

July 8, 2009

Elizabeth M. Murphy  
Secretary  
U.S. Securities and Exchange Commission  
100 F Street, N.E.  
Washington, DC 20549-1090

**Re: File No. SR-FINRA-2009-019 – Response to Comments**

Dear Ms. Murphy:

This letter responds to comments submitted to the Securities and Exchange Commission (the “SEC”) regarding the above-referenced rule filing, a proposed rule change to adopt new FINRA Rule 1010 (Electronic Filing Requirements for Uniform Forms) and FINRA Rule 2263 (Arbitration Disclosure to Associated Persons Signing or Acknowledging Form U4).<sup>1</sup>

Proposed FINRA Rule 1010, which is based on NASD Rule 1140 (Electronic Filing Rules), among other things, would: (1) codify FINRA’s position that every initial and transfer electronic Form U4 must be based on an original, manually signed Form U4; (2) modify the signature requirement with respect to amendments to disclosure information in the Form U4 to allow firms to obtain a written acknowledgment in lieu of a manual signature, subject to specified conditions; (3) clarify that a member must submit disclosure information to which it has knowledge in those cases where a member is not able to obtain an associated person’s manual signature or written acknowledgement of the amendment; and (4) incorporate Web CRD’s current practice of permitting Form U4 administrative information to be amended without obtaining the associated person’s signature (manual or otherwise). Proposed FINRA Rule 2263, which is based on NASD Rule 3080 (Disclosure to Associated Persons When Signing Form U-4), would require a member to provide specified arbitration disclosures whenever a member asks an associated person, pursuant to proposed FINRA Rule 1010, to manually sign an initial or amended Form U4, or to otherwise provide written acknowledgment of an amendment to the Form.

The SEC received one comment letter from Charles Schwab & Co., Inc. (“Schwab”) in response to the proposed rule filing.<sup>2</sup> Schwab, while supporting much of

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<sup>1</sup> See Securities Exchange Act Release No. 59784 (April 17, 2009); 74 FR 18779 (April 24, 2009) (SR-FINRA-2009-019).

<sup>2</sup> Letter from Bari Havlik, Senior Vice President and Chief Compliance Officer, Charles Schwab & Co., Inc., to Florence Harmon, Deputy Secretary, SEC (May 15, 2009).

the proposal, raised concerns regarding certain aspects of proposed FINRA Rule 1010. A summary of Schwab's comments and FINRA's responses are set forth below.

Proposed FINRA Rule 1010(c)(3): Obligation to File Disclosure Information Known by Member

Schwab objected to proposed FINRA Rule 1010(c)(3)'s requirement that a member must submit known disclosure information in those cases where the member is not able to obtain an associated person's manual signature or written acknowledgement of the amendment. Specifically, Schwab argued that the proposed requirement could cause a member to submit incomplete or inaccurate disclosure information that could expose the member and its employees to defamation lawsuits and other litigation risks. Additionally, Schwab argued that such submission could result in an inadvertent violation of FINRA Rule 1122 (Filing of Misleading Information as to Membership or Registration), which prohibits a member or registered person from submitting incomplete or inaccurate registration information.

As FINRA stated in the rule filing, the proposed rule change codifies a member's obligation under the FINRA By-Laws that every Form U4 be kept current,<sup>3</sup> thereby making clear that this requirement applies to members as well as associated persons. Accordingly, a member with independent knowledge of specific disclosure information (e.g., a customer complaint submitted to the member) is required to submit such information.<sup>4</sup> Implicit in this duty is the expectation that the member will seek to ensure, prior to submission, such information is accurate and complete.<sup>5</sup> In this regard, proposed FINRA Rule 1010(c)(3) presumes that the member will seek to obtain the associated person's manual signature or written acknowledgment of the amended disclosure information and will file such information as to which it has knowledge where the member is unable to obtain such signature or acknowledgment.

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<sup>3</sup> See FINRA By-Laws, Article V, Section 2(c).

<sup>4</sup> Schwab also suggested amending proposed FINRA Rule 1010(c)(3) to provide that members "may" submit known disclosure information only in such situations as described in proposed Supplementary Material 1010.03 (Filing of Amendments Involving Disclosure Information) (e.g., where the representative is on active military service or refuses to acknowledge disclosure information). Such an amendment, however, is inconsistent with a member's above-stated duty to keep the Form U4 current by submitting any disclosure information to which it has knowledge. FINRA declines to adopt Schwab's suggestion.

<sup>5</sup> See Robert E. Kauffman, 51 S.E.C. 838, 839 (1993) (noting the prohibition against filing misleading information and stating that "[FINRA], which cannot investigate the veracity of every detail in each document filed with it, must depend on its members to report to it accurately and clearly in a manner that is not misleading").

Schwab also raised concerns that the proposed provision could permit an associated person to rely on the member to update the Form U4 and requested amending proposed FINRA Rule 1010(c)(3) to reflect that the associated person has the primary responsibility for updating the Form U4 information.<sup>6</sup> Additionally, Schwab suggested amending the provision to require an associated person to review submitted disclosure information and immediately inform the member of any inaccuracies. Schwab's suggestions, however, ignore the fact that proposed FINRA Rule 1010 (and current NASD Rule 1140, upon which it is based) sets forth a member's obligations regarding Form U4 and other Uniform Form filings. An associated person's obligations regarding the Form U4 are addressed elsewhere in the FINRA Manual.<sup>7</sup> These provisions, among other things, also require the associated person to keep the person's application for registration filed with FINRA current at all times. Accordingly, FINRA declines to adopt the suggested amendments.

#### Proposed FINRA Rule 1010(c)(4): Filing Electronic Form U4 Administrative Data Amendments

Schwab did not object to incorporating WebCRD's current practice of permitting a member to file electronic Form U4 amendments to administrative data without obtaining an associated person's signature. However, Schwab argued that proposed FINRA Rule 1010(c)(4) should not also require a member to use reasonable efforts to provide the associated person with a copy of the filed administrative information, as the requirement would create significant implementation costs for members without providing any clear benefits for either the associated person or the investing public. Instead, Schwab suggested that it should be sufficient for a firm to retain a record of the event that caused the amendment.

Among the many ways FINRA protects investors is by using the Form U4 to determine the fitness of applicants for registration as securities professionals. However, the effectiveness of this protection depends on the accuracy of the Form U4 information. FINRA believes that one means of ensuring such accuracy is to provide an associated person with the ability to review submitted Form U4 information that is not based on a document manually signed by the associated person. Thus, FINRA considers it appropriate that proposed FINRA Rule 1010 require a member to use reasonable efforts to provide an associated person with a copy of all disclosure and administrative Form U4 information filed without the associated person's manual signature. Because administrative data is limited to items such as the addition of state or self-regulatory organization registrations, exam scheduling and updates to residential, business and

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<sup>6</sup> Although an associated person may have the primary responsibility for maintaining the accuracy of the Form U4, see Douglas J. Toth, Exchange Act Rel. No. 58074 (July 1, 2008), that does not negate a member's own responsibility to submit Form U4 information to which it has knowledge.

<sup>7</sup> See generally, FINRA By-Laws, Article V, Section 2.

personal history, the proposed rule would allow firms the flexibility to provide copies of amendments to administrative information after the information has been filed.

Proposed FINRA Rules 1010(c)(2): Filing Form U4 Disclosure Amendments without Obtaining a Manual Signature; Proposed FINRA Rule 2263

Schwab supported permitting members to file Form U4 disclosure information amendments without obtaining an associated person's manual signature. However, Schwab stated its belief that the requirements may be overly restrictive. In short, Schwab requested that FINRA reconsider, due to potential implementation costs, the proposed requirements that a member, to file amendments to disclosure information without obtaining the registered person's manual signature, must: (1) use reasonable efforts to provide the associated person with a copy of the amended disclosure information prior to filing and obtain a written acknowledgement prior to filing that the associated person received and reviewed the information; (2) retain the written acknowledgement as part of its recordkeeping requirements and make it available promptly upon regulatory request; and (3) provide the associated person with the arbitration disclosures required by proposed FINRA Rule 2263.

In particular, Schwab suggested that FINRA permit an exception to the first requirement above in circumstances where a firm maintains procedures and provides electronic systems that require registered persons to (1) self disclose and respond to disclosure questions identical to the Form U4 disclosure questions; (2) provide disclosure information essentially similar to the associated disclosure reporting pages; and (3) electronically sign and acknowledge the accuracy and completeness of the self disclosed information and be provided with language essentially similar to the disclosures under proposed FINRA Rule 2263. Moreover, per Schwab's letter, the electronic system would (1) provide or make readily accessible a copy of the self disclosure information submission to the registered person; and (2) retain the self disclosure information and acknowledgment in accordance with SEA Rule 17a-4(e)(1) and make it available promptly upon regulatory request.

FINRA considers Schwab's suggestions as a form of request for interpretive guidance on the manner in which a member may comply with proposed FINRA Rule 1010(c)(2) and FINRA Rule 2263, employing electronic systems. Assuming SEC approval of the proposed rule change, FINRA staff would address related interpretive issues, as appropriate.

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FINRA believes that the foregoing responds to the material issues raised by Schwab to this rule filing. If you have any questions, please contact me at (202) 728-8026.

Sincerely,

A handwritten signature in cursive script that reads "Patricia Albrecht".

Patricia Albrecht  
Assistant General Counsel