

Notice to Members

FEBRUARY 2007

SUGGESTED ROUTING

Legal & Compliance
Operations
Registered Representatives
Registration
Senior Management
Training

KEY TOPICS

BrokerCheck
Form BD (Uniform Application for Broker-Dealer Registration)
Form BDW (Uniform Application for Broker-Dealer Withdrawal)
Form U4 (Uniform Application for Securities Industry Registration or Transfer)
Form U5 (Uniform Termination Notice for Securities Industry Registration)
Form U6
IM-8310-2
IM-8310-3

GUIDANCE

NASD BrokerCheck

SEC Approves Changes to NASD Interpretive Material 8310-2 Regarding the Release of Information through NASD BrokerCheck; **Effective Date: March 19, 2007**

Executive Summary

The Securities and Exchange Commission (SEC) has approved amendments to Interpretive Material 8310-2 (IM-8310-2), governing the release of information through NASD BrokerCheck (formerly known as NASD's Public Disclosure Program).¹ These amendments expand the information NASD makes available through BrokerCheck and reflect NASD's commitment to strike a fair balance between investor protection and the privacy interests of member firms and their associated persons. Additionally, NASD is making BrokerCheck more user-friendly and improving its security and integrity by replacing the current method for the electronic delivery of BrokerCheck reports and by introducing a redesigned BrokerCheck Web site. NASD is also introducing an educational component of the BrokerCheck report and Web site that it believes will enable the reader to view disclosure events in the appropriate context and give appropriate weight to all disclosure events when evaluating a particular firm or broker. Upon request, subject to terms and conditions established by NASD and after execution of a licensing agreement prepared by NASD, NASD will also provide a compilation of selected data of NASD members. The amendments to IM-8310-2 and changes to NASD BrokerCheck are effective March 19, 2007. The amended text of IM-8310-2 and IM-8310-3 is attached to this *Notice* in Attachment A.

Questions/Further Information

Questions concerning this *Notice* may be directed to Richard E. Pullano, Chief Counsel and Associate Vice President, Registration and Disclosure, at (240) 386-4821; or Stefanie M. Watkins, Senior Counsel, Registration and Disclosure, at (240) 386-4824.

Background

NASD established its public disclosure program (now known as BrokerCheck) in 1988 to provide the public with information on the professional background, business practices and conduct of NASD member firms 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 member firms and associated persons. In 1998, NASD began providing certain administrative information, such as registration and employment history, online via NASD's Web site (www.nasd.com). In 2000, NASD established a two-year period for disclosure of information about persons formerly registered with an NASD member, increased the amount of information disclosed to investors through BrokerCheck and refined the report delivery process.

BrokerCheck currently processes over four million inquiries each year and gives investors an opportunity to obtain information essential to making an informed choice on whether to do business with a particular broker or securities firm. The changes to BrokerCheck, as described in this *Notice*, are the product of a comprehensive review of the information available through BrokerCheck and the way in which it is delivered to the public.

Information NASD Will Release through BrokerCheck

Subject to the exceptions described below, NASD will release through BrokerCheck the following information regarding current or former members, persons currently registered with an NASD member, or persons who were registered with an NASD member within the preceding two years, as reported on the most recently filed Form U4, Form U5, Form U6 (the form used by regulators to report actions), Form BD and Form BDW (collectively, Registration Forms).

NASD will release:

- ◆ Currently approved registrations for brokers and member firms.
- ◆ Information about qualifications examinations passed by the broker and date passed.
- ◆ The name and succession history for current or former member firms.
- ◆ Summary information about certain arbitration awards against a member firm involving a securities or commodities dispute with a public customer.
- ◆ Information regarding control relationships, direct and indirect owners, and executive officers as provided on the Form BD.
- ◆ Information regarding the date of withdrawal from NASD registration and, if appropriate, details regarding funds owed customers or other firms, as provided on the Form BDW.
- ◆ In response to telephonic inquiries via the BrokerCheck toll-free telephone listing, whether a particular member firm is subject to the provisions of the Taping Rule (NASD Rule 3010(b)(2)).

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- ▶ 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**:
 - (1) any such matter became a Historic Complaint on or after March 19, 2007;
 - (2) the most recent Historic Complaint or currently reported customer complaint, arbitration or litigation is less than ten (10) years old; and
 - (3) 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 March 19, 2007), or any combination thereof.

In other words, only those disclosure events (*i.e.*, customer complaints, arbitrations or litigations) that were archived on or after March 19, 2007 will be considered Historic Complaints for purposes of determining whether a person's Historic Complaints become eligible for disclosure through BrokerCheck.

- ▶ Broker Comments. As described below, currently registered persons and persons who are not currently registered with a member firm, but who were registered with an NASD member within the last two years (and who are, therefore, subject to BrokerCheck)² will be given an opportunity to add context to or update information that may be disclosed through BrokerCheck.

Persons No Longer Registered with a Member Firm May Submit Broker Comments

Starting on March 19, 2007, NASD will give persons who are not currently registered with an NASD member, but who were registered within the last two years, an opportunity to submit a comment through the Broker Comment process. (As explained below, the Broker Comment process will not be available to currently registered persons.) Persons wishing to submit a Broker Comment must complete a *Broker Comment Request Form*, which may be found on NASD's Web site. The *Request Form* must be signed and notarized. NASD will also post *Guidelines for Broker Comments on BrokerCheck* on its Web site. NASD will review all submitted Request Forms to confirm relevance and compliance with the established instructions. Only Broker Comments that relate to the information provided through BrokerCheck will be accepted. If the person's Broker Comment meets NASD's criteria, NASD will add the Comment to the written report provided through BrokerCheck. The person submitting the Comment will be able to amend, replace or delete the Comment in the same way. These Comments will also be made available through the Central Registration Depository (CRD[®]) to participating regulators, and to any member firms with which the person who submitted the Comment seeks to be associated subject to the pre-registration protocols,³ so long as the person is subject to BrokerCheck.

Registered Persons Continue to Provide Comments on Form U4

Persons who are currently registered with a member firm will continue to have the opportunity to provide details in the appropriate Disclosure Reporting Page (DRP) of the Form U4. Currently, registered persons may provide details at the time a disclosure event is reported. Additionally, if the registered person wishes to add to his or her previously submitted filing, or provide comments for the first time, the person may, through his or her firm, amend the Form U4 to provide an additional statement relating to the reportable event.

NASD will not edit these comments (whether submitted via Form U4 or a Broker Comment Form); however, consistent with current practice, NASD reserves the right to reject comments or redact information from comments, on a case-by-case basis, that contain 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. NASD will post *Guidelines for Broker Comments on BrokerCheck* on NASD's Web site.

Additionally, NASD reminds all registered persons and persons registered within the last two years that customer complaints that become non-reportable may, at some future time, be eligible for disclosure through BrokerCheck. Therefore, all persons who are subject to BrokerCheck (whether registered or formerly registered) are responsible for ensuring that their comments about any customer complaint adequately reflect their views and concerns, in the event that the matter, although not currently disclosed through BrokerCheck, may be disclosed in the future as a Historic Complaint.

Information NASD Will Not Release through BrokerCheck

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 that is provided solely for use by regulators.
- ▶ Information about current or former members, registered persons or persons who were registered with an NASD member within the preceding two years that has been 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.
- ▶ "Internal Review Disclosure" information reported by members, associated persons or regulators on Section 7 of the Form U5.⁴
- ▶ "Reason for Termination" information reported on Section 3 of the Form U5.

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- ▶ Form U5 disclosure information for fifteen (15) days following the filing of such information. This will give persons on whose behalf the Form U5 was submitted an opportunity to file (or amend) a Form U4 or submit a separate Broker Comment to NASD for inclusion with the information released pursuant to BrokerCheck, regarding disclosure information reported on the Form U5 and any amendments thereto. NASD would then release both the Form U5 disclosure information and the person's comment, if any, to a requester.
 - ▶ The most recent information reported on a Registration Form if:
 - (1) NASD has determined that the information was reported in error by a firm, regulator or other appropriate authority; or
 - (2) the information has been determined by regulators, through amendments to the 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.
 - ▶ Information regarding branch offices provided on Schedule E of the Form BD.⁵

In addition, 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.

Educational Component of BrokerCheck

NASD has also developed an educational component of the BrokerCheck report and the BrokerCheck Web site that it believes will help the reader to view disclosure events in the appropriate context and give appropriate weight to all disclosure events when evaluating a particular firm or broker. These online educational materials consist of text and links to other resources and are designed to help the users of BrokerCheck better understand the content, context and source of the information provided through BrokerCheck and help investors in choosing a broker or firm.

An introductory section immediately preceding the BrokerCheck report will explain that some reported items may involve pending actions or allegations that may be contested and have not been resolved or proven, and that these items may be withdrawn or dismissed, resolved in favor of the broker or concluded through a negotiated settlement with no admission or conclusion of wrongdoing. The report will also include certain status information on each type of disclosure event (provided the firm and/or regulator has reported the disposition on a Registration Form), so that the reader will know whether the complaint was resolved and, if so, how it was resolved. In addition, both the BrokerCheck report and the BrokerCheck Web site will advise the reader not to rely solely on the information available through the BrokerCheck program, but to learn as much as possible about the broker or firm from other sources.⁶

Electronic Delivery of BrokerCheck Reports

Prior to March 19, 2007, NASD delivered BrokerCheck reports via U.S. mail (when requested through NASD's toll-free number) or email (when requested online via BrokerCheck). NASD will continue to deliver BrokerCheck reports via U.S. mail, but will no longer send reports as file attachments in an email. Due to a number of practical issues that have arisen regarding email delivery, NASD will replace the current delivery approach with access to an online report through a secure Internet session in response to inquiries via its Web site or through the established toll-free number. The report will be in Portable Document Format (PDF) and will be viewable online within seconds after a request is made. This improved delivery method will result in more efficient and faster delivery of reports and will eliminate previous email file size limitations often encountered by users under the previous delivery methods. A requester also will be able to view investor education materials that will aid him or her in understanding the written report. NASD will continue to provide hard copy reports to those requesting hard copies.

Compilation of Information

Starting on March 19, 2007, upon written request, NASD will provide to the public (subject to terms and conditions established by NASD, and after execution of a licensing agreement prepared by NASD) a compilation of information selected by NASD from the Forms BD and BDW. The information provided under the licensing agreement will be limited to information that is otherwise publicly available from the SEC. NASD expects to charge a fee to commercial users. Interested persons should call the BrokerCheck Hotline ((800) 289-9999) for information on how to obtain a compilation.

Endnotes

- 1 Securities Exchange Act Release No. 55127 (January 18, 2007), 72 FR 3455 (January 25, 2007) (SR-NASD-2003-168). These amendments also created IM-8310-3, which was formerly denominated as IM-8310-2(b). IM-8310-3 contains the rules regarding the release of disciplinary complaints, decisions and other information.
- 2 Requesters may obtain information about brokers through BrokerCheck only during the time such persons are registered with NASD and for two years following the termination of their registration with an NASD member firm.
- 3 NASD member firms are required to obtain an individual's written consent prior to reviewing his or her CRD record in connection with a firm's consideration of a potential employee.
- 4 NASD will not release the response to the internal review question and related information reported on the associated DRP through BrokerCheck. However, if the matter that was the subject of the internal review is or becomes reportable under the investigation, termination or other disclosure questions, the disclosure information made pursuant to these other disclosure questions would be released.
- 5 Branch office information formerly reported on Schedule E of the Form BD is now reported on the Form BR (Uniform Branch Office Registration Form).
- 6 For example, NASD suggests that investors contact state securities regulators, local consumer and investment groups, or others who have established business relationships with a particular broker or firm.

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ATTACHMENT A

Proposed new language is underlined; proposed deletions are in brackets.

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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) summary information about certain 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 March 19, 2007;

(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 March 19, 2007), 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 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 [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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