

Shelley A. Finger,
*Jones v. SEC: Upholding the SEC's Ability to Impose Sanctions in Addition to Those of
the NASD*

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This Casenote discusses the decision of *Jones v. SEC*, 115 F.3d 1173 (4th Cir. 1997), a Fourth Circuit decision that held that a prior disciplinary action by the National Association of Securities Dealers, Inc. (NASD) lacked a res judicata effect with respect to a subsequent enforcement action by the United States Securities & Exchange Commission (SEC). The court based its holding on several factors, including the fact that Jones failed to establish that the SEC and the NASD were in privity with each other. The court also held that the Maloney Act did not preclude the SEC from instituting its own enforcement actions, although that act limits the SEC's review over NASD actions. In addition, based on the court's findings that the NASD was not a government agent and that the SEC's sanctions were not penal in nature, the *Jones* court determined that the SEC did not violate the Double Jeopardy Clause of the Constitution.

As well as providing a detailed analysis of the court decision, this Note provides an overview of the SEC's and the NASD's roles, responsibilities, and enforcement actions, including sanctions available to both entities. In discussing *Jones v. SEC*, the Comment provides a prediction of the impact that the court's denial of the res judicata and the Double Jeopardy defenses, will have to the securities industry.

This Note concludes that this decision allows the SEC, as the "ultimate administrative arbitrator" of SEC and NASD sanctions, to pursue and sanction the same party twice: once indirectly through the NASD and again directly through the SEC's own proceedings. By permitting this, the court's decision runs contrary to the concept of res judicata and to Congress's delegation of disciplinary responsibilities in over-the-counter markets to the NASD. In addition, the Note concludes that the SEC circumvented the Maloney Act's prohibition of exacerbating an NASD sanction by imposing a second punishment on Jones, therefore violating the Double Jeopardy Clause.