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TO: S.E.C.

FROM: Bradley R. Stark, P.A.

RE: Revisions to U4 & U5 FINRA 2009-008

Brokers and dealers already operate in an advantageous environment that puts the private investor at great disadvantage. The objections to the new FINRA rule changes regarding U4 and U5 reporting merely highlight these advantages.

There are several reasons brokers are not named despite their wrong doing.

First, often brokers have little money, no insurance and are not collectible. Because FINRA does not have 'joint and severably' liability, FINRA panels often would apportion a significant amount of an award to the broker (an employee of the brokerage) and thus make the collection of any award difficult or impossible. (This makes FINRA 'appear fair' when in fact the award has little usefulness to the aggrieved investor.) Thus the broker or financial advisor is already receiving a windfall by avoiding a potential adverse award and financial responsibility for his/her untoward actions as a result of the manner in which FINRA administers arbitrations. Now claiming that a record of an award against a brokerage for actions of the broker is unfair to the broker is a sham, the height of nerve! If liability were joint and severable, in every one of these cases the broker would be personally named.

Second, the focus of any arbitration in which the broker is not named will be the actions of the broker. The broker will testify, is fully available to the brokerage firm and both the broker and brokerage firm do aggressively defend the broker's actions. The investor can only win if he/she proves the broker has committed

transgressions. Thus some idea that the broker is a defenseless aggrieved party is a joke.

Third, what service is being provided by the broker? Significant losses that lead to the filing of cases only arise (in the vast vast majority of cases) when a broker has strayed far from the teachings of Modern Portfolio Theory. Since 80% of professional fund managers (with superior skills to the vast majority of brokers) underperform the S&P500 and since Nobel Prizes have been awarded for showing the vast majority of investors can not 'beat the market', doesn't it seem probable that the broker has committed some transgression in communicating risks and making recommendations regarding investment strategies if there are significant losses that prompt an arbitration for straying from Modern Portfolio Theory teachings?

Conclusion: It is an embarrassment that, having avoided personal liability that is deserved for their misconduct due to a few quirks in the manner in which FINRA administers arbitration, brokers are not happy with this advantage and instead demand that their transgressions that cost their firms money should go unreported. The position of INRA and FSI, the attempt to avoid responsibility for untoward actions in financial markets reflect the type of thinking that President Obama has demanded must change.