

**ARM** Association  
of Registration  
Management, Inc  
Post Office Box 133, Bowling Green Station, New York, NY 10274

April 15, 2009

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

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

Dear Ms. Murphy:

The Association of Registration Management ("ARM") appreciates the opportunity to comment on this very critical proposal. ARM was established in 1975 and its mission is to be a voice for its membership representing industry on issues that concern the registration and licensing functions for securities, commodities and insurance.

We recognize that one of the proposed changes will enable regulators and firms to more readily identify individuals subject to disqualification for "willful violations" pursuant to Section 15(b)(4)(D) or (E) of the Exchange Act. We support the public policy underlying this change; however, as it is proposed, the implementation of this change will cause an undue and significant burden on member firms. While theoretically there is a possibility that someone will have a "Yes" answer to one of the expanded questions, the likelihood is so remote that it does not justify the tremendous burden that this current proposal will have on the entire industry.

The proposal will require firms to promptly determine whether any of their Registered Representatives ("RRs") have been subject to any action that requires reporting under questions 14C (6), (7) and (8) and 14E (5), (6) and (7). Firms will then be required to amend Forms U4 to respond to the additional questions the first time they file a U4 amendment after the effective date of the proposed rule, but no later than 120 days following the effective date. The rule, as proposed, will be incredibly burdensome and difficult to comply with. Therefore, we respectfully request consideration of the following issues in order to assist member firms in complying with the changes:

- Form U4 should default to "No" for additional questions for Registered Representatives ("RRs") who currently have no "Yes" answers under 14C, D and/or E

In 2003 the 14D(2) questions were introduced and defaulted to "No" answers for the additional 14C and 14E questions for all RRs who currently had no "Yes" answers on their U4.<sup>1</sup> In 2003, FINRA was introducing new disclosure questions to capture certain Orders issued by various state regulators, an appropriate Federal Banking Agency or the National Credit Union Administration. The current proposal is not seeking to capture new unreported matters necessarily but simply trying to identify if a currently reported regulatory matter involves a "willful violation". In other words, the only way for an RR to potentially have a "Yes" answer to the additional willful question is to currently have a "Yes" answer on their current U4. As such, FINRA should have the U4 default to "No" for all RRs who currently have no "Yes" answers under 14C, D and/or E on their U4. For those RRs who currently have a "Yes" answer on their U4, the question should default to a "null" answer requiring a U4 amendment after determining if the RR will have a "Yes" answer to the additional questions.

- Allow firms to submit Form U4 amendments with "No" answers to the aforementioned new questions, electronically

Disclosure questions cannot currently be amended through EFT. If FINRA is unable to implement the proposal above, the industry will literally be filing hundreds of thousands of U4 amendments to provide "No" answers to the additional questions. This will be an extremely manual task requiring thousands of administrative hours by industry personnel. ARM proposes that FINRA provide a mechanism for firms to batch file their "No" responses to the additional questions either through EFT or by some other batch filing process. For those few amendments that will require a "Yes" answer, firms will be submitting them manually as they do today including a completed DRP with manual signatures.

- Signatures not required on U4 amendments with "No" answers

It appears that FINRA believes a manual original signature is required on a U4 amendment that provides a "No" answer to the additional 14C or 14E questions. FINRA states in its recent filing (SR-FINRA-2009-19) "...amendments to Form U4 that provide disclosure information must be signed by the associated person." ARM disagrees with this interpretation. The instructions to the U4 clearly provide "*A copy, with original signatures, of the initial Form U4 and amendments to DRPs U4 must be retained by the filing firm...*". The U4 instructions indicate that *only* when a DRP is being added or amended is a manual original signature required. ARM believes a manual signature is not required when filing a U4 amendment to provide a "No" answer to the additional questions. No DRP is being filed or amended. FINRA interprets through its rule filing and guidance that the word "DRP" in the U4 instructions refers to "disclosure information" and that includes a "No" answer to disclosure information. We are aware of FINRA filing SR-FINRA-2009-19 to relax the signature

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<sup>1</sup> In 2003, the Sarbanes-Oxley Act questions were populated with "NO" responses to new questions for all registered persons who had no prior disclosure on their CRD record. Member firms were required to change only those that were found to be reportable and populate those that were unpopulated. Member Firms were required to ask the questions and collect responses via an electronic signature process. This method allowed daily form filings to continue since the completeness check did not prevent a routine filing.

requirement in order to provide member firms relief from what they believe is a requirement. ARM fully supports FINRA's amended request to allow member firms relief by providing the ability to systematically and electronically collect signatures.

- To alleviate the operational and systems burden to member firms, we suggest extending the deadline to 180 days to allow firms additional time to work with their internal technical partners/departments to implement methods to collect information electronically

For many firms, particularly those with large numbers of RRs, the 120 day implementation period does not provide sufficient time to develop a systematic approach to gathering answers to each of the six additional questions, and then filing the necessary information through the WebCRD system. At a minimum, firms will need to develop a process that: (i) communicates the six additional questions to the RRs; (ii) allows the RRs to respond to the questions, (iii) records the answers to those questions, (iv) submits the answers to WebCRD, (v) tracks individuals who have not responded, (vi) escalates non-responders to appropriate supervisors, and (vii) provides RRs with the ability to seek guidance in responding to the questions. Additionally the work needed to accomplish these tasks will require approval, budget funding and technology development. The 120 day period does not provide sufficient time for firms to complete the tasks. ARM requests that FINRA allow firms 180 days to complete all additional filings.

- Suppress the CRD-system completeness check until the 120<sup>th</sup> day (or 180<sup>th</sup> day as discussed above)

As proposed, the 120 day implementation period is shortened considerably for those RRs that make an amendment following the effective date of the rule. Firms must affirmatively answer the newly added questions by populating the field with either a "Yes" or "No" response the first time they file a Form U4 amendment after the effective date of the proposed rule change, but no later than 120 days from the effective date. As proposed, the completeness check for the additional questions will go into effect "day one" when the proposed rule become effective. This will cause firms' daily work flow to be immediately impacted, because the effectiveness of unrelated amendments to Forms U4 will be delayed and potentially interfere with the ability of those RRs to conduct business with their customers. The proposal, as written is another way of shutting down registration on day one of the implementation and make the appearance that member firms have 120 days when in certain cases they will not. For example, daily routine filings will not pass the completeness check, without having to get the applicant to first review and respond to the new questions. This means that simple amendments such as a billing code change, residence address change or branch location update will fail a completeness check. More importantly, an applicant who fails an exam cannot be immediately scheduled to re-take the exam; an account representative cannot obtain an additional state registration to conduct business. This could potentially have a negative impact on clients. For the aforementioned reasons and those stated above, ARM respectfully requests that the completeness check *not be activated* until after the 120 day implementation period has expired.

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We thank you for the opportunity to comment. Please contact me if you have any questions or you would like additional information.

Sincerely,

On Behalf of The Association of Registration Management Executive Board\*

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