

PACE INVESTOR RIGHTS PROJECT

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Jonathan G. Katz, Secretary
Securities and Exchange Commission
100 F Street, N.E.
Washington, DC 20549-9309

Re: File Number SR-NASD-2003-168

To Whom It May Concern:

The Pace Investor Rights Project (“PIRP”)¹ at Pace University School of Law welcomes the opportunity to comment on NASD’s proposal to amend IM-8310-2 to change the types of information disclosed through its BrokerCheck Program.

We agree with NASD’s approach in balancing quality disclosure for the investing public with the legitimate privacy interests of members and their associated persons. However, we strongly oppose NASD’s proposal to release Historic Complaints *only* after an associated person has a total of three or more currently disclosed incidents on his/her record.² In its BrokerCheck brochure, NASD declares to investors that “BrokerCheck should be your first resource tool to learn about the professional background, registration/license statuses, and conduct of NASD registered firms and their registered brokers.”³ Consequently, many customers rely heavily on the information provided through the BrokerCheck Program to assist them in deciding whether to conduct business with or allege a claim against a particular associated person. Preventing the disclosure of information directly related to an associated member’s past conduct is inconsistent with the intended purpose of the BrokerCheck Program.

Allowing three or more disclosed incidents to accrue prior to disclosure would limit investors’ ability to learn about the past conduct of particular associated persons, which could be potentially valuable information. This “three or more” disclosed incident threshold is simply too high; instead, BrokerCheck should disclose all Historic Complaints to customers and customers can assess their relevance or sporadic nature.

¹ PIRP’s mission is to advocate on behalf of investor justice, particularly with respect to the rights of the small, individual investor.

² Proposed IM-8310-2 (b)(7).

³ This Brochure is available as a PDF file on the NASD Website.

Moreover, associated persons can rely on counter-disclosures to provide a full context for historical information. For example, the BrokerCheck brochure currently reminds investors that “a number of items that qualify for disclosure involve pending actions or allegations that may be or are being contested and that have not been resolved or proven [and that] such items may, in the end, be withdrawn or dismissed, resolved in favor of the broker, or concluded through a negotiated settlement with no admission or conclusion of wrongdoing.” In addition, NASD now proposes to allow associated persons to provide comment on any disclosed material.⁴ This would provide them with an opportunity to explain any information they perceive to be incomplete. Under this approach, BrokerCheck provides complete disclosure.

Investors should be afforded the opportunity to have all relevant information on the associated person available to them. Withholding this information from investors will not provide them with accurate insight into the associated person and will not make available the assistance that the BrokerCheck Program was intended to provide investors. Thus, this proposed amendment would adversely impact investor protection by decreasing investors’ ability to assess the integrity of associated persons.

Please do not hesitate to contact us if you have any questions regarding these comments. Thank you for the opportunity to comment on this rule.

Sincerely,

Jill Gross

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Student Intern

⁴ Proposed IM-8310-2 (b)(4).