

# Notice to Members

SEPTEMBER 2006

## SUGGESTED ROUTING

Executive Representatives  
Legal & Compliance  
Operations  
Senior Management  
Systems

## KEY TOPICS

NASD Sanction Guidelines

## GUIDANCE

### NASD Sanction Guidelines

NASD Revises *Sanction Guidelines* to Further Address Consideration of a Firm's Size

#### Executive Summary

This *Notice* advises NASD member firms of modifications to the NASD *Sanction Guidelines* (Guidelines). NASD has amended the General Principles Applicable to All Sanction Determinations (General Principles) to clarify that adjudicators should consider a firm's size and available resources when imposing monetary sanctions. In particular, as revised, the Guidelines state that, in determining sanctions for violations that are not egregious and do not involve fraud, adjudicators should take into account a firm's revenues, as well as other factors indicative of firm size. The revisions also state that, as a result of adjudicators' consideration of size and available resources, a fine that is below the minimum level otherwise recommended in the Guidelines may be imposed. The revisions to the General Principles are effective immediately and are available on NASD's Web site at [www.nasd.com/sanctionguidelines](http://www.nasd.com/sanctionguidelines).

#### Questions/Further Information

Questions concerning this *Notice* may be directed to Carla Carloni, Office of General Counsel, Regulatory Policy and Oversight, at (202) 728-8019.

#### Discussion

NASD's Guidelines are designed to address a wide variety of potential violations of NASD's rules and provide fact-specific guidance for crafting appropriately remedial sanctions. NASD's adjudicators rely on the Guidelines to determine appropriately remedial sanctions, and NASD's Departments of Enforcement and Market Regulation, as well as the defense bar, rely on the Guidelines in negotiating settlements in disciplinary matters.

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With these revisions to the General Principles, NASD reiterates and reinforces its dedication to ensuring that the sanctions imposed in litigated and settled matters are proportionately remedial and are not punitive. The revisions remind users of the Guidelines that it is appropriate in certain cases to consider a respondent member firm's size when determining monetary sanctions.

With these revisions, NASD expands on the concept in General Principle No. 1 that adjudicators factor a firm's size into monetary sanction considerations. Prior to these revisions, the Guidelines pointed to the following facts to consider, among others, in determining firm size: the number of individuals associated with the firm; the level of trading activity at the firm; and other entities under common control with the firm. As revised, the Guidelines specifically include firm revenues as a factor to consider in assessing sanctions. The Guidelines now state that, in assessing whether to reduce sanctions based on firm size, adjudicators can consider, among other factors:

the amount of the firm's revenues; the financial resources of the firm; the nature of the firm's business; the number of individuals associated with the firm; the level of sales and trading activity at the firm; other entities that the firm controls, is controlled by, or is under common control with; the firm's contractual relationships; and prior disciplinary actions against the firm (see General Principle No. 2 regarding recidivists).

The revised Guidelines also state that, in imposing a sanction that is proportionately scaled to the firm's size, adjudicators may reduce the level of the sanction below the minimum level otherwise recommended in the Guidelines. Adjudicators' consideration of a firm's size is limited to violations that are neither egregious nor involve fraud.

NASD also amended General Principle No. 3 to reinforce for adjudicators, in connection with the determination of appropriately remedial sanctions, that it is appropriate to consider a firm's size and available resources. As revised, the Guidelines emphasize that, when considering reduction of a monetary sanction for a firm, adjudicators should aim to achieve a remedial sanction that is proportionately scaled to the firm's size and that may result in a reduction of the sanction below the minimum level that is otherwise indicated in the Guidelines.

The amendments to the Sanction Guidelines are effective immediately.

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