

Required fields are shown with yellow backgrounds and asterisks.

Page 1 of * <input type="text" value="84"/>	SECURITIES AND EXCHANGE COMMISSION WASHINGTON, D.C. 20549 Form 19b-4	File No.* SR - <input type="text" value="2016"/> - * <input type="text" value="148"/>	Amendment No. (req. for Amendments *) <input type="text"/>
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Filing by NASDAQ Stock Market
Pursuant to Rule 19b-4 under the Securities Exchange Act of 1934

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

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

Exhibit 2 Sent As Paper Document <input type="checkbox"/>	Exhibit 3 Sent As Paper Document <input type="checkbox"/>
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Description

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

Proposal to adopt Rules 9556 and 9800, which were previously adopted as a pilot the term of which has since expired, and to make related changes to the 9100, 9200, 9300, 9550, and 9800 Rule Series.

Contact Information

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

First Name * <input type="text" value="Sean"/>	Last Name * <input type="text" value="Bennett"/>
Title * <input type="text" value="Principal Associate General Counsel"/>	
E-mail * <input type="text" value="Sean.Bennett@nasdaq.com"/>	
Telephone * <input type="text" value="(301) 978-8499"/>	Fax <input type="text"/>

Signature

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

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

(Title *)

Date <input type="text" value="10/27/2016"/>	Executive Vice President and General Counsel
By <input type="text" value="Edward S. Knight"/>	<input type="text"/>
(Name *)	

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

SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

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

Form 19b-4 Information *

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

Exhibit 1 - Notice of Proposed Rule Change *

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

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

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

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

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Exhibit Sent As Paper Document

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

Exhibit 3 - Form, Report, or Questionnaire

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Exhibit Sent As Paper Document

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

Exhibit 4 - Marked Copies

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

Exhibit 5 - Proposed Rule Text

Add Remove View

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

Partial Amendment

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

1. Text of the Proposed Rule Change

(a) The NASDAQ Stock Market LLC (“Nasdaq” or “Exchange”), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)¹ and Rule 19b-4 thereunder,² is filing with the Securities and Exchange Commission (“SEC” or “Commission”) a proposal to adopt Rules 9556 and 9800, which were previously adopted as a pilot the term of which has since expired, and to make related changes to the 9100, 9200, 9300, 9550, and 9800 Rule Series.

The Exchange requests that the Commission waive the 30-day operative delay period contained in Exchange Act Rule 19b-4(f)(6)(iii).³

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

(b) Not applicable.

(c) Not applicable.

2. Procedures of the Self-Regulatory Organization

The proposed rule change was approved by senior management of the Exchange pursuant to authority delegated by the Board of Directors of the Exchange (the “Board”) on August 15, 2016. No other action is necessary for the filing of the rule change.

Questions and comments on the proposed rule change may be directed to:

T. Sean Bennett
Principal Associate General Counsel
Nasdaq, Inc.
(301) 978-8499

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ 17 CFR 240.19b-4(f)(6)(iii).

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

a. Purpose

The Exchange is proposing to adopt new Rules 9556 and 9800, which were previously adopted as a pilot the term of which has since expired, and to make related changes to the 9100, 9200, 9300, 9550, and 9800 Rule Series. In May 2003, the Commission approved, on a pilot basis, a rule change to adopt NASD Rules 9556 and 9800 that gave NASD, now known as FINRA, authority to issue temporary cease and desist orders and made explicit NASD's ability to impose permanent cease and desist orders as a remedy in disciplinary cases.⁴ Because NASD was, and now FINRA is, the Exchange's regulatory services provider and administers the Exchange's disciplinary program under contract, the Exchange seeks to maintain comparability between its disciplinary procedure rules and those of NASD and now FINRA. As a consequence, the Exchange adopted Rules 9556 and 9800 to mirror the then-NASD rules to operate as a pilot in conjunction with the related NASD pilot.⁵

⁴ See Securities Exchange Act Release No. 47925 (May 23, 2003) (File No. SR-NASD-98-80), 68 FR 33548 (June 4, 2003). See also Securities Exchange Act Release No. 51860 (June 16, 2005), 70 FR 36427 (June 23, 2005) (SR-NASD-2005-061) (extending the pilot to June 23, 2007 and making non-substantive changes); and Securities Exchange Act Release No. 55819 (May 25, 2007), 72 FR 30895 (June 4, 2007) (SR-NASD-2007-033) (extending the pilot to June 23, 2009 and making non-substantive changes).

⁵ See Securities Exchange Act Release No. 53128 (January 13, 2006), 71 FR 3550 (January 23, 2006). See also Securities Exchange Act Release No. 56120 (July 24, 2007), 72 FR 41561 (July 30, 2007) (SR-NASDAQ-2007-060) (extending the pilot to June 23, 2009 and making conforming changes); and Securities Exchange Act Release No. 58069 (June 30, 2008), 73 FR 39360 (July 9, 2008) (SR-NASDAQ-2008-054) (making non-substantive changes).

On June 23, 2009, the Exchange's Rule 9556 and 9800 pilot programs expired, at which time those rules and certain references thereto became obsolete, notwithstanding that they remained in the rulebook. The FINRA pilot program, however, continued and was approved on July 14, 2009 on a permanent basis.⁶

Neither the Exchange nor FINRA, acting on behalf of the Exchange pursuant to agreement, have used the cease and desist authority under Rules 9556 and 9800 during the time that the rules were effective. Nonetheless, the Exchange believes that, in addition to maintaining similar disciplinary rules, adoption of Rules 9556 and 9800 is important to the Exchange's disciplinary program. The authority under these rules will provide the Exchange and FINRA, operating on behalf of the Exchange, with a mechanism to take appropriate remedial action against a member or an associated person that has engaged (or is engaging) in violative conduct that could cause continuing harm to the investing public if not addressed expeditiously, such as dissipation or conversion of assets. It must be emphasized, however, that the cease and desist provisions contain numerous procedural protections for respondents to ensure that the proceedings are fair. Consequently, the Exchange believes that adoption of these rules is important to its regulatory program, notwithstanding that it anticipates exercising the authority provided by the rules sparingly.

⁶ Securities Exchange Act Release No. 60306 (July 14, 2009), 74 FR 36292 (July 22, 2009) (SR-FINRA-2009-035). The Exchange notes that FINRA, in its rule change proposal to make its pilot program permanent, noted that it had used the authority under Rules 9556 and 9800 sparingly. Id. at 36293.

The Exchange is proposing to delete Rules 9556 and 9800 (and related references in other rules⁷) because the pilot period for these rules has expired rendering them void, and adopt new Rules 9556 and 9800 (and related references in other rules)⁸ based on FINRA's analogous cease and desist rules, which include amendments to the former Nasdaq cease and desist rules to reflect changes that FINRA has made to its cease and desist rules in 2011 and 2015 after they were made permanent.⁹ The Exchange is also proposing to amend other Rules under the 9000 Series to incorporate changes that FINRA made to its analogous rules in 2015, as discussed below. These proposed changes include significant amendments made by FINRA to not only its Rules 9556 and 9800, but also to its 9100, 9200, 9300, 9550, and 9800 Rule Series in 2015. Unless otherwise noted, Nasdaq is adopting the FINRA Rules with only minor changes to reflect the Exchange's committee structure and rules,¹⁰ as described below.

⁷ The Exchange is deleting text from related provisions of Rules 8310, IM-8310-3(c)(1), 9120(r), 9241(c), 9290, 9311(b), 9312(b), and 9360 that also expired on June 23, 2009 and is inserting new text identical to what was deleted.

⁸ As a consequence of the expiration of the pilot rendering the existing related rule text void, in certain cases the Exchange is deleting the void text and reinserting identical rule text thereafter so the text may have effect once again. For example, the Exchange is deleting Rule 8310(a)(6), concerning imposition of a temporary or permanent cease and desist order, and adopting a new Rule 8310(a)(6) identical to what was deleted.

⁹ In 2013, FINRA consolidated the publication standards for expedited proceeding decisions, including under FINRA Rule 9556, in FINRA Rule 8313(a)(3) and consequently amended FINRA Rule 9556 to remove paragraph (h) "Notice to Membership" from the rule. See Securities Exchange Act Release No. 69825 (June 21, 2013), 78 FR 38771 (June 27, 2013) (SR-FINRA-2013-018). The Exchange did not have such a provision in its Rule 9556. The Exchange's disclosure obligations are provided under IM-8310-3, including the Exchange's disclosure obligations related to expedited proceedings. See IM-8310-3(c).

¹⁰ The Exchange is replacing references to FINRA and FINRA staff with references to Nasdaq and Nasdaq staff, which are the appropriate analogous parties at

2011 FINRA Rule Changes

In 2011, FINRA amended Rules 9552(b), 9553(b), 9554(b), 9555(b), and 9556(b), all of which concern service of notice.¹¹ Each of these rules concern the process followed when a person or entity subject to FINRA's jurisdiction fail to comply with various requirements under its rules. FINRA amended the rule provisions noted above to allow notice of failure to comply with a temporary or permanent cease and desist order to be served on counsel representing the member or person, or other person authorized to represent others under FINRA Rule 9141,¹² when counsel or other person authorized to represent others under FINRA Rule 9141 agrees to accept service for the member or person.

Nasdaq. The Exchange is also replacing FINRA text that states "Chief Executive Officer or such other senior officer as the Chief Executive Officer may designate" with "Chief Regulatory Officer," which is the Exchange officer vested with the authority described under the rules. For example, old Rules 9556(a) and 9860 vested authority with the Chief Regulatory Officer to authorize notice and initiation of proceedings, respectively, whereas the analogous FINRA rules authorize its Chief Executive Officer or such other senior officer as the Chief Executive Officer may designate instead. Last, the Exchange is adding clarifying language to Rule 9810 to make it clear that initiation of a proceeding must not only be authorized by FINRA's Chief Executive Officer or such other senior officer as the Chief Executive Officer may designate, but also Nasdaq's Chief Regulatory Officer. As a practical matter, the Chief Regulatory Officer must agree that such a proceeding should be brought pursuant to Nasdaq rules.

¹¹ Securities Exchange Act Release No. 60306 (January 4, 2012), 77 FR 1524 (January 10, 2012) (SR-FINRA-2011-044). FINRA also amended other rules in the FINRA Rule 9000 Series not addressed in this filing. Id.

¹² FINRA Rule 9141, entitled "Appearance and Practice; Notice of Appearance," provides, among other things, what is permissible in terms of representation before an Adjudicator. Exchange Rule 9141 is consistent with FINRA Rule 9141.

2015 FINRA Rule Changes

In 2015, FINRA made significant changes to its temporary and permanent cease and desist rules.¹³ FINRA lowered the evidentiary standard to obtain a temporary cease and desist order, adopted a new expedited proceedings to address situations involving repeated violations of temporary or permanent cease and desist orders, and made a series of rule amendments to the temporary cease and desist order rules under FINRA Rule Series 9800, the expedited proceedings rules under FINRA Rule Series 9550,¹⁴ and FINRA's Code of Procedure (FINRA Rule Series 9000) that harmonize service provisions in temporary cease and desist proceedings and expedited proceedings, ease administrative burdens in temporary cease and desist proceedings, and clarify the process by which permanent cease and desist orders may be imposed.

(i) Evidentiary Standard for Imposing a Temporary Cease and Desist Order

FINRA amended FINRA Rule 9840(a)(1) to change the evidentiary standard applied by Hearing Panels in issuing a temporary cease and desist order. Specifically, FINRA changed the standard for issuing a temporary cease and desist order from “by a preponderance of the evidence that the alleged violation specified in the notice has occurred” to a “showing of a likelihood of success on the merits.” FINRA noted that it believed that the “preponderance of the evidence” standard set too high an evidentiary threshold for this critical investor-protection tool, and noted that it is the identical

¹³ Securities Exchange Act Release No. 75629 (August 6, 2015), 80 FR 48379 (August 12, 2015) (SR-FINRA-2015-019).

¹⁴ FINRA amended its Rule 9551 “Failure to Comply with Public Communications Standards.” Nasdaq does not have such a rule (Nasdaq Rule 9551 is held in reserve) and is thus not incorporating those changes. In a related change, the Exchange is also amending its Rule 9559 to delete the references to Rule 9551, which were erroneously included in the rule.

standard for proving a violation in the underlying disciplinary proceeding that must be pursued at the same time.¹⁵ Thus, to obtain a temporary cease and desist order—and thereby prevent the likely and significant dissipation or conversion of assets or other significant harm to investors—FINRA’s prosecuting department had to make an evidentiary presentation in the temporary cease and desist proceeding that is similar in extent to its evidentiary presentation in the subsequent underlying disciplinary proceeding, but in an expedited manner.

FINRA also made a corresponding amendment to FINRA Rule 9840(a)(2). Prior to the amendment, FINRA Rule 9840(a)(2) provided that a temporary cease and desist order shall be imposed if the Hearing Panel finds 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 proceeding. The 2015 rule change modified this requirement to apply to the “alleged” violative conduct or continuation thereof, to be consistent with the proposed change to the evidentiary standard.

(ii) Failures to Comply with Temporary Cease and Desist Orders and Permanent Cease and Desist Orders (FINRA Rule 9556)

FINRA also made amendments to FINRA Rule 9556, which sets forth expedited procedures for enforcing violations of FINRA-issued temporary and permanent cease and desist orders. FINRA was concerned that their existing expedited procedures may permit cease and desist orders to be circumvented without any real threat of a sanction.¹⁶ Thus,

¹⁵ See Securities Exchange Act Release No. 75333 (June 30, 2015), 80 FR 38783 (July 7, 2015) (Notice of Filing File No. SR-FINRA-2015-019) at 38784.

¹⁶ Id. at 38785.

FINRA amended FINRA Rule 9556 to adopt a new paragraph (h) to permit its staff (with prior authorization from FINRA's Chief Executive Officer or other designated senior officer) to institute a new kind of expedited proceeding if the subject of a temporary or permanent cease and desist order fails to comply with that order and has previously been served with a notice under Rule 9556(a) for failure to comply with any provision of the same temporary or permanent cease and desist order. FINRA adopted the change to prevent a respondent from abusing the existing process by repeatedly violating a cease and desist order and curing that violation before the effective date of any FINRA Rule 9556 notice,¹⁷ without being subject to the immediate sanctions or review by the Office of Hearing Officers for a prolonged period. FINRA noted in its filing that the new FINRA Rule 9556(h) proceeding differs from other FINRA Rule 9556 expedited proceedings in other respects that reflect the response that FINRA believes is warranted for situations involving repeated violations of temporary or permanent cease and desist orders.¹⁸ These differences include the following:

- a FINRA Rule 9556(h) proceeding could be initiated only if the respondent has previously been served, under FINRA Rule 9556(a), with a notice for failing to comply with any provision of the same temporary or permanent cease and desist order;

¹⁷ Under the then-current FINRA Rule 9556, if a member or person failed to comply with a temporary or permanent cease and desist order, FINRA staff (with prior authorization from FINRA's Chief Executive Officer or other designated senior officer) may have issued a notice stating that the failure to comply within seven days will result in a suspension or cancellation of membership or a suspension or bar from associating with any member and also would have stated what the respondent must do to avoid such action.

¹⁸ See supra note 15 at 38785.

- FINRA’s prosecuting department would initiate a FINRA Rule 9556(h) proceeding by filing a petition with FINRA’s Office of Hearing Officers (and serving the respondent) that seeks the imposition of sanctions for the violation (rather than issuing a notice to the respondent);
- FINRA’s prosecuting department would seek the imposition of any fitting sanction at the outset of the FINRA Rule 9556(h) proceeding (in contrast to other FINRA Rule 9556 expedited proceedings, where the recipient of a notice is not subject to the imposition of any fitting sanction unless such recipient opts for a hearing);
- a hearing is required in a FINRA Rule 9556(h) proceeding;
- the hearing for a FINRA Rule 9556(h) proceeding must be held in a condensed time frame (ten business days after a respondent is served the petition, versus other Rule 9556 proceedings which require a respondent to request a hearing within seven business days after service of a notice instituting a proceeding and require hearings to be held within 14 days after a request for a hearing is filed);¹⁹
- a FINRA Rule 9556(h) proceeding is presided over by a Hearing Officer,²⁰ rather than a Hearing Panel;²¹ and
- the Hearing Officer may issue default decisions in FINRA Rule 9556(h) proceedings.²²

¹⁹ See FINRA Rule 9559(f)(2) and (3); FINRA Rule 9556(e).

²⁰ As defined by FINRA Rule 9120(r).

²¹ As defined by FINRA Rule 9120(s). See FINRA Rule 9559(d)(1) and (2) for a description of the appointment and authority of a Hearing Officer and/or Hearing Panel in expedited proceedings.

Under amended FINRA Rule 9556(h)(4), the FINRA department that filed the petition can withdraw it without prejudice and shall be permitted to refile a petition based on allegations concerning the same facts and circumstances that are set forth in the withdrawn petition. FINRA noted that this provision provides it the flexibility to withdraw the petition where, for instance, the respondent evidences a good faith intent to comply with the temporary or permanent cease and desist order without the need to adjudicate the petition, while preserving FINRA's right to refile the petition if the respondent fails to do so.²³

(iii) Service Provisions in Temporary Cease and Desist Proceedings and Expedited Proceedings

FINRA also made the rules that govern service of documents in temporary cease and desist proceedings and the eight different types of expedited proceedings under the Rule 9550 Series more consistent.²⁴ Prior to the changes, some provisions of these rules explicitly addressed service by facsimile and on counsel, while some did not. FINRA's amendments explicitly allow service by facsimile and on counsel across all temporary

²² See FINRA Rule 9559(m)(2).

²³ See supra note 15 at 38785.

²⁴ The Exchange notes that in SR-FINRA-2015-019 FINRA replaced references to "contact questionnaires" with reference to the "FINRA Contact System," FINRA's proprietary system that facilitates member firm reporting of key contacts to FINRA. Exchange members are required to use the FINRA Contact System to report to Nasdaq all contact information required by Nasdaq and update its required contact information promptly. See Rule 1160. Under the FINRA Rule 9550 Series, the rules cite Article 4, Section III of the FINRA By-Laws as the authority pursuant to which its members have an obligation to report required contact information to it via the FINRA Contact System, whereas the Exchange's authority is pursuant to Rule 1160, as noted above. Thus, the Exchange is instead referencing Rule 1160 in the Rule 9550 Series as the authority pursuant to which members have the reporting obligation.

cease and desist and expedited proceedings, noting that doing so removed unnecessary burdens and inefficiencies. FINRA also amended its rules to permit service by email for all temporary cease and desist proceedings and expedited proceedings. FINRA noted that email service would allow parties to receive information quickly, which is particularly important in these types of proceedings, considering the short time frames involved.²⁵ As part of the changes allowing service by email, FINRA also now requires duplicate service through some other means such as overnight courier or personal delivery and made changes to its Rule 9550 Series to reflect this requirement.

(iv) Clarifying FINRA's Authority to Impose Permanent Cease and Desist Orders

FINRA clarified its rules concerning the process for imposing permanent cease and desist orders in disciplinary proceedings. FINRA noted that when it obtained the authority to impose temporary cease and desist orders, it also obtained the authority to impose permanent cease and desist orders.²⁶ Thus, the clarifying changes were procedural in nature and did not reflect any change to FINRA's prior representations concerning the context in which it would seek permanent cease and desist orders.

(v) Administrative Changes to Temporary Cease and Desist Proceedings

FINRA also expanded the pool of persons eligible to serve on hearing panels to include those who may serve on hearing panels for disciplinary matters, as provided under FINRA Rules 9231(b) and 9559(d)(2).²⁷ Specifically, FINRA amended its Rule

²⁵ See supra note 15 at 38785-6.

²⁶ See supra note 15 at 38786.

²⁷ FINRA harmonized the categories of individuals eligible for appointment as a Hearing Panelist under FINRA Rule 9820 with FINRA Rule 9231(b) (providing that each panelist shall be associated with a member of FINRA or retired therefrom and that the pool of panelists for disciplinary proceedings includes

9820 to provide that the potential panelists for the Hearing Panels that preside over temporary cease and desist proceedings to include persons who currently serve or previously served on a District Committee;²⁸ previously served on the National Adjudicatory Council;²⁹ previously served on a disciplinary subcommittee of the National Adjudicatory Council or the National Business Conduct Committee;³⁰ previously served as a member of the Board of Directors of FINRA Regulation or of the Board of Governors of FINRA; or currently serve or previously served on a committee appointed or approved by the Board of Governors of FINRA, but do not serve currently on the National Adjudicatory Council or as a member of the Board of Directors of FINRA Regulation or of the Board of Governors of FINRA. The amendment to FINRA Rule 9820 also required that each panelist be associated with a member of FINRA or retired therefrom. FINRA noted that, while its Office of Hearing Officers has presided over only a limited number of temporary cease and desist proceedings, those experiences have revealed that the narrowly circumscribed set of potential panelists can impede the recruitment of Hearing Panel members, especially considering that the expedited nature of temporary cease and desist proceedings will already preclude many from being able to

current or previous members of District Committees, former members of the National Adjudicatory Council, past members of disciplinary subcommittees of the National Adjudicatory Council or the National Business Conduct Committee, past members of the Board of Directors of FINRA Regulation or past members of the Board of Governors of FINRA, and current or previous members of committees appointed or approved by the Board of Governors of FINRA); FINRA Rule 9559(d)(2) (providing for the same pool for FINRA Rule 9556 expedited proceedings).

²⁸ As defined by FINRA Rule 9120(g).

²⁹ See By-Laws of FINRA Regulation, Inc., Article V National Adjudicatory Council.

³⁰ The predecessor to the FINRA National Adjudicatory Council.

serve.³¹ FINRA also noted that it had concerns that the small pool of potential panelists will often make it difficult to recruit hearing panelists who can serve on both the temporary cease and desist proceeding and the subsequent underlying disciplinary proceeding, as well as any related expedited proceeding under FINRA Rule 9556.³²

The Exchange is proposing to, likewise, expand the categories of individuals eligible to participate as Hearing Panelists. Like FINRA, the Exchange is harmonizing the categories of eligible individuals with the criteria under Rules 9231(b) and 9559(d)(2).³³ Thus, the Exchange is allowing the Chief Hearing Officer to select as a Panelist pursuant to proposed Rule 9820(a) a person who: previously served on the Nasdaq's Review Council;³⁴ previously served on a disciplinary subcommittee of the Nasdaq Review Council, including a Subcommittee, an Extended Proceeding Committee,³⁵ or their predecessor subcommittees; previously served as a Director, but does not serve currently in that position; served on the FINRA National Adjudicatory Council or on a disciplinary subcommittee of the FINRA National Adjudicatory Council prior to the date that Nasdaq commenced operating as a national securities exchange; or is a FINRA Panelist approved by the Nasdaq Board at least annually, or is drawn from other sources the Board deems appropriate given the responsibilities of Panelists.

³¹ See supra note 15 at 38786.

³² Id.

³³ Like FINRA's Rule 9559(d)(2), Rule 9559(d)(2) provides for the same pool for Rule 9556 expedited proceedings). Supra note 27.

³⁴ See By-Laws of The Nasdaq Stock Market LLC, Article VI, Nasdaq Review Council.

³⁵ As defined by Rule 9120(n).

FINRA's proposed changes also eased other administrative burdens created by the shortened time frame of a temporary cease and desist proceeding. Those proposed changes were aimed at improving Hearing Panels' and parties' ability to prepare for hearings and giving Hearing Officers some needed flexibility. For example, under FINRA Rule 9830(a) prior to the 2015 amendments a Hearing Officer was not able to extend a hearing date in a temporary cease and desist proceeding unless all parties consented to the extension. The requirement to obtain the parties' consent was problematic in instances whereby the Office of Hearing Officers, rather than one of the parties, had a need for an extension, such as when it encounters difficulty in quickly appointing a Hearing Panel. To address this problem, FINRA amended its Rule 9830(a) to allow hearing deadlines to be extended by the Chief Hearing Officer or Deputy Chief Hearing Officer for good cause shown.

FINRA also made similar amendments to the process by which extensions are obtained to the deadlines for issuing decisions in temporary cease and desist proceedings and responding to requests to modify, set aside, limit, or suspend a temporary cease and desist order. Before the amendments to FINRA Rule 9840(a), the Hearing Panel's deadline for issuing its written decision could not be extended, even where there was good cause, without the consent of the parties. Likewise, prior to amending FINRA Rule 9850, a Hearing Panel's deadline for responding to an application to have a temporary cease and desist order modified, set aside, limited, or suspended could not be extended, even where there was a good cause, without the consent of the Parties. To allow a Hearing Panel some flexibility where there is a need for additional time to prepare its decision or respond to a FINRA Rule 9850 request (e.g., when a member of the Hearing

Panel becomes ill, where the temporary cease and desist proceeding is highly complex), FINRA amended FINRA Rules 9840(a) and 9850 to permit the deadlines for issuing decisions and responding to FINRA Rule 9850 applications to be extended by the Chief Hearing Officer or Deputy Chief Hearing Officer for good cause shown.

To further address the burdens created by the short time frame of temporary cease and desist proceedings, FINRA amended its rules to: (i) require FINRA's prosecuting department to file a memorandum of points and authorities with the notice initiating a temporary cease and desist proceeding; and (ii) permit the Hearing Officer to order a party to furnish to all other parties and the Hearing Panel such information as deemed appropriate, including any or all of the pre-hearing submissions described in FINRA Rule 9242(a). FINRA noted that requiring its prosecuting department to file a memorandum of points and authorities at the initiation of the proceeding provides more context to the allegations and set forth legal authorities on which the notice seeking a temporary cease and desist order is premised.³⁶ FINRA believed that the change would, in turn, facilitate a more efficient process and improve the quality of the hearing through more thorough preparation, which are the same goals of the pre-hearing processes in FINRA disciplinary proceedings. FINRA also noted that requiring the filing of a memorandum of points and authorities at the initiation of a temporary cease and desist proceeding also enhances disclosure of the prosecuting department's allegations, which would inure to the benefit of the respondents and further increases the fairness of the proceeding.³⁷ Last, FINRA

³⁶ See supra note 15 at 38787.

³⁷ Id.

noted that all of these objectives are served by authorizing Hearing Officers to order a party to furnish other pre-hearing submissions.³⁸

FINRA also proposed Rule 9840(e), which is a delivery requirement that requires a member firm that is the subject of a temporary cease and desist order to provide a copy of the order to its associated persons, within one business day of receiving it.

Considering the significant nature of the harm that a temporary cease and desist order is aimed at stopping, FINRA believed that there is a heightened need to ensure that the persons who may act on behalf of the member firm are made aware of the contents of a temporary cease and desist order imposed against the member firm and the delivery requirement furthers that goal.³⁹

FINRA's rule change clarified the following additional three issues: (1) how settlements may be approved in temporary cease and desist proceedings; (2) which Hearing Panel has jurisdiction to preside over applications filed under FINRA Rule 9850 to modify, set aside, limit or suspend temporary cease and desist orders that are filed after

³⁸ Id.

³⁹ Similarly, FINRA made related amendments to FINRA Rules 9269, 9270, and 9840 to require that the Office of Hearing Officers, the Department of Enforcement, the Department of Market Regulation, or the General Counsel, as appropriate, disseminate default decisions, orders of acceptance of settlement, and temporary cease and desist orders to each member of FINRA with which a respondent is associated. FINRA noted that these dissemination requirements are intended to ensure that a respondent's member firm is made aware of the disciplinary history of its associated persons, regardless of the specific disciplinary procedure involved. See supra note 15 at 38787, n. 15. FINRA also noted that the amendments are consistent with other FINRA Rules that already require the Office of Hearing Officers, the National Adjudicatory Council, or the Board of Governors of FINRA to provide copies of a decision issued by a Hearing Panel, an Extended Hearing Panel, the National Adjudicatory Council, or the Board of Governors of FINRA to each member firm with which a respondent is associated. Id.; see also FINRA Rules 9268(d), 9349(c), 9351(e). The Exchange is adopting these amendments to Rules 9269, 9270, and 9840.

a Hearing Panel has already been appointed in the underlying disciplinary proceeding; and (3) whether temporary and permanent cease and desist orders imposed against a firm also apply to successors of that firm.

With respect to the first issue, new FINRA Rule 9810(c) established that, if the parties agree to the terms of a proposed temporary cease and desist order, the Hearing Officer has the authority to approve and issue the order. On the second issue, amended FINRA Rule 9850 provided that the Hearing Panel that presided over the temporary cease and desist order proceeding shall retain jurisdiction to review a FINRA Rule 9850 application unless at the time the application is filed a Hearing Panel has already been appointed in the underlying disciplinary proceeding commenced under FINRA Rule 9211, in which case the Hearing Panel appointed in the disciplinary proceeding has jurisdiction. As to the third issue, amended FINRA Rule 9840(b) and new Rule 9291(a) established that when a temporary or permanent cease and desist order is imposed against a member firm, it also applies to any successor of the member firm.

Finally, FINRA amended certain provisions of FINRA Rule 9120. FINRA amended FINRA Rule 9120(s), "Hearing Panel," to include an Adjudicator that is constituted under Rule 9231 to conduct a disciplinary proceeding governed by the Rule 9800 Series. The Exchange is adopting this amendment in its Rule 9120(s).

FINRA also amended FINRA Rule 9120(t), "Interested Staff," to: (1) insert "or petition" under paragraph (2)(A) of the rule, thus expanding the definition to include FINRA staff that filed a petition in a proceeding under the Rule 9520 Series or Rule 9550 Series; and (2) include a new paragraph (4) to list FINRA staff that are defined as Interested Staff in a proceeding under the FINRA Rule 9800 Series. The Exchange is

also adopting the amendment to its Rule 9120(t) “Interested Staff,” but is expanding the definition to also include Nasdaq Regulation employees who directly participated in the authorization of the notice that initiates a temporary cease and desist proceeding, or directly participated in an examination, investigation, prosecution, or litigation related to a specific temporary cease and desist proceeding, under new paragraphs (t)(4)(C) and (D) of the rule.

FINRA also amended FINRA Rule 9120(w), “Panelists,” to include references to Panelists in the Rule 9550 Series, and the Rule 9800 Series within the definition provided by the rule. The Exchange is adopting this amendment in Rule 9120(z). FINRA also amended Rule 9120(z) “Respondent” to define a Respondent in a proceeding governed by the Rule 9800 Series to mean a FINRA member or associated person that has been served a notice initiating a cease and desist proceeding. The Exchange is adopting this amendment in Rule 9120(bb) “Respondent.”

The Exchange believes that the changes made by FINRA in 2011 and 2015, as described above, improve the cease and desist authority as well as the service provisions. Consequently, the Exchange is proposing to adopt the changes, as described above, as its own.

Other Non-Substantive Changes

The Exchange is also proposing to make other non-substantive changes to its rules to correct misuse of the word “FINRA,” which were introduced erroneously when the Exchange adopted the rules. Specifically, the Exchange is proposing to amend Rule 9555(g) to remove reference to FINRA and replace it with reference to Nasdaq to make clear that it is Nasdaq’s departments that should be contacted. The Exchange is also replacing references to FINRA’s rules under new Rule 9810 with references to analogous

rules of Nasdaq. Specifically, Nasdaq is replacing reference to FINRA Rule 2010 with reference to Nasdaq Rule 2010A, reference to FINRA Rule 2020 with reference to Nasdaq Rule 2120, and FINRA Rule 4330 with reference to Nasdaq Rule 2150.⁴⁰ The Exchange is also replacing the word “FINRA” with “Nasdaq” in adopting Rule 9840(d) to make it clear that the rule applies to Nasdaq members. The Exchange is proposing not to include the word “FINRA” prior to “Rule 9211” in adopting Rule 9850 to make it clear that the rule referenced is Nasdaq’s rule, not FINRA’s. Last, the Exchange is proposing to correct references to Nasdaq’s rule concerning “Restrictions on Affiliation” in Rules 9270(e) and (f)(1), and Rule 9360. Specifically, Rules 9270(e) and (f)(1), and Rule 9360 erroneously reference Rule 2140 as providing the meaning of the term “affiliate of Nasdaq.” Rule 2160 is titled “Restrictions on Affiliation” and is the appropriate reference under Rules 9270(e) and (f)(1), and Rule 9360, and accordingly the Exchange replacing references to Rule 2140 with references to Rule 2160 under those rules.

⁴⁰ Nasdaq notes that the Nasdaq rules cited in new Rule 9810(a) are the same as those that were cited under old Rule 9810(a). Nasdaq further notes that under FINRA Rule 9810(a), FINRA cites to FINRA Rules 2010, 2020, and 4330. Nasdaq is replacing reference to the FINRA rules with reference to Nasdaq’s analogous Rules 2010A, 2120, and 2150, as was the case in old Rule 9810(a). While the provisions of Nasdaq Rules 2010A and 2120 closely mirror FINRA Rules 2010 and 2020, Nasdaq Rule 2150 is significantly different than FINRA Rule 4330. FINRA Rule 4330 concerns the permissible use of customers’ margin securities while Nasdaq Rule 2150 requires a member and persons associated with a member to comply with FINRA’s Rule 2150. FINRA Rule 2150 is titled “Improper Use of Customers’ Securities or Funds; Prohibition Against Guarantees and Sharing in Accounts” and, among other things, prohibits members or persons associated with a member from making improper use of a customer’s securities or funds, guaranteeing a customer against loss in connection with any securities transaction or in any securities account of such customer, and setting forth what is permissible in terms of sharing in profits and losses in a customer account. Nasdaq believes that Nasdaq Rule 2150 is the appropriate rule cite under new Rule 9810(a) for purposes of alleged violations concerning misuse or conversion of customer assets.

b. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,⁴¹ in general, and furthers the objectives of Section 6(b)(5) of the Act,⁴² in particular, in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general to protect investors and the public interest.

The Exchange also believes that the proposed rule is consistent with Section 6(b)(6) of the Act,⁴³ which requires the rules of an exchange provide that its members be appropriately disciplined for violations of the Act as well as the rules and regulations thereunder, or the rules of the Exchange, by expulsion, suspension, limitation of activities, functions, and operations, fine, censure, being suspended or barred from being associated with a member, or any other fitting sanction.

The Exchange believes that the proposed rule change is consistent with these provisions because the proposed changes are based on the cease and desist authority that FINRA has adopted, which the Exchange believes furthers the objectives of the Act by providing it with ability to stop violative conduct that is likely to cause dissipation or conversion of assets or other significant harm to investors, and on other changes to its related rules that clarify, harmonize, and improve its disciplinary process.

The proposed rule change will improve the Exchange's capacity to enforce compliance with applicable laws and rules by its members and persons associated with

⁴¹ 15 U.S.C. 78f(b).

⁴² 15 U.S.C. 78f(b)(5).

⁴³ 15 U.S.C. 78f(b)(6).

members and improving the Exchange's capability to prevent fraudulent and manipulative acts and practices. Thus, this authority is a vitally important tool to have to protect market participants.

The Exchange acknowledges that, when used, the cease and desist authority proposed herein would significantly impact a respondent. The Exchange, however, notes that the proposed rules incorporate numerous procedural protections for respondents to ensure that the proceedings initiated under these rules are fair, including notice and an opportunity to be heard before a neutral tribunal. Moreover, the Exchange anticipates using the authority provided by these rules sparingly.

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

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. The changes are being proposed to provide an important regulatory tool to the Exchange and FINRA, acting on its behalf, which will protect investors when violative conduct is being taken by a member or person associated with a member, and time is of the essence to prevent harm, or further harm, to investors.

The proposed change does not impose a burden on competition among participants or other venues because it will only be used in circumstances where investor harm is imminent or is occurring. Thus, to the extent a burden on competition results from use of the authority provided by the proposed rules, such burden is necessary to protect investors, which is consistent with the purposes of the Act.

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

No written comments were either solicited or received.

6. Extension of Time Period for Commission Action

Not applicable.

7. Basis for Summary Effectiveness Pursuant to Section 19(b)(3) or for Accelerated Effectiveness Pursuant to Section 19(b)(2)

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)⁴⁴ of the Act and Rule 19b-4(f)(6) thereunder⁴⁵ in that it effects a change that: (i) does not significantly affect the protection of investors or the public interest; (ii) does not impose any significant burden on competition; and (iii) by its terms, does not become operative for 30 days after the date of the filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest.

As described above, the proposed changes are copied from FINRA's rules and closely follow those rules, except where noted in Item 3. The purpose of the proposed rules is to give the Exchange, and FINRA acting on its behalf, authority to stop violative conduct that is likely to cause dissipation or conversion of assets or other significant harm to investors. Thus, the proposed rules are being adopted to protect investors. Moreover, to the extent any burden is placed on competition in the limited circumstances that the Exchange or FINRA would need to exercise its authority under the rules, such burden is necessary to protect investors.

Furthermore, Rule 19b-4(f)(6)(iii) requires a self-regulatory organization to give the Commission written notice of its intent to file a proposed rule change under that subsection at least five business days prior to the date of filing, or such shorter time as designated by the Commission. The Exchange has provided such notice.

⁴⁴ 15 U.S.C. 78s(b)(3)(A).

⁴⁵ 17 CFR 240.19b-4(f)(6).

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is: (i) necessary or appropriate in the public interest; (ii) for the protection of investors; or (iii) otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

A proposed rule change filed under Rule 19b-4(f)(6) normally does not become operative prior to 30 days after the date of filing. Rule 19b-4(f)(6)(iii), however, permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange requests that the Commission waive the 30-day operative delay contained in Rule 19b-4(f)(6)(iii) so that the authority to issue temporary cease and desist orders, and to make explicit the authority to impose permanent cease and desist orders as a remedy in disciplinary cases, may be applied at the earliest time possible. As the Exchange notes above, it does not anticipate that it will be necessary to use the authority proposed herein; however, when the cease and desist authority is needed, the Exchange must be able to move swiftly to prevent or stop investor harm. Although such an event may occur infrequently, the Exchange is unable to predict when the event may occur. There is nothing that would impede the Exchange or FINRA from applying the proposed cease and desist authority immediately. Thus, in the interest of protecting investors and the public interest, the Exchange requests that the Commission waive the operative delay so that it may implement the change immediately.

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

The proposal is based on the analogous rules of FINRA, except as discussed above.

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

Not applicable.

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

Not applicable.

11. Exhibits

1. Notice of Proposed Rule Change for publication in the Federal Register.
5. Text of the proposed rule change.

EXHIBIT 1

SECURITIES AND EXCHANGE COMMISSION
(Release No. _____ ; File No. SR-NASDAQ-2016-148)

October __, 2016

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Adopt Cease and Desist Authority Rules

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)¹, and Rule 19b-4 thereunder,² notice is hereby given that on October 27, 2016, The NASDAQ Stock Market LLC (“Nasdaq” or “Exchange”) filed with the Securities and Exchange Commission (“SEC” or “Commission”) the proposed rule change as described in Items I, II, and III, below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

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

The Exchange proposes to adopt Rules 9556 and 9800, which were previously adopted as a pilot the term of which has since expired, and to make related changes to the 9100, 9200, 9300, 9550, and 9800 Rule Series.

The text of the proposed rule change is available on the Exchange’s Website at <http://nasdaq.cchwallstreet.com>, at the principal office of the Exchange, and at the Commission’s Public Reference Room.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

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

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

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

1. Purpose

The Exchange is proposing to adopt new Rules 9556 and 9800, which were previously adopted as a pilot the term of which has since expired, and to make related changes to the 9100, 9200, 9300, 9550, and 9800 Rule Series. In May 2003, the Commission approved, on a pilot basis, a rule change to adopt NASD Rules 9556 and 9800 that gave NASD, now known as FINRA, authority to issue temporary cease and desist orders and made explicit NASD's ability to impose permanent cease and desist orders as a remedy in disciplinary cases.³ Because NASD was, and now FINRA is, the Exchange's regulatory services provider and administers the Exchange's disciplinary program under contract, the Exchange seeks to maintain comparability between its disciplinary procedure rules and those of NASD and now FINRA. As a consequence, the

³ See Securities Exchange Act Release No. 47925 (May 23, 2003) (File No. SR-NASD-98-80), 68 FR 33548 (June 4, 2003). See also Securities Exchange Act Release No. 51860 (June 16, 2005), 70 FR 36427 (June 23, 2005) (SR-NASD-2005-061) (extending the pilot to June 23, 2007 and making non-substantive changes); and Securities Exchange Act Release No. 55819 (May 25, 2007), 72 FR 30895 (June 4, 2007) (SR-NASD-2007-033) (extending the pilot to June 23, 2009 and making non-substantive changes).

Exchange adopted Rules 9556 and 9800 to mirror the then-NASD rules to operate as a pilot in conjunction with the related NASD pilot.⁴

On June 23, 2009, the Exchange's Rule 9556 and 9800 pilot programs expired, at which time those rules and certain references thereto became obsolete, notwithstanding that they remained in the rulebook. The FINRA pilot program, however, continued and was approved on July 14, 2009 on a permanent basis.⁵

Neither the Exchange nor FINRA, acting on behalf of the Exchange pursuant to agreement, have used the cease and desist authority under Rules 9556 and 9800 during the time that the rules were effective. Nonetheless, the Exchange believes that, in addition to maintaining similar disciplinary rules, adoption of Rules 9556 and 9800 is important to the Exchange's disciplinary program. The authority under these rules will provide the Exchange and FINRA, operating on behalf of the Exchange, with a mechanism to take appropriate remedial action against a member or an associated person that has engaged (or is engaging) in violative conduct that could cause continuing harm to the investing public if not addressed expeditiously, such as dissipation or conversion of assets. It must be emphasized, however, that the cease and desist provisions contain numerous procedural protections for respondents to ensure that the proceedings are fair.

⁴ See Securities Exchange Act Release No. 53128 (January 13, 2006), 71 FR 3550 (January 23, 2006). See also Securities Exchange Act Release No. 56120 (July 24, 2007), 72 FR 41561 (July 30, 2007) (SR-NASDAQ-2007-060) (extending the pilot to June 23, 2009 and making conforming changes); and Securities Exchange Act Release No. 58069 (June 30, 2008), 73 FR 39360 (July 9, 2008) (SR-NASDAQ-2008-054) (making non-substantive changes).

⁵ Securities Exchange Act Release No. 60306 (July 14, 2009), 74 FR 36292 (July 22, 2009) (SR-FINRA-2009-035). The Exchange notes that FINRA, in its rule change proposal to make its pilot program permanent, noted that it had used the authority under Rules 9556 and 9800 sparingly. Id. at 36293.

Consequently, the Exchange believes that adoption of these rules is important to its regulatory program, notwithstanding that it anticipates exercising the authority provided by the rules sparingly.

The Exchange is proposing to delete Rules 9556 and 9800 (and related references in other rules⁶) because the pilot period for these rules has expired rendering them void, and adopt new Rules 9556 and 9800 (and related references in other rules)⁷ based on FINRA's analogous cease and desist rules, which include amendments to the former Nasdaq cease and desist rules to reflect changes that FINRA has made to its cease and desist rules in 2011 and 2015 after they were made permanent.⁸ The Exchange is also proposing to amend other Rules under the 9000 Series to incorporate changes that FINRA made to its analogous rules in 2015, as discussed below. These proposed changes include significant amendments made by FINRA to not only its Rules 9556 and 9800, but also to its 9100, 9200, 9300, 9550, and 9800 Rule Series in 2015. Unless

⁶ The Exchange is deleting text from related provisions of Rules 8310, IM-8310-3(c)(1), 9120(r), 9241(c), 9290, 9311(b), 9312(b), and 9360 that also expired on June 23, 2009 and is inserting new text identical to what was deleted.

⁷ As a consequence of the expiration of the pilot rendering the existing related rule text void, in certain cases the Exchange is deleting the void text and reinserting identical rule text thereafter so the text may have effect once again. For example, the Exchange is deleting Rule 8310(a)(6), concerning imposition of a temporary or permanent cease and desist order, and adopting a new Rule 8310(a)(6) identical to what was deleted.

⁸ In 2013, FINRA consolidated the publication standards for expedited proceeding decisions, including under FINRA Rule 9556, in FINRA Rule 8313(a)(3) and consequently amended FINRA Rule 9556 to remove paragraph (h) "Notice to Membership" from the rule. See Securities Exchange Act Release No. 69825 (June 21, 2013), 78 FR 38771 (June 27, 2013) (SR-FINRA-2013-018). The Exchange did not have such a provision in its Rule 9556. The Exchange's disclosure obligations are provided under IM-8310-3, including the Exchange's disclosure obligations related to expedited proceedings. See IM-8310-3(c).

otherwise noted, Nasdaq is adopting the FINRA Rules with only minor changes to reflect the Exchange's committee structure and rules,⁹ as described below.

2011 FINRA Rule Changes

In 2011, FINRA amended Rules 9552(b), 9553(b), 9554(b), 9555(b), and 9556(b), all of which concern service of notice.¹⁰ Each of these rules concern the process followed when a person or entity subject to FINRA's jurisdiction fail to comply with various requirements under its rules. FINRA amended the rule provisions noted above to allow notice of failure to comply with a temporary or permanent cease and desist order to be served on counsel representing the member or person, or other person authorized to represent others under FINRA Rule 9141,¹¹ when counsel or other person authorized to

⁹ The Exchange is replacing references to FINRA and FINRA staff with references to Nasdaq and Nasdaq staff, which are the appropriate analogous parties at Nasdaq. The Exchange is also replacing FINRA text that states "Chief Executive Officer or such other senior officer as the Chief Executive Officer may designate" with "Chief Regulatory Officer," which is the Exchange officer vested with the authority described under the rules. For example, old Rules 9556(a) and 9860 vested authority with the Chief Regulatory Officer to authorize notice and initiation of proceedings, respectively, whereas the analogous FINRA rules authorize its Chief Executive Officer or such other senior officer as the Chief Executive Officer may designate instead. Last, the Exchange is adding clarifying language to Rule 9810 to make it clear that initiation of a proceeding must not only be authorized by FINRA's Chief Executive Officer or such other senior officer as the Chief Executive Officer may designate, but also Nasdaq's Chief Regulatory Officer. As a practical matter, the Chief Regulatory Officer must agree that such a proceeding should be brought pursuant to Nasdaq rules.

¹⁰ Securities Exchange Act Release No. 60306 (January 4, 2012), 77 FR 1524 (January 10, 2012) (SR-FINRA-2011-044). FINRA also amended other rules in the FINRA Rule 9000 Series not addressed in this filing. Id.

¹¹ FINRA Rule 9141, entitled "Appearance and Practice; Notice of Appearance," provides, among other things, what is permissible in terms of representation before an Adjudicator. Exchange Rule 9141 is consistent with FINRA Rule 9141.

represent others under FINRA Rule 9141 agrees to accept service for the member or person.

2015 FINRA Rule Changes

In 2015, FINRA made significant changes to its temporary and permanent cease and desist rules.¹² FINRA lowered the evidentiary standard to obtain a temporary cease and desist order, adopted a new expedited proceedings to address situations involving repeated violations of temporary or permanent cease and desist orders, and made a series of rule amendments to the temporary cease and desist order rules under FINRA Rule Series 9800, the expedited proceedings rules under FINRA Rule Series 9550,¹³ and FINRA's Code of Procedure (FINRA Rule Series 9000) that harmonize service provisions in temporary cease and desist proceedings and expedited proceedings, ease administrative burdens in temporary cease and desist proceedings, and clarify the process by which permanent cease and desist orders may be imposed.

(i) Evidentiary Standard for Imposing a Temporary Cease and Desist Order

FINRA amended FINRA Rule 9840(a)(1) to change the evidentiary standard applied by Hearing Panels in issuing a temporary cease and desist order. Specifically, FINRA changed the standard for issuing a temporary cease and desist order from "by a preponderance of the evidence that the alleged violation specified in the notice has occurred" to a "showing of a likelihood of success on the merits." FINRA noted that it

¹² Securities Exchange Act Release No. 75629 (August 6, 2015), 80 FR 48379 (August 12, 2015) (SR-FINRA-2015-019).

¹³ FINRA amended its Rule 9551 "Failure to Comply with Public Communications Standards." Nasdaq does not have such a rule (Nasdaq Rule 9551 is held in reserve) and is thus not incorporating those changes. In a related change, the Exchange is also amending its Rule 9559 to delete the references to Rule 9551, which were erroneously included in the rule.

believed that the “preponderance of the evidence” standard set too high an evidentiary threshold for this critical investor-protection tool, and noted that it is the identical standard for proving a violation in the underlying disciplinary proceeding that must be pursued at the same time.¹⁴ Thus, to obtain a temporary cease and desist order—and thereby prevent the likely and significant dissipation or conversion of assets or other significant harm to investors—FINRA’s prosecuting department had to make an evidentiary presentation in the temporary cease and desist proceeding that is similar in extent to its evidentiary presentation in the subsequent underlying disciplinary proceeding, but in an expedited manner.

FINRA also made a corresponding amendment to FINRA Rule 9840(a)(2). Prior to the amendment, FINRA Rule 9840(a)(2) provided that a temporary cease and desist order shall be imposed if the Hearing Panel finds 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 proceeding. The 2015 rule change modified this requirement to apply to the “alleged” violative conduct or continuation thereof, to be consistent with the proposed change to the evidentiary standard.

(ii) Failures to Comply with Temporary Cease and Desist Orders and Permanent Cease and Desist Orders (FINRA Rule 9556)

FINRA also made amendments to FINRA Rule 9556, which sets forth expedited procedures for enforcing violations of FINRA-issued temporary and permanent cease and desist orders. FINRA was concerned that their existing expedited procedures may permit

¹⁴ See Securities Exchange Act Release No. 75333 (June 30, 2015), 80 FR 38783 (July 7, 2015) (Notice of Filing File No. SR-FINRA-2015-019) at 38784.

cease and desist orders to be circumvented without any real threat of a sanction.¹⁵ Thus, FINRA amended FINRA Rule 9556 to adopt a new paragraph (h) to permit its staff (with prior authorization from FINRA's Chief Executive Officer or other designated senior officer) to institute a new kind of expedited proceeding if the subject of a temporary or permanent cease and desist order fails to comply with that order and has previously been served with a notice under Rule 9556(a) for failure to comply with any provision of the same temporary or permanent cease and desist order. FINRA adopted the change to prevent a respondent from abusing the existing process by repeatedly violating a cease and desist order and curing that violation before the effective date of any FINRA Rule 9556 notice,¹⁶ without being subject to the immediate sanctions or review by the Office of Hearing Officers for a prolonged period. FINRA noted in its filing that the new FINRA Rule 9556(h) proceeding differs from other FINRA Rule 9556 expedited proceedings in other respects that reflect the response that FINRA believes is warranted for situations involving repeated violations of temporary or permanent cease and desist orders.¹⁷ These differences include the following:

- a FINRA Rule 9556(h) proceeding could be initiated only if the respondent has previously been served, under FINRA Rule 9556(a), with a notice for failing to

¹⁵ Id. at 38785.

¹⁶ Under the then-current FINRA Rule 9556, if a member or person failed to comply with a temporary or permanent cease and desist order, FINRA staff (with prior authorization from FINRA's Chief Executive Officer or other designated senior officer) may have issued a notice stating that the failure to comply within seven days will result in a suspension or cancellation of membership or a suspension or bar from associating with any member and also would have stated what the respondent must do to avoid such action.

¹⁷ See supra note 14 at 38785.

- comply with any provision of the same temporary or permanent cease and desist order;
- FINRA’s prosecuting department would initiate a FINRA Rule 9556(h) proceeding by filing a petition with FINRA’s Office of Hearing Officers (and serving the respondent) that seeks the imposition of sanctions for the violation (rather than issuing a notice to the respondent);
 - FINRA’s prosecuting department would seek the imposition of any fitting sanction at the outset of the FINRA Rule 9556(h) proceeding (in contrast to other FINRA Rule 9556 expedited proceedings, where the recipient of a notice is not subject to the imposition of any fitting sanction unless such recipient opts for a hearing);
 - a hearing is required in a FINRA Rule 9556(h) proceeding;
 - the hearing for a FINRA Rule 9556(h) proceeding must be held in a condensed time frame (ten business days after a respondent is served the petition, versus other Rule 9556 proceedings which require a respondent to request a hearing within seven business days after service of a notice instituting a proceeding and require hearings to be held within 14 days after a request for a hearing is filed);¹⁸
 - a FINRA Rule 9556(h) proceeding is presided over by a Hearing Officer,¹⁹ rather than a Hearing Panel;²⁰ and

¹⁸ See FINRA Rule 9559(f)(2) and (3); FINRA Rule 9556(e).

¹⁹ As defined by FINRA Rule 9120(r).

²⁰ As defined by FINRA Rule 9120(s). See FINRA Rule 9559(d)(1) and (2) for a description of the appointment and authority of a Hearing Officer and/or Hearing Panel in expedited proceedings.

- the Hearing Officer may issue default decisions in FINRA Rule 9556(h) proceedings.²¹

Under amended FINRA Rule 9556(h)(4), the FINRA department that filed the petition can withdraw it without prejudice and shall be permitted to refile a petition based on allegations concerning the same facts and circumstances that are set forth in the withdrawn petition. FINRA noted that this provision provides it the flexibility to withdraw the petition where, for instance, the respondent evidences a good faith intent to comply with the temporary or permanent cease and desist order without the need to adjudicate the petition, while preserving FINRA's right to refile the petition if the respondent fails to do so.²²

(iii) Service Provisions in Temporary Cease and Desist Proceedings and Expedited Proceedings

FINRA also made the rules that govern service of documents in temporary cease and desist proceedings and the eight different types of expedited proceedings under the Rule 9550 Series more consistent.²³ Prior to the changes, some provisions of these rules

²¹ See FINRA Rule 9559(m)(2).

²² See *supra* note 14 at 38785.

²³ The Exchange notes that in SR-FINRA-2015-019 FINRA replaced references to "contact questionnaires" with reference to the "FINRA Contact System," FINRA's proprietary system that facilitates member firm reporting of key contacts to FINRA. Exchange members are required to use the FINRA Contact System to report to Nasdaq all contact information required by Nasdaq and update its required contact information promptly. See Rule 1160. Under the FINRA Rule 9550 Series, the rules cite Article 4, Section III of the FINRA By-Laws as the authority pursuant to which its members have an obligation to report required contact information to it via the FINRA Contact System, whereas the Exchange's authority is pursuant to Rule 1160, as noted above. Thus, the Exchange is instead referencing Rule 1160 in the Rule 9550 Series as the authority pursuant to which members have the reporting obligation.

explicitly addressed service by facsimile and on counsel, while some did not. FINRA's amendments explicitly allow service by facsimile and on counsel across all temporary cease and desist and expedited proceedings, noting that doing so removed unnecessary burdens and inefficiencies. FINRA also amended its rules to permit service by email for all temporary cease and desist proceedings and expedited proceedings. FINRA noted that email service would allow parties to receive information quickly, which is particularly important in these types of proceedings, considering the short time frames involved.²⁴ As part of the changes allowing service by email, FINRA also now requires duplicate service through some other means such as overnight courier or personal delivery and made changes to its Rule 9550 Series to reflect this requirement.

(iv) Clarifying FINRA's Authority to Impose Permanent Cease and Desist Orders

FINRA clarified its rules concerning the process for imposing permanent cease and desist orders in disciplinary proceedings. FINRA noted that when it obtained the authority to impose temporary cease and desist orders, it also obtained the authority to impose permanent cease and desist orders.²⁵ Thus, the clarifying changes were procedural in nature and did not reflect any change to FINRA's prior representations concerning the context in which it would seek permanent cease and desist orders.

(v) Administrative Changes to Temporary Cease and Desist Proceedings

FINRA also expanded the pool of persons eligible to serve on hearing panels to include those who may serve on hearing panels for disciplinary matters, as provided

²⁴ See supra note 14 at 38785-6.

²⁵ See supra note 14 at 38786.

under FINRA Rules 9231(b) and 9559(d)(2).²⁶ Specifically, FINRA amended its Rule 9820 to provide that the potential panelists for the Hearing Panels that preside over temporary cease and desist proceedings to include persons who currently serve or previously served on a District Committee;²⁷ previously served on the National Adjudicatory Council;²⁸ previously served on a disciplinary subcommittee of the National Adjudicatory Council or the National Business Conduct Committee;²⁹ previously served as a member of the Board of Directors of FINRA Regulation or of the Board of Governors of FINRA; or currently serve or previously served on a committee appointed or approved by the Board of Governors of FINRA, but do not serve currently on the National Adjudicatory Council or as a member of the Board of Directors of FINRA Regulation or of the Board of Governors of FINRA. The amendment to FINRA Rule 9820 also required that each panelist be associated with a member of FINRA or retired therefrom. FINRA noted that, while its Office of Hearing Officers has presided

²⁶ FINRA harmonized the categories of individuals eligible for appointment as a Hearing Panelist under FINRA Rule 9820 with FINRA Rule 9231(b) (providing that each panelist shall be associated with a member of FINRA or retired therefrom and that the pool of panelists for disciplinary proceedings includes current or previous members of District Committees, former members of the National Adjudicatory Council, past members of disciplinary subcommittees of the National Adjudicatory Council or the National Business Conduct Committee, past members of the Board of Directors of FINRA Regulation or past members of the Board of Governors of FINRA, and current or previous members of committees appointed or approved by the Board of Governors of FINRA); FINRA Rule 9559(d)(2) (providing for the same pool for FINRA Rule 9556 expedited proceedings).

²⁷ As defined by FINRA Rule 9120(g).

²⁸ See By-Laws of FINRA Regulation, Inc., Article V National Adjudicatory Council.

²⁹ The predecessor to the FINRA National Adjudicatory Council.

over only a limited number of temporary cease and desist proceedings, those experiences have revealed that the narrowly circumscribed set of potential panelists can impede the recruitment of Hearing Panel members, especially considering that the expedited nature of temporary cease and desist proceedings will already preclude many from being able to serve.³⁰ FINRA also noted that it had concerns that the small pool of potential panelists will often make it difficult to recruit hearing panelists who can serve on both the temporary cease and desist proceeding and the subsequent underlying disciplinary proceeding, as well as any related expedited proceeding under FINRA Rule 9556.³¹

The Exchange is proposing to, likewise, expand the categories of individuals eligible to participate as Hearing Panelists. Like FINRA, the Exchange is harmonizing the categories of eligible individuals with the criteria under Rules 9231(b) and 9559(d)(2).³² Thus, the Exchange is allowing the Chief Hearing Officer to select as a Panelist pursuant to proposed Rule 9820(a) a person who: previously served on the Nasdaq's Review Council;³³ previously served on a disciplinary subcommittee of the Nasdaq Review Council, including a Subcommittee, an Extended Proceeding Committee,³⁴ or their predecessor subcommittees; previously served as a Director, but does not serve currently in that position; served on the FINRA National Adjudicatory

³⁰ See supra note 14 at 38786.

³¹ Id.

³² Like FINRA's Rule 9559(d)(2), Rule 9559(d)(2) provides for the same pool for Rule 9556 expedited proceedings). Supra note 26.

³³ See By-Laws of The Nasdaq Stock Market LLC, Article VI, Nasdaq Review Council.

³⁴ As defined by Rule 9120(n).

Council or on a disciplinary subcommittee of the FINRA National Adjudicatory Council prior to the date that Nasdaq commenced operating as a national securities exchange; or is a FINRA Panelist approved by the Nasdaq Board at least annually, or is drawn from other sources the Board deems appropriate given the responsibilities of Panelists.

FINRA's proposed changes also eased other administrative burdens created by the shortened time frame of a temporary cease and desist proceeding. Those proposed changes were aimed at improving Hearing Panels' and parties' ability to prepare for hearings and giving Hearing Officers some needed flexibility. For example, under FINRA Rule 9830(a) prior to the 2015 amendments a Hearing Officer was not able to extend a hearing date in a temporary cease and desist proceeding unless all parties consented to the extension. The requirement to obtain the parties' consent was problematic in instances whereby the Office of Hearing Officers, rather than one of the parties, had a need for an extension, such as when it encounters difficulty in quickly appointing a Hearing Panel. To address this problem, FINRA amended its Rule 9830(a) to allow hearing deadlines to be extended by the Chief Hearing Officer or Deputy Chief Hearing Officer for good cause shown.

FINRA also made similar amendments to the process by which extensions are obtained to the deadlines for issuing decisions in temporary cease and desist proceedings and responding to requests to modify, set aside, limit, or suspend a temporary cease and desist order. Before the amendments to FINRA Rule 9840(a), the Hearing Panel's deadline for issuing its written decision could not be extended, even where there was good cause, without the consent of the parties. Likewise, prior to amending FINRA Rule 9850, a Hearing Panel's deadline for responding to an application to have a temporary

cease and desist order modified, set aside, limited, or suspended could not be extended, even where there was a good cause, without the consent of the Parties. To allow a Hearing Panel some flexibility where there is a need for additional time to prepare its decision or respond to a FINRA Rule 9850 request (e.g., when a member of the Hearing Panel becomes ill, where the temporary cease and desist proceeding is highly complex), FINRA amended FINRA Rules 9840(a) and 9850 to permit the deadlines for issuing decisions and responding to FINRA Rule 9850 applications to be extended by the Chief Hearing Officer or Deputy Chief Hearing Officer for good cause shown.

To further address the burdens created by the short time frame of temporary cease and desist proceedings, FINRA amended its rules to: (i) require FINRA's prosecuting department to file a memorandum of points and authorities with the notice initiating a temporary cease and desist proceeding; and (ii) permit the Hearing Officer to order a party to furnish to all other parties and the Hearing Panel such information as deemed appropriate, including any or all of the pre-hearing submissions described in FINRA Rule 9242(a). FINRA noted that requiring its prosecuting department to file a memorandum of points and authorities at the initiation of the proceeding provides more context to the allegations and set forth legal authorities on which the notice seeking a temporary cease and desist order is premised.³⁵ FINRA believed that the change would, in turn, facilitate a more efficient process and improve the quality of the hearing through more thorough preparation, which are the same goals of the pre-hearing processes in FINRA disciplinary proceedings. FINRA also noted that requiring the filing of a memorandum of points and authorities at the initiation of a temporary cease and desist proceeding also enhances

³⁵ See supra note 14 at 38787.

disclosure of the prosecuting department's allegations, which would inure to the benefit of the respondents and further increases the fairness of the proceeding.³⁶ Last, FINRA noted that all of these objectives are served by authorizing Hearing Officers to order a party to furnish other pre-hearing submissions.³⁷

FINRA also proposed Rule 9840(e), which is a delivery requirement that requires a member firm that is the subject of a temporary cease and desist order to provide a copy of the order to its associated persons, within one business day of receiving it. Considering the significant nature of the harm that a temporary cease and desist order is aimed at stopping, FINRA believed that there is a heightened need to ensure that the persons who may act on behalf of the member firm are made aware of the contents of a temporary cease and desist order imposed against the member firm and the delivery requirement furthers that goal.³⁸

³⁶ Id.

³⁷ Id.

³⁸ Similarly, FINRA made related amendments to FINRA Rules 9269, 9270, and 9840 to require that the Office of Hearing Officers, the Department of Enforcement, the Department of Market Regulation, or the General Counsel, as appropriate, disseminate default decisions, orders of acceptance of settlement, and temporary cease and desist orders to each member of FINRA with which a respondent is associated. FINRA noted that these dissemination requirements are intended to ensure that a respondent's member firm is made aware of the disciplinary history of its associated persons, regardless of the specific disciplinary procedure involved. See supra note 14 at 38787, n. 15. FINRA also noted that the amendments are consistent with other FINRA Rules that already require the Office of Hearing Officers, the National Adjudicatory Council, or the Board of Governors of FINRA to provide copies of a decision issued by a Hearing Panel, an Extended Hearing Panel, the National Adjudicatory Council, or the Board of Governors of FINRA to each member firm with which a respondent is associated. Id.; see also FINRA Rules 9268(d), 9349(c), 9351(e). The Exchange is adopting these amendments to Rules 9269, 9270, and 9840.

FINRA's rule change clarified the following additional three issues: (1) how settlements may be approved in temporary cease and desist proceedings; (2) which Hearing Panel has jurisdiction to preside over applications filed under FINRA Rule 9850 to modify, set aside, limit or suspend temporary cease and desist orders that are filed after a Hearing Panel has already been appointed in the underlying disciplinary proceeding; and (3) whether temporary and permanent cease and desist orders imposed against a firm also apply to successors of that firm.

With respect to the first issue, new FINRA Rule 9810(c) established that, if the parties agree to the terms of a proposed temporary cease and desist order, the Hearing Officer has the authority to approve and issue the order. On the second issue, amended FINRA Rule 9850 provided that the Hearing Panel that presided over the temporary cease and desist order proceeding shall retain jurisdiction to review a FINRA Rule 9850 application unless at the time the application is filed a Hearing Panel has already been appointed in the underlying disciplinary proceeding commenced under FINRA Rule 9211, in which case the Hearing Panel appointed in the disciplinary proceeding has jurisdiction. As to the third issue, amended FINRA Rule 9840(b) and new Rule 9291(a) established that when a temporary or permanent cease and desist order is imposed against a member firm, it also applies to any successor of the member firm.

Finally, FINRA amended certain provisions of FINRA Rule 9120. FINRA amended FINRA Rule 9120(s), "Hearing Panel," to include an Adjudicator that is constituted under Rule 9231 to conduct a disciplinary proceeding governed by the Rule 9800 Series. The Exchange is adopting this amendment in its Rule 9120(s).

FINRA also amended FINRA Rule 9120(t), “Interested Staff,” to: (1) insert “or petition” under paragraph (2)(A) of the rule, thus expanding the definition to include FINRA staff that filed a petition in a proceeding under the Rule 9520 Series or Rule 9550 Series; and (2) include a new paragraph (4) to list FINRA staff that are defined as Interested Staff in a proceeding under the FINRA Rule 9800 Series. The Exchange is also adopting the amendment to its Rule 9120(t) “Interested Staff,” but is expanding the definition to also include Nasdaq Regulation employees who directly participated in the authorization of the notice that initiates a temporary cease and desist proceeding, or directly participated in an examination, investigation, prosecution, or litigation related to a specific temporary cease and desist proceeding, under new paragraphs (t)(4)(C) and (D) of the rule.

FINRA also amended FINRA Rule 9120(w), “Panelists,” to include references to Panelists in the Rule 9550 Series, and the Rule 9800 Series within the definition provided by the rule. The Exchange is adopting this amendment in Rule 9120(z). FINRA also amended Rule 9120(z) “Respondent” to define a Respondent in a proceeding governed by the Rule 9800 Series to mean a FINRA member or associated person that has been served a notice initiating a cease and desist proceeding. The Exchange is adopting this amendment in Rule 9120(bb) “Respondent.”

The Exchange believes that the changes made by FINRA in 2011 and 2015, as described above, improve the cease and desist authority as well as the service provisions. Consequently, the Exchange is proposing to adopt the changes, as described above, as its own.

Other Non-Substantive Changes

The Exchange is also proposing to make other non-substantive changes to its rules to correct misuse of the word “FINRA,” which were introduced erroneously when the Exchange adopted the rules. Specifically, the Exchange is proposing to amend Rule 9555(g) to remove reference to FINRA and replace it with reference to Nasdaq to make clear that it is Nasdaq’s departments that should be contacted. The Exchange is also replacing references to FINRA’s rules under new Rule 9810 with references to analogous rules of Nasdaq. Specifically, Nasdaq is replacing reference to FINRA Rule 2010 with reference to Nasdaq Rule 2010A, reference to FINRA Rule 2020 with reference to Nasdaq Rule 2120, and FINRA Rule 4330 with reference to Nasdaq Rule 2150.³⁹ The Exchange is also replacing the word “FINRA” with “Nasdaq” in adopting Rule 9840(d) to make it clear that the rule applies to Nasdaq members. The Exchange is proposing not to include the word “FINRA” prior to “Rule 9211” in adopting Rule 9850 to make it clear

³⁹ Nasdaq notes that the Nasdaq rules cited in new Rule 9810(a) are the same as those that were cited under old Rule 9810(a). Nasdaq further notes that under FINRA Rule 9810(a), FINRA cites to FINRA Rules 2010, 2020, and 4330. Nasdaq is replacing reference to the FINRA rules with reference to Nasdaq’s analogous Rules 2010A, 2120, and 2150, as was the case in old Rule 9810(a). While the provisions of Nasdaq Rules 2010A and 2120 closely mirror FINRA Rules 2010 and 2020, Nasdaq Rule 2150 is significantly different than FINRA Rule 4330. FINRA Rule 4330 concerns the permissible use of customers’ margin securities while Nasdaq Rule 2150 requires a member and persons associated with a member to comply with FINRA’s Rule 2150. FINRA Rule 2150 is titled “Improper Use of Customers’ Securities or Funds; Prohibition Against Guarantees and Sharing in Accounts” and, among other things, prohibits members or persons associated with a member from making improper use of a customer’s securities or funds, guaranteeing a customer against loss in connection with any securities transaction or in any securities account of such customer, and setting forth what is permissible in terms of sharing in profits and losses in a customer account. Nasdaq believes that Nasdaq Rule 2150 is the appropriate rule cite under new Rule 9810(a) for purposes of alleged violations concerning misuse or conversion of customer assets.

that the rule referenced is Nasdaq's rule, not FINRA's. Last, the Exchange is proposing to correct references to Nasdaq's rule concerning "Restrictions on Affiliation" in Rules 9270(e) and (f)(1), and Rule 9360. Specifically, Rules 9270(e) and (f)(1), and Rule 9360 erroneously reference Rule 2140 as providing the meaning of the term "affiliate of Nasdaq." Rule 2160 is titled "Restrictions on Affiliation" and is the appropriate reference under Rules 9270(e) and (f)(1), and Rule 9360, and accordingly the Exchange replacing references to Rule 2140 with references to Rule 2160 under those rules.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,⁴⁰ in general, and furthers the objectives of Section 6(b)(5) of the Act,⁴¹ in particular, in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general to protect investors and the public interest.

The Exchange also believes that the proposed rule is consistent with Section 6(b)(6) of the Act,⁴² which requires the rules of an exchange provide that its members be appropriately disciplined for violations of the Act as well as the rules and regulations thereunder, or the rules of the Exchange, by expulsion, suspension, limitation of activities, functions, and operations, fine, censure, being suspended or barred from being associated with a member, or any other fitting sanction.

⁴⁰ 15 U.S.C. 78f(b).

⁴¹ 15 U.S.C. 78f(b)(5).

⁴² 15 U.S.C. 78f(b)(6).

The Exchange believes that the proposed rule change is consistent with these provisions because the proposed changes are based on the cease and desist authority that FINRA has adopted, which the Exchange believes furthers the objectives of the Act by providing it with ability to stop violative conduct that is likely to cause dissipation or conversion of assets or other significant harm to investors, and on other changes to its related rules that clarify, harmonize, and improve its disciplinary process.

The proposed rule change will improve the Exchange's capacity to enforce compliance with applicable laws and rules by its members and persons associated with members and improving the Exchange's capability to prevent fraudulent and manipulative acts and practices. Thus, this authority is a vitally important tool to have to protect market participants.

The Exchange acknowledges that, when used, the cease and desist authority proposed herein would significantly impact a respondent. The Exchange, however, notes that the proposed rules incorporate numerous procedural protections for respondents to ensure that the proceedings initiated under these rules are fair, including notice and an opportunity to be heard before a neutral tribunal. Moreover, the Exchange anticipates using the authority provided by these rules sparingly.

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

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. The changes are being proposed to provide an important regulatory tool to the Exchange and FINRA, acting on its behalf, which will protect investors when violative conduct is being taken by a member or person associated with a member, and time is of the essence to prevent harm, or further harm, to investors.

The proposed change does not impose a burden on competition among participants or other venues because it will only be used in circumstances where investor harm is imminent or is occurring. Thus, to the extent a burden on competition results from use of the authority provided by the proposed rules, such burden is necessary to protect investors, which is consistent with the purposes of the Act.

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

No written comments were either solicited or received.

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

Because the foregoing proposed rule change does not: (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A)(iii) of the Act⁴³ and subparagraph (f)(6) of Rule 19b-4 thereunder.⁴⁴

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is: (i) necessary or appropriate in the public interest; (ii) for the protection of investors; or (iii) otherwise in furtherance of the purposes of the Act. If

⁴³ 15 U.S.C. 78s(b)(3)(a)(iii).

⁴⁴ 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic comments:

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-NASDAQ-2016-148 on the subject line.

Paper comments:

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

All submissions should refer to File Number SR-NASDAQ-2016-148. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (<http://www.sec.gov/rules/sro.shtml>).

Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the

Commission's Public Reference Room, 100 F Street, NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly.

All submissions should refer to File Number SR-NASDAQ-2016-148 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.⁴⁵

Robert W. Errett
Deputy Secretary

⁴⁵ 17 CFR 200.30-3(a)(12).

EXHIBIT 5

Deleted text is [bracketed]. New text is underlined.

The NASDAQ Stock Market Rules

* * * * *

8310. Sanctions for Violation of the Rules**(a) Imposition of Sanction**

After compliance with the Rule 9000 Series, Nasdaq may impose one or more of the following sanctions on a member or person associated with a member for each violation of the federal securities laws, rules or regulations thereunder, or Rules of Nasdaq, or may impose one or more of the following sanctions on a member or person associated with a member for any neglect or refusal to comply with an order, direction, or decision issued under the Rules of Nasdaq:

(1) – (5) No change.

[(**6**) impose a temporary or permanent cease and desist order against a member or a person associated with a member; or](**6**) impose a temporary or permanent cease and desist order against a member or a person associated with a member; or

(7) No change.

(b) No change.

* * * * *

IM-8310-3. Release of Disciplinary Complaints, Decisions and Other Information

(a) – (b) No change.

(c) (1) Nasdaq Regulation shall release to the public information with respect to any disciplinary decision issued pursuant to the Rule 9000 Series imposing a suspension, cancellation or expulsion of a member; or suspension or revocation of the registration of a person associated with a member; or suspension or barring of a member or person associated with a member from association with all members; or imposition of monetary sanctions of \$10,000 or more upon a member or person associated with a member; or containing an allegation of a violation of a Designated Rule; and may also release such information with respect to any disciplinary decision or group of decisions that involve a significant policy or enforcement determination where the release of information is deemed by the Chief Regulatory Officer to be in the public interest. Nasdaq Regulation also may release to the public information with respect to any decision issued pursuant to the Rule 9550 Series imposing a suspension or cancellation of the member or a

suspension or bar of the association of a person with a member, unless Nasdaq Regulation determines otherwise. Nasdaq Regulation may, in its discretion, determine to waive the requirement to release information with respect to a disciplinary or other decision under those extraordinary circumstances where the release of such information would violate fundamental notions of fairness or work an injustice. [Nasdaq Regulation also shall release to the public information with respect to any temporary cease and desist order issued pursuant to the Rule 9800 Series.]Nasdaq Regulation also shall release to the public information with respect to any temporary cease and desist order issued pursuant to the Rule 9800 Series. Nasdaq Regulation may release to the public information on any disciplinary or other decision issued pursuant to the Rule 9000 Series, not specifically enumerated in this paragraph, regardless of sanctions imposed, so long as the names of the parties and other identifying information is redacted.

(A) – (B) No change.

(2) No change.

(d) – (l) No change.

* * * * *

9120. Definitions

(a) – (q) No change.

(r) “Hearing Officer”

The term “Hearing Officer” means an attorney 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 members and associated persons], and the Rule 9800 Series regarding temporary cease and desist proceedings brought against members and associated persons. Hearing Officers may be drawn from FINRA’s pool of Hearing Officers pursuant to the Regulatory Contract, if approved by the Nasdaq Board of Directors at least annually.

(s) “Hearing Panel”

The term “Hearing Panel” means an Adjudicator that is constituted under Rule 9231 to conduct a disciplinary proceeding governed by the Rule 9200 Series, [or]that is constituted under the Rule 9520 Series or the Rule 9550 Series to conduct a proceeding, or that is constituted under the Rule 9800 Series to conduct a temporary cease and desist proceeding.

(t) “Interested Staff”

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

(1) No change.

(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 petition or is designated as a Party;

(B) – (C) No change.

(D) a Nasdaq Regulation or FINRA 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) – (C) No change.

(D) a Nasdaq Regulation or FINRA 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[.]; or

(4) a proceeding under the Rule 9800 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) a Nasdaq Regulation or FINRA employee who directly participated in the authorization of the notice that initiates a temporary cease and desist proceeding;

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

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

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

(u) – (y) No change.

(z) “Panelist”

The term “Panelist,” as used in the Rule 9200 Series, the Rule 9550 Series, and the Rule 9800 Series, means a member of a Hearing Panel or Extended Hearing Panel who is not a Hearing Officer. As used in the Rule 9300 Series, the term means a current or former member of the Nasdaq Review Council or a former Director who is appointed to serve on a Subcommittee or an Extended Proceeding Committee.

(aa) No change.

(bb) “Respondent”

The term “Respondent” means, in a disciplinary proceeding governed by the Rule 9200 Series and in an appeal or review governed by the Rule 9300 Series, a Nasdaq member or associated person against whom a complaint is issued. In a proceeding governed by the Rule 9800 Series, the term “Respondent” means a Nasdaq member or associated person that has been served a notice initiating a cease and desist proceeding.

(cc) – (ee) No change.

* * * * *

9241. Pre-Hearing Conference

(a) – (b) No change.

(c) Subjects to be Discussed

At a pre-hearing conference, the Hearing Officer [shall schedule an expedited proceeding as required by Rule 9290, and]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) – (10) No change.

(d) – (f) No change.

* * * * *

9268. Decision of Hearing Panel or Extended Hearing Panel

(a) No change.

(b) Contents of Decision

The decision shall include:

(1) – (4) No change.

(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 Nasdaq Regulation staff[.]; and

(7) a statement, when the sanctions include a permanent cease and desist order, that is consistent with the requirements of Rule 9291(a) concerning the content, scope, and form of a permanent cease and desist order.

(c) – (e) No change.

9269. Default Decisions

(a) Issuance of Default Decisions

(1) – (3) No change.

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

(b) – (d) No change.

9270. Settlement Procedure

(a) – (b) No change.

(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) – (4) No change.

(5) a proposed sanction to be imposed that is consistent with the current sanction guidelines or, if inconsistent with the sanction guidelines, a detailed statement supporting the proposed sanction;[and,]

(6) if applicable, a proposed permanent cease and desist order to be imposed that is consistent with the requirements of Rule 9291(a) concerning the content, scope, and form of a permanent cease and desist order; and

~~(6)~~ (7) 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 Nasdaq Regulation staff.

(d) No change.

(e) Uncontested Offers of Settlement

If a Respondent makes an offer of settlement and the Department of Enforcement or the Department of Market Regulation does not oppose it, the offer of settlement is uncontested. If an offer of settlement is determined to be uncontested by the Department of Enforcement or the Department of Market Regulation before a hearing on the merits has begun, the Department of Enforcement or the Department of Market Regulation shall transmit the uncontested offer of settlement and a proposed order of acceptance to the Nasdaq Review Council (or to the Office of Disciplinary Affairs, in the case of a Respondent that is an affiliate of Nasdaq within the meaning of Rule 2160[40]) with its recommendation. If an offer of settlement is determined to be uncontested by the Department of Enforcement or the Department of Market Regulation after a hearing on the merits has begun, the Department of Enforcement or the Department of Market Regulation shall transmit the offer of settlement and a proposed order of acceptance to the Hearing Panel or, if applicable, the Extended Hearing Panel for acceptance or rejection. If accepted by the Hearing Panel or, if applicable, Extended Hearing Panel, the offer of settlement and the order of acceptance shall be forwarded to the Nasdaq Review Council (or to the Office of Disciplinary Affairs, in the case of a Respondent that is an affiliate of Nasdaq within the meaning of Rule 2160[40]) to accept or reject.

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

(2) No change.

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

(f) Contested Offers of Settlement

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

the Extended Hearing Panel, may order the Department of Enforcement or the Department of Market Regulation and the Respondent to attend a settlement conference.

(1) If a contested offer of settlement is approved by the Hearing Panel or, if applicable, Extended Hearing Panel, the Hearing Officer shall draft an order of acceptance of the offer of settlement. The order of acceptance shall make findings of fact, including a statement of the rule, regulation, or statutory provision violated, and impose sanctions (including, if applicable, a permanent cease and desist order) consistent with the terms of the offer of settlement. The offer of settlement, any written opposition thereto, and the order of acceptance shall be forwarded to the Nasdaq Review Council (or to the Office of Disciplinary Affairs, in the case of a Respondent that is an affiliate of Nasdaq within the meaning of Rule 2160[40]) to accept or reject.

(2) No change.

(3) If the offer of settlement and order of acceptance are accepted by the Office of Disciplinary Affairs, the Nasdaq Review Council or the Review Subcommittee, the Chief Regulatory Officer shall issue the order, [and]notify the Office of Hearing Officers, and provide a copy of an issued order of acceptance to each Nasdaq member with which a Respondent is associated.

(g) – (j) No change.

* * * * *

[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.]

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.

9291. Permanent Cease and Desist Orders

(a) Content, Scope and Form Requirements

When a decision issued under Rule 9268 or Rule 9269 or an order of acceptance issued under Rule 9270 imposes a permanent cease and desist order, it shall:

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

(2) set forth the violation; and

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

(b) Delivery Requirement

Where a Respondent is a member firm, Respondent shall deliver a copy of a permanent cease and desist order, within one business day of receiving it, to its associated persons.

* * * * *

9311. Appeal by Any Party; Cross-Appeal

(a) No change.

(b) Effect

An appeal to the Nasdaq Review Council from a decision issued pursuant to Rule 9268 or Rule 9269 shall operate as a stay of that decision until the Nasdaq Review Council issues a decision pursuant to Rule 9349 or, in cases called for discretionary review by the Nasdaq Board, until a decision is issued pursuant to Rule 9351. [Any such appeal, however, will not stay a decision, or that part of a decision, that imposes a permanent cease and desist order.]Any such appeal, however, will not stay a decision, or that part of a decision, that imposes a permanent cease and desist order.

(c) – (f) No change.

9312. Review Proceeding Initiated By Nasdaq Review Council

(a) No change.

(b) Effect

Institution of review by a member of the Nasdaq Review Council on his or her own motion, a member of the Review Subcommittee on his or her own motion, or the Chief Regulatory Officer, on his or her own motion, shall operate as a stay of a final decision issued pursuant to Rule 9268 or Rule 9269 as to all Parties subject to the notice of review, until the Nasdaq Review Council issues a decision pursuant to Rule 9349, or, in cases called for discretionary review by the Nasdaq Board, until a decision is issued pursuant to Rule 9351. [Institution of any such review, however, will not stay a decision, or that part of a decision, that imposes a permanent cease and desist order.]Institution of any such

review, however, will not stay a decision, or that part of a decision, that imposes a permanent cease and desist order.

(c) – (d) No change.

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9348. Powers of the Nasdaq Review Council on Review

In any appeal or review proceeding pursuant to the Rule 9300 Series, the Nasdaq Review Council may affirm, dismiss, modify, or reverse with respect to each finding, or remand the disciplinary proceeding with instructions. The Nasdaq Review Council may affirm, modify, reverse, increase, or reduce any sanction (including the terms of any permanent cease and desist order), or impose any other fitting sanction.

* * * * *

9351. Discretionary Review by Nasdaq Board

(a) – (c) No change.

(d) Decision of Nasdaq Board, Including Remand

After review, the Nasdaq Board may affirm, modify, or reverse the proposed written decision of the Nasdaq Review Council. The Nasdaq Board may affirm, modify, reverse, increase, or reduce any sanction (including the terms of any permanent cease and desist order), or impose any other fitting sanction. Alternatively, the Nasdaq Board may remand the disciplinary proceeding with instructions. The Nasdaq Board shall prepare a written decision that includes all of the elements described in Rule 9349(b)(1) through (6).

(e) No change.

9360. Effectiveness of Sanctions

Unless otherwise provided in the decision issued under Rule 9349 or Rule 9351, a sanction (other than a bar, an expulsion, [or a permanent cease and desist order]or a permanent cease and desist order) specified in a decision constituting final disciplinary action of Nasdaq for purposes of SEC Rule 19d-1(c)(1) shall become effective on a date to be determined by Nasdaq staff (or the Hearing Panel, Extended Hearing Panel, or Office of Disciplinary Affairs in the case of a decision with respect to an affiliate of Nasdaq within the meaning of Rule 2160[40]). A bar, an expulsion, [or a permanent cease and desist order]or a permanent cease and desist order shall become effective upon service of the decision constituting final disciplinary action of Nasdaq, unless otherwise specified therein. Nasdaq shall serve the decision on a Respondent by courier, facsimile or other means reasonably likely to obtain prompt service when the sanction is a bar, an expulsion, [or a permanent cease and desist order]or a permanent cease and desist order.

* * * * *

9552. Failure to Provide Information or Keep Information Current

(a) No change.

(b) Service of Notice of Suspension

Except as provided below, Nasdaq Regulation staff shall serve the member or person with such notice (or upon counsel representing the member or person, or other person authorized to represent others under Rule 9141, when counsel or other person authorized to represent others under Rule 9141 agrees to accept service for the member or person) in accordance with Rule 9134 or by facsimile or email. A copy of a notice under this Rule that is served on a person associated with a member also shall be served on such member. Papers served on a member by facsimile shall be sent to the member's facsimile number listed in the FINRA Contact System submitted to Nasdaq pursuant to Rule 1160, except that, if Nasdaq Regulation staff has actual knowledge that a member's FINRA Contact System facsimile number is out of date, duplicate copies shall be sent to the member by overnight courier or personal delivery in conformity with paragraphs (a)(1) and (3) and (b)(2) of Rule 9134. Papers served on a member by email shall be sent to the member's email address listed in the FINRA Contact System submitted to Nasdaq pursuant to Rule 1160 and shall also be served by either overnight courier or personal delivery in conformity with paragraphs (a)(1) and (3) and (b)(2) of Rule 9134. Papers served on a person by facsimile or email shall be sent to the person's last known facsimile number or email address and shall also be served by either overnight courier or personal delivery in conformity with paragraphs (a)(1) and (3) and (b)(1) of Rule 9134. Papers served on counsel for a member, or other person authorized to represent others under Rule 9141, by facsimile or email shall be sent to the facsimile number or email address that counsel or other person authorized to represent others under Rule 9141 provides and shall also be served by either overnight courier or personal delivery in conformity with paragraphs (a)(1) and (3) of Rule 9134. Service is complete upon sending the notice by facsimile or email, mailing the notice by U.S. Postal Service first class mail, first class certified mail, first class registered mail, or Express Mail, sending the notice through a courier service, or delivering it in person, except that, where duplicate service is required, service is complete when the duplicate service is complete.

(c) – (h) No change.

9553. Failure to Pay Nasdaq Dues, Fees and Other Charges

(a) No change.

(b) Service of Notice of Suspension, Cancellation or Bar

Except as provided below, Nasdaq Regulation staff shall serve the member or person with such notice (or upon counsel representing the member or person, or other person authorized to represent others under Rule 9141, when counsel or other person authorized

to represent others under Rule 9141 agrees to accept service for the member or person) in accordance with Rule 9134 or by facsimile or email. A copy of a notice under this Rule that is served on a person associated with a member also shall be served on such member. Papers served on a member by facsimile shall be sent to the member's facsimile number listed in the FINRA Contact System submitted to Nasdaq pursuant to Rule 1160, except that, if Nasdaq Regulation staff has actual knowledge that a member's FINRA Contact System facsimile number is out of date, duplicate copies shall be sent to the member by overnight courier or personal delivery in conformity with paragraphs (a)(1) and (3) and (b)(2) of Rule 9134. Papers served on a member by email shall be sent to the member's email address listed in the FINRA Contact System submitted to Nasdaq pursuant to Rule 1160 and shall also be served by either overnight courier or personal delivery in conformity with paragraphs (a)(1) and (3) and (b)(2) of Rule 9134. Papers served on a person by facsimile or email shall be sent to the person's last known facsimile number or email address and shall also be served by either overnight courier or personal delivery in conformity with paragraphs (a)(1) and (3) and (b)(1) of Rule 9134. Papers served on counsel for a member, or other person authorized to represent others under Rule 9141, by facsimile or email shall be sent to the facsimile number or email address that counsel or other person authorized to represent others under Rule 9141 provides and shall also be served by either overnight courier or personal delivery in conformity with paragraphs (a)(1) and (3) of Rule 9134. Service is complete upon sending the notice by facsimile or email, mailing the notice by U.S. Postal Service first class mail, first class certified mail, first class registered mail, or Express Mail, sending the notice through a courier service, or delivering it in person, except that, where duplicate service is required, service is complete when the duplicate service is complete.

(c) – (g) No change.

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

(a) No change.

(b) Service of Notice of Suspension or Cancellation

Except as provided below, Nasdaq Regulation staff shall serve the member or person with such notice (or upon counsel representing the member or person, or other person authorized to represent others under Rule 9141, when counsel or other person authorized to represent others under Rule 9141 agrees to accept service for the member or person) in accordance with Rule 9134 or by facsimile or email. A copy of a notice under this Rule that is served on a person associated with a member also shall be served on such member. Papers served on a member by facsimile shall be sent to the member's facsimile number listed in the FINRA Contact System submitted to Nasdaq pursuant to Rule 1160, except that, if Nasdaq Regulation staff has actual knowledge that a member's FINRA Contact System facsimile number is out of date, duplicate copies shall be sent to the member by overnight courier or personal delivery in conformity with paragraphs (a)(1) and (3) and (b)(2) of Rule 9134. Papers served on a member by email shall be sent to the member's email address listed in the FINRA Contact System submitted to Nasdaq pursuant to Rule

1160 and shall also be served by either overnight courier or personal delivery in conformity with paragraphs (a)(1) and (3) and (b)(2) of Rule 9134. Papers served on a person by facsimile or email shall be sent to the person's last known facsimile number or email address and shall also be served by either overnight courier or personal delivery in conformity with paragraphs (a)(1) and (3) and (b)(1) of Rule 9134. Papers served on counsel for a member, or other person authorized to represent others under Rule 9141, by facsimile or email shall be sent to the facsimile number or email address that counsel or other person authorized to represent others under Rule 9141 provides and shall also be served by either overnight courier or personal delivery in conformity with paragraphs (a)(1) and (3) of Rule 9134. Service is complete upon sending the notice by facsimile or email, mailing the notice by U.S. Postal Service first class mail, first class certified mail, first class registered mail, or Express Mail, sending the notice through a courier service, or delivering it in person, except that, where duplicate service is required, service is complete when the duplicate service is complete.

(c) – (g) No change.

9555. Failure to Meet the Eligibility or Qualification Standards or Prerequisites for Access to Services

(a) No change.

(b) Service of Notice

Except as provided below, Nasdaq Regulation staff shall serve the member or person with such notice (or upon counsel representing the member or person, or other person authorized to represent others under Rule 9141, when counsel or other person authorized to represent others under Rule 9141 agrees to accept service for the member or person) in accordance with Rule 9134 or by facsimile or email. A copy of a notice under this Rule that is served on a person associated with a member also shall be served on such member. Papers served on a member by facsimile shall be sent to the member's facsimile number listed in the FINRA Contact System submitted to Nasdaq pursuant to Rule 1160, except that, if Nasdaq Regulation staff has actual knowledge that a member's FINRA Contact System facsimile number is out of date, duplicate copies shall be sent to the member by overnight courier or personal delivery in conformity with paragraphs (a)(1) and (3) and (b)(2) of Rule 9134. Papers served on a member by email shall be sent to the member's email address listed in the FINRA Contact System submitted to Nasdaq pursuant to Rule 1160 and shall also be served by either overnight courier or personal delivery in conformity with paragraphs (a)(1) and (3) and (b)(2) of Rule 9134. Papers served on a person by facsimile or email shall be sent to the person's last known facsimile number or email address and shall also be served by either overnight courier or personal delivery in conformity with paragraphs (a)(1) and (3) and (b)(1) of Rule 9134. Papers served on counsel for a member, or other person authorized to represent others under Rule 9141, by facsimile or email shall be sent to the facsimile number or email address that counsel or other person authorized to represent others under Rule 9141 provides and shall also be served by either overnight courier or personal delivery in conformity with paragraphs (a)(1) and (3) of Rule 9134. Service is complete upon sending the notice by facsimile or

email, mailing the notice by U.S. Postal Service first class mail, first class certified mail, first class registered mail, or Express Mail, sending the notice through a courier service, or delivering it in person, except that, where duplicate service is required, service is complete when the duplicate service is complete.

(c) – (f) No change.

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

A member or 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 [FINRA]Nasdaq department or office that issued the notice or, if another [FINRA]Nasdaq department or office is named as the party handling the matter on behalf of the issuing department or office, with the head of the [FINRA]Nasdaq department or office that is so designated. The appropriate head of the department or office may grant relief for good cause shown.

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

Rule 9556, and related provisions of Rule 8310, IM-8310-3(c)(1), 9120(aa), 9241(c), 9290, 9311(b), 9312(b), 9360 and the Rule 9800 Series, shall expire on June 23, 2009, unless extended or permanently adopted pursuant to SEC approval at or before such date.

(a) Notice of Suspension, Cancellation or Bar

If a member, person associated with a member or person subject to Nasdaq's jurisdiction fails to comply with a temporary or permanent cease and desist order issued under the Rule 9200, 9300 or 9800 Series, Nasdaq Regulation staff — after receiving written authorization from the Chief Regulatory Officer — may issue a notice to such member or 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.

(b) Service of Notice

Nasdaq Regulation staff shall serve the member or person subject to a notice issued under this Rule by facsimile, overnight courier or personal delivery. Papers served on a member or person by overnight courier or personal delivery shall conform to paragraphs (a)(1) and (3) and (b)(1) and (2) of Rule 9134. Papers served on a member by facsimile shall be sent to the facsimile number listed in the member's contact questionnaire submitted to Nasdaq pursuant to Nasdaq's By-Laws, except that, if Nasdaq Regulation staff has actual knowledge that an entity's contact questionnaire facsimile number is out of date, duplicate copies shall be sent to the entity by overnight courier or personal delivery in conformity with paragraphs (a)(1) and (3) and (b)(2) of Rule 9134. Papers served on a person by facsimile shall be sent to the person's last known facsimile number and shall also be served by either overnight courier or personal delivery in conformity with

paragraphs (a)(1) and (3) and (b)(1) of Rule 9134. A copy of a notice under this Rule that is served on a person associated with a member also shall be served on such member. Service is complete upon sending the notice by facsimile, mailing the notice by overnight courier or delivering it in person, except that, where duplicate service is required, service is complete upon sending the duplicate service.

(c) Contents of Notice

The notice shall explicitly identify the provision of the permanent or temporary cease and desist order that is alleged to have been violated and shall contain a statement of facts specifying the alleged violation. The notice shall state when the Nasdaq 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 Nasdaq 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 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 Nasdaq action.

(f) Failure to Request Hearing

If a member or 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 Nasdaq action.

(g) Request for Termination of the Suspension

A member or 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 FINRA department or office that issued the notice or, if another FINRA department or office is named as the party

handling the matter on behalf of the issuing department or office, with the head of the FINRA department or office that is so designated. The appropriate head of the department or office may grant relief for good cause shown.]

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

(a) Notice of Suspension, Cancellation or Bar

If a member, person associated with a member or person subject to Nasdaq's jurisdiction fails to comply with a temporary or permanent cease and desist order issued under the Rule 9200, 9300 or 9800 Series, Nasdaq Regulation staff, after receiving written authorization from the Chief Regulatory Officer, may issue a notice to such member or 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.

(b) Service of Notice

Nasdaq Regulation staff shall serve the member or person subject to a notice issued under this Rule (or upon counsel representing the member or person, or other person authorized to represent others under Rule 9141, when counsel or other person authorized to represent others under Rule 9141 agrees to accept service for the member or person) by facsimile, email, overnight courier or personal delivery. Papers served on a member, person or counsel for such member or 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 or person, (b)(1) and (2) of Rule 9134. Papers served on a member by facsimile shall be sent to the member's facsimile number listed in the FINRA Contact System submitted to Nasdaq pursuant to Rule 1160, except that, if Nasdaq Regulation staff has actual knowledge that a member's FINRA Contact System facsimile number is out of date, duplicate copies shall be sent to the member by overnight courier or personal delivery in conformity with paragraphs (a)(1) and (3) and (b)(2) of Rule 9134. Papers served on a member by email shall be sent to the member's email address listed in the FINRA Contact System submitted to Nasdaq pursuant to Rule 1160 and shall also be served by either overnight courier or personal delivery in conformity with paragraphs (a)(1) and (3) and (b)(2) of Rule 9134. Papers served on a person by facsimile or email shall be sent to the person's last known facsimile number or email address and shall also be served by either overnight courier or personal delivery in conformity with paragraphs (a)(1) and (3) and (b)(1) of Rule 9134. Papers served on counsel for a member or person, or other person authorized to represent others under Rule 9141 by facsimile or email shall be sent to the facsimile number or email address that counsel or other person authorized to represent others under Rule 9141 provides and shall also be served by either overnight courier or personal delivery in conformity with paragraphs (a)(1) and (3) of Rule 9134. A copy of a notice under this Rule that is served on a person associated with a member also shall be served on such member. Service is complete upon sending the notice by facsimile or email, sending the notice by overnight

courier or delivering it in person, except that, where duplicate service is required, service is complete upon sending the duplicate service.

(c) Contents of Notice

The notice shall explicitly identify the provision of the permanent or temporary cease and desist order that is alleged to have been violated and shall contain a statement of facts specifying the alleged violation. The notice shall state when the Nasdaq 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 Nasdaq 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 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 Nasdaq action.

(f) Failure to Request Hearing

If a member or 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 Nasdaq action.

(g) Request for Termination of the Suspension

A member or person subject to a suspension imposed after the process described in paragraphs (a) through (f) of this Rule may file a written request for termination of the suspension on the ground of full compliance with the notice or decision. Such request shall be filed with the head of the Nasdaq department or office that issued the notice or, if another Nasdaq department or office is named as the party handling the matter on behalf of the issuing department or office, with the head of the Nasdaq department or office that

is so designated. The appropriate head of the department or office may grant relief for good cause shown.

(h) Subsequent Proceedings

If a member, person associated with a member or person subject to Nasdaq's jurisdiction fails to comply with a temporary or permanent cease and desist order issued under the Rule 9200, 9300, or 9800 Series, and has previously been served under paragraph (a) of this Rule with a notice for a failure to comply with any provision of the same temporary or permanent cease and desist order, Nasdaq Regulation staff, after receiving written authorization from the Chief Regulatory Officer, may file a petition with the Office of Hearing Officers seeking a hearing pursuant to Rule 9559 and the imposition of any fitting sanctions for such member's or person's failure to comply with the temporary or permanent cease and desist order.

(1) The petition shall be served in accordance with paragraph (b) of this Rule, and it shall be filed with the Office of Hearing Officers.

(2) The petition shall explicitly identify the provision of the permanent or temporary cease and desist order that is alleged to have been violated, contain a statement of facts specifying the alleged violation, describe with particularity the sanctions that Nasdaq Regulation staff seeks to have imposed, and note that a hearing under Rule 9559 is requested. Nasdaq Regulation staff may seek the imposition of any fitting sanction.

(3) Upon the filing of the petition, Rule 9559 shall govern the proceeding. Respondent's full compliance with the temporary or permanent cease and desist order is not a ground for dismissing a proceeding brought pursuant to this paragraph (h).

(4) The Nasdaq Department that filed the petition can withdraw it without prejudice and shall be permitted to refile a petition based on allegations concerning the same facts and circumstances that are set forth in the withdrawn petition.

9557. Procedures for Regulating Activities Under Rules 4110A and 4120A Regarding a Member Experiencing Financial or Operational Difficulties

(a) No change.

(b) Service of Notice

Nasdaq Regulation staff shall serve the member subject to a notice issued under this Rule (or upon counsel representing the member, 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) by facsimile, email, overnight courier or personal delivery. Papers served on a member, counsel for such member, 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, (b)(2) of Rule

9134. Papers served on a member by facsimile shall be sent to the member's facsimile number listed in the [member's contact questionnaire]FINRA Contact System submitted to Nasdaq pursuant to Rule 1160[submitted to Nasdaq pursuant to Nasdaq's By-Laws], except that, if Nasdaq Regulation staff has actual knowledge that a[n entity's]member's [contact questionnaire]FINRA Contact System facsimile number is out of date, duplicate copies shall be sent to the [entity]member by overnight courier or personal delivery in conformity with paragraphs (a)(1) and (3) and (b)(2) of Rule 9134. Papers served on a member by email shall be sent to the member's email address listed in the FINRA Contact System submitted to Nasdaq pursuant to Rule 1160 and shall also be served by either overnight courier or personal delivery in conformity with paragraphs (a)(1) and (3) and (b)(2) of Rule 9134. Papers served on counsel for a member, or other person authorized to represent others under Rule 9141 by facsimile or email shall be sent to the facsimile number or email address that counsel or other person authorized to represent others under Rule 9141 provides and shall also be served by either overnight courier or personal delivery in conformity with paragraphs (a)(1) and (3) of Rule 9134. Service is complete upon sending the notice by facsimile or email, sending[mailing] the notice by overnight courier or delivering it in person, except that, where duplicate service is required, service is complete upon sending the duplicate service.

(c) – (h) No change.

9558. Summary Proceedings for Actions Authorized by Section 6(d)(3) of the Act

(a) No change.

(b) Service of Notice

Nasdaq Regulation staff shall serve the[The] member or person subject to a notice issued under this Rule (or upon counsel representing the member or person, or other person authorized to represent others under Rule 9141, when counsel or other person authorized to represent others under Rule 9141 agrees to accept service for the member or person)[shall be served] by facsimile, email, overnight courier, or personal delivery. Papers served on a member, [or]person or counsel for such member or 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 or person, (b)(1) and (2) of Rule 9134. Papers served on a member by facsimile shall be sent to the member's facsimile number listed in the [member's contact questionnaire]FINRA Contact System submitted to Nasdaq pursuant to Rule 1160[submitted to Nasdaq pursuant to Nasdaq's By-Laws], except that, if Nasdaq Regulation staff has actual knowledge that a[n entity's] member's [contact questionnaire]FINRA Contact System facsimile number is out of date, duplicate copies shall be sent to the [entity]member by overnight courier or personal delivery in conformity with paragraphs (a)(1) and (3) and (b)(2) of Rule 9134. Papers served on a member by email shall be sent to the member's email address listed in the FINRA Contact System submitted to Nasdaq pursuant to Rule 1160 and shall also be served by either overnight courier or personal delivery in conformity with paragraphs (a)(1) and (3) and (b)(2) of Rule 9134. Papers served on a person by facsimile or email shall be sent to the person's last known facsimile number or

email address and shall also be served by either overnight courier or personal delivery in conformity with paragraphs (a)(1) and (3) and (b)(1) of Rule 9134. A copy of a notice under this Rule that is served on a person associated with a member also shall be served on such member. Papers served on counsel for a member or person, or other person authorized to represent others under Rule 9141 by facsimile or email shall be sent to the facsimile number or email address that counsel or other person authorized to represent others under Rule 9141 provides and shall also be served by either overnight courier or personal delivery in conformity with paragraphs (a)(1) and (3) of Rule 9134. Service is complete upon sending the notice by facsimile[,] or email, sending[mailing] the notice by overnight courier or delivering it in person, except that, where duplicate service is required, service is complete upon sending the duplicate service.

(c) – (g) No change.

9559. Hearing Procedures for Expedited Proceedings Under the Rule 9550 Series

(a) Applicability

The hearing procedures under this Rule shall apply to a member, person associated with a member, person subject to Nasdaq's jurisdiction or other person who is served with a notice issued under the Rule 9550 Series and who timely requests a hearing or who is served with a petition instituting an expedited proceeding under Rule 9556(h). For purposes of this Rule, such members or persons shall be referred to as respondents.

(b) No change.

(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[1] through 9556, except that: (A) the effectiveness of a notice of a limitation or prohibition on access to services offered by Nasdaq or a member thereof under Rule 9555 with respect to services to which the member or person does not have access shall not be stayed by a request for a hearing; and (B) this paragraph has no applicability to a petition instituting an expedited proceeding under Rule 9556(h).

(2) – (3) No change.

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

(1) For proceedings initiated under Rules 9553, [and]9554, and 9556(h), the Chief Hearing Officer shall appoint a Hearing Officer to preside over and act as the sole adjudicator for the matter.

(2) For proceedings initiated under Rules [9551,]9552, 9555, 9556 (except Rule 9556(h)), 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 [9551,]9552, 9555, 9556 (except Rule 9556(h)) and 9558, the Chief Hearing Officer shall select as Panelists persons who meet the qualifications delineated in Rules 9231 and 9232. For proceedings initiated under Rule 9557, the Chief Hearing Officer shall select as Panelists current or former members of the Nasdaq Financial Responsibility Committee.

(3) – (6) No change.

(e) No change.

(f) Time of Hearing

(1) No change.

(2) A hearing shall be held within ten days after a respondent is served a petition seeking an expedited proceeding issued under Rule 9556(h).

~~(2)~~**(3)** A hearing shall be held within 14 days after a respondent subject to a notice issued under Rules 9556 (except Rule 9556(h)) and 9558 files a written request for a hearing with the Office of Hearing Officers.

~~(3)~~**(4)** A hearing shall be held within 30 days after a respondent subject to a notice issued under Rules 9552[1] through 9555 files a written request for a hearing with the Office of Hearing Officers.

~~(4)~~**(5)** The timelines established by paragraphs (f)(1) through (f)~~(4)~~**(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)]~~

(2) At least six days prior to the hearing in the case of an action brought pursuant to Rule 9556(h);

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

~~[(2)]~~**(4)** At least 21 days prior to the hearing in the case of an action brought pursuant to Rules 9552[1] 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 six days before the hearing in an action brought under Rule 9556(h), not less than seven days before the hearing in an action brought under Rules 9556 (except Rule 9556(h)) and 9558, and not less than 14 days before the hearing in an action brought under Rules 9552[1] through 9555, Nasdaq Regulation staff shall provide to the respondent who requested the hearing or the respondent who has received a petition pursuant to Rule 9556(h), by facsimile, email, [or]overnight courier or personal delivery, all documents that were considered in issuing the notice unless a document meets the criteria of Rule 9251(b)(1)(A), (B) or (C). Documents served by facsimile or email shall also be served by either overnight courier or personal delivery. A document that meets [such]the criteria in this paragraph shall not constitute part of the record, but shall be retained until the date upon which the Nasdaq's final decision is served or, if applicable, upon the conclusion of any review by the Securities and Exchange Commission 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[1] through 9555, the parties shall exchange proposed exhibit and witness lists. The exhibit and witness lists shall be served by facsimile, email, [or by]overnight courier or personal delivery. Documents served by facsimile or email shall also be served by either overnight courier or personal delivery.

(i) – (l) No change.

(m) Failure to Appear at a Pre-Hearing Conference or Hearing or to Comply with a Hearing Officer Order Requiring the Production of Information

Failure of any respondent to appear before the Hearing Officer or, if applicable, the Hearing Panel at any status conference, pre-hearing conference or hearing, or to comply with any order of the Hearing Officer or, if applicable, Hearing Panel requiring production of information to support any defense to the notice or petition that respondent has raised, shall be considered an abandonment of the respondent's defense and waiver of any opportunity for a hearing provided by the Rule 9550 Series. In such cases[.];

(1) [t]The notice issued under the Rule 9550 Series shall be deemed to be final Nasdaq action. The Hearing Officer or, if applicable, the Hearing Panel may permit the hearing to go forward as to those parties who appear and otherwise comply with this Rule.

(2) The Hearing Officer may issue a default decision against a respondent who is the subject of a petition filed pursuant to Rule 9556(h) and may deem the allegations against that respondent admitted. The contents of a default decision shall conform to the content requirements of Rule 9559(p). A respondent may, for good cause shown, file a motion to set aside a default. Upon a showing of good cause, the Hearing Officer that entered the original order shall decide the motion. If the Hearing Officer is not available, the Chief Hearing Officer shall appoint another Hearing Officer to

decide the motion. If a default decision is not called for review pursuant to Rule 9559(q), the default decision shall become the final Nasdaq action.

(n) Sanctions, Costs and Remands

(1) In any action brought under the Rule 9550 Series, other than an action brought under Rule 9556(h) or 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 9556(h), the Hearing Officer may impose any fitting sanction.

([2]3) 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 Nasdaq Regulation staff issues a letter of withdrawal of all requirements and/or restrictions pursuant to Rule 9557(g)(2).

([3]4) 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]5) In any action brought under the Rule 9550 Series, other than an action brought under Rule 9556(h) or 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) – (2) No change.

(3) Proceedings initiated under Rules [9551,]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 Nasdaq Review Council's Review Subcommittee.

(4) No change.

(5) If not timely called for review by the Nasdaq Review Council's Review Subcommittee pursuant to paragraph (q) of this Rule, the Hearing Officer's or, if applicable, the Hearing Panel's written decision shall constitute final Nasdaq action. For decisions issued under Rules 9552[1] 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 Nasdaq member with which the respondent is associated.

(6) No change.

(p) – (s) No change.

* * * * *

[9800. Temporary Cease and Desist Orders

Temporary Cease and Desist Orders

The entire Rule 9800 Series, and related provisions of Rules 8310, IM-8310-3(c)(1), 9120(aa), 9241(c), 9290, 9311(b), 9312(b), 9360, and 9556, shall expire on June 23, 2009, unless extended or permanently adopted pursuant to SEC approval at or before such date.

9810. Initiation of Proceeding

(a) Department of Enforcement or Department of Market Regulation

With the prior written authorization of the FINRA's Chairman and CEO or FINRA's Senior Executive Vice President for Regulatory Policy and Programs, 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 Securities Exchange Act of 1934 and SEC Rule 10b-5 thereunder; SEC Rules 15g-1 through 15g-9; Nasdaq Rule 2110 (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 of 1933); Nasdaq Rule 2120; or Nasdaq Rule 2150 (if the alleged violation is misuse or conversion of customer assets). The Department of Enforcement or the Department of Market Regulation shall initiate the proceeding by serving a notice on a member or associated person (hereinafter "Respondent") and filing a copy thereof with the Office of Hearing Officers. The Department of Enforcement or the Department of Market Regulation shall serve the notice by personal service, overnight commercial courier, or facsimile. If service is made by facsimile, the Department of Enforcement or the Department of Market Regulation shall send an additional copy of the notice by 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.

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 current or former Directors or Nasdaq Review Council members, and at least one Panelist shall be an associated person.

(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.

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, overnight commercial courier, or facsimile. If service is made by facsimile, the Office of Hearing Officers shall send an additional copy of the notice by 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 Nasdaq 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

Nasdaq's decision becomes final or, if applicable, upon the conclusion of any review by the Commission 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.

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, overnight commercial courier, or facsimile. If service is made by facsimile, the Office of Hearing Officers shall send an additional copy of the Hearing Panel's decision and any temporary cease and desist order by overnight commercial courier. The temporary cease and desist order shall be effective upon service.

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, overnight commercial courier, or facsimile. If service is made by facsimile, the Office of Hearing Officers shall send an additional copy of the temporary cease and desist order by overnight commercial courier. The filing of an application under this Rule shall not stay the effectiveness of the temporary cease and desist order.

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 Chief Regulatory Officer of Nasdaq must authorize the initiation of any such proceeding in writing.

9870. Application to Commission for Review

Temporary cease and desist orders issued pursuant to this Rule Series constitute final and immediately effective disciplinary sanctions imposed by Nasdaq. The right to have any action under this Rule Series reviewed by the Commission 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 Commission otherwise orders.]

9800. Temporary Cease and Desist Orders

9810. Initiation of Proceeding

(a) Department of Enforcement or Department of Market Regulation

With the prior written authorization of FINRA's Chief Executive Officer or such other senior officers as the Chief Executive Officer may designate, and the Nasdaq Chief

Regulatory Officer, 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 SEC Rule 10b-5 thereunder; SEC Rules 15g-1 through 15g-9; Nasdaq Rule 2010A (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); Nasdaq Rule 2120; or Nasdaq Rule 2150 (if the alleged violation is misuse or conversion of customer assets). The Department of Enforcement or the Department of Market Regulation shall initiate the proceeding by serving a notice on a member or associated person (hereinafter "Respondent") (or upon counsel representing the Respondent, or other person authorized to represent others under Rule 9141, when counsel or other person authorized to represent others under Rule 9141 agrees to accept service for the Respondent) and filing a copy thereof with the Office of Hearing Officers. The Department of Enforcement or the Department of Market Regulation shall serve the notice by personal service, overnight commercial courier, facsimile, or email. If service is made by facsimile or email, the Department of Enforcement or the Department of Market Regulation shall send an additional copy of the notice by personal service or overnight commercial courier. Service is complete upon sending the notice by facsimile or email, sending the notice by overnight courier or delivering it in person, except that, where duplicate service is required, service is complete when the duplicate service is complete. The notice shall be effective when service is complete.

(b) Contents of Notice

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

- (1) a declaration of facts, signed by a person with knowledge of the facts contained therein, that specifies the acts or omissions that constitute the alleged violation;
- (2) a memorandum of points and authorities setting forth the legal theories upon which the Department of Enforcement or the Department of Market Regulation relies; and
- (3) a proposed order that contains the required elements of a temporary cease and desist order (except the date and hour of the order's issuance), which are set forth in Rule 9840(b).

(c) Authority to Approve Settlements

If the Parties agree to the terms of the proposed temporary cease and desist order, the Hearing Officer shall have the authority to approve and issue the order.

(d) Filing of Underlying Complaint

If 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. Service of the complaint can be made in accordance with the service provisions in paragraph (a).

9820. Appointment of Hearing Officer and Hearing Panel

(a) As soon as practicable after the Department of Enforcement or the Department of Market Regulation files a copy of the notice initiating a 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. Each Panelist shall be associated with a member of Nasdaq or retired therefrom. The Chief Hearing Officer shall select as a Panelist a person who:

- (1) previously served on the Nasdaq Review Council;
- (2) previously served on a disciplinary subcommittee of the Nasdaq Review Council, including a Subcommittee, an Extended Proceeding Committee, or their predecessor subcommittees;
- (3) previously served as a Director, but does not currently serve in any of these positions;
- (4) served on the FINRA National Adjudicatory Council or on a disciplinary subcommittee of the FINRA National Adjudicatory Council prior to the date that Nasdaq commenced operating as a national securities exchange; or
- (5) is a FINRA Panelist approved by the Nasdaq Board at least annually, or is drawn from other sources the Board deems appropriate given the responsibilities of Panelists.

(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.

9830. Hearing

(a) When Held

The hearing shall be held not later than 15 days after service of the notice and filing initiating the temporary cease and desist proceeding, unless otherwise extended by the Chief Hearing Officer or Deputy Chief Hearing Officer for good cause shown. If a Hearing Officer or Hearing Panelist is recused or disqualified, the hearing shall be held not later than five days after a replacement Hearing Officer or Hearing Panelist is appointed.

(b) Service of Notice of Hearing

The Office of Hearing Officers shall serve a notice of date, time, and place of the hearing on the Department of Enforcement or the Department of Market Regulation and the Respondent (or upon counsel representing the Respondent, or other person authorized to represent others under Rule 9141, when counsel or other person authorized to represent others under Rule 9141 agrees to accept service for the Respondent) not later than seven days before the hearing, unless otherwise ordered by the Hearing Officer. Service shall be made by personal service, overnight commercial courier, facsimile, or email. If service is made by facsimile or email, the Office of Hearing Officers shall send an additional copy of the notice by personal service or overnight commercial courier. Service is complete upon sending the notice by facsimile or email, sending the notice by overnight courier or delivering it in person, except that, where duplicate service is required, service is complete when the duplicate service is complete. The notice shall be effective when service is complete.

(c) 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 Nasdaq shall testify under oath or affirmation. The oath or affirmation shall be administered by a court reporter or a notary public.

(e) Additional Information

Prior to the hearing, the Hearing Officer may order a Party to furnish to all other Parties and the Hearing Panel such information as deemed appropriate, including any or all of the pre-hearing submissions described in Rule 9242(a). The documentary evidence

submitted by the Parties pursuant to this paragraph shall not become part of the record, unless the Hearing Officer or Hearing Panel orders some or all of such evidence included pursuant to Rule 9830(g). At any time during the Hearing Panel's consideration, the Hearing Panel may direct a Party to submit additional information. Any additional information submitted shall be provided to all Parties at least one day before the Hearing Panel renders its decision.

(f) Transcript

The hearing shall be recorded by a court reporter and a written transcript thereof shall be prepared. A transcript of the hearing shall be available to the Parties for purchase from the court reporter at prescribed rates. A witness may purchase a copy of the transcript of his or her own testimony from the court reporter at prescribed rates. Proposed corrections to the transcript may be submitted by affidavit to the Hearing Panel within a reasonable time determined by the Hearing Panel. Upon notice to all the Parties to the proceeding, the Hearing Panel may order corrections to the transcript as requested or sua sponte.

(g) Record and Evidence Not Admitted

The record shall consist of the notice initiating the proceeding, the declaration, and the proposed order described in Rule 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 Nasdaq'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.

9840. Issuance of Temporary Cease and Desist Order by Hearing Panel

(a) Basis for Issuance

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

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

(2) that the alleged violative conduct or continuation thereof is likely to result in significant dissipation or conversion of assets or other significant harm to investors prior to the completion of the underlying disciplinary proceeding under the Rule 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 (and any successor of a Respondent, where the Respondent is a member firm) to cease and desist from violating a specific rule or statutory provision, and, where applicable, to ordering a Respondent (and any successor of a Respondent, where the Respondent is a member firm) to cease and desist from dissipating or converting assets or causing other harm to investors;

(2) set forth the alleged violation and the significant dissipation or conversion of assets or other significant harm to investors that is likely to result without the issuance of an order;

(3) describe in reasonable detail the act or acts the Respondent (and any successor of a Respondent, where the Respondent is a member firm) shall take, refrain from taking, or both; and

(4) include the date and hour of its issuance.

(c) Duration of Order

A temporary cease and desist order shall remain effective and enforceable until the issuance of a decision under Rule 9268 or Rule 9269, or until a settlement offer is accepted pursuant to Rule 9270.

(d) Service and Dissemination Requirements

The Office of Hearing Officers shall serve the Hearing Panel's decision and any temporary cease and desist order on the Department of Enforcement or the Department of Market Regulation and the Respondent (or upon counsel representing the Respondent or person, or other person authorized to represent others under Rule 9141, when counsel or other person authorized to represent others under Rule 9141 agrees to accept service for the Respondent) by personal service, overnight commercial courier, facsimile, or email. If service is made by facsimile or email, the Office of Hearing Officers shall send an additional copy of the Hearing Panel's decision and any temporary cease and desist order by personal service or overnight commercial courier. Service is complete upon sending the notice by facsimile or email, sending the notice by overnight courier, or delivering it

in person, except that, where duplicate service is required, service is complete when the duplicate service is complete. The temporary cease and desist order shall be effective when service is complete. The Office of Hearing Officers shall provide a copy of the temporary cease and desist order to each Nasdaq member with which a Respondent is associated.

(e) Delivery Requirement

Where a Respondent is a member firm, Respondent shall deliver a copy of a temporary cease and desist order, within one business day of receiving it, to its associated persons.

9850. Review by Hearing Panel

At any time after the Office of Hearing Officers serves the Respondent (or counsel representing the Respondent, or other person authorized to represent others under Rule 9141, when counsel or other person authorized to represent others under Rule 9141 agrees to accept service for the Respondent) with a temporary cease and desist order, a Party may apply to the Hearing Panel to have the order modified, set aside, limited, or suspended. The application shall set forth with specificity the facts that support the request. The Hearing Panel that presided over the temporary cease and desist order proceeding shall retain jurisdiction to modify, set aside, limit, or suspend the temporary cease and desist order, unless at the time the application is filed a Hearing Panel has already been appointed in the underlying disciplinary proceeding commenced under Rule 9211 in which case the Hearing Panel appointed in the disciplinary proceeding has jurisdiction. The Hearing Panel shall respond to the request in writing within ten days after receipt of the request, unless otherwise extended by the Chief Hearing Officer or Deputy Chief Hearing Officer for good cause shown. The Hearing Panel's response shall be served on the Respondent (or upon counsel representing the Respondent, or other person authorized to represent others under Rule 9141, when counsel or other person authorized to represent others under Rule 9141 agrees to accept service for the Respondent) via personal service, overnight commercial courier, facsimile, or email. If service is made by facsimile or email, the Office of Hearing Officers shall send an additional copy of the temporary cease and desist order by personal service or overnight commercial courier. The filing of an application under this Rule shall not stay the effectiveness of the temporary cease and desist order.

9860. Violation of Temporary Cease and Desist Orders

A Respondent who violates a temporary cease and desist order imposed under this Rule Series may have its association or membership suspended or canceled or be subject to any fitting sanction under Rule 9556. The Chief Regulatory Officer of Nasdaq must authorize the initiation of any such proceeding in writing.

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 Nasdaq. 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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