

Subsection (c) of the rule further requires members to report to the NASD statistical and summary information regarding written customer complaints received by the member firm or relating to the firm or any of its associated persons. Importantly, Subsection (e) of the proposed rule eliminates the possibility of unnecessary regulatory duplication by providing an exemption from filing with the NASD for members already subject to similar reporting requirements of another SRO. NYSE Rule 351 is the only such rule in place at this time.

Currently, Part V of Schedule C to the NASD By-Laws requires members to promptly notify the NASD in writing of any disciplinary action that the member takes against any of its associated persons involving suspension, termination, the withholding of commissions, or imposition of fines in excess of \$2,500, or any other significant limitation on activities. As this existing disclosure requirement is incorporated into the proposed rule in Subsection (a)(10), the NASD is proposing to rescind this part of Schedule C with the adoption of the new rule.

Members will file the information required by this rule through the same data entry mechanism that is used for the electronic filing of FOCUS reports. The NASD will distribute to the members the software which will allow the members to file this information electronically.

The NASD believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act in that the proposed new Rule of Fair Practice will improve the NASD's ability to detect and investigate sales practice violations. Pursuant to this statutory obligations, the NASD has proposed this rule change in order to establish a reporting mechanism for certain specified events which will enhance the NASD's regulatory efforts.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The NASD does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Association received 25 letters commenting on Notice to Members 94-95 ("the Notice"), the proposed amendment to the Rules of Fair Practice. Below is a summary of the more significant and/or recurring issues

raised in the letters and the NASD's position in connection with the same.

The NASD published Notice to Members 94-95 on December 15, 1994. The Notice requested member comment on a new Rule of Fair Practice which would require NASD members to report to the NASD the occurrence of certain specified events and quarterly summary statistics concerning customer complaints.

Twenty-five comment letters have been received. Twenty-four of these are from NASD member firms or associations representing certain industry segments; e.g., the Securities Industry Association. One letter was received from a former registered person. Eight responses were against the rule proposal with comment, fifteen responses were in general agreement with the concept of the proposal, but with suggested modifications, and one letter supported the proposal. The remaining response requested a continuance to comment.

Overview of Comments

I. Form U-4 Reporting and the CRD System

The common general criticism was that the proposed rule is somewhat duplicative of current reporting to the CRD through Form U-4. Also, a majority of commenters questioned the manner in which the required information would be collected and reported to the NASD. Similar comments were also made that the proposal is premature in view of the other ongoing initiatives involving the CRD redesign. As a result, some commenters suggest that this rule proposal be postponed until such time as the CRD redesign project is completed.

Additionally, one commenter suggested that it seems overburdensome for members to provide another reporting channel for customer complaints under the proposed rule. Another commenter was concerned that the proposed rule would create a parallel database of the disciplinary history of registered representatives separate and distinct from the CRD system. Another commenter suggested that quarterly statistical information be reported through CRD.

II. Filing Format and Content

Several commenters observed that the proposed rule fails to disclose actual information to be filed by the member, to whom at the NASD, and in what form. Further, several commenters asked how the information should be transmitted to the NASD.

III. Separate Reporting Obligations on Members and Registered Persons

Several commenters noted that the proposed rule had separate reporting obligations for the member and the registered person. A number of commenters requested clarification on the member's obligation to independently determine the existence of any of the cited provisions regarding their registered persons, especially where the registered person may be the only known source of this information. As a result, one commenter suggested that the rule proposal should be modified to require disclosure of reported events upon "obtaining knowledge" and not the "occurrence" of the event.

IV. Public Versus Non-Public Availability of the Information

Several commenters were confused as to whether the information submitted to the NASD would immediately, or at some future date, be provided to the public. As a result consistent with their understanding of the NYSE Rule 351 information, commenters suggested that the information remain confidential.

V. Breadth and Scope of the Proposed Rule

Some commenters were concerned by the scope of the proposed rule and opined that the requested information goes beyond the state regulatory purposes.

Specific Comments

The following specific comments will highlight the comments with respect to the various provisions of the proposed rule.

Section (a)(1)

Several commenters stated that this section is overly broad by requiring reporting by any violation of "rules or standards of conduct" of any governmental entity, SRO, or business or professional organization. According to commenters, this would include violations of rules and regulations that have no relationship to securities activities or financial businesses. In this regard, one commenter suggested that the proposed provision should be revised to state that it only pertains to misconduct related to the financial services industry.

Section (a)(2)

Most commenters on this provision were concerned that the proposed rule required the reporting of "allegations" of misconduct. A general view was that requiring a report based only on allegations, without permitting some