

SR Amex 2008-64
EXHIBIT 5

AMERICAN STOCK EXCHANGE LLC

Proposed Rule Change

It is proposed that the following provisions of the American Stock Exchange Constitution and Rules be amended as set forth below. Underlined text indicates material to be added; [bracketed] text indicates material to be deleted.

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Rule 478T Temporary Procedures Governing Legacy Disciplinary Proceedings

(a) The provisions of this rule apply solely to “Legacy Disciplinary Proceedings,” as defined below, and are otherwise of no force or effect. “Legacy Disciplinary Proceedings” shall include any of the following proceedings, as set forth below, if commenced by the Exchange and still pending as of (insert transaction closing date):

- If the Exchange served a written charge or charges upon the respondent(s) pursuant to Article V, Section 1(b)(6) of the Constitution of the American Stock Exchange LLC (“Amex Constitution”) or Amex Rule 345(d);
- If the Exchange and the respondent(s) executed a stipulation of facts and consent to a specified penalty, which is not yet final and conclusive pursuant to Article V, Section 2 of the Amex Constitution or Amex Rule 345(k);
- If the Exchange suspended a member, member organization, or employee thereof pursuant to Article V, Section 3 of the Amex Constitution or Amex Rule 345(l);
- If the Exchange initiated a summary proceeding against a member, member organization, or employee thereof pursuant to Article V, Section 5(b) of the Amex Constitution or Amex Rule 345(h); or
- If the Exchange served a summary fine notice on a member, member organization, or employee thereof pursuant to Parts 1(b), 2(e), or 3(b) of Amex Rule 590, and the respondent(s) contests the Exchange’s determination (thereby invoking a right to a formal disciplinary proceeding governed by the provisions of Article V, Section 1(b) of the Amex Constitution).

(b) Legacy Disciplinary Proceedings shall be conducted by the Exchange pursuant to the pertinent procedural rules based upon the Amex Constitution, Amex Rule 345, and the Rules of Procedure in Disciplinary Matters, as specifically set forth in paragraph (c) below (collectively, “Legacy Disciplinary Procedural Rules”), except:

- any review of a determination made by the Exchange in any Legacy Disciplinary Proceeding (including identification of when a determination in a Legacy Disciplinary Proceeding is final and conclusive) shall be governed exclusively by the provisions of Rules 475(c) and (j) and 476(e)-(g);
 - determination of sanctions, if any, to be imposed as part of any Legacy Disciplinary Proceeding shall be made with reference to the Sanctions Guidelines, set forth in Supplementary Material .10 to Rule 476 (which are the same in substance as the former Amex Sanctions Guidelines); and
 - this rule has no impact on any prior retentions of jurisdiction by the Exchange over former members, member organizations or employees thereof pursuant to former Article V, Section 6 of the Amex Constitution or Amex Rule 345(c), which retentions remain in full force and effect but shall now be governed exclusively by the provisions of Rule 477.
- (c) The Legacy Disciplinary Procedural Rules are set forth below.

LEGACY CONSTITUTION OF THE AMERICAN STOCK EXCHANGE LLC

LEGACY ARTICLE IV

Membership

Secs. 1-4 Not Applicable.

Sec. 5. Reinstatement

(a) Reinstatement by Board

Every application for reinstatement by a member, member organization or owner of a membership suspended pursuant to Section 3 of Legacy Article V shall be referred to such committee as may be appointed (or charged with the responsibility) by the Board of Directors for such purpose. A hearing shall be held by the committee with respect to such application and a record shall be kept. No application for reinstatement shall be considered with respect to a member, member organization or owner of a membership as to whom dues, fines, assessments or charges of the Exchange are due and unpaid. If the committee shall determine to reinstate a member, member organization or owner of a membership suspended under the provisions of Section 3 of Legacy Article V, it may impose such conditions as it shall deem appropriate. If the committee shall determine not to reinstate such suspended member, member organization or owner of a membership, its determination shall be supported by a statement setting forth the specific grounds on which the application for reinstatement is denied.

Reinstatement by Chief Executive Officer

(b) Notwithstanding the foregoing provisions of this Section 5, whenever it shall appear to the Chief Executive Officer:

(1) that a member or member organization has been suspended pursuant to subsection (a) or (b) of Section 3 of Legacy Article V, and that the conditions resulting in such suspension no longer exist or the suspension of such member or member organization by another registered national securities exchange or national securities association has been terminated by such other exchange or securities association; and

(2) that prompt reinstatement is advisable to avoid substantial loss to the public, to the Exchange or to the member or member organizations; and

(3) that it is not practicable to convene a meeting of the Board of Directors immediately to act in the matter;

the Chief Executive Officer may announce to the Exchange the reinstatement of such member or member organization. Any reinstatement pursuant to this subsection (b) shall be effective immediately, but shall be submitted to the Board of Directors as soon as reasonably practicable and unless approved by the Board of Directors such reinstatement shall forthwith terminate.

Denial for Irregularities

(c) Whenever an Exchange Hearing Panel shall determine that a member, member organization or owner of a membership suspended under the provisions of Section 3 of Legacy Article V, has been guilty of irregularities or unbusinesslike dealings, it may declare such member, member organization or owner of a membership ineligible for reinstatement. Any such determination shall be made only after the suspended member, member organization or owner of a membership has been given notice and an opportunity to be heard by the Hearing Panel in accordance with the procedures specified in Section 1(b) of Legacy Article V and such determination shall be subject to review in accordance with the provisions of Rule 476(e)-(g).

Secs. 6-7 Not Applicable.

LEGACY ARTICLE V

Discipline of Members

Sec. 1. Procedures

(a) Assistance of Counsel Permitted

A person, firm or corporation shall be permitted to have the assistance of legal or other counsel in any hearing conducted pursuant to the provisions of this Legacy Article or any review thereof, and in any investigation conducted by any officer, employee or representative of the Exchange, or any committee authorized by the Board of Directors.

Hearing before Hearing Panel

(b) Except as provided in Section 2 of this Legacy Article, Exchange disciplinary proceedings shall be conducted in the following manner:

(1) Hearing Panel. In any disciplinary proceeding involving charges against a member, member organization, approved person, or a registered or non-registered employee or prospective employee of a member or member organization (each a "respondent"), a

hearing shall be held with respect to such charges before an Exchange Hearing Panel. Such Hearing Panel shall consist of not less than three nor more than five persons: a hearing officer who shall be chairman of the Panel, with the remainder of the Hearing Panel being members of the hearing board¹; provided, however, that, without convening such Hearing Panel, (i) the chairman of the Panel may preside over a disciplinary proceeding in which the respondent fails to answer the charges or otherwise defend himself, and (ii) any hearing officer, without conducting a formal hearing, may accept or reject a respondent's written stipulation of facts and consent to a specified penalty before a hearing on the merits has begun, as specified in Section 2 of this Legacy Article (in the case of a respondent member, member organization or approved person) or Legacy Exchange Rule 345(k)(in the case of a respondent employee or prospective employee of a member or member organization).

(2) – (3) Not Applicable.

(4) Composition of Hearing Panel. In any hearing at which a charge or charges against a member, member organization, or approved person are considered pursuant to this Legacy Article, the members of the hearing board serving on the Hearing Panel shall, except as hereinafter provided, be members of the Exchange.

In any hearing at which a charge or charges against a registered or non-registered employee or prospective employee of a member or member organization are considered pursuant to this Legacy Article or pursuant to the Legacy Rules of Procedure in Disciplinary Matters, the members of the hearing board serving on the Hearing Panel shall include at least one registered employee or non-registered employee of a member or member organization; in the discretion of the chairman of the Hearing Panel the remainder thereof may be members of the Exchange.

In any hearing at which a charge or charges against both a registered or non-registered employee or prospective employee of a member or member organization and against a member, member organization or approved person are considered pursuant to this Legacy Article or pursuant to the Legacy Rules of Procedure in Disciplinary Matters, the members of the hearing board serving on the Hearing Panel shall include one registered employee or non-registered employee of a member or member organization and the remainder thereof shall be members of the Exchange.

Subject to the foregoing provisions of this paragraph, the selection of the hearing officer to serve as the chairman of each Hearing Panel and the members of the hearing board to serve thereon shall be made in accordance with the Legacy Rules of Procedure in Disciplinary Matters. For all purposes of this Legacy Article, the decision of a majority of the members of a Hearing Panel shall be the decision of such Hearing Panel and shall be final and conclusive, except to the extent that such decision may be revised on review as provided in Rule 476(e)-(g).

(5) Not Applicable.

¹ The roster of individuals eligible to serve as hearing officers and as members of the hearing board is appointed by the Chairman of the Board of Directors pursuant to Rule 476(b). The process of selection of hearing officers and hearing board members from that roster to serve on an individual hearing panel is governed by the Legacy Rules of Procedure in Disciplinary Matters.

(6) An accusation, charging a member, member organization or approved person before an Exchange Hearing Panel with having committed an offense, shall be in writing; it shall specify the charge or charges against such member, member organization or approved person with reasonable detail, and shall be signed by the person or persons making the charge or charges. A copy of such charge or charges, shall be served upon the accused member, member organization or approved person either personally, or by leaving the same during business hours at the office address of such member, member organization or approved person or by mailing it to such member, member organization or approved person at his or its office address or place of residence. The accused shall have twenty days from the date of such service to answer such charge or charges, or such further time as the Exchange in its discretion may deem proper. An answer shall be in writing, signed by or on behalf of the accused member, member organization or approved person and shall be filed with the Secretary of the Exchange. If so expressly required in the charge or charges, the answer shall specifically indicate which statements, or portions thereof, contained in the charge or charges are denied and which are admitted, and any such statements or portions thereof in the charge or charges which are not specifically denied shall be deemed to be admitted. The answer shall also contain in reasonable detail any affirmative defense which the accused wishes to submit and shall include any documents which the accused wishes to submit in support of the answer. Upon the answer being filed, or if the accused shall refuse or neglect to make answer as hereinbefore required, the Hearing Panel shall, at a hearing called for that purpose, proceed to consider the charge or charges. The Exchange shall cause copies of the charge or charges, and of the answer, if any, and of any documents submitted in support thereof by the accused, to be mailed or otherwise delivered to each member of the Hearing Panel at least five days before such hearing. Notice of such hearing shall be sent to the accused; the accused member, or any person associated with the accused member organization who is a member of the Exchange and is designated in writing by the accused member organization to represent it for all purposes at such hearing, or the accused approved person, shall be entitled to be present personally thereat, and shall be permitted to examine and cross-examine all of the witnesses produced before the Hearing Panel, and also to present such testimony, defense or explanation as may be deemed responsive to the charge or charges. Any witnesses produced by the accused shall be subject to cross-examination. After hearing all the witnesses produced before the Hearing Panel and after hearing the accused the Hearing Panel shall determine whether or not the accused member, the accused member organization or the accused approved person is guilty of the offense or offenses charged. If it determines that the accused is guilty, the Hearing Panel may fix and impose the penalty. Any such determination shall be supported by a written statement setting forth (i) any act or practice in which such member, member organization or approved person is found to have engaged or which such member, member organization or approved person is found to have omitted, (ii) the specific provision of the Securities Exchange Act of 1934, as amended, the rules and regulations thereunder, the Constitution or the rules, procedures or policies of the Exchange, which any such act, practice or omission to act is deemed to violate, and (iii) the penalty imposed and the reasons therefore. Such written statement shall be served upon the accused in the manner hereinbefore provided, and a copy thereof shall be sent to each member of the NYSE Regulation Committee. The determination of the Hearing

Panel and any penalty imposed shall become final and conclusive twenty days after notification thereof to the accused, provided, however, that if a request for review of such determination or penalty, or both, is filed, as hereinafter provided, the penalty shall be stayed pending the result of such review.

(c) – (e) Not Applicable.

Discussing Charges Prohibited

(f) No person, firm or corporation under charges before a Hearing Panel shall discuss the subject of such charges with any member of the Panel, the NYSE Regulation Committee, or the Board of Directors (collectively “Adjudicatory Bodies”). No member of an Adjudicatory Body shall discuss charges made in a disciplinary proceeding with any person, firm or corporation being charged, or with any one representing such person, firm or corporation.

Announcement of Results

(g) Announcement of the results of any disciplinary proceeding conducted pursuant to the provisions of this Legacy Article shall be in accordance with Rule 12 of the Legacy Rules of Procedure in Disciplinary Matters.

Sec. 2. Delegation of Disciplinary Powers

Stipulation of Facts and Consent to Penalty

In lieu of the procedures set forth in paragraph 6 of Section 1(b) of this Legacy Article, a hearing officer, selected in accordance with the provisions of Rule 476(b), may, without conducting a formal hearing, determine whether any member, member organization or approved person has committed an offense or offenses on the basis of a written stipulation of facts and consent to a specified penalty proposed to be entered into between such member, member organization or approved person and any authorized officer of the Exchange (a “Stipulation”), and may (i) fix and impose the penalty agreed to in such Stipulation or (ii) reject the Stipulation. A written notice of the hearing officer’s determination shall be served upon the member, member organization or approved person in the manner provided in subsection (b)(6) of Section 1 of this Legacy Article, and a copy thereof shall be sent to each member of the NYSE Regulation Committee. Any action by a hearing officer pursuant to this subsection shall be subject to review in accordance with the procedures specified in Rule 476(g). If the hearing officer rejects the Stipulation, the matter shall proceed as if the Stipulation had not been entered into, and such Stipulation shall be disregarded in any subsequent proceeding.

Sec. 3. Suspension in View of Financial or Operating Conditions

(a) Automatic Suspension

A member that fails to perform his or its contracts or is insolvent or is in such financial or operating condition that he or it cannot be permitted to continue in business with safety to investors, his or its creditors, other members or the Exchange, or a member who is associated with a member organization which fails to perform its contracts or is

insolvent or is in such financial or operating condition that it cannot be permitted to continue in business with safety to investors, its creditors, other members or the Exchange, shall immediately inform the Chief Executive Officer, in writing, of such fact, and prompt announcement thereof shall be made by the Chief Executive Officer to the Exchange and such member or member organization shall, upon such notice to the Exchange, become automatically suspended until and unless such member or member organization has been reinstated as provided in Section 5 of Legacy Article IV.

Suspension by Chief Executive Officer

(b) Whenever it shall appear to the Chief Executive Officer that a member or a member organization has failed to meet his or its engagements or is insolvent, or is in such financial or operating condition that he or it cannot be permitted to continue in business with safety to investors, his or its creditors, other members of the Exchange, or whenever it shall appear to the Chief Executive Officer that a member or member organization has been suspended by another registered national securities exchange or national securities association for failure to meet his or its engagements, for insolvency or for being in such financial or operating condition that he or it cannot be permitted to continue in business with safety to investors, his or its creditors, other members, or such other exchange or securities association, the Chief Executive Officer shall announce to the Exchange the suspension of such member or member organization, which suspension shall continue until such member or member organization has been reinstated as provided in Section 5 of Legacy Article IV.

Investigation by Exchange

(c) Every member and member organization suspended under the foregoing provisions of this Section shall immediately afford every facility to the Exchange for investigation of his or its affairs and shall at the request of the Exchange submit to the Exchange or its representatives his or its books and papers and the books and papers of any employee of such member and the books and papers of any member associated with, approved person or employee of such member organization, and such suspended member or member organization shall appear, and cause such persons to appear, and testify before such officers, employees or representatives of the Exchange as may be designated by the Chief Executive Officer.

(d) – (e) Not Applicable.

(f) Any member or member organization suspended under the provisions of subsections (a) or (b) of this Section 3 shall be granted promptly a hearing with regard to such suspension before the Board of Directors or such committee as may be appointed (or charged with the responsibility) by the Board of Directors for such purpose. Any determination by the Board of Directors or such committee as a result of such hearing to affirm the suspension shall be supported by a statement setting forth the specific grounds on which the suspension is based.

Sec. 4. Not Applicable.

Sec. 5. Suspension, Expulsion or Bar by Another Regulatory Authority

(a) Whenever a member or member organization is suspended or expelled from any other securities exchange or any national securities association, or is suspended or barred from being associated with any member of such exchange or association, or is suspended or barred by any governmental securities agency from dealing in securities or being associated with any broker or dealer in securities, an Exchange Hearing Panel may, in view of such suspension, expulsion or bar, suspend or expel such person or organization as a member or member organization of the Exchange, but no such suspension imposed by such Hearing Panel shall commence before or expire after the suspension imposed by such other exchange, association or agency, and no such expulsion shall be imposed by such Hearing Panel unless such member or member organization has been expelled or barred by such other exchange, association or agency. Nothing in this Section 5 shall preclude any proceeding against any member or member organization under any other Section of this Legacy Article V.

Procedure

(b) In any proceeding under this Section 5, the method of procedure required by Section 1(b) of this Legacy Article V shall not apply, but the accused shall be given not less than ten days' notice in writing that an Exchange Hearing Panel will conduct a hearing to determine whether or not to suspend or expel the accused, as the case may be, as provided in this Section 5. At the hearing before the Hearing Panel, the accused member, or any person associated with the accused member organization who is a member of the Exchange and is designated in writing by the accused member organization to represent it for all purposes at such hearing, shall be afforded an opportunity to explain why it would be inappropriate for the Hearing Panel to accept the finding of such other exchange, association or agency or to suspend or expel the accused, notwithstanding the suspension, expulsion or bar by such other exchange, association or agency. In the event that the Hearing Panel determines not to accept the finding of guilt by such other exchange, association or agency, it may order a proceeding under any other Section of this Legacy Article V. In the event that the accused fails or refuses to appear before the Hearing Panel, the Hearing Panel may nevertheless determine the matter and suspend or expel the accused as provided in this Section 5. If the Hearing Panel determines to accept the finding of guilt by such other exchange, association or agency and to suspend or expel the accused, such determination shall be supported by a written statement setting forth the specific grounds on which such action is based. Such written statement shall be served upon the accused in the manner provided by Section 1(b) of this Legacy Article V, and a copy thereof shall be sent to each member of the NYSE Regulation Committee. Any action by an Exchange Hearing Panel pursuant to this Section 5 shall be subject to review in accordance with the procedures specified in Rule 476(e)-(g).

(c) A member or member organization may, nevertheless, consent to the penalty of suspension or expulsion from the Exchange solely by reason of the imposition of the suspension, expulsion or bar by such other exchange, association or agency, and without either the separate determination of an Exchange Hearing Panel as provided above in this Section 5 or the procedure provided by Section 1(b) of this Legacy Article V. Such

consent shall be in writing, signed by the accused member or member organization, and shall be delivered to the Exchange not later than two business days after the Exchange gives the accused notice in writing that it intends to proceed under Section 5 of Legacy Article V. The consent shall take effect immediately upon approval by the Board of Directors.

Sec. 6. Not Applicable.

LEGACY AMEX RULE 345

Determinations Involving Employees and Prospective Employees

(a) – (c) Not Applicable.

(d) Except as provided in paragraph (j) of this rule, Exchange Disciplinary proceedings against an employee or a prospective employee of a member or member organization shall be conducted in the following manner. An accusation charging an employee or prospective employee of a member or member organization with having committed an offense shall be in writing; it shall specify the charge or charges against such employee or prospective employee with reasonable detail; it shall inform the person charged that he is entitled to be present at the hearing of the charge or charges before an Exchange Hearing Panel selected in accordance with the provisions of Sections 1(b) of Legacy Article V of the Constitution; and it shall be signed by an officer of the Exchange or a director or manager in the division bringing the charge or charges. A copy of such charge or charges shall be served upon the employee or prospective employee either personally, or by leaving the same at his office address during business hours, or by mailing it to him at his office address or place of residence. He shall have twenty days from the date of such service to answer such charge or charges, or such further time as the Exchange in its discretion may deem proper. An answer shall be in writing, signed by or on behalf of the person charged, and shall be filed with the Secretary of the Exchange. If so expressly required in the charge or charges, the answer shall specifically indicate which statements, or portions thereof, contained in the charge or charges are denied and which are admitted, and any such statements or portions thereof in the charge or charges which are not specifically denied shall be deemed to be admitted. The answer shall also contain in reasonable detail any affirmative defense which the accused wishes to submit and shall include any documents which the accused wishes to submit in support of the answer.

(e) Upon the answer being filed, or if the person charged shall refuse or neglect to make answer as hereinbefore required, the Hearing Panel shall, at a hearing called for that purpose, proceed to consider the charge or charges. The Exchange shall cause copies of the charge or charges and of the answer, if any, and of any documents submitted in support thereof by the person charged, to be mailed or otherwise delivered to each member of the Hearing Panel at least five days before such hearing. Notice of such

hearing shall be sent to the person charged; he shall be entitled to be present personally at the hearing, and shall be permitted to examine and cross-examine all witnesses produced at the hearing and also to present such testimony, defense or explanation as may be deemed responsive to the charge or charges. Any witnesses produced by the person charged shall be subject to cross-examination. After hearing all witnesses produced at the hearing and after hearing the person charged, the Hearing Panel shall by a majority vote determine whether or not the employee or prospective employee is guilty of the offense or offenses charged. If it determines that the person charged is guilty, the Hearing Panel shall by a majority vote impose the penalty or prescribe the action to be taken by the Exchange. Any such determination shall be supported by a written statement setting forth (i) any act or practice in which such employee or prospective employee is found to have engaged or which such employee or prospective employee has been found to have omitted, (ii) the specific provision of the Securities Exchange Act of 1934, as amended, the rules and regulations thereunder, the Constitution or rules, procedures or policies of the Exchange, which any such act, practice or omission to act is deemed to violate and (iii) the penalty imposed or other action prescribed and the reasons therefor. Such written statement shall be served upon the person charged in the manner hereinbefore provided and a copy thereof shall be sent to each member of the NYSE Regulation Committee. Any action by an Exchange Hearing Panel pursuant to this subsection shall be subject to review in accordance with the procedures specified in Rule 476(e)-(f).

(f) – (g) Not Applicable.

(h) If any employee or prospective employee of a member or member organization is suspended or expelled from any other securities exchange or any national securities association, or is suspended or barred from being associated with any member of such exchange or association, or is suspended or barred by any governmental securities agency from dealing in securities or being associated with any broker or dealer in securities, the Exchange may, in view of such suspension, expulsion or bar, suspend or withdraw its approval of, or disapprove, his employment by a member or member organization, but no such suspension imposed by the Exchange shall commence before or expire after the suspension imposed by such other exchange, association or agency, and no such withdrawal of approval and no such disapproval shall be imposed by the Exchange unless such employee or prospective employee has been expelled or barred by such other exchange, association or agency. Nothing in this paragraph (h) shall preclude any proceeding against any employee or prospective employee under the foregoing provisions of this Legacy Rule 345. In any proceeding under this paragraph (h), the method of procedure required by paragraphs (c) and (d) of this rule shall not apply, but the employee or prospective employee shall be given not less than ten days' notice in writing of a hearing before an Exchange Hearing Panel to determine whether or not the Exchange shall suspend or withdraw its approval of, or disapprove, as the case may be, his employment by a member or member organization, as provided herein. At such hearing, the employee or prospective employee shall be afforded an opportunity to explain why it would be inappropriate for the Exchange to accept the finding of such other exchange, association or agency or to suspend or withdraw its approval of, or disapprove, his employment, notwithstanding his suspension, expulsion or bar by such other exchange, association or agency. The Hearing Panel shall thereupon on behalf of

the Exchange determine the matter by a majority vote. In the event that the Hearing Panel determines that the Exchange should not accept the finding of guilt by such other exchange, association or agency, it may order a proceeding under any other paragraph of this rule. In the event that the employee or prospective employee fails or refuses to appear at such hearing, the Hearing Panel may nevertheless determine the matter and suspend or withdraw Exchange approval of, or disapprove, his employment or prospective employment as provided herein. If the Hearing Panel determines to accept the finding by such other exchange, association or agency and to suspend or withdraw its approval of, or disapprove, the employment of such employee or prospective employee by a member or member organization, such determination shall be supported by a written statement setting forth the specific grounds for such action. Such written statement shall be served upon the employee or prospective employee in the matter hereinbefore provided by paragraph (d) of this rule and a copy thereof shall be sent to each member of the NYSE Regulation Committee. Any action by an Exchange Hearing Panel pursuant to this subsection shall be subject to review in accordance with the procedures specified in Rule 476(e)-(g). Notwithstanding the foregoing, the employee or prospective employee may, nevertheless, consent to the penalty that the Exchange suspend or withdraw its approval of, or disapprove, his employment or prospective employment by a member or member organization solely by reason of the imposition of such penalty by such other exchange, association or agency, and without either the separate determination of an Exchange Hearing Panel as provided above in this paragraph (h) or the procedure provided for in the foregoing paragraphs of this rule. Such consent shall be in writing, signed by the employee or prospective employee, and shall be delivered to the Exchange not later than two business days after the Exchange gives notice in writing to him that it intends to proceed under Legacy Rule 345(h). The consent shall take effect immediately upon approval by the Exchange.

(i) In accordance with the Legacy Rules of Procedure in Disciplinary Matters, the Exchange may publicly disclose its disapproval or suspension or withdrawal of approval of the employment of any employee or prospective employee of a member or member organization and it may publicly disclose any fine, censure or other determination, provided, however, that no such disclosure shall be permitted until there has been a final determination of the matter.

(j) Unless otherwise directed by an Adjudicatory Body (as defined in Legacy Article V, Section I(f) of the Constitution), a copy of any accusation under paragraph (d) of this rule or a copy of any notice of hearing under paragraph (h) of this rule served on an employee or a prospective employee of a member or member organization shall be furnished to his employer or prospective employer and a representative of the employer or prospective employer may be present at the hearing of the matter.

(k) In lieu of the procedures set forth in paragraph (d) of this rule, a hearing officer, selected in accordance with the provisions of Rule 476(b), may, without conducting a formal hearing, determine whether an employee or prospective employee of a member or member organization has committed an offense or offenses on the basis of a written stipulation of facts and consent to a specified penalty proposed to be entered into between such employee or prospective employee and any authorized officer of the Exchange (a "Stipulation"), and may (i) fix and impose the penalty or prescribe such

other action to be taken by the Exchange as shall be agreed to in such Stipulation or (ii) reject the Stipulation. A written notice of the hearing officer's determination shall be served upon the employee or prospective employee in the manner provided in paragraph (d) of this rule and a copy thereof shall be sent to each member of the NYSE Regulation Committee. Any action by a hearing officer pursuant to this subsection shall be subject to review in accordance with the procedures specified in Rule 476(g). If the hearing officer rejects the Stipulation, the matter shall proceed as if the Stipulation had not been entered into, and such Stipulation shall be disregarded in any subsequent proceeding.

(l) An employee of a member or member organization who fails to pay a fine within thirty (30) days after the same becomes due and payable may, after written notice mailed to such person at either his office or last place of residence as reflected in the Exchange's records, be summarily suspended from association in any capacity with a member or member organization, or have his approval as a registered employee withdrawn, until such fine is paid.

LEGACY RULES OF PROCEDURE IN DISCIPLINARY MATTERS

Rule 1. Not Applicable.

Rule 2(a). Selection of Chairman of Hearing Panel

Whenever the Chief Executive Officer of the Exchange shall be advised that a charge or charges have been served upon a member, member organization, approved person, or a registered or non-registered employee or prospective employee of a member or member organization, or that a written stipulation of facts and consent to a specified penalty has been entered into between any such person or persons and an authorized officer of the Exchange, or that a member or member organization has been suspended or expelled from any other securities exchange or any national securities association, or has been suspended or barred from being associated with any member of such exchange or association, or has been suspended or barred by any governmental securities agency from dealing in securities or being associated with any broker or dealer in securities and such member or member organization has not consented in writing to similar action by the Exchange, or that an employee or prospective employee of a member or member organization has been suspended or expelled from any other securities exchange or any national securities association, or has been suspended or barred from being associated with any member of such exchange or association, or has been suspended or barred by any governmental securities agency from dealing in securities or being associated with any broker or dealer in securities and such employee or prospective employee has not consented in writing to similar action by the Exchange, the Chief Executive Officer (or such person(s) as the Chief Executive Officer may designate with Board approval), shall select a hearing officer, appointed pursuant to Rule 476(b), to act as a chairman of a Hearing Panel and take such further action as may be authorized pursuant to the Legacy Disciplinary Procedural Rules. To the extent practicable, such selection shall be made on a rotating basis from among the hearing officers designated to serve on Exchange Hearing Panels.

Rule 2(b). Selection of Persons on Hearing Board for Service on Panels

The chairman of an Exchange Hearing Panel, promptly after his selection to serve in such capacity, shall review the charge or charges and the answer, if any, to be considered by the Panel, or the written stipulation of facts and consent to a specified penalty or other written statement of the disciplinary matter to be considered in the event no charge or charges have been served, and shall determine the number of additional persons to be selected to serve on such panel, which number shall be not less than two nor more than four. Thereafter he shall select, from among the persons on the hearing board, the individuals to serve on the Panel, consistent with the provisions of Sections 1(b)(1) and 1(b)(4) of Legacy Article V of the Constitution. In making such selections the chairman shall, to the extent practicable, choose individuals whose background, experience and training qualified them to consider and make determinations regarding the subject matter to be presented to the Panel. He shall also consider such factors as the availability of individuals on the hearing board, the extent of their prior service on Hearing Panels and any relationship between an individual on the hearing board and the respondent which might make it inappropriate for such person to serve on the Panel. Promptly after the selection of the persons to serve on the Hearing Panel, the chairman of the Panel shall cause written notice thereof to be given to the respondent. If any person involved in the disciplinary proceeding shall have knowledge of a relationship between himself and any person selected for service on the Panel which might result in such person being unable to render a fair and impartial decision, he shall give prompt written notice thereof to the chairman of the Panel, specifying the nature of such relationship and the grounds for contesting the qualification of such person to serve on the Panel. The decision of the chairman of the Panel shall be final and conclusive with respect to the qualification of any persons to serve on the Panel. Notwithstanding anything in the foregoing to the contrary, consistent with Section 1(b)(1) of Legacy Article V of the Constitution, without convening a Hearing Panel, (i) the chairman of such Panel may preside over a disciplinary proceeding in which the respondent fails to answer the charges or otherwise defend himself, and (ii) any hearing officer, without conducting a formal hearing, may accept or reject a written stipulation of facts and consent to a specified penalty before a hearing on the merits has begun, as specified in Section 2 of Legacy Article V of the Constitution (in the case of a respondent member, member organization or approved person) or Legacy Exchange Rule 345(k)(in the case of a respondent employee or prospective employee of a member or member organization).

••• Commentary -----

.01 In determining the number of persons to serve on a Hearing Panel, the chairman of the Panel shall consider such factors as the complexity of the disciplinary matter to be heard, whether it presents novel questions concerning the interpretation and application of Exchange rules or of the securities laws and whether it appears that substantial questions of fact or law must be resolved.

Rule 3. Meetings of Hearing Panel

The chairman of an Exchange Hearing Panel shall determine the time and place of all meetings of the Panel and written notice thereof shall be sent to each person serving on the Panel and to each of the parties, except that, if the time and place of an adjourned meeting or succeeding meeting is announced by the chairman at a meeting of the Panel no further notice thereof need be given. The hearing of all witnesses, the receiving of evidence and the hearing of oral argument, if any, by an Exchange Hearing Panel shall be at a meeting of the Panel at which all members of the Panel and all parties are present, except where any party is absent by reason of his own default or has waived his right to be present. The chairman of the Panel and all other persons serving on the Panel shall be present during all deliberations of the Panel and shall participate in all decisions of the Panel, except with regard to procedural or evidentiary matters to be determined exclusively by the chairman.

••• Commentary -----

.01 For the purposes of these Legacy Rules of Procedure, the term "parties" shall mean:

(i) The person or persons (including member organizations) named in the charges or in the written stipulation of facts and consent to penalty or in a statement describing the disciplinary action taken against such person or persons by another securities exchange, national securities association or governmental securities agency, as the case may be. With respect to a member organization the term "party", for the purpose of giving and receiving notice under these rules and being represented at meetings of the Panel shall mean any general partner, holder of voting stock, director or executive officer of the accused member organization who is a member of the Exchange and is designated in writing by the accused member organization to represent it for all purposes in the disciplinary proceeding. Such written designation shall be furnished to the chairman of the Panel prior to the commencement of the hearing.

(ii) The officer of the Exchange in charge of compliance matters or any other official or employee of the Exchange designated by such officer to represent the Exchange in such disciplinary proceeding.

Rule 4. Substitution of Persons on Hearing Panels

If, after a Hearing Panel has been selected and commenced hearing a particular disciplinary matter, any person selected from the hearing board and serving on the Panel shall for any reason become unavailable to continue with the hearing of the matter without undue delay, or it shall be determined that he is not qualified to continue hearing the matter because of the existence of a relationship between him and the person or persons involved in the disciplinary proceeding, the parties may agree to the substitution of another person from the hearing board to serve on the Panel to be selected by the chairman provided that such substitute hearing officer is given adequate opportunity to review all the prior proceedings of the Hearing Panel and to familiarize himself with all evidence and documents which have theretofore been presented to the Panel. If the parties do not agree to the substitution of a member of the Panel under such conditions, a new Panel member shall be selected by the chairman of the Panel from the hearing board

and the Panel shall commence to hear the matter again. If the chairman of a Panel shall for any reason become unavailable to continue with the hearing of the matter without undue delay, the Chief Executive Officer of the Exchange shall appoint another hearing officer to serve as chairman of the Panel, and the Panel shall commence to hear the matter again.

Rule 5. Panel Assistants

The Chief Executive Officer of the Exchange may appoint a person or persons to provide assistance to Exchange Hearing Panels, provided that such persons are not part of, nor assigned to, any division or department of the Exchange having responsibility for compliance matters or charged with investigating or presenting disciplinary matters to Hearing Panels.

Rule 6. Evidence and Witnesses

Conformity with legal rules of evidence shall not be required in proceedings before Exchange Hearing Panels. The parties in any such proceeding may offer such evidence and may conduct such examination of witnesses as may be deemed relevant to the issues raised by the charge or charges and by the answer, if any. The chairman of the Panel shall rule on all questions of admissibility, relevancy and materiality of evidence offered. The parties shall produce such additional evidence as the chairman may require. All witnesses called by a party during a hearing shall be subject to examination by members of the Panel and cross-examination by the other parties. The chairman of the Panel shall have the authority to require all witnesses to testify under oath. Except as otherwise provided in these Legacy Disciplinary Procedural Rules, the chairman shall prescribe the time within which all documents, exhibits, briefs, stipulations, notices or other written materials must be filed with the Panel. If during the course of a hearing it shall appear to the chairman that proffered evidence relates to matters outside the scope of the charges or the answer but that a proper resolution of the issues involved requires consideration of such evidence by the Panel, he may permit amendment of the charges or the answer, or both, by the respective parties. In such event, the chairman shall grant a reasonable continuance to enable the objecting party to meet such evidence.

Rule 7. Notice of Representation

Upon receipt of notice of the selection of a Hearing Panel to hear a disciplinary matter, each party to the proceeding (other than the representative of the Exchange) shall promptly notify the Secretary of the Exchange of an address to which all notices and other written communications from the Panel to such party may be sent. Each such party shall also notify the Secretary of the Exchange in writing if he is to be represented during the hearing by legal or other counsel and shall indicate the name, address and telephone number of the person who will represent him. Thereafter, any notice or other written communication from the Panel to such party may be delivered or mailed to the person designated as his representative and upon being so delivered or mailed shall be deemed for all purposes to have been served upon such party.

Rule 8. Record of Proceedings

A stenographic record shall be made of every meeting of a Hearing Panel at which evidence or testimony is received (including a proceeding presided over by a Panel

Chairman alone pursuant to Section 1(b)(1)(i) of Legacy Article V of the Constitution), and a transcript thereof shall be prepared.

Rule 9. Not Applicable.

Rule 10. Representation by Counsel

The parties and legal or other counsel representing a party before an Exchange Hearing Panel shall be subject to and shall comply with such rulings and directives as the chairman of the Panel shall deem necessary to preserve orderliness and proper decorum during the hearing and to avoid undue delay of the proceeding.

Rule 11. Exchange Investigations

(a) Members, employees of member organizations and prospective employees of member organizations who are the subject of, or are questioned in connection with, an Exchange investigation shall not discuss such investigation publicly or with any member of the Board of Directors or any Exchange Official.

(b) No person, firm or corporation, nor his or its counsel, shall assert legal objections to inquiries by Exchange representatives in the course of an Exchange investigation, nor impede nor delay the conduct of such investigation. All objections to questions or requests for information shall be reserved until there is a hearing on the matter which is the subject of the investigation.

Rule 12. Disclosure of the Result of Disciplinary Proceeding

Whenever an Exchange Hearing Panel shall find a person guilty of an offense and such determination has become final and conclusive, the Exchange shall announce publicly the results of such disciplinary proceeding, including the basis for such determination and the penalty imposed or other action taken. Such public announcement, in a form approved by the Hearing Panel rendering the decision, shall be released to the press and may be in any or all of the following additional forms: an announcement on the Exchange ticker, a circular to the membership, and the posting of an announcement on the trading floor. This rule shall not be applicable if the Hearing Panel finds in its determination that the offense relates solely to minor administrative requirements of the Exchange and does not materially affect the public interest or the interest of investors.