

INFORMATIONAL

Imposition Of Censures

NASD Revises And Replaces *Notice to Members 99-59* And Issues New Censure Policy

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.

- Legal & Compliance
- Senior Management

KEY TOPICS

- Disciplinary Actions
- *NASD Sanction Guidelines*

Executive Summary

In July 1999, the National Association of Securities Dealers, Inc. (NASD®) issued *Notice to Members 99-59* regarding a new censure policy adopted by the National Adjudicatory Council (NAC). This *Notice to Members* revises and replaces *Notice to Members 99-59*; members should discard their copies of the *Notice to Members 99-59* and refer to this *Notice to Members* for guidance on this issue.

The new censure policy provides that, in general, censures will no longer be imposed for certain designated violations when total monetary sanctions are \$5,000 or less, and when bars or suspensions are imposed. Censures still may be imposed, however, in litigated cases, where the policy would suggest no censure, if the adjudicator determines that extraordinary circumstances merit their imposition. Members are directed to attach this *Notice to Members* as an amendment to their *NASD Sanction Guidelines*.

Questions/Further Information

Questions concerning this new policy may be directed to Shannon Lane, Senior Attorney, Office of General Counsel, NASD Regulation, Inc. (NASD RegulationSM), at (202) 728-6904.

Background

The NASD may impose sanctions on member firms for violations of the federal securities laws, rules of the Municipal Securities Rulemaking Board (MSRB), and the Association's rules. When disciplining a member for such violations, the NASD may impose any fitting sanction including monetary sanctions (e.g., fines, disgorgement ordered payable as a fine, and orders of restitution) and non-monetary sanctions (e.g., censures, suspensions, bars, and expulsions). The *NASD Sanction Guidelines* recommend a range of monetary and non-monetary sanctions for particular violations.

Although the *NASD Sanction Guidelines* do not specifically recommend whether or not a censure should be imposed under any of the individual sanction guidelines for particular violations, the NASD has in the past routinely imposed censures for all violations except for certain quality of market violations when fines below \$5,000 were imposed. The NASD has determined to revise this practice in recognition of the fact that censures should be imposed when disciplining members for violations that particularly warrant the Association's official disapproval of a respondent's conduct.

NASD Notice to Members 99-91

This *Notice to Members* is issued to inform the membership of a new censure policy adopted by the NAC. Under the revised censure policy, the NASD has identified certain violations for which generally it will no longer impose censures when relatively low

monetary sanctions are imposed. Accordingly, the NASD generally will not impose censures in cases in which the total monetary sanction for any disciplinary action, regardless of the number of violations alleged, is \$5,000 or less (fines, disgorgement ordered

payable as a fine, and restitution), and when the violation(s) at issue consists solely of one or more of the following violations as set forth below.¹

Violations That Generally Will No Longer Be Subject To Censure When Monetary Sanctions Of \$5,000 Or Less Are Imposed

Quality of Markets violations

- ACT Violations - Rule 6100 Series
- Backing Away
- Best Execution and Interpositioning
- Confirmation of Transactions (SEC Rule 10b-10)
- ECN Display Rule
- Failure to Display Minimum Size in Nasdaq[®] Securities, CQS Securities, and OTC Bulletin Board[®] Securities
- Fixed Income Pricing SystemSM - Trade Reporting and Participant and Quotation Obligations
- Limit Order Display Rule
- Limit Order Protection Rule
- Locked/Crossed Market
- Options Exercise and Positions Limits
- Options Positions Reporting - Late Reporting and Failing to Report
- Order Audit Trail System (NASD Rules 6950-6957)
- Passive Market Making
- SelectNetSM Text Messages
- Short Sale Violations
- SOESSM Rules
- Trade or Move Rule - NASD Rule 4613(b)(2)
- Trades Executed During a Trading Halt
- Trade Reporting - Late Reporting; Failing to Report; Inaccurate Reporting
- 1 % Rule - SEC Rule 11Ac1-1(c)(1)

Qualification and Membership violations

- Continuing Education - Firm Element
- Continuing Education - Regulatory Element
- Registration Violations

Reporting/Provision of Information violations

- FOCUS Reports - Late Filing
- Form BD-Y2K Reports - Late Filing
- Forms U-4/U-5 - Late Filing; Failure to File; Inaccurate Forms or Amendments
- MSRB Rule G-36 - Untimely Filing of Offering Documents With MSRB; Late Filing; Failure to File
- MSRB Rule G-37/G-38 Reporting - Late Filing; Failing to File
- Regulation M Reports - Late Filing; Failing to File
- Request for Automated Transmission of Trading Data (Blue Sheets) - Failure to Respond in a Timely and Accurate Manner

Financial and Operational Practices violations

- Customer Protection Rule violations
- Net Capital violations
- Recordkeeping violations
- Violations of SEC Rule 17a-11 (Notification Provisions for Broker/Dealers)

Supervision violations

- Supervisory Procedures - Deficient Written Supervisory Procedures²

NASD Notice to Members 99-91

Censures will be imposed, however, when fines above \$5,000 are reduced or eliminated due to a respondent's demonstrated inability to pay or bankruptcy.

NASD adjudicators (Hearing Panels, the NAC, and other adjudicators) will apply this new policy in a manner consistent with the advisory nature of the *NASD Sanction Guidelines*.³ NASD adjudicators may therefore order the imposition of censures in certain extraordinary cases even though a censure would not be required under the new censure policy.⁴

The NASD also has determined that censures should not be imposed when bars or suspensions are imposed, regardless of the nature of the violation. Although the NASD has in the past routinely imposed censures whenever bars or suspensions were imposed, the new censure policy revised this practice in recognition of the fact that bars and suspensions are severe sanctions that already signify the Association's official disapproval of a respondent's conduct. Accordingly, a censure is

not an appropriate additional sanction when a respondent is barred or suspended, and the NASD will not impose censures in those cases.

The new policy applies to all Letters of Acceptance, Waiver, and Consent and Offers of Settlement executed by respondents beginning on June 11, 1999, and to all NAC and Office of Hearing Officer decisions decided and issued on or after June 11, 1999.

Endnotes

¹This list largely consists of violations as found in the *NASD Sanction Guidelines*. The *NASD Sanction Guidelines* provide recommendations on sanctions for most typical securities-industry violations. When violations do not have guidelines that specifically apply to them, adjudicators may refer to guidelines for analogous violations to determine appropriate sanctions. In cases where the violations at issue are not listed in this *Notice to Members*, but where adjudicators refer to guidelines for analogous violations that are listed in this *Notice to Members*, adjudicators generally will not impose censures for those violations when monetary sanctions of \$5,000 or less are imposed.

²In addition, censures will not be imposed for violations disposed of under the Minor Rule Violation Plan pursuant to NASD Rule 9216(b) and IM-9216.

³The *NASD Sanction Guidelines* are advisory and are intended to provide direction to NASD adjudicators in determining appropriate sanctions consistently and fairly.

⁴With respect to settled matters (e.g., Letters of Acceptance, Waiver, and Consent; Offers of Settlement; and other settlements), however, NASD staff will negotiate censures in accordance with the new policy and will not impose censures when total monetary sanctions are \$5,000 or less for those violations listed in this *Notice to Members*. When fines are above \$5,000, NASD staff will require the imposition of censures in settlements. Censures will not be imposed in any settled or adjudicated matter when a bar or suspension is imposed.

© 1999, National Association of Securities Dealers, Inc. (NASD). All rights reserved. Notices to Members attempt to present information to readers in a format that is easily understandable. However, please be aware that, in case of any misunderstanding, the rule language prevails.