Chief Governance Office
WS 2024
901 E. Byrd Street
Richmond, VA 23219
(804) 787-6851 Office
(804) 344-6544 Fax

May 27, 2008

Via E-mail: pubcom@finra.org

WACHOVIA

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

Re: Financial Regulatory Authority ("FINRA") Regulatory Notice 8-20
Proposed Changes to Forms U-4 and U-5

Dear Ms. Asquith:

Wachovia Securities, LLC is pleased to submit the below comments concerning proposed revisions to Forms U-4 and U-5:

Introduction and Overview

Wachovia Securities is a full service brokerage firm serving clients in 50 states. It assists active retail clients in managing almost $1.1 trillion in assets. Wachovia Securities is fully supportive of the principles underlying FINRA's rules designed to disclose information concerning customer complaints and implement aggressively the rules designed to achieve full disclosure. We do worry, however, that the proposed revisions are a missed opportunity to review the entire complaint and disciplinary reporting system and make an effort to make it more congruent with the needs and technologies of the 21st century. In a way, the revisions appear merely to tinker around the edges of a cumbersome apparatus designed for a time when both the industry and the number of customer complaints or disciplinary items were considerably smaller. Many feel that the system is one where the filing of a complaint implies guilt and requires punishment and sentencing before any facts are developed. The current proposals do nothing to distinguish between a potentially meritorious claim and one made by someone who, sadly, clearly is out of touch with reality. A complete streamlining and modernizing of the entire regulatory reporting system is timely and would be in the best interests of the industry, regulators and most importantly, investors.

Suggested Clarifications or Changes

As proposed, FINRA's revisions would require firms to answer questions affirmatively on Form U-4 and Form U-5 when arbitrations or civil litigations name an individual broker in the body of a complaint but do not name the broker in the caption. In a footnote, the Notice also declares that a "yes" response would be required when:

> (2) the Statement of Claim or Complaint does not mention a registered representative by name, but the firm has made a good faith determination after a reasonable investigation that the *sales practice violations* alleged *involve* one or more particular registered representatives. *See FINRA Regulatory Notice 8-20, p. 6, Fn. 8.*

At the outset, we wonder if there is a benefit to having FINRA do outreach to those who represent plaintiffs regularly to discuss the role naming brokers plays in protecting the industry and investors. Currently, with the onus solely on firms to review complaints and make disclosures, there is the great risk that some may argue a firm failed to file a disclosure when it should have. It certainly seems that claimant's counsel has the better opportunity to make certain that an "involved" broker is named.

A. Class Action

Without clarification, this "good faith determination" requirement could present severe problems for brokerage firms in the class action context. Often in a class action, though naming the firm, plaintiffs describe conduct by individuals (as a group) in the firm. Unless made clear by FINRA, some may contend that a firm must wade through its sales force to name all registered individuals who might be "involved" in the complaint. We trust that FINRA does not intend such a result and will provide adequate instructions to clarify this important point.

B. Removal from Public Disclosure

FINRA's proposal will treat allegations naming a broker in the underlying arbitration or civil litigation the same as a complaint against that broker. It is important that like unfounded customer complaints, registered representatives have a right to remove similarly unfounded arbitrations or civil litigations from the public record after 2 years. It simply is unfair to have a registered person continuously followed by false and unfounded allegations in a broad, publicly available database.

FINRA notes that it is considering raising the threshold for reporting settlements from the existing $10,000 to $15,000. In part, the rationale for raising this reporting limit is "to more accurately reflect the business criteria (including the cost of litigation) firms consider when deciding to settle claims." *See FINRA Regulatory Notice 8-20, p. 6.*

The proposed dollar threshold is too low and should go to $50,000. This level more appropriately reflects the realities and expectations of the industry, the regulators and investors when it concerns the impact of settlements. FINRA Code of Arbitration Rule 12401 (a and b) indicate in most instances that FINRA will assign a single arbitrator, rather than the normal three person panel, to decide claims of $50,000 or less. Pace Law School Securities Arbitration Clinic, founded in 1997 to handle cases that most lawyers will not take because the claim amount is too small, sets its intake limit for claims at $50,000. *See "Pace Securities Clinic Aids Small Investors," New York Times, October 18, 1998*. The cost of litigation has increased significantly since 1980 -- rates that were $85 an hour for a top firm now reach $800 an hour and higher. Legal fee rates at the mid-level and lower levels have seen comparable dramatic, exponential growth since 1980. By contrast, in 1980 the reporting threshold was $5,000 and is now $15,000. Thus, while legal fees have risen by a factor of ten times, the reporting threshold has only risen by a factor of 3 in the same time frame. Raising the threshold for reporting settlements only $5,000 to $15,000 simply is not in keeping with the objective business criteria actually exhibited by FINRA, law student arbitration clinics and law firms. We recommend that FINRA raise the limits for reporting to $50,000 both for complaints and for arbitrations.

Conclusion

Wachovia is pleased to have this opportunity to provide FINRA with our feedback on the proposed revisions to Forms U-4 and U-5. We believe that a system of efficient, accurate and meaningful disclosure of important information concerning registered personnel is a cornerstone of our world-leading securities system. We would urge that FINRA give serious consideration to whether this time is a good opportunity to determine if, rather than limited revisions, the Forms U-4 and U-5 could benefit from a full top-to-bottom overhaul. Please feel free to contact me if you wish to discuss this letter.

Very truly yours,

Ronald C. Long
Director of Regulatory Affairs

RCL:mm