

NASD NOTICE TO MEMBERS 97-42

SEC Approves Amendments Relating To The Release Of Disciplinary Information

Suggested Routing

- ☒ Senior Management
- ☐ Advertising
- ☐ Corporate Finance
- ☐ Government Securities
- ☐ Institutional
- ☐ Internal Audit
- ☒ Legal & Compliance
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Executive Summary

On April 22, 1997, the Securities and Exchange Commission (SEC) approved amendments to the Interpretation on the Release of Disciplinary Information (NASD[®] IM-8310-2). These amendments authorize the release of public information on disciplinary complaints and non-final disciplinary decisions that present significant investor protection issues, provided that such releases are accompanied by appropriate disclosures concerning the status of the complaint or decision. The effective date of these amendments is June 12, 1997.

Background And Description

The NASD's Public Disclosure Program currently provides, through the Central Registration Depository (CRDSM), a synopsis of all pending NASD disciplinary information regarding members and associated persons, including information on disciplinary complaints¹ when they are issued by the NASD and disciplinary decisions when they are issued by any Committee or Board of the NASD.

The Interpretation on the Release of Disciplinary Information (Interpretation), NASD IM-8310-2, currently permits the NASD to issue information regarding certain specified significant disciplinary decisions when they become final.² The specified decisions are those that impose sanctions of a suspension, bar, or a fine of \$10,000 or more.

While information on all pending NASD disciplinary matters regarding members and associated persons is available through CRD, there are concerns that there is limited access to such information. Previously, the Interpretation did not permit NASD Regulation, Inc. (NASD RegulationSM) to be proactive in providing notification to the public of non-final disci-

plinary decisions and did not permit NASD Regulation to publicize other final and non-final disciplinary decisions that do not meet the current publication criteria but nonetheless involve a significant policy or enforcement issue that should be brought to the attention of the public. Recently, the SEC approved an amendment to the Interpretation to provide copies of disciplinary complaints and decisions upon request.³

The NASD has adopted amendments to the Interpretation designed to balance the interests of the public in obtaining improved access to information concerning significant disciplinary matters against the legitimate interests of respondents not to be subject to unfair publicity concerning unadjudicated allegations of violations and non-final determinations of violations. The amendments to the Interpretation seek to balance these interests by authorizing the NASD to release information on disciplinary matters that could most significantly affect investor interests and by enhancing the disclosure accompanying the release of disciplinary information.

Release Of Complaint Information

The amended Interpretation authorizes the NASD to release information on those disciplinary complaints that present the most significant investor protection issues, *i.e.*, violations of anti-fraud, anti-manipulation, and sales practices rules that affect investors. In particular, the amendments authorize the NASD to release public information on NASD-initiated disciplinary complaints that contain an allegation of a violation of a specifically designated statute, rule or regulation of the SEC, NASD, or Municipal Securities Rulemaking Board (MSRB)⁴ that is determined by the NASD Regulation Board of Directors to involve serious misconduct that affects investors (Designated

Rules). The amendments also authorize the NASD to release public information on any complaint or group of complaints that the Presi-

dent of NASD Regulation determines should be publicized in the public interest.

Information will be automatically released to the public for complaints alleging violations of the following list of Designated Rules:

List Of Designated Rules

SEC Rules

Rule 10b-5	Employment of Manipulative and Deceptive Devices
Rules 15g-1 to 15g-9	Sales Practice Requirements for Certain Low-Priced Securities (Penny Stock Rules)
Section 17(a)	Fraudulent Interstate Transactions

NASD Rules

Rule No.	Title
2110	Standards of Commercial Honor and Principles of Trade (Only if the complaint alleges unauthorized trading, churning, conversion, material misrepresentations or omissions to a customer, front-running, trading ahead of research reports, or excessive markups).
2120	Use of Manipulative, Deceptive, or Other Fraudulent Devices
2310	Recommendations to Customers (Suitability)
2330	Customers' Securities or Funds
2440	Fair Prices and Commissions
3310	Publication of Transactions and Quotations
3330	Payment Designed to Influence Market Prices, Other than Paid Advertising

MSRB Rules

Rule	Title
Rule G-19	Suitability of Recommendations and Transactions
Rule G-30	Prices and Commissions (Markups)
Rules G-37(b) & (c)	Political Contributions and Prohibitions on Municipal Securities Business

Any future changes to this list will be published by NASD Regulation in a subsequent *NASD Notice to Members*, after approval by the Board.

To ensure that appropriate disclosures accompany information on any disciplinary complaint, the amendments provide that the release of information concerning a disciplinary complaint be accompanied by disclosure regarding the status of such complaint. The Interpretation currently requires disclosure that “the issuance of a disciplinary complaint represents the initiation of a formal proceeding by the Association in which findings as to the allegations in the complaint have not been made and does not represent a decision as to any of the allegations contained in the complaint.” The amendments to the Interpretation expand this disclosure to include the following statement: “Because this complaint is unadjudicated, you are encouraged to contact the respondent before drawing any conclusions regarding the allegations in the complaint.” NASD Regulation believes that this disclosure will help to enable recipients of the information to view it in an appropriate context and, thereby, provide appropriate protections to the respondent.

Release Of Information On Disciplinary Decisions

With respect to non-final disciplinary decisions, the amendments require that the current significance test for release of information on final decisions also be applied to the release of information on non-final decisions, with the additional requirement that non-final decisions be accompanied by appropriate disclosures as to the status of the case. As a result of these changes, the NASD is authorized to release information on non-final disciplinary decisions that impose monetary sanctions of \$10,000 or more or penalties of expulsion, revocation, suspension, or a bar from being associated with member firms.

In addition, the amendments require that information on all non-final and

final decisions that contain an allegation of a Designated Rule be released, regardless of the extent of the sanction or whether any sanction had, in fact, been imposed. NASD Regulation believes that where information on a disciplinary complaint is released because it includes an allegation of violation of one or more Designated Rules, information on the decision involving the same matter should also be released based on the same public policy interests that justify the release of complaint information, regardless of whether the decision results in the finding of a violation and the imposition of sanctions, a dismissal of the allegation, or a reversal of earlier findings.⁵ Further, the rule amendments provide that the release of any non-final disciplinary decisions should contain appropriate disclosures regarding the status of such non-final decisions.

Moreover, to remain consistent with the treatment of disciplinary complaints, the amendments authorize the NASD to release public information on any decision or group of decisions that the President of NASD Regulation determines should be publicized in the public interest.

Finally, the current Interpretation allows a waiver of the release of information in a particular case under those extraordinary circumstances where the release of information would be deemed to violate fundamental notions of fairness or work an injustice. The amendments transfer the authority to grant exceptions from the NASD Board of Governors to the National Business Conduct Committee (NBCC) to facilitate consideration of any application for an exception pursuant to the standard NBCC review procedures for motions by respondents.

Questions regarding this Notice may be directed to Gary L. Goldsholle, Senior Attorney, Office of General

Counsel, NASD Regulation, at (202) 728-8104.

Text Of Amendments

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

IM-8310-2 Release of Disciplinary Information

(a)⁶ The Association shall, in response to a written inquiry, electronic inquiry or telephonic inquiry via a toll-free telephone listing, release certain information [as] contained in its files regarding the employment and disciplinary history of members and their associated persons, including information regarding past and present employment history with Association members; all final disciplinary actions taken by federal, [or] state, or foreign securities agencies or self-regulatory organizations that relate to securities or commodities transactions; all pending disciplinary actions that have been taken by federal or state securities agencies or self-regulatory organizations that relate to securities and commodities transactions and are required to be reported on Form BD or U-4 and all foreign government or self-regulatory organization disciplinary actions that [are] relate to securities or commodities [related] transactions and are required to be reported on Form BD or U-4; and all criminal indictments, informations or convictions that are required to be reported on Form BD or Form U-4. The Association will also release information required to be reported on Form BD or Form U-4 concerning civil judgments and arbitration decisions in securities and commodities disputes involving public customers, pending and settled customer complaints, arbitrations and civil litigation, current investigations involving criminal or regulatory matters, terminations of employment after allegations involving violations of

investment related statutes or rules, theft or wrongful taking of property, bankruptcies less than ten (10) years old, outstanding judgements or liens, any bonding company denial, pay out or revocation, and any suspension or revocation to act as an attorney, accountant or federal contractor.

(b) The Association shall, in response to a request, release to the requesting party a copy of any identified disciplinary complaint or disciplinary decision issued by the Association or any subsidiary or Committee thereof; provided, however, that each copy of:

(1) a disciplinary complaint shall be accompanied by [a] the following statement [that]: “The issuance of a disciplinary complaint represents the initiation of a formal proceeding by the Association in which findings as to the allegations in the complaint have not been made and does not represent a decision as to any of the allegations contained in the complaint. Because this complaint is unadjudicated, you may wish to contact the respondent before drawing any conclusions regarding the allegations in the complaint.”

(2) a disciplinary decision that is released prior to the expiration of the time period provided under the [Code of Procedure] Rule 9000 Series for appeal or call for review within the Association or while such an appeal or call for review is pending, shall be accompanied by a statement that the findings and sanctions imposed in the decision may be increased, decreased, modified, or reversed by the Association;

(3) a final decision of the Association that is released prior to the time period provided under the [Securities Exchange] Act [of 1934] for appeal to the Commission or while such an appeal is pending, shall be accompanied by a statement that the findings

and sanctions of the Association are subject to review and modification by the Commission; and

(4) a final decision of the Association that is released after the decision is appealed to the Commission shall be accompanied by a statement as to whether the effectiveness of the sanctions has been stayed pending the outcome of proceedings before the Commission.

(c)(1) The Association shall release to the public information with respect to any disciplinary complaint initiated by the Department of Enforcement of NASD Regulation, Inc., the NASD Regulation, Inc. Board of Directors, or the NASD Board of Governors containing an allegation of a violation of a designated statute, rule or regulation of the Commission, NASD, or Municipal Securities Rule-making Board, as determined by the NASD Regulation, Inc. Board of Directors (a “Designated Rule”); and may also release such information with respect to any disciplinary complaint or group of disciplinary complaints that involve a significant policy or enforcement determination where the release of information is deemed by the President of NASD Regulation, Inc. to be in the public interest.

(2) Information released to the public pursuant to subparagraph (c)(1) shall be accompanied by the statement required under subparagraph (b)(1).

[(c)](d)(1) The Association shall [report to the membership and to the press pursuant to the procedures and at the times outlined herein any order of] release to the public information with respect to any disciplinary decision issued pursuant to the Rule 9000 Series imposing a suspension, cancellation or expulsion of a member; or suspension or revocation of the registration of a person associated with a member; or suspension or bar-

ring of a member or person associated with a member from association with all members; or imposition of monetary sanctions of \$10,000 or more upon a member or person associated with a member; or containing an allegation of a violation of a Designated Rule; and may also release such information with respect to any disciplinary decision or group of decisions that involve a significant policy or enforcement determination where the release of information is deemed by the President of NASD Regulation, Inc. to be in the public interest. The [Board of Governors] National Business Conduct Committee (NBCC) may, in its discretion, determine to waive the [notice provisions set forth herein as to an order of imposition of monetary sanctions of \$10,000 or more upon a member or person associated with a member,] requirement to release information with respect to a disciplinary decision under those extraordinary circumstances where [notice] the release of such information would violate fundamental notions of fairness or work an injustice.

(2) Information released to the public pursuant to subparagraph (d)(1) shall be accompanied by a statement to the extent required for that type of information under subparagraphs (b)(2)-(4).

[(d)] (e) If a decision [of a District Business Conduct Committee] issued pursuant to the Rule 9000 Series other than by the NBCC is not appealed to or called for review by the NBCC, the [order of the District Business Conduct Committee] decision shall become effective on a date set by the Association but not before the expiration of 45 days after the date of decision. [Notices of decisions imposing monetary sanctions of \$10,000 or more or penalties of expulsion, revocation, suspension and/or the barring of a person from being associated with all members

shall promptly be transmitted to the membership and to the press, concurrently; provided, however, no such notice shall be sent prior to the expiration of 45 days from the date of the said decision.]

[(e)](f) Notwithstanding paragraph [(d)](e), expulsions and bars imposed pursuant to the provisions of Rules 9217 and 9226 shall become effective upon approval or acceptance by the [National Business Conduct Committee] NBCC, and [publicity] information regarding any sanctions imposed pursuant to those Rules may be [issued] released to the public pursuant to paragraph (d) immediately upon such approval or acceptance.

[(f)](g) If a decision [of a District Business Conduct Committee] issued pursuant to the Rule 9000 Series is appealed to or called for review by the NASD Regulation, Inc. Board of [Governors] Directors or called for review by the NASD Board of Governors, [the order of the District Business Conduct Committee is] the decision shall be stayed pending a final determination and decision by the Board [and notice of the action of the District Business Conduct Committee shall not be sent to the membership or the press during the pendency of proceedings before the Board of Governors].

[(g)](h) If a final decision of the Association is not appealed to the Commission, the sanctions specified in the decision (other than bars and expulsions) shall become effective on a date established by the Association but not before the expiration of 30 days after the date of the decision. Bars and expulsions, however, shall become effective upon issuance of the decision, unless the decision specifies otherwise. [Notices of decisions imposing monetary sanctions of \$10,000 or more or penalties of expulsion, revocation, suspension and/or the barring of a person from

being associated with all members shall promptly be transmitted to the membership and to the press concurrently; provided, however, that any notice shall be sent prior to the expiration of 30 days from the date of a decision imposing sanctions other than expulsion, revocation, and/or the barring of a person from being associated with all members.]

[(h)](i) If a decision of the [Board of Governors] Association imposing monetary sanctions of \$10,000 or more or a penalty of expulsion, revocation, suspension and/or barring of a member from being associated with all members is appealed to the Commission, notice thereof shall be given to the membership and to the press as soon as possible after receipt by the Association of notice from the Commission of such appeal and the Association's notice shall state whether the effectiveness of the Board's decision has [or has not] been stayed pending the outcome of proceedings before the Commission.

[(i)](j) In the event an appeal to the courts is filed from a decision by the Commission in a case previously appealed to it from a decision of the [Board of Governors] Association, involving the imposition of monetary sanctions of \$10,000 or more or a penalty of expulsion, revocation, suspension and/or barring of a member from being associated with all members, notice thereof shall be given to the membership as soon as possible after receipt by the Association of a formal notice of appeal. Such notice shall include a statement [that] whether the order of the Commission has [or has not] been stayed.

[(j)](k) Any order issued by the Commission of revocation or suspension of a member's broker/dealer registration with the Commission; or the suspension or expulsion of a member from the Association; or the suspension or barring of a member or per-

son associated with a member from association with all broker/dealers or membership; or the imposition of monetary sanctions of \$10,000 or more shall be [made known to the membership of the Association] released to the public through a notice containing the effective date thereof sent as soon as possible after receipt by the Association of the order of the Commission.

[(k)](l) Cancellations of membership or registration pursuant to the Association's By-Laws, Rules and Interpretative Material shall be [sent to the membership and, when appropriate, to the press] released to the public as soon after the effective date of the cancellation as possible.

[(l)](m) [Notices to the membership and r] Releases to the [press] public referred to in paragraphs (c) and (d) above shall identify the Rules and By-Laws of the Association or the SEC Rules violated, and shall describe the conduct constituting such violation. [Notices] Releases may also identify the member with which an individual was associated at the time the violations occurred if such identification is determined by the Association to be in the public interest.

Endnotes

¹ These rule amendments relate to "disciplinary complaints" and do not address "customer complaints."

² The publication of information concerning significant disciplinary actions that have become final during the preceding month is normally done through a monthly press release. In addition, a more detailed press release about a case of particular importance may be issued on a more expedited basis.

³ See *NASD Notice to Members* 96-76.

⁴ NASD Regulation maintains the authority and responsibility to enforce compliance with MSRB rules with respect to member firms.

⁵ With respect to the methodology for the release of information on complaints and decisions, it is anticipated that information

will be released through an omnibus press release that is subsequently included in an *NASD Notice to Members*, a press release on an individual matter, or through the NASD Regulation Web site.

⁶ The language of paragraph (a) treats as if adopted proposed amendments to the provision filed with the SEC in SR-NASD-96-38. File SR-NASD-96-38 has been published for comment in Securities Exchange Act Release

No. 37994 (November 27, 1996), 61 FR 64549 (December 5, 1996).

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