

Notice to Members

DECEMBER 2005

SUGGESTED ROUTING

Legal & Compliance
Senior Management

KEY TOPICS

IM-8310-2
Publication of NAC Membership
Decisions
Rule 1014
Rule 1017
Rule 1015

GUIDANCE

Publication of National Adjudicatory Council Membership Decisions Pursuant to NASD Rule 1015

SEC Approves Amendments to IM-8310-2 Regarding
the Publication of Decisions Issued by the National
Adjudicatory Council (NAC) Pursuant to NASD Rule 1015;
Effective Date: January 12, 2006

Executive Summary

On October 28, 2005, the Securities and Exchange Commission (SEC) approved amendments to IM-8310-2 to authorize the NAC to release to the public information with respect to any decision issued by the NAC pursuant to NASD Rule 1015.¹ The new rule text is contained in Attachment A and is effective on January 12, 2006. NASD will publish only those NAC decisions issued pursuant to Rule 1015 in which the appeal has been filed on or after January 12, 2006.

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

NASD Rule 1015 is part of the NASD Rule 1010 Series governing membership proceedings. These proceedings involve both the review of new member applications (NASD Rule 1014) and continuing membership applications seeking approval of a change in ownership, control or business operations (NASD Rule 1017).

Under Rule 1014, NASD's Department of Member Regulation (Department) determines whether an applicant meets all of the requisite standards for admission to NASD and serves the applicant with a written decision. Under Rule 1017, the Department considers applications for approval of change in ownership, control or business operations and renders a decision.

Under Rule 1015, an aggrieved applicant may file a written request for NAC review of the Department's decision issued under Rule 1014 or Rule 1017. Unlike disciplinary appeals conducted pursuant to the Rule 9300 Series, membership appeal hearings before the NAC are trial-level proceedings that usually involve the submission of new exhibits and testimony, and are not limited to 30-minute appellate argument. The NAC may affirm, modify or reverse the Department's decision or remand the membership proceeding with instructions. The NAC's decision summarizes the evidence, explains its evaluation of the evidence and explains the basis for the decision. The NAC's decisions under Rule 1015 are subject to discretionary review by the NASD Board, which may affirm, modify, reverse or remand the NAC's proposed decision.

Discussion

The amendment to IM-8310-2 authorizes NASD to release to the public information with respect to any decision issued by the NAC pursuant to Rule 1015, including decisions pertaining to new membership applications (Rule 1014) or continuing membership applications (Rule 1017). NASD will release the decisions issued by the NAC pursuant to Rule 1015 in the form issued by the NAC. NASD will publish only those NAC decisions issued pursuant to Rule 1015 in which the appeal has been filed on or after January 12, 2006.

In structuring its decisions, the NAC may choose the level of detail with which it writes in support of its decision. For example, the NAC's decisions will not routinely name shareholders of a closely held broker-dealer that is being sold insofar as the decision serves to evaluate the qualifications of the proposed buyers. Such drafting decisions would be made to accommodate the interests of persons who are not themselves under consideration or review as part of the membership application process.

NASD believes that making these decisions available to the public will benefit applicants—both potential NASD members and members that are considering a change in ownership, control or business operations—as well as public investors and the NAC itself. Access to these decisions will assist applicants in understanding the standards that must be met under Rule 1014 or 1017, as appropriate, and the manner in which such standards are applied, especially with respect to applicants that have been denied membership. Potential new NASD members and their investors will have the opportunity to review the rationale supporting the NAC’s decision-making, including NAC denials of membership. They will be better informed about the membership process and standards, and may be deterred from pursuing meritless appeals. In addition, publishing the NAC’s decisions will benefit the NAC members who serve on the subcommittees that conduct these hearings because their decisions could cite to and build upon earlier NAC precedents. NASD also believes that public investors will benefit from the availability of information about any limitations placed on members, where such limitations result from proceedings before the NAC.

Endnote

- 1 Exchange Act Rel. No. 52692 (Oct. 28, 2005),
70 FR 66876 (Nov. 3, 2005) (SR-NASD-2005-064).

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ATTACHMENT A

New text is underlined.

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IM-8310-2. Release of Disciplinary and Other Information Through the Public Disclosure Program

(a) through (l) No change.

(m) NASD shall release to the public, in the form issued by the National Adjudicatory Council, information with respect to any decision issued by the National Adjudicatory Council pursuant to Rule 1015. In its discretion, the National Adjudicatory Council may have redacted certain information from such decisions prior to their issuance.

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