

Public Investors Arbitration Bar Association

December 2, 2002

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

RE: Notice to Members 02-74
Public Information Review

Dear Ms. Sweeney:

I write as President of the Public Investors Arbitration Bar Association (PIABA) in response to the NASD's request for comments to Notice to Members 02-74 ("the NTM") regarding a proposed increase in the information available to public investors via NASDR's Public Disclosure Program (PDP).

As a preliminary matter, PIABA has for years now called on the NASD to change the expungement practices affecting the accuracy and reliability of the information available on reports generated by the CRD system. The NASD has recently announced a rule proposal to dramatically limit the instances in which a broker or firm can be granted an expungement of his/her practices, and given the link between the CRD system and the PDP, those changes will presumably go a long way toward enhancing the PDP program as well.

PIABA's comments to the specifics of the NTM follow:

Reference to Other Sources of Information

As noted on pages 799-800 and footnote 9 of the NTM, certain information that would be of interest to investors is not permitted to be reported via the PDP, but may be available through state securities regulators. In order to accomplish its goal of making the PDP a central information clearinghouse, the NASD should continue to push for changes in the laws and regulations which limit the dissemination of information through the PDP, and PIABA stands ready to assist the NASD in that effort.

In the meantime, however, PIABA believes the PDP should contain a far more prominent disclaimer of the limits on the information contained therein than currently exists on the PDP site. That disclaimer should include the

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information which is not available on the PDP and should be coupled with an equally prominent disclosure that investors may be able to obtain additional information through their state regulator. While the PDP interface currently refers investors to their state regulators and provides contact information and links to state regulators, that information is contained under the heading "Other Investment Professionals" and doesn't appear until after the investor is prompted to enter the PDP and the discussion of Investment Advisor information. PIABA suggests that the public investor would be better served by prominently positioning the "limited information disclaimer" and hyperlink to the state regulator contact information in the initial, opening discussion of the PDP program.

Increase Information Available

PIABA believes all information contained on a full "legacy" CRD report which one could obtain through a state securities regulator should be available and reported on the PDP system. Given the public availability of this information through state regulators, there is no legitimate argument in opposition to limiting the information available through the PDP. Unfortunately, many investors do not know how to access their state regulator or what information to request, so that limiting this information on the PDP serves no purpose other than to frustrate the public investor's information search.¹ All registered representatives and member firms are allowed to respond in their own words to matters required to be reported on Forms U-4, U-5 and BD. As such, any argument by the securities industry that the matters contained in a PDP report mimicking a full legacy CRD may be taken out of context or be unreliable is a hollow argument. If a complaint is "out of context" or otherwise "unreliable," it is only because the member firm or registered representative has failed to avail themselves of the opportunity to "tell their side of the story."

¹ PIABA recognizes that the NASD - with the SEC's support - has asked Congress to amend the provisions of the 1990 Penny Stock Reform Act, which established the PDP program, to extend immunity to the NASD for information provided online. PIABA supports these efforts and will provide whatever resources PIABA or its members can offer to help the NASD and SEC persuade Congress to effect the proposed amendments.

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PDP Report "Updates"

PIABA likewise endorses the notion of PDP Report "updates" as discussed in the NTM. Firm changes, new customer complaints and arbitration proceedings, disciplinary proceedings instituted by the SROs or the SEC and termination information should be included in such updates.

Putting the Information Provided "in Context"

As noted above, given the nature of the forms from which the information typically constituting a full legacy CRD report is derived and the opportunity given member firms and registered representatives to "tell their side of the story" on those forms, PIABA suggests that any objections to more complete PDP disclosure on the basis that "the information may be taken out of context" are largely unfounded and do not comport with reality. NTM 02-74 suggests the possibility of providing statistical information for the purpose of putting the individual representative's or member firm's PDP Report in context. While PIABA is not averse to this proposal in theory, PIABA would be opposed to the presentation of any such statistical information in a fashion which would or could serve to undermine or diminish the significance of the matters reported. For example, "unsuitability" complaints undoubtedly form the basis of a statistically significant number of all complaints filed against registered representatives and member firms. Any accompanying statistical information provided by the PDP Report should not be presented in such a way as to diminish the significance of those types of complaints against a particular registered representative or member firm simply because those complaints happen to fall into an overall statistically significant category of complaints.

Implementation of Additional Safeguards to Ensure Timely Reporting of Disclosure Information

This should be one of the NASD's highest priorities, whether instituted in connection with a plan to improve the PDP system or otherwise. Over the last several years, PIABA's members have noted a significant increase in the failure of member firms and associated persons to timely report customer complaints and arbitration claims.

PIABA agrees with all of the suggestions contained in the NTM and offers another suggestion that it believes would significantly increase compliance with reporting obligations: Require that every arbitration claim received by NASD-DR and every written customer complaint received by the NASD disciplinary department - and all initial responses thereto - be filed with the CRD department for immediate input into the CRD system. Additionally, an actual copy of such arbitration complaint/written customer complaint should be made a part of the CRD and PDP

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reports. Given the NASD's already extensive use of PDF format, this should not present any extensive investment by the NASD in either technology or staff and would, in fact, lessen the manual data input burdens on those in the CRD department and remove any concerns that either the complaint or the answer thereto would be mischaracterized by those manually entering the data.

Improve Ease of Access to Arbitration Awards

As NASD-DR is well aware, in response to member complaints about the difficulty of using the system currently offered through the NASD portal, PIABA recently began providing its own arbitration awards database to its members. Quite frankly, the system offered through the NASD portal, designed as it is to only allow searches one month at a time, is virtually useless to any attorney (or more significantly, *pro se* party) attempting to educate himself/herself on potential arbitrators listed on an NLSS list without devoting an entire day to the process, or alternatively, spending significant amounts of money to procure the information "the old fashioned way" through SAC. If the NASD is interested in leveling the playing field between public customers and the more well-heeled securities industry, or, for that matter, simply making it easier for a public customer to conduct his/her own "due diligence" with regard to choosing a broker, a complete revamping of the search capabilities of the awards database accessed via the NASD portal is in order. PIABA had its own proprietary technology developed for the purposes of its own awards database which, I'm proud to say, is more advanced than anything else currently in existence for that purpose. PIABA would be happy to discuss detailed suggestions with the NASD as to how to improve the NASD arbitration awards database based on our own experiences and technology.

PIABA agrees with the NASD's statement, at page 799 of the NTM, that the PDP "is a critical investor education and protection service," and endorses anything which would increase the flow of information readily and easily available to the public investor. We heartily commend the NASD's efforts in this regard.

As always, please don't hesitate to contact me with any questions or comments.

Sincerely,



J. Pat Sadler, President
PUBLIC INVESTORS
ARBITRATION BAR ASSOCIATION