

Additions underlined.  
Deletions [bracketed].

**NYSE Rules**

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**Rule 2A. Jurisdiction**

(a) through (d) No Change

(e) The Exchange shall have jurisdiction after notice and a hearing to discipline members, member organizations, principal executives, approved persons in connection with their conduct of the business of a member organization, and registered or non-registered employees of member organizations and other broker-dealers that choose to be regulated by the Exchange. The Exchange may impose one or more of the following disciplinary sanctions following a proceeding under Rule 475 or 476: expulsion, suspension; limitation as to activities, functions, and operations, including the suspension or cancellation of a registration in, or assignment of, one or more stocks, fine, censure, suspension or bar from being associated with any member or member organization, or any other fitting sanction. The Exchange may impose one or more of the disciplinary sanctions set forth in Rule 8310(a) following a proceeding under the Rule 9000 Series.

(f) No Change

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**Rule 20. Delegation, Authority and Access**

(a) No Change

(b) NYSE Market shall establish a Market Performance Committee and NYSE Regulation shall establish a Regulatory Advisory Committee, each to include persons associated with member organizations. The committees shall include representatives of both those member organizations doing business on the Floor of the Exchange and those who do not do business on the Floor. Individuals may serve on one or both rule advisory committees as appropriate. The Market Performance Committee shall act in an advisory capacity regarding trading rules and other matters within its Charter. The Regulatory Advisory Committee shall act in an advisory capacity regarding [disciplinary matters and] regulatory rules other than trading rules.

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**Rule 36. Communications Between Exchange and Members' Offices**

No member or member organization shall establish or maintain any telephonic or electronic communication between the Floor and any other location without the approval

of the Exchange. The Exchange may to the extent not inconsistent with the Securities Exchange Act of 1934, as amended, deny, limit or revoke such approval whenever it determines, in accordance with the procedures set forth in Rule 475 or 9558, as applicable, that such communication is inconsistent with the public interest, the protection of investors or just and equitable principles of trade.

••• **Supplementary Material:** -----

.10 through .70 No Change.

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**Rule 103B. Security Allocation and Reallocation**

(I) through (V) No Change.

**VI. POLICY NOTES**

(A) through (F) No Change.

**(G) *Allocation Freeze Policy***

In the event that a DMM unit: (i) loses its registration in a specialty stock as a result of proceedings under Exchange Rules 475 or 476 or the Rule 8000 or 9000 Series, as applicable; or (ii) voluntarily withdraws its registration in a specialty stock as a result of possible proceedings under those rules, the unit will be ineligible to apply for future allocations for the six month period immediately following the reassignment of the security (“Allocation Prohibition”).

Following the Allocation Prohibition, a second six month period will begin during which a DMM unit may apply for new listings, provided that the unit demonstrates to the Exchange relevant efforts taken to resolve the circumstances that triggered the Allocation Prohibition. The determination as to whether a unit may apply for new listings will be made by the staff of NYSE Regulation, in consultation with the Executive Floor Governors. The factors the staff will consider will vary depending on the unit’s particular situation, but may include one or more steps such as:

- supplying additional manpower/experience;
- changes in professional staff;
- attaining appropriate dealer participation;
- enhancing back-office staff; and
- implementing more stringent supervision/new procedures.

(H) through (I) No Change.

VII. through IX. No Change.

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**Rule 309. Failure to Pay Exchange Fees**

Any member, member organization or [allied member] principal executive who shall not pay a fee or any other sums due to the Exchange, within forty-five days after the same shall become payable, shall be reported to the Chief Financial Officer of the Exchange or designee who, after notice has been given to such member, member organization or [allied member] principal executive of such arrearages, may suspend access to some or all of the facilities of the Exchange until payment is made. Except that (i) failure to pay any fine levied in connection with a disciplinary action shall be governed by Exchange Rule [476 (k) (Disciplinary Proceedings Involving Charges Against Members, Member Organizations, Allied Members, Approved Persons, Employees, or Others)] 8320, and (ii) failure to make timely payment of trading license fee installments will be governed by Rule 300(h).

Denial of access to some or all of the facilities of the Exchange through suspension under the provisions of this Rule shall not prevent the member, member organization or [allied member] principal executive from being proceeded against for any offense other than that for which such member, member organization, or [allied member] principal executive was suspended.

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**Rule 345A. Continuing Education For Registered Persons**

(a) Regulatory Element.— No Change.

(1) through (2) No Change.

(3) Disciplinary Actions.—Unless otherwise determined by the Exchange, a registered person will be required to re-take the Regulatory Element of the program and satisfy the program’s requirements in their entirety in the event such person:

(i) becomes subject to any statutory disqualification as defined in Section 3(a)(39) of the Securities Exchange Act of 1934 [(see also Rule 346(f))];

(ii) through (iii) No Change.

A re-taking of the Regulatory Element shall commence with participation within one hundred twenty days of the registered person becoming subject to the statutory disqualification, in the case of (i) above, or the completion of the sanction or the disciplinary action becoming final, in the case of (ii) and (iii) above. The date that the disciplinary action becomes final will be deemed the person’s new base date for purposes of this Rule.

(b) No Change.

••• **Supplementary Material:** -----

.10 through .50 No Change.

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**[Rule 410A. Automated Submission of Trading Data**

A member or member organization shall submit such of the following trade data elements specified below in such automated format as may be prescribed by the Exchange from time to time, in regard to such transaction or transactions as may be subject of a particular request for information made by the Exchange:

(a) If the transaction was a proprietary transaction effected or caused to be effected by the member or member organization for any account in which such member or member organization, or any member, principal executive, approved person, partner, officer, director, or employee of such member organization, is directly or indirectly interested, such member or member organization shall submit or cause to be submitted the following information:

- (1) Clearing house number, or alpha symbol as used by the member or the member organization submitting the data;
- (2) Clearing house number(s), or alpha symbol(s) as may be used from time to time, of the member(s) or member organization(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 and 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.

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

- (1) Data elements (1) through (8) as contained in paragraph (a) above; and

- (2) Customer name, address(es), branch office number, registered representative number, whether order was solicited or unsolicited, date account opened and employer name and the tax identification number(s).
- (3) If transaction was effected for a member broker-dealer customer, whether the broker-dealer was acting as principal or agent on the transaction or transactions that are the subject of the Exchange's request.
- (c) In addition to the above trade data elements, a member or member organization shall submit such other information in such automated format as may be prescribed by the Exchange, as may from time to time be required.
- (d) The Exchange may grant exceptions, in such cases and for such time periods as it deems appropriate, from the requirement that the data elements prescribed in paragraphs (a) and (b) above be submitted to the Exchange in an automated format.]

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**Rule 475. Prohibition or Limitation with Respect to Access to Services Offered by the Exchange or a Member or Member Organization— Summary Proceedings**

Rule 475 shall apply only to a proceeding for which a written notice has been issued by the Exchange under this Rule prior to [insert date], and shall continue to apply until such proceeding is final; otherwise, Rule 9558 shall apply.

- (a) No change.
- (b) The Exchange may summarily—
- (i) suspend a member, member organization, [allied member] principal executive, approved person, or registered or non-registered employee of a member or member organization who has been and is expelled or suspended from any other self-regulatory organization, as defined in Section 3(a)(26) of the Securities Exchange Act of 1934, or barred or suspended from being associated with a member or any such self-regulatory organization provided, however, that any such summary suspension imposed by the Exchange shall not exceed the termination of the suspension imposed by such other self-regulatory organization on such member, member organization, [allied member] principal executive, approved person, or registered or non-registered employee;
  - (ii)-(iii) No change
- (c)-(g) No change.
- (h) A member suspended under the provisions of this Rule shall be deprived during the term of the member's suspension of all rights and privileges of membership. Any

suspension under the provisions of this Rule of a member or [allied member] principal executive shall create a vacancy in any office or position held by such member or [allied member] principal executive.

(i)-(j) No change.

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

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

(a)-(j) No change.

(k) Any approved person or registered or non-registered employee who shall neglect to pay any fine within forty-five days after the same shall become payable may, after written notice mailed to such person at either the member's office or last place of residence as reflected in Exchange records, be summarily suspended from association in any capacity with a member organization or have the member's approval withdrawn until such fine is paid.

Any member, member organization or allied member who shall not pay a fine[, or any other sums due to the Exchange,] within forty-five days after the same shall become payable, shall be reported by the Exchange Treasurer to the Chairman of the Exchange Board of Directors and, after written notice mailed to such member, member organization or allied member of such arrearages, may be suspended by the Exchange Board of Directors until payment is made.

Whenever a member, member organization, allied member, approved person or registered or non-registered employee of a member or member organization is suspended under the provisions of this Rule, that person or organization may be proceeded against for any offense other than that for which such member, member organization, allied member, approved person or registered or non-registered employee was suspended.

The suspension or expulsion of a member or allied member under the provisions of this Rule shall create a vacancy in any office or position held by the member or allied member.

(l) No change.

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## **Rule 476A. Imposition of Fines for Minor Violation(s) of Rules**

Rule 476A shall apply only to a proceeding for which a Charge Memorandum has been filed with the hearing board under Rule 476(d) prior to [insert date], until such proceeding is final; otherwise, the Rule 9000 Series shall apply.

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## **Rule 477. Retention of Jurisdiction—Failure to Cooperate**

Rule 477 shall apply to any member organization that resigned or had its membership canceled or revoked and any person whose status as a covered person was terminated or whose registration was revoked or canceled only if such member organization or person has been served with a Charge Memorandum or written notice of inquiry prior to [insert date]; otherwise, Rule 8130 shall apply.

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## **Rule 600A. [ (a) Duty to Arbitrate. (i) Any dispute . . ]**

(a) Duty to Arbitrate. (i) Any dispute, claim or controversy between or among member organizations and/or associated persons shall be arbitrated pursuant to the [NASD DR] FINRA Codes of Arbitration Procedure; and, (ii) any dispute, claim or controversy between a customer or non-member and a member organization and/or associated person arising in connection with the business of such member organization and/or in connection with the activities of an associated person, shall be arbitrated pursuant to [NASD DR] FINRA Codes of Arbitration Procedure as provided by any duly executed and enforceable written agreement, or upon the demand of the customer or non-member. Such obligation to arbitrate shall extend only to those matters that are permitted to be arbitrated under [NASD DR] FINRA Codes of Arbitration Procedure.

(b) Referrals. The Exchange may receive, investigate and take disciplinary action with respect to any referral it receives from a [NASD DR] FINRA arbitrator of any matter which comes to the attention of such arbitrator during and in connection with the arbitrator's participation in a proceeding, either from the record of the proceeding or from material or communications related to the proceeding, that the arbitrator has reason to believe may constitute a violation of the Exchange's Rules or the federal securities laws.

(c) Failure to Arbitrate or to Pay an Arbitration Award. Any member organization or associated person who fails to submit to arbitration a matter required to be arbitrated pursuant to this Rule, or that fails to honor an arbitration award made pursuant to the [NASD DR] FINRA Codes of Arbitration Procedure, or made under the auspices of any other self-regulatory organization, shall be subject to disciplinary proceedings in accordance with Exchange Rule 476, or the Rule 8000 and 9000 Series, as applicable.

(d) No Change.

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**Rule 619. General Provision Governing Subpoenas, Production of Documents, etc.**

(a)-(g) No Change.

**(h) Failure to Appear or Produce Documents**

It may be deemed conduct or proceeding inconsistent with just and equitable principles of trade for purposes of Rule 476(a)(6) or Rule 8210, as applicable, for a member, member organization, [allied member] principal executive, approved person, registered or non-registered employee of a member or member organization or person otherwise subject to the jurisdiction of the Exchange to fail to appear or to produce any document in their possession or control as directed pursuant to provisions of the NYSE Arbitration Rules.

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**Rule 772. Option Contracts of Suspended Members**

When a member or member organization, other than a clearing member, is suspended pursuant to the provisions of Rules 475<sub>2</sub> [(Prohibition or Limitation with Respect to Access to Services Offered by the Exchange or a Member or a Member Organization—Summary Proceedings) or] 476 [(Disciplinary Proceedings Involving charges against Members, Member Organizations, Allied Members, Approved Persons, or Employees)], or the Rule 8000 and 9000 Series, as applicable, all open short positions of the suspended member or member organization in option contracts and all open positions resulting from exercise of option contracts, other than positions that are secured in full by a specific deposit or escrow deposit in accordance with the rules of The Options Clearing Corporation, shall be closed without unnecessary delay by all member organizations carrying such positions for the account of the suspended member or member organization; provided, however, that upon any such suspension the Board may, in its discretion, suspend the mandatory close-out provisions of this Rule and may, in its discretion, reinstate such provisions at such time as it may determine. No temporary suspension of the mandatory close-out provisions of this Rule shall relieve the suspended member or member organization of his or its obligations or for any damages incurred by member organizations carrying positions for the account of such suspended member or member organization. When a clearing member is suspended pursuant to the provisions of Rules 475<sub>2</sub> [(Prohibition or Limitation with Respect to Access to Services Offered by the Exchange or a Member of a Member Organization—Summary Proceedings) or] 476 [(Disciplinary Proceedings Involving Charges against Members, Member Organizations, Allied Members, Approved Persons, or Employees)], or the Rule 8000 and 9000 Series, as applicable, the positions of such clearing member shall be closed out in accordance with the rules of The Options Clearing Corporation.

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**Rule 1301. streetTRACKS® Gold Shares: Securities Accounts and Orders of DMMs**

(a) No Change.

(b) In addition to the existing obligations under Exchange rules regarding the production of books and records (see, e.g., Rule 476(a)(11) and the Rule 8000 Series), the member organization acting as DMM in streetTRACKS® Gold Shares shall make available to the Exchange such books, records or other information pertaining to transactions by such entity or any member, principal executive, approved person, registered or non-registered employee affiliated with such entity for its or their own accounts in physical gold, gold futures or options on gold futures, or any other gold derivatives, as may be requested by the Exchange.

(c) No Change.

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**Rule 1301A. Currency Trust Shares: Securities Accounts and Orders of DMMs**

(a) No Change.

(b) In addition to the existing obligations under Exchange rules regarding the production of books and records (see, e.g., Rule 476(a)(11) and the Rule 8000 Series), the member organization acting as DMM in Currency Trust Shares shall make available to the Exchange such books, records or other information pertaining to transactions by such entity or any member, [allied member] principal executive, approved person, registered or non-registered employee affiliated with such entity for its or their own accounts in the applicable non-U.S. currency options, futures or options on futures on such currency, or any other derivatives on such currency, as may be requested by the Exchange.

(c) No Change.

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**Rule 1301B. Commodity Trust Shares: Securities Accounts and Orders of DMM**

(a) No Change.

(b) In addition to the existing obligations under Exchange rules regarding the production of books and records (see, e.g., Rule 476(a)(11) and the Rule 8000 Series), the member organization acting as DMM in Commodity Trust Shares shall make available to the Exchange such books, records or other information pertaining to transactions by such entity or any member, [allied member] principal executive, approved person, registered or non-registered employee affiliated with such entity for its or their own accounts in options, futures or options on futures on, an index underlying an issue of Commodity Trust Shares in which the member organization acts as DMM; or in any commodity

included in such index; or in any other derivatives based on such index or based on any commodity included in such index, as may be requested by the Exchange.

(c) No Change.

••• **Supplementary Material:** -----

.10 No Change.

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**Rule 4110. Capital Compliance**

(a) When necessary for the protection of investors or in the public interest, the Exchange may, at any time or from time to time with respect to a particular carrying or clearing member organization, or all carrying or clearing member organizations, prescribe greater net capital or net worth requirements than those otherwise applicable, including more stringent treatment of items in computing net capital or net worth, or require such member organization to restore or increase its net capital or net worth. In any such instance, the Exchange shall issue a notice[, for FINRA members,] pursuant to [FINRA] Rule 9557[, and for member organizations that are not FINRA members, pursuant to NYSE Rule 475].

(b) (1) Unless otherwise permitted by the Exchange, a member organization shall suspend all business operations during any period in which it is not in compliance with applicable net capital requirements set forth in SEA Rule 15c3-1.

(2) The Exchange may issue a notice[, for FINRA members,] pursuant to [FINRA] Rule 9557[, and for member organizations that are not FINRA members, pursuant to NYSE Rule 475,] directing a member organization that is not in compliance with applicable net capital requirements set forth in SEA Rule 15c3-1 to suspend all or a portion of its business.

(c)-(e) No Change.

••• **Supplementary Material:** -----

.01-.02 No Change.

**Rule 4120. Regulatory Notification and Business Curtailment**

(a) No Change.

(b) Restrictions on Business Expansion

(1) Except as otherwise permitted by the Exchange in writing, a member organization that carries customer accounts or clears transactions shall not expand its business during any period in which any of the conditions described in

paragraph (a)(1) continue to exist for more than 15 consecutive business days, provided that such condition(s) has been known to the Exchange or the member organization for at least five consecutive business days. The Exchange may issue a notice[, for FINRA members,] pursuant to [FINRA] Rule 9557[, and for member organizations that are not FINRA members, pursuant to NYSE Rule 475,] directing any such member organization not to expand its business; however, the Exchange's authority to issue such notice does not negate the member organization's obligation not to expand its business in accordance with this paragraph (b)(1).

(2) No member organization may expand its business during any period in which the Exchange restricts the member organization from expanding its business for any financial or operational reason. In any such instance, the Exchange shall issue a notice[, for FINRA members,] pursuant to [FINRA] Rule 9557[, and for member organizations that are not FINRA members, pursuant to NYSE Rule 475].

(3) No Change.

(c) Reduction of Business

(1) No Change.

(A)-(F) No Change.

The Exchange may issue a notice[, for FINRA members,] pursuant to [FINRA] Rule 9557[, and for member organizations that are not FINRA members, pursuant to NYSE Rule 475,] directing any such member organization to reduce its business to a point enabling its available capital to exceed the standards set forth in paragraph (a)(1)(A) through (F) of this Rule; however, the Exchange's authority to issue such notice does not negate the member organization's obligation to reduce its business in accordance with this paragraph (c)(1).

(2) A member organization must reduce its business as directed by the Exchange for any financial or operational reason. In any such instance, the Exchange shall issue a notice[, for FINRA members,] pursuant to [FINRA] Rule 9557[, and for member organizations that are not FINRA members, pursuant to NYSE Rule 475].

(3) No Change.

••• **Supplementary Material:** -----

.01 through .03 No Change.

**Rule 4130. Regulation of Activities of Section 15C Member Organizations Experiencing Financial and/or Operational Difficulties**

(a)-(e) No Change.

(f) Any notice directing a member organization to limit or suspend its business operations shall be issued by the Exchange[, for FINRA members,] pursuant to [FINRA] Rule 9557[, and for member organizations that are not FINRA members, pursuant to NYSE Rule 475].

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### **Rule 4360. Fidelity Bonds**

(a)-(f)(1)(B) No change.

(2) Any member organization may apply for an exemption, pursuant to the [FINRA] Rule 9600 Series, from the requirements of paragraphs (d)(2) and (d)(3) of this Rule. An exemption may be granted, at the discretion of the Exchange, upon a showing of good cause, including a substantial change in the circumstances or nature of the member organization's business that would result in a lower net capital requirement.

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## **Rule 8000. INVESTIGATIONS AND SANCTIONS**

### **Rule 8001. Effective Date of Rule 8000 Series**

The Rule 8000 Series shall become effective on [insert date], except as otherwise provided in Rule 8130(d). The Exchange may issue a written notice of suspension for non-payment of a fine under Rule 476(k) until [insert date]; thereafter, Rule 8320 shall apply.

## **Rule 8100. GENERAL PROVISIONS**

### **Rule 8110. Availability of Rules for Customers**

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

### **Rule 8120. Definitions**

(a) Unless otherwise provided, terms used in the Rule 8000 Series shall have the meaning as defined in applicable Exchange rules.

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

### **Rule 8130. Retention of Jurisdiction**

(a) A member organization 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 member organization'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 is no longer a covered person of any member organization 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 Exchange Rule 345.17, provided, however that any amendment to a notice of termination filed pursuant to Exchange Rule 345.17(b) 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 member organization.

(c) A person whose status as a covered person is terminated and is no longer a covered person of any member organization shall continue to be subject to a proceeding to suspend his or her ability to associate with a member organization 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) Rule 477 shall continue to apply to any member organization that resigned or had its membership canceled or revoked and any person whose status as a covered person was terminated or whose registration was revoked or canceled only if such member organization or person has been served with a Charge Memorandum or written notice of inquiry prior to [insert date].

### **Rule 8200. INVESTIGATIONS**

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

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

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

(1) require a member organization 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 member organization or covered person with respect to any matter involved in the investigation, complaint, examination, or 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 member organization 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 member organization or covered person to whom it is directed by mailing or otherwise transmitting the notice to the last known business address of the member organization or the last known residential address of the covered person as reflected in the Central Registration Depository. If the Adjudicator or Exchange staff responsible for mailing or otherwise transmitting the notice to the member organization or 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 member organization 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 member organization or covered person known to the Adjudicator or Exchange staff who is responsible for mailing or otherwise transmitting the notice.

**(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 member organizations.

**(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 member organization 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 in which meaning cannot be assigned without the use of a confidential process or key. To ensure that encrypted information is secure, a member organization 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.

### **Rule 8211. Automated Submission of Trading Data Requested by the Exchange**

(a) A member organization 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 member organization for any account in which such member organization or covered person is directly or indirectly interested, such member organization shall submit or cause to be submitted the following information:

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

(2) Clearing house number(s), or alpha symbol(s) as may be used from time to time, of the member organization(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 member organization for any customer account, such member organization 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 member organization, whether the other member organization was acting as principal or agent.

(d) In addition to the above trade data, a member organization 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 9600 Series, the Exchange may exempt a member 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 8212. Reserved.**

**Rule 8213. Reserved.**

**Rule 8300. SANCTIONS**

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

**(a) Imposition of Sanction**

After compliance with the Rule 9000 Series, the Exchange may impose one or more of the following sanctions on a member organization 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 member organization or covered person for any neglect or refusal to comply with an order, direction, or decision issued under Exchange rules:

(1) censure a member organization or covered person;

(2) impose a fine upon a member organization or covered person;

(3) suspend the membership of a member organization 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 member organization, cancel the membership of a member organization, or revoke or cancel the registration of a covered person;

(5) suspend or bar a member organization or covered person from association with all member organizations;

(6) impose a temporary or permanent cease and desist order against a member organization 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 9000 Series.

**Rule 8311. Effect of a Suspension, Revocation, Cancellation, or Bar**

If the Exchange or the SEC issues an order that imposes a suspension, revocation, or cancellation of the registration of a covered person or bars a covered person from further association with any member organization, a member organization shall not allow such person to remain associated with it in any capacity, including a clerical or ministerial capacity. If the Exchange or the SEC suspends a covered person, the member organization also shall not pay or credit any salary, or any commission, profit, or other remuneration that results directly or indirectly from any securities transaction, that the covered person might have earned during the period of suspension.

**Rule 8312. Reserved.**

**Rule 8313. Release of Disciplinary Decisions**

The Exchange shall publish a copy of any final disciplinary action under the Rule 9000 Series, other than minor rule violations, on its website.

**Rule 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 member organization that fails to:

(1) pay promptly a fine or other monetary sanction imposed pursuant to Rule 8310 or cost imposed pursuant to Rule 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 8310 or

a cost imposed pursuant to Rule 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 8310 or a cost imposed pursuant to Rule 8330 when such fine, monetary sanction, or cost becomes finally due and payable.

### **Rule 8330. Costs of Proceedings**

A member organization or covered person disciplined pursuant to Rule 8310 shall bear such costs of the proceeding as the Adjudicator deems fair and appropriate under the circumstances.

### **Rule 9000. CODE OF PROCEDURE**

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

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

### **Rule 9100. APPLICATION AND PURPOSE**

#### **Rule 9110. Application**

##### **(a) Proceedings**

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

##### **(b) Rights, Duties, and Obligations of Member Organizations and Covered Persons**

Unless otherwise specified, a covered person shall have the same rights as a member organization 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 9000 Series shall have the meaning as defined in Rule 9120 and applicable rules of the Exchange. References within the Rule 9000 Series to Exchange offices or departments refer to offices so designated by the Exchange.

### **Rule 9120. Definitions**

#### **(a) “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) “Board of Directors”**

The term “Board of Directors” shall have the meaning as defined in Rule 1.

#### **(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 a member, principal executive, approved person, registered or non-registered employee of a member organization, or other person (excluding a member organization) subject to the jurisdiction of the Exchange.

**(h) “Department of Enforcement”**

The term “Department of Enforcement” means the Department of Enforcement of FINRA.

**(i) “Department of Market Regulation”**

The term “Department of Market Regulation” means the Department of Market Regulation of FINRA.

**(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) “Exchange”**

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

**(n) “Extended Hearing”**

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

**(o) “Extended Hearing Panel”**

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

**(p) “Floor-Based Panelist”**

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

**(q) “Head of Enforcement”**

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

**(r) “Head of Market Regulation”**

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

**(s) “Hearing Officer”**

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

**(t) “Hearing Panel”**

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

**(u) “Interested Staff”**

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

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

(A) the Head of Enforcement;

(B) an employee of the Department of Enforcement who reports, directly or indirectly, to the Head of Enforcement;

(C) an Exchange employee who directly participated in the authorization of the complaint;

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

(E) the Head of Market Regulation; or

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

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

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

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

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

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

(3) a proceeding under the Rule 9600 Series:

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

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

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

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

**(v) “Office of Disciplinary Affairs”**

The term “Office of Disciplinary Affairs” means the Office of Disciplinary Affairs for FINRA.

**(w) “Office of Hearing Officers”**

The term “Office of Hearing Officers” means the Office of Hearing Officers for FINRA.

**(x) “Panelist”**

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

**(y) “Party”**

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

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

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

(3) in the Rule 9550 Series, the Exchange department or office that issued the notice or, if another Exchange department or office is named as the party handling the matter on behalf of the issuing department or office, the Exchange department or office that is so designated or a member organization or covered person that is the subject of a notice under the Rule 9550 Series; or

(4) in the Rule 9600 Series, the department or office designated under Rule 9620 to issue the decision granting or denying an exemption or a member organization that seeks the exemption under Rule 9610.

**(z) “Respondent”**

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

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

**Rule 9131. Service of Complaint**

**(a) Service on Each Party**

Except as provided below, a complaint shall be served on each Party by the Department of Enforcement or the Department of Market Regulation. When counsel for a Party or other person authorized to represent others under Rule 9141 agrees to accept service of the complaint, then the Department of Enforcement or Department of Market Regulation may serve the complaint on counsel for a Party or other person authorized to represent others under Rule 9141 as specified in Rule 9134(a).

**(b) How Served**

A complaint or document initiating a proceeding shall be served pursuant to Rule 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 9135.

**Rule 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 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 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 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 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 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 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 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 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 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 9200 Series shall be filed with the Office of Hearing Officers. All other papers required to be filed pursuant to the Rule 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 9136. Filing of Papers: Form**

#### **(a) Specifications**

Papers filed in connection with any proceeding under the Rule 9200 Series and the Rule 9300 Series shall:

(1) be on unglazed white paper measuring 8 ½ 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 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 9200 Series shall be preserved under Rule 9267(b).

**Rule 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 9138. Computation of Time**

**(a) Calendar Day**

In the Rule 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 9140. Proceedings**

**Rule 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 9150 and 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) Reserved.**

## **Rule 9142. Withdrawal by Attorney or Representative**

An attorney for a Party or other person authorized to represent others by Rule 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 9143. Ex Parte Communications**

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

Unless on notice and opportunity for all Parties to participate, or to the extent required for the disposition of ex parte matters as authorized by the Rule 9000 Series:

(1) No Party, or counsel to or representative of a Party, or Interested Staff shall make or knowingly cause to be made an ex parte communication relevant to the merits of a proceeding to an Adjudicator who is participating in a decision with respect to that proceeding, or to a 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 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 9200 Series and the Rule 9300 Series, the prohibitions of this Rule shall apply beginning with the authorization of a complaint as provided in Rule 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 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 member organization or covered person submits an executed letter of acceptance, waiver, and consent under Rule 9216(a), the submission constitutes a waiver by such member organization 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 Plan Letter**

If a member organization or covered person submits an executed minor rule violation plan letter under Rule 9216(b), the submission constitutes a waiver by such member organization 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 plan letter, or other consideration of the minor rule violation plan letter, including acceptance or rejection of such minor rule plan violation letter.

**Rule 9144. Separation of Functions**



**(a) Interested Staff**

Except as counsel or a witness in a proceeding or as provided in the Rule 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 9211 and a decision whether to file a request for a review by the Exchange Board of Directors pursuant to Rule 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 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 member organization or covered person submits an executed letter of acceptance, waiver, and consent under Rule 9216(a), the submission constitutes a waiver by such member organization 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 Plan Letter**

If a member organization or covered person submits an executed minor rule violation plan letter under Rule 9216(b), the submission constitutes a waiver by such member organization 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 plan letter or other consideration of the minor rule violation plan letter, including acceptance or rejection of such minor rule violation plan letter.

## **Rule 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 9000 Series.

### **(b) Official Notice**

In a proceeding governed by the Rule 9000 Series, an Adjudicator may take official notice of such matters as might be judicially noticed by a court, or of other matters within the specialized knowledge of the 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 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 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 shall be fully informed and shall have adequate notice and 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 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 9300 Series, a motion on a procedural matter may be decided by the Exchange Board of Directors.

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

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

### **(l) General**

All motions, oppositions or responses, replies, and any other filings made in a proceeding shall comply with Rules 9133, 9134, 9135, 9136 and 9137.

### **Rule 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 9148. Interlocutory Review**

Except as provided in Rule 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 9280 or as otherwise ordered by the Adjudicator.

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

#### **(a) Exclusion**

An Adjudicator may exclude an attorney for a Party or other person authorized to represent others by Rule 9141 from acting as counsel, acting in any representative capacity, or otherwise appearing in a particular Rule 9000 Series proceeding for contemptuous conduct under Rule 9280 or unethical or improper professional conduct in that proceeding. If an attorney for a Party, or other person authorized to represent others by Rule 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 9280(c).

#### **(b) Other Proceedings Not Precluded**

Prohibiting an attorney or other person authorized to represent others by Rule 9141 from practicing or appearing in an Exchange proceeding shall not preclude the Exchange from initiating other proceedings against such person.

### **Rule 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 9200 Series shall be governed by Rule 9234.

**(f) Hearing Officer**

Disqualification of a Hearing Officer of a Hearing Panel or an Extended Hearing Panel shall be governed by Rule 9233.

**Rule 9200. DISCIPLINARY PROCEEDINGS**

**Rule 9210. Complaint and Answer**

**Rule 9211. Authorization of Complaint**

**(a) Complaint**

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

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

**(b) Commencement of Disciplinary Proceeding**

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

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

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

(1) If a complaint is authorized, the Department of Enforcement or the Department of Market Regulation shall issue the complaint. Each complaint shall be in writing and signed by the Department of Enforcement or the Department of Market Regulation. The complaint shall specify in reasonable detail the conduct alleged to constitute the violative activity and the rule, regulation, or statutory provision the Respondent is alleged to be violating or to have violated. If the complaint consists of several causes of action, each cause shall be stated separately. Complaints shall be served by the Department of Enforcement or the Department of Market Regulation on each Party pursuant to Rules 9131 and 9134.

and filed at the time of service with the Office of Hearing Officers pursuant to Rules 9135, 9136, and 9137.

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

(A) an appropriate location for the hearing; and

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

**(b) Amendments to Complaint**

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

**(c) Withdrawal of Complaint**

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

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

(2) the start of the hearing on the merits, the withdrawal of the complaint by the Department of Enforcement or the Department of Market Regulation shall be without prejudice and the Department of Enforcement or the Department of Market Regulation shall be permitted to refile a case based on allegations concerning the same facts and circumstances that are set forth in the withdrawn complaint.

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

**(d) 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 9213. Assignment of Hearing Officer and Appointment of Panelists to Hearing Panel or Extended Hearing Panel**

**(a) Assignment of Hearing Officer**

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

**(b) 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 9231 and 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 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 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) appear 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 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 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 9231 and 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 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) appear 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 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 9231 and 9232.

**Rule 9215. Answer to Complaint**

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

Pursuant to Rule 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 9135, 9136 and 9137. The Hearing Officer assigned to a disciplinary proceeding pursuant to Rule 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 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, the Department of Enforcement or the Department of Market Regulation shall send a second notice to such Respondent requiring an answer within 14 days after service of the second notice. The second notice shall state that failure of the Respondent to reply within the period specified shall allow the Hearing Officer, in the exercise of his or her discretion, pursuant to Rule 9269 to:

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

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

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

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

(1) Notwithstanding Rule 9211, if the Department of Enforcement or the Department of Market Regulation has reason to believe a violation has occurred and the member organization or covered person does not dispute the violation, the Department of Enforcement or the Department of Market Regulation may prepare

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

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

(i) any right to claim bias or prejudice 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 9143 or the separation of functions prohibitions of Rule 9144, in connection with such person's or body's participation in discussions regarding the terms and conditions of the letter of acceptance, waiver, and consent, or other consideration of the letter of acceptance, waiver, and consent, including acceptance or rejection of such letter of acceptance, waiver, and consent.

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

(4) If the letter is accepted by the Office of Disciplinary Affairs, it shall be deemed final and shall constitute the complaint, answer, and decision in the

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

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

(1) Notwithstanding Rule 9211, the Exchange may, subject to the requirements set forth in paragraphs (b)(2) through (b)(4) and in SEA Rule 19d-1(c)(2), impose a fine (not to exceed \$2,500) and/or a censure on any member organization or covered person with respect to any rule listed in Rule 9217. If the Department of Enforcement or the Department of Market Regulation has reason to believe a violation has occurred and if the member organization or covered person does not dispute the violation, the Department of Enforcement or the Department of Market Regulation may prepare and request that the member organization or covered person execute a minor rule violation plan letter accepting a finding of violation, consenting to the imposition of sanctions, and agreeing to waive such member organization's or covered person's right to a hearing before a Hearing Panel or, if applicable, an Extended Hearing Panel, and any right of review by the Exchange Board of Directors, the SEC, and the courts, or to otherwise challenge the validity of the letter, if the letter is accepted. The letter shall describe the act or practice engaged in or omitted, the rule, regulation, or statutory provision violated, and the sanction or sanctions to be imposed. Unless the letter states otherwise, the effective date of any sanction(s) imposed will be a date to be determined by Exchange staff.

(2)(A) If a covered person or member organization submits an executed minor rule violation plan letter, by the submission such covered person or member organization 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 plan letter or other consideration of the minor rule violation plan letter, including acceptance or rejection of such minor rule violation plan letter; and

(ii) any right to claim that a person violated the ex parte prohibitions of Rule 9143 or the separation of functions prohibitions of Rule 9144, in connection with such person's or body's participation in discussions regarding the terms and conditions of the minor rule violation plan letter or other

consideration of the minor rule violation plan letter, including acceptance or rejection of such minor rule violation plan letter.

(B) If a minor rule violation plan letter is rejected, the member organization 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 plan letter was executed and submitted and ending upon the rejection of the minor rule violation plan letter.

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

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

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

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

- Rule 15 (Pre-Opening Indications) and Rule 15A (Order Protection Rule).
- Rule 35 requirement that employees of members and member organizations be registered with, qualified by, and approved by the Exchange before being admitted to the Trading Floor.
- Failure to notify the Exchange's Security Office and surrender Exchange-issued identification cards within 24 hours of Floor members' or employees' termination or reassignment, or cancellation of such identification cards, as required by Rule 35.80.
- Rule 36 provisions governing member and member organization communications between the Floor and other locations, the use and/or possession of portable or wireless communication or trading devices, and the proper handling and reporting of "give ups."
- Rule 60 requirements for dissemination of quotations for reported securities.

- Violation of the agency provisions of Rule 72(d).
- Rule 79A.20 requirement to obtain Floor Official approval for trades at wide variations from last sale.
- Rule 91.10 requirements for a DMM to summon a representative of a firm who had entrusted an order with the DMM who has elected to take or supply for his or her account the securities named in the order to confirm the acceptance or rejection of such transaction.
- Rule 95 order identification requirements and prohibition of transactions which involve discretion on the Floor as to choice of security, total amount of security to be bought or sold or whether transaction is purchase or sale.
- Reporting rule violations (Rules 104A.50, 312(a), (b) & (c), 313, 345.12, 345.17, 351, 440H, 706, 4110.01, 4521, 4530 and 4560(a)).
- Rule 103.11 requirements to keep and provide records to the Exchange with respect to the time DMMs and DMM clerks are on the Floor of the Exchange acting in those capacities.
- Rule 104 requirements for the dealings and responsibilities of DMMs.
- Rule 105 and Guidelines (DMMs' Interest in Pools, Options, and Single Stock Futures)
- Rule 116.30 requirement for DMM's stopping stock.
- Record retention rule violations (Rules 117, 121, 123, 123A.20, 345.11, 410, 432(a), 440, 440I and 472(d)).
- Failure to Time-Record Orders Received at the DMM's Post (Rule 121) and Failure to Time-Record Orders received at a Member's Booth from off the Floor (Rule 123).
- Failure of a member or member organization to use standardized Floor stationery as required by Rule 123A.23.
- Rule 123C - Failure to adhere to entry and cancellation procedures for limit-at-the-close and market-at-the-close orders.
- Rule 123D requirements for DMMs relating to openings, re-openings, delayed openings, trading halts, and tape indications.
- Failure to utilize procedures of Rule 127 to satisfy all better priced limit orders when effecting block crosses outside the quote and failure to provide public orders an execution at the cross price when required by Rule 127 procedures.

• Failure to submit required trade data to comparison pursuant to Rule 130 within time periods determined by the Exchange.

• Failure to collect and/or submit all audit trail data specified in Rule 132.

• Rule 134(c) and (e) requirement to comply with specified QT procedures and time periods.

• Failure to Obtain Exchange Approval Rule Violations (Rules 312(h) & (i), 342(c), 342.10, 382(a), 791(c), and 4110).

• Failure of a member organization to have individuals responsible and qualified for the positions of Financial Principal, Operations Principal, Compliance Official, Branch Office Manager and Supervisory Analyst (Rules 342(b), (d) & . 13, 311(b)(5), 344, and 3130(a)).

• Rule 343 requirements relating to member organization office sharing arrangements

• Failure of a member organization to have individuals responsible and qualified for the position of Securities Lending Supervisor (Rule 345(a)).

• Failure to obtain employer's prior written consent for engaging in an outside activity as required by Rule 3270.

• Guaranteeing a customer's account against loss or sharing in profits or losses as prohibited by Rules 352(b) & (c), and 2150(b) & (c).

• Rule 387 requirements for customer COD/POD transactions.

• Rules 392 and 5190 notification requirements.

• Failure to acknowledge customer complaint within 15 business days, as required by Rule 401A.

• Rule 407 requirements for transactions of employees of the Exchange, members or member organizations.

• Rule 407A reporting and notification requirements for members.

• Rule 408(a) requirement that written authorization be obtained for discretionary power in a customer's account.

• Rule 410A and Rule 8211 requirements for automated submission of trading data.

• Rule 410B requirements to report transactions in Exchange listed securities not otherwise reported to the Consolidated Tape.



• Rule 411(b) requirement to not combine the orders of several different customers to buy or sell odd-lots of the same stock, into a round-lot order, without the prior approval of the customers interested.

• Failure to transfer a customer securities account in accordance with the requirements of Rule 412 and the interpretations thereunder.

• Failure to promptly provide or promptly update required membership profile information through the Exchange's Electronic Filing Platform ("EFP"), or failure to electronically certify that required membership profile information is complete and accurate, as required by Rule 416A.

• Rule 440B short sale rule violations.

• Rule 440C failure to deliver against a short sale without diligent effort to borrow.

• Failure to designate and identify to the Exchange an Anti-Money Laundering contact person or persons as required by Rules 445(4) and 3310(d).

• Rules 451 and 452 requirements relating to transmission of proxy material and authorizing the giving of proxies.

• Misstatements or omission of fact on submissions filed with the Exchange (Rule 476(a)(10)).

• Rule 460.30 notification requirements.

• Failure to submit books and records or to furnish information on the date or within the time period that the Exchange requires (Rules 476(a)(11) and 8210).

• Rules 704 and 705 options position limits and exercise limits.

• Failure of a member organization to have individuals responsible and qualified for the positions of Registered Options Principal, Senior Registered Options Principal and Compliance Registered Options Principal (Rules 720 and 722(b)).

• Rule 726 options disclosure document and prospectus delivery requirement violations.

• Rule 750(e)(i) requirement for options specialists to establish bid/ask spreads no greater than the maximum permitted Competitive Options Traders, based on the price of the option or the bid/ask differential of the underlying security.

• Rule 758(b)(i)(C)(1) requirement for Competitive Options Traders to establish bid/ask spreads no greater than the maximum permitted, based on the price of the option or the bid/ask differential of the underlying security.

• Rule 758(b)(ii)(A) limitations on principal/agency trading of a Competitive Options Trader.

• Rule 762 requirements to file option trade information.

• Rule 780(b)(i) requirement for members and member organizations to indicate final decisions of holders of equity options either to exercise or not to exercise expiring equity options by a specific time.

• Rule 780(f) requirement for members and member organizations to make, keep and file with the Exchange records concerning final exercise decisions made with respect to options in certain circumstances.

• Rule 780.10(b) requirement to deliver “exercise advice.”

• Rule 781 allocation of exercise assignment notice violations.

• Failure of new member to adhere to order execution supervision procedures during period the member is required to wear a temporary badge.

• Failure to adhere to procedures for automatic execution of orders under the NYSE DIRECT +<sup>®</sup> facility (Rules 1000-1004).

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

#### **Rule 9221. Request for Hearing**

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

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

(1) request a hearing;

(2) propose an appropriate location for the hearing; and

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

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

##### **(b) 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 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 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 9230. Appointment of Hearing Panel, Extended Hearing Panel**

## **Rule 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**

(1) The Hearing Panel shall be composed of a Hearing Officer and two Panelists, except as provided in paragraph (e) and in Rule 9234(a), (c), (d), or (e). The Hearing Officer shall serve as the chair of the Hearing Panel, and shall appoint Panelists pursuant to the criteria in Rule 9232.

(2) The Chief Hearing Officer may select a Floor-Based Panelist if the complaint alleges at least one cause of action involving activities on the Floor of the Exchange.

### **(c) Extended Hearing Panel**

Upon consideration of the complexity of the issues involved, the probable length of the hearing, or other factors that the Chief Hearing Officer deems material, the Chief Hearing Officer may determine that a matter shall be designated an Extended Hearing, and that such matter shall be considered by an Extended Hearing Panel. The Extended Hearing Panel shall be composed of a Hearing Officer and two Panelists, except as provided in Rule 9234(a), (c), (d), or (e). The Hearing Officer will serve as the chair of the Extended Hearing Panel. The 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.

(1) Except as provided in (2), the Chief Hearing Officer shall select as a Panelist a person who meets the criteria set forth in Rule 9232.

(2) If the complaint alleges at least one cause of action involving activities on the Floor of the Exchange, the Chief Hearing Officer may select a Floor-Based Panelist.

**(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 9235(a), including preparing and signing the decision on behalf of the Hearing Panel, in accordance with Rule 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 9232. Criteria for Selection of Panelists, Replacement Panelists, and Floor-Based Panelists**

(a) Each Panelist shall be a person of integrity and judgment and, other than the Hearing Officer, shall be a member of the NYSE 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 Chairman of the Exchange Board of Directors, subject to the approval the Exchange Board of Directors, shall from time to time appoint a hearing board to be composed of such number of members and former allied members of the Exchange who are not members of the Exchange Board of Directors and registered employees and non-registered employees of member organizations. Former members, allied members, or registered and non-registered employees of member organizations who have retired from the securities industry may be appointed to the hearing board. The members of the hearing board shall be appointed annually and shall serve at the pleasure of the Exchange Board of Directors.

(c) The Chief Hearing Officer may select one but not more than one Floor-Based Panelist to serve in a disciplinary proceeding if the complaint alleges at least one cause of action involving activities on the Floor of the Exchange.

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

The Chief Hearing Officer shall select Panelists from the current members of the NYSE 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 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 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 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 9232.



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

### **Rule 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 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 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 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 have failed to answer, from the expiration of the second period provided for filing an answer under Rule 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 9269, against a Party that fails to appear, in person or through counsel or a representative, at a pre-hearing conference of which the Party has due notice.

**Rule 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) Reserved.**

**Rule 9250. Discovery**

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

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

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

(A) requests for information issued pursuant to Rule 8210;

(B) every other written request directed to persons not employed by the Exchange to provide Documents or to be interviewed;

(C) the Documents provided in response to any such requests described in (A) and (B) above;

(D) all transcripts and transcript exhibits; and

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

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

(3) Nothing in paragraph (a)(1) shall limit the discretion of the Department of Enforcement or the Department of Market Regulation to make

available any other Document or the authority of the Hearing Officer to order the production of any other Document.

**(b) Withheld Documents**

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

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

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

(C) the Document would disclose:

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

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

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

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

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

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

**(c) Withheld Document List**

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

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

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

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

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

## **Rule 9252. Requests for Information**

### **(a) Content and Timing of Requests**

A Respondent who requests that the Exchange invoke Rule 8210 to compel the production of Documents or testimony at the hearing shall do so in writing and serve copies on all Parties. Such request shall: be submitted to the Hearing Officer no later than 21 days before the scheduled hearing date; describe with specificity the Documents, the category or type of Documents, or the testimony sought; state why the Documents, the category or type of Documents, or the testimony are material; describe the requesting Party's previous efforts to obtain the Documents, the category or type of Documents, or the testimony through other means; and state whether the custodian of each Document, or the custodian of the category or type of Documents, or each proposed witness is subject to the 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 9253. Production of Witness Statements**

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

Notwithstanding the provisions of Rule 9251(b),

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

(2) A Respondent in a disciplinary proceeding may also file a motion requesting that the Department of Enforcement or the Department of Market Regulation produce for inspection and copying any contemporaneously written statement made by an Interested 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 the Department of Enforcement or the Department of Market Regulation, and

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

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

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

### **Rule 9260. Hearing and Decision**

### **Rule 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 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 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 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 9267.

**Rule 9264. Motion for Summary Disposition**

**(a) Pre-hearing**

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

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

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

**(c) 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 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 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 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 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 9233 or a Panelist under Rule 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 9136(e); and

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

(6) a statement describing any sanction imposed, the reasons therefor, and the date upon which such sanction shall become effective. Unless otherwise provided in the decision, the sanction(s) shall become effective on a date to be determined by Exchange staff.

**(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 member organization with which a Respondent is associated.

**(e) Review**

(1) If a request for review is not timely filed pursuant to Rule 9310, the majority decision shall constitute final disciplinary action of the Exchange for purposes of SEA Rule 19d-1(c)(1).

(2) A majority decision with respect to an Exchange member that is an affiliate of the Exchange 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 9310.

**Rule 9269. Default Decisions**

**(a) Issuance of Default Decisions**

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

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

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

**(b) Contents of Decision**

The contents of a default decision shall conform to the requirements of Rule 9268(b).

**(c) Review of Default Decision**

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 9310 within 25 days after the date the Office of Hearing Officers serves it on the Parties, the default decision shall become the final disciplinary action of the Exchange for purposes of SEA Rule 19d-1(c)(1). Unless otherwise provided in the default decision, the sanctions shall become effective on a date to be determined by Exchange staff, 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 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 member organization or covered person is alleged to have violated;

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

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

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

**(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 9143 or the separation of functions prohibitions of Rule 9144, in connection with such person's or body's participation in discussions regarding the terms and conditions of the offer of settlement and the order of acceptance, or other consideration of the offer of settlement and order of settlement, including acceptance or rejection of such offer of settlement and order of acceptance.

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

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

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

**(f) Uncontested Offers of Settlement**

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

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

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

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

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

The proceeding shall conclude as of the date the order of acceptance is issued. The order of acceptance shall constitute final disciplinary action of the 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 Office of Disciplinary Affairs, the Hearing Panel or the Extended Hearing Panel, the Respondent shall be notified in writing and the offer of settlement and proposed order of acceptance shall be deemed withdrawn. An offer and a proposed order of acceptance that are not accepted shall not constitute a part of the record in any proceeding against the Respondent making the offer.

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

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

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

If an offer of settlement is rejected by the Office of Disciplinary Affairs, 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 9280. Contemptuous Conduct**

**(a) Persons Subject to Sanctions**

If a Party, attorney for a Party, or other person authorized to represent others by Rule 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 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 9141, under Rule 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 9141.

(1) Such orders may include:

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

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

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

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

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

(2) A Party that without substantial justification fails to disclose information required by the Rule 9240 Series and the Rule 9250 Series or otherwise required by order of the Hearing Officer, Hearing Panel or, if applicable, the Extended Hearing Panel, shall not, unless such failure is harmless, be permitted to use as evidence at a hearing, in a motion or in any other filing of papers, or in oral argument, any witness or information not so disclosed. In addition to, or in lieu of this sanction, the Hearing Officer, Hearing Panel or, if applicable, the Extended Hearing Panel, on motion and after affording an opportunity to be heard, may impose other appropriate sanctions. These sanctions may include any of the sanctions provided for in 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 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 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 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 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 9241.

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

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

**(a) Request for Review**

(1) Any Party, any Director, and any member of the committee of NYSE Regulation to which is delegated the authority to review disciplinary decisions on behalf of the Exchange Board of Directors may require a review by the Exchange Board of Directors of any determination or penalty, or both, imposed by a Hearing Panel or Extended Hearing Panel under the Rule 9200 Series, except that neither Party may request a review by the Exchange Board of Directors of a decision concerning an Exchange member that is an affiliate. A request for review shall be made by filing with

the Secretary of the Exchange a written request therefor, which states the basis and reasons for such review, within 25 days after notice of the determination and/or penalty is served upon the Respondent. The Secretary of the Exchange shall give notice of any such request for review to the Parties.

(2) 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 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, 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, 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 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 9500. OTHER PROCEEDINGS**

## **Rule 9520. Eligibility Proceedings**

### **Rule 9521. Purpose and Definitions**

#### **(a) Purpose**

The Rule 9520 Series sets forth procedures for a covered person to become or remain associated with a member organization, notwithstanding the existence of a statutory disqualification as defined in Section 3(a)(39) of the Exchange Act and for a current member organization 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 member organizations, filed with FINRA's Department of Registration and Disclosure ("RAD").

(2) The term "disqualified member organization" means a broker, dealer, municipal securities broker or dealer, government securities broker or dealer, or member organization 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 or is otherwise ineligible for association under Exchange rules.

(4) The term "sponsoring member organization" means the member organization 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 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 member organization or covered person otherwise fails to meet the eligibility requirements of the Exchange, Exchange staff shall issue a written notice to the member organization 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 member organizations 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 member organization or applicant for membership under Exchange rules is required to file an application pursuant to an Information Memo entitled “Eligibility Proceedings: Exchange Rule 9520 Series to Establish Procedures Applicable to Member Organizations and Covered Persons Subject to Certain Statutory Disqualifications” (the “SD Information Memo”).

### **(2) Notice Regarding a Member Organization**

A notice issued to a disqualified member organization shall state that the disqualified member organization may apply for relief by filing an application or, in the case of a matter set forth in Rule 9522(e)(1), a written request for relief, within ten business days after service of the notice. If the member organization fails to file the application or, where appropriate, the written request for relief, within the 10-day period, the membership of the member organization 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 member organization or applicant for membership under Exchange rules shall state that such member organization 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 9522(e)(1), a written request for relief, within ten business days after service of the notice. If the member organization 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 9131 and 9134.

### **(b) Obligation of Member Organization to Initiate Proceeding**

(1) A member organization shall file an application or, in the case of a matter set forth in Rule 9522(e)(1), a written request for relief, with RAD, if the member organization determines prior to receiving a notice under paragraph (a) that:

(A) it has become a disqualified member organization;

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

(C) the member organization 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 member shall not file an application unless instructed to do so by the SD Information Memo.

### **(c) Withdrawal of Application**

A member organization may withdraw its application or written request for relief prior to a hearing by filing a written notice with RAD pursuant to Rules 9135, 9136, and 9137. A member organization 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 9135, 9136, and 9137.

### **(d) Ex Parte Communications**

The prohibitions against ex parte communications set forth in Rule 9143 shall become effective under the Rule 9520 Series when Exchange staff has initiated the eligibility proceeding and Exchange staff has knowledge that a member intends to file an application or written request for relief pursuant to the Rule 9520 Series.

### **(e) Member Regulation Consideration**

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

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

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



investment company, bank, insurance company, foreign entity substantially equivalent to any of the above, or entity or person required to be registered under the Commodity Exchange Act or any substantially equivalent foreign statute or regulation, or from engaging in or continuing any conduct or practice in connection with any such activity, or in connection with the purchase or sale of any security.

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

(C) a disqualified member organization or sponsoring member organization 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 SEA Rule 19h-1 approving the membership continuance of the disqualified member organization or, in the case of a sponsoring member organization, 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 member organization or sponsoring member organization if the disqualified member organization 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 SEA 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 SEA 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 Member Organization, Sponsoring Member Organization, 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 member organization or sponsoring member organization may file an application, and such member organization shall have the right to proceed under Rule 9523 or 9524, as applicable. The Department of Member Regulation may require a disqualified member organization or sponsoring member organization 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

member organization or sponsoring member organization shall have the right to proceed under Rule 9523 or 9524, as applicable.

**Rule 9523. Acceptance of Member Regulation Recommendations and Supervisory Plans by Consent Pursuant to SEA 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 member organization or sponsoring member organization or the association or continuing association of a disqualified person pursuant to a supervisory plan where the disqualified member organization, sponsoring member organization, and/or disqualified person, as the case may be, consent to the recommendation and the imposition of the supervisory plan. The disqualified member organization, sponsoring member organization, 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 member organization, sponsoring member organization, and/or disqualified person submitted an executed letter consenting to a supervisory plan, by the submission of such letter, the disqualified member organization, sponsoring member organization 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 member organization, sponsoring member organization, 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 member organization, sponsoring member organization, and/or disqualified person to claim that a person violated the ex parte prohibitions of Rule 9143 or the separation of functions prohibitions of Rule 9144, in connection with such person's or body's participation in discussions regarding the terms and conditions of the recommendation or supervisory plan, or other consideration of the recommendation or supervisory plan, including acceptance or rejection of such recommendation or supervisory plan.

(2) If a recommendation or supervisory plan is rejected, the disqualified member organization, sponsoring member organization, 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 9524, as applicable.

(3) If the disqualified member organization, sponsoring member organization, 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 SEA 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 SEA 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 member organization, sponsoring member organization, and/or disqualified person. If the recommendation and supervisory plan are rejected, the disqualified member organization, sponsoring member organization, 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 9522(e)(2)(F), the Department of Member Regulation is authorized to accept the membership or continued membership of a disqualified member organization or sponsoring member organization or the association or continuing association of a disqualified person pursuant to a supervisory plan where the disqualified member organization, sponsoring member organization, and/or disqualified persons, as the case may be, consent to the imposition of the supervisory plan. The disqualified member organization, sponsoring member organization, 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 SEA Rule 19h-1, where required, and the Exchange shall file such Notice.

(1) If a disqualified member organization, sponsoring member organization, and/or disqualified person submitted an executed letter consenting to a supervisory plan, by the submission of such letter, the disqualified member organization, sponsoring member organization 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 member organization, sponsoring member organization, 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 member organization, sponsoring member organization, and/or disqualified person to claim that a person violated the ex parte prohibitions of Rule 9143 or the separation of functions prohibitions of Rule 9144, in connection with such person's or body's participation in discussions regarding the terms and conditions of the 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 member organization, sponsoring member organization, 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 9524.

#### **Rule 9524. Exchange Board of Directors Consideration**

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

A disqualified member organization, sponsoring member organization, or applicant may request that the Exchange Board of Directors review a decision to reject a supervisory plan under Rule 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 9525. Reserved.**

**Rule 9526. Reserved.**

**Rule 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 9550. Expedited Proceedings**

**Rule 9551. Reserved.**

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

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

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

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

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

to accept service of such notice, then Exchange staff may serve notice on counsel or other person authorized to represent others under Rule 9141 as specified in Rule 9134.

**(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 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 8310(a) and 9559(n), a Hearing Officer or, if applicable, Hearing Panel, may approve, modify or withdraw any and all sanctions or limitations imposed by the notice, and may impose any other fitting sanction.

**(d) Effective Date of Suspension**

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 9559.

**(e) Request for Hearing**

A member organization 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 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 member organization 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 9270, except that, if an uncontested offer of settlement, made under Rule 9270(e) after a hearing on the merits has begun, is accepted by the Hearing Officer, the Hearing Officer shall issue the order of acceptance, which shall constitute final Exchange action. Contested offers of settlement shall not be considered in proceedings initiated under this Rule.

**(h) Defaults**

A member organization 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 9553. Reserved.**

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

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

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

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

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

**(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 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 8310(a) and 9559(n), a Hearing Officer or, if applicable, Hearing Panel, may approve, modify or withdraw any and all sanctions or limitations imposed by the notice, and may impose any other fitting sanction.

**(d) Effective Date of Suspension 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 9559.

**(e) Request for Hearing**

A member organization 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 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 member organization 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 member organization 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 9555. Failure to Meet the Eligibility or Qualification Standards or Prerequisites for Access to Services**

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

(1) If a member organization 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 covered person or member organization stating that the failure to become eligible or qualified will result in a suspension or cancellation of membership or a suspension or bar from associating with any member organization.

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

prohibiting access to services offered by the Exchange or a member organization thereof.

**(b) Service of Notice**

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

**(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 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 8310(a) and 9559(n), a Hearing Officer or, if applicable, Hearing Panel, may approve, modify or withdraw any and all sanctions or limitations imposed by the notice, and may impose any other fitting sanction.

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

The limitation, prohibition, suspension, cancellation or bar referenced in a notice issued under this Rule shall become effective 14 days after service of the notice, except that the effective date for a notice of a limitation or prohibition on access to services offered by the Exchange or a member organization thereof with respect to services to which the member organization or covered person does not have access shall be upon service of the notice. A request for a hearing, pursuant to Rule 9559, shall stay the effectiveness of the notice, except that the effectiveness of a notice of a limitation or prohibition on access to services offered by the Exchange or a member organization thereof with respect to services to which the member organization or covered person does not have access shall not be stayed by a request for a hearing.

**(e) Request for Hearing**

A member organization 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 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 member organization 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 member organization thereof with respect to services to which the member organization or covered person does not have access shall be upon service of the notice. The notice shall constitute final Exchange action if the member organization 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 member organization 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 9556. Failure to Comply with Temporary and Permanent Cease and Desist Orders**

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

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

**(b) Service of Notice**

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

associated with a member organization also shall be served on such member organization. Service is complete upon mailing the notice by overnight courier or delivering it in person.

**(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 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 8310(a) and 9559(n), a Hearing Officer or, if applicable, Hearing Panel, may approve, modify or withdraw any and all sanctions or limitations imposed by the notice, and may impose any other fitting sanction.

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

The suspension, cancellation or bar referenced in a notice issued and served under this Rule shall become effective seven days after service of the notice, unless stayed by a request for a hearing pursuant to Rule 9559.

**(e) Request for a Hearing**

A member organization served with a notice under this Rule may file with the Office of Hearing Officers a written request for a hearing pursuant to Rule 9559. A request for a hearing shall be made before the effective date of the notice, as indicated in paragraph (d) of this Rule. A request for a hearing must set forth with specificity any and all defenses to the Exchange action.

**(f) Failure to Request Hearing**

If a member organization 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 member organization 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 9557. Procedures for Regulating Activities Under Rules 4110, 4120 and 4130 Regarding a Member Organization Experiencing Financial or Operational Difficulties**

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

Exchange staff may issue a notice directing a member organization to comply with the provisions of Rule 4110, 4120 or 4130 or restrict its business activities, either by limiting or ceasing to conduct those activities consistent with Rule 4110, 4120 or 4130, if Exchange staff has reason to believe that a condition specified in Rule 4110, 4120 or 4130 exists. A notice served under this Rule shall constitute Exchange action.

**(b) Service of Notice**

Exchange staff shall serve the member organization subject to a notice issued under this Rule by overnight courier or personal delivery. Papers served by overnight courier or personal delivery shall conform to paragraphs (a)(1) and (3) and (b)(2) of Rule 9134. Service is complete upon mailing the notice by overnight courier or delivering it in person.

**(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 member organization 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 member organization 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 member organization may file a written request for a hearing with the Office of Hearing Officers pursuant to Rule 9559;

(8) inform the member organization 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 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 member organization has not complied with all of them, the Hearing Panel shall impose an immediate suspension on the member organization.

**(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 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 members. 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 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 member organization 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 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 member 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 member organization 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 member.

**(f) Enforcement of Notice**

A member organization 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 member organization continues to experience financial or operational difficulty specified in Rule 4110 or 4120 or 4130, 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 member organization 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 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 member organization'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 member organization, 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 member organization'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 member organization, 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 member organization's failure to continue to comply with those requirements and/or restrictions that remain effective shall result in the member organization 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 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 member organization 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 organization of any self-regulatory organization;

(2) suspends a member organization that is in such financial or operating difficulty that Exchange staff determines and so notifies the SEC that the member organization cannot be permitted to continue to do business as a member organization with safety to investors, creditors, other members, 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 member organization 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, member organizations, or the Exchange, and so notifies the SEC.

**(b) Service of Notice**

Exchange staff shall serve the member organization or covered person or other person subject to a notice issued under this Rule by 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 9134. A copy of a notice under this Rule that is served on a covered person associated with a member organization also shall be served on such member organization. Service is complete upon mailing the notice by overnight courier or delivering it in person.

**(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 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 8310(a) and 9559(n), a Hearing Officer or, if applicable, Hearing Panel, may approve, modify or withdraw any and all sanctions or limitations imposed by the notice, and may impose any other fitting sanction.

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

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

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

A member organization 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 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 member organization 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 member organization 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 member organization 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 9559. Hearing Procedures for Expedited Proceedings Under the Rule 9550 Series**

**(a) Applicability**

The hearing procedures under this Rule shall apply to a member organization, covered person or other person who is served with a notice issued under the Rule 9550 Series and who timely requests a hearing. For purposes of this Rule, such member organizations, covered persons or other persons shall be referred to as respondents.

**(b) Computation of Time**

Rule 9138 shall govern the computation of time in proceedings brought under the Rule 9550 Series, except that intermediate Saturdays, Sundays and Federal holidays shall be included in the computation in proceedings brought under Rules 9556 through 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 9552 through 9556,

except that the effectiveness of a notice of a limitation or prohibition on access to services offered by the Exchange or a member organization thereof under Rule 9555 with respect to services to which the member organization, covered person or other person does not have access shall not be stayed by a request for a hearing.

(2) A timely request for a hearing shall stay the effectiveness of a notice issued under Rule 9557 for ten business days after service of the notice or until the Office of Hearing Officers issues a written order under Rule 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 9557 shall not be stayed. Where a notice under Rule 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 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 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 Rule 9554, 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 9552, 9555, 9556, 9557 and 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 9552, 9555, 9556, 9557 and 9558, the Chief Hearing Officer shall select as Panelists persons who meet the qualifications delineated in Rules 9231 and 9232.

(3) Rules 9231(e), 9233 and 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 9235 and 9280.

(5) Hearings under the Rule 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 9557.

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

Rule 9214 shall govern the consolidation or severance of proceedings, except that, where one of the notices that are the subject of consolidation under this Rule requires that a hearing be held before a Hearing Panel, the hearing of the consolidated matters shall be held before a Hearing Panel. Where two consolidated matters contain different timelines under this Rule, the Chief Hearing Officer or Hearing Officer assigned to the matter has discretion to determine which timeline is appropriate under the facts and circumstances of the case. Where one of the consolidated matters includes an action brought under 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 9557, or Hearing Officer, in the case of Rule 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 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 9557 files a written request for a hearing with the Office of Hearing Officers.

(2) A hearing shall be held within 14 days after a respondent subject to a notice issued under Rules 9556 and 9558 files a written request for a hearing with the Office of Hearing Officers.

(3) A hearing shall be held within 30 days after a respondent subject to a notice issued under Rules 9552 through 9555 files a written request for a hearing with the Office of Hearing Officers.

(4) The timelines established by paragraphs (f)(1) through (f)(3) 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 9557;

(2) At least seven days prior to the hearing in the case of an action brought pursuant to Rules 9556 and 9558; and

(3) At least 21 days prior to the hearing in the case of an action brought pursuant to Rules 9552 through 9555.

**(h) Transmission of Documents**

(1) Not less than two business days before the hearing in an action brought under Rule 9557, not less than seven days before the hearing in an action brought under Rules 9556 and 9558, and not less than 14 days before the hearing in an action brought under Rules 9552 through 9555, Exchange staff shall provide to the respondent who requested the hearing, by overnight courier, all documents that were considered in issuing the notice unless a document meets the criteria of Rule 9251(b)(1)(A), (B), (C) or (b)(2). A document that meets such criteria 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 9557, not less than three days before the hearing in an action brought under Rules 9556 and 9558, and not less than seven days before the hearing in an action brought under Rules 9552 through 9555, the parties shall exchange proposed exhibit and witness lists. The exhibit and witness lists shall be served by overnight courier.

**(i) Evidence**

Formal rules of evidence shall not apply to a hearing under this Rule Series. Rules 9262 and 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 9265 shall govern the requirements for the record of the hearing.

**(l) Record of Proceeding**

Rule 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 that respondent has raised, shall be considered an abandonment of the respondent's defense and waiver of any opportunity for a hearing provided by the Rule 9550 Series. In such cases, the notice issued under the Rule 9550 Series shall be deemed to be final 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.

**(n) Sanctions, Costs and Remands**

(1) In any action brought under the Rule 9550 Series, other than an action brought under Rule 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 8310(a), may also impose any other fitting sanction.

(2) In an action brought under Rule 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 9557(g)(2).

(3) The Hearing Officer or, if applicable, the Hearing Panel may impose costs pursuant to Rule 8330 regarding all actions brought under the Rule 9550 Series.

(4) In any action brought under the Rule 9550 Series, other than an action brought under Rule 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 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 9556 and 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 9552 and 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 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 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 9552 through 9556 and 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 Exchange member organization 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 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 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 9550 Series (other than Rule 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 9310. For proceedings initiated under Rule 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 9310.

**(r) Reserved.**

**(s) 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 9600. PROCEDURES FOR EXEMPTIONS**

**Rule 9610. Application**

**(a) Where to File**

A member organization seeking exemptive relief as permitted under Rules 4311, 4360, or 8211 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 member organization's name and address, the name of a person associated with the member organization who will serve as the primary contact for the application, the Rule from which the member organization is seeking an exemption, and a detailed statement of the grounds for granting the exemption. If the member organization does not want the application or the decision on the application to be publicly available in whole or in part, the member organization also shall include in its application a detailed statement, including supporting facts, showing good cause for treating the application or decision as confidential in whole or in part.

**(c) Applicant**



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

### **Rule 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 9132 and 9134. After the decision is served on the Applicant, the application and decision shall be publicly available unless Exchange staff determines that the Applicant has shown good cause for treating the application or decision as confidential in whole or in part.

### **Rule 9630. Appeal**

#### **(a) Notice**

An Applicant may file a written notice of appeal within 15 calendar days after service of a decision issued under Rule 9620. The notice of appeal shall be filed with the 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 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 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 9132 and 9134. The decision shall be effective upon service and shall constitute final action of the Exchange.

**Rule 9700. Reserved.**

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

**Rule 9810. Initiation of Proceeding**

**(a) Department of Enforcement or Department of Market Regulation**

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

**(b) Contents of Notice**

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

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

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

**(c) Filing of Underlying Complaint**

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

Enforcement or the Department of Market Regulation shall serve and file such a complaint with the notice initiating the temporary cease and desist proceeding.

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

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

(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 9233 and 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 9233 and 9234; and

(2) the Chief Hearing Officer shall appoint a replacement Panelist using the criteria set forth in paragraph (a) of this Rule.

### **Rule 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 Hearing Officer with the consent of the Parties 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 the Department of Enforcement or the Department of Market Regulation and the Respondent not later than seven days before the hearing, unless otherwise ordered by the Hearing Officer. Service shall be made by personal service or overnight commercial courier. The notice shall be effective upon service.

#### **(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 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**

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.

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

**Rule 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 Hearing Officer with the consent of the Parties for good cause shown. A temporary cease and desist order shall be imposed if the Hearing Panel finds:

(1) by a preponderance of the evidence that the alleged violation specified in the notice has occurred; and

(2) that the 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 9200 and 9300 Series.

**(b) Content, Scope, and Form of Order**

A temporary cease and desist order shall:

(1) be limited to ordering a Respondent to cease and desist from violating a specific rule or statutory provision, and, where applicable, to ordering a Respondent 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 is to take or refrain from taking; 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 9268 or Rule 9269.

**(d) Service**

The Office of Hearing Officers shall serve the Hearing Panel's decision and any temporary cease and desist order by personal service or overnight commercial courier. The temporary cease and desist order shall be effective upon service.

**Rule 9850. Review by Hearing Panel**

At any time after the Office of Hearing Officers serves 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 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 temporary cease and desist order.

### **Rule 9860. Violation of Temporary Cease and Desist Orders**

A Respondent who violates a temporary cease and desist order imposed under this Rule Series may have its association or membership suspended or canceled under Rule 9556. 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 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.

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## **NYSE Rule Interpretations**

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### **Rule 345A Continuing Education for Registered Persons**

#### **(a) REGULATORY ELEMENT**

/01 through /05 No Change.

#### **(a) (2) /01 No Change.**

#### **(a) (3) /01 Re-entry into the Program**

Re-entry into the Regulatory Element is triggered by the occurrence of specified disciplinary events. The effective date of a disciplinary action requiring re-entry into the program is the date upon which such action becomes final and conclusive i.e., expiration of the time period allowed to appeal or request review of the action (see [Exchange] Rule 476(g) or the Rule 9000 Series, as applicable) or, if the matter is appealed or reviewed, the date a decision on the appeal or review is issued.

#### **(b) FIRM ELEMENT**

(1)/01 No Change.

**(b) (2) (i) Needs Assessment and Written Training Plan**

/01 through /02 No Change.

**(c) GENERAL STANDARDS**

/01 through /03 No Change.