

Notice to Members

AUGUST 2002

SUGGESTED ROUTING

Executive Representatives
Legal & Compliance
Senior Management

KEY TOPICS

IM-8310-2
Release of Disciplinary Information to the Public

INFORMATIONAL

Release of Disciplinary Information

NASD Adopts Amendments to IM-8310-2 Concerning Release of Disciplinary Information to the Public;
Implementation Date: September 1, 2002

Executive Summary

NASD has adopted amendments to NASD Interpretative Material 8310-2 (IM-8310-2), concerning the release of disciplinary information to the public. The amendments (1) clarify the circumstances under which NASD will release redacted information with respect to both Hearing Panel and Extended Hearing Panel decisions issued under the Rule 9200 Series (hereafter referred to as Hearing Panel decisions), and National Adjudicatory Council (NAC) disciplinary decisions issued under the Rule 9300 Series; and (2) conform the timing for the release of unredacted disciplinary information to the timing for the release of redacted disciplinary information with respect to Hearing Panel and NAC decisions.

The amendments were filed with the Securities and Exchange Commission (SEC) on July 31, 2002.¹ Pursuant to Section 19(b)(3)(A) of the Securities Exchange Act of 1934 and SEC Rule 19b-4(f)(6) thereunder, the amendments became effective upon filing. The NASD will implement the amendments to IM-8310-2 on September 1, 2002.

Included with this *Notice* is Attachment A, the text of amended IM-8310-2.

Questions/Further Information

Questions concerning this *Notice* may be directed to Manly Ray, Supervisory Paralegal, Office of Hearing Officers, at (202) 728-8202, or Shirley H. Weiss, Associate General Counsel, Office of General Counsel, NASD Regulatory Policy and Oversight, at (202) 728-8844.

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Discussion

IM-8310-2(d)(1) requires NASD to release to the public information with respect to any disciplinary decision that: imposes a suspension, cancellation or expulsion of a member; suspends or revokes an associated person's registration; suspends or bars an associated person; or imposes monetary sanctions of \$10,000 or more. NASD also may release to the public information about disciplinary decisions that involve a significant policy or enforcement determination where the President of NASD Regulatory Policy and Oversight deems the release of such information to be in the public interest. Additionally, IM-8310-2 permits NASD to release in redacted form final, litigated decisions that do not meet any of the criteria for release of information to the public.² As defined in IM-8310-2(d)(1), a redacted decision is one in which the names of the parties and other identifying information (such as the names of employer firms and addresses) are deleted prior to its release.

(1) Permitting the Prompt Release of Decisions in Redacted Form Where the Sanctions Imposed by the Hearing Panel Do Not Meet the Criteria for Release of Disciplinary Information to the Public

Currently, IM-8310-2(d)(1) limits the release of redacted disciplinary decisions that do not meet any of the criteria for release of disciplinary information to the public to "final, litigated, disciplinary decision[s]." This rule language means that NASD cannot release information with respect to such Hearing Panel decisions until the decision is "final," *i.e.* the respondent has appealed to the NAC and the NAC has issued its decision or, in the alternative, the respondent has not appealed and the NAC has determined

not to call the decision for review.³ Additionally, if such a Hearing Panel decision were appealed to, or called for review by, the NAC, the NAC decision would become the "final, litigated, disciplinary decision," and NASD generally would not publish the underlying Hearing Panel decision.

The amendment to IM-8310-2(d)(1) changes "final, litigated, disciplinary decision" to "any disciplinary decision" with respect to the release of redacted decisions. This means that, as of September 1, 2002, NASD will promptly publish on its Web Site "any disciplinary decision" in either redacted or unredacted form, depending upon whether the decision meets any of the criteria for release of disciplinary information to the public. The rule change will allow public investors and other interested persons to get prompt notice of all disciplinary decisions, including those in which the sanctions imposed, if any, did not meet the publication criteria.

(2) Sanctions Imposed by the Hearing Panel Meet the Criteria for Release of Disciplinary Information to the Public, but the Sanctions Imposed by the NAC Do Not Meet the Publication Criteria

The rule change to IM-8310-2(d)(1)(A) will eliminate the current practice in which NASD publishes an unredacted Hearing Panel decision because it meets one or more of the criteria for release of information to the public, but publishes the subsequent NAC decision in redacted form because following an appeal or call for review, the NAC has lowered the sanctions below the minimum criteria for release of information to the public. As of September 1, 2002, NASD will release NAC decisions that do not meet the criteria for release of information to the

public in unredacted form if the underlying Hearing Panel decision meets the criteria for release of information under IM-8210-2 and has been published in unredacted form. This will enable public investors and other interested persons to follow the history of a disciplinary matter on the NASD Web Site in unredacted form even where the NAC has reduced the sanctions imposed by the Hearing Panel to a level that does not meet the publication criteria of IM-8310-2.

(3) Sanctions Imposed on One or More, But Not All, of the Respondents Meet the Criteria for Release of Disciplinary Information to the Public

On occasion, the sanctions imposed on one or more, but not all, of the respondents in Hearing Panel or NAC decisions meet the criteria for release of information to the public. Currently, NASD releases information with respect to both Hearing Panel and NAC decisions in redacted form as to all respondents if the sanctions imposed on one or more, but not all, of the respondents fail to meet any of the criteria for release of information to the public. The amendment to IM-8310-2(d)(1)(B) clarifies that, as of September 1, 2002, NASD will release information in unredacted form as to the respondents whose sanctions meet the publication criteria and in redacted form as to the respondents whose sanctions do not meet the publication criteria; however, consistent with the amendments to IM-8310-2(d)(1)(A) as discussed above, information regarding respondents in NAC decisions that do not meet the criteria for release of inform-

ation to the public will be released in unredacted form if the sanctions imposed on the respondent in the underlying Hearing Panel decision meet one or more of such criteria and the Hearing Panel decision as to that respondent was published in unredacted form.

Implementation Date of Amendments

NASD will implement these amendments on September 1, 2002.

Endnotes

- 1 See Securities Exchange Act Release No. 46289 (July 31, 2002) (File No. SR-NASD-2002-103).
- 2 See Securities Exchange Act Release No. 42783 (May 15, 2000), 65 FR 32140 (May 22, 2000), effective on July 1, 2002 (amending IM-8310-2 to permit the release of certain disciplinary decisions in redacted form).
- 3 See Rule 9312.

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ATTACHMENT A

New language is underlined; deletions are in brackets.

IM-8310-2. Release of Disciplinary Information

(a) through (c) No change

(d)(1) [The Association] NASD shall release to the public information with respect to any disciplinary decision issued pursuant to the Rule 9000 Series imposing a suspension, cancellation or expulsion of a member; or suspension or revocation of the registration of a person associated with a member; or suspension or barring of a member or person associated with a member from association with all members; or imposition of monetary sanctions of \$10,000 or more upon a member or person associated with a member; or containing an allegation of a violation of a Designated Rule; and may also release such information with respect to any disciplinary decision or group of decisions that involve a significant policy or enforcement determination where the release of information is deemed by the President of NASD [Regulation, Inc.] Regulatory Policy and Oversight to be in the public interest. [The Association] NASD also may release to the public information with respect to any disciplinary decision issued pursuant to the Rule 8220 Series imposing a suspension or cancellation of the member or a suspension of the association of a person with a member, unless the National Adjudicatory Council determines otherwise. The National Adjudicatory Council may, in its discretion, determine to waive the requirement to release information with respect to a disciplinary decision under those extraordinary circumstances where the release of such information would violate fundamental notions of fairness or work an injustice. [The Association] NASD may release to the public information on any [other final, litigated,] disciplinary decision issued pursuant to the Rule 8220 Series or Rule 9000 Series, not specifically enumerated in this paragraph, regardless of sanctions imposed, so long as the names of the parties and other identifying information is redacted.

(A) NASD shall release to the public, in unredacted form, information with respect to any disciplinary decision issued pursuant to the Rule 9300 Series that does not meet one or more of the criteria in IM-8310-2(d)(1) for the release of information to the public, provided that the underlying decision issued pursuant to the Rule 9200 Series meets one or more of the criteria in IM-8310-2(d)(1) for the release of information to the public, and information regarding such decision has been released to the public in unredacted form.

(B) In the event there is more than one respondent in a disciplinary decision issued

pursuant to the Rule 9000 Series, and sanctions imposed on one or more, but not all, of the respondents meets one or more of the criteria in Rule IM-8310-2(d)(1) for the release of information to the public, NASD shall release to the public, in unredacted form, information with respect to the respondent(s) who meet such criteria, and may release to the public, in redacted form, information with respect to the respondent(s) who do not meet such criteria. Notwithstanding the foregoing, NASD shall release to the public, in unredacted form, information with respect to any respondent in a disciplinary decision issued pursuant to the Rule 9300 Series if the sanctions imposed on such respondent in the underlying decision issued pursuant to Rule 9200 meet one or more of the criteria for release of information to the public, and information with respect to that respondent has been released in unredacted form.

(2) No change.

(e) through (l) No change.