

Notice to Members

FEBRUARY 2005

SUGGESTED ROUTING

Executive Representatives
Registered Representatives
Legal & Compliance
Senior Management

KEY TOPICS

Clerical and Ministerial Activities
MC-400 Application
Rule 9520 Series—Eligibility Proceedings
Rule 9522
Statutory Disqualification

GUIDANCE

Eligibility Proceedings

SEC Approves Amendments to Rule 9522 Regarding Applications of Statutorily Disqualified Persons Who Will Be Engaged Solely in Clerical and/or Ministerial Activities; **Effective Date: March 7, 2005**

Executive Summary

NASD's Rule 9520 Series sets forth NASD's eligibility procedures, under which statutorily disqualified persons may become or remain associated with a member firm. On December 14, 2004, the Securities and Exchange Commission (SEC) approved amendments to NASD Rule 9522(e)(2), giving NASD's Department of Member Regulation (Member Regulation) the authority to approve, without review by NASD's National Adjudicatory Council (NAC), the Member Continuance Applications (MC-400 Applications or Applications) of statutorily disqualified persons who will be engaged solely in clerical and/or ministerial activities.¹

Questions/Further Information

Questions concerning this *Notice* may be directed to Lorraine Lee, Statutory Disqualification Administrator, Member Regulation, at (240) 386-4783; or Shirley H. Weiss, Associate General Counsel, Office of General Counsel, Regulatory Policy and Oversight, at (202) 728-8844.

Discussion

The Rule 9520 Series, among other things, sets forth procedures for a statutorily disqualified person to become or remain associated with a member. These procedures are referred to as "eligibility proceedings." Generally, a member firm wishing to sponsor a disqualified person must file an MC-400 Application with NASD,

and the Application must be approved (or denied) by the NAC after consideration by the Statutory Disqualification Committee (SD Committee). If NASD's Member Regulation Department determines that an Application should be approved, but with specific supervisory requirements, the parties have the option of proceeding under Rule 9523. Rule 9523 provides that the Chairman of the SD Committee (Chairman), acting on behalf of the NAC, may accept or reject Member Regulation's recommendation and supervisory plan or refer them to the NAC for acceptance or rejection. If the parties cannot agree on a supervisory plan, the sponsoring member may request NAC consideration of the matter under Rule 9524.

Rule 9522(e)(1) permits Member Regulation to approve, but not deny, certain requests made by a member on behalf of a disqualified person for relief from the eligibility requirements. Prior to this rule change, however, Member Regulation was not authorized to approve Applications of persons seeking to engage solely in clerical and/or ministerial activities. Rather, Rule 9523 required the Chairman and Rule 9524 required the NAC to determine whether a statutorily disqualified person could associate with a member firm in a purely clerical and/or ministerial capacity.

Starting on March 7, 2005, Member Regulation will have the authority to consider and approve the Applications of statutorily disqualified persons who would associate with a member firm in a purely clerical and/or ministerial capacity. The sponsoring firms will still be required to file MC-400 Applications for statutorily disqualified persons who intend to associate with a member firm solely in a clerical and/or ministerial capacity. In the event Member Regulation does not approve an Application, the sponsoring member will have the right to proceed under Rule 9524 (*i.e.*, to have the matter decided by the NAC after a hearing and consideration by the SD Committee).²

Effective Date

These amendments become effective on **March 7, 2005**.

Endnotes

- 1 See Exchange Act Rel. No. 50848 (Dec. 14, 2004), 69 FR 76510 (Dec. 21, 2004) (SR-NASD-2004-133).
- 2 Member Regulation also retains the discretion to refer any matter to the NAC, rather than exercise its authority under Rule 9522(e)(1) to approve an Application or other request for relief.

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ATTACHMENT A

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

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9500. OTHER PROCEEDINGS

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9522. Initiation of Eligibility Proceeding; Member Regulation Consideration

(a) through (e)(1) No change

(e)(2) Matters that may be Approved by the Department of Member Regulation after the Filing of an Application

The Department of Member Regulation, as it deems consistent with the public interest and the protection of investors, may approve an application filed by a disqualified member or sponsoring member if a disqualified member or disqualified person is subject to one or more of the following conditions but is not other subject to disqualification (other than a matter set forth in subparagraph (e)(1)):

(A) through (C) No change

(D) The disqualification consists of a court order or judgment of injunction or conviction, and such order or judgment:

(i) No change

(ii) includes such restrictions or limitations for a specified time period and such time period has run out[.]; or

(E) The disqualified person's functions are purely clerical and/or ministerial in nature.

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