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May 21, 2008

VIA E-MAIL
Marcia E. Asquith
Office of the Corporate Secretary
FINRA
1735 K Street, NW
Washington, D.C. 20006-1500

Re: Proposed Changes to Forms U4 and U5

Dear Ms. Asquith:

The Securities Arbitration Clinic at St. John's University School of Law is very pleased to accept this opportunity to comment on the proposed rule changes to Forms U4 and U5 concerning the reporting of customer complaints as set forth in Regulatory Notice 08-20 ("RN 08-20"). The Clinic strongly supports the proposed changes to these Forms.

In addition to representing aggrieved investors, the Securities Arbitration Clinic is committed to investor education and protection. Accordingly, the Clinic has a strong interest in the rules governing the public disclosure of information about brokers, and ensuring that investors have sufficient information available to them to make informed decisions when deciding which investment professional is appropriate for them.

There is a serious loophole in the current versions of the Forms U4 and U5. If a customer makes a written complaint implicating the actions of a broker, that complaint is reported on that broker's Form U4 and/or U5. However, if a customer files an arbitration or civil litigation implicating the very same actions of a broker, but fails to name the broker in the caption of the proceeding, that complaint is not reported against the broker. The same inconsistency currently exists with respect to the reporting of a settlement of a customer complaint versus the settlement of an arbitration or civil litigation in which the broker is not named in the caption. The proposed changes help to close this serious, and

inconsistent, loophole. The proposed changes would eliminate the currently inconsistent reporting requirements by requiring arbitrations and civil litigations to be reported on a broker's U4 and/or U5 if they are settled for $10,000 or more, in the same manner as written complaints are now reportable. With respect to question 14I(2), we do suggest that the language that currently reads: "or resulted in an arbitration award or civil judgment against the named respondent(s), regardless of amount" be changed to "or resulted in an arbitration award or civil judgment against any named respondent(s), regardless of amount", to further clarify that the matter is reportable even if the award or judgment is not specifically rendered against the broker.

Additionally, FINRA proposes to raise the reporting threshold from $10,000 to $15,000. By raising the threshold, the reporting requirements on the Forms U4 and U5 would more closely mirror those of NASD Rule 3070. While we agree that the reporting requirements should be consistent, we are concerned that raising the threshold would eliminate the reporting of certain complaints that are currently reportable. In order to alleviate this situation and identify claims that are settled for lesser amounts, we believe it would be appropriate to also add a percentage criteria such as, "if the settlement is for less than $15,000, it must still be reported if the settlement represents 50% or more of the claimed damages."

With respect to the proposed changes to question 14I(3), there does remain a loophole, albeit the loophole is smaller than before. Question 14I(1) encompasses any arbitration and civil litigation in which the broker has been named in the caption. The question removes loopholes by covering all possible situations, that is, the complaint is reportable: (a) if it is still pending; (b) if it resulted in an arbitration award or civil judgment against the broker; or (c) if it was settled for $10,000 (proposed to be $15,000) or more. The proposed changes to question 14I(2) would require the reporting of written complaints and arbitrations and civil litigations not naming the broker which are settled for $10,000 (proposed to be $15,000) or more or that resulted in an arbitration award or civil judgment against the named respondent(s) regardless of the amount. With respect to the proposed changes to question 14I(3), only those customer complaints and arbitrations and civil litigations not naming the broker which were initiated in the past 24 months are reportable.

FINRA offers guidance on its website concerning how these questions are currently to be answered. The following is taken from the page on FINRA's website entitled, "Form U4 and U5 Interpretive Questions":

> Question 14I(3)
>
> Q1: If a registered person reports a customer complaint under Question 14I(3), but after 24 months the complaint has neither been settled for $10,000 or more, nor evolved into arbitration or civil litigation, should the registered person file an amended Form U4 changing the answer to Question 14I(3) to "No"?
>
> A: Yes, the registered person should do so. (Originally posted 02/13/98; revised 09/01/99)

This interpretation is problematic as there is no contemplation for those cases where the matter is still being investigated or pursued. How would the broker be required to answer the new question if the arbitration or civil litigation implicating the actions of the broker was filed more than 24 months prior, but is still pending? Presumably, under this scenario, the broker would be able to change this answer to no. However, it is not uncommon for arbitrations and civil litigations to last longer than 24 months. In fact, by prolonging the matter, the broker would be benefited because the matter would no longer be reportable.

The 24 month limitation made sense when the question only encompassed written complaints. This ensured that complaints that were not pursued did not remain on the broker's record. However, the 24 month limitation is not appropriate when an arbitration or civil litigation is involved. There is no similar time limitation on question 14I(1). Thus, there should not be a time limitation on that part of question 14I(3) that applies to arbitrations and civil litigations.

Rather than including arbitrations and civil litigations with written complaints, it may be more comprehensive to treat them separately, *i.e.*, in the same manner as if the broker was named. As opposed to changing the current questions, we propose the following additional question:

> Have you ever been the subject of an investment-related, consumer initiated arbitration claim or civil litigation, not otherwise reported under question 14I(1) above, which alleged that you were involved in one or more sales practice violations and which:
> (a) is still pending, or;
> (b) resulted in an arbitration award or civil judgment against any named respondent(s), regardless of amount, or;
> (c) was settled for an amount of $10,000 [$15,000] or more?

This would close the loopholes and ensure full and complete disclosure, regardless of whether or not the broker has been named in the caption of the arbitration or civil litigation.

RN 08-20 recognizes that it is becoming more prevalent to name the firm as the sole respondent in arbitration claims. Because of the difficulties entailed with having a matter expunged from a broker's record, settlement is often facilitated by not naming the broker as a party to the arbitration. However, NASD Rule 3070(a)(8) requires a firm to report to FINRA whenever a broker "is the subject of any claim for damages by a customer, broker, or dealer which is settled for an amount exceeding $15,000". Many firms interpret this to mean that, if a broker's actions have been implicated in a complaint filed in arbitration or civil litigation, then the broker is the subject of a claim for damages regardless of whether or not he or she has been named, and any settlement of over $15,000 is reportable by the firm pursuant to NASD Rule 3070. Accordingly, the proposed changes should not make these firms any more or less likely to settle, as the

reporting requirement exists independent of the Forms U4 and U5. In fact, the proposed changes should act to level the playing field, so to speak, by making such settlements reportable in all cases. There will be no room for interpretation of NASD Rule 3070, and the brokers will have the opportunity to provide their own explanation. Moreover, if a broker has in fact acted inappropriately, he or she will not be protected by a tactical decision by the customer's attorney not to name the broker in the caption of the arbitration or civil litigation. Accordingly, the public will have fuller and fairer disclosure of the broker's conduct.

As discussed above, we believe that the proposed changes to the Forms U4 and U5 are necessary to close some of the loopholes that currently exist in the reporting system. However, we believe that it would be possible to close the loopholes even further, thus ensuring fuller and more accurate disclosure of a broker's customer complaint history. We ask that FINRA continue to consider other changes that may be made to Forms U4 and U5 to address the protection of the public investors. Thank you for your consideration of this important matter.

Very truly yours,

/s/ Christine Lazaro

Christine Lazaro

/s/ Lisa Catalano

Lisa Catalano