

INFORMATIONAL

Statutory Disqualification

NASD Regulation To Make Statutory Disqualification Decisions Publicly Available In Redacted Format

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- Legal & Compliance
- Senior Management

KEY TOPICS

- Eligibility and Qualification Standards
- Statutory Disqualification
- Rule 9520 Series

Executive Summary

NASD Regulation, Inc. (NASD RegulationSM) has commenced an initiative to make publicly available the text of statutory disqualification decisions (decisions) issued by the NASD Regulation National Adjudicatory Council (NAC). NASD Regulation believes that the availability of the decisions will assist National Association of Securities Dealers, Inc. (NASD[®]) member firms to understand better the criteria that NASD Regulation uses in determining whether to permit disqualified member firms to retain their membership and in determining whether to permit disqualified persons to associate or to continue to associate with a member firm. The decisions will be issued in redacted format with the names of individuals, names of member firms, and other identifying information removed.

NASD Regulation intends to make all decisions issued after August 7, 1997, the effective date of the current NASD Code of Procedure, publicly available in redacted format. NASD Regulation will commence the release of the decisions to the public on January 10, 2001, or as soon thereafter as practicable. The decisions will be published on the NASD Regulation Web Site (www.nasdr.com).

Questions/Further Information

Questions concerning this *Notice* may be directed to Bradford Ali, Attorney, Department of Member Regulation, NASD Regulation, at (202) 728-8402, or by e-mail at bradford.ali@nasd.com; or Gregory Dean, Assistant General Counsel, Office of General

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Discussion

Section 4 of Article III of the NASD By-Laws sets forth the circumstances that would make a member firm or a person subject to disqualification. Disqualified members that seek to retain their eligibility for membership must seek approval from NASD Regulation through NASD Regulation's Eligibility Proceedings pursuant to the NASD Procedural Rule 9520 Series (Eligibility Proceedings or Form MC-400 process). Similarly, persons subject to the disqualification are not permitted to associate or to continue to associate with a member firm unless the member firm seeks approval from NASD Regulation pursuant to the Form MC-400 process to permit the association despite the disqualification.

Generally, under the Eligibility Proceedings a review of and a hearing on the Form MC-400 application will be conducted by the NAC. If the NAC approves the continued eligibility of a member firm despite a disqualification, a notice will be filed by NASD Regulation with the SEC pursuant to Rule 19h-1 under the Securities Exchange Act of 1934 (Exchange Act). Similarly, if the NAC approves the association or continued association of a disqualified person with a member firm despite the disqualification, NASD Regulation also will file a notice with the SEC pursuant to Rule 19h-1. Generally, an approval becomes effective if the SEC does not object, within a specified time, to the approval.

If after review of and a hearing on the Form MC-400 application the NAC decides not to permit the continued eligibility of a member firm due to a disqualification, NASD Regulation will file a notice with the SEC pursuant to Rule 19d-1 under the Exchange Act. Similarly, if the NAC decides not to permit a disqualified person to associate with or to continue their association with a member firm, NASD Regulation will file a notice with the SEC pursuant to Rule 19d-1. A member firm and/or disqualified person may appeal an adverse decision by NASD Regulation to the SEC.

Historically, statutory disqualification decisions issued by NASD Regulation have not been made available to the general public.¹ Under this initiative, NASD Regulation intends to make publicly available in redacted format the eligibility decisions issued by the NAC and filed with the SEC pursuant to Rules 19d-1 and 19h-1. NASD Regulation believes that there are three primary reasons for making the decisions publicly available:

- (1) The decisions will enable member firms and individuals to understand better the specific criteria used by NASD Regulation and the NAC in determining whether to permit a disqualified firm to retain its membership and in determining whether to permit a disqualified person to associate or to continue to associate with a member firm. In addition, the body of eligibility decisions may be one of the more useful tools for assisting members in considering whether to sponsor a disqualified person for association or continued

association. Specifically, the decisions will assist member firms to understand under what conditions an approval is likely to be granted and the supervisory requirements and/or business restrictions that have been imposed in prior comparable decisions;

- (2) The NAC and its Statutory Disqualification Committee look to relevant precedent for guidance in evaluating and deciding cases. Accordingly, member firms will have access to decisions and benefit from the same relevant precedents to assist them in preparing for eligibility hearings before the NAC; and
- (3) Making the decisions publicly available will further promote consistency in the Eligibility Proceedings process and will give the general public a greater understanding of the decision-making process of the Eligibility Proceedings.

To preserve the legitimate privacy concerns of member firms and persons involved in the Eligibility Proceedings, all of the publicly available decisions will be issued in redacted format. The names of the individuals, names of member firms, and other identifying information mentioned in the decisions will be redacted from the decisions.

Recently, NASD Regulation has taken similar steps to make another decision-making process more open to the public. Effective July 10, 2000, NASD Regulation now makes publicly available in redacted format all final litigated disciplinary decisions issued by the Office of Hearing Officers, the NAC, and the NASD Board.²

Under the current initiative, NASD Regulation intends to make all statutory disqualification decisions issued after August 7, 1997, the effective date of the current NASD Code of Procedure, publicly available. NASD Regulation will begin to release the redacted decisions to the public on January 10, 2001, or as soon thereafter as practicable. The decisions will be published on the NASD Regulation Web Site (www.nasdr.com).

Endnotes

1 Although NASD Regulation eligibility decisions have not been made available to the public, certain information contained in the decisions may be made public when an applicant appeals an adverse decision by NASD Regulation to the SEC and the SEC includes the information in its final order.

2 See *NASD Notice to Members 00-36* (June 2000). See also NASD IM-8310-2 (governing the publication of disciplinary decisions).

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