May 30, 2008

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

Comment in response to Regulatory Notice 08-20

Dear Ms Asquith:

We are a mid-sized Broker/Dealer and Investment Advisor supported by a network of Independent Brokers and Advisors across the country. We have a number of questions and issues that we believe require further attention and clarification based on the Notice above. Our concerns are not as much with the added disclosure, rather the timing issues, some interpretive issues and several situations that we have identified herein that require further guidance as to their application to the disclosure of certain categories of registered persons.

Timing issues:

1. Please define further what is intended for "Prospective" as well as its application to the following examples:

    a. Arbitration is filed 5/1/08 naming the firm only, but also refers to an individual representative in the text of the Statement of Claim alleging various sales practice violations. The above rule is not as yet approved. The hearing is scheduled for 5/1/09 (a year away) and the Representative is still with the firm. The firm and the representative decide to settle the case for $24,000 and the FINRA Dispute Resolution Office accepts the withdrawal of the claims against the firm on 3/30/09. The above rule is approved for immediate effectiveness on 6/1/09 after the Arbitration has been settled.

        i. What is required if the Rep is still with the firm on 6/1/09?
        ii. What is required if the Rep is terminated without cause on 5/1/09 before the Rule is effective? Does this become an obligation of a hiring firm after 5/1/09 on the new U-4 application anytime prior to 6/1/09 if it had not been reported but was disclosed to the Firm by the Rep?
        iii. What if the Rep is hired 6/15/09 after the Rule is approved? It was not required to be reported during his tenure with the prior firm. If on 6/15/09 the U-4 is submitted without any notification by the Rep to the new firm, what is the responsibility of the new hiring firm? The Rep could still be

lingering under the belief that it was not a required disclosure during the time he was with the other firm so, why would it now be required? What will the obligation of the new firm be when or if they become aware of this oversight after the Rule is effective?

2. Currently, if a complaint is received naming a Rep and it is properly reported under 3070 and noted on the CRD form U-4, it remains on the record even after it is settled when it is for more than $10,000. If it is settled for less than $10,000 it is removed from the public disclosure page after two years.

   a. If however, this same complaint that named the Rep turns into an arbitration that only names the Firm, and it is prior to the Rule approval, there is no requirement to do anything further on the Rep's CRD to disclose the arbitration. It is still there however, in the form of the original 3070 customer complaint.

   b. If the Rule then goes into effect, and the firm now settles the arbitration for $24,000 (still not a reportable event for the Firm's Form B/D record since it is below $25,000), does this obligate the Firm to report the settlement and add new information to the Rep's U-4 (or U-5) regarding his being named in the body of the arbitration claim but not formally charged? If not, does the original U-4 complaint remain on his record? Further, if the Firm settles for $9,900, does the award generate a new requirement to amend the Rep's U-4? If so, will this also disappear from the Rep's public disclosure page after two years?

3. Currently if the firm is named in an arbitration that is for more than $5,000 but not the Rep who was responsible for the underlying allegations, there is no requirement to amend the Rep's U-4 (assuming also, that no complaint preceded the filing of the arbitration). If this arbitration is still pending when the new Rule is approved, is there a requirement to now amend the Rep's U-4 to disclose the allegations that pertained to him in the arbitration that did not name him specifically?

   a. Similarly, if the arbitration is still pending but the Rep changes his address thereby requiring an amendment to his U-4, must the arbitration be reported with the new information if it occurs after the Rule is approved?

4. If we have a current or former Rep that was not named in an arbitration but was named in the text of the Statement of Claim, and the arbitration was settled by the Firm just prior to the Rule approval and both the current Rep and the former Rep had nothing reported on their U-4s; is there any obligation by the Firm to amend either the U-4 or the U-5 after the Rule goes into effect?

5. Are there any situations where a Firm has reported allegations in excess of $25,000 that after a certain period of time it is removed from the Form B/D?

a. In view of the proposed increase in the reportable settlement benchmark from $10,000 to $15,000 for individual Reps' U-4, is there not a similar justification for increasing the benchmark for firms to some figure above $25,000 on the Form B/D?

Reportable "allegations of sales practice violations against a registered person" under certain circumstances noted below are in need of further clarification and/or justification:

1. An arbitration is filed alleging sales practice violations and failure to supervise:

   a. It names only the Firm but it refers to a Rep in the text of the Statement of Claim: We would consider this to be a new reportable event for the Rep's U-4.
   b. It names the Firm and the Rep but not the Rep's immediate supervisor. Is there a requirement to name the supervisor based on the "failure to supervise" allegation, even if the supervisor is not specifically named in the text of the claim?
   c. It names the Firm, the Branch Manager but not the Rep who is however mentioned in the underlying text of the Claim. We would consider this to be a new reportable event for the Rep's U-4.
   d. It names the Firm, several Officers of the Firm NOT directly involved in the allegations, and the Rep but not the Branch Manager. Are we required to name the Branch Manager? Is there any thought to a procedure to avoid reporting these allegations against named Officers (also registered principals of the firm) who are clearly not involved in the underlying allegations, including the failure to supervise?
   e. Will there be further interpretive guidance on what criteria may be used to determine what a good faith investigation would entail and what period of time would be considered reasonable within which a report will be required?

Other issues:

1. We have additional concerns about the timing of these reporting obligations after a Statement of Claim under the current Arbitration procedures has been received. In particular, when a firm receives a claim with allegations against a Rep and the Firm, the requirement for filing a report against a Representative may also be made available to FINRA regulatory staff. This may result in follow up letters and inquiries made by the FINRA staff, either from the national office or the District office. These inquiries often ask for detailed records and notes etc as well a many probing questions. All this generally occurs while the discovery process is ongoing for the Arbitration Claim.

   The real problems come in several forms. First, some documents may be provided to the FINRA staff that would not ordinarily be documents that are discoverable under Arbitration procedures. Some may be protected or perhaps unrelated to the Arbitration claims but none the less part of the FINRA staff's

request. It is not unusual for some of the questions raised by the staff to be clearly irrelevant to the issues in this statement of claim. Some questions are clearly made in the context of an assumption of guilt perhaps because of misleading or factually deficient allegations in the claim. Sometimes these requests go beyond the claims to other areas of the firm's business that may present a bias to the issues raised in arbitration. In effect, a premature expanded inquiry from the staff is tantamount to a discovery request that would not require production in the arbitration matter. If we are required to furnish such correspondence to an SRO under Arbitration procedures, it creates additional problems as noted herein.

These timing issues and the nature and extent of the questions raised by the FINRA staff should be reviewed further by legal and or enforcement before they are issued in writing to the Firm or the Rep in order to recognize the sensitivity of the timing and due process issues that may arise from these inquiries. Inaccurate, exaggerated and false allegations are not unusual in an Arbitration Statement of Claim.

We would prefer at a minimum, that a discussion with the Firm occur by any FINRA staff member to address the timing of any expected request for records and answers from the firm and/or the Rep. We think that the integrity of the Arbitration process should not be jeopardized by additional wide ranging inquiries and/or fishing expeditions before the Rep and or Firm have had a chance to properly defend themselves in a Hearing forum. There are additional concerns about the impact on a Rep during this sensitive discovery phase that can affect his or her current or future employment.

In sum, we believe there should be more consideration of the overall number of reporting events that are being considered under this proposal that may often stem from only one single complaint and/or arbitration. There should be some thought given to a single form that might include multiple reporting events for the same set of allegations from the same party. Further, there needs to be a review of the Arbitration procedures in order to avoid unnecessary and inappropriate disclosures may come from a premature or broad based inquiry from staff that could cause irreparable harm to an individual or member firm.

We appreciate the opportunity to be included in this comment period and we look forward to seeing a response to the issues raised herein. We would also be happy to discuss any of these issues further if you wish.

Very truly yours,

George W. Mann Jr.
General Counsel