

November 20, 2003

Katherine A. England
Assistant Director
Division of Market Regulation
Securities and Exchange Commission
450 Fifth Street, N.W.
Washington, D.C. 20549-1001

Re: File No. SR-NASD-2003-168-Release of Information Through the Public Disclosure Program

Dear Ms. England:

Pursuant to Rule 19b-4, enclosed please find the above-numbered rule filing. Also enclosed is a 3-1/2" disk containing the rule filing in Microsoft Word 7.0 to facilitate production of the Federal Register release.

If you have any questions, please contact Shirley H. Weiss, Office of General Counsel, Regulatory Policy and Oversight, NASD, at (202) 728-8844; e-mail shirley.weiss@nasd.com. The fax number of the Office of General Counsel is (202) 728-8264.

Very truly yours,

Barbara Z. Sweeney
Senior Vice President
and Corporate Secretary

Enclosures

File No. SR-NASD-2003-168
Consists of 241 Pages
November 20, 2003

SECURITIES AND EXCHANGE COMMISSION

Washington, D.C.

Form 19b-4

Proposed Rule Change

by

NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.

Pursuant to Rule 19b-4 under the
Securities Exchange Act of 1934

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") a proposed rule change to amend NASD Interpretive Material 8310-2 ("IM-8310-2") to enhance investor protection by expanding the types of information NASD makes available through its public disclosure program; to address fairness and privacy concerns by excluding certain information currently disclosed through the program based on the status or disposition of the event; to provide, upon written request and subject to terms and conditions established by NASD, a compilation of publicly available information about NASD members; and to make conforming changes. Below is the text of the proposed rule change. Proposed new language is underlined; proposed deletions are in brackets.

* * * * *

IM-8310-2. Release of Disciplinary and Other Information [Through the Public 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 [P]public [D]disclosure [P]program, as described below. [Such information shall include:] In addition, NASD 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). NASD shall not release through the public disclosure program social security numbers, residential history information, physical description information, 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 or privacy concerns that are not outweighed by investor protection concerns.

[(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.]

(1) With respect to a current or former member, NASD shall release, except for information described above in this subparagraph (a) and below in subparagraph (b):

(A) any information reported on the most recently filed Form BD and BDW and the most recently filed information reported by any regulator via the Form U6; and

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

(2) With respect to an associated person or a person who was associated with a member within the preceding two years, NASD shall release, except for information described above in this subparagraph (a) and below in subparagraph (b):

(A) any information reported on the most recently filed Form U4 and the most recently filed information reported by any regulator via the Form U6;

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

(C) any disclosure information reported on the most recently filed Form U5, with the exception of "Internal Review Disclosure" information, except for information described above in this subparagraph (a) and below in subparagraph (b). NASD will not release Form U5 information for 30 days following the filing of such information, in order to give persons on whose behalf the Form U5 was

submitted the opportunity to comment on responses to reported disclosure information. Persons who are currently registered with a member who wish to comment must submit their comments via the Form U4; persons who are not currently registered with a member may comment in a manner specified by NASD. NASD shall then release both the disclosure information and the person's comment; and

(D) the last filed information reported on a Form U4, Form U5 or Form U6 relating to (i) customer complaints that are more than two (2) years old and have not been settled, or (ii) customer complaints, arbitrations or litigation that have been settled for an amount less than \$10,000 (collectively, "Historic Complaints") when the person has a total of three or more currently reported regulatory action disclosures; currently reported customer complaint, arbitration or litigation disclosures; or Historic Complaint disclosures. NASD shall not release Historic Complaints, however, if the most recent currently reported customer complaint, arbitration or litigation disclosure is more than ten (10) years old (or there is no such disclosure) and the most recent Historic Complaint is also more than ten (10) years old.

(b) With respect to current or former members, associated persons, and persons who were associated with a member within the preceding two years, NASD shall not release information reported by members, associated persons, or regulators on Forms U4, U5, U6, BD or BDW relating to criminal proceedings, regulatory proceedings, investigations, civil judicial actions, customer complaints, arbitrations or litigation, if:

(1) the member or associated person prevailed in a final, adjudicatory proceeding as to the matter reported;

(2) the reported regulatory action, investigation, or criminal proceeding was dismissed or withdrawn by the authority instituting the action or proceeding;

(3) the information was reported in error by a member, regulator or other appropriate authority; or

(4) 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.

(c) 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 will consist solely of information selected by NASD from Forms BD and BDW and will be limited to information that is otherwise publicly available from the Securities and Exchange Commission.

[(b)] (d) [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)](e)(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 subparagraph [c] (e)(1) shall be accompanied by the statement required under subparagraph [(b)] (d)(1).

[(d)] (f)(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 disciplinary decision issued pursuant to the Rule 8220 Series imposing a suspension or cancellation of the member or a suspension of the association of a person with a member, unless the National Adjudicatory Council determines otherwise. The National Adjudicatory Council may, in its discretion, determine to waive the requirement to release information with respect to a disciplinary decision under those extraordinary circumstances where the release of such information

would violate fundamental notions of fairness or work an injustice. [The Association] 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 decision issued pursuant to the Rule 8220 Series or 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-8310-2(f)(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-8310-2(f)(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-8310-2(f)(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 subparagraph [(d)] (f)(1) shall be accompanied by a statement to the extent required for that type of information under subparagraphs [(b)] (d)(2)-(4).

[(e)] (g) 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)] (h) Notwithstanding [paragraph e] subparagraph (g), 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)] subparagraph (f) immediately upon such approval or acceptance.

[(g)] (i) No change in text

[(h)] (j) 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)] (k) 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)] (l) 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)] (m) 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)] (n) Releases to the public referred to in subparagraphs [(c)] (e) and [(d)] (f) 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.

* * * * *

(b) Not applicable.

(c) Not applicable.

2. Procedures of the Self-Regulatory Organization

(a) 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 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. Because the proposed rule change will require changes to the software application supporting NASD's public disclosure program, the effective date is expected to be approximately one year following publication of the Notice to Members announcing Commission approval. NASD will announce the effective date in a subsequent Notice to Members.

(b) Questions regarding this rule filing may be directed to Shirley H. Weiss, Associate General Counsel, Office of General Counsel, Regulatory Policy and Oversight, NASD, at (202) 728-8844.

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

(a) Purpose

The purpose of the proposed rule change is to amend IM-8310-2 to enhance investor protection by expanding the types of information that NASD makes publicly available through its public disclosure program and to address fairness and privacy concerns by excluding certain information that is currently disclosed based on the status or disposition of the event. The proposed rule change will also govern NASD's release of compilations of publicly available information about NASD members. In addition, the rule change will make conforming changes to IM-8310-2.

Background

IM-8310-2(a) governs the information NASD releases to the public via its public disclosure program, which NASD established in 1988 to provide the public with information on the professional background, business practices, and conduct of NASD members and their associated persons. In 1990, with NASD's support, Congress passed legislation requiring NASD to establish and maintain a toll-free telephone number to respond to inquiries about members and associated persons. In 1998, NASD began providing certain administrative information, such as registration and employment history, online on NASD's Web site. In 2000, the SEC approved the most recent changes to IM-8310-2(a), which (1) established a two-year period for disclosure of information about persons formerly registered with NASD; (2) authorized release of information about terminated persons and firms that is provided on the Form U6 (the form regulators use to report disciplinary actions), if such matters would be required to be reported on Form U4

("Uniform Application for Securities Industry Registration or Transfer") or Form BD ("Uniform Application for Broker-Dealer Registration"); and (3) provided for delivery of automated disclosure reports, which include information as reported by filers on the uniform forms.

In 2002, NASD initiated a comprehensive review of the information that NASD makes publicly available under IM-8310-2. This review included an evaluation of NASD's public disclosure program from the perspective of public investors regarding their experience in obtaining information as well as their assessment of the value of the information they received. NASD subsequently issued *Notice to Members 02-74 (November 2002)*, seeking comment on, among other things, the possible expansion of information NASD makes available to the public.

Proposed Rule Change

Current or Former Members

With respect to current or former members, NASD proposes to release all administrative information reported on Form BD and Form BDW ("Uniform Application for Broker Dealer Withdrawal"), except for social security numbers, residential history information, physical description information; information that NASD is otherwise prohibited from releasing under Federal law; or information provided solely for use by regulators. Additionally, NASD reserves the right to exclude, on a case by case basis, administrative or disclosure information that contains confidential customer information, offensive or potentially defamatory language, or information that raises significant identity theft or privacy concerns.

In addition to information currently released through the public disclosure program with respect to current and former members, NASD proposes to release information regarding control

persons, direct and indirect owners, and information reported on Schedule D of Form BD, as well as certain information reported on Form BDW.

NASD also proposes to release the most recently filed disclosure information, including the most recently filed disclosure information reported by any regulator via the Form U6, subject to certain exceptions described below. Specifically, NASD does not propose to release information reported by members, associated persons, or regulators on Forms U6, BD, and BDW relating to criminal proceedings, regulatory proceedings and investigations, civil judicial actions, and customer complaints, arbitration and litigation with respect to current or former members, associated persons, and persons who were associated with a member within the preceding two years if: (1) the member or associated person prevailed in a final, adjudicatory proceeding as to the matter reported; (2) the reported regulatory action, investigation, or criminal proceeding was dismissed or withdrawn by the authority instituting the action or proceeding; (3) the information was reported in error by a member, regulator or other appropriate authority; or (4) 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.

NASD also proposes to release summary information about certain arbitration awards against a member involving a securities or commodities dispute with a public customer. NASD currently releases summary information concerning arbitration awards issued by NASD arbitrators. NASD intends to continue to work with other regulators regarding disclosure of arbitration awards issued in other forums.

Associated Persons

With respect to associated persons or persons who were associated with a member within the preceding two years, NASD proposes to release any administrative information currently reported on the Form U4, except for social security numbers, residential history information, physical description information; information that NASD is otherwise prohibited from releasing under Federal law; or information provided solely for use by regulators. NASD reserves the right to exclude, on a case by case basis, administrative or disclosure information that contains confidential customer information, offensive or potentially defamatory language, or information that raises significant identity theft or privacy concerns. NASD also proposes to release information with respect to the qualification examinations passed by an associated person and the date passed. NASD will not release examination scores or information regarding failed examinations.

NASD also proposes to release the most recently filed disclosure information reported on Forms U4 and U5, including the most the most recently filed disclosure information reported by any regulator via the Form U6, with the exception of "Internal Review Disclosure" information.¹ As with disclosure information reported on Forms BD and BDW, NASD does not propose to release information reported by members, associated persons, or regulators relating to criminal proceedings, regulatory proceedings and investigations, civil judicial actions, and customer complaints, arbitration and litigation with respect to current or former members, associated

¹ Accordingly, this rule change does not include disclosure of current Question 3, "Reason for Termination" information. However, under proposed IM-8310-2, information regarding certain terminations for cause (*i.e.*, those that meet the criteria in current Question 7F on Form U5 or current Question 14J on Form U4) would be disclosed through the program.

persons, and persons who were associated with a member within the preceding two years if: (1) the member or associated person prevailed in a final, adjudicatory proceeding as to the matter reported; (2) the reported regulatory action, investigation, or criminal proceeding was dismissed or withdrawn by the authority instituting the action or proceeding; (3) the information was reported in error by a member, regulator or other appropriate authority; or (4) 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.

NASD will not release Form U5 information for 30 days following the filing of such information with NASD, in order to give persons on whose behalf the Form U5 was submitted an opportunity to comment on reported disclosure information, including updates to the Form U5. NASD would then release both the Form U5 disclosure and the person's comments to a requestor.² Procedurally, persons who are currently registered with a member firm who wish to submit a comment on a current Form U5 disclosure would be required to use the Form U4 or, if appropriate, Part II of the Form U5, to comment.³ Persons who are currently registered with a member firm who wish to submit a comment on a historical disclosure (e.g., information

² Consistent with current practice, NASD reserves the right to reject comments or redact information, on a case by case basis, that contains confidential customer information, offensive or potentially defamatory language or information that raises significant identity theft or privacy concerns that are not outweighed by investor protection concerns.

³ Currently, both registered and unregistered persons may submit comments on Part II of the Form U5 if the member that previously employed them reported that they are, or were at the time of termination, the subject of an internal review for fraud, wrongful taking of property, or violating investment-related statutes, regulations, rules, or industry standards of conduct. At this time, the Part II mechanism for submitting comments is limited to disclosure information involving internal reviews. NASD is considering whether to propose changes to Form U5 to allow for the submission of comments via Part II for other disclosure events reported via Form U5, so that there is a consistent mechanism for submitting such comments prospectively.

previously reported on Forms U4 that is not made public under the current version of IM-8310-2, but would be made public under the proposed rule change) would be required to submit a signed, notarized affidavit to NASD. Persons who are not currently registered with a member firm will also be required to submit a signed notarized affidavit to NASD in order to submit comment. NASD would publish instructions for submitting comments on its Web site for such persons.

Customer Complaint Information

NASD also proposes to release the last reported information reported on a previously filed Form U4, Form U5, or Form U6 relating to customer complaints that are more than two years old and have not been settled, or customer complaints, arbitrations, or litigation that have been settled for an amount less than \$10,000 (collectively, "Historic Complaints") only when the person has a total of three or more currently reported regulatory action disclosures; currently reported customer complaint, arbitration, or litigation disclosures; or Historic Complaint disclosures.⁴ Even then, if the most recent currently reported customer complaint, arbitration or litigation disclosure is more than 10 years old (or there is no such disclosure), and the most recent Historic Complaint disclosure is also more than 10 years old, NASD proposes not to release any Historic Complaint information.

When the criteria for releasing Historic Complaints is met, i.e., the person has a total of three or more currently reported regulatory action disclosures; currently reported customer

⁴ 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.

complaint, arbitration, or litigation disclosures; or Historic Complaint disclosures, all Historic Complaints, regardless of age, will be released provided that at least one of the currently reported customer complaint, arbitration, or litigation disclosure (if any) or Historic Complaints was filed within the past 10 years. Public investors will be able to determine for themselves whether a particular broker has demonstrated a pattern of conduct over the years and the significance, if any, they should attach to the Historic Complaint information.

Compilation of Information

The rule change also proposes that, 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 compilations reasonable fees as determined by NASD. Such compilations of information will consist of information selected by NASD from Forms BD and BDW and will be limited to information that is otherwise publicly available from the SEC.

Conforming Changes

The proposed rule change will conform subparagraph numbers in IM-8210-2 as required by these amendments.

(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's 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, among other things, that NASD receive and respond promptly to inquiries regarding

disciplinary actions involving its members and their associated persons. The proposed rule change is designed to accomplish these ends by broadening the types and, on balance, the amount of information released to the investing public through NASD's public disclosure program, while at the same time, establishing a principled basis for disclosure that meets NASD's investor protection objectives, yet fairly addresses 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

In *NASD Notice to Members 02-74 (November 2002)*, NASD requested comment on a broad range of issues relating to information NASD makes public. This discussion will be limited to the comments that were received in connection with NASD's public disclosure program. There were a total of 58 commenters. Those who commented on NASD's public disclosure program were generally in favor of timely and accurate disclosure to the investing public, but they were also concerned about striking a fair balance between the need for quality disclosure and the legitimate privacy interests of firms and associated persons. NASD believes that it has addressed those concerns in the proposed rule change.

For example, NASD will not release social security numbers, residential history information, physical description information, information that NASD is otherwise prohibited

from releasing under Federal law, or information 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 or privacy concerns. With respect to qualification examination information, NASD proposes to release information only as to examinations passed by an associated person and date passed and will not release information regarding examination scores or failed examinations.

With respect to "disclosure" information, a number of commenters were concerned about the potential release of "historical" information, i.e., non-reportable "disclosure" events. Under the proposed rule change, NASD will not release any disclosure that is no longer reportable on the current uniform forms (except for Historic Complaints once the established criteria have been met) such as bankruptcies that are more than 10 years old or liens that have been satisfied. Further, under proposed IM-8310-2, NASD will not release information reported by members, associated persons, or regulators relating to criminal proceedings, regulatory proceedings, investigations, civil judicial actions, customer complaints, arbitrations, or litigation if any of the four exceptions applies to the disclosure, i.e., the member or associated person prevailed in a final, adjudicatory proceeding as to the matter reported; the reported regulatory action, investigation, or criminal proceeding was dismissed or withdrawn by the authority instituting the action or proceeding; the information was reported in error by a member, regulator, or the appropriate authority; or the information was 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.

With respect to "historical" information, proposed IM-8310-2 defines "Historical Complaints" as the last filed information relating to customer complaints reported on a Form U4, Form U5, or Form U6 that are more than two years old that have not been settled, or customer complaints, arbitrations, or litigation that have been settled for an amount less than \$10,000. Among other things, commenters expressed the view that releasing Historic Complaints would be unhelpful and potentially misleading, on the basis that such information was outdated and no longer relevant.

In response to these commenters, NASD proposes to release historical customer complaint information only where a potential for a pattern exists. Proposed IM-8310-2 provides that an individual must have a total of three or more currently reported regulatory action disclosures; currently reported customer complaint, arbitration, or litigation disclosures; or Historic Complaint disclosures, before NASD will consider releasing Historic Complaint information. If an individual has three or more current disclosures, as described above, NASD will examine the age of the currently reported customer complaint, arbitration or litigation disclosure(s), if any, and the age of any Historic Complaints. If the most recently reported customer complaint, arbitration or litigation disclosure is more than 10 years old (or there is no such disclosure) and the most recent Historic Complaint disclosure is also more than 10 years old, NASD proposes not to release any Historic Complaint information.

NASD will release all Historic Complaints only when the person has a total of three or more currently reported regulatory action disclosures; currently reported customer complaint, arbitration, or litigation disclosures; or Historic Complaint disclosures, and at least one of the currently reported customer complaint, arbitration, or litigation disclosures or Historic Complaint

disclosures was filed within the past 10 years. In that case, all Historic Complaints, regardless of age, will be released. Releasing Historic Complaint disclosures on this basis will enable public investors to make an informed assessment as to whether a particular broker has demonstrated a pattern of conduct over the years. NASD believes that providing this information will allow public investors to determine for themselves the significance, if any, of the Historic Complaint(s).

NASD has also taken into account some commenters' concern about releasing Form U5 information, given the potential for public disclosure of allegedly defamatory material and the possibility that a broker may be in the process of suing his or her previous member firm over information reported on a Form U5. Commenters also expressed the view that reasons for release from employment should not be public information unless the reason is reportable on the Form U4. NASD notes that proposed IM-8310-2 proposes to release only disclosure information reported on the Form U5. This means that under the proposed rule change, responses to current Question 3 (Full Termination) on the Form U5, regarding "Reason for Termination," would not be released, but information regarding terminations for cause that meet the criteria in current Question 7F on the Form U5 or current Question 14J on the Form U4 would be released.

A number of commenters suggested that brokers should be given the opportunity to respond before the information is released to the public. NASD has addressed commenters' concerns by proposing to delay the release of Form U5 information for 30 days, in order to give the broker an opportunity to file a response to any disclosure. Both the disclosure and the broker's response will then be released to the public.

Procedurally, persons who are currently registered with a member firm who wish to submit a comment on a current Form U5 disclosure would be required to use the Form U4 or, if

appropriate, Part II of the Form U5, to comment. Persons who are currently registered with a member firm who wish to submit a comment on a historical disclosure (e.g., information previously reported on Forms U4 that is not made public under the current version of IM-8310-2, but would be made public under the proposed rule change) and persons who are not currently registered with a member firm would be required to submit a signed, notarized affidavit to NASD in order to submit comment(s). NASD will publish instructions for submitting comments on its Web site for such persons.

Notice to Members 02-74 also asked for comment on publishing comparative information, i.e., putting information released to the public in context. The *Notice* stated that expanding the information available through the public disclosure program to include certain comparative information would help an investor better understand and evaluate the information on the specific broker or firm he or she may be interested in or how his or her broker or firm compares to the rest of the industry. This comparative information would not rate brokers or firms or specifically advise an investor whether or not to conduct business with a particular broker or firm. The commenters generally opposed this concept, stating that comparative information would confuse or potentially mislead the public.

In response, NASD notes that it does not intend to include comparative information with respect to particular persons or members in reports that will be available through the program and, therefore, publication of comparative information is not part of the proposed rule change to IM-8310-2. NASD plans instead to make educational materials and/or explanatory information available via the NASD Web site and through other means that will help investors understand the

information they are receiving. This informational material may include generic statistical or comparative information.

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)

Not applicable.

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

Not applicable.

9. Exhibits

1. Completed notice of proposed rule change for publication in the Federal Register.
2. *Notice to Members 02-74*.
3. Comments received in response to *Notice to Members 02-74*.

Pursuant to the requirements of the Securities Exchange Act of 1934, NASD has duly caused this filing to be signed on its behalf by the undersigned thereunto duly authorized.

NASD

BY: _____
Barbara Z. Sweeney, Senior Vice President and
Corporate Secretary

Date: November 20, 2003

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34- ; File No. SR-NASD-2003-168)

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by National Association of Securities Dealers, Inc. Relating to the Release of Information Through the Public Disclosure Program

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")⁵ and Rule 19b-4 thereunder,⁶ notice is hereby given that on , the National Association of Securities Dealers, Inc. ("NASD"), filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change 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.

I. SELF-REGULATORY ORGANIZATION'S STATEMENT OF THE TERMS OF SUBSTANCE OF THE PROPOSED RULE CHANGE

NASD is proposing to amend IM-8310-2 to enhance investor protection by expanding the types of information NASD makes available through its public disclosure program; to address fairness and privacy concerns by excluding certain information currently disclosed through the program based on the status or disposition of the event; to provide, upon written request and subject to terms and conditions established by NASD, a compilation of publicly available information about NASD members; and to make conforming changes. Below is the text of the proposed rule change. Proposed new language is underlined; proposed deletions are in brackets.

⁵ 15 U.S.C. 78s(b)(1).

⁶ 17 CFR 240.19b-4.

* * * * *

IM-8310-2. Release of Disciplinary and Other Information [Through the Public 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 [P]public [D]disclosure [P]program, as described below. [Such information shall include:] In addition, NASD 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). NASD shall not release through the public disclosure program social security numbers, residential history information, physical description information, 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 or privacy concerns that are not outweighed by investor protection concerns.

[(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-

(D) required to be reported under item 14 on Form U-4;

(E) required to be reported under item 11 on Form BD; or

(F) 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.]

(1) With respect to a current or former member, NASD shall release, except for information described above in this subparagraph (a) and below in subparagraph (b):

(A) any information reported on the most recently filed Form BD and BDW and the most recently filed information reported by any regulator via the Form U6; and

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

(2) With respect to an associated person or a person who was associated with a member within the preceding two years, NASD shall release, except for information described above in this subparagraph (a) and below in subparagraph (b):

(A) any information reported on the most recently filed Form U4 and the most recently filed information reported by any regulator via the Form U6;

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

(C) any disclosure information reported on the most recently filed Form U5, with the exception of "Internal Review Disclosure" information, except for information described above in this subparagraph (a) and below in subparagraph (b). NASD will not release Form U5 information for 30 days following the filing of such information, in order to give persons on whose behalf the Form U5 was submitted the opportunity to comment on responses to reported disclosure information. Persons who are currently registered with a member who wish to comment must submit their comments via the Form U4; persons who are not currently registered with a member may comment in a manner specified by NASD. NASD shall then release both the disclosure information and the person's comment; and

(D) the last filed information reported on a Form U4, Form U5 or Form U6 relating to (i) customer complaints that are more than two (2) years old and have not been settled, or (ii) customer complaints, arbitrations or litigation that have been settled for an amount less than \$10,000 (collectively, "Historic Complaints") when the person has a total of three or more currently reported regulatory action disclosures; currently reported customer complaint, arbitration or

litigation disclosures; or Historic Complaint disclosures. NASD shall not release Historic Complaints, however, if the most recent currently reported customer complaint, arbitration or litigation disclosure is more than ten (10) years old (or there is no such disclosure) and the most recent Historic Complaint is also more than ten (10) years old.

(b) With respect to current or former members, associated persons, and persons who were associated with a member within the preceding two years, NASD shall not release information reported by members, associated persons, or regulators on Forms U4, U5, U6, BD or BDW relating to criminal proceedings, regulatory proceedings, investigations, civil judicial actions, customer complaints, arbitrations or litigation, if:

(1) the member or associated person prevailed in a final, adjudicatory proceeding as to the matter reported;

(2) the reported regulatory action, investigation, or criminal proceeding was dismissed or withdrawn by the authority instituting the action or proceeding;

(3) the information was reported in error by a member, regulator or other appropriate authority; or

(4) 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.

(c) 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 will consist solely of information selected by NASD from Forms BD and BDW and will be limited to information that is otherwise publicly available from the Securities and Exchange Commission.

[(b)] (d) [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)](e)(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 subparagraph [c] (e)(1) shall be accompanied by the statement required under subparagraph [(b)] (d)(1).

[(d)] (f)(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 disciplinary decision issued pursuant to the Rule 8220 Series imposing a suspension or cancellation of the member or a suspension of the association of a person with a member, unless the National Adjudicatory Council determines otherwise. The National Adjudicatory Council may, in its discretion, determine to waive the requirement to release information with respect to a disciplinary decision under those extraordinary circumstances where the release of such information would violate fundamental notions of fairness or work an injustice. [The Association] 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 decision issued pursuant to the Rule 8220 Series or 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-8310-2(f)(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-8310-2(f)(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-8310-2(f)(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 subparagraph [(d)] (f)(1) shall be accompanied by a statement to the extent required for that type of information under subparagraphs [(b)] (d)(2)-(4).

[(e)] (g) 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)] (h) Notwithstanding [paragraph e] subparagraph (g), 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)] subparagraph (f) immediately upon such approval or acceptance.

[(g)] (i) No change in text

[(h)] (j) 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)] (k) 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)] (l) 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)] (m) 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)] (n) Releases to the public referred to in subparagraphs [(c)] (e) and [(d)] (f) 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.

* * * * *

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.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

(a) Purpose

The purpose of the proposed rule change is to amend IM-8310-2 to enhance investor protection by expanding the types of information that NASD makes publicly available through its public disclosure program and to address fairness and privacy concerns by excluding certain information that is currently disclosed based on the status or disposition of the event. The proposed rule change will also govern NASD's release of compilations of publicly available information about NASD members. In addition, the rule change will make conforming changes to IM-8310-2.

Background

IM-8310-2(a) governs the information NASD releases to the public via its public disclosure program, which NASD established in 1988 to provide the public with information on the professional background, business practices, and conduct of NASD members and their associated persons. In 1990, with NASD's support, Congress passed legislation requiring NASD to establish and maintain a toll-free telephone number to respond to inquiries about members and associated persons. In 1998, NASD began providing certain administrative information, such as registration and employment history, online on NASD's Web site. In 2000, the SEC approved the most recent changes to IM-8310-2(a), which (1) established a two-year period for disclosure of information about persons formerly registered with NASD; (2) authorized release of information about terminated persons and firms that is provided on the Form U6 (the form regulators use to report disciplinary actions), if such matters would be required to be reported on Form U4

("Uniform Application for Securities Industry Registration or Transfer") or Form BD ("Uniform Application for Broker-Dealer Registration"); and (3) provided for delivery of automated disclosure reports, which include information as reported by filers on the uniform forms.

In 2002, NASD initiated a comprehensive review of the information that NASD makes publicly available under IM-8310-2. This review included an evaluation of NASD's public disclosure program from the perspective of public investors regarding their experience in obtaining information as well as their assessment of the value of the information they received. NASD subsequently issued *Notice to Members 02-74 (November 2002)*, seeking comment on, among other things, the possible expansion of information NASD makes available to the public.

Proposed Rule Change

Current or Former Members

With respect to current or former members, NASD proposes to release all administrative information reported on Form BD and Form BDW ("Uniform Application for Broker Dealer Withdrawal"), except for social security numbers, residential history information, physical description information; information that NASD is otherwise prohibited from releasing under Federal law; or information provided solely for use by regulators. Additionally, NASD reserves the right to exclude, on a case by case basis, administrative or disclosure information that contains confidential customer information, offensive or potentially defamatory language, or information that raises significant identity theft or privacy concerns.

In addition to information currently released through the public disclosure program with respect to current and former members, NASD proposes to release information regarding control

persons, direct and indirect owners, and information reported on Schedule D of Form BD, as well as certain information reported on Form BDW.

NASD also proposes to release the most recently filed disclosure information, including the most recently filed disclosure information reported by any regulator via the Form U6, subject to certain exceptions described below. Specifically, NASD does not propose to release information reported by members, associated persons, or regulators on Forms U6, BD, and BDW relating to criminal proceedings, regulatory proceedings and investigations, civil judicial actions, and customer complaints, arbitration and litigation with respect to current or former members, associated persons, and persons who were associated with a member within the preceding two years if: (1) the member or associated person prevailed in a final, adjudicatory proceeding as to the matter reported; (2) the reported regulatory action, investigation, or criminal proceeding was dismissed or withdrawn by the authority instituting the action or proceeding; (3) the information was reported in error by a member, regulator or other appropriate authority; or (4) 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.

NASD also proposes to release summary information about certain arbitration awards against a member involving a securities or commodities dispute with a public customer. NASD currently releases summary information concerning arbitration awards issued by NASD arbitrators. NASD intends to continue to work with other regulators regarding disclosure of arbitration awards issued in other forums.

Associated Persons

With respect to associated persons or persons who were associated with a member within the preceding two years, NASD proposes to release any administrative information currently reported on the Form U4, except for social security numbers, residential history information, physical description information; information that NASD is otherwise prohibited from releasing under Federal law; or information provided solely for use by regulators. NASD reserves the right to exclude, on a case by case basis, administrative or disclosure information that contains confidential customer information, offensive or potentially defamatory language, or information that raises significant identity theft or privacy concerns. NASD also proposes to release information with respect to the qualification examinations passed by an associated person and the date passed. NASD will not release examination scores or information regarding failed examinations.

NASD also proposes to release the most recently filed disclosure information reported on Forms U4 and U5, including the most the most recently filed disclosure information reported by any regulator via the Form U6, with the exception of "Internal Review Disclosure" information.⁷ As with disclosure information reported on Forms BD and BDW, NASD does not propose to release information reported by members, associated persons, or regulators relating to criminal proceedings, regulatory proceedings and investigations, civil judicial actions, and customer complaints, arbitration and litigation with respect to current or former members, associated

⁷ Accordingly, this rule change does not include disclosure of current Question 3, "Reason for Termination" information. However, under proposed IM-8310-2, information regarding certain terminations for cause (*i.e.*, those that meet the criteria in current Question 7F on Form U5 or current Question 14J on Form U4) would be disclosed through the program.

persons, and persons who were associated with a member within the preceding two years if: (1) the member or associated person prevailed in a final, adjudicatory proceeding as to the matter reported; (2) the reported regulatory action, investigation, or criminal proceeding was dismissed or withdrawn by the authority instituting the action or proceeding; (3) the information was reported in error by a member, regulator or other appropriate authority; or (4) 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.

NASD will not release Form U5 information for 30 days following the filing of such information with NASD, in order to give persons on whose behalf the Form U5 was submitted an opportunity to comment on reported disclosure information, including updates to the Form U5. NASD would then release both the Form U5 disclosure and the person's comments to a requestor.⁸ Procedurally, persons who are currently registered with a member firm who wish to submit a comment on a current Form U5 disclosure would be required to use the Form U4 or, if appropriate, Part II of the Form U5, to comment.⁹ Persons who are currently registered with a member firm who wish to submit a comment on a historical disclosure (e.g., information

⁸ Consistent with current practice, NASD reserves the right to reject comments or redact information, on a case by case basis, that contains confidential customer information, offensive or potentially defamatory language or information that raises significant identity theft or privacy concerns that are not outweighed by investor protection concerns.

⁹ Currently, both registered and unregistered persons may submit comments on Part II of the Form U5 if the member that previously employed them reported that they are, or were at the time of termination, the subject of an internal review for fraud, wrongful taking of property, or violating investment-related statutes, regulations, rules, or industry standards of conduct. At this time, the Part II mechanism for submitting comments is limited to disclosure information involving internal reviews. NASD is considering whether to propose changes to Form U5 to allow for the submission of comments via Part II for other disclosure events reported via Form U5, so that there is a consistent mechanism for submitting such comments prospectively.

previously reported on Forms U4 that is not made public under the current version of IM-8310-2, but would be made public under the proposed rule change) would be required to submit a signed, notarized affidavit to NASD. Persons who are not currently registered with a member firm will also be required to submit a signed notarized affidavit to NASD in order to submit comment. NASD would publish instructions for submitting comments on its Web site for such persons.

Customer Complaint Information

NASD also proposes to release the last reported information reported on a previously filed Form U4, Form U5, or Form U6 relating to customer complaints that are more than two years old and have not been settled, or customer complaints, arbitrations, or litigation that have been settled for an amount less than \$10,000 (collectively, "Historic Complaints") only when the person has a total of three or more currently reported regulatory action disclosures; currently reported customer complaint, arbitration, or litigation disclosures; or Historic Complaint disclosures.¹⁰ Even then, if the most recent currently reported customer complaint, arbitration or litigation disclosure is more than 10 years old (or there is no such disclosure), and the most recent Historic Complaint disclosure is also more than 10 years old, NASD proposes not to release any Historic Complaint information.

When the criteria for releasing Historic Complaints is met, i.e., the person has a total of three or more currently reported regulatory action disclosures; currently reported customer

¹⁰ 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.

complaint, arbitration, or litigation disclosures; or Historic Complaint disclosures, all Historic Complaints, regardless of age, will be released provided that at least one of the currently reported customer complaint, arbitration, or litigation disclosure (if any) or Historic Complaints was filed within the past 10 years. Public investors will be able to determine for themselves whether a particular broker has demonstrated a pattern of conduct over the years and the significance, if any, they should attach to the Historic Complaint information.

Compilation of Information

The rule change also proposes that, 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 compilations reasonable fees as determined by NASD. Such compilations of information will consist of information selected by NASD from Forms BD and BDW and will be limited to information that is otherwise publicly available from the SEC.

Conforming Changes

The proposed rule change will conform subparagraph numbers in IM-8210-2 as required by these amendments.

(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's 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, among other things, that NASD receive and respond promptly to inquiries regarding

disciplinary actions involving its members and their associated persons. The proposed rule change is designed to accomplish these ends by broadening the types and, on balance, the amount of information released to the investing public through NASD's public disclosure program, while at the same time, establishing a principled basis for disclosure that meets NASD's investor protection objectives, yet fairly addresses 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

In *NASD Notice to Members 02-74 (November 2002)*, NASD requested comment on a broad range of issues relating to information NASD makes public. This discussion will be limited to the comments that were received in connection with NASD's public disclosure program. There were a total of 58 commenters. Those who commented on NASD's public disclosure program were generally in favor of timely and accurate disclosure to the investing public, but they were also concerned about striking a fair balance between the need for quality disclosure and the legitimate privacy interests of firms and associated persons. NASD believes that it has addressed those concerns in the proposed rule change.

For example, NASD will not release social security numbers, residential history information, physical description information, information that NASD is otherwise prohibited

from releasing under Federal law, or information 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 or privacy concerns. With respect to qualification examination information, NASD proposes to release information only as to examinations passed by an associated person and date passed and will not release information regarding examination scores or failed examinations.

With respect to "disclosure" information, a number of commenters were concerned about the potential release of "historical" information, i.e., non-reportable "disclosure" events. Under the proposed rule change, NASD will not release any disclosure that is no longer reportable on the current uniform forms (except for Historic Complaints once the established criteria have been met) such as bankruptcies that are more than 10 years old or liens that have been satisfied. Further, under proposed IM-8310-2, NASD will not release information reported by members, associated persons, or regulators relating to criminal proceedings, regulatory proceedings, investigations, civil judicial actions, customer complaints, arbitrations, or litigation if any of the four exceptions applies to the disclosure, i.e., the member or associated person prevailed in a final, adjudicatory proceeding as to the matter reported; the reported regulatory action, investigation, or criminal proceeding was dismissed or withdrawn by the authority instituting the action or proceeding; the information was reported in error by a member, regulator, or the appropriate authority; or the information was 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.

With respect to "historical" information, proposed IM-8310-2 defines "Historical Complaints" as the last filed information relating to customer complaints reported on a Form U4, Form U5, or Form U6 that are more than two years old that have not been settled, or customer complaints, arbitrations, or litigation that have been settled for an amount less than \$10,000. Among other things, commenters expressed the view that releasing Historic Complaints would be unhelpful and potentially misleading, on the basis that such information was outdated and no longer relevant.

In response to these commenters, NASD proposes to release historical customer complaint information only where a potential for a pattern exists. Proposed IM-8310-2 provides that an individual must have a total of three or more currently reported regulatory action disclosures; currently reported customer complaint, arbitration, or litigation disclosures; or Historic Complaint disclosures, before NASD will consider releasing Historic Complaint information. If an individual has three or more current disclosures, as described above, NASD will examine the age of the currently reported customer complaint, arbitration or litigation disclosure(s), if any, and the age of any Historic Complaints. If the most recently reported customer complaint, arbitration or litigation disclosure is more than 10 years old (or there is no such disclosure) and the most recent Historic Complaint disclosure is also more than 10 years old, NASD proposes not to release any Historic Complaint information.

NASD will release all Historic Complaints only when the person has a total of three or more currently reported regulatory action disclosures; currently reported customer complaint, arbitration, or litigation disclosures; or Historic Complaint disclosures, and at least one of the currently reported customer complaint, arbitration, or litigation disclosures or Historic Complaint

disclosures was filed within the past 10 years. In that case, all Historic Complaints, regardless of age, will be released. Releasing Historic Complaint disclosures on this basis will enable public investors to make an informed assessment as to whether a particular broker has demonstrated a pattern of conduct over the years. NASD believes that providing this information will allow public investors to determine for themselves the significance, if any, of the Historic Complaint(s).

NASD has also taken into account some commenters' concern about releasing Form U5 information, given the potential for public disclosure of allegedly defamatory material and the possibility that a broker may be in the process of suing his or her previous member firm over information reported on a Form U5. Commenters also expressed the view that reasons for release from employment should not be public information unless the reason is reportable on the Form U4. NASD notes that proposed IM-8310-2 proposes to release only disclosure information reported on the Form U5. This means that under the proposed rule change, responses to current Question 3 (Full Termination) on the Form U5, regarding "Reason for Termination," would not be released, but information regarding terminations for cause that meet the criteria in current Question 7F on the Form U5 or current Question 14J on the Form U4 would be released.

A number of commenters suggested that brokers should be given the opportunity to respond before the information is released to the public. NASD has addressed commenters' concerns by proposing to delay the release of Form U5 information for 30 days, in order to give the broker an opportunity to file a response to any disclosure. Both the disclosure and the broker's response will then be released to the public.

Procedurally, persons who are currently registered with a member firm who wish to submit a comment on a current Form U5 disclosure would be required to use the Form U4 or, if

appropriate, Part II of the Form U5, to comment. Persons who are currently registered with a member firm who wish to submit a comment on a historical disclosure (e.g., information previously reported on Forms U4 that is not made public under the current version of IM-8310-2, but would be made public under the proposed rule change) and persons who are not currently registered with a member firm would be required to submit a signed, notarized affidavit to NASD in order to submit comment(s). NASD will publish instructions for submitting comments on its Web site for such persons.

Notice to Members 02-74 also asked for comment on publishing comparative information, i.e., putting information released to the public in context. The *Notice* stated that expanding the information available through the public disclosure program to include certain comparative information would help an investor better understand and evaluate the information on the specific broker or firm he or she may be interested in or how his or her broker or firm compares to the rest of the industry. This comparative information would not rate brokers or firms or specifically advise an investor whether or not to conduct business with a particular broker or firm. The commenters generally opposed this concept, stating that comparative information would confuse or potentially mislead the public.

In response, NASD notes that it does not intend to include comparative information with respect to particular persons or members in reports that will be available through the program and, therefore, publication of comparative information is not part of the proposed rule change to IM-8310-2. NASD plans instead to make educational materials and/or explanatory information available via the NASD Web site and through other means that will help investors understand the

information they are receiving. This informational material may include generic statistical or comparative information.

III. DATE OF EFFECTIVENESS OF THE PROPOSED RULE CHANGE AND TIMING FOR COMMISSION ACTION

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. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. 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 will also be available for inspection

and copying at the principal office of NASD. All submissions should refer to the file number in the caption above and should be submitted by [insert date 21 days from the date of publication].

For the Commission, by the Division of Market Regulation, pursuant to delegated authority, 17 CFR 200.30-3(a)(12).

Margaret H. McFarland
Deputy Secretary