

PUBLICATION

Changes to Forms U4 and U5

May 19, 2009

The U.S. Securities and Exchange Commission (SEC) recently approved the Financial Industry Regulatory Authority (FINRA) proposed amendments to Form U4 (Uniform Application for Securities Industry Registration or Transfer) and Form U5 (Uniform Termination Notice). The amendments are below:

1. Added questions to existing Form U4 Questions 14C and 14E which inquire about SEC and Commodity Futures Trading Commission regulatory actions.
2. Added three new questions on Form U4 (14C(6), (7) and (8)) regarding willful violations (with three identical questions in the context of findings by any Self-Regulatory Organizations at Question 14E). Adding these new questions to Form U4 requires all FINRA members to amend Form U4 for all their registered persons. These amendments must be made by November 14, 2009. May 18, 2009 was the first day to make such amendments. When you amend the Form U4, you will be informed that the answers for the new questions are "provisional" and not effective until November 14, 2009. Any "no" answers filed in response to the new regulatory action disclosure questions and that are not amended before November 14, 2009 will become final without any further action by the firm.

If the FINRA member answers "yes" to the new questions, the amendment filings must include completed Disclosure Reporting Page(s) or DRP(s) covering the proceedings or action reported.

FINRA is providing firms with the ability to upload a "batch" file of Form U4 amendments to the Central Registration Depository (CRD) system for all of their registered persons for the purpose of filing "no" answers to all of the new regulatory action disclosure questions.

3. Revised Form U4 (new Questions 14I(4) and (5)) and Form U5 (Questions 7E(4) and (5)) to require the reporting of allegations of sales practices violations made against registered persons in a civil lawsuit or arbitration in which the registered person is not a named party. The new questions apply only to arbitration claims or civil litigation filed on or after May 18, 2009. A "yes" answer to these new questions on Forms U4 or U5 indicates that the registered person, though not named as a respondent/defendant in a customer-initiated arbitration or civil lawsuit, was either named in, or could be reasonably identified from, the body of the arbitration claim or civil litigation as a registered person who was involved in one or more of the alleged sales practice violations. A firm is required to report a "yes" answer only after it has made a good-faith determination after a reasonable investigation that the alleged sales practice violation(s) involved the registered person.

As of May 18, 2009, alleged sales practice violations made by a customer against persons identified in the body of a civil litigation complaint or arbitration claim will be treated the same way that customer complaints are treated. For example, such matters will be required to be reported no later than 30 days after receipt by the firm.

4. Increased the monetary threshold for reporting customer complaints, arbitration or litigation so that the existing settlement amount is now \$15,000 rather than \$10,000. This change is reflected in Question 14I on Form U4 and Question 7E on Form U5.

5. Revised Form U5 to provide that the date to be provided by a firm 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." The rule change also permits a firm as of May 18, 2009 to amend the "Date of Termination" and "Reason for Termination" in a Form U5 previously submitted, but the firm must provide a reason for each amendment.