

Notice to Members

DECEMBER 2003

REQUEST FOR COMMENT

ACTION REQUESTED BY JANUARY 9, 2004

SUGGESTED ROUTING

Executive Representatives
Registered Representatives
Legal & Compliance
Senior Management

NASD Seeks Comment on Enhanced Access to NASD BrokerCheck (Formerly Known as NASD's Public Disclosure Program)

Access to Information Available Under Interpretive Material 8310-2; **Comment Period Expires January 9, 2004**

KEY TOPICS

Central Registration Depository
NASD BrokerCheck/Public Disclosure Program
IM-8310-2

Executive Summary

Interpretive Material 8310-2 (IM-8310-2) governs the release of disciplinary and other information to the public through NASD BrokerCheck. In July 2002, NASD initiated a comprehensive review of the information that it makes public, including the information released under IM-8310-2. In November 2002, NASD requested comment on its public information review initiative in *Notice to Members 02-74*. Based on NASD's review and member, investor, and other comments, the NASD Board of Governors (NASD Board), at its July 31, 2003 meeting, authorized proposed changes to IM-8310-2 that would broaden the scope of administrative and disclosure information NASD releases to the public. These proposed changes adopt a principled and consistent approach to disclosure and reflect NASD's commitment to strike a fair balance between investor protection and the legitimate privacy interests of brokers. NASD has submitted a rule filing with the Securities and Exchange Commission (SEC) seeking approval of the proposed changes.

In connection with the proposed changes to IM-8310-2, and the overall objectives of the public information review that led to these changes, NASD is seeking comment on proposed enhancements to the existing approach for the electronic delivery of written reports (e-mail) used by the NASD BrokerCheck Program. These enhancements, which include a link to a secure written report, are intended to address investor needs and enhance the security and integrity of the program.

03-76

Action Requested

NASD encourages all interested parties to comment on the proposal. Comments must be received by January 9, 2004. Members and interested persons can submit their comments using the following methods:

- ▶ mailing in written comments
- ▶ e-mailing written comments to pubcom@nasd.com
- ▶ submitting comments online at the NASD Web Site (www.nasd.com)

Written comments submitted via hard copy should be mailed to:

Barbara Z. Sweeney
NASD
Office of the Corporate Secretary
1735 K Street, NW
Washington, DC 20006-1500

Important Notes: The only comments that will be considered are those submitted pursuant to the methods described above. All comments received in response to this *Notice* will be made available to the public on the NASD Web Site. Generally, comments will be posted on the NASD Web Site one week after the end of the comment period. See *Notice to Members 03-73*.

Before becoming effective, any rule change developed as a result of comments received must be adopted by the Regulatory Services and Operations Committee of the NASD Board, may be reviewed by the NASD Board, and must be approved by the SEC following public comment.

Questions/Further Information

Questions concerning this *Notice* may be directed to Ann E. Bushey, Director, Registration and Disclosure, at (240) 386-4724; Richard E. Pullano, Associate Vice President/Chief Counsel, Registration and Disclosure, at (240) 386-4821; or Patricia M. Albrecht, Assistant General Counsel, at (202) 728-8026.

Background

IM-8310-2 governs the release of disciplinary and other information to the public through, among other means, NASD BrokerCheck. The BrokerCheck program processes over two million inquiries a year and provides investors with an unparalleled ability to obtain information essential to making an informed choice on whether to do business with a securities firm or an individual broker. Investors may request information either by accessing a toll-free telephone number (800-289-9999) or by visiting NASD's Web Site (www.nasd.com). As the program has grown, investors and other users have shown a marked preference for requesting and receiving information from the program electronically. Notwithstanding the toll-free number, NASD receives over 98 percent of program inquiries online, and the vast majority of investors and other requesters prefer to receive written NASD BrokerCheck reports electronically. In addition to this preference for electronic access and report distribution, investors want to receive more complete information from the program. They have consistently expressed a need for material that explains what the information they receive means and its importance to their decision whether to do business with a securities firm or an individual broker.

In July 2002, NASD initiated a comprehensive review of, among other things, the information that it makes public through IM-8310-2(a). In November 2002, NASD requested comment on the public information review initiative in *Notice to Members 02-74*. Based on NASD's review and member, investor, and other comments, the NASD Board, at its July 31, 2003 meeting, authorized proposed changes to IM-8310-2 that would change the scope of administrative and disclosure information NASD releases through its public disclosure program. These proposed changes adopt a principled and consistent approach to disclosure and reflect NASD's commitment to strike a fair balance between investor protection and the legitimate privacy interests of brokers. NASD has submitted a rule filing with the SEC seeking approval of the proposed changes.¹

In connection with the proposed changes to IM-8310-2, and the overall objectives of the public information review that led to these changes, NASD is seeking comment from members and other interested parties regarding proposed enhancements to the existing approach for the electronic delivery of written reports (e-mail) generated by NASD BrokerCheck.

Comment Requested on Enhanced Electronic Distribution of Written Reports

In addition to expanding the scope of the information that may be disclosed through NASD BrokerCheck, NASD is considering enhancing the way in which investors or other requesters may obtain this information and is seeking comment on these proposed enhancements. Currently, NASD makes written reports available by U.S. Mail in printed (hard copy) form and by e-mail in an electronic format upon receipt of a request via e-mail or the established toll-free number.² These written reports provide administrative and disclosure information on NASD-registered firms and persons (as well as firms and persons whose NASD registrations were terminated within the last two years) and are principally intended to assist investors who may be interested in doing business with a firm or broker.

NASD is proposing to enhance e-mail delivery of written reports by replacing the report attachment currently sent by e-mail with a unique access code and a link to a secure written report server, which NASD would send by e-mail. Individuals could access this server only with the requisite access code, and such access would be limited to the specific written report requested. Under the proposed approach, a person requesting a written report on a firm or broker in electronic format would provide his or her e-mail address. In response, NASD would send an e-mail to the individual providing a unique access code and a link to a secure written report server. The investor or other requester would use the access code and link to access the report on the requested firm or broker. The secure server would be accessible only to individuals who received the link (i.e., the URL address) and access code from NASD. NASD plans to implement security features and access controls to minimize the risk of unauthorized use of the secure written report server and of individual written reports. Once granted access to the requested written report, investors or other requesters would be able to view the written report electronically and print the report at their discretion. Investors also would be able to view investor education materials that would aid them in understanding the written report. NASD would continue to accept requests for reports via the toll-free number and provide hard-copy reports to those requesters.

NASD believes that this proposed method of distribution is an improvement over the current distribution process. Users of the current program strongly prefer receiving written reports in an electronic format.³ However, a number of practical issues have arisen regarding e-mail delivery. For example, many Internet service providers limit the size of attachments that can be received by an individual via e-mail. Accordingly, NASD sends any written report that exceeds one megabyte (including, for example, reports on the largest NASD-registered broker/dealers) in hard copy via U.S. Mail. This is an inconvenience for investors who are expecting a written report via e-mail, rather than a hard-copy report.

Also, investors often have requested additional information from NASD to explain the meaning of the information provided through the program. Adding this explanatory material would increase the overall size of the e-mail and would result in an even greater number of reports exceeding the one-megabyte threshold. In addition, e-mail distribution of explanatory material would require inclusion of all relevant explanatory material in every e-mail because there is no practical way to know in advance the specific needs or questions of each investor. The proposed delivery system would give NASD the flexibility to more easily provide contextual and other investor education material as part of the program.

NASD believes that these enhancements will make NASD BrokerCheck easier to use and make the information provided through the program easier to understand by investors and other users by, among other things, providing investors with ready access to investor education materials that will provide context and address specific questions they may have about the information provided to them through the program. These changes also will provide investors and other requesters with electronic format written reports that are more readily accessible and more secure.

Proposed Action

NASD proposes enhancing the e-mail delivery of written reports by replacing the report attachment currently sent by e-mail with a unique access code and a link to a secure written report server. Only individuals with the requisite access code would be granted access to this server, and access would be limited to the specific written report requested. Once granted access to the requested written report, requesters would be able to view the written report electronically and print the report at their discretion. Requesters also would be able to view investor education materials that would aid them in understanding the written report.

Request For Comment

NASD requests comment on the following questions:

- (1) Should NASD implement an enhanced electronic delivery method for NASD BrokerCheck program reports that would replace the current e-mail system?
- (2) What alternative technical solutions, if any, can you suggest for NASD to consider that will achieve the objectives of the program?
- (3) How long should an authorization code remain valid? Should access to the report be unlimited during the time the authorization code is valid (or should access also be limited to a certain number of viewings of the report)?
- (4) What additional protections, if any, can you suggest for NASD to consider that might prevent misuse of the proposed system? For example, should NASD add a message to all outgoing reports requesting recipients to notify NASD if they did not request the report?

Endnotes

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| <p>1 File No. SR-NASD-2003-168. NASD will alert members when the SEC publishes the rule filing and remind them of their opportunity to comment.</p> <p>2 NASD voluntarily initiated the disclosure program as an investor protection service in 1988. In an endorsement of the program, Congress added Section 15A(i) to the Securities Exchange Act of 1934, which mandated that</p> | <p>NASD implement a toll-free telephone number to receive inquiries regarding disciplinary actions involving its members and associated persons and promptly respond to such inquiries in writing.</p> <p>3 For example, in 2002, 93 percent of requesters elected to receive written reports in an electronic format, while only 7 percent elected to receive hard-copy reports via U.S. Mail.</p> |
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