

cases. These amendment filings must include completed DRP(s) covering the proceedings or action reported. Firms are required to maintain a copy, with original signatures, of these amendment filings.

While NASD noted its appreciation that this requirement places an administrative burden on firms, it stated the belief that the NASD has taken sufficient steps to mitigate the burden. First, as a practical matter, NASD stated that current Question 14D elicits virtually all information required by the Sarbanes-Oxley Act changes with the exception of NCUA and state credit union regulatory proceedings or actions. Consequently, according to NASD, registered persons already should have reported most information responsive to the Sarbanes-Oxley Act changes, with the exception of those proceedings or actions. While registered persons with affirmative answers to current Question 14D also may be required to report an affirmative answer to new Question 14D(2), a statistical review done by the NASD of information in the CRD system reflects that only about five percent of registered persons (approximately 3,600 individuals) have affirmative answers to current Question 14D. Moreover, based on preliminary discussions with the NCUA and state regulators, NASD noted its belief that the number of required amendment filings to report NCUA and state credit union regulatory proceedings/actions will be even smaller, involving less than one-tenth of one percent of registered persons. Thus, NASD attested that the number of Form U-4 amendments firms will be obligated to file to report affirmative answers to new Question 14D(2) by August 13, 2003 will be quite small. Firms will, however, be required to obtain Section 15D (the registered person's acknowledgement and consent), with original signatures, for these registered persons.

Moreover, in Amendment No. 3, NASD noted that any registered person who has not filed an amended Form U-4 reporting credit union regulatory proceedings within the specified 30-day period will be deemed to have represented that he or she has not been the subject of any such proceedings. Firms will be entitled to submit amended Forms U-4 on behalf of such registered persons without completing Section 15D, provided that the amended filing does not involve any other Section 14 Disclosure Question changes. Although firms will not be required to obtain an executed Section 15D from registered persons under these circumstances, the registered persons will be required to answer the new

14D(2) questions.¹¹ NASD cautioned that a registered person who fails timely to notify his or her member firm of a reportable credit union regulatory proceeding will be deemed to have made a false or incomplete filing, irrespective of whether his or her firm has made a specific inquiry of its registered persons about such proceedings. In addition, NASD emphasized that reporting such proceedings is an affirmative obligation of the registered person, which is not excused by a firm's failure specifically to inquire as to the existence of such proceedings.

Finally, NASD concluded in Amendment No. 3 that these procedures should avoid imposing on firms the unwarranted administrative burdens and costs associated with obtaining more than 600,000 copies of Form U-4 Section 15D with original signatures for registered persons who have no reportable credit union regulatory proceedings.

C. Jamieson Comment

The Jamieson Comment was received by the Commission on June 26, 2003 in which Jamieson made one primary argument that was germane to the NASD's proposed rule change. Specifically, Jamieson questioned the need and rationale for the proposal to add Question 7F to the Form U-5. That question would allow firms to report

¹¹ The CRD system will process such Form U4 filings as follows. If a registered person has a "yes" answer to any question in Questions 14A through J in the Disclosure Section of the Form U-4 on or after July 14, the CRD system will require that the firm filing an amended Form U-4 enter a response (by selecting the appropriate "yes" or "no" radio button) to new disclosure Question 14D(2) and also obtain a completed Section 15D. If those questions are not answered, the filing will fail the CRD system completeness check. For the sake of clarity, NASD notes that an amendment to a Form U-4 filing on or after July 14, for the purpose of adding a "yes" answer to Questions 14A through J, when previously there had been no "yes" answers, would require the firm filing the amendment to answer new disclosure Question 14D(2) and obtain a completed Section 15D.

If a registered person does not have a "yes" answer to questions 14A through J in the Disclosure Section of the Form U4, the CRD system will default new disclosure Question 14D(2) with a "no" response for any filings prepared for submission after implementation of the new questions, and the firm will not be required to obtain a completed Section 15D for the purposes of answering Question 14D(2). Form U4 amendments filed by the firm for such individuals will not fail the completeness check due to these new questions; however, by submitting the filing, firms will be representing that they are filing "no" answers to the new questions, unless they affirmatively change the "no" answer to "yes" before submitting the filing. Similarly, as discussed above, registered persons who have not filed an amended Form U-4 reporting credit union regulatory proceedings within the specified 30-day period will be deemed to have represented that they have not been the subject of any such proceedings.

that an individual was terminated after allegations of certain violations, fraud, wrongful taking of property, or failure to supervise, and would further clarify the terminated individual's obligation to report the termination on the Form U-4 in response to current Question 14J thereon.

D. NASD Response

The Commission received the NASD Response to the Jamieson Comment on July 3, 2003. NASD noted in its response that the new question 7F on the Form U-5 does not change the reporting obligations of either a broker-dealer or a registered person. Instead, the new question parallels Form U-4, Question 14J, relating to terminations for cause and will provide a firm with a specific question to answer if it has terminated a registered person under the circumstances identified in the question.

NASD further argued that affirmative responses to proposed Question 7F should clarify for NASD staff and terminated individuals the specific basis for and circumstances surrounding the termination (and whether it requires an affirmative answer on the corresponding Form U-4 question). The new question also should enable firms to specifically identify and provide supporting details regarding certain categories of terminations for cause. Currently, NASD staff must rely on the reason for termination provided by the terminating firm, which may provide an adequate response regarding the reason for termination, but may not provide sufficient detail to allow staff or the terminated person to determine whether an affirmative response is required to Form U-4, Question 14J. Similarly, NASD stated that although current Question 7B on Form U-5 elicits information relating to an internal review conducted by a firm relating to certain violations, fraud, wrongful taking of property, or failure to supervise, an affirmative answer to that question reports only that a terminated person was under internal review for those particular circumstances or conduct either at the time of termination or after; it does not, however, specifically identify whether the registered person was terminated for the reasons specified in the question.

III. Discussion and Commission's Findings

The Commission has carefully reviewed the proposed rule change, the comments, and the NASD's responses thereto, and finds that the proposed rule change, as amended, is consistent with the Act and the rules and regulations