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May 15, 2009

**BY EMAIL TO: [rule-comments@sec.gov](mailto:rule-comments@sec.gov)**

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

**RE: Release No. 34-59784; File No. SR-FINRA-2009-019**  
**Proposed Rule change to adopt FINRA Rules 1010 (Requirements for**  
**Uniform Forms) and 2263 (Arbitration Disclosure to Associated Persons**  
**Signing or Acknowledging Form U4) in the Consolidated FINRA Rulebook**

Dear Ms. Harmon:

Charles Schwab & Co., Inc. ("Schwab") appreciates the opportunity to comment on FINRA's "Proposed Rule change to adopt FINRA Rules 1010 (Requirements for Uniform Forms) and 2263 (Arbitration Disclosure to Associated Persons Signing or Acknowledging Form U4) in the Consolidated FINRA Rulebook." Schwab supports:

- **FINRA's effort to modify the signature requirement with respect to disclosure amendments**, however, as discussed in more detail below, Schwab believes the requirements may be overly restrictive.
- **The proposed supplementary material expressly permitting the registered principal(s) or corporate officer(s) responsible for supervising a firm's electronic filings to delegate to another associated person the electronic filing of the member's forms via Web CRD.**

Schwab believes these changes will ultimately promote Form U4 filing timeliness and will provide firms with the flexibility to leverage personnel and electronic systems.

**Proposed FINRA Rule 1010(c)(3) and Supplementary Material .03**

Schwab is aware of the importance of accurate and timely disclosure of Form U4 information both to investors and member firms, recognizes the joint nature of the Form U4 disclosure amendment process and believes that firms should have policies and procedures to facilitate the submission of Form U4 disclosure amendments. However, Schwab is concerned that the requirement in the proposal that "...the member is obligated to file the disclosure information as to which it has knowledge..." may create practical challenges for both member firms and regulators and is unnecessary. Notably, Schwab is concerned that the proposal:

- May require firms to file a Form U4 disclosure amendment when the firm has access to incomplete, insufficient, unsubstantiated and perhaps even inaccurate disclosure information and as a result, may inadvertently violate proposed FINRA Rule 1122,<sup>1</sup> "Filing of Misleading Information as to Members or Registration" which states:

No member or person associated with a member shall file with FINRA information with respect to membership or registration which is incomplete or inaccurate so as to be misleading, or which could in any way tend to mislead, or fail to correct such filing after notice thereof.

This is particularly true with respect to criminal, civil judicial, termination and financial disclosures and customer complaint/arbitration/civil litigation disclosures resulting from matters related to a registered persons prior employment. In such matters, firms may have access to limited information and generally rely on the registered person to provide the detailed information required to file a complete and accurate Form U4 disclosure amendment. As stated in bold on the Form U4 General Instructions, "Filers must answer all questions and submit all requested information" and further noted in Section 14, Disclosure Questions, "Provide complete details explaining any "yes" answers on the appropriate Disclosure Reporting Pages (DRPs)."

- May dilute the standard that the primary responsibility for updating and keeping the Form U4 current rests with the registered person, a standard expressed in the Form U4 General Instructions by the statement "An individual is under a continuing obligation to amend and update information required by the Form U4 as changes occur." and further noted in the Section 15A, Individual/Applicant's Acknowledgement and Consent, (section 9) by the applicant's required representation that "I agree to update this form by causing an amendment to be filed on a timely

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<sup>1</sup> Schwab notes that proposed FINRA Rule 1122 was approved the SEC on April 20, 2009. See Release No. 34-59789, File No. SR-FINRA-2009-009

basis whenever changes occur to previously reported answers.” This standard has also been articulated by FINRA’s Department of Enforcement in innumerable disciplinary actions and proceedings. The proposed rule change introduces the possibility that a registered person may avoid accountability and responsibility by attributing the Form U4 disclosure amendment filing responsibility to the firm. In addition, as a practical matter, in most cases the registered person is in a better position to know and provide the complete details of the matter being disclosed.

- Will expose member firms and member firm employees that file Form U4 disclosure amendments to legal actions from aggrieved registered persons alleging defamation and other such claims. These types of disputes are not only time consuming and expensive, but divert resources and may create conflicts within an organization.

Schwab believes that proposed Rule 1010(c)(3) is unnecessary and that the obligation specified in Article V, Section 2(c) of the FINRA By-Laws, together with existing FINRA guidance, appropriately and adequately addresses the responsibility that every Form U4 be kept current. Article V, Section 2(c) of the FINRA By-Laws states as follows;

c) Every application for registration filed with the Corporation shall be kept current at all times by supplementary amendments via electronic process or such other process as the Corporation may prescribe to the original application. Such amendment to the application shall be filed with the Corporation not later than 30 days after learning of the facts or circumstances giving rise to the amendment. If such amendment involves a statutory disqualification as defined in Section 3(a)(39) and Section 15(b)(4) of the Act, such amendment shall be filed not later than ten days after such disqualification occurs.

As an alternative, Schwab recommends that FINRA amend the proposed Rule to reflect that the registered person remains primarily responsible for keeping the Form U4 current, is obligated to review Form U4 disclosure amendment information prepared or filed by a member firm on their behalf and immediately inform the firm of any inaccuracies and that member firms “may” submit disclosure information which it has knowledge of “only” under the conditions specified in Supplementary Material .03. Schwab also strongly recommends that FINRA revise the Form U4, particularly section 15A, “Individual/Applicant’s Acknowledgement and Consent” and the Form U4 Instructions to contemplate the provisions of the proposed rule.

#### **Proposed FINRA Rule 1010(c)(4)**

The proposed rule change incorporates WebCRD’s current practice of permitting Form U4 administrative information to be amended without obtaining the associated person’s

signature. However, proposed Rule 1010(c)(4) includes the additional requirement that “The member firm shall use reasonable efforts to provide the associated person a copy of the amended administrative information that was filed.” Schwab is unaware of prior FINRA guidance requiring that copies of electronic amendments to administrative data be provided to registered persons. Schwab believes this requirement would significantly impact existing firm systems and procedures, requiring costly and complex re-engineering. It is unclear what benefits are achieved by this change. Schwab believes a clearly articulated benefit to the registered person and/or investing public would need to be expressly identified to warrant the significant systems changes and associated costs firms would have to incur to comply with this new requirement.

Schwab proposes that if the firm retains a record of the event that prompted the Form U4 administrative amendment, the requirement to provide a copy to the associated person be removed. For example if a registered person requested a state registration and/or exam window and the firm retains a record of such request, the firm should not be required to deliver a copy of the administrative amendment to the registered person. Similarly, when a registered person notifies the firm of a residential address change or the firm files a change in location of a registered person and the firm retains a record of the events, it should not be required to provide the registered person with a copy of the administrative filing.

#### **Proposed FINRA Rule 1010(c)(1) and 2263**

Under the proposed rule, for a firm to file amendments to the Form U4 disclosure information without obtaining the registered person’s manual signature, the firm would be required to:

1. Use reasonable efforts to provide the registered person with a copy of the amended disclosure information prior to filing; and
2. Use reasonable efforts to obtain the registered person’s written acknowledgment (which may be electronic) prior to filing that the information has been received and reviewed; and
3. Retain the written acknowledgment in accordance with SEA Rule 17a-4(e)(1) and make it available promptly upon regulatory request; and
4. Provide the associated person with the “Arbitration Disclosure to Associated Persons Signing or Acknowledging Form U4” written statement.

These requirements are significant and would prove costly and complex for firms to implement. Schwab requests that FINRA reconsider these requirements and permit an exception to or relax requirements #1 and #2 above in circumstances where a firm maintains procedures and provides electronic systems that require registered persons to:

1. Self disclose and respond to disclosure questions identical to the Form U4 disclosure questions; and
2. Provide disclosure information essentially similar to the associated disclosure reporting pages (“DRP”); and
3. Electronically sign and acknowledge the accuracy and completeness of the self disclosed information and be provided with language essentially similar to the “Arbitration Disclosure to Associated Persons Signing or Acknowledging Form U4” written statement.

The electronic system would:

1. Provide or make readily accessible a copy of the self disclosure information submission to the registered person; and
2. Retain the self disclosure information and acknowledgement in accordance with SEA Rule 17a-4(e)(1) and it would be made available promptly upon regulatory request.

Such guidance would allow firms to use and leverage existing systems while achieving FINRA’s apparent goal of having clear evidence of the registered person’s knowledge and acceptance of the disclosure information.

We appreciate the opportunity to provide comments and thank you for your consideration of the points we have raised in this letter. Please feel free to contact me at (415) 636-3540 to discuss them in more detail.

Sincerely,



Bari Havlik  
SVP and Chief Compliance Officer  
Charles Schwab & Co., Inc.