

# Reporting Disclosure Events

**November 19, 2010**

Registered broker-dealers must report specified disclosure events on Forms BD, U4 and U5 within prescribed timeframes. Firms also must report to FINRA certain events, known as the “Ten Disclosure Events,” pursuant to NASD Rule 3070. Failure to make timely and accurate disclosures can result in significant adverse consequences. Thus, firms should be aware of the triggers and timeframes for regulatory disclosure and the need to implement effective systems and procedures around these requirements.

Articles IV and V of FINRA’s By-Laws make clear that a broker-dealer is under a continuing obligation to amend Forms BD, U4 and U5 whenever there is a change to the information reported on the Forms.<sup>[1]</sup> In general, a firm must amend a Form within thirty days from the date it first learns of the facts or circumstances giving rise to the reporting obligation.<sup>[2]</sup> Form BD requires disclosure of, among other things, regulatory and civil judicial actions pertaining to the firm and its affiliates. Form U4 requires similar disclosures with respect to associated persons, as well as additional disclosures regarding regulatory investigations, customer complaints, termination and other relevant events, including receipt of a Wells Notice.<sup>[3]</sup> Form U5 requires further disclosure where the individual is, or at termination was, under internal review for a securities law violation. Instructions for the filing of disclosures and an explanation of the terms employed in the forms are available on the FINRA Web site.<sup>[4]</sup>

NASD Rule 3070 requires that member firms report to FINRA certain disclosure events in addition to their Forms U4, U5 and BD filings. The stated purpose of such disclosure is to “help FINRA with the timely identification of matters of regulatory concern in line with [its] goal of enhancing risk based and focused approaches to regulation.” The ten disclosure events, which are specified in Rule 3070(a) and include comparable disclosures to those outlined above, must be reported to FINRA within ten business days after the firm knows or should have known of their existence. Rule 3070 disclosures are submitted electronically via the FINRA Firm Gateway. Further details may be found on the FINRA Web site.<sup>[5]</sup> Depending upon the circumstances, disclosure on several different forms may be required for the same event. Additionally, the ten business day deadline under NASD Rule 3070 means that such disclosures may have to be made in advance of other required disclosures.

Firms should have in place robust supervisory procedures and systems to ensure compliance with their reporting requirements. This includes implementing processes which assure that complete information is communicated immediately to those with a need to know and that required filings are made accurately and timely. In particular, firms should ensure that they have effective procedures to facilitate communication between associated persons, their designated supervisors and the registration, compliance or other departments responsible for regulatory filings. Making accurate and complete disclosure is not always a simple task and may require nuanced judgment. Thus, it is critical that compliance and other appropriate personnel receive sufficient information to inform their disclosure decisions. Firms also should consider including specific procedures in their compliance and supervisory manuals regarding the events giving rise to a disclosure obligation, and the proper protocol to follow upon receipt of a Wells Notice or the occurrence of another event triggering disclosure.

<sup>[1]</sup> See FINRA By-Laws Article IV, Section 1(c) and Article V, Sections 2(c) and 3(b).

[2] If the amendment to a Form U4 involves a “statutory disqualification” as defined in Sections 3(a)(39) and 15(b)(4) of the Securities Exchange Act of 1934, the amendment must be filed within ten days of learning of the statutory disqualifying event. If the disqualified individual is terminated, a Form U5 must be filed within thirty days following termination. If the firm plans to retain the individual, an MC-400 Membership Continuance Application pursuant to FINRA’s Eligibility Rules (the Rule 9520 Series) must be made to FINRA. A firm that becomes subject to disqualification must update its Form BD immediately (but no later than thirty days from learning of the disqualifying event), and should simultaneously file an MC-400A Membership Continuance Application with FINRA if it wishes to continue in business. A firm’s procedures should include protocols for dealing with statutory disqualifications, including the process for retaining persons who become subject to a statutory disqualification and the procedure to be followed if the firm itself becomes subject to disqualification.

[3] A “Wells Notice” is a letter that a regulatory agency sends to a prospective respondent notifying them of the substance of charges that the regulatory agency intends to bring against them, and providing the person or firm with the opportunity to submit a written statement to the ultimate decision maker.

[4] Available at

<http://www.finra.org/Industry/Compliance/Registration/CRD/FilingGuidance/P005235>.

[5] Available at

<http://www.finra.org/Industry/Compliance/RegulatoryFilings/CustomerComplaints>.