

Notice to Members

JULY 2003

SUGGESTED ROUTING

Legal & Compliance
Operations
Registered Representatives
Registration
Senior Management
Training

KEY TOPICS

Central Registration Depository
Form U4
Form U5
Statutory Disqualification

INFORMATIONAL

Revised Forms U4 and U5

SEC Approves Proposed Changes to Forms U4 and U5;
Implementation Date: July 14, 2003

Executive Summary

The Securities and Exchange Commission (SEC) has approved changes to the Form U4 (Uniform Application for Securities Industry Registration or Transfer) and Form U5 (Uniform Termination Notice for Securities Industry Registration). The changes: (1) add new disclosure questions to the "Regulatory Disciplinary Actions" subsection of Section 14 (Disclosure Questions) of the Form U4 and a new corresponding Disclosure Reporting Page (DRP), to elicit information regarding events that might cause a person to be subject to a statutory disqualification as a result of new disqualifying events created by the Sarbanes-Oxley Act of 2002; (2) add new disclosure question Question 7F and corresponding DRP on the Form U5 to mirror Question 14J on the Form U4 relating to terminations for cause; (3) streamline the language associated with Form U4 questions relating to fingerprinting requirements; and (4) make other non-substantive technical, clarifying, and conforming revisions.

The revised forms will be implemented on July 14, 2003. Copies of the new forms are available on the NASD Web Site at www.nasd.com.

Questions concerning this *Notice* may be directed to the Gateway Call Center at 301-869-6699.

Background And Discussion

The SEC has approved changes to the Forms that: (1) add new disclosure Question 14D(2) to the “Regulatory Disciplinary Actions” subsection of Section 14 (Disclosure Questions) of the Form U4 and a new Disclosure Reporting Page (DRP), to elicit information regarding events that might cause a person to be subject to a statutory disqualification as a result of new disqualifying events created by the passage of the Sarbanes-Oxley Act of 2002;¹ (2) add new disclosure question Question 7F and corresponding DRP on the Form U5 to mirror Question 14J on the Form U4 relating to terminations for cause; (3) streamline the language associated with Form U4 questions relating to fingerprinting requirements; and (4) make other non-substantive technical, clarifying, and conforming revisions generally designed to make the Forms clearer and easier to use.

This *Notice* highlights the changes made in the Forms. Additional background and explanatory information may be found in SEC Release No. 34-48161 (July 10, 2003), the SEC release approving Forms U4 and U5 revisions.²

New Questions 14D(2) (a) and (b) on Form U4

The Form U4 historically has been the vehicle for reporting events that may cause a person to become subject to statutory disqualification. Accordingly, with the concurrence of a working group of regulators, including state regulators, representatives of other self-regulatory organizations (SROs), and SEC observers, NASD proposed and the SEC approved an amendment to Section 14 of the Form U4 to add Question 14D(2). New Question 14D(2) will elicit reporting of

regulatory actions that may cause an individual to be subject to a statutory disqualification under the expanded definition of disqualification in Section 15(b)(4)(H) of the Exchange Act, created by the passage of the Sarbanes-Oxley Act. Question 14D(2) requires firms to report certain orders issued by a State securities commission (or any agency or officer performing like functions), State authority that supervises or examines banks, savings associations, or credit unions, State insurance commission (or any agency or office performing like functions), an appropriate Federal banking agency (as defined in section 3 of the Federal Deposit Insurance Act), or the National Credit Union Administration (NCUA) that: bars persons from association with an entity regulated by such commission, authority, agency, or officer, or from engaging in the business of securities, insurance banking, savings association activities, or credit union activities; or constitutes a final order based on violations of any laws or regulations that prohibit fraudulent, manipulative or deceptive conduct. Former Regulatory Action Disclosure Question 14D has been renumbered as Question 14D(1). To aid members and associated persons in reporting events required to be reported under Question 14D(2), NASD has also amended the Regulatory Action DRP and added two defined terms, “final order” and “federal banking agency,” to the “Explanation of Terms” section.

Generally, a change to a disclosure question or the addition of a new disclosure question on Form U4 requires the prompt filing of an amended Form U4 only if a registered person is subject to an action or event that requires an affirmative response to the changed or new question or additional disclosure on detailed DRPs relating to the new or

changed question. Firms making such amendments to Section 14 (Disclosure Questions) or any DRP also generally are required to complete Section 15D of the Form U4 (the Individual/Applicant's Amendment Acknowledgment and Consent). If a registered person has not been the subject of an action or event that is elicited by a changed or new disclosure question, he or she need not answer the changed or new disclosure question until an amended Form U4 filing is otherwise required (e.g., with the filing of a change of address, a request for a new registration category or license, or any new or amended responses to the questions in Section 14 or related DRPs).

Therefore, with respect to the new Question 14D(2), firms must immediately determine whether their registered persons have been subject to an action that requires reporting under the new question. **If a member firm determines that any one of its registered persons has been the subject of a regulatory action that would require a "yes" answer to Question 14D(2), it must amend that person's Form U4 to provide a "yes" answer to the appropriate subsection of Question 14D(2) not later than 30 days from implementation of the new question or August 13, 2003.** Firms must also obtain a completed Form U4 Section 15D (the Individual/Applicant's Amendment Acknowledgment and Consent) in such cases. These amendment filings must include completed DRP(s) covering the proceedings or action reported. Firms are required to maintain a copy, with original signatures, of these amendment filings.³ Firms will not be required to amend a registered person's Form U4 within 30 days, *i.e.*, by August 13, 2003, if the firm has determined that the registered person is not required to answer "yes" to any part of Question 14D(2).

In sum, even though current Question 14D elicits much of the information elicited by new Question 14D(2), firms must submit any "yes" answers to Question 14D(2) by August 13, 2003, notwithstanding that previous answers to Question 14D may appear to provide the same information. In such cases, firms must also review and, as necessary, amend the previously submitted "Regulatory Action" DRP to mark the appropriate checkboxes for Question 14D(2) and make sure the details for the affirmative response to new Question 14D(2) are reported.

Firms must submit amended Forms U4 by August 13, 2003, if "yes" answers are required for any part of new Question 14D(2), and must also obtain a completed Form U4 Section 15D (the Individual/Applicant's Amendment Acknowledgment and Consent) in such cases. These amendment filings must include completed DRP(s) covering the proceedings or action reported, and firms are required to maintain a copy, with original signatures, of these amendment filings. **Any registered person for whom a firm has not filed an amended Form U4 reporting "yes" answers to Question 14D(2) by August 13, 2003, will be deemed to have represented that he or she has not been the subject of any such proceedings as of that date.⁴**

The CRD system will process amendments to Form U4 filings on or after July 14, 2003, as follows. As of July 14, 2003, for all registered persons who have no "yes" answers to Questions 14A through M in the Disclosure Section of the Form U4, the CRD system will default new disclosure Question 14D(2) with a "no" response for any filings prepared for submission after implementation of the new questions, and the firm will not be required to obtain an executed Section

15D for purposes of answering Question 14D(2). Form U4 amendments filed by the firm for such individuals will not fail the completeness check because of these new questions; however, by submitting the filing, a firm will be representing that it is filing “no” answers to the new questions, unless it affirmatively changes the system-defaulted “no” answer to “yes” before submitting the filing. Similarly, as discussed above, a registered person who has not filed an amended Form U4 reporting “yes” answers to Question 14D(2) within the specified 30-day period will be deemed to have represented that he or she has not been the subject of any such proceedings.

If a registered person has answered “yes” to any question in Questions 14A through M in the Disclosure Section of the Form U4 as of July 14, 2003, the CRD system will require that a firm filing an amended Form U4 enter a response (by selecting the appropriate “yes” or “no” radio button) to new Disclosure Question 14D(2) and also obtain an executed Section 15D. If those questions are not answered at that time, the filing will fail the CRD system completeness check. In any event, firms should promptly amend Forms U4 at such time as any of their registered persons become subject to a disqualification under Section 3(a)(39) of the Exchange Act (which incorporates Section 15(b)(4)(H) by reference).⁵

New Question 7F on Form U5

The revised Form U5 includes a new Question 7F and corresponding DRP that mirrors Question 14J on the Form U4. Both questions concern terminations for cause. New Question 7F will enable firms to report that an individual was terminated after allegations of certain violations, fraud, wrongful taking of property, or failure to supervise.

Affirmative answers to that question will further clarify an individual’s obligation to report the termination in response to Question 14J on a subsequent Form U4. In addition, the term “resign or resigned” has been added on the Form U5 “Explanation of Terms” section to parallel the term on the Form U4.

Modifications to the Form U4 Relating to Fingerprinting Requirements

The revised Form U4 streamlines the language in Section 2 (Fingerprint Information) and Section 6 (Registration Requests with Affiliated Firms) to clarify fingerprint requirements applicable to associated persons of broker/dealers and investment adviser representatives.

Section 2 has been modified to address two situations that were not specifically covered in the March 2002 version of the Form U4. The first involves a firm submitting fingerprint results on behalf of an individual whose fingerprints were processed through another SRO, in lieu of submitting fingerprint cards. The second occurs when the firm is seeking registration for an individual who is currently employed by the firm (usually in an unregistered capacity) and previously has been fingerprinted (either through NASD or another SRO). The new language allows firms and individuals to represent that the filing firm (1) has continuously employed the individual since the last submission of a fingerprint card to NASD (and therefore is not required to resubmit a card with this filing) or (2) has continuously employed the individual since the individual had his or her fingerprints processed through another SRO, and the individual will submit (or has submitted) the processed results to the CRD system.

The “Exceptions to the Fingerprint Requirement” subsection under Section 2 has also been modified to allow firms to select the specific permissive fingerprint exemption under Exchange Act Rule 17f-2(a)(1)(i) and/or (a)(1)(iii). The previous Form U4 language contained a general exception to the fingerprint requirement in which firms represented that an individual had been continuously employed by the filing firm in an unregistered capacity (and had previously submitted a fingerprint card in connection with that employment) or met one or more exemptions under Rule 17f-2.⁶

Additionally, Section 2 has been modified to clarify fingerprint filing requirements for investment adviser representative-only applicants who use the Form U4 to register with states in an investment adviser representative capacity (shown as “RA” on the Form U4). In particular, language has been added to clarify the circumstances under which an individual may need to file a fingerprint card when submitting an application for state licensure as an investment adviser representative, notwithstanding having previously submitted a fingerprint card with an unaffiliated broker/dealer. The amended language also allows an investment adviser representative to represent on the Form U4 that he or she previously satisfied a state fingerprint requirement.⁷

A fingerprint question also has been added to Section 6 (Registration Requests with Affiliated Firms) to create appropriate options (relating to fingerprint obligations) for individuals requesting new registrations with a firm affiliated with the filing firm.⁸

Technical/Conforming Changes

The 2003 revisions include technical and other changes to increase the consistency between the Forms U4 and U5 and better clarify the disclosure information that is required to be reported on the Forms, including the following:

- ◆ Hyphens have been removed from “U-4” and “U-5” (Forms will now be referenced as “U4” and “U5.”)
- ◆ Summary fields on the DRPs (where individuals may elect to add comments on a reported event) have been reworded to emphasize that those fields are optional.
- ◆ The Customer Complaint DRPs on both Forms have been modified to clearly distinguish the fields that are required for reporting a customer complaint, arbitration claim, and/or litigation. The additional instructions and rearrangement of the questions into a more logical order clarify the information that is required to be reported on the Customer Complaint DRP; however, the content of the DRP has not changed.
- ◆ Question 14F has been revised to clarify the intent of the reporting obligation. Question 14F now asks whether an applicant has ever had an authorization to act as an attorney, accountant or federal contractor that was revoked or suspended.
- ◆ The hair and eye color codes have been modified to match the codes used by the Federal Bureau of Investigation’s fingerprint system.
- ◆ Additional bolding and underlining has been introduced to emphasize certain instructions and facilitate reporting of certain information on the DRPs.

Uniform Forms Reference Guide

NASD created the *Uniform Form Reference Guide* in March 2002 to provide member firms and other users of the Forms with resource and contact information. In conjunction with the 2003 revised Forms, NASD has updated and amended the *Uniform Form Reference Guide*, which is available on www.nasd.com.

Endnotes

- 1 Section 604 of the Sarbanes-Oxley Act expanded the definition of "statutory disqualification" by amending Sections 3(a)(39) and 15(b)(4) of the Securities Exchange Act of 1934 (Exchange Act).
 - 2 For additional background, see SEC Release No. 34-47936, File No. SR-NASD-2003-57, 68 FR 33545 (June 4, 2003) (proposing release).
 - 3 NASD appreciates that this requirement places an administrative burden on member firms. However, the burden should be mitigated by the following facts. First, as a practical matter, current Question 14D elicits virtually all information required by the Sarbanes-Oxley Act changes, with the exception of NCUA and state credit union regulatory proceedings or actions. Consequently, registered persons already should have reported most information responsive to the Sarbanes-Oxley Act changes, with the exception of those proceedings or actions. Based on preliminary discussions with the NCUA and state regulators, NASD believes that the number of Form U4 amendments firms will be obligated to file to report affirmative answers to new Question 14D(2) by August 13, 2003, should be quite small.
 - 4 A registered person who fails timely to notify his or her member firm of a reportable credit union regulatory proceeding will be deemed to have made a false or incomplete filing in these circumstances, irrespective of whether his or her firm has made a specific inquiry of its registered persons about such proceedings. NASD wishes to emphasize that reporting such proceedings is an affirmative obligation of the registered person, which is not excused by a firm's failure specifically to inquire as to the existence of such proceedings.
 - 5 In SEC Release No. 34-48161A, the reference to "Questions 14A through J" was corrected to read "Questions 14A through M" in these two paragraphs.
 - 6 Rule 17f-2 governs the fingerprinting requirements of securities personnel. Rule 17f-2(a)(1)(i) permits an exemption for persons who are not engaged in the sale of securities; do not regularly have access to the keeping, handling, or processing of securities, monies, or books and records; and do not have supervisory responsibility over persons engaged in such activities. Rule 17f-2(a)(1)(iii) generally exempts the partners, directors, officers, and employees of a broker/dealer that is engaged exclusively in the sales of certain securities, such as variable contracts, limited partnership interests, and unit investment trusts.
 - 7 This addition should be particularly helpful to investment adviser representatives who became licensed in a jurisdiction through the submission of a hard copy Form U4 before that jurisdiction accepted electronic filings via the Investment Adviser Registration Depository and who are now being "transitioned" onto an electronic system via an electronically filed Form U4 amendment.
 - 8 "Affiliated firm" has been added to the "Explanation of Terms" to clarify the use and meaning of that term on the Form U4.
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