BYBEL RUTLEDGE LLP
Attorneys at Law

April 27, 2012

Via E-Mail

Elizabeth Murphy, Secretary
U.S. Securities & Exchange Commission
100 F. Street, NE
Washington, DC 20549

RE: File No. SR-FINRA-2011-057

Dear Ms. Murphy:

Based upon a filing by the Financial Industry Regulatory Authority ("FINRA") of Form 19b-4 with the U.S. Securities and Exchange Commission ("SEC") on April 17, 2012 with respect to the above-referenced filing, FINRA voluntarily has extended the time for consideration by the SEC of proposed FINRA Rule 5123, "Private Placement of Securities" (the "Proposed Rule"). Kindly accept the enclosed comments with respect to the Proposed Rule. These comments reflect my personal views and should not be construed as comments by this firm or any member or client of this firm.

First, I would suggest that, in light of the recent enactment of the Jumpstart Our Business Startups Act of 2012 (the "JOBS Act"), FINRA should revisit the Proposed Rule in context of a member firm effecting transactions in reliance on the new exemptions in Section 3(b)(2) and 4(6) of the Securities Act of 1933, as amended (the "1933 Act"). FINRA also should reevaluate the Proposed Rule in light of the JOBS Act legalizing use of general solicitation and general advertising in connection with SEC Rule 506 offerings made to accredited investors, including individual accredited investors. FINRA further should take into consideration that the intent of Congress in passing the JOBS Act was to lessen regulation applicable to small business capital formation, not increase it.

Second, in my view, the beginning point in analyzing whether any proposal is appropriate is whether the new law or rule is necessary in the context of current tools available and, if not, what unintended consequences might occur if the proposal is adopted. As more particularly set forth herein, I believe the Proposed Rule is unnecessary, will not achieve its desired effect and will further chill (if not kill) an important and heretofore viable legitimate capital raising avenue which overwhelmingly benefits small business.

Proposed Rule in Search of a Mission

The Proposed Rule appears to be a regulatory reaction to the alleged $485 million mis-selling of fraudulent oil and gas private placements originated by Provident Royalties LLC. Although it is alleged that these private placements were made through 21 affiliated entities of Provident Royalties LLC, to more than 7,700 investors, it appears that its affiliated broker-dealer, Provident Asset Management, LLC mostly solicited unaffiliated retail broker-dealers to enter into placement agreements to sell the private placements to retail investors and it only made some direct retail sales.[1]

Regrettably, sales of fraudulent offerings targeting retail investors by members or associated persons of members is hardly novel. Provident Royalties LLC and Medical Capital Holdings, Inc. are not dissimilar to Mutual Benefits Corporation ($1.25 billion relating to the sale of viatical contracts (2009)),[2] The Bennett Funding Group, Inc. ($570 million relating to the sale of securities backed by leases (1996)),[3] American Business Financial Services ($500 million relating to the sale of promissory notes (2009)),[4] Greater Ministries ($500 million relating to the sale of debt securities (2002)),[5] Yucatan Universal Leases ($428 million relating to the sale of investment contracts relating to condos in Mexico (2007-2008)),[6] ETS Payphones, Inc. ($300 million relating to the sale of pay telephone leaseback arrangements)[7] and Foundation for New Era Philanthropy ($354 million relating to the sale of debt securities of a non-profit organization (1996)).[8]

Associated persons of FINRA members have been involved in these or similar offerings (and, in some cases, more than one)[9] as sales agents while employed by a member firm and have been the subject of administrative proceedings.[10]

Interestingly, none of the foregoing previously moved FINRA to contemplate imposing the provisions contained in the Proposed Rule. Therefore, one might legitimately ask of FINRA why it is now so motivated to take the action reflected in the Proposed Rule. A painstaking

---

[1] *See* SEC Litigation Release No. 21118 (July 7, 2009).
[2] *See* SEC News Digest Issue 2009-4 (January 7, 2009); *SEC v. Mutual Benefits Corp.*, 408 F.3d 737 (11th Cir. 2005) holding that the arrangement constituted an investment contract and therefore a security under federal law.
[3] *See* SEC Litigation Release No. 19094 (February 18, 2005), No. 414991 (July 26, 1996) and No. 14875 (April 15, 1996).
[4] Philadelphia Business Journal (October 8, 2009).
[5] Anti-Defamation League (July 1, 2002) www.adl.org.
[6] *See* SEC Litigation Release No. 20708 (September 9, 2008), No. 20708 (September 9, 2008) and No. 20267 (September 5, 2007).
[7] *See* SEC Litigation Release No. 16813 (November 30, 2000) and *SEC v. Edwards,* 540 U.S. 389 (2004) wherein the U. S. Supreme Court held that the arrangement constituted an investment contract and therefore a security under federal law.
[8] *See* SEC Litigation Release No. 15095 (September 30, 1996).
[9] *See Schwalm v. Pennsylvania Securities Commission,* 965 A.2d 326 (Pa.Cwlth. 2008) wherein the undisputed facts were that Mr. Schwalm, while an associated person of a FINRA member, sold investments in Mutual Benefits Corporation and universal leases in Yucatan Resorts, S.A. de C.V.
[10] *See, for example, the following Final Orders of the Pennsylvania Securities Commission:* In the Matter of: Gary Stephen Mayo; In the Matter of: Donald L. Woods; In the Matter of: Paul H. Buckwalter (sale of viatical settlement contracts); In the Matter of: Louis David Verrone (pay telephone leasebacks and promissory notes); In the Matter of: Norman Rubin (viatical settlement contracts).

review of the submission fails to find any rationale stated by FINRA as to what it believes has changed to justify adoption of the Proposed Rule.

FINRA asserts that filing of a written disclosure document for a private placement to be recommended by a member or associated person of a member that will be reviewed by FINRA staff will "provide investors with additional protection from fraud and abuse." However, FINRA does not explain what specific tangible protections investors will receive as a result of these filings and consequent regulatory burdens imposed on member firms. FINRA does not appear to have undertaken a comparison of the costs (particularly to small business issuers that are significant users of private placements) of compliance with the benefits to be received by retail investors.

It should be noted that, in the case of American Business Financial Services, it had an effective registration statement with the SEC at all times when it was alleged to have violated the anti-fraud provisions of the federal securities laws. Filing with, or even review by, a statutory regulator is no guaranty that the issuer or its affiliates have not or will not commit securities fraud. A mandatory filing with FINRA will cause no different result.

Under the 1933 Act, the SEC has specific authority and has promulgated specific rules relating to disclosure in public[11] and non-public[12] offerings of securities and yet, the presence of these rules is no guaranty that offerings will be free from fraud. Does FINRA intend to issue its own disclosure rules with respect to private placements subject to the Proposed Rule resulting in yet another layer for disclosure regulation?

FINRA Should Focus on Enforcing Existing Rules

In Regulatory Notice 10-22, FINRA reiterated that a number of existing rules apply to members and associated persons of members in the context of their recommending private placements, most prominently NASD Rule 2310 (now FINRA Rule 2111) concerning investor suitability. In this notice, FINRA provided specific guidance on broker-dealer responsibilities, including (1) a broker-dealer which is affiliated with the issuer, (2) a broker-dealer that prepared the private placement memorandum, (3) the presence of "red flags," (4) reliance on counsel and syndicate managers, (5) supervision, (6) documentation and (7) reasonable investigation. ***FINRA devoted three pages of this notice to examples of what constitutes reasonable investigative practices.***

Furthermore, NASD Rule 3040 requires an associated person of a member to provide written notice to the member and receive approval from the member for any private securities transaction where the associated person is receiving selling commission which is broadly defined to include, without limitation, commissions, finder's fees, securities or rights to acquire securities, rights of participation in profits, tax benefits, dissolution proceeds, expense reimbursements or compensation as a general partner. This rule would apply where an associated person of a member wanted to sell a private placement to a client and receive a sales

[11] *See* SEC Regulation S-K.
[12] See Rule 502(b) of SEC Regulation D.

commission whether or not the associated person was affiliated with the issuer in the private placement.

Where the member approves the associated person's participation in the private securities transaction, the transaction must be recorded on the books and records of the member and the member must supervise the associated person's participation in the transaction as if the transaction were executed on behalf of the member. A member or associated person of a member who violates NASD Rule 3040 is subject to the panoply of sanctions available to FINRA in a disciplinary proceeding.

I posit that FINRA is doing what it should be doing to address investor protection concerns in the context of private placements – investigating possible wrongdoing, enforcing existing FINRA rules and sanctioning those found to have violated those rules.

FINRA Should Increase Its Sanctions for Private Placement Fraud

Given the statements made by FINRA concerning the potential private placements hold for investor abuse in the hands of FINRA members and associated persons (and the consequent imperativeness of filing such documents with FINRA), one would have expected FINRA to be prepared to punish severely those associated persons of FINRA members who facilitated the sale to retail investors of the Provident Royalty private placements by barring them from the securities industry as a consequence of their nefarious acts.

At the now defunct Workman Securities Corp., which was alleged to have sold $9 million of Provident Royalty private placements, the former president was only barred from being a principal and was fined only $10,000. The former CEO and president of the now defunct Cullum & Burks Securities, Inc. were suspended as principals for six months and fined $10,000 each. Therefore, the persons who FINRA alleged contributed significantly to investor abuse in the sale of private placements continue to work in the securities industry and with retail investors. It appears they only suffered the inconvenience of paying a rather small fine considering the sales commissions pocketed.

It is curious that, in light of filing the Proposed Rule, FINRA is unable to demonstrate a record of robust enforcement and punishment of members who have taken advantage of retail investors. As recently as 2010 and 2011 with respect to registered persons who sold retail investors millions of dollars in universal lease and promissory note schemes (as described above), FINRA sanctions generally have ranged from 5-12 month suspensions, even where the associated person failed to notify the broker-dealer firm as required by NASD Rule 3040.[13]

[13] The following represent FINRA Acceptances Waivers and Consents in which the associated persons neither admit nor deny the allegations contained therein. Richard Elmer Gilbert (CRD#1031899) received a one year suspension for selling $1.1 million of promissory notes (FINRA Case #200814574101); Dante Thomas Garcia DeMiro (CRD#2674582) received a 9 month suspension for selling $587,000 of promissory notes (FINRA Case #2008012498701); Richard Aaron Paul (CRD#2768628) received a 9 month suspension for selling $545,000 of promissory notes; Gregory Earl Hafen (CRD#4312542) received a 7 month suspension for selling $482,015 of universal leases (FINRA Case #2009016709011); Gregory Lee Oldham (CRD#347565) received a 5 month suspension for selling $403,000 of universal leases FINRA Case #200906709017); Marilyn Louise Yamanaka (CRD#2650202) received an 8 month suspension and a $5,000 fine for selling $408,273 of universal leases (FINRA

FINRA sanctions were no more onerous where associated persons of a FINRA member engaged in foreign currency exchange programs in which investors lost millions,[14] in telephone leaseback contracts,[15] or in sales of equity indexed annuities,[16] all under circumstances where the associated person failed to notify the broker-dealer as required by NASD Rule 3040.

Would it not be more useful for FINRA to focus its efforts and energies on meting out more meaningful sanctions for investor fraud rather than burden the entire industry with a new regime of regulatory filings and review?

Unintended Consequences

Like many regulatory proposals which react to events rather than thoughtful analysis, the Proposed Rule would create a number of unintended consequences which, when taken collectively, would impose enormous costs which could not be justified in terms of any conceivable benefit reasonably to be expected from adoption of the Proposed Rule.

The Proposed Rule would have a significant chill on small business capital formation.

When the current economic climate calls for regulatory policies that facilitate small business capital formation, my view is that the Proposed Rule would significantly impede small business capital formation. In testimony before the House Government Reform and Oversight Committee on May 10, 2011, SEC Chair Mary Shapiro stated that the SEC should take a new look at its rules and whether it can do more to encourage capital formation, especially among small companies. She said, "Companies seeking access to capital should not be burdened by unnecessary or superfluous regulations" and that these issues are "front and center on our agenda." In the undersigned's opinion, SEC approval of the Proposed Rule would be inconsistent with those statements.

Entrepreneurs and small businesses usually look to those within their immediate community to assist with financing. Initially, these include bankers (including banks designated as lenders under the Small Business Administration) and local community development revolving loan or grant programs funded by local chambers of commerce, economic

---

Case #200916709018); Scott Jeffrey Adler (CRD#3175603) received a 12 month suspension and a $36,434 fine for selling $700,000 of promissory notes in which customers lost $630,000 (FINRA Case #2010021436901); and Carl Henry Blanchard (CRD#3175596) received a 6 month suspension and a $31,434 fine for selling $325,000 of promissory notes in which customers lost $290,000 (FINRA Case #2008016127401).

[14] The following represent FINRA Acceptance, Waivers and Consents in which the associated persons neither admit nor deny the allegations contained therein. Robin Bruce Davidson (CRD#1931402) received a 16 month suspension and a $10,000 fine for selling $2.68 million in a foreign currency exchange program in which investors lost $2.4 million (FINRA Case #2008016063601) and as to which the associated person forged a customer's name to multiple account-related documents;

[15] The following represent FINRA Acceptances Waivers and Consents in which the associated persons neither admit nor deny the allegations contained therein. Louis A. Wright (CRD#4053503) received a one year suspension for selling $1.6 million in telephone leaseback contracts (FINRA Case #2007010986202).

[16] The following represent FINRA Acceptances Waivers and Consents in which the associated persons neither admit nor deny the allegations contained therein. Gary Scot Cohen (CRD#3093483) received a four month suspension and a $5,000 fine for selling $1.5 million in equity indexed annuities from which he earned $176,000 in commissions (FINRA Case #2009020792101).

development organizations or state and local governments. When these sources become inadequate for the capital needs of these businesses, they must seek private equity.

The regulatory actions of the SEC and FINRA with respect to Provident Asset Management and Medical Holdings, when combined with FINRA's Regulatory Notice 10-22, has sent a strong chill wind through the private placement industry. Broker-dealer clients have advised that, under the current regulatory climate, there is no way they would serve as a financial intermediary for a private placement or allow their associated persons to sell a private placement of securities. The reason is simple arithmetic.

The traditional amount of compensation received by a broker-dealer in connection with a private placement no longer will cover the expenditure required for the level of compliance required by FINRA or compensate the broker-dealer for undertaking the risk of regulatory and civil liability. As one broker-dealer client commented, "FINRA's view of reasonable due diligence is that extra step it thinks you should have taken with the benefit of 20/20 hindsight."

Securities regulators generally have welcomed the involvement of registered persons in the offer and sale of securities in non-public offerings. The SEC provides a safe harbor from the definition of underwriter for the sale of an issuer's securities by an affiliate in a non-public offering in reliance on Section 4(2) of the 1933 Act if the transactions are effected by a broker or a market maker.[17] The Uniform Securities Act (2002) provided exemptions from registration for non-public offerings of securities premised, in part, on the involvement of registered persons.[18]

As discussed below, due to the great uncertainty that adoption of the Proposed Rule would bring to the private placement process, it would provide just one more reason for broker-dealers to abandon offering any type of private placement and shut off another of the very limited avenues by which small business can access risk capital.

The Proposed Rule would inject great uncertainty in the private placement process.

Federal and state securities laws and rules governing private placements of securities are complex and failure to follow these rules can result in civil liability and/or regulatory action. Therefore, issuers, broker-dealers and their counsel strive to bring as much certainty, transparency and objectivity to the process as possible. Since members (and those who counsel them) have no clue how FINRA will judge a private placement offering document or what it may or may not do if it finds a private placement offering document to be deficient, they will be loath to effect any transactions in a private placement offering until FINRA staff gives them some assurance that the private placement offering document is not deficient.

In short, the Proposed Rule will set up an implicit approval process because members will be very reluctant to effect any transaction in a private placement subject to filing under the Proposed Rule without some indication from FINRA that the disclosure documents are not "deficient on their face." That is the simple reality of protecting oneself from the costs of potentially being subject to some future regulatory action or civil litigation.

---

[17] Rule 144(f), 17 CFR 230.144(f).

[18] Sections 202(2)-(5) of the Uniform Securities Act (2002). This uniform act is the basis for state securities laws.

The Proposed Rule would require the filing of a private placement memorandum with FINRA's Corporate Financing Department (the "Department"). FINRA has stated that this filing requirement is intended to allow it to identify those documents that are deficient "on their face" although members would not be required to receive a "no objections" letter as otherwise would be required in a registered offering. The determination of whether a document is deficient will require FINRA staff to apply a review process to each private placement filed. FINRA has not identified what elements will constitute this review process or what criteria will be used to deem an offering document not deficient.

Institution of a review process raises the following questions related to the administration of such a program which FINRA has not addressed.

1. What criteria will be used by FINRA staff to determine whether a private placement offering document is deficient?
2. Will the criteria be based on the merits of the offering and, if so, what merits will be determinative?
3. At what level within FINRA will the review criteria be established?
4. Will the review criteria be subject to comment and consultation with FINRA members, the SEC and the general public?
5. Within what timeframe will FINRA staff conduct its review and make a determination?
6. Given that FINRA has stated that, under the Proposed Rule, it expects the workload of the Department to rise tenfold from 300 filings to approximately 3,000 filings annually, will FINRA have sufficient competent staff to conduct a prompt review of these filings?[19]

It is unclear whether FINRA appreciates the extent of the Proposed Rule and the effect it will have on issuers who are not under FINRA's jurisdiction. These issuers, whether they intend to use a registered broker-dealer or simply want the flexibility of using one, will need to know what FINRA thinks will constitute documents which are not deficient.

FINRA also has not addressed the consequences to the member and any unrelated issuer if FINRA staff determines that the private placement offering documents are deficient. This raises the following questions:

1. Will the Department issue a deficiency letter to the member and, if so, will that notice constitute an order of FINRA to the member prohibiting the member from effecting any transactions in the private placement securities?

2. If the private placement offering documents are found to be deficient, will the broker-dealer and issuer be given an opportunity to revise the documents and resubmit to FINRA? How many times will FINRA permit resubmissions?

[19] Recently, I had to educate a FINRA analyst as to what a limited partnership was.

3. What happens if, by the time FINRA reviews the documents and has found them to be deficient, the broker-dealer has sold securities in the private placement offering? Does this constitute a violation of the Proposed Rule for which the full panoply of sanctions available to FINRA would apply? Would FINRA require the broker-dealer to offer rescission as to those transactions?

4. What happens if the issuer already has sold directly some securities which are the subject of the private placement and subsequently engages a broker-dealer to sell more securities in the same offering but FINRA notifies the broker-dealer that the private placement offering documents are deficient? Must the issuer offer rescission to the prior purchasers?

5. If FINRA determines that a private placement offering document is deficient, it is conceivable that such determination would imply that if an offer or sale was effected by the member, the member may have violated the anti-fraud provisions of federal and state securities laws and may be subject to civil and administrative liability.

The Proposed Rule would disrupt the established scheme of securities regulation in the U.S.

FINRA is a private, non-profit corporation which exercises certain statutory powers under the Securities Exchange Act of 1934, as amended and rules and regulations adopted thereunder (the "1934 Act") as permitted by the SEC. In the context of private placements, the SEC has adopted Regulation D which provides for a number of exemptions and safe harbors from registration under the 1933 Act. The most used provision of Regulation D upon which issuers rely in offering private placements is Rule 506.

Concerned about a patchwork of state securities laws applicable to Rule 506 offerings, Congress enacted the National Securities Markets Improvement Act of 1996 ("NSMIA") which pre-empted the application of the registration and merit provisions of state securities laws to Rule 506 offerings. NSMIA has been interpreted to prohibit state securities regulators from requiring issuers to file copies of their private placement memoranda with state securities regulators.[20]

FINRA admits that the Proposed Rule will greatly expand its jurisdiction over private placements of issuers that are not affiliated with a member firm and therefore, the Proposed Rule will have a dramatic effect on the balance of regulatory jurisdiction for Rule 506 offerings established by Congress in NSMIA. If Congress, in NSMIA, determined that it was not appropriate for state securities regulators to receive a copy of a private placement memorandum for a Rule 506 offering, how does FINRA justify asking the SEC to permit something for itself that Congress specifically has forbade to state securities regulators which are viewed as being co-equal regulators with the SEC with their own jurisdiction, laws and enforcement powers?

[20] See SEC Form D, "Terms of Submission." NSMIA did permit states to receive a copy of Form D and a filing fee. SEC does not require issuers relying on SEC Rule 506 to file a copy of their offering documents with the SEC.

By filing the Proposed Rule, FINRA has placed the SEC in an awkward position by asking it to approve a rule requiring the filing with FINRA of a Rule 506 private placement memorandum which, for the very same offering, is prohibited by federal law from being filed with a state securities regulator. Paradoxically, the Proposed Rule may introduce a form of "merit review" of private placements (since determining whether or not an offering is deficient may require a conclusion about its merits) which was a major basis for Congress preempting state jurisdiction. FINRA appears to be trying to do indirectly what Congress has forbade directly. Only the SEC can decide whether Congress' mandate under NSMIA will be honored.

FINRA Efforts Better Focused on Other Private Placement Issues

In my opinion, the more useful action that FINRA could take in context of private placements is for it to endorse and move forward with the recommendations made by the ABA Task Force on Private Placement Broker-Dealers.[21] Adoption by FINRA and the SEC of these recommendations would bring needed certainty and regulation of business brokers and finders often used by issuers in private placements to identify potential purchasers. As has been the case for decades, these persons operate in a regulatory no-man's land, yet they serve a legitimate and vital link in the capital raising process for small businesses.

Understandably, SEC staff has not granted staff no action letter requests for such persons because it is concerned about appearing to approve receipt of any type of transaction-based compensation by unregulated persons in connection with securities transactions.[22] However, SEC concerns would be ameliorated if such persons were included in a limited broker-dealer licensing regime for private placement finders and business brokers. In this regard, FINRA quite appropriately could impose licensing, qualification, recordkeeping and continuing education requirements. In my opinion, a resolve by FINRA to pursue this objective would contribute immeasurably to overall investor protection in the private placement market.

The concept of a limited licensing regime for private placement finders and business brokers has landed in the top recommendations to the SEC made by small business persons attending annual SEC Small Business Fora from 2005-2009 so this obviously is of great importance to the small business community. In that context, it is even more regrettable that FINRA has not made promoting legitimate small business capital formation a priority nor has it availed itself of the collective wisdom and practical experience of the Task Force members.

Any filing requirement should embrace uniformity

If FINRA believes, and SEC concurs, that imposition of the filing requirement under the Proposed Rule is necessary in the public interest and for the protection of investors, it is suggested that such filing requirement be limited to filing a copy of SEC Form D.

SEC Form D includes detailed information on sales compensation, including the person to whom compensation will be paid, the person's CRD number and the states in which such

---

[21] Report and Recommendations of the Task Force on Private Placement Broker-Dealers, Business Law Section of the American Bar Association (July 28, 2010).

[22] *See* SEC Staff Denial of No Action Letter Request to G. Nelson Mackey, Jr., Brumberg, Mackey & Wall, P.L.C. (May 17, 2010).

person will conduct solicitation on behalf of the issuer.[23] In addition, SEC Form D requires disclosure of amounts of sales commissions and finders' fee expenses[24] as well as the amount of gross proceeds of the offering that will be used for payments to any person who is an executive officer, director or promoter of the issuer.[25] Given the availability of this data on SEC Form D, it should be considered a suitable candidate to acquit any filing requirement under the Proposed Rule.

Accepting Form D would permit automatic filings with FINRA and promote uniformity

Revisions to SEC Form D in 2008 presaged mandatory electronic filing of SEC Form D with the SEC. As revised, SEC Form D now contains broker-dealer and associated person disclosure relating to selling and selling compensation, including CRD numbers ("Selling B-D Disclosure"). By executing an agreement with the SEC, FINRA could obtain automatic access to SEC Form D filings containing Selling B-D Disclosure. This would provide efficient and cost-effective compliance as the filing with FINRA would be automatic with the SEC filing and the broker-dealer could not violate the Proposed Rule by virtue of a failure to file. This also may serve as effective compliance oversight to detect selling away activities if FINRA would contact the compliance officer at the broker-dealer disclosed on SEC Form D to confirm the member's participation in the offering.

Another strong reason for FINRA to accept SEC Form D to acquit any filing responsibility under the Proposed Rule is uniformity with the SEC and state securities regulators. The SEC and state securities regulators both accept the filing of SEC Form D for Rule 506 offerings and many states also accept SEC Form D for Rule 505 offerings. One system where all statutory regulators and FINRA accept the same filing on SEC Form D makes enormous sense both for regulators and the regulated.[26]

Thank you for the opportunity to express my views.

Sincerely,

G. Philip Rutledge

cc: SEC Office of Small Business Policy

[23] Item 12, SEC Form D.
[24] Item 15, SEC Form D.
[25] Item 16, SEC Form D.
[26] FINRA, the SEC and states securities regulators all accept a uniform form for registration of broker-dealers and associated persons (Form BD and Form U-4).