

INFORMATIONAL

Default Decisions

NASD Regulation Modifies Default Decision Procedures

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

- Default Decisions
- Disciplinary Actions
- Hearing Officers

Executive Summary

The purpose of this *Notice to Members* is to give National Association of Securities Dealers, Inc. (NASD[®]) members notice that if members or persons associated with members fail to file an answer to a complaint or fail to make any other filing or request related to a complaint with the Office of Hearing Officers within the time required, or fail to appear at a hearing of which they have been duly notified, the allegations of the complaint may be treated as admitted, and a default decision against the members or associated persons entered by a Hearing Officer. The procedures described in this *Notice to Members* will apply to all complaints filed on or after October 1, 1999.

Questions/Further Information

Questions concerning this *Notice to Members* should be directed to Shirley H. Weiss, Associate General Counsel, Office of General Counsel, NASD Regulation, Inc. (NASD Regulation[®]), at (202) 728-8844.

Discussion***Procedures To Set Aside Or Appeal A Default Decision***

In July 1998, the National Adjudicatory Council of NASD Regulation (NAC) remanded the default decision issued in the Nancy H. Martin matter (Complaint No. C02970027) in order to establish a record that would allow the NAC to conduct a review of the case. The NAC's remand in Martin was consistent with the decision issued by the Securities and Exchange Commission (SEC) in In re James M. Russen, Jr., 51 S.E.C. 675 (1993) (establishment of a complete record will give the SEC a basis for discharging its review function under Section 19 of the Securities Exchange Act of 1934).

In both of those cases, the defaulting respondent had appealed a District Business Conduct Committee default decision. Both of those decisions stated that an adjudicator conducting a new review of a default decision needs evidentiary support for the default decision in order to uphold the findings and sanctions.

It is not, however, necessary for the record to provide full evidentiary support in order for a default decision to be entered against a defaulting respondent by a Hearing Officer. Under Rule 9269(a) of the NASD's Code of Procedure, which was adopted and approved by the SEC subsequent to the issuance of the Russen decision, a Hearing Officer may consider the allegations against a defaulting respondent to be admitted and enter a default decision on that basis.

We are issuing this *Notice to Members* to clarify and reconcile the Martin and Russen decisions with Rule 9269(a). Rule 9269(a) governs the issuance of initial default decisions by Hearing Officers. Accordingly, if a respondent defaults by failing to answer a complaint in a timely manner, make any other filing or request related to the complaint, or appear at a pre-hearing conference, the allegations of the complaint may be deemed admitted and a default decision validly entered against the respondent under Rule 9269(a).¹

Consistent with the decisions in Russen and Martin, however, if a respondent against whom a default decision has been validly entered under Rule 9269(a) makes a timely appeal or motion to set aside the default and also establishes good cause for not having participated in the proceeding below, he or she will be given the opportunity to participate in a hearing before a Hearing Panel. This hearing would

allow the respondent, among other things, to have the opportunity to participate in a full evidentiary hearing on the merits and, if he or she wishes, to contest the findings and sanctions. In determining whether a respondent has established good cause, Hearing Officers and the NAC will consider such factors as:

- whether the respondent notified the Central Registration Depository (CRDSM) of any change of address;
- the length of time that has passed between the issuance of the default decision and the respondent's appeal or motion to set aside; and
- the reasons for the respondent's failure to participate in the proceeding before the Hearing Officers.

The procedures described in this *Notice to Members* will apply to all complaints filed on or after October 1, 1999.

Duty To Update Address Information

Registered persons are reminded that failure to keep the NASD informed of their most recent address may cause a default decision to be entered against them. Article V, Section 2 of the NASD By-Laws requires all persons who apply for registration with the NASD to submit a Form U-4 and to keep all information on the Form U-4 current. Accordingly, registered persons must keep their member firms informed of their current address, and a member firm is obligated to file an amendment to the Form U-4 to notify the NASD when any registered person in the firm's employ changes his or her address. In addition, the NASD may request information from, or file a formal disciplinary action against, persons who are no longer registered with a member for at least two years after their termination from the member (Article V, Sections 3 and 4 of the NASD's By-Laws). Requests for information and disciplinary complaints issued by the NASD during this two-year period will be mailed to such a person's last address in the NASD's records, and are considered to have been

received at that address, whether or not the individual has actually received them. Thus, in order to receive mailings from the NASD, individuals must keep their address in CRD current during that two-year period. Individuals who are no longer associated with an NASD member firm and who have failed to update their addresses during the two years after they end their association may have a default decision issued against them (**see Notice to Members 97-31**).

Letters notifying the NASD of such address changes should be sent to:

Central Registration Depository
National Association of Securities
Dealers, Inc.
P.O. Box 9495
Gaithersburg, MD 20898-9401

Endnote

¹We note that Rule 9269(a) is consistent with federal practice under Rule 55 of the Federal Rules of Civil Procedure.

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