

Form U5

Obligation to Provide Timely, Complete and Accurate Information on Form U5

Executive Summary

This *Notice* reminds firms of their obligation to provide timely, complete and accurate information on Form U5 (Uniform Termination Notice for Securities Industry Registration).¹

Questions concerning this *Notice* should be directed to the FINRA Gateway Call Center at (301) 590-6500.

Background and Discussion

Under Article V, Section 3 of the FINRA By-Laws, firms are required to file Form U5 no later than 30 days after terminating an associated person's registration. In addition, firms must file an amended Form U5 when they learn of facts or circumstances that make a previously filed Form U5 inaccurate or incomplete.² Further, firms are required to provide the person whose registration has been terminated with a copy of any Form U5 (initial or amended) at the same time that it is filed with FINRA.

Form U5 requires an appropriate signatory of a firm to verify the accuracy and completeness of the information contained in it prior to filing with FINRA. It is imperative that firms file complete and accurate Forms U5 in a timely manner because the reported information is used by a number of constituencies for a variety of reasons. For instance, FINRA uses the information to help identify and sanction individuals who violate FINRA rules and applicable federal statutes and regulations. FINRA, other self-regulatory organizations and state regulatory and licensing authorities also use the information to make informed registration and licensing decisions. Firms use the information to help them make informed employment decisions. Further, investors use the Form U5 information that is displayed through BrokerCheck when considering whether to do business with a registered (or formerly registered) person.

September 2010

Notice Type

- Guidance

Suggested Routing

- Compliance
- Legal
- Operations
- Registered Representatives
- Registration
- Senior Management
- Training

Key Topic(s)

- Form U5

Referenced Rules & Notices

- NTM 04-09
- Article V, Section 2 of the FINRA By-Laws
- Article V, Section 3 of the FINRA By-Laws

FINRA notes that each question on Form U5 stands on its own, and firms should carefully read each question on the form and respond appropriately to each question. For example, when reporting information relating to the reason for termination, firms must separately consider and respond to both Section 3 of the form and any of the disclosure-related questions found in Section 7. FINRA emphasizes that reporting the reason for termination in Section 3 does not abrogate the requirement that a firm complete any of the questions in Section 7 appropriately, including, in particular, Questions 7B and 7F. ***In this regard, FINRA notes that, with respect to factual situations that would cause a reasonable person to answer affirmatively any disclosure question in Form U5, a firm may not parse through the questions in a manner that would allow the firm to avoid responding affirmatively to a question.*** FINRA further notes that:

- ▶ A firm must provide sufficient detail when responding to Form U5 questions such that a reasonable person may understand the circumstances that triggered the affirmative response. For example, for purposes of Section 3 on Form U5, it is not sufficient for a firm to report only that a person's registration was terminated because that person violated "firm policy." If a firm is obligated to report that a registered person was terminated because he or she violated a firm policy, the firm must identify the policy, provide sufficient facts and circumstances to enable the reader to understand what conduct was involved, and review other questions on the form to determine whether an affirmative response to any other question is required.
- ▶ A firm that is terminating a registered person for misconduct subject to disclosure specified in Question 7F is required to answer that question in the affirmative, irrespective of whether or not the firm is the entity making the allegations of misconduct. Question 7F asks whether the individual who is the subject of the Form U5 voluntarily resigned, or was discharged or permitted to resign, after allegations were made that accused the individual of certain types of misconduct. Question 7F does not specify or require that the terminating firm be the source of those allegations. For example, if an affiliate of a firm employing a registered person discharges the registered person after making allegations of fraud against that person and the firm thereafter discharges the person, the firm would need to provide an affirmative answer to the appropriate part of Question 7F and indicate that it was discharging the person after allegations of fraud had been made against him or her.
- ▶ A firm should err on the side of interpreting the term "investment-related" in an expansive manner in line with the scope of the term when reporting information on Form U5. The scope of the term pertains to securities, commodities, banking, insurance or real estate (including, but not limited to, acting as or being associated with a broker-dealer, issuer, investment company, investment adviser, futures

sponsor, bank or savings association). Accordingly, a firm may be required to provide an affirmative answer to a question even if the matter is not securities-related. Furthermore, the type of conduct described in Form U5 questions need not always pertain to or involve a customer of the terminating firm in order to require an affirmative answer. Several questions ask about specific types of misconduct without regard to whether such misconduct involved a customer of the terminating firm. Therefore, the issue of whether the conduct involved a customer of the terminating firm is not necessarily determinative as to whether the conduct may require an affirmative answer to a Form U5 question.

FINRA notes that firms may be subject to administrative and civil penalties for failing to provide complete and accurate information on Form U5 in a timely manner.³

Endnotes

1. See Article V, Section 3(a) of the FINRA By-Laws; *Notice to Members (NTM) 04-09* (SEC Announces Immediate Effectiveness of Amendments to Section 4 of Schedule A to the NASD By-Laws). Although this Notice focuses on Form U5, FINRA notes that firms also must provide timely, complete and accurate disclosure on Form U4 (Uniform Application for Securities Industry Registration or Transfer). See Article V, Section 2(c) of the FINRA By-Laws.
2. FINRA reminds firms that this obligation to file an amended Form U5 when it learns of facts or circumstances that make a previously filed Form U5 inaccurate or incomplete applies to those instances when a firm has reported that it has initiated an internal review in response to Question 7B. In such instances, FINRA expects a firm to file an amended Form U5 to report, at a minimum, the date the internal review was concluded and the findings of such review, and to respond to any other questions on the form as appropriate.
3. See, e.g., *DBCC v. Nichols*, Complaint No. C01950004, 1996 NASD Discip. LEXIS 30 at *30 (NASD NBCC Nov. 13, 1996); see also *NTM 04-09*, which reminds firms, among other things, that they may be assessed late fees for failure to timely file accurate and complete Forms U5.

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