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April 19, 2004

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

Re: Notice to Members 04-23 – reply sent via e-mail to: pubcom@nasd.com

Dear Ms. Sweeney:

Thank you for giving us the opportunity to comment on Notice to Members 04-23 *Inactive Disclosure Review Registration Status*.

We agree with the importance of maintaining accurate and complete Form U-4 information. This is vital in order for the NASD to properly conduct their review of disclosure items and for the investing public to have confidence in their selection of a registered representative. The integrity of the information available through the NASD must be unquestioned. However, as described in more detail below disclosure needs to be accurate and appropriate as well as prompt. Additionally, the creation of a new status that would require a registered representative to cease doing business would be cumbersome for a member to administer and in many instances would be unduly harsh on the registered representative and his customers. Requiring a registered representative to cease doing business should be a consequence of last resort.[1]

For the reasons set forth below, we believe that the Proposal would be difficult for members to administer and may unnecessarily harm registered representatives.

DISCLOSURES SHOULD BE BOTH ACCURATE AND PROMPT

The NASD requests for information, because of their very nature, can require substantial effort to prepare a comprehensive response. In some cases, the requests ask for documents that are many years old. Acquiring and collating this information can be daunting. It must be gathered from a myriad of sources including courts, state

[1] It is noted that the NASD has only recently enacted a Late Disclosure Fee to address this issue.

agencies, and other regulators and can require long timeframes that are not in the control of the member. This does not diminish the requirement of the firm to remain diligent in its efforts to collect the necessary information, but it does raise difficulties in a bright line test of only 30 days. The need for timely disclosure of reportable events must be weighed against the need for accuracy. Misleading or erroneous disclosure should not be substituted for prompt disclosure.

ADMINISTRATION OF THIS NEW RULE WOULD BE CUMBERSOME

Despite the need for accuracy, this rule might force disclosures to be submitted before all the needed information can be gathered. Additional filings would be needed to correct disclosures that were later deemed to be inaccurate or incomplete but filed prematurely due to time constraints. Even requesting an extension of the filing period would be one more step in an already difficult process.

Further, the complexity of ensuring that all relevant parties are notified of a registered representative's new inactive status would be great. Every department and many individuals, from the representative's OSJ manager to the representative himself, would need to be informed and aware of all the ramifications and consequences of this new status. The same would be needed when the registered representative's status changed back to "Approved." This would be difficult to administer and would be costly in terms of the time required to ensure compliance.

THE PROPOSED NEW STATUS WOULD BE UNDULY HARSH TO THE REGISTERED REPRESENTATIVE

It is not always clear when a disclosure must be made on a Form U-4. Reasonable persons can differ as to whether a particular event falls within one of the reportable items. Requests for information concerning a potential disclosure are not always clear and, as set forth above, often require substantial effort to prepare a response. Information requested is not always in the possession of the registered representative, but rather in the possession of persons or entities over whom the representative has no control.

Nevertheless, the rule would propose what is, in essence, a summary suspension without any opportunity for a hearing on the merits. The rule states that it is similar to the process for failure to meet continuing education requirements. However, this comparison is not appropriate. In the continuing education situation, it is clear whether the person has taken the appropriate regulatory element course or has not. In a failure to report a disclosable item, it is not always clear that the item must be reported or that it is possible to comply with the request for information.

To suspend a representative under these circumstances, without any review on the merits would be unfair to the representative and not necessarily in the interests of his/her customers.

CONCLUSION

In conclusion we believe that the NASD should reconsider the implementation of a new "Inactive Disclosure Review" status. It would be difficult for a broker-dealer to manage and could cause serious harm to a registered representative and his customers. If the NASD feels compelled to institute a process whereby a registered representative is put on an inactive status if they feel disclosures are not forthcoming, it should be only after a much longer time period, such as the 120 days given for continuing education, and should include a hearing on the merits before summarily suspending a registered representatives ability to conduct his business.

Respectfully submitted,

Jack R. Handy, Jr.
President & CEO