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**NORTH AMERICAN SECURITIES ADMINISTRATORS ASSOCIATION, INC.**

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September 7, 2006

Ms. Nancy Morris, Secretary  
Securities and Exchange Commission  
100 F Street, NE  
Washington, DC 20549-1090

VIA EMAIL TO: [rule-comments@sec.gov](mailto:rule-comments@sec.gov)

Re: File No. SR-NASD-2003-168; Notice of Filing of Amendment Nos. 4 and 5 of the Proposed Rule Change Relating to the Release of Information Through NASD BrokerCheck

Dear Secretary Morris:

I write on behalf of NASAA<sup>1</sup> in response to the NASD's letter from Richard E. Pullano dated August 30, 2006, ("NASD Response") regarding the comments received by the Commission concerning the 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 ("BrokerCheck").

One of the letters addressed in the NASD Response is NASAA's comment letter filed with the Commission on July 20, 2006. NASAA offered extensive comments on the NASD's proposal to further restrict the disclosure through BrokerCheck of historic complaints currently filed with CRD<sup>2</sup> and NASD's proposal to change the method by which it calculates the time frame for disclosing certain customer complaint information. In short, NASAA objected to NASD's proposal to limit the disclosure of historic complaints to only those complaints filed ninety days after the proposed rule is approved by the Commission. NASAA also objected to the NASD's announcement that it would alter the method by which it calculates the two-year time period for disclosing customer complaints through broker-check from the date the complaint is filed with the firm rather than the date the complaint is reported to CRD.

The NASD Response addresses both of these concerns. While NASAA is encouraged that NASD has decided not to change the method by which it will measure the two-year time frame for

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<sup>1</sup> NASAA is the association of the 67 state, provincial, and territorial securities regulatory agencies of the United States, Canada, and Mexico. NASAA serves as the forum for these regulators to work with each other in an effort to protect investors at the grassroots level and to promote fair and open capital markets.

<sup>2</sup> NASD operates the CRD system in accordance with an agreement with NASAA. CRD policy is jointly established by NASD and NASAA. The information on CRD includes disclosures relating to any disciplinary history of stockbrokers and is available to members of the public through public records requests to state securities regulators.

disclosure of customer complaints, NASAA remains concerned that NASD has not changed its position on the disclosure of historic complaints.

In the two paragraphs in which NASD addresses the comments submitted by NASAA regarding the disclosure of historic complaints, NASD does not address the specific points raised by NASAA. Rather, NASD simply reiterates that the decision to disclose only those items that qualify as historic complaints after the implementation of the proposed rule change strikes a balance between investor protection and the interest of industry participants. The NASD Response fails to address the fact that the idea of disclosing historic complaints through BrokerCheck has been around since 2002 when the proposal was discussed in a NASD Notice to Members.<sup>3</sup> NASD does not explain how such a policy is beneficial to investors. Furthermore, NASD does not address the possibility of uneven disclosure for dually registered stock brokers and investment adviser representatives as discussed in extensive detail in NASAA's comment letter.

The NASD Response does not address the important issues raised by NASAA in its comment letter. And, as stated in our comment letter, we believe that the NASD's proposal to reduce disclosure of customer complaints does not serve the goal of investor protection. In fact, this action seems contrary to our shared desire to better protect the public, especially at a time when the SEC, NASAA, as well as NASD, are making a concerted effort through the Senior Fraud Initiative to **improve** the level of disclosure for the benefit of senior investors. We, therefore, again urge the Commission **not** to approve the BrokerCheck proposal.

Sincerely,



Patricia D. Struck  
NASAA President  
Wisconsin Securities Administrator

cc: Christopher Cox, Chairman  
Paul S. Atkins, Commissioner  
Roel C. Campos, Commissioner  
Annette L. Nazareth, Commissioner  
Kathleen L. Casey, Commissioner  
Buddy Donahue, Director, Division of Investment Management  
Robert L. Colby, Deputy Director, Division of Market Regulation  
Douglas Shulman, Vice Chairman & Pres., Markets, Services and Information, NASD  
James J. Cummings, Sr. Vice Pres., Registration and Disclosure, NASD  
Richard E. Pullano, Assoc. V.P. & General Counsel, Registration and Disclosure, NASD

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<sup>3</sup> NASD *Notice to Members 02-74*, page 802 states as follows, "For example, should NASD expand its [Public Disclosure] Program to include additional information reported on current Uniform Forms and provide investors access to historical form filings that may include disclosure events that are no longer reportable?"