

NASD NOTICE TO MEMBERS 97-31

NASD Reminds Registered Persons Of Continuing Obligation To Update NASD Records

Suggested Routing

- ☒ Senior Management
- ☐ Advertising
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- ☒ Legal & Compliance
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- ☒ Training

Executive Summary

Every person registered with a member of the NASD® must notify the NASD of his or her current mailing address. This obligation exists while a registrant is associated with any NASD member firm, and continues for as long as the NASD retains jurisdiction to bring a disciplinary action against the registrant, which may be up to four years after the registrant's association ends. If you are currently registered, you must notify the NASD of an address change by filing a new Uniform Application for Securities Industry Registration or Transfer (Form U-4). Registrants who are no longer affiliated with an NASD member should notify the NASD's Membership Services Department of any address changes.

Discussion

The NASD Regulation, Inc. (NASD RegulationSM) National Business Conduct Committee (NBCC) has reviewed a number of recent disciplinary actions in which registered persons have claimed that their failure to respond to a request for information made under NASD Rule 8210 was due to a recent change of address which prevented them from receiving the request. NASD Regulation reminds registered persons that they must notify the NASD of any changes to their current addresses and that they may face disciplinary action for failing to respond to requests for information that are mailed to the last known address reflected in the NASD's records. Individuals who are no longer associated with an NASD member firm must continue to notify the NASD of their mailing address for at least two years after they end that association. The consequences of failing to update your mailing address can be serious—please read this *Notice* carefully.

Registered persons are required to comply with the NASD's By-Laws,

rules, and regulations.¹ The NASD By-Laws require that all persons who apply for registration with the NASD must submit a Form U-4 and that those who are already registered must file an amendment to the Form U-4 when information contained on the original Form U-4 changes.² Form U-4 requires applicants for registration to notify the NASD of their current address and to keep all information on Form U-4 current. Thus, registered representatives have a continuing duty to maintain a current address in the NASD's records.

It is imperative, both to registered persons and to the NASD, that registered persons understand this duty in the context of requests for information under Rule 8210. Rule 8210 is the NASD's tool for investigating suspected wrongdoing. It enables a District Business Conduct Committee, Market Regulation Committee, or the NBCC to request any member or registered person to provide the NASD with documents, information, and testimony. Requests for information are mailed to a registered person's last known address as reflected in the NASD's records and are deemed to have been received there, whether or not the individual actually receives them.³ Disciplinary complaints alleging violations of Rule 8210 are also mailed to a registered person's last known address as reflected on the NASD's records and are deemed to have been received there, whether or not the individual actually receives them.

For at least two years **after** an individual's registration has been terminated by the filing of a Uniform Termination Notice for Securities Industry Registration (Form U-5), the NASD may use Rule 8210 to investigate whether that individual violated any of the NASD's rules and may bring a disciplinary action if the individual fails to comply with Rule 8210.⁴ A request for information or a

disciplinary complaint issued by the NASD during this two-year period, will be mailed to the non-affiliated person's last address in the NASD's records and the non-affiliated person is deemed to have received them there, whether or not he or she actually did. Therefore, a person whose registration is terminated must continue to notify the NASD when his or her current mailing address changes.

In fact, the NASD may request information and issue disciplinary complaints for longer than two years after a registrant has been out of the securities industry. The NASD By-Laws state that even if a Form U-5 has been filed, the termination of an individual's registration does not take effect until all disciplinary complaints against them are resolved.⁵ The filing of an amended Form U-5 recommences the running of the two-year period, although the amendment must be filed within two years of the original Form U-5.⁶ Thus, the NASD may retain jurisdiction over a registered individual for four years after the original Form U-5 is filed. Written notice of the filing of an amended Form U-5 must be sent to the affected person.

The consequences of failing to inform the NASD of a change of address can be serious. If the NASD staff sends a request for information or a disciplinary complaint to a registered person's last known address and the registered person fails to receive it because he or she has changed addresses, the registered person is subject to the imposition of sanctions unless he or she has filed an amended Form U-4 or has notified the NASD's Membership Services Department of his or her current mailing address. The NASD Sanction Guidelines recommend the imposition of a censure, a fine of up to \$20,000, and a bar from associating with any member of the NASD for failure to respond to a request for information under Rule 8210.

To fulfill this obligation, a registered person must cause the firm(s) with which he or she is associated to file an amended Form U-4 with the NASD. Persons whose registrations have been terminated, canceled, or revoked should advise the NASD of any changes to the information on their Form U-4 that occur after their registrations have lapsed until such time as the NASD no longer has jurisdiction to file a complaint or

request for information. Letters advising the NASD of such changes should be sent, via certified mail, to:

NASD Membership Services
Department
1390 Piccard Drive
Rockville, Maryland 20850.

Questions concerning this *Notice* should be directed to Jeffrey Davis, Attorney, Office of General Counsel, NASD Regulation, at (202) 728-8461.

Endnotes

¹ Article IV, Section 2(a)(1) of the NASD By-Laws. *See also* Form U-4.

² Article IV, Section 2 of the NASD By-Laws.

³ NASD Rule 9134 states that "[a]ny person shall be deemed to have received notice to which he is entitled under any provision of this Code by the mailing of the notice to that person at his last known address as reflected on the Association's records."

⁴ Article IV, Sections 3 and 4 of the NASD By-Laws.

⁵ Article IV, Section 3(a) of the NASD By-Laws.

⁶ Article IV, Section 4(a) of the NASD By-Laws.

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