



## Revisions to Forms U4 and U5 – Action Required by November 14

In May 2009, the SEC approved a proposal by the Financial Industry Regulatory Authority (“FINRA”) to modify Forms U4 and U5 in several ways.<sup>1</sup> The revised forms contain additional disclosure questions regarding regulatory actions brought against industry employees, which are designed to enable FINRA and other regulators to more readily identify persons who are subject to disqualification from participation in the securities industry. Among the most important changes:

- The amendments add additional questions to questions 14C and 14E on Form U4. Question 14C, which inquires about SEC and Commodity Futures Trading Commission (“CFTC”) actions, adds three new questions regarding willful violations. Question 14E, adds three identical questions with respect to findings by self-regulatory organizations.
- On the revised Form U5, the date to be included in the “Date of Termination” field is the “date that the firm terminated the individual’s association with the firm in a capacity for which registration is required.” Additionally, firms will be permitted to amend the “Date of Termination” and “Reason for Termination” sections of the Form U5 without having to obtain a court order or arbitration award to do so.
- The revised forms also require member firms to report allegations of sales practice violations made against a registered person in an arbitration or litigation, even in cases where the registered person is not a named party. A firm is required to report a “yes” answer (indicating that the person, while not named as a respondent or defendant, was either named in or could be reasonably identified from the body of the arbitration claim or litigation as involved in the alleged violations) only after it has made a good-faith determination, after a reasonable investigation, that the alleged sales practice violations involved the registered person.

Beginning May 18, 2009, broker-dealers have been required to amend existing Forms U4 of their registered personnel to reflect any such regulatory actions, a process that must be completed by November 14, 2009. Under a temporary “blanket answer” protocol, firms have been permitted to provide provisional “no” answers to most of the new questions; however, failure to amend any “no” answer to “yes” by November 14, 2009, will constitute a statement by the broker-dealer that “no” is the correct answer for that representative. A “yes” answer will require a detailed explanation.

To make the revised Form U4 filing process less onerous for broker-dealers, FINRA Rule 1010 permits broker-dealers to file amendments related to the new Form U4 disclosure section without obtaining the manual signature of associated persons, subject to certain conditions. Broker-dealers must use reasonable efforts to (1) provide the associated person with a copy of the amended disclosure information

<sup>1</sup> FINRA Regulatory Notice 09-23 ([www.finra.org/web/groups/industry/@ip/@reg/@notice/documents/notices/p118705.pdf](http://www.finra.org/web/groups/industry/@ip/@reg/@notice/documents/notices/p118705.pdf)).

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and (2) obtain the associated person's written acknowledgement (which may be electronic) that the information has been received and reviewed. Such written acknowledgments should be retained in order to satisfy the record retention requirements set forth in Rule 17a-4 of the Securities Exchange Act of 1934.

The North American Securities Administrators Association CRD/IARD Steering Committee believes that investment adviser

representatives should be allowed to file provisional responses to the questions contained in 14C and 14E on Form U4 until such time as the questions become effective on November 14, 2009. States oversee their own Form U4 filing requirements for registered investment adviser representatives and, thus, Form U4 compliance requirements should be reviewed on a state-by-state basis.

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The Financial Services Practice Group of Winston & Strawn represents a broad range of financial institutions on all regulatory matters. If you have any questions regarding the matters discussed in this Briefing, if you need assistance in preparing comments to FINRA regarding the proposed rules, or if you need assistance in analyzing, developing, and/or reviewing systems, controls, and/or procedures relating to these matters, please contact any of the Winston & Strawn attorneys listed below or your usual Winston & Strawn contact.

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