



NASAA

NORTH AMERICAN SECURITIES ADMINISTRATORS ASSOCIATION, INC.

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May 27, 2008

Marcia E. Asquith
Office of the Corporate Secretary
FINRA
1735 K Street, NW
Washington, DC 20006-1500
VIA EMAIL TO: pubcom@finra.org

Re: Regulatory Notice 08-20 – Proposed Changes to Forms U4 and U5

Dear Ms. Asquith:

The following comments are hereby submitted on behalf of the North American Securities Administrators Association, Inc., (“NASAA”)¹ regarding the above-referenced regulatory notice (“Notice”). NASAA is pleased that FINRA requested comment on these proposed Form U4 and U5 changes as an initial step in filing these changes with the Securities and Exchange Commission for comment and adoption. Overall, NASAA supports the proposed changes to the uniform registration forms. NASAA is especially pleased with the proposed Form U4 change that requires the reporting of arbitrations and litigations where the registered person is not named as a party, but which allege sales practice violations against that person. Inclusion of this information on the uniform registration forms used for self-regulatory organizations and state agent licensing will close a significant reporting gap and will serve to increase investor protection. Additionally, we believe the reporting of these additional arbitrations and litigations will benefit securities firms as they review the historical record of potential new hires. Finally, this information is essential to regulators in both their review of licensing applications and in their ongoing examinations and oversight of associated persons. Our specific comments relating to the regulatory notice follow:

Acknowledgement

Before commenting on the specific content of the Notice, NASAA wishes to acknowledge the dedication, commitment and work product of the CRD/IARD Forms and Process Project Group (Project Group). This Project Group, referenced in the notice as the “Working Group,” was first formed in 1979 to develop the initial securities industry uniform registration forms that are the subject of amendment in this Notice. While the Project Group membership has changed over the years, the regulatory and securities industry individuals who

¹ NASAA is the association of the 67 state, provincial, and territorial securities regulatory agencies of the United States, Canada, and Mexico. NASAA serves as the forum for state regulators to work with each other in an effort to protect investors at the grassroots level and to promote fair and open capital markets.

have served on this Project Group have always demonstrated an unwavering commitment to investor protection. Their work product, as detailed in this Notice, continues this long tradition.

Background Information and General Comment

As FINRA describes in the Notice, under the current Form U4 reporting standards a registered representative is not required to report an arbitration claim that does not specifically name him/her, even if the claimant alleges in the arbitration claim that the representative committed actions that would be considered sales practice violations. Further, since securities firms are not currently required to report arbitrations on Form BD, arbitration claims that only name a securities firm are also not reported to the investing public. To compound this problem, NASAA is aware of the strategy employed by some arbitration claimant attorneys to name only the securities firm, not the agent, in their pleadings to potentially enhance their ability to reach a settlement for their client. The result is decreased disclosure and decreased investor protection.

NASAA representatives on the Project Group communicated our concerns to both our self-regulatory and industry colleagues on this issue. After a series of Project Group meetings and discussions that culminated in May and June 2006, a revised Form U4 disclosure question, as detailed the Notice, was developed to address this concern. At the time, our concerns were heightened by articles in major news publications. According to one report, for example, a stockbroker was the subject of a \$2,000,000 arbitration claim, but the matter did not appear on his disclosure record because he was not named in the arbitration claim. In another case, an arbitration panel awarded an investor \$2,600,000, which also went unreported since the claim was only filed against the securities firm and not the agent. To eliminate these reporting gaps, the Project Group reached consensus on the revised uniform form reporting question amendments contained in the Notice. As NASAA participated in the drafting of these questions, NASAA supports the language developed by the Project Group as contained in Notice for revisions to Form U4 questions 14I(2) and 14I(3) and the related Form U5 questions 7E(2) and 7E(3).

Specific Comments

The Notice details that the Project Group discussed the need to add Form U4 and Form U5 instructions and interpretive guidance to assist securities firms in accurately completing the revised Form U4 and U5 questions. NASAA believes that such assistance is needed and will assist the Project Group in developing guidance to accompany the increased disclosure.

NASAA is aware that agents and their firm employers have expressed due process concerns related to the increased disclosure required by the form amendments. NASAA believes that the agent's ability to provide a version of the reported matter on Form U4 will address this concern. Further, agents who are not currently registered, but were registered within the previous two years, also have the option of providing context on the reported matter by use of a Broker Comment.

NASAA additionally supports the concept that an arbitration claim of alleged sales practice violations should be treated similar to a customer complaint. Currently, the reporting of a customer complaint is required no later than thirty days after receipt by the securities firm. NASAA believes that this thirty day reporting threshold should apply both in cases where the

registered person was named in the arbitration claim and in cases where the agent could reasonably be identified after a firm's review of the arbitration claim. In essence, NASAA supports the thirty day time period for a firm's reasonable investigation of the arbitration allegations, as detailed in the Notice. NASAA believes this will result in increased disclosures for investors. The Notice also provides a good faith standard for the firm's determination to report a registered person's involvement, as mitigation of any potential claims of inaccurate reporting.

The Project Group members and advisers reached consensus on the language for proposed U4 questions 14I(2), 14I(3) and Form U5 questions 7E(2) and 7E(3). After some debate, the Project Group also agreed to increase the dollar threshold for complaint settlements from \$10,000 to \$15,000. NASAA concurs with the increase from \$10,000 to \$15,000, as the threshold dollar amount for reporting settlements. This change, which is a 50% increase from the current reporting requirement, should be the maximum increase permitted.

NASAA concurs with the Project Group's proposed revisions of Form U5 to allow firms to amend the "Date of Termination" and "Reason for Termination" fields. This was the consensus of all Project Group members after securities firm representatives of the group actively sought this change and detailed compelling reasons to enact these revisions. As a condition for these changes, NASAA required that the CRD system report any updates to these fields to all states in which the individual is licensed.

Securities firm representatives also requested, during Project Group deliberations, a Form U5 change that would add an optional Certification Checkbox on the form to enable firms to affirmatively represent that all required disclosure for an agent had been previously reported and the agent's disclosure record was current as of the date of termination. Regulators on the Project Group, including NASAA, supported this suggestion.

The Project Group also developed a number of discrete reporting fields on the uniform forms' Disclosure Reporting Pages that will replace free text reporting. These changes are needed to improve the quality of reporting and to increase efficiency. NASAA supports these technical changes.

In summary, NASAA believes that the CRD/IARD Forms and Process Project Group in these uniform form revisions has accomplished the difficult task of balancing the needs of investors and regulators with the reporting demands placed on securities firms. NASAA applauds the work of the Project Group, supports the changes detailed in the Notice, and will work to develop the form instructions and interpretive guidance relating to these revisions. NASAA additionally commits to work with FINRA through our joint CRD/IARD Steering Committee to adopt and implement these form changes in order to increase the protections deserved by investors.

Thank you for the opportunity to comment on this Notice. Should you have any questions, please contact Melanie Senter Lubin, Maryland Securities Commissioner and Chair of NASAA's CRD/IARD Steering Committee at 410.576.6365, or, Robert Terry, Georgia Assistant Commissioner of Securities and Vice-chair of NASAA's CRD/IARD Steering Committee at 404.656.9721.

Sincerely,

A handwritten signature in black ink, appearing to read 'K. Tyler', with a long horizontal flourish extending to the right.

Karen Tyler
NASAA President and
North Dakota Securities Commissioner