

NASD NOTICE TO MEMBERS 98-2

SEC Approves Amendments To Rule 1010, 8000, And 9000 Series To Reflect Changes In NASD Corporate Organization

Suggested Routing

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- ☐ Advertising
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Executive Summary

On December 19, 1997, the Securities and Exchange Commission (SEC or Commission) approved various amendments to the Rules of the National Association of Securities Dealers, Inc. (NASD® or Association) and a related change to the By-Laws of NASD Regulation, Inc. (NASD RegulationSM) (NASD Regulation By-Laws).¹ The amendments to the Rules include changes in the membership admission Rules, the Rules relating to investigations and sanctions, and the Code of Procedure that conform the Rules to the formal changes in the NASD, NASD Regulation and The Nasdaq Stock Market, Inc. (Nasdaq®) corporate and committee structures approved by the SEC on November 14, 1997.² The amendments to the Rules and the NASD Regulation By-Law that are the subject of this *Notice* shall become effective on January 16, 1998, contingent upon the completion of several corporate actions by January 15, 1998, including the election of the NASD Board of Governors (NASD Board) by NASD members at the annual meeting, the appointment of the NASD Regulation Board of Directors (NASD Regulation Board) following the annual meeting, and the appointment of the National Adjudicatory Council (NAC) by the NASD Regulation Board. If any of the above actions do not occur by January 15, 1998, the NASD will publish a second *Notice to Members* providing a new effective date for the affected Rules and the NASD Regulation By-Law.

Questions

Questions should be directed to:

Membership Application Procedures

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Procedures In Rule 9400 Series—Rule 9500 Series

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Procedures For Exemptions

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Membership Application Procedures

The NASD is amending the membership application procedures to reflect changes that are required by the SEC's approval of amendments to the corporate and committee structure of NASD, NASD Regulation, and Nasdaq. The amendments to the Rule 1010 Series reflect the following changes:

— the term, "National Adjudicatory Council," is substituted for the term, "National Business Conduct Committee" throughout the Rules;

— the Rules are amended to reflect the composition of the NAC, and that

the Chair is a member of the NASD Regulation Board and the NASD Board;

– the authority to engage in discretionary review of the decisions of the NAC is vested in the NASD Board, rather than in both the NASD Regulation Board and the NASD Board;

– specific references to NASD Regulation Directors are deleted as unnecessary because NASD Regulation Directors participate in the review of membership decisions only as members of the NASD Board.

In addition, the following Rules in the Rule 1010 Series are amended to incorporate other changes specifically described below.

Rule 1011 – Paragraph (b) of the Rule is amended to broaden the defined term “Associated Person” to include “a natural person registered under the Rules of the Association,” consistent with a recent change to NASD By-Laws, Article I.

Rule 1012 – Subparagraph (c)(1) of the Rule is amended to clarify that a majority of the Governors of the NASD Board, excluding the Chair, shall have authority to direct the disqualification of the Chair.

Rule 1013 – Subparagraph (a)(2)(C) of the Rule is amended to delete the requirement that an application for membership shall include “evidence of all registrations and licenses required by the Commission, state securities authorities, the Municipal Securities Rulemaking Board, the National Securities Clearing Corporation, and self-regulatory organizations.”

Rule 1015 – Under subparagraph (a)(2), the NAC or the Review Subcommittee of the NAC (Review Subcommittee) may call a membership decision for review. The NASD

must serve a written notice of review promptly on the Applicant if a decision is called for review. In paragraph (d), the Association is amending the Rule to authorize the Review Subcommittee to appoint a Subcommittee to review membership decisions.

Rules Regarding Investigations And Sanctions

The NASD is amending the Rule 8000 Series to reflect the changes required by the corporate reorganization (*e.g.*, the substitution of the term, “National Adjudicatory Council,” for the term, “National Business Conduct Committee”). In addition, the following Rules in the Rule 8000 Series are amended to incorporate other changes specifically described below.

Rule 8110 – The Rule is amended to allow members to keep a current copy of the *NASD Manual* electronically.

Rule 8210 – The Association is amending the notice provision in paragraph (d) to set forth more ways to give notice to a subject member or person.

Rule 8211, Rule 8212, and Rule 8213 – The Association is relocating three rules, Rule 4615, Rule 5107 and Rule 6730, which require a member or a person to submit information to the Association, to the Rule 8000 Series as Rule 8211, Rule 8212, and Rule 8213. The Association is also including in the text of Rule 8211, Rule 8212, and Rule 8213 a specific reference to the Rule 9600 Series to clarify that a person seeking exemptive relief under any of the three Rules should do so pursuant to the Rule 9600 Series.

Code Of Procedure Disciplinary Proceedings

The NASD is amending the Rules set forth in the Rule 9100 Series, the Rule 9200 Series, and the Rule 9300 Series, which are the rules applicable to most disciplinary proceedings. Other proceedings are subject to the Rule 9400 Series and the Rule 9500 Series described in the next section of this *Notice*.

Generally, the changes set forth in the Rules incorporate the changes described above that are required as a result of the corporate and committee restructuring.

In addition, throughout the Rule 9100 Series, the Rule 9200 Series and the Rule 9300 Series, the Rules have been amended to specifically authorize the Review Subcommittee to take a number of actions that previously were delegated from the National Business Conduct Committee (NBCC) to the Chair and the Vice Chair of the NBCC. The most important of these changes are set forth in amended Rule 9216(a) relating to the negotiation and conclusion of a letter of acceptance, waiver, and consent, amended Rule 9216(b) relating to the negotiation and conclusion of a minor rule violation plan letter, and amended Rule 9270 relating to the negotiation and settlement of a disciplinary matter by an offer of settlement. The Association is amending Rule 9322 (a) and (b), Rule 9331(a)(2), Rule 9344(a) and (b), and Rule 9347(a) and (b) similarly.

Other significant amendments to the Rule 9100 Series, the Rule 9200 Series, and the Rule 9300 Series are discussed specifically below.

Rule 9120 – The definitions listed below are new or are amended substantively:

- (a) “Adjudicator”;
- (d) “Counsel to the National Adjudicatory Council”;
- (e) “Department of Enforcement”;
- (f) “Director”;
- (o) “Head of Enforcement”;
- (r) “Interested Association Staff”;
- (w) “Party”;
- (z) “Review Subcommittee”;
- (aa) “Statutory Disqualification Committee”; and
- (bb) “Subcommittee.”

Rule 9141 – In paragraph (b), the Association is clarifying that the notice to be filed regarding the representation of another person is a Notice of Appearance.

Rule 9146 – The Association is amending subparagraph (j)(2) to authorize the Review Subcommittee to decide a motion on a procedural matter and a motion to dismiss a case for abandonment made under Rule 9344.

Rule 9160 – The Association is amending paragraph (a) to provide that the majority of the NASD Board, excluding the Chair of the NASD Board, is authorized to order the disqualification of the Chair. In paragraph (b), disqualification matters regarding members of the NAC, the Review Subcommittee, certain subcommittees in the Rule 9410 Series or the Rule 9600 Series, a Hearing Panel appointed under the Rule 9520 Series, and the Statutory Disqualification Committee are also addressed.

Rule 9211 – The Association is relocating a portion of paragraph (a) to Rule 9212 as subparagraph (a)(2).

Rule 9214 – The Association is clarifying that if a party to a case requests consolidation of that case with another case, the party must serve all parties to all cases proposed to be consolidated. The Association is also clarifying that the Chief Hearing Officer will decide a motion for consolidation by issuing an order.

Rule 9215 – The Association is amending paragraph (f) to provide that if a Respondent fails to answer a complaint or does not make any other filing or request related to the complaint with the Office of Hearing Officers within the period required to answer, the Department of Enforcement shall send a second notice to such Respondent requiring an answer within 14 days after service of the second notice. If the Respondent fails to reply within the period specified, the Hearing Officer, in the exercise of his or her discretion, may treat as admitted by Respondent the allegations in the complaint and enter a default decision. Previously, the requirement to send a second notice to a Respondent was triggered solely by Respondent’s failure to file an answer.

IM-9216 – In the last line of IM-9216, certain violations of Rule 8211 (former Rule 4615), Rule 8212 (former Rule 5107), and Rule 8213 (former Rule 6730) may now be resolved by a minor rule violation plan letter.

Rule 9231 – New paragraph (d) provides that the Chief Hearing Officer may designate a person who is qualified to serve as a Panelist to serve as an “observer” to a disciplinary proceeding.

Rule 9235 – New paragraph (b) allows the Chief Hearing Officer or the Deputy Chief Hearing Officer to temporarily act as a Hearing Officer if the appointed Hearing Officer is temporarily unavailable.

Rule 9241 – Amended paragraph (d) requires that an initial pre-hearing conference be held within 21 days after filing, rather than service, of an answer.

Rule 9331 – Paragraph (a), which sets forth the composition of a Subcommittee and an Extended Proceeding Committee, is being modified to reflect the corporate reorganization.

Rule 9332 – New subparagraph (d) (2) provides for the disqualification of multiple members of the Review Subcommittee.

Procedures In Code Of Procedure Regarding Eligibility, Limitations On Operations, Summary And Non-Summary Suspensions, Cancellations, Bars, And Denials Of Access

The NASD is amending portions of the Rule 9400 Series and the Rule 9500 Series, which are the procedures relating to eligibility, limitations on operations, summary and non-summary suspensions, cancellations, bars, and denials of access to conform such proceedings to the current corporate structure.

The Rule 9400 Series Rules are amended to substitute the term “National Adjudicatory Council” for the former term “National Business Conduct Committee” and to make other changes that conform to the corporate reorganization discussed in greater detail above. The Rule 9500 Series Rules are similarly amended.

Procedures For Exemptions

The Rule 9600 Series Rules are amended to reflect the changes in the name of the committee from the “National Business Conduct Committee” to the “National Adjudicatory Council.” In addition, two other minor changes have been made to Rule 9610 and Rule 9630.

Rule 9610 – The Association is amending the Rule to incorporate four additional rules that are subject to the exemptive procedures set forth in the Rule 9600 Series, and is requiring that a person seeking an exemption must file a written application with the appropriate department and provide a copy of the application to the Office of the General Counsel of NASD Regulation.

Rule 9630 – The amended Rule will require that a person filing a notice of appeal of an exemptive decision must do so by filing it with the Office of the General Counsel of NASD Regulation, and filing a copy with the appropriate department.

List Of Amended Rules

The Rules, as amended, will incorporate changes to conform the membership admission Rules, the Rules relating to investigations, and the Code of Procedure to the corporate changes recently adopted by the NASD Board and approved by the SEC. For a complete understanding of the Rules, the NASD urges members and their associated persons to read the Rules, as amended.

For member convenience, the amended Rules are set forth on the NASD Regulation Web Site, www.nasdr.com. Click on the navigation bar titled, “Members Check Here” and then click on the navigation bar titled “Notices to Members.”

The following list sets forth the By-Laws and Rules that were amended including those that were deleted or renumbered.

NASD Regulation, Inc. By-Laws Article V Section 5.11 (added)

NASD Rules (numbered as of August 8, 1997) (only Rules that were amended on December 19, 1997 are listed)

Rule 1010 Series

Rule 1011
Rule 1012
Rule 1013
Rule 1014
Rule 1015
Rule 1016
Rule 1017
Rule 1018

Rule 4600 Series

Rule 4615 (renumbered as new Rule 8211)

Rule 5100 Series

Rule 5107 (renumbered as new Rule 8212)

Rule 6730 Series

Rule 6730 (renumbered as new Rule 8213)

Rule 8000 Series

Rule 8110 Series

Rule 8110

Rule 8220 Series

Rule 8210
Rule 8211 (previously numbered as Rule 4615)
Rule 8212 (previously numbered as Rule 5107)
Rule 8213 (previously numbered as Rule 6730)
Rule 8221
Rule 8222
Rule 8223
Rule 8225

Rule 8300 Series

Rule 8310
IM-8310-1
IM-8310-2

Rule 9000 Series

Rule 9100

Rule 9110
Rule 9120
Rule 9141
Rule 9143
Rule 9144
Rule 9146
Rule 9147
Rule 9150
Rule 9160

Rule 9200 Series

Rule 9211
Rule 9212
Rule 9214
Rule 9215
Rule 9216
IM-9216
Rule 9221
Rule 9231
Rule 9232
Rule 9235
Rule 9241
Rule 9251
Rule 9253
Rule 9270
Rule 9280

Rule 9300 Series

Rule 9311
Rule 9312
Rule 9313
Rule 9321
Rule 9322
Rule 9331
Rule 9332
Rule 9341
Rule 9343
Rule 9344
Rule 9345
Rule 9346
Rule 9347
Rule 9348

Rule 9349
Rule 9351 (deleted)
Rule 9352 (renumbered as
new Rule 9351)

Rule 9400 Series

Rule 9413
Rule 9414
Rule 9415 (deleted)
Rule 9416 (renumbered as
new Rule 9415)
Rule 9417 (renumbered as
new Rule 9416)
Rule 9418 (renumbered as
new Rule 9417)
Rule 9419 (renumbered as
new Rule 9418)
Rule 9419 (added)
Rule 9420 (deleted)

Rule 9500 Series

Rule 9511
Rule 9513
Rule 9514
Rule 9515
Rule 9522
Rule 9523
Rule 9524 (deleted)
Rule 9525 (renumbered as
new Rule 9524)
Rule 9526 (renumbered as
new Rule 9525)

Rule 9600 Series

Rule 9610
Rule 9630

Endnotes

¹ SR-NASD-97-81 was approved in Securities Exchange Act Rel. No. 34-39470 (Dec. 19, 1997), 62 F.R. 67927 (December 30, 1997). See SR-NASD-97-81, filed October 31, 1997, Rel. No. 34-39350 (November 21, 1997), 62 F.R. 64000 (December 3, 1997); SR-NASD-97-81, Amendment No. 1, filed November 12, 1997; SR-NASD-97-81, Amendment No. 2, filed November 18, 1997; SR-NASD-97-81, Amendment No. 3, filed December 16, 1997.

² SR-NASD-97-71, approved in Securities Exchange Act Rel. No. 34-39326 (November 14, 1997).

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