

Notice to Members

MAY 2005

SUGGESTED ROUTING

Legal and Compliance
Registration
Senior Management

KEY TOPICS

Best Practices
Fingerprinting

GUIDANCE

Fingerprinting Procedures

NASD Suggests Best Practices for Fingerprinting Procedures

Executive Summary

NASD is issuing this *Notice to Members* to remind members to review and, as necessary, update their fingerprinting procedures to help ensure that fingerprints submitted to the Federal Bureau of Investigation (FBI) as part of the hiring process belong to the employee being hired by the member. This *Notice* also suggests best practices for members' consideration.

Questions/Further Information

Questions concerning this *Notice* may be directed to Victoria Pawelski, Assistant Chief Counsel/Assistant Director, Registration and Disclosure, Markets, Services and Information, at (240) 386-4803; or Shirley H. Weiss, Associate General Counsel, Regulatory Policy and Oversight, at (202) 728-8844.

Background and Discussion

Under the federal securities laws, certain persons employed in the securities industry are required to be fingerprinted for purposes of a criminal background check.¹ Members are responsible for obtaining a prospective employee's fingerprints and certain required identifying information.² Members then submit the prospective employee's fingerprints together with the required identifying information to NASD. NASD, in turn, submits these fingerprints to the FBI. NASD also makes the fingerprint results, which may include information about criminal charges and convictions that are required to be reported on the Form U4 (the Uniform Application for Securities Registration or Transfer), available to the employing member and regulators, consistent with applicable federal laws and FBI and NASD requirements.

Members use the fingerprint results to assist them in making informed hiring decisions. Among other things, members and NASD must determine whether a prospective employee is subject to a statutory disqualification under Article III, Section 4 of NASD's By-Laws. It is essential that the fingerprint results being reported to a member actually belong to the prospective employee, so that the person's criminal history, or lack thereof, is accurately reported to the member. Certain criminal convictions may cause an individual to be subject to a statutory disqualification. In addition, this information helps members fulfill their obligations in connection with hiring persons who are seeking to work in NASD-registered capacities. Under Rule 3010(e), members are required to ascertain by investigation the good character, business repute, qualifications, and experience of persons seeking NASD registration.

Accordingly, a member's supervisory procedures and internal controls surrounding the hiring process should attempt to ensure that the fingerprints submitted to the FBI belong to the individual seeking employment. These procedures and controls may differ, depending upon whether the member fingerprints prospective employees in-house, or requires or allows prospective employees to be fingerprinted by a third party in a separate location. Members should use all available information gathered in the hiring process (both from the Form U4 responses, if applicable, and from any other sources gathered as a result of the member's investigation of a prospective employee, including, but not limited to, any private background checks conducted by the member and communications with previous employers), to confirm that the person being fingerprinted is the same person who is seeking employment with the member.

Suggested "Best Practices"

Members' internal procedures addressing the fingerprinting of prospective employees as required under Exchange Act Section 17(f)(2) and Exchange Act Rule 17f-2 should attempt to ensure that the person being fingerprinted is the same person who is seeking employment with the member. NASD suggests the following best practices.

Members that elect to fingerprint prospective employees in-house should consider:

- ♦ training appropriate staff on how to verify the authenticity of the prospective employee's identification cards, and to roll high-resolution fingerprints that will be accepted by the FBI;
- ♦ requiring that the individual being fingerprinted present at least two forms of identification immediately before fingerprints are taken, one of which is a valid picture driver's license, state identification card, or U.S. passport; if there is any doubt about the individual's identity, consider requiring additional picture identification;
- ♦ requiring the individual to submit a signature for comparison purposes;
- ♦ including an attestation form in the fingerprint process, whereby the individual seeking to become associated attests in writing and in person that he or she is in fact the person being fingerprinted³; and

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- ♦ requiring the person rolling or otherwise taking the fingerprints to attest in writing that he or she has followed the member's compliance procedures.

Members that rely on third parties in an off-site location to collect fingerprints and to verify the identity of the person being fingerprinted should consider:

- ♦ requiring applicants to be fingerprinted at a local law enforcement office, where officers likely are trained to verify identity as well as the authenticity of identification cards presented;
- ♦ notifying local law enforcement officials to inform them of securities industry fingerprinting requirements, and to discuss reasonable identification verification procedures;
- ♦ giving applicants a list of acceptable third-party vendors that provide fingerprinting services; and
- ♦ discouraging the practice of allowing applicants to fingerprint themselves.

Conclusion

NASD encourages its members to review and, if necessary, update their fingerprinting procedures so that, to the extent possible, they are able to verify the identity of persons submitting fingerprints in the employment process. Robust procedures will help reduce the possibility of an individual entering the securities industry under an assumed identity, thereby furthering NASD's goals of investor protection and market integrity.

Endnotes

- 1 Section 17(f)(2) of the Securities Exchange Act of 1934 and Exchange Act Rule 17f-2 govern the fingerprinting of securities industry personnel. Unless otherwise exempted from these requirements, every member of a national securities exchange, broker, dealer, registered transfer agent, and registered clearing agency must: (1) require each of its partners, directors, officers, and employees to be fingerprinted; and (2) submit these fingerprints to the Attorney General or its designee (the FBI) for identification and appropriate processing.
- 2 The identifying information is required either by the FBI or NASD and generally includes the person's full name; Social Security Number; date and place of birth; physical features such as height, gender, and eye color; the firm's name, address, and CRD® number; and certain transaction identification numbers required by the FBI.
- 3 For any person seeking NASD registration, this attestation would be in addition to the attestation on the Form U4, whereby the person attests to the completeness and accuracy of the information submitted on the Form.

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