

## Brokers' Pasts Can Still Be Covered Up

By SUSANNE CRAIG

**C**HICAGO STOCKBROKER Michael Noble is the subject of a \$2 million arbitration claim against his former employer Credit Suisse First Boston by investors who blame him and the firm for their stock losses.

It is unlikely, however, the complaint will ever show up in a public database that logs customer beefs against securities dealers—despite new rules to stop brokers and their employers from erasing misdeeds from the public record.

Brokers are supposed to end up in the database if clients file arbitration claims against them, one of the main means investors have for redress against broker misconduct. But many plaintiff lawyers have stopped naming brokers individually as what are known as respondents. The reason: They say many big Wall Street firms now refuse to settle complaints that name brokers as respondents, because the new rules make it almost impossible to erase from their employees' records black marks that can drive away customers.

"This is a classic example of an investor-friendly rule having the opposite effect of what was intended," says Jake Zamansky, a New York lawyer who represents aggrieved investors. Mr. Zamansky says he stopped naming brokers as respondents after the National Association of Securities Dealers, which helps regulate the industry, adopted the rule.

So now, less than a year after the rule went into effect, regulators are studying whether to change it again.

In the case against the Credit Suisse Group unit, San Francisco attorney Alan Sparer represents three of Mr. Noble's former clients who claim the broker failed to diversify their holdings enough to prevent big losses.

In 2002, before the new rule was in place, Mr. Sparer filed a similar claim against CSFB and Mr. Noble, naming both. Not this time. "I know it may not be good public policy, but if I name a broker, it could make it much harder for my client to get a settlement," Mr. Sparer says.

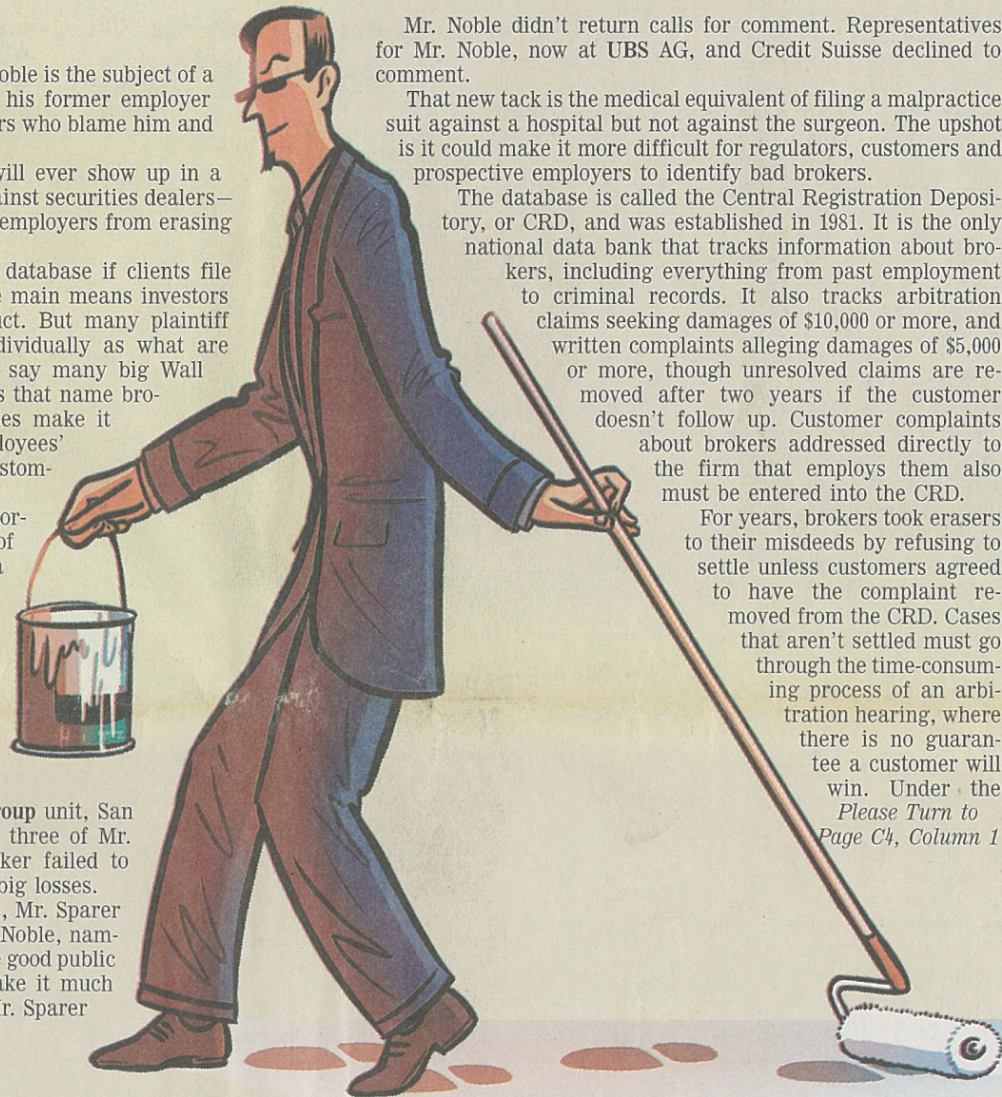
Mr. Noble didn't return calls for comment. Representatives for Mr. Noble, now at UBS AG, and Credit Suisse declined to comment.

That new tack is the medical equivalent of filing a malpractice suit against a hospital but not against the surgeon. The upshot is it could make it more difficult for regulators, customers and prospective employers to identify bad brokers.

The database is called the Central Registration Depository, or CRD, and was established in 1981. It is the only national data bank that tracks information about brokers, including everything from past employment to criminal records. It also tracks arbitration claims seeking damages of \$10,000 or more, and written complaints alleging damages of \$5,000 or more, though unresolved claims are removed after two years if the customer doesn't follow up. Customer complaints about brokers addressed directly to the firm that employs them also must be entered into the CRD.

For years, brokers took erasers to their misdeeds by refusing to settle unless customers agreed to have the complaint removed from the CRD. Cases that aren't settled must go through the time-consuming process of an arbitration hearing, where there is no guarantee a customer will win. Under the

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old rules, only cases that received a decision from an arbitration panel typically were logged in the CRD, and even then brokers sometimes filed counter-claims against clients after awards to get the incidents removed from the record.

Under the new rules, the only cases that can be removed are those found to be clearly without merit by an arbitration panel or a court, or to contain a simple factual error.

Since the new rules went into effect, for cases filed after April 12, 2004, the NASD has removed only five complaints from the CRD. Although many lawyers say they have stopped naming brokers as respondents, the NASD declined to release statistics on the number of complaints against individual brokers. In 2004, information about customer disputes was removed in approximately 8% of the cases filed, according to the NASD.

In 2004, 8,201 arbitration cases were filed with the NASD, which provides the forum for 90% of all claims filed. The cases include complaints by brokers against their employers, but the overwhelming majority involve allegations of broker misconduct, including inappropriately investing clients' funds in risky stocks or overtrading to pump up brokerage commissions.

The NASD and other regulators say plaintiff lawyers are partly responsible

for the problem. "In the interest of zealously representing their clients, lawyers are now undermining the disclosure system that investors and regulators rely on," says Maryland Securities Commissioner Melanie Lubin. NASD spokeswoman Nancy Condon said the lawyers "are choosing not to name brokers and are blaming others" for that decision.

Some plaintiff lawyers never have named brokers as respondents. Philip Aidikoff, a lawyer in Beverly Hills, Calif., says a firm ultimately is responsible for the conduct of its employees—and has deeper pockets. Naming brokers gives arbitrators the option of holding the broker, not the firm, liable, making it more difficult to collect awards.

Nevertheless, the NASD is considering ways to address the issue and, separately, has begun reviewing arbitration complaints in search of allegations that might warrant a closer look from regulators.

"The CRD is a fairly good system, but it is not perfect," said George Kramer, deputy general counsel for the Securities Industry Association, which represents Wall Street firms. He says that fixing the problem will be tricky, because the NASD has long struggled with what should go into the CRD system and what shouldn't.

One option suggested by some plaintiff lawyers is to include in brokers' CRD records all arbitration claims in which

they are accused of wrongdoing, regardless of whether they are named as respondents. Ms. Lubin, who is on a regulatory committee looking at the issue, fears this may tar brokers who are mentioned only in passing and don't deserve to have their behavior logged in the CRD.

"We are trying to make sure that the information we want in the CRD is picked up, but not in a way that sweeps in people that should not be in," Ms. Lubin says.

Another solution some regulators have suggested is for clients or their lawyers to write complaint letters to firms that employ brokers they accuse of wrongdoing, since those complaints are also entered into brokers' CRD records. The lawyers don't like this idea because it could hamper their ability to extract a settlement.

"Maybe instead of asking plaintiff lawyers to write a letter complaining, something that may not even be in our client's interest, the NASD should simply close the loophole," says Mr. Zamansky, the New York lawyer.