



NASAA

NORTH AMERICAN SECURITIES ADMINISTRATORS ASSOCIATION, INC.

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November 16, 2016

Submitted electronically to rule-comments@sec.gov

Brent J. Fields, Secretary
Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549

RE: Release No. 34-79055, File Number SR-NYSEMKT-2016-052

Dear Mr. Fields:

On behalf of the North American Securities Administrators Association, Inc. ("NASAA"),¹ I hereby submit the following comments in response to Release No. 34-79055, File Number SR-NYSEMKT-2016-052, entitled Order Instituting Proceedings to Determine Whether to Approve or Disapprove Proposed Rule Changes to Extend the Time Within Which a Member, Member Organization, an ATP Holder, an OTP Holder, or an OTP Firm Must File a Uniform Termination Notice for Securities Industry Registration ("Form U5").² NASAA appreciates the opportunity to expand upon its comments in response to this proposed rule change.³

As expressed in our initial comment letter, the 10-day filing requirement for the Form U5 should be maintained, particularly given the valuable regulatory information the Form contains. Having timely access to U5 information is critical for both regulators and industry stakeholders. Regulators use this important information in licensing decisions and securities firms use it in making hiring decisions.

NYSE MKT ("the Exchange") contends that its proposed rule change would harmonize its Form U5 filing deadline with the Form U5 filing deadlines of other exchanges and self-regulatory organizations, such as FINRA. The Exchange notes that the Commission has approved similar 30-day filing deadlines in the past.⁴

¹ NASAA is the association of the 67 state, provincial, and territorial securities regulatory agencies of the United States, Canada, and Mexico. NASAA serves as the forum for these regulators to work with each other in an effort to protect investors at the grassroots level and to promote fair and open capital markets.

² 81 Fed. Reg. 70,460 (Oct. 12, 2016).

³ NASAA previously commented on this rule proposal in a letter dated August 3, 2016. *See* Letter from Judith Shaw, NASAA President and Maine Securities Administrator, to Brent J. Fields, Secretary, Securities and Exchange Commission, dated Aug. 3, 2016 ("NASAA Letter").

⁴ *See* Letter from Elizabeth King, General Counsel and Corporate Secretary, New York Stock Exchange, to Brent J. Fields, Secretary, Securities and Exchange Commission, dated Aug. 12, 2016 ("August NYSE Letter"); *see also*

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Serious consideration, however, should be given to whether the longer filing deadlines in other contexts are even appropriate. In NASAA's view, now is the time for a comprehensive review of Form U5 filing deadlines industry-wide, not a cursory acceptance of an argument based on potentially outdated rules.

A 30-day filing deadline poses significant challenges for state regulators reviewing registration requests, particularly where an individual has been terminated from one firm and quickly obtained employment with a new firm.⁵ A representative may pack up his or her things on a Friday afternoon and start employment at a new firm the following Monday morning. In light of the often automatic nature of the registration process in many states, in such circumstances a state would be unlikely to have the essential Form U5 information before making a new licensing decision.⁶

Significant ramifications of licensing decisions outweigh any arguable burden, and supports maintaining the shorter 10-day filing deadline. Based on NASAA's review of recent Form U5 filing data for state registrants under FINRA's current 30-day filing deadline, approximately 16% of Form U5s are not filed until at least the 16th day following the date of termination.⁷ Admittedly, this figure does not represent a majority of filings. This figure is, however, significant given the importance of the information contained on Form U5 and the sheer volume of Form U5 filings the states receive. Combined, the states receive approximately 10,000 Form U5 filings each month; while the number of Form U5 filings a particular state receives varies depending on the state's registration population, the filing volume for each state is substantial. Further, the data show that approximately 73% of Form U5s are already filed within 10 days of a representative's termination. The burden of maintaining a shorter filing deadline is demonstrably minimal, and the vast majority of firms already are in compliance with a 10-day deadline.⁸ Because of the significant ramifications that may result from a licensing decision based on less timely filed Form U5s, a shorter filing deadline is more appropriate.

The Exchange also has argued that maintaining its current 10-day filing deadline would put it at a competitive disadvantage in relation to FINRA and exchanges that maintain longer

Letter from Elizabeth King, General Counsel and Corporate Secretary, New York Stock Exchange, to Brent J. Fields, Secretary, Securities and Exchange Commission, dated Oct. 26, 2016 ("October NYSE Letter").

⁵ See NASAA Letter, *supra* note 2, at 2.

⁶ See, e.g., Uniform Securities Act of 1956 Sec. 202 (automatic registration if no action within 30 days); Uniform Securities Act of 2002 Sec. 408 (automatic registration after 30 days in case of transferring firms).

⁷ NASAA reviewed Form U5 filing data for broker-dealer agents, investment adviser representatives, and dual registrants across all states from October 1, 2013 through September 30, 2016.

⁸ This filing data also rebuts the argument presented by the Association of Registration Management that a shorter timeline would not allow firms to conduct the proper due diligence before making these filings and result in inaccurate filings. See Letter from Michele Van Tassel, President, Association of Registration Management, to Brent J. Fields, Secretary, Securities and Exchange Commission, dated Nov. 4, 2016. Further, NASAA's examination of the Form U5 filing data shows that the rate at which Form U5 Amendments are filed does not fluctuate significantly based on how quickly following termination the initial Form U5 is filed. This suggests that a shorter filing deadline would not result in increased inaccuracies.

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filing deadlines.⁹ As the filing data demonstrate, a majority of firms subject to the longer filing deadline already meet a 10-day standard. There simply is no “competitive disadvantage” for the Exchange’s members.

Finally, NASAA plans to review more detailed Form U5 filing information as we continue to examine this important issue. For example, NASAA expects that the 73% of Form U5 filings completed within 10 days of termination are the result of voluntary separations and do not involve complex personnel issues. On the other hand, we expect that the Form U5s that are filed later may involve more complex separations, such as terminations for cause—filings that are of more importance to state regulators and more likely to affect a licensing decision.

Accordingly, given NASAA’s continued work in this area, it would be premature for the Commission to approve the Exchange’s proposal. This is especially so when the work underway may lead to a more comprehensive industry-wide examination leading to a recommendation to shorten the filing deadlines.

In sum, NASAA has significant concerns about the proposed rule change’s negative impact on investor protection.¹⁰ Harmonization efforts should be focused on shortening the Form U5 filing deadlines across the industry, not lengthening them as proposed by the Exchange. Indeed, a shorter filing deadline is more appropriate and the Commission should disapprove the Exchange’s proposed change.

NASAA appreciates the opportunity to offer its further comments on the Exchange’s proposal. If you have any questions about these comments, please contact NASAA’s General Counsel, A. Valerie Mirko, at [REDACTED] or (202)-737-0900.

Sincerely,



Mike Rothman
NASAA President
Minnesota Commissioner of Commerce

⁹ See August NYSE Letter and October NYSE Letter, *supra* note 4.

¹⁰ NASAA has similar concerns as those expressed in the Investor Advocate’s comments. See Letter from Rick Fleming, Investor Advocate, Securities and Exchange Commission, to Brent J. Fields, Secretary, Securities and Exchange Commission, dated Oct. 3, 2016.