

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others*

Written comments were neither solicited nor received.

**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 NASD 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. Comments may be submitted by any of the following methods:

*Electronic Comments*

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-NASD-2006-070 on the subject line.

*Paper Comments*

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, Station Place, 100 F Street, NE., Washington, DC 20549-1090.

All submissions should refer to File Number SR-NASD-2006-070. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (<http://www.sec.gov/rules/sro.shtml>). 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 also will be available for inspection and copying at the principal office of the NASD. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-NASD-2006-070 and should be submitted on or before July 26, 2006.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>12</sup>

**J. Lynn Taylor,**

*Assistant Secretary.*

[FR Doc. E6-10434 Filed 7-3-06; 8:45 am]

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**SECURITIES AND EXCHANGE COMMISSION**

**[Release No. 34-54053; File No. SR-NASD-2003-168]**

**Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Notice of Filing of Amendment Nos. 4 and 5 to the Proposed Rule Change Relating to the Release of Information Through NASD BrokerCheck**

June 27, 2006.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on June 6, 2006 and June 22, 2006, the National Association of Securities Dealers, Inc. ("NASD") filed with the Securities and Exchange Commission ("Commission") Amendment Nos. 4 and 5, respectively, to the proposed rule change as described in Items I, II, and III below, which Items have been prepared by NASD. The proposed rule change, incorporating Amendment Nos. 1, 2, and 3, was published for comment in the **Federal Register** on June 30, 2005.<sup>3</sup> The Commission received eight comment letters in response to the Notice.<sup>4</sup> The Commission is publishing

this notice to solicit comments on the proposed rule change, as amended by Amendment Nos. 4 and 5, from interested persons.

**I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change**

In response to comments on the Notice, NASD proposes additional amendments to NASD Interpretive Material 8310-2 ("IM-8310-2")<sup>5</sup> regarding disclosures through NASD BrokerCheck.<sup>6</sup> The discussion section of this notice focuses on the changes made in Amendment Nos. 4 and 5.<sup>7</sup> The text of the proposed rule change, as amended by Amendment Nos. 4 and 5, is available on NASD's Web site (<http://www.nasd.com>), at NASD's principal office, and at the Commission's Public Reference Room.

**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, as amended, and discussed any comments it received on the proposed rule change, as amended. 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.

Ronald C. Long, Senior Vice President, Regulatory Policy and Administration, Wachovia Securities, LLC, dated July 18, 2005; Mario Di Trapani, President, Association of Registration Management, dated July 19, 2005 ("ARM Letter"); John S. Simmers, CEO, ING Advisors Network, dated July 19, 2005 ("ING Letter"); Coleman Wortham III, President and CEO, Davenport & Company LLC, dated July 20, 2005; Jill Gross, Director of Advocacy and Rosario M. Patane, Student Intern, Pace Investor Rights Project, dated July 21, 2005; and Ira Hammerman, Senior Vice President and General Counsel, Securities Industry Association, dated July 27, 2005 ("SIA Letter"). NASD submitted a response to comments on June 6, 2006. See letter from Richard E. Pullano, Associate Vice President & Chief Counsel, Registration and Disclosure, NASD, to Katherine A. England, Assistant Director, Division of Market Regulation, Commission, dated June 6, 2006 ("NASD Response to Comments"). The NASD Response to Comments is available on the Commission's Web site (<http://www.sec.gov/rules/sro.shtml>).

<sup>5</sup> NASD also proposes to make non-substantive technical changes to the proposed rule language, including the text of Interpretive Material 8310-3, in Amendment Nos. 4 and 5. In Amendment No. 5, NASD also clarifies that the implementation date for the proposed rule change would be no later than 90 days following Commission approval.

<sup>6</sup> In December 2003, NASD announced that its Public Disclosure Program would thereafter be known as "NASD BrokerCheck."

<sup>7</sup> For an explanation of the Notice, see Securities Exchange Act Release No. 51915, *supra* note 3.

<sup>12</sup> 17 CFR 200.30-3(a)(12).

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> See Securities Exchange Act Release No. 51915 (June 23, 2005), 70 FR 37880 ("Notice").

<sup>4</sup> See letters from Barry Augenbraun, Senior Vice President and Corporate Secretary, Raymond James Financial, Inc., dated July 8, 2005; Joseph D. Fleming, Managing Director and Chief Compliance Officer, Piper Jaffray & Co., dated July 13, 2005;

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

1. Purpose

Rule Filing History

On November 21, 2003, NASD filed with the Commission a proposed rule change to amend IM-8310-2 and amended the proposed rule change in Amendment Nos. 1, 2, and 3 on September 28, 2004, March 8, 2005, and April 12, 2005, respectively. The Commission published the Notice in the **Federal Register** on June 30, 2005.<sup>8</sup> The comment period closed on July 21, 2005. Based on comments received in response to the Notice, NASD is filing Amendment No. 4 to amend the rule language of IM-8310-2.<sup>9</sup>

Proposal

The sole substantive change to the proposed rule language of IM-8310-2 in Amendment No. 4 concerns the conditions under which NASD proposes to release Historic Complaints through BrokerCheck.<sup>10</sup> As provided in Amendment No. 2, NASD proposes to release Historic Complaints only if the most recent Historic Complaint or currently reported customer complaint, arbitration, or litigation is less than ten (10) years old and the person has a total of three (3) or more currently disclosable regulatory actions, currently reported customer complaints, arbitrations, or litigations, or Historic Complaints, or any combination thereof.

In Amendment No. 4, based on concerns from certain commenters,<sup>11</sup> NASD proposes to change the way in which it determines whether an individual's Historic Complaints

become eligible for disclosure through BrokerCheck. In response to the Notice, commenters contended that firms and registered persons made certain decisions with respect to customer complaints, arbitrations, or litigations based on the rules under which the Central Registration Depository and BrokerCheck currently operate (for example, electing to enter into a settlement for what they considered to be a nuisance value to maintain good client relationships or avoid expensive litigation).

Accordingly, NASD proposes to amend the proposed rule language to provide that Historic Complaints will be eligible for disclosure only if the matter becomes a Historic Complaint on or after the implementation date of this proposed rule change, *i.e.*, was archived on or after the implementation date of this proposed rule change. NASD believes that it is in the public interest for those items that are available for disclosure through BrokerCheck on or after the implementation date of the proposed rule change to be eligible for disclosure as Historic Complaints.

The proposed modification to this rule would continue to provide that NASD will disclose through BrokerCheck all of an individual's Historic Complaints if: (1) The most recent Historic Complaint or currently reported customer complaint, arbitration, or litigation is less than ten (10) years old, and (2) 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 the implementation date of the proposed rule change), or any combination thereof.

NASD will announce the effective date of the proposed rule change in a *Notice to Members* to be published no later than 60 days following Commission approval. The effective date will be 30 days following publication of the *Notice to Members* announcing Commission approval.<sup>12</sup>

2. Statutory Basis

NASD believes that the proposed rule change, as amended, is consistent with the provisions of section 15A(b)(6) of the Act,<sup>13</sup> which requires, among other things, that NASD 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),<sup>14</sup> which requires that NASD establish and maintain a toll-free telephone listing to receive inquiries regarding disciplinary actions involving its members and their associated persons and promptly respond to such inquiries in writing. NASD states that the proposed rule change, as amended, is designed to accomplish these ends by broadening the types of information released to the investing public through NASD BrokerCheck. At the same time, the proposed rule change, as amended, establishes a principled basis for disclosure that meets NASD's investor protection objectives, while fairly addressing 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, as amended, will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

NASD has submitted as a separate document its response to comments received by the Commission in response to the publication of the Notice on June 30, 2005.<sup>15</sup>

**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 NASD consents, the Commission will:

(A) By order approve such proposed rule change, as amended, or

(B) Institute proceedings to determine whether the proposed rule change, as amended, should be disapproved.

**IV. Solicitation of Comments**

Interested persons are invited to submit written data, views and arguments concerning the filing, as amended by Amendment Nos. 4 and 5, including whether the filing is

<sup>8</sup> *Id.*

<sup>9</sup> See also Amendment No. 5, *supra* note 5.

<sup>10</sup> For purposes of IM-8310-2, Historic Complaints are defined as customer complaints that are more than two years old and have not been settled or adjudicated, or customer complaints, arbitrations, or litigations that have been settled for an amount less than \$10,000, and which are no longer reported on a registration form.

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 two-year period beginning on 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.

<sup>11</sup> See, e.g., ARM Letter, ING Letter and SIA Letter, *supra* note 4.

<sup>12</sup> See also note 5, *supra*, clarifying that the implementation date for the proposed rule change would be no later than 90 days following Commission approval.

<sup>13</sup> 15 U.S.C. 78o-3(b)(6).

<sup>14</sup> 15 U.S.C. 78o-3(i).

<sup>15</sup> See Notice and NASD Response to Comments, *supra* notes 3 and 4.

consistent with the Act. Comments may be submitted by any of the following methods:

#### *Electronic Comments*

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-NASD-2003-168 on the subject line.

#### *Paper Comments*

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549-1090.

All submissions should refer to File Number SR-NASD-2003-168. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (<http://www.sec.gov/rules/sro.shtml>). 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 also will be available for inspection and copying at the principal office of NASD. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-NASD-2003-168 and should be submitted on or before July 20, 2006.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>16</sup>

**J. Lynn Taylor,**

*Assistant Secretary.*

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## **SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-54055; File No. SR-NYSE-2006-32]

### **Self-Regulatory Organizations; New York Stock Exchange LLC; Order Approving Proposed Rule Change Relating to the NYSE Retail Trading Product and the NYSE Program Trading Product**

June 28, 2006.

#### **I. Introduction**

On May 9, 2006, the New York Stock Exchange LLC ("NYSE" or "Exchange") filed with the Securities and Exchange Commission ("Commission"), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> a proposed rule change relating to the NYSE Retail Trading Product and the NYSE Program Trading Product (collectively, the "NYSE Trading Information Products").<sup>3</sup> The proposed rule change was published for comment in the **Federal Register** on May 24, 2006.<sup>4</sup> The Commission received no comments regarding the proposal. This order approves the proposed rule change.

#### **II. Description of the Proposal**

The NYSE Retail Trading Product consists of: (A) A real-time data feed of certain execution report information that has been recorded as trades for the accounts of "individual investors;"<sup>5</sup> and (B) an end-of-day summary of the retail trading activity on the Exchange for that day, including total buy and sell retail share volume for each stock traded. The NYSE Program Trading Product consists of: (A) A real-time data feed of certain execution report information that has been recorded as program trades;<sup>6</sup> and (B) an end-of-day summary of program trading activity on the Exchange for that day, including total index arbitrage program trading volume. Each published report of a trade execution that is included in the

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> A proposal to introduce the NYSE Trading Information Products without charge as a 60-day pilot program was effective upon filing with the Commission. See Securities Exchange Act Release No. 53835 (May 18, 2006), 71 FR 30456 (May 26, 2006).

<sup>4</sup> See Securities Exchange Act Release No. 53834 (May 18, 2006), 71 FR 30011.

<sup>5</sup> For purposes of the NYSE Retail Trading Product, the account of an "individual investor" means an account covered by section 11(a)(1)(E) of the Act. 15 U.S.C. 78k(a)(1)(E).

<sup>6</sup> For purposes of the NYSE Program Trading Product, "program trading" refers to program trading as defined in NYSE Rule 80A, Supplementary Material .40(b).

data feed for either product will indicate such information as the security's symbol, the size of the trade, the time of the trade's execution, and other related information.

The NYSE proposes to establish fees for these data products. Specifically, NYSE proposes to charge a \$1,500 monthly access fee for receipt of the NYSE Retail Trading Product data feed (for receipt of the real-time data feed, the end-of-day summaries, or both); a \$1,500 monthly access fee for receipt of the NYSE Program Trading Product data feed (for receipt of the real-time data feed, the end-of-day summaries, or both); a \$2.00 monthly display fee for each display device receiving the NYSE Retail Trading Product information and/or the NYSE Program Trading Product information that the vendor makes available from the real-time data feed; and a \$250 monthly fee for vendors that only provide end of day summaries of NYSE Trading Information Products.

In addition, the NYSE proposes to provide each vendor of the NYSE Trading Information Products with a monthly credit of \$2 for each device that the vendor has entitled to receive displays of the NYSE Trading Information Products, up to a maximum of either \$3,000 per month if the vendor pays the monthly access fees for both the NYSE Retail Trading Product data feed and the NYSE Program Trading Product data feed (which total monthly access fees total \$3,000); or \$1,500 per month if the vendor pays the monthly access fees for either the NYSE Retail Trading Product data feed or the NYSE Program Trading Product data feed, but not both (either of which monthly access fees equals \$1,500).

Finally, NYSE proposes to require vendors receiving the NYSE Trading Information Products, to provide subscribers, by link or otherwise, in a manner that is reasonably transparent and accessible to subscribers, a description of the NYSE Retail Trading Product and the NYSE Program Trading Product. The NYSE will require vendors to update their Exhibit A to their contract with NYSE for receipt and redistribution of NYSE Trading Information Products to describe how they will make this description available.

#### **III. Discussion**

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities

<sup>16</sup> 17 CFR 200.30-3(a)(12).