



The National Association of Investment Professionals

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January 3, 2003

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

Subject: NASD Regulation, Inc.'s Request for Comment on NASD Notice to Members 02-74;
Proposed Changes to Public Disclosure Program

Dear Ms. Sweeney:

Please accept this comment letter on behalf of the National Association of Investment Professionals ("NAIP") in response to Notice to Members 02-74 requesting comments to the NASDR proposal regarding changes to the PDP program. The NAIP welcomes this opportunity to provide input on this very important subject.

As we understand the proposal detailed in NTM 02-74, the NASDR is considering disclosing U-5 information as soon as its filed (as opposed to the current practice of only disclosing information when the broker becomes re-registered with a new firm). While the NAIP supports timely and accurate disclosure to the investing public, please note that we have serious reservations regarding the proposed changes. The main area of concern rests with the potential for public disclosure of defamatory material on a Form U-5 that the broker may be in the process of litigating before he becomes re-registered with a new firm. As I am sure you are aware, derogatory information on a registered representative's record often makes it difficult for the broker to obtain new employment. Consequently, brokers who believe they have been defamed often begin arbitration actions in order to clear their names before such information is made public. By disclosing such information before there has been any sort of official determination as to the defamatory nature of the information, a broker will suffer irreparable damage to his reputation.

In October of 2000, the NAIP commented on the NASDR's creation of a comment field to be used by member firms to correct inadvertent errors or clarify certain unusual circumstances on a broker's CRD record. As noted in that comment letter there were several aspects of the functionality which were troubling including the fact that comments added via the new mechanism would not be made available to the brokers the ability the NASDR gave firms to delete the comments at will. Notwithstanding our concerns, however, the NASDR implemented the system and pledged to take disciplinary action against member firms who abused it. By allowing the member firm to delete the

comments without maintaining a record thereof and without even reviewing the comments in the first place, we wonder how the NASDR has been able to monitor the system for abuse. Since the implementation of the Web CRD comment function, the NAIP has learned of numerous instances of abuse by member firms, yet we have failed to see any disciplinary action taken against such firms. Additionally, on October 29, 2001 the NAIP also commented on the NASDR's proposed changes to expungement orders. The NAIP expressed several concerns with that proposal; noting the additional cost to brokers and the added impediments that the NASDR was imposing on them.

When all these factors are considered together with the most recent proposal, it appears that the NASD is engaging in a coordinated effort to allow member firms to defame their former employees without affording the brokers an effective opportunity to challenge the accuracy of publicly disclosed information and/or clear their names. The SEC blocked the member firm's from implementing a qualified immunity rule yet the NASDR seems to be doing everything in its power to quietly erode the brokers right to protect themselves from defamation and is effectively providing member firms with a "back-door qualified immunity". This is unacceptable.

Let us make it perfectly clear: It is the NAIP's opinion that negative (and potentially defamatory) information on a Form U-5 should not be disclosed (or indeed even filed with the NASD) until the member firm has proven that the broker has seen the information and has had a chance to challenge the validity of the accusations of the member firm. Fairness dictates nothing less.

Very truly yours,

Alan Foxman, Esq.
Chairman Government and Regulatory Committee

cc: T. Sheridan O'Keefe
President, National Association of Investment Professionals