

September 27, 2010

**FINRA Notice to Members 10 – 39  
Clarifies Requirements for  
“Complete and Accurate”  
Form U-5**

FINRA recently published Notice to Members 10-39 entitled “Form U5 Obligation to Provide Timely, Complete and Accurate Information on Form U5.” The notice clarifies the level of detail that FINRA requires of member firms when reporting terminations for cause. Specifically, the notice states the following:

- A firm must provide sufficient detail when responding to Form U5 questions such that a reasonable person may understand the circumstances that triggered the affirmative response. For example, for purposes of Section 3 on Form U5, it is not sufficient for a firm to report only that a person’s registration was terminated because that person violated “firm policy.” If a firm is obligated to report that a registered person was terminated because he or she violated a firm policy, the firm must identify the policy, provide sufficient facts and circumstances to enable the reader to understand what conduct was involved, and review other questions on the form to determine whether an affirmative response to any other question is required.
- A firm that is terminating a registered person for misconduct subject to disclosure specified in Question 7F is required to answer that question in the affirmative, irrespective of whether or not the firm is the entity making the allegations of misconduct. Question 7F asks whether the individual who is the subject of the Form U5 voluntarily resigned, or was discharged or permitted to resign, after allegations were made that accused the individual of certain types of misconduct. Question 7F does not specify or require that the terminating firm be the source of those allegations. For example, if an affiliate of a firm employing a registered person discharges the registered person after making allegations of fraud against that person and the firm thereafter discharges the person, the firm would need to provide an affirmative answer to the appropriate part of Question 7F and indicate that it was discharging the person after allegations of fraud had been made against him or her.
- A firm should err on the side of interpreting the term “investment-related” in an expansive manner in line with the scope of the term when reporting information on Form U5. The scope of the term pertains to securities, commodities, banking,

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- insurance or real estate (including, but not limited to, acting as or being associated with a broker-dealer, issuer, investment company, investment adviser, futures sponsor, bank or savings association). Accordingly, a firm may be required to provide an affirmative answer to a question even if the matter is not securities- related. Furthermore, the type of conduct described in Form U5 questions need not always pertain to or involve a customer of the terminating firm in order to require an affirmative answer. Several questions ask about specific types of misconduct without regard to whether such misconduct involved a customer of the terminating firm. Therefore, the issue of whether the conduct involved a customer of the terminating firm is not necessarily determinative as to whether the conduct may require an affirmative answer to a Form U5 question.

The level of detail required in Forms U-5 has long been a subject of discussion and disagreement among legal and compliance personnel within the financial services industry. Additionally, it has often been misunderstood and misrepresented in employment arbitrations relating to defamation claims on Form U-5 language. This notice should go a long way toward explaining to arbitrators who may not be familiar with the regulatory requirements that Forms U-5 must be sufficiently detailed to enable the reader to understand the true circumstances of a registered representative’s employment termination.

A link to the full notice may be found at  
<http://www.finra.org/Industry/Regulation/Notices/2010/P122041>.