



## Form U4 and U5 Interpretive Questions and Answers

Below is a list of Frequently Asked Questions (FAQ) regarding a registered person's reporting obligations with respect to Forms U4 or U5. These FAQ are organized by the question number as found on the Forms U4 and U5.

### FORM U4

- **Questions 14A and 14B**

**Q1:** Is a registered person required to report military charges?

**A:** Yes. If a registered person is charged with, pleads guilty or no contest to, or is convicted of a felony or certain enumerated misdemeanors in a military court, such event must be reported. (02/13/98)

**Q2:** If a registered person is convicted of a crime and later pardoned, must the conviction continue to be reported? What if a conviction is set aside?

**A:** A person convicted of a crime and subsequently pardoned must continue to report the conviction. A pardon releases an individual from the punishment for a crime, but does not remove the conviction.

If the conviction is set aside, a copy of the court's order should be sent to FINRA's Registration and Disclosure Department (RAD). In many cases, the purpose of an order to set aside a conviction is to restore the individual to the position he would have been in if the conviction had never been entered; in such case, the conviction is not reportable. In other cases, an order may restore some or all civil rights, but not order the expungement of, or otherwise remove, the conviction. Each order setting aside a conviction will be reviewed by RAD staff to determine if the conviction must be reported.

Even if the conviction is not reportable, the charge may still be reportable. Registered persons have an obligation to determine whether a criminal event is required to be reported through one or more questions under Item 14A or 14B. (Originally posted 02/13/98; revised 04/29/98; revised 09/01/99; revised 05/18/09)

**Q3:** If a registered person is arrested but not charged with a crime, is the arrest required to be reported?

**A:** No. An arrest without a charge is not required to be reported. (02/13/98)

**Q4:** Is a misdemeanor charge or conviction of failure to file income tax or a guilty or no contest plea to such offense required to be reported?

**A:** No. (Originally posted 02/13/98; amended 08/05/98)

**Q5:** Is an offense that results in an individual being placed in a pre-trial diversion or intervention program required to be reported?

**A:** Each case must be reviewed individually to determine if formal charges were filed. If so, the matter must be reported. The registered person should submit the official court documents and a copy of the relevant statute to demonstrate that no formal charges were filed or charges otherwise are not required to be reported. (02/13/98)

**Q6:** Are misdemeanor gambling charges or convictions required to be reported?

**A:** No. (02/13/98)

**Q7:** Are summary courts-martial reportable?

**A:** No. (04/29/98)

**Q8:** Is a dishonorable discharge reportable?

**A:** A dishonorable discharge itself is not a reportable event. However, the underlying charge and conviction may be reportable under Question 14A or 14B; if so, the dishonorable discharge should be included in item 4 (Disposition Disclosure Detail) of the Criminal Disclosure Reporting Page (DRP). (Originally posted 04/29/98; revised 09/01/99, revised 5/18/09)

- **Question 14D**

**Q1:** If a regulatory agency enters an order against a registered person in connection with an investment-related activity, and later vacates the order, may the registered person answer "No" to Question 14D(1)(d)?

**A:** Generally, no. The question asks whether a regulatory agency has ever entered an order. The vacated order represents the final disposition of the action; it does not relieve the registered person from the obligation to disclose the original findings. However, if the regulatory agency vacates the order and explicitly signals its intent that the vacating order should have retroactive effect by using terminology such as the Latin phrases "nunc pro tunc" ('now for then') or "ab initio" ('from the beginning'), the regulatory action is not reportable, and a registered person may answer "No" to Question 14D(1)(d). If the vacated order was originally reported to CRD, the registered person may amend the corresponding DRP to indicate the regulatory agency vacated the order nunc pro tunc or ab initio, and therefore, it is no longer reportable. (Originally posted 02/13/98; revised 09/01/99; revised 08/05/05)

- **Question 14E**

**Q1:** Is a FINRA Acceptance, Waiver, and Consent ("AWC") reportable?

**A:** Yes, an AWC is reportable if it contains any of the findings set forth in this Question. (04/29/98)

**Q2:** Is a rule violation that results in a fine of \$2,500 or less always a Minor Rule Violation, and therefore not reportable?

**A:** No, the determination is not made solely based on the amount of the fine. Minor Rule Violations are defined in the Explanation of Terms on the Forms. A violation must be designated as a Minor Rule Violation as part of a plan submitted to and approved by the SEC. Under FINRA Rule 9216 (formerly Article II, Section 10 of the Code of Procedure), a violation is considered a minor rule violation only if the violation is the subject of a minor rule violation plan letter submitted by a member or associated person that is accepted by FINRA in accordance with Rule 9216. The list of the rules covered by FINRA's plan is set forth in FINRA Rule 9217. FINRA's plan became effective on October 1, 1993, and has no retroactive application. (05/26/98)

- **Question 14G**

**Q1:** When does a registered person have to report that he is the subject of a FINRA investigation?

**A:** The Forms define the term "investigation." An investigation is defined to include a FINRA investigation after the Wells notice has been given or after an associated person has been advised by the staff that it intends to recommend formal disciplinary action. An investigation does not include subpoenas, preliminary or routine regulatory inquiries or requests for information, deficiency letters, "blue sheet" requests or other trading questionnaires, or examinations. (02/13/98)

**Q2:** If FINRA files a complaint against a registered person, but the complaint is dismissed and not appealed, what should the registered person report?

**A:** When the registered person receives written notice that he is the subject of a FINRA investigation, the registered person should answer "Yes" to Question 14G(2). When the complaint is dismissed, the answer can be amended to "No." (Originally posted 02/13/98; revised 09/01/99)

- **Question 14I Generally**

**Q1:** What constitutes a sales practice violation?

**A:** The term "sales practice violation" is defined in the instructions to the Forms and includes any conduct directed at or involving a customer which would constitute a violation of any rules for which a person could be disciplined by any self-regulatory organization; any provision of the Securities Exchange Act of 1934; or any state statute prohibiting fraudulent conduct in connection with the offer, sale or purchase of a security or in connection with the rendering of investment advice. (02/13/98)

**Q2:** Who is included in the term "consumer"?

**A:** The term includes a current, former, or prospective customer or a person who can act for such person by law or contract, including an executor, conservator, or a person holding a power of attorney. An example of a person who is not a "consumer" is a customer's relative who does not hold a power of attorney. (08/05/98)

**Q3(A):** If a registered person is the subject of a written customer complaint that was reported under Question 14I(3) which settles for less than \$10,000 prior to 5/18/09 or for less than \$15,000 on or after 5/18/09, must he report the settlement under Question 14I(2)?

**A:** No. The registered person can answer "No" to Question 14I(2); however, the registered person has an obligation to update the DRP to disclose the disposition of the customer complaint. The "Yes"

response to Question 14I(3) remains applicable for two years from the date the complaint was received by the firm. (Originally posted 02/13/98; revised 09/01/99; revised 05/18/09)

**Q3(B):** If a registered person is the subject of an investment-related, consumer-initiated arbitration claim or civil litigation that was reported under 14I(5) and settles for less than \$15,000, must he report the settlement under Question 14I(4)?

**A:** No. The registered person can answer "No" to Question 14I(4); however, the registered person has an obligation to update the DRP to disclose the disposition of the customer complaint. The "Yes" response to Question 14I(5) remains applicable for two years from the date the complaint was received by the firm. (Originally posted 05/18/09)

**Q4:** If a customer files a written complaint with a broker-dealer that must be reported under Question 14I(3) and later files an arbitration regarding the same allegations, does the registered person have to answer "Yes" to both Questions 14I(3) and 14I(1)? What if a customer files a written complaint with the member and then subsequently files an arbitration claim that raises completely separate allegations, e.g., the written complaint alleges a sales practice violation with respect to a mutual fund transaction, while the subsequent arbitration alleges a different sales practice violation with respect to a bond transaction?

**A:** When the written customer complaint is filed with the broker-dealer, the registered person must answer "Yes" to Question 14I(3). When the arbitration is filed over the same allegations, the registered person should amend his U4 by changing the answer to Question 14I(3) to "No" and answering either Question 14I(1) "Yes" (if he is a named party to the arbitration), or Question 14I(5) "Yes" (if he is the subject of, but not a named party to, the arbitration).

If the subsequent claim raises different allegations, the registered person must answer "Yes" to both Questions 14I(3) and 14I(1) (if named as a party in the arbitration) or "Yes" to Questions 14I(3) and 14I(5) (if not named as a party in the arbitration), and disclose details of the new claim on a separate DRP. Therefore, the original written customer complaint and the subsequent arbitration would be treated separately for reporting purposes. (Originally posted 02/13/98; revised 09/01/99; revised 05/18/09)

**Q5:** A customer files a written complaint against registered persons A and B, and the complaint is reported against both under Question 14I(3). Subsequently, the customer files an arbitration against registered person A, but not registered person B, regarding the same allegations contained in the complaint. Registered person A amends his U4 to change 14I(3) to "No" and 14I(1) to "Yes" and amends his DRP with details on the pending arbitration. Although registered person B is not required to answer "Yes" to Question 14I(1) because he was not named in the arbitration, is registered person B obligated to update his DRP for the 14I(3) "Yes" answer to reflect that the customer has filed an arbitration against Broker A?

**A:** It depends. Registered Person B is obligated to update his DRP for Question 14I(3) to reflect the disposition of the customer complaint only as it pertains to him. Although registered person B was not a respondent in the arbitration, he may still be the subject of the arbitration (i.e., a customer party may have alleged that he committed sales practice violations). If this is the case, registered person B must answer "Yes" to Question 14I(5), change the answer to Question 14I(3) to "No" and update Questions 7-11 on the DRP, as appropriate. If registered person B is not a respondent in, or the subject of, the arbitration, he does not need to update his DRP until the disposition of the customer complaint as it pertains to him. The "Yes" response to Question 14I(3) or 14I(5) will remain applicable for two years

from the date the complaint was received by the firm. (Originally posted 08/05/98; revised 09/01/99; revised 05/18/09)

**Q6:** If a customer complaint, arbitration or litigation is settled for a total of \$10,000 or more before 5/18/09, or \$15,000 or more on or after 5/18/09, but the registered person's contribution is less than the threshold amount, should the registered person answer "Yes" to Question 14I(1)(c) or (d), 14I(2) or 14I(4)(a)?

**A:** Yes. These questions refer to the total amount of the settlement, not the registered person's contribution. The fact that the registered person contributes less than the threshold amount does not change his obligation to report. (Originally posted 02/13/98; revised 09/01/99; revised 05/18/09)

**Q7:** How should a customer complaint settled through mediation for \$10,000 or more before 5/18/09, or \$15,000 or more on or after 5/18/09 be reported?

**A:** If the customer complaint was settled via mediation before the customer filed an arbitration case, the settlement should be reported under Question 14I(2). If the customer complaint was settled through mediation after the customer filed an arbitration and the registered person was a named party, he should report that the arbitration was settled under Question 14I(1). If the registered person was not a named party but was the subject of the arbitration, he should report the settlement via mediation under Question 14I(4)(A). In any case, the terms of the settlement should be reported on a Customer Complaint DRP. (Originally posted 04/29/98; revised 09/01/99; revised 05/18/09)

**Q8:** What if the terms of a settlement agreement are confidential? Does the registered person have to report his contribution to the settlement if the total settlement is \$10,000 or more before 5/18/09 or \$15,000 or more on or after 5/18/09?

**A:** Yes. The registered person and firm must report the entire settlement, including the individual's contribution amount. The terms of a settlement agreement cannot be confidential for purposes of CRD reporting and FINRA BrokerCheck®. By filing a Form U4, a registered person agrees to provide true and complete answers to the Questions. A registered person cannot nullify that obligation by a separate settlement agreement with a customer. Thus, a settlement agreement between a registered person and/or firm and customer could only require that parties other than registered persons or firms, e.g., the customer or his attorneys, not divulge the terms of the settlement.

Note that it is also a violation of just and equitable principles of trade (FINRA Rule 2010) to include any provision in a settlement agreement that purports to prevent a customer or his attorney from talking to or otherwise cooperating with a regulator. See Notice to Members 95-87 (October 1995) and Notice to Members 04-44 (June 2004). (Originally posted 04/29/98; revised 05/18/09)

**Q9:** If an arbitration is no longer required to be reported under Question 14I(1) because it has been withdrawn or dismissed, is there any requirement to report it under Question 14I(3)?

**A:** No. For reporting purposes, the arbitration does not revert to a customer complaint when the arbitration is withdrawn or dismissed. If the arbitration was preceded by a written customer complaint regarding the same allegations, then the registered person should have: (1) answered "Yes" to Question 14I(3) at the time the written customer complaint was received by the broker-dealer; (2) filed an amendment answering "No" to Questions 14I(3) and "Yes" to Question 14I(1) when the arbitration was filed naming him as a party; and (3) filed a further amendment when the arbitration is withdrawn or

dismissed changing the answer to Question 14I(1) to "No." If the arbitration was not preceded by a written customer complaint regarding the same allegations, then the registered person continues to answer "No" to Question 14I(3). (Originally posted 08/05/98; revised 09/01/99; revised 05/18/09)

**Q10:** For purposes of reporting a customer complaint, arbitration or litigation that settles for \$10,000 or more before 5/18/09 (under Questions 14I(1) (c) or 14I(2)(a)), or for \$15,000 or more on or after 5/18/09 (under Questions 14I(1)(d), 14I(2)(b), or 14(4)(a)), should the attorney fees be included in the threshold total?

**A:** No. The attorney fees are not included in the settlement amount for purposes of reporting a customer complaint, arbitration or litigation that settles for at least the threshold amount. (Originally posted 08/05/05; revised 05/18/09)

**Q11:** If a registered person is not named as a respondent in an arbitration, but the statement of claim alleges that such person engaged in a sales practice violation, must the matter be reported?

**A:** Yes. The registered person should report the arbitration under Question 14I(5). (Originally posted 05/18/09)

- **Question 14I(1)**

**Q1:** What if a customer files an arbitration claim in which the registered person is a named party, alleging sales practice violations against several respondents and the claim is withdrawn or dismissed as to a particular respondent prior to any settlement or award? Is that respondent obligated to report any subsequent settlement or award?

**A:** In general, when a claim is dismissed or withdrawn against a respondent prior to a settlement or award, he may change his answer to Question 14I(1) from "Yes" to "No." The dismissal or withdrawal is the final disposition as to him and he is not required to report the disposition with respect to the remaining respondents. (See, however, Question 2 regarding withdrawal of a claim as part of a settlement.)

However, if a withdrawn or dismissed respondent contributes directly or indirectly to the settlement of the claim (e.g., his firm withholds compensation as repayment for the firm's settlement costs), then that respondent must continue to answer Question 14I(1) "Yes" and amend the relevant DRP with details as to the settlement and his contribution. (Originally posted 02/13/98; amended 08/05/98; revised 09/01/99; revised 05/18/09)

**Q2:** What if a customer withdraws an arbitration claim against a named particular respondent as part of a settlement of \$10,000 or more before 5/18/09, or \$15,000 or more on or after 5/18/09?

**A:** The registered person should answer "Yes" to Question 14I(1)(c) or (d), as appropriate. The registered person should report in items 14-16 of the DRP that the claim was settled and in item 24 that the claim against him was withdrawn as part of the settlement and that no contribution was made to the settlement. (Originally posted 02/13/98; revised 09/01/99; revised 05/18/09)

**Q3:** If a registered person has reported an arbitration under Question 14I(1), and the arbitration is settled by other respondents for at least the threshold amount, but the registered person is not a direct or indirect party to the settlement and does not pay any part of it, should the registered person answer

"Yes" to Question 14I(1)? What if the registered person is a party to the settlement, but still does not pay any part of the settlement?

**A:** If an arbitration is settled as to some respondents but not others, then the respondents who do not settle must continue to report that the arbitration is pending under Question 14I(1)(a) until there is some other disposition, e.g., withdrawal or dismissal of the claim or a separate settlement. If the registered person is a party to the settlement he must report the settlement under Question 14I(1)(c) or (d), as appropriate, even if he contributed nothing to the settlement, continues to arbitrate additional claims, or reaches an additional separate settlement. The registered person can state in item 24 of the DRP that he contributed nothing to the settlement. (Originally posted 02/13/98; revised 09/01/99; revised 05/18/09)

**Q4:** If an arbitration claim names several registered persons as respondents, and the statement of claim contains allegations of sales practice violations, but does not specifically allege that each respondent was involved in a violation, which respondents should answer "Yes" to Question 14I(1)(a)? For example, if the statement of claim alleges that a broker engaged in churning and that his office manager should have been overseeing the broker's activities, and the persons named as respondents are the broker and his branch manager, as well as the compliance director and the president of the broker/dealer, who should report?

**A:** The broker and his branch manager should answer "Yes" to Question 14I(1)(a), but the compliance director and the president may answer "No." A registered person must report an arbitration under Question 14I(1)(a) if he is named as a respondent and the statement of claim alleges that he was involved in one or more sales practice violations. Because the statement of claim alleges no sales practice violation by the compliance director or the president, they are not required to report the arbitration, even though they are named as respondents.

The terms "involved" and "sales practice violations" are defined to clarify reporting obligations. The term "involved" includes both doing an act and failing reasonably to supervise another in doing an act. The term "sales practice violations" includes any conduct directed at or involving a customer that would constitute a violation of an SRO rule for which a person could be disciplined; any provision of the Securities and Exchange Act of 1934; or any state statute prohibiting fraudulent conduct in connection with the offer, sale or purchase of a security or in connection with the rendering of investment advice, and thus includes churning. Thus, the broker and the branch manager must report the arbitration.

It is not necessary that a statement of claim use precise legal terminology. The fact that the claim does not use the legal term "failing reasonably to supervise" does not alleviate the branch manager's obligation to report. The allegation that the manager should have been overseeing a broker's activities is sufficient to trigger reporting. Firms and registered persons should review each claim on a case-by-case basis and make a good faith determination as to whether reporting is required. (Originally posted 02/13/98; revised 09/01/99)

**Q5:** What if (1) an arbitration is dismissed by an arbitration panel or withdrawn by the claimant prior to settlement and the respondent pays no part of the settlement; (2) the panel decides in favor of the respondent; or (3) the arbitration is settled for less than the threshold amount?

**A:** The registered person should file an amended Form U4 to (1) change the answer to Question 14I(1) from "Yes" to "No," and (2) update the DRP with disposition details that support the change in the answer. (Originally posted 02/13/98; amended 05/26/98; amended 08/05/98; revised 09/01/99)

**Q6:** Is an arbitration reportable under Question 14I(1)(b) if the arbitration panel denies all claims against a registered person but requires him to pay a portion of the forum fees?

**A:** No. Payment of forum fees is not payment of an arbitration award. (Originally posted 04/29/98; revised 09/01/99)

**Q7:** Is an arbitration proceeding that is stayed or enjoined by a court considered pending for purposes of this Question?

**A:** Yes. If a party to an arbitration seeks to have the proceeding stayed or enjoined, then the proceeding will be treated as pending for purposes of this question until a court enters a permanent stay or injunction and all appeals are exhausted. At that time, the arbitration is closed and no longer considered pending for the purpose of the Question. An arbitration will be treated as pending if it is subject to a temporary stay or preliminary injunction. (Originally posted 05/26/98; revised 05/18/09)

- **Question 14I(2)**

**Q1:** Is a registered person required to report an oral complaint? What if a customer makes an oral complaint that is resolved through a written settlement agreement for \$10,000 or more before 5/18/09, or \$15,000 or more on or after 5/18/09 that acknowledges that the customer alleged a sales practice violation, and there is no other writing that evidences the complaint?

**A:** An oral complaint by itself is not reportable under Question 14I(3). An oral complaint that alleges a sales practice violation that is settled for \$10,000 or more before 5/18/09, or \$15,000 or more on or after 5/18/09 is reportable under Question 14I(2). (Originally posted 02/13/98; revised 04/29/98; revised 09/01/99; revised 05/18/09)

- **Questions 14I(3) and 14I(5)**

**Q1(A):** If a registered person reports a customer complaint under Question 14I(3) that, after 24 months, has neither settled for \$10,000 or more before 5/18/09 or for \$15,000 or more on or after 5/18/09, nor evolved into an arbitration or civil litigation in which the registered person is a named party, should the registered person file an amended Form U4 changing the answer to Question 14I(3) to "No"?

**A:** Yes. The registered person should file an amended Form U4 to change the answer to Question 14I(3) to "No" and update the DRP with disposition details once the pending customer complaint is resolved. (Originally posted 02/13/98; revised 09/01/99; revised 05/18/09)

**Q1(B):** If a registered person reports an arbitration or civil litigation under Question 14I(5) that, after 24 months, has not settled for \$15,000, should the registered person file an amended Form U4 changing Question 14I(5) to a "No" response?

**A:** Yes. The registered person should file an amended Form U4 to change the answer to Question 14I(5) to "No" and update the DRP with the disposition details. (Originally posted 05/18/09)

**Q2:** If a written customer complaint (reportable under Question 14I(3)) alleges a sales practice violation and forgery, should the registered person submit two DRPs?



**A:** No, the registered person should answer "Yes" to both Questions 14I(3)(a) and 14I(3)(b) and submit one DRP with details for both alleged violations. (Originally posted 04/29/98; revised 09/01/99, revised 5/18/09)

**Q3:** Are there any differences for reporting securities, commodities, banking, insurance and real estate complaints under Questions 14I(3)(a) and (b) or 14I(5)(a) and (b)?

**A:** Yes. The definitions of the terms "investment-related," "sales practice violations," and "self-regulatory organization" should be carefully reviewed because they result in different reporting obligations under 14I(3)(a) and (b) and 14I(5) (a) and (b).

A written customer complaint that includes an allegation of a sales practice violation (as well as the other threshold requirements) must be reported under Question 14I(3)(a). Likewise, the subject of an arbitration/litigation that includes an allegation of a sales practice violation (as well as the other threshold requirements) must be reported under Question 14I(5)(a). A sales practice violation is defined to include any conduct directed at or involving a customer which would constitute a violation of any rules for which a person could be disciplined by any self-regulatory organization; any provision of the Securities Exchange Act of 1934; or any state statute prohibiting fraudulent conduct in connection with the offer, sale, or purchase of a security or in connection with the rendering of investment advice. A self-regulatory organization is defined to include any national securities or commodities exchange, any national securities association (e.g., FINRA), or any registered clearing agency. Thus, a sales practice violation includes a violation of the rules of FINRA, any national securities or commodities exchange (e.g., the New York Stock Exchange, the Chicago Board of Trade), and any registered clearing agency (e.g., the National Securities Clearing Corporation); a violation of the Exchange Act; and a violation of any state statute prohibiting fraudulent conduct in connection with the offer, sale, or purchase of a security or in connection with the rendering of investment advice. A sales practice violation does not include violations of banking, insurance, or real estate laws or rules. Thus, complaints concerning a security, variable contract that is subject to regulation under the federal securities laws, or commodity exchange product are reportable under Questions 14I(3)(a) or 14I(5)(a), but complaints solely concerning other products are not reportable under Questions 14I(3)(a) or 14I(5)(a).

However, Questions 14I(3)(b) and 14I(5)(b) are not limited by the term "sales practice violations." Thus, a written customer complaint that relates to securities, commodities, banking, insurance, or real estate and alleges forgery, theft, or misappropriation or conversion of funds or securities is reportable under 14I(3)(b). Similarly, a registered person who is the subject of an investment-related, consumer-initiated arbitration claim or civil litigation relating to securities, commodities, banking, insurance, or real estate that alleges that the registered person was involved in forgery, theft, misappropriation or conversion of funds or securities is reportable under 14I(5)(b). (Originally posted 04/29/98; revised 09/01/99; revised 05/18/09)

**Q4:** What is included in the term "misappropriation or conversion of funds or securities"?

**A:** Misappropriation refers to any intentional or reckless use of customer funds or securities. This includes, but is not limited to, placing money from a customer into an account under a representative's control, diverting funds or securities from one customer's account to another customer's account, and stealing customer funds or securities. The term does not include complaints about delays in transfers of funds or accounts.

A firm should immediately investigate any allegation of misappropriation or conversion of customer funds or securities and immediately report any conclusion that such an act has occurred to appropriate regulatory and law enforcement authorities.

Criminal charges or convictions of wrongful taking of property are separately reportable under Questions 14A or 14B. (Originally posted 05/26/98; revised 09/01/99)

**Q5:** If a firm solicits information from a customer about an account, and the customer submits a written document that meets the reporting criteria of Question 14I(3), is such a document a "consumer-initiated" complaint?

**A:** Yes. A customer is a "consumer." (See Question 14I Generally, Q2) A firm may solicit information about a problem with an account for a variety of reasons, and may ask for information by a variety of means, including a telephone call, letter, questionnaire, or survey. The customer determines whether to respond to the request, and if so, whether to do so in writing or in a form requested by the firm (e.g., questionnaire or survey). Once the customer decides to submit a written document, the document is consumer-initiated and should be reviewed to determine if it meets the remaining criteria of Question 14I(3). If so, it constitutes a complaint that must be reported. (Originally posted 08/05/98; revised 09/01/99)

**Q6:** If a customer sends a written complaint that meets the criteria of Question 14I(3) to a regulator, and the regulator sends a copy to the registered person or his firm, is the complaint "consumer-initiated"?

**A:** Yes. A complaint is initiated by the customer even if the customer determines to send it to a regulator rather than to a firm.

FINRA and most jurisdictions will forward any written customer complaint they receive to the registered person and his current employer. If the complaint concerns conduct at a previous employer, FINRA also will send a copy of the written complaint to the previous employer. Each firm has an independent obligation to determine if any complaint it receives is reportable on the Forms -- the current employer and the representative must determine if the complaint is reportable under Question 14I(3) on the Form U4, and the former employer must determine whether the complaint is reportable under Question 7E3 on Form U5. Under FINRA By-Laws, if the complaint is required to be reported on the Forms, reporting must occur within 30 days of receipt by the respective firms. (Originally posted 08/05/98; revised 04/05/02)

**Q7:** A customer sends a written complaint to a firm regarding a registered person and such person's Form U4 is amended to answer "Yes" to Question 14I(3). The customer subsequently sends a letter to the firm withdrawing the complaint. Can the Form U4 be amended to change the answer to Question 14I(3) to "No"? What if the withdrawal letter is received before the original complaint letter is reported on the Form U4?

**A:** No. The original complaint should be reported on Form U4, regardless of whether the customer withdraws the complaint even if the withdrawal is received within 30 days of receipt of the original complaint and prior to disclosure to CRD. The complaint should be reported as withdrawn in item 9 of the DRP. (Originally posted 08/05/98; revised 09/01/99; revised 05/18/09)

**Q8:** Is an arbitration proceeding that is stayed or enjoined by a court considered pending for purposes of Question 14I(5)?

**A:** Yes. If a party to an arbitration seeks to have the proceeding stayed or enjoined, then the proceeding will be treated as pending for purposes of Question 14I(5) until a court enters a permanent stay or injunction and all appeals are exhausted. At that time, the arbitration is closed and no longer considered pending for the purpose of the Question. An arbitration will be treated as pending if it is subject to a temporary stay or preliminary injunction. (Originally posted 05/26/98; revised 05/18/09)

- **Question 14K**

**Q1:** What is a “Compromise with Creditors” for purposes of responding to Question 14K on Form U4?

**A:** A compromise with one or more creditors<sup>1</sup> generally involves an agreement between a borrower and a creditor in which a creditor agrees to accept less than the full amount owed in full satisfaction of an outstanding debt, unless such an agreement is included in the original terms of the loan (e.g., forgivable loan or forgivable promissory note). A creditor can be a natural person or an entity, but is often a financial institution that extends credit and typically charges interest on a loan. In general, for purposes of Form U4 Question 14K, any agreement between a borrower and a creditor that changes only the terms of the repayment and does not result in a decrease in the full amount owed does not constitute a compromise with a creditor. (Originally posted 03/23/12; revised 04/13/20)

**Q2:** Is a real estate short sale reportable under Question 14K on Form U4?

**A:** The answer depends on the terms of the short sale transaction. A short sale is reportable as a “compromise with creditors” if the lender/creditor forgives all or part of the borrower’s outstanding amount owed. Firms should make a good faith determination based on the facts and circumstances of the short sale to determine whether the lender/creditor has released the short seller/homeowner from some or all of the full amount owed. Generally, in a short sale, a lender/creditor “compromises” by agreeing to permit the sale of the real estate although it will receive from the borrower an amount less than the full amount owed. The nature of the short sale agreement and relevant state laws may enable a lender or third party to seek a judgment for the unpaid amount owed after the auction or sale of the real estate. Consequently, in such cases, the short sale may not have been a compromise, and is therefore not reportable as a “compromise with creditors.” Any resulting judgment (to the extent it has not been satisfied) relating to the unpaid amount owed, however, would be reportable under Question 14M on Form U4. (Originally posted 03/23/12)

- **Question 14M**

**Q1:** If a registered person receives notice of a judgment/lien on a date that is different than the date it was filed, which date should the registered person report?

**A:** The registered person should report both dates. The date that the judgment/lien was filed should be reported in Question 4 (Date Filed) on the Judgment/Lien DRP and the date that the registered person received notice or learned of the judgment/lien should be reported in Question 8 (Comment section) on the DRP. CRD will use the date that the registered person received notice of the judgment/lien to determine whether a late disclosure fee should be assessed and, if so, the amount of the fee. If the date the judgment/lien was filed is the same date that the registered person received notice of the judgment/lien, the registered person should report that date only in Question 4 on the DRP. (Originally posted 08/13/12)

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<sup>1</sup> To the extent that *Dep’t of Enforcement v. Cody*, Complaint No. 200500318901, 2009 FINRA Discip. LEXIS 17 (January 29, 2009); National Adjudicatory Council Decision (May 10, 2010) (*appealed on other grounds*); Exchange Act Rel. No. 64565 (May 27, 2011) (*appealed on other grounds*) could be read to state that a compromise with more than one creditor is necessary to trigger reporting under Question 14K, the staff disagrees. FINRA staff’s view is that a compromise with a single creditor is sufficient to trigger the reporting requirement.

**Q2:** Do I need to report that I have been ordered to pay child support as a result of a divorce proceeding or settlement in response to Question 14M on Form U4?

**A:** No. In general, you do not need to report that you are obligated to pay child support ordered by a court (or magistrate) as part of a divorce proceeding or divorce settlement in response to Question 14M provided you are current in paying such child support obligations. Only unsatisfied judgments or liens are reportable in response to Question 14M. Accordingly, if you are current in meeting your child support obligations, you do not need to report the existence of those obligations in response to Question 14M. However, depending on the law applicable to your court order, you may have a reporting obligation if you are in default of making child support payments (even without the issuance by a court of a judgment for non-payment). You are responsible for determining if there is an unsatisfied judgment or lien resulting from your failure to meet your child support obligations. (Originally posted 01/02/13)

**Q3:** If a registered person satisfies a judgment or lien within 30 days of receiving notice or learning that it was unsatisfied (not paid within the period provided by a court, statute, or applicable contract or agreement), does the registered person need to amend their Form U4 to report the judgment or lien?

**A:** Yes. A registered person's obligation to amend their Form U4 arises on the date the registered person receives notice or learns that they have an unsatisfied judgment or lien; therefore, the registered person must report the judgment or lien no later than 30 days from that date. The reporting obligation exists even if the registered person satisfies the judgment or lien in the interim period prior to the 30-day deadline for filing the Form U4 amendment. (Originally posted 03/05/15)

**Q4:** How should a registered person amend their Form U4 to report a satisfied judgment or lien that was not reported when it was unsatisfied?

**A:** To report a satisfied judgment or lien in such situations, a registered person should create a new Judgment/Lien DRP and provide the necessary information about the matter. No change should be made to the response to Question 14M; a new Judgment/Lien DRP can be created even if the response to Question 14M is "No." (Originally posted 03/05/15)

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## FORM U5

- **Questions 7C and 7D**

**Q1:** Questions 7C and 7D on the Form U5 request information about criminal or regulatory actions involving a former associated person that were initiated after that person has left the firm, but that were initiated based on events that occurred while the individual was employed by or associated with the firm. Does this mean that a firm is required to monitor all former associated persons to ensure that it has adequately responded to these questions? What if actions are initiated in connection with events that occurred while the person was employed by or associated with the firm, but the firm is never informed of the initiation of these actions?

**A:** Firms are required to answer "Yes" to these questions only if they have actual notice of an action that is required to be reported on a form. In this context, actual notice means express notice -- that is, a communication by the responsible agency/authority regarding the initiation of a criminal or regulatory action directly to a representative of the firm who is aware of the Form U5 reporting requirement or

should be aware of such requirement because such person has official responsibility for receiving such notice. Generally speaking, firms would receive actual notice of the initiation of a criminal or regulatory action against a terminated person only if that action is based on events that occurred in connection with the former associated person's employment. (Originally posted 09/01/99; revised 04/05/02)

- **Question 7E**

**Q1:** Does a firm's reporting obligation on Form U5 cease after a certain period of time?

**A:** No. Article V, Section 3 of the FINRA By-Laws requires an amendment to any information on Form U5 that is inaccurate or incomplete. This obligation does not lapse. If a firm receives actual notice of an event that involves a former associated person, and that is reportable on Form U5, the firm must amend the person's Form U5. (Originally posted 08/05/05)

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## **General Questions**

**Q1:** Is documentation required to support changing a "Yes" answer to a "No" answer?

**A:** Although documents are not generally required to be filed, you may be required to provide them to a jurisdiction or SRO. See General Instructions on the Forms. (Originally posted 05/26/98; revised 09/01/99)

**Q2:** If I am registered or seeking registration with multiple broker-dealer and/or investment adviser firms, in which section of Form U4 should I list the firms corresponding with those registrations (or requests)?

**A:** You should report in Section 12 (Employment History) the broker-dealers and investment adviser firms with which you are currently registered or seeking registration, or with which you have been employed in the last ten years. This includes unaffiliated and affiliated firms reported in Sections 3 and 6 of Form U4, respectively. You should not report any of these firms in Section 13 (Other Business). Section 13 elicits current employment or business activities that are separate from (i.e., "outside") the activities you perform in your capacity as a registered person with the broker-dealer(s) and/or investment adviser(s) that you report in Section 12. (Originally posted 01/26/12)

## **Reminders**

1. The Guidance provided in this document applies only to the question or questions noted. (04/29/98)
2. When a firm files an amendment to Question 11 of the Form BD, the firm should determine whether corresponding Form U4 filings should be made for individuals listed as control persons on Schedule A of the Form BD. Refer to the Form BD instructions to determine who should be listed as a control person. RAD may send deficiency notices to firms that fail to do so and continued failure to do so could result in disciplinary action. (Originally posted 04/29/98; revised 09/01/99; revised 05/18/09)