

# NASD NOTICE TO MEMBERS 96-76

## SEC Approves Amendment To IM-8310-2 Regarding The Availability Of Disciplinary Complaints And Disciplinary Decisions Upon Request

### Suggested Routing

- Senior Management
- Advertising
- Corporate Finance
- Government Securities
- Institutional
- Internal Audit
- Legal & Compliance
- Municipal
- Mutual Fund
- Operations
- Options
- Registration
- Research
- Syndicate
- Systems
- Trading
- Training

### Executive Summary

On October 9, 1996, the Securities and Exchange Commission (SEC) approved an amendment to IM-8310-2 regarding the availability of disciplinary complaints and disciplinary decisions upon request. The amendment permits the NASD to provide copies of NASD<sup>®</sup> disciplinary complaints and disciplinary decisions upon request and requires that such copies be accompanied by a disclosure statement in certain circumstances. The full text of the amendment, which became effective on an accelerated basis on October 9, 1996, follows the discussion below.<sup>1</sup>

Questions regarding this Notice may be directed to Suzanne E. Rothwell, Associate General Counsel, NASD Regulation, at (202) 728-8247.

### Background And Discussion

Under the Interpretation on the Release of Disciplinary Information (Rule), IM- 8310-2,<sup>2</sup> NASD Regulation, Inc. (NASD Regulation) provides notification to the membership and the press of significant disciplinary decisions when time for appeal and call for review has expired, but the Rule does not specifically authorize NASD Regulation to provide copies of any disciplinary complaint or disciplinary decision, in its entirety, upon request. As a matter of practice, the staff has not provided copies of disciplinary complaints in response to requests. However, the NASD has maintained a policy since 1994 of providing complete copies of disciplinary decisions upon request, pursuant to an interpretation of paragraph (a) of the Rule, which permits the NASD to release information upon request regarding "all pending disciplinary actions ...."

The NASD is amending the Rule to adopt new paragraph (b) to clarify that the NASD shall in response to a

request, release to the requesting party a copy of any NASD disciplinary complaint or disciplinary decision issued by the NASD or any of its subsidiaries or committees.<sup>3</sup> In making a request for a disciplinary complaint or decision, the new rule requires that the requesting party identify the disciplinary complaint or decision that is being requested. This requirement is satisfied where the requesting party identifies a particular broker/dealer or associated person that is a respondent in an NASD disciplinary action (although the date of the complaint or decision may not be known) or identifies an issue or rule that is the subject of one or more complaints or decisions (where the identity of the respondent or respondents is not known). It is also permissible for a request to encompass all disciplinary complaints and decisions related to an identified respondent without reference to a particular time period.

The new provision also requires that copies of disciplinary complaints and decisions be accompanied by certain disclosures, in certain circumstances, that are set forth in subparagraphs (b)(1)-(4). The new provision requires that any copy of a disciplinary complaint be accompanied by a statement that the issuance of a complaint represents the initiation of

<sup>1</sup> Securities and Exchange Act Release No. 34-37797 (October 9, 1996); 61 FR 53984 (October 16, 1996).

<sup>2</sup> The Interpretation was previously cited as "Resolution of the Board of Governors— Notice to Membership and Press of Suspensions, Expulsions, Revocations, and Monetary Sanctions and Release of Certain Information Regarding Disciplinary History of Members and Their Associated Persons" and appeared after paragraph 2301 of the *NASD Manual*, following Article V, Section 1 of the Rules of Fair Practice.

<sup>3</sup> This amendment addresses only "disciplinary complaints," not "customer complaints."

a formal proceeding by the NASD in which findings as to the allegations in the complaint have not been made and does not represent a decision as to any of the allegations contained in the complaint.

In addition, any copy of a disciplinary decision issued by a District Business Conduct Committee or the Market Surveillance Committee that is released prior to the expiration of the time for appeal to or call for review by the National Business Conduct Committee, NASD Regulation Board of Directors, or NASD Board of Governors, or while such an appeal or review is pending, is required to be accompanied by a statement that the findings and sanctions imposed in the decision may be increased, decreased, modified, or reversed if the matter is appealed or called for review.

Any copy of a final decision of the NASD released prior to the expiration of the time period for the filing of an appeal to the SEC or while such an appeal is pending is required to be accompanied by a statement that the findings and sanctions of the NASD are subject to review with the SEC if the decision is appealed. Finally, any copy of a final decision of the NASD released after the decision is appealed to the SEC is required to be accompanied by a statement that the effectiveness of the decision has or has not been stayed pending the outcome of proceedings before the SEC.

The NASD is also amending paragraph (a) of the Rule. Currently, the provision appears to prevent information from being provided through the Public Information Program (Program), i.e., the Central Registration Depository, if it has not been reported on Forms BD or U-4, even though Forms BD or U-4 would require the reporting of such information. This was not the intent of the current rule language. The NASD is, therefore,

amending the provision to clarify that information provided through the Program is the same information that is required to be reported on Forms BD or U-4.

NASD Regulation believes these changes will further protect investors and the public interest by providing more complete information with respect to the issuance of disciplinary complaints and decisions to persons requesting such documents. In addition, providing complete copies of complaints and decisions permits more complete disclosure of the surrounding facts and circumstances, in contrast to the abbreviated descriptions that are available through the Program.

Questions regarding this Notice may be directed to Suzanne E. Rothwell, Associate General Counsel, NASD Regulation, at (202) 728-8247.

### **Text Of Amendment**

(Note: New text is underlined; deletions are bracketed.)

### **IM-8310-2. Release of Disciplinary Information**

(a) The Association shall, in response to a written inquiry or telephonic inquiry via a toll-free telephone listing, release certain information as contained in its files regarding the employment and disciplinary history of members and their associated persons, including information regarding past and present employment history with Association members; all final disciplinary actions taken by federal or state or foreign securities agencies or self-regulatory organizations that relate to securities or commodities transactions; all pending disciplinary actions that have been taken by federal or state securities agencies or self-regulatory organizations that relate to securities and commodities transactions and [have

been] are required to be reported on Form BD or U-4 and all foreign government or self-regulatory organization disciplinary actions that are securities or commodities related and are required to be reported on Form BD or U-4; and all criminal indictments, informations or convictions that are required to be reported on Form BD or Form U-4. The Association will also release information concerning civil judgments and arbitration decisions in securities and commodities disputes involving public customers.

(b) The Association shall, in response to a request, release to the requesting party a copy of any identified disciplinary complaint or disciplinary decision issued by the Association or any subsidiary or Committee thereof; provided, however, that each copy of:

(1) a disciplinary complaint shall be accompanied by a statement that the issuance of a disciplinary complaint represents the initiation of a formal proceeding by the Association in which findings as to the allegations in the complaint have not been made and does not represent a decision as to any of the allegations contained in the complaint;

(2) a disciplinary decision that is released prior to the expiration of the time period provided under the Code of Procedure for appeal or call for review within the Association or while such an appeal or call for review is pending, shall be accompanied by a statement that the findings and sanctions imposed in the decision may be increased, decreased, modified, or reversed by the Association;

(3) a final decision of the Association that is released prior to the time period provided under the Securities Exchange Act of 1934 for appeal to the Commission or while such an appeal is pending, shall be accompa-

nied by a statement that the findings and sanctions of the Association are subject to review and modification by the Commission; and

(4) a final decision of the Association that is released after the decision is appealed to the Commission shall be

accompanied by a statement as to whether the effectiveness of the sanctions has been stayed pending the outcome of proceedings before the Commission.

Current paragraphs (b) through (k) are redesignated (c) through (l).