



**NASAA**

January 9, 2004

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

Via e-mail to: [pubcom@nasd.com](mailto:pubcom@nasd.com)

**RE: NASD Notice to Members 03-76 – Request for Comment  
Enhanced Access to BrokerCheck**

Dear Ms. Sweeney:

The North American Securities Administrators Association, Inc., (NASAA) appreciates the opportunity to comment on NASD Notice to Members (NtM) 03-76, Enhanced Access to NASD BrokerCheck (formerly known as NASD's Public Disclosure Program). NASAA supports both increased disclosure of the information included on Forms U4, U5, U6, BD and BDW, as well as efficient and effective distribution of such information to the investing public. NASAA's specific comments on certain questions NASD poses in NtM 03-76 follow.

**Implementation of an Enhanced Electronic Delivery Method** – As part of the proposed technical enhancement detailed in the NtM, NASD would replace the disclosure report attachment currently sent by e-mail to an individual in response to a request for information with a unique access code and a link to a secure written report server. This access code would be sent by e-mail and individuals could access the server only with the requisite code. NASD suggests that this distribution method would be an improvement, in at least one aspect, over the current distribution system because some Internet service providers currently limit the size of attachments that can be received via e-mail and NASD must distribute some BrokerCheck reports by U.S. Mail.

NASAA supports NASD's proposal for an enhancement to develop a secure distribution system provided that access to and receipt of information from the new technical delivery scheme will not additionally burden the users of the BrokerCheck website. Under the present distribution method, an individual requests information and that information is returned via e-mail or U.S. Mail. The revised system requires that additional procedural steps must be taken by the individual investor.

While there appear to be benefits to the new approach, NASAA is concerned that these additional steps and processes could be perceived by investors as an impediment to their prompt receipt of information about an agent or brokerage firm. NASAA suggests that NASD test the new technical distribution methodology with a subset of randomly selected individuals who currently request information using the BrokerCheck program. The primary clients for the disclosure information are public investors. Canvassing investors to determine if the revised distribution approach is useful should be beneficial to them. It should not be difficult to obtain a statistically valid random sample to confirm the efficiency of the new technical distribution approach.

**Educational Material Delivery** – NASAA, with some reservations, generally supports NASD’s proposal to provide investor education material to BrokerCheck requestors to aid them in understanding the written report generated by the system. As we noted in our reply to NASD’s earlier request for comment on NASD public information disclosure matters (NtM 02-74), the collective regulatory community, including the NASD, Securities and Exchange Commission (SEC), the New York Stock Exchange (NYSE), and the states have collaboratively developed the securities industry licensing applications and reporting forms that NASD uses as a source for its BrokerCheck Program. Since the Central Registration Depository (CRD) is comprised of data from various sources, NASD should work with the entire regulatory community in developing the educational material that would now be part of the BrokerCheck program and distributed to our citizens.

There are numerous ways in which “educational materials” can be presented to requestors. We believe it is critical that this be done in the most objective, unbiased way possible. BrokerCheck reports are likely to include information taken from Disclosure Reporting Pages (DRPs). If not done thoughtfully, educational materials accompanying information taken from DRPs could be construed to downplay the importance of a disclosure. For example, materials might say, to the effect: “This firm has three reportable disclosures, which is average for a firm of this size.” That could discourage requestors from checking further into the nature of the disclosures. It thus is critical that the educational materials present a balanced point of view that puts disclosures in proper perspective. NASAA would be pleased to work with NASD on these materials.

**Suggestions for Alternative Technical Solutions** – NASD requested that commentators provide alternative technical solutions to achieve NASD’s objectives for its BrokerCheck program. NASAA would reference its previous recommendation that NASD beta test the revised BrokerCheck distribution system with the public investing community. This test would provide the comments needed for NASD to determine the efficiency and efficacy of its proposed technical solution. NASAA cannot predict what the replies would be from a group of public investors testing the new distribution system, but predicts that such replies would provide NASD with feedback to judge the ultimate success of its revised plan. We believe the key answer to the success of the program’s revision lies not in the technical solution itself, but in the public investors’ satisfaction with the solution.

**Time Frame for Authorization Code/Other Access Issues** – NASD requested comments on the length of time the authorization code, which would be provided under the new system, should remain in effect. NASAA suggests, if the technical solution as proposed by NASD is adopted and the efficient operation of the system would not be adversely affected, that the authorization code remain valid for not less than thirty (30) calendar days. While some group of

investors would access the report immediately or soon after receipt of the access code, a 30-day time period should provide space for investors whose business travel or vacation plans, as an example, would require an extended access time horizon.

NASAA further suggests that a requestor have unlimited access to a report – or multiple reports if possible – during the period of time in which the authorization code is valid. The investor also should be given the right to save the report to disk or a similar type of storage medium. Under the current proposal, it appears that investors or other requesters would only be able to view the information electronically and/or print the report. The ability to save the requested information would afford the investor additional options that would accommodate her/his particular needs or requirements. Again, if NASD adopts NASAA's recommendation to test the proposed technical solution with the public investor community, questions on an appropriate access period and varied distribution media, including disk recordation, could be part of the inquiries made of the investing community.

**Additional Protection Requirements** – NASD requested ideas to prevent misuse of the proposed system. NASAA suggests that any potential misuse would be remote since the information generated by BrokerCheck already is publicly available. NASAA believes that one potential issue could be receipt of information by an individual who did not request the material. As NASD suggests in its notice, a message requesting a recipient to notify NASD if they did not request the report would, if used, alert NASD to the incorrect information transmission.

**Other Issues** – As detailed in this response, NASAA supports NASD's proposed enhancement of its BrokerCheck technical distribution system because this update offers increased investor information in an era in which it is certainly needed. The more disclosure information that is provided to investors, the better decisions they can make. State securities regulators have a long history of providing their residents with investment industry information that may go beyond what is included in the BrokerCheck report. Investors thus should also, as part of the BrokerCheck notification, be directed to NASAA's website to obtain contact details for their state securities regulators to ease their access to the additional information.

In conclusion, NASAA appreciates the opportunity to comment on NASD's proposal to enhance the e-mail delivery of BrokerCheck reports and hopes its comments are helpful in achieving that objective.

Should you have questions about this matter, please feel free to contact Melanie Senter Lubin, Chair of NASAA's CRD/IARD Steering Committee and Maryland Securities Commissioner. Mark Davis and John Veator of NASAA's Legal Department also stand ready to provide any assistance necessary.

Sincerely,



Ralph A. Lambiase  
NASAA President and  
Director, Connecticut Division of Securities