



NASAA

NORTH AMERICAN SECURITIES ADMINISTRATORS ASSOCIATION, INC.

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By Email: rule-comment@sec.gov

April 15, 2009

Elizabeth M. Murphy, Secretary
Securities and Exchange Commission
100 F Street, NE
Washington, D.C. 20549-1090
Via Email to rule-comments@sec.gov

Re: SR-FINRA-2009-008

Dear Ms. Murphy:

The following comments are hereby submitted on behalf of the North American Securities Administrators Association, ('NASAA'), regarding the above referenced File Number. NASAA supports the proposed changes in the uniform registration forms detailed in the SEC Release. NASAA is especially supportive of the proposed Form U4 change that would require reporting of allegations of sales practice violations made against registered persons in a civil lawsuit or arbitration in which the registered person is not a named party.

As the Commission is aware, in 2004 NASAA representatives on the CRD/IARD Forms and Process Project Group (Project Group) communicated the need for the addition of this specific disclosure requirement during Project Group deliberations on language and question changes to the uniform registration forms. NASAA recognized that under current Form U4 reporting standards, a registered representative is not required to report an arbitration claim that does not specifically name her/him, 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 required to report arbitrations on Form BD, arbitration claims that only name a securities firm also are not reported to the investing public. Therefore, inclusion of this additional arbitration disclosure information on a uniform registration form used by self regulatory organizations and state jurisdictions for licensing will close a significant reporting gap and will thus serve to increase investor protection.

In addition, NASAA believes that the reporting of the additional disclosures detailed in the SEC Release will benefit securities firms as they review the historical record of potential new hires and transfers. Finally, the additional disclosures are essential to regulators in both their review of licensing applications and in their ongoing field

examinations and oversight of associated persons. Our specific comments relating to the SEC Release follow.

Proposed Revisions Regarding Willful Violations

NASAA supports the revisions to the uniform registration forms to enable self regulatory organizations and state jurisdictions to more readily identify individuals and firms subject to statutory disqualification pursuant to Section 15(b)(4)(D) or (E) of the Exchange Act.

NASAA recognizes that the current uniform registration form questions do not specifically reference willful violations and do not capture all the types of willful violations. The form revisions as detailed will accomplish this necessary regulatory objective and would thus increase investor protection. We recognize that securities firms will, under the proposal for increased reporting of willful violations, need to promptly determine whether any of their registered persons have been subject to an action that now requires reporting. NASAA believes that the proposed implementation plan detailed in the SEC Release, i.e., a requirement that firms update their Form U4 filings no later than 120 days after the effective date of the proposed rule, strikes the proper balance between increased investor protection and increased workload on securities firms.

Proposed Revisions to Elicit Reporting of Allegations of Sales Practice Violations Against Registered Persons Made in Arbitrations or Litigation in which the Registered Person is not a Named Party

As detailed earlier in this letter, NASAA is especially pleased with the proposed uniform registration form revisions to require reporting by those who are the subject of arbitrations and litigations. When NASAA originally raised concerns in 2004 about the regulatory gap that existed in Form U4 reporting that permitted registered individuals who were not named to avoid reporting, our concerns were heightened by articles that appeared at that time in major news publications. According to one article, a stockbroker was the subject of a \$2,000,000 arbitration claim but the matter did not appear on his CRD disclosure record because he was not named in the arbitration claim. In another case, an arbitration panel awarded an investor \$2,600,000 but the settlement went unreported since the claim was only filed against the securities firm and not its agent. Since NASAA representatives participated in development and review of the proposed Question 14I on Form U4 and Question 7E on Form U5 to require reporting of alleged sales practice violations made against persons who are subject of a civil litigation or arbitration claim, NASAA supports the specific language additions detailed in the SEC Release to achieve this objective.

As the SEC points out in its Release, under the current uniform registration reporting system, a written customer complaint alleging that a registered person committed a sales practice violation is required to be reported while a written allegation of such a violation contained in the body of an arbitration Statement of Claim or civil lawsuit is not required to be reported unless the registered person is also named in the proceeding. SEC notes that this inconsistent treatment regarding the reporting of alleged sales practice violations

is difficult to reconcile on principle since whether or not the person is named, a sales practice violation has been alleged. NASAA supports the goal of eliminating this inconsistency by requiring all allegations of sales practice violations to be reported.

Proposed Revisions to Raise the Monetary Threshold for Reporting Customer Complaints, Arbitrations or Litigations from \$10,000 to \$15,000 on the Forms and Conforming Change to FINRA Rule 8312

The proposed rule change would raise the current dollar threshold for reporting a consumer initiated arbitration or litigation settlement from \$10,000 to \$15,000. NASAA concurs with this dollar amount increase to \$15,000 but would note that the change represents a 50% increase from the current reporting requirements and should be the maximum increase permitted.

FINRA has also requested a change to Rule 8312 to amend the description of Historic Complaints. NASAA cannot support this change as requested since it represents another reduction in disclosure to those public investors who would use FINRA's BrokerCheck system. In this proposing Release, SEC has concluded that it is inconsistent in principle to have disparate treatment in the reporting of alleged sales practice violations. NASAA believes it is as inconsistent in principle to provide disclosure information to securities firms as they review such information as part of their employment hiring process and to disclose that same information to regulators as they administer their oversight of registered persons but not disclose that identical information to public investors.

In essence, however, that is exactly what occurs since CRD archived disclosure information under Rule 8312 is not revealed. There are indeed powerful self interested securities firms that have vigorously opposed attempts to shine sunlight on certain disclosure information contained in the CRD system. NASAA believes that fairness to the public investor, in principle and in right, requires that the same information used by securities firms and by the regulatory community itself should be available to the investing public. For these reasons, NASAA cannot support a further reduction in public information that would occur if amendments to Rule 8312 were adopted. Because NASAA believes public investors should be on equal footing with brokerage firms and securities industry regulators with respect to knowledge of registered person's disclosure information, it believes all historic complaints as defined in FINRA Rule 8312 should not be hidden but revealed by FINRA for the use of public investors as they reach their investment decisions. This is a necessary reform that would better protect investors when they place their money with a broker dealer.

Proposed Revisions to Clarify the Definition of 'Date of Termination' in Form U5 and to Allow Firms to Amend the 'Date of' Termination' and 'Reason for Termination' and Other Changes

NASAA concurs with the proposed revisions of Form U5 to permit firms to amend the 'Date of Termination' and 'Reason for Termination' fields. These changes were initially proposed by securities firm representatives on the Project Group and they detailed compelling reasons to enact these revisions. Securities firm representatives also requested a Form U5 change that would add an optional Disclosure 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 is current at the time of termination. NASAA supports this change. Finally, 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 will improve the quality of reporting and NASAA supports these technical changes.

In summary, NASAA supports the proposed changes to Form U4 and U5 as detailed in the SEC Release. These changes were initially developed by the CRD/IARD Forms and Process Project Group and that group has accomplished the difficult task of balancing the needs of investors and regulators with the reporting demands placed on securities firms. NASAA will work with FINRA through our joint CRD/IARD Steering Committee to implement these changes.

We would, however, respectfully request that SEC not approve FINRA's proposed change to further remove required CRD disclosure information from its BrokerCheck system. SEC should instead require that all CRD archive information or historic complaints be disclosed by FINRA to the investing public in its BrokerCheck system.

Sincerely,

A handwritten signature in black ink, appearing to read "Fred J. Joseph", with a long horizontal flourish extending from the top of the first name.

Fred Joseph
NASAA President
Colorado Securities Commissioner