

SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

For complete Form 19b-4 instructions please refer to the EFFS website.

Form 19b-4 Information

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The self-regulatory organization must provide all required information, presented in a clear and comprehensible manner, to enable the public to provide meaningful comment on the proposal and for the Commission to determine whether the proposal is consistent with the Act and applicable rules and regulations under the Act.

Exhibit 1 - Notice of Proposed Rule Change

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The Notice section of this Form 19b-4 must comply with the guidelines for publication in the Federal Register as well as any requirements for electronic filing as published by the Commission (if applicable). The Office of the Federal Register (OFR) offers guidance on Federal Register publication requirements in the Federal Register Document Drafting Handbook, October 1998 Revision. For example, all references to the federal securities laws must include the corresponding cite to the United States Code in a footnote. All references to SEC rules must include the corresponding cite to the Code of Federal Regulations in a footnote. All references to Securities Exchange Act Releases must include the release number, release date, Federal Register cite, Federal Register date, and corresponding file number (e.g., SR-[SRO]-xx-xx). A material failure to comply with these guidelines will result in the proposed rule change being deemed not properly filed. See also Rule 0-3 under the Act (17 CFR 240.0-3)

Exhibit 2 - Notices, Written Comments, Transcripts, Other Communications

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Exhibit Sent As Paper Document

Copies of notices, written comments, transcripts, other communications. If such documents cannot be filed electronically in accordance with Instruction F, they shall be filed in accordance with Instruction G.

Exhibit 3 - Form, Report, or Questionnaire

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Exhibit Sent As Paper Document

Copies of any form, report, or questionnaire that the self-regulatory organization proposes to use to help implement or operate the proposed rule change, or that is referred to by the proposed rule change.

Exhibit 4 - Marked Copies

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The full text shall be marked, in any convenient manner, to indicate additions to and deletions from the immediately preceding filing. The purpose of Exhibit 4 is to permit the staff to identify immediately the changes made from the text of the rule with which it has been working.

Exhibit 5 - Proposed Rule Text

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The self-regulatory organization may choose to attach as Exhibit 5 proposed changes to rule text in place of providing it in Item I and which may otherwise be more easily readable if provided separately from Form 19b-4. Exhibit 5 shall be considered part of the proposed rule change.

Partial Amendment

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If the self-regulatory organization is amending only part of the text of a lengthy proposed rule change, it may, with the Commission's permission, file only those portions of the text of the proposed rule change in which changes are being made if the filing (i.e. partial amendment) is clearly understandable on its face. Such partial amendment shall be clearly identified and marked to show deletions and additions.

1. Text of Proposed Rule Change

(a) Pursuant to the provisions of Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”), the National Association of Securities Dealers, Inc. (“NASD”) is filing with the Securities and Exchange Commission (“SEC” or “Commission”) Amendment No. 4 to SR-NASD-2003-168, which proposes amendments to NASD Interpretive Material 8310-2 (“IM-8310-2”) regarding disclosures through NASD BrokerCheck.¹ As described below, NASD is filing Amendment No. 4 to SR-NASD-2003-168 to propose amendments to the rule language as submitted in Amendment No. 2.² These proposed changes are in response to the comment letters received by the Commission following the publication of the proposed rule change in the Federal Register.³

The text of the proposed rule change may be found in Exhibit 5.

(b) Not applicable.

(c) Not applicable.

2. Procedures of the Self-Regulatory Organization

The proposed rule change was approved by the Board of Governors of NASD at its meetings on September 26, 2002 and July 31, 2003, which authorized the filing of the proposed rule change with the SEC. No other action by NASD is necessary for the filing of the proposed rule change. Section 1(a)(ii) of Article VII of the NASD By-Laws

¹ In December 2003, NASD announced that its Public Disclosure Program would thereafter be known as “NASD BrokerCheck.”

² Amendment No. 4 also makes some corrections to the proposed rule language, as described in Exhibit 4.

³ See Exchange Act Rel. No. 51915 (June 23, 2005), 70 FR 37880 (June 30, 2005) (SR-NASD-2003-168).

permits the NASD Board of Governors to adopt amendments to NASD Rules without recourse to the membership for approval.

NASD will announce adoption of the proposed rule change in a Notice to Members to be published no later than 60 days following Commission approval. The effective date will be 30 days following publication of the Notice to Members announcing Commission approval.

3. Self-Regulatory Organization’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

(a) Purpose

Rule Filing History

On November 21, 2003, NASD filed with the Commission a rule change to amend IM-8310-2 (SR-NASD-2003-168). NASD filed with the Commission Amendment Nos. 1, 2 and 3 on September 28, 2004, March 8, 2005, and April 12, 2005, respectively. The Commission published the “Notice of Filing of Proposed Rule Change and Amendment Nos. 1, 2 and 3 Thereto Relating to the Release of Information Through the Public Disclosure Program” (hereafter referred to as the “Notice”) in the Federal Register on June 30, 2005.⁴ The comment period closed July 21, 2005. Based on comments received in response to the Notice, NASD is filing Amendment No. 4 to amend the rule language of IM-8310-2, as proposed by NASD in Amendment No. 2.

Proposal

The sole change to the proposed rule language of IM-8310-2 in Amendment No. 4 concerns the conditions under which NASD proposes to release Historic Complaints

⁴ See supra note 3.

through BrokerCheck.⁵ As provided in Amendment No. 2, NASD proposes to release Historic Complaints only if the most recent Historic Complaint or currently reported customer complaint, arbitration, or litigation is less than ten (10) years old; and the person has a total of three (3) or more currently disclosable regulatory actions, currently reported customer complaints, arbitrations, or litigations, or Historic Complaints, or any combination thereof.

In this Amendment No. 4, based on commenters' concerns, NASD is proposing to change the way in which it determines whether an individual's Historic Complaints become eligible for disclosure through BrokerCheck. In response to the Notice, commenters contended that firms and registered persons made certain decisions with respect to customer complaints, arbitrations, or litigations based on the rules under which the Central Registration Depository ("CRD® or CRD system") and BrokerCheck currently operate (for example, electing to enter into a settlement for what they

⁵ For purposes of IM-8310-2, Historic Complaints are defined as customer complaints that are more than two years old and have not been settled or adjudicated, or customer complaints, arbitrations, or litigation that have been settled for an amount less than \$10,000, and which are no longer reported on a registration form.

NASD currently calculates the two-year period for disclosure of a customer complaint as of the date the customer complaint was first reported on Form U4 or Form U5. Under the proposed rule change, and consistent with the current interpretation of Form U4 and Form U5, NASD will consider this two-year period to begin on the date on which the member received the complaint, both for purposes of reportability on Form U4 and Form U5 and for purposes of disclosure pursuant to IM-8310-2. Accordingly, under the proposed rule change, a customer complaint that has not been settled or adjudicated within the past two years from the date on which the member received the complaint would cease to be reported on Forms U4 and U5 and would also become a Historic Complaint.

considered to be a nuisance value to maintain good client relationships or avoid expensive litigation).

Accordingly, NASD is proposing to amend the proposed rule language to provide that Historic Complaints will be eligible for disclosure only if the matter becomes a Historic Complaint on or after the implementation date of this proposed rule change, i.e., was archived on or after the implementation date of this proposed rule change. NASD believes that it is in the public interest for those items that are available for disclosure through BrokerCheck on or after the implementation date of the proposed rule change to be eligible for disclosure as Historic Complaints.

The proposed modification to this rule change would continue to provide that NASD will disclose through BrokerCheck all of an individual's Historic Complaints if: (1) the most recent Historic Complaint or currently reported customer complaint, arbitration or litigation is less than ten (10) years old; and (2) the person has a total of three (3) or more currently disclosable regulatory actions, currently reported customer complaints, arbitrations or litigations, or Historic Complaints (subject to the limitation that they became a Historic Complaint on or after the implementation date of the proposed rule change), or any combination thereof.

As noted in Item 2 of this filing, NASD will announce the effective date of the proposed rule change in a Notice to Members to be published no later than 60 days following Commission approval. The effective date will be 30 days following publication of the Notice to Members announcing Commission approval.

(b) Statutory Basis

NASD believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act, which requires, among other things, that NASD rules must be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest, and Section 15A(i), which requires that NASD establish and maintain a toll-free telephone listing to receive inquiries regarding disciplinary actions involving its members and their associated persons and promptly respond to such inquiries in writing. The proposed rule change is designed to accomplish these ends by broadening the types of information released to the investing public through NASD BrokerCheck. At the same time, the proposed rule change establishes a principled basis for disclosure that meets NASD's investor protection objectives, while fairly addressing the proprietary interests of firms and the privacy interests of their associated persons.

4. Self-Regulatory Organization's Statement on Burden on Competition

NASD does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.

5. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

NASD is submitting as a separate document its response to comments received by the Commission in response to the publication of the Notice on June 30, 2005.⁶

⁶ See supra note 3.

6. Extension of Time Period for Commission Action

NASD does not consent at this time to an extension of the time period for Commission action specified in Section 19(b)(2) of the Act.

7. Basis for Summary Effectiveness Pursuant to Section 19(b)(3) or for Accelerated Effectiveness Pursuant to Section 19(b)(2)

NASD requests the Commission to find good cause pursuant to Section 19(b)(2) of the Act⁷ for approving the proposed rule change prior to the 30th day after its publication in the Federal Register.

NASD is proposing only one substantive change, i.e., to amend the proposed rule language of IM-8310-2 to change the way in which it determines whether an individual's Historic Complaints become eligible for disclosure through BrokerCheck. This proposed change is in response to commenters' concerns that firms and registered persons made certain decisions with respect to customer complaints, arbitrations, or litigations based on the currently existing rules under which the CRD system and BrokerCheck operate. Therefore, as proposed in this Amendment No. 4, Historic Complaints will be eligible for disclosure only if the matter became a Historic Complaint on or after the implementation date of this proposed rule change, i.e., was archived on or after the implementation date of this proposed rule change. NASD believes that the proposed rules regarding the operation of BrokerCheck should be put into place as soon as practicable on the basis that they establish a principled basis for disclosure that meets NASD's investor protection objectives, while fairly addressing the proprietary interests of firms and the privacy interests of their associated persons.

⁷ 15 U.S.C. 78s(b)(2).

NASD therefore requests that the Commission accelerate approval of the proposed rule change prior to the 30th day after its publication in the Federal Register.

8. Proposed Rule Change Based on Rules of Another Self-Regulatory Organization or of the Commission

Not applicable.

9. Exhibits⁸

Exhibit 1. Completed notice of proposed rule change for publication in the Federal Register.

Exhibit 4. Full text of rule change indicating additions to and deletions from Amendment No. 2.

Exhibit 5. Proposed changes to rule text.

⁸ Notice to Members 02-74, comments received in response to Notice to Members 02-74, Notice to Members 03-76, and comments received in response to Notice to Members 03-76 were previously filed with Amendment No. 1.

EXHIBIT 1

SECURITIES AND EXCHANGE COMMISSION

(Release No. 34- ; File No. SR-NASD-2003-168)

Self-Regulatory Organizations: National Association of Securities Dealers, Inc.; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change Relating to the Release of Information Through NASD BrokerCheck

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)¹ and Rule 19b-4 thereunder,² notice is hereby given that on , the National Association of Securities Dealers, Inc. (“NASD”) filed with the Securities and Exchange Commission (“SEC” or “Commission”), Amendment No. 4 to the proposed rule change³ as described in Items I, II, and III below, which Items have been prepared by NASD. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons. For the reasons discussed below, the Commission is granting accelerated approval of the proposed rule change.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ Amendment No. 1 to SR-NASD-2003-168, filed on September 28, 2004, replaced and superseded the original filing, filed on November 20, 2003. Amendment No. 2, filed on March 8, 2005, made certain changes to the rule language, divided IM-8310-2 into two Interpretative Materials: “IM-8310-2. NASD BrokerCheck Disclosure Program” (changed in this Amendment No. 4 to “IM-8310-2. NASD BrokerCheck Disclosure”) and “IM-8310-3. Release of Disciplinary Complaints, Decisions and Other Information,” and also made certain editorial changes. Amendment No. 3, filed on April 12, 2005, made additional editorial changes, but made no additional changes to the rule language.

I. Self-Regulatory Organization’s Statement of the Terms of Substance of the Proposed Rule Change

NASD is proposing to amend NASD Interpretive Material 8310-2 (“IM-8310-2”) regarding disclosures through NASD BrokerCheck.⁴ As described below, NASD is filing Amendment No. 4 to SR-NASD-2003-168 to propose amendments to the rule language as submitted in Amendment No. 2.⁵ These proposed changes are in response to the comment letters received by the Commission following the publication of the proposed rule change in the Federal Register.⁶

The text of the proposed rule change may be found in Exhibit 5.

II. Self-Regulatory Organization’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, NASD included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. NASD has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

⁴ In December 2003, NASD announced that its Public Disclosure Program would thereafter be known as “NASD BrokerCheck.”

⁵ Amendment No. 4 also makes some corrections to the proposed rule language, as described in Exhibit 4.

⁶ See Exchange Act Rel. No. 51915 (June 23, 2005), 70 FR 37880 (June 30, 2005) (SR-NASD-2003-168).

A. **Self-Regulatory Organization’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change**

1. Purpose

Rule Filing History

On November 21, 2003, NASD filed with the Commission a rule change to amend IM-8310-2 (SR-NASD-2003-168). NASD filed with the Commission Amendment Nos. 1, 2 and 3 on September 28, 2004, March 8, 2005, and April 12, 2005, respectively. The Commission published the “Notice of Filing of Proposed Rule Change and Amendment Nos. 1, 2 and 3 Thereto Relating to the Release of Information Through the Public Disclosure Program” (hereafter referred to as the “Notice”) in the Federal Register on June 30, 2005.⁷ The comment period closed July 21, 2005. Based on comments received in response to the Notice, NASD is filing Amendment No. 4 to amend the rule language of IM-8310-2, as proposed by NASD in Amendment No. 2.

Proposal

The sole change to the proposed rule language of IM-8310-2 in Amendment No. 4 concerns the conditions under which NASD proposes to release Historic Complaints through BrokerCheck.⁸ As provided in Amendment No. 2, NASD proposes to release

⁷ See supra note 6.

⁸ For purposes of IM-8310-2, Historic Complaints are defined as customer complaints that are more than two years old and have not been settled or adjudicated, or customer complaints, arbitrations, or litigation that have been settled for an amount less than \$10,000, and which are no longer reported on a registration form.

NASD currently calculates the two-year period for disclosure of a customer complaint as of the date the customer complaint was first reported on Form U4 or Form U5. Under the proposed rule change, and consistent with the current interpretation of Form U4 and Form U5, NASD will consider this two-year period

Historic Complaints only if the most recent Historic Complaint or currently reported customer complaint, arbitration, or litigation is less than ten (10) years old; and the person has a total of three (3) or more currently disclosable regulatory actions, currently reported customer complaints, arbitrations, or litigations, or Historic Complaints, or any combination thereof.

In this Amendment No. 4, based on commenters' concerns, NASD is proposing to change the way in which it determines whether an individual's Historic Complaints become eligible for disclosure through BrokerCheck. In response to the Notice, commenters contended that firms and registered persons made certain decisions with respect to customer complaints, arbitrations, or litigations based on the rules under which the Central Registration Depository ("CRD® or CRD system") and BrokerCheck currently operate (for example, electing to enter into a settlement for what they considered to be a nuisance value to maintain good client relationships or avoid expensive litigation).

Accordingly, NASD is proposing to amend the proposed rule language to provide that Historic Complaints will be eligible for disclosure only if the matter becomes a Historic Complaint on or after the implementation date of this proposed rule change, i.e., was archived on or after the implementation date of this proposed rule change. NASD believes that it is in the public interest for those items that are available for disclosure

to begin on the date on which the member received the complaint, both for purposes of reportability on Form U4 and Form U5 and for purposes of disclosure pursuant to IM-8310-2. Accordingly, under the proposed rule change, a customer complaint that has not been settled or adjudicated within the past two years from the date on which the member received the complaint would cease to be reported on Forms U4 and U5 and would also become a Historic Complaint.

through BrokerCheck on or after the implementation date of the proposed rule change to be eligible for disclosure as Historic Complaints.

The proposed modification to this rule change would continue to provide that NASD will disclose through BrokerCheck all of an individual's Historic Complaints if: (1) the most recent Historic Complaint or currently reported customer complaint, arbitration or litigation is less than ten (10) years old; and (2) the person has a total of three (3) or more currently disclosable regulatory actions, currently reported customer complaints, arbitrations or litigations, or Historic Complaints (subject to the limitation that they became a Historic Complaint on or after the implementation date of the proposed rule change), or any combination thereof.

NASD will announce the effective date of the proposed rule change in a Notice to Members to be published no later than 60 days following Commission approval. The effective date will be 30 days following publication of the Notice to Members announcing Commission approval.

2. Statutory Basis

NASD believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act, which requires, among other things, that NASD rules must be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest, and Section 15A(i), which requires that NASD establish and maintain a toll-free telephone listing to receive inquiries regarding disciplinary actions involving its members and their associated persons and promptly respond to such inquiries in writing. The proposed rule change is designed to accomplish these ends by broadening the types of

information released to the investing public through NASD BrokerCheck. At the same time, the proposed rule change establishes a principled basis for disclosure that meets NASD's investor protection objectives, while fairly addressing the proprietary interests of firms and the privacy interests of their associated persons.

B. Self-Regulatory Organization's Statement on Burden on Competition

NASD does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

NASD is submitting as a separate document its response to comments received by the Commission in response to the publication of the Notice on June 30, 2005.⁹

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

NASD has requested that the Commission find good cause pursuant to Section 19(b)(2) of the Act¹⁰ for approving the proposed rule change prior to the 30th day after publication in the Federal Register. The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to NASD and, in particular, the requirements of Section 15A of the Act and the rules and regulations thereunder. The Commission finds good cause for approving the proposed rule change prior to the 30th day after the date of publication of notice of filing thereof in that accelerated approval will benefit both public investors and the

⁹ See supra note 6.

¹⁰ 15 U.S.C. 78s(b)(2).

securities industry because the proposed rules regarding the operation of BrokerCheck establish a principled basis for disclosure that meets NASD's investor protection objectives, while fairly addressing the proprietary interests of firms and the privacy interests of their associated persons.

Within 35 days of the date of publication of this notice in the Federal Register or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) by order approve such proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments:

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-NASD-2003-168 on the subject line.

Paper Comments:

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-1090.

All submissions should refer to File Number SR-NASD-2003-168. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing also will be available for inspection and copying at the principal office of NASD.

All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-NASD-2003-168 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹¹

Nancy M. Morris

Secretary

¹¹ 17 CFR 200.30-3(a)(12).

EXHIBIT 4

Proposed new language in Amendment No. 2 is underlined; proposed deletions in Amendment No. 2 are [bracketed.] Proposed new language in Amendment No. 4 is double underlined; proposed deletions in Amendment No. 4 are [[double bracketed.]]

* * * * *

IM-8310-2. [Release of Disciplinary and Other Information Through the Public Disclosure Program]NASD BrokerCheck Disclosure [[Program]]

(a) In response to a written inquiry, electronic inquiry, or telephonic inquiry via a toll-free telephone listing, [the Association] NASD shall release certain information [contained in the Central Registration Depository] regarding a current or former member, an associated person, or a person who was associated with a member within the preceding two years, through [the] NASD[['s]] [Public Disclosure Program] BrokerCheck[[program]]. [Such information shall include:]

[(1) the person's employment history and other business experience required to be reported on Form U-4;]

[(2) currently approved registrations for the member or associated person;]

[(3) the main office, legal status, and type of business engaged in by the member; and]

[(4) an event or proceeding-]

[(A) required to be reported under Item 14 on Form U-4;]

[(B) required to be reported under Item 11 on Form BD; or]

[(C) reported on Form U-6.]

[The Association also shall make available through the Public Disclosure Program certain arbitration decisions against a member involving a securities or commodities dispute with a public customer. In addition, the Association shall make available in

response to telephonic inquiries via the Public Disclosure Program's toll-free telephone listing whether a particular member is subject to the provisions of Rule 3010(b)(2). The Association shall not release through the Public Disclosure Program social security numbers, residential history information, or physical description information, or information that the Association is otherwise prohibited from releasing under Federal law.]

(b) Except as otherwise provided in paragraph (c) below, NASD shall release:

(1) any information reported on the most recently filed Form U4, Form U5, Form U6, Form BD, and Form BDW (collectively "Registration Forms");

(2) currently approved registrations;

(3) certain summary information about arbitration awards against a member involving a securities or commodities dispute with a public customer;

(4) the most recently submitted comment, if any, provided to NASD by the person who is covered by [[the]] BrokerCheck [[program]], in the form and in accordance with the procedures established by NASD, for inclusion with the information provided through [[the]] BrokerCheck [[program]]. Only comments that relate to the information provided through [[the]] BrokerCheck [[program]] will be included;

(5) information as to qualifications examinations passed by the person and date passed. NASD will not release information regarding examination scores or failed examinations;

(6) in response to telephonic inquiries via the BrokerCheck toll-free telephone listing whether a particular member is subject to the provisions of Rule 3010(b)(2) (“Taping Rule”);

(7) Historic Complaints, (i.e., the information last reported on Registration Forms relating to customer complaints that are more than two (2) years old and that have not been settled or adjudicated, and customer complaints, arbitrations or litigations that have been settled for an amount less than \$10,000 [(collectively, “Historic Complaints”), if the most recent Historic Complaint or currently reported customer complaint, arbitration or litigation is: less than ten (10) years old and the person has a total of three (3) or more currently disclosable regulatory actions; currently reported customer complaints, arbitrations or litigations; Historic Complaints; or any combination thereof; and]] and are no longer reported on a Registration Form), provided that:

(A) any such matter became a Historic Complaint on or after [implementation date to be announced no later than 60 days following Commission approval];

(B) the most recent Historic Complaint or currently reported customer complaint, arbitration or litigation is less than ten (10) years old; and

(C) the person has a total of three (3) or more currently disclosable regulatory actions, currently reported customer complaints, arbitrations or litigations, or Historic Complaints (subject to the limitation that they became a Historic Complaint on or after [implementation date to be

announced no later than 60 days following Commission approval]), or any combination thereof; and

(8) the name and succession history for current or former members.

(c) NASD shall not release:

(1) information reported as a Social Security number, residential history or physical description, information that NASD is otherwise prohibited from releasing under Federal law, or information that is provided solely for use by regulators. NASD reserves the right to exclude, on a case-by-case basis, information that contains confidential customer information, offensive or potentially defamatory language or information that raises significant identity theft, personal safety or privacy concerns that are not outweighed by investor protection concerns;

(2) information reported on Registration Forms relating to regulatory investigations or proceedings if the reported regulatory investigation or proceeding was vacated or withdrawn by the instituting authority;

(3) “Internal Review Disclosure” information reported on Section 7 of the Form U5 ;

(4) “Reason for Termination” information reported on Section 3 of the Form U5;

(5) Form U5 information for fifteen (15) days following the filing of such information;

(6) the most recent information reported on a Registration Form, if [[NASD has determined that]]:

(A) NASD has determined that the information was reported in error by a member, regulator or other appropriate authority;

(B) the information has been determined by regulators, through amendments to the uniform [r]Registration [f]Forms, to be no longer relevant to securities registration or licensure, regardless of the disposition of the event or the date the event occurred;

(7) information provided on Schedule E of Form BD.

(d) Upon written request, NASD may provide a compilation of information about NASD members, subject to terms and conditions established by NASD and after execution of a licensing agreement prepared by NASD. NASD may charge commercial users of such information reasonable fees as determined by NASD. Such compilations shall consist solely of information selected by NASD from Forms BD and BDW and shall be limited to information that is otherwise publicly available from the Commission.

IM-8310-3 Release of Disciplinary Complaints, Decisions and Other Information

[(b)](a) [The Association] NASD shall, in response to a request, release to the requesting party a copy of any identified disciplinary complaint or disciplinary decision issued by [the Association] NASD or any subsidiary or Committee thereof; provided, however, that each copy of:

(1) a disciplinary complaint shall be accompanied by the following statement: “The issuance of a disciplinary complaint represents the initiation of a formal proceeding by [the Association] NASD in which findings as to the allegations in the complaint have not been made and does not represent a decision as to any of the allegations contained in the complaint. Because this complaint is

unadjudicated, you may wish to contact the respondent before drawing any conclusions regarding the allegations in the complaint.”

(2) a disciplinary decision that is released prior to the expiration of the time period provided under the Rule 9000 Series for appeal or call for review within [the Association] NASD or while such an appeal or call for review is pending, shall be accompanied by a statement that the findings and sanctions imposed in the decision may be increased, decreased, modified, or reversed by [the Association] NASD;

(3) a final decision of [the Association] NASD that is released prior to the time period provided under the Act for appeal to the Commission or while such an appeal is pending, shall be accompanied by a statement that the findings and sanctions of [the Association] NASD are subject to review and modification by the Commission; and

(4) a final decision of [the Association] NASD that is released after the decision is appealed to the Commission shall be accompanied by a statement as to whether the effectiveness of the sanctions has been stayed pending the outcome of proceedings before the Commission.

[(c)](b)(1) [The Association] NASD shall release to the public information with respect to any disciplinary complaint initiated by the Department of Enforcement or the Department of Market Regulation of NASD [Regulation, Inc.], the NASD Regulation, Inc. Board of Directors, or the NASD Board of Governors containing an allegation of a violation of a designated statute, rule or regulation of the Commission, NASD, or Municipal Securities Rulemaking Board, as determined by the NASD Regulation, Inc.

Board of Directors (a “Designated Rule”); and may also release such information with respect to any disciplinary complaint or group of disciplinary complaints that involve a significant policy or enforcement determination where the release of information is deemed by the President of NASD [Regulation, Inc.] Regulatory Policy and Oversight to be in the public interest.

(2) Information released to the public pursuant to [[sub]]paragraph [(c)](b)(1) shall be accompanied by the statement required under [[sub]]paragraph [(b)](a)(1).

[(d)](c)(1) NASD shall release to the public information with respect to any disciplinary decision issued pursuant to the Rule 9000 Series imposing a suspension, cancellation or expulsion of a member; or suspension or revocation of the registration of a person associated with a member; or suspension or barring of a member or person associated with a member from association with all members; or imposition of monetary sanctions of \$10,000 or more upon a member or person associated with a member; or containing an allegation of a violation of a Designated Rule; and may also release such information with respect to any decision or group of decisions that involve a significant policy or enforcement determination where the release of information is deemed by the President of NASD Regulatory Policy and Oversight to be in the public interest. NASD also may release to the public information with respect to any decision issued pursuant to the Rule 9550 Series imposing a suspension or cancellation of the member or a suspension or bar of the association of a person with a member, unless NASD determines otherwise. NASD may, in its discretion, determine to waive the

requirement to release information with respect to a disciplinary or other decision under those extraordinary circumstances where the release of such information would violate fundamental notions of fairness or work an injustice. NASD also shall release to the public information with respect to any temporary cease and desist order issued pursuant to the Rule 9800 Series. NASD may release to the public information on any disciplinary or other decision issued pursuant to the Rule 9000 Series, not specifically enumerated in this paragraph, regardless of sanctions imposed, so long as the names of the parties and other identifying information is redacted.¹

(A) NASD shall release to the public, in unredacted form, information with respect to any disciplinary decision issued pursuant to the Rule 9300 Series that does not meet one or more of the criteria in [IM-8310-2(d)(1)] IM-8310-3(c)(1) for the release of information to the public, provided that the underlying decision issued pursuant to the Rule 9200 Series meets one or more of the criteria in [IM-8310-2(d)(1)] IM-8310-3(c)(1) for the release of information to the public, and information regarding such decision has been released to the public in unredacted form.

(B) In the event there is more than one respondent in a disciplinary decision issued pursuant to the Rule 9000 Series, and sanctions imposed on one or more, but not all, of the respondents meets one or more of the criteria in [IM-8310-2(d)(1)] IM-8310-3(c)(1) for the release of

¹ This rule language reflects amendments made to this subparagraph since this rule change was filed in 2003.

information to the public, NASD shall release to the public, in unredacted form, information with respect to the respondent(s) who meet such criteria, and may release to the public, in redacted form, information with respect to the respondent(s) who do not meet such criteria.

Notwithstanding the foregoing, NASD shall release to the public, in unredacted form, information with respect to any respondent in a disciplinary decision issued pursuant to the Rule 9300 Series if the sanctions imposed on such respondent in the underlying decision issued pursuant to the Rule 9200 Series meet one or more of the criteria for release of information to the public, and information with respect to that respondent has been released in unredacted form.

(2) Information released to the public pursuant to ~~[[sub]]~~paragraph ~~[(d)](c)~~(1) shall be accompanied by a statement to the extent required for that type of information under ~~[[sub]]~~paragraphs ~~[(b)](a)~~(2)-(4).

~~[(e)](d)~~ If a decision issued pursuant to the Rule 9000 Series other than by the National Adjudicatory Council is not appealed to or called for review by the National Adjudicatory Council, the decision shall become effective on a date set by [the Association] NASD but not before the expiration of 45 days after the date of decision.

~~[(f)](e)~~ Notwithstanding paragraph ~~[(e)](d)~~, expulsions and bars imposed pursuant to the provisions of Rules 9216 and 9270 shall become effective upon approval or acceptance by the National Adjudicatory Council, and information regarding any sanctions imposed pursuant to those Rules may be released to the public pursuant to paragraph ~~[(d)](c)~~ immediately upon such approval or acceptance.

[(g)](f) No change in text.

[(h)](g) If a decision of [the Association] NASD imposing monetary sanctions of \$10,000 or more or a penalty of expulsion, revocation, suspension and/or barring of a member from being associated with all members is appealed to the Commission, notice thereof shall be given to the membership and to the press as soon as possible after receipt by [the Association] NASD of notice from the Commission of such appeal and [the Association's] NASD's notice shall state whether the effectiveness of the Board's decision has been stayed pending the outcome of proceedings before the Commission.

[(i)](h) In the event an appeal to the courts is filed from a decision by the Commission in a case previously appealed to it from a decision of [the Association] NASD, involving the imposition of monetary sanctions of \$10,000 or more or a penalty of expulsion, revocation, suspension and/or barring of a member from being associated with all members, notice thereof shall be given to the membership as soon as possible after receipt by [the Association] NASD of a formal notice of appeal. Such notice shall include a statement whether the order of the Commission has been stayed.

[(j)](i) Any order issued by the Commission of revocation or suspension of a member's broker/dealer registration with the Commission; or the suspension or expulsion of a member from [the Association] NASD; or the suspension or barring of a member or person associated with a member from association with all broker/dealers or membership; or the imposition of monetary sanctions of \$10,000 or more shall be released to the public through a notice containing the effective date thereof sent as soon as possible after receipt by [the Association] NASD of the order of the Commission.

[(k)](j) Cancellations of membership or registration pursuant to [the Association's] NASD's By-Laws, Rules and Interpretative Material shall be released to the public as soon after the effective date of the cancellation as possible.

[(l)](k) Releases to the public referred to in paragraphs [(c)](b) and [(d)](c) above shall identify the NASD Rules and By-Laws [of the Association] or the SEC Rules violated, and shall describe the conduct constituting such violation. Releases may also identify the member with which an individual was associated at the time the violations occurred if such identification is determined by [the Association] NASD to be in the public interest.

[(m)](l) No change in text.

* * * * *

EXHIBIT 5

Proposed new language is underlined; proposed deletions are [bracketed].

* * * * *

IM-8310-2. [Release of Disciplinary and Other Information Through the Public Disclosure Program] NASD BrokerCheck Disclosure

(a) In response to a written inquiry, electronic inquiry, or telephonic inquiry via a toll-free telephone listing, [the Association] NASD shall release certain information [contained in the Central Registration Depository] regarding a current or former member, an associated person, or a person who was associated with a member within the preceding two years, through [the Public Disclosure Program] NASD BrokerCheck.

[Such information shall include:]

[(1) the person's employment history and other business experience required to be reported on Form U-4;]

[(2) currently approved registrations for the member or associated person;]

[(3) the main office, legal status, and type of business engaged in by the member; and]

[(4) an event or proceeding-]

[(A) required to be reported under Item 14 on Form U-4;]

[(B) required to be reported under Item 11 on Form BD; or]

[(C) reported on Form U-6.]

[The Association also shall make available through the Public Disclosure Program certain arbitration decisions against a member involving a securities or commodities dispute with a public customer. In addition, the Association shall make available in

response to telephonic inquiries via the Public Disclosure Program's toll-free telephone listing whether a particular member is subject to the provisions of Rule 3010(b)(2). The Association shall not release through the Public Disclosure Program social security numbers, residential history information, or physical description information, or information that the Association is otherwise prohibited from releasing under Federal law.]

(b) Except as otherwise provided in paragraph (c) below, NASD shall release:

(1) any information reported on the most recently filed Form U4, Form U5, Form U6, Form BD, and Form BDW (collectively "Registration Forms");

(2) currently approved registrations;

(3) certain summary information about arbitration awards against a member involving a securities or commodities dispute with a public customer;

(4) the most recently submitted comment, if any, provided to NASD by the person who is covered by BrokerCheck, in the form and in accordance with the procedures established by NASD, for inclusion with the information provided through BrokerCheck. Only comments that relate to the information provided through BrokerCheck will be included;

(5) information as to qualifications examinations passed by the person and date passed. NASD will not release information regarding examination scores or failed examinations;

(6) in response to telephonic inquiries via the BrokerCheck toll-free telephone listing whether a particular member is subject to the provisions of Rule 3010(b)(2) ("Taping Rule");

(7) Historic Complaints (i.e., the information last reported on Registration Forms relating to customer complaints that are more than two (2) years old and that have not been settled or adjudicated, and customer complaints, arbitrations or litigations that have been settled for an amount less than \$10,000 and are no longer reported on a Registration Form), provided that:

(A) any such matter became a Historic Complaint on or after [implementation date to be announced no later than 60 days following Commission approval];

(B) the most recent Historic Complaint or currently reported customer complaint, arbitration or litigation is less than ten (10) years old; and

(C) the person has a total of three (3) or more currently disclosable regulatory actions, currently reported customer complaints, arbitrations or litigations, or Historic Complaints (subject to the limitation that they became a Historic Complaint on or after [implementation date to be announced no later than 60 days following Commission approval]), or any combination thereof; and

(8) the name and succession history for current or former members.

(c) NASD shall not release:

(1) information reported as a Social Security number, residential history or physical description, information that NASD is otherwise prohibited from releasing under Federal law, or information that is provided solely for use by regulators. NASD reserves the right to exclude, on a case-by-case basis,

information that contains confidential customer information, offensive or potentially defamatory language or information that raises significant identity theft, personal safety or privacy concerns that are not outweighed by investor protection concerns;

(2) information reported on Registration Forms relating to regulatory investigations or proceedings if the reported regulatory investigation or proceeding was vacated or withdrawn by the instituting authority;

(3) “Internal Review Disclosure” information reported on Section 7 of the Form U5;

(4) “Reason for Termination” information reported on Section 3 of the Form U5;

(5) Form U5 information for fifteen (15) days following the filing of such information;

(6) the most recent information reported on a Registration Form, if:

(A) NASD has determined that the information was reported in error by a member, regulator or other appropriate authority;

(B) the information has been determined by regulators, through amendments to the uniform Registration Forms, to be no longer relevant to securities registration or licensure, regardless of the disposition of the event or the date the event occurred;

(7) information provided on Schedule E of Form BD.

(d) Upon written request, NASD may provide a compilation of information about NASD members, subject to terms and conditions established by NASD and after

execution of a licensing agreement prepared by NASD. NASD may charge commercial users of such information reasonable fees as determined by NASD. Such compilations shall consist solely of information selected by NASD from Forms BD and BDW and shall be limited to information that is otherwise publicly available from the Commission.

IM-8310-3 Release of Disciplinary Complaints, Decisions and Other Information

[(b)](a) [The Association] NASD shall, in response to a request, release to the requesting party a copy of any identified disciplinary complaint or disciplinary decision issued by [the Association] NASD or any subsidiary or Committee thereof; provided, however, that each copy of:

(1) a disciplinary complaint shall be accompanied by the following statement: “The issuance of a disciplinary complaint represents the initiation of a formal proceeding by [the Association] NASD in which findings as to the allegations in the complaint have not been made and does not represent a decision as to any of the allegations contained in the complaint. Because this complaint is unadjudicated, you may wish to contact the respondent before drawing any conclusions regarding the allegations in the complaint.”

(2) a disciplinary decision that is released prior to the expiration of the time period provided under the Rule 9000 Series for appeal or call for review within [the Association] NASD or while such an appeal or call for review is pending, shall be accompanied by a statement that the findings and sanctions imposed in the decision may be increased, decreased, modified, or reversed by [the Association] NASD;

(3) a final decision of [the Association] NASD that is released prior to the time period provided under the Act for appeal to the Commission or while such an appeal is pending, shall be accompanied by a statement that the findings and sanctions of [the Association] NASD are subject to review and modification by the Commission; and

(4) a final decision of [the Association] NASD that is released after the decision is appealed to the Commission shall be accompanied by a statement as to whether the effectiveness of the sanctions has been stayed pending the outcome of proceedings before the Commission.

[(c)](b)(1) [The Association] NASD shall release to the public information with respect to any disciplinary complaint initiated by the Department of Enforcement or the Department of Market Regulation of NASD [Regulation, Inc.], the NASD Regulation, Inc. Board of Directors, or the NASD Board of Governors containing an allegation of a violation of a designated statute, rule or regulation of the Commission, NASD, or Municipal Securities Rulemaking Board, as determined by the NASD Regulation, Inc. Board of Directors (a “Designated Rule”); and may also release such information with respect to any disciplinary complaint or group of disciplinary complaints that involve a significant policy or enforcement determination where the release of information is deemed by the President of NASD [Regulation, Inc.] Regulatory Policy and Oversight to be in the public interest.

(2) Information released to the public pursuant to [sub]paragraph [(c)](b)(1) shall be accompanied by the statement required under [sub]paragraph [(b)](a)(1).

[(d)](c)(1) NASD shall release to the public information with respect to any disciplinary decision issued pursuant to the Rule 9000 Series imposing a suspension, cancellation or expulsion of a member; or suspension or revocation of the registration of a person associated with a member; or suspension or barring of a member or person associated with a member from association with all members; or imposition of monetary sanctions of \$10,000 or more upon a member or person associated with a member; or containing an allegation of a violation of a Designated Rule; and may also release such information with respect to any disciplinary decision or group of decisions that involve a significant policy or enforcement determination where the release of information is deemed by the President of NASD Regulatory Policy and Oversight to be in the public interest. NASD also may release to the public information with respect to any decision issued pursuant to the Rule 9550 Series imposing a suspension or cancellation of the member or a suspension or bar of the association of a person with a member, unless NASD determines otherwise. NASD may, in its discretion, determine to waive the requirement to release information with respect to a disciplinary or other decision under those extraordinary circumstances where the release of such information would violate fundamental notions of fairness or work an injustice. NASD also shall release to the public information with respect to any temporary cease and desist order issued pursuant to the Rule 9800 Series. NASD may

release to the public information on any disciplinary or other decision issued pursuant to the Rule 9000 Series, not specifically enumerated in this paragraph, regardless of sanctions imposed, so long as the names of the parties and other identifying information is redacted.

(A) NASD shall release to the public, in unredacted form, information with respect to any disciplinary decision issued pursuant to the Rule 9300 Series that does not meet one or more of the criteria in [IM-8310-2(d)(1)] IM-8310-3(c)(1) for the release of information to the public, provided that the underlying decision issued pursuant to Rule 9200 meets one or more of the criteria in [IM-8310-2(d)(1)] IM-8310-3(c)(1) for the release of information to the public, and information regarding such decision has been released to the public in unredacted form.

(B) In the event there is more than one respondent in a disciplinary decision issued pursuant to the Rule 9000 Series, and sanctions imposed on one or more, but not all, of the respondents meets one or more of the criteria in [Rule IM-8310-2(d)(1)] IM-8310-3(c)(1) for the release of information to the public, NASD shall release to the public, in unredacted form, information with respect to the respondent(s) who meet such criteria, and may release to the public, in redacted form, information with respect to the respondent(s) who do not meet such criteria.

Notwithstanding the foregoing, NASD shall release to the public, in unredacted form, information with respect to any respondent in a disciplinary decision issued pursuant to the Rule 9300 Series if the

sanctions imposed on such respondent in the underlying decision issued pursuant to the Rule 9200 Series meet one or more of the criteria for release of information to the public, and information with respect to that respondent has been released in unredacted form.

(2) Information released to the public pursuant to [sub]paragraph [(d)](c)(1) shall be accompanied by a statement to the extent required for that type of information under [sub]paragraphs [(b)](a)(2)-(4).

[(e)](d) If a decision issued pursuant to the Rule 9000 Series other than by the National Adjudicatory Council is not appealed to or called for review by the National Adjudicatory Council, the decision shall become effective on a date set by [the Association] NASD but not before the expiration of 45 days after the date of decision.

[(f)](e) Notwithstanding paragraph [(e)](d), expulsions and bars imposed pursuant to the provisions of Rules 9216 and 9270 shall become effective upon approval or acceptance by the National Adjudicatory Council, and information regarding any sanctions imposed pursuant to those Rules may be released to the public pursuant to paragraph [(d)](c) immediately upon such approval or acceptance.

[(g)](f) No change in text.

[(h)](g) If a decision of [the Association] NASD imposing monetary sanctions of \$10,000 or more or a penalty of expulsion, revocation, suspension and/or barring of a member from being associated with all members is appealed to the Commission, notice thereof shall be given to the membership and to the press as soon as possible after receipt by [the Association] NASD of notice from the Commission of such appeal and [the

Association's] NASD's notice shall state whether the effectiveness of the Board's decision has been stayed pending the outcome of proceedings before the Commission.

[(i)](h) In the event an appeal to the courts is filed from a decision by the Commission in a case previously appealed to it from a decision of [the Association] NASD, involving the imposition of monetary sanctions of \$10,000 or more or a penalty of expulsion, revocation, suspension and/or barring of a member from being associated with all members, notice thereof shall be given to the membership as soon as possible after receipt by [the Association] NASD of a formal notice of appeal. Such notice shall include a statement whether the order of the Commission has been stayed.

[(j)](i) Any order issued by the Commission of revocation or suspension of a member's broker/dealer registration with the Commission; or the suspension or expulsion of a member from [the Association] NASD; or the suspension or barring of a member or person associated with a member from association with all broker/dealers or membership; or the imposition of monetary sanctions of \$10,000 or more shall be released to the public through a notice containing the effective date thereof sent as soon as possible after receipt by [the Association] NASD of the order of the Commission.

[(k)](j) Cancellations of membership or registration pursuant to [the Association's] NASD's By-Laws, Rules and Interpretative Material shall be released to the public as soon after the effective date of the cancellation as possible.

[(l)](k) Releases to the public referred to in paragraphs [(c)](b) and [(d)](c) above shall identify the NASD Rules and By-Laws [of the Association] or the SEC Rules violated, and shall describe the conduct constituting such violation. Releases may also identify the member with which an individual was associated at the time the violations

occurred if such identification is determined by [the Association] NASD to be in the public interest.

[(m)](l) No change in text.

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