ARM Association of Registration Management
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June 24, 2003

Via Email and Overnight Mail

Mr. Jonathan G. Katz
Secretary
Securities and Exchange Commission
450 Fifth Street, N.W.
Washington, D.C. 20549-0609

Re: File No. SR-NASD-2003-57

Dear Mr. Katz:

The Association of Registration Management ("ARM") appreciates the opportunity to comment on NASD's proposed amendments to the Uniform Application for Securities Industry Registration or Transfer" (Form U-4) and the "Uniform Termination Notice for Securities Industry Registration" (Form U-5) (herein collectively referred to as "forms") whereby NASD seeks to add two additional disclosure questions to these forms. ARM understands NASD is taking these steps in reaction to the Sarbanes-Oxley Act ("SOX") which expanded the definition of a statutorily disqualified person to include "certain" types of state disciplinary sanctions against associated persons.

While ARM certainly appreciates NASD's objectives in attempting to identify individuals subject to a statutory disqualification, we believe there are two problems with the contemplated approach.

First, the information being sought through the introduction of these additional questions is information that is *already* required to be disclosed (through existing questions) on the forms. Following are the two proposed questions:

14D(2) Have you been subject to any final order of a state securities commission (or any agency or officer performing like functions), state authority that supervises or examines banks, savings associations, or credit unions, state insurance commission (or any agency or office performing like functions), an appropriate federal banking agency, or the National Credit Union Administration, that:

(a) bars you from association with an entity regulated by such commission, authority, agency, or officer, or from engaging in the business of securities, insurance, banking, savings association activities, or credit union activities; or

(b) constitutes a final order based on violations of any laws or regulations that prohibit fraudulent, manipulative, or deceptive conduct?

The proposed questions are subsumed in (existing) disclosure question 14D which reads as follows:

14D. Has any other Federal regulatory agency or any state regulatory agency or foreign financial regulatory authority ever:

(1) found you to have made a false statement or omission or been dishonest, unfair or unethical?

(2) found you to have been involved in a violation of investment-related regulation(s) or statute(s)?

(3)found you to have been a cause of an investment-related business having its authorization to do business denied, suspended, revoked or restricted?

(4) entered an order against you in connection with investment-related activity?

(*5) denied, suspended, or revoked you registration or license or otherwise, by order, prevented you from associating with an investment related business or restricting your activities?*

It is also important to note that the existing forms define "investment-related" as *"pertain(ing) to securities, commodities, banking, insurance, or real estate (including, but not limited to, acting as or being associated with a broker-dealer, issuer, investment company, investment advisor, futures sponsor, bank, or savings association).*

Given that the proposed questions are again subsumed in existing questions, ARM believes that one consequence of introducing these new questions will be the likelihood of confusion being generated with respect to reporting obligations.

We understand the proposed questions are intended to introduce terms such as "credit union" and "final order" but we also believe such terms are already incorporated or otherwise implied in the *existing* questions. For example, we believe "credit union" falls within the current definition of "investment-related". The proposed questions also attempt to draw a distinction between the terms "order" and "final order". Keep in mind that most securities professionals are not securities lawyers who might be able to distinguish between the two terms. Industry professionals need to see plain English on their registration applications if they are going to be held to a strict standard of accurate and full disclosure.

Notwithstanding any confusion that will be likely be engendered by the introduction of the questions, a further consequence will be abundant operational and administrative

problems, many that will likely have adverse consequences to industry as relate to firms being able to promptly effect registrations for personnel. Specifically, every registered person in NASD's WebCRD database (approximately 650,000 individuals) would, upon introduction of the questions, immediately have an *incomplete* Form U-4 on file! These incomplete or deficient records will consequently prevent firms from obtaining any additional registrations (i.e., additional *state* registrations), effecting exam schedulings or from otherwise making any other amendment on behalf of its registered representatives *until such time when each registrant refiles a new Form U-4 with WebCRD with the new questions answered*. Compounding matters, NASD Rule 3080 requires firms to send a notice (regarding employer/employee disputes) to all registered persons who amend page three of Form U-4.

Accomplishing all this would present a monumental task to industry; as well, this would certainly bring the number of WebCRD filings made by firms to a near halt and would render *useless* WebCRD's Electronic Filing Transmission[1] functionality (that many firms have already paid $3,600 per broker-dealer to utilize) thereby negating any intended benefit.

Secondly, the expanded definition of a statutorily disqualified person contained in SOX extends as well to *non-registered* individuals. Expanding the questions on registration forms will obviously do nothing with respect to identifying such individuals.

As a remedy, ARM suggests that NASD adopt a rule that would require broker-dealers to have their employees certify, without a need to amend registration forms, to the proposed questions. This is similar to a New York Stock Exchange rule that, as applied, requires all employees of a member organization (both registered and non-registered) to certify annually on certain matters; among others, whether or not they had been the subject of any event that might render them statutorily disqualified. By incorporating such questions into employees' annual certifications, firms would be able to identify any employee who, under SOX, is subject to statutory disqualification. In making such identification, firms would then be required to notify their designated examining authority ("DEA"). The DEA would (as is procedurally done today) flag WebCRD records of any registered persons who are deemed to be statutorily disqualified.

In summary, ARM believes the current Form U-4 already elicits the *same* information being sought in the proposed questions. Allowing NASD to introduce the proposed questions would place a costly administrative and operational burden upon industry; specifically, firms would be compelled to refile thousands of forms without any benefit.

Allow ARM to again point out that the proposal does not extend to non-registered persons.

A final consideration (and this touches upon a few of the previously-made points): the forms are *dynamic*. NASD accordingly needs to consider the *ongoing* burden that form revision places upon industry. Whenever form changes are effected, industry is faced with the prospect of more work, the likelihood that more paper will need to be collected

[1] A functionality whereby large firms can submit filings in batch mode as opposed to submitting hundreds on separate daily filings.

(certainly, amassing paper is *not* in the spirit of WebCRD), the prospect of unintended regulatory transgressions and the certainty of overall greater administrative and operational costs. These are not frivolous concerns.

Thank you for your time and attention to this matter.

Very truly yours,

Mario Di Trapani
President
Association of Registration Management