

July 1, 2003

VIA MESSENGER

Katherine A. England
Assistant Director
Division of Market Regulation
Securities and Exchange Commission
450 Fifth Street, N.W.
Washington, D.C. 20549-1001

Re: File No. SR-NASD-2003-57 - Amendment No. 1 to Proposed Rule Change to Revise Uniform Application for Securities Industry Registration or Transfer (Form U-4) and Uniform Termination Notice for Securities Industry Registration (Form U-5)

Dear Ms. England:

This letter responds to the comment letter received by the Securities and Exchange Commission ("SEC" or "Commission") in response to the publication in the *Federal Register* of Notice of Filing of SR-NASD-2003-57 relating to proposed revisions to the Uniform Application for Securities Industry Registration or Transfer (Form U4) and Uniform Termination Notice for Securities Industry Registration (Form U5) and adds additional language to the "Purpose" section of the rule filing.¹

Response to Comments

The Association of Registration Management ("ARM") raises three concerns regarding NASD's proposed changes to the Form U4 and Form U5 (hereinafter referred to as the "Forms"). Among other things, NASD proposes to add new disclosure Questions 14D(2)(a) and (b) to elicit reporting of events that may cause a person to be subject to a statutory disqualification as a result of the expansion of the federal definition of statutory disqualification based on the enactment of the Sarbanes-Oxley Act of 2002 ("Sarbanes-Oxley Act").

ARM questions the need for these additional questions based on its belief that current Question 14D requires firms to report all of the events that would be elicited under proposed Questions 14D(2)(a) and (b). Specifically, ARM contends that Question 14D may be fairly read to include events relating to credit union activities, on the basis that "credit union" falls within the current definition of "investment-related." NASD does not

¹ The list of Commenters is attached as Exhibit 1.

agree with this contention. Although NASD recognizes that there is an overlap between the information elicited by the Question 14D and proposed Question 14D(2), the literal language of Question 14D does not specifically require individuals to report final orders of the National Credit Union Administration (NCUA) or state credit union regulators. Further, NASD does not agree with ARM that it may be implied on the basis of the current definition of "investment-related" that such orders should be reported under Question 14D.

In light of the fact that the Sarbanes-Oxley Act created a new set of statutory disqualifications, NASD, representatives of other self-regulatory organizations and state regulators, including representatives of the North American Securities Administrators Association ("NASAA"), made a policy decision that although Question 14D currently requires firms to report most events that may cause an individual to become statutorily disqualified under the Sarbanes-Oxley Act, the Forms should be amended specifically to require firms and individuals to report all of that information (in response to questions that specifically track the language of the Sarbanes-Oxley Act) in a new question.

NASD appreciates ARM's concern that this substantive change to the Forms will create an administrative burden on firms. NASD disagrees, however, with ARM's suggestion that, as an alternative to including these questions on the Forms, NASD adopt a rule that would require firms to have their employees certify (annually or otherwise) on a firm-by-firm basis to the proposed questions. First, NASD does not believe that this approach will save time and effort, since it likely will require firms to establish a methodology for requesting and collecting this information on paper. Second, NASD believes that firms and individuals should be required to report timely all statutorily disqualifying events on the Forms, including statutorily disqualifying events pursuant to the Sarbanes-Oxley Act.

However, in consideration of the potential administrative and operational costs to firms to amend the Disclosure Questions section of every registered person's Form U4 and obtain a new, signed Section 15D of the Form (the Individual/Applicant's Amendment Acknowledgment and Consent), NASD has established procedures, as described in Amendment No. 1 to this rule filing, that it believes make sense from both a regulatory and administrative standpoint, and will ease the burden on firms.

Amendment to "Purpose" Section of Rule Filing

NASD proposes adding the following language to the "Purpose" section of the rule filing to establish procedures for answering Question 14D(2).

* * * * *

Beginning July 14, 2003, NASD will implement the following procedures with respect to filing answers to proposed Question 14D(2):²

As explained above, the Sarbanes-Oxley Act creates new categories of statutory disqualifications. The current Question 14D on the Form U4 elicits answers that cover most of these disqualifications, including final orders issued by a state securities, insurance, or banking authority, but it does not elicit answers that cover final orders issued by a state regulator with authority over credit union activities or the National Credit Union Administration (NCUA).

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 Disclosure Reporting Pages (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).

With respect to the proposed new Question 14D(2), therefore, firms need to determine immediately whether their registered persons have been subject to an action that requires reporting under the new question. Firms then will be required to amend Forms U4 to respond to Question 14D(2) promptly (i.e., not later than 30 days from implementation of the new question or August 13, 2003). Firms will be required to amend a registered person's Form U4 by August 13, 2003 only when a firm has determined that one of its registered persons must answer "yes" to any part of Question 14D(2). Firms must 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.

While NASD appreciates that this requirement places an administrative burden on firms, 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

² In addition, NASD will publish a Notice to Members explaining these procedures and publish these procedures on the NASD Web Site.

or actions. While registered persons with affirmative answers to current Question 14D also may be required to report an affirmative answer to new Question 14D(2), a statistical review of information in the CRD system reflects that only about five percent of registered persons (approximately 3,600 individuals) have affirmative answers to current Question 14D. Moreover, based on preliminary discussions with the NCUA and state regulators, NASD believes that the number of required amendment filings to report NCUA and state credit union regulatory proceedings/actions will be even smaller, involving less than one-tenth of one percent of registered persons. As a result, 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 will be quite small. Firms will, however, be required to obtain Section 15D (the registered person's acknowledgement and consent), with original signatures, for these registered persons.

Any registered person who has not filed an amended Form U4 reporting credit union regulatory proceedings 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. Firms will be entitled to submit amended Forms U4 on behalf of such registered persons without completing Section 15D, provided that the amended filing does not involve any other Section 14 Disclosure Question changes. Although firms will not be required to obtain an executed Section 15D from registered persons under these circumstances, they will be required to answer the new 14D(2) questions.³

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

³ The CRD system will process such Form U4 filings as follows. If a registered person has a "yes" answer to any question in Questions 14A through J in the Disclosure Section of the Form U4 on or after July 14, the CRD system will require that the 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 a completed Section 15D. If those questions are not answered, the filing will fail the CRD system completeness check. For the sake of clarity, NASD notes that an amendment to a Form U4 filing on or after July 14, for the purpose of adding a "yes" answer to Questions 14A through J, when previously there had been no "yes" answers, would require the firm filing the amendment to answer new disclosure Question 14D(2) and obtain a completed Section 15D.

If a registered person does not have a "yes" answer to Questions 14A through J 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 a completed Section 15D for the purposes of answering Question 14D(2). Form U4 amendments filed by the firm for such individuals will not fail the completeness check due to these new questions; however, by submitting the filing, firms will be representing that they are filing "no" answers to the new questions, unless they affirmatively change the "no" answer to "yes" before submitting the filing. Similarly, as discussed above, registered persons who have not filed an amended Form U4 reporting credit union regulatory proceedings 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.

Katherine A. England

July 1, 2003

Page 5

person, which is not excused by a firm's failure specifically to inquire as to the existence of such proceedings.

NASD believes that these procedures will avoid imposing on firms the unwarranted administrative burdens and costs associated with obtaining more than 600,000 copies of Form U4 Section 15D with original signatures for registered persons who have no reportable credit union regulatory proceedings.

* * * * *

If you have any questions, please contact Shirley H. Weiss, Office of General Counsel, Regulatory Policy and Oversight, NASD, at (202) 728-8844, e-mail Shirley.Weiss@nasd.com or Rick Pullano, Department of Registration and Disclosure, Regulatory Services and Operations, (240) 386-4821, e-mail Richard.Pullano@nasd.com. The fax number of the Office of General Counsel is (202) 728-8264.

Very truly yours,

Patrice M. Gliniecki
Vice President
and Deputy General Counsel

cc: Elizabeth Badawy
Joseph Corcoran
Christopher Stone