

February 6, 2007

## NASD Expands Information Available Through BrokerCheck

Information available through the NASD BrokerCheck system would be greatly expanded and previously unavailable Historic Complaints would be disclosed under certain circumstances, if a proposed rule change recently submitted to the Securities and Exchange Commission is approved. NASD has asked for accelerated approval of the rule change, which would be the culmination of a process that has already lasted more than two years. See SEC Release No. 34-55127 for the full text of the proposed changes.

### Disclosure of Historic Complaints

The most significant of the changes NASD is proposing would make Historic Complaints available to the general public for the first time since BrokerCheck was established in 1988. NASD defines Historic Complaints as the information last reported on Form U-4, Form U-5, Form U-6, Form BD, or Form BDW (collectively, "Registration Forms") relating to (i) customer complaints that are more than two years old and that have not been settled or adjudicated, and (ii) customer complaints, arbitrations, or litigations that have been settled for less than \$10,000 and that are no longer reported on a Registration Form. NASD does not currently make this information available to the public.

NASD proposes to release a broker's Historic Complaints only if all three of the following conditions are met: (1) the Historic Complaint being released became a Historic Complaint on or after the implementation date of the proposed rule change; *and* (2) the most recent Historic Complaint or currently reported customer complaint, arbitration or litigation is less than 10 years old; *and* (3) the broker has a total of three or more currently disclosable regulatory actions; currently reported customer complaints, arbitrations, or litigations; or Historic Complaints (subject to the limitation that only matters that become Historic Complaints on or after the implementation date of the proposed rule change are counted).<sup>1</sup>

As originally proposed, the rule change would have provided for the disclosure of *all* Historic Complaints against a broker once the three-event threshold was met. In response to industry complaints, NASD modified the proposed rule change to limit disclosure of Historic Complaints to matters that became Historic Complaints on or after the implementation date (if the broker reaches the three-event threshold).

Brokers entering into settlements must now be aware that even if the settlement is for less than \$10,000 (and therefore no longer reported on a Registration Form), the matter would be subject to disclosure through BrokerCheck if the three-event threshold was reached at a later date.

Another change would allow brokers, for the first time, to supplement previous comments (or submit new comments) to archived disclosures. NASD will submit a Notice to Members explaining how archived disclosures will be updated.

### Disclosure of Additional Information

NASD proposes to release any information reported on the most recently filed Form U-4, Form U-5, Form U-6, Form BD, and Form BDW, with limited exceptions. Specifically, NASD *will not* disclose Social

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<sup>1</sup> Implementation is expected to begin no more than 90 days after SEC approval of the rule change.

Security numbers, residential history information, physical description information, information NASD is prohibited from releasing under federal law, and information provided solely for the use of regulators.

While NASD will release qualification exams passed (and the date on which the broker passed each exam), NASD will not release a broker's exam scores or a broker's failure to pass an exam. Information regarding for-cause terminations that meet the criteria in Question 7F of Form U-5 will be disclosed; otherwise, "Reason for Termination" information will not be disclosed.<sup>2</sup> "Internal Review Disclosure" information also will be unavailable through BrokerCheck.

## Other Changes

- NASD will cease delivering reports via email and will instead provide access to reports through Internet links.<sup>3</sup>
- NASD is supplementing its BrokerCheck report with an introductory section designed to "put Historic Complaints in the appropriate context..." (SEC Release No. 34-55127, at 15.) Additionally, NASD will advise readers that they should consult other sources for information about the registered person.
- NASD's proposal to measure the two-year disclosure period for customer complaints from the date the member *received* the complaint was abandoned; NASD will continue to measure the two-year disclosure period from the date the complaint is *reported*.
- NASD will provide compilations of information about NASD members to commercial users for a fee. The compilation will consist only of information from Forms BD and BDW, and will not include any information that is not otherwise publicly available.



*If you are interested in more information about this development, or the services we provide, please feel free to contact any of the following attorneys on our Broker-Dealer and Securities Litigation Team:*

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<sup>2</sup> Brokers will have 15 days to submit a comment to NASD following the filing of any Form U-5; Form U-5 information will not be disclosed through BrokerCheck during this 15-day period.

<sup>3</sup> Customers may still request hard copies of reports.