

NASD Notice to Members 98-30

NASD Office Of The Ombudsman Clarifies Its Role

Suggested Routing

- Senior Management
- Advertising
- Continuing Education
- Corporate Finance
- Executive Representatives
- Government Securities
- Institutional
- Insurance
- Internal Audit
- Legal & Compliance
- Municipal
- Mutual Fund
- Operations
- Options
- Registered Representatives
- Registration
- Research
- Syndicate
- Systems
- Trading
- Training
- Variable Contracts

Executive Summary

The National Association of Securities Dealers, Inc. (NASD[®]) Office of the Ombudsman staff has helped resolve many issues and concerns raised by members and their associated persons, issuers and their associated persons, and investors. With a staff of four full-time Ombudspersons, the Office has been able to better serve the steady growth in the number of concerns that are brought to its attention.

The NASD would like to remind members that the Ombudsman's role does not displace the NASD's existing procedures for handling customer complaints, members' disciplinary grievances, arbitration matters, or issuer concerns. The Ombudsman staff reviews concerns in an objective and confidential manner to resolve matters that fall outside established forums and to ensure that existing structural operations are functioning equitably.

Questions regarding this *Notice* should be directed to the Office of the Ombudsman, at (202) 728-8442, or toll free at (888) 700-0028.

Background

In mid-1996, the NASD created the Office of the Ombudsman (the Office) and appointed Bernard Thompson as Ombudsman for the NASD and its subsidiaries, NASD Regulation, Inc. (NASD RegulationSM) and The Nasdaq Stock Market, Inc. (Nasdaq[®]). Additional Ombudsman staff include Dave Bradford, Mariann Miller, and Jean Robinson.

The NASD created the Office in response to recommendations made by the NASD Select Committee on Structure and Governance (*see Notices to Members 95-84, 95-101, 95-102, and 96-35*) that an independent office be established to receive and address "concerns and com-

plaints, whether anonymous or not, from any source (within or outside of the NASD) concerning the operations, enforcement, or other activities of the NASD, NASD Regulation, or Nasdaq, or any staff members."

Description

When an established complaint or appellate process does not exist, Ombudsman staff can serve a dispute resolution function by suggesting actions or policies that are intended to be equitable to all parties. One of the major functions of the Office is to provide confidential assistance to parties inside and outside the NASD regarding a complaint or a concern. The Ombudsman staff will help all parties identify and evaluate options for positive actions and remain neutral in doing so. Where an established complaint or appellate process exists, the Ombudsman staff will identify the process, explain it in general terms, and direct the caller to the appropriate office.

In all situations, the Ombudsman's role is to remain neutral. It represents neither the party expressing a concern nor the part of the organization responsible for the process or procedure that causes concern.

Matters That May Be Reviewed Inconsistent Decisions By NASD Staff

Complaints regarding decisions made or actions taken by NASD staff that may be inconsistent, biased, or result in disparate treatment may be directed to the Office. These complaints may be based on discretionary acts by the NASD staff for which an established appellate channel does not exist. The Ombudsman staff will process each complaint received, review or conduct an informal investigation of the allegations,

and recommend appropriate action, if warranted.

For issues in which an established complaint or appellate process exists, at its conclusion, concerns about the process may be reviewed and, when necessary, informally investigated.

Weak Procedures

The Office will review complaints of weaknesses in NASD controls, practices, or procedures submitted by persons who, for whatever reason, do not want to, or believe they cannot, report such weaknesses to NASD management or who wish to remain anonymous. This could include, for example, continued failure of an NASD manager to respond to public customers, member firms, or issuers' needs or the failure of an NASD department to address matters for which it is responsible.

Matters That Will Not Be Reviewed

Complaints will be directed to the appropriate office in those cases where established procedures currently exist regarding application of rules, policies, procedures, or interpretations. These complaints may deal with various topics and allegations, (*i.e.*, Committee or Hearing Panel action, applicability of a rule or a procedure, how an interpretation is applied, etc.).

Complaints from member firms and/or their associated persons regarding disciplinary rulings, from issuers regarding listing proceedings, and from member firms regarding application of existing rules by market operations staff, prosecutorial bias, bias by a Hearing Panel, or a conflict of interest by a Hearing Panel member are subject to review by the existing NASD appellate procedures and processes.

Where a structured dispute resolution and/or appellate process currently exists, that process should continue to be used by parties seeking a redress. Accordingly, in such cases the Ombudsman's role will be limited to informing persons of the existence of the appropriate process for resolution and monitoring the outcome. However, in such cases Ombudsman staff is authorized to conduct independent reviews of complaints involving particular NASD staff, departments, processes, or procedures.

Arbitration And Mediation

Complaints from parties in arbitration or mediation dealing with arbitrators' rulings, conduct, or awards will not be the focus of the Office. The arbitration staff currently investigates and responds to complaints regarding the arbitration and mediation processes. The Ombudsman staff will only be available for reviewing complaints regarding allegations of NASD staff misconduct, separate from the merits of the arbitration claim. The Ombudsman staff does not have the authority to change an arbitration ruling.

Complaints Regarding Conduct Of Members Or Their Associated Persons

The Office will advise persons who claim to have suffered monetary injury as a result of the conduct of member firms or their associated persons to pursue the matter through arbitration. When a complaint alleges possible violations of rules that the NASD is responsible for enforcing, the Office will also recommend that the complaining party report the matter to the appropriate NASD Regulation District Office for investigation and possible disciplinary action.

Complaints that are within the jurisdiction of another department or organization will be referred by the

Office to those areas that have the jurisdiction and expertise to handle them. If the complainant is referred internally to another NASD department, Ombudsman staff will follow up to ensure the appropriate department responds in a timely manner.

Board Rulemaking And Policy Decisions

Because avenues exist for interested persons to express their views on proposed rules under consideration by the NASD Board of Governors or the Directors of NASD Regulation or Nasdaq, the Office does not handle concerns or complaints relating to this area. Persons who wish to participate in the policy formulation process are strongly encouraged to submit comments when proposed rules are published for comment by the NASD and/or the Securities and Exchange Commission.

How To Contact The Office

If members, associated persons, investors, issuers, or others have a complaint or comment regarding an action by the NASD as described in this *Notice*, they can contact the Office of the Ombudsman, at (202) 728-8442, or (888) 700-0028; e-mail: ombuds@nasd.com; or write to:

NASD
Office of the Ombudsman
1775 K Street, Suite 480
Washington, DC 20006

The inquiries may be anonymous and will be treated confidentially.

© 1998, National Association of Securities Dealers, Inc. (NASD). All rights reserved.