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Jonathan Katz
Secretary
Securities and Exchange Commission
450 Fifth Street, NW
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Comment to File No. **SR-NASD-2003-57**

Dear Mr. Katz:

Thank you for accepting comments to this proposal.

The NASD is proposing to add a new question, 7F, to the U-5 that would ask the b/d employer if a broker resigned or was discharged after being accused of fraud or violating industry rules or standards of conduct. The new question parallels the existing question 14J on the U-4.

This proposed new question seems to give the employment side of the equation more power in forcing disclosure of ANY type of allegations that caused a termination. Currently, the U-5 form specifically asks firms if an associated person (“broker”) was terminated while under investigation by a regulatory authority or while under internal review. Firms also report the reason for termination, and if it is for cause, must explain it. All this information supposedly only becomes public if and when the

broker re-registers with another b-d, and in so doing completes a new U-4 and answers the U-4's questions about terminations.

It is unclear why the new question 7F is needed, which appears to give to the employer a say in whether a broker must report publicly a much greater range of allegations. The rule filing only indicates that the question will "clarify" for associated persons what they need to report. Why aren't employers providing this information on Question 3 of the U-5? And why aren't regulators doing anything to train brokers as to their reporting obligations—most firms do nothing in this regard.

Many questions remain unanswered as to the need for a new question 7F. Are there perceived problems with associated persons not disclosing termination information? What if the firm and broker disagree in answers to 14J and 7F—whose version determines whether the matter is publicly reported? Specifically, if a firm answered affirmatively on 7F, would a rep then have to answer "yes" on 14J? What if a broker has already given "no" answers on 14J?

Further, the new question 7F seems unfair and unneeded given that regulators apparently have not consulted with any organization or people representing brokers regarding the new U-5. In addition, giving firms more control over the reporting is unfair and unwise. Firms continue to make malicious filings with no fear of enforcement (see, for example, "Street Justice? Broker Wins \$27.6 Million Award," *Wall Street Journal*, Aug. 9, 2001, Pg. C1: Broker's firm "orchestrated a campaign of deception," according to arbitration panel, and ordered defamatory CRD information removed. See also, "Rep Wins \$28 Million in Employment Case," *Registered Representative*, Nov. '01, a story on the same case: "[The broker's] U-5 shows he was discharged for 'personality differences,' and the termination form also claims [the broker] was under internal review and involved in an SEC investigation at the

time of termination.”) On the other hand, firms still think nothing of burying the records of rogue brokers: Documents released by the New York attorney general show that former SSB telecom analyst Jack Grubman negotiated a clean U-5.

Where is the NASD’s concern over *firms’* failures to report accurately? Why give b-ds more control?

On a separate but related issue, the proposed package of changes to the U-5 fail to add any questions or functions that would eliminate the need for the CRD Registration Comment (RC) section. This lack of action re the RC is troublesome.

This CRD RC section was rolled out in February 2000 to ostensibly allow clerical fixes, but the NASD has since admitted that the section was misused to report termination information, which critics say was its purpose all along. In an about-face, last year the NASD officially sanctioned the use of the RC section for termination information, subject to pre-approval by the NASD. The NASD promised to eliminate the section in 2004, but said revisions to the U-5 would first be needed. The latest changes to the U-5 do not include the needed changes. Neither did prior changes to the disclosure forms made after the RC rollout. Why? When are the RC-related changes to the U5 coming?

Meanwhile, it is not clear whether RC data is archived, even though it can be used in licensing decisions. It is unknown if brokers get copy of any RC data, or if SROs are alerted to RC entries for possible investigation as they are with U-5s.

My point here is that the RC section shows the ad hoc nature of disclosure policy relating to termination information—the RC section suddenly appeared in Feb. ’00 to give member firms what they wanted, which was a way to quietly rat on their employees and thereby minimize defamation claims. (The industry had struck

out in its attempt to override state law and institute the NASD's "qualified immunity" rule, which would have made it tougher for employees to bring defamation claims.) While keeping alleged termination reasons private may be correct policy, disclosure policy seems to be run from the backrooms of the NASD, with complicity from NASAA. The new proposed Question 7F is one more ad hoc result that is unfair to industry employees. The question should not be added to the U-5.

Sincerely,

Dan Jamieson