

NEW YORK CITY TAXI AND LIMOUSINE COMMISSION

Notice of Public Hearing and Opportunity to Comment on Proposed Rules

Notice is hereby given in accordance with section 1043(b) of the Charter of the City of New York (“Charter”) that the Taxi and Limousine Commission (“TLC”) proposes amended rules governing taxicab brokers.

These rules are proposed pursuant to sections 1043 and 2303 of the Charter and section 19-503 of the Administrative Code of the City of New York. These proposed rules were not included in the TLC’s regulatory agenda for Fiscal Year 2009 because the need for such rules was not anticipated at the time the regulatory agenda was published.

A public hearing on these proposed rules will be held by the TLC at its offices at 40 Rector Street, 5th Floor, New York, New York 10006 on April 3, 2009 at 2:30 p.m. Persons wishing to testify at the hearing may notify the TLC in advance, either in writing or by telephone to the TLC’s Office of Legal Affairs at the address and telephone given below. Any request for a sign language interpreter or other form of reasonable accommodation for a disability at the hearing must be submitted to the Office of Legal Affairs in writing, by telephone, or by TTY/TDD no later than March 27, 2009.

The public hearing will not be a meeting of the Commissioners of the Taxi and Limousine Commission and will be chaired by the TLC’s Deputy Commissioner for Legal Affairs. Persons who wish to speak at the hearing will be strictly limited to three minutes of speaking time. Persons who wish to comment on the proposed rules are urged to submit written comments. There is no page limit on written comments.

Written comments in connection with these proposed rules should be submitted to the Office of Legal Affairs and must be received no later than March 30, 2009 to:

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Taxi and Limousine Commission
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Written comments and a summary of all comments received at the hearing will be available for public inspection at that office.

Section 1. It is hereby proposed to amend Title 35 of the Rules of the City of New York by adding a new chapter 12 thereto, to read as follows:

New Material is underlined.

Chapter 12

TAXICAB BROKERS

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§12-01 Scope of this Chapter

- (a) To establish procedures for the licensing and supervision of an individual or Business Entity acting as a Taxicab Broker.
- (b) To establish the qualifications, requirements, prohibitions, and procedures for getting and maintaining a Taxicab Broker's License.
- (c) To establish operating rules to protect the customers and the public.
- (d) To establish appropriate penalties for the violation of these Rules.

§12-02 Penalties

- (a) *Specific Penalties.* If there are specific penalties for violating a Rule, they are shown at the end of the Rule. The penalty section also states whether the violator must attend the Hearing.
- (b) *General Penalty.* Fines are due within 30 days of the day the violator is found guilty of the violation. If a respondent has made a timely request for a copy of the hearing recording under §18-14(e) of this title, the time for payment of fines is extended to 21 days from the date of the issuance of the recording. If a timely appeal has been filed, fines are stayed until a decision is made in the appeal. If the fine is not paid by the close of business on the date due, the violator's License will be suspended until the fine is paid.

§12-03 Definitions Specific to this Chapter

- (a) *Administrator* means the duly appointed administrator, executor, executrix or personal representative of an estate.
- (b) *Broker or Taxicab Broker* is an individual or Business Entity licensed by the Commission to act as an agent for another person or Business Entity in negotiating either of the following:
 - (1) The transfer of any interest in a Medallion
 - (2) A loan to be secured by a Medallion or a Taxicab
- (c) *Brokerage* is the term for the business of being a Broker.
- (d) *De-licensed* means an individual or Business Entity whose License is suspended or revoked.

- (e) Exclusive Listing means that the Broker has been given the right to be the only Broker for a particular transaction. Usually the right will be limited to a specific period of time.

§12-04 Licensing – General Information Required

- (a) Identification. An Applicant for an original License must provide the following two forms of identification:
- (1) A Valid government-issued photo ID
 - (2) A Valid, original Social Security card
- (b) Proof of Age. An individual Applicant and each Business Entity Person of an Applicant must be at least twenty-one (21) years of age.
- (c) Good Moral Character. The Applicant must be of good moral character. Moral character will be determined in part through fingerprinting and background investigations, as follows:
- (1) Fingerprinting Applicants. An individual and all Business Entity Persons applying for a Broker's license must be fingerprinted.
 - (2) Fingerprinting New Business Entity Persons. Fingerprinting is also required when a Business Entity Licensee adds new Business Entity Persons. A Business Entity Licensee must notify the Commission of any new Business Entity Persons within five working days of their addition. The Commission can permit continued use of the Broker's License during completion of the background investigation.
 - (3) Fingerprinting Financiers. An individual or the Business Entity Person who provides funds for Brokers must be fingerprinted unless the provider is a licensed bank or loan company.
 - (4) Waiver of Fingerprinting. The Commission can waive fingerprinting requirements at its discretion.
- (d) Proficiency in the English Language. The Applicant must be able to understand, speak, read and write the English language.
- (e) Experience. The Applicant must have at least one of the following types of experience:
- (1) Active participation in the Taxicab Brokerage business under the supervision of a licensed Taxicab Broker for not less than one (1) year

- (2) Equivalent experience in the general Taxicab business for a period of at least two (2) years

The Applicant must provide a sworn affidavit regarding the required experience. The Commission may allow or require the Applicant to provide other proof of the required experience, or waive the requirement entirely.

- (f) Waivers for Attorneys. An attorney who is a member in good standing of the Bar of the State of New York, does not need to submit proof as otherwise required in §12-04.

§12-05 Licensing – Specific Information Required

- (a) Location of Business Premises. The Applicant must provide the physical address of the location where the Applicant will conduct business.
- (b) Prior Business or Occupation of Applicant. The Applicant must provide information on the prior business or occupation of the individual Applicant or, if a Business Entity, information on the Applicant’s Business Entity Persons during the two years immediately before the date of the application. The information must specify the place or places of the business or occupation and the name or names of employers.
- (c) Potential Conflicts of Interest. The Applicant must disclose all information about Applicant’s interest if the Applicant or any principal of the Applicant also:
 - (1) Acts as a lender, insurance broker, or automobile dealer or
 - (2) Has a financial interest in a lender, insurance Broker, or automobile dealership
- (d) Additional Information as Required by the Commission. The Applicant must provide any additional information the Commission may require to determine if the Applicant is qualified to assume the duties and obligations of a Taxicab Broker.

§12-06 Licensing – Bond Required

- (a) Amount of Bond. An Applicant for a Broker’s License or a license renewal must deposit with the Commission a bond in the sum of fifty thousand dollars (\$50,000) payable to the City of New York. The bond must be furnished by one or more sureties approved by the Commission.
- (b) Bond Guarantees. The bond must guarantee that the Applicant or Licensee will comply with the provisions of the Administrative Code of the City of New York, observe all applicable rules or regulations of the Commission, pay all fines

imposed by the Commission, and pay all judgments or settlements arising from any action connected in any way with the Broker's License.

- (c) Fines and Judgments. The Broker is immediately liable for any fine or judgment when the amount is determined or, in case of an appeal, when the final determination is issued.

§12-07 Licensing – Rules for Business Entity Applicants

- (a) Partnerships. If the Applicant is a partnership, its application must include a certificate from the clerk of the county where the principal place of business is located.
- (b) Corporations.
 - (1) The Commission will not accept any corporate or trade name similar to a name already in use by another Taxicab Broker.
 - (2) A corporation must file with its license application the following:
 - (i) A certified copy of its certificate of incorporation
 - (ii) A list of its officers and shareholders
 - (iii) A certified copy of the minutes of the meeting at which the current officers were elected

§12-08 Licensing – Term of License

Term of License. Taxicab Broker's Licenses will be issued as of January 1st and will expire on the next December 31st unless suspended or revoked before then by the Commission.

§12-09 Licensing – Cause for Denial

- (a) Failure to Meet Requirements. If the Commission determines that the Applicant has failed to meet the requirements for a Taxicab Broker's license, the Commission will notify the Applicant in writing the reason for the denial within a reasonable period of time.
- (b) Material Falsifications. The Commission will deny a license application or revoke or suspend a license for any of the following reasons:
 - (1) The Applicant or Broker provided materially false information in an original or renewal application for a license.

- (2) The Applicant or Broker failed to notify the Commission of a material change in the information contained in the application.
- (3) The Applicant or Broker attempted to conceal the identity of a party who has an interest, direct or indirect, in his or her business as a Broker.
- (c) No Longer Meets Requirements. Whenever the Commission determines that a licensed Broker no longer meets the requirements to hold a Broker's License, the Commission will deny the renewal application or suspend or revoke the License in the manner provided in Chapter 18 of these Rules.

§12-10 Provisions in the Event of Licensee's Death

- (a) When an individual Broker dies, the Administrator of his or her estate may complete any unfinished Brokerage business.
- (b) The Administrator must be authorized for this purpose under the provisions of §215-a of the Surrogate's Court Act.
- (c) The Administrator's authority cannot extend beyond 120 days from the date of the Broker's death unless the Commission extends this time period for good cause.

§12-11 Requirements & Prohibitions – No Unlicensed Activity

- (a) Must Have Valid License. An individual or Business Entity must possess a valid Taxicab Broker's License in order to act as a Taxicab Broker or hold himself or herself out as a Taxicab Broker.

§12-11(a)	Fine: \$500-\$1,500	Appearance REQUIRED
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- (b) Must Display License. A Broker must conspicuously and continuously display a copy of his or her Broker's License in every place of business maintained by the Broker.

§12-11(b)	Fine: \$100	Appearance NOT REQUIRED
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- (c) Must Not Display Invalid License. A Broker must not display a Taxicab Broker's License that is expired, suspended, or revoked and must surrender such a license immediately to the Commission .

§12-11(c)	Fine: \$500 - \$1,500	Appearance REQUIRED
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- (d) Must Renew Before Expiration. A Broker must submit an application for renewal of the License no later than the expiration date of the License unless the Commission grants an extension.

§12-11(d)	Fine: \$25	Appearance NOT REQUIRED
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- (e) Must Not Employ Certain De-Licensed Persons. A Broker must not employ or use the services of any individual whose License as a Taxicab Broker has been revoked or is suspended or who was the chief executive officer of a partnership or corporation whose License has been revoked or is suspended without the prior written consent of the Commission.

§12-11(e)	Fine: \$2,500 and suspension	Appearance REQUIRED
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- (f) Must Not Act on Behalf of De-Licensed Broker. A Broker must not act on behalf of any Broker whose License has been suspended or revoked without the prior written consent of the Commission.

§12-11(f)	Fine: \$2,500 and suspension	Appearance REQUIRED
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§12-12 Requirements & Prohibitions – Broker as Fiduciary Agent of Owner

- (a) Owner Authorization Required

- (1) A Broker must not offer a Taxicab for transfer unless the Broker is authorized to do so by the owner.

§12-12(a)(1)	Fine: \$500-\$1,000	Appearance REQUIRED
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- (2) A Broker must not operate or cause to be operated any Medallion delivered to the Broker without the owner’s written consent.

§12-12(a)(2)	Fine: \$250–\$1,000	Appearance REQUIRED
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- (b) Withdrawal of Authorization. An owner can withdraw his or her authorization by giving written notice to the Broker except where an Exclusive Listing has been given for a fixed period.

§12-12(b)	Fine: \$500–\$1,000	Appearance REQUIRED
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- (c) Storage with Commission. A Broker holding a Medallion and Rate Card for purposes of sale must deliver them to the Commission for storage within 48 hours of their receipt, not including holidays or weekends.

§12-12(c)	Fine: \$250–\$1,000	Appearance REQUIRED
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- (d) Broker Compensation. A Broker must not accept any commission, rebate, or profit on expenditures that the Broker makes for the owner unless the owner provides written consent. The Broker must retain the written consent for three years.

§12-12(d)	Fine: \$250–\$2,000	Appearance REQUIRED
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§12-13 Requirements & Prohibitions – Intentional Interference with Contract

A Broker must not encourage any party to break a contract for the transfer of a Taxicab Medallion in order to substitute a new contract with another owner.

§12-13	Fine: \$100-\$750	Appearance REQUIRED
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§12-14 Requirements & Prohibitions – Self-Dealing

- (a) A Broker must not directly or indirectly buy for himself or herself any interest in a Medallion listed with the Broker without first disclosing that fact in writing to the owner.

§12-14(a)	Fine: \$500-\$2,000	Appearance REQUIRED
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- (b) A Broker must not sell a Medallion in which he or she owns an interest without disclosing that interest in writing to the purchaser.

§12-14(b)	Fine: \$250-\$750	Appearance REQUIRED
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- (c) The Broker must disclose any financial interests in writing to the owners in any transaction where the Broker acts as a lender, insurance broker, or automobile dealer or has a financial interest in the lender, insurance brokerage firm, or automobile dealership.

§12-14(c)	Fine: \$250-\$2,000	Appearance REQUIRED
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§12-15 Business Procedures – Mailing Address

- (a) *Required Mailing Address.* A Broker must provide to the Commission the street address of his or her primary business location for the mailing of all notices and correspondence, as well as for the service of summonses.

- (b) *Additional Mailing Address.* A Broker may also designate a post office box number as a mailing address.

- (c) *Report of Changes in Mailing Address.* A Broker must report to the Commission any change in his or her mailing address and in the address of any other office where the Taxicab Brokerage business is conducted. The report must be filed in person or by registered or certified mail, with return receipt requested, within seventy-two (72) hours of the change, not including weekends and holidays.

§12-15(a)-(c)	Fine: \$50-\$500 and/or suspension	Appearance REQUIRED
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§12-16 Business Procedures – Exclusive Agreements

- (a) *Specific Disclosure.* The Broker must include the following explanation in type size of not less than six point in all agreements that provide for an Exclusive Listing of a Taxicab Medallion:

An “Exclusive Right to Sell” listing with a Broker is one where the owner has surrendered his or her own right to sell. This means that if you, the Taxicab

Medallion owner, find a buyer for your Taxicab, or if another Broker finds a buyer, you must nonetheless pay the agreed commission to the Broker who has the Exclusive Right to Sell.

This explanation must be signed or initialed by the owner and attached to the listing, printed in boldface type on the listing, or printed on the reverse side of the listing.

§12-16(a)	Fine: \$100-\$500	Appearance REQUIRED
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- (b) No Automatic Continuation. A Broker must not be a party to an Exclusive Listing contract that contains an automatic continuation of the period for the listing beyond the end date specified in the contract.

§12-16(b)	Fine: \$100-\$750	Appearance NOT REQUIRED
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§12-17 Business Procedures – Net Listings

Net Listings. A Broker must not enter into a net listing contract for the transfer of a Medallion or any interest in it unless the contract is part of a bulk transfer of 10 or more Medallions owned by a fleet or minifleet and is completed within six months of the listing.

§12-17	Fine: \$100-\$1,000	Appearance REQUIRED
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§12-18 Business Procedures – Documents, Transactions, and Closing Procedures

- (a) Interested Parties.

- (1) A Broker must not request, accept or permit a party to provide a Power of Attorney or any other legal document that has not been completed and signed.
- (2) If a Broker requests a party to sign a document and return it to the Broker, the Broker must give the party a duplicate copy for the party’s own records. If any party attends a closing and is presented with a document for signature, the Broker must furnish that party with a copy of the signed document at that closing.
- (3) All other documents prepared by the Broker for an interested party must be delivered to that party within 10 business days after the completion of a closing or other transaction.
- (4) The Broker must request written acknowledgement that the party received the papers.

§12-18(a)(1)-(4)	Fine: \$400-\$ 2,000 and/or suspension	Appearance REQUIRED
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- (5) A Broker must give written notice to all sellers and buyers involved in a Medallion transfer of their right to be represented by an attorney or an accountant of their own choosing.

§12-18(a)(5)	Fine: \$500-\$1,000	Appearance REQUIRED
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(b) Principals.

- (1) A Broker who arranges a loan for his or her principal must give that principal a copy of the lender's commitment and of all other documents provided by the lender to the Broker.

§12-18(b)(1)	Fine: \$400-\$2,000 and/or suspension	Appearance REQUIRED
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- (2) Within 10 business days after the completion of a closing (including the financial closing), a Broker must give his or her principal(s) and the Commission a written closing statement including the following:

- (i) Names and addresses of seller(s) and purchaser(s)
- (ii) Medallion(s) being sold
- (iii) Sales price
- (iv) Vehicle cost (if any)
- (v) Amount of personal funds furnished by purchaser
- (vi) Names and addresses of lenders together with amount(s) of loan(s)
- (vii) Broker's commission
- (viii) List of all disbursements or payments made on behalf of the principal(s) including an explanation of the purpose for the individual payments

§12-18(b)(2)(i)-(viii)	Fine: \$500-\$2,000	Appearance REQUIRED
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- (3) Within 10 business days after completion of the financial closing, a Broker must forward all monies due to his or her principal(s).

§12-18(b)(3)	Fine: \$1,000-\$2,500 and/or suspension or revocation	Appearance REQUIRED
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§12-19 Business Procedures – Record Keeping

- (a) Retention of Records. A Broker must keep and maintain the following records for three years:

- (1) The names and addresses of transferor(s), transferee(s), mortgagee(s), or other lien holder(s), if any
- (2) The purchase price
- (3) Amount of deposit paid on contract
- (4) Amount of commission paid to Broker
- (5) Expenses of procuring the mortgage loan, if any
- (6) Closing statements
- (7) Listing placed with the Broker

§12-19(a)(1)-(7)	Fine: \$250-\$1,000	Appearance NOT Required
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- (b) Inspection of Records. Upon demand, a Broker must furnish all records and documents listed above to the Commission or its representatives for inspection.

§12-19(b)	Fine: \$500-\$1,500 and/or suspension	Appearance REQUIRED
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§12-20 Business Procedures – Handling of Funds

- (a) A Broker must not pay any part of funds advanced by the transferee to the transferor or any other person without the written approval of the transferee.

§12-20(a)	Fine: \$1,000-\$2,500	Appearance REQUIRED
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- (b) The Broker must not commingle funds advanced from a transferee with his or her own funds. He or she must deposit advanced funds promptly in a separate, federally insured, special account.

§12-20(b)	Fine: \$1,000-\$2,500	Appearance REQUIRED
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- (c) The Broker must provide written notification to the person who advanced the funds, giving the name and address of the bank in which the money was deposited and the amount of the deposit.

§12-20(c)	Fine: \$100-\$500	Appearance REQUIRED
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- (d) The Broker must not retain any of the interest earned from the deposited funds unless he or she has written permission from the principal.

§12-20(d)	Fine: \$100-\$500	Appearance REQUIRED
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§12-21 Business Procedures – Advertising

- (a) A Broker must indicate in any advertisement placed by the Broker that he or she is a licensed Broker.

§12-21(a)	Fine: \$100-\$750	Appearance REQUIRED
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- (b) A Broker must not use deceptive or misleading advertising.

§12-21(b)	Fine: \$500-\$2,000	Appearance NOT REQUIRED
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§12-22 Comply with Laws – Conduct Rules

- (a) Bribery. A Licensee or anyone acting on behalf of the Licensee must not offer or give any gift, gratuity or thing of value to any employee, representative or member of the Commission, or any other public servant.

§12-22(a)	\$2,000 and/or suspension or revocation	Appearance REQUIRED
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- (b) Failure to Report Bribery. A Licensee must immediately report to the Commission any request or demand for a gift, gratuity or thing of value by any employee, representative or member of the Commission, or any other public servant.

§12-22(b)	\$500-\$1,000 and/or suspension or revocation	Appearance REQUIRED
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- (c) Fraud, Theft. A Licensee must not commit or attempt to commit any act of fraud, misrepresentation or theft while performing the duties and responsibilities of a Licensee.

§12-22(c)	\$100-\$2,500 and/or suspension or revocation	Appearance REQUIRED
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- (d) Willful Acts of Omission. A Licensee must not perform any willful act of omission that is against the best interests of the public while performing the duties and responsibilities as a Licensee.

§12-22(d)	\$100-\$2,500 and/or suspension or revocation	Appearance REQUIRED
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- (e) Willful Acts of Commission. A Licensee must not perform any willful act of commission that is against the best interests of the public while performing the duties and responsibilities as a Licensee.

§12-22(e)	\$100-\$2,500 and/or suspension or revocation	Appearance REQUIRED
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- (f) Threats, Harassment, Abuse. A Licensee, his or her representatives, and his or her employees must not threaten, harass, or abuse any governmental or Commission representative, public servant, or other person while performing the duties and responsibilities of a Licensee.

§12-22(f)	\$1,000-\$2,500	Appearance REQUIRED
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- (g) Use or Threat of Physical Force. A Licensee, his or her representatives, and his or her employees must not use or attempt to use any physical force against a Commission representative, public servant, or other person while performing the duties and responsibilities of a Licensee.

<u>§12-22(g)</u>	<u>\$2,000-\$5,000 and/or suspension or revocation</u>	<u>Appearance REQUIRED</u>
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(h) Notice of Criminal Conviction.

- (1) A Licensee must immediately notify the Commission when he or she is convicted of a crime. The Licensee must also report any criminal convictions of any of the Licensee's Business Entity Persons or employees.
- (2) The notification must be in writing and accompanied by a certified copy of the certificate of disposition issued by the Clerk of the Court.

<u>§12-22(h)</u>	<u>\$500-\$1,000</u>	<u>Appearance REQUIRED</u>
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(i) Failure to Cooperate with Law Enforcement. A Licensee must cooperate with all law enforcement officers and all authorized representatives of the Commission, and comply with all their reasonable requests.

<u>§12-22(i)</u>	<u>\$500-\$1,500 and/or suspension</u>	<u>Appearance REQUIRED</u>
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(j) Failure to Cooperate with the Commission.

- (1) A Licensee must answer or comply with all questions, communications, or directives received from the Commission or its representatives within 72 hours. An emergency communication must be answered immediately.

<u>§12-22(j)(1)</u>	<u>\$250-\$750 and/or suspension</u>	<u>Appearance NOT REQUIRED</u>
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- (2) A Broker must answer all summonses from the Commission on the scheduled date.

<u>§12-22(j)(2)</u>	<u>\$250-\$750 and/or suspension</u>	<u>Appearance NOT REQUIRED</u>
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Statement of Basis and Purpose of Rules

These rules are proposed pursuant to sections 1043 and 2303 of the Charter and section 19-503 of the Administrative Code of the City of New York. The rules are part of a project undertaken by the Taxi and Limousine Commission (“TLC”) to revise its existing rule book. The first phase of this project consists of reorganizing and redrafting TLC’s rules, to enhance their clarity and accessibility without substantive change. Accordingly, these rules are not intended to make any changes to TLC’s current policies, procedures or operations.

During this first phase of the rules revision project, all of TLC’s existing rules will be redrafted, then posted on a chapter-by-chapter basis on the TLC Web site for review and discussion by interested members of the public. Each chapter will be revised based on that discussion, then published for public comment and public hearing pursuant to the City Administrative Procedure Act (CAPA). Because this phase of the rules revision is intended to involve no substantive changes to the rules, and as announced at the Commission meeting held on August 7, 2008, public hearings will be held separately from monthly stated Commission meetings.

When this process has been completed for all TLC rules, the complete set of rules will be presented to the Commission for promulgation simultaneously with repeal of the current set of TLC rules. The revised rules will replace the existing rules compiled in chapter 35 of the Rules of the City of New York. It is anticipated that the promulgation of the revised rules and repeal of the current rules will occur in 2009.

After the first phase of its rules revision is completed, TLC will move to the second phase, which will involve the assessment of its rules for more substantive changes.

The rules proposed here are as follows:

Current Rule Chapters revised in this rule-making	Proposed Rule Chapters
Chapter 5, Taxicab Brokers	Chapter 12, Taxicab Brokers

The proposed rule makes one substantive change. To fully incorporate the provisions of Local Law 16 of 2008, the penalty provisions have been amended to reflect that fines are stayed pending decision of a timely-filed appeal.