

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-54053; File No. SR-NASD-2003-168)

June 27, 2006

Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Notice of Filing of Amendment Nos. 4 and 5 to the Proposed Rule Change Relating to the Release of Information Through NASD BrokerCheck

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on June 6, 2006 and June 22, 2006, the National Association of Securities Dealers, Inc. (“NASD”) filed with the Securities and Exchange Commission (“Commission”) Amendment Nos. 4 and 5, respectively, to the proposed rule change as described in Items I, II, and III below, which Items have been prepared by NASD. The proposed rule change, incorporating Amendment Nos. 1, 2, and 3, was published for comment in the Federal Register on June 30, 2005.<sup>3</sup> The Commission received eight comment letters in response to the Notice.<sup>4</sup> The Commission is publishing this notice to solicit comments on the proposed rule change, as amended by Amendment Nos. 4 and 5, from interested persons.

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<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17CFR 240.19b-4.

<sup>3</sup> See Securities Exchange Act Release No. 51915 (June 23, 2005), 70 FR 37880 (“Notice”).

<sup>4</sup> See letters from Barry Augenbraun, Senior Vice President and Corporate Secretary, Raymond James Financial, Inc., dated July 8, 2005; Joseph D. Fleming, Managing Director and Chief Compliance Officer, Piper Jaffray & Co., dated July 13, 2005; Ronald C. Long, Senior Vice President, Regulatory Policy and Administration, Wachovia Securities, LLC, dated July 18, 2005; Mario Di Trapani, President, Association of Registration Management, dated July 19, 2005 (“ARM Letter”); John S. Simmers, CEO, ING Advisors Network, dated July 19, 2005 (“ING Letter”); Coleman Wortham III, President and CEO, Davenport & Company LLC, dated July 20, 2005; Jill Gross, Director of Advocacy and Rosario M. Patane, Student Intern, Pace Investor Rights Project, dated July 21, 2005; and Ira Hammerman, Senior Vice President and General Counsel, Securities Industry Association, dated July 27, 2005 (“SIA Letter”).

NASD submitted a response to comments on June 6, 2006. See letter from Richard E. Pullano, Associate Vice President & Chief Counsel, Registration and Disclosure, NASD,

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

In response to comments on the Notice, NASD proposes additional amendments to NASD Interpretive Material 8310-2 ("IM-8310-2")<sup>5</sup> regarding disclosures through NASD BrokerCheck.<sup>6</sup> The discussion section of this notice focuses on the changes made in Amendment Nos. 4 and 5.<sup>7</sup> The text of the proposed rule change, as amended by Amendment Nos. 4 and 5, is available on NASD's Web site (<http://www.nasd.com>), at NASD's principal office, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, NASD included statements concerning the purpose of and basis for the proposed rule change, as amended, and discussed any comments it received on the proposed rule change, as amended. The text of these statements may be examined at the places specified in Item IV below. NASD has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

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to Katherine A. England, Assistant Director, Division of Market Regulation, Commission, dated June 6, 2006 ("NASD Response to Comments"). The NASD Response to Comments is available on the Commission's Web site (<http://www.sec.gov/rules/sro.shtml>).

<sup>5</sup> NASD also proposes to make non-substantive technical changes to the proposed rule language, including the text of Interpretive Material 8310-3, in Amendment Nos. 4 and 5. In Amendment No. 5, NASD also clarifies that the implementation date for the proposed rule change would be no later than 90 days following Commission approval.

<sup>6</sup> In December 2003, NASD announced that its Public Disclosure Program would thereafter be known as "NASD BrokerCheck."

<sup>7</sup> For an explanation of the Notice, see Securities Exchange Act Release No. 51915, *supra* note 3.

## Rule Filing History

On November 21, 2003, NASD filed with the Commission a proposed rule change to amend IM-8310-2 and amended the proposed rule change in Amendment Nos. 1, 2, and 3 on September 28, 2004, March 8, 2005, and April 12, 2005, respectively. The Commission published the Notice in the Federal Register on June 30, 2005.<sup>8</sup> The comment period closed on July 21, 2005. Based on comments received in response to the Notice, NASD is filing Amendment No. 4 to amend the rule language of IM-8310-2.<sup>9</sup>

## Proposal

The sole substantive change to the proposed rule language of IM-8310-2 in Amendment No. 4 concerns the conditions under which NASD proposes to release Historic Complaints through BrokerCheck.<sup>10</sup> As provided in Amendment No. 2, NASD proposes to release Historic Complaints only if the most recent Historic Complaint or currently reported customer complaint, arbitration, or litigation is less than ten (10) years old and the person has a total of three (3) or

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<sup>8</sup> Id.

<sup>9</sup> See also Amendment No. 5, supra note 5.

<sup>10</sup> For purposes of IM-8310-2, Historic Complaints are defined as customer complaints that are more than two years old and have not been settled or adjudicated, or customer complaints, arbitrations, or litigations that have been settled for an amount less than \$10,000, and which are no longer reported on a registration form.

NASD currently calculates the two-year period for disclosure of a customer complaint as of the date the customer complaint was first reported on Form U4 or Form U5. Under the proposed rule change, and consistent with the current interpretation of Form U4 and Form U5, NASD will consider this two-year period to begin on the date on which the member received the complaint, both for purposes of reportability on Form U4 and Form U5 and for purposes of disclosure pursuant to IM-8310-2. Accordingly, under the proposed rule change, a customer complaint that has not been settled or adjudicated within the two-year period beginning on the date on which the member received the complaint would cease to be reported on Forms U4 and U5 and would also become a Historic Complaint.

more currently disclosable regulatory actions, currently reported customer complaints, arbitrations, or litigations, or Historic Complaints, or any combination thereof.

In Amendment No. 4, based on concerns from certain commenters,<sup>11</sup> NASD proposes to change the way in which it determines whether an individual's Historic Complaints become eligible for disclosure through BrokerCheck. In response to the Notice, commenters contended that firms and registered persons made certain decisions with respect to customer complaints, arbitrations, or litigations based on the rules under which the Central Registration Depository and BrokerCheck currently operate (for example, electing to enter into a settlement for what they considered to be a nuisance value to maintain good client relationships or avoid expensive litigation).

Accordingly, NASD proposes to amend the proposed rule language to provide that Historic Complaints will be eligible for disclosure only if the matter becomes a Historic Complaint on or after the implementation date of this proposed rule change, i.e., was archived on or after the implementation date of this proposed rule change. NASD believes that it is in the public interest for those items that are available for disclosure through BrokerCheck on or after the implementation date of the proposed rule change to be eligible for disclosure as Historic Complaints.

The proposed modification to this rule would continue to provide that NASD will disclose through BrokerCheck all of an individual's Historic Complaints if: (1) the most recent Historic Complaint or currently reported customer complaint, arbitration, or litigation is less than ten (10) years old, and (2) the person has a total of three (3) or more currently disclosable regulatory actions, currently reported customer complaints, arbitrations, or litigations, or Historic

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<sup>11</sup> See, e.g., ARM Letter, ING Letter and SIA Letter, supra note 4.

Complaints (subject to the limitation that they became a Historic Complaint on or after the implementation date of the proposed rule change), or any combination thereof.

NASD will announce the effective date of the proposed rule change in a Notice to Members to be published no later than 60 days following Commission approval. The effective date will be 30 days following publication of the Notice to Members announcing Commission approval.<sup>12</sup>

## 2. Statutory Basis

NASD believes that the proposed rule change, as amended, is consistent with the provisions of Section 15A(b)(6) of the Act,<sup>13</sup> which requires, among other things, that NASD rules must be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest, and Section 15A(i),<sup>14</sup> which requires that NASD establish and maintain a toll-free telephone listing to receive inquiries regarding disciplinary actions involving its members and their associated persons and promptly respond to such inquiries in writing. NASD states that the proposed rule change, as amended, is designed to accomplish these ends by broadening the types of information released to the investing public through NASD BrokerCheck. At the same time, the proposed rule change, as amended, establishes a principled basis for disclosure that meets NASD's investor protection objectives, while fairly addressing the proprietary interests of firms and the privacy interests of their associated persons.

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<sup>12</sup> See also note 5, supra, clarifying that the implementation date for the proposed rule change would be no later than 90 days following Commission approval.

<sup>13</sup> 15 U.S.C. 78o-3(b)(6).

<sup>14</sup> 15 U.S.C. 78o-3(i).

B. Self-Regulatory Organization's Statement on Burden on Competition

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

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

NASD has submitted as a separate document its response to comments received by the Commission in response to the publication of the Notice on June 30, 2005.<sup>15</sup>

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the Federal Register or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which NASD consents, the Commission will:

- (A) by order approve such proposed rule change, as amended, or
- (B) institute proceedings to determine whether the proposed rule change, as amended, should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the filing, as amended by Amendment Nos. 4 and 5, including whether the filing is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments:

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-NASD-

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<sup>15</sup> See Notice and NASD Response to Comments, supra notes 3 and 4.

2003-168 on the subject line.

Paper Comments:

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-1090.

All submissions should refer to File Number SR-NASD-2003-168. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing also will be available for inspection and copying at the principal office of NASD. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to

make available publicly. All submissions should refer to File Number SR-NASD-2003-168 and should be submitted on or before [insert date 15 days from publication in the Federal Register].

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>16</sup>

Nancy M. Morris  
Secretary

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<sup>16</sup> 17 CFR 200.30-3(a)(12).