



NASAA

January 6, 2003

Barbara Z. Sweeney
NASD
Office of the Corporate Secretary
1735 K Street, N.W.
Washington, D.C. 20006-1500

By letter and email to: pubcom@nasd.com

Re: NASD Notice to Members 02-74 - Request for Comment

Dear Ms. Sweeney:

The North American Securities Administrators Association, Inc. (NASAA)¹ appreciates the opportunity to comment on NASD Notice to Members 02-74, Public Information Review.

NASAA applauds the NASD for undertaking this comprehensive review of the information it makes public. Over the years, improvements in technology have created the opportunity to put important information in the hands of the retail investor. Because most investors and potential investors interested in researching their brokers use the NASD's website to retrieve information about their financial professionals, it is important that the NASD's website provide accurate, complete and timely information to investors in an easy-to-read format. NASAA supports providing information to investors because we feel that details about financial services providers are in many ways as critical to informed decisions as details about the investments themselves.

The NASD Notice to Members reflects how the Public Disclosure (PD) Program has grown in size and significance since inception in 1988. The PD system, put into place the year after Black Monday and the 1987 stock market crash,² has demonstrated its value as a means for investors to obtain critical information concerning the background, practices and history of NASD members and associated persons. As interest, involvement and investment in equity and related investments have increased significantly over the past decade among the general populace, so too has the real need for providing members of the general public with the necessary tools to assist them in making informed investment decisions.

¹ The oldest international organization devoted to investor protection, the North American Securities Administrators Association, Inc. was organized in 1919. Its membership consists of the securities administrators in the 50 states, the District of Columbia, Puerto Rico, Canada and Mexico. NASAA is the voice of securities agencies responsible for grass-roots investor protection and efficient capital formation.

² On Black Monday, many retail investors were unable to locate their brokers. NASAA set up a toll free number to assist the public find their brokers. The next year, Congress passed a law mandating that the NASD set up a toll free number.

We now will turn to some of your specific proposals on which you seek comment.

1. ESTABLISH A CENTRAL GATEWAY FOR ACCESS TO PUBLIC INFORMATION

NASAA agrees with the concept that investors should have access to public information from a central gateway. Almost all the information filed on forms U-4, U-5, U-6, BD and BD-W is public information under state freedom of information or sunshine laws.³ Investors should be able to view all of this public information in one easy to access site. Because NASD operates Web CRD, it is in the optimal position to manage this central gateway for investors and potential investors to access public information. Given easy access to the licensing information collected through the uniform forms, investors should be able to view all of the information at their convenience through their own computers.

NASAA supports this enhancement to the operational structure of the current system to effectuate the goal of one-stop information shopping for the public. NASD now collects a large amount of data, either in its role as a self-regulating organization of broker-dealers and agents, or as a vendor for the SEC and the states. It would be useful for investors to have one user-friendly starting point for locating detailed information about broker-dealers, agents, investment advisers, and investment adviser representatives.

In cases where NASD does not itself possess the information or is unable to receive a download of that information, there should be a link directly to the source. This should be supplemented with links to other sources, including the SEC and state securities regulators. We also would recommend that the NASD include a separate section with links to other organizations that assist investors, as well as web sites that can provide information regarding specific investments.⁴

2. ENHANCE NASD'S PUBLIC DISCLOSURE PROGRAM

We support the NASD's belief that the PD program should be enhanced to (1) make it easier to use; (2) provide disclosure information on line; (3) put the information provided in context; (4) expand the types of information released through the PD program and (5) expand the types of information released through the PD Program.

Making PD Easier to Use

We agree that the NASD's existing PD Program should be as user friendly as possible. An investor should be able to easily find the link to the PD website from the NASD homepage. Inquiries should receive a prompt and complete response that can be printed directly from the

³ States generally consider social security numbers, residential address and other similar information to be non-public and NASAA agrees that this information should not be made available on the public information site.

⁴ NASAA can provide brochures to publish on the NASD site concerning such topics as, investing in viaticals, variable annuities, promissory notes, understanding 529 Plans, and understanding brokerage account statements.

web site. Investors should be able to obtain information by inputting the minimum possible data. The initial information on a registered representative should be retrievable upon entering only a first and last name, with prompts from the system if it is necessary to narrow the search because of similarly named individuals. We also encourage functionality that will allow investors to find an individual even if the name is not spelled correctly.

NASAA also supports contextual or explanatory materials to help investors better understand the information they receive. Recognizing that the information collected by NASD often is generated by other sources, NASD should work with those sources in developing appropriate descriptive materials.

Online Access to Disclosure Information

The NASD should put disclosure information online along with the rest of the PD information. Over the past years, more and more people rely on the Internet for information. This trend is supported by the NASD's finding that 95 percent of the inquiries made through the PD program came through the Internet. NASAA agrees with the NASD that because the NASD does not display all information online, "access to information and usability of the PD Program will continue to be hampered to the detriment of investor protection." We suggest that that NASD continue to seek federal legislation that would provide it with the statutory protection it believes is necessary to put disclosure information on the website. NASAA has supported this legislative change for years. NASAA considers this issue so important that it is a priority on NASAA's 2003 legislative agenda.⁵

Public Disclosure Report Updates

NASAA commends the NASD for the creative suggestion of sending e-mails to investors and potential investors when certain disclosure events are reported on their broker. This may send an important signal to an investor to double-check his or her monthly statement or check other important information. The proposal would relieve the investor and the PD program of the burden of having to perform this search daily.

CRD Data and Form Filing Information

NASAA encourages NASD to make more information available from Forms BD, U-4 and U-5 as suggested in the Notice to Members. Since these forms are considered public documents with the states in which they are filed and made available by state regulators, it would make sense to have all of the information accessible from one site. Investors also should be given the option of receiving historical form filings.

More complete information concerning an individual's exam history also could be important to some investors. The same is the case with respect to direct and indirect owners, control

⁵ See http://www.nasaa.org/nasaa/abtnasaa/display_top_story.asp?stid=334.

affiliates, answers and related details to all Form BD questions, disclosure information for control affiliates and historical Form BD amendments. The reason for termination, as disclosed on Form U-5 and disclosure events reported via Form U-5, should be accessible on agent records viewed through the updated PD Program. Many regulators use this information to start investigations against stockbrokers. We believe investors consider this information important as well.

Former agents who do not re-associate with a new firm should have greater means to file a response to information filed on a Form U-5 or Form U-6, and that information should be viewable through the updated PD Program. Such responses should be included in CRD and the PD Program and should be filed on either new or revised uniform forms which are subject to state form filing requirements. This would insure that these responses would be formal filings with the states over which the normal state false filing prohibitions would apply. Such responses should not be filed exclusively with NASD and made available only through the PD program.

NASAA has long supported the release and disclosure of information reported on the current uniform forms as well as providing investor access to all other disclosure events contained on an individual's or NASD member firm's record. We therefore would support the NASD's decision to expand its PD Program to include both current and *archived* disclosure information. An investor's decision to place his/her savings with a particular member firm and/or conduct business with a particular registered individual should not be limited only to a review of disclosure information that is presently required to be reported in the Uniform Forms, but rather to all disclosure information contained in the CRD system. For example, even if there were not follow-up action on a series of customer complaints within the 24-month period proscribed by the current Form U-4, an investor should be aware that there were five or six such complaints on the potential broker's record. Expansion of the disclosure segment of NASD's PD program to include material currently archived in the CRD system would provide that necessary information to an investor.

The revelation of disclosure events, which are currently archived in the CRD system and therefore not available to investors through its PD Program, should be an outcome of NASD's review of its PD program.

3. ACTIONS TO ENSURE TIMELY REPORTING OF INFORMATION

Expanding NASD Staff Review

NASAA supports the NASD expanding the sources of information other than the CRD system its staff reviews to ensure that information required to be reported by firms and brokers through the CRD system is filed in a timely manner. The NASD's disclosure review staff is CRD's "border patrol," having the responsibility of assuring that the information in CRD is accurate and complete. We believe that consulting more sources will enhance their success in this mission.

Inactive Disclosure Status

An "Inactive Disclosure" status should be applied to agents when their firms fail to meet their reporting obligations. We note that states generally provide that an agent must be properly registered with the NASD to be properly registered in the states. An agent selling securities while under the "Inactive Disclosure" status may be liable under many states' strict liability for unregistered agents laws. We believe this will provide agents and firms incentive to timely report disclosures.

Late Fees

We agree that late fees would provide an incentive to filers that do not timely report required information. We also think this information should be referred to the states' enforcement divisions.

All Individuals Must File on CRD

NASAA supports this proposal which would require the remaining 7.5 percent of registered individuals to submit a Form U-4 amendment filing. The amendment would serve the dual purpose of updating the records for such persons and verifying the information on such individuals currently contained in the CRD system.

Establishment Of Web Page for Attorneys, Investors and Others to Inform the NASD Of an Agent's or Firm's Failure to Amend Its Form U-4, U-5 Or BD

NASAA supports this innovative way of providing the public a way to notify the NASD that the information on the CRD reporting system may not be accurate and up to date. There is no harm to NASD members because the NASD staff would conduct a review before the firm was required to report the information in question. We also think the states in which the firm or person in question is registered should be provided notice of this potential failure to report.

4. IMPROVE EASE OF ACCESS TO ARBITRATION AWARDS

NASAA believes that enhancing NASD's Securities Arbitration Commentator (SAC) portal could be of value to investors. We believe this database should be searchable by stockbroker name or firm name. As NASD knows from other NASAA comments, we think that the arbitration process should be more transparent. We are concerned with arbitrations where results are not publicly disclosed by agreement of the parties, and encourage efforts at meaningful disclosure of results to investors.

We also support a requirement that firms report arbitration awards on Form BD for arbitrations that are not elsewhere reported on the CRD system via Forms U-4 and U-5. Currently, firms are not required to report adverse arbitration awards on the Form BD. If the firms were required to report on Form BD adverse decisions not reported elsewhere on CRD, the NASD would no

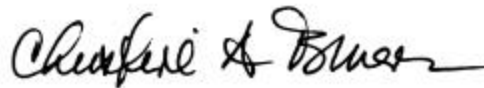
longer have to rely on the Securities Arbitration Commentator for arbitration award information; rather, important information could be extracted from CRD.

5. OTHER NASD INFORMATION

We recognize that NASD collects a great deal of information, some of which is proprietary. Even in the case of proprietary information, we suggest that the NASD could undertake statistical analyses that may shed light on industry operations in a way that benefits all concerned.

Thank you for consideration of these views. State securities regulators have a long history of providing their residents with investment industry information. NASAA looks forward to continuing to work with NASD to assure that the breadth of information the states provide is available on the NASD's PD website.

Sincerely,

A handwritten signature in black ink, appearing to read "Charles A. Blum". The signature is fluid and cursive, with a long horizontal stroke at the end.

NASAA President and
Maine Securities Administrator