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May 14, 2019

FINRA
1735 K Street NW
Washington, D.C. 20006

*Attn: Robert W. Cook
President/CEO*

Dear Mr. Cook:

I write regarding a FINRA procedure that in my view, as well as in the view of other counsel representing broker-dealer and associated persons, is not only unfair but, further, harmful to certain associated persons.

In general, FINRA requires that if an associated person is named as a respondent in a customer arbitration, it be disclosed on a disclosure reporting page of the associated person's Form U4 or U5 and, therefore, publicly available.

In my experience, in many arbitrations claimants name some or all of the persons who are reported as direct owners and executive officers on a broker-dealer's BrokerCheck Report. In these instances, claimants simply allege, without support, that these associated persons are supervisors of the broker(s) involved and, accordingly, are liable based on lack of supervision. In many instances these persons so named are uninvolved and have been haphazardly named.

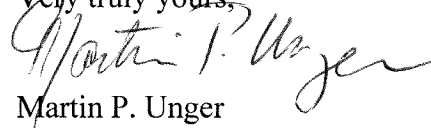
Nevertheless, FINRA takes the position that if an associated person is named as a respondent in an arbitration, that fact must be reported on a disclosure reporting page annexed to the associated person's Form U4 or U5. Further, FINRA takes the position that the only cure is, after the arbitration, which could exceed one year, during which it is publicly reportable, an expungement proceeding with its attendant costs, including attorneys' fees and court costs.

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Question four of Form U4 and U5 Interpretive Questions and Answers published by FINRA, and revised March 5, 2015, to some extent resolves the quandary broker-dealers find themselves in in the situation above described, but it is far from definitive.

I write to suggest that FINRA issue either a further clarification, release and/or rule providing in substance that a good faith determination by the broker-dealer as to whether an associated person is involved in an alleged sales practice violation may be made by the broker-dealer and, if such determination is that a person was not involved in the alleged violation, that it not be required to be reported on that associated person's Form U4. In my view, while those associated persons involved in alleged sales practice violations will still be subject to disclosure reporting, persons who have been haphazardly named simply because their names appear on the broker-dealer's BrokerCheck, would not have a disclosure and thus would not suffer the harm and public notice attendant to the disclosure.

Very truly yours,

A handwritten signature in black ink, appearing to read "Martin P. Unger", written in a cursive style.

Martin P. Unger

MPU/fb
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