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SECURITIES AND COMMODITIES  
LITIGATION AND ARBITRATION

INVESTOR RIGHTS

STOCKBROKER  
MISCONDUCT

April 17, 2009

**Via e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov)**

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

Re: File Number SR-FINRA-2009-008

Dear Ms. Murphy:

We write to comment on File Number SR-FINRA-2009-008, in which FINRA proposes to revise Forms U4 and U5 to require the reporting of sales practice violations by brokers and investment advisers that are alleged in arbitration claims or lawsuits, when these brokers and advisers are not named as parties in the claims or lawsuits. We support this change, based on the same rationale that reporting is required when these persons are named as parties. No logical basis exists to require the reporting of alleged misconduct by named brokers but not by unnamed brokers, when the misconduct of these brokers is otherwise identical and is the subject of an arbitration claim or lawsuit.

For many reasons as counsel for investors, we commonly do not name brokers as parties in our arbitration claims against brokerage firms. This tactical litigation decision should have no bearing on whether the brokers' misconduct is reported on Forms U4 and U5. If the misconduct must be reported for named brokers, then it should also be reported for unnamed brokers whose wrongdoing is alleged in an arbitration claim or lawsuit, for exactly the same reasons.

This proposed revision to Forms U4 and U5 will satisfy Section 15A(b)(6) of the Securities Exchange Act of 1934, 15 U.S.C. § 78o-3(b)(6), which requires that FINRA rules must be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest. Information about alleged misconduct by brokers is helpful to investors when they determine where to place their hard-earned dollars. It is helpful to regulators, to allow them to review registration applications and monitor the activities of associated persons. It is likewise helpful to brokerage firms when they decide to hire

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new representatives or retain old ones. Accordingly, the proposed revisions protect investors and the public interest as required by Section 15A(b)(6).

Many industry representatives have filed comments with the Commission opposing this proposed change, on the grounds that it will violate their privacy rights and require disclosure of allegations that are not yet adjudicated. Whatever the force of these objections, however, the Commission and FINRA have already rejected them. By requiring reporting of sales practice violations alleged against brokers who are named as parties in arbitration claims and lawsuits, the Commission and FINRA have already determined that these objections are not enough to outweigh the interest of the investing public, regulatory authorities, and brokerage firm employers, in having information about alleged misconduct available to them. The current practice of not requiring the same disclosures—both for brokers who are named as parties and for brokers who are not named as parties, when their misconduct is in either case the subject of the arbitration claims and lawsuits against them—is inconsistent and harmful to investors.

Thank you for allowing us to submit these comments.

/s/ Stephen Krosschell  
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