

Stephanie L. Brown
Managing Director
General Counsel

One Beacon Street, 22nd Floor
Boston, MA 02108-3106
stephanie.brown@lpl.com
617 897 4340 *office*
617 556 2811 *fax*

9785 Towne Centre Drive
San Diego, CA 92121-1968
858 909 6340 *office*
858 646 0609 *fax*

April 15, 2009

BY EMAIL TO: rule-comments@sec.gov

Florence E. Harmon
Deputy Secretary
Securities and Exchange Commission
100 F. Street, NE
Washington, DC 20549-1090

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

Dear Ms. Harmon:

LPL Financial Corporation (“LPL”)¹ appreciates the opportunity to comment on the above-referenced proposed rule amendments by the Financial Industry Regulatory Authority (“FINRA”), which propose certain amendments to Forms U4 and U5 (together, the “Forms”). Specifically, four substantive changes are proposed:

- Revise questions on the Forms to enable FINRA and other regulators to more easily identify individuals and firms subject to statutory disqualification pursuant to Section 15(b)(4)(D) or (E) of the Securities Exchange Act of 1934 (“willful violations”);
- Revise questions on the Forms to elicit reporting of allegations of violations made against a registered person in arbitration or litigation claims even if that person is not named a party in such proceedings;
- Raise the monetary threshold for reporting of settlements of complaints, arbitrations or civil litigation to \$15,000; and
- Revise the definition of “Date of Termination” in Form U5 and allow firms to amend the “Date of Termination” and “Reason for Termination” sections of the Form U5.

In addition to these substantive changes, FINRA has also proposed certain technical and conforming changes to the Forms.

¹ LPL Financial is one of the nation’s leading diversified financial services companies and the largest independent broker/dealer supporting more than 11,000 financial advisors nationwide. It has offices in Boston, Charlotte, Chicago, Los Angeles, San Diego and West Palm Beach.

LPL supports the proposed changes to raise the monetary threshold for reporting settlements of complaints, arbitrations or civil litigation and to allow firms to amend the “Date of Termination” and “Reason for Termination” sections of the Form U5. However, for the reasons set forth below, LPL has concerns over the proposed revisions which would (1) enable regulators to more easily indentify individuals and firms subject to statutory disqualification and (2) require firms to report allegations of violations made against a registered person in arbitration or litigation claims even if that person is not named a party in such proceedings. In addition, as further described below, LPL has questions regarding certain of the technical and conforming changes suggested by FINRA and proposes certain clarifications to these revisions.

I. Proposed Revisions Regarding Willful Violations.

Under current rules, the Forms require disclosure of information that “assists regulators in identifying individuals and firms subject to statutory disqualification based on findings by or sanctions imposed by the Securities and Exchange Commission, the Commodity Futures Trading Commission or an SRO, as defined in the Forms².” However, the Forms do not specifically require disclosure of willful violations of the federal securities laws by a registered representative. FINRA’s proposed rules would add specific questions (the “New Questions”) to the Forms requiring disclosure of findings of willful violations. Firms would be given 120 days from the effective date to amend their registered representatives’ Forms in response to these New Questions.

While LPL fully supports this proposed revision and is in favor of the transparency created by the timely disclosure of willful violations of the federal securities laws, we have concerns over the 120 day implementation period proposed by FINRA. LPL currently supports over 11,000 registered representatives, and the imposition of a 120 day implementation period presents logistical challenges for firms of our size. Upon the approval of this revised rule, LPL will be required to file amended Form U4s for each of our over 11,000 registered representatives. Furthermore, because the proposed revision requires that the New Questions be answered “the first time [the firm] file[s] a Form U4 amendment after the effective date of the proposed rule change”³, firms will be required to answer the New Questions the first time any amendment is made to the Form U4 – even if such Form U4 is amended for an unrelated matter.

Given the logistical challenges presented by this proposed rule change, LPL respectfully requests that FINRA modify the rule proposal to extend the implementation date to 240 days from the effective date for all filings. In addition, we request that the proposed rule be further modified so that during the implementation period, routine amendments (for purposes such as address changes or branch changes) do not trigger a requirement that firms also answer the New Questions, as this would essentially render the implementation period meaningless for those needing to file such routine amendments. These revisions would help alleviate the burden that will be placed upon firms such as ours while achieving the intent of the rule, which we wholeheartedly support.

² Securities and Exchange Commission Release No. 34-59616, March 20, 2009.

³ *Ibid.*

II. Proposed Revisions to Elicit Reporting of Allegations of Sales Practice Violations Against Registered Persons Made in Arbitrations or Litigation in which the Registered Person is not a Named Party.

Under current rules, firms are required to report arbitrations and civil litigation that allege a registered representative's involvement in sales practice violations only if such registered representative is named in the arbitration or civil litigation. FINRA's proposed revisions would revise the Forms to require the reporting of allegations of sales practice violations against a registered representative even if such registered representative is not named in the arbitration claim or civil litigation. Reporting would be required if the registered representative was either named in, or could reasonably be identified from the body of the claim or litigation.

LPL has concerns about these proposed revisions. First, we fear that reporting allegations of violations on a Form U4 or Form U5 when a registered representative has been afforded no opportunity to dispute the charges would constitute a clear abuse of due process. In an industry where business is often dependent upon a registered representative's good name and reputation, disclosing an alleged violation before it has been proven true could potentially cause the registered representative undue harm. We believe that as a matter of fundamental fairness, an individual registered representative has the right to be adequately notified of charges being made against him or her, to be given the opportunity to be heard at proceedings governing the matter and to have an impartial person make a final decision over such proceedings before having such matter affirmatively disclosed on a Form U4 or Form U5. An individual who has not been named in either the title or the body of a claim would have no ability to participate in proceedings or settlement negotiations concerning the issue at hand.

Second, the obligation to review a claim to determine whether a registered representative, who is not named in the claim, has been involved to a degree that would require the disclosure on Form U4 and Form U5 would be burdensome to the firm and fraught with uncertainty. How would a firm determine that a registered representative, "though not named as a respondent/defendant in a customer-initiated arbitration or civil lawsuit...could be reasonably identified from the body of the arbitration claim or civil litigation as a registered person who was involved in one or more of the alleged sales practice violations?"⁴ Moreover, by identifying a registered representative as a person "involved" in a claim, a firm that is attempting to comply with the rule may open itself up to defamation suits initiated by a wronged registered representative.

Given these concerns, we would strongly encourage FINRA to revise the proposed rules so it is a requirement to report allegations of sales practice violations against a registered representative only if such person is actually named in the title or body of an arbitration claim or civil litigation.

III. LPL Comments Regarding Technical and Conforming Changes

One of the technical and conforming changes proposed by FINRA "would provide more detailed instructions regarding the reporting of an internal review (conducted by the firm) to

⁴ Securities and Exchange Commission Release No. 34-59616, March 20, 2009.



clarify that employment-related disputes between a registered person and the firm should not be reported in Question 7B. It would also clarify how an individual may file comments to an Internal Review DRP (via "Part II" of that DRP) to emphasize that the individual's signature is required (in Section 8 of that DRP)."⁵

LPL would like clarification with respect to the logistics surrounding this proposal. First, will this proposal require that firms obtain the signature of the registered representative prior to the filing of the Form U5? If this is the case, this could create a significant burden for the firm as a registered representative could, in theory, hold a firm "hostage" if he or she does not agree with the language submitted in the document. Second, will the registered representative file his or her comments through his or her new firm, through the prior firm, or with FINRA directly? We believe that this rule proposal is currently unclear and would urge FINRA to provide additional clarity prior to adoption.

IV. Conclusion

LPL appreciates the opportunity to comment, and we thank you for your consideration of our concerns. Should you have any questions, please contact me at (617) 897-4340.

Sincerely,

A handwritten signature in black ink that reads 'Stephanie L. Brown'.

Stephanie L. Brown
Managing Director, General Counsel

⁵ Federal Register/Vol. 74, No. 58/Friday, March 27, 2009.