Exchange Act, or any substantially equivalent foreign statute or regulation, or as an affiliated person or employee of any investment company, bank, insurance company, foreign entity substantially equivalent to any of the above, or entity or person required to be registered under



the Commodity Exchange Act or any substantially equivalent foreign statute or regulation, or from engaging in or continuing any conduct or practice in connection with any such activity, or in connection with the purchase or sale of any security.

(B) a sponsoring Participant or Participant Firm makes a request to change the supervisor of a disqualified person; or

(C) a disqualified Participant or Participant Firm or sponsoring Participant or Participant Firm is a member of both the Exchange and another self-regulatory organization; and:

(i) the other self-regulatory organization intends to file a Notice under Exchange Act Rule 19h-1 approving the membership continuance of the disqualified Participant or Participant Firm or, in the case of a sponsoring Participant or Participant Firm, the proposed association or continued association of the disqualified person; and

(ii) the Department of Member Regulation concurs with that determination.

## **(2) Matters that may be Approved by the Department of Member Regulation after the Filing of an Application**

The Department of Member Regulation, as it deems consistent with the public interest and the protection of investors, is authorized to approve an application filed by a disqualified Participant or Participant Firm or sponsoring Participant or Participant Firm if the disqualified Participant or Participant Firm or disqualified person is subject to one or more of the following conditions but is not otherwise subject to disqualification (other than a matter set forth in paragraph (e)(1)):

(A) The disqualified person is already a participant in, a member of, or a person associated with a member of, a self-regulatory organization (other than the Exchange), and the terms and conditions of the proposed admission to the Exchange are the same in all material respects as those imposed or not disapproved in connection with such covered person's prior admission or continuance pursuant to an order of the SEC under Exchange Act Rule 19h-1 or other substantially equivalent written communication;

(B) The Department of Member Regulation finds, after reasonable inquiry, that except for the identity of the employer concerned, the terms and conditions of the proposed admission or

continuance are the same in all material respects as those imposed or not disapproved in connection with a prior admission or continuance of the disqualified person pursuant to an order of the SEC under Exchange Act Rule 19h-1 or other substantially equivalent written communication, and that there is no intervening conduct or other circumstance that would cause the employment to be inconsistent with the public interest or the protection of investors;

(C) The disqualification previously was a basis for the institution of an administrative proceeding pursuant to a provision of the federal securities laws, and was considered by the SEC in determining a sanction against such disqualified person in the proceeding; and the SEC concluded in such proceeding that it would not restrict or limit the future securities activities of such disqualified person in the capacity now proposed, or, if it imposed any such restrictions or limitations for a specified time period, such time period has elapsed;

(D) The disqualification consists of a court order or judgment of injunction or conviction, and such order or judgment:

(i) expressly includes a provision that, on the basis of such order or judgment, the SEC will not institute a proceeding against such covered person pursuant to Section 15(b) or 15B of the Exchange Act or that the future securities activities of such covered persons in the capacity now proposed will not be restricted or limited; or

(ii) includes such restrictions or limitations for a specified time period and such time period has elapsed;

(E) The disqualified person's functions are purely clerical and/or ministerial in nature; or

(F) The disqualification arises from findings or orders specified in Section 15(b)(4)(D), (E), or (H) of the Exchange Act or arises under Section 3(a)(39)(E) of the Exchange Act.

**(3) Rights of Disqualified Participant or Participant Firm, Sponsoring Participant or Participant Firm, Disqualified Person, and Department of Member Regulation**

(A) In the event the Department of Member Regulation does not approve a written request for relief from the eligibility requirements pursuant to paragraph (e)(1), the disqualified

Participant or Participant Firm or sponsoring Participant or Participant Firm may file an application, and such Participant or Participant Firm shall have the right to proceed under Rule 10.9523 or 10.9524, as applicable. The Department of Member Regulation may require a disqualified Participant or Participant Firm or sponsoring Participant or Participant Firm to file an application with RAD, notwithstanding the provisions of paragraph (e)(1).

(B) In the event the Department of Member Regulation does not approve an application pursuant to paragraph (e)(2), the disqualified Participant or Participant Firm or sponsoring Participant or Participant Firm shall have the right to proceed under Rule 10.9523 or 10.9524, as applicable.

**Rule 10.9523. Acceptance of Member Regulation Recommendations and Supervisory Plans by Consent Pursuant to Exchange Act Rule 19h-1**

(a) With respect to all disqualifications, except those arising solely from findings or orders specified in Section 15(b)(4)(D), (E) or (H) of the Exchange Act or arising under Section 3(a)(39)(E) of the Exchange Act, after an application is filed, the Department of Member Regulation may recommend the membership or continued membership of a disqualified Participant or Participant Firm or sponsoring Participant or Participant Firm or the association or continuing association of a disqualified person pursuant to a supervisory plan where the disqualified Participant or Participant Firm, sponsoring Participant or Participant Firm, and/or disqualified person, as the case may be, consent to the recommendation and the imposition of the supervisory plan. The disqualified Participant or Participant Firm, sponsoring Participant or Participant Firm, and/or disqualified person, as the case may be, shall execute a letter consenting to the imposition of the supervisory plan.

(1) If a disqualified Participant or Participant Firm, sponsoring Participant or Participant Firm, and/or disqualified person submitted an executed letter consenting to a supervisory plan, by the submission of such letter, the disqualified Participant or Participant Firm, sponsoring Participant or Participant Firm and/or disqualified person waive:

(A) the right to a hearing before a Hearing Panel and any right of appeal to the Exchange Board of Directors, the SEC, and the courts, or otherwise challenge the validity of the supervisory plan, if the supervisory plan is accepted.

(B) any right of the disqualified Participant or Participant Firm, sponsoring Participant or Participant Firm, and/or disqualified person to claim bias or prejudice by the Department of

Member Regulation, the CRO, the Exchange Board of Directors, or any member of the Exchange Board of Directors, in connection with such person's or body's participation in discussions regarding the terms and conditions of the Department of Member Regulation's recommendation or the supervisory plan, or other consideration of the recommendation or supervisory plan, including acceptance or rejection of such recommendation or supervisory plan; and

(C) any right of the disqualified Participant or Participant Firm, sponsoring Participant or Participant Firm, and/or disqualified person to claim that a person violated the ex parte prohibitions of Rule 10.9143 or the separation of functions prohibitions of Rule 10.9144, in connection with such person's or body's participation in discussions regarding the terms and conditions of the recommendation or supervisory plan, or other consideration of the recommendation or supervisory plan, including acceptance or rejection of such recommendation or supervisory plan.

(2) If a recommendation or supervisory plan is rejected, the disqualified Participant or Participant Firm, sponsoring Participant or Participant Firm, and/or disqualified person shall be bound by the waivers made under paragraph (a)(1) for conduct by persons or bodies occurring during the period beginning on the date the supervisory plan was submitted and ending upon the rejection of the supervisory plan and shall have the right to proceed under this rule and Rule 10.9524, as applicable.

(3) If the disqualified Participant or Participant Firm, sponsoring Participant or Participant Firm, and/or disqualified person execute the letter consenting to the supervisory plan, it shall be submitted to the CRO by the Department of Member Regulation with a proposed Notice under Exchange Act Rule 19h-1, where required. The CRO may accept or reject the recommendation of the Department of Member Regulation and the supervisory plan.

(4) If the recommendation and supervisory plan is accepted by the CRO, it shall be deemed final and, where required, the proposed Notice under Exchange Act Rule 19h-1 will be filed by the Exchange. If the recommendation and supervisory plan are rejected by the CRO, the Exchange may take any other appropriate action with respect to the disqualified Participant or Participant Firm, sponsoring Participant or Participant Firm, and/or disqualified person. If the recommendation and supervisory plan are rejected, the disqualified Participant or Participant Firm, sponsoring Participant or Participant Firm, and/or disqualified person shall not be prejudiced by the execution of the letter

consenting to the supervisory plan under this paragraph (a) and the letter may not be introduced into evidence in any proceeding.

**(b)** With respect to disqualifications arising solely from findings or orders specified in Section 15(b)(4)(D), (E) or (H) of the Exchange Act or arising under Section 3(a)(39)(E) of the Exchange Act, after an application is filed, in approving an application under Rule 10.9522(e)(2)(F), the Department of Member Regulation is authorized to accept the membership or continued membership of a disqualified Participant or Participant Firm or sponsoring Participant or Participant Firm or the association or continuing association of a disqualified person pursuant to a supervisory plan where the disqualified Participant or Participant Firm, sponsoring Participant or Participant Firm, and/or disqualified persons, as the case may be, consent to the imposition of the supervisory plan. The disqualified Participant or Participant Firm, sponsoring Participant or Participant Firm, and/or disqualified person, as the case may be, shall execute a letter consenting to the imposition of the supervisory plan. The Department of Member Regulation shall prepare a proposed Notice under Exchange Act Rule 19h-1, where required, and the Exchange shall file such Notice.

(1) If a disqualified Participant or Participant Firm, sponsoring Participant or Participant Firm, and/or disqualified person submitted an executed letter consenting to a supervisory plan, by the submission of such letter, the disqualified Participant or Participant Firm, sponsoring Participant or Participant Firm and/or disqualified person waive:

(A) the right of appeal to the Exchange Board of Directors, the SEC, and the courts, or otherwise challenge the validity of the supervisory plan, if the supervisory plan is accepted;

(B) any right of the disqualified Participant or Participant Firm, sponsoring Participant or Participant Firm, and/or disqualified person to claim bias or prejudice by the Department of Member Regulation or the CRO in connection with such person's or body's participation in discussions regarding the terms and conditions of the Department of Member Regulation's recommended supervisory plan, or other consideration of the supervisory plan, including acceptance or rejection of such recommendation or supervisory plan; and

(C) any right of the disqualified Participant or Participant Firm, sponsoring Participant or Participant Firm, and/or disqualified person to claim that a person violated the ex parte prohibitions of Rule 10.9143 or the separation of functions prohibitions of Rule 10.9144, in connection with such person's or body's participation in discussions regarding the terms and conditions of the

supervisory plan, or other consideration of the supervisory plan, including acceptance or rejection of such supervisory plan.

(2) If the supervisory plan is rejected, the disqualified Participant or Participant Firm, sponsoring Participant or Participant Firm, and/or disqualified person shall be bound by the waivers made under paragraph (b)(1) for conduct by persons or bodies occurring during the period beginning on the date the supervisory plan was submitted and ending upon the rejection of the supervisory plan and shall have the right to proceed under Rule 10.9524.

### **Rule 10.9524. Exchange Board of Directors Consideration**

#### **(a) Request for Review**

A disqualified Participant or Participant Firm, sponsoring Participant or Participant Firm, or applicant may request that the Exchange Board of Directors review a decision to reject a supervisory plan under Rule 10.9523. 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 decision is served. The Secretary of the Exchange shall give notice of any such request for review to the CRO and the Department of Member Regulation.

#### **(b) Review by Exchange Board of Directors**

Any review by the Exchange Board of Directors shall be based on oral arguments and written briefs and shall be limited to consideration of the record before the Department of Member Regulation and the CRO. Upon review, the Exchange Board of Directors, by the affirmative vote of a majority of the Exchange Board of Directors then in office, may sustain, modify, or reverse any such decision. Unless the Exchange Board of Directors otherwise specifically directs, the decision of the Exchange Board of Directors after review shall be final and conclusive subject to the provisions for review of the Securities Exchange Act of 1934.

#### **(c) Remand**

Notwithstanding the foregoing, if either Party upon review applies to the Exchange Board of Directors for leave to adduce additional evidence, and shows to the satisfaction of the Exchange Board of Directors that the additional evidence is material and that there was reasonable ground for failure to adduce it previously, the Exchange Board of Directors may remand the matter for further proceedings, in whatever manner and on whatever conditions the Exchange Board of Directors considers appropriate.

**Rule 10.9525. Reserved.**

**Rule 10.9526. Reserved.**

**Rule 10.9527. Application to SEC for Review**

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

**Rule 10.9550. Expedited Proceedings****Rule 10.9551. Failure to Comply with Public Communication Standards Pursuant to FINRA Rule 2210 as Incorporated by Reference in Rule 11.2210****(a) Notice of Pre-Use Filing Requirement**

Pursuant to Rule 11.2210(c)(1)(B), Regulatory Staff may issue a written notice requiring a Participant or Participant Firm to file communications with the FINRA's Advertising Regulation Department at least ten days prior to use if Regulatory Staff determines that the Participant or Participant Firm has departed from the standards of Rule 11.2210.

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

Except as provided below, Regulatory Staff shall serve the Participant or Participant Firm (or counsel representing the Participant or Participant Firm or other person authorized to represent others under Rule 10.9141, when counsel or other person authorized to represent others under Rule 10.9141 agrees to accept service for the Participant or Participant Firm) with such notice in accordance with Rule 10.9134 or by email. Papers served on a Participant or Participant Firm by email shall be sent to the email address on file with the Exchange and shall also be served by either overnight courier or personal delivery in conformity with paragraphs (a)(1) and (3) and (b)(1) and (2) of Rule 10.9134. Papers served on counsel for a Participant or Participant Firm, or other person authorized to represent others under Rule 10.9141, by email shall be sent to the email address that counsel or other person authorized to represent others under Rule 10.9141 provides and shall also be served by either overnight courier or personal delivery in conformity with paragraphs (a)(1) and (3) of Rule 10.9134. Service is complete upon sending the notice by email, mailing the notice by U.S. Postal Service first class mail, first class certified mail, first class registered mail, or Express Mail, sending the notice through a courier service, or delivering it in person, except that, where duplicate service is required, service is complete when the duplicate service is complete.

**(c) Contents of Notice**

A notice issued under this Rule shall state the specific grounds and include the factual basis for the Exchange action. The notice shall state when the Exchange action will take effect. The notice shall state that the respondent may file a written request for a hearing with the Office of Hearing Officers pursuant to Rule 10.9559. The notice also shall inform the respondent of the applicable deadline for filing a request for a hearing and

shall state that a request for a hearing must set forth with specificity any and all defenses to the Exchange action. In addition, the notice shall explain that, pursuant to Rules 10.8310(a) and 10.9559(n), a Hearing Officer or, if applicable, Hearing Panel, may approve, modify or withdraw any and all sanctions or limitations imposed by the notice, and may impose any other fitting sanction.

**(d) Effective Date of Notice of Pre-Use Filing Requirement**

Pursuant to Rule 11.2210(c)(1)(B), the pre-use filing requirement referenced in a notice issued and served under this Rule shall become effective 21 days after service of the notice, unless stayed by a request for a hearing pursuant to Rule 10.9559.

**(e) Request for Hearing**

A Participant or Participant Firm served with a notice under this Rule may file with the Office of Hearing Officers a written request for a hearing pursuant to Rule 10.9559. A request for a hearing shall be made before the effective date of the notice, as indicated in paragraph (d) of this Rule. A request for a hearing must set forth with specificity any and all defenses to the Exchange action.

**(f) Failure to Request Hearing**

If a Participant or Participant Firm does not timely request a hearing, the pre-use filing requirements specified in the notice shall become effective 21 days after service of the notice and the notice shall constitute final Exchange action.

**(g) Request for Modification or Termination of Pre-Use Filing Requirement**

A Participant or Participant Firm that is subject to a pre-use filing requirement under this Rule may file a written request for modification or termination of the requirement. Such request shall be filed with the head of the 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, with the head of the Exchange department or office that is so designated. The head of the appropriate department or office may grant relief for good cause shown.

**Rule 10.9552. Failure to Provide Information or Keep Information Current**

**(a) Notice of Suspension of a Participant, Participant Firm or Covered Person if Corrective Action is Not Taken**

If a Participant, Participant Firm 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, Regulatory Staff may provide written notice to such Participant, Participant Firm 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 Participant, Participant Firm or of association of the covered person with any Participant or Participant Firm.

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

Except as provided below, Regulatory Staff shall serve the Participant, Participant Firm or covered person (or counsel representing the Participant, Participant Firm or covered person, or other person authorized to represent others under Rule 10.9141, when counsel or other person authorized to represent others under Rule 10.9141 agrees to accept service for the Participant, Participant Firm or covered person) with such notice in accordance with Rule 10.9134 or by email. A copy of a notice under this Rule that is served on a covered person also shall be served on such Participant or Participant Firm. Papers served on a Participant or Participant Firm by email shall be sent to the email address on file with the Exchange and shall also be served by either overnight courier or personal delivery in conformity with paragraphs (a)(1) and (3) and (b)(1) and (2) of Rule 10.9134. Papers served on a person by email shall be sent to the person's last known email address and shall also be served by either overnight courier or personal delivery in conformity with paragraphs (a)(1) and (3) and (b)(1) of Rule 10.9134. Papers served on counsel for a Participant, Participant Firm or covered person, or other person authorized to represent others under Rule 10.9141, by email shall be sent to the email address that counsel or other person authorized to represent others under Rule 10.9141 provides and shall also be served by either overnight courier or personal delivery in conformity with paragraphs (a)(1) and (3) of Rule 10.9134. Service is complete upon sending the notice by email, mailing the notice by U.S. Postal Service first class mail, first class certified mail, first class registered mail, or Express Mail, sending the notice through a courier service, or delivering it in person, except that, where duplicate service is required, service is complete when the duplicate service is complete.

**(c) Contents of Notice**

A notice issued under this Rule shall state the specific grounds and include the factual basis for the Exchange action. The notice shall state when the Exchange action will take effect and explain what the respondent must do to avoid such action. The notice shall state that the respondent may file a written request for a hearing with the Office of Hearing Officers pursuant to Rule 10.9559. The notice also shall inform the respondent of the applicable deadline for filing a request for a hearing and shall state that a request for a hearing must set forth with specificity any and all defenses to the Exchange action. In addition, the notice shall explain that, pursuant to Rules 10.8310(a) and 10.9559(n), a Hearing Officer or, if applicable, Hearing Panel, may approve, modify or withdraw any and all sanctions or limitations imposed by the notice, and may impose any other fitting sanction.

**(d) Effective Date of Suspension**

The suspension referenced in a notice issued and served under this Rule shall become effective 21 days after service of the notice, unless stayed by a request for a hearing pursuant to Rule 10.9559.

**(e) Request for Hearing**

A Participant, Participant Firm or covered person served with a notice under this Rule may file with the Office of Hearing Officers a written request for a hearing pursuant to Rule 10.9559. A request for a hearing shall be made before the effective date of the notice, as indicated in paragraph (d) of this Rule. A request for a hearing must set forth with specificity any and all defenses to the Exchange action.

**(f) Request for Termination of the Suspension**

A Participant, Participant Firm or covered person subject to a suspension pursuant to this Rule may file a written request for termination of the suspension on the ground of full compliance with the notice or decision. Such request shall be filed with the head of the 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, with the head of the Exchange department or office that is so designated. The head of the appropriate department or office may grant relief for good cause shown.

**(g) Settlement Procedure**

Uncontested offers of settlement shall be permitted under this Rule and shall conform to the requirements of Rule 10.9270, except that, if an uncontested offer of settlement, made under Rule 10.9270(e) after a hearing on the merits has begun, is accepted by the Hearing Officer, the Hearing Officer shall issue the order of acceptance, which shall constitute final Exchange action. Contested offers of settlement shall not be considered in proceedings initiated under this Rule.

**(h) Defaults**

A Participant, Participant Firm or covered person who is suspended under this Rule and fails to request termination of the suspension within three months of issuance of the original notice of suspension will automatically be expelled or barred.

**Rule 10.9553. Reserved.**

**Rule 10.9554. 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 Participant, Participant Firm 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, Regulatory Staff may provide written notice to such Participant, Participant Firm or covered person stating that the failure to comply within 21 days of service of the notice will result in a suspension or cancellation of membership or a suspension from associating with any Participant or Participant Firm. When a Participant, Participant Firm 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, Regulatory Staff shall serve the Participant, Participant Firm or covered person (or counsel representing the Participant, Participant Firm or covered person, or other person authorized to represent others under Rule 10.9141, when counsel or other person authorized to represent others under Rule 10.9141 agrees to accept service for the Participant, Participant Firm or covered person) with such notice in accordance with Rule 10.9134 or by email. A copy of a notice under this Rule that is served on a covered person also shall be served on such Participant or Participant Firm. Papers served on a Participant or Participant Firm by email shall be sent to the email address on file with the Exchange and shall also be served by either overnight courier or personal delivery in conformity with paragraphs (a)(1) and (3) and (b)(1) and (2) of Rule 10.9134. Papers served on a person by email shall be sent to the person's last known email address and shall also be served by either overnight courier or personal delivery in conformity with paragraphs (a)(1) and (3) and (b)(1) of Rule 10.9134. Papers served on counsel for a Participant, Participant Firm or covered person, or other person authorized to represent others under Rule 10.9141, by email shall be sent to the email address that counsel or other person authorized to represent others under Rule 10.9141 provides and shall also be served by either overnight courier or personal delivery in conformity with paragraphs (a)(1) and (3) of Rule 10.9134. Service is complete upon sending the notice by email, mailing the notice by U.S. Postal Service first class mail, first class certified mail, first class registered mail, or Express Mail, sending the notice through a courier service, or delivering it in person, except that, where duplicate service is required, service is complete when the duplicate service is complete.

### **(c) Contents of Notice**

A notice issued under this Rule shall state the specific grounds and include the factual basis for the Exchange action. The notice shall state when the Exchange action will take effect and explain what the respondent must do to avoid such action. The notice shall state that the respondent may file a written request for a hearing with the Office of Hearing Officers pursuant to Rule 10.9559. The notice also shall inform the respondent of the applicable deadline for filing a request for a hearing and shall state that a request for a hearing must set forth with specificity any and all defenses to the Exchange action. In addition, the notice shall explain that, pursuant to Rules 10.8310(a) and 10.9559(n), a Hearing Officer or, if applicable, Hearing Panel, may approve, modify or withdraw any

and all sanctions or limitations imposed by the notice, and may impose any other fitting sanction.

**(d) Effective Date of Suspension or Cancellation**

The suspension or cancellation referenced in a notice issued and served under this Rule shall become effective 21 days after service of the notice, unless stayed by a request for a hearing pursuant to Rule 10.9559.

**(e) Request for Hearing**

A Participant, Participant Firm or covered person served with a notice under this Rule may file with the Office of Hearing Officers a written request for a hearing pursuant to Rule 10.9559. A request for a hearing shall be made before the effective date of the notice, as indicated in paragraph (d) of this Rule. A request for a hearing must set forth with specificity any and all defenses to the Exchange action.

**(f) Failure to Request Hearing**

If a Participant, Participant Firm or covered person does not timely request a hearing, the suspension or cancellation specified in the notice shall become effective 21 days after the service of the notice and the notice shall constitute final Exchange action.

**(g) Request for Termination of the Suspension**

A Participant, Participant Firm or covered person subject to a suspension under this Rule may file a written request for termination of the suspension on the ground of full compliance with the notice or decision. Such request shall be filed with the head of the Exchange department or office that issued the notice or, if another department or office is named as the party handling the matter on behalf of the issuing department or office, with the head of the department or office that is so designated. The appropriate head of the department or office may grant relief for good cause shown.

**Rule 10.9555. Failure to Meet the Eligibility or Qualification Standards or Prerequisites for Access to Services**

**(a) Notice to Participant, Participant Firm or Covered Person of Suspension, Cancellation, Bar, or Limitation or Prohibition on Access to Services**

(1) If a Participant, Participant Firm or covered person does not meet the eligibility or qualification standards set forth in the Exchange's Rules, Exchange staff may provide written notice to such Participant, Participant Firm or covered person stating that the failure to become eligible or qualified will result in a suspension or cancellation of membership or a suspension or bar from associating with any Participant or Participant Firm.

(2) If a Participant, Participant Firm or covered person does not meet the prerequisites for access to services offered by the Exchange or a Participant or Participant Firm thereof or cannot be permitted to continue to have access to services offered by the Exchange or a Participant or Participant Firm thereof with safety to investors, creditors, Participants, Participant Firms or the Exchange, Exchange staff may provide written notice to such Participant, Participant Firm or covered person limiting or prohibiting access to services offered by the Exchange or a Participant or Participant Firm thereof.

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

Except as provided below, Exchange staff shall serve the Participant, Participant Firm or covered person (or counsel representing the Participant, Participant Firm or covered person, or other person authorized to represent others under Rule 10.9141, when counsel or other person authorized to represent others under Rule 10.9141 agrees to accept service for the Participant, Participant Firm or covered person) with such notice in accordance with Rule 10.9134 or by email. A copy of a notice under this Rule that is served on a covered person also shall be served on such Participant or Participant Firm. Papers served on a Participant or Participant Firm by email shall be sent to the email address on file with the Exchange and shall also be served by either overnight courier or personal delivery in conformity with paragraphs (a)(1) and (3) and (b)(1) and (2) of Rule 10.9134. Papers served on a person by email shall be sent to the person's last known email address and shall also be served by either overnight courier or personal delivery in conformity with paragraphs (a)(1) and (3) and (b)(1) of Rule 10.9134. Papers served on counsel for a Participant, Participant Firm or covered person, or other person authorized to represent others under Rule 10.9141, by email shall be sent to the email address that counsel or other person authorized to represent others under Rule 10.9141 provides and shall also be served by either overnight courier or personal delivery in conformity with paragraphs (a)(1) and (3) of Rule 10.9134. Service is complete upon sending the notice by email, mailing the notice by U.S. Postal Service first class mail, first class certified mail, first class registered mail, or Express Mail, sending the notice through a courier service, or delivering it in person, except that, where duplicate service is required, service is complete when the duplicate service is complete.

### **(c) Contents of Notice**

A notice issued under this Rule shall state the specific grounds and include the factual basis for the Exchange action. The notice shall state when the Exchange action will take effect and explain what the respondent must do to avoid such action. The notice shall state that the respondent may file a written request for a hearing with the Office of Hearing Officers pursuant to Rule 10.9559. The notice also shall inform the respondent of the applicable deadline for filing a request for a hearing and shall state that a request for a hearing must set forth with specificity any and all defenses to the Exchange action. In addition, the notice shall explain that, pursuant to Rules 10.8310(a) and 10.9559(n), a Hearing Officer or, if applicable, Hearing Panel, may approve, modify or withdraw any

and all sanctions or limitations imposed by the notice, and may impose any other fitting sanction.

**(d) Effective Date of Limitation, Prohibition, Suspension, Cancellation or Bar**

The limitation, prohibition, suspension, cancellation or bar referenced in a notice issued under this Rule shall become effective 14 days after service of the notice, except that the effective date for a notice of a limitation or prohibition on access to services offered by the Exchange or a Participant or Participant Firm thereof with respect to services to which the Participant, Participant Firm or covered person does not have access shall be upon service of the notice. A request for a hearing, pursuant to Rule 10.9559, shall stay the effectiveness of the notice, except that the effectiveness of a notice of a limitation or prohibition on access to services offered by the Exchange or a Participant or Participant Firm thereof with respect to services to which the Participant, Participant Firm or covered person does not have access shall not be stayed by a request for a hearing.

**(e) Request for Hearing**

A Participant, Participant Firm or covered person served with a notice under this Rule may file with the Office of Hearing Officers a written request for a hearing pursuant to Rule 10.9559. A request for a hearing shall be made within 14 days after service of the notice. A request for a hearing must set forth with specificity any and all defenses to the Exchange action.

**(f) Failure to Request Hearing**

If a Participant, Participant Firm or covered person does not timely request a hearing, the limitation, prohibition, suspension, cancellation or bar specified in the notice shall become effective 14 days after service of the notice, except that the effective date for a notice of a limitation or prohibition on access to services offered by the Exchange or a Participant or Participant Firm thereof with respect to services to which the Participant, Participant Firm or covered person does not have access shall be upon service of the notice. The notice shall constitute final Exchange action if the Participant, Participant Firm or covered person does not request a hearing within 14 days after service of the notice.

**(g) Request for Termination of the Limitation, Prohibition or Suspension**

A Participant, Participant Firm or covered person subject to a limitation, prohibition or suspension under this Rule may file a written request for termination of the limitation, prohibition or suspension on the ground of full compliance with the notice or decision. Such request shall be filed with the head of the Exchange department or office that issued the notice or, if another department or office is named as the party handling the matter on behalf of the issuing department or office, with the head of the department or office that is so designated. The appropriate head of the department or office may grant relief for good cause shown.

**Rule 10.9556. Failure to Comply with Temporary and Permanent Cease and Desist Orders****(a) Notice of Suspension, Cancellation or Bar**

If a Participant, Participant Firm or covered person fails to comply with a temporary or permanent cease and desist order issued under the Rule 10.9200, 10.9300 or 10.9800 Series, 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 Participant, Participant Firm 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 Participant or Participant Firm.

**(b) Service of Notice**

Regulatory Staff shall serve the Participant, Participant Firm or covered person subject to a notice issued under this Rule (or upon counsel representing the Participant, Participant Firm or covered person, or other person authorized to represent others under Rule 10.9141, when counsel or other person authorized to represent others under Rule 10.9141 agrees to accept service for the Participant, Participant Firm or covered person) by email, overnight courier or personal delivery. Papers served on a Participant, Participant Firm, covered person or counsel for such Participant, Participant Firm or covered person, or other person authorized to represent others under Rule 10.9141 by overnight courier or personal delivery shall conform to paragraphs (a)(1) and (3) and, with respect to a Participant, Participant Firm or covered person, (b)(1) and (2) of Rule 10.9134. Papers served on a Participant or Participant Firm by email shall be sent to the email address on file with the Exchange and shall also be served by either overnight courier or personal delivery in conformity with paragraphs (a)(1) and (3) and (b)(1) and (2) of Rule 10.9134. Papers served on a person by email shall be sent to the person's last known email address and shall also be served by either overnight courier or personal delivery in conformity with paragraphs (a)(1) and (3) and (b)(1) of Rule 10.9134. Papers served on counsel for a Participant, Participant Firm or covered person, or other person authorized to represent others under Rule 10.9141 by email shall be sent to the email address that counsel or other person authorized to represent others under Rule 10.9141 provides and shall also be served by either overnight courier or personal delivery in conformity with paragraphs (a)(1) and (3) of Rule 10.9134. A copy of a notice under this Rule that is served on a covered person also shall be served on such Participant or Participant Firm. Service is complete upon sending the notice by email or overnight courier or delivering it in person, except that, where duplicate service is required, service is complete upon sending the duplicate service.

**(c) Contents of Notice**

The notice shall explicitly identify the provision of the permanent or temporary cease and desist order that is alleged to have been violated and shall contain a statement of facts

specifying the alleged violation. The notice shall state when the Exchange action will take effect and explain what the respondent must do to avoid such action. The notice shall state that the respondent may file a written request for a hearing with the Office of Hearing Officers pursuant to Rule 10.9559. The notice also shall inform the respondent of the applicable deadline for filing a request for a hearing and shall state that a request for a hearing must set forth with specificity any and all defenses to the Exchange action. In addition, the notice shall explain that, pursuant to Rules 10.8310(a) and 10.9559(n), a Hearing Officer or, if applicable, Hearing Panel, may approve, modify or withdraw any and all sanctions or limitations imposed by the notice, and may impose any other fitting sanction.

**(d) Effective Date of Suspension, Cancellation or Bar**

The suspension, cancellation or bar referenced in a notice issued and served under this Rule shall become effective seven days after service of the notice, unless stayed by a request for a hearing pursuant to Rule 10.9559.

**(e) Request for a Hearing**

A Participant, Participant Firm or covered person served with a notice under this Rule may file with the Office of Hearing Officers a written request for a hearing pursuant to Rule 10.9559. A request for a hearing shall be made before the effective date of the notice, as indicated in paragraph (d) of this Rule. A request for a hearing must set forth with specificity any and all defenses to the Exchange action.

**(f) Failure to Request Hearing**

If a Participant, Participant Firm or covered person does not timely request a hearing, the suspension, cancellation or bar specified in the notice shall become effective seven days after the service of the notice and the notice shall constitute final Exchange action.

**(g) Request for Termination of the Suspension**

A Participant, Participant Firm or covered person subject to a suspension imposed after the process described in paragraphs (a) through (f) of this Rule may file a written request for termination of the suspension on the ground of full compliance with the notice or decision. Such request shall be filed with the head of the Exchange department or office that issued the notice or, if another department or office is named as the party handling the matter on behalf of the issuing department or office, with the head of the department or office that is so designated. The appropriate head of the department or office may grant relief for good cause shown.

**(h) Subsequent Proceedings**

If a Participant, Participant Firm or covered person fails to comply with a temporary or permanent cease and desist order issued under the Rule 10.9200, 10.9300, or 10.9800



Series, and has previously been served under paragraph (a) of this Rule with a notice for a failure to comply with any provision of the same temporary or permanent cease and desist order, Regulatory Staff, after receiving written authorization from the CRO, may file a petition with the Office of Hearing Officers seeking a hearing pursuant to Rule 10.9559 and the imposition of any fitting sanctions for such Participant's, Participant Firm's or covered person's failure to comply with the temporary or permanent cease and desist order.

- (1) The petition shall be served in accordance with paragraph (b) of this Rule, and it shall be filed with the Office of Hearing Officers.
- (2) The petition shall explicitly identify the provision of the permanent or temporary cease and desist order that is alleged to have been violated, contain a statement of facts specifying the alleged violation, describe with particularity the sanctions that Regulatory Staff seeks to have imposed, and note that a hearing under Rule 10.9559 is requested. Regulatory Staff may seek the imposition of any fitting sanction.
- (3) Upon the filing of the petition, Rule 10.9559 shall govern the proceeding. Respondent's full compliance with the temporary or permanent cease and desist order is not a ground for dismissing a proceeding brought pursuant to this paragraph (h).
- (4) After having filed the petition, Regulatory Staff can withdraw it without prejudice and shall be permitted to refile a petition based on allegations concerning the same facts and circumstances that are set forth in the withdrawn petition.

**Rule 10.9557. Procedures for Regulating Activities Under Article 7, Rules 3 or 8 Regarding a Participant or Participant Firm Experiencing Financial or Operational Difficulties**

**(a) Notice of Requirements and/or Restrictions; Exchange Action**

Exchange staff may issue a notice directing a Participant or Participant Firm to comply with the provisions of Article 7, Rules 3 or 8 or restrict its business activities, either by limiting or ceasing to conduct those activities consistent with Article 7, Rules 3 or 8, if Exchange staff has reason to believe that a condition specified in Article 7, Rules 3 or 8 exists. A notice served under this Rule shall constitute Exchange action.

**(b) Service of Notice**

Exchange staff shall serve a Participant or Participant Firm subject to a notice issued under this Rule (or counsel representing the Participant or Participant Firm, or other person authorized to represent others under Rule 10.9141, when counsel or other person authorized to represent others under Rule 10.9141 agrees to accept service for the Participant or Participant Firm) by email, overnight courier or personal delivery. Papers served by overnight courier or personal delivery shall conform to paragraphs (a)(1) and

(3) and (b)(1) and (2) of Rule 10.9134. Papers served on a Participant or Participant Firm by email shall be sent to the email address on file with the Exchange and shall also be served by either overnight courier or personal delivery in conformity with paragraphs (a)(1) and (3) and (b)(1) and (2) of Rule 10.9134. Papers served on counsel for a Participant or Participant Firm, or other person authorized to represent others under Rule 10.9141 by email shall be sent to the email address that counsel or other person authorized to represent others under Rule 10.9141 provides and shall also be served by either overnight courier or personal delivery in conformity with paragraphs (a)(1) and (3) of Rule 10.9134. Service is complete upon sending the notice by email or overnight courier or delivering it in person, except that, where duplicate service is required, service is complete upon sending the duplicate service.

### **(c) Contents of Notice**

A notice issued under this Rule shall:

(1) state the specific grounds and include the factual basis for the Exchange action;

(2) specify the date of the notice and the requirements and/or restrictions being imposed by the notice;

(3) state that the requirements and/or restrictions imposed by the notice are immediately effective;

(4) specify the conditions for complying with and, where applicable, avoiding or terminating the requirements and/or restrictions imposed by the notice;

(5) inform the Participant or Participant Firm that, pursuant to paragraph (f) of this Rule, the failure to comply with the requirements and/or restrictions imposed by an effective notice under this Rule shall be deemed, without further notice from Exchange staff, to result in automatic and immediate suspension unless Exchange staff issues a letter of withdrawal of all requirements and/or restrictions imposed by the notice pursuant to paragraph (g)(2) of this Rule;

(6) explain that the Participant or Participant Firm may make a request for a letter of withdrawal of the notice pursuant to paragraph (e) of this Rule;

(7) state that, in addition to making a request for a letter of withdrawal of the notice, the Participant or Participant Firm may file a written request for a hearing with the Office of Hearing Officers pursuant to Rule 10.9559;

(8) inform the Participant or Participant Firm of the applicable deadline for filing a request for a hearing and state that a request for a hearing must set forth with specificity any and all defenses to the Exchange action; and

(9) explain that, pursuant to Rule 10.9559(n), a Hearing Panel may approve or withdraw the requirements and/or restrictions imposed by the notice, and that if the Hearing Panel approves the requirements and/or restrictions imposed by the notice and finds that the Participant or Participant Firm has not complied with all of them, the Hearing Panel shall impose an immediate suspension on the Participant or Participant Firm.

**(d) Effectiveness of the Requirements and/or Restrictions**

The requirements and/or restrictions imposed by a notice issued and served under this Rule are immediately effective, except that a timely request for a hearing shall stay the effective date for ten business days after service of the notice or until the Office of Hearing Officers issues a written order under Rule 10.9559(o)(4)(A) (whichever period is less), unless the Exchange's CRO (or such other senior officer as the CRO may designate) determines that such a stay cannot be permitted with safety to investors, creditors or other Participants or Participant Firms. Such a determination by the Exchange's CRO (or such other senior officer as the CRO may designate) cannot be appealed. An extension of the stay period is not permitted. Where a timely request for a hearing stays the action for ten business days after service of the notice or until the Office of Hearing Officers issues a written order under Rule 10.9559(o)(4)(A) (whichever period is less), the notice shall not be deemed to have taken effect during that entire period.

Any requirements and/or restrictions imposed by an effective notice shall remain in effect unless Exchange staff shall remove or reduce the requirements and/or restrictions pursuant to a letter of withdrawal of the notice issued as set forth in paragraph (g)(2) of this Rule.

**(e) Request for a Letter of Withdrawal of the Notice; Request for a Hearing**

A Participant or Participant Firm served with a notice under this Rule may request from Exchange staff a letter of withdrawal of the notice pursuant to paragraph (g)(2) of this Rule and/or file with the Office of Hearing Officers a written request for a hearing pursuant to Rule 10.9559.

(1) A request for a letter of withdrawal of the notice may be made at any time after service of a notice under this Rule. The Participant or Participant Firm making the request must demonstrate to the satisfaction of Exchange staff that the requirements and/or restrictions imposed by the notice should be removed or reduced. If such a request

is denied by Exchange staff, the Participant or Participant Firm shall not be precluded from making a subsequent request or requests.

(2) A request for a hearing shall be made within two business days after service of a notice under this Rule. A request for a hearing must set forth with specificity any and all defenses to the Exchange action. A request for a hearing may seek to contest:

(A) the validity of the requirements and/or restrictions imposed by the notice (as the same may have been reduced by a letter of withdrawal pursuant to paragraph (g)(2) of this Rule, where applicable); and/or

(B) Exchange staff's determination not to issue a letter of withdrawal of all requirements and/or restrictions imposed by the notice, if such was requested by the Participant or Participant Firm.

#### **(f) Enforcement of Notice**

A Participant or Participant Firm that has failed to comply with the requirements and/or restrictions imposed by an effective notice under this Rule shall be deemed, without further notice from Exchange staff, automatically and immediately suspended. Such suspension shall remain in effect unless Exchange staff shall issue a letter, pursuant to paragraph (g)(2) of this Rule, stating that the suspension is lifted.

#### **(g) Additional Requirements and/or Restrictions or the Removal or Reduction of Requirements and/or Restrictions; Letter of Withdrawal of the Notice**

##### **(1) Additional Requirements and/or Restrictions**

If a Participant or Participant Firm continues to experience financial or operational difficulty specified in Article 7, Rules 3 or 8, notwithstanding an effective notice, Exchange staff may impose additional requirements and/or restrictions by serving an additional notice under paragraph (b) of this Rule. The additional notice shall inform the Participant or Participant Firm that it may apply for relief from the additional requirements and/or restrictions by filing a written request for a letter of withdrawal of the notice and/or a written request for a hearing before the Office of Hearing Officers under Rule 10.9559. The procedures delineated in this Rule shall be applicable to such additional notice.

##### **(2) Removal or Reduction of Requirements and/or Restrictions and/or Lifting of Suspension; Letter of Withdrawal**

**(A) Removal or Reduction of Requirements and/or Restrictions**

If, upon the Participant's or Participant Firm's demonstration to the satisfaction of Exchange staff, Exchange staff determines that any requirements and/or restrictions imposed by a notice under this Rule should be removed or reduced, Exchange staff shall serve the Participant or Participant Firm, pursuant to paragraph (b) of this Rule, a written letter of withdrawal that shall, in the sole discretion of Exchange staff, withdraw the notice in whole or in part. A notice that is withdrawn in part shall remain in force, unless Exchange staff shall remove the remaining requirements and/or restrictions.

**(B) Lifting of Suspension**

If, upon the Participant's or Participant Firm's demonstration to the satisfaction of Exchange staff, Exchange staff determines that a suspension imposed by a notice under this Rule should be lifted, Exchange staff shall serve the Participant or Participant Firm, pursuant to paragraph (b) of this Rule, a letter that shall, in the sole discretion of Exchange staff, lift the suspension. Where all or some of the requirements and/or restrictions imposed by a notice issued under this Rule remain in force, the letter shall state that the Participant's or Participant Firm's failure to continue to comply with those requirements and/or restrictions that remain effective shall result in the Participant or Participant Firm being immediately suspended.

**(h) Exchange Staff**

For purposes of this Rule, "Exchange staff" shall mean:

- (1) the head of the Exchange department or office that issued the notice, or his or her written officer delegate; or
- (2) if another department or office is named as the party handling the matter on behalf of the issuing department or office, the head of the department or office that is so designated, or his or her written officer delegate.

**Rule 10.9558. Summary Proceedings for Actions Authorized by Section 6(d)(3) of the Exchange Act**

**(a) Notice of Initiation of Summary Proceedings**

The Exchange's CRO or such other senior officer as the CRO may designate may provide written authorization to Exchange staff to issue on a case-by-case basis a written notice that summarily:

(1) suspends a Participant, Participant Firm or covered person who has been and is expelled or suspended from any self-regulatory organization or barred or suspended from being associated with a member of any self-regulatory organization;

(2) suspends a Participant or Participant Firm that is in such financial or operating difficulty that Exchange staff determines and so notifies the SEC that the Participant or Participant Firm cannot be permitted to continue to do business as a Participant or Participant Firm with safety to investors, creditors, other Participants or Participant Firms, or the Exchange; or

(3) limits or prohibits any person with respect to access to services offered by the Exchange if paragraphs (a)(1) or (2) of this Rule or the provisions of Section 6(d)(3) of the Exchange Act applies to such person or, in the case of a person who is not a Participant, Participant Firm or covered person, if the Exchange's CRO or such other senior officer as the CRO may designate determines that such person does not meet the qualification requirements or other prerequisites for such access and such person cannot be permitted to continue to have such access with safety to investors, creditors, Participants, Participant Firms or the Exchange, and so notifies the SEC.

**(b) Service of Notice**

Exchange staff shall serve the Participant, Participant Firm or covered person or other person subject to a notice issued under this Rule (or counsel representing the Participant, Participant Firm or covered person, or other person authorized to represent others under Rule 10.9141, when counsel or other person authorized to represent others under Rule 10.9141 agrees to accept service for the Participant, Participant Firm or covered person) by email, overnight courier or personal delivery. Papers served by overnight courier or personal delivery shall conform to paragraphs (a)(1) and (3) and (b)(1) and (2) of Rule 10.9134. Papers served on a Participant or Participant Firm by email shall be sent to the email address on file with the Exchange staff and shall also be served by either overnight courier or personal delivery in conformity with paragraphs (a)(1) and (3) and (b)(1) and (2) of Rule 10.9134. Papers served on a person by email shall be sent to the person's last known email address and shall also be served by either overnight courier or personal delivery in conformity with paragraphs (a)(1) and (3) and (b)(1) of Rule 10.9134. Papers served on counsel for a Participant, Participant Firm or covered person, or other person authorized to represent others under Rule 10.9141 by email shall be sent to the email address that counsel or other person authorized to represent others under Rule 10.9141 provides and shall also be served by either overnight courier or personal delivery in

conformity with paragraphs (a)(1) and (3) of Rule 10.9134. A copy of a notice under this Rule that is served on a covered person also shall be served on such Participant or Participant Firm. Service is complete upon sending the notice by email or overnight courier or delivering it in person, except that, where duplicate service is required, service is complete upon sending the duplicate service.

### **(c) Contents of Notice**

A notice issued under this Rule shall state the specific grounds and include the factual basis for the Exchange action. The notice shall state when the Exchange action will take effect and explain what the respondent must do to avoid such action. The notice shall state that the respondent may file a written request for a hearing with the Office of Hearing Officers pursuant to Rule 10.9559. The notice also shall inform the respondent of the applicable deadline for filing a request for a hearing and shall state that a request for a hearing must set forth with specificity any and all defenses to the Exchange action. In addition, the notice shall explain that, pursuant to Rules 10.8310(a) and 10.9559(n), a Hearing Officer or, if applicable, Hearing Panel, may approve, modify or withdraw any and all sanctions or limitations imposed by the notice, and may impose any other fitting sanction.

### **(d) Effective Date of Limitation, Prohibition or Suspension**

The limitation, prohibition or suspension referenced in a notice issued and served under this Rule is immediately effective. The limitation, prohibition or suspension specified in the notice shall remain in effect unless, after a timely written request for a hearing and written request for a stay, the Chief Hearing Officer or Hearing Officer assigned to the matter finds good cause exists to stay the limitation, prohibition or suspension.

### **(e) Request for a Hearing and Stay**

A Participant, Participant Firm or covered person or other person subject to a notice issued under this Rule may file with the Office of Hearing Officers a written request for a hearing pursuant to Rule 10.9559. A request for a hearing shall be made within seven days after service of the notice issued under this Rule. A request for a hearing must set forth with specificity any and all defenses to the Exchange action.

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

### **(f) Failure to Request Hearing**

If a Participant, Participant Firm or covered person or other person subject to a notice issued under this Rule does not timely request a hearing within the time period specified in paragraph (e) of this Rule, the notice shall constitute final Exchange action.

**(g) Request for Termination of the Limitation, Prohibition or Suspension**

A Participant, Participant Firm or covered person or other person subject to a limitation, prohibition or suspension under this Rule may file a written request for termination of the limitation, prohibition or suspension on the ground of full compliance with the notice or decision. Such request shall be filed with the head of the Exchange department or office that issued the notice or, if another department or office is named as the party handling the matter on behalf of the issuing department or office, with the head of the department or office that is so designated. The appropriate head of the department or office may grant relief for good cause shown.

**Rule 10.9559. Hearing Procedures for Expedited Proceedings Under the Rule 10.9550 Series**

**(a) Applicability**

The hearing procedures under this Rule shall apply to a Participant, Participant Firm, covered person or other person who is served with a notice issued under the Rule 10.9550 Series and who timely requests a hearing or who is served with a petition instituting an expedited proceeding under Rule 10.9556(h). For purposes of this Rule, such Participants, Participant Firms, covered persons or other persons shall be referred to as respondents.

**(b) Computation of Time**

Rule 10.9138 shall govern the computation of time in proceedings brought under the Rule 10.9550 Series, except that intermediate Saturdays, Sundays and Federal holidays shall be included in the computation in proceedings brought under Rules 10.9556 through 10.9558, unless otherwise specified.

**(c) Stays**

(1) Unless the Chief Hearing Officer or the Hearing Officer assigned to the matter orders otherwise for good cause shown, a timely request for a hearing shall stay the effectiveness of a notice issued under Rules 10.9551 through 10.9556, except that: (A) the effectiveness of a notice of a limitation or prohibition on access to services offered by the Exchange or a Participant or Participant Firm thereof under Rule 10.9555 with respect to services to which the Participant, Participant Firm, covered person or other person does not have access shall not be stayed by a request for a hearing; and (B) this paragraph has no



applicability to a petition instituting an expedited proceeding under Rule 10.9556(h).

(2) A timely request for a hearing shall stay the effectiveness of a notice issued under Rule 10.9557 for ten business days after service of the notice or until the Office of Hearing Officers issues a written order under Rule 10.9559(o)(4)(A) (whichever period is less), unless the Exchange's CRO (or such other senior officer as the CRO may designate) determines that a notice under Rule 10.9557 shall not be stayed. Where a notice under Rule 10.9557 is stayed by a request for a hearing, such stay shall remain in effect only for ten business days after service of the notice or until the Office of Hearing Officers issues a written order under Rule 10.9559(o)(4)(A) (whichever period is less) and shall not be extended.

(3) A timely request for a hearing shall not stay the effectiveness of a notice issued under Rule 10.9558, unless the Chief Hearing Officer or the Hearing Officer assigned to the matter orders otherwise for good cause shown.

**(d) Appointment and Authority of Hearing Officer and/or Hearing Panel**

(1) For proceedings initiated under Rules 10.9554 and 10.9556(h), the Chief Hearing Officer shall appoint a Hearing Officer to preside over and act as the sole adjudicator for the matter.

(2) For proceedings initiated under Rules 10.9551, 10.9552, 10.9555, 10.9556 (except Rule 10.9556(h)), 10.9557 and 10.9558, the Chief Hearing Officer shall appoint a Hearing Panel composed of a Hearing Officer and two Panelists. The Hearing Officer shall serve as the chair of the Hearing Panel. For proceedings initiated under Rules 10.9551, 10.9552, 10.9555, 10.9556 (except Rule 10.9556(h)), 10.9557 and 10.9558, the Chief Hearing Officer shall select as Panelists persons who meet the qualifications delineated in Rules 10.9231 and 10.9232.

(3) Rules 10.9231(e), 10.9233 and 10.9234 shall govern disqualification, recusal or withdrawal of a Hearing Officer or, if applicable, Hearing Panelist.

(4) A Hearing Officer appointed pursuant to this provision shall have authority to do all things necessary and appropriate to discharge his or her duties as set forth under Rules 10.9235 and 10.9280.

(5) Hearings under the Rule 10.9550 Series shall be held by telephone conference, unless the Hearing Officer orders otherwise for good cause shown.

(6) For good cause shown, or with the consent of all of the parties to a proceeding, the Hearing Officer or, if applicable, the Hearing Panel may extend or shorten any time limits prescribed by this Rule other than those relating to Rule 10.9557.

**(e) Consolidation or Severance of Proceedings**

Rule 10.9214 shall govern the consolidation or severance of proceedings, except that, where one of the notices that are the subject of consolidation under this Rule requires that a hearing be held before a Hearing Panel, the hearing of the consolidated matters shall be held before a Hearing Panel. Where two consolidated matters contain different timelines under this Rule, the Chief Hearing Officer or Hearing Officer assigned to the matter has discretion to determine which timeline is appropriate under the facts and circumstances of the case. Where one of the consolidated matters includes an action brought under a Rule that does not permit a stay of the effectiveness of the notice or where Exchange's CRO (or such other senior officer as the CRO may designate), in the case of Rule 10.9557, or Hearing Officer, in the case of Rule 10.9558(d), determines that a request for a hearing shall not stay the effectiveness of the notice, the limitation, prohibition, condition, requirement, restriction, or suspension specified in the notice shall not be stayed pending resolution of the case. Where one of the consolidated matters includes an action brought under Rule 10.9557 that is stayed for up to ten business days, the requirement and/or restriction specified in the notice shall not be further stayed.

**(f) Time of Hearing**

(1) A hearing shall be held within five business days after a respondent subject to a notice issued under Rule 10.9557 files a written request for a hearing with the Office of Hearing Officers.

(2) A hearing shall be held within ten days after a respondent is served a petition seeking an expedited proceeding issued under Rule 10.9556(h).

(3) A hearing shall be held within 14 days after a respondent subject to a notice issued under Rules 10.9556 (except Rule 10.9556(h)) and 10.9558 files a written request for a hearing with the Office of Hearing Officers.

(4) A hearing shall be held within 30 days after a respondent subject to a notice issued under Rules 10.9551 through 10.9555 files a written request for a hearing with the Office of Hearing Officers.

(5) The timelines established by paragraphs (f)(1) through (f)(4) confer no substantive rights on the parties.

**(g) Notice of Hearing**

The Hearing Officer shall issue a notice stating the date, time, and place of the hearing as follows:

(1) At least two business days prior to the hearing in the case of an action brought pursuant to Rule 10.9557;

(2) At least six days prior to the hearing in the case of an action brought pursuant to Rule 10.9556(h);

(3) At least seven days prior to the hearing in the case of an action brought pursuant to Rules 10.9556 (except Rule 10.9556(h)) and 10.9558; and

(4) At least 21 days prior to the hearing in the case of an action brought pursuant to Rules 10.9551 through 10.9555.

#### **(h) Transmission of Documents**

(1) Not less than two business days before the hearing in an action brought under Rule 10.9557, not less than six days before the hearing in an action brought under Rule 10.9556(h), not less than seven days before the hearing in an action brought under Rules 10.9556 (except Rule 10.9556(h)) and 10.9558, and not less than 14 days before the hearing in an action brought under Rules 10.9551 through 10.9555, Exchange staff shall provide to the respondent who requested the hearing or the respondent who has received a petition pursuant to Rule 10.9556(h), by email, overnight courier or personal delivery, all documents that were considered in issuing the notice unless a document meets the criteria of Rule 10.9251(b)(1)(A), (B), (C) or (b)(2). Documents served by email shall also be served by either overnight courier or personal delivery. A document that meets the criteria in this paragraph shall not constitute part of the record, but shall be retained until the date upon which the Exchange's final decision is served or, if applicable, upon the conclusion of any review by the SEC or the federal courts.

(2) Not less than two business days before the hearing in an action brought under Rule 10.9557, not less than three days before the hearing in an action brought under Rules 10.9556 and 10.9558, and not less than seven days before the hearing in an action brought under Rules 10.9551 through 10.9555, the parties shall exchange proposed exhibit and witness lists. The exhibit and witness lists shall be served by email, overnight courier or personal delivery. Documents served by email shall also be served by either overnight courier or personal delivery.

#### **(i) Evidence**

Formal rules of evidence shall not apply to a hearing under this Rule Series. Rules 10.9262 and 10.9263 shall govern testimony and the admissibility of evidence.

**(j) Additional Information**

The Hearing Officer or, if applicable, the Hearing Panel may direct the Parties to submit additional information.

**(k) Record of Hearing**

Rule 10.9265 shall govern the requirements for the record of the hearing.

**(l) Record of Proceeding**

Rule 10.9267 shall govern the record of the proceeding.

**(m) Failure to Appear at a Pre-Hearing Conference or Hearing or to Comply with a Hearing Officer Order Requiring the Production of Information**

Failure of any respondent to appear before the Hearing Officer or, if applicable, the Hearing Panel at any status conference, pre-hearing conference or hearing, or to comply with any order of the Hearing Officer or, if applicable, Hearing Panel requiring production of information to support any defense to the notice or petition that respondent has raised, shall be considered an abandonment of the respondent's defense and waiver of any opportunity for a hearing provided by the Rule 10.9550 Series. In such cases:

(1) The notice issued under the Rule 10.9550 Series shall be deemed to be final Exchange action. The Hearing Officer or, if applicable, the Hearing Panel may permit the hearing to go forward as to those parties who appear and otherwise comply with this Rule.

(2) The Hearing Officer may issue a default decision against a respondent who is the subject of a petition filed pursuant to Rule 10.9556(h) and may deem the allegations against that respondent admitted. The contents of a default decision shall conform to the content requirements of Rule 10.9559(p). A respondent may, for good cause shown, file a motion to set aside a default. Upon a showing of good cause, the Hearing Officer that entered the original order shall decide the motion. If the Hearing Officer is not available, the Chief Hearing Officer shall appoint another Hearing Officer to decide the motion. If a default decision is not called for review pursuant to Rule 10.9559(q), the default decision shall become the final Exchange action.

**(n) Sanctions, Costs and Remands**

(1) In any action brought under the Rule 10.9550 Series, other than an action brought under Rule 10.9556(h) or Rule 10.9557, the Hearing Officer or, if applicable, the Hearing Panel may approve, modify or withdraw any and all sanctions, requirements, restrictions or

limitations imposed by the notice and, pursuant to Rule 10.8310(a), may also impose any other fitting sanction.

(2) In an action brought under Rule 10.9556(h), the Hearing Officer may impose any fitting sanction.

(3) In an action brought under Rule 10.9557, the Hearing Panel shall approve or withdraw the requirements and/or restrictions imposed by the notice. If the Hearing Panel approves the requirements and/or restrictions and finds that the respondent has not complied with all of them, the Hearing Panel shall impose an immediate suspension on the respondent that shall remain in effect unless Exchange staff issues a letter of withdrawal of all requirements and/or restrictions pursuant to Rule 10.9557(g)(2).

(4) The Hearing Officer or, if applicable, the Hearing Panel may impose costs pursuant to Rule 10.8330 regarding all actions brought under the Rule 10.9550 Series.

(5) In any action brought under the Rule 10.9550 Series, other than an action brought under Rule 10.9557, the Hearing Officer or, if applicable, the Hearing Panel may remand the matter to the department or office that issued the notice for further consideration of specified matters.

#### **(o) Timing of Decision**

##### **(1) Proceedings initiated under Rule 10.9554**

Within 60 days of the date of the close of the hearing, the Hearing Officer shall prepare a proposed written decision and provide it to the Exchange Board of Directors.

##### **(2) Proceedings initiated under Rules 10.9556 and 10.9558**

Within 21 days of the date of the close of the hearing, the Hearing Officer shall prepare a proposed written decision that reflects the views of the Hearing Panel, as determined by majority vote, and provide it to the Exchange Board of Directors.

##### **(3) Proceedings initiated under Rules 10.9551, 10.9552 and 10.9555**

Within 60 days of the date of the close of the hearing, the Hearing Officer shall prepare a proposed written decision that reflects the views of the Hearing Panel, as determined by majority vote, and provide it to the Exchange Board of Directors.

**(4) Proceedings initiated under Rule 10.9557**

**(A) Written Order**

Within two business days of the date of the close of the hearing, the Office of Hearing Officers shall issue a written order that reflects the Hearing Panel's summary determinations, as decided by majority vote, and shall serve the Hearing Panel's written order on the Parties. The Hearing Panel's written order under Rule 10.9557 is effective when issued. The Hearing Panel's written order will be followed by a written decision explaining the reasons for the Hearing Panel's summary determinations, as required by paragraphs (o)(4)(B) and (p) of this Rule.

**(B) Written Decision**

Within seven days of the issuance of the Hearing Panel's written order, the Office of Hearing Officers shall issue a written decision that complies with the requirements of paragraph (p) of this Rule and shall serve the Hearing Panel's written decision on the Parties.

(5) If not timely called for review by the Exchange Board of Directors pursuant to paragraph (q) of this Rule, the Hearing Officer's or, if applicable, the Hearing Panel's written decision shall constitute final Exchange action. For decisions issued under Rules 10.9551 through 10.9556 and 10.9558, the Office of Hearing Officers shall promptly serve the decision of the Hearing Officer or, if applicable, the Hearing Panel on the Parties and provide a copy to each Participant or Participant Firm with which the respondent is associated.

(6) The timelines established by paragraphs (o)(1) through (5) confer no substantive rights on the parties.

**(p) Contents of Decision**

The decision, which for purposes of Rule 10.9557 means the written decision issued under paragraph (o)(4)(B) of this Rule, shall include:

(1) a statement describing the investigative or other origin of the notice issued under the Rule 10.9550 Series;

(2) the specific statutory or rule provision alleged to have been violated or providing the authority for the Exchange action;

(3) a statement setting forth the findings of fact with respect to any act or practice the respondent was alleged to have committed or omitted or any condition specified in the notice;

(4) the conclusions of the Hearing Officer or, if applicable, Hearing Panel regarding the alleged violation or condition specified in the notice;

(5) a statement of the Hearing Officer or, if applicable, Hearing Panel in support of the disposition of the principal issues raised in the proceeding; and

(6) a statement describing any sanction, requirement, restriction or limitation imposed, the reasons therefore, and the date upon which such sanction, requirement, restriction or limitation shall become effective.

**(q) Call for Review by the Exchange Board of Directors**

(1) For proceedings initiated under the Rule 10.9550 Series (other than Rule 10.9557), the Exchange Board of Directors may call for review a proposed decision prepared by a Hearing Officer or, if applicable, Hearing Panel in accordance with Rule 10.9310. For proceedings initiated under Rule 10.9557, the Exchange Board of Directors may call for review a written decision issued under paragraph (o)(4)(B) of this Rule by a Hearing Panel in accordance with Rule 10.9310.

**(r) Application to SEC for Review**

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

**Rule 10.9560. Expedited Suspension Proceeding**

**(a) Initiation of Proceeding**

**(1) Scope of Authority**

With the prior written authorization of the Chief Regulatory Officer ("CRO") or such other senior officers as the CRO may designate, Enforcement may initiate an expedited suspension proceeding with respect to alleged violations of Rule 11.21 (Disruptive Quoting and Trading Activity Prohibited).

**(2) Service of Notice**

Enforcement shall initiate the proceeding by serving a notice on a Participant, Participant Firm or covered person (hereinafter "Respondent"). Enforcement shall serve the notice by personal service or overnight commercial courier. The notice shall be effective upon service.

### **(3) Content of Notice**

The notice shall state whether Enforcement is requesting the Respondent to be required to take action or to refrain from taking action. The notice shall be accompanied by:

- (A) a declaration of facts, signed by a person with knowledge of the facts contained therein, that specifies the acts that constitute the alleged violation; and
- (B) a proposed order that contains the required elements of a suspension order (except the date and hour of the order's issuance), which are set forth in sub-paragraph (d)(2) of this Rule).

### **(b) Appointment of Hearing Officers and Hearing Panel**

(1) As soon as practicable after Enforcement initiates a suspension proceeding, a Hearing Panel shall be assigned in accordance with paragraphs (a) and (b) of Rule 10.9231.

(2) If at any time a Hearing Officer or Panelist determines that he or she has a conflict of interest or bias or circumstances otherwise exist where his or her fairness might reasonably be questioned, or if a Party files a motion to disqualify a Hearing Officer or Panelist, the recusal and disqualification proceeding shall be conducted in accordance with Rules 10.9233 and 10.9234, except that:

- (A) a motion seeking disqualification of a Hearing Officer or Panelist must be filed no later than 5 days after the announcement of the Hearing Panel; and
- (B) Enforcement may file a brief in opposition to the Respondent's motion no later than 5 days after service thereof.

### **(c) Hearing**

(1) **When Held.** The hearing shall be held not later than 15 days after service of the notice initiating the suspension proceeding, unless otherwise extended by the Hearing Officer with the consent of the Parties for good cause shown. If a Hearing Officer or Panelist is recused or disqualified, the hearing shall be held not later than five days after a replacement Hearing Officer or Panelist is appointed.

(2) **Service of Notice of Hearing.** A notice of date, time, and place of the hearing shall be served on the Parties 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.



**(3) Authority of Hearing Officers.** A Hearing Officer shall have authority to do all things necessary and appropriate to discharge his or her duties as set forth in Rules 10.9235 and 10.9280.

**(4) Witnesses.** A person who is subject to the jurisdiction of the Exchange shall testify under oath or affirmation. The oath or affirmation shall be administered by a court reporter or a notary public.

**(5) Additional Information.** At any time during its consideration, the Hearing Panel may direct a Party to submit additional information. Any additional information submitted shall be provided to all Parties at least one day before the Hearing Panel renders its decision.

**(6) Transcript.** The hearing shall be recorded by a court reporter and a written transcript thereof shall be prepared. A transcript of the hearing shall be available to the Parties for purchase from the court reporter at prescribed rates. A witness may purchase a copy of the transcript of his or her own testimony from the court reporter at prescribed rates. Proposed corrections to the transcript may be submitted by affidavit to the Hearing Panel within a reasonable time determined by the Hearing Panel. Upon notice to all the Parties to the proceeding, the Hearing Panel may order corrections to the transcript as requested or sua sponte.

**(7) Record and Evidence Not Admitted.** The record shall consist of the notice initiating the proceeding, the declaration, and the proposed order described in subparagraph (a)(3) above; the transcript of the hearing; all evidence considered by the Hearing Panel; and any other document or item accepted into the record by the Hearing Panel. Enforcement shall be the custodian of the record. Proffered evidence that is not accepted into the record by the Hearing Panel shall be retained by the custodian of the record until the date when the Exchange's decision becomes final or, if applicable, upon the conclusion of any review by the SEC or the federal courts.

**(8) Failure to Appear at a 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 suspension order without further proceedings. If Enforcement fails to appear at a hearing for which it has notice, the Hearing Panel may order that the suspension proceeding be dismissed.

**(d) Issuance of Suspension Order by Hearing Panel**

**(1) Basis for Issuance.** The Hearing Panel shall issue a written decision stating whether a suspension 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 Hearing Officer with the consent of the Parties for good cause shown. A suspension order shall be imposed if the Hearing Panel finds:

(A) by a preponderance of the evidence that the alleged violation specified in the notice has occurred; and

(B) that the violative conduct or continuation thereof is likely to result in significant market disruption or other significant harm to investors.

**(2) Content, Scope, and Form of Order.** A suspension order shall:

(A) be limited to: (i) ordering a Respondent to cease and desist from violating Rule 11.21, and/or (ii) ordering a Respondent to cease and desist from providing access to the Exchange to a client of Respondent that is causing violations of Rule 11.21;

(B) set forth the alleged violation and the significant market disruption or other significant harm to investors that is likely to result without the issuance of an order;

(C) describe in reasonable detail the act or acts the Respondent is to take or refrain from taking and to suspend the Respondent unless and until such action is taken or refrained from; and

(D) include the date and hour of its issuance.

**(3) Duration of Order.** A suspension order shall remain effective and enforceable unless modified, set aside, limited, or revoked pursuant to paragraph (e), below.

**(4) Service.** The Hearing Panel's decision and any suspension order shall be served by personal service or overnight commercial courier. The suspension order shall be effective upon service.

**(e) Review by Hearing Panel**

At any time after the Respondent is served with a suspension order, a Party may apply to the Hearing Panel to have the order modified, set aside, limited, or revoked. The application shall set forth with specificity the facts that support the request. The opposing Party shall have an opportunity to respond to the request within a period of time set by the Hearing Officer. The Hearing Panel shall respond to the request in writing within ten days after receipt of the request, unless otherwise extended by the Hearing Officer with the consent of the Parties for good cause shown. The Hearing Panel's response shall be served on the Respondent via personal service or overnight commercial courier. The filing of an application under this Rule shall not stay the effectiveness of the suspension order.

**(f) Call for Review by the Exchange Board of Directors**

If there is no pending application to the Hearing Panel to have a suspension order modified, set aside, limited, or revoked, the Exchange Board of Directors, in accordance with Rule 10.9310, may call for review the Hearing Panel decision on whether to issue a

suspension order. A call for review by the Exchange Board of Directors shall not stay the effectiveness of a suspension order.

#### **(g) Application to SEC for Review**

If there is no call for review by the Exchange Board of Directors, sanctions imposed pursuant to this Rule constitute final and immediately effective disciplinary sanctions imposed by the Exchange. If there is a call for review by the Exchange Board of Directors, their decision shall constitute final and immediately effective disciplinary sanctions imposed by the Exchange. The right to have any action under this Rule reviewed by the SEC is governed by Section 19 of the Exchange Act. The filing of an application for review shall not stay the effectiveness of a suspension order unless the SEC otherwise orders.

### **RULE 10.9600. PROCEDURES FOR EXEMPTIONS**

#### **Rule 10.9610. Application**

##### **(a) Where to File**

A Participant or Participant Firm seeking exemptive relief as permitted under Rule 10.8211 or Rule 11.2210 shall file a written application with the appropriate department or staff of the Exchange and provide a copy of the application to the CRO.

##### **(b) Content**

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

##### **(c) Applicant**

A Participant or Participant Firm that files an application under this Rule is referred to as "Applicant" hereinafter in the Rule 10.9600 Series.

#### **Rule 10.9620. Decision**

After considering an application, Exchange staff shall issue a written decision setting forth its findings and conclusions. The decision shall be served on the Applicant pursuant

to Rules 10.9132 and 10.9134. After the decision is served on the Applicant, the application and decision may be publicly available.

### **Rule 10.9630. Appeal**

#### **(a) Notice**

An Applicant may file a written notice of appeal within 15 calendar days after service of a decision issued under Rule 10.9620. The notice of appeal shall be filed with the CRO, with a copy of the notice also provided to the appropriate department or staff of the Exchange. The notice of appeal shall contain a brief statement of the findings and conclusions as to which exception is taken. Appeals of decisions issued by Exchange staff pursuant to Rule 10.9620 shall be decided by the CRO. If the Applicant does not want the decision on the appeal to be publicly available in whole or in part, the Applicant also shall include in its notice of appeal a detailed statement, including supporting facts, showing good cause for treating the decision as confidential in whole or in part. The notice of appeal shall be signed by the Applicant.

#### **(b) Expedited Review**

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

#### **(c) Withdrawal of Appeal**

An Applicant may withdraw its notice of appeal at any time by filing a written notice of withdrawal of appeal with the CRO.

#### **(d) Oral Argument**

Following the filing of a notice of appeal, the CRO may order oral argument. The CRO may consider any new evidence if the Applicant can show good cause for not including it in its application.

#### **(e) Decision**

After considering all matters on appeal, the CRO shall affirm, modify, or reverse the decision issued under Rule 10.9620. The CRO shall issue a written decision setting forth its findings and conclusions and serve the decision on the Applicant. The decision shall be served pursuant to Rules 10.9132 and 10.9134. The decision shall be effective upon service and shall constitute final action of the Exchange.

### **RULE 10.9700. Reserved.**

### **RULE 10.9800. TEMPORARY CEASE AND DESIST ORDERS**

**Rule 10.9810. Initiation of Proceeding****(a) 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 may initiate a temporary cease and desist proceeding with respect to alleged violations of Section 10(b) of the Exchange Act and Rule 10b-5 thereunder; Exchange Act Rules 15g-1 through 15g-9; Article 9, Rule 2 (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); and Article 9, Rules 9, 10, 11 and 12. Enforcement shall initiate the proceeding by serving a notice on a Participant, Participant Firm or covered person (hereinafter "Respondent") (or upon counsel representing the Respondent, or other person authorized to represent others under Rule 10.9141, when counsel or other person authorized to represent others under Rule 10.9141 agrees to accept service for the Respondent) and filing a copy thereof with the Office of Hearing Officers. Enforcement shall serve the notice by personal service, overnight commercial courier, or email. If service is made by email, Enforcement shall send an additional copy of the notice by personal service or overnight commercial courier. Service is complete upon sending the notice by email or 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 Enforcement is seeking to have the Respondent ordered to cease violating. The notice also shall state whether Enforcement is requesting the Respondent to be required to take action, refrain from taking action or both. 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;
- (2) a memorandum of points and authorities setting forth the legal theories upon which Enforcement relies; and
- (3) 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 10.9840(b).

**(c) Authority to Approve Settlements**

If the Parties agree to the terms of the proposed temporary cease and desist order, the Hearing Officer shall have the authority to approve and issue the order.

**(d) Filing of Underlying Complaint**

If Enforcement has not issued a complaint under Rule 10.9211 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 shall serve and file such a complaint with the notice initiating the temporary cease and desist proceeding. Service of the complaint can be made in accordance with the service provisions in paragraph (a).

**Rule 10.9820. Appointment of Hearing Officer and Hearing Panel**

(a) As soon as practicable after Enforcement 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 10.9231.

(b) If at any time a Hearing Officer or Hearing Panelist determines that he or she has a conflict of interest or bias or circumstances otherwise exist where his or her fairness might reasonably be questioned, or if a Party files a motion to disqualify a Hearing Officer or Hearing Panelist, the recusal and disqualification proceeding shall be conducted in accordance with Rules 10.9233 and 10.9234, except that:

(1) a motion seeking disqualification of a Hearing Officer or Hearing Panelist must be filed no later than 5 days after the later of the events described in paragraph (b) of Rules 10.9233 and 10.9234; and

(2) the Chief Hearing Officer shall appoint a replacement Panelist using the criteria set forth in paragraph (a) of this Rule.

**Rule 10.9830. Hearing****(a) When Held**

The hearing shall be held not later than 15 days after service of the notice and filing initiating the temporary cease and desist proceeding, unless otherwise extended by the Chief Hearing Officer or Deputy Chief Hearing Officer for good cause shown. If a Hearing Officer or Hearing Panelist is recused or disqualified, the hearing shall be held not later than five days after a replacement Hearing Officer or Hearing Panelist is appointed.

**(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 and the Respondent (or upon counsel representing the Respondent, or

other person authorized to represent others under Rule 10.9141, when counsel or other person authorized to represent others under Rule 10.9141 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, or email. If service is made by 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 email or 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) Authority of Hearing Officer**

The Hearing Officer shall have authority to do all things necessary and appropriate to discharge his or her duties as set forth under Rule 10.9235.

**(d) Witnesses**

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

**(e) Additional Information**

Prior to the hearing, the Hearing Officer may order a Party to furnish to all other Parties and the Hearing Panel such information as deemed appropriate, including any or all of the pre-hearing submissions described in Rule 10.9242(a). The documentary evidence submitted by the Parties pursuant to this paragraph shall not become part of the record, unless the Hearing Officer or Hearing Panel orders some or all of such evidence included pursuant to Rule 10.9830(g). At any time during the Hearing Panel's consideration, the Hearing Panel may direct a Party to submit additional information. Any additional information submitted shall be provided to all Parties at least one day before the Hearing Panel renders its decision.

**(f) Transcript**

The hearing shall be recorded by a court reporter and a written transcript thereof shall be prepared. A transcript of the hearing shall be available to the Parties for purchase from the court reporter at prescribed rates. A witness may purchase a copy of the transcript of his or her own testimony from the court reporter at prescribed rates. Proposed corrections to the transcript may be submitted by affidavit to the Hearing Panel within a reasonable time determined by the Hearing Panel. Upon notice to all the Parties to the proceeding, the Hearing Panel may order corrections to the transcript as requested or sua sponte.

**(g) Record and Evidence Not Admitted**

The record shall consist of the notice initiating the proceeding, the declaration, and the proposed order described in Rule 10.9810(b); the transcript of the hearing; all evidence considered by the Hearing Panel; and any other document or item accepted into the record by the Hearing Officer or the Hearing Panel. The Office of Hearing Officers shall be the custodian of the record. Proffered evidence that is not accepted into the record by the Hearing Panel shall be retained by the custodian of the record until the date when the Exchange's decision becomes final or, if applicable, upon the conclusion of any review by the SEC or the federal courts.

#### **(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 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.

### **Rule 10.9840. Issuance of Temporary Cease and Desist Order by Hearing Panel**

#### **(a) Basis for Issuance**

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 Enforcement has made a showing of a likelihood of success on the merits; and
- (2) that the alleged violative conduct or continuation thereof is likely to result in significant dissipation or conversion of assets or other significant harm to investors prior to the completion of the underlying disciplinary proceeding under the Rule 10.9200 and 10.9300 Series.

#### **(b) Content, Scope, and Form of Order**

A temporary cease and desist order shall:

- (1) be limited to ordering a Respondent (and any successor of a Respondent, where the Respondent is a Participant or Participant Firm) to cease and desist from violating a specific rule or statutory provision, and, where applicable, to ordering a Respondent (and any successor of a Respondent, where the Respondent is a Participant or Participant Firm) to cease and desist from dissipating or converting assets or causing other harm to investors;



(2) set forth the alleged violation and the significant dissipation or conversion of assets or other significant harm to investors that is likely to result without the issuance of an order;

(3) describe in reasonable detail the act or acts the Respondent (and any successor of a Respondent, where the Respondent is a Participant or Participant Firm) shall take, refrain from taking, or both; and

(4) include the date and hour of its issuance.

### **(c) Duration of Order**

A temporary cease and desist order shall remain effective and enforceable until the issuance of a decision under Rule 10.9268 or Rule 10.9269, or until a settlement offer is accepted pursuant to Rule 10.9270.

### **(d) Service and Dissemination Requirements**

The Office of Hearing Officers shall serve the Hearing Panel's decision and any temporary cease and desist order on Enforcement and the Respondent (or upon counsel representing the Respondent, or other person authorized to represent others under Rule 10.9141, when counsel or other person authorized to represent others under Rule 10.9141 agrees to accept service for the Respondent) by personal service, overnight commercial courier, or email. If service is made by email, the Office of Hearing Officers shall send an additional copy of the Hearing Panel's decision and any temporary cease and desist order by personal service or overnight commercial courier. Service is complete upon sending the notice by email or 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 cease and desist order shall be effective when service is complete. The Office of Hearing Officers shall provide a copy of the temporary cease and desist order to each Participant or Participant Firm with which a Respondent is associated.

### **(e) Delivery Requirement**

Where a Respondent is a Participant or Participant Firm, Respondent shall deliver a copy of a temporary cease and desist order, within one business day of receiving it, to its covered persons.

### **Rule 10.9850. Review by Hearing Panel**

At any time after the Office of Hearing Officers serves the Respondent (or counsel representing the Respondent, or other person authorized to represent others under Rule 10.9141, when counsel or other person authorized to represent others under Rule 10.9141 agrees to accept service for the Respondent) with a temporary cease and desist order, a Party may apply to the Hearing Panel to have the order modified, set aside, limited, or suspended. The application shall set forth with specificity the facts that support the

request. The Hearing Panel that presided over the temporary cease and desist order proceeding shall retain jurisdiction to modify, set aside, limit, or suspend the temporary cease and desist order, unless at the time the application is filed a Hearing Panel has already been appointed in the underlying disciplinary proceeding commenced under Rule 10.9211 in which case the Hearing Panel appointed in the disciplinary proceeding has jurisdiction. The Hearing Panel shall respond to the request in writing within ten days after receipt of the request, unless otherwise extended by the Chief Hearing Officer or Deputy Chief Hearing Officer for good cause shown. The Hearing Panel's response shall be served on the Respondent (or upon counsel representing the Respondent, or other person authorized to represent others under Rule 10.9141, when counsel or other person authorized to represent others under Rule 10.9141 agrees to accept service for the Respondent) via personal service, overnight commercial courier, or email. If service is made by email, the Office of Hearing Officers shall send an additional copy of the temporary cease and desist order by personal service or overnight commercial courier. The filing of an application under this Rule shall not stay the effectiveness of the temporary cease and desist order.

#### **Rule 10.9860. Violation of Temporary Cease and Desist Orders**

A Respondent who violates a temporary cease and desist order imposed under this Rule Series may have its association or membership suspended or canceled or be subject to any fitting sanction under Rule 10.9556. The Exchange's CRO or such other senior officer as the CRO may designate must authorize the initiation of any such proceeding in writing.

#### **Rule 10.9870. Application to SEC for Review**

Temporary cease and desist orders issued pursuant to this Rule Series constitute final and immediately effective disciplinary sanctions imposed by the Exchange. The right to have any action under this Rule Series reviewed by the SEC is governed by Section 19 of the Exchange Act. The filing of an application for review shall not stay the effectiveness of the temporary cease and desist order, unless the SEC otherwise orders.

### **RULE 11 BUSINESS CONDUCT**

#### **Rule 11.21. Disruptive Quoting and Trading Activity Prohibited**

(a) No Participant, Participant Firm or covered person shall engage in or facilitate disruptive quoting and trading activity on the Exchange, including acting in concert with other persons to effect such activity.

(b) For purposes of this rule, disruptive quoting and trading activity shall include a frequent pattern in which the following facts are present:

1. Disruptive Quoting and Trading Activity Type 1:

- A. a party enters multiple limit orders on one side of the market at various price levels (the “Displayed Orders”); and
- B. following the entry of the Displayed Orders, the level of supply and demand for the security changes; and
- C. the party enters one or more orders on the opposite side of the market of the Displayed Orders (the “Contra-Side Orders”) that are subsequently executed; and
- D. following the execution of the Contra-Side Orders, the party cancels the Displayed Orders.

2. Disruptive Quoting and Trading Activity Type 2:

- A. a party narrows the spread for a security by placing an order inside the national best bid and national best offer (“NBBO”); and
- B. the party then submits an order on the opposite side of the market that executes against another market participant that joined the new inside market established by the order described in paragraph (A).

(c) **Applicability.** For purposes of this Rule, disruptive quoting and trading activity shall include a frequent pattern in which the facts listed above are present. Unless otherwise indicated, the order of the events indicating the pattern does not modify the applicability of the Rule. Further, disruptive quoting and trading activity includes a pattern or practice in which all of the quoting and trading activity is conducted on the Exchange as well as a pattern or practice in which some portion of the quoting or trading activity is conducted on the Exchange and the other portions of the quoting or trading activity is conducted on one or more other exchanges.

**11.2210 Communications with the Public -- Reserved**

**Rule 11.5190 Notification Requirements for Offering Participants**

\* \* \* \* \*

**ARTICLE 2 Committees**

\* \* \* \* \*

**Rule 3. Judiciary Committee**

Whenever, in accordance with the Rules, a disciplinary matter initiated pursuant to Article 12, Rule 1 is to be reviewed by a Judiciary Committee, the Chief Executive

Officer shall appoint five disinterested Participants of the Exchange and/or general partners or officers of Participant Firms as a Judiciary Committee, for that purpose. A new Judiciary Committee shall be appointed to consider and determine each such matter. If a vacancy shall occur on a Judiciary Committee after it has begun its proceedings, the remaining members appointed by the Chief Executive Officer shall complete consideration and disposition of the matter. Once a Judiciary Committee has determined the matter for which it was appointed and has notified the Secretary in writing of its decision, it shall be dissolved automatically.

**Rule 4. Committee for Review ("CFR")**

The Board shall, on an annual basis, appoint the CFR as a subcommittee of the ROC. Effective on [insert date], the CFR will be responsible for reviewing disciplinary decisions and acting in an advisory capacity to the Board with respect to disciplinary matters, regulatory programs, rulemaking, and regulatory rules, including trading rules. The CFR shall be made up of the Non-Affiliated Director(s) and the Public Directors of the Exchange.

Subject to the Rule 10.9000 Series, decisions of the CFR shall be subject to the review of the Board of Directors. The decision of the Board of Directors shall constitute the final action of the Exchange, unless such Board remands the proceedings.

**Rule [4]5. Committee Quorum**

\* \* \* \* \*

**ARTICLE 6 Registration, Supervision and Training**

\* \* \* \* \*

**Rule 9. Reserved|Provision of Information to the Exchange**

(a) No Participant or partner, officer, director or other person associated with a Participant or other person or entity subject to the jurisdiction of the Exchange shall impede or delay an Exchange examination, inquiry or investigation (whether formal or informal) with respect to possible violations within the disciplinary jurisdiction of the Exchange or with respect to possible limitations on access to Exchange services or otherwise with respect to the discharge of its duties nor refuse to permit an inspection and copying of books, records, or accounts or to furnish testimony, documentary materials or other information requested by the Board of Directors or by the Exchange (or by any committee, subcommittee, or officer or employee thereof) during the course of such examination, inquiry or investigation or otherwise in furtherance of the discharge of its or his duties. Failure to permit an inspection and copying of books, records, or accounts or to furnish such testimony, documentary materials or other information requested pursuant to this Rule on the date or within the time period requested shall be considered obstructive of an Exchange inquiry or investigation and shall be subject to formal disciplinary action.

(b) No Participant, or partner, officer, director or other person associated with a Participant or other person or entity subject to the jurisdiction of the Exchange shall refuse to appear and testify before another exchange or self-regulatory organization in connection with a regulatory investigation, examination or disciplinary proceeding or refuse to furnish documentary materials or other information or otherwise impede or delay such investigation, examination or disciplinary proceeding if the Exchange requests such information or testimony in connection with an inquiry resulting from an agreement entered into by the Exchange pursuant to subsection (c) of this Rule. The requirements of this Rule 9(b) shall apply regardless of whether the Exchange has itself initiated a formal investigation or disciplinary proceeding.

(c) The Exchange may enter into agreements with domestic and foreign self-regulatory organizations providing for the exchange of information and other forms of mutual assistance for market surveillance, investigative, enforcement and regulatory purposes.

••• *Interpretations and Policies:*

.01 The terms "exchange" and "self-regulatory organization," as used in Rule 9, shall include, but not be limited to, any member or affiliate member of the Intermarket Surveillance Group.

.02 Any person or entity required to furnish information or testimony pursuant to Rule 9 shall be afforded the same rights and procedural protections as that person or entity would have if the Exchange had initiated the request for information or testimony.]

\* \* \* \* \*

**ARTICLE 7 Financial Responsibility and Reporting Requirements**

\* \* \* \* \*

**Rule 12. Failure to Pay [Debts]Fees**

Any Participant or Participant Firm that shall fail to pay a fee[any debt for Trading Permit fees, fines, transaction fees, or other sums owing the Exchange or its subsidiaries] within 60 days after the same shall become payable shall, after due notice, be suspended from trading on the Exchange until payment is made. If payment is not made within six months after such suspension, the Participant's status as a Participant may be terminated by the Chief Executive Officer on at least 10 days' written notice mailed to the Participant or Participant Firm at the address last registered with the Exchange. Exchange action under this Rule is subject to the opportunity to be heard and to appeal as provided for in Article 15. Notwithstanding the foregoing, any failure to pay any fine, sanction or cost levied in connection with a disciplinary action shall be governed by Rule 10.8320.

The failure to pay any debt owing the Exchange within the timeframes noted herein shall also constitute grounds for initiating disciplinary proceedings [pursuant to Article 12] against any Participant, associated person or other person or entity subject to the jurisdiction of the Exchange. In any such action, the Exchange shall, if it prevails, be entitled to any sanction that it could obtain in a disciplinary proceeding [under Article 12,] plus interest on the amount owed at the Internal Revenue Service rate for prejudgment interest calculated from the date when the debt was first due and payable.

\* \* \* \* \*

**ARTICLE 12 Legacy Disciplinary Matters and Trial Proceedings Investigation and Charges**

Article 12 shall apply only to an investigation or proceeding instituted under Article 12, Rule 1 prior to [insert date] and will continue to apply until such proceeding is final. Article 12 shall also continue to apply to any Participant, Participant Firm or person over whom the Exchange asserted jurisdiction by providing written notice of the commencement of an inquiry pursuant to Article 12, Rule 7(b) prior to [insert date]. Otherwise, the Rule 10.8000 Series and Rule 10.9000 Series will apply.

\* \* \* \* \*

**ARTICLE 13 Suspension—Reinstatement**

The provisions of Article 13, Rule 2 governing emergency suspensions by the CRO shall apply only to a proceeding for which the Exchange has issued a written notice or statement thereunder prior to [insert date]. Thereafter, the Rule 10.9500 Series will apply.

\* \* \* \* \*

**ARTICLE 14 Arbitration**

**Rule 1. Arbitration**

\* \* \* \* \*

(e) Payment of Awards. Any Participant, or associated person with a Participant, who fails to honor an award of arbitrators appointed in accordance with this Rule shall be subject to disciplinary proceedings[ in accordance with Article 12].

\* \* \* \* \*