

INFORMATIONAL

NASD Examinations

NASD Regulation Issues Statement Of Policy Regarding Recordation By Members Of NASD Examinations

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

- Recording NASD Field Examinations

Executive Summary

In response to a request by a member firm, NASD Regulation, Inc. (NASD RegulationSM) recently clarified its long-standing practice of not permitting members to record by video or audio tape conversations between NASD Regulation field examiners and National Association of Securities Dealers, Inc. (NASD[®]) member firm officers or other staff during the opening and exit interviews that are routinely requested by NASD Regulation staff during field examinations, as well as any other aspects of examinations. By this *Notice*, the NASD adopts this long-standing practice as its policy regarding audio or video taping of examinations by members.

Questions/Further Information

Questions or comments concerning this *Notice* may be directed to Alden S. Adkins, Senior Vice President and General Counsel, Office of General Counsel, NASD Regulation, at (202) 728-8332; or Dan Sibears, Senior Vice President, Member Regulation, at (202) 728-8221; or Robert J. Smith, Assistant General Counsel, Office of General Counsel, NASD Regulation, at (202) 728-8451.

Discussion

Recently, an NASD member firm requested clarification of NASD Regulation policy regarding whether members are permitted to video or audio tape conversations between NASD Regulation field examiners and member firm officers or their staff during the opening and exit interviews that are routinely requested by NASD Regulation staff during a field examination.

Conducting examinations of NASD member firms is fundamental to the regulatory responsibilities of NASD Regulation. The member's request raised concerns about whether certain actions by members, if permitted, could compromise the confidentiality and integrity of the procedures and methodology employed by field examiners to conduct field examinations. In addition, a unilateral or undisclosed recordation by video or audio tape of NASD examinations could, among other things, result in evidentiary complications involving the authenticity and reliability of such recordings.

NASD Regulation carries out its examination and other regulatory responsibilities in a manner designed to ensure the integrity, professionalism, and confidentiality of this business process. NASD Rule 8210¹ and supporting case law make it clear that NASD Regulation has the authority to define the conditions under which examinations and investigations occur. In this regard, the long-standing practice of NASD Regulation is to conduct examinations without video or audio taping by members. By this *Notice*, the NASD adopts this long-standing practice as its policy regarding audio or video taping of examinations by members. It would be contrary to NASD rules, and potentially contrary to state law, for a member to record by video or audio tape any portion of the examination without the express written permission of NASD Regulation. Moreover, based on the rationale above, NASD Regulation would rarely, if ever, permit a member to video or audio tape any aspect of an examination.

Endnote

¹The authority under which NASD Regulation conducts investigations and examinations of member firms is embodied in Rule 8210. Rule 8210, in part, permits the NASD, for the purpose of an investigation, complaint, examination, or proceeding authorized by the NASD, to inspect books, records, and accounts of members, and to

require members to provide other information and testify under oath. Rule 8210 further provides that members must comply with the requirements to provide such testimony, information, books, and records. Implicit in Rule 8210 is the idea that the NASD establishes and controls the conditions under which the information is provided and the examinations are conducted.

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