

Proposed Rule Change by National Association of Securities Dealers
Pursuant to Rule 19b-4 under the Securities Exchange Act of 1934

<input type="checkbox"/> Initial	<input checked="" type="checkbox"/> Amendment	<input type="checkbox"/> Withdrawal	<input checked="" type="checkbox"/> Section 19(b)(2)	<input type="checkbox"/> Section 19(b)(3)(A)	<input type="checkbox"/> Section 19(b)(3)(B)
			Rule		
<input type="checkbox"/> Pilot	<input type="checkbox"/> Extension of Time Period for Commission Action	<input type="text" value=""/> Date Expires	<input type="checkbox"/> 19b-4(f)(1)	<input type="checkbox"/> 19b-4(f)(4)	
			<input type="checkbox"/> 19b-4(f)(2)	<input type="checkbox"/> 19b-4(f)(5)	
			<input type="checkbox"/> 19b-4(f)(3)	<input type="checkbox"/> 19b-4(f)(6)	

<input type="checkbox"/> Exhibit 2 Sent As Paper Document	<input type="checkbox"/> Exhibit 3 Sent As Paper Document
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Description
Provide a brief description of the proposed rule change (limit 250 characters).

Contact Information
Provide the name, telephone number and e-mail address of the person on the staff of the self-regulatory organization prepared to respond to questions and comments on the proposed rule change.

First Name	<input type="text" value="Richard E."/>	Last Name	<input type="text" value="Pullano"/>
Title	<input type="text" value="Registration and Disclosure, Markets, Services and Information"/>		
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Signature
Pursuant to the requirements of the Securities Exchange Act of 1934,

has duly caused this filing to be signed on its behalf by the undersigned thereunto duly authorized.

Date	<input type="text" value="04/12/2005"/>
By	<input type="text" value="Patrice Gliniecki"/>
	(Name)
	<input type="text" value="Senior Vice President and Deputy General Counsel"/>
	(Title)

NOTE: Clicking the button at right will digitally sign and lock this form. A digital signature is as legally binding as a physical signature, and once signed, this form cannot be changed.

SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

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

Form 19b-4 Information

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

Exhibit 1 - Notice of Proposed Rule Change

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

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

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Exhibit Sent As Paper Document

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

Exhibit 3 - Form, Report, or Questionnaire

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Exhibit Sent As Paper Document

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

Exhibit 4 - Marked Copies

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

Exhibit 5 - Proposed Rule Text

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

Partial Amendment

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

On March 8, 2005, NASD filed Amendment No. 2 to SR-3003-168 to amend IM-8310-2. NASD is filing this Partial Amendment No. 3 to request that the Commission make the following changes in the Form 19b-4 (and corresponding changes to Exhibit 1):

(1) In the "Information NASD Proposes Not to Release" section of the Purpose section, please add the following sentence to the last paragraph on page 20 of the Form 19b-4 (and page 49 of Exhibit 1):

"NASD currently does not release information reported on Schedule E of the Form BD. Under the proposed rule change, NASD will continue not to release this information."

(2) Please modify the last paragraph of the "Information NASD Proposes Not to Release" section of the Purpose section on page 19 of the Form 19b-4 (and page 48 of Exhibit 1) as follows (new language underlined; deleted language in brackets):

Information NASD Proposes Not to Release

NASD proposes not to release information about current or former members, associated persons or persons who were associated with a member within the preceding two years that has been reported [by members, associated persons, or regulators] on Forms U4, U5, U6, BD, and BDW relating to 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; or (2) the reported regulatory [action] proceeding or investigation was [dismissed,]vacated or withdrawn by the instituting authority [instituting the action or proceeding]. Additionally, NASD does not propose to release the most recent information reported [by members, associated persons, or regulators] on Forms U4, U5, U6, BD, and BDW if: (1) the information was reported in error by a member, regulator or other appropriate authority; or (2) 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.

(3) Please modify the following paragraph on page 25 of the Form 19b-4 (and page 54 of Exhibit 1) as follows (new language underlined; deleted language in brackets) to make the language consistent with the description of the rule change in the "Purpose" section:

Further, under proposed IM-8310-2, NASD proposes [will] not to release information reported [by members, associated person, or regulators, including information] on Forms U4, U5, U6, BD, and BDW relating to regulatory proceedings[, and investigations[, civil judicial actions, customer complaints, arbitrations, or litigation if the member or associated person prevailed in a final, adjudicatory proceeding as to the matter reported,] if the reported regulatory [action,] proceeding or investigation[, or

criminal proceeding] was [dismissed,] vacated or withdrawn by the instituting authority [instituting the action or proceeding] [;]. NASD will also not disclose [the] information that was reported in error by a member, regulator, or the appropriate authority; or [the] information that 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 criminal proceedings, NASD will not release information reported by members, associated persons, or regulators if 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.]

* * * * *

For editing ease, NASD is submitting the entire "Purpose" section, as corrected.

(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 BrokerCheck 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 also addresses NASD's release of compilations of publicly available information about NASD members. In addition, the proposed rule change makes conforming changes to IM-8310-2.

Amendment No. 2 to SR-NASD-2003-168 makes the following changes to the rule language as submitted in Amendment No. 1:

(1) NASD has reorganized the rule language to enumerate all information that will be released through the BrokerCheck program in IM-8310-2(b) and all information that will not be released through the BrokerCheck program in IM-8310-2(c).

(2) With respect to "broker comment," NASD clarifies that submission of the broker comment to NASD is by the person "who is covered by the BrokerCheck program."

(3) NASD has revised the rule language in various places to assure that it appropriately and consistently addresses how information reported on the uniform registration forms is disclosed through NASD's BrokerCheck program.

(4) NASD has clarified the rule language regarding the release of "Historical Complaints."

(5) NASD has divided IM-8310-2 into two Interpretive Materials: "IM-8310-2. BrokerCheck Disclosure Program" and "IM-8310-3. Release of Disciplinary and Other Information" and renumbered IM-8310-3 accordingly.

(6) NASD has also made various editorial changes.

In addition, NASD has revised the "Electronic Delivery of Written Reports" section of the "Purpose" section in Amendment No. 2 to more accurately reflect the way in which individuals will be allowed access to and use the secure server to obtain information through NASD's BrokerCheck program.

Background

IM-8310-2(a) governs the information NASD releases to the public via its BrokerCheck 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 via 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 BrokerCheck 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. (Section 5 of this proposed rule change discusses the comments received on Notice to Members 02-74 (November 2002).)

Proposed Rule Change

Information NASD Proposes to Release

With respect to current or former members, NASD proposes to release all administrative information reported on the most recently filed 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, personal safety or privacy concerns. These disclosures would include, in addition to information currently released through the BrokerCheck program with respect to current and former members, 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 information reported by any regulator via the Form U6.

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.

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 reported on the most recently filed 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. Again, 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, personal safety or privacy concerns. NASD also proposes to release information with respect to the qualification examinations passed by an associated person and the date passed; however, NASD will not release examination scores or information regarding failed examinations.

Also, in the case of associated persons or persons who were associated with a member within the preceding two years, NASD proposes to release the most recently filed disclosure information reported on Form U4 and Form U5, including the most recently filed disclosure information reported by any regulator via the Form U6, with certain exceptions, as described below.

NASD also proposes to provide associated persons or persons who were associated with a member within the preceding two years with the opportunity to provide a brief comment that would be included in the information NASD releases through the BrokerCheck program. Only comments that relate to the information provided through the BrokerCheck program would be included. Any such person who wishes to submit a comment would be required to submit a signed, notarized affidavit in the form specified by NASD. NASD will publish instructions for submitting comments on its Web site for such persons.¹ NASD will review the affidavit to confirm relevance and compliance with

¹ Consistent with current practice, NASD reserves the right to reject comments or redact information from a comment or a report, on a case-by-case basis, 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. NASD, in rare circumstances, has excluded or redacted information in cases involving stalking or terroristic threats.

the established instructions and add the comment (if it meets these criteria) to the written report provided through the BrokerCheck program. The person submitting the comment would be able to replace or delete the comment in the same way. These comments also would be made available through the CRD system to participating regulators, and to any member firms that the person who submitted the comment is associated with or is seeking to be associated with, for as long as such information is available through the BrokerCheck program.² Persons who are currently registered with a member firm would continue to be required to amend Form U4, where possible, instead of submitting a comment.

Information NASD Proposes Not to Release

NASD proposes not to release information about current or former members, associated persons or persons who were associated with a member within the preceding two years that has been reported on Forms U4, U5, U6, BD, and BDW relating to regulatory proceedings and investigations if the reported regulatory proceeding or investigation was vacated or withdrawn by the instituting authority. Additionally, NASD proposes not to release the most recent information reported on Forms U4, U5, U6, BD, and BDW if: (1) the information was reported in error by a member, regulator or other appropriate authority; or (2) 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.

² The availability of such comments through the CRD system would parallel the availability of a report on a broker through the BrokerCheck program. For example, such comments would no longer be available through the CRD system if the broker has been out of the industry for more than two years.

With respect to information reported on the Form U5, NASD proposes not to release Form U5 information for 15 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 file a Form U4 or submit a comment to NASD for inclusion with the information released pursuant to the BrokerCheck program regarding disclosure information reported on Form U5 and any amendments thereto. NASD would then release both the Form U5 disclosure and the person's comment, if any, to a requestor. NASD also proposes to continue its current practice of not releasing "Internal Review Disclosure" information reported by members, associated persons, or regulators on the most recently filed Form U5³ or the reason for termination provided in response to Question 3 on Form U5. 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) would be disclosed through the program. NASD currently does not release information reported on Schedule E of the Form BD. Under the proposed rule change, NASD will continue not to release this information.

Customer Complaint Information

The proposed rule change also addresses the reporting of Historic Complaints, i.e., customer complaints that are more than two years old and have not been settled or adjudicated, or customer complaints, arbitrations, or litigation that have been settled for an amount less than \$10,000. NASD proposes to release Historic Complaints only when the person has a total of three or more currently disclosed regulatory actions; currently

³ Although the response to the internal review question and related information reported on the associated disclosure reporting page would not be released, if the matter subject to the internal review is or becomes reportable under the investigation, termination or other disclosure questions, the disclosure made pursuant to these other disclosure questions would be released.

reported customer complaint, arbitration, or litigation disclosures; or Historic Complaint disclosures, or any combination thereof.⁴ Even then, if the most recent Historic Complaint or currently reported customer complaint disclosure (including any arbitration or litigation disclosure) is 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 complaint, arbitration, or litigation disclosures; Historic Complaint disclosures; or any combination thereof, all Historic Complaints, regardless of age, will be released provided that at least one of the currently reported customer complaint, arbitration, or litigation disclosures (if any) or Historic Complaints was filed within the past 10 years. Under such an approach, public investors would 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

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.

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. Finally, NASD no longer refers to itself or its subsidiary, NASD Regulation, Inc., using its full corporate name, "the Association," "the NASD" or "NASD Regulation, Inc." Instead, NASD uses "NASD" unless otherwise appropriate for corporate or regulatory reasons. Accordingly, the proposed rule change replaces several references to "Association" in the text of the proposed rule change with "NASD."

Electronic Delivery of Written Reports

In connection with the proposed changes to IM-8310-2, and the overall objectives of the public information review, NASD also considered the manner in which it releases information to the public via the BrokerCheck program. Currently, NASD makes written reports available by U.S. mail in printed (hard copy) form and by email in an electronic format upon receipt of a request via email or the established toll-free number. However, a number of practical issues have arisen regarding email delivery. For example, many Internet service providers limit the size of attachments that can be received by an individual via email. This limit effectively prevents NASD from providing written reports on the largest NASD-registered firms via email. Instead, NASD must send the reports via U.S. mail. As a result, investors are required to wait, sometimes for several days, before receiving the requested reports. The email limit also restricts NASD's

opportunity to include explanatory material that would tend to increase the size of the report beyond the email size limits.

Accordingly, NASD plans to enhance the electronic delivery of written reports sent in response to inquiries via email or through the established toll-free number by replacing the current delivery approach with a link to a controlled-access server that would allow access to the requested report through a secure Internet session. Access to the information would be limited to the written report requested, and only the individual making the request would be granted access to the database. A requestor also would be able to view investor education materials that would aid him or her in understanding the written report. This planned electronic distribution system will allow NASD to provide investors with more immediate access to the requested information. This change eliminates the additional step of emailing the requestor a passcode and requiring the requestor to reenter that passcode, as initially contemplated and described in Amendment No. 1. Additionally, this change should enable NASD to have the flexibility it needs to provide a report delivery solution that is more user-friendly, and that more efficiently meets investor needs in light of changing technology, while still providing safeguards against data piracy. NASD also would continue to accept requests for reports via the existing toll-free number and provide hard copy reports to those requestors.