

INFORMATIONAL

Revised Forms U-4 And U-5

SEC Approves Technical Changes To Forms U-4 And U-5 And Amendment To NASD Interpretive Material 8310-2; **Effective Date: March 18, 2002**

SUGGESTED ROUTING

The Suggested Routing function is meant to aid the reader of this document. Each NASD member firm should consider the appropriate distribution in the context of its own organizational structure.

- Continuing Education
- Legal & Compliance
- Operations
- Registered Representatives
- Registration
- Senior Management
- Training

KEY TOPICS

- Central Registration Depository System
- IM 8310-2
- Investment Adviser Representatives
- U-4
- U-5

Executive Summary

The Securities and Exchange Commission (SEC) has approved technical changes to Forms U-4 and U-5, effective March 18, 2002. The SEC also has approved an amendment to National Association of Securities Dealers, Inc. (NASD®) Interpretive Material (IM) 8310-2, which authorizes the NASD to release to the public disciplinary and other information on NASD members and their associated persons.

The revised forms are effective March 18, 2002. Copies of the new forms are available on the NASD Regulation Web Site at www.nasdr.com. Members are not required to "re-file" Forms U-4 and U-5 for their associated persons.

Questions concerning this *Notice* may be directed to Richard E. Pullano, Chief Counsel and Director, CRD/Public Disclosure, NASD Regulation, Inc., at (240) 386-4821; or Shirley H. Weiss, Associate General Counsel, Office of General Counsel, NASD Regulation, Inc., at (202) 728-8844.

Background And Discussion

The Uniform Application for Securities Industry Registration or Transfer ("Form U-4") and the Uniform Termination Notice for Securities Industry Registration ("Form U-5") are used by NASD member firms (*i.e.*, broker/dealers) to register, transfer, and terminate the registration of their associated persons with self-regulatory organizations (SROs) and states, as appropriate. Broker/dealers have filed Forms U-4 and U-5 electronically to fulfill registration-related obligations of their associated persons since the implementation of Web CRDSM in August 1999.¹ Investment adviser firms also use Forms U-4 and U-5

to fulfill state licensing obligations for investment adviser representatives (called "RAs" on the revised Forms U-4 and U-5), but until now, they have been required to submit those forms to individual states in hard copy.²

In July 2000, the SEC formally designated NASD Regulation as the entity to establish and maintain the Investment Adviser Registration Depository (IARDSM), a system designed to enable investment advisers to fulfill their registration-related obligations with federal and state regulators through an electronic Internet-based filing system.³ In January 2001, NASD Regulation implemented the first phase of the IARD system, which allows investment adviser firms to file electronically Forms ADV and ADV-W, and amendments thereto. The second phase of the system, which will enable investment adviser representatives to register and terminate electronically their state registrations, is scheduled to be deployed on March 18, 2002, concurrent with the implementation of the revised Forms U-4 and U-5.

In connection with this second phase of the IARD system, NASD Regulation worked with representatives of the North American Securities Administrators Association (NASAA), the states, the broker/dealer and investment adviser communities and other SROs to craft changes to Forms U-4 and U-5 that: (1) accommodate the electronic submission of investment adviser representative filings in the IARD system; (2) establish procedures that enable broker/dealer and investment adviser firms that employ the same person to concur with information contained in Forms U-4 filed by the other firm

on that person; (3) clarify the filing instructions; (4) provide separate paper filing instructions for investment adviser representative filers and other state-only filers that do not use the CRD or IARD systems; (5) clarify items that have been confusing to filers; (6) make formatting and technical changes to Forms U-4 and U-5 that complete the transition from a paper-based filing model to an electronic-filing model; and (7) update form U-4 to add examination and registration categories not previously included. The SEC also approved a technical amendment to IM-8310-2(a), which addresses the NASD's release of information through the Public Disclosure Program, to reflect the correct reference to the disclosure section on Form U-4, which has changed from Item 23 to Item 14 on the revised Form U-4.

The approved Forms changes do not alter the reporting or disclosure requirements applicable to broker/dealers or their registered persons. Therefore, member firms are not required to "re-file" disclosure or administrative information for their associated persons.

This *Notice* highlights the changes included in the March 2002 Forms U-4 and U-5. Additional background and explanatory information may be found in the Securities Exchange Act of 1934 ("Exchange Act") Release No. 45531, the SEC release approving Forms U-4 and U-5 revisions.

❖ **Section Headers Replace Numbered Fields**

The numbered fields used in previous versions of the Forms U-4 and U-5 have been removed because the electronic interactive filing format used in the Web CRD and IARD systems presents information in a specified order, thereby eliminating the need for

numbered data fields. Instead, the revised Forms U-4 and U-5 contain numbered "section headers" that clearly describe the types of information elicited or action required by the applicant or firm, with applicable subquestions contained within each section. Organizing the current fields into sections has changed the question numbers, but there are no substantive changes to the questions. Of note, Question 14 on Form U-4 replaces Question 23 as the "Disclosure Question," and contains subquestions numbered 14A, 14B, etc.⁴

❖ **Explanation of Terms and Specific Instructions**

The revised "Explanation of Terms" and "Specific Instructions" sections have been generally revised and simplified to include instructive language. The Explanation of Terms section includes seven new terms and an alphabetical list of definitions to better aid applicants and firms.⁵ In addition, the Specific Instructions include directions for investment adviser representative-only applicants (*i.e.*, those individuals who are not also registered or seeking registration with a broker/dealer), as well as separate instructions for paper filers.

❖ **Private Residence Check Box**

The new "General Information" section contains a "private residence check box" that allows individuals to notify regulators that their office of employment address is a private residence. This feature was added to address privacy concerns raised by the investment adviser community in connection with the potential release to the public through open records laws or other programs of the home addresses of investment advisers who are sole practitioners operating out of their homes.

Functionality within the CRD and IARD systems enables regulators to block the release of such information.

❖ **Fingerprint Information**

A new "Fingerprint Information" section replaces Question 8a on the 1999 Form U-4 and addresses procedures for submitting fingerprints to register with SROs and states. This section includes a representation affirming that an electronic filer who seeks registration with a broker/dealer is submitting or will promptly submit fingerprint cards consistent with SRO rules. The revised Form U-4 permits an applicant firm to represent that the subject of a filing is exempt from the fingerprint requirement if the applicant meets one or more of the exemptions established by Rule 17f-2 under the Exchange Act. In addition, this section also addresses the applicable scenarios for the filing of fingerprint cards by individuals who are filing only as investment adviser representatives, and who may not be required to submit fingerprint cards for one or more jurisdictions.

❖ **Dual Registration/Affiliated Firms**

Because the meaning of "dual registration" in Questions 9 and 10 on the 1999 Forms U-4 and U-5 caused some confusion for both regulators and member firms, the revised Forms U-4 and U-5 replace former Questions 9 and 10 with the "Registration with Unaffiliated Firms" and "Registration with Affiliated Firms" sections, respectively. The "Registration with Unaffiliated Firms" section states the majority view of "dual registration" within the states, *i.e.*, those individuals who answer this question affirmatively will be considered to be "dually registered." Individuals/

firms are instructed to consult applicable state or SRO rules to determine whether dual registrations are permitted. The "Registration with Affiliated Firms" section applies only to individuals registering with firms that are under common ownership or control.

❖ **Registration Categories**

The revised Forms U-4 and U-5 include changes to the registration categories to accommodate the addition of, among others, the International Securities Exchange (ISE) as a new national securities exchange, and the new Private Placement (PR) position required by the Gramm-Leach-Bliley Act.⁶

❖ **Professional Designations Section**

The revised Form U-4 adds Section 8, "Professional Designations," to enable an individual requesting registration as an investment adviser representative to seek a waiver from examinations if he or she currently maintains certain designations (*i.e.*, Certified Financial Planner, Chartered Financial Consultant, Personal Financial Specialist, Chartered Financial Analyst, or Chartered Investment Counselor).

❖ **Signature and Acknowledgment Sections**

New Section 15 on Form U-4 enables individuals and appropriate signatories to go directly to designated signature fields to execute signatures electronically required by the Forms U-4 and U-5. Sections 15A and 15B address the individual/applicant's acknowledgment and consent and the firm/appropriate signatory's representations, both of which must be completed on all initial or Temporary Registration

form filings. Section 15C addresses the Temporary Registration Acknowledgment, which must be completed for all temporary registrations. Section 15D has been added to address an individual/applicant's acknowledgment and consent to amendments to the disclosure questions or the Disclosure Reporting Pages (DRPs). Firms and appropriate signatories must complete Section 15E for all amendment form filings.

In addition, as discussed in more detail below, Section 15F, "Firm/Appropriate Signatory Concurrence," enables one firm to "concur" with, and thereby adopt as its own, a filing made by another firm with which an individual is also registered (*i.e.*, an individual registered with more than one broker/dealer and/or investment adviser firm). The concurrence filing provides firms with a faster, more efficient method of fulfilling their reporting obligations on an associated person who also is associated with another entity.

Section 8 of the revised Form U-5 addresses the signature requirements on that Form, including the firm acknowledgment in Section 8A and a new individual acknowledgment and consent in Section 8B. Although only appropriate signatories of firms are required to sign Form U-5 in the ordinary course of business, individuals who are the subject of Form U-5 may be required to submit signatures under two scenarios: (1) formerly registered individuals must submit to the CRD system address changes for two years following the termination of their registration under NASD rules;⁷ and (2) registered or formerly registered individuals may file an Internal Review DRP-Part II to respond to a report on Form U-5

by that individual's previous employer that the individual is subject to an internal review. New Section 8B enables individuals submitting an address change or Internal Review DRP-Part II to attest that the information being submitted is accurate and complete.

Concurrence Filing Procedures

With the implementation of electronic filing for investment adviser representatives, investment advisers will be able electronically to submit Forms U-4 and U-5 to register and terminate the registrations of their representatives with appropriate state regulators. Individuals who are registered with both a registered investment adviser firm and a broker/dealer will share a single registration record on the CRD and IARD systems. As discussed above, the changes to Form U-4 allow a member broker/dealer to concur with a filing submitted by any other broker/dealer or investment adviser with which a registered person is also registered. Enabling member broker/dealers to concur with filings submitted by an investment adviser regarding a particular person will streamline the registration process and make it more efficient for members to comply with their reporting obligations on an associated person who also is associated with another entity.

To implement this new process, the CRD and IARD systems will automatically notify a member firm of the submission of a Form U-4 or amendment for one of its associated persons by another broker/dealer or an investment adviser that also employs that individual. The firm that is notified will then be able to review the information that has been

submitted and execute a “concurrency filing,” which communicates to the CRD and IARD systems (and, therefore, all appropriate regulators) that it has adopted the filing as its own.⁸

In the event that multiple firms associated with any particular individual submit different DRPs on the same disclosure event, NASD Regulation staff will “flag” the affected record on the CRD and IARD systems to put regulators and the involved firms on notice that differences between the two filings exist. The “difference flag” will be set whenever there is a difference between the information provided in any of the fields eliciting objective factual information (*i.e.*, any of the DRP fields, with the exception of the last field on the DRP, which is reserved for the registered representative’s summary or commentary on the event).⁹

Uniform Forms Reference Guide

In connection with the revised Forms U-4 and U-5, NASD Regulation has created a *Uniform Forms Reference Guide* to provide member firms and other users of the Forms U-4 and U-5 with resource and contact information. The *Reference Guide* is available on the www.nasdr.com Web Site.

Endnotes

- 1 In 1999, the SEC approved amendments to Forms U-4 and U-5 that included both technical and formatting changes in anticipation of the implementation of the Web CRD system and electronic filing. See *Securities Exchange Act Rel. No. 41560 (June 25, 1999)*, 64 FR 36059 (July 2, 1999). Also, see *Notice to Members 99-63*.
- 2 Registration/licensing categories for investment adviser representatives were added to Forms U-4 and U-5 in 1996 in anticipation of the processing of these and other non-member categories through the CRD system. See *Securities Exchange Act Rel. No. 37404 (July 5, 1996)*, 61 FR 36595 (July 11, 1996). Note that for technical reasons, the designation for investment adviser representatives has changed from “IAR” to “RA” on the revised Forms U-4 and U-5.
- 3 See *Investment Advisers Act of 1940 (“Advisers Act”) Rel. 1888 (July 28, 2000)*, 65 FR 47809 (Aug. 3, 2000). As noted in the order, in 1996, Congress gave the SEC authority “to participate in an electronic system for the registration of investment advisers.” As a result, Congress enacted Section 203(A)(d) of the Advisers Act, which enables the SEC to require investment advisers to file registration and other forms “through any entity designated [by the SEC] for that purpose” and to “pay the reasonable costs associated with [these] filings.” A description of the IARD system is provided in *Advisers Act Rel. 1862 (Apr. 5, 2000)*, 65 FR 20524 (Apr. 17, 2000). Although the IARD system functions in a manner similar to the Web CRD system, NASD Regulation does not act as an SRO for investment advisers or investment adviser representatives.
- 4 The SEC also approved an amendment to IM-8310-2 to change the reference in paragraph (a)(4)(A) from Item 23 to Item 14 to accurately reflect the correct item number on the revised Form U-4.
- 5 The revised Forms U-4 and U-5 now define the following terms: *affiliated, applicant, designated entity, filing firm, firm, firm CRD number, and individual CRD number*.
- 6 The PR position was implemented in May 2001 as required by the Gramm-Leach-Bliley Act of 1999, which added a new subsection (j) to Section 15A of the Exchange Act and created a new NASD registration category for individuals engaged only in private securities offerings. See *Section 203, P.L. 102, Gramm-Leach-Bliley Act (Nov. 12, 1999)*.
- 7 See generally Article V, Section 4 of the NASD By-Laws, Forms U-4 and U-5.
- 8 Firms will receive notice filings for all Form U-4 filings that affect their associated persons who are also registered with another broker/dealer or investment adviser firm. Such firms would not be required to make concurrence filings where the Form U-4 amends information that is relevant only to the broker/dealer or investment adviser that initially filed the Form U-4 (*e.g.*, such firms will not have to submit concurrence filings for changes to registrations, office of employment address, etc. that are specific to the entity making the initial filing).
- 9 When a difference is flagged, NASD staff will alert the firms involved to request that they resolve the difference. If the firms are not able to reach an agreement within 30 calendar days, NASD staff will refer the matter to a state regulator and/or internal NASD department, as appropriate, based on the facts and circumstances of the situation, for review and resolution.

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