

**EXHIBIT 5**

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**Nasdaq PHLX LLC Rules**

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**RULES OF THE EXCHANGE**

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**[Investigations and Sanctions (Rules 8000—8330)]****8000. Investigations and Sanctions****8001. Regulation of the Exchange and its Member Organizations**

The Exchange and FINRA are parties to the FINRA Regulatory Contract pursuant to which FINRA has agreed to perform certain functions described in these rules on behalf of the Exchange. Exchange rules that refer to the Phlx Regulation Department, Exchange Regulation staff, Exchange staff, and Exchange departments should be understood as also referring to FINRA staff and FINRA departments acting on behalf of the Exchange pursuant to the FINRA Regulatory Contract.

Notwithstanding the fact that the Exchange has entered into the Regulatory Contract with FINRA to perform some of the Exchange's functions, the Exchange shall retain ultimate legal responsibility for, and control of, such functions.

**8100. General Provisions****8110. Availability of Manual to Customers**

Member organizations shall keep and maintain current paper or electronic copies of the FINRA and the Exchange Manuals in a readily accessible place and shall make them available for examination by customers upon request.

**8120. Definitions**

(a) Unless otherwise provided, terms used in the Rule 8000 Series shall have the meaning as defined in Rule 1.

(b) The term "Adjudicator" shall have the meaning as defined in Rule 9120.

**8200. Investigations****8210. Provision of Information and Testimony and Inspection and Copying of Books****(a) Authority of the Phlx Regulation Department, Including FINRA Staff**

For the purpose of an investigation, complaint, examination, or proceeding authorized by the By-Laws or Exchange Rules, the Phlx Regulation Department, including FINRA staff shall have the right to:

- (1) require a member, member organization, person associated with a member organization, or person subject to the Exchange's jurisdiction to provide information orally, in writing, or electronically (if the requested information is, or is required to be, maintained in electronic form) and to testify at a location specified by the Phlx Regulation Department, including FINRA staff, under oath or affirmation administered by a court reporter or a notary public if requested, with respect to any matter involved in the investigation, complaint, examination, or proceeding; and
- (2) inspect and copy the books, records, and accounts of such member, member organization or person with respect to any matter involved in the investigation, complaint, examination, or proceeding.

**(b) Other SROs and Regulators**

The Phlx Regulation Department, including FINRA staff, also may exercise the authority set forth in paragraph (a) for the purpose of an investigation, complaint, examination, or proceeding conducted by another domestic or foreign self-regulatory organization, association, securities or contract market, or regulator of such markets with which the Exchange has entered into an agreement providing for the exchange of information and other forms of material assistance solely for market surveillance, investigative, enforcement, or other regulatory purposes.

**(c) Requirement to Comply**

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

**(d) Notice**

A notice under this Rule shall be deemed received by the member, member organization or person to whom it is directed by mailing or otherwise transmitting the notice to the last known business address of the member organization or the last known residential address of the member or person as reflected in the Central Registration Depository. If the Phlx Regulation Department staff, including FINRA staff, responsible for mailing or otherwise transmitting the notice to the member, member organization or person has actual knowledge that the address in the Central Registration Depository is out of date or inaccurate, then a copy of the notice shall be mailed or otherwise transmitted to:

- (1) the last known business address of the member organization or the last known residential address of the member or person as reflected in the Central Registration Depository, and
- (2) any other more current address of the member, member organization or the person known to the Adjudicator or the Phlx Regulation Department, including FINRA staff who is responsible for mailing or otherwise transmitting the notice.

**(e) Electronic Interface**

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

**(f) Inspection and Copying**

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

**8211. Automated Submission of Trading Data**

**(a)** A member organization shall submit the trade data specified below in automated format as may be prescribed by the Phlx Regulation Department, including FINRA staff, from time to time. This information shall be supplied with respect to any transaction or transactions that are the subject of a request for information made by the Phlx Regulation Department, including FINRA staff.

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

- (1) Clearing house number, or alpha symbol as used by the member organization submitting the data;
- (2) Clearing house number(s), or alpha symbol(s) as may be used from time to time, of the member organization(s) on the opposite side of the transaction;
- (3) Identifying symbol assigned to the security;
- (4) Date transaction was executed;
- (5) Number of shares, or quantity of bonds or options contracts for each specific transaction and whether each transaction was a purchase, sale, short sale, or, if an options contract, whether open long or short or close long or short;
- (6) Transaction price;
- (7) Account number; and

(8) Market center where transaction was executed.

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

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

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

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

(d) In addition to the above trade data, a member organization shall submit such other information in such automated format as may from time to time be required by the Phlx Regulation Department.

(e) Pursuant to the Rule 9600 Series, the Exchange may exempt a member organization from the requirement that the data prescribed in paragraphs (b) through (d) above be submitted to the Phlx Regulation Department, including FINRA staff, in an automated format for good cause shown.

**8212. Reserved**

**8213. Reserved**

**8220. Reserved**

**8300. Sanctions**

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

**(a) Imposition of Sanction**

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

(1) censure a member, member organization or person associated with a member organization;

(2) impose a fine upon a member, member organization or person associated with a member organization;

- (3) suspend the membership of a member organization, suspend the permit of a member, or suspend the registration of a person associated with a member organization for a definite period or a period contingent on the performance of a particular act;
- (4) expel a member, member organization, cancel the membership of a member organization, revoke or cancel the permit of a member, or revoke or cancel the registration of a person associated with a member organization;
- (5) suspend or bar a member, member organization or person associated with a member organization from association with all member organizations;
- (6) impose a temporary or permanent cease and desist order against a member, member organization or a person associated with a member organization; or
- (7) impose any other fitting sanction.

**(b) Assent to Sanction**

Each party to a proceeding resulting in a sanction shall be deemed to have assented to the imposition of the sanction unless such party files a written application for appeal, review, or relief pursuant to the Rule 9000 Series.

**IM-8310-1. Effect of a Suspension, Revocation, Cancellation, or Bar**

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

**IM-8310-2. Reserved**

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

**(a)** The Phlx Regulation Department shall, in response to a request, release to the requesting party a copy of any identified disciplinary complaint or disciplinary decision issued by the Exchange or any committee thereof; provided, however, that each copy of:

- (1) a disciplinary complaint shall be accompanied by the following statement: “The issuance of a disciplinary complaint represents the initiation of a formal proceeding by Nasdaq PHLX in which findings as to the allegations in the complaint have not been made and does not represent a decision as to any of the allegations contained in the complaint. Because this complaint is unadjudicated, you may wish to contact the

respondent before drawing any conclusions regarding the allegations in the complaint.”

- (2) a disciplinary decision that is released prior to the expiration of the time period provided under the Rule 9000 Series for appeal or call for review within the Exchange or while such an appeal or call for review is pending, shall be accompanied by a statement that the findings and sanctions imposed in the decision may be increased, decreased, modified, or reversed by the Exchange;
- (3) a final decision of the Exchange that is released prior to the time period provided under the Act for appeal to the Commission or while such an appeal is pending, shall be accompanied by a statement that the findings and sanctions of the Exchange are subject to review and modification by the Commission; and
- (4) a final decision of the Exchange that is released after the decision is appealed to the Commission shall be accompanied by a statement as to whether the effectiveness of the sanctions has been stayed pending the outcome of proceedings before the Commission.

**(b)**

- (1) The Phlx Regulation Department shall release to the public information with respect to any disciplinary complaint initiated by the Department of Enforcement or the Department of Market Regulation of FINRA as defined in Rules 9120(f) and (g), respectively, containing an allegation of a violation of a designated statute, rule or regulation of the Commission or the Exchange, as determined by the Chief Regulatory Officer of the Exchange (a “Designated Rule”); and may also release such information with respect to any disciplinary complaint or group of disciplinary complaints 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.
- (2) Information released to the public pursuant to paragraph (b)(1) shall be accompanied by the statement required under paragraph (a)(1).

**(c)**

- (1) The Phlx Regulation Department 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 organization or member; suspension or revocation of a member’s permit; or suspension or revocation of the registration of a member or person associated with a member organization; or suspension or barring of a member organization, member or person associated with a member organization from association with all member organizations; or imposition of monetary sanctions of \$10,000 or more upon a member organization, member or person associated with a member organization; 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. The Phlx Regulation Department 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 organization or member or a suspension or bar of the association of a member or a person with a member organization, unless the Phlx Regulation Department determines otherwise. The Phlx Regulation Department 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. The Phlx Regulation Department also shall release to the public information with respect to any temporary cease and desist order issued pursuant to the Rule 9800 Series. The Phlx Regulation Department 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) The Phlx Regulation Department shall release to the public, in unredacted form, information with respect to any disciplinary decision issued pursuant to the Rule 9300 Series that does not meet one or more of the criteria in IM-8310-3(c)(1) for the release of information to the public, provided that the underlying decision issued pursuant to the Rule 9200 Series meets one or more of the criteria in IM-8310-3(c)(1) for the release of information to the public, and information regarding such decision has been released to the public in unredacted form.
- (B) In the event there is more than one respondent in a disciplinary decision issued pursuant to the Rule 9000 Series, and sanctions imposed on one or more, but not all, of the respondents meet one or more of the criteria in IM-8310-3(c)(1) for the release of information to the public, the Phlx Regulation Department shall release to the public, in unredacted form, information with respect to the respondent(s) who meet such criteria, and may release to the public, in redacted form, information with respect to the respondent(s) who do not meet such criteria. Notwithstanding the foregoing, the Phlx Regulation Department shall release to the public, in unredacted form, information with respect to any respondent in a disciplinary decision issued pursuant to the Rule 9300 Series if the sanctions imposed on such respondent in the underlying decision issued pursuant to the Rule 9200 Series meet one or more of the criteria for release of information to the public, and information with respect to that respondent has been released in unredacted form.
- (2) Information released to the public pursuant to paragraph (c)(1) shall be accompanied by a statement to the extent required for that type of information under paragraphs (a)(2)-(4).

**(d)** If a decision issued pursuant to the Rule 9000 Series other than by the Exchange Review Council is not appealed to or called for review by the Exchange Review Council, the decision shall become effective on a date set by the Phlx Regulation Department but not before the expiration of 45 days after the date of decision.

**(e)** Notwithstanding paragraph (d), expulsions and bars imposed pursuant to the provisions of Rules 9216 and 9270 shall become effective upon approval or acceptance by the Exchange Review Council, and information regarding any sanctions imposed pursuant to those Rules may be released to the public pursuant to paragraph (c) immediately upon such approval or acceptance.

**(f)** If a decision issued pursuant to the Rule 9000 Series is called for review by the Exchange Board, the decision shall be stayed pending a final determination and decision by the Board.

**(g)** If a decision of the Exchange imposing monetary sanctions of \$10,000 or more or a penalty of expulsion, revocation, or suspension of a member, member organization and/or barring of a person from being associated with all member organizations is appealed to the Commission, notice thereof shall be given to the membership and to the press as soon as possible after receipt by the Exchange of notice from the Commission of such appeal and the Exchange's notice shall state whether the effectiveness of the Board's decision has been stayed pending the outcome of proceedings before the Commission.

**(h)** In the event an appeal to the courts is filed from a decision by the Commission in a case previously appealed to it from a decision of the Exchange, involving the imposition of monetary sanctions of \$10,000 or more or a penalty of expulsion, revocation, or suspension of a member, member organization and/or barring of a person from being associated with all member organizations, notice thereof shall be given to the membership as soon as possible after receipt by the Exchange of a formal notice of appeal. Such notice shall include a statement whether the order of the Commission has been stayed.

**(i)** Any order issued by the Commission of revocation or suspension of a member organization's broker/dealer registration with the Commission; or the suspension or expulsion of a member or member organization from the Exchange; or the barring of a person associated with a member organization from association with all broker/dealers or membership; or the imposition of monetary sanctions of \$10,000 or more shall be released to the public through a notice containing the effective date thereof sent as soon as possible after receipt by the Exchange of the order of the Commission.

**(j)** Cancellations of membership or registration pursuant to the Rules of the Exchange shall be released to the public as soon after the effective date of the cancellation as possible.

**(k)** Releases to the public referred to in paragraphs (b) and (c) above shall identify the Rules of the Exchange or SEC Rules violated, and shall describe the conduct constituting



such violation. Releases may also identify the member organization with which an individual was associated at the time the violations occurred if such identification is determined by the Phlx Regulation Department to be in the public interest.

(I) The Phlx Regulation Department shall release to the public, in the form issued by the Exchange Review Council, information with respect to any decision issued by the Exchange Review Council pursuant to Rule 923(a). In its discretion, the Exchange Review Council may have redacted certain information from such decisions prior to their issuance.

### **8320. Payment of Fines, Other Monetary Sanctions, or Costs; Summary Action for Failure to Pay**

#### **(a) Payment to Treasurer**

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

Subject to the following conditions and procedures, a member or member organization may pay a regulatory fine via an installment plan:

- (1) The member or member organization must check the installment plan option on the election of payment form included with the letter of acceptance, waiver, and consent (“AWC”).
- (2) The fine under the AWC must be fifty thousand dollars (\$50,000) or more. A fine of less than fifty thousand dollars (\$50,000) is not eligible for the installment plan.
- (3) A down payment of twenty-five percent (25%) or more of the total fine must be submitted with the signed AWC.
- (4) An installment package, including a promissory note and payment schedule, will be mailed to the member or member organization upon receipt of the down payment, as required in paragraph (3) above.
- (5) An executed (signed and notarized) promissory note for the unpaid balance of the fine must be returned with the first installment payment.
- (6) The term of the installment plan shall not exceed four (4) years after the execution of the AWC. The member or member organization may elect monthly or quarterly payments.

#### **(b) Summary Suspension or Expulsion**

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

- (1) pay promptly a fine or other monetary sanction imposed pursuant to Rule 8310 or cost imposed pursuant to Rule 8330 when such fine, monetary sanction, or cost becomes finally due and payable; or
- (2) terminate immediately the association of a person who fails to pay promptly a fine or other monetary sanction imposed pursuant to Rule 8310 or a cost imposed pursuant to Rule 8330 when such fine, monetary sanction, or cost becomes finally due and payable.

**(c) Summary Revocation of Registration**

After seven days notice in writing, the Exchange may summarily revoke the registration of a person associated with a member organization if such person fails to pay promptly a fine or other monetary sanction imposed pursuant to Rule 8310 or a cost imposed pursuant to Rule 8330 when such fine, monetary sanction, or cost becomes finally due and payable.

**8330. Costs of Proceedings**

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

**Code of Procedure (Rules 9000—9870)**

**9000. Code of Procedure**

**9001. Regulatory Contract with FINRA**

The Exchange and FINRA are parties to the FINRA Regulatory Contract, pursuant to which FINRA has agreed to perform certain functions described in the Rule 9000 Series on behalf of the Exchange. Rules of the Exchange that refer to the Phlx Regulation Department, the Phlx Regulation Department staff, Exchange staff, and Exchange departments should be understood as also referring to FINRA staff and FINRA departments acting on behalf of the Exchange pursuant to the FINRA Regulatory Contract.

Notwithstanding the fact that the Exchange has entered into the FINRA Regulatory Contract with FINRA to perform some of the Exchange's functions, the Exchange shall retain ultimate legal responsibility for, and control of, such functions.

**9100. Application and Purpose**

**9110. Application**

**(a) Proceedings**

The Rule 9000 Series is the Code of Procedure and includes proceedings for disciplining a member, member organization or person associated with a member organization; proceedings for regulating the activities of a member organization experiencing financial

or operational difficulties; proceedings for summary or non-summary suspensions, cancellations, bars, prohibitions, or limitations; and proceedings for obtaining relief from the eligibility requirements of the Exchange By-Laws and the Rules of the Exchange. The Rule 9100 Series is of general applicability to all proceedings set forth in the Rule 9000 Series, unless a Rule specifically provides otherwise.

**(b) Rights, Duties, and Obligations of Members, Member Organizations and Associated Persons**

Unless otherwise specified, a member and a person associated with a member organization shall have the same rights as a member organization and shall be subject to the same duties and obligations under the Code of Procedure.

Except as otherwise permitted under the By-Laws or the Act and as set forth in more detail in the Rule 9000 Series, in any disciplinary proceeding under the Rules, any member, member organization or person associated with a member organization shall be given the opportunity to have a hearing at which such member, member organization or person associated with an member organization shall be entitled to be heard in person or by counsel or by a representative as provided in the Rules. Such persons may present any relevant material in accordance with the Rules. In any such proceeding against a member, member organization or against a person associated with a member organization to determine whether the member, member organization or the person associated with a member organization shall be disciplined:

- (1) specific charges shall be brought;
- (2) such member, member organization or person associated with a member organization shall be notified of and be given an opportunity to defend against such charges;
- (3) a record shall be kept; and
- (4) any determination shall include a statement setting forth:
  - (i) any act or practice, in which such member, member organization or person associated with a member organization may be found to have engaged, or which such member, member organization or person associated with a member organization may be found to have omitted;
  - (ii) the rule, regulation, or statutory provision of which any such act or practice, or omission to act, is deemed to be in violation;
  - (iii) the basis upon which any findings are made; and
  - (iv) the sanction imposed.

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

Unless otherwise provided, terms used in the Rule 9000 Series shall have the meaning as defined in Rule 1 and Rule 9120.

**(d) Jurisdiction**

Any member, member organization, or any partner, officer, director or person employed by or associated with any member organization (the Respondent) who is alleged to have violated or aided and abetted a violation of the Securities Exchange Act of 1934 (Exchange Act), the rules and regulations thereunder, the By-Laws and Rules of the Exchange or any interpretation thereof, and the Rules, Regulations, resolutions and stated policies of the Board of Directors or any Committee of the Exchange, shall be subject to the disciplinary jurisdiction of the Exchange, and after notice and opportunity for a hearing may be appropriately disciplined by expulsion, suspension, fine, censure, limitation or termination as to activities, functions, operations, or association with a member organization, or any other fitting sanction in accordance with the provisions of these disciplinary Rules.

An individual member, or a partner, officer, director or person employed by or associated with a member organization may be charged with any violation within the disciplinary jurisdiction of the Exchange committed by employees under his supervision or by the member organization with which he is associated, as though such violations were his own. A member organization may be charged with any violation within the disciplinary jurisdiction of the Exchange committed by its officers, directors, or employees or by a member or other person who is associated with such member organization, as though such violation were its own.

Any member, or any partner, officer, director, or person employed by or associated with a member organization, and any member organization shall continue to be subject to the disciplinary jurisdiction of the Exchange following the termination of such person's permit or the termination of the employment by or the association with a member organization of such member or partner, officer, director or person, or following the deregistration of a member organization from the Exchange; provided, that the Exchange serves written notice to such former member, partner, officer, director, employee, associated person or member organization within one year of receipt by the Exchange of notice of such termination or deregistration that the Exchange is making inquiry into a matter or matters which occurred prior to the termination of such person's status as a member, or as a partner, officer, director or person employed by or associated with a member organization, or prior to the deregistration of such member organization.

**9120. Definitions****(a) "Adjudicator"**

The term "Adjudicator" means:

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

The term includes a Review Subcommittee as defined in paragraph (bb), a Subcommittee as defined in paragraph (dd), an Extended Proceeding Committee as defined in paragraph (n), and a Statutory Disqualification Committee as defined in paragraph (cc).

**(b) “Chief Hearing Officer”**

The term “Chief Hearing Officer” means the Hearing Officer that manages the Office of Hearing Officers, or his or her delegatee. The Chief Hearing Officer may be FINRA’s Chief Hearing Officer pursuant to the Regulatory Contract, if approved by the Exchange Board of Directors at least annually.

**(c) “Chief Regulatory Officer”**

The term “Chief Regulatory Officer” means the Chief Regulatory Officer of the Exchange, or his or her delegatee, who shall be a person who reports to the Chief Regulatory Officer of the Exchange.

**(d) “Code”**

The term “Code” refers to the Code of Procedure.

**(e) “Counsel to the Exchange Review Council”**

The term “Counsel to the Exchange Review Council” means an attorney that reports to the Chief Regulatory Officer of the Exchange who is responsible for advising the Exchange Review Council, the Review Subcommittee, a Subcommittee, or an Extended Proceeding Committee regarding a disciplinary proceeding on appeal or review before the Exchange Review Council.

**(f) “Department of Enforcement”**

The term “Department of Enforcement” means the Department of Enforcement of FINRA Regulation, acting on behalf of the Exchange pursuant to the FINRA Regulatory Contract.

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

The term “Department of Market Regulation” means the Department of Market Regulation of FINRA, acting on behalf of the Exchange pursuant to the FINRA Regulatory Contract.

**(h) “Department of Member Regulation”**

The term “Department of Member Regulation” means the Department of Member Regulation of FINRA, acting on behalf of the Exchange pursuant to the FINRA Regulatory Contract.

**(i) “Director”**

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

**(j) “Document”**

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

**(k) “Extended Hearing”**

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

**(l) “Extended Hearing Panel”**

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

**(m) “Extended Proceeding”**

The term “Extended Proceeding” means a disciplinary proceeding described in Rule 9331(a)(2).

**(n) “Extended Proceeding Committee”**

The term “Extended Proceeding Committee” means an appellate Adjudicator that is constituted under Rule 9331 to participate in the Exchange Review Council’s consideration of a disciplinary proceeding that is classified as an “Extended Proceeding” and governed by the Rule 9300 Series.

**(o) “Head of Enforcement”**

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

**(p) “Head of Market Regulation”**

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

**(q) “Head of Member Regulation”**

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

**(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, member organizations and associated persons. Hearing Officers may be drawn from FINRA’s pool of Hearing Officers pursuant to the Regulatory Contract, if approved by the Exchange 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, 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) a disciplinary proceeding under the Rule 9200 Series and the Rule 9300 Series:
  - (A) the Head of the Phlx Regulation Department;
  - (B) an Exchange employee of the Phlx Regulation Department who reports, directly or indirectly, to the Head of the Phlx Regulation Department;

- (C) an Exchange employee who directly participated in the authorization of the complaint;
  - (D) an Exchange employee who directly participated in an examination, investigation, prosecution, or litigation related to a specific disciplinary proceeding, and a department head to whom such employee reports;
  - (E) the Head of the Department of Enforcement;
  - (F) a FINRA employee of the Department of Enforcement who reports, directly or indirectly, to the Head of Enforcement;
  - (G) a FINRA employee who directly participated in the authorization of the complaint;
  - (H) a FINRA employee who directly participated in an examination, investigation, prosecution, or litigation related to a specific disciplinary proceeding, and a district director or department head to whom such employee reports;
  - (I) the Head of the Department of Market Regulation; or
  - (J) an employee of the Department of Market Regulation who reports, directly or indirectly, to the Head of the Department of Market Regulation; or
- (2) a proceeding under the Rule 9520 Series or Rule 9550 Series:
- (A) the head of the Exchange or FINRA department or office that issues the notice or petition or is designated as a Party;
  - (B) an Exchange employee or a FINRA employee who reports, directly or indirectly, to such person;
  - (C) an Exchange employee or a FINRA employee who directly participated in the authorization or initiation of the proceeding;
  - (D) an Exchange employee who directly participated in an examination, investigation, prosecution, or litigation related to a specific proceeding, and a department head to whom such employee reports; or
  - (E) a 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) the head of the Exchange or FINRA department or office that issues the decision granting or denying an exemption or is designated as a Party;
  - (B) an Exchange employee or a FINRA employee who reports, directly or indirectly, to such person;
  - (C) an Exchange employee or a FINRA employee who directly participated in the exemption proceeding;
  - (D) an Exchange employee who directly participated in an examination, investigation, prosecution, or litigation related to a specific exemption proceeding, and a department head to whom such employee reports; or
  - (E) a 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 the Phlx Regulation Department;
  - (B) an employee of the Phlx Regulation Department who reports, directly or indirectly, to the Head of the Phlx Regulation Department;
  - (C) the Head of Enforcement;
  - (D) a FINRA employee who reports, directly or indirectly, to the Head of Enforcement;
  - (E) an Exchange employee or FINRA employee who directly participated in the authorization of the notice that initiates a temporary cease and desist proceeding;
  - (F) an Exchange employee 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;
  - (G) the Head of the Department of Market Regulation; or
  - (H) a FINRA employee who reports, directly or indirectly, to the Head of the Department of Market Regulation.

**(u) “the Exchange Board”**

The term “the Exchange Board” means the Board of Directors of the Exchange.

**(v) “Phlx Regulation” or “Phlx Regulation Department”**

The term “Phlx Regulation” or “Phlx Regulation Department” means the department of the Exchange that administers the Code, and includes the Phlx Enforcement Department.

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

The term “Office of Disciplinary Affairs” means the Office of Disciplinary Affairs for FINRA, acting on behalf of the Exchange pursuant to the FINRA Regulatory Contract.

**(x) “Office of Hearing Officers”**

The term “Office of Hearing Officers” means the Office of Hearing Officers of FINRA, acting on behalf of the Exchange pursuant to the FINRA Regulatory Contract.

**(y) “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 Exchange Review Council or a former Director who is appointed to serve on a Subcommittee or an Extended Proceeding Committee.

**(z) “Party”**

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

- (1) in the Rule 9200 Series, the Rule 9300 Series, and the Rule 9800 Series, the Phlx Regulation Department, the Department of Enforcement or the Department of Market Regulation or a Respondent;
- (2) in the Rule 9400 Series, the Phlx Regulation Department, Department of Enforcement or the Department of Market Regulation, or a member, member organization or associated person that is the subject of a notice under Rule 9400(a)(2);
- (3) in the Rule 9520 Series, the Department of Member Regulation or a member organization that is the subject of a notice or files an application under Rule 9522;
- (4) in the Rule 9550 Series, the Exchange or FINRA department or office that issued the notice or, if another Exchange or FINRA department or office is named as the party handling the matter on behalf of the issuing department or office, the Exchange or FINRA department or office that is so designated or a member, member organization or person that is the subject of a notice under the Rule 9550 Series; or

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

**(aa) “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, an Exchange member, member organization or associated person against whom a complaint is issued. In a proceeding governed by the Rule 9800 Series, the term “Respondent” means an Exchange member, member organization or associated person that has been served a notice initiating a cease and desist proceeding.

**(bb) “Review Subcommittee”**

The term “Review Subcommittee” means a body appointed by the Exchange Review Council pursuant to the Exchange By-Laws.

**(cc) “Statutory Disqualification Committee”**

The term “Statutory Disqualification Committee” means a Subcommittee of the Exchange Review Council that makes a recommended decision to grant or deny an application for relief from the eligibility requirements of the Exchange to the Exchange Review Council pursuant to the Rule 9520 Series.

**(dd) “Subcommittee”**

The term “Subcommittee” means an Adjudicator that is:

- (1) constituted under Rule 9331(a) to participate in the Exchange Review Council’s consideration of an appeal or a review of a disciplinary proceeding pursuant to the Rule 9300 Series;
- (2) constituted under Rule 9559(q) or Rule 9630 to conduct a review proceeding.

**9130. Service; Filing of Papers**

**9131. Service of Complaint and Document Initiating a Proceeding**

**(a) Service on Each Party**

A complaint shall be served on each Party by the Department of Enforcement or the Department of Market Regulation. A document initiating a proceeding shall be served on each Party by the Party or person initiating such proceeding or his or her counsel or representative.

**(b) How Served**

A complaint or document initiating a proceeding shall be served pursuant to Rule 9134.

**(c) Filing Requirement**

A complaint that is served upon a Respondent and each document initiating a proceeding that is served upon a Party, along with the certificate of service executed in connection with the service upon such Respondent or Party, shall be filed with the Phlx Regulation Department pursuant to Rule 9135.

**9132. Service of Orders, Notices, and Decisions by Adjudicator**

**(a) Service on Each Party**

An order, notice, or decision issued by a Hearing Officer, Hearing Panel or Extended Hearing Panel under the Rule 9200 Series shall be served on each Party, or each Party's counsel, or other person the Party designates to represent him or her in a proceeding by the Office of Hearing Officers. An order, notice, or decision issued by any other Adjudicator shall be served by that Adjudicator.

**(b) How Served**

An order, notice, or decision shall be served pursuant to Rule 9134.

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

Whenever service is required to be made upon a person represented by counsel or a representative who has filed a notice of appearance pursuant to Rule 9141, service shall be made upon counsel or the representative. The Adjudicator, at its discretion, may also order that service be made upon the person.

**9133. Service of Papers Other Than Complaints, Orders, Notices, or Decisions**

**(a) Service on Each Party**

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

**(b) How Served**

The paper shall be served pursuant to Rule 9134.

**(c) Filing Requirement**

The paper that is served upon a Party, along with the certificate of service executed in connection with the service upon such Party, shall be filed with the Phlx Regulation Department pursuant to Rule 9135.

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

Whenever service is required to be made upon a person represented by counsel or a representative who has filed a notice of appearance pursuant to Rule 9141, service shall be made upon counsel or the representative. The Adjudicator, at its discretion, may also order that service be made upon the person.

**9134. Methods of, Procedures for Service****(a) Methods**

The following methods of service are permitted:

**(1) Personal Service**

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

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

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

**(3) Service by Courier**

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

**(b) Procedures****(1) Service on Natural Persons**

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

The Hearing Officer may waive the requirement of serving documents (other than complaints) at the addresses listed in the Central Registration Depository if there is evidence that these addresses are no longer valid, and there is a more current address available. If a natural person is represented by counsel or a representative, papers served on the natural person, excluding a complaint or a document initiating a proceeding, shall be served on the counsel or representative.

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

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

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

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

### **9135. Filing of Papers with Adjudicator: Procedure**

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

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

#### **(b) Where to File**

All papers required to be filed pursuant to the Rule 9200 Series and any notice of appeal or review required to be filed pursuant to the Rule 9300 Series shall be filed with the Office of Hearing Officers. All other papers required to be filed pursuant to the Rule 9000 Series shall be filed where specified in the Rule, or if not specified in the Rule, with the Adjudicator, unless the Adjudicator orders otherwise.

#### **(c) Certificate of Service**

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

### **9136. Filing of Papers: Form**

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

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

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

#### **(b) Signature Required**

All papers shall be signed and dated pursuant to Rule 9137.

#### **(c) Number of Copies**

A signed original and three copies of all papers shall be filed with the Adjudicator.

#### **(d) Form of Briefs**

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

#### **(e) Scandalous or Impertinent Matter**

Any scandalous or impertinent matter contained in any brief, pleading, or other filing, or in connection with any oral presentation in a proceeding may be stricken on order of an Adjudicator. Any matter stricken by an Adjudicator by this Rule shall be marked “Stricken” and preserved. Matters stricken in a proceeding governed by the Rule 9200 Series shall be preserved under Rule 9267(b).

### **9137. Filing of Papers: Signature Requirement and Effect**

#### **(a) General Requirements**

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

#### **(b) Effect of Signature**

- (1) The signature of a counsel, representative, or Party shall constitute a certification that:
  - (A) the person signing the filing has read the filing;
  - (B) to the best of his or her knowledge, information, and belief, formed after reasonable inquiry, the filing is well grounded in fact and is warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law; and
  - (C) the filing is not made for any improper purpose, such as to harass, cause unnecessary delay, or needlessly to increase the cost of adjudication.
- (2) If a filing is not signed, an Adjudicator may strike the filing, unless it is signed promptly after the omission is called to the attention of the person making the filing.

### **9138. Computation of Time**

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

In the Rule 9000 Series, “day” means calendar day.

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

In computing any period of time, the day of the act, event, or default from which the period of time designated in the Code begins to run shall not be included. The last day of the period so computed shall be included, unless it is a Saturday, Sunday, or Federal holiday, in which event the period runs until the end of the next day that is not a Saturday, Sunday, or Federal holiday. Intermediate Saturdays, Sundays, and Federal



holidays shall be excluded from the computation when the period prescribed is ten days or less, not including any additional time for service by mail allowed by paragraph (c).

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

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

**9140. Proceedings**

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

**(a) Representing Oneself**

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

**(b) Representing Others**

A person shall not be represented before an Adjudicator, except as provided in this paragraph. Subject to the prohibitions of Rules 9150 and 9280, a person may be represented in any proceeding by an attorney at law admitted to practice before the highest court of any state of the United States, the District of Columbia, or any commonwealth, territory, or possession of the United States. A member of a partnership may represent the partnership; and a bona fide officer of a corporation, trust, or association may represent the corporation, trust, or association. When a person first makes any filing or otherwise appears in a representative capacity before an Adjudicator in a proceeding, that person shall file with the Adjudicator, and keep current a Notice of Appearance. The Notice of Appearance is a written notice stating the name of the proceeding; the representative's name, business address, and telephone number; and the name and address of the person or persons represented. Any individual appearing or practicing in a representative capacity before an Adjudicator may be required to file a power of attorney with the Adjudicator showing his or her authority to act in such capacity.

**9142. Withdrawal by Attorney or Representative**

An attorney for a Party or other person authorized to represent others by Rule 9141 may withdraw by giving notice to the Adjudicator. The notice shall be in writing, set forth the good cause for withdrawal, and, unless circumstances do not permit, be given at least 30 days prior to withdrawal.

**9143. Ex Parte Communications**

**(a) Prohibited Communications**

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

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

**(b) Disclosure of Prohibited Communication**

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

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

**(c) Remedies**

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

**(d) Timing**

In a disciplinary proceeding governed by the Rule 9200 Series and the Rule 9300 Series, the prohibitions of this Rule shall apply beginning with the authorization of a complaint as provided in Rule 9211, unless the person responsible for the communication has knowledge that the complaint shall be authorized, in which case the prohibitions shall apply beginning at the time of his or her acquisition of such knowledge.

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

**(1) Offer of Settlement**

If a Respondent submits an offer of settlement under Rule 9270, the submission constitutes a waiver by such Respondent of any claim that the prohibitions against ex parte communications were violated by a person or body in connection with such person's or body's participation in discussions regarding the terms and conditions of the offer of settlement and the order of acceptance, or other consideration of the offer of settlement and order of acceptance, including acceptance or rejection of such offer of settlement and order of acceptance.

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

If a member, member organization or a person associated with a member organization submits an executed letter of acceptance, waiver, and consent under Rule 9216(a), the submission constitutes a waiver by such member, member organization or person associated with a member organization of any claim that the prohibitions against ex parte communications were violated by a person or body in connection with such person's or body's participation in discussions regarding the terms and conditions of the letter of acceptance, waiver, and consent, or other consideration of the letter of acceptance, waiver, and consent, including acceptance or rejection of such letter of acceptance, waiver, and consent.

**(3) Minor Rule Violation Plan and Violation Letters**

If a member, member organization or a person associated with a member organization submits an executed minor rule violation plan letter or violation letter under Rule 9216(b), the submission constitutes a waiver by such member, member organization or person associated with a member organization of any claim that the prohibitions against ex parte communications by a person or body in connection with such person's or body's participation in discussions regarding the terms and conditions of the minor rule violation plan letter or violation letter, or other consideration of the minor rule violation plan letter or violation letter, including acceptance or rejection of such minor rule plan violation letter or violation letter.

**9144. Separation of Functions**

**(a) Interested Staff**

Except as counsel or a witness in a proceeding or as provided in the Rule 9550 Series, Interested Staff is prohibited from advising an Adjudicator regarding a decision or otherwise participating in a decision of an Adjudicator. An Adjudicator is prohibited from advising Interested Staff regarding a decision or otherwise participating in a decision of Interested Staff, including the decision to issue a complaint and a decision whether to appeal or cross-appeal a disciplinary proceeding to the Exchange Review Council.

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

A Hearing Officer, including the Chief Hearing Officer, or a Panelist of a Hearing Panel or an Extended Hearing Panel, is prohibited from participating in: a decision whether to issue a complaint pursuant to Rule 9211; a decision whether to appeal or cross-appeal a disciplinary proceeding to the Exchange Review Council pursuant to Rule 9311; and a discussion or decision relating to a call for review, a review, or an appeal pursuant to the Rule 9300 Series. A Director is prohibited from participating in a discussion or a decision relating to the above referenced acts with the Review Subcommittee or the Adjudicators referenced above.

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

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

If a Respondent submits an offer of settlement under Rule 9270, the submission constitutes a waiver by such Respondent of any claim of violation of paragraph (a) or (b) by a person or body in connection with such person's or body's participation in discussions regarding the terms and conditions of the offer of settlement and the order of acceptance, or other consideration of the offer of settlement and order of acceptance, including acceptance or rejection of such offer of settlement and order of acceptance.

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

If a member, member organization or a person associated with a member organization submits an executed letter of acceptance, waiver, and consent under Rule 9216(a), the submission constitutes a waiver by such member, member organization or person associated with a member organization of any claim of violation of paragraph (a) or (b) by a person or body in connection with such person's or body's participation in discussions regarding the terms and conditions of the letter of acceptance, waiver, and consent, or other consideration of the proposed letter of acceptance, waiver, and consent, including acceptance or rejection of such letter of acceptance, waiver, and consent.

#### **(3) Minor Rule Violation Plan and Violation Letters**

If a member, member organization or a person associated with a member organization submits an executed minor rule violation plan letter or violation letter under Rule 9216(b), the submission constitutes a waiver by such member, member organization or person associated with a member organization of any claim of violation of paragraph (a) or (b) by a person or body in connection with such person's or body's participation in discussions regarding the terms and conditions of the minor rule violation plan letter or violation letter, or other consideration of the minor rule violation plan letter or violation letter, including acceptance or rejection of such minor rule violation plan letter or violation letter.

#### **9145. Rules of Evidence; Official Notice**

##### **(a) Rules of Evidence**

The formal rules of evidence shall not apply in a proceeding brought under the Rule 9000 Series.

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

In a proceeding governed by the Rule 9000 Series, an Adjudicator may take official notice of such matters as might be judicially noticed by a court, or of other matters within the specialized knowledge of the Exchange as an expert body. Before an Adjudicator proposes to take official notice of a matter, it shall permit a Party the opportunity to oppose or otherwise comment upon the proposal to take official notice.

#### **9146. Motions**

##### **(a) General Requirement for Motions**

A Party may make a written or oral motion, subject to limitations set forth below. A Party or other person may make a motion under Rule 9146(k), subject to limitations set forth below.

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

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

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

##### **(c) Specificity**

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

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

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

**(e) Oral Argument**

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

**(f) Frivolous Motions**

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

**(g) No Stay**

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

**(h) Reply**

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

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

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

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

- (1) In the Rule 9200 Series, a motion on a procedural matter may be decided by a Hearing Officer. A motion for summary disposition of a cause of action set forth in a

complaint shall be decided by a majority vote of the Hearing Panel or, if applicable, the Extended Hearing Panel.

- (2) In the Rule 9300 Series, a motion on a procedural matter may be decided by Counsel to the Exchange Review Council, the Review Subcommittee, a Subcommittee or, if applicable, an Extended Proceeding Committee, or the Exchange Review Council. A motion for disposition of a cause of action shall be decided by the Exchange Review Council, except that a motion to dismiss a case for abandonment made under Rule 9344 may be decided by the Review Subcommittee.
- (3) In the Rule 9500 Series, a motion shall be decided by an Adjudicator.

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

- (1) A Party, a person who is the owner, subject, or creator of a Document subject to production under Rule 8210 or any other Rule which may be introduced as evidence in a disciplinary proceeding, or a witness who testifies at a hearing in a disciplinary proceeding may file a motion requesting a protective order to limit disclosure or prohibit from disclosure to other Parties, witnesses or other persons, except the Department of Enforcement and the Department of Market Regulation and the Phlx Regulation Department staff, Documents or testimony that contain confidential information. The motion shall include a general summary or extract of the Documents or testimony without revealing confidential details. If the movant seeks a protective order against disclosure to other Parties, copies of the Documents shall not be served on the other Parties. Unless the Documents are unavailable, the movant shall file for in camera inspection a sealed copy of the Documents for which the order is sought. If the movant is not a Party, the motion shall be served on each Party by the movant using a method in Rule 9134(a) and filed with the Adjudicator. A motion for a protective order shall be granted only upon a finding that disclosure of the Document or testimony would have a demonstrated adverse business effect on the movant or would involve an unreasonable breach of the movant's personal privacy.
- (2) If a protective order is granted, the order shall set forth the restrictions on use and disclosure of such Document or testimony. An Adjudicator does not have the authority to issue a protective order that would limit in any manner the use by the staff of the Phlx Regulation Department of such Documents or testimony in the Phlx Regulation Department staff's performance of their regulatory and self-regulatory responsibilities and functions, including the transmittal, without restriction to the recipient, of such Documents or testimony to state, federal, or foreign regulatory authorities or other self-regulatory organizations. An Adjudicator does not have the authority to issue a protective order that purports to protect from production such Documents or testimony in the event that the Exchange is subject to a subpoena requiring that the Documents or testimony be produced.

#### **(l) General**

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

**9147. Rulings On Procedural Matters**

The Exchange Board, the Exchange Review Council, a Hearing Officer, or any other Adjudicator shall have full authority, except as otherwise provided by the Code, to rule on a procedural motion and any other procedural or administrative matter arising during the course of a proceeding conducted pursuant to the Code, subject to the rights of review or appeal provided by the Code.

**9148. Interlocutory Review**

Except as provided in Rule 9280, there shall be no interlocutory review of a ruling or order issued by any Adjudicator in a proceeding governed by the Code. If an Adjudicator grants interlocutory review of a ruling or order, such review shall not stay a proceeding, except under Rule 9280 or as otherwise ordered by the Adjudicator.

**9150. Exclusion from Rule 9000 Series Proceeding****(a) Exclusion**

An Adjudicator may exclude an attorney for a Party or other person authorized to represent others by Rule 9141 from acting as counsel, acting in any representative capacity, or otherwise appearing in a particular Rule 9000 Series proceeding for contemptuous conduct under Rule 9280 or unethical or improper professional conduct in that proceeding. If an attorney for a Party, or other person authorized to represent others by Rule 9141, is excluded from a disciplinary hearing or conference, or any portion thereof, such attorney or person may seek review by the Exchange Review Council of such exclusion under Rule 9280(c).

**(b) Other Proceedings Not Precluded**

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

**9160. Recusal or Disqualification**

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

**(a) Exchange Board**

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



**(b) Exchange Review Council, Review Subcommittee, or Certain Subcommittees**

The Chair of the Exchange Review Council shall have authority to order the disqualification of a member of the Exchange Review Council or the Review Subcommittee, a member of a Subcommittee appointed pursuant to Rule 9559(q) or the Rule 9600 Series, a Hearing Panel appointed pursuant to the Rule 9520 Series, and the Statutory Disqualification Committee; and a majority of the Exchange Review Council excluding the Chair of the Exchange Review Council shall have authority to order the disqualification of the Chair of the Exchange Review Council;

**(c) Rule 9331 Subcommittee or Extended Proceeding Committee**

Disqualification of a Panelist of a Subcommittee or Extended Proceeding Committee appointed under the Rule 9300 Series shall be governed by Rule 9332;

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

Disqualification of a Panelist of a Hearing Panel or Extended Hearing Panel appointed under the Rule 9200 Series shall be governed by Rule 9234; and

**(f) Hearing Officer**

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

**9200. Disciplinary Proceedings****9210. Complaint and Answer****9211. Authorization of Complaint****(a) Complaint**

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

When the number of violations under Exchange Rules is determined based upon an exception-based surveillance program, the Phlx Regulation Department, Department of Enforcement, or the Department of Market Regulation may aggregate, or “batch,” individual violations of Exchange order handling Rules and consider such “batched” violations as a single offense only in accordance with the guidelines set forth in the

Exchange's Numerical Criteria for Bringing Cases for Violations of Exchange Order Handling Rules. In addition, the Phlx Regulation Department, Department of Enforcement, or the Department of Market Regulation may batch individual violations of Rule 1014(c)(i)(A) pertaining to quote spread parameters (and corresponding Options Floor Procedure Advice F-6). In the alternative, the Phlx Regulation Department, Department of Enforcement, or the Department of Market Regulation may request authorization from the FINRA Office of Disciplinary Affairs to issue a complaint when (i) the Phlx Regulation Department, Department of Enforcement, or the Department of Market Regulation determines that there exists a pattern or practice of violative conduct without exceptional circumstances, or (ii) any single instance of violative conduct without exceptional circumstances is deemed to be egregious.

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

#### **(b) Commencement of Disciplinary Proceeding**

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

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

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

- (1) If a complaint is authorized, the Phlx Regulation Department, the Department of Enforcement or the Department of Market Regulation shall issue the complaint. Each complaint shall be in writing and signed by the Phlx Regulation Department, the Department of Enforcement or the Department of Market Regulation. The complaint shall specify in reasonable detail the conduct alleged to constitute the violative activity and the rule, regulation, or statutory provision the Respondent is alleged to be violating or to have violated. If the complaint consists of several causes of action, each cause shall be stated separately. Complaints shall be served by the Phlx Regulation Department, the Department of Enforcement or the Department of Market Regulation on each Party pursuant to Rules 9131 and 9134, and filed at the time of service with the Office of Hearing Officers pursuant to Rules 9135, 9136, and 9137.
- (2) At the time of issuance of a complaint, the Phlx Regulation Department, the Department of Enforcement or the Department of Market Regulation may propose an appropriate location for the hearing.

**(b) Amendments to Complaint**

The Phlx Regulation Department, the Department of Enforcement or the Department of Market Regulation may file and serve an amended complaint once as a matter of course at any time before the Respondent answers the complaint. Otherwise, upon motion by the Phlx Regulation Department, the Department of Enforcement or the Department of Market Regulation, the Hearing Officer may permit the Phlx Regulation Department, the Department of Enforcement or the Department of Market Regulation to amend the complaint, including amendments so as to make the complaint conform to the evidence presented, after considering whether the Phlx Regulation Department, the Department of Enforcement or the Department of Market Regulation has shown good cause for the amendment and whether any

Respondent will suffer any unfair prejudice if the amendment is allowed. Amendments to complaints will be freely granted when justice so requires.

**(c) Withdrawal of Complaint**

With prior leave of the Hearing Officer, the Phlx Regulation Department, the Department of Enforcement or the Department of Market Regulation may withdraw a complaint. If the Phlx Regulation Department, the Department of Enforcement or the Department of Market Regulation withdraws the complaint before the earlier of (1) the Hearing Panel's or, if applicable, the Extended Hearing Panel's, issuance of a ruling on a motion for summary disposition, or (2) the start of the hearing on the merits, the withdrawal of the complaint by the Phlx Regulation Department, the Department of Enforcement or the Department of Market Regulation shall be without prejudice and the Phlx Regulation Department, the Department of Enforcement or the Department of Market Regulation shall be permitted to refile a case based on allegations concerning the same facts and circumstances that are set forth in the withdrawn complaint. If the Phlx Regulation Department, the Department of Enforcement or the Department of Market Regulation requests to withdraw such complaint after the occurrence of either of the two events set forth in (1) and (2) in this paragraph, the Hearing Panel or, if applicable, the Extended Hearing Panel, after considering the facts and circumstances of the request, shall determine whether the withdrawal shall be granted with prejudice.

**(d) Disciplinary Proceeding Docket**

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

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

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

**(b) Appointment of Panelists**

As soon as practicable after assigning a Hearing Officer to preside over a disciplinary proceeding, the Chief Hearing Officer shall appoint Panelists pursuant to Rules 9231 and 9232 to a Hearing Panel or, if the Chief Hearing Officer determines that an Extended Hearing Panel should be appointed, to an Extended Hearing Panel.

**9214. Consolidation or Severance of Disciplinary Proceedings**

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

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

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

If the Chief Hearing Officer proposes to consolidate two or more disciplinary proceedings, the Chief Hearing Officer shall serve upon the Parties notice of the proposed consolidation of disciplinary proceedings, together with a copy of each relevant complaint and any answer that has been filed thereto, pursuant to Rule 9132. The Parties shall have 14 days after service to file a response, stating any arguments in favor of or opposition to consolidation.

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

A Party may file a motion to consolidate two or more disciplinary proceedings if such consolidation would further the efficiency of the disciplinary process, if the subject complaints involve common questions of law or fact or one or more of the same Respondents, or if one or more of the factors favoring consolidation set forth in paragraph (a) appear to be present. If a Party moves to consolidate two or more

disciplinary proceedings, the Party shall file such motion, together with a copy of each relevant complaint and any answer thereto that has been filed, with the Office of Hearing Officers, and, pursuant to Rule 9133, shall serve the same upon the Parties in each of the cases proposed to be consolidated. The Parties shall have 14 days after service to file a response, stating any arguments in favor of or opposition to consolidation, and shall serve the response upon the Parties in each of the cases proposed to be consolidated. The Chief Hearing Officer shall issue an order approving or denying the request for consolidation.

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

If the Chief Hearing Officer issues an order to consolidate two or more disciplinary proceedings for which Hearing Panels or, if applicable, Extended Hearing Panels, have been appointed, the Chief Hearing Officer's order shall specify which Hearing Panel or, if applicable, Extended Hearing Panel, shall preside over the consolidated disciplinary proceeding, or shall appoint a new Hearing Panel or, if applicable, Extended Hearing Panel, to preside, based on the criteria set forth in Rules 9231 and 9232.

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

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

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

If the Chief Hearing Officer proposes to sever a disciplinary proceeding, the Chief Hearing Officer shall serve upon the Parties notice of the proposed severance of disciplinary proceedings pursuant to Rule 9132. The Parties shall have 14 days after service to file a response, stating any arguments in favor of or opposition to severance.

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

A Party may file a motion to sever a disciplinary proceeding if one or more of the factors favoring severance set forth in paragraph (d) appear to be present. If a Party moves to sever a disciplinary proceeding, the Party shall file such motion with the Office of Hearing Officers, and, pursuant to Rule 9133, shall serve the same upon each of the parties to the action proposed to be severed. The Parties shall have 14 days after service to file a response, stating any arguments in favor of or opposition to severance, and shall

serve the response upon the Parties in the case proposed to be severed. The Chief Hearing Officer shall issue an order approving or denying the request for severance.

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

If the Chief Hearing Officer issues an order to sever a disciplinary proceeding for which a Hearing Panel or, if applicable, Extended Hearing Panel, has been appointed, the Chief Hearing Officer's order shall specify whether the same Hearing Panel or, if applicable, Extended Hearing Panel, shall preside over the severed disciplinary proceedings, or shall appoint a new Hearing Panel(s) or, if applicable, Extended Hearing Panel(s), to preside over any or all of the severed proceedings, based on the criteria set forth in Rules 9231 and 9232.

**9215. Answer to Complaint**

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

Pursuant to Rule 9133, each Respondent named in a complaint shall serve an answer to the complaint on all other Parties within 25 days after service of the complaint on such Respondent, and at the time of service shall file such answer with the Office of Hearing Officers pursuant to Rules 9135, 9136 and 9137. The Hearing Officer assigned to a disciplinary proceeding pursuant to Rule 9213 may extend such period for good cause. Upon the receipt of a Respondent's answer, the Office of Hearing Officers shall promptly send written notice of the receipt of such answer to all Parties.

**(b) Content, Affirmative Defenses**

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

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

A Respondent may file with an answer a motion for a more definite statement of specified matters of fact or law to be considered or determined. Such motion shall state why each such matter of fact or law should be required to be made more definite. If the motion is granted, the order granting such motion shall set the periods for filing such a statement and any answer thereto.

**(d) Amendments to Answer**

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

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

If a complaint is amended pursuant to Rule 9212(b), the time for filing an answer or amended answer shall be the greater of the original time period within which the Respondent is required to respond, or 14 days after service of the amended complaint. If any Respondent has already filed an answer, such Respondent shall have 14 days after service of the amended complaint, unless otherwise ordered by the Hearing Officer, within which to file an amended answer.

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

If a Respondent does not file an answer or make any other filing or request related to the complaint with the Office of Hearing Officers within the time required, the Phlx Regulation Department, the Department of Enforcement or the Department of Market Regulation shall send a second notice to such Respondent requiring an answer within 14 days after service of the second notice. The second notice shall state that failure of the Respondent to reply within the period specified shall allow the Hearing Officer, in the exercise of his or her discretion, pursuant to Rule 9269 to: (1) treat as admitted by the Respondent the allegations in the complaint; and (2) issue a default decision against the Respondent. If the Respondent fails to file an answer with the Office of Hearing Officers within the time required, the Hearing Officer may issue, a default decision against the Respondent pursuant to Rule 9269.

**9216. Acceptance, Waiver, and Consent; Violation of Floor Procedure Advices; Violation of Order and Decorum Regulations**

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

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

(2)

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

(i) any right of such member, member organization or person associated with a member organization to claim bias or prejudgment of the Chief Regulatory Officer, the Exchange Review Council, or any member of the Exchange Review Council, in connection with such person's or body's participation in discussions regarding the terms and conditions of the letter of acceptance, waiver, and consent, or other consideration of the letter of acceptance, waiver, and consent, including acceptance or rejection of such letter of acceptance, waiver, and consent; and

(ii) any right of such member, member organization or person associated with a member organization to claim that a person violated the ex parte prohibitions of Rule 9143 or the separation of functions prohibitions of Rule 9144, in connection with such person's or body's participation in discussions regarding the terms and conditions of the letter of acceptance, waiver, and consent, or other consideration of the letter of acceptance, waiver, and consent, including acceptance or rejection of such letter of acceptance, waiver, and consent.

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

(3) If the member, member organization or associated person executes the letter of acceptance, waiver, and consent, it shall be submitted to the Exchange Review Council. The Review Subcommittee or the Office of Disciplinary Affairs may accept such letter or refer it to the Exchange Review Council for acceptance or rejection by the Exchange Review Council. The Review Subcommittee may reject such letter or refer it to the Exchange Review Council for acceptance or rejection by the Exchange Review Council.

(4) If the letter is accepted by the Exchange Review Council, the Review Subcommittee, or the Office of Disciplinary Affairs, it shall be deemed final and shall constitute the complaint, answer, and decision in the matter. If the letter is rejected by the Review Subcommittee or the Exchange Review Council, the Phlx Regulation Department may take any other appropriate disciplinary action with respect to the alleged violation or violations. If the letter is rejected, the member, member organization or associated person shall not be prejudiced by the execution



of the letter of acceptance, waiver, and consent under subparagraph (a)(1) and the letter may not be introduced into evidence in connection with the determination of the issues set forth in any complaint or in any other proceeding.

**(b) Procedure for Violation of Floor Procedure Advices Other than Regulations Concerning Violation of Order, Decorum, Health, Safety and Welfare on the Exchange**

(1) The following process is followed for fines assessed under a plan pursuant to SEC Rule 19d-1(c)(2):

(A) Notwithstanding Rule 9211, the Exchange Review Council may, subject to the requirements set forth in subparagraphs (b)(1)(B) through (b)(1)(E) and in SEC Rule 19d-1(c)(2), impose a fine (not to exceed \$2,500) on any member, member organization, or any partner, officer, director or person employed by or associated with any member organization with respect to any rule listed in IM-9216. If the Phlx Regulation Department, the Department of Enforcement or the Department of Market Regulation has reason to believe a violation has occurred and if the member, member organization or associated person does not dispute the violation, the Phlx Regulation Department, the Department of Enforcement or the Department of Market Regulation may prepare and request that the member, member organization or associated person execute a minor rule violation plan letter accepting a finding of violation, consenting to the imposition of sanctions, and agreeing to waive such member's, member organization's or associated person's right to a hearing before a Hearing Panel or, if applicable, an Extended Hearing Panel, and any right of appeal to the Exchange Review Council, the Commission, and the courts, or to otherwise challenge the validity of the letter, if the letter is accepted. The letter shall describe the act or practice engaged in or omitted, the rule, regulation, or statutory provision violated, and the sanction or sanctions to be imposed. Unless the letter states otherwise, the effective date of any sanction(s) imposed will be a date to be determined by the Phlx Regulation Department staff.

(B)

(i) If a member, member organization or person associated with a member organization submits an executed minor rule violation plan letter, by the submission such member, member organization or person associated with a member organization also waives:

(a) any right of such member, member organization or person associated with a member organization to claim bias or prejudgment of the Chief Regulatory Officer, the Exchange Review Council, or any member of the Exchange Review Council, in connection with such person's or body's participation in discussions regarding the terms and conditions of the minor rule violation

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

- (b) any right of such member, member organization or person associated with a member organization to claim that a person violated the ex parte prohibitions of Rule 9143 or the separation of functions prohibitions of Rule 9144, in connection with such person's or body's participation in discussions regarding the terms and conditions of the minor rule violation plan letter or other consideration of the minor rule violation plan letter, including acceptance or rejection of such minor rule violation plan letter.
- (ii) If a minor rule violation plan letter is rejected, the member, member organization or person associated with a member organization shall be bound by the waivers made under subparagraphs (b)(1)(A) and (b)(1)(B)(i) for conduct by persons or bodies occurring during the period beginning on the date the minor rule violation plan letter was executed and submitted and ending upon the rejection of the minor rule violation plan letter.
- (C) If the member, member organization or person associated with a member organization executes the minor rule violation plan letter, it shall be submitted to the Exchange Review Council. The Review Subcommittee or the Office of Disciplinary Affairs may accept such letter or refer it to the Exchange Review Council for acceptance or rejection by the Exchange Review Council. The Review Subcommittee may reject such letter or refer it to the Exchange Review Council for acceptance or rejection by the Exchange Review Council.
- (D) If the letter is accepted by the Exchange Review Council, the Review Subcommittee, or the Office of Disciplinary Affairs, it shall be deemed final and the Exchange shall report the violation to the Commission as required by the Commission pursuant to a plan approved under SEC Rule 19d-1(c)(2). If the letter is rejected by the Review Subcommittee or the Exchange Review Council, the Phlx Regulation Department may take any other appropriate disciplinary action with respect to the alleged violation or violations. If the letter is rejected, the member, member organization or associated person shall not be prejudiced by the execution of the minor rule violation plan letter under subparagraph (b)(1)(A) and the letter may not be introduced into evidence in connection with the determination of the issues set forth in any complaint or in any other proceeding.
- (E) For purposes of imposing fines under the Option Floor Procedure Advices, when the number of violations under Exchange Rules is determined based upon an exception-based surveillance program the Phlx Regulation Department, Department of Enforcement, or the Department of Market Regulation may aggregate, or "batch," individual violations of order handling Options Floor Procedure Advices, and consider such "batched" violations as a single Occurrence only in accordance with the guidelines set forth in the Exchange's Numerical Criteria for Bringing Cases for Violations of Phlx Order Handling Rules. In

addition, the Phlx Regulation Department, Department of Enforcement, or the Department of Market Regulation may batch individual violations of Rule 1014(c)(i)(A) pertaining to quote spread parameters (and corresponding Options Floor Procedure Advice F-6). In the alternative, the Phlx Regulation Department, Department of Enforcement, or the Department of Market Regulation may request authorization from the FINRA Office of Disciplinary Affairs to issue a complaint when (i) the Phlx Regulation Department, Department of Enforcement, or the Department of Market Regulation determines that there exists a pattern or practice of violative conduct without exceptional circumstances, or (ii) any single instance of violative conduct without exceptional circumstances is deemed to be egregious.

(2) The following process is followed for fines assessed that are not subject to a plan pursuant to SEC Rule 19d-1(c)(2):

(A) Notwithstanding Rule 9211, the Exchange Review Council may, subject to the requirements set forth in subparagraphs (b)(2)(B) through (b)(2)(E), impose a fine, in excess of \$2,500 but not to exceed \$10,000, on any member, member organization, or any partner, officer, director or person employed by or associated with any member organization with respect to any rule listed in IM-9216. If the Phlx Regulation Department, the Department of Enforcement or the Department of Market Regulation has reason to believe a violation has occurred and if the member, member organization or associated person does not dispute the violation, the Phlx Regulation Department, the Department of Enforcement or the Department of Market Regulation may prepare and request that the member, member organization or associated person execute a violation letter accepting a finding of violation, consenting to the imposition of sanctions, and agreeing to waive such member's, member organization's or associated person's right to a hearing before a Hearing Panel or, if applicable, an Extended Hearing Panel, and any right of appeal to the Exchange Review Council, the Commission, and the courts, or to otherwise challenge the validity of the letter, if the letter is accepted. The letter shall describe the act or practice engaged in or omitted, the rule, regulation, or statutory provision violated, and the sanction or sanctions to be imposed. Unless the letter states otherwise, the effective date of any sanction(s) imposed will be a date to be determined by the Phlx Regulation Department staff.

(B)

(i) If a member, member organization or person associated with a member organization submits an executed violation letter, by the submission such member, member organization or person associated with a member organization also waives:

(a) any right of such member, member organization or person associated with a member organization to claim bias or prejudgment of the Chief Regulatory Officer, the Exchange Review Council, or any member of the Exchange Review Council, in connection with such person's or body's participation in

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

- (b) any right of such member, member organization or person associated with a member organization to claim that a person violated the ex parte prohibitions of Rule 9143 or the separation of functions prohibitions of Rule 9144, in connection with such person's or body's participation in discussions regarding the terms and conditions of the violation letter or other consideration of the violation letter, including acceptance or rejection of such violation plan letter.
- (ii) If a violation letter is rejected, the member, member organization or person associated with a member organization shall be bound by the waivers made under subparagraphs (b)(2)(A) and (b)(2)(B)(i) for conduct by persons or bodies occurring during the period beginning on the date the violation plan letter was executed and submitted and ending upon the rejection of the violation letter.
- (C) If the member, member organization or associated person executes the violation letter, it shall be submitted to the Exchange Review Council. The Review Subcommittee or the Office of Disciplinary Affairs may accept such letter or refer it to the Exchange Review Council for acceptance or rejection by the Exchange Review Council. The Review Subcommittee may reject such letter or refer it to the Exchange Review Council for acceptance or rejection by the Exchange Review Council.
- (D) If the letter is accepted by the Exchange Review Council, the Review Subcommittee, or the Office of Disciplinary Affairs, it shall be deemed final and the Exchange shall report the violation to the Commission as required by the Commission pursuant to SEC Rule 19d-1(c)(1). If the letter is rejected by the Review Subcommittee or the Exchange Review Council, the Phlx Regulation Department may take any other appropriate disciplinary action with respect to the alleged violation or violations. If the letter is rejected, the member, member organization or associated person shall not be prejudiced by the execution of the violation letter under subparagraph (b)(2)(A) and the letter may not be introduced into evidence in connection with the determination of the issues set forth in any complaint or in any other proceeding.
- (E) For purposes of imposing fines under the Option Floor Procedure Advices, when the number of violations under Exchange Rules is determined based upon an exception-based surveillance program the Phlx Regulation Department, Department of Enforcement, or the Department of Market Regulation may aggregate, or "batch," individual violations of order handling Options Floor Procedure Advices, and consider such "batched" violations as a single Occurrence only in accordance with the guidelines set forth in the Exchange's Numerical

Criteria for Bringing Cases for Violations of Phlx Order Handling Rules. In addition, the Phlx Regulation Department, Department of Enforcement, or the Department of Market Regulation may batch individual violations of Rule 1014(c)(i)(A) pertaining to quote spread parameters (and corresponding Options Floor Procedure Advice F-6). In the alternative, the Phlx Regulation Department, Department of Enforcement, or the Department of Market Regulation may request authorization from the FINRA Office of Disciplinary Affairs to issue a complaint when (i) the Phlx Regulation Department, Department of Enforcement, or the Department of Market Regulation determines that there exists a pattern or practice of violative conduct without exceptional circumstances, or (ii) any single instance of violative conduct without exceptional circumstances is deemed to be egregious.

**(c) Procedure for Violation of Regulations that Relate to Administration of Order, Decorum, Health, Safety and Welfare on the Exchange**

Notwithstanding Rule 9211 and paragraph (b) above, an Options Exchange Official or Exchange Staff may impose the following sanctions on members, member organizations and associated persons for violations of regulations relating to order, decorum, health, safety and welfare under Section H of the Option Floor Procedure Advices. In most cases, the Exchange will enforce compliance with the regulations under Section H of the Option Floor Procedure Advices pursuant to this rule. While ordinarily a finding of a violation will result in the appropriate pre-set fine and/or sanction, an Options Exchange Official or Exchange Staff may request authorization of a complaint directly from the Office of Disciplinary Affairs, or refer the matter to the Department of Enforcement or the Department of Market Regulation, where it shall proceed in accordance with the Rule 8000 and 9000 Series. In the case of repeat violations of a regulation by the same individual, the amount of the fine is determined by the number of such violations which have occurred within the year immediately preceding the current violation.

- (1) An Options Exchange Official and Exchange Staff may impose on members, member organizations and associated persons, fines for breaches of regulations that relate to administration of order, decorum, health, safety, and welfare on the Exchange or an Options Exchange Official may request authorization of a complaint directly from the Office of Disciplinary Affairs, or refer the matter to the Department of Enforcement or the Department of Market Regulation, where it shall proceed in accordance with Rule 8000 and 9000 Series.

The procedure to be followed in cases where a pre-set fine of up to \$10,000.00 is summarily assessed is as follows:

- (A) **Notice of Fine.** Notice of fine for breach of such regulations shall be given by the issuance of a written citation. Exchange Staff shall serve the written citations that are issued by the Options Exchange Official. The cited party may accept or contest the written citation.

- (B) **Time and Place of Hearing.** If the written citation is contested, the Exchange shall fix a mutually convenient time and place of hearing, notice of which must be given in advance and may be given orally.
- (C) **Record.** An appropriate record shall be kept. The costs of the making of such a transcript, including, but not limited to, the costs for the court reporter, reproduction of the transcript and producing copies thereof, shall be equally borne by the Exchange and by the cited party.
- (D) **Procedure.** The hearing shall be conducted by a Hearing Director appointed by the Chair of the Exchange Review Council, and will be conducted in whatever manner will permit full presentation of the evidence.
- (E) **Finding.** The finding of the Hearing Director shall be rendered at the close of the hearing. The Hearing Director may decide that: (i) the citation should be overturned; (ii) the citation is valid as issued; or (iii) the citation as issued should be modified to specify either a higher or lower fine than the one on the notice as issued.
- (F) **Forum Fee.** If a person contests a citation imposed under Rule 9216(c) and the citation is upheld by the reviewing body, the reviewing body will impose a forum fee against the person in the amount of \$100.
- (G) **No Right of Appeal.** The finding of the Hearing Director shall be final. There shall be no appeal from such finding.
- (H) **Report to Securities and Exchange Commission (SEC).** A report in appropriate form shall be made to the SEC. As provided by SEC Rule 19d-1(c)(1), no report shall be made in the case of citations for breaches of regulations relating to order, decorum, health, safety and welfare or administration of the Exchange if a citation is not contested and the fine is \$1,000 or less, or if the Hearing Director finds in favor of the appellant.
- (2) An Options Exchange Official and an officer of the Exchange may exclude a member and any associated person from the trading floor for breaches of regulations that relate to administration of order, decorum, health, safety and welfare on the Exchange that occurred on the trading floor or on the premises immediately adjacent to the trading floor. Specifically, members and associated persons shall be excluded if they pose an immediate threat to the safety of persons or property, are seriously disrupting Exchange operations, or are in possession of a firearm. Members or associated persons so excluded may be excluded for a period of up to five (5) business days.
- (A) For purposes of this Rule, an “officer of the Exchange” shall refer to an officer who is a vice president or higher.

- (B) For purposes of this Rule and the Regulations promulgated thereunder, the “premises immediately adjacent to the trading floor” shall include the following:
- (1) all premises other than the trading floor that are under Exchange control, and
  - (2) premises in the building where the Exchange maintains its principal office and place of business, namely FMC Tower, 2929 Walnut Street, Philadelphia, Pennsylvania.
- (C) Exclusion from the floor may not be the exclusive sanction for breaches of this Rule and the regulations thereunder. In addition to exclusion, a member or associated person may also be subject to a fine or Exchange staff may request authorization of a complaint directly from the Office of Disciplinary Affairs, or refer the matter to the Department of Enforcement or the Department of Market Regulation, where it shall proceed in accordance with Rule 8000 and 9000 Series.
- (D) If a member shall be excluded for a period exceeding forty-eight hours, an expedited hearing (“Expedited Hearing”) will be held before the Chair of the Exchange Review Council or a member of the Exchange Review Council designated by the Chair (“Expedited Hearing Officer”) within forty-eight (48) business hours after the members’ exclusion from the trading floor. Written notice will be provided to the member of the date, time and place of the hearing. The member may be represented by counsel. The Expedited Hearing Officer or his or her designee shall conduct an Expedited Hearing. The Expedited Hearing Officer shall allow both the member or his or her representative and Exchange staff to present arguments. The Expedited Hearing Officer shall make a determination of whether to continue the member’s exclusion from the trading floor for a period of up to five (5) business days. The determination shall be based on the severity of the threat posed to persons on the trading floor, the disruptiveness caused by the actor and the safety and welfare of persons on the trading floor. The Expedited Hearing Officer shall make a ruling at the time of the hearing and a written decision will be provided to the member following the hearing. Members shall not be excluded from electronic trading, but will not be permitted to be physically present on the trading floor for the duration of any exclusion.
- (E) The procedure to be followed when a member is to be excluded from the trading floor is as follows:
- (i) **No Further Right of Appeal.** The determination that a member shall be excluded is final. There shall be no appeal from such determination.
  - (ii) **Report to the SEC.** A report in appropriate form shall be made to the SEC. However, no report shall be made in a case where a clerical employee is excluded from the trading floor for not more than five days for a breach of regulations relating to order, decorum, health, safety and welfare or administration of the Exchange if the clerical employee has not sought an adjudication, including a hearing, or otherwise exhausted his administrative

remedies at the Exchange with respect to the matter, as provided by Rule 19b-1(c) of the Act.

**IM-9216. Violations Appropriate for Disposition Under Plan Pursuant to SEC Rule 19d-1(c)(2)**

- EQUITY FLOOR PROCEDURE ADVICES (fines equal to or less than \$2,500)

A-1 Record of Orders on PSX

A-2 Failure to Comply with an Exchange Inquiry

A-3 Supervisory Procedures Relating to ITSFEA

A-4 Fingerprinting Personnel

A-5 Training

A-6 Failure to Provide Notification of Changes in Business Operations

A-7 Failure to Timely Submit Amendments to Form U4, Form U5 and Form BD

- OPTION FLOOR PROCEDURE ADVICES AND ORDER & DECORUM REGULATIONS (fines equal to or less than \$2,500; does not include Order & Decorum Regulations under Paragraph (H))

B-1 Responsibility to Make Markets

B-2 Crowd Courtesy

B-3 Trading Requirements

B-4 ROTs Entering Orders from On-Floor and Off-Floor for Execution on the Exchange

B-5 Agency-Principal Restrictions

B-6 Priority of Options Orders for Equity Options, Index Options and U.S. Dollar-Settled

Foreign Currency Options by Account Type (EQUITY OPTION, INDEX OPTION AND

U.S. DOLLAR-SETTLED FOREIGN CURRENCY OPTION ONLY), Section F

B-8 Use of Floor Brokers by an ROT While on the Floor

B-12 ROTs and Specialists Entering Orders for Execution on Other Exchanges in

Multiply Traded Options



- C-1 Ascertaining the Presence of Registered Options Traders in a Trading Crowd
- C-2 Options Floor Broker Management System
- C-3 Handling Orders of ROTs and Other Registered Options Market Makers
- C-4 Floor Brokers Handling Orders for Same Firm
- C-5 ROTs Acting as Floor Brokers
- C-7 Responsibility to Represent Orders to the Trading Crowd
- C-9 Floor Brokers and Clerks Trading in their Customer Accounts
- E-1 Required Staffing of Options Floor
- F-2 Allocation, Time Stamping, Matching and Access to Matched Trades
- F-4 Orders Executed as Spreads, Straddles, Combinations or Synthetics and Other Order Ticket Marking Requirements
- F-5 Changes or Corrections to Material Terms of a Matched Trade
- F-6 Option Quote Parameters
- F-8 Failure to Comply with an Exchange Inquiry
- F-9 Affiliations
- F-11 Splitting Orders
- F-12 Responsibility for Assigning Participation
- F-13 Supervisory Procedures Relating to ITSFEA
- F-15 Minor Infractions of Position/Exercise Limits and Hedge Exemptions
- F-19 Clearing Agents' Responsibility for Carrying Positions in Market Maker Accounts
- F-23 Clerks in the Crowd
- F-25 Fingerprinting Floor Personnel
- F-27 Options Exchange Official Rulings

F-30 Options Trading Floor Training

F-31 Communications and Equipment

F-33 Failure to Provide Notification of Changes in Business Operations

F-34 Failure to Timely Submit Amendments to Form U4, Form U5 and Form BD

F-35 Violations of Exercise and Exercise Advice Rules for Noncash-Settled Equity

Option Contracts

G-1 Index Option Exercise Advices

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

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

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

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

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

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

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

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

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

If all Respondents waive a hearing, and the Hearing Officer does not order a hearing on his or her own motion, the Hearing Panel or, if applicable, the Extended Hearing Panel, may order a hearing or may consider the matter on the record, as defined in Rule 9267. If fewer than all Respondents waive a hearing, the Hearing Officer, the Hearing Panel, or, if applicable, the Extended Hearing Panel, may, in the exercise of its discretion, order that a hearing be held as to all Respondents. Alternatively, the Hearing Officer, the Hearing Panel, or, if applicable, the Extended Hearing Panel, may conduct a hearing as to only those Respondents who requested a hearing and consider the matter on the record as to those Respondents who waived a hearing.

**(d) Notice of Hearing**

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

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

**9222. Extensions of Time, Postponements, and Adjournments****(a) Availability**

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

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

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

**(1) Additional Considerations**

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

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

**(2) Time Limit**

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

### **9230. Appointment of Hearing Panel, Extended Hearing Panel**

### **9231. Appointment by the Chief Hearing Officer of Hearing Panel or Extended Hearing Panel or Replacement Hearing Officer**

#### **(a) Appointment**

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

#### **(b) Hearing Panel**

The Hearing Panel shall be composed of a Hearing Officer and two Panelists, except as provided in paragraph (e) and in Rule 9234(a), (c), (d), or (e). The Hearing Officer shall serve as the chair of the Hearing Panel. Each Panelist shall be associated with a member organization of the Exchange or retired therefrom.

(1) The Chief Hearing Officer shall select as a Panelist a person who:

- (A) previously served on the Exchange Review Council;
- (B) previously served on a disciplinary subcommittee of the Exchange Review Council, including a Subcommittee, an Extended Proceeding Committee, or their predecessor subcommittees;
- (C) previously served as a Director, or as a Governor of the Exchange prior to its acquisition by Nasdaq, Inc., but does not serve currently in that position; or
- (D) is a FINRA Panelist approved by the Exchange Board at least annually, including a member of FINRA's Market Regulation Committee or a person who previously served on the Market Regulation Committee not earlier than four years before the date the complaint was served upon the Respondent who was the first served Respondent in the disciplinary proceeding for which the Hearing Panel or the Extended Hearing Panel is being appointed, or from other sources the Board deems appropriate given the responsibilities of Panelists.

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

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

Hearing Panel. The Panelists shall be associated with a member organization of the Exchange, or retired therefrom. The Chief Hearing Officer shall have discretion to compensate any or all Panelists of an Extended Hearing Panel at the rate then in effect for arbitrators appointed under the FINRA Rule 12000 and 13000 Series. The Chief Hearing Officer shall select as a Panelist a person who meets the criteria set forth in paragraph (b)(1).

**(d) Observer**

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

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

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

- (1) Allow the Hearing Panelists to resolve the issues in the proceeding and issue a decision without the participation of the replacement Hearing Officer in the decision. The replacement Hearing Officer may advise the Hearing Panelists regarding legal issues, and shall exercise the powers of the Hearing Officer under Rule 9235(a), including preparing and signing the decision on behalf of the Hearing Panel, in accordance with Rule 9268; or
- (2) Certify familiarity with the record and participate in the resolution of the issues in the case and in the issuance of the decision. In exercising this power, the replacement Hearing Officer may recall any witness before the Hearing Panel.

**9232. Criteria for Selection of Panelists and Replacement Panelists**

The Chief Hearing Officer shall select Panelists from the categories of persons eligible to serve as Panelists as set forth in Rule 9231(b)(1) based upon the following criteria:

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

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

### **9233. Hearing Panel or Extended Hearing Panel: Recusal and Disqualification of Hearing Officers**

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

If at any time a Hearing Officer determines that he or she has a conflict of interest or bias or circumstances otherwise exist where his or her fairness might reasonably be questioned, the Hearing Officer shall notify the Chief Hearing Officer and the Chief Hearing Officer shall issue and serve on the Parties a notice stating that the Hearing Officer has withdrawn from the matter. In the event that a Hearing Officer withdraws, is incapacitated, or otherwise is unable to continue service after being appointed, the Chief Hearing Officer shall appoint a replacement Hearing Officer. In such a case, the replacement Hearing Officer shall proceed according to Rule 9231(e).

#### **(b) Motion for Disqualification**

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

- (1) when the Party learned of the facts believed to constitute the disqualification; or
- (2) when the Party was notified of the assignment of the Hearing Officer.

#### **(c) Disposition of Disqualification Motion**

A motion for disqualification of a Hearing Officer shall be decided by the Chief Hearing Officer who shall promptly investigate whether disqualification is required and issue a written ruling on the motion. In the event of a disqualification of the Hearing Officer, the Chief Hearing Officer shall appoint a replacement Hearing Officer.

### **9234. Hearing Panel or Extended Hearing Panel: Recusal and Disqualification of Panelists**

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

If at any time a Panelist of a Hearing Panel or an Extended Hearing Panel determines that he or she has a conflict of interest or bias or circumstances otherwise exist where his or

her fairness might reasonably be questioned, the Panelist shall notify the Hearing Officer and the Hearing Officer shall issue and serve on the Parties a notice stating that the Panelist has withdrawn from the matter. In the event that a Panelist withdraws, is incapacitated, or otherwise is unable to continue service after being appointed, the Chief Hearing Officer may, in the exercise of discretion, determine whether to appoint a replacement Panelist. In the event that both Panelists withdraw, are incapacitated, or otherwise are unable to continue service after being appointed, the Chief Hearing Officer shall appoint two replacement Panelists.

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

- (1) A Party may file a motion to disqualify a Panelist of a Hearing Panel or an Extended Hearing Panel. A motion shall be based upon a reasonable, good faith belief that a conflict of interest or bias exists or circumstances otherwise exist where the Panelist's fairness might reasonably be questioned, and shall be accompanied by an affidavit setting forth in detail the facts alleged to constitute grounds for disqualification, and the dates on which the Party learned of those facts.
- (2) Such motions shall be filed not later than 15 days after the later of:
  - (A) when the Party learned of the facts believed to constitute the disqualification; or
  - (B) when the Party was notified of the appointment of the Panelist.
- (3) The Chief Hearing Officer may order the disqualification of a Panelist of a Hearing Panel or an Extended Hearing Panel if the Chief Hearing Officer determines that a conflict of interest or bias exists or circumstances otherwise exist where the Panelist's fairness might reasonably be questioned, and shall state the facts constituting the grounds for disqualification.

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

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

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

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

replacement Panelist. In the event both Panelists are disqualified, the Chief Hearing Officer shall promptly appoint two persons as replacement Panelists.

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

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

**(f) Criteria for Replacement Panelist**

If the Chief Hearing Officer appoints a replacement Panelist by operation of this Rule, the Chief Hearing Officer shall do so using the criteria set forth in Rule 9232.

**9235. Hearing Officer Authority**

**(a) Hearing Officer Authority**

The Hearing Officer shall be selected by the Chief Hearing Officer and shall have authority to do all things necessary and appropriate to discharge his or her duties. In addition to the powers exercised by all members of the Hearing Panel or, if applicable, the Extended Hearing Panel, the powers of the Hearing Officer include, but are not limited to:

- (1) holding pre-hearing and other conferences and requiring the attendance at any such conference of at least one representative of each Party who has authority to negotiate the resolution of issues in controversy;
- (2) regulating the course of the hearing;
- (3) ordering the Parties to present oral arguments at any stage of the disciplinary proceeding;
- (4) resolving any and all procedural and evidentiary matters, discovery requests, and other non-dispositive motions, subject to any limitations set forth elsewhere in the Code;



- (5) reopening any hearing, upon notice to all Parties, prior to the issuance of the decision of the Hearing Panel or, if applicable, the Extended Hearing Panel;
- (6) creating and maintaining the official record of the disciplinary proceeding; and
- (7) drafting a decision that represents the views of the majority of the Hearing Panel or, if applicable, the Extended Hearing Panel.

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

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

**9240. Pre-Hearing Conference and Submission**

**9241. Pre-Hearing Conference**

**(a) Purposes**

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

- (1) expediting the disposition of the proceeding;
- (2) establishing procedures to manage the proceeding efficiently; and
- (3) improving the quality of the hearing through more thorough preparation.

**(b) Procedure**

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

**(c) Subjects to be Discussed**

At a pre-hearing conference, the Hearing Officer shall schedule an expedited proceeding as required by Rule 9290, and may consider and take action with respect to any or all of the following:

- (1) simplification and clarification of the issues;
- (2) exchange of witness and exhibit lists and copies of exhibits;

- (3) stipulations, admissions of fact, and stipulations concerning the contents, authenticity, or admissibility into evidence of documents;
- (4) matters of which official notice may be taken;
- (5) the schedule for exchanging pre-hearing motions or briefs, if any;
- (6) the method of service and filing of papers by the Parties;
- (7) determination of hearing dates;
- (8) amendments to the complaint or answers thereto;
- (9) production of documents as set forth in Rule 9251; and
- (10) such other matters as may aid in the orderly and expeditious disposition of the proceeding.

**(d) Scheduling**

An initial pre-hearing conference, unless determined by the Hearing Officer to be unnecessary or premature, shall be held within 21 days after filing of an answer, or after the expiration of the second period provided for filing an answer as set forth in Rule 9215(f). When a complaint names multiple Respondents, the 21-day period shall commence from the later of (i) the date on which the last timely answer was filed, or (ii) if one or more Respondents have failed to answer, from the expiration of the second period provided for filing an answer under Rule 9215(f).

**(e) Pre-hearing Order**

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

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

The Hearing Officer may issue a default decision, pursuant to Rule 9269, against a Party that fails to appear, in person or through counsel or a representative, at a pre-hearing conference of which the Party has been due notice.

**9242. Pre-Hearing Submission**

**(a) Requirement to Furnish Information**

Prior to a hearing before a Hearing Panel or, if applicable, an Extended Hearing Panel, the Hearing Officer, in the exercise of his or her discretion, may order a Party to furnish

to all other Parties and the Hearing Panel or, if applicable, the Extended Hearing Panel, such information as deemed appropriate, including any or all of the following:

- (1) an outline or narrative summary of a Party's case or defense;
- (2) the legal theories upon which a Party shall rely;
- (3) a list and copies of documents that a Party intends to introduce at the hearing;
- (4) a list of witnesses who shall testify on a Party's behalf, including the witnesses' names, occupations, addresses, and a brief summary of their expected testimony; and,
- (5) if a witness shall be called to testify as an expert, a statement of the expert's qualifications, a listing of other proceedings in which the expert has given expert testimony, a list of the expert's publications, and copies of those publications that are not readily available to the other Parties and the Hearing Panel or, if applicable, the Extended Hearing Panel.

## **9250. Discovery**

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

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

- (1) Unless otherwise provided by this Rule, or by order of the Hearing Officer, the Phlx Regulation Department, the Department of Enforcement or the Department of Market Regulation shall make available for inspection and copying by any Respondent, Documents prepared or obtained by Interested Staff in connection with the investigation that led to the institution of proceedings. Such Documents include but are not limited to:
  - (A) requests for information issued pursuant to Rule 8210;
  - (B) every other written request directed to persons not employed by the Exchange to provide Documents or to be interviewed;
  - (C) the Documents provided in response to any such requests described in (A) and (B) above;
  - (D) all transcripts and transcript exhibits; and
  - (E) all other Documents obtained from persons not employed by the Exchange.
- (2) The Phlx Regulation Department, the Department of Enforcement or the Department of Market Regulation shall promptly inform the Hearing Officer and each other Party if, after the issuance of a complaint, requests for information under Rule 8210 are issued under the same investigative file number under which the

investigation leading to the institution of disciplinary proceedings was conducted. If Interested Staff receives Documents pursuant to a request for information under Rule 8210 after Documents have been made available to a Respondent for inspection and copying as set forth in paragraph (a), and if such Documents are material and relevant to the disciplinary proceeding in which such Respondent is a Party, the additional Documents shall be made available to the Respondent not later than 14 days after the Interested Staff receives such Documents. If a hearing on the merits is scheduled to begin, Interested Staff shall make the additional Documents available to the Respondent not less than ten days before the hearing. If Interested Staff receives such Documents ten or fewer days before a hearing on the merits is scheduled to begin or after such hearing begins, Interested Staff shall make the additional Documents available immediately to the Respondent.

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

**(b) Documents That May Be Withheld**

- (1) The Phlx Regulation Department, the Department of Enforcement or the Department of Market Regulation may withhold a Document if:
- (A) the Document is privileged or constitutes attorney work product;
  - (B) the Document is an examination or inspection report, an internal memorandum, or other note or writing prepared by an Exchange employee that shall not be offered in evidence;
  - (C) the Document would disclose (i) an examination, investigatory or enforcement technique or guideline of the Exchange, a federal, state, or foreign regulatory authority, or any self-regulatory organization; (ii) the identity of a source, including a federal, state, or foreign regulatory authority or a self-regulatory organization that furnished information or was furnished information on a confidential basis regarding an investigation, an examination, an enforcement proceeding, or any other type of civil or criminal enforcement action; or (iii) an examination, an investigation, an enforcement proceeding, or any other type of civil or criminal enforcement action under consideration by, or initiated by the Exchange, a federal, state, or foreign regulatory authority, or a self-regulatory organization; or
  - (D) the Hearing Officer grants leave to withhold a Document or category of Documents as not relevant to the subject matter of the proceeding, or for other good cause shown.

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

**(c) Withheld Document List**

The Hearing Officer may require the Phlx Regulation Department, the Department of Enforcement or the Department of Market Regulation to submit to the Hearing Officer a list of Documents withheld pursuant to subparagraphs (b)(1)(A) through (D) or to submit to the Hearing Officer any Document withheld. Upon review, the Hearing Officer may order the Phlx Regulation Department, the Department of Enforcement or the Department of Market Regulation to make the list or any Document withheld available to the other Parties for inspection and copying. A motion to require the Phlx Regulation Department, the Department of Enforcement or the Department of Market Regulation to produce a list of Documents withheld pursuant to paragraph (b) shall be based upon some reason to believe that a Document is being withheld in violation of the Code.

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

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

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

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

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

**(f) Copying Costs**

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

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

In the event that a Document required to be made available to a Respondent pursuant to this Rule is not made available by the Phlx Regulation Department, the Department of Enforcement or the Department of Market Regulation, no rehearing or amended decision of a proceeding already heard or decided shall be required unless the Respondent establishes that the failure to make the Document available was not harmless error. The Hearing Officer, or, upon appeal or review, a Subcommittee, an Extended Proceeding Committee, or the Exchange Review Council, shall determine whether the failure to make the document available was not harmless error.

**9252. Requests for Information**

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

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

**(b) Standards for Issuance**

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

**(c) Limitations on Requests**

If, after consideration of all the circumstances, the Hearing Officer determines that a request submitted pursuant to this Rule is unreasonable, oppressive, excessive in scope,

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

### **9253. Production of Witness Statements**

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

Notwithstanding the provisions of Rule 9251(b),

- (1) A Respondent in a disciplinary proceeding may file a motion requesting that the Phlx Regulation Department, the Department of Enforcement or the Department of Market Regulation produce for inspection and copying any statement of any person called or to be called as a witness by the Phlx Regulation Department, the Department of Enforcement or the Department of Market Regulation that pertains, or is expected to pertain, to his or her direct testimony and which is “a stenographic, mechanical, electrical, or other recording, or a transcription thereof, which is a substantially verbatim recital of an oral statement made by said witness and recorded contemporaneously with the making of such oral statement,” as that phrase is used in 18 U.S.C. §3500(e)(2).
- (2) A Respondent in a disciplinary proceeding may also file a motion requesting that the Phlx Regulation Department, the Department of Enforcement or the Department of Market Regulation produce for inspection and copying any contemporaneously written statement made by an Interested Staff member during a routine examination or inspection about the substance of oral statements made by a non-Exchange person when (a) either the Interested Staff member or non-Exchange person is called as a witness by the Phlx Regulation Department, the Department of Enforcement or the Department of Market Regulation, and (b) that portion of the statement for which production is sought directly relates to the Interested Staff member’s testimony or the testimony of the non-Exchange witness.

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

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

Extended Proceeding Committee, or the Exchange Review Council, shall determine whether the failure to provide any statement was not harmless error.

## **9260. Hearing and Decision**

### **9261. Evidence and Procedure in Hearing**

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

No later than ten days before the hearing, or at such earlier date as may be specified by the Hearing Officer, each Party shall submit to all other Parties and to the Hearing Officer copies of documentary evidence and the names of the witnesses each Party intends to present at the hearing.

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

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

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

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

### **9262. Testimony**

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

### **9263. Evidence: Admissibility**

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

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

#### **(b) Objections**

Objections to the admission or exclusion of evidence shall be made on the record and shall succinctly state the grounds relied upon. Excluded material shall be deemed a supplemental document, which shall be attached to the record and retained under Rule 9267.

### **9264. Motion for Summary Disposition**

#### **(a) Pre-hearing**

After a Respondent's answer has been filed and Documents have been made available to that Respondent for inspection and copying pursuant to Rule 9251, the Respondent or the



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

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

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

**(c) Case Not Fully Adjudicated on Motion**

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

**(d) Form of Papers**

A motion for summary disposition pursuant to paragraph (a) shall be accompanied by the following: a statement of undisputed facts; a supporting memorandum of points and authorities; and affidavits or declarations that set forth such facts as would be admissible at the hearing and show affirmatively that the affiant is competent to testify to the matters stated therein. A memorandum of points and authorities in support or opposition shall not exceed 35 pages.

**(e) Rulings on Motion**

The Hearing Officer may promptly deny or defer decisions on any motion for summary disposition, however, only the Hearing Panel or, if applicable, the Extended Hearing Panel, may grant a motion for summary disposition, except the Hearing Officer may grant motions for summary disposition with respect to questions of jurisdiction. The Hearing Panel or, if applicable, the Extended Hearing Panel, may grant the motion for

summary disposition if there is no genuine issue with regard to any material fact and the Party that files the motion is entitled to summary disposition as a matter of law. If a Party files a motion under paragraph (a), the facts alleged in the pleadings of the Party against whom the motion is made shall be taken as true, except as modified by stipulations or admissions made by the non-moving Party, by uncontested affidavits or declarations, or by facts officially noticed pursuant to Rule 9145. If a Party opposing a motion for summary disposition made under paragraph (a) cannot present, by affidavit prior to the hearing, facts essential to justify the Party's opposition to the motion, the Hearing Panel or, if applicable, the Extended Hearing Panel, may deny the motion for summary disposition or defer the decision on the motion.

## **9265. Record of Hearing**

### **(a) Recordation**

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

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

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

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

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

## **9266. Proposed Findings of Fact, Conclusions of Law, and Post-Hearing Briefs**

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

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

### **(b) Reference to Record Required**

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

**(c) Period for Filing**

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

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

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

**9267. Record; Supplemental Documents Attached to Record; Retention****(a) Contents of the Record, Retention**

The record shall consist of:

- (1) the complaint, answers, each notice of hearing, pre-hearing order, and any amendments thereto;
- (2) each application, motion, submission, and other paper, and any amendments, motions, objections, and exceptions to or regarding them;
- (3) each transcript of a pre-hearing conference and of a hearing, and each stipulation, transcript of testimony, Document, and other item admitted into evidence;
- (4) each written communication accepted at the discretion of the Hearing Officer;
- (5) with respect to a motion to disqualify a Hearing Officer under Rule 9233 or a Panelist under Rule 9234, each affidavit or transcript of testimony taken and the ruling made in connection with the request;
- (6) all proposed findings and conclusions;
- (7) each written ruling, order, and decision issued by the Chief Hearing Officer, Hearing Officer, Hearing Panel or, if applicable, Extended Hearing Panel; and,
- (8) any other Document or item accepted into the record by the Hearing Officer, the Hearing Panel or, if applicable, the Extended Hearing Panel.

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

- (1) A supplemental Document attached to the record is any Document submitted to the Hearing Officer that did not become part of the record, including:
  - (A) a Document not admitted by the Hearing Officer, Hearing Panel or, if applicable, the Extended Hearing Panel;
  - (B) any matter stricken from any filing or stricken during an oral presentation, including any matter stricken from any filing or stricken during any oral presentation because the Adjudicator determined it was scandalous or impertinent as provided in Rule 9136(e); and
  - (C) a list of Documents, if any, that a Respondent unsuccessfully sought by motion to inspect and copy under Rule 9251(c).
- (2) A supplemental Document attached to the record shall not constitute part of the record, but shall be retained until the date upon which the Exchange's decision becomes final disciplinary action or, if applicable, upon the conclusion of any review by the Commission or the federal courts.

**(c) Substitution of Copies**

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

**9268. Decision of Hearing Panel or Extended Hearing Panel**

**(a) Majority Decision**

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

**(b) Contents of Decision**

The decision shall include:

- (1) a statement describing the investigative or other origin of the disciplinary proceeding;
- (2) the specific statutory or rule provisions that were alleged to have been violated;
- (3) a statement setting forth the findings of fact with respect to any act or practice the Respondent was alleged to have committed or omitted;

- (4) the conclusions of the Hearing Panel, or Extended Hearing Panel, as to whether the Respondent violated any provision alleged in the complaint;
- (5) a statement of the Hearing Panel, or the Extended Hearing Panel, in support of the disposition of the principal issues raised in the proceeding;
- (6) a statement describing any sanction imposed, the reasons therefor, and the date upon which such sanction shall become effective. Unless otherwise provided in the decision, the sanction(s) shall become effective on a date to be determined by the Phlx Regulation Department 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) Dissenting Opinion**

Within 65 days after the final date allowed for filing proposed findings of fact and conclusions of law, and post-hearings briefs, or by a date established at the discretion of the Chief Hearing Officer, the Hearing Officer or any Panelist may prepare a written dissenting opinion.

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

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

**(e) Appeal or Review**

- (1) If not timely appealed pursuant to Rule 9311 or timely called for review pursuant to Rule 9312, the majority decision shall constitute final disciplinary action of the Exchange for purposes of SEC Rule 19d-1(c)(1).
- (2) The majority decision with respect to an Exchange member or member organization that is an affiliate of the Exchange within the meaning of Rule 985(b) shall constitute final disciplinary action of the Exchange for purposes of SEC Rule 19d-1(c)(1) and may not be appealed pursuant to Rule 9311 or called for review pursuant to Rule 9312.

**9269. Default Decisions**

**(a) Issuance of Default Decisions**

- (1) The Hearing Officer may issue a default decision against a Respondent that fails to answer the complaint within the time afforded under Rule 9215, or a Party that fails to appear at any hearing that a Party is required to attend under the Rule 9200 Series of which the Party has due notice.
- (2) If the defaulting Party is the Respondent, the Hearing Officer may deem the allegations against that Respondent admitted. If the Defaulting Party is the Phlx Regulation Department, the Department of Enforcement or the Department of Market Regulation, the Hearing Officer may issue a default decision ordering that the complaint be dismissed with prejudice.
- (3) The Hearing Officer may order a Party that fails to appear at the pre-hearing conference or the hearing to pay the costs incurred by other Parties in connection with their appearance.
- (4) The Office of Hearing Officers shall provide a copy of the default decision to each Exchange member organization with which a Respondent is associated.

**(b) Contents of Decision**

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

**(c) Review of Default Decision**

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

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

- (1) If a default decision is not appealed pursuant to Rule 9311 or called for review pursuant to Rule 9312 within 25 days after the date the Office of Hearing Officers serves it on the Parties, the default decision shall become the final disciplinary action of the Exchange for purposes of SEC Rule 19d-1(c)(1). Unless otherwise provided in the default decision, the sanctions shall become effective on a date to be determined by the Phlx Regulation Department staff, except that a bar or expulsion shall become effective immediately upon the default decision becoming the final disciplinary action of the Exchange. The decision shall be served on a Respondent by courier, facsimile or other means reasonably likely to obtain prompt service when the sanction is a bar or an expulsion.
- (2) A default decision with respect to an Exchange member or member organization that is an affiliate of the Exchange within the meaning of Rule 985(b) shall constitute final disciplinary action of the Exchange for purposes of SEC Rule 19d-

1(c)(1) and may not be appealed pursuant to Rule 9311 or called for review pursuant to Rule 9312.

## **9270. Settlement Procedure**

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

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

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

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

### **(c) Content and Signature Requirements**

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

- (1) a statement describing the investigative or other origin of the disciplinary action;
- (2) the specific statutory or rule provisions that the member, member organization or associated person is alleged to have violated;
- (3) a statement containing the acts or practices which the member, member organization or associated person is alleged to have engaged in or omitted;
- (4) a statement consenting to findings of fact and violations consistent with the statements contained in the offer of settlement required by subparagraphs (c)(2) and (c)(3);
- (5) a proposed sanction to be imposed that is consistent with the current Exchange Enforcement Sanctions User's Guide, or, if inconsistent with the Enforcement Sanctions User's Guide, a detailed statement supporting the proposed sanction must be provided;
- (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

- (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 the Phlx Regulation Department staff.

**(d) Waiver**

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

- (A) any right of such Respondent to a hearing before a Hearing Panel or, if applicable, an Extended Hearing Panel, and any right of appeal to the Exchange Review Council, the Commission, and the courts, or any right otherwise to challenge or contest the validity of the order issued, if the offer of settlement and order of acceptance are accepted;
- (B) any right of such Respondent to claim bias or prejudgment of the Chief Hearing Officer, Hearing Officer, a Hearing Panel or, if applicable, an Extended Hearing Panel, a Panelist on a Hearing Panel, or, if applicable, an Extended Hearing Panel, the Chief Regulatory Officer, the Exchange Review Council, or any member of the Exchange Review Council, in connection with such person's or body's participation in discussions regarding the terms and conditions of the offer of settlement and the order of acceptance, or other consideration of the offer of settlement and order of acceptance, including acceptance, or rejection of such offer of settlement and order of acceptance; and
- (C) any right of such Respondent to claim that a person or body violated the ex parte prohibitions of Rule 9143 or the separation of functions prohibitions of Rule 9144, in connection with such person's or body's participation in discussions regarding the terms and conditions of the offer of settlement and the order of acceptance, or other consideration of the offer of settlement and order of settlement, including acceptance or rejection of such offer of settlement and order of acceptance.

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

**(e) Uncontested Offers of Settlement**

If a Respondent makes an offer of settlement and the Phlx Regulation Department, 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 Phlx Regulation Department, the Department of Enforcement or the Department of Market Regulation before a hearing on the merits has begun, the Phlx



Regulation Department, 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 Exchange Review Council (or to the Office of Disciplinary Affairs, in the case of a Respondent that is an affiliate of the Exchange within the meaning of Rule 985) with its recommendation. If an offer of settlement is determined to be uncontested by the Phlx Regulation Department, the Department of Enforcement or the Department of Market Regulation after a hearing on the merits has begun, the Phlx Regulation Department, 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 Exchange Review Council (or to the Office of Disciplinary Affairs, in the case of a Respondent that is an affiliate of the Exchange within the meaning of Rule 985) 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) Before an offer of settlement and an order of acceptance shall become effective, they shall be submitted to and accepted by the Exchange Review Council or the Office of Disciplinary Affairs. The Office of Disciplinary Affairs may accept such offer of settlement and order of acceptance or refer them to the Exchange Review Council. The Review Subcommittee may accept or reject such offer of settlement and order of acceptance or refer them to the Exchange Review Council for acceptance or rejection by the Exchange Review Council. In the case of a Respondent that is an affiliate of the Exchange within the meaning of Rule 985, the offer of settlement and order of acceptance shall be accepted or rejected by the Office of Disciplinary Affairs and shall not be referred to the Exchange Review Council.
- (3) If the offer of settlement and order of acceptance are accepted by the Exchange 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 Phlx Regulation Department, the Department of Enforcement or the Department of Market Regulation shall provide a copy of an issued order of acceptance to each Exchange member organization with which a Respondent is associated.

**(f) Contested Offers of Settlement**

If a Respondent makes an offer of settlement and the Phlx Regulation Department, the Department of Enforcement or the Department of Market Regulation opposes it, the offer of settlement is contested. When the Phlx Regulation Department, the Department of Enforcement or the Department of Market Regulation opposes an offer of settlement, the

Respondent's written offer and the Phlx Regulation Department, 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 Phlx Regulation Department, 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 Exchange Review Council (or to the Office of Disciplinary Affairs, in the case of a Respondent that is an affiliate of the Exchange within the meaning of Rule 985) to accept or reject.
- (2) Before an offer of settlement and order of acceptance shall become effective, they shall be submitted to, and accepted by, the Exchange Review Council or the Office of Disciplinary Affairs. The Review Subcommittee may accept or reject such offer of settlement and order of acceptance or refer them to the Exchange Review Council for acceptance or rejection by the Exchange Review Council. In the case of a Respondent that is an affiliate of the Exchange within the meaning of Rule 985, the offer of settlement and order of acceptance shall be accepted or rejected by the Office of Disciplinary Affairs and shall not be referred to the Exchange Review Council.
- (3) If the offer of settlement and order of acceptance are accepted by the Office of Disciplinary Affairs, the Exchange 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 Exchange member organization with which a Respondent is associated.

**(g) Final Disciplinary Action**

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

**(h) Rejection of Offer of Settlement**

If an uncontested offer of settlement or an order of acceptance is rejected by the Hearing Panel or, if applicable, the Extended Hearing Panel, the Review Subcommittee, the Office of Disciplinary Affairs, or the Exchange Review Council, the Respondent shall be notified in writing and the offer of settlement and proposed order of acceptance shall be

deemed withdrawn. If a contested offer of settlement or an order of acceptance is rejected by the Hearing Panel or, if applicable, the Extended Hearing Panel, the Review Subcommittee, the Office of Disciplinary Affairs, or the Exchange Review Council, the Respondent shall be notified in writing and the offer of settlement and proposed order of acceptance shall be deemed withdrawn. The rejected offer and proposed order of acceptance shall not constitute a part of the record in any proceeding against the Respondent making the offer.

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

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

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

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

**9280. Contemptuous Conduct**

**(a) Persons Subject to Sanctions**

If a Party, attorney for a Party, or other person authorized to represent others by Rule 9141, engages in conduct in violation of an order of a Hearing Officer, a Hearing Panel or, if applicable, an Extended Hearing Panel, or other contemptuous conduct during a proceeding, a Hearing Officer, Hearing Panel or, if applicable, an Extended Hearing Panel, may:

- (1) subject the Party, attorney for a Party, or other person authorized to represent others by Rule 9141, to the sanctions set forth in paragraph (b); and
- (2) exclude an attorney for a Party, or other person authorized to represent others by Rule 9141, under Rule 9150.

**(b) Sanctions Other Than Exclusion**

A Hearing Officer, Hearing Panel or, if applicable, an Extended Hearing Panel, may make such orders as are just in regard to a Party, an attorney for a Party, or other person authorized to represent others by Rule 9141.

(1) Such orders may include:

- (A) an order providing that the matters on which the order is made or any other designated facts shall be taken to be established for the purposes of the disciplinary proceeding in accordance with the claim of the Party obtaining the order;
- (B) an order providing that the disobedient Party may not support or oppose designated claims or defenses, or may not introduce designated matters in evidence;
- (C) an order providing that pleadings or a specified part of the pleading shall be stricken, or an order providing that the proceeding shall be stayed until the Party subject to the order obeys it;
- (D) in lieu of any of the foregoing orders or in addition thereto, an order providing that contemptuous conduct includes the failure to obey any order; and
- (E) an order as provided in subparagraphs (A), (B), and (C) where a Party has failed to comply with an order to produce a person for examination, unless the Party failing to comply shows that such Party is unable to produce such person for examination.

(2) A Party that without substantial justification fails to disclose information required by the Rule 9240 Series and the Rule 9250 Series or otherwise required by order of the Hearing Officer, Hearing Panel or, if applicable, the Extended Hearing Panel, shall not, unless such failure is harmless, be permitted to use as evidence at a hearing, in a motion or in any other filing of papers, or in oral argument, any witness or information not so disclosed. In addition to, or in lieu of this sanction, the Hearing Officer, Hearing Panel or, if applicable, the Extended Hearing Panel, on motion and after affording an opportunity to be heard, may impose other appropriate sanctions. These sanctions may include any of the sanctions provided for in subparagraphs (b)(1)(A) through (C).

**(c) Exchange Review Council Review of Exclusions**

If an attorney for a Party, or other person authorized to represent others by Rule 9141, is excluded from a disciplinary hearing or conference, or any portion thereof, such attorney or other person may seek review of the exclusion by filing a motion to vacate with the Exchange Review Council. Such motion to vacate shall be filed and served on all Parties within five days after service of the exclusion order. Any response shall be filed with the Exchange Review Council and served on all Parties within five days after the service of the motion to vacate. The Exchange Review Council or the Review Subcommittee shall consider such motion on an expedited basis and promptly issue a written order. The filing of a motion to vacate shall stay all aspects of the disciplinary proceeding until at least seven days after service of the order of the Exchange Review Council or the Review

Subcommittee. The review proceedings shall be conducted on the basis of the written record without oral argument.

**(d) Adjournment**

The hearing, conferences, or other activities relating to the disciplinary proceeding shall be stayed pending the review by the Exchange Review Council or the Review Subcommittee of an exclusion order in paragraph (c). In the event that the Exchange Review Council or the Review Subcommittee upholds an exclusion of an attorney or other person authorized to represent others by Rule 9141, the Hearing Officer may, upon motion by a Party represented by an attorney or other person subject to an order of exclusion, grant an adjournment to allow the retention of new counsel or selection of a new representative. In determining whether to grant an adjournment or the length of an adjournment, the Hearing Officer shall consider whether there are other counsel or representatives of record on behalf of the Party, the availability of other counsel or other members of an excluded attorney's firm, or the availability of other representatives for the Party, and any other relevant factors.

**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 organization) 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 organization) shall take or refrain from taking.

**(b) Delivery Requirement**

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

**9300. Review of Disciplinary Proceeding by the Exchange Review Council and the Exchange Board; Application for Commission Review****9310. Appeal to or Review by the Exchange Review Council****9311. Appeal by Any Party; Cross-Appeal****(a) Time to File Notice of Appeal**

A Respondent or Phlx Regulation Department, the Department of Enforcement or the Department of Market Regulation may file a written notice of appeal within 25 days after service of a decision issued pursuant to Rule 9268 or Rule 9269; provided, however, that a decision with respect to a Respondent that is an affiliate of the Exchange within the meaning of Rule 985 may not be appealed to the Exchange Review Council.

**(b) Effect**

An appeal to the Exchange Review Council from a decision issued pursuant to Rule 9268 or Rule 9269 shall operate as a stay of that decision until the Exchange Review Council issues a decision pursuant to Rule 9349 or, in cases called for discretionary review by the Exchange 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.

**(c) Notice of Appeal Content and Signature Requirements**

A Party appealing pursuant to this Rule shall file a written notice of appeal with the Office of Hearing Officers and serve the notice on the Parties. The notice of appeal shall be signed by the appealing Party, or his or her counsel or representative, and shall contain:

- (1) the name of the disciplinary proceeding;
- (2) the disciplinary proceeding docket number;
- (3) the name of the Party on whose behalf the appeal is made;
- (4) a statement on whether oral argument before the Exchange Review Council is requested; and
- (5) a brief statement of the findings, conclusions, or sanctions as to which exceptions are taken.

**(d) Notice of Cross-Appeal**

A Party who is served with a notice of appeal may file a written notice of cross-appeal and serve the notice of cross-appeal on the Parties. The notice of cross-appeal shall be filed within five days after service of the notice of appeal. The notice of cross-appeal

shall be signed by the Party cross-appealing, or his or her counsel, and shall contain the information set forth in subparagraphs (c)(1), (c)(2), (c)(4), and (c)(5), and the name of the Party on whose behalf the cross-appeal is made.

**(e) Waiver of Issues Not Raised**

The Exchange Review Council may, in its discretion, deem waived any issue not raised in the notice of appeal or cross-appeal. The Exchange Review Council, the Review Subcommittee, a Subcommittee, the Chief Regulatory Officer or, if applicable, an Extended Proceeding Committee, shall provide the Parties with notice of, and an opportunity to submit briefs on, any issue that shall be considered by the Exchange Review Council if such issue was not previously set forth in the notice of appeal. Parties may submit motions to either the Review Subcommittee or the Exchange Review Council challenging requests for briefing made by the Chief Regulatory Officer under this Rule of issues that were not previously set forth in the notice of appeal.

**(f) Withdrawal of Notice of Appeal or Cross-Appeal**

A Party may withdraw a notice of appeal or a notice of cross-appeal filed by him or her at any time by filing a written notice of withdrawal of appeal or cross-appeal with the Office of Hearing Officers and serving notice thereof on the Parties. The notice of withdrawal of appeal or cross-appeal shall contain: the name of the disciplinary proceeding; the disciplinary proceeding docket number; and the name of the Party on whose behalf the notice of appeal or cross-appeal was filed previously. The notice of withdrawal of appeal or cross-appeal shall be signed by the Party, or his or her counsel or representative. Upon the withdrawal of a notice of appeal, any outstanding cross-appeal shall be treated as an appeal unless it is withdrawn.

**9312. Review Proceeding Initiated By the Exchange Review Council**

**(a) Call for Review**

**(1) Rule 9268 Decision**

A decision issued pursuant to Rule 9268 may be subject to a call for review by any member of the Exchange Review Council or, pursuant to authority delegated from the Exchange Review Council, by any member of the Review Subcommittee. A decision issued pursuant to Rule 9268 shall be subject to a call for review within 45 days after the date of service of the decision. If called for review, such decision shall be reviewed by the Exchange Review Council.

**(2) Rule 9269 Decision**

A default decision issued pursuant to Rule 9269 shall be subject to a call for review by the Chief Regulatory Officer, on his or her own motion within 25 days after the date of service of the decision. If called for review, such decision shall be reviewed by the Exchange Review Council.

**(3) Decision Regarding Affiliate of the Exchange**

Notwithstanding anything herein to the contrary, a decision with respect to a member or member organization that is an affiliate of the Exchange within the meaning of Rule 985 may not be called for review by the Exchange Review Council.

**(b) Effect**

Institution of review by a member of the Exchange 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 Exchange Review Council issues a decision pursuant to Rule 9349, or, in cases called for discretionary review by the Exchange 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.

**(c) Requirements**

(1) If a member of the Exchange Review Council, a member of the Review Subcommittee, or, for a disciplinary proceeding decided under Rule 9269, the Chief Regulatory Officer determines to call a case for review, a written notice of review shall be served promptly on each Party to the proceeding and filed with the Office of Hearing Officers. Such notice of review shall contain:

(A) the name of the disciplinary proceeding;

(B) the disciplinary proceeding docket number; and

(C) a brief statement of the findings, conclusions, or sanctions with respect to which the Exchange Review Council, the Review Subcommittee, or the Chief Regulatory Officer determined that a call for review was necessary.

(2) The statement contained in the notice of review shall not limit the scope of the Exchange Review Council's authority under Rule 9346 to review any issues raised in the record. The Exchange Review Council, the Review Subcommittee, a Subcommittee, the Chief Regulatory Officer or, if applicable, an Extended Proceeding Committee, shall provide the Parties with notice of, and an opportunity to submit briefs on, any issue that shall be considered by the Exchange Review Council if such issue was not previously set forth in the notice of review. Parties may submit motions to either the Review Subcommittee or the Exchange Review Council challenging requests for briefing made by the Chief Regulatory Officer under this Rule of issues that were not previously set forth in the notice of appeal.

**(d) Effect of Withdrawal of Notice of Appeal, Cross-Appeal**



If the review of a disciplinary proceeding by the Exchange Review Council is terminated before the Exchange Review Council issues a decision on the merits because all appealing Parties file a notice of withdrawal of appeal and no Party previously filed a notice of cross-appeal, or all Parties who previously filed a notice of cross-appeal file a notice of withdrawal of cross-appeal:

- (1) a member of the Exchange Review Council or the Review Subcommittee shall have the right to call for review a decision issued pursuant to Rule 9268 in accordance with Rule 9312(a)(1), except that the 45 day period during which a call for review may be made shall begin on the day the Exchange receives the last filed notice of withdrawal of appeal or, if applicable, the last filed notice of withdrawal of cross-appeal; and,
- (2) the Chief Regulatory Officer shall have the right to call for review a decision issued pursuant to Rule 9269 in accordance with Rule 9312(a)(2), except that the 25 day period during which a call for review may be made shall begin on the day the Exchange receives the last filed notice of withdrawal of appeal or, if applicable, the last filed notice of withdrawal of cross-appeal.

### **9313. Counsel to the Exchange Review Council**

#### **(a) Authority**

A Counsel to the Exchange Review Council shall have authority to take ministerial and administrative actions to further the efficient administration of a proceeding, including the authority to:

- (1) direct the Office of Hearing Officers to complete and transmit a record of a disciplinary proceeding to the Exchange Review Council in accordance with Rule 9267;
- (2) establish or amend a briefing schedule under Rule 9347(b) but not shorten a briefing schedule except with the consent of the Parties;
- (3) permit a brief or any other document required to be filed to vary from the requirements of the Rule 9130 Series as provided in Rule 9347(a);
- (4) establish the date, time, and location of an oral argument and provide for notice of the hearing under Rule 9341;
- (5) for other than a Party and counsel or a person acting in a representative capacity, determine who may attend a hearing;
- (6) rule on a motion by a Party to request to lengthen or shorten a period of time prescribed by the Code for the filing of any papers, or request that a hearing be postponed or adjourned under Rule 9322, except that a period may not be shortened

and a hearing may not be postponed or adjourned without the consent of the Parties;  
and

- (7) create and maintain the official record of the disciplinary proceeding on appeal or review.

**(b) Review**

A Party seeking the review of a decision of a Counsel to the Exchange Review Council may make a motion to the Exchange Review Council, the Review Subcommittee, a Subcommittee or, if applicable, an Extended Proceeding Committee.

**9320. Transmission of Record; Extensions of Time, Postponements, Adjournments**

**9321. Transmission of Record**

Within 21 days after the filing of a notice of appeal or notice of review, or at such later time as the Exchange Review Council may designate, the Office of Hearing Officers shall assemble and prepare an index to the record, transmit the record and the index to the Exchange Review Council, and serve copies of the index upon all Parties. The Hearing Officer who participated in the disciplinary proceeding, or the Chief Hearing Officer, shall certify that the record transmitted to the Exchange Review Council is complete.

**9322. Extensions of Time, Postponements, Adjournments**

**(a) Availability**

At any time prior to the issuance of a decision pursuant to Rule 9349, the Exchange Review Council, the Review Subcommittee, a Subcommittee or, if applicable, an Extended Proceeding Committee, or Counsel to the Exchange Review Council, for good cause shown, may extend or shorten a period prescribed by the Code for the filing of any papers, except that Counsel to the Exchange Review Council may shorten a period so prescribed only with the consent of the Parties. The Exchange Review Council, the Review Subcommittee, a Subcommittee or, if applicable, an Extended Proceeding Committee, or Counsel to the Exchange Review Council, for good cause shown, may postpone or adjourn a hearing consistent with paragraph (b), except that Counsel to the Exchange Review Council may postpone or adjourn a hearing only with the consent of the Parties.

**(b) Limitations on Postponements, Adjournments, and Changes in Location**

Oral argument shall begin at the time and place ordered, unless the Exchange Review Council, the Review Subcommittee, a Subcommittee or, if applicable, an Extended Proceeding Committee, or Counsel to the Exchange Review Council, for good cause shown, postpones, adjourns, or changes the location of the oral argument, except that Counsel to the Exchange Review Council may postpone or adjourn the oral argument only with the consent of the Parties. In considering a motion for the postponement or adjournment of an oral argument, the Exchange Review Council, the Review Subcommittee, a Subcommittee or, if applicable, an Extended Proceeding Committee, or

Counsel to the Exchange Review Council shall consider, in addition to any other relevant factors:

- (1) the length of time the disciplinary proceeding has been pending to date, and the timeliness of the request for a postponement, an adjournment, or an extension;
- (2) the number of postponements, adjournments, or extensions already granted;
- (3) the stage of the proceedings at the time of the request;
- (4) the prejudice to the other Parties;
- (5) the potential harm to the investing public if an extension of time, an adjournment, or a postponement is granted; and
- (6) any other matter that justice may require.

**9330. Appointment of Subcommittee or Extended Proceeding Committee; Disqualification and Recusal**

**9331. Appointment of Subcommittee or Extended Proceeding Committee  
(a) Appointment by the Exchange Review Council**

Following the filing of a notice of appeal pursuant to Rule 9311 or a notice of review pursuant to Rule 9312, the Exchange Review Council or the Review Subcommittee shall appoint a Subcommittee or an Extended Proceeding Committee to participate, subject to Rule 9345, in a disciplinary proceeding appealed or called for review.

**(1) Subcommittee**

Except as provided in subparagraph (2), for each disciplinary proceeding appealed or called for review, the Exchange Review Council or the Review Subcommittee shall appoint a Subcommittee to participate, subject to Rule 9345, in the appeal or review. A Subcommittee shall be composed of two or more persons who shall be current or former members of the Exchange Review Council or former Directors.

**(2) Extended Proceeding Committee**

Upon consideration of the volume and complexity of the certified record, or other factors the Exchange Review Council or the Review Subcommittee deems material, the Exchange Review Council or the Review Subcommittee may determine that a disciplinary proceeding appealed or called for review shall be designated an Extended Proceeding and shall appoint an Extended Proceeding Committee to participate, subject to Rule 9345, in the appeal or review. The Extended Proceeding Committee shall be composed of two or more persons who shall be current or former members of the Exchange Review Council or former Directors. The Review Subcommittee shall have discretion to compensate any or all Panelists of an

Extended Proceeding Committee at the rate then in effect for arbitrators appointed under the FINRA Rule 12000 and 13000 Series.

**(b) Function**

If a hearing is held, the Subcommittee or, if applicable, the Extended Proceeding Committee, shall hear oral arguments and consider, if allowed under Rule 9346(b), any new evidence. Based on the hearing and the record on appeal or review, the Subcommittee or, if applicable, the Extended Hearing Committee, shall make a recommendation to the Exchange Review Council regarding the disposition of all matters on appeal, cross-appeal, or review. The recommendation shall be in the form of a written recommended decision.

**9332. Disqualification and Recusal**

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

If at any time a member of the Exchange Review Council, including a member of the Review Subcommittee, a Panelist of a Subcommittee or an Extended Proceeding Committee, or a Counsel to the Exchange Review Council determines that the member, the Panelist, or the Counsel to the Exchange Review Council has a conflict of interest or bias or circumstances otherwise exist where the fairness of the member, the Panelist, or the Counsel to the Exchange Review Council might reasonably be questioned, the member, the Panelist, or the Counsel to the Exchange Review Council shall notify the Chair of the Exchange Review Council, and the Chair of the Exchange Review Council shall issue and serve on the Parties a notice stating that the member, the Panelist, or the Counsel to the Exchange Review Council has withdrawn from the matter. In the event that a Panelist withdraws, is incapacitated, or is otherwise unable to continue service after a hearing has been convened, the Chair of the Exchange Review Council shall appoint a replacement Panelist. In the event that a member of the Review Subcommittee withdraws, is incapacitated, or is otherwise unable to continue service after assignment, the Chair of the Exchange Review Council shall appoint another member of the Exchange Review Council to serve on the Review Subcommittee for the limited purpose of considering the issues raised in the disciplinary proceeding in which the withdrawal action was taken. The replacement member of the Review Subcommittee must have the same classification (Industry or Non-Industry) as the member who withdrew. In the event that a Counsel to the Exchange Review Council withdraws, is incapacitated, or is otherwise unable to continue service after assignment, the Chief Regulatory Officer shall assign a replacement Counsel to the Exchange Review Council.

**(b) Motion for Disqualification**

A Party may move for the disqualification of a member of the Exchange Review Council, the Review Subcommittee, a Panelist of a Subcommittee or an Extended Proceeding Committee, or a Counsel to the Exchange Review Council. All such motions shall be based upon a reasonable, good faith belief that a conflict of interest or bias exists or circumstances otherwise exist where the fairness of the member, the Panelist, or the

Counsel to the Exchange Review Council might reasonably be questioned, and shall be accompanied by an affidavit setting forth in detail the facts alleged to constitute grounds for disqualification, and the dates on which the Party learned of those facts. Such motions shall be filed not later than 15 days after the later of:

- (1) when the Party learned of the facts believed to constitute the disqualification; or
- (2) when the Party was notified of the composition of the Subcommittee or, if applicable, the Extended Proceeding Committee or the assignment to the disciplinary proceeding of the Counsel to the Exchange Review Council.

**(c) Disposition of Disqualification Motions: Challenges to Single Member of the Exchange Review Council or Review Subcommittee, Single Panelist of Subcommittee or Extended Hearing Committee, or Counsel to the Exchange Review Council**

Motions for disqualification of a member of the Exchange Review Council, including a member of the Review Subcommittee, a Panelist of a Subcommittee or an Extended Proceeding Committee, or a Counsel to the Exchange Review Council shall be decided by the Chair of the Exchange Review Council, who shall promptly determine whether disqualification is required and issue a written ruling on the motion. If a member of the Review Subcommittee is disqualified, the Chair of the Exchange Review Council shall appoint another member of the Exchange Review Council to serve on the Review Subcommittee for the limited purpose of considering the issues raised in the disciplinary proceeding in which the motion was made. The replacement member of the Review Subcommittee must have the same classification (Member, Industry or Non-Industry) as the member being replaced. If a Panelist is disqualified, the Chair of the Exchange Review Council shall appoint a replacement Panelist. If a Counsel is disqualified, the Chief Regulatory Officer shall assign a replacement Counsel to the Exchange Review Council.

**(d) Disposition of Disqualification Motions: Challenges to Multiple Members or Panelists**

**(1) Exchange Review Council**

If a Party files a motion to disqualify more than one member of the Exchange Review Council, the Chair of the Exchange Review Council shall promptly determine whether disqualification is required, and shall issue a written ruling on the matter. In the event of such disqualification, the remaining members of the Exchange Review Council shall consider the review or appeal of the disciplinary matter.

**(2) Review Subcommittee**

If a Party files a motion to disqualify more than one member of the Review Subcommittee, the Chair of the Exchange Review Council shall promptly determine

whether disqualification is required, and shall issue a written ruling on the matter. If members of the Review Subcommittee are disqualified, the Chair of the Exchange Review Council shall appoint other members of the Exchange Review Council to serve on the Review Subcommittee for the limited purpose of considering the issues raised in the disciplinary proceeding in which the motion was made. The replacement members of the Review Subcommittee must have the same classification (Member, Industry or Non-Industry) as the members being replaced.

### **(3) Subcommittee; Extended Proceeding Committee**

If a Party files a motion to disqualify more than one Panelist of a Subcommittee or an Extended Proceeding Committee, the Chair of the Exchange Review Council shall promptly determine whether disqualification is required, and shall issue a written ruling on the motion. If multiple Panelists are disqualified, the Chair of the Exchange Review Council shall appoint replacement Panelists.

## **9340. Proceedings**

### **9341. Oral Argument**

#### **(a) Request for Oral Argument**

A Party may request oral argument before the Subcommittee or, if applicable, the Extended Proceeding Committee. Oral argument shall be requested in writing either in the Party's notice of appeal or cross-appeal or within 15 days after service of the Exchange Review Council's notice of review. Subject to the limitations of Rules 9342 and 9344, oral argument shall be granted if timely requested. The right to oral argument set forth in this Rule is unaffected by a Party's waiver of, or failure to request, a hearing pursuant to the Rule 9200 Series.

#### **(b) Discretion to Proceed With or Without Oral Argument**

In the absence of a request for oral argument, the Subcommittee or, if applicable, the Extended Proceeding Committee, in its discretion, may order that a matter be set down for oral argument or may consider the matter on the basis of the record.

#### **(c) Notice Regarding Oral Argument**

If oral argument is held, a notice stating the date, time, and location of the oral argument shall be served on the Parties at least 21 days before the hearing. The Parties may agree in writing to waive the notice period or, in extraordinary circumstances, the Subcommittee or, if applicable, the Extended Proceeding Committee, or Counsel to the Exchange Review Council may provide for a shorter notice period, except that Counsel to the Exchange Review Council may provide for a shorter notice period only with the consent of the Parties.

#### **(d) Attendance Required**

The Parties shall make oral arguments before the Subcommittee or, if applicable, the Extended Proceeding Committee. Unless otherwise agreed to by all of the Parties, all Panelists comprising the Subcommittee or, if applicable, the Extended Proceeding Committee shall be present for the oral argument.

**(e) Time Limits**

Unless the Subcommittee or, if applicable, the Extended Proceeding Committee, orders otherwise for good cause shown, each Party's oral argument before the Subcommittee or, if applicable, the Extended Proceeding Committee, shall be limited to a total of 30 minutes.

**(f) Recordation; Transcript Correction**

- (1) Oral arguments shall be recorded by a court reporter and a transcript shall be prepared.
- (2) A transcript of a hearing shall be available to a Party for purchase from the court reporter at prescribed rates. A witness may purchase a transcript of his or her own testimony from the court reporter.
- (3) Prior to the filing of post-hearing briefs or within such earlier time as reasonably ordered by the Subcommittee or, if applicable, the Extended Proceeding Committee, a Party or witness may seek to correct his or her transcript. A proposed correction of the transcript shall be submitted by affidavit to the Subcommittee or, if applicable, the Extended Proceeding Committee. Upon notice to all Parties to the disciplinary proceeding, the Subcommittee or, if applicable, the Extended Proceeding Committee may order the correction to the transcript as requested or sua sponte.

**9342. Failure to Appear at Oral Argument**

A Party who requests oral argument but fails to appear after being duly notified shall be deemed to have waived any opportunity for oral argument provided under the Rule 9300 Series. The Subcommittee or, if applicable, the Extended Proceeding Committee, shall permit argument to go forward as to those Parties who appear. The Subcommittee or, if applicable, the Extended Proceeding Committee, in the exercise of its discretion, may consider the matter on the basis of the record without oral argument as to those Parties who failed to appear.

**9343. Disposition Without Oral Argument**

If an oral argument is not held, the matter shall be considered by a Subcommittee or, if applicable, an Extended Proceeding Committee, on the basis of the record, as defined in Rule 9267, and supplemented by any written materials submitted to or issued by the Subcommittee or, if applicable, the Extended Proceeding Committee, or the Exchange Review Council in connection with the appeal, cross-appeal, or call for review.

**9344. Failure to Participate Below; Abandonment of Appeal**

**(a) Failure to Participate Below**

When an appealing Party did not participate in the disciplinary proceeding before a Hearing Officer, a Hearing Panel or, if applicable, an Extended Hearing Panel, but shows good cause for the failure to participate, the Exchange Review Council or the Review Subcommittee may dismiss the appeal and remand the matter for further proceedings, or may order that the appeal proceed. If the appealing Party did not participate in the disciplinary proceeding before a Hearing Officer, a Hearing Panel or, if applicable, an Extended Hearing Panel, and fails to show good cause for the failure to participate, the matter shall be considered by the Subcommittee or, if applicable, the Extended Proceeding Committee, and the Exchange Review Council on the basis of the record and other documents, as provided in Rules 9346 and 9347. Alternatively, the Exchange Review Council or Review Subcommittee may remand the disciplinary proceeding with instructions. For purposes of this paragraph, failure to participate shall include failure to file an answer or otherwise respond to a complaint, or failure to appear at a scheduled hearing, but shall not include failure to request a hearing pursuant to Rule 9221.

**(b) Abandonment of Appeal**

If an appealing Party fails to advise the Exchange Review Council or the Review Subcommittee of the basis for seeking review or otherwise fails to provide information or submit a written brief in response to a request pursuant to Rules 9346 and 9347, the Exchange Review Council or the Review Subcommittee may dismiss the appeal as abandoned, and the decision of the Hearing Officer, the Hearing Panel or, if applicable, the Extended Hearing Panel, shall become the final disciplinary action of the Exchange. If a cross-appealing Party fails to advise the Exchange Review Council or the Review Subcommittee of the basis for seeking review or otherwise fails to provide information or submit a written brief in response to a request pursuant to Rules 9346 and 9347, the Exchange Review Council or the Review Subcommittee may dismiss the cross-appeal as abandoned. Upon a showing of good cause, the Exchange Review Council may withdraw any dismissal entered pursuant to this Rule.

**9345. Subcommittee or Extended Proceeding Committee Recommended Decision to the Exchange Review Council**

A Subcommittee or, if applicable, an Extended Proceeding Committee, shall present a recommended decision in writing to the Exchange Review Council before the meeting of the Exchange Review Council at which the disciplinary proceeding shall be considered.

**9346. Evidence in the Exchange Review Council Proceedings****(a) Scope of Review**

Except as otherwise set forth in this paragraph, the Exchange Review Council's review shall be limited to consideration of:



- (1) the record, as defined in Rule 9267, supplemented by briefs and other papers submitted to the Subcommittee or, if applicable, the Extended Proceeding Committee, and the Exchange Review Council; and
- (2) any oral argument permitted under this Code.

A Party may introduce additional evidence only with prior approval of the Subcommittee or, if applicable, the Extended Proceeding Committee, or the Exchange Review Council, upon a showing that extraordinary circumstances exist under paragraph (b). If an appealing Party shows good cause for failure to participate in the disciplinary proceeding below, the Exchange Review Council may hear evidence and consider the disciplinary proceeding pursuant to Rule 9344(a).

**(b) Leave to Introduce Additional Evidence**

A Party may apply to the Subcommittee or, if applicable, the Extended Proceeding Committee, or the Exchange Review Council for leave to introduce additional evidence by motion filed not later than 30 days after the Office of Hearing Officers transmits to the Exchange Review Council and serves upon all Parties the index to the record, pursuant to Rule 9321. The motion shall describe each item of proposed new evidence, demonstrate that there was good cause for failing to introduce it below, demonstrate why the evidence is material to the proceeding, and be filed and served. The Party may attach the documentary evidence as an exhibit to the motion. By a motion filed in accordance with Rule 9146, a Party may request an extension of the period during which a Party may file a motion for leave to introduce additional evidence. A Party shall demonstrate that there was good cause for failing to file the motion for leave to introduce additional evidence during the period prescribed.

**(c) Motion In Opposition; Motion to Introduce Rebuttal Evidence**

A Party may file an opposition to a motion, as provided in Rule 9146(d), for leave to introduce new evidence, and may move for leave to introduce rebuttal evidence in response to the proposed new evidence. A Party who moves to introduce rebuttal evidence in response to the proposed new evidence of another Party shall describe each item of proposed rebuttal evidence and explain why the evidence is material to the proceeding, and shall file and serve such motion.

**(d) Discretion Regarding Review of Additional Evidence**

Upon consideration of any motion to introduce additional evidence and any opposition thereto, the Subcommittee or, if applicable, the Extended Proceeding Committee, or the Exchange Review Council may permit the evidence to be introduced into the record on review, or the Exchange Review Council may remand the disciplinary proceeding for further proceedings consistent with its ruling or for further fact finding.

**(e) Requirements for Submitting Additional Documentary Evidence**

A Party that is permitted to introduce additional documentary evidence before the Subcommittee or, if applicable, the Extended Proceeding Committee, or the Exchange Review Council pursuant to paragraph (d) shall make copies of the evidence available to the Subcommittee or, if applicable, the Extended Proceeding Committee, or the Exchange Review Council, and to all Parties at such time as the Subcommittee or, if applicable, the Extended Proceeding Committee, the Exchange Review Council, or Counsel to the Exchange Review Council may specify.

**(f) Subcommittee or Extended Proceeding Committee Order Requiring Additional Evidence**

On its own motion, the Subcommittee or, if applicable, the Extended Proceeding Committee, or the Exchange Review Council may order that the record be supplemented with such additional evidence as it may deem relevant. Among other things, the Subcommittee, or if applicable, the Extended Proceeding Committee, or the Exchange Review Council may order a Respondent who asserts his or her inability to pay a monetary sanction to file a sworn financial statement and to keep such statement current as ordered by the Subcommittee or, if applicable, the Extended Proceeding Committee, or the Exchange Review Council.

**(g) Rules of Evidence Not Applicable**

The formal rules of evidence shall not apply.

**(h) Testimony**

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

**9347. Filing of Papers in the Exchange Review Council Proceedings**

**(a) Briefs; Reply Briefs; Requirements**

Parties may file briefs in connection with proceedings governed by the Rule 9300 Series. Briefs shall be confined to the particular matters at issue. An exception to findings, conclusions, or sanctions shall be supported by citation to the relevant portions of the record, including references to specific pages relied upon, and by concise argument, including citation of such statutes, decisions, and other authorities as may be relevant. If an exception relates to the admission or exclusion of evidence, the substance of the evidence admitted or excluded shall be set forth in the brief, an appendix thereto, or by citation to the record. Parties may file reply briefs. If a Party files a reply brief, such brief shall be limited to matters in reply. All briefs shall conform to the requirements of the Rule 9130 Series, and, except with advance leave of the Subcommittee or, if applicable, the Extended Proceeding Committee, the Exchange Review Council, the Review Subcommittee, or Counsel to the Exchange Review Council, exclusive of pages containing tables of contents or tables of authorities, a brief other than a reply brief shall

not exceed 25 double-spaced pages, and a reply brief shall not exceed 12 double-spaced pages.

**(b) Timely Filing of Briefs**

Briefs shall be due upon dates established by the Subcommittee or, if applicable, the Extended Proceeding Committee, the Exchange Review Council, the Review Subcommittee, or Counsel to the Exchange Review Council in a scheduling order. Unless the Subcommittee or, if applicable, the Extended Proceeding Committee, the Exchange Review Council, the Review Subcommittee, or Counsel to the Exchange Review Council specifies otherwise, opening briefs shall be submitted not less than 21 days from the date of the scheduling order, and answering briefs shall be submitted 21 days thereafter. When reply briefs are submitted, such briefs shall be filed not later than ten days after service of the answering brief. Counsel to the Exchange Review Council may not shorten a period previously established for the filing of briefs except with the consent of the Parties. The time periods listed in this provision are only applicable to the filing of opening briefs, answering briefs, and reply briefs.

**9348. Powers of the Exchange Review Council on Review**

In any appeal or review proceeding pursuant to the Rule 9300 Series, the Exchange Review Council may affirm, dismiss, modify, or reverse with respect to each finding, or remand the disciplinary proceeding with instructions. The Exchange 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.

**9349. Exchange Review Council Formal Consideration; Decision**

**(a) Decision of the Exchange Review Council, Including Remand**

In an appeal or review of a disciplinary proceeding governed by the Rule 9300 Series that is not withdrawn or dismissed prior to a decision on the merits, the Exchange Review Council, after considering all matters presented in the appeal or review and the written recommended decision of the Subcommittee or, if applicable, the Extended Proceeding Committee, may affirm, dismiss, modify or reverse the decision of the Hearing Panel or, if applicable, Extended Hearing Panel, with respect to each Respondent who has appealed or cross-appealed or is subject to a call for review. The Exchange Review Council may affirm, modify, reverse, increase, or reduce any sanction, or impose any other fitting sanction. Alternatively, the Exchange Review Council or the Review Subcommittee may remand the disciplinary proceeding with instructions. The Exchange Review Council shall prepare a proposed written decision pursuant to paragraph (b).

**(b) Contents of Decision**

The decision shall include:

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

- (2) the specific statutory or rule provisions that were alleged to have been violated;
- (3) a statement setting forth the findings of fact with respect to any act or practice the Respondent was alleged to have committed or omitted;
- (4) the conclusions as to whether the Respondent violated any provision alleged in the complaint;
- (5) a statement 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, pursuant to Rule 9360, the date upon which such sanction shall become effective.

**(c) Issuance of Decision After Expiration of Call for Review Period**

The Exchange Review Council shall provide its proposed written decision to the Exchange Board. The Exchange Board may call the disciplinary proceeding for review pursuant to Rule 9351. If the Exchange Board does not call the disciplinary proceeding for review, the proposed written decision of the Exchange Review Council shall become final, and the Exchange Review Council shall serve its written decision on the Parties and provide a copy to each member organization of the Exchange with which a Respondent is associated. The decision shall constitute the final disciplinary action of the Exchange for purposes of SEC Rule 19d-1(c)(1), unless the Exchange Review Council remands the proceeding.

**9350. Discretionary Review by Board**

**9351. Discretionary Review by the Exchange Board**

**(a) Call for Review by Director**

A Director may call a disciplinary proceeding for review by the Exchange Board if the call for review is made within the period prescribed in paragraph (b); provided, however, that a decision with respect to a member or member organization that is an affiliate of the Exchange within the meaning of Rule 985 may not be called for review.

**(b) 15 Day Period; Waiver**

- (1) A Director shall make his or her call for review not later than the next meeting of the Exchange Board that is at least 15 days after the date on which the Exchange Board receives the proposed written decision of the Exchange Review Council.
- (2) Waiver

By a unanimous vote of the Exchange Board, the Exchange Board may shorten the period in subparagraph (1) to less than 15 days. By an affirmative vote of the majority of the Exchange Board then in office, the Exchange Board may, during the

15 day period in subparagraph (1), vote to extend the period in subparagraph (1) to more than 15 days.

**(c) Review at Next Meeting**

If a Director calls a disciplinary proceeding for review within the period prescribed in paragraph (b), the Exchange Board shall review the disciplinary proceeding not later than the next meeting of the Exchange Board. The Exchange Board may order the Parties (excluding any Respondent who did not appeal or cross-appeal, or as to whom the issues appealed or called for review do not apply) to file briefs in connection with the review proceedings pursuant to this Rule.

**(d) Decision of the Exchange Board, Including Remand**

After review, the Exchange Board may affirm, modify, or reverse the proposed written decision of the Exchange Review Council. The Exchange 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 Exchange Board may remand the disciplinary proceeding with instructions. The Exchange Board shall prepare a written decision that includes all of the elements described in Rule 9349(b)(1) through (6).

**(e) Issuance of Decision After Expiration of Call for Review Period**

The Exchange Board shall issue and serve its written decision on the Parties and provide a copy to each member organization of the Exchange with which a Respondent is associated. The decision shall constitute the final disciplinary action of the Exchange for purposes of SEC Rule 19d-1(c)(1), unless the Exchange Board remands the proceeding.

**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) specified in a decision constituting final disciplinary action of the Exchange for purposes of SEC Rule 19d-1(c)(1) shall become effective on a date to be determined by the Exchange 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 the Exchange within the meaning of Rule 985). A bar, an expulsion, or a permanent cease and desist order shall become effective upon service of the decision constituting final disciplinary action of the Exchange, unless otherwise specified therein. The Exchange 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.

**9370. Application to Commission for Review**

**(a) Appeal to Commission; Effect**

A Respondent aggrieved by final disciplinary action pursuant to the Rule 9200 Series or the Rule 9300 Series may apply for review by the Commission pursuant to Section 19(d)(2) of the Act. The filing with the Commission of an application for review by the Commission shall stay the effectiveness of any sanction, other than a bar or an expulsion, imposed in a decision constituting final disciplinary action of the Exchange for purposes of SEC Rule 19d-1(c)(1).

**(b) Notification to Member Organization**

The Exchange shall promptly notify any member organization with which a Respondent is associated if the Respondent files an application for review to the Commission.

**9400. Expedited Client Suspension Proceeding**

**(a) Initiation of Proceeding**

(1) *Scope of Authority.* With the prior written authorization of the Chief Regulatory Officer (“CRO”) or such other senior officers as the CRO may designate, the Phlx Regulation Department, Department of Enforcement, or the Department of Market Regulation may initiate an expedited suspension proceeding with respect to alleged violations of Rule 774 (Disruptive Quoting and Trading Activity Prohibited).

(2) *Service of Notice.* The Exchange or FINRA shall initiate the proceeding by serving a notice on a member, member organization or associated person (hereinafter “Respondent”). The Exchange or FINRA shall serve the notice by personal service or overnight commercial courier. The notice shall be effective upon service.

(3) *Content of Notice.* The notice shall state whether the Exchange is requesting the Respondent to be required to take action or to refrain from taking action. The notice shall be accompanied by:

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

(B) a proposed order that contains the required elements of a suspension order (except the date and hour of the order’s issuance), which are set forth in subparagraph (d)(2) of this Rule).

**(b) Appointment of Hearing Officers and Hearing Panel**

(1) As soon as practicable after the Exchange or FINRA initiates a suspension proceeding, a Hearing Panel shall be assigned in accordance with paragraph (a) of Rule 9231(b).

(2) If at any time a Hearing Officer determines that he or she has a conflict of interest or bias or circumstances otherwise exist where his or her fairness might reasonably be questioned, or if a Party files a motion to disqualify a Hearing Officer, the recusal

and disqualification proceeding shall be conducted in accordance with Rules 9233(a), except that:

- (A) a motion seeking disqualification of a Hearing Officer must be filed no later than 5 days after the announcement of the Hearing Panel; and
- (B) the Exchange may file a brief in opposition to the Respondent's motion no later than 5 days after service thereof.

(c) Hearing

- (1) *When Held.* The hearing shall be held not later than 15 days after service of the notice initiating the suspension proceeding, unless otherwise extended by the Chairman of the Hearing Panel with the consent of the Parties for good cause shown. If a Hearing Officer is recused or disqualified, the hearing shall be held not later than five days after a replacement Hearing Officer is appointed.
- (2) *Service of Notice of Hearing.* A notice of date, time, and place of the hearing shall be served on the Parties not later than seven days before the hearing, unless otherwise ordered by the Chairman of the Hearing Panel. Service shall be made by personal service or overnight commercial courier. The notice shall be effective upon service.
- (3) *Authority of Hearing Officers.* A Hearing Officer shall have authority to do all things necessary and appropriate to discharge his or her duties as set forth in Rule 9235.
- (4) *Witnesses.* A person who is subject to the jurisdiction of the Exchange shall testify under oath or affirmation. The oath or affirmation shall be administered by a court reporter or a notary public.
- (5) *Additional Information.* At any time during its consideration, the Hearing Panel may direct a Party to submit additional information. Any additional information submitted shall be provided to all Parties at least one day before the Hearing Panel renders its decision.
- (6) *Transcript.* The hearing shall be recorded by a court reporter and a written transcript thereof shall be prepared. A transcript of the hearing shall be available to the Parties for purchase from the court reporter at prescribed rates. A witness may purchase a copy of the transcript of his or her own testimony from the court reporter at prescribed rates. Proposed corrections to the transcript may be submitted by affidavit to the Hearing Panel within a reasonable time determined by the Hearing Panel. Upon notice to all the Parties to the proceeding, the Hearing Panel may order corrections to the transcript as requested or sua sponte.

(7) *Record and Evidence Not Admitted.* The record shall consist of the notice initiating the proceeding, the declaration, and the proposed order described in sub-paragraph (a)(3) above; the transcript of the hearing; all evidence considered by the Hearing Panel; and any other document or item accepted into the record by the Hearing Panel. The Phlx Regulation Department shall be the custodian of the record. Proffered evidence that is not accepted into the record by the Hearing Panel shall be retained by the custodian of the record until the date when the Exchange's decision becomes final or, if applicable, upon the conclusion of any review by the SEC or the federal courts.

(8) *Failure to Appear at a Hearing.* If a Respondent fails to appear at a hearing for which it has notice, the allegations in the notice and accompanying declaration may be deemed admitted, and the Hearing Panel may issue a suspension order without further proceedings. If the Exchange or FINRA fails to appear at a hearing for which it has notice, the Hearing Panel may order that the suspension proceeding be dismissed.

(d) Issuance of Suspension Order by Hearing Panel

(1) *Basis for Issuance.* The Hearing Panel shall issue a written decision stating whether a suspension order shall be imposed. The Hearing Panel shall issue the decision not later than ten days after receipt of the hearing transcript, unless otherwise extended by the Chairman of the Hearing Panel with the consent of the Parties for good cause shown. A suspension order shall be imposed if the Hearing Panel finds:

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

(B) that the violative conduct or continuation thereof is likely to result in significant market disruption or other significant harm to investors.

(2) *Content, Scope, and Form of Order.* A suspension order shall:

(A) be limited to: (i) ordering a Respondent to cease and desist from violating Rule 774, and/or (ii) ordering a Respondent to cease and desist from providing access to the Exchange to a client of Respondent that is causing violations of Rule 774;

(B) set forth the alleged violation and the significant market disruption or other significant harm to investors that is likely to result without the issuance of an order;

(C) describe in reasonable detail the act or acts the Respondent is to take or refrain from taking and to suspend the Respondent unless and until such action is taken or refrained from; and

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



(3) *Duration of Order.* A suspension order shall remain effective and enforceable unless modified, set aside, limited, or revoked pursuant to paragraph (e), below.

(4) *Service.* The Hearing Panel's decision and any suspension order shall be served by personal service or overnight commercial courier. The suspension order shall be effective upon service.

(e) *Review by Hearing Panel.* At any time after the Respondent is served with a suspension order, a Party may apply to the Hearing Panel to have the order modified, set aside, limited, or revoked. The application shall set forth with specificity the facts that support the request. The Hearing Panel shall respond to the request in writing within ten days after receipt of the request, unless otherwise extended by the Chairman of the Hearing Panel with the consent of the Parties for good cause shown. The Hearing Panel's response shall be served on the Respondent via personal service or overnight commercial courier. The filing of an application under this Rule shall not stay the effectiveness of the suspension order.

(f) *Application to SEC for Review.* Sanctions imposed pursuant to this Rule constitute final and immediately effective disciplinary sanctions imposed by the Exchange. The right to have any action under this Rule reviewed by the SEC is governed by Section 19 of the Exchange Act. The filing of an application for review shall not stay the effectiveness of a suspension order unless the SEC otherwise orders.

## **9500. Other Proceedings**

### **9510. Reserved**

### **9520. Eligibility Proceedings**

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

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

The Rule 9520 Series sets forth procedures for a person to become or remain associated with a member organization, notwithstanding the existence of a statutory disqualification as defined in the Exchange By-Laws and for a current member, member organization or person associated with a member organization to obtain relief from the eligibility or qualification requirements of the Exchange By-Laws and the Rules of the Exchange. Such actions hereinafter are referred to as "eligibility proceedings."

##### **(b) Definitions**

(1) The term "Application" means FINRA's Form MC-400 for individuals or Form MC-400A for member organizations, filed with the Central Registration Depository/Public Disclosure.

(2) The term "disqualified member organization" means a broker, dealer, municipal securities broker or dealer, government securities broker or dealer, or member

organization that is or becomes subject to a disqualification or is otherwise ineligible for membership under the Rules of the Exchange.

(3) The term “disqualified person” means an associated person, including a member, associated person or person seeking to become an associated person who is or becomes subject to a disqualification or is otherwise ineligible for association under the Rules of the Exchange.

(4) The term “sponsoring member organization” means the member organization or applicant for membership pursuant to Rule 900.2 that is sponsoring the association or continued association of a disqualified person to be admitted, readmitted, or permitted to continue in association.

## **9522. Initiation of Eligibility Proceeding; Member Regulation Consideration**

### **(a) Initiation**

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

If staff of the Department of Member Regulation has reason to believe that a disqualification exists or that a member, member organization or person associated with a member organization otherwise fails to meet the eligibility requirements of the Exchange, staff of the Department of Member Regulation shall issue a written notice to the member, member organization or applicant for membership under Rule 901. The notice shall specify the grounds for such disqualification or ineligibility. Staff of the Department of Member Regulation shall not issue such written notice to members, member organizations or applicants for membership under Rule 901 with respect to disqualifications arising solely from findings or orders specified in Section 15(b)(4)(D), (E), or (H) of the Exchange Act or arising under Section 3(a)(39)(E) of the Exchange Act, unless the member organization or applicant for membership under Rule 901 is required to file an application pursuant to a Regulatory Alert entitled “Eligibility Proceedings: Amendments to Rule 9520 Series to Establish Procedures Applicable to Firms and Associated Persons Subject to Certain Statutory Disqualifications” (the “SD Regulatory Alert”).

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

A notice issued to a disqualified member organization shall state that the disqualified member organization may apply for relief by filing an application or, in the case of a matter set forth in Rule 9522(e)(1), a written request for relief, within ten business days after service of the notice. If the member organization fails to file the application or, where appropriate, the written request for relief, within the 10-day period, the membership of the member organization shall be canceled, unless the Department of Member Regulation grants an extension for good cause shown.

#### **(3) Notice Regarding an Associated Person**

A notice issued regarding a disqualified person to a member organization or applicant for membership under Rule 901 shall state that such member organization or applicant for membership may file an application on behalf of itself and such person or, in the case of a matter set forth in Rule 9522(e)(1), a written request for relief, within ten business days after service of the notice. If the member organization fails to file the application or, where appropriate, the written request for relief, within the 10-day period, the registration of the disqualified person shall be revoked, unless the Department of Member Regulation grants an extension for good cause shown.

#### **(4) Service**

A notice issued under this section shall be served by facsimile or pursuant to Rules 9131 and 9134.

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

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

(A) it has become a disqualified member organization;

(B) a person associated with such member organization, including a member, or whose association is proposed by an applicant for membership under Rule 901 has become a disqualified person; or

(C) the member organization or applicant for membership under Rule 901 wishes to sponsor the association of a person who is a disqualified person.

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

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

A member organization may withdraw its application or written request for relief prior to a hearing by filing a written notice with the Central Registration Depository/Public Disclosure pursuant to Rules 9135, 9136, and 9137. A member organization may withdraw its application after the start of a hearing but prior to the issuance of a decision by the Exchange Review Council by filing a written notice with the Exchange Review Council and the Office of General Counsel pursuant to Rules 9135, 9136, and 9137.

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

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

**(e) Member Regulation Consideration**

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

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

- (A) a disqualified member organization or disqualified person is subject to a disqualification based on an injunction that was entered ten or more years prior to the proposed admission or continuance by order, judgment, or decree of any court of competent jurisdiction from acting as an investment adviser, underwriter, broker, dealer, municipal securities dealer, government securities broker, government securities dealer, transfer agent, foreign person performing a function substantially equivalent to any of the above, entity or person required to be registered under the Commodity Exchange Act, or any substantially equivalent foreign statute or regulation, or as an affiliated person or employee of any investment company, bank, insurance company, foreign entity substantially equivalent to any of the above, or entity or person required to be registered under the Commodity Exchange Act or any substantially equivalent foreign statute or regulation, or from engaging in or continuing any conduct or practice in connection with any such activity, or in connection with the purchase or sale of any security.
- (B) a sponsoring member organization makes a request to change the supervisor of a disqualified person; or
- (C) a disqualified member organization or sponsoring member organization is a member organization of both the Exchange and another self-regulatory organization; and:
- (i) the other self-regulatory organization intends to file a Notice under SEC Rule 19h-1 approving the membership continuance of the disqualified member organization or, in the case of a sponsoring member organization, the proposed association or continued association of the disqualified person; and

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

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

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

- (A) The disqualified person is already a participant in, a member organization (or equivalent) of, or a person associated with a member organization (or equivalent) of, a self-regulatory organization (other than the Exchange), and the terms and conditions of the proposed admission to the Exchange are the same in all material respects as those imposed or not disapproved in connection with such person's prior admission or continuance pursuant to an order of the Commission under SEC Rule 19h-1 or other substantially equivalent written communication;
- (B) The Department of Member Regulation finds, after reasonable inquiry, that except for the identity of the employer concerned, the terms and conditions of the proposed admission or continuance are the same in all material respects as those imposed or not disapproved in connection with a prior admission or continuance of the disqualified person pursuant to an order of the Commission under SEC Rule 19h-1 or other substantially equivalent written communication, and that there is no intervening conduct or other circumstance that would cause the employment to be inconsistent with the public interest or the protection of investors;
- (C) The disqualification previously was a basis for the institution of an administrative proceeding pursuant to a provision of the federal securities laws, and was considered by the Commission in determining a sanction against such disqualified person in the proceeding; and the Commission concluded in such proceeding that it would not restrict or limit the future securities activities of such disqualified person in the capacity now proposed, or, if it imposed any such restrictions or limitations for a specified time period, such time period has elapsed; or
- (D) The disqualification consists of a court order or judgment of injunction or conviction, and such order or judgment:
  - (i) expressly includes a provision that, on the basis of such order or judgment, the Commission will not institute a proceeding against such person pursuant to Section 15(b) or 15B of the Act or that the future securities activities of such persons in the capacity now proposed will not be restricted or limited; or

- (ii) includes such restrictions or limitations for a specified time period and such time period has elapsed;
  - (E) The disqualified person's functions are purely clerical and/or ministerial in nature; or
  - (F) The disqualification arises from findings or orders specified in Section 15(b)(4)(D), (E), or (H) of the Exchange Act or arises under Section 3(a)(39)(E) of the Exchange Act.
- (3) Rights of Disqualified Member Organization, Sponsoring Member Organization, Disqualified Person, and Department of Member Regulation
- (A) In the event the Department of Member Regulation does not approve a written request for relief from the eligibility requirements pursuant to subparagraph (e)(1), the disqualified member organization or sponsoring member organization may file an application, and such member organization shall have the right to proceed under Rule 9523 or 9524, as applicable. The Department of Member Regulation may require a disqualified member organization or sponsoring member organization to file an application with the Central Registration Depository/Public Disclosure, notwithstanding the provisions of subparagraph (e)(1).
  - (B) In the event the Department of Member Regulation does not approve an application pursuant to subparagraph (e)(2), the disqualified member organization or sponsoring member organization shall have the right to proceed under Rule 9523 or 9524, as applicable.

**9523. Acceptance of Member Regulation Recommendations and Supervisory Plans by Consent Pursuant to SEC Rule 19h-1**

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

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

- (A) the right to a hearing before a Hearing Panel and any right of appeal to the Exchange Review Council, the Commission, and the courts, or otherwise challenge the validity of the supervisory plan, if the supervisory plan is accepted.
- (B) any right of the disqualified member organization, sponsoring member organization, and/or disqualified person to claim bias or prejudice by the Department of Member Regulation, the Chief Regulatory Officer, the Exchange Review Council, or any member of the Exchange Review Council, in connection with such person's or body's participation in discussions regarding the terms and conditions of the Department of Member Regulation's recommendation or the supervisory plan, or other consideration of the recommendation or supervisory plan, including acceptance or rejection of such recommendation or supervisory plan; and
- (C) any right of the disqualified member organization, sponsoring member organization, and/or disqualified person to claim that a person violated the ex parte prohibitions of Rule 9143 or the separation of functions prohibitions of Rule 9144, in connection with such person's or body's participation in discussions regarding the terms and conditions of the recommendation or supervisory plan, or other consideration of the recommendation or supervisory plan, including acceptance or rejection of such recommendation or supervisory plan.
- (2) If a recommendation or supervisory plan is rejected, the disqualified member organization, sponsoring member organization, and/or disqualified person shall be bound by the waivers made under subparagraph (a)(1) for conduct by persons or bodies occurring during the period beginning on the date the supervisory plan was submitted and ending upon the rejection of the supervisory plan and shall have the right to proceed under this rule and Rule 9524, as applicable.
- (3) If the disqualified member organization, sponsoring member organization, and/or disqualified person execute the letter consenting to the supervisory plan, it shall be submitted to the Phlx Regulation Department by the Department of Member Regulation with a proposed Notice under SEC Rule 19h-1, where required. The Phlx Regulation Department shall forward the supervisory plan and proposed Notice under SEC Rule 19h-1, if any, to the Chairman of the Statutory Disqualification Committee, acting on behalf of the Exchange Review Council. The Chairman of the Statutory Disqualification Committee may accept or reject the recommendation of the Department of Member Regulation and the supervisory plan or refer them to the Exchange Review Council for acceptance or rejection by the Exchange Review Council.
- (4) If the recommendation and supervisory plan is accepted by the Exchange Review Council, the Chairman of the Statutory Disqualification Committee it shall be deemed final and, where required, the proposed Notice under SEC Rule 19h-1 will be filed by the Exchange. If the recommendation and supervisory plan are rejected by the Chairman of the Statutory Disqualification Committee, the Exchange Review

Council the Phlx Regulation Department may take any other appropriate action with respect to the disqualified member organization, sponsoring member organization, and/or disqualified person. If the recommendation and supervisory plan are rejected, the disqualified member organization, sponsoring member organization, and/or disqualified person shall not be prejudiced by the execution of the letter consenting to the supervisory plan under subparagraph (a) and the letter may not be introduced into evidence in any proceeding.

**(b)** With respect to disqualifications arising solely from findings or orders specified in Section 15(b)(4)(D), (E) or (H) of the Exchange Act or arising under Section 3(a)(39)(E) of the Exchange Act, after an application is filed, in approving an application under Rule 9522(e)(2)(F), the Department of Member Regulation is authorized to accept the membership or continued membership of a disqualified member organization or sponsoring member organization or the association or continuing association of a disqualified person pursuant to a supervisory plan where the disqualified member organization, sponsoring member organization, and/or disqualified persons, as the case may be, consent to the imposition of the supervisory plan. The disqualified member organization, sponsoring member organization, and/or disqualified person, as the case may be, shall execute a letter consenting to the imposition of the supervisory plan. The Department of Member Regulation shall prepare a proposed Notice under SEC Rule 19h-1, where required, and the Exchange shall file such Notice.

- (1) If a disqualified member organization, sponsoring member organization, and/or disqualified person submitted an executed letter consenting to a supervisory plan, by the submission of such letter, the disqualified member organization, sponsoring member organization and/or disqualified person waives:
  - (A) the right to a hearing before a Hearing Panel and any right of appeal to the Exchange Review Council, the SEC, and the courts, or otherwise challenge the validity of the supervisory plan, if the supervisory plan is accepted;
  - (B) any right of the disqualified member organization, sponsoring member organization, and/or disqualified person to claim bias or prejudice by the Department of Member Regulation or the General Counsel in connection with such person's or body's participation in discussions regarding the terms and conditions of the Department of Member Regulation's recommended supervisory plan, or other consideration of the supervisory plan, including acceptance or rejection of such recommendation or supervisory plan; and
  - (C) any right of the disqualified member organization, sponsoring member organization, and/or disqualified person to claim that a person violated the ex parte prohibitions of Rule 9143 or the separation of functions prohibitions of Rule 9144, in connection with such person's or body's participation in discussions regarding the terms and conditions of the supervisory plan, or other consideration of the supervisory plan, including acceptance or rejection of such supervisory plan.



- (2) If the supervisory plan is rejected, the disqualified member organization, sponsoring member organization, and/or disqualified person shall be bound by the waivers made under paragraph (b)(1) for conduct by persons or bodies occurring during the period beginning on the date the supervisory plan was submitted and ending upon the rejection of the supervisory plan and shall have the right to proceed under Rule 9524.

## **9524. Exchange Review Council Consideration**

### **(a) Hearing Panel Consideration**

#### **(1) Appointment of Hearing Panel**

When the disqualified member organization, sponsoring member organization, or applicant requests a hearing, the Exchange Review Council or the Review Subcommittee shall appoint a Hearing Panel composed of two or more members, who shall be current or former members of the Exchange Review Council or the Statutory Disqualification Committee or former Directors (provided, however, that current members of the Exchange Review Council shall not serve on a Hearing Panel with respect to an affiliate of the Exchange within the meaning of Rule 985). The Hearing Panel shall conduct a hearing and recommend a decision on the request for relief.

#### **(2) Notice of Hearing**

The disqualified member organization or sponsoring member organization, as the case may be, and the Department of Member Regulation shall be notified via mail, facsimile, or overnight courier of the location, time, and date of the hearing not less than fourteen business days before the hearing, unless the parties agree to shorten the time period.

#### **(3) Transmission of Documents**

- (A) Upon receipt of an application, the Central Registration Depository shall gather all of the information necessary to process the application, including (i) the Central Registration Depository records for the disqualified member organization, sponsoring member organization, and/or disqualified person, as the case may be, and the proposed supervisor; and (ii) all of the information submitted by the disqualified member organization or sponsoring member organization in support of the application. The Central Registration Depository will prepare an index of these documents, and simultaneously provide this index and copies of the documents to the disqualified member organization or sponsoring member organization, as the case may be, the Phlx Regulation Department, and the Department of Member Regulation. Such documents shall be served on the disqualified member organization or sponsoring member organization, as the case may be, by mail, facsimile, or overnight courier as soon as practicable. The Department of Member Regulation shall serve its recommendation and its

supporting documents on the Phlx Regulation Department and the disqualified member organization or sponsoring member organization, as the case may be, within ten business days of the hearing, unless the Parties agree otherwise. The disqualified member organization or sponsoring member organization, as the case may be, shall serve its documents on the Phlx Regulation Department and the Department of Member Regulation within ten business days of the hearing, unless the Parties agree otherwise. The Phlx Regulation Department shall forward all documents transmitted to it pursuant to this subparagraph (a)(3) to the Hearing Panel.

(B) Not less than ten business days before the hearing, the Department of Member Regulation, which shall act as a Party in the eligibility proceeding, and the disqualified member organization or sponsoring member organization, as the case may be, shall serve proposed exhibit and witness lists on each other and the Phlx Regulation Department. The exhibit and witness lists shall be served by facsimile or overnight courier.

(C) At any time prior to the issuance of its recommendation, the Hearing Panel may order the Parties to supplement the record with any additional information that the Hearing Panel deems necessary.

**(4) Rights of Disqualified Member Organization, Sponsoring Member Organization, Disqualified Person, and Department of Member Regulation**

The disqualified member organization, sponsoring member organization, and/or disqualified person, as the case may be, and, the Department of Member Regulation, shall be entitled to be heard in person, to be represented by an attorney, and to submit any relevant evidence.

**(5) Extensions of Time, Postponements, and Adjournments**

At any time prior to the issuance of the decision of the Hearing Panel, after obtaining consent of all the Parties, the Hearing Panel may extend or shorten any time limits prescribed by the Code for the filing of any papers and may postpone or adjourn any hearing.

**(6) Recordation of Hearing**

The hearing shall be recorded and a transcript prepared by a court reporter. The disqualified member organization, sponsoring member organization, and/or disqualified person, as the case may be, may purchase a copy of the transcript 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 the

participants in the hearing, the Hearing Panel may order corrections to the transcript as requested or sua sponte.

**(7) Record**

The record shall consist of:

- (A) the notice issued pursuant to Rule 9522(a), if applicable;
- (B) all documents relied upon in issuing the notice under Rule 9522(a), if applicable;
- (C) the application for relief filed pursuant to Rule 9522(b);
- (D) any other submissions by the disqualified member organization, sponsoring member organization, and/or disqualified person, as the case may be, and the Department of Member Regulation;
- (E) any evidence considered at the hearing; and
- (F) the transcript of the hearing and any corrections thereto.

**(8) Custodian of the Record**

The custodian of the record shall be the Phlx Regulation Department.

**(9) Evidence Not Admitted**

Evidence that is proffered but not admitted during the hearing shall not be part of the record, but shall be retained by the custodian of the record until the date when the Exchange's decision becomes final or, if applicable, upon the conclusion of any review by the Commission or the federal courts.

**(10) Recommendation**

On the basis of the record, the Hearing Panel shall present a recommended decision in writing on the request for relief to the Statutory Disqualification Committee. After considering the record and recommendation of the Hearing Panel, the Statutory Disqualification Committee shall present its recommended decision in writing to the Exchange Review Council. Notwithstanding the foregoing, with respect to an Exchange member or member organization that is an affiliate of the Exchange within the meaning of Rule 985, the Hearing Panel shall prepare a final decision meeting the requirements of Rule 9524(b)(2), which shall not be reviewed by the Statutory Disqualification Committee or the Exchange Review Council, and may not be called for review by the Exchange Board pursuant to Rule 9525.

**(b) Decision**

**(1) Decision of the Exchange Review Council**

After considering all matters presented in the request for relief, the Statutory Disqualification Committee's recommended decision, the public interest, and the protection of investors, the Exchange Review Council may grant or deny the request for relief, and, if relief is granted, impose conditions on the disqualified member organization, sponsoring member organization, and/or disqualified person, as the case may be. At any time prior to the issuance of its recommendation, the Exchange Review Council may order the Parties to supplement the record with any additional information that the Exchange Review Council deems necessary. Alternatively, the Exchange Review Council may remand the eligibility proceeding. The Exchange Review Council shall prepare a proposed written decision pursuant to subparagraph (b)(2).

**(2) Contents of Decision**

The decision shall include:

- (A) a description of the origin of the eligibility proceeding and the nature of the disqualification;
- (B) a description of the prospective business or employment requested to be engaged in; and
- (C) a statement in support of the disposition of the request for relief, which, if granted, includes any of the applicable elements under SEC Rule 19h-1(e) and a description of any conditions that are imposed on the disqualified member organization, sponsoring member organization, or disqualified person, as the case may be.

**(3) Issuance of Decision After Expiration of Call for Review Period**

The Exchange Review Council shall provide its proposed written decision to the Exchange Board. The Exchange Board may call the eligibility proceeding for review pursuant to Rule 9525. If the Exchange Board does not call the eligibility proceeding for review, the proposed written decision of the Exchange Review Council shall become final, and the Exchange Review Council shall serve its written decision on the disqualified member organization, sponsoring member organization, and/or disqualified person, as the case may be, and the Department of Member Regulation pursuant to Rules 9132 and 9134. In the case of a decision with respect to an Exchange member or member organization that is an affiliate of the Exchange within the meaning of Rule 985, the decision of the Hearing Panel shall become final without being provided to the Exchange Board, and the Hearing Panel shall serve its written decision.

The decision shall constitute final action of the Exchange, unless the Exchange Review Council remands the eligibility proceeding. A decision to deny re-entry or continued association shall be effective immediately. A decision to approve shall be effective after the Commission issues an acknowledgment letter or, in cases involving Commission ordered sanctions, an order.

## **9525. Discretionary Review by the Exchange Board**

### **(a) Call for Review by Director**

A Director may call an eligibility proceeding for review by the Exchange Board if the call for review is made within the period prescribed in paragraph (b).

### **(b) 15 Day Period; Waiver**

A Director shall make his or her call for review not later than the next meeting of the Exchange Board that is at least 15 days after the date on which the Exchange Board receives the proposed written decision of the Exchange Review Council. By a unanimous vote of the Exchange Board, the Exchange Board may shorten the period to less than 15 days. By an affirmative vote of the majority of the Exchange Board then in office, the Exchange Board may, during the 15 day period, vote to extend the period to more than 15 days.

### **(c) Review at Next Meeting**

If a Director calls an eligibility proceeding for review within the period prescribed in paragraph (b), the Exchange Board shall review the eligibility proceeding not later than the next meeting of the Exchange Board. The Exchange Board may order the filing of briefs in connection with its review proceedings pursuant to this Rule.

### **(d) Decision of the Exchange Board, Including Remand**

After review, the Exchange Board may affirm, modify, or reverse the proposed written decision of the Exchange Review Council. Alternatively, the Exchange Board may remand the eligibility proceeding with instructions. The Exchange Board shall prepare a written decision that includes all of the elements described in Rule 9524(b)(2).

### **(e) Issuance of Decision**

The Exchange Board shall issue and serve its written decision on the disqualified member organization, sponsoring member organization, and/or disqualified person, as the case may be, and the Department of Member Regulation pursuant to Rules 9132 and 9134. The decision shall constitute the final action of the Exchange, unless the Exchange Board remands the proceeding. A decision to deny re-entry or continued association shall be effective immediately. A decision to approve shall be effective after the Commission issues an acknowledgment letter or, in cases involving Commission-ordered sanctions, an order.

**9526. Expedited Review****(a) Direction by Executive Committee**

Notwithstanding Rules 9524 and 9525, the Exchange Board Executive Committee, upon request of the Statutory Disqualification Committee, may direct an expedited review of a recommended written decision of the Statutory Disqualification Committee if the Exchange Board Executive Committee determines that expedited review is necessary for the protection of investors.

**(b) Call for Review Period**

If a recommended decision is subject to expedited review, a Director may call the eligibility proceeding for review within seven days after receipt of the recommended written decision.

**(c) No Call for Review**

If no Director calls the proceeding for review within the time prescribed, the decision shall become final, and the Statutory Disqualification Committee shall serve the decision on the disqualified member organization, sponsoring member organization, and/or disqualified person, as the case may be, and the Department of Member Regulation pursuant to Rules 9132 and 9134. The decision shall constitute final action of the Exchange. The decision shall be effective upon approval by the Commission.

**(d) Call for Review**

If a Director calls the eligibility proceeding for review within the prescribed time, a review panel shall meet and conduct a review not later than 14 days after the call for review. The review panel shall be composed of the Exchange Board Executive Committee, except that the Director who calls the proceeding for review shall serve on the review panel in lieu of a member of the Executive Committee who has the same classification (Member, Industry, Non-Industry, or Public) as such Director. The review panel may affirm, modify, or reverse the recommended written decision of the Statutory Disqualification Committee or remand the eligibility proceeding with instructions. The review panel shall prepare, issue, and serve its decision pursuant to Rule 9525(d) and (e).

**9527. Application to Commission for Review**

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

**9530. Reserved****9531. Reserved****9532. Reserved**

**9533. Reserved**

**9534. Reserved**

**9535. Reserved**

**9536. Reserved**

**9537. Reserved**

**9550. Expedited Proceedings**

**9551. Reserved**

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

**(a) Notice of Suspension of Member, Member Organization, Person Associated with a Member Organization or Person Subject to the Exchange's Jurisdiction if Corrective Action is Not Taken**

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

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

Except as provided below, the Phlx Regulation Department staff (or FINRA, acting on behalf of the Exchange) shall serve the member, member organization or person with such notice (or upon counsel representing the member, member organization 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, member organization 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 member or person associated with a member organization also shall be served on such member organization. Papers served on a member organization by facsimile shall be sent to the member organization's facsimile number listed in the FINRA Contact System submitted to the Exchange pursuant to Rule 600(d), except that, if the Phlx Regulation Department staff has actual knowledge that a member organization's FINRA Contact System facsimile number is out of date, duplicate copies shall be sent to the member organization 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 organization by email shall be sent to the member organization's email address listed in the FINRA Contact System submitted to the Exchange pursuant to Rule 600(d) 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 member or person by facsimile or email shall be

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

**(c) Contents of Notice**

A notice issued under this Rule shall state the specific grounds and include the factual basis for the Exchange action. The notice shall state when the Exchange action will take effect and explain what the respondent must do to avoid such action. The notice shall state that the respondent may file a written request for a hearing with the Office of Hearing Officers pursuant to Rule 9559. The notice also shall inform the respondent of the applicable deadline for filing a request for a hearing and shall state that a request for a hearing must set forth with specificity any and all defenses to the Exchange action. In addition, the notice shall explain that, pursuant to Rules 8310(a) and 9559(n), a Hearing Officer or, if applicable, Hearing Panel, may approve, modify or withdraw any and all sanctions or limitations imposed by the notice, and may impose any other fitting sanction.

**(d) Effective Date of Suspension**

The suspension referenced in a notice issued and served under this Rule shall become effective 21 days after service of the notice, unless stayed by a request for a hearing pursuant to Rule 9559.

**(e) Request for Hearing**

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

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

A member, member organization, or person subject to a suspension pursuant to this Rule may file a written request for termination of the suspension on the ground of full compliance with the notice or decision. Such request shall be filed with the head of the Exchange or FINRA department or office that issued the notice or, if another Exchange



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

**(g) Settlement Procedure**

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

**(h) Defaults**

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

**9553. Failure to Pay the Exchange Dues, Fees, and Other Charges**

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

If a member, member organization, person associated with a member organization or person subject to the Exchange's jurisdiction fails to pay any fees, dues, assessment or other charge required to be paid under the Exchange By-Laws or Rules, or to submit a required report or information related to such payment, the Phlx Regulation Department staff may issue a written notice to such member, member organization or person stating that the failure to comply within 21 days of service of the notice will result in a suspension or cancellation of membership or a suspension or bar from associating with any member organization.

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

Except as provided below, the Phlx Regulation Department staff (or FINRA, acting on behalf of the Exchange) shall serve the member, member organization or person with such notice (or upon counsel representing the member, member organization 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, member organization 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 member or person associated with a member organization also shall be served on such member organization. Papers served on a member organization by facsimile shall be sent to the member organization's facsimile number listed in the FINRA Contact System submitted to the Exchange pursuant to Rule 600(d), except that, if the Phlx Regulation Department staff has actual knowledge that a member organization's FINRA Contact System

facsimile number is out of date, duplicate copies shall be sent to the member organization 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 organization by email shall be sent to the member organization's email address listed in the FINRA Contact System submitted to the Exchange pursuant to Rule 600(d) 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 member or person by facsimile or email shall be sent to the member's or 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, member organization 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, mailing the notice by U.S. Postal Service first class mail, first class certified mail, first class registered mail, or Express Mail, sending the notice through a courier service, or delivering it in person, except that, where duplicate service is required, service is complete when the duplicate service is complete.

**(c) Contents of Notice**

A notice issued under this Rule shall state the specific grounds and include the factual basis for the Exchange action. The notice shall state when the Exchange action will take effect and explain what the respondent must do to avoid such action. The notice shall state that the respondent may file a written request for a hearing with the Office of Hearing Officers pursuant to Rule 9559. The notice also shall inform the respondent of the applicable deadline for filing a request for a hearing and shall state that a request for a hearing must set forth with specificity any and all defenses to the Exchange action. In addition, the notice shall explain that, pursuant to Rules 8310(a) and 9559(n), a Hearing Officer or, if applicable, Hearing Panel, may approve, modify or withdraw any and all sanctions or limitations imposed by the notice, and may impose any other fitting sanction.

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

The suspension, cancellation or bar referenced in a notice issued and served under this Rule shall become effective 21 days after service of the notice, unless stayed by a request for a hearing pursuant to Rule 9559.

**(e) Request for Hearing**

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

**(f) Failure to Request Hearing**

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

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

A member, member organization 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 Exchange or FINRA department or office that issued the notice or, if another Exchange or 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 Exchange or FINRA department or office that is so designated. The appropriate head of the department or office may grant relief for good cause shown.

**9554. Failure to Comply with an Arbitration Award or Related Settlement or an Order of Restitution or Settlement Providing for Restitution****(a) Notice of Suspension or Cancellation**

If a member, member organization, person associated with a member organization or person subject to Exchange's jurisdiction fails to comply with an arbitration award or a settlement agreement related to an arbitration or mediation under the Exchange By-Laws or a FINRA order of restitution or FINRA settlement agreement providing for restitution, Phlx Regulation Department staff may provide written notice to such member, member organization or person stating that the failure to comply within 21 days of service of the notice will result in a suspension or cancellation of membership or a suspension from associating with any member organization.

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

Except as provided below, the Phlx Regulation Department staff (or FINRA, acting on behalf of the Exchange) shall serve the member, member organization or person with such notice (or upon counsel representing the member, member organization 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, member organization 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 member or person associated with a member organization also shall be served on such member organization. Papers served on a member organization by facsimile shall be sent to the member organization's facsimile number listed in the FINRA Contact System submitted to the Exchange pursuant to Rule 600(d), except that, if the Phlx Regulation Department staff has actual knowledge that a member organization's FINRA Contact System facsimile number is out of date, duplicate copies shall be sent to the member organization 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 organization by email shall be sent to the member organization's email address listed in the FINRA Contact System submitted to the Exchange pursuant to Rule 600(d) 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 member or person by facsimile or email shall be sent to the member's or 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, member organization 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, mailing the notice by U.S. Postal Service first class mail, first class certified mail, first class registered mail, or Express Mail, sending the notice through a courier service, or delivering it in person, except that, where duplicate service is required, service is complete when the duplicate service is complete.

**(c) Contents of Notice**

A notice issued under this Rule shall state the specific grounds and include the factual basis for the Exchange action. The notice shall state when the Exchange action will take effect and explain what the respondent must do to avoid such action. The notice shall state that the respondent may file a written request for a hearing with the Office of Hearing Officers pursuant to Rule 9559. The notice also shall inform the respondent of the applicable deadline for filing a request for a hearing and shall state that a request for a hearing must set forth with specificity any and all defenses to the Exchange action. In addition, the notice shall explain that, pursuant to Rules 8310(a) and 9559(n), a Hearing Officer or, if applicable, Hearing Panel, may approve, modify or withdraw any and all sanctions or limitations imposed by the notice, and may impose any other fitting sanction.

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

The suspension or cancellation referenced in a notice issued and served under this Rule shall become effective 21 days after service of the notice, unless stayed by a request for a hearing pursuant to Rule 9559.

**(e) Request for Hearing**

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

**(f) Failure to Request Hearing**

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

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

A member, member organization 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 Exchange or FINRA department or office that issued the notice or, if another Exchange or 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 Exchange or FINRA department or office that is so designated. The appropriate head of the department or office may grant relief for good cause shown.

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

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

- (1) If a member, member organization or person associated with a member organization does not meet the eligibility or qualification standards set forth in the Exchange By-Laws or Rules, the Phlx Regulation Department staff (or FINRA, acting on behalf of the Exchange) may provide written notice to such member, member organization or person stating that the failure to become eligible or qualified will result in a suspension or cancellation of membership or a suspension or bar from associating with any member organization.
- (2) If a member, member organization, person associated with a member organization, or other person does not meet the prerequisites for access to services offered by the Exchange or a member organization thereof or cannot be permitted to continue to have access to services offered by the Exchange or a member organization thereof with safety to investors, creditors, members, or the Exchange, the Phlx Regulation Department staff (or FINRA, acting on behalf of the Exchange) may provide written notice to such member, member organization or person limiting or prohibiting access to services offered by the Exchange or a member organization thereof.

**(b) Service of Notice**

Except as provided below, the Phlx Regulation Department staff (or FINRA, acting on behalf of the Exchange) shall serve the member, member organization or person with such notice (or upon counsel representing the member, member organization 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, member organization 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 member or person

associated with a member organization also shall be served on such member organization. Papers served on a member organization by facsimile shall be sent to the member organization's facsimile number listed in the FINRA Contact System submitted to the Exchange pursuant to Rule 600(d), except that, if the Phlx Regulation Department staff has actual knowledge that a member organization's FINRA Contact System facsimile number is out of date, duplicate copies shall be sent to the member organization 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 organization by email shall be sent to the member organization's email address listed in the FINRA Contact System submitted to the Exchange pursuant to Rule 600(d) 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 member or person by facsimile or email shall be sent to the member's or 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, member organization 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, mailing the notice by U.S. Postal Service first class mail, first class certified mail, first class registered mail, or Express Mail, sending the notice through a courier service, or delivering it in person, except that, where duplicate service is required, service is complete when the duplicate service is complete.

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

A notice issued under this Rule shall state the specific grounds and include the factual basis for the Exchange action. The notice shall state when the Exchange action will take effect and explain what the respondent must do to avoid such action. The notice shall state that the respondent may file a written request for a hearing with the Office of Hearing Officers pursuant to Rule 9559. The notice also shall inform the respondent of the applicable deadline for filing a request for a hearing and shall state that a request for a hearing must set forth with specificity any and all defenses to the Exchange action. In addition, the notice shall explain that, pursuant to Rules 8310(a) and 9559(n), a Hearing Officer or, if applicable, Hearing Panel, may approve, modify or withdraw any and all sanctions or limitations imposed by the notice, and may impose any other fitting sanction.

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

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

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

**(e) Request for Hearing**

A member, member organization or person served with a notice under this Rule may file with the Office of Hearing Officers a written request for a hearing pursuant to Rule 9559. A request for a hearing shall be made within 14 days after service of the notice. A request for a hearing must set forth with specificity any and all defenses to the Exchange action.

**(f) Failure to Request Hearing**

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

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

A member, member organization 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 Exchange or FINRA department or office that issued the notice or, if another Exchange or 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 Exchange or 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, member organization, person associated with a member organization or person subject to the Exchange's jurisdiction fails to comply with a temporary or permanent cease and desist order issued under the Rule 9200, 9300 or 9800 Series, the Phlx Regulation Department staff (or FINRA, acting on behalf of the Exchange) — after receiving written authorization from the Chief Regulatory Officer — may issue a notice to such member, member organization 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 organization.

**(b) Service of Notice**

The Phlx Regulation Department staff (or FINRA, acting on behalf of the Exchange) shall serve the member, member organization or person subject to a notice issued under this Rule (or upon counsel representing the member, member organization 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, member organization or person) by facsimile, email, overnight courier or personal delivery. Papers served on a member, member organization, person, or counsel for such member, member organization 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, member organization or person, (b)(1) and (2) of Rule 9134. Papers served on a member organization by facsimile shall be sent to the member organization's facsimile number listed in the FINRA Contact System submitted to the Exchange pursuant to Rule 600(d), except that, if the Phlx Regulation Department staff has actual knowledge that a member organization's FINRA Contact System facsimile number is out of date, duplicate copies shall be sent to the member organization 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 organization by email shall be sent to the member organization's email address listed in the FINRA Contact System submitted to the Exchange pursuant to Rule 600(d) 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 member or person by facsimile or email shall be sent to the member's or 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, member organization 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 member or person associated with a member organization also shall be served on such member organization. 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 Exchange action will take effect and explain what the respondent must do to avoid such action. The notice shall state that the respondent may file a written request for a hearing with the Office of Hearing Officers pursuant to Rule 9559. The notice also shall inform the respondent of the applicable deadline for filing a request for a hearing and shall state that a request for a



hearing must set forth with specificity any and all defenses to the Exchange action. In addition, the notice shall explain that, pursuant to Rules 8310(a) and 9559(n), a Hearing Officer or, if applicable, Hearing Panel, may approve, modify or withdraw any and all sanctions or limitations imposed by the notice, and may impose any other fitting sanction.

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

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

**(e) Request for a Hearing**

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

**(f) Failure to Request Hearing**

If a member, member organization 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 Exchange action.

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

A member, member organization 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 Exchange or FINRA department or office that issued the notice or, if another Exchange or 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 Exchange or FINRA 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, member organization, person associated with a member organization or person subject to the Exchange'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, the Phlx Regulation Department 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, member organization'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 the Phlx Regulation Department staff seeks to have imposed, and note that a hearing under Rule 9559 is requested. The Phlx Regulation Department 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 Exchange 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 Rule 703 Regarding a Member Organization Experiencing Financial or Operational Difficulties**

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

The Phlx Regulation Department staff (or FINRA, acting on behalf of the Exchange) may issue a notice directing a member organization to comply with the provisions of Rule 703 or restrict its business activities, either by limiting or ceasing to conduct those activities consistent with Rule 703, if the Phlx Regulation Department staff (or FINRA, acting on behalf of the Exchange) has reason to believe that a condition specified in Rule 703 exists. A notice served under this Rule shall constitute Exchange action.

**(b) Service of Notice**

The Phlx Regulation Department staff (or FINRA, acting on behalf of the Exchange) shall serve the member organization subject to a notice issued under this Rule (or upon counsel representing the member organization, or other person authorized to represent others under Rule 9141, when counsel or other person authorized to represent others under Rule 9141 agrees to accept service for the member organization) by facsimile, email, overnight courier or personal delivery. Papers served on a member organization, counsel for such member organization, or other person authorized to represent others under Rule 9141 by overnight courier or personal delivery shall conform to paragraphs (a)(1) and (3) and, with respect to a member organization, (b)(2) of Rule 9134. Papers served on a member organization by facsimile shall be sent to the member organization's facsimile number listed in the FINRA Contact System submitted to the Exchange

pursuant to Rule 600(d), except that, if the Phlx Regulation Department staff has actual knowledge that a member organization's FINRA Contact System facsimile number is out of date, duplicate copies shall be sent to the member organization 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 organization by email shall be sent to the member organization's email address listed in the FINRA Contact System submitted to the Exchange pursuant to Rule 600(d) 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 organization, 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 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**

A notice issued under this Rule shall

- (1) state the specific grounds and include the factual basis for the Exchange action;
- (2) specify the date of the notice and the requirements and/or restrictions being imposed by the notice;
- (3) state that the requirements and/or restrictions imposed by the notice are immediately effective;
- (4) specify the conditions for complying with and, where applicable, avoiding or terminating the requirements and/or restrictions imposed by the notice;
- (5) inform the member organization that, pursuant to paragraph (f) of this Rule, the failure to comply with the requirements and/or restrictions imposed by an effective notice under this Rule shall be deemed, without further notice from the Phlx Regulation Department staff, to result in automatic and immediate suspension unless the Phlx Regulation Department staff issues a letter of withdrawal of all requirements and/or restrictions imposed by the notice pursuant to paragraph (g)(2) of this Rule;
- (6) explain that the member organization may make a request for a letter of withdrawal of the notice pursuant to paragraph (e) of this Rule;
- (7) state that, in addition to making a request for a letter of withdrawal of the notice, the member organization may file a written request for a hearing with the Office of Hearing Officers pursuant to Rule 9559;

- (8) inform the member organization of the applicable deadline for filing a request for a hearing and state that a request for a hearing must set forth with specificity any and all defenses to the Exchange action; and
- (9) explain that, pursuant to Rule 9559(n), a Hearing Panel may approve or withdraw the requirements and/or restrictions imposed by the notice, and that if the Hearing Panel approves the requirements and/or restrictions imposed by the notice and finds that the member organization has not complied with all of them, the Hearing Panel shall impose an immediate suspension on the member organization.

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

The requirements and/or restrictions imposed by a notice issued and served under this Rule are immediately effective, except that a timely request for a hearing shall stay the effective date for ten business days after service of the notice or until the Office of Hearing Officers issues a written order under Rule 9559(o)(4)(A) (whichever period is less), unless the Exchange's Chief Executive Officer (or such other senior officer as the Chief Executive Officer may designate) determines that such a stay cannot be permitted with safety to investors, creditors or other member organizations. Such a determination by the Exchange's Chief Executive Officer (or such other senior officer as the Chief Executive Officer may designate) cannot be appealed. An extension of the stay period is not permitted. Where a timely request for a hearing stays the action for ten business days after service of the notice or until the Office of Hearing Officers issues a written order under Rule 9559(o)(4)(A) (whichever period is less), the notice shall not be deemed to have taken effect during that entire period.

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

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

A member organization served with a notice under this Rule may request from the Phlx Regulation Department staff (or FINRA, acting on behalf of the Exchange) a letter of withdrawal of the notice pursuant to paragraph (g)(2) of this Rule and/or file with the Office of Hearing Officers a written request for a hearing pursuant to Rule 9559.

- (1) A request for a letter of withdrawal of the notice may be made at any time after service of a notice under this Rule. The member organization making the request must demonstrate to the satisfaction of the Phlx Regulation Department staff that the requirements and/or restrictions imposed by the notice should be removed or reduced. If such a request is denied by the Phlx Regulation Department staff, the member organization shall not be precluded from making a subsequent request or requests.

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

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

(B) the Phlx Regulation Department staff's determination not to issue a letter of withdrawal of all requirements and/or restrictions imposed by the notice, if such was requested by the member organization.

**(f) Enforcement of Notice**

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

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

(1) Additional Requirements and/or Restrictions

If a member organization continues to experience financial or operational difficulty specified in Rule 703, notwithstanding an effective notice, the Phlx Regulation Department staff (or FINRA, acting on behalf of the Exchange) may impose additional requirements and/or restrictions by serving an additional notice under paragraph (b) of this Rule. The additional notice shall inform the member organization that it may apply for relief from the additional requirements and/or restrictions by filing a written request for a letter of withdrawal of the notice and/or a written request for a hearing before the Office of Hearing Officers under Rule 9559. The procedures delineated in this Rule shall be applicable to such additional notice.

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

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

If, upon the member organization's demonstration to the satisfaction of the Phlx Regulation Department staff (or FINRA, acting on behalf of the Exchange), the Phlx Regulation Department staff (or FINRA, acting on behalf of the Exchange)

determines that any requirements and/or restrictions imposed by a notice under this Rule should be removed or reduced, the Phlx Regulation Department staff (or FINRA, acting on behalf of the Exchange) shall serve the member organization, pursuant to paragraph (b) of this Rule, a written letter of withdrawal that shall, in the sole discretion of the Phlx Regulation Department staff (or FINRA, acting on behalf of the Exchange), withdraw the notice in whole or in part. A notice that is withdrawn in part shall remain in force, unless the Phlx Regulation Department (or FINRA, acting on behalf of the Exchange) staff shall remove the remaining requirements and/or restrictions.

**(B) Lifting of Suspension**

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

**(h) For purposes of this Rule, "Phlx Regulation Department staff" shall mean:**

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

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

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

The Chief Regulatory Officer of the Exchange may provide written authorization to FINRA staff to issue on a case-by-case basis a written notice that summarily:

- (1) suspends a member, member organization, person associated with a member organization or person subject to the Exchange's jurisdiction who has been and is expelled or suspended from any self-regulatory organization or barred or suspended from being associated with a member of any self-regulatory organization;

- (2) suspends a member organization, and its associated permit(s), who is in such financial or operating difficulty that FINRA staff determines and so notifies the Commission that the member organization cannot be permitted to continue to do business as a member organization with safety to investors, creditors, other member organizations, or the Exchange; or
- (3) limits or prohibits any person with respect to access to services offered by the Exchange if paragraphs (1) or (2) of this Rule or the provisions of Section 6(d)(3) of the Act applies to such person or, in the case of a person who is not a member organization, if the Chief Regulatory Officer of the Exchange determines that such person does not meet the qualification requirements or other prerequisites for such access and such person cannot be permitted to continue to have such access with safety to investors, creditors, member organizations, or the Exchange, and so notifies the Commission.

**(b) Service of Notice**

The Phlx Regulation Department staff (or FINRA, acting on behalf of the Exchange) shall serve the member, member organization or person subject to a notice issued under this Rule (or upon counsel representing the member, member organization 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, member organization or person) by facsimile, email, overnight courier, or personal delivery. Papers served on a member, member organization, person or counsel for such member, member organization 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, member organization or person, (b)(1) and (2) of Rule 9134. Papers served on a member organization by facsimile shall be sent to the member organization's facsimile number listed in FINRA Contact System submitted to the Exchange pursuant to Rule 600(d), except that, if the Phlx Regulation Department staff has actual knowledge that a member organization's FINRA Contact System facsimile number is out of date, duplicate copies shall be sent to the member organization 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 organization by email shall be sent to the member organization's email address listed in the FINRA Contact System submitted to the Exchange pursuant to Rule 600(d) 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 member or person by facsimile or email shall be sent to the member's or 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 member or person associated with a member organization also shall be served on such member organization. Papers served on counsel for a member, member organization 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 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**

A notice issued under this Rule shall state the specific grounds and include the factual basis for the Exchange action. The notice shall state when the Exchange action will take effect and explain what the respondent must do to avoid such action. The notice shall state that the respondent may file a written request for a hearing with the Office of Hearing Officers pursuant to Rule 9559. The notice also shall inform the respondent of the applicable deadline for filing a request for a hearing and shall state that a request for a hearing must set forth with specificity any and all defenses to the Exchange action. In addition, the notice shall explain that, pursuant to Rules 8310(a) and 9559(n), a Hearing Officer or, if applicable, Hearing Panel, may approve, modify or withdraw any and all sanctions or limitations imposed by the notice, and may impose any other fitting sanction.

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

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

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

A member, member organization or person subject to a notice issued under this Rule may file with the Office of Hearing Officers a written request for a hearing pursuant to Rule 9559. A request for a hearing shall be made within seven days after service of the notice issued under this Rule. A request for a hearing must set forth with specificity any and all defenses to the Exchange action.

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

**(f) Failure to Request Hearing**

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



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

A member, member organization 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 Exchange or FINRA department or office that issued the notice or, if another Exchange or 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 Exchange or FINRA department or office that is so designated. The appropriate head of the department or office may grant relief for good cause shown.

**9559. Hearing Procedures for Expedited Proceedings Under the Rule 9550 Series****(a) Applicability**

The hearing procedures under this Rule shall apply to a member, member organization or person associated with a member organization, person subject to the Exchange'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, member organizations or persons shall be referred to as respondents.

**(b) Computation of Time**

Rule 9138 shall govern the computation of time in proceedings brought under the Rule 9550 Series, except that intermediate Saturdays, Sundays and Federal holidays shall be included in the computation in proceedings brought under Rules 9556 through 9558, unless otherwise specified.

**(c) Stays**

- (1) Unless the Chief Hearing Officer or the Hearing Officer assigned to the matter orders otherwise for good cause shown, a timely request for a hearing shall stay the effectiveness of a notice issued under Rules 9552 through 9556, except that: (A) the effectiveness of a notice of a limitation or prohibition on access to services offered by the Exchange or a member organization thereof under Rule 9555 with respect to services to which the member organization 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) A timely request for a hearing shall stay the effectiveness of a notice issued under Rule 9557 for ten business days after service of the notice or until the Office of Hearing Officers issues a written order under Rule 9559(o)(4)(A) (whichever period is less), unless the Exchange's Chief Executive Officer (or such other senior officer as the Chief Executive Officer may designate) determines that a notice under Rule 9557 shall not be stayed. Where a notice under Rule 9557 is stayed by a request for a hearing, such stay shall remain in effect only for ten business days after service of

the notice or until the Office of Hearing Officers issues a written order under Rule 9559(o)(4)(A) (whichever period is less) and shall not be extended.

- (3) A timely request for a hearing shall not stay the effectiveness of a notice issued under Rule 9558, unless the Chief Hearing Officer or the Hearing Officer assigned to the matter orders otherwise for good cause shown.

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

- (1) For proceedings initiated under Rules 9553, 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 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 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 Exchange's Financial Responsibility Committee.
- (3) Rules 9231(e), 9233, and 9234 shall govern disqualification, recusal or withdrawal of a Hearing Officer or, if applicable, Hearing Panelist.
- (4) A Hearing Officer appointed pursuant to this provision shall have authority to do all things necessary and appropriate to discharge his or her duties as set forth under Rules 9235 and 9280.
- (5) Hearings under the Rule 9550 Series shall be held by telephone conference, unless the Hearing Officer orders otherwise for good cause shown.
- (6) For good cause shown, or with the consent of all of the parties to a proceeding, the Hearing Officer or, if applicable, the Hearing Panel may extend or shorten any time limits prescribed by this Rule other than those relating to Rule 9557.

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

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

that does not permit a stay of the effectiveness of the notice or where the Exchange's Chief Executive Officer (or such other senior officer as the Chief Executive Officer may designate), in the case of Rule 9557, or Hearing Officer, in the case of Rule 9558(d), determines that a request for a hearing shall not stay the effectiveness of the notice, the limitation, prohibition, condition, requirement, restriction, or suspension specified in the notice shall not be stayed pending resolution of the case. Where one of the consolidated matters includes an action brought under Rule 9557 that is stayed for up to ten business days, the requirement and/or restriction specified in the notice shall not be further stayed.

**(f) Time of Hearing**

- (1) A hearing shall be held within five business days after a respondent subject to a notice issued under Rule 9557 files a written request for a hearing with the Office of Hearing Officers.
- (2) A hearing shall be held within ten days after a respondent is served a petition seeking an expedited proceeding issued under Rule 9556(h).
- (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.
- (4) A hearing shall be held within 30 days after a respondent subject to a notice issued under Rules 9552 through 9555 files a written request for a hearing with the Office of Hearing Officers.
- (5) The timelines established by paragraphs (f)(1) through (f)(4) confer no substantive rights on the parties.

**(g) Notice of Hearing**

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

- (1) At least two business days prior to the hearing in the case of an action brought pursuant to Rule 9557;
- (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
- (4) At least 21 days prior to the hearing in the case of an action brought pursuant to Rules 9552 through 9555.

**(h) Transmission of Documents**

- (1) Not less than two business days before the hearing in an action brought under Rule 9557, not less than 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 through 9555, the Phlx Regulation Department 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, 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 the criteria in this paragraph shall not constitute part of the record, but shall be retained until the date upon which the Exchange's final decision is served or, if applicable, upon the conclusion of any review by the 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 through 9555, the parties shall exchange proposed exhibit and witness lists. The exhibit and witness lists shall be served by facsimile, email, by overnight courier or personal delivery. Documents served by facsimile or email shall also be served by either overnight courier or personal delivery.

**(i) Evidence**

Formal rules of evidence shall not apply to a hearing under this Rule Series. Rules 9262 and 9263 shall govern testimony and the admissibility of evidence.

**(j) Additional Information**

The Hearing Officer or, if applicable, the Hearing Panel may direct the Parties to submit additional information.

**(k) Record of Hearing**

Rule 9265 shall govern the requirements for the record of the hearing.

**(l) Record of Proceeding**

Rule 9267 shall govern the record of the proceeding.

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

Failure of any respondent to appear before the Hearing Officer or, if applicable, the Hearing Panel at any status conference, pre-hearing conference or hearing, or to comply with any order of the Hearing Officer or, if applicable, Hearing Panel requiring production of information to support any defense to the notice 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) The notice issued under the Rule 9550 Series shall be deemed to be final the Exchange action. The Hearing Officer or, if applicable, the Hearing Panel may permit the hearing to go forward as to those parties who appear and otherwise comply with this Rule.
- (2) The Hearing Officer may issue a default decision against a respondent who is the subject of a petition filed pursuant to Rule 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 Exchange 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.
- (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 the Phlx Regulation Department staff issues a letter of withdrawal of all requirements and/or restrictions pursuant to Rule 9557(g)(2).
- (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.
- (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) Proceedings initiated under Rules 9553 and 9554

Within 60 days of the date of the close of the hearing, the Hearing Officer shall prepare a proposed written decision and provide it to the Exchange Review Council's Review Subcommittee.

(2) Proceedings initiated under Rules 9556 and 9558

Within 21 days of the date of the close of the hearing, the Hearing Officer shall prepare a proposed written decision that reflects the views of the Hearing Panel, as determined by majority vote, and provide it to the Exchange Review Council's Review Subcommittee.

(3) Proceedings initiated under Rules 9552 and 9555

Within 60 days of the date of the close of the hearing, the Hearing Officer shall prepare a proposed written decision that reflects the views of the Hearing Panel, as determined by majority vote, and provide it to the Exchange Review Council's Review Subcommittee.

(4) Proceedings initiated under Rule 9557

(A) Written Order

Within two business days of the date of the close of the hearing, the Office of Hearing Officers shall issue a written order that reflects the Hearing Panel's summary determinations, as decided by majority vote, and shall serve the Hearing Panel's written order on the Parties. The Hearing Panel's written order under Rule 9557 is effective when issued. The Hearing Panel's written order will be followed by a written decision explaining the reasons for the Hearing Panel's summary determinations, as required by paragraphs (o)(4)(B) and (p) of this Rule.

(B) Written Decision

Within seven days of the issuance of the Hearing Panel's written order, the Office of Hearing Officers shall issue a written decision that complies with the requirements of paragraph (p) of this Rule and shall serve the Hearing Panel's written decision on the Parties.

(5) If not timely called for review by the Exchange 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 Exchange action. For decisions issued under Rules 9552 through 9556 and 9558, the Office of Hearing Officers shall promptly serve the decision of the Hearing Officer or, if applicable, the Hearing Panel on the Parties and provide a copy to each Exchange member organization with which the respondent is associated.

- (6) The timelines established by paragraphs (o)(1) through (5) confer no substantive rights on the parties.

**(p) Contents of Decision**

The decision, which for purposes of Rule 9557 means the written decision issued under paragraph (o)(4)(B) of this Rule, shall include:

- (1) a statement describing the investigative or other origin of the notice issued under the Rule 9550 Series;
- (2) the specific statutory or rule provision alleged to have been violated or providing the authority for the Exchange action;
- (3) a statement setting forth the findings of fact with respect to any act or practice the respondent was alleged to have committed or omitted or any condition specified in the notice;
- (4) the conclusions of the Hearing Officer or, if applicable, Hearing Panel regarding the alleged violation or condition specified in the notice;
- (5) a statement of the Hearing Officer or, if applicable, Hearing Panel in support of the disposition of the principal issues raised in the proceeding; and
- (6) a statement describing any sanction, requirement, restriction or limitation imposed, the reasons therefore, and the date upon which such sanction, requirement, restriction or limitation shall become effective.

**(q) Call for Review by the Exchange Review Council**

- (1) For proceedings initiated under the Rule 9550 Series (other than Rule 9557), the Exchange Review Council's Review Subcommittee may call for review a proposed decision prepared by a Hearing Officer or, if applicable, Hearing Panel within 21 days after receipt of the decision from the Office of Hearing Officers; provided, however, that a decision under the Rule 9550 Series with respect to an Exchange member or member organization that is an affiliate of the Exchange within the meaning of Rule 985 shall constitute final disciplinary action of the Exchange for purposes of SEC Rule 19d-1(c)(1) and may not be called for review pursuant to Rule 9559. For proceedings initiated under Rule 9557, the Exchange Review Council's Review Subcommittee may call for review a written decision issued under

paragraph (o)(4)(B) of this Rule by a Hearing Panel within 14 days after receipt of the written decision from the Office of Hearing Officers. Rule 9313(a) is incorporated herein by reference.

- (2) If the Review Subcommittee calls the proceeding for review within the prescribed time, a Subcommittee of the Exchange Review Council shall meet and conduct a review not later than 40 days after the call for review. The Subcommittee shall be composed pursuant to Rule 9331(a)(1). The Subcommittee may elect to hold a hearing or decide the matter on the basis of the record made before the Hearing Officer or, if applicable, the Hearing Panel. Not later than 60 days after the call for review, the Subcommittee shall make its recommendation to the Exchange Review Council. Not later than 60 days after receipt of the Subcommittee's recommendation, the Exchange Review Council shall serve a final written decision on the parties via overnight courier or facsimile. The Exchange Review Council may affirm, modify or reverse the decision of the Hearing Officer or, if applicable, the Hearing Panel. The Exchange Review Council also may impose any other fitting sanction, pursuant to Rule 8310(a), and may impose costs, pursuant to 8330. In addition, the Exchange Review Council may remand the matter to the Office of Hearing Officers for further consideration of specified matters.
- (3) For good cause shown, or with the consent of all of the parties to a proceeding, the Review Subcommittee, the Exchange Review Council Subcommittee or the Exchange Review Council may extend or shorten any time limits prescribed by this Rule other than those relating to Rule 9557.
- (4) The Exchange Review Council's written decision shall constitute final the Exchange action
- (5) The Exchange Review Council shall promptly serve the decision on the Parties and provide a copy of the decision to each the Exchange member organization with which the respondent is associated.
- (6) The timelines established by paragraphs (q)(1)-(5) confer no substantive rights on the parties.

**(r) Reserved**

**(s) Application to Commission for Review**

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

**9600. Procedures for Exemptions**



**9610. Application****(a) Where to File**

A member organization seeking exemptive relief as specifically permitted under any Exchange Rule referencing the 9600 Series shall file a written application with the appropriate FINRA department or staff and provide a copy of the application to the Phlx Regulation Department.

**(b) Content**

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

**(c) Applicant**

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

**9620. Decision**

After considering an application, the Phlx Regulation Department staff shall issue a written decision setting forth its findings and conclusions. The decision shall be served on the Applicant pursuant to Rules 9132 and 9134. After the decision is served on the Applicant, the application and decision shall be publicly available unless the Phlx Regulation Department staff determines that the Applicant has shown good cause for treating the application or decision as confidential in whole or in part.

**Rule 9630. Appeal****(a) Notice**

An Applicant may file a written notice of appeal within 15 calendar days after service of a decision issued under Rule 9620. The notice of appeal shall be filed with the Phlx Regulation Department, with a copy of the notice also provided to the appropriate the Phlx Regulation Department staff. The notice of appeal shall contain a brief statement of the findings and conclusions as to which exception is taken. Appeals of decisions issued by the Phlx Regulation Department staff pursuant to Rule 9620 shall be decided by the Exchange Review Council, except with respect to exemptive relief under General 4, Section 1.1210.03, which shall be decided by the Waiver Subcommittee of the Exchange Review Council. If the Applicant does not want the decision on the appeal to be publicly available in whole or in part, the Applicant also shall include in its notice of appeal a

detailed statement, including supporting facts, showing good cause for treating the decision as confidential in whole or in part. The notice of appeal shall be signed by the Applicant.

**(b) Expedited Review**

Where the failure to promptly review a decision to deny a request for exemption would unduly or unfairly harm the Applicant, the Exchange Review Council or the Waiver Subcommittee of the Exchange Review Council, as the case may be, shall provide expedited review.

**(c) Withdrawal of Appeal**

An Applicant may withdraw its notice of appeal at any time by filing a written notice of withdrawal of appeal with the Exchange Review Council.

**(d) Oral Argument**

- (1) Subject to paragraph (2) below, following the filing of a notice of appeal, the Exchange Review Council or Review Subcommittee may order oral argument and may designate a Subcommittee to hear such oral argument. The Subcommittee may consider any new evidence if the Applicant can show good cause for not including it in its application, and the Subcommittee will recommend to the Exchange Review Council a disposition of all matters on appeal.
- (2) With respect to exemptive relief requested under General 4, Section 1.1210.03, the Waiver Subcommittee of the Exchange Review Council may order oral argument and consider any new evidence if the Applicant can show good cause for not including it in its application.

**(e) Decision**

- (1) Subject to paragraph (2) below, after considering all matters on appeal, and, as applicable, the Subcommittee's recommendation, the Exchange Review Council shall affirm, modify, or reverse the decision issued under Rule 9620. The Exchange Review Council shall issue a written decision setting forth its findings and conclusions and serve the decision on the Applicant. The decision shall be served pursuant to Rules 9132 and 9134. The decision shall be effective upon service and shall constitute final action of the Exchange.
- (2) With respect to exemptive relief requested under General 4, Section 1.1210.03, after considering all matters on appeal, the Waiver Subcommittee of the Exchange Review Council shall affirm, modify, or reverse the decision issued under Rule 9620. The Waiver Subcommittee shall issue a written decision setting forth its findings and conclusions and serve the decision on the Applicant. The decision shall be served pursuant to Rules 9132 and 9134. The decision shall be effective upon

service and shall constitute final action of the Exchange. The Waiver Subcommittee shall retain the discretion to refer the appeal to the Exchange Review Council, in which case the Exchange Review Council shall act on such appeal pursuant to its authority under this 9600 Series.

**9700. Reserved**

**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 Exchange Chief Regulatory Officer, the Phlx Regulation Department, 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; Rule 707 (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); Rule 782; or Rule 741 (if the alleged violation is misuse or conversion of customer assets). The Phlx Regulation Department, the Department of Enforcement or the Department of Market Regulation shall initiate the proceeding by serving a notice on a member, member organization 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 Phlx Regulation Department, 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 Phlx Regulation Department, 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 Phlx Regulation Department, 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 Phlx Regulation Department, 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 Phlx Regulation Department, 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 Phlx Regulation Department, 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 Phlx Regulation Department, 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 organization of the Exchange or retired therefrom. The Chief Hearing Officer shall select as a Panelist a person who:

- (1) previously served on the Exchange Review Council;
- (2) previously served on a disciplinary subcommittee of the Exchange 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 the Exchange commenced operating as a national securities exchange; or

(5) is a FINRA Panelist approved by the Exchange 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 Phlx Regulation Department, 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 the Exchange shall testify under oath or affirmation. The oath or affirmation shall be administered by a court reporter or a notary public.

**(e) Additional Information**

Prior to the hearing, the Hearing Officer may order a Party to furnish to all other Parties and the Hearing Panel such information as deemed appropriate, including any or all of the pre-hearing submissions described in Rule 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 the Exchange's decision becomes final or, if applicable, upon the conclusion of any review by the SEC or the federal courts.

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

If a Respondent fails to appear at a hearing for which it has notice, the allegations in the notice and accompanying declaration may be deemed admitted, and the Hearing Panel may issue a temporary cease and desist order without further proceedings. If the Phlx Regulation Department, 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 Phlx Regulation Department, 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 organization) 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 organization) 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 organization) 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 Phlx Regulation Department, 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 Exchange member organization with which a Respondent is associated.

**(e) Delivery Requirement**

Where a Respondent is a member organization, 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 the Exchange 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 the Exchange. 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.]

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### **General 5 Discipline**

#### **Section 1. Disciplinary Jurisdiction**

(a) Any member, member organization, or any partner, officer, director or person employed by or associated with any member organization (the Respondent) who is alleged to have violated or aided and abetted a violation of the Securities Exchange Act of 1934 (Exchange Act), the rules and regulations thereunder, the By-Laws and Rules of the Exchange or any interpretation thereof, and the Rules, Regulations, resolutions and stated policies of the Board of Directors or any Committee of the Exchange, shall be subject to the disciplinary jurisdiction of the Exchange, and after notice and opportunity for a hearing may be appropriately disciplined by expulsion, suspension, fine, censure, limitation or termination as to activities, functions, operations, or association with a member organization, or any other fitting sanction in accordance with the provisions of these disciplinary Rules.

(b) An individual member, or a partner, officer, director or person employed by or associated with a member organization may be charged with any violation within the disciplinary jurisdiction of the Exchange committed by employees under his supervision or by the member organization with which he is associated, as though such violations were his own. A member organization may be charged with any violation within the disciplinary jurisdiction of the Exchange committed by its officers, directors, or

employees or by a member or other person who is associated with such member organization, as though such violation were its own.

(c) Any member, or any partner, officer, director, or person employed by or associated with a member organization, and any member organization shall continue to be subject to the disciplinary jurisdiction of the Exchange following the termination of such person's permit or the termination of the employment by or the association with a member organization of such member or partner, officer, director or person, or following the deregistration of a member organization from the Exchange; provided, that the Exchange serves written notice to such former member, partner, officer, director, employee, associated person or member organization within one year of receipt by the Exchange of notice of such termination or deregistration that the Exchange is making inquiry into a matter or matters which occurred prior to the termination of such person's status as a member, or as a partner, officer, director or person employed by or associated with a member organization, or prior to the deregistration of such member organization.

## **Section 2. Investigations and Sanctions**

Series 8000 of The Nasdaq Stock Market LLC Rules, as such rules may be in effect from time to time (the "Nasdaq Rule 8000 Series"), are hereby incorporated by reference into this General 5, Section 2 of the Nasdaq PHLX LLC ("Phlx") Rules, and are thus Phlx Rules and thereby applicable to Phlx members, member organizations, persons associated with member organizations, and other persons subject to the Exchange's jurisdiction. Phlx members, member organizations, persons associated with member organizations, and other persons subject to the Exchange's jurisdiction shall comply with the Nasdaq Rule 8000 Series as though such rules were fully set forth herein.

All terms (whether or not defined), including any variations thereof, contained in the Nasdaq Rule 8000 Series shall be read to refer to the Phlx-related meaning of such term. The terms "Exchange" or "Nasdaq" in the Nasdaq Rule 8000 Series shall be read to refer to the Phlx Exchange; the terms "Rules" or "Rules of Nasdaq" in the Nasdaq Rule 8000 Series shall be read to refer to the Phlx Rules; the terms "Board" or "Nasdaq Board" in the Nasdaq Rule 8000 Series shall be read to refer to the Phlx Board of Directors; the term "member" in the Nasdaq 8000 Series shall be read to refer to a Phlx member organization; the phrase "person associated with a member" shall be read to refer to a Phlx member or a person associated with a Phlx member organization; the terms "Nasdaq Regulation" or "Nasdaq Regulation Department" shall be read to refer to the Phlx Regulation Department; and the term "Chief Regulatory Officer" shall be read to refer to the Chief Regulatory Officer of Phlx.

Additionally, references in the Nasdaq Rule 8000 Series to "Rule 0120" shall be read to refer to Phlx General 1, Section 1. References in the Nasdaq Rule 8000 Series to "Rule 1015" shall be read to refer to Phlx Rule General 3, Section 16(a).

When applied to a Phlx member, Rule 8310(a)(3) shall also permit the suspension of the permit of a Phlx member and Rule 8310(a)(4) shall also permit the revocation or cancellation of the permit of a Phlx member, or expulsion of a Phlx member; and IM-

8310-3(c)(1) shall also permit the Phlx Regulation Department to 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 Phlx member, or suspension or revocation of a Phlx member's permit or any decision issued pursuant to the Rule 9550 Series imposing a suspension or cancellation of the Phlx member, or a suspension or bar of the association of a Phlx member with a Phlx member organization.

IM-8310-3(g) and (h) also shall be read to apply to a Phlx member with respect to a decision of the Exchange that imposes upon him or her a monetary sanction of \$10,000 or more or a penalty of expulsion, revocation, suspension, or bar; and IM-8310-3(i) also shall be read to apply to a Phlx member with respect to any order issued by the Commission of suspension, expulsion, bar, or the imposition of monetary sanctions of \$10,000 or more.

Finally, Rules 8320(a)(2), (b), and (c) in the Nasdaq Rule 8000 Series also shall be read to apply to Phlx members. Subsection (a)(1) shall have no application to the Phlx Exchange or its members, member organizations, persons associated with member organizations, and other persons subject to the Exchange's jurisdiction as that provision in the Nasdaq 8000 Series applies to the Nasdaq Options Market members only.

Notwithstanding the above, Rule IM-8310-1 in the Nasdaq Rule 8000 Series shall not apply to the Phlx Exchange or its members, member organizations, persons associated with member organizations, or other persons subject to its jurisdiction. Instead, the applicable Phlx rule shall be the following:

#### IM-8310-1. Effect of a Suspension, Revocation, Cancellation, or Bar

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

### **Section 3. Code of Procedure**

Series 9000 of The Nasdaq Stock Market LLC Rules, as such rules may be in effect from time to time (the "Nasdaq Rule 9000 Series"), are hereby incorporated by reference into this General 5, Section 3 of the Phlx Rules, and are thus Phlx Rules and thereby applicable to Phlx members, member organizations, persons associated with member organizations, and other persons subject to the Exchange's jurisdiction. Phlx members, member organizations, persons associated with member organizations, and other persons subject to the Exchange's jurisdiction shall comply with the Nasdaq Rule 9000 Series as

though such rules were fully set forth herein. All terms (whether or not defined), including any variations thereof, contained in the Nasdaq Rule 9000 Series shall be read to refer to the Phlx-related meaning of such term. Solely by way of example, and not in limitation or in exhaustion: the terms “Exchange” or “Nasdaq” in the Nasdaq Rule 9000 Series shall be read to refer to the Phlx Exchange; the terms “Rules” or “Rules of Nasdaq” in the Nasdaq Rule 9000 Series shall be read to refer to the Phlx Rules; the terms “Board” or “Nasdaq Board” in the Nasdaq Rule 9000 Series shall be read to refer to the Phlx Board of Directors; the terms “member” or “member firm” in the Nasdaq Rule 9000 Series shall be read to refer to a Phlx member organization, except that with respect to Rules 9268(e)(2), 9269(d)(2), 9312(a)(3), 9351(a), 9524(a)(10), 9524(b)(3), and 9559(q)(1), the term “member” shall be read also to apply to a Phlx member; the terms “Associated Person” or “person associated with a member” shall be read to refer to a Phlx member or person associated with a Phlx member organization; the terms “Nasdaq Regulation” or “Nasdaq Regulation Department” shall be read to refer to the Phlx Regulation Department; and the term “Chief Regulatory Officer” shall be read to refer to the Chief Regulatory Officer of Phlx.

Additionally, references in the Nasdaq Rule 9000 Series to the following rules shall be read to refer to the following Phlx Rules:

Nasdaq Rule	Corresponding Exchange Rule
0120	General 1, Section 1
1013	General 3, Section 5 or General 3, Section 2
1015	General 3, Section 16 (a)
1160	General 3, Section 7 (d)
2010A	Options 9, Section 1
2160	General 2, Section 4
2170	General 9, Section 53
4110A	Options 6D, Section 1
4120A	Options 6D, Section 1
Options 9, Section 4	General 9, Section 53

When applied to a Phlx member organization, Rule 9558(a)(2) and any other applicable rules in the Nasdaq Rule 9000 Series shall also allow the summary suspension of the associated permit(s) of a Phlx member organization.

Rules 9552(f), 9553(g), 9554(g), 9555(g), 9556(g), and 9558(g) in the Nasdaq Rule 9000 Series shall be read to allow the filing of a request for termination of a suspension (or a request for termination of the limitation, prohibition or suspension with respect to Rules 9555(g) and 9558(g)), to be made with either the head of the Exchange or FINRA department or office that issued the notice or that is handling the matter on behalf of the issuing department or office.

Notwithstanding the above:

1. Rule 9110(d) (“Jurisdiction”) in the Nasdaq Rule 9000 Series shall not apply to the Phlx Exchange or its members, member organizations, persons associated with member organizations, or other persons subject to its jurisdiction. Instead, the Phlx Rule that governs jurisdiction is found in General 5, Section 1.
2. The Waiver of Ex Parte Prohibition set forth in Nasdaq Rule 9143(e)(3) and Separation of Functions set forth in Nasdaq Rule 9144(c)(3) shall also apply to violation letters executed pursuant to Phlx Rule 9216(b)(2).
3. The following paragraph shall be added after the existing paragraph of Nasdaq Rule 9211(a)(1):

When the number of violations under Exchange Rules is determined based upon an exception-based surveillance program, the Phlx Regulation Department or the Department of Enforcement may aggregate, or “batch,” individual violations of Exchange order handling Rules and consider such “batched” violations as a single offense only in accordance with the guidelines set forth in the Exchange’s Numerical Criteria for Bringing Cases for Violations of Exchange Order Handling Rules. In addition, the Phlx Regulation Department or the Department of Enforcement may batch individual violations of Rule Options 2, Section 5(c) pertaining to quote spread parameters (and corresponding Options Floor Procedure Advice Options 11, Section 7). In the alternative, the Phlx Regulation Department or the Department of Enforcement may request authorization from the FINRA Office of Disciplinary Affairs to issue a complaint when (i) the Phlx Regulation Department or the Department of Enforcement determines that there exists a pattern or practice of violative conduct without exceptional circumstances, or (ii) any single instance of violative conduct without exceptional circumstances is deemed to be egregious.

4. Rule 9216 (“Acceptance, Waiver, and Consent; Plan Pursuant to SEC Rule 19d-1(c)(2)”) in the Nasdaq Rule 9000 Series shall not apply to the Phlx Exchange or its members, member organizations, persons associated with member organizations, or other persons subject to its jurisdiction. Instead, the applicable Phlx Rule shall be the following:

Rule 9216. Acceptance, Waiver, and Consent; Violation of Floor Procedure Advices; Violation of Order and Decorum Regulations

(a) Acceptance, Waiver, and Consent Procedures

(1) Notwithstanding Rule 9211, if the Phlx Regulation Department or the Department of Enforcement has reason to believe a violation has occurred and the member, member organization or associated person does not dispute the violation, the Phlx Regulation Department or the Department of Enforcement may prepare and request that the member, member organization or associated person execute a letter accepting a finding of violation, consenting to the imposition of sanctions, and agreeing to waive such member’s, member organization’s or associated

person's right to a hearing before a Hearing Panel or, if applicable, an Extended Hearing Panel, and any right of appeal to the Exchange Review Council, the Commission, and the courts, or to otherwise challenge the validity of the letter, if the letter is accepted. The letter shall describe the act or practice engaged in or omitted, the rule, regulation, or statutory provision violated, and the sanction or sanctions to be imposed. Unless the letter states otherwise, the effective date of any sanction(s) imposed will be a date to be determined by the Phlx Regulation Department staff.

(2)

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

(i) any right of such member, member organization or person associated with a member organization to claim bias or prejudgment of the Chief Regulatory Officer, the Exchange Review Council, or any member of the Exchange Review Council, in connection with such person's or body's participation in discussions regarding the terms and conditions of the letter of acceptance, waiver, and consent, or other consideration of the letter of acceptance, waiver, and consent, including acceptance or rejection of such letter of acceptance, waiver, and consent; and

(ii) any right of such member, member organization or person associated with a member organization to claim that a person violated the ex parte prohibitions of Rule 9143 or the separation of functions prohibitions of Rule 9144, in connection with such person's or body's participation in discussions regarding the terms and conditions of the letter of acceptance, waiver, and consent, or other consideration of the letter of acceptance, waiver, and consent, including acceptance or rejection of such letter of acceptance, waiver, and consent.

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

(3) If the member, member organization or associated person executes the letter of acceptance, waiver, and consent, it shall be submitted to the Exchange Review Council. The Review Subcommittee or the Office of Disciplinary Affairs may accept such letter or refer it to the Exchange Review Council for acceptance or rejection by the Exchange Review Council. The Review Subcommittee may reject such letter or refer it to the Exchange Review Council for acceptance or rejection by the Exchange Review Council.

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

(b) Procedure for Violation of Floor Procedure Advices Other than Regulations Concerning Violation of Order, Decorum, Health, Safety and Welfare on the Exchange

(1) The following process is followed for fines assessed under a plan pursuant to SEC Rule 19d-1(c)(2):

(A) Notwithstanding Rule 9211, the Exchange Review Council may, subject to the requirements set forth in subparagraphs (b)(1)(B) through (b)(1)(E) and in SEC Rule 19d-1(c)(2), impose a fine (not to exceed \$2,500) on any member, member organization, or any partner, officer, director or person employed by or associated with any member organization with respect to any rule listed in IM-9216. If the Phlx Regulation Department or the Department of Enforcement has reason to believe a violation has occurred and if the member, member organization or associated person does not dispute the violation, the Phlx Regulation Department or the Department of Enforcement may prepare and request that the member, member organization or associated person execute a minor rule violation plan letter accepting a finding of violation, consenting to the imposition of sanctions, and agreeing to waive such member's, member organization's or associated person's right to a hearing before a Hearing Panel or, if applicable, an Extended Hearing Panel, and any right of appeal to the Exchange Review Council, the Commission, and the courts, or to otherwise challenge the validity of the letter, if the letter is accepted. The letter shall describe the act or practice engaged in or omitted, the rule, regulation, or statutory provision violated, and the sanction or sanctions to be imposed. Unless the letter states otherwise, the effective date of any sanction(s) imposed will be a date to be determined by the Phlx Regulation Department staff.

(B)

(i) If a member, member organization or person associated with a member organization submits an executed minor rule violation plan letter, by the submission such member, member organization or person associated with a member organization also waives:

(a) any right of such member, member organization or person associated with a member organization to claim bias or prejudgment of the Chief Regulatory Officer, the Exchange Review Council, or any member of the Exchange Review Council, in connection with such person's or body's participation in discussions regarding the terms and conditions of the minor rule violation plan letter or other consideration of the minor rule violation plan letter, including acceptance or rejection of such minor rule violation plan letter; and

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

(ii) If a minor rule violation plan letter is rejected, the member, member organization or person associated with a member organization shall be bound by the waivers made under subparagraphs (b)(1)(A) and (b)(1)(B)(i) for conduct by persons or bodies occurring during the period beginning on the date the minor rule violation plan letter was executed and submitted and ending upon the rejection of the minor rule violation plan letter.

(C) If the member, member organization or person associated with a member organization executes the minor rule violation plan letter, it shall be submitted to the Exchange Review Council. The Review Subcommittee or the Office of Disciplinary Affairs may accept such letter or refer it to the Exchange Review Council for acceptance or rejection by the Exchange Review Council. The Review Subcommittee may reject such letter or refer it to the Exchange Review Council for acceptance or rejection by the Exchange Review Council.

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

(E) For purposes of imposing fines under the Option Floor Procedure Advices, when the number of violations under Exchange Rules is determined based upon an exception-based surveillance program the Phlx Regulation Department or the Department of Enforcement may aggregate, or "batch," individual violations of



order handling Options Floor Procedure Advices, and consider such “batched” violations as a single Occurrence only in accordance with the guidelines set forth in the Exchange’s Numerical Criteria for Bringing Cases for Violations of Phlx Order Handling Rules. In addition, the Phlx Regulation Department or the Department of Enforcement may batch individual violations of Rule Options 2, Section 5(c) pertaining to quote spread parameters (and corresponding Options Floor Procedure Advice Options 11, Section 7). In the alternative, the Phlx Regulation Department or the Department of Enforcement may request authorization from the FINRA Office of Disciplinary Affairs to issue a complaint when (i) the Phlx Regulation Department or the Department of Enforcement determines that there exists a pattern or practice of violative conduct without exceptional circumstances, or (ii) any single instance of violative conduct without exceptional circumstances is deemed to be egregious.

(2) The following process is followed for fines assessed that are not subject to a plan pursuant to SEC Rule 19d-1(c)(2):

(A) Notwithstanding Rule 9211, the Exchange Review Council may, subject to the requirements set forth in subparagraphs (b)(2)(B) through (b)(2)(E), impose a fine, in excess of \$2,500 but not to exceed \$10,000, on any member, member organization, or any partner, officer, director or person employed by or associated with any member organization with respect to any rule listed in IM-9216. If the Phlx Regulation Department or the Department of Enforcement has reason to believe a violation has occurred and if the member, member organization or associated person does not dispute the violation, the Phlx Regulation Department or the Department of Enforcement may prepare and request that the member, member organization or associated person execute a violation letter accepting a finding of violation, consenting to the imposition of sanctions, and agreeing to waive such member’s, member organization’s or associated person’s right to a hearing before a Hearing Panel or, if applicable, an Extended Hearing Panel, and any right of appeal to the Exchange Review Council, the Commission, and the courts, or to otherwise challenge the validity of the letter, if the letter is accepted. The letter shall describe the act or practice engaged in or omitted, the rule, regulation, or statutory provision violated, and the sanction or sanctions to be imposed. Unless the letter states otherwise, the effective date of any sanction(s) imposed will be a date to be determined by the Phlx Regulation Department staff.

(B)

(i) If a member, member organization or person associated with a member organization submits an executed violation letter, by the submission such member, member organization or person associated with a member organization also waives:

(a) any right of such member, member organization or person associated with a member organization to claim bias or prejudgment of the Chief Regulatory Officer, the Exchange Review Council, or any member of the Exchange Review

Council, in connection with such person's or body's participation in discussions regarding the terms and conditions of the violation letter or other consideration of the violation letter, including acceptance or rejection of such violation letter; and

(b) any right of such member, member organization or person associated with a member organization to claim that a person violated the ex parte prohibitions of Rule 9143 or the separation of functions prohibitions of Rule 9144, in connection with such person's or body's participation in discussions regarding the terms and conditions of the violation letter or other consideration of the violation letter, including acceptance or rejection of such violation plan letter.

(ii) If a violation letter is rejected, the member, member organization or person associated with a member organization shall be bound by the waivers made under subparagraphs (b)(2)(A) and (b)(2)(B)(i) for conduct by persons or bodies occurring during the period beginning on the date the violation plan letter was executed and submitted and ending upon the rejection of the violation letter.

(C) If the member, member organization or associated person executes the violation letter, it shall be submitted to the Exchange Review Council. The Review Subcommittee or the Office of Disciplinary Affairs may accept such letter or refer it to the Exchange Review Council for acceptance or rejection by the Exchange Review Council. The Review Subcommittee may reject such letter or refer it to the Exchange Review Council for acceptance or rejection by the Exchange Review Council.

(D) If the letter is accepted by the Exchange Review Council, the Review Subcommittee, or the Office of Disciplinary Affairs, it shall be deemed final and the Exchange shall report the violation to the Commission as required by the Commission pursuant to SEC Rule 19d-1(c)(1). If the letter is rejected by the Review Subcommittee or the Exchange Review Council, the Phlx Regulation Department may take any other appropriate disciplinary action with respect to the alleged violation or violations. If the letter is rejected, the member, member organization or associated person shall not be prejudiced by the execution of the violation letter under subparagraph (b)(2)(A) and the letter may not be introduced into evidence in connection with the determination of the issues set forth in any complaint or in any other proceeding.

(E) For purposes of imposing fines under the Option Floor Procedure Advices, when the number of violations under Exchange Rules is determined based upon an exception-based surveillance program the Phlx Regulation Department or the Department of Enforcement may aggregate, or "batch," individual violations of order handling Options Floor Procedure Advices, and consider such "batched" violations as a single Occurrence only in accordance with the guidelines set forth in the Exchange's Numerical Criteria for Bringing Cases for Violations of Phlx Order Handling Rules. In addition, the Phlx Regulation Department or the Department of Enforcement may batch individual violations of Rule Options 2, Section 5(c) pertaining to quote spread parameters (and corresponding Options

Floor Procedure Advice Options 11, Section 7). In the alternative, the Phlx Regulation Department or the Department of Enforcement may request authorization from the FINRA Office of Disciplinary Affairs to issue a complaint when (i) the Phlx Regulation Department or the Department of Enforcement determines that there exists a pattern or practice of violative conduct without exceptional circumstances, or (ii) any single instance of violative conduct without exceptional circumstances is deemed to be egregious.

(c) Procedure for Violation of Regulations that Relate to Administration of Order, Decorum, Health, Safety and Welfare on the Exchange

Notwithstanding Rule 9211 and paragraph (b) above, an Options Exchange Official or Exchange Staff may impose the following sanctions on members, member organizations and associated persons for violations of regulations relating to order, decorum, health, safety and welfare under Options 8, Section 39, F. In most cases, the Exchange will enforce compliance with the regulations under Options 8, Section 39, F pursuant to this rule. While ordinarily a finding of a violation will result in the appropriate pre-set fine and/or sanction, an Options Exchange Official or Exchange Staff may request authorization of a complaint directly from the Office of Disciplinary Affairs, or refer the matter to the Department of Enforcement, where it shall proceed in accordance with the Rule 8000 and 9000 Series. In the case of repeat violations of a regulation by the same individual, the amount of the fine is determined by the number of such violations which have occurred within the year immediately preceding the current violation.

(1) An Options Exchange Official and Exchange Staff may impose on members, member organizations and associated persons, fines for breaches of regulations that relate to administration of order, decorum, health, safety, and welfare on the Exchange or an Options Exchange Official may request authorization of a complaint directly from the Office of Disciplinary Affairs, or refer the matter to the Department of Enforcement, where it shall proceed in accordance with Rule 8000 and 9000 Series.

The procedure to be followed in cases where a pre-set fine of up to \$10,000.00 is summarily assessed is as follows:

(A) Notice of Fine. Notice of fine for breach of such regulations shall be given by the issuance of a written citation. Exchange Staff shall serve the written citations that are issued by the Options Exchange Official. The cited party may accept or contest the written citation.

(B) Time and Place of Hearing. If the written citation is contested, the Exchange shall fix a mutually convenient time and place of hearing, notice of which must be given in advance and may be given orally.

(C) Record. An appropriate record shall be kept. The costs of the making of such a transcript, including, but not limited to, the costs for the court reporter,

reproduction of the transcript and producing copies thereof, shall be equally borne by the Exchange and by the cited party.

(D) Procedure. The hearing shall be conducted by a Hearing Director appointed by the Chair of the Exchange Review Council, and will be conducted in whatever manner will permit full presentation of the evidence.

(E) Finding. The finding of the Hearing Director shall be rendered at the close of the hearing. The Hearing Director may decide that: (i) the citation should be overturned; (ii) the citation is valid as issued; or (iii) the citation as issued should be modified to specify either a higher or lower fine than the one on the notice as issued.

(F) Forum Fee. If a person contests a citation imposed under Rule 9216(c) and the citation is upheld by the reviewing body, the reviewing body will impose a forum fee against the person in the amount of \$100.

(G) No Right of Appeal. The finding of the Hearing Director shall be final. There shall be no appeal from such finding.

(H) Report to Securities and Exchange Commission (SEC). A report in appropriate form shall be made to the SEC. As provided by SEC Rule 19d-1(c)(1), no report shall be made in the case of citations for breaches of regulations relating to order, decorum, health, safety and welfare or administration of the Exchange if a citation is not contested and the fine is \$1,000 or less, or if the Hearing Director finds in favor of the appellant.

(2) An Options Exchange Official and an officer of the Exchange may exclude a member and any associated person from the trading floor for breaches of regulations that relate to administration of order, decorum, health, safety and welfare on the Exchange that occurred on the trading floor or on the premises immediately adjacent to the trading floor. Specifically, members and associated persons shall be excluded if they pose an immediate threat to the safety of persons or property, are seriously disrupting Exchange operations, or are in possession of a firearm. Members or associated persons so excluded may be excluded for a period of up to five (5) business days.

(A) For purposes of this Rule, an “officer of the Exchange” shall refer to an officer who is a vice president or higher.

(B) For purposes of this Rule and the Regulations promulgated thereunder, the “premises immediately adjacent to the trading floor” shall include the following: (1) all premises other than the trading floor that are under Exchange control, and (2) premises in the building where the Exchange maintains its principal office and place of business, namely FMC Tower, 2929 Walnut Street, Philadelphia, Pennsylvania.

- (C) Exclusion from the floor may not be the exclusive sanction for breaches of this Rule and the regulations thereunder. In addition to exclusion, a member or associated person may also be subject to a fine or Exchange staff may request authorization of a complaint directly from the Office of Disciplinary Affairs, or refer the matter to the Department of Enforcement, where it shall proceed in accordance with Rule 8000 and 9000 Series.
- (D) If a member shall be excluded for a period exceeding forty-eight hours, an expedited hearing (“Expedited Hearing”) will be held before the Chair of the Exchange Review Council or a member of the Exchange Review Council designated by the Chair (“Expedited Hearing Officer”) within forty-eight (48) business hours after the members’ exclusion from the trading floor. Written notice will be provided to the member of the date, time and place of the hearing. The member may be represented by counsel. The Expedited Hearing Officer or his or her designee shall conduct an Expedited Hearing. The Expedited Hearing Officer shall allow both the member or his or her representative and Exchange staff to present arguments. The Expedited Hearing Officer shall make a determination of whether to continue the member’s exclusion from the trading floor for a period of up to five (5) business days. The determination shall be based on the severity of the threat posed to persons on the trading floor, the disruptiveness caused by the actor and the safety and welfare of persons on the trading floor. The Expedited Hearing Officer shall make a ruling at the time of the hearing and a written decision will be provided to the member following the hearing. Members shall not be excluded from electronic trading, but will not be permitted to be physically present on the trading floor for the duration of any exclusion.
- (E) The procedure to be followed when a member is to be excluded from the trading floor is as follows:
- (i) No Further Right of Appeal. The determination that a member shall be excluded is final. There shall be no appeal from such determination.
- (ii) Report to the SEC. A report in appropriate form shall be made to the SEC. However, no report shall be made in a case where a clerical employee is excluded from the trading floor for not more than five days for a breach of regulations relating to order, decorum, health, safety and welfare or administration of the Exchange if the clerical employee has not sought an adjudication, including a hearing, or otherwise exhausted his administrative remedies at the Exchange with respect to the matter, as provided by Rule 19b-1(c) of the Act.
5. Rule IM-9216 (“Violations Appropriate for Disposition Under Plan Pursuant to SEC Rule 19d-1(c)(2)”) in the Nasdaq Rule 9000 Series shall not apply to the Nasdaq PHLX Exchange or its members, member organizations, persons associated with member organizations, or other persons subject to its jurisdiction. Instead, the applicable Phlx Rule shall be the following:

Rule IM-9216. Violations Appropriate for Disposition Under Plan Pursuant to SEC Rule 19d-1(c)(2)

• EQUITY FLOOR PROCEDURE ADVICES (fines equal to or less than \$2,500)

A-1 Record of Orders on PSX

A-2 Failure to Comply with an Exchange Inquiry

A-3 Supervisory Procedures Relating to ITSFEA

A-4 Fingerprinting Personnel

A-5 Training

A-6 Failure to Provide Notification of Changes in Business Operations

A-7 Failure to Timely Submit Amendments to Form U4, Form U5 and Form BD

• OPTION FLOOR PROCEDURE ADVICES AND ORDER & DECORUM REGULATIONS (fines equal to or less than \$2,500; does not include Order & Decorum Regulations under Options 8, Section 39, F)

B-1 Responsibility to Make Markets

B-2 Crowd Courtesy

B-3 Trading Requirements

B-4 Floor Market Makers Entering Orders from On-Floor and Off-Floor for Execution on the Exchange

B-5 Agency-Principal Restrictions

B-6 Priority of Options Orders for Equity Options, Index Options and U.S. Dollar-Settled Foreign Currency Options by Account Type (EQUITY OPTION, INDEX OPTION AND U.S. DOLLAR-SETTLED FOREIGN CURRENCY OPTION ONLY), Section F

B-8 Use of Floor Brokers by an ROT While on the Floor

B-11 Floor Market Makers and Lead Market Makers Entering Orders for Execution on Other Exchanges in Multiply Traded Options

C-1 Ascertaining the Presence of Floor Market Makers in a Trading Crowd

C-2 Options Floor Broker Management System

C-3 Handling Orders of Floor Market Makers and Other Registered Options Market Makers

C-4 Floor Brokers Handling Orders for Same Firm

C-5 Floor Market Makers Acting as Floor Brokers

C-7 Responsibility to Represent Orders to the Trading Crowd

C-9 Floor Brokers and Clerks Trading in their Customer Accounts

D-1 Required Staffing of Options Floor

E-2 Allocation, Time Stamping, Matching and Access to Matched Trades

E-3 Orders Executed as Spreads, Straddles, Combinations or Synthetics and Other Order Ticket Marking Requirements

E-4 Changes or Corrections to Material Terms of a Matched Trade

E-5 Option Quote Parameters

E-6 Failure to Comply with an Exchange Inquiry

E-7 Affiliations

E-8 Splitting Orders

E-9 Responsibility for Assigning Participation

Options 11, Section 6 Supervisory Procedures Relating to ITSFEA

Options 11, Section 7 Minor Infractions of Position/Exercise Limits and Hedge Exemptions

Options 11, Section 8 Clearing Agents' Responsibility for Carrying Positions in Market Maker Accounts

E-13 Clerks in the Crowd

E-14 Fingerprinting Floor Personnel

Options 11, Section 9 Options Exchange Official Rulings

E-15 Options Trading Floor Training

E-16 Communications and Equipment

Options 11, Section 10 Failure to Provide Notification of Changes in Business Operations

Options 11, Section 11 Failure to Timely Submit Amendments to Form U4, Form U5 and Form BD

Options 11, Section 12 Violations of Exercise and Exercise Advice Rules for Noncash-Settled Equity Option Contracts

Options 11, Section 13 Index Option Exercise Advices

6. Pursuant to Nasdaq Rule 9231(b)(1)(C), the Chief Hearing Officer may also select as a Panelist a person who previously served as a Governor of the Exchange prior to its acquisition by Nasdaq, Inc., but does not serve currently in that position.
7. Pursuant to Nasdaq Rule 9231(b)(1)(D), a person who is a member of FINRA's Market Regulation Committee is among the FINRA Panelists approved by the Exchange Board at least annually that the Chief Hearing Officer may also select as a Panelist.
8. Rule 9610(b) in the Nasdaq Rule 9000 Series shall not apply to the Phlx Exchange or its members, member organizations, persons associated with member organizations, or other persons subject to its jurisdiction. Instead, the applicable Phlx Rule shall be the following:

Rule 9610(b) Content

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