ING
ADVISORS NETWORK

July 19, 2005

Jonathan G. Katz, Secretary
Securities and Exchange Commission
100 F Street, NE
Washington, D.C. 20549-9309

Re: File Number SR-NASD-2003-168

Dear Mr. Katz:

We appreciate the opportunity to comment on SEC Release No. 34-51915 concerning the NASD's *Notice of Filing of Proposed Rule Change and Amendments 1, 2 and 3 thereto Relating to the Release of Information Through the Public Disclosure Program.* ("Proposal")

We agree with the general proposition that investors should have access to information concerning associated persons who have a significant history of industry/regulatory-related events. We also believe, however, that any regulatory rule changes that affect the ability of associated persons to earn a living should be weighed carefully against the potential benefits of such rule changes. We also believe that the benefit of any new rules, including rule changes, should not be substantially outweighed by the burden it imposes on members and associated persons.

It is respectfully submitted that the Proposal will not materially improve the current status of the NASD's "BrokerCheck" program. Rather, the Proposal could hinder the business of numerous associated persons by painting them with the broad brush of having a "pattern of conduct" of complaints and/or regulatory actions. The proposed rule changes would also have the effect of altering the rules retroactively for hundreds of associated persons who settled certain matters with the understanding that the settlement would drop off their record after two years. Further, the proposed rule changes will result in unnecessary added burdens to members.

Of particular concern to us is the proposed release of "historical complaints." For the reasons set forth below, we believe that this disclosure would be unreasonable and unfair to our representatives.

The Proposed Threshold for Release of Historic Complaints is Unreasonable.

The use of three complaints, arbitrations, regulatory actions and/or litigation matters within a ten-year period as a trigger to disclose all complaints, regardless of age, is not appropriate or fair. The NASD supports this proposition by stating that three or more events in a ten year period is demonstrative of a "pattern" of misconduct that may be of significance to investors.

In reaching its conclusion, the NASD does not appear to take into account the fact that many customer complaints, particularly in the kind of difficult markets we have experienced recently, turn out to be frivolous, unwarranted, filed against the wrong person or the result of a misunderstanding on the part of the investor. In other instances, complaints are filed by investors at the suggestion of competitors. Such filings are not representative of any "pattern" of misconduct. Using such matters as the basis for providing the public with a list of virtually every "customer complaint," regardless of merit, that has ever been filed against a representative during the course of his/her career will work as a disservice to the reputation of a representative. The potential negative impact of this disclosure on a representative's ability to earn a living far outweighs the benefit to the public of disclosure.

Even where there have been complaints that have some merit against a representative, the time frame suggested is far too long. We believe that a far more reasonable approach to determining whether there is a "pattern" of misconduct that might be of significance to investors would be five reportable events within a three-year period. Even with such a threshold, historical events should be limited to a ten-year look back at most.

The Proposal Gives Too Much Weight to Unproven Allegations

As previously stated, many customer complaints are erroneous and/or of no merit. Nevertheless, the NASD's Proposal would give the same weight to these unproven allegations that it would give to pending regulatory actions, as, undoubtedly, would public investors. It is unlikely that the public disclosure would give investors enough information to determine for themselves the significance of such unproven allegations, as the NASD suggests. There will be insufficient information given to them to do so.

The Proposal Gives Too Much Weight to Small Settlements

The Proposal fails to reflect the fact that settlements of customer complaints and regulatory matters are often made as business decisions, rather than acknowledgements of wrongdoing. Minor complaints are often settled because it is far more cost effective (for both parties) than litigation, or for any number of reasons other than because wrongdoing actually occurred.

The Proposal places an unintended negative connotation on settlements. Equally important, the Proposal would have a chilling effect on settlement offers and could increase the amount of customer-related litigation, which is not in the interest of the investing public.

The Proposal Would Have a Negative Impact on Disclosure

Historically, the reporting process was first and foremost a regulatory tool and not a public disclosure tool. Firms have often reported events that were not clearly reportable, but potentially reportable. The rules relating to what constitutes a reportable matter are not always clear. The Proposal could discourage firms from reporting questionable matters.

The Proposal Would Inappropriately Alter the Rules Retroactively

For years associated persons have acquiesced to settling complaints and regulatory matters to avoid the time and costs of litigation to all parties. They have done so with the understanding that such settlements would drop off their public records after two years, thus having no long-term negative effect on their business or reputation. Many of these representatives might not have settled these matters if they had known that the public disclosure rules would be changed. Under these circumstances, retroactive application of the Proposal would be patently unfair.

The Rule Would Be Costly and Time Consuming

The rule change proposal would greatly reduce the number of settlements of small claims and thereby increase the amount of litigation to members, associated persons and customers. The cost of such litigation could be staggering, impacting member firms and customers alike. It would also increase the amount of time between the filing of a customer complaint and the disposition of the matter (as well as the receipt of any remuneration by the customer).

Conclusion

For the reasons set forth above, we believe the SEC should adopt the expanded BrokerCheck program without the disclosure of historic complaint provisions. If, however, such historic complaint information were to be used, then the threshold should be changed to 5 events in 3 years, as 3 events in 10 years is not indicative of a "pattern of conduct." Furthermore, disclosure of historic complaint information should not be retroactive. Rather, such disclosure should apply only to complaints reported after the effective date of rule change.

Respectfully submitted,

John S. Simmers, CEO