

Notice to Members

OCTOBER 2004

SUGGESTED ROUTING

Legal & Compliance
Registered Representatives
Senior Management

KEY TOPICS

Article V, Section 3(a) of the NASD By-Laws
Form U5 (Uniform Termination Notice for Securities Industry Registration)
Interpretive Material 9216 (IM-9216)
Minor Rule Violation Plan
MRVP

GUIDANCE

Failure to Timely Submit Amendments to Form U5

SEC Announces Approval of Amendment to NASD's Minor Rule Violation Plan (MRVP) to Include Failure to Timely Submit Amendments to Form U5; **Effective Date: November 22, 2004**

Executive Summary

On September 24, 2004, the Securities and Exchange Commission (SEC) approved an amendment to IM-9216 (NASD's MRVP) to include the failure to timely submit amendments to Forms U5 (Uniform Termination Notices for Securities Industry Registration).¹

Questions/Further Information

Questions concerning this *Notice* may be directed to Shirley H. Weiss, Associate General Counsel, Office of General Counsel, Regulatory Policy and Oversight, at (202) 728-8844.

Background

In 1984, the SEC adopted amendments to SEC Rule 19d-1(c) under the Securities Exchange Act of 1934 to allow self-regulatory organizations to adopt, with SEC approval, plans for the disposition of minor violations of rules.² In 1993, pursuant to SEC Rule 19d-1(c), NASD established an MRVP, as set forth in NASD Rule 9216(b).³ In 2001, the SEC approved significant amendments to NASD's MRVP.⁴ On September 24, 2004, the SEC approved an amendment to include in NASD's MRVP the failure to timely submit amendments to Forms U5, which is the subject of this *Notice*.⁵

The purpose of the MRVP is to provide for a meaningful sanction for a minor or technical violation of a rule when the initiation of a disciplinary proceeding through the formal complaint process would be more costly and time-consuming than would be warranted. Inclusion of a rule in NASD's MRVP does not mean it is an unimportant rule; rather, it means that a minor or technical violation of the rule may be appropriate for disposition under the MRVP. NASD retains the discretion to bring full disciplinary proceedings for the violation of any rule listed in the MRVP.

Rule 9216(b) authorizes NASD to impose a fine of \$2,500 or less on any member or associated person of a member for a violation of any of the rules specified in IM-9216. NASD staff reviews the number and seriousness of the violations, as well as the previous disciplinary history of the respondent to determine if a matter is appropriate for disposition under the MRVP and to determine the amount of the fine. Once NASD has brought a minor violation of a rule against an individual or member firm, NASD may, at its discretion, issue progressively higher fines for all subsequent minor violations of rules within the next 24-month period or initiate more formal disciplinary proceedings.⁶

Failure to Timely Submit Amendments to Forms U5

In July 2002, an NASD task force (the Public Information Review or PIR Task Force) initiated a comprehensive review of disciplinary and other information that NASD makes public. In *Notice to Members 04-23* (March 2004), NASD requested comment from its members and other interested parties on two of the PIR Task Force's recommendations. One of these recommendations was to expand the coverage of NASD's MRVP to include the failure to amend the Form U5 in a timely manner. The recommendation was part of a multi-pronged effort to help ensure that members make required disclosures on all uniform registration forms in a timely manner.⁷

Including the failure to timely submit amendments to the Form U5 in NASD's MRVP gives NASD the additional flexibility to resolve these violations as it has regarding the failure to timely submit amendments to the Form U4 (Uniform Application for Securities Industry Registration or Transfer) and Form BD (Uniform Application for Broker-Dealer Registration),⁸ and it gives NASD staff the ability to impose a meaningful sanction for violations that warrant more than a Letter of Caution but do not necessarily rise to a level meriting a full disciplinary proceeding. As with all violations included in NASD's MRVP, NASD staff will continue to determine on a case-by-case basis whether a particular violation merits disposition under its MRVP or warrants formal disciplinary action.

Endnotes

- 1 See Exchange Act Rel. No. 50446 (Sept. 24, 2004), 69 F.R. 58568 (Sept. 30, 2004) (SR-NASD-2004-121).
- 2 See Exchange Act Rel. No. 21013 (June 1, 1984), 49 F.R. 23828 (June 8, 1984).
- 3 See Exchange Act Rel. No. 32076 (Mar. 31, 1993), 58 F.R. 18291 (Apr. 8, 1993); see also *Notice to Members 93-42* (July 1993).
- 4 See Exchange Act Rel. No. 44512 (July 3, 2001), 68 F.R. 36812 (July 13, 2001).
- 5 See Exchange Act Rel. No. 50446 (Sept. 24, 2004), 69 F.R. 58568 (Sept. 30, 2004) (SR-NASD-2004-121). NASD also has proposed to add six additional rule violations to its MRVP. See SR-NASD-2004-025. Specifically, that proposal, which remains pending at the SEC, would add: (1) violation of the Intermarket Trading System (ITS) trade-through rule; (2) violation of the locked and crossed markets rule; (3) violation of the Trade Reporting and Compliance Engine (TRACE) system transaction reporting requirement; (4) violation of the Alternate Display Facility (ADF) transaction reporting requirement; (5) violation of the standards applicable to communications with the public; and (6) failure to provide or update firm contact information as required by NASD rules.
- 6 See *Notice to Members 04-19* (March 2004) (NASD Releases Minor Rule Violation Plan (MRVP) Guidelines), which provides interested parties with guidance concerning the application of NASD's MRVP to each of the rules under the Plan, as specified in NASD IM-9216. This guidance includes identifying the factors to be considered in determining whether to dispose of an action under the MRVP and discussing the appropriate levels for fines. NASD will update this guidance to reflect the addition to its MRVP of the failure to timely submit amendments to Forms U5.
- 7 This effort includes the newly established late disclosure fee, which was another recommendation of the PIR Task Force. See Exchange Act Rel. No. 49224 (Feb. 11, 2004), 69 F.R. 7833 (Feb. 19, 2004) (File No. SR-NASD-2003-192). See also *Notice to Members 04-09* (March 2004).
- 8 More specifically, NASD's MRVP also includes: (1) failure to timely submit amendments to Form U4 (as required by Article V, Section 2(c) of the NASD By-Laws); and (2) failure to timely submit amendments to Form BD (as required by Article IV, Section 1(c) of the NASD By-Laws).

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ATTACHMENT A

Below is the text of the proposed rule change. Additions are underlined; deletions are in brackets.

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9200. DISCIPLINARY PROCEEDINGS

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IM-9216. Violations Appropriate for Disposition Under Plan Pursuant to SEC Rule 19d-1(c)(2)

—Rule 2210(b) and (c) and Rule 2220(b) and (c)—Failure to have advertisements and sales literature approved by a principal prior to use; failure to maintain separate files of advertisements and sales literature containing required information; and failure to file communications with the Association within the required time limits.

—Rule 3360—Failure to timely file reports of short positions on Form NS-1.

—Rule 3110—Failure to keep and preserve books, accounts, records, memoranda, and correspondence in conformance with all applicable laws, rules, regulations and statements of policy promulgated thereunder, and with the Rules of the Association.

—Rule 8211, Rule 8212, and Rule 8213—Failure to submit trading data as requested.

—Article IV of the NASD By-Laws—Failure to timely submit amendments to Form BD.

—Article V of the NASD By-Laws —Failure to timely submit amendments to Form [U-4] U4.

—Article V of the NASD By-Laws —Failure to timely submit amendments to Form U5.

—Rule 1120—Failure to comply with the Firm Element of the continuing education requirements.

—Rule 3010(b)—Failure to timely file reports pursuant to the Taping Rule.

—Rule 3070—Failure to timely file reports.

—Rule 4619(d)—Failure to timely file notifications pursuant to SEC Regulation M.

—Rules 4632, 4642, 4652, 6240, 6420, 6550, 6620, and 6720—Transaction reporting in equity, convertible debt, and high yield securities.

—Rules 6130 and 6170—Transaction reporting to the Automated Confirmation Transaction Service (“ACT”).

—Rules 6954 and 6955—Failure to submit data in accordance with the Order Audit Trail System (“OATS”).

—Rule 11870—Failure to abide by Customer Account Transfer Contracts.

—SEC Exchange Act Rule 11Ac1-4—Failure to properly display limit orders.

—SEC Exchange Act Rule 11Ac1-1(c)(5)—Failure to properly update published quotations in certain Electronic Communication Networks (“ECN’s”).

—SEC Exchange Act Rule 17a-5—Failure to timely file FOCUS reports and annual audit reports.

—SEC Exchange Act Rule 17a-10—Failure to timely file Schedule I.

—MSRB Rule A-14—Failure to timely pay annual fee.

—MSRB Rule G-12—Failure to abide by uniform practice rules.

—MSRB Rule G-14—Failure to submit reports.

—MSRB Rule G-36—Failure to timely submit reports.

—MSRB Rule G-37—Failure to timely submit reports for political contributions.

—MSRB Rule G-38—Failure to timely submit reports detailing consultant activities.

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