

April 17, 2009

BY EMAIL TO: rule-comments@sec.gov

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

**RE: Release No. 34-59616; File No. SR-FINRA-2009-008
Proposed Changes to Forms U4 & U5**

Dear Ms. Murphy,

Fidelity Investments¹ (“Fidelity”) appreciates the opportunity to comment on FINRA’s proposed changes to Forms U4 and U5 disclosure questions. We support FINRA’s objective to identify more readily individuals subject to statutory disqualification and to otherwise clarify and promote consistency in reporting disclosure events. However, we have considerable concern with the practical feasibility of implementing these changes within the timeframes contemplated in the proposal.

A. Any Form U4 amendments made post-effectiveness would also need to include responses to new “willful violation” questions under section 14.

Under the proposal, FINRA states that firms “will be required to amend Forms U4 to respond to these new questions the first time they file a Form U4 amendment after the effective date of the proposed rule change, but no later than 120 days following the effective date of the proposed rule change.”

Our understanding through direct participation in industry conference calls with FINRA representatives is that FINRA is planning for an effective date in May of 2009 (May 18, 2009 has been mentioned on several occasions) to introduce the new U4 questions. This would mean that as early as May of 2009, firms would be required to answer the new U4 questions prior to or concurrent with the submission of any unrelated U4 amendments. Such an early effective date would have significant adverse consequences for Fidelity relative to its ability to maintain current and accurate Forms U4.

In an effort to improve the efficiency, timeliness, and accuracy of its processes associated with maintaining Forms U4, Fidelity has made substantial technological investments in order to

¹ Fidelity Investments is a diversified financial services company with five registered broker-dealers and more than 10,000 registered representatives.

furnish certain amendments to FINRA through both nightly and weekly automated file transfers. Form U4 fields that are updated through the automated process include individual name information; office of employment address; residential address; SRO registration categories; qualification examinations; and state jurisdictions. Over one thousand such amendments are submitted on a monthly basis.

In order to continue to file amendments in this automated manner, under the proposal, Fidelity must first (or concurrently) answer the new questions on Form U4 for each representative for whom an amendment filing must be made. If the new questions are not answered, any other unrelated amendments will not be accepted due to FINRA's Central Registration Depository ("CRD") system's completeness review procedures. Given the impracticality of determining in advance which representatives may be subject to a future automated amendment, in net effect, Fidelity would have to respond to the new U4 questions for each of its 10,000 plus registered individuals by the effective date of the rule in order to avoid disruption of the automated file transfer process. Stated differently, failure to answer the new questions on all Forms U4 by the effective date would result in those amendments sent through automated file transfers being rejected and Fidelity would, prior to the effective date, need to develop and implement a monitoring and reconciliation process to submit rejected data (in conjunction with obtaining and submitting the responses to the new questions).

Fidelity does not believe it is feasible to obtain and transmit responses to the new questions from all of its registered representatives by a May 2009 effective date. Fidelity would generally request 180 days from the effective date to implement the requirements for its entire registered person population, and that is predicated on not having to respond to the new questions in order to submit unrelated amendments during this period. The fact that the proposal would allow for 120 days from the effective date to answer all new U4 questions (in the absence of other amendments) is of no practical benefit to Fidelity or any other firm that submits a portion of its U4 data through automated file transfers because of the proposal's requirement to update the new questions in order to submit unrelated amendments to Form U4 upon effective date.

If a later effective date were granted, with or without eliminating the requirement to answer the new questions when filing unrelated Form U4 amendments, it would likely result in a number of firms seeking to transmit responses for its entire registered person population at once, rather than on an ad hoc basis or when other unrelated amendments are to be filed, as appears to be contemplated under the proposal. It is conceivable that FINRA would face the prospect of receiving extremely high volumes of industry data immediately before the effective date with only a single night or weekend for its systems to process and accept the data, with the potential result of ensuing disruptions to the CRD.

In light of these considerations, Fidelity recommends a compliance date to provide all answers to the new Form U4 questions for all registered individuals of December 18, 2009.² This compliance date would provide firms with sufficient time to collect and submit all responses to

² This date is intended to represent the Friday prior to the ensuing "shut down" of FINRA's CRD system. We do not believe the actual date of the "shut down" period for 2009 has been confirmed by FINRA, and accordingly this date is an estimate.

the new questions, and would have the added benefit of allowing FINRA adequate time to accept and process the U4 amendments during the period in which CRD typically “shuts down” or operates under a reduced schedule in connection with performing reconciliation procedures for annual registration renewals. We further recommend that FINRA eliminate the requirement to provide answers to the new questions the first time any unrelated amendment is filed. Rather, we recommend the standard Forms U4 and U5 be updated to include the new questions on January 1, 2010, at which time responses to the new questions would be reflected for all registered individuals.

B. Manually signed copies of each amended Form U4 would need to be maintained.

Currently, manually signed copies must be retained for each Form U4 amendment to disclosure questions or DRP pages.³ We consider responses to the new Form U4 questions to be amendments for such purposes, even in the absence of an affirmative response. As a result, a manually signed copy of all Form U4 amendment filings responding to the new “willful violation” questions would need to be retained under the proposal.

Retaining a manually signed copy of each Form U4 amendment would generally require that Fidelity arrange for each registered person to be issued a separate CRD reference number to complete the new “willful violation” questions individually through CRD. Each registered person would then need to print a hardcopy of the filing, sign it, arrange to have an appropriate signatory sign it, and return the manually signed hardcopy to an internal repository. The firm must then review each response and track the return of each manually signed hardcopy prior to submitting the filing to CRD. It would be a substantial administrative burden to complete this process for over 10,000 registered individuals.

We believe providing relief from the manual signature requirement for amendments to the new questions is appropriate given the operational and resource efficiencies that would be achieved and further believe it would comport with current relief already contemplated by FINRA under a separate proposal.⁴ We understand that FINRA has provided an indication in industry conference calls of a willingness to accept answers to the new questions through a batch spreadsheet upload process to CRD rather than through individual U4 filings. We applaud FINRA’s willingness to provide such an accommodation and are hopeful this will soon be confirmed by FINRA. However, remaining at issue is whether manual signatures will be required on the Form U4 as this will drive the manner in which firms can proceed with the collection of answers to the new questions from each registered person. Fidelity believes collecting responses and acknowledgments from each registered person for the new “willful violation” questions through a reliable electronic communication process where each responder can be readily identified, and each response retrievably stored, would be reasonable under the circumstances.

³ See Form U4 Instructions at page 1 and FINRA proposal File No. SR-FINRA-2009-019 at page 7.

⁴ FINRA has proposed relief from the requirement to maintain a manually signed copy of disclosure related amendments provided the firm has obtained the person’s written acknowledgment (which may be electronic) of the filing information prior to submission (See FINRA proposal File No. SR-FINRA-2009-019 at page 7).

Given these considerations we request that FINRA expressly provide relief from the requirement to maintain a manually signed copy of U4 amendments addressing the new “willful violation” questions in lieu of retaining some other reasonable means of documenting each individual’s response to the questions and acknowledgement of the amendment filings.

C. Conclusion

Fidelity understands FINRA’s rationale and supports its proposal to revise the questions on Forms U4 and U5. Due to material concerns with the proposed implementation timeline, Fidelity advocates a compliance date of December 18, 2009 to answer the new “willful violation” questions and further recommends the Forms U4 and U5 be updated on January 1, 2010, at which time responses to the new questions would be reflected for all registered individuals. Acceptance of this recommendation will result in the elimination of the requirement to answer the new questions when filing an unrelated Form U4 amendment prior to January 1, 2010. From a resource allocation perspective, Fidelity believes that it would be prudent and appropriate for FINRA to grant relief from its requirement that firms obtain (and retain) manually signed copies of Form U4 amendments in connection with responses to the new questions. We hope that FINRA will formally confirm that it will facilitate compliance with the new requirements by accepting responses to the new questions in the form of a batch spreadsheet upload process.

If FINRA accepts answers to the new questions through a batch spreadsheet upload process and also grants relief from the requirement to obtain manual signatures for these amendments (while accepting unrelated amendments without a requirement to answer the new questions) it will substantially lessen the administrative burden associated with this effort. Notwithstanding such administrative relief, Fidelity maintains that December 18, 2009 is the optimal date for compliance with the new requirements to provide for orderly and efficient implementation.

* * * *

We appreciate the opportunity to provide comment on FINRA’s proposal and thank you for your consideration of the points we’ve raised. Please feel free to contact me at (617) 563-1527 if you have any questions or comments.

Sincerely,

Charles V. Senatore
Senior Vice President, Chief Compliance Officer