

**MEMO# 21361**

July 16, 2007

## **NASD Fines Firm for Improper Directed Brokerage Arrangements**

[21361]

July 16, 2007

TO: COMPLIANCE MEMBERS No. 36-07

SEC RULES MEMBERS No. 85-07

SMALL FUNDS MEMBERS No. 57-07

BROKER/DEALER ADVISORY COMMITTEE No. 36-07 RE: NASD FINES FIRM FOR IMPROPER DIRECTED BROKERAGE ARRANGEMENTS

The NASD has announced the settlement of charges against a member for (1) sharing directed brokerage commissions from a mutual fund company with a single registered representative, (2) accepting receipt of directed brokerage commissions in exchange for promise of fund sales, and (3) failing to adequately supervise the representative's communications with his retirement plan clients to ensure that he disclosed his additional compensation to those clients. [\[1\]](#) While the NASD found the member to have engaged in this conduct, in settling the matter, the firm neither admitted nor denied the findings.

According to the AWC, the representative provided financial services for retirement plan sponsors, including recommending funds the plans should offer. In or about January 2002, the representative negotiated an arrangement with a mutual fund company that he recommended to retirement plans. Under the arrangement, brokerage commissions were to be directed to him in exchange for the hiring of a sales assistant – a former employee of the fund company – to help him find new retirement plan clients. The member approved the arrangement and, for almost two years, received the directed commissions from the fund company, which were paid, in part, to the representative.

The NASD further found that, while the representative was sharing in the commissions generated by the fund company, all but one of his retirement plan clients included at least one mutual fund from the fund company in their plans. Despite periodically meeting with

his clients and encouraging them to select or maintain funds offered by the fund company in their investment choices for individual plan participants, the NASD found that the representative failed to disclose that he was receiving additional compensation from the fund company and misled clients regarding his remuneration and the directed commissions. In addition, the NASD found that the member failed to take steps to ensure that the representative described and disclosed to his customers the receipt of additional compensation from the fund company; failed to detect and prevent other misleading communications by the representative concerning his arrangement and the NASD investigation; and, in one instance, approved one of the representative's misleading communications.

Based on this alleged conduct, the NASD found that the member violated NASD Rules 2830(k)(4), 2830(k)(7), 2110, and 3010(a). The member was censured and ordered to pay a \$375,000 fine.

In a separate complaint, NASD alleged that the representative improperly received directed brokerage commissions and other compensation, and he misrepresented and failed to disclose said compensation to his retirement plan clients -- at the same time he was advising those clients to maintain or include the fund company's mutual funds in the retirement plans they offered. The representative also was alleged to have concealed from the member a direct payment to him from the fund company to reimburse him for some of the same expenses for which he was receiving directed commissions. This complaint remains pending.

Heather L. Traeger  
Assistant Counsel

#### [Attachment](#)

#### **endnotes**

[1] See "In First Case of Its Kind, NASD Charges Former Securities America Broker with Misleading Union Retirement Plans About Receipt of More Than \$280,000 in Improper Directed Brokerage Commissions, Other Payments," NASD Press Release (July 11, 2007), available at [http://www.nasd.com/PressRoom/NewsReleases/2007NewsReleases/NASDW\\_019394](http://www.nasd.com/PressRoom/NewsReleases/2007NewsReleases/NASDW_019394) and attached copy of *Securities America, Inc.*, NASD Letter of Acceptance, Waiver and Consent ("AWC") No. 2005003437101 (July 11, 2007).

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