



**April 17, 2009**

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

Re: Release No. 34-59-616; File No SR-FINRA-2009-008  
Proposed Changes to Forms U4 and U5

Dear Ms. Murphy:

The Securities Industry and Financial Markets Association (“SIFMA”)<sup>1</sup> appreciates the opportunity to comment on the referenced Financial Industry Regulatory Authority (“FINRA”) rule proposal to amend the Form U4 and Form U5 disclosure questions.<sup>2</sup> Among other things, the rule proposal would add six new questions to Form U4 in order to more readily identify statutorily disqualified persons due to “willful violations” of federal securities and commodities law.<sup>3</sup> Under the proposal, firms would be required to file amended Forms U4 on behalf of their registered persons responding to the six new questions (either through a “yes” or “no” answer) the first time the firm files a Form U4 amendment on behalf of the registered person, but no later than 120 days following the effective date of the new rule. Notably, FINRA proposed the 120 days requirement in recognition that the “new disclosure questions on the Form U4 will require firms to amend (or refile) such forms for their registered persons, and that this requirement may place an administrative burden on firms.”<sup>4</sup>

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<sup>1</sup> The Securities Industry and Financial Markets Association brings together the shared interests of more than 600 securities firms, banks and asset managers. SIFMA’s mission is to promote policies and practices that work to expand and perfect markets, foster the development of new products and services and create efficiencies for member firms, while preserving and enhancing the public’s trust and confidence in the markets and the industry. SIFMA works to represent its members’ interests locally and globally. It has offices in New York, Washington D.C., and London and its associated firm, the Asia Securities Industry and Financial Markets Association, is based in Hong Kong.

<sup>2</sup> Form U4 refers to the Uniform Application for Securities Industry Registration or Transfer. Form U5 refers to the Uniform Termination Notice for Securities Industry Registration (“Form U5”).

<sup>3</sup> Currently, the Uniform Forms do not specifically elicit information from registrants as to whether they have been the subject of a finding or sanction by the Securities and Exchange Commission (“SEC”) or the Commodity Futures Trading Commission (“CFTC”) for a willful violation of an underlying federal securities law, rule or regulation.

<sup>4</sup> SR-FINRA-2009-08, at page 9.

SIFMA fully supports inclusion of the revised questions on the Form U4 and the timely filing of such information within Central Registration Depository system (“CRD”).<sup>5</sup> We also agree that compliance with the new rule will place considerable administrative burdens on member firms, and therefore commend FINRA for its effort to afford firms additional time beyond the traditional 30 days to make the necessary disclosure amendments. SIFMA does not support, however, the implementation construct proposed in the rule. Rather, we firmly believe that the proposal presents significant practical challenges that make it extremely difficult, if not virtually impossible, for many firms to obtain and file the necessary information in the allotted timeframe.

Currently, there are over 660,000 registered persons whose records are maintained within the CRD System. Depending on the size of the firm’s registrant population, compliance with the new rule could entail *thousands* of filings with CRD per firm. Each filing would have to be made separately and accompanied by the registered person’s signature acknowledging the accuracy of the disclosure information. Moreover, because FINRA would require firms to answer the six questions for registrants the first time a member firm makes any amendment to the Form U4, the implementation period conceivably could commence immediately upon effectiveness. Failure to affirmatively answer any of the new questions would result in an incomplete Form due to CRD’s “completeness” check procedures, thus preventing further amendments on behalf of the registrant. Particularly for member firms that file Form U4 amendments daily through FINRA’s Electronic File Transfer (“EFT”) system, approval of this aspect of the proposal could cause countless amendments to fail the completeness review process, thereby severely disrupting the registration filing process and unnecessarily penalizing blameless registrants whose unrelated Form U4 amendments could not be processed.

Accordingly, and as detailed below, SIFMA respectfully requests that FINRA make the following adjustments to the rule:

- (i) Provide a single implementation date of 180 days from the effective date for firms to answer the six new questions;
- (ii) Provide member firms with a mechanism to electronically batch-file the responses to the new questions without need for the registrant’s signature; and
- (iii) Pre-populate the new questions with “no” answers during the implementation period so that amendments to the Forms may pass the CRD completeness check while firms verify the new information. Alternatively, FINRA could relax the CRD completeness check with respect to the new questions during the implementation period so that firms may continue processing other amendments during this time period.

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<sup>5</sup> The New York Stock Exchange issued Information Memo 06-76 in October 2006 in which they requested that their member firms identify individuals who had committed these “willful violations,” but the Forms U4 and U5 were never amended by the regulators to reflect this.

At a time when member firms are experiencing significant cost-cutting and non-revenue generating businesses are under increasing pressure, it is vital that implementation of new regulatory requirements be reasonable and measured so as not to unduly tax already strained resources at member firms. SIFMA's suggested modifications significantly alleviate the administrative and operational burdens to firms while retaining the core objectives of the proposed amendments. SIFMA's detailed comments are provided below.

### **120 Days Does Not Afford Firms Sufficient Time to Develop a Systemic Method to Collect and File the Necessary Information with CRD**

Upon introduction of these new questions, member firms will be required to verify and file amended Form U4s responding to the new questions for each of their registered persons. Firms, particularly those with large numbers of registrants, will therefore need sufficient time and resources to develop a systemic process that: (i) communicates the six new questions to the registered persons; (ii) allows these individuals to answer each question; (iii) records and tracks the answers to those questions; (iv) escalates non-responders to appropriate supervisors; (v) provides registrants with the ability to ask interpretive questions and get answers to those questions; and (vi) transfers the answers to the CRD system so that the "yes" or "no" radio button can be accomplished.

Additionally, and to further compound the operational complexity of this process, the Form U4 instructions require member firms to retain the registrant's original signature for initial Form U4 and any amendments to Disclosure Reporting Pages (DRP), including disclosures to Question 14 where the six new questions will be placed.<sup>6</sup> While we understand that FINRA has filed a proposed amendment to relax the signature requirements for some disclosure amendments, even if approved, that amendment would still obligate the member firms to obtain the registered person's written acknowledgement of the new disclosure prior to filing a Form U4 change.<sup>7</sup> Thus, for purposes of this rule proposal, firms still would need to capture, track and file the written affirmative responses to the new questions for each one of their registered persons.

To alleviate the operational and systems burdens to member firms, SIFMA respectfully requests that FINRA amend the rule filing to afford firms 180 days following the effective date to implement the rule for all filings. Additionally, and under all circumstances, we also request that FINRA provide a mechanism for firms to electronically batch file the answers to the new questions and without need for the

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<sup>6</sup> See Form U4 Instruction, page 7.

<sup>7</sup> See SR-FINRA-2009-18. SIFMA greatly appreciates and supports FINRA's efforts to address the signature requirements for disclosure filings in these proposed amendments. SIFMA would urge the Commission to approve SR-FINRA-2009-18 as expeditiously as possible and provide an effective date that is aligned to the present rule filing.

registered person's signature. Absent this relief, firms will be forced to expend countless man-hours collecting signed Form U4 s and manually inputting the amended information within WebCRD for each of their registrants.

### **The Implementation Period for Unrelated Amendments Renders the Rule Effective Immediately Upon Approval Without Any Implementation Period**

In addition to the forgoing, it is critical that FINRA also address the proposed implementation timeframe with respect to unrelated Form U4 amendments in order to afford firms the full implementation period. Under the proposal, the 120-day implementation period is reduced considerably for those registrants that seek to amend the Form U4 following the effective date of the rule. In its rule filing, FINRA explains that upon SEC approval of the rule change, the CRD system will process and transfer answers to the existing disclosure questions without change. By contrast, CRD will assign the new questions a "null" value, leaving the responses blank.<sup>8</sup> Firms therefore would be required to affirmatively answer the new questions by populating the field with either a "yes" or "no" response the first time they file a Form U4 amendment after the effective date. If a firm does not affirmatively answer the new questions for registered persons, the filing of any amendments to the Form will fail the CRD-system completeness check.

SIFMA believes that this contracted timeframe for amendments is untenable for many firms because it effectively nullifies any implementation period, making the rule for all practical purposes effective immediately upon Commission approval. Each day, the CRD system processes thousands of Form U4 amendments on behalf of member firms, the vast majority of which are "routine" amendments. These include residential address changes, office of employment changes, state registration information and SRO registration categories. Because firms cannot reasonably anticipate which of their registered personnel will require an amended Form following the effective date, firms will be forced to have a mechanism in place on "day one" that allows them to respond to the six new questions for all their registered persons. If not, firms run the risk of having unrelated routine amendments fail the CRD completeness review process. Not only would such an outcome undermine the efficiencies of the FINRA EFT system and increase administrative burdens to firms, it would impair the firm's ability to process additional registrations for their registered persons, and in turn the registrant's ability to conduct business with the public.

SIFMA therefore urges FINRA to provide a single implementation date of 180 days following the approval of the rule for all amendments. Additionally, we also request that FINRA pre-populated the new questions with "no" answers so that firms may verify the answers during the implementation period. Alternatively, FINRA could suppress the CRD-system completeness check in order to allow firms to continue to send other

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<sup>8</sup> SR-FINRA-2009-008, Footnote 8.

amendments during the implementation period. These modifications, we believe, will significantly alleviate the administrative and operational burdens to firms while retaining the goals of the proposed amendments.

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SIFMA appreciates the opportunity to provide comments on FINRA's proposed amendments to the Form U4 and hopes you find its comments helpful. Please feel free to contact the undersigned at (212) 313-1268 if you have any questions or require further information.

Sincerely,

A handwritten signature in black ink, appearing to read "Amal Aly", with a long, sweeping flourish extending to the right.

Amal Aly  
Managing Director and  
Association General Counsel

CC: Marc Menchel, Executive Vice President and General Counsel for Regulation,  
FINRA  
Rick Pullano, Associate Director and Counsel, CRD/Public Disclosure, FINRA  
Mario DiTrapani, Associate Vice President, FINRA