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April 16, 2009

Via Electronic Mail rule-comments@sec.gov

Elizabeth M. Murphy, Secretary
United States Securities & Exchange Commission
100 F Street, N.E.
Washington, D.C. 20549-1090

Re: SEC Release No. 34-59616; SR-FINRA-2009-008.

Dear Secretary Murphy:

My firm regularly represents investors in arbitrations before the Financial Industry Regulatory Authority ("FINRA"), and has done so for many years. I write to offer comments on FINRA's recently-proposed rule changes regarding reporting requirements for Forms U4 and U5.

I agree with (and adopt) the comments already offered by Brian N. Smiley, Esq., of the Public Investors Arbitration Bar Association ("PIABA").¹ I believe that one issue warrants additional commentary.

The Commission Should Adopt FINRA's Proposed Changes to Form U4 Questions 14I(2) and (3) Form U5 Questions 7E(2) and (3).

The current reporting regime is fundamentally flawed because investors may not be aware that a particular broker has been the subject of numerous arbitration claims that member firms settled for substantial sums. A common tactic for respondent member firms is to offer investors a settlement that requires the victimized investor to not name the broker as a party respondent. Further, as many commentators have pointed out, claimants' counsel typically do not name brokers as respondents when counsel file statements of claim.

Under the current regime, investors who exercise some due diligence and who use FINRA's BrokerCheck system will see only those complaints or arbitrations where counsel chose to name the broker as a party respondent, thus giving the diligent investor an incomplete or inaccurate picture of the subject broker. The very real prospect exists that, in comparing and choosing between two potential brokers, the diligent investor might be misled into picking the broker with the more extensive and negative history—a prospect that promises only more investor losses and more arbitrations.

¹ available at: (<http://www.sec.gov/comments/sr-finra-2009-008/finra2009008-30.pdf>).

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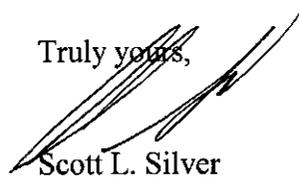
The current reporting regime requires disclosure if, for example, the member firm receives a client e-mail that complains about some broker's sales practices. Yet if that same client later files a statement of claim with FINRA and does not list the broker in the case caption, that need not be disclosed on a Form U4. This seems inconsistent, and consequently, I do not believe the current reporting regime to be a logical one.

Rather, the current regime, I believe, turns logic on its head and exalts form over substance. As another commentator pointed out, a statement of claim—whether it names the broker as a respondent or not—is a far more serious allegation of wrongdoing than a simple e-mail. Logic would seem to dictate that the more serious allegations of wrongdoing be disclosed.

FINRA's proposal to require Form U4 and U5 disclosure when a representative is not named but is the subject of a lawsuit or arbitration involving sales practices, if adopted, would bring consistency to the current reporting regime. Additionally, it would increase transparency and reliability for investors who avail themselves of FINRA's BrokerCheck.

For these reasons, I believe adopting FINRA's proposed changes to Questions 14I(2) and (3) on Form U4 and Questions 7E(2) and (3) on Form U5 will bring both consistency and increased transparency to FINRA's reporting system, which will only benefit investors.

Truly yours,

A handwritten signature in black ink, appearing to read "Scott L. Silver", written over the typed name.

Scott L. Silver

SLS/sla