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April 9, 2008

Elizabeth M. Murphy  
Secretary  
Securities and Exchange Commission  
100 F Street, N.E.  
Washington, D.C. 20549-0609

Re: File No. SR-FINRA-2009-008

Dear Ms. Murphy:

I am an attorney in private practice and have been representing investors in claims against brokerage firms for 31 years. Prior to entering private practice I was assistant commissioner of the Oregon Securities Division and was responsible for enforcement of the Oregon securities laws, including those applying to broker-dealers.

I support the proposed rule change that requires reporting of arbitration cases in which a registered person is not named as a party respondent, but in which a registered person's conduct is nonetheless the subject of the claimant's misconduct allegations against the member firm.

I oppose any dollar value threshold for the reporting of settlements and/or awards in FINRA arbitration proceedings.

Finally, I oppose the proposed rule change that would permit member firms to amend the reason for termination of a registered person's employment without a court order or arbitration award.

The CRD system provides the underpinning of FINRA's BrokerCheck system. It is used by public investors who desire to obtain information about a broker to whom they may entrust their life's savings. SRO's and state regulators utilize the system in carrying out their regulatory functions, and the CRD system is jointly owned by FINRA and the North American Securities Administrators Association ("NASAA"). The accuracy and integrity of the system are of utmost importance to the public.

The CRD system falls woefully short of the accuracy its users have a right to expect. Expungement orders have increased exponentially even though FINRA has taken and continues to take action to ensure that the expungement procedure is not abused. Another problem has been failure of the firms to report. Even though FINRA has increased its disciplinary filings against firms and brokers that refuse or neglect to make timely reports to the CRD, the reports are still frequently woefully slow and the necessity of reporting at all is construed extremely narrowly.

A third problem is the proposed revision to the Forms U4 and U5. Under the current reporting system, a written complaint such as a letter to a FINRA member firm alleging that a registered

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person committed a sales practice violation must be reported, but a written allegation of such a violation contained in the text of an arbitration statement of claim or civil lawsuit complaint is not required to be reported unless the registered person is also named as a party to the proceeding. This is simply insane when a clever customer could take the exact same information and put it in a letter to the branch manager entitled "Complaint about conduct of Joe Registered Representative" and it would be reportable.

The current system thus mandates a Form U4 filing and CRD public disclosure of a sales practice complaint by an investor who feels sufficiently aggrieved to send a note, or even an e-mail, to a member firm, but does not require disclosure of the identical claims of investors who feel aggrieved enough to sue the firm with identical allegations but where the registered person is not named in the case caption as a party. This has led to many anomalous results, and there is no supportable rationale for permitting the non-reporting of these claims.

There are a variety of strategic reasons why attorneys recommend to their clients that they name only the firm in an arbitration proceeding: *e.g.* give panel members who don't believe in *respondeat superior* liability only one respondent to blame; the futility of proceeding against a registered representative who is impecunious and who cannot pay an award in any event; the desire to avoid having two defense lawyers at the table with increased discovery requirements and length of hearing; and the desire to have one party to negotiate with for settlement among others. There is no reason to have different reporting requirements for the same conduct, depending upon the attorney's strategic decision to name or not name the individual wrongdoer as a respondent.

The \$10,000 reporting loophole impacts arbitration settlement negotiations between the parties. Under the current rules, if a named registered person participates in a settlement of \$10,000 or more, the settlement will appear on the registered person's CRD. However, if the named registered person and the firm arbitrate the claim to a zero award, the CRD disclosure may be removed from the reporting system. The current rule thus encourages claimants' counsel not to name individual registered persons as arbitration respondents, in order to avoid providing the member firm an artificial incentive to arbitrate, rather than settle the claims.

Under the current system complaints of serious wrongdoing by registered persons who are not named in proceedings are not reported on the CRD. The proposed rule change will close this problematic loophole in the reporting rules and promote full and fair disclosure of customer complaints charging misconduct by registered persons.

Both the current rule requiring the disclosure of claims settled for \$10,000 or more and the proposed change requiring disclosure of settlements of \$15,000 or more impose a completely arbitrary threshold for reporting arbitration settlements. There is no reason for any "*de minimus*" exception for reporting claims and I oppose any monetary threshold for the reporting of settlements. Why should an intentional theft of even \$500 not be reportable? How about \$1.00?

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Both the current rule and the proposed change permit registered persons to essentially ensure that they will retain a "clean" CRD if they pay the customer a relatively small sum (currently, \$9,999 - under the proposal, \$14,999). The amount of such a settlement may be far less than the amount by which the customer was damaged by the registered person's conduct, and the conduct giving rise to the arbitration claim may in some instances be egregious. There is no objectively reasonable basis for any arbitrary reporting threshold and I oppose both the existing \$10,000 threshold and the proposed \$15,000 threshold.

This arbitrary reporting threshold gives registered persons an incentive to settle claims below the settlement reporting threshold for the sole purpose of eliminating the risk of having an arbitration award reported on the CRD. The proposed change should be revised to eliminate any monetary threshold for the reporting of settled claims, and require all settled sales practice claims to be reported. Prospective customers and other persons can then decide for themselves in an environment of full disclosure whether a relatively modest financial settlement of a customer case is a material factor in their evaluation of the ability, integrity, and trustworthiness of a registered person.

Under current practice member firms do not have the ability to amend the reason for termination or date of termination after the initial filing of Form U5. Instead, member firms can place a Registration Comment on the WebCRD to explain "unusual circumstances or irregularities in an individual's registration history that: (1) relates to the date or reason for termination on the Form U5; and (2) cannot be addressed otherwise through a form filing ...." Alternatively, the member firm or registered persons may follow the expungement procedure set forth in FINRA Rule 12805 and NASD Rule 2130.

FINRA proposes to allow member firms to amend the reason for, or date of, termination without any arbitration award or court order. Member firms would, however, have to give a reason for the change. FINRA would notify other regulators and the broker-dealer currently employing the person (if the person is with another firm) when a reason for termination or date of termination has been amended.

I do not object to the rule proposal as it relates to the change in the date of termination. However, granting the same latitude to firms wishing to make changes in the reasons for a broker's termination increases the potential for abuse and collusion. In some circumstances, departing registered persons have financial disputes with member firms. For example, promissory notes may exist to repay a registered person's "draw" against commissions, or a registered person may be obligated for a portion of a sum advanced by the member firm to resolve a customer arbitration or satisfy an arbitration award. Certainly, where the member firm and departing registered person have financial issues to resolve and may be otherwise adverse, it is possible that amendment of the reason for termination of the registered person may become a subject of bargained-for exchange as the parties negotiate their other issues.

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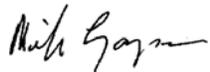
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The present rule's requirement that a member firm obtain an arbitration award or court order in order to make an amendment to the reason for termination serves an important purpose by requiring member firms to explain the reason(s) for the change to an impartial decision maker. The current process effectively requires the member firm to make a verified statement setting forth a legitimate reason for the change in the reason for termination. While sharp practices unfortunately may develop under any set of rules, and while the current requirement of judicial/arbitral approval of changes does not guarantee accurate and transparent reporting, the proposed change lessens rather than increases the likelihood of trustworthy information and increases the potential for collusion.

#### Conclusion

For the above reasons I support the proposed FINRA changes to reporting on Forms U4 and U5 with respect to arbitration claims in which registered persons' conduct is complained of but as to which registered persons are not named as party respondents. I strongly favor elimination of any arbitrary monetary threshold for the reporting of customer arbitrations and I oppose permitting member firms to unilaterally change the reasons for a broker's termination.

Very truly yours,



Richard M. Layne

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