



July 19, 2005

Mr. Jonathan G. Katz  
Secretary  
United States Securities and Exchange Commission  
100 F. Street, N.E.  
Washington, D.C. 20549-9309

Re: File No. SR-NASD-2003-168

Dear Mr. Katz:

The Association of Registration Management<sup>1</sup> ("ARM") appreciates the opportunity to comment on NASD's proposal to expand information that is currently made available through their public disclosure program, "BrokerCheck".

While ARM agrees in principle that BrokerCheck provides investors with the fundamental ability to make an informed decision concerning whether or not to conduct (or continue to conduct) business with a particular broker/dealer or registered representative, we have concerns that the contemplated approach will result in inequities against certain industry professionals and will have unintended consequences that could ultimately harm investors.

By way of background, the archival process was designed to provide a mechanism so that non-substantiated complaints or those settled for relatively small amounts of money<sup>2</sup> would not forever injure or otherwise tarnish the reputation of industry professionals. Please keep in mind that the reporting requirements, which are derived from registration applications, were initially created so that regulators could make informed licensing decisions and commence investigations/enforcement proceedings when and as deemed necessary. Over the years, this information has been made available to the public. Recognizing that these disclosures can at times be self-incriminating (since reporting requirements are driven by allegations regardless whether or not the claim has any factual basis), various self-regulatory organizations such as NASD and the New York Stock Exchange as well as the North American Securities Administrators Association took

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<sup>1</sup> The Association of Registration Management is an industry association founded in 1975 that is comprised of registration managers of broker-dealers who deal with the regulatory community on matters relating to licensing and registration.

<sup>2</sup> The \$10,000 reportability threshold has remained unchanged for over 25 years.

great care in developing the questions contained in the various registration applications so that unsubstantiated or frivolous claims would not *forever* unfairly damage a person's reputation.

Be mindful that firms very often settle customer complaints—even if a meritorious defense can be mounted—because it is cost effective to do so. For example, it might be less expensive for a firm to provide a client with a few thousand dollars rather than spend twice that amount in legal and related fees in a prevailing case. Such economic decisions are often made without the registered representative's consent, notwithstanding a registered representative's frequent desire to challenge allegations and to formally vindicate oneself. At other times, complaints are settled to maintain good client relationships (perhaps a complaint arose, for example, that was of an operational nature but due to the wording of the complaint, a reporting requirement was triggered—again, these would constitute archived complaints settled in amounts less than \$10,000).

ARM is aware that NASD created a mechanism for expungements of complaints that are factually impossible (see NASD Rule 2130); however, utilizing that process could be extremely cumbersome and costly. In order to seek an expungement, one must file a claim naming NASD as a party in order to provide NASD the ability to oppose the petition for expungement. While this can be done when submitting an Answer to a civil or arbitration claim, it becomes difficult with regard to written customer complaints. This is because there exists no current forum to petition for an expungement. Hence, a firm and/or a registered representative must commence a formal proceeding (where none previously existed) in order to clear his/her name—again, this would be a very costly endeavor.

ARM is also concerned about the fairness of changing rules after over ten years of applying a standard—namely, the archival process—for which firms and their registered representative have relied upon. Firms and their registered representatives have settled complaints for less than \$10,000, sometimes reluctantly so, with the belief that such complaints would not become part of any public record. Had public disclosure protocols been different, those types of settlement offers might not have ever been extended.

We realize NASD seeks to make historical data public where there appears to be a pattern of misconduct; however, we submit that denied or unsubstantiated claims—that is to say claims that have no relevance—should not be counted towards such a tally. We believe that to do otherwise would not serve to advance investor protection.

Secondly (and more importantly), releasing archived records would create a *disincentive* for firms to settle any customer complaint, including those seeking more than \$10,000. Settling a customer complaint for more than \$10,000 would trigger a reportable event which thereby would bring the registered representative closer to having his/her archived history released to the public. Accordingly, firms might opt to simply deny all written and verbal complaints which would then leave a customer with a choice of seeking potentially costly legal remedies (with a hope that they are victorious) or simply abandoning a complaint. Clearly, NASD does not wish to stymie amicable settlements between its members and their customers, especially in those instances where a firm

concludes that their registered representatives did not engage in sales practice violations and where for a few thousands dollars a customer could be satisfied.

In closing, ARM wishes to reiterate its strong support for investor protection but also wishes to remind NASD that information contained on CRD was designed for licensing purposes *only*. Moreover, registration applications require applicants to report certain matters *regardless* of outcome or whether (or not) allegations have merit. Again, opportunities for expungements are very restrictive. Most importantly, NASD should not create any policy that would discourage or otherwise impede their members from reaching amicable settlements.

ARM believes the best investor protection results not from having one's allegations against a registered representative made available through BrokerCheck but rather through enforcement actions being taken against those individuals who violate rules. Investors should focus on regulatory sanctions as indications of whether or not to conduct business with a firm or with one of its registered representatives, not dismissed or unsubstantiated investor complaints.

Again, ARM appreciates the opportunity to provide comment on this very important and very sensitive matter.

Sincerely,

Mario Di Trapani  
President