

Notice to Members

MARCH 2004

SUGGESTED ROUTING

Legal & Compliance
Registered Representatives
Senior Management

KEY TOPICS

Minor Rule Violation Plan (MRVP)
Sanctions

GUIDANCE

NASD Releases Minor Rule Violation Plan (MRVP) Guidelines

Executive Summary

In 1993, NASD established the Minor Rule Violation Plan (MRVP or the Plan) to provide NASD with a process for imposing meaningful sanctions for rule violations that may not warrant the initiation of a full disciplinary proceeding. The MRVP provides an efficient alternative means by which to deter violations of rules while maintaining procedural rights for disciplined persons.

NASD is publishing this *Notice* to provide interested parties with guidance concerning the application of NASD's MRVP to each of the rules under the Plan, as specified in NASD IM-9216. This guidance includes identifying the factors to be considered in determining whether to dispose of an action under the MRVP and discussing the appropriate levels for fines. These factors are intended to provide guidance only and, depending on the facts and circumstances of each matter, it may be appropriate to deviate from the suggested disposition and fines.

The NASD MRVP Guidelines are included in Attachment A.

Questions/Further Information

Questions concerning this *Notice* may be directed to Carla Carloni, Associate General Counsel, Office of General Counsel, Regulatory Policy and Oversight (OGC RPO), at (202) 728-8019; or Shirley Weiss, Associate General Counsel, OGC RPO, at (202) 728-8844.

Background and Discussion

In 1984, the SEC adopted amendments to Rule 19d-1(c) under the Securities Exchange Act of 1934 (Exchange Act) to allow self-regulatory organizations to adopt, with SEC approval, plans for the disposition of minor violations of rules.¹ In 1993, pursuant to SEC Rule 19d-1(c), NASD established an MRVP, as set forth in NASD Rule 9216(b).² In 2001, the SEC approved significant amendments to NASD's MRVP.³

Rule 9216(b) authorizes NASD to impose a fine of \$2,500 or less on any member or associated person of a member for a violation of any of the rules specified in IM-9216. NASD staff reviews the number and seriousness of the violations, as well as the previous disciplinary history of the respondent to determine if a matter is appropriate for disposition under the MRVP and to determine the amount of the fine. Once NASD has issued an MRVP letter against an individual or member firm, NASD may, at its discretion, issue progressively higher fines for all subsequent minor violations of rules within the next 24-month period or initiate more formal disciplinary proceedings.

The purpose of the MRVP is to provide for the imposition of a meaningful sanction for a minor or technical violation of a rule when the initiation of a full disciplinary proceeding would be more costly and time-consuming than may be warranted. Inclusion of a rule in NASD's MRVP does not mean it is an unimportant rule; rather, inclusion of a rule in the MRVP means that the minor or technical violation of the rule may be appropriate for disposition under the MRVP. NASD retains the discretion to bring full disciplinary proceedings for the violation of any rule listed in the MRVP.

Unlike immediate reporting of full disciplinary adjudications by NASD to the SEC, reporting of minor rule violations to the SEC is done on a quarterly basis. Furthermore, members and associated persons currently do not need to report an MRV letter on Form BD or Forms U4 and U5.⁴

NASD MRVP Guidelines

The MRVP Guidelines (Guidelines) provide NASD staff with a framework from which to decide whether a matter is appropriate for disposition under the Plan and, if so, guidance regarding the level of fine that NASD should impose. The Guidelines allow NASD to examine the facts and circumstances of each violation to make such determinations. Under the Guidelines, NASD staff will not assess MRVP fines through a rigid tier structure (e.g., \$1,000 for a first-time violation, \$2,000 for a second-time violation, and \$2,500 for a third-time violation). Rather, the Guidelines enable NASD staff to take a facts and circumstances approach to each violation and allow NASD staff to tailor the fine to the specific violation at issue.

The Guidelines contain a General Principles Section for use with all violations eligible for MRVP treatment. This section lists factors for NASD staff to use to determine whether to address a matter through informal means (e.g., a Letter of Caution), the MRVP, or full disciplinary proceedings. The General Principles Section states that an important objective of the MRVP is to deter future misconduct by imposing progressively escalating fines for repeat violations and lists factors to be considered for all MRVP eligible dispositions.

The Guidelines also include a Violation-Specific section that provides NASD staff with additional guidance for each violation eligible for disposition under the Plan. The Violation-Specific section includes individualized considerations for NASD staff to take into account when determining whether a matter should be addressed informally, through the MRVP, or through full disciplinary proceedings. For instance, for a violation of Rule 4619(d)—failure to timely file notifications pursuant to SEC Regulation M, the Violation-Specific Guideline states that an MRVP letter and fine are appropriate only when a notification is filed late and that a complete failure to file the required notification should result in full disciplinary proceedings. The Guideline also states that a Letter of Caution may be appropriate for a minor, first-time violation.

The Violation-Specific section also includes specific factors for staff to use in determining the level of fine to impose. For instance, for a violation of SEC Rule 11Ac1-4—failure to properly display limit orders, the Violation-Specific Guideline lists five factors for NASD staff to take into account: (1) whether violations are batched; (2) whether violations are the result of only one individual or the result of faulty systems or procedures; (3) whether the firm has taken remedial measures to correct the violations; (4) prior minor rule violations within the past 24 months; and (5) collateral effects that the failure has on customers.

As with the General Principles section of the Guidelines, all listed factors and considerations are intended to provide guidance only and, depending on the facts and circumstances of each matter, it may be appropriate for NASD staff to deviate from the suggested disposition and fines.

Endnotes

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| 1 See Exchange Act Rel. No. 21013 (June 1, 1984), 49 Fed. Reg. 23833 (June 8, 1984). | 3 See Exchange Act Rel. No. 44512 (July 3, 2001), 68 Fed. Reg. 36812 (July 13, 2001). |
| 2 See Exchange Act Rel. No. 32076 (Mar. 31, 1993), 58 Fed. Reg. 18291 (Apr. 8, 1993); see also <i>Notice to Members</i> 93-42 (July 1993). | 4 Firms and individuals should consult with their own legal counsel as needed to determine whether any particular matter must be reported on Form BD or Forms U4 and U5. |

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ATTACHMENT A

General Guidelines for Violations of Rules Contained in NASD's Minor Rule Violation Plan

Minor Rule Violation Plan

NASD Rule 9216(b) establishes NASD's Minor Rule Violation Plan (MRVP or the Plan). Under the MRVP, NASD may impose a fine of up to \$2,500 on any member or associated person of a member for a violation of any of the rules specified in NASD IM-9216 (Violations Appropriate for Disposition under the Plan).

Minor Rule Violation letters provide NASD with an effective and efficient means of addressing violations that warrant more than a Letter of Caution, but do not necessarily rise to the level meriting a full disciplinary proceeding. Consistent with NASD's Sanction Guidelines, MRV letters also represent an additional tool for implementing the concept of progressive discipline. Unlike immediate reporting of full disciplinary adjudications by NASD to the SEC, however, under SEC Rule 19d-1, reporting of minor rule violations to the SEC is done on a quarterly basis. Furthermore, members and associated persons currently do not need to report an MRV letter on Form BD or Forms U4 and U5.¹

These Guidelines contain both a General Principles section applicable to all violations under the MRVP as well as a Violation-Specific section that provides additional guidance concerning the application of the MRVP to each of the rules under the Plan, as specified in NASD IM-9216. The Violation-Specific section includes factors to be considered in determining whether to dispose of an action under the MRVP and the appropriate levels for fines. These factors are intended to provide guidance only and, depending on the facts and circumstances of each matter, it may be appropriate to deviate from the suggested disposition and fines.

¹ Firms and individuals should consult with their own legal counsel as needed to determine whether any particular matter must be reported on Form BD or Forms U4 and U5.

General Principles

In addition to the specific rule-by-rule guidance, there are a number of general principles applicable to the MRVP:

1. **For a first-time violation of a rule, NASD staff may determine that a Letter of Caution, rather than a formal action under the MRVP, is sufficient.** The inclusion of a particular rule violation in the MRVP does not require that the staff dispose of a matter through the MRVP. NASD staff, for instance, may determine in a particular case that a Letter of Caution is more appropriate for a first-time violation. Among the factors to consider in determining whether to issue a Letter of Caution or to dispose of a matter as a Minor Rule Violation are:
 - a whether the particular violation is part of a larger scheme or series of violations;
 - b whether other violations of any kind were revealed in the same or concurrent examinations or investigations by NASD; and
 - c the firm or associated person's prior Minor Rule Violations and/or other disciplinary history.
2. **The MRVP adopts a concept of progressive discipline.** An important objective of the MRVP is to deter future misconduct by imposing progressively escalating fines for repeat violations. In the specific guidance for many of the rule violations under the MRVP, there are recommendations for escalating fines based upon specific listed factors, including the number of prior violations. Among the factors to consider in establishing the level of fine for a Minor Rule Violation are:
 - a whether there have been prior Minor Rule Violations involving the conduct at issue;
 - b whether the firm or associated person has had prior Minor Rule Violations that are unrelated to the violation at issue;
 - c the firm or associated person's other disciplinary history;
 - d the number of violations; and
 - e the seriousness of the violation(s).

In general, the guidance under the MRVP calls for progressively higher fines for all subsequent minor violations of rules within a 24-month period.

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3. **NASD staff retains discretion to bring full disciplinary proceedings for any violation of a rule included in the MRVP.** The decision as to whether a particular violation should be resolved as a Minor Rule Violation or through full disciplinary proceedings depends upon the facts and circumstances of each case. Inclusion of a particular rule within the MRVP does not require the resolution of initial or subsequent violations of that rule as Minor Rule Violations. NASD staff retains the discretion to bring full disciplinary proceedings for any violation listed in the MRVP. Among the factors for staff to consider in determining whether to bypass the MRVP and pursue full disciplinary proceedings are:
- a whether a violation is more than a “technical” violation;
 - b whether a violation is deliberate;
 - c the complexity of the issues;
 - d whether there is a history or pattern of repeat violations;
 - e whether the violation has a significant impact on investors or impairs the ability of NASD to regulate the market;
 - f the number of violations;²
 - g the firm or associated person’s prior Minor Rule Violations and/or other disciplinary history; and
 - h the seriousness of the violation(s).

2 An MRV letter may be appropriate for addressing more than one violation in a single action. In cases where two or more rule violations are disposed of as an MRV, the maximum penalty will be \$2,500. In such cases, the determination to pursue full disciplinary proceedings should be made on a case-by-case basis.

Violation-Specific Guidance on the Application of NASD's MRVP

Rule Specified in the Plan	General Guidelines	Specific Factors to Use in Determining the Amount of the Fine
Rule 2210(b)(1) – Failure to have advertisements and sales literature approved by a principal prior to use	1) Content-related violations generally require full disciplinary proceedings.	1) Number of advertisements and sales literature not approved; 2) Size and scope of the distribution; 3) Evidence of training of representatives; 4) Adequacy of the firm's internal procedures; and 5) Number of prior failures to obtain a principal's approval, including prior MRVs within the past 24 months.
Rule 2210(b)(2) – Failure to maintain separate files of advertisements and sales literature containing required information	1) Content-related violations generally require full disciplinary proceedings; and 2) An MRV should be strictly limited to the violation of failing to maintain the files at issue.	1) Number and type of documents missing; 2) Length of time since firm has maintained a complete set of files; 3) Number of documents only containing partial information; and 4) Prior MRVs within the past 24 months.
Rule 2210(c) and Rule 2220(c) – Failure to file communications with NASD within the required time limits	1) Content-related violations generally require full disciplinary proceedings; 2) A Letter of Caution may be appropriate instead of issuing an MRV letter based on the <u>relative frequency</u> of a member's late filings. (For example, a firm that has only one or two late filings out of 10,000 total filings may not require an MRV. In comparison, a firm that has one or two late filings out of 10 total filings may require an MRV. A firm that consistently files late may require full disciplinary proceedings.); and 3) An MRV is appropriate only when a document is filed late. A complete failure to file required communications should result in full disciplinary proceedings.	1) Number of late filings compared to the firm's total number of filings; 2) Number of days that a filing is late; 3) Whether the firm has adequate procedures; and 4) Whether the firm has a history of filing compliance/non-compliance, including prior MRVs within the past 24 months.
Rule 3360 – Failure to timely file reports of short positions on Form NS-1	1) A complete failure to file the reports generally requires full disciplinary proceedings; 2) For a first late filing in a 12-month period, a Letter of Caution is appropriate; and 3) For a second late filing in a 12-month period, consider an MRV.	1) Number of days that the filing is late; 2) Prior MRVs within the past 24 months; 3) Collateral effects that the late filing has on customers; and 4) Collateral effects that the late filing has on NASD's ability to perform its regulatory function.

Rule Specified in the Plan	General Guidelines	Specific Factors to Use in Determining the Amount of the Fine
Rule 3110 – Failure to keep and preserve books, accounts, records, memoranda, and correspondence in conformance with applicable laws, rules, regulations and statements of policy promulgated thereunder, and with NASD Rules	Violations that prevent NASD from performing its regulatory function generally require full disciplinary proceedings.	- Number of documents affected and the time frame over which the problem occurred; - The materiality of the documents that are missing; - Prior MRVs within the past 24 months; and - Collateral effects that the failure has on NASD's ability to perform its regulatory function.
Rule 8211, Rule 8212, and Rule 8213 – Failure to submit trading data as requested	- For any review period, if less than 95% of the blue sheet responses are on time: - if average delay is between one and nine days, issue a Letter of Caution; - if average delay is between 10 and 15 days, use an MRV. - For any review period, if more than 95% of the blue sheets are on time: - if average delay is less than 17 days, file without action; - if average delay is between 17 and 29 days, use an MRV.	- Percentage of submissions received late; - Prior MRVs within the past 24 months; and - Collateral effects that the failure has on NASD's ability to perform its regulatory function.
Article IV – Failure to timely submit amendments to Form BD	- Content-related violations generally require full disciplinary proceedings; - An MRV or Letter of Caution should be limited to failure to file a Form BD amendment on the required date; and - Letter of Caution may be appropriate for a minor, first-time violation.	- Number of days that the filing is late; - The materiality of the reporting event; - Complexity of facts and circumstances giving rise to the amendment; - Prior MRVs within the past 24 months; - Collateral effects that the late filing has on customers; and - Collateral effects that the late filing has on NASD's ability to perform its regulatory function.

Rule Specified in the Plan	General Guidelines	Specific Factors to Use in Determining the Amount of the Fine
Article V – Failure to timely submit amendments to Form U4	1) A willful misstatement or omission on Form U4 even if it is not material generally requires full disciplinary proceedings; 2) An MRV or Letter of Caution should be limited to failure to file Form U4 amendments in a timely way or non-negligent errors on Form U-4 due to inadvertence, mistake or incorrect advice from an attorney or member firm after full disclosure by the individual; and 3) Letter of Caution may be appropriate for a minor, first-time violation.	1) Number of days that the filing is late; 2) The materiality of the reporting event; 3) Prior MRVs within the past 24 months; 4) Collateral effects that the late filing has on customers; and 5) Collateral effects that the late filing has on NASD's ability to perform its regulatory function.
Rule 1120 – Failure to comply with continuing education requirements (Firm Element)	1) An MRV will be considered only for violations of the rule if: a. The firm has made a good faith effort to comply with the Rule's requirements; b. The firm has provided training to all or substantially all of its registered representatives; c. The firm has no prior formal or informal action in this area; and d. The firm has promptly corrected any deficiencies after being contacted by the staff. 2) Failure of registered persons to take appropriate and reasonable steps to participate in continuing education programs as required by the member may also result in an MRV against registered person.	1) The length of time the firm failed to comply with the rule; 2) The number of registered persons affected; 3) The nature of the firm's business; and 4) Prior MRVs within the past 24 months.
Rule 3010(b)(2)(vii) – Failure to timely file reports pursuant to the Taping Rule	1) Full disciplinary proceedings generally are required for any failure to establish, maintain and enforce special written supervisory procedures for supervising the telemarketing activities of registered personnel; 2) Full disciplinary proceedings generally are required for the complete failure to file a Taping Rule report and for incomplete filings; 3) MRVs should be limited strictly to failure to file a Taping Rule Report on the required date (Rule 3010(b)(2)(vii)); and 4) A Letter of Caution may be appropriate for a minor, first-time failure to file a Taping Rule report on the required date.	1) Number of days that the filing is late; 2) Prior MRVs within the past 24 months; 3) Collateral effects that the late filing has on customers; and 4) Collateral effects that the late filing has on NASD's ability to perform its regulatory function.

Rule Specified in the Plan	General Guidelines	Specific Factors to Use in Determining the Amount of the Fine
Rule 3070 – Failure to timely file reports	1) An MRV is appropriate only when a report is filed late. A complete failure to file required reports should result in full disciplinary proceedings; 2) The nature of information required to be reported may require full disciplinary proceedings; 3) The reason for the failure to timely file reports may require full disciplinary proceedings if the failure is intentional or reckless; and 4) A Letter of Caution may be appropriate for a minor, first-time violation.	1) Number of days that the filing is late; 2) Nature of information required to be reported; 3) Prior MRVs within the past 24 months; 4) Collateral effects that the late filing has on customers; and 5) Collateral effects that the late filing has on NASD's ability to perform its regulatory function.
Rule 4619(d) – Failure to timely file notifications pursuant to SEC Regulation M	1) An MRV is appropriate only when a notification is filed late. A complete failure to file required notification should result in full disciplinary proceedings; and 2) Letter of Caution may be appropriate for a minor, first-time violation.	1) Whether the filing is complete; 2) Length of time that the filing is late; 3) Prior MRVs within the past 24 months; 4) Collateral effects that the late filing has on customers; and 5) Collateral effects that the late filing has on NASD's ability to perform its regulatory function.
Rules 4632, 4642, 4652, 6240, 6420, 6550, 6620, and 6720 – Transaction reporting in equity, convertible debt, and high-yield securities	1) Violations that prevent NASD from performing its regulatory function may not be appropriate for disposition under the MRVP.	1) Total number of reports that are not submitted, submitted late, or not submitted in proper form; 2) The timeframe over which the violations occur; 3) Whether the violation affects data dissemination to the public; 4) Whether violations are batched; 5) Whether the violations are the result of the actions of one individual or the result of faulty systems or procedures; 6) Whether the firm has taken remedial measures to correct the violations; 7) Prior MRVs within the past 24 months; and 8) Collateral effects that the failure has on NASD's ability to perform its regulatory function.

Rule Specified in the Plan	General Guidelines	Specific Factors to Use in Determining the Amount of the Fine
Rules 6130 and 6170 – Transaction reporting to ACT	Violations that prevent NASD from performing its regulatory function generally require full disciplinary proceedings.	- Total number of reports that are not submitted, submitted late, or not submitted in proper form; - The timeframe over which the violations occur; - Whether violations are batched; - Whether the violations are the result of the actions of one individual or the result of faulty systems or procedures; - Whether the firm has taken remedial measures to correct the violations; - Prior MRVs within the past 24 months; - Collateral effects that the failure has on customers; and - Collateral effects that the failure has on NASD's ability to perform its regulatory function.
Rules 6954 and 6955 – Failure to submit data in accordance with OATS	Violations that prevent NASD from performing its regulatory function generally require full disciplinary proceedings.	- Total number of reports that are not submitted or submitted late; - The timeframe over which the violations occur; - Whether violations are batched; - Whether the violations are the result of the actions of one individual or the result of faulty systems or procedures; - Whether the firm has taken remedial measures to correct the violations; - Prior MRVs within the past 24 months; - Collateral effects that the failure has on customers; and - Collateral effects that the failure has on NASD's ability to perform its regulatory function.
Rule 11870 – Failure to abide by customer account transfer contracts	A Letter of Caution may be appropriate for first-time violations.	- Number of violations; - Adequacy of the firm's internal procedures; - Nature of the violation of the transfer contract; - Prior MRVs within the past 24 months; and - Collateral effects that the failure has on customers.

Rule Specified in the Plan	General Guidelines	Specific Factors to Use in Determining the Amount of the Fine
SEC Rule 11Ac1-4 – Failure to properly display limit orders	1) A Letter of Caution may be appropriate if the number of violations in a quarter is small and the percentage of orders not properly displayed is small; and 2) If the number of violations or the percentage of orders not handled properly is high, an MRV or a full disciplinary proceeding may be required.	1) Whether violations are batched; 2) Whether violations are the result of only one individual or the result of faulty systems or procedures; 3) Whether the firm has taken remedial measures to correct the violations; 4) Prior MRVs within the past 24 months; and 5) Collateral effects that the failure has on customers.
SEC Rule 11Ac1-1(c)(5) – Failure to properly update published quotes in certain ECNs	1) Violations that prevent NASD from performing its regulatory function generally require full disciplinary proceedings.	1) Number of violations; 2) Whether violations are batched; 3) Whether violations are the result of only one individual or the result of faulty systems or procedures; 4) Whether the firm has taken remedial measures to correct the violations; 5) Prior MRVs within the past 24 months; and 6) Collateral effects that the failure has on customers.
SEC Rule 17a-5 – Failure to timely file FOCUS reports and annual audits	1) An MRV or Letter of Caution should not be used if the violation is accompanied by other violations, especially Net Capital violations; 2) If a filing is late 10 business days or less, a mandatory \$100 fee per day is assessed;¹ 3) If a filing is more than 10 business days late, an MRV may be assessed; and 4) An MRV also may be considered when a firm has exhibited a pattern of late filings, e.g., reports late three times within a year, but the filings were less than 10 business days late.	1) Number of days late; 2) Prior MRVs within the past 24 months; and 3) Collateral effects that the late filing has on NASD's ability to monitor a member firm's financial and operational condition, or otherwise perform its regulatory function.

Rule Specified in the Plan	General Guidelines	Specific Factors to Use in Determining the Amount of the Fine
SEC Rule 17a-10 – Failure to timely file Schedule I	1) An MRV or Letter of Caution should not be used if the violation is accompanied by other violations, especially Net Capital violations; 2) If a filing is late 10 business days or less, a mandatory \$100 fee per day is assessed; 3) If a filing is more than 10 business days late, an MRV may be assessed; and 4) An MRV also may be considered when a firm has exhibited a pattern of late filings, <i>e.g.</i>, reports late three times within a year, but the filings were less than 10 business days late.	1) Number of days late; 2) Prior MRVs within the past 24 months; and 3) Collateral effects that the late filing has on NASD's ability to monitor a member firm's financial and operational condition, or otherwise perform its regulatory function.
MSRB Rule A-14 – Failure to timely pay annual fee	1) A Letter of Caution should be considered if the annual fee is paid less than 30 days late and if the member firm has no prior history of late payment; and 2) An AWC should be considered if the member pays the fee more than 30 days late for three or more consecutive years.	1) A \$500 fine should be considered for the first MRV issued to the member firm; and 2) Progressively higher fines should be considered for subsequent MRVs issued over a 24-month period.
MSRB Rule G-12 – Failure to abide by uniform practice rules	1) A Letter of Caution may be appropriate for a first-time occurrence and if the firm's inter-dealer trade compliance statistics, on average, are below the industry average for no longer than a three-month period;² 2) If a firm's inter-dealer statistics remain below the industry average following the first Letter of Caution, an MRV would be appropriate if the firm's compliance, on average, is no more than 3% below the industry average for no longer than a three-month period. Otherwise, an AWC should be used; and 3) Violations that prevent NASD from performing its regulatory function generally require full disciplinary proceedings.	1) Total number of transactions that were reported late, reported inaccurately, or not reported; 2) The timeframe over which the violations occurred; 3) The firm's compliance, as measured by MSRB-generated statistics and as compared with industry averages, taking into consideration the firm's transaction volume and the timeframe over which the violations occurred; 4) Whether the violation affects data dissemination to the public;³ 5) Whether the violations are the result of the actions of only one individual or the result of faulty systems or procedures; 6) Whether the firm has taken remedial measures to correct the violations, including a proactive compliance process for transaction reporting (<i>e.g.</i>, adequate policies and procedures and periodic review of the MSRB Dealer Feedback System); 7) Prior MRVs within the past 24 months; and 8) Collateral effects that the failure has on customers.

Rule Specified in the Plan

General Guidelines

Specific Factors to Use in Determining the Amount of the Fine

MSRB Rule G-14 – Failure to submit timely and accurate transaction reports

- 1) A Letter of Caution may be appropriate for a first-time occurrence and only if the firm's customer trade compliance statistics, on average, are below the industry average for no longer than a three-month period;⁴
- 2) If a firm's transaction reporting statistics remain below the industry average following the first Letter of Caution, an MRV would be appropriate if the firm's compliance, on average, is no more than 3% below the industry average for no longer than a three-month period. Otherwise, an AWC should be used; and
- 3) Violations that prevent NASD from performing its regulatory function generally require full disciplinary proceedings.

- 1) Total number of transactions that were reported late, reported inaccurately, or not reported;
- 2) The time frame over which the violations occurred;
- 3) The firm's compliance, as measured by MSRB-generated statistics and as compared with industry averages, taking into consideration the firm's transaction volume and the time frame over which the violations occurred;
- 4) Whether the violation affects data dissemination to the public;⁵
- 5) Whether the violations are the result of the actions of only one individual or the result of faulty systems or procedures;
- 6) Whether the firm has taken remedial measures to correct the violations, including a proactive compliance process for transaction reporting (e.g., adequate policies and procedures and periodic review of the MSRB Dealer Feedback System);
- 7) Prior MRVs within the past 24 months; and
- 8) Collateral effects that the late filing has on NASD's ability to perform its regulatory function.

Rule Specified in the Plan	General Guidelines	Specific Factors to Use in Determining the Amount of the Fine
MSRB Rule G-36 – Failure to timely submit reports (Official Statements; Advance Refunding Documents)	1) An MRV or Letter of Caution is appropriate only when a report is filed late. A complete failure to file required reports or an inadequate filing should result in full disciplinary proceedings; 2) A Letter of Caution should be considered if the firm has fewer than 10 late filings during a 12-month period; and 3) Formal action should be considered if a report is filed more than 30 days late.	1) The number of late filings as a percentage of total filings; 2) The average number of days late; 3) Whether documents were obtained from the issuer in sufficient time to allow the underwriter to comply with the time frames of Rule G-36; 4) Whether the underwriter recorded attempts to obtain such documents; 5) The Rule G-36 compliance history of the firm; 6) Prior MRVs within the past 24 months; and 7) Collateral effects that the late filing has on NASD's ability to perform its regulatory function
MSRB Rule G-37 – Failure to timely submit reports for political contributions	1) An MRV or Letter of Caution is appropriate only when a report is filed late. A complete failure to file required reports or an inadequate filing should result in full disciplinary proceedings; 2) A Letter of Caution should be considered for first violation of rule within a 24-month period if report contains accurate information; and 3) Full disciplinary proceedings should be considered if member firm violates rule more than three times during a 24-month period.	1) A history of late, incomplete, or inaccurate Form G-37 filings, or inaccurate record-keeping as required by Rule G-37 will determine the fine; 2) Whether the firm's filings and associated records are complete; 3) Fines should be increased if a Form was filed 30 or more days late and the firm had political contribution and/or underwriting information to report; 4) Prior MRVs within the past 24 months; and 5) Collateral effects that the late filing has on NASD's ability to perform its regulatory function.

Rule Specified in the Plan	General Guidelines	Specific Factors to Use in Determining the Amount of the Fine
MSRB Rule G-38 – Failure to timely submit reports detailing consultant activities	1) An MRV or Letter of Caution should be limited to late filing of report. A complete failure to file required reports or an inadequate filing should result in full disciplinary proceedings; 2) A Letter of Caution should be considered for first violation of rule within a 24-month period if report contains accurate information; and 3) Full disciplinary proceedings should be considered if member firm violates rule more than three times during a 24-month period.	1) A firm's past compliance with the filing deadlines; 2) Whether the firm's filings and associated records are complete; 3) Fines should be increased if a Form was filed 30 or more days late and the firm had consultant information to report; 4) Prior MRVs within the past 24 months; and 5) Collateral effects that the late filing has on NASD's ability to perform its regulatory function.

Endnotes

- 1 NASD established the \$100 late fee schedule pursuant to Section 4(l)(1) of Schedule A to the NASD By-laws, not the MRVP. The \$100 assessment is an administrative fee, not a disciplinary fine. See *Notice to Members 01-54*.
- 2 Following are the statistical measures of firm compliance. Current industry averages are provided on every firm report card obtained from the MSRB. The statistics listed below are for November 2003. For further information about MSRB transaction reporting compliance statistics, please see *Notice to Members 03-13* and the NASD-MSRB joint notice attached thereto.
 - Inter-dealer statistics: late or stamped trade reporting (7.6%), invalid time of trade reporting (1.7%), uncompleted input (7.5%), compared but deleted or withheld input (0.6%);
 - Customer trade statistics: late trade reporting (3.5%), canceled trades (1.4%), amended trades (3.0%), invalid time of trade reporting (0.2%); and
 - Effecting broker symbol statistics: the current industry compliance average is over 99%.
- 3 The MSRB's T+1 Daily Report contains municipal securities price information about all transactions reported by dealers the previous trading day. The MSRB provides this report to subscribers, which includes public investment-related Web sites, on T+1. Consequently, if a firm reported a large number of trades late or inaccurately, or deleted a large number of transactions after T+1, not only would this behavior affect regulatory function, but it also would diminish the value of the Daily Report vis-a-vis price transparency to investors.
- 4 See *supra* note 2.
- 5 See *supra* note 3.