

April 13, 2009

Ms. Elizabeth M. Murphy, Secretary  
Securities and Exchange Commission  
100 F Street, NE  
Washington, DC 20549-1090

**Re: Proposed FINRA Rule Change Relating to Proposed Changes to Forms U4 and U5  
File No.: SR-FINRA-2009-008 – Comment Letter**

Dear Ms. Murphy:

I am writing on behalf of MWA Financial Services, Inc. an introductory, full-service broker-dealer with a fully disclosed brokerage arrangement.

I appreciate the opportunity to comment on FINRA's proposed rule change relating to Forms U4 and U5 (the "Proposed Rule"). This letter addresses the stated purpose of the Proposed Rule and selected subject areas set forth in Release No. 34-59616. I oppose two aspects of the Proposed Rule as unduly burdensome and unclear in their application.

I am aware that public policy requires prompt, proper filings related to reportable events. However, does the Proposed Rule address valid public concerns? I believe it does not and I believe we will be unduly burdened by the Proposed Rule. More importantly, I ask if the changes will improve pertinent reporting, which is the stated purpose of the Proposed Rule and in large, promote investor protection, which is the overall concern of FINRA. The Proposed Rule's language is vague therefore, making it difficult to apply. The ambiguities of the Proposed Rule will lead to an inconsistent and arbitrary application of its terms. Once again, the broker-dealers will be put in the tenuous "no win" position at the time of a FINRA examination when it is decided the broker-dealer has not applied the rules correctly.

The proposed rule change would add new Questions 14C(6), (7) and (8) and Questions 14E(5), (6) and (7) to the Form U4 and would add Question 12C to the Form U5 Regulatory Action DRP. These new questions seek to elicit from registered persons whether the SEC or CFTC have ever found the person "to have willfully" or "failed reasonably to supervise," according to the Rule Proposal.

FINRA states that it "appreciates that adding new disclosure requirements to Form U4 will require firms to amend (or refile) such forms for the registered persons, and that this requirement *may place an administrative burden on firms.*" (My emphasis added)

While FINRA acknowledges the burden, I do not believe the regulators fully appreciate the scope of the project to be undertaken. Obvious problems are inherent. The Rule Proposal provides no guidance about how far back in the registered person's history we must search. How would we assess whether registered persons have been subject to a reportable action? Will requesting the information from registered persons be sufficient due diligence? Should we require formal certifications from its registered persons that they are innocent of anything that would require this type of reporting? Will we have to consult outside counsel concerning certain actions and what would require reporting? Any and all of these issues will cause any broker-dealer great consternation, time and resources, both financial and physical to comply with this rule.

Feasibly, the application of the Proposed Rule will require member firms to search old records for registered persons and obtain legal opinions in order to provide us with any confidence about our reporting obligations. FINRA needs to understand that, "may place an administrative burden on firms" is a gross understatement. The "real world" effect of this rule will be a **great** burden on firms like ours to assure compliance without any meaningful, corresponding benefit. FINRA needs to resolve the question how will this increase burden on the industry protect the investor?

The Proposed Rule also revises the Forms U4 and U5 to require the reporting of allegations of sales practice violations against registered persons in a civil lawsuit or arbitration *in which the registered person is not a named party*. It seems more likely that this Rule Proposal will provoke irrational decisions to report, or not report, litigation or arbitration matters, causing unwanted or unjustifiable reporting outcomes. Further, an unnamed person's (which now becomes "named") reputation could be damaged by unproven allegations contained in an arbitration or civil litigation claim. This is absolutely unacceptable.

If a complaint relates to an account serviced by multiple representatives, none of whom had "primary" responsibility to service the client, is a sales complaint about a product a trigger for reporting everyone "on the account?"

Notably, supervisory negligence is alleged in virtually every securities arbitration. How then should our firm decide if the incident is related to (a) supervisor(s) and how should it be determined which one? Therefore, should a registered representative's supervisor(s) always be included in the reporting?

Under Rule 3070, mere allegations contained in written customer complaints are to be reported on the filing system and are published to the public through FINRA's BrokerCheck. I vigorously disagree with this format and what information the investor should be privy to through this public site. I believe only substantiated and claims of merit concerning misconduct or wrongdoing should be reported.

The possible untenable result of the Proposed Rule again places a burden on broker-dealers, whose finances and resources are stretched to the limit with little or no benefit to the investor. My concern is that the Proposed Rule will cause all member firms to make reports arbitrarily, and unnecessarily, based on fear of regulatory reprisal.

Investors are becoming savvier concerning the securities industry. They realize that writing a complaint or going through arbitration can net them a monetary “reward” just by using a few key words. Therefore, I urge you to reevaluate the **all** of the reporting requirements and the rationale for making those reports. I urge you to consider meaningful and useful modes of receiving and disseminating information that will:

- protect the innocent advisor from unmerited allegations,
- provide the investor with information that is valid and meaningful, and
- provide the member firms relevant information which will aid in the due diligence process when considering an advisor for registration.

Thank you for considering my comments.

Sincerely,

Pam Fritz  
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