

July 18, 2006

Nancy M. Morris  
Secretary  
Securities and Exchange Commission  
100 F Street, N.E.  
Washington, DC 20549-1090

RE: File No. SR-NASD-2003-168

Dear Ms. Morris:

We appreciate the opportunity to comment on SEC Release No.34-54053 regarding the NASD's *Notice of Filing of Amendment Nos. 4 and 5 to the Proposed Rule Change Relation to the Release of Information Through NASD BrokerCheck*.

We agree with NASD's proposal to change the rule language to provide that Historical Complaints will not be eligible for disclosure if the matter became a Historic Complaint prior to the implementation date of the proposed rule change. However, we still have concern with the rationale that three disclosures over 10 years is indicative of a "pattern of conduct" by the registered representative.

Due to the nature of the NASD Uniform Forms, firms are required to disclose *all* customer disputes that *allege* involvement in any sales practice violation where compensatory damages would amount to \$5,000 or more. Through NASD's open interpretation of the term "sales practice violation", disclosure may be needed for disputes made by a customer who is upset at the loss of principal in an investment choice that they made with the guidance of a registered representative.

If further investigation finds the representative did not violate sales practices and the customer dispute is found to be invalid, there is no exoneration for the registered representative on the Form U-4. The initial customer complaint of allegation is still an event that must be disclosed on the representative's Form U-4. In times of poor market conditions or unrealistic expectations, three similar occurrences in 10 years is possible and should not be grounds to allow an investor the ability to see all customer complaints the representative has received throughout his career to determine a pattern of conduct.

We agree with the Securities Industry Association's ("SIA") recommendation that NASD should use a "...five events in three years threshold for the release of historic complaints".<sup>1</sup> We feel that five complaints over a three-year period is a better indication

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<sup>1</sup> See SIA letter to Jonathan G. Katz, SEC (July 27, 2005).

of a representative's "pattern of conduct" than three complaints over a 10-year period. Representatives who receive three customer disputes, which are found to be invalid, over 10 years, may not exhibit a pattern of misconduct and will be negatively affected by the current proposal. It is important for investors to be aware of those representatives who may actually exhibit a pattern of unfavorable conduct. A five complaints in three years threshold will disclose the correct information to investors without negatively impacting those representatives who do not deserve this level of scrutiny.

We agree with NASD's proposal to change the rule language to provide that Historical Complaints will not be eligible for disclosure if the matter became a Historic Complaint prior to the implementation date of the proposed rule change. However, we do not believe that the current NASD threshold that three disclosures over 10 years is potentially indicative of a "pattern of conduct" by the registered representative. This current threshold will negatively impact some representatives who do not exhibit a pattern of misconduct, but rather only had the misfortune of being the target of baseless complaints.

Sincerely,

Pamela S. Fritz  
Chief Compliance Officer  
MWA Financial Services, Inc.