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August 30, 2006

**VIA MESSENGER**

Ms. Katherine A. England  
Assistant Director  
Division of Market Regulation  
U.S. Securities and Exchange Commission  
100 F Street, NE  
Washington, DC 20549-02001

**RE: File No. SR-NASD-2003-168 – Proposed Rule Change Relating to the Release of Information Through NASD’s Public Disclosure Program (now known as BrokerCheck): Response to Comments**

Dear Ms. England:

NASD hereby responds to the four comment letters<sup>1</sup> received by the Securities and Exchange Commission (“Commission” or “SEC”) in response to the publication in the Federal Register of Notice of Filing of SR-NASD-2003-168 (and Amendment Nos. 4 and 5 thereto) relating to the release of information through NASD’s public disclosure program (now known as “BrokerCheck”).<sup>2</sup> The commenters focused their comments on NASD’s proposal to count as a “Historic Complaint” only those matters that become a

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<sup>1</sup> Eileen O’Connell Arcuri, Executive Committee Member, Association of Registration Management (“ARM”) (July 20, 2006); Pamela S. Fritz, Chief Compliance Officer, MWA Financial Services, Inc. (“MWA”) (July 18, 2006); Ira Hammerman, Senior Vice President and General Counsel, Securities Industry Association (“SIA”) (July 20, 2006); Patricia D. Struck, North American Securities Administrators Association, Inc. (“NASAA”), NASAA President (July 20, 2006).

<sup>2</sup> See Securities Exchange Act Release No. 54053 (June 27, 2006), 71 FR 128 (July 5, 2006) (Notice of Filing of Proposed Rule Change and Amendment Nos. 4 and 5 Thereto Relating to the Release of Information Through the Public Disclosure Program).

Historic Complaint on or after the implementation date of the proposed rule change, i.e., were archived on or after the implementation date of the proposed rule change.<sup>3</sup>

One commenter (SIA) continues to have concerns regarding the retroactive disclosure of archived, unadjudicated customer complaints. Nevertheless, this commenter supports NASD's proposal to count as a Historic Complaint only those matters that become a Historic Complaint on or after the implementation date of the proposed rule change as "a measured compromise to a difficult issue."<sup>4</sup>

One commenter (ARM) suggests that Historic Complaints should include only those matters that both commence and are archived following the rule change, and not include any matters that are currently pending.<sup>5</sup> A third commenter (MWA) supports NASD's proposal regarding Historic Complaints, but suggests that the threshold for disclosure be changed to five events in three years.<sup>6</sup> NASD has carefully considered each of these comments, but it continues to believe that it is in the public interest to keep the threshold for disclosure at three items, and to count as Historic Complaints those items that became Historic Complaints on or after the implementation date of the proposed rule change.

The fourth commenter, NASAA, objects to NASD's proposal to disclose Historic Complaints only if the item became a Historic Complaint on or after the implementation date of the proposed rule change.<sup>7</sup> NASAA correctly notes that the process of determining what, if any, Historic Complaints should be disclosed, and the circumstances under which they should be disclosed, has taken place over a number of years. NASD's thinking on this issue has evolved based on the numerous comments it has received, both in response to Notice to Members 02-74 and in comments to its rule filings. NASD's position on this issue has nonetheless been consistent. Throughout this process, NASD's goal has been to develop a system of disclosure that would enhance investor protection by expanding the types of information that NASD makes publicly available through its BrokerCheck program while, at the same time, addressing the fairness concerns of participants in the securities industry.

NASD strongly believes that its proposal achieves that goal. NASD's proposal represents an even-handed approach that will give investors additional information about brokers who have demonstrated a pattern of conduct by accumulating customer

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<sup>3</sup> Also referred to as "archived" complaints, Historic Complaints are not required to be reported on the uniform registration forms and currently are not disclosed via BrokerCheck.

<sup>4</sup> Ira Hammerman, Senior Vice President and General Counsel, SIA (July 20, 2006).

<sup>5</sup> Eileen O'Connell Arcuri, Executive Committee Member, ARM (July 20, 2006).

<sup>6</sup> Pamela S. Fritz, Chief Compliance Officer, MWA (July 18, 2006).

<sup>7</sup> Patricia D. Struck, NASAA, NASAA President (July 20, 2006).

complaints, regulatory actions, arbitrations or litigations, but that will also not retroactively change the rules governing the disclosure of such events. In this regard, the proposal for the BrokerCheck program strikes an appropriate balance – providing investors with additional information when a pattern of conduct exists, while still recognizing the rights of participants in the securities industry.

NASAA also comments on NASD's proposal to measure the two-year time period for disclosing customer complaints through BrokerCheck from the date the complaint is filed with the firm, rather than the date the complaint is reported to the CRD system. NASD has concluded that, to the extent a firm may not timely amend a registered person's Form U4 to report a customer complaint, the event should still be disclosed through BrokerCheck for two years. Therefore, NASD has determined not to change the way in which it measures the two-year time frame for complaint disclosure, and complaints will continue to be disclosed through BrokerCheck for 24 months beginning on the date that the complaint is reported to the CRD system. Although the overwhelming majority of customer complaints are timely reported, continuing the current policy will ensure that all customer complaints are treated consistently for purposes of disclosure through BrokerCheck.

NASD believes that the foregoing fully responds to the issues raised by the commenters to the rule filing. Please feel free to call me at (240) 386-4821 if you wish to discuss this further.

Sincerely,



Richard E. Pullano

cc: Hoang Mai Rodriguez  
Kate Robbins