

**Faculty Supervisors**

ADELE BERNHARD  
ELIZABETH J. CARROLL  
MARGARET M. FLINT  
JILL GROSS  
VANESSA MERTON

**Staff Attorney**

BRIDGET CRAWFORD \*

\*ADMITTED IN NEW JERSEY

**JOHN JAY LEGAL SERVICES, INC.**

PACE UNIVERSITY SCHOOL OF LAW  
80 NORTH BROADWAY  
WHITE PLAINS, NY 10603  
TEL 914-422-4333  
FAX 914-422-4391  
[JJLS@LAW.PACE.EDU](mailto:JJLS@LAW.PACE.EDU)

**Executive Director**

MARGARET M. FLINT

**Clinic Administrator**

FLORIE FRIEDMAN

**Staff**

IRIS MERCADO  
MARYANN RASULO  
ROBERT WALKER  
LOUIS MACCARIELLO

May 27, 2008

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

**Re: FINRA Regulatory Notice 08-20 – Proposed Changes to Forms U4 and U5**

The Investor Rights Clinic at Pace University School of Law, operating through John Jay Legal Services, Inc. (“PIRC”), welcomes the opportunity to comment on FINRA’s rule proposal to revise Forms U4 and U5 in order to clarify and facilitate reporting requirements and to make other technical and/or conforming changes. PIRC is a law school curricular program in which J.D. students, for academic credit and under close faculty supervision, represent individual investors of modest means in arbitrable securities disputes. Through our representation, we have become acutely aware of the need for broker-dealers and their associated persons to disclose accurate, complete and up-to-date information to investors so they can make informed investment decisions. Thus, we generally support the proposed changes to Forms U4 and U5 because they will lead to enhanced disclosure of material information to the investing public.

**Proposed Revisions to Question 14(1) on Form U4 and Question 7E on Form U5**

Currently, a registered representative (also known as “associated person” or “broker”) does not have to report a customer claim alleging that s/he committed a sales practice violation if the arbitration or lawsuit does not name that broker as a defendant or respondent. This information is then unavailable to regulators or prospective broker-dealer employers of the broker via the Central Registration Depository (CRD) or to the investing public through BrokerCheck.<sup>1</sup> In contrast, if the investor were to make the same allegations against a registered representative in a written complaint to the firm, the firm and the broker are required under FINRA rules to report the complaint and its contents to the Central Registration Depository (CRD) within 30 days – and the information would be available to regulators and to the public.<sup>2</sup>

<sup>1</sup> See FINRA Regulatory Notice 08-20, Proposed Changes to Forms U4 and U5 (April 2008).

<sup>2</sup> See FINRA News Release, “FINRA Proposes Rule Change to Require Reporting of Customer Allegations of Sales Practice Violations Against Brokers in All Arbitrations, Civil Lawsuits – Even When Broker is Not an Official Party to the Dispute,” <http://www.finra.org/PressRoom/NewsReleases/2008NewsReleases/P038380> (April 24, 2008).

The proposed revisions to Question 14(1) on Form U4 and Question 7E on Form U5 would eliminate this inconsistency by requiring firms to report allegations of sales practice violations against registered persons made in a civil lawsuit or arbitration even if the registered person is not a named party. The proposed revisions also would require firms to report allegations against unnamed brokers if their identity can be inferred from the record of the arbitration or court filings. As a result, the broker's complete historical record would be made available to regulators, broker-dealers and the investing public for investigation and research through FINRA's BrokerCheck.

PIRC supports these proposed revisions as they improve investor protection. FINRA's BrokerCheck is an important tool for investors to research a registered representative's background, registration, employment history, and license status. This user-friendly service is only useful if it contains comprehensive, up-to-date disclosures about brokers and past allegations against them. Current and accurate information ensures that investors have access to all material information to make informed decision in choosing brokers.

Furthermore, the proposed rule changes, if enacted, will disincentivize disturbing industry practices. Broker-dealers and their lawyers currently discourage claimant's lawyers from naming an individual broker in an arbitration claim to protect the broker's record. In fact, some firms indirectly penalize customer claimants who do name the broker by refusing to engage in settlement negotiations unless the customer agrees to drop the broker from the claim. Likewise, some claimant's lawyers do not name the broker to avoid involving additional attorneys in the case, simplifying and streamlining settlement discussions and/or the hearing process.<sup>3</sup> These practices, however, not only create inconsistencies between the reporting of alleged sales practice violations by brokers, they also discourage the pursuit of valid claims against individual wrongdoers, decreasing overall efficiencies within the industry.

Moreover, the proposed revisions will aid firms in their hiring practices. Since a critical part of the hiring process in the securities industry is the background investigation of prospective personnel,<sup>4</sup> the proposed revisions will provide more complete information for that process. With more information reported, firms will avoid hiring brokers with various customer complaints not previously reported.<sup>5</sup>

Finally, PIRC supports the proposed revisions to the extent they help regulators make better licensing decisions.<sup>6</sup>

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<sup>3</sup> See Justin Kelly, "FINRA Wants Arbitration Claims Against Unknown Brokers Reported," *ADRWorld.com* (May 5, 2008) (quoting a claimant's lawyer who stated that "...his firm does not name brokers to avoid having to face additional lawyers and because it is more efficient in the arbitration process").

<sup>4</sup> See, e.g., NASD Conduct Rule 3010 (requiring member firms to investigate the good character, business repute, qualifications and experience of brokers they hire before certifying their registration).

<sup>5</sup> *Wietecha v. Ameritas Life Insurance Corp.* No. Civ 05-0324-PHX-SMM, 2006 U.S. Dist. Lexis 70320 (Sept. 27, 2006).

<sup>6</sup> See Dan Jamieson, "FINRA to Close Disclosure Loophole," *Investment News* (May 5, 2008) (quoting Melanie S. Lubin, Maryland's securities commissioner).

### Proposed Revisions to Question 14(1) on Form U4 and Question 7E on Form U5 to Raise the Dollar Threshold from \$10,000 to \$15,000

PIRC also supports the proposed revision to raise the dollar threshold for reporting settlements from \$10,000 to \$15,000. A higher threshold amount allows the parties flexibility to craft reasonable and equitable settlements. Many investors are senior citizens who have limited resources and any economic loss affects their retirement funds. The higher threshold is preferred because it could make settling smaller claims easier. Firms may want to settle for economic reasons, too. While we recognize the tension between our support of enhanced disclosure and the consequence of this proposal that more settlements will not be reported, we believe that, in light of the fact that the threshold has not been raised in several years, the proposed higher threshold strikes an appropriate balance between the competing interests.

### Proposed Revisions to the Initial Form U5 to Allow Firms to Amend the “Reason for Termination” and the “Date of Termination”

PIRC supports the proposal to permit amendments to the “Reason for Termination” and the “Date of Termination” sections of Form U5 without a court order or arbitration award. Having the ability to amend the “Reason for Termination” and the “Date of Termination” will allow firms to fix clerical errors and inaccurate information in a timely manner and allow for more accurate and updated records that are consistent with present complaints and proceedings. As a result, investors will have access to the most current information.

Furthermore, although firms have had the ability since 2000 to add a Registration Comment (a note on a person’s CRD record) to report an error in the reason for, or date of, termination, the Registration Comment neither amended the original reason for/date of termination nor did it allow firms to explain the reason for the amendment. This proposed rule change would require firms to provide a reason for the amendment, providing more complete disclosures to investors.

### Technical, Conforming and Other Changes to Forms U4 and U5

The proposed technical, conforming and other changes to Forms U4 and U5 can only help to provide the most complete and updated information to investors. Allowing broker-dealers to provide more information on the forms through “free text” fields alleviates the additional communications between FINRA staff and firms that are needed when DRP filings are incomplete and makes filing more efficient. The optional Certification Checkbox in section 7 will enable a quick review by broker-dealers to ensure that submitted information is current.

## Conclusion

In conclusion, PIRC believes that Regulatory Notice 08-20 proposes changes to the U4 and U5 forms that are critical for investor education and protection. Investors have an absolute right to be fully and consistently informed about past complaints against registered representatives. The proposed changes will help unsophisticated investors in their research by providing a more complete history of the broker. Broker-dealers will also be able to make more informed hiring decisions which will, in turn, safeguard investors from further sales practice violations.

Thank you for providing us with the opportunity to comment on these proposed revisions.

Sincerely,

*Jill Gross*  
Director, PIRC

*Deborah Sommers*  
Student Intern