

For Your Information

Testing And Continuing Education Scheduling Procedures Revised

To provide a better level of service to members, NASD Regulation, Inc., and the Sylvan Technology Center Network (Sylvan) have agreed that certain appointment scheduling activities regarding testing and continuing education sessions will become the direct responsibility of NASD RegulationSM. **Effective June 1, 1998**, NASD Regulation Field Support Services (FSS), **(800) 999-6647**, will be taking over responsibility from Sylvan in the following areas:

- **Registration Authorization Discrepancies.** FSS will assume responsibility for handling registration validation problems and their resolution. This should eliminate the majority of appointment cancellations due to validation problems.
- **Group Appointment Scheduling.** Firms scheduling group appointments (five or more people at one location on the same day), or scheduling five or more individual appointments at one time will do so by calling FSS rather than Sylvan. This will provide for a more time efficient process for the firm.
- **Special Accommodations Appointment Scheduling Pursuant To Mandates Of Americans With Disabilities Act (ADA).** After approving special accommodation requests, FSS will make all arrangements for the accommodation with Sylvan. Firms and candidates need only contact FSS; the current procedure of contacting both FSS and Sylvan will no longer be necessary.

More detailed information about these important changes, along with a current delivery location list, will be published in the June issue of the NASD's *Regulatory & Compliance Alert*.

NASD Regulation, Year 2000 Program Office Develop Member Regulation Plan

As the year 2000 gets closer, all National Association of Securities Dealers, Inc. (NASD[®]) member firms have a responsibility to move their Year 2000 program plans forward to ensure continued successful operation. NASD members are the first line of action in fulfilling the mission of investor protection and market integrity. If businesses—including NASD member firms—are not ready for the Year 2000, the consequences could be enormous. In order to help NASD members, NASD Regulation, in conjunction with the NASD Year 2000 Program Office, has developed a Year 2000 Member Regulation Plan.

Member Regulation Plan

Under this plan, NASD Year 2000 staff will be focused on educating member firms and service bureaus on the importance of developing Year 2000 programs to ensure that all proprietary and nonproprietary systems used in conducting a securities business will continue to operate successfully after December 31, 1999. Specifics of the plan include the following:

- **Ongoing Awareness And Education.** This area involves ongoing communication with members regarding the progress of the industry in preparing for Year 2000 issues and challenges. Currently, most NASD publications contain articles targeted to increase members' awareness, discuss reporting requirements, and provide helpful hints. In addition, while the staff will not be inspecting and/or evaluating Year 2000 project plans developed by members or service bureaus, the Year 2000 Program Office provides education through forums and participation in conferences. For example, NASD staff conduct-

ed 34 Year 2000 seminars in May and June 1998, and the 1998 NASD Regulation Spring Securities Conference included a pre-conference entirely devoted to Year 2000 issues and prominently featured Year 2000 issues in the conference itself, with keynote speakers and workshops. These types of activities will continue throughout 1999.

• **Membership Information Collection And Disclosure.** There will be a series of surveys and reports for members to indicate and certify their progress related to Year 2000 readiness. An NASD-sponsored survey was conducted in late 1997/early 1998, and the staff is still in the process of assuring 100 percent participation in that effort. In March, the Securities and Exchange Commission (SEC) proposed a temporary rule amendment to SEC Rule 17a-5 requiring broker/dealers to file two Year 2000 compliance reports. The NASD submitted comments to the SEC in April stating that the proposed amendments are a positive addition to the regulatory and industry-wide Year 2000 initiatives currently underway. The NASD also indicated that the SEC's amendment should extend to all broker/dealers, rather than the SEC's proposed \$100,000 net capital reporting threshold, but that smaller firms should not be subject to an outside attestation requirement. Furthermore, the NASD commented that the results of these reports should be made available to the public and should be collected and published under a standard reporting format. The SEC is expected to act on this shortly.

In addition, NASD Regulation implemented an exam procedure to verify that member firms have provided information to the NASD about the status of their Year 2000 planning activities.

Important Note: Member firms that fail to provide Year 2000 information as required by the NASD will be subject to disciplinary action for violation of NASD Rule 8210 (Provision of Information and Testimony and Inspection and Copying of Books) and SEC Rule 17a-5.

• **Membership Analysis.** Using data collected from the NASD Year 2000 survey, the proposed SEC reports, and data gathered by individual calls to member firms, Year 2000 Program Office staff will be able to increase the reporting and analysis of membership risks and readiness. The NASD will also use this data to evaluate members' progress toward industry milestones, monitor members' overall Year 2000 contingency plan preparedness, and report to the SEC on the industry's progress.

• **Other Activities.** The NASD will continue its ongoing coordination with the many groups that affect and would be affected by the success of the various Year 2000 initiatives. This includes coordination with the SEC, Securities Industry Association (SIA), International Organization of Securities Commissions (IOSCO), NASD Small Firm Advisory Board, and the Municipal Securities Rulemaking Board (MSRB).

For further information about the Year 2000 challenge in general and/or NASD's Year 2000 Program, visit the Year 2000 Web pages on either the NASD Regulation Web Site (www.nasdr.com) or the NASD Web Site (www.nasd.com); or contact Lyn Kelly at the NASD Year 2000 Program Office, at (888) 227-1330, or via e-mail at y2k@nasd.com.

Court Limits Arbitration Requirement For Employment Discrimination Claims

A federal appellate court in the Ninth Circuit issued a decision on May 8, 1998, which held that, under the United States Civil Rights Act of 1991, employers may not, as a condition of employment, compel individuals to waive their right to a judicial forum in cases alleging employment discrimination. The Ninth Circuit is the only U.S. Court of Appeals to reach this conclusion. The jurisdiction of the Ninth Circuit includes the States of Alaska, Arizona, California, Hawaii, Idaho, Montana, Nevada, Oregon, and Washington.

The case, *Duffield v. Robertson Stephens & Co.*, involved a situation in which an associated person had signed a Form U-4 that required her to arbitrate all employment-related disputes. The associated person sued her employer in federal court, alleging sex discrimination and sexual harassment in violation of federal and California state statutes, as well as other claims based on state law. The employer moved to compel arbitration pursuant to the Form U-4 requirement. The court held that the Form U-4 is unenforceable as applied to claims under Title VII of the Civil Rights Act and a parallel California anti-discrimination law. The court determined, however, that there is no constitutional bar to employers requiring employees to agree in advance to arbitrate state law tort and contract claims (other than claims for violation of state civil rights laws).

Members and associated persons who are subject to the jurisdiction of the Ninth Circuit may wish to consult counsel if they are involved in a matter covered by the decision. The docket number of the decision is 97-15698. The decision may be obtained from various legal research services, and may be

accessed via the Internet at a Web site maintained by the Villanova Center for Information Law and Policy at www.law.vill.edu/Fed-Ct/ca09.html.

In addition, members and associated persons are reminded that an NASD rule proposal currently awaiting SEC approval provides that associated persons will no longer be required, solely by virtue of their association or registration with the NASD, to arbitrate claims of statutory employment discrimination. Associated persons will still be required to arbitrate other employment-related claims, as well

as any business-related claims involving investors or other persons. If approved, the proposed rule will become effective on January 1, 1999, and will apply nationwide to claims filed on or after that date. The proposed rule will not affect private arbitration agreements entered into between members and associated persons. Further information with regard to the rule filing is available on the NASD Regulation Web Site at www.nasdr.com, under "Arbitration/Mediation—Rules and Procedures."

Errata Page Issued For NASD Sanction Guidelines

An errata page for the *NASD Sanction Guidelines* published last month may be found on page 348 of the print version of this month's *Notices to Members*. The Guidelines are available on-line through the NASD Regulation Web Site at www.nasdr.com.

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