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April 17, 2009

BY ELECTRONIC MAIL

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 and U5

Dear Ms. Murphy:

Bank of America Corporation¹ appreciates the opportunity to comment on the proposed regulations of the Financial Industry Regulatory Authority (FINRA) rule proposal referenced above, to amend the Uniform Application for Securities Industry Registration or Transfer (Form U4) and the Uniform Termination Notice for Securities Industry Registration (Form U5) disclosure questions. 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.² 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 in recognition that the "new disclosure questions to 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."³

Bank of America supports inclusion of the revised questions on the Form U4 and the timely filing of such information within Central Registration Depository system (CRD).⁴ 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. Bank of America does not support, however, the implementation construct proposed in the rule. Rather, we firmly believe that the proposal presents significant practical challenges

¹ Bank of America is one of the world's largest financial institutions, serving individual consumers, small and middle market businesses, and large corporations with a full range of banking, investing, asset management and other financial and risk-management products and services. Bank of America provides unmatched convenience in the United States, serving more than 59 million consumer, and small business relationships with more than 6,100 retail banking offices, nearly 18,700 ATMs and award-winning online banking with nearly 29 million active users.

² Pursuant to Section 15(b)(4)(D) or (E) of the Securities Exchange Act of 1934 (Exchange Act).

³ SR-FINRA-2009-08, at page 9.

⁴ 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.

that make it extremely difficult, if not virtually impossible, for many firms to obtain and file the necessary information in the allotted timeframe.

Currently, Bank of America is integrating its broker-dealer subsidiaries with Merrill Lynch & Co., Inc.'s broker-dealer subsidiaries⁵ and compliance with the new rule would likely entail *tens of thousands* of filings with CRD across the combined organization.⁶ Each filing would have to be made separately and, as proposed, accompanied by the registered person's signature acknowledging the accuracy of the disclosure information.⁷ Moreover, because FINRA would require firms to answer the six questions for registrants the first time a member firm makes any amendment to a registered person's Form U4, the implementation period would commence immediately upon effectiveness. Failure to affirmatively answer any of the new questions would result in an incomplete Form U4 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.

Bank of America is represented at the Securities Industry and Financial Markets Association (SIFMA), and the Association of Registration Management (ARM), among other groups, and has participated in the preparation of their comment letters. We would like to take this opportunity to emphasize some points of particular importance to Bank of America that we ask the SEC, and FINRA, consider as they review the proposal.

Accordingly, and as detailed below, Bank of America respectfully requests that FINRA make the following adjustments to the proposal:

- (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;
- (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; or
- (iv) Relax the CRD-system completeness check with respect to the new questions during the implementation period so that firms may continue processing other amendments during this time period.

We believe 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. In addition, Bank of America, Merrill Lynch, and other securities industry members are going through an unprecedented movement of registered personnel among its affiliated entities as their businesses are integrated. Each one of these transfers necessitates the filing and processing of a Form U4. These suggested modifications significantly alleviate the administrative and operational burdens to firms while retaining the core objectives of the proposed amendments.

⁵ Some of the FINRA-member Bank of America broker-dealers affected by the proposal include: Banc of America Securities LLC; Merrill Lynch, Pierce, Fenner & Smith, Inc.; Banc of America Investment Services, Inc.; Merrill Lynch Professional Clearing Corp.; Banc of America Specialist, Inc.; and First Republic Securities Company, LLC.

⁶ The combined number of registered persons in the Bank of America group is in excess of 38,000 associates.

⁷ See, footnote 9 regarding SR-FINRA-2009-19.

Insufficient 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. Bank of America and Merrill Lynch, with their 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 appropriately selected.

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.⁸ 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.⁹ 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, Bank of America 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, we request that FINRA staff be given the authority to accept and grant requests for reasonable extensions of time by member firms to comply with Forms U4 and U5 filing requirements. Also, 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 registered person’s signature. Absent this relief, firms will be forced to expend countless man-hours collecting signed Form U4s and manually inputting the amended information within WebCRD for each of their registrants.

Unrelated Amendments Renders the Rule Effective Immediately Upon Approval Without Any Implementation Period

In addition to the forgoing, Bank of America believes 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 make an unrelated amendment to 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.¹⁰ 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.

⁸ See Form U4 Instruction, page 7.

⁹ See SR-FINRA-2009-19. Bank of America would urge the Commission to approve SR-FINRA-2009-19 as expeditiously as possible and provide an effective date that is aligned to the present rule filing.

¹⁰ SR-FINRA-2009-008, Footnote 8.

Bank of America believes that this contracted timeframe for amendments is untenable 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 U4 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 their all 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.

Bank of America 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 should suppress the CRD-system completeness check in order to allow firms to continue to send other 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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Bank of America appreciates the opportunity to comment on the FINRA’s proposed amendments to the Form U4, and we thank you for your consideration of our comments.

Sincerely,

Douglas G. Preston
Senior Vice President
Head of Regulatory Affairs