

M E M O R A N D U M

January 22, 1988

TO : Chairman Ruder  
Linda Fienberg  
Dan Goelzer  
Paul Gonson  
Nina Gross  
George Kundahl  
Kathryn McGrath  
Linda Quinn

FROM : John Penhollow

*John Penhollow*

SUBJECT : Response to NASAA Letter of January 14, 1988

The attached letter was sent to Wayne Howell and Andrew Maguire of NASAA in response to their letter of January 14. Since the NASAA letter has generated considerable interest within the Commission and perhaps on the Hill as well, I want to make you aware of our response which was prepared with input from the Chairman's Office, General Counsel and Legislative Affairs as well as the operating divisions.

If you receive any feedback that I may not be aware of, please share it with me.

Attachment

cc: Commissioner Peters  
Ken Fogash  
Mary Joane Hoene  
Carol Scott  
Ernestine Zipoy

*Ruder*  
*Edgm/*  
*for*  
*meeting*



UNITED STATES  
SECURITIES AND EXCHANGE COMMISSION  
WASHINGTON, D.C. 20549

OFFICE OF  
EDGAR MANAGEMENT

January 22, 1988

*Jim Meyer - NASAA Pres*

*500,000 (5-10 m)*

*26 M*

*Long  
Time*

Mr. H. Wayne Howell  
Chair, NASAA Edgar Committee  
2 Martin Luther King Jr., Dr.  
Suite 802, West Tower  
Atlanta, Georgia 30334

*Lee Patson - Poulson - Lawyer/Comment*

Mr. Andrew Maguire  
NASAA Vice President/CEO  
555 New Jersey Ave., N.W.  
Suite 750  
Washington, D.C. 20001

*Dwayne Witt - Systems*

Gentlemen:

In response to your letter of January 14, please be assured that the North American Securities Administrators Association (NASAA) will have adequate time to review and comment on the proposed revisions to the State Agencies section, C.6.3.2, of the Edgar Request for Proposals (RFP) before it is released as an amendment. As I stated during our phone conversation on January 15, the Commission has issued Edgar RFP Amendment 12 excluding modifications to the State Agencies section, C.6.3.2, and the closely related section on Self-Regulatory Organizations (SROs), C.6.3.3. The cover letter for Amendment 12 indicates that these sections are still under review and will be released as a separate amendment in about four weeks.

Chairman Ruder would like to meet with you as soon as possible, but since he will be out of the city or giving Congressional testimony during most of this week and next, the earliest we can meet with him is at 10:00 a.m. on February 4. Between now and then I hope we will be able to identify and resolve key issues regarding state agency access to the Edgar system.

*① \$ 2 1/2 for state work -- Then withdrawn because Fed couldn't do w/o Congress*

*② Language agreed to -- state faculty Free Level I*

*③*



H. Wayne Howell  
Andrew Maguire  
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Before commenting on the specifics of your letter, it is important to note that NASAA and the Commission previously agreed on the prior language of RFP section C.6.3.2. That language required the contractor to negotiate in good faith with an agent selected by the States to provide filing information and other services to the States to permit an effective, affordable and efficient full text review of state-designated filings. The contractor was expected to recover its costs and earn a reasonable rate of return through service fees charged to those filers using the state facility. Furthermore, the contractor was required to make available to the state agent the software used or developed for the SEC A&R subsystem and to provide a potential capability in the receipt subsystem to receive and distribute the information necessary to make the state facility viable. Finally, the state agent was to be provided a Level I subscription to the Edgar data base at no charge.

✓ To make the Edgar interface with both the States and the SROs more uniform and less costly to the Federal government, our proposed revision of C.6.3.2 deletes the free Level I subscription and substitutes an identification and routing capability in the Edgar receipt and A&R subsystems. This would provide a real-time, direct feed of electronic filings and header information to the state agent and/or the States following acceptance of these filings by the Commission. This approach assumes the state agent and/or the States have or will establish the necessary computer and communication facilities to receive, process, store and retrieve the filing information transmitted from the Edgar system.

Since the state agencies may want to receive state-only filings and correspondence as well as Edgar filings in electronic form, the Commission may require the contractor to make available to the state agent and/or the States the software used or developed for both the receipt subsystem and the A&R subsystem. We are also willing to incorporate the "negotiate in good faith" clause in the revised version of section C.6.3.2 although it is not part of the draft that I provided Andrew Maguire, Lee Polson and Duane Whitt on January 14.

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*Do we care?*

In summary, the principal difference between what is now being proposed and what was accepted by NASAA and the Commission previously is the replacement of the free Level I subscription with a real-time, direct feed of all state-regulated electronic filings. In addition, the Commission may make the software for the receipt subsystem as well as the A&R subsystem available to the state agent and/or the States. The state agencies could use this software to receive, process, store and retrieve Edgar or state-only electronic filings in their own computer facilities.

*Cost?*

Wayne, we discussed the impact of this approach on the proposed NASAA facility during our phone conversation on January 5. You stressed the need for online archival access to the Edgar data base both to limit the need for archival storage of state-designated filings at the NASAA facility and to permit state regulators to retrieve filings not routed to the States as part of their designated subset. I indicated that a Level I subscription would not provide the online archival search capability that NASAA and the States may want. I also noted that implementation of the Edgar receipt and A&R subsystem software by NASAA and/or the States would give these agencies the same archival retrieval and review capability as direct access to the Edgar system would provide. You felt this approach would be too costly for the States, since NASAA or the States would have to pay license fees for the proprietary components of this software and acquire the computer facilities necessary to operate it. I noted that the software could be tailored to operate on a much less expensive hardware facility than the full Edgar system by keeping fewer filings online and using magnetic tape for archival storage of state-designated filings. You indicated that there could still be situations where the State agencies would need direct access to the full Edgar data base for regulatory purposes. Therefore, you asked us to consider giving the State regulators the same access to the Edgar data base that Commission users will have. I said we would consider the direct access option again and get back to you as soon as possible.

Following internal discussion of the issue, I phoned you on the morning of January 7. Since I was unable to reach you, I elected to brief Duane Whitt who happened to be in our offices that day. After updating Duane on our prior phone conversation, I explained why we were still concerned about giving non-SEC regulators direct access to the Edgar data base. During that

*Could we limit the #?*

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conversation, I also told Duane how we planned to modify section C.6.3.2 for release as part of Amendment 12 on January 15. I suggested that he review this with you and then get back to me if further discussion was needed. We proceeded with the preparation of specific language for section C.6.3.2 in anticipation of reviewing it with NASAA before its release as part of Amendment 12.

It was not until January 13 when Lee Polson called to inquire about the release date for Amendment 12 that I realized more time would be needed to discuss the proposed changes to section C.6.3.2. In retrospect, it is clear that we both failed to communicate as fully as we should have on this issue, and I regret that you felt compelled to submit a formal request to delay the amendment of section C.6.3.2. As agreed on January 15, we will direct future communications on Edgar to Andrew Maguire and consult with Lee Polson and Duane Whitt as NASAA's representatives on Edgar legal and technical issues, respectively.

The Commission staff welcomes the opportunity to engage in meaningful discussions with NASAA on the language of section C.6.3.2 and the underlying issues. However, please recognize that we continue to have serious concerns about giving non-SEC regulators direct access to the Edgar data base for the reasons as noted below.

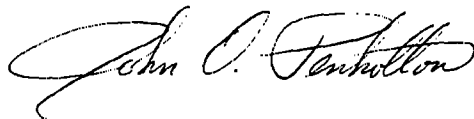
If the Commission were to grant non-SEC regulators direct access to the Edgar data base, the number of Edgar user terminals would increase significantly over time. It is also likely the functionality of Edgar would need to be broadened. As a minimum, this would increase the frequency and complexity of Edgar data base searches and related transactions. The federal cost of maintaining system capacity and responsiveness under these conditions would undoubtedly exceed the cost of simply identifying and routing state-designated electronic filings to the state agent and/or the States as we propose.

Management of the Edgar project would gain an added degree of complexity if non-SEC users were to become actively involved in the procurement and operation of Edgar. This could easily delay the award of the Edgar contract for several months. In our view, this would not be in the best interest of the States or the Commission at this stage.

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I believe we made progress in finding the middle ground on these issues during our meetings with Lee Polson and Duane Whitt yesterday. As I indicated at the conclusion of those meetings, we are anxious to understand more fully the State requirements for direct access to Edgar. We also want to explore alternatives to our proposal which will satisfy State regulatory needs without increasing the federal cost of Edgar by significant amounts. Hopefully, we will be able to reach agreement on a reasonable alternative by February 4 when we meet with Chairman Ruder.

Very truly yours,

A handwritten signature in cursive script that reads "John O. Penhollow". The signature is fluid and elegant, with a large initial "J" and "P".

John O. Penhollow  
Director