

INFORMATIONAL

Subordination Agreements

Procedures Governing The Review And Approval Of Subordination Agreements Filed With The NASD

SUGGESTED ROUTING

The Suggested Routing function is meant to aid the reader of this document. Each NASD member firm should consider the appropriate distribution in the context of its own organizational structure.

- Executive Representatives
- Legal & Compliance
- Operations
- Senior Management

KEY TOPICS

- Broker/Dealer Financial and Operations

Executive Summary

On April 26, 2001, NASD Regulation, Inc. (NASD RegulationSM) staff reported to the Board of Directors that it would: (1) discontinue publishing the "Procedures Governing the Review and Approval of Subordination Agreements filed with the Association" ("Procedures") in the *NASD Manual* (following Appendix D to Rule 15c3-1 under the Securities Exchange Act of 1934) and, instead, publish the Procedures in hard copy as part of the instructions for subordination agreements; and (2) change the 30/10-day time frames previously contained in the Procedures from a requirement to a guideline.

Questions/Further Information

Questions concerning this *Notice* may be directed to Susan DeMando, Director, Financial Operations, Member Regulation, NASD Regulation, Inc., at (202) 728-8411; or Shirley H. Weiss, Associate General Counsel, Office of General Counsel, NASD Regulation, at (202) 728-8844.

Discussion

Since 1975, the NASD has published the Procedures in the *NASD Manual* following Appendix D to Rule 15c3-1 under the Securities Exchange Act of 1934. Among other things, the Procedures **require** firms to submit their subordination agreements to the appropriate District Office within 30 days of the scheduled effective date or within 10 days of the scheduled effective date in the case of a temporary subordination agreement.

Increased staff experience and the use of standardized subordinated loan agreement forms have enabled District Office staff routinely to review and approve subordination agreements in less than the 30/10 days contemplated by the Procedures. Thus, although members may at times fail to submit subordinated loan agreements 30 or 10 days prior to the scheduled effective dates as contemplated by the Procedures, District Office staff has nonetheless been able to process the agreements so that a loan can become effective on the scheduled effective date. Moreover, members generally submit agreements sufficiently in advance of the scheduled effective dates to avoid potential net capital deficiencies.

This *Notice* is announcing two changes:

- (1) Staff has removed the Procedures from the *NASD Manual* and, instead, will publish the Procedures in hard copy as part of the instructions for subordination agreements; and
- (2) Staff is changing the 30/10-day time frames set forth in the Procedures from a requirement to a guideline. This will remove an outdated time restriction and will give District Office staff greater flexibility in reviewing and approving subordination agreements. Members are reminded that they should read the Procedures included in the subordinated agreements carefully and that they must obtain staff approval of their subordination agreements prior to the effective date in order for the subordination agreements to have value for net capital purposes.

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