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April 17, 2009

CLIENT/MATTER NUMBER

Florence E. Harmon  
Deputy Secretary  
Securities and Exchange Commission  
100 F. Street, NE  
Washington, DC 20549-1090

Re: Release No. 34-59616; File Number SR-FINRA-2009-008  
Proposed Changes to Forms U4 and U5

Dear Ms. Harmon:

Foley & Lardner LLP appreciates the opportunity to comment on the above-referenced proposed rule amendments by the Financial Industry Regulatory Authority ("FINRA"), which propose certain amendments to Forms U4 and U5. Among the revisions is a proposal to increase the monetary threshold for reporting settlements of complaints, arbitrations or civil litigation to \$15,000. We believe this change is appropriate and support its adoption. However, in light of this proposed change FINRA should also amend its Rule 8313 "Release of Disciplinary Complaints, Decisions and Other Information" to adopt the same \$15,000 threshold for public disclosure of disciplinary decisions. For the reasons set forth below, this change would be appropriate.

Currently Rule 8313(c)(1) provides in pertinent part:

FINRA shall release to the public information with respect to any disciplinary decision issued pursuant to the Rule 9000 Series imposing a suspension, cancellation or expulsion of a member; or suspension or revocation of the registration of a person associated with a member; or suspension or barring of a member or person associated with a member from association with all members; or imposition of monetary sanctions of \$10,000 or more upon a member or person associated with a member; or containing an allegation of a violation of a Designated Rule<sup>1</sup>.

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<sup>1</sup> In NASD Notice to Members 97-42 (July 1997) NASD established the following List of Designated Rules: SEC Rules 10b-5, 15g-1 to 15g-15, and Section 17(a) of the Securities Act of 1933, NASD Rules 2110, 2120, 2310, 2330, 2440, 3310, and 3330, and MSRB Rules G-19, G-30 and G-37(b) & (c).

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The \$10,000 threshold for disclosure of disciplinary actions has been in place without modification since at least 1996. Over time the size of sanctions imposed by FINRA on similar conduct has increased due to several factors. There has been a general increase in the size of sanctions imposed on members and associated persons. Changes in fines have been reflected in the FINRA Sanction Guidelines which was amended in 2006 to reflect increased fines for violations of quality of market rules.<sup>2</sup> The result of these changes is that sanctions for violations that would not have been publicized previously are now publicized simply because of a rising level of monetary sanctions. The factors involved are similar to the factors that caused FINRA to recommend increasing the threshold for forms U4 and U5.<sup>3</sup> A \$15,000 threshold would also be consistent with the requirements of FINRA Rule 3070(a)(7) for reporting settlements.

Additionally, since 1996 FINRA has increasingly grouped together sanctions arising from discrete examinations, reviews and investigations involving different rules by the same member or associated person into a single settlement. This practice has the effect in certain instances of making multiple matters that standing alone would not meet the Rule's monetary threshold for disclosure into a settlement that is publicized.

Rule 8313 requires disclosure of many disciplinary actions regardless of the size of the monetary sanction. First, the Rule requires disclosure of any action involving a suspension, cancellation or expulsion of a member; or suspension or revocation of the registration of a person associated with a member. Second, the Rule requires disclosure of any disciplinary action involving the Designated Rules. The Designated Rules cover fraud, manipulative behavior, the Penny Stock Rules, suitability, fair pricing and other customer protection rules. Third, the public can request copies of any disciplinary action.<sup>4</sup> Finally, the Rule allows FINRA to release decisions or groups of decisions that involve a significant policy or enforcement determination where the release of information is deemed by FINRA's Chief Executive Officer to be in the public interest.

The benefits of the proposed changes to forms U4 and U5 would be complimented by this simple change to FINRA Rule 8313. Having a uniform standard would be fair to FINRA members and associated persons while serving the investing public.

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<sup>2</sup> See NASD Notice to Members 06-10, NASD Revises Sanction Guidelines, (March 2006). In cases involving quality of markets violations "disciplinary actions in these areas have generally involved sanctions of \$5,000 or more." NASD 2006 Revisions to the NASD Sanction Guidelines—Frequently Asked Questions (April 2006) (Available on the FINRA website under Industry/Enforcement/SanctionGuidelines).

<sup>3</sup> FINRA Regulatory Notice 08-20 (April 2008) at page 6 ("Recognizing that the monetary threshold for settlements of customer complaints was set some time ago and has never been adjusted for inflation, members of the Working Group are considering raising the existing settlement amount to \$15,000 to more accurately reflect the business criteria (including cost of litigation) firms consider when deciding to settle claims.").

<sup>4</sup> FINRA Rule 8313(a). Information about member firms and associated persons is readily available through FINRA's BrokerCheck© system.



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Foley & Lardner LLP appreciates the opportunity to comment, and we thank you for your consideration of our concerns. Should you have any questions, please contact me at (202) 295-4049.

Sincerely,

A handwritten signature in black ink, appearing to read 'Richard G. Wallace', written in a cursive style.

Richard G. Wallace