

OMB APPROVAL

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SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549
Form 19b-4

File No. SR - 2003 - 168
Amendment No. 5

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

Initial ☐	Amendment ☒	Withdrawal ☐	Section 19(b)(2) ☒	Section 19(b)(3)(A) ☐	Section 19(b)(3)(B) ☐
			Rule		
Pilot ☐	Extension of Time Period for Commission Action ☐	Date Expires 	☐ 19b-4(f)(1) ☐ 19b-4(f)(2) ☐ 19b-4(f)(3)	☐ 19b-4(f)(4) ☐ 19b-4(f)(5) ☐ 19b-4(f)(6)	

Exhibit 2 Sent As Paper Document
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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 Last Name
Title
E-mail
Telephone Fax

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

By
(Name)

(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.

PATRICE GLINIECKI,

SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

For complete Form 19b-4 instructions please refer to the EDFS 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

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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

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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 June 6, 2006, NASD filed Amendment No. 4 to SR-NASD-2003-168 to amend IM-8310-2. NASD is filing this Partial Amendment No. 5 to make the following changes to the proposed rule language:

- (1) IM-8310-2(b)(7)(A) and IM-8310-2(b)(7)(C) are hereby amended to indicate that the proposed rule change will become effective no later than 90 days following Commission approval, as follows:

(A) any such matter became a Historic Complaint on or after [effective date to be no later than 90 days following Commission approval];

* * * * *

(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 [effective date to be no later than 90 days following Commission approval]), or any combination thereof; and

- (2) The words “the” and “Series” were inadvertently omitted from the phrase “the Rule 9200 Series” in IM-8310-3(c)(1)(A). That paragraph is hereby corrected to read:

(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.

The full text of IM-8310-2 and IM-8310-3, as amended, is attached below as Exhibit 5 and is intended to replace the Exhibit 5 filed in Amendment No. 4.

* * * * *

Exhibit 5

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

* * * * *

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

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

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

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

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

[(4) an event or proceeding-]

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

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

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

[The Association also shall make available through the Public Disclosure Program certain arbitration decisions against a member involving a securities or commodities dispute with a public customer. In addition, the Association shall make available in response to telephonic inquiries via the Public Disclosure Program's toll-free telephone listing whether a particular member is subject to the provisions of Rule 3010(b)(2). The Association shall not release through the

Public Disclosure Program social security numbers, residential history information, or physical description information, or information that the Association is otherwise prohibited from releasing under Federal law.]

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

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

(2) currently approved registrations;

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

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

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

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

(7) Historic Complaints (i.e., the information last reported on Registration Forms relating to customer complaints that are more than two (2) years old and

that have not been settled or adjudicated, and customer complaints, arbitrations or litigations that have been settled for an amount less than \$10,000 and are no longer reported on a Registration Form), provided that:

(A) any such matter became a Historic Complaint on or after [implementation date to be no later than 90 days following Commission approval];

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

(C) the person has a total of three (3) or more currently disclosable regulatory actions, currently reported customer complaints, arbitrations or litigations, or Historic Complaints (subject to the limitation that they became a Historic Complaint on or after [implementation date to be no later than 90 days following Commission approval]), or any combination thereof; and

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

(c) NASD shall not release:

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

theft, personal safety or privacy concerns that are not outweighed by investor protection concerns;

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

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

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

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

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

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

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

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

(d) Upon written request, NASD may provide a compilation of information about NASD members, subject to terms and conditions established by NASD and after execution of a licensing agreement prepared by NASD. NASD may charge commercial users of such information reasonable fees as determined by NASD. Such compilations

shall consist solely of information selected by NASD from Forms BD and BDW and shall be limited to information that is otherwise publicly available from the Commission.

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

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

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

* * * * *