

and/or (a)(1)(iii).¹² Additional proposed changes to section 2 (Fingerprint Information) will clarify fingerprint filing requirements for investment adviser representative only applicants.

Individuals use the Form U-4 to register with states in an investment adviser representative capacity (shown as "RA" on the Form U-4). Some states have advised NASD that individuals are confused about which radio button¹³ to select when applying solely for registration as an investment adviser. In some cases, these individuals have previously submitted a fingerprint card for registration with a broker-dealer. NASD proposes to amend the "Investment Adviser Representative Only Applicants" section by adding additional instructions under the heading "Fingerprint Information for Affiliated Firms" that will explain the fingerprint filing requirements for these applicants.

The proposed language will clarify the circumstances under which an individual may need to file a fingerprint card when submitting an application for state licensure as an investment adviser representative notwithstanding having previously submitted a fingerprint card with an unaffiliated broker-dealer. The proposed language will also address situations in which an investment adviser representative previously has satisfied a state fingerprint requirement by allowing the representative to make that representation on the Form U-4.¹⁴

Under section 6 (Registration Requests With Affiliated Firms) of the Form U-4, NASD is proposing to add a fingerprint question to section 6 (Registration Requests with Affiliated Firms) on the Form U-4 to create appropriate options for individuals requesting new registrations with a firm

affiliated with the filing firm.¹⁵ The proposed "Electronic or Other Filing Representation" subsection will provide three additional radio buttons. Filers can select the current standard representation (*i.e.*, "I am submitting, have submitted, or promptly will submit to the appropriate SRO a fingerprint card * * *"). In the alternative, the proposed representations would enable the individual to indicate that (1) he or she has been employed continuously by the filing firm since the last submission of a fingerprint card and he or she is not required to resubmit a fingerprint card; or (2) the individual has been employed continuously by the filing firm and his or her fingerprints have been processed by an SRO other than NASD and the individual is submitting, has submitted, or promptly will submit the processed results for posting to the CRD. Section 6 (Registration Requests With Affiliated Firms) will also contain a radio button that allows the applicant to select an exemption to the fingerprint requirement pursuant to SEC Rule 17f-2.¹⁶

Conforming Changes

(1) NASD proposes replacing all references to "NASD Regulation" or "NASD Regulation, Inc." with "NASD" consistent with NASD's current corporate structure. NASD also proposes changing "U-4" to "U4" and "U-5" to "U5."

(2) NASD proposes making grammatical and other modifications that will make the Form U-4 and Form U-5 more consistent and better clarify the disclosure information that is required to be reported on the Forms. For example, NASD proposes rewording the summary field of the DRPs on the Form U-4 and Form U-5 to emphasize that those fields are optional for comments by representatives and firms, respectively.

(3) NASD proposes modifying the Customer Complaint DRP on both Forms to distinguish the fields that are required for reporting a customer complaint, arbitration and/or litigation. The proposed changes add instructions and rearrange the questions in a more logical order; however, the content of the customer complaint disclosure question and DRP fields will not change.

(4) NASD proposes revising the language in Question 14F (on Form U-

4) to clarify the intent of the reporting obligation.¹⁷

(5) NASD proposes changes to the current hair and eye color codes to match the codes used by the Federal Bureau of Investigation's fingerprint system.

(6) NASD proposes other consistency changes that relate to bolding or highlighting certain instructions in the DRPs to facilitate appropriate reporting on the Forms.

2. Statutory Basis

NASD believes that the proposed rule change is consistent with the provisions of section 15A(b)(6)¹⁸ of the Act, which requires, among other things, that the Association's rules 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. NASD believes that the proposed rule change is designed to accomplish these ends by making changes to the Forms that would (1) add disclosure questions to elicit reporting of events that may cause a person to be subject to a statutory disqualification as a result of the expansion of the federal definition of statutory disqualification based on the enactment of the Sarbanes-Oxley Act; (2) add a DRP and a question to the Form U-5 (new Question 7F) that parallels Question 14J on the Form U-4 DRP relating to terminations for cause; (3) streamline the language associated with questions on the Form U-4 relating to fingerprinting requirements; and (4) make other technical, clarifying, and conforming changes that are intended to facilitate accurate reporting.

B. Self-Regulatory Organization's Statement on Burden on Competition

NASD does not believe that the proposed rule change 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

Written comments were neither solicited nor received.

¹⁷ Currently, Question 14F asks, "Has your authorization to act as an attorney, accountant or federal contractor ever been revoked or suspended?" The proposed Question 14F asks, "Have you ever had an authorization to act as an attorney, accountant or federal contractor that was revoked or suspended?"

¹⁸ 15 U.S.C. 78o-3(b)(6).

¹² SEC Rule 17f-2, 17 CFR 240.17f-2, governs the fingerprinting requirements of securities personnel. SEC Rule 17f-2(a)(1)(i), 17 CFR 240.17f-2(a)(1)(i), permits an exemption for persons who are not engaged in the sale of securities; do not regularly have access to the keeping, handling, or processing of securities, monies, or books and records; and do not have supervisory responsibility over persons engaged in such activities. SEC Rule 17f-2(a)(1)(iii), 17 CFR 240.17f-2(a)(1)(iii), generally exempts the partners, directors, officers, and employees of a broker-dealer that is engaged exclusively in the sales of certain securities, such as variable contracts, limited partnership interests, and unit investment trusts.

¹³ A "radio button" is a navigation and selection device that allows a filer to select a particular option in an electronic filing environment.

¹⁴ This addition should be particularly helpful to investment adviser representatives who became licensed in a jurisdiction through the submission of a hard copy Form U-4 before that jurisdiction accepted electronic filings via the Investment Adviser Registration Depository and who are now being "transitioned" onto an electronic system via an electronically filed Form U-4 amendment.

¹⁵ The new term "Affiliated Firm" is to be defined in the Form U-4 as follows: AFFILIATED FIRM means a broker-dealer under common ownership or control with the filing firm.

¹⁶ 17 CFR 240.17f-2.