

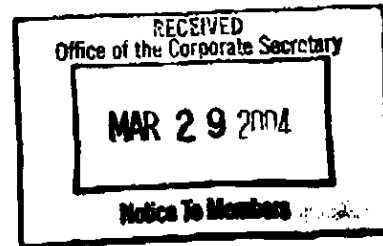
CANTELLA & Co., INC.

2 OLIVER STREET, BOSTON, MASSACHUSETTS 02109
TELEPHONE (617) 521-8630 • FAX: (617) 521-8604

Intensive for INDEPENDENT REPRESENTATIVES
REGISTERED INVESTMENT ADVISORS
BROKER/DEALERS

March 25, 2004

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



RE: NTM 04-23 re Proposed Inactive Disclosure Review Status

Dear Ms. Sweeney:

Please accept this letter as my comments on the proposed "Inactive Disclosure Review Status" as described in Notice to Members #04-23:

1) "Should NASD amend IM-9216....." Yes. As far as I am aware, there should be no inconsistency between requirements to keep current Form U4, Form BD, etc. and Form U5. I do believe that there should be some sort of reporting cut off date that is related to the length of time an individual has ceased to remain as an associated person of the reporting broker or dealer. For example, assume I terminated a representative due to the fact that the individual had voluntarily resigned their position and a Form U5 was promptly filed. Subsequent to that filing, I learned through news accounts that the former registered representative has been disciplined by the CFTC for an infraction of the rules of that agency. Do I have an obligation to update the Form U5 to disclose a regulatory action (or criminal arrest as another example)? I may not be in a position to "know" whether or not the inappropriate behavior was "related" to that individual's employment with my firm. I am concerned that there will be instances in which the requirement to update a Form U5 is not clear. At that point, one's judgement to not file an amendment may evolve into a Rule Violation.

2) (a) Inactive Disclosure Review: I am opposed to the proposal for one primary reason. That reason being an assumption that the failure to report or update a disclosure item is due to negligent behavior on the part of the firm. The reality of the problem is that there are many instances in which an assumption of negligence would be accurate. Unfortunately, there are also times in which it is literally impossible to "update" a disclosure item to the satisfaction of those who interpret disclosures on behalf of the CRD. I am referring to a "requirement" to "obtain" very old documents, stale information or other data that is generally related to disclosure items relative to either an arrest or an allegation of a "criminal" DRP. I have seen requests for documents that relate to incidents that were alleged to have occurred over forty years ago. How am I, sitting in Boston, supposed to obtain forty-year old court records from St. Louis, MO? This is not a hypothetical question as this specific event occurred during an attempt to

register one of our representatives a few years ago. I am also aware of an individual who was (and is) the victim of mistaken identity in that his CRD discloses a request to document an arrest that never occurred. How am I supposed to clear up such items as these? At the very least, the proposal should be changed to allow for a member to explain the reason for failing to respond to an inquiry from the CRD as opposed to automatic finding of a rule violation.

(b) I do not believe that the 30-day and supplemental 10-day notice provisions provide adequate time for members to report matters or otherwise resolve deficiencies.

(c) Additional comments – I agree totally that there is no reason to ignore a legitimate inquiry from the CRD to resolve an open item. I believe it is the responsibility of the member firm to promptly receive, review and resolve such matters to the extent that they may be resolved. However, please recognize that there are some matters that are not easily resolved, especially when one is requested to provide old documents. On occasion, there may be questions that require input or information from a prior employer (and that prior employer may no longer be in the securities business). I urge the Association to consider the motives and good faith attempts made by member firms to resolve an inquiry prior to imposing a judgment of a violation having occurred.

Thank you for the opportunity granted to me to state my views on this matter.

Sincerely yours,
Cantella & Co., Inc.



Philip C. McMorrow, CFP®
President