

## NASD Charges Morgan Stanley DW with Repeatedly Failing to Provide Emails to Arbitration Claimants and Regulators

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### **Firm Also Charged with Falsely Claiming that Millions of Emails in its Possession Had Been Lost in 9-11 Terrorist Attacks**

NASD announced today that it has charged Morgan Stanley DW, Inc. with routinely failing to provide emails to claimants in arbitration proceedings as well as to regulators – and with falsely claiming that millions of emails it possessed had been lost in the Sept. 11, 2001 terrorist attacks on the World Trade Center in New York, where its email servers were housed.

In its complaint, NASD alleges that Morgan Stanley failed to provide pre-September 11 emails to arbitration claimants and regulators in numerous proceedings from October 2001 through March 2005.

NASD also charged that Morgan Stanley falsely claimed in many of those proceedings that such email had been destroyed. In fact, according to the complaint, Morgan Stanley possessed millions of pre-September 11 emails that had been restored to its system shortly after September 11 using back-up tapes. Many other emails were maintained on individual users' computers and were therefore never affected by the attacks, yet Morgan Stanley often failed to search those computers when responding to requests. NASD also charged that Morgan Stanley later destroyed many of the emails it did possess, in two ways – by overwriting backup tapes that had been used to restore the emails to the firm's system and by allowing users of the firm's email system to permanently delete the emails over an extended period of time. As a result, the complaint alleges that between September 2001 and March 2005, millions of the emails were destroyed.

"It is essential that firms comply with discovery obligations in arbitration proceedings and respond fully and truthfully to regulatory requests," said James S. Shorris, NASD Executive Vice President and Head of Enforcement. "In this case, we charge that Morgan Stanley's conduct fell far below those standards, with the firm repeatedly making false statements about the existence of important evidence, and failing to provide that evidence in numerous proceedings. The firm's actions undermined the integrity of the regulatory and arbitration processes potentially leaving in question the validity of the outcomes in hundreds of cases."

NASD's complaint charges Morgan Stanley with violating NASD rules by failing to produce email in its possession in numerous customer arbitration proceedings over the three-and-a-half year period, and by making misrepresentations that it did not have such email in numerous proceedings. The complaint also charges Morgan Stanley with violating NASD rules by failing to produce the email to a number of regulators, including

NASD, and by falsely representing that the email had been destroyed. For instance, NASD charged that in an NASD investigation into the firm's fee-based brokerage practices, Morgan Stanley falsely claimed that it did not have pre-October 2001 email and failed to produce over 12,000 emails and attachments in response to an NASD request. By the time the firm conducted the search that led to the production of these emails, the firm had already deleted millions of other emails from its servers and the regulatory matter at issue had been settled (see the August 2005 NASD news release [NASD Orders Morgan Stanley to Pay Over \\$6.1 Million for Fee-Based Account Violations; Firm's Customers to Receive \\$4.6 Million in Restitution](#)).

NASD also charged that Morgan Stanley violated recordkeeping rules by destroying many of the emails it did possess, failed to implement procedures providing for the retention of email, and failed to adopt adequate procedures governing searches for email in response to requests by regulators and in arbitration proceedings.

Under NASD rules, a firm or individual named in a complaint can file a response and request a hearing before an NASD disciplinary panel. Possible remedies include a fine, censure, suspension, or bar from the securities industry, disgorgement of gains associated with the violations, and payment of restitution. The issuance of a disciplinary complaint represents the initiation of a formal proceeding by NASD in which findings as to the allegations in the complaint have not been made and does not represent a decision as to any of the allegations contained in the complaint.