NASD Notice to Members 00-16

INFORMATIONAL

Public Disclosure Program

SEC Approves Changes To NASD Public Disclosure Program (Interpretive Material 8310-2)

SUGGESTED ROUTING

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KEY TOPICS

- Forms U-4 And U-5
- IM-8310-2
- Public Disclosure Program

Executive Summary

On February 7, 2000, the Securities and Exchange Commission (SEC) approved proposed changes to National Association of Securities Dealers, Inc. (NASD®) Interpretive Material 8310-2 (IM-8310-2), the provision that governs the NASD's Public Disclosure Program (Program).

In summary, the approved changes clarify that the NASD: (1) will release information about persons formerly associated with a member only for a two-year period following the termination of their registration with the NASD; (2) will release information about terminated persons and firms that is provided on the Form U-6 (the form regulators use to report regulatory actions), if such matters would be required to be reported on the Form U-4 or Form BD; and (3) will begin using automated disclosure reports, which will include verbatim information submitted by filers on uniform forms.

Under this Program, the NASD discloses to the public certain information regarding the employment history, other business experience, and disclosure information1 of NASD members and their associated persons. The primary purpose of the Program is to help investors make informed choices about the individuals and firms with whom they may wish to do business. The changes approved by the SEC are intended to ensure that the NASD's disclosure practices are clearer and fairer to NASD members, associated persons, and the public.

Questions/Further Information

For more information about this *Notice*, please contact the following NASD Regulation, Inc. (NASD RegulationSM) staff: Ann Bushey,

Assistant Director, CRD/Public Disclosure, at (301) 590-6389; or Rick Pullano, Associate Director and Counsel, CRD/Public Disclosure, at (301) 212-3789.

Background

The NASD established the Program in 1988 to provide investors with important information about the professional background, business practices, and conduct of NASD members and their associated persons. Recognizing the Program's value to investors, Congress passed legislation in 1990 requiring the NASD to establish and maintain a toll-free telephone number to receive inquiries regarding its members and their associated persons. In 1998, NASD Regulation began providing administrative information (i.e., employment history, registration statuses) online via the NASD Regulation Web Site (www.nasdr.com). In 1999, NASD Regulation responded to nearly 1,000,000 inquiries through the Program.

The changes to the Program recently approved by the SEC do not include the display of disclosure information via the NASD Regulation Web Site. Disclosure reports will continue to be provided by e-mail and regular mail. The NASD, however, continues to work with the SEC and Congress to seek legislation that it believes is necessary in order to provide for the display of all disclosure information via the NASD Regulation Web Site.

The changes approved by the SEC are intended to ensure that the NASD's disclosure practices are clearer and fairer to NASD members, associated persons, and the public. In particular, the changes clarify which persons are

NASD Notice to Members 00-16

subject to the Program and what types of information are disclosed through the Program. NASD Regulation also is changing the manner in which it provides disclosure reports about persons who are subject to the Program. Specifically, NASD Regulation will no longer prepare manual summaries of information to be disclosed pursuant to the Program. Instead, NASD Regulation will generate reports under the Program by drawing information directly from the Web CRD[™] database. As discussed in more detail in the next section, this change means that Public Disclosure Reports will include verbatim descriptions of events and comments that have been provided by registered representatives and firms on their respective uniform forms. Member firms should be cognizant of this change and should take appropriate steps to ensure that such forms do not contain confidential client information or offensive or potentially defamatory language. NASD Regulation reiterated in the rule filing, approved by the SEC, its current policy of not releasing Social Security numbers, home addresses, or physical description information through the Program. The proposed changes to the Program are summarized in the next section.

Key Changes To IM-8310-2 Persons Subject To Disclosure Through The Program

NASD Regulation will release information regarding:

- current and former NASD member firms;
- (2) persons currently associated with an NASD member; and

(3) persons who have been associated with an NASD member within the preceding two years. The two-year period coincides with the period in which an individual can return to the industry without being required to requalify by examination and the initial period in which an individual remains subject to the NASD's jurisdiction.

Release Of Information Provided Via Form U-6

Before the rule change, NASD Regulation would not disclose information with respect to a firm or individual if it was filed after the termination of an individual or firm because once the individual or firm had been terminated, there was no longer a requirement to report the information. The rule change clarifies that NASD Regulation will release information provided on Form U-6, the form used by regulators to report disciplinary matters, if such matters would be required to be reported on the Form U-4 or Form BD, even if the individual or member firm is no longer registered. NASD Regulation believes that information reported on the Form U-6 is highly reliable because it is filed by federal and state securities regulators or selfregulatory organizations. NASD Regulation further believes that this information serves an important investor protection purpose; therefore, it will disclose such information about individuals and firms under the Program. Disclosure of such information about individuals will be subject to the two-year limitation discussed above, however.

Automated Disclosure Reports

NASD Regulation will generate reports from its Web CRD database beginning in March 2000. These reports will be sent to requesters by regular or electronic mail. The automated reports will draw information from specified fields on the Web CRD database that parallel fields on the Forms U-4 and U-6. The automated reports will allow for more consistent disclosure of the information as it is reported to NASD Regulation and also will allow NASD Regulation to provide reports to investors more quickly. In addition, the automated reports allow the inclusion of comments submitted on the uniform forms (e.g., comments submitted by registered representatives on the Form U-4).

Members should understand that. under this new approach, information submitted on uniform forms, including the Form U-4, will be disclosed verbatim in the Public Disclosure Reports. Member firms and/or registered persons responsible for submitting confidential client information or offensive or potentially defamatory language on such forms may be subject to civil liability or NASD regulatory sanctions. NASD Regulation recognizes that it may receive complaints or objections to information or language that has been submitted on a uniform form. Upon receipt of such a complaint or objection, NASD Regulation intends to notify the filer of the objection or complaint, and provide the filer with an opportunity to amend the filing to remove the language in controversy. If the filer determines not to amend, NASD Regulation will apply a balancing test to weigh the value of the language in controversy for investor protection and completeness of disclosure of the reported information against the objector's asserted privacy rights, concerns regarding offensive language, and/or defamation claims. Based on the outcome of this test, NASD Regulation may

NASD Notice to Members 00-16

determine to redact information in question from a disclosure report. In such cases, NASD Regulation will inform a requester of a report that has had information redacted of the reasons for the redaction.

NASD Regulation believes these changes enhance the Public Disclosure Program by clarifying

NASD Regulation's disclosure policies and by making information available to investors in a more timely manner. The release approving the rule changes (SEC Release No. 34-42402; File No. SR-NASD-99-45) may be viewed on the SEC Web Site at www.sec.gov/rules/sroindx.htm.

Endnote

¹Disclosure information includes certain criminal, regulatory, customer complaint, and other information that is required to be reported on the Uniform Form U-4 or Form BD.

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