

- NASD Rule 9540 Series (Failure to Provide Information or Meet the Eligibility and Qualification Standards).<sup>10</sup>

With this proposed rule change, the NASD believes that the first major improvement to the expedited proceedings provisions is that they are reorganized into a single rule series, the proposed NASD Rule 9550 Series, and each type of action is clearly labeled. At present, the various types of expedited proceedings are scattered throughout the NASD's rules, in many instances without clear headings,<sup>11</sup> increasing the likelihood of confusion for interested parties and adjudicators. Going forward, interested parties will simply need to review the NASD Rule 9550 Series, with its clearly marked subheadings, to ascertain their rights and obligations with regard to expedited actions.

The proposed amendments also consolidate some current expedited rules that have similar or overlapping provisions. For instance, current NASD Rules 8221(a) and (b) and 9541(a) and (b) have identical provisions that allow NASD staff to issue a notice of suspension if a member or associated person "fails to provide any information, report, material, data, or testimony." These provisions are consolidated into a single rule, proposed NASD Rule 9552, under the proposed amendments. Similarly, current NASD Rules 9511(a)(2)(B) and 9541(c) both cover situations where a member or associated person fails to meet eligibility or qualification standards. Under the proposal, these provisions are now consolidated and clarified under the amendments as proposed NASD Rule 9555. The NASD believes that the consolidation of these various rules will alleviate the current confusion over which rule to use in a particular situation.

The proposed amendments, moreover, separate into individual rules some provisions, the consolidation of which has caused confusion. The proposed

amendments, for example, separate the four "non-summary" actions currently located in NASD Rule 9511(a)(2) for failure to pay an arbitration award, failure to meet eligibility or qualification standards, failure to comply with certain public communication standards and failure to comply with a cease and desist order. The NASD believes that these provisions were not logically connected to one another; they are separated into individual rules under the proposed amendments.<sup>12</sup> The substance of the four provisions remains intact, however. The NASD proposes to separate these four provisions into individual rules so that the rule headings clearly denote the substance of the actions. The NASD believes that the previous heading of "non-summary" proceedings was confusing because there are a number of rules that have an expedited component that could be viewed as "non-summary" in nature.

In addition, the proposed rule change modifies the authorization provision for initiating certain summary proceedings. Pursuant to section 15A(h)(3) of the Act,<sup>13</sup> existing NASD Rule 9512 allows the summary suspension or limitation of activities of a member or associated person when, for example, another self-regulatory organization has expelled, barred or suspended the member or associated person, or when the member is in such financial or operating difficulty that it cannot be permitted to continue to do business as a member with safety to investors, creditors, other members or the NASD. Currently, the NASD may only invoke NASD Rule 9512 with NASD Board authorization.<sup>14</sup> The proposed rule change would allow the President of NASD Regulatory Policy and Oversight or the Executive Vice President for NASD Regulatory Policy and Programs (rather than the Board) to authorize the issuance of summary proceeding notices, which begin the summary proceeding process. The NASD would only initiate a summary proceeding under circumstances demanding quick action.

This modification to the authorization provision would avoid the logistical difficulties of having to obtain the necessary authorization from the Board on short notice, while at the same time ensuring that such decisions are made at the highest NASD staff levels.<sup>15</sup> Unlike the current summary provision, moreover, the modified provision provides that a respondent's request for a hearing generally will result in a stay of the action.<sup>16</sup>

The proposed amendments also reorganize the hearing provisions of these various rules into a single rule within the new NASD Rule 9550 Series. The NASD believes that the new hearing rule, proposed NASD Rule 9559, creates a uniform, efficient and manageable expedited procedure consistent with the NASD's obligations to the investing public, the securities markets and NASD members. Under the proposal, a respondent may request a hearing at any time prior to the effective date of the action contained in the notice issued pursuant to the new NASD Rule 9550 Series. Under the present scheme, some rules have five-day periods while others have seven-day periods to request hearings,<sup>17</sup> even though the notices often do not become effective for much longer periods of time.<sup>18</sup> This new provision ties the periods together, giving respondents more time to request a hearing without altering the expedited nature of the proceedings.

The NASD believes that the proposed NASD Rule 9550 Series also simplifies the actual hearing process in a number of ways. First, the rule series channels all requests for hearings to the Office of Hearing Officers ("OHO"). At present, various expedited proceedings are held before different adjudicative bodies—e.g., NASD Board hearing panels, National Adjudicatory Council ("NAC") hearing panels, OHO hearing panels,

Fees and Other Charges) is now located at proposed NASD Rule 9553 (Failure to Pay NASD Dues, Fees and Other Charges).

<sup>10</sup> The current NASD Rule 9540 Series (Failure to Provide Information or Meet the Eligibility and Qualification Standards) has been combined with two proposed rules. NASD Rules 9541(a) and (b) regarding failure to provide information is now located at proposed NASD Rule 9552 (Failure to Provide Information or Keep Information Current). NASD Rule 9541(c) regarding failure to meet the eligibility and qualification standards is now located at proposed NASD Rule 9555 (Failure to Meet the Eligibility or Qualification Standards or Prerequisites for Access to Services).

<sup>11</sup> For instance, NASD Rule 9511(a)(2) covers three distinct and unrelated types of conduct without any description in the title beyond "non-summary proceedings."

<sup>12</sup> As discussed above, current NASD Rule 9511(a)(2)(A) (Failure to Comply with an Arbitration Award) is now located at proposed NASD Rule 9554. Current NASD Rule 9511(a)(2)(B) (Failure to Meet Eligibility or Qualification Standards) is now located at proposed NASD Rule 9555. Current NASD Rule 9511(a)(2)(C) (Failure to Comply with Certain Public Communication Standards) is now located at proposed NASD Rule 9551. Finally, current NASD Rule 9511(a)(2)(D) (Failure to Comply with a Temporary or Permanent Cease and Desist Order) is now located at proposed NASD Rule 9556.

<sup>13</sup> 15 U.S.C. 78o-3(h)(3).

<sup>14</sup> The present requirement that the NASD Board must authorize such actions is set forth in NASD's rule and not in the Act.

<sup>15</sup> This proposed change makes the authorization provision for summary proceedings consistent with the authorization provision for temporary cease and desist orders under NASD Rule 9810(a).

<sup>16</sup> As mentioned *supra*, the summary proceedings provisions have been renumbered and will be located at proposed NASD Rule 9558.

<sup>17</sup> Compare NASD Rules 8222(a) (a respondent must request a hearing within five days of the service of the notice); 9413(a) (same); 9532(a) (same); 9542(a) (same) with NASD Rule 9514(a)(1) (a respondent must request a hearing within seven days of the service of the notice).

<sup>18</sup> See, e.g., NASD Rules 8221-22 (respondent must request hearing within five days of service of notice but the notice of suspension does not become effective for 20 days); NASD Rules 9531-32 (respondent must request hearing within five days of the notice but the notice of suspension or cancellation does not become effective until 15 days after service of the notice); NASD Rule 9541-42 (respondent must request hearing within five days of service of notice but the notice of suspension does not become effective for 20 days).