

I submit this comment to NASD NTM 08-20 (FINRA Requests Comments on Proposed Changes to Forms U4 and U5)

I support the change as a long-overdue closing of a significant loophole in the public disclosure system.

BACKGROUND

I am Professor of Law at the Zicklin School of Business of Baruch College, CUNY. I am also a member of Deutsch Lipner, a Garden City, NY law firm which represents investors in arbitration. I am the co-author Lipner Long, Securities Arbitration Desk Reference (Thomson/West 2007), and numerous articles on securities arbitration, ADR, and other areas. I am a two-time past-president of PIABA, and served for 4 years on the NASDs National Arbitration and Mediation Committee.

THE PROPOSAL

Under current rules, an arbitration claim brought against a firm that does not also name the individual broker as a Respondent (in the caption) is not considered a written complaint against that broker, and is not reported. That "exception" to reporting exists even if the broker's name appears prominently in the text of the arbitration complaint. Indeed, even if there are ten such arbitration claims, or 100, there will be no reporting of that fact to the public.

Disclosure ought not turn on whether the broker was named separately as a Respondent. Many attorneys, including myself, often do not separately name individual brokers because it is unnecessary (given the rule of Respondeat Superior).

It is a very positive step that FINRA fix this hole. Once repaired, the system will produce the full disclosure the public deserves.

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