

# NASD Notice to Members 99-09

## NASD Regulation Imposes Moratorium On Arbitrator-Ordered Expungements Of Information From The Central Registration Depository

### Suggested Routing

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### Executive Summary

NASD Regulation, Inc. (NASD Regulation<sup>SM</sup>) is imposing a moratorium on expungement of certain information from the Central Registration Depository (CRD<sup>SM</sup>) that is ordered by arbitrators. Effective **January 19, 1999**, NASD Regulation will not expunge information from the CRD system based on a directive contained in an arbitration award rendered in a dispute between a public customer and a firm or an associated person, unless the award has been confirmed by a court of competent jurisdiction. Therefore, arbitration awards rendered in such disputes that contain expungement directives that are not final (*i.e.*, those awards that have not been signed by a majority of the arbitrators) on or before **January 19, 1999**, must be confirmed by a court of competent jurisdiction before NASD Regulation will execute the expungement directive. During this moratorium, NASD Regulation will continue to execute court-ordered expungements, including expungement orders contained in an arbitration award that is confirmed by a court of competent jurisdiction. In addition, NASD Regulation will continue to expunge information from the CRD system based on expungement directives in arbitration awards rendered in disputes between firms and current or former associated persons, where arbitrators have awarded such relief based on the defamatory nature of the information.

NASD Regulation is imposing this moratorium after discussions with the North American Securities Administrators Association (NASAA), an association whose members include state and other securities regulators in the United States, as well as other securities regulators in North America. NASD Regulation operates the CRD system pursuant to an agreement with NASAA.

Although the agreement governing the operation of the CRD system expressly addresses court-ordered expungements, it does not specifically address arbitrator-ordered expungements. NASD Regulation has taken the position that expungement of information from the CRD system that is ordered by an arbitrator and contained in an award should be afforded the same treatment as a court-ordered expungement. NASAA disagrees with this position and has informed NASD Regulation that it does not believe that arbitrator-ordered expungements should be afforded the same treatment as court-ordered expungements. NASAA has informed NASD Regulation that, in its opinion, according to various state laws, information submitted to the CRD system is deemed to have been filed with each state in which that person or entity seeks to be registered. Therefore, according to NASAA, information in the CRD system that may be the subject of an arbitrator-ordered expungement is in many cases a state record, and state laws do not currently recognize the authority of an arbitrator to expunge a state record or do not otherwise currently permit such expungements because of state recordkeeping requirements. Pending further discussions with NASAA and the states, NASD Regulation is imposing a moratorium on expunging information from the CRD system based on a directive contained in an arbitration award rendered in a dispute between a public customer and a firm or associated person, unless the award has been confirmed by a court of competent jurisdiction. The moratorium is effective **January 19, 1999**.

Questions concerning this *Notice* may be directed to Ann E. Bushey, Assistant Director, CRD/Public Disclosure, NASD Regulation, at (301) 590-6389; Mary M. Dunbar,

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## Background And Discussion

The CRD system is an electronic registration and licensing system that contains information used by the Securities and Exchange Commission (SEC), National Association of Securities Dealers, Inc. (NASD®), other self-regulatory organizations (SROs), and state securities regulators to make licensing and registration decisions, among other things. The information on the CRD system includes criminal information (e.g., indictments and convictions for certain criminal offenses), disciplinary information (e.g., sanctions imposed by regulators, customer complaints that meet specified criteria, and certain categories of employment terminations), and other information. The information on the CRD system is submitted by regulatory authorities (e.g., state securities regulators and SROs) and by registered broker/dealers. NASD Regulation is responsible for processing registration-related filings and entering information into the CRD system.

NASD Regulation maintains and operates the CRD system pursuant to NASD rules and an agreement between NASD Regulation and NASAA, an association whose members include state and other securities regulators in the United

States, as well as other securities regulators in North America. NASD Regulation expunges information from the CRD system when ordered to do so by a court of competent jurisdiction. NASD Regulation, recognizing arbitrators' broad authority to grant equitable relief and a party's ability to have an award confirmed in court, also has honored such expungement directives provided they were contained in an arbitrator's award. NASD Regulation provides NASAA with copies of arbitration awards containing expungement directives before expunging any information from the CRD system.

NASAA has informed NASD Regulation that, in its opinion, under the laws of certain states, information filed with the CRD system is deemed to have been filed with those states, and, according to NASAA, is therefore a state record subject to all of the regulations and protocols that apply to state records. NASAA has further informed NASD Regulation that, in its opinion, state laws do not currently recognize the authority of an arbitrator to expunge a state record or do not otherwise currently permit such expungements because of state recordkeeping requirements. NASD Regulation has determined to impose a moratorium on expungement of information from the CRD system that is awarded by arbitrators in disputes involving public customers and firms or associated persons, but not confirmed by a court of competent jurisdiction, while it discusses with NASAA and the states certain legal and policy issues implicated by these

expungements. Therefore, effective **January 19, 1999**, NASD Regulation will not expunge information from the CRD system based on a directive contained in an arbitration award rendered in a dispute involving a public customer and a firm or associated person, unless the award has been confirmed by a court of competent jurisdiction. Awards rendered in such disputes that contain expungement directives that are not final (i.e., those awards that have not been signed by a majority of the arbitrators) on or before **January 19, 1999**, must be confirmed by a court of competent jurisdiction before NASD Regulation will execute the expungement directive. Notwithstanding this moratorium, NASD Regulation will continue to expunge information from the CRD system based on expungement directives contained in arbitration awards rendered in disputes between firms and current or former associated persons, where arbitrators have awarded such relief based on the defamatory nature of the information. In addition, NASD Regulation will continue to execute court-ordered expungements, including expungement directives contained in arbitration awards rendered in disputes between public customers and firms or associated persons, provided those awards are confirmed by a court of competent jurisdiction.

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