

NASD Notice to Members 99-01

Office Of Disciplinary Affairs To Authorize All Enforcement Actions

Suggested Routing

- ☐ Senior Management
- ☐ Advertising
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Executive Summary

On December 30, 1998, the Securities and Exchange Commission (SEC) approved rule changes proposed by the National Association of Securities Dealers, Inc. (NASD®) that provide for the Office of Disciplinary Affairs (ODA) of NASD Regulation, Inc. (NASD RegulationSM) to authorize all disciplinary actions brought by the NASD.¹ These amendments will be effective on January 1, 1999.

Questions regarding this *Notice* should be directed to Eric Moss, Assistant General Counsel, NASD Regulation, at (202) 728-8982.

Office Of Disciplinary Affairs As Case Authorizer

As of January 1, 1999, the ODA will authorize all disciplinary actions brought by the NASD. For the past year, the Case Authorization Unit (CAU), a division of the NASD Regulation Department of Enforcement, authorized all disciplinary actions brought by the NASD. The Office of Disciplinary Policy (ODP), which reported to the Office of the President of NASD Regulation, was the primary reviewer of cases developed in the Washington, D.C. office and those involving "quality-of-market" issues. The ODP also reviewed and commented on all cases involving policy issues.

To increase overall operating efficiency and to maintain the consistency and independence of the case authorization function, the NASD is placing the functions performed by the ODP and CAU in one office. Under the new rules, all cases will be authorized by the ODA, which will review the legal, policy, and consistency issues presented by each case.

The text of these rules that go into effect on January 1, 1999, is set forth in the remainder of this *Notice*.

Text Of Amendments

(Note: New text is underlined; deletions are bracketed.)

9120. Definitions

(a) - (d) No change

(e) "Department of Enforcement"

The term "Department of Enforcement" means the Department of Enforcement or its delegatee, the Department of Market Regulation[, except that the term excludes the Department of Market Regulation with respect to the actions of:

(1) authorizing a complaint under Rule 9211;

(2) determining the terms of a letter of acceptance, waiver, and consent or the terms of a minor rule violation plan letter under Rule 9216;

(3) determining whether to contest an offer of settlement under Rule 9270; and

(4) authorizing the filing of an appeal under Rule 9311].

(f) - (u) No change

(v) "Office of Disciplinary Affairs"

The term "Office of Disciplinary Affairs" means the Office of Disciplinary Affairs for NASD Regulation.

(w) [v] "Panelist"

The term "Panelist," as used in the Rule 9200 Series, means a member of a Hearing Panel or Extended Hearing Panel who is not a Hearing Officer. As used in the Rule 9300 Series, the term means a current member of the National Adjudicatory Council, a former Director or a former Governor who is appointed to serve on a Subcommittee or an Extended Proceeding Committee.

(x) [w] “Party”

With respect to a particular proceeding, the term “Party” means:

(1) in the Rule 9200 Series and the Rule 9300 Series, the Department of Enforcement or a Respondent;

(2) in the Rule 9410 Series and the Rule 9520 Series, the Department of Member Regulation or

(A) a member that is the subject of a notice under Rule 9412;

(B) a member that is the subject of a notice or files an application under Rule 9522;

(3) in the Rule 9510 Series, the department or office designated under Rule 9514(b) or a member or person that is the subject of a notice under Rule 9512 or Rule 9513; or

(4) in the Rule 9600 Series, the department or office designated under Rule 9620 to issue the decision granting or denying an exemption or a member that seeks the exemption under Rule 9610.

(y) [x] “Primary District Committee”

The term “Primary District Committee” means, in a disciplinary proceeding under the Rule 9200 Series, the District Committee designated by the Chief Hearing Officer pursuant to Rule 9232 to provide one or more of the Panelists to a Hearing Panel or, if applicable, to an Extended Hearing Panel, for such disciplinary proceeding.

(z) [y] “Respondent”

The term “Respondent” means, in a disciplinary proceeding governed by

the Rule 9200 Series and in an appeal or review governed by the Rule 9300 Series, an NASD member or associated person against whom a complaint is issued.

(aa) [z] “Review Subcommittee”

The term “Review Subcommittee” means a body appointed by the National Adjudicatory Council pursuant to Article V of the NASD Regulation By-Laws.

(bb) [aa] “Statutory Disqualification Committee”

The term “Statutory Disqualification Committee” means a Subcommittee of the National Adjudicatory Council that makes a recommended decision to grant or deny an application for relief from the eligibility requirements of the Association to the National Adjudicatory Council pursuant to the Rule 9520 Series.

(cc) [bb] “Subcommittee”

The term “Subcommittee” means an Adjudicator that is:

(1) constituted under Rule 9331(a) to participate in the National Adjudicatory Council’s consideration of an appeal or a review of a disciplinary proceeding pursuant to the Rule 9300 Series;

(2) constituted under the Rule 9410 Series or Rule 9630 to conduct a review proceeding.

9200. DISCIPLINARY PROCEEDINGS

9210. Complaint and Answer

9211. Authorization of Complaint

(a) Complaint

(1) If the Department of Enforcement believes that any NASD member or associated person is violating or has violated any rule, regulation, or statutory provision, including the federal securities laws and the regulations thereunder, which the Association has jurisdiction to enforce, the Department of Enforcement may request authorization from the Office of Disciplinary Affairs to issue [authorize] a complaint.

(2) The NASD Regulation Board and the NASD Board each shall have the authority to direct the Office of Disciplinary Affairs [Department of Enforcement] to authorize and the Department of Enforcement to issue a complaint when, on the basis of information and belief, either of such boards is of the opinion that any NASD member or associated person is violating or has violated any rule, regulation, or statutory provision, including the federal securities laws and the regulations thereunder, which the Association has jurisdiction to enforce.

(b) No change

Endnote

¹Securities Exchange Act Rel. No. 34-40864 (December 30, 1998) (File No. SR-NASD-98-90).

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