

ARM *Association
of Registration
Management, Inc*
Post Office Box 133, Bowling Green Station, New York, NY 10274

May 27, 2008

Ms. Marcia E. Asquith
Office of the Corporate Secretary
FINRA
1735 K Street, NW
Washington, DC 20006-1500

Re: Regulatory Notice 08-20 – Proposed Revisions to Disclosure Questions on U4 and U5

Dear Ms. Asquith,

The Association of Registration Management (“ARM”) appreciates the opportunity to comment on this very important proposal. ARM applauds the efforts of the Financial Industry Regulatory Authority, Inc. (“FINRA”) to address this issue of revising the U4 and U5 disclosure questions to capture previously unreported items.

ARM believes the proposal impacts the reporting of arbitrations and civil lawsuits in two ways:

- Complaints, which do not name the registered representative (“RR”) in the caption or style of the complaint, but make reference to alleged involvement in the body of the complaint (ARM agrees with the proposal that such matters should be reported and believes that minimal burden will be encountered by firms to accurately report such complaints against the appropriate RRs as the RR would be easily identifiable from the complaint)
- Complaints, which do not name the RR in the caption, style or body of the complaint but would require firms to “reasonably identify” the RR who is the subject of the complaint (ARM does not support this)

ARM wishes to express, however, the following concerns in relation to the aforementioned proposal as it relates to the disclosure question revisions:

First, Regulatory Notice 08-20 refers to arbitrations and lawsuits, in which an RR is not identified as a “form of customer complaint”. ARM believes this will cause confusion for industry members, who have long complied with the reporting requirements for formal Litigation and Claims in Arbitration under 14I(1) and customer complaints under 14I(2) and (3). This proposal will now require formal legal actions to be reported against unnamed RRs as customer complaints under questions 14I(2) and (3) instead of 14I(1) of the Form U4.

Second, the Notice characterizes the claims against an unnamed RR in an arbitration as a form of a customer complaint. ARM would argue that if this characterization is true, it is similar to an oral complaint and as FINRA itself recognized in Regulatory Notice 08-24 "...oral complaints are more difficult to capture and assess, and they raise competing views as to the substance of the complaint being alleged; consequently oral complaints do not lend themselves as effectively to an examination program as written complaints." Similarly, ARM would argue that unnamed RRs in an arbitration or litigation complaint are similar to an oral complaint. They are difficult to capture and assess and do not lend themselves to an exam program. ARM suggests that FINRA take an approach similar to oral complaints and only report against unnamed RRs who are the *subject of a complaint at settlement* of the matter if the settlement meets the monetary threshold.

Next, as you know, the initial allegations in an arbitration or lawsuit can be vague and ambiguous. They often do not name an RR in the caption, style or body of the complaint and may not identify a specific transaction or time period. It may often be difficult for firms to determine when the complaint is filed if a sales practice allegation has been made, when it occurred, who is the appropriate "RR of record", and if the amount of damages claimed meets the threshold reporting requirements. ARM believes for these and other reasons it may be difficult for firms to "reasonably identify" the appropriate RR who is the subject of the allegation(s) within 30 days of the complaint being filed without further investigation occurring through the discovery process.

This effort is further complicated by the fact that many firms have chosen to apply a team-based method to servicing their clients. There may be anywhere from 2-5 different RRs working with a client or handling a particular account. Without the benefit of time to accurately review the account, ascertain which specific transactions within the history of the account are contained in the allegations of the complaint, and which RRs were involved within the specific transaction(s), firms may inadvertently report a matter against the wrong RR in an attempt to adhere to the 30-day reporting deadline.

As such, ARM would also respectfully recommend that complaints in which an RR is not specifically named only be reported upon the settlement of the complaint. We believe that when a firm and RR have agreed to effect a settlement offer, appropriate discovery and due diligence has been performed to determine the exact transactions at issue, the alleged sales practice violation, the risk of liability and the appropriate RRs for whom the matter should be reported against.

However, if FINRA requires firms to report matters against unnamed RRs when the complaint is received versus at settlement, ARM respectfully requests that sincere consideration be given to increasing the current 30-day Form U4 and U5 reporting obligation to 60 days.

Furthermore, current rules and interpretations require original signatures on all initial U4s and U4 amendments reporting initial or amended disclosure items ("DRP"). ARM believes that this proposal may make it even more difficult for firms to obtain a RR's signature on a Form U4 amendment where he or she is not specifically named in the complaint and cannot defend him or herself in the action.

Additionally, ARM believes the proposal as written may produce an unwarranted increase in the number of lawsuits between RRs and their employing firms where a firm believes it has a regulatory responsibility to report a complaint and an RR who believes he or she is not the subject of the complaint and should not be required to report the matter on their Form U4. Postponing reporting until settlement or award when the facts are clear and the RR understands

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his or her involvement should eliminate a RR's refusal to sign a Form U4 or amendment to the Form.

ARM appreciates FINRA's proposal to increase the reporting threshold on settlements from \$10,000 to \$15,000. However, we believe this minimal increase does not reflect the realities of managing litigation in today's environment. Furthermore, it does not recognize that settlements are often entered into even though Firm's believe that although there is no liability by the firm or the RR, it is economically appropriate to settle than to defend the matter over an extended period of time and endure the legal fees of a lengthy hearing or arbitration. ARM believes increasing the settlement reporting threshold to \$25,000 more accurately reflects the current litigious and economical environment.

Finally, ARM also appreciates and applauds FINRA's response to industry requests to allow Firms to amend the reason and/or date of termination on Form U5 in an automatic environment, via CRD. ARM realizes and appreciates the effort and coordination behind such an enhancement.

In summary, ARM supports the proposal as follows:

- Reporting matters where the RR is not a named defendant but is named in the body of a complaint with sales practice allegations;
- Increasing the settlement threshold reporting amount;
- Allowing firms to amend the reason and/or date of termination on the Form U5

However, ARM believes the proposal should be revised to include the following:

- Report matters against unnamed RRs at settlement
- Alternatively, increase the 30-day reporting obligation to 60 days for unnamed RRs
- Increasing the reporting threshold under questions 14I(1), (2) and (3) to \$25,000
- 3070(a)(8) reporting should be increased as well to coincide with U4/U5 threshold changes
- Matters should be reported under 14I(1) (not 2 or 3) when an RR is named in body of an arbitration or lawsuit but not as a defendant
- FINRA, should issue at the same time the changes are approved, guidance for firms on how to interpret and implement the terms "reasonably identified", "subject of" and "good faith determination"

Thank you for permitting ARM to comment on the proposal. We appreciate the many hours of hard work that have been contributed by many to address this issue and thank you for your consideration of our comments.

Very truly yours,

On behalf of the Association of Registration Management, Inc.

Marian H. Desilets

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cc: Richard E. Pullano, AVP-Chief Counsel, FINRA Registration and Disclosure