



UNITED STATES  
SECURITIES AND EXCHANGE COMMISSION  
WASHINGTON, D.C. 20549

DIVISION OF  
TRADING AND MARKETS

February 19, 2008

Mr. Richard E. Pullano  
Associate Vice President and Chief Counsel  
Registration and Disclosure  
Financial Industry Regulatory Authority  
9509 Key West Avenue  
Rockville, MD 20850

Re: Request for No-action Relief from Rule 17a-4  
for Certain Form Filings Made on Web CRD

Dear Mr. Pullano:

In your letter dated September 28, 2007, you request, on behalf of FINRA, no-action relief from the staff of the Division of Trading and Markets ("Division") to permit FINRA members to rely on certain electronic records submitted to and maintained on Web CRD to satisfy their record retention requirements under Exchange Act Rule 17a-4.<sup>1</sup> Specifically, you seek assurance that the Division would not recommend enforcement action to the Commission against FINRA members who rely on Web CRD to satisfy their record retention requirements under Rule 17a-4 with respect to the following registration-related records filed with and maintained on Web CRD: Form U4 amendments that do not require the registered person's signature; Form U5 filings that do not require the registered person's signature; and Form BR filings.

A copy of your letter is attached with this response. By doing this, we avoid having to repeat or summarize the facts you presented. The defined terms in this letter have the same meaning as in your letter, unless otherwise noted.

As you explain in your letter, Web CRD is a secure web-based registration and licensing system for the United States securities industry. Web CRD enables users to electronically file registration forms and to access the system via the Internet. FINRA owns and operates Web CRD and jointly administers it with the NASAA. FINRA makes Web CRD available to all states securities regulators, other self-regulatory organizations and the Commission. Generally, all broker-dealers registered or applying for registration

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<sup>1</sup> 17 CFR 240.17a-4.

Mr. Richard E. Pullano

February 19, 2008

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with the Commission are required to file uniform registration forms through Web CRD. These forms include Forms U4 and U5, which are used to register and terminate registrations of persons associated with a broker-dealer, as well as Form BR which is used to register (or notice-file) and deregister (or provide notification of the closing of) branch offices.

Initial Forms U4 and amendments that provide disclosure information must be signed by the registered person as well the broker-dealer.<sup>2</sup> Form U4 amendments that provide or update administrative information may be filed and signed by the broker-dealer without the signature of the registered person.<sup>3</sup> Initial Forms U5 also are filed and signed by the broker-dealer without the signature of the registered person.<sup>4</sup> Certain Form U5 amendments, however, in addition to the broker-dealer's signature, must include a signature of the individual whose registration has been terminated, including residential address changes and changes to Part II of the internal review DRP.<sup>5</sup> Finally, a Form BR requires only the signature of the broker-dealer. When a broker-dealer's signature is required on a Form U4 or Form U5 filed on Web CRD, the firm's signature is done electronically.

FINRA employs a rigorous entitlement program for Web CRD that is designed to ensure that only authorized users are able to view information, make required filings or otherwise interact with the system. System audit capabilities are able to identify users and their activities within Web CRD. Broker-dealers file registration forms directly into Web CRD. The filings submitted to Web CRD are date and time-stamped upon filing. In addition, you state that all filings are able to be accurately reproduced as filed, and viewed or printed by any authorized CRD user via any computer that is capable of accessing the Internet. Broker-dealers cannot delete or alter form filings once they have been filed on Web CRD.

As explained in your letter, you state that as a result of the comprehensive nature of the information collected on the forms and the volume of filings made on Web CRD, the forms create significant recordkeeping obligations for FINRA members. You state that allowing FINRA members to rely on the Web CRD system to maintain certain records will result in significant cost savings and decrease administrative burdens without sacrificing important regulatory needs and objectives. You also state that Web CRD will retain the form filings subject to your request and identified below for the time periods broker-dealers are required to retain such records under Rule 17a-4.

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<sup>2</sup> NASD Rule 1140(c) requires every initial and transfer electronic Form U4 filing to be based on a signed Form U4 provided to the member by the person on whose behalf the Form U4 is being filed. As part of the member's recordkeeping requirements, the rule also requires the member to retain the signed Form U4 and make it available promptly for regulatory request.

<sup>3</sup> See Exchange Act Release No. 37439 (July 15, 1996).

<sup>4</sup> A broker-dealer must file a U5 within 30 days of termination if a registered representative leaves the firm and provide a copy to the individual whose registration has been terminated.

<sup>5</sup> See Form U5, Section 8B.

**Response:**

On the basis of the facts and representations contained in your letter, the Division will not recommend to the Commission enforcement action under Rule 17a-4 if a FINRA member relies on Web CRD to satisfy its record retention requirements under Rule 17a-4 for the following registration-related records filed with and maintained on Web CRD:

- Form U4 amendments that do not require the registered person's signature;
- Form U5 filings (both initial Forms U5 and any amendments) that do not require the registered person's signature; and
- Form BR filings (both initial Forms BR and any amendments).

This relief is limited to the form filings identified above which: (a) are submitted by the FINRA member under the Entitlement/Security/Audit Capabilities described in your letter; (b) are filed by the FINRA member under the member's Web CRD account; and (c) contain an electronic signature of the "appropriate signatory" of the FINRA member. We also note that Web CRD will retain the form filings for the time periods broker-dealers are required to retain such records under Rule 17a-4.

Any different facts or representations may require a different conclusion. This is a staff position regarding enforcement action under Rule 17a-4 only, and does not express any legal conclusions regarding the applicability of Rule 17a-4 or any other federal or state laws or the applicability of self-regulatory organization rules. Finally, this position is subject to modification or revocation if at any time the Commission or Division determines that such action is necessary or appropriate in furtherance of the purposes of the Exchange Act.

Sincerely,



Thomas K. McGowan  
Assistant Director

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Richard E. Pullano  
Associate President and Chief Counsel  
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September 28, 2007

Mr. Michael Macchiaroli  
Associate Director  
Division of Market Regulation  
U.S. Securities and Exchange Commission  
100 F Street, NE  
Washington, DC 20549

Dear Mr. Macchiaroli:

The Financial Industry Regulatory Authority, Inc. (FINRA), on behalf of its members, respectfully requests that the staff of the Division of Market Regulation of the Securities and Exchange Commission (Commission or SEC) provide assurances that it will not recommend enforcement action to the Commission under Rule 17a-4 under the Securities Exchange Act of 1934 (Exchange Act) if FINRA members rely on certain electronic records (as further described below) submitted to and maintained on the Central Registration Depository (CRD<sup>®</sup> or Web CRD) to satisfy their record retention requirements under Exchange Act Rule 17a-4.<sup>1</sup>

### Overview

The SEC historically has endorsed the use of technology to create efficiencies in the books and records area, and has encouraged the use of technological innovation so long as investor protection is not compromised. This no-action request builds on those principles by requesting that Web CRD be recognized as an acceptable electronic storage medium for FINRA members for retention of certain registration-related records required to be maintained under Rule 17a-4.

As discussed in more detail below, Web CRD has matured significantly and demonstrated its reliability since its deployment in 1999. The system possesses numerous attributes and safeguards that, in FINRA's view, enable it to satisfy the regulatory objectives identified by the Commission for an acceptable electronic storage medium. Allowing FINRA members to rely on Web CRD system to maintain such records will result in significant cost savings and decreased administrative burdens without sacrificing important regulatory needs and objectives. FINRA is specifically requesting no-action relief from the obligations under Rule 17a-4 that FINRA members maintain the following records: (1) Form U4 amendments that do not require the registered person's signature; (2) Form U5 Filings (both initial Forms U5 and any amendments thereto); and (3) Form BR Filings (both initial Forms BR and amendments thereto).

<sup>1</sup> Rule 17a-4 generally requires broker-dealers to keep certain enumerated records for specified periods of time and to make them available upon request of a regulator.

## Web CRD

Web CRD is the secure web-based registration and licensing system for the United States securities industry.<sup>2</sup> All broker-dealers registered or applying for registration with the SEC are required to file uniform registration forms through Web CRD. Those forms include Form BD (the Uniform Application for Broker-Dealer Registration); Form BDW (the Uniform Request for Broker-Dealer Withdrawal); Form BR (the Uniform Branch Registration Form); Form U4 (the Uniform Application for Securities Industry Registration and Transfer); and Form U5 (the Uniform Termination Notice for Securities Industry Registration). FINRA makes Web CRD available to all state securities regulators, other securities self-regulatory organizations (SROs), and the SEC. All of the state securities administrators, other SROs, and the SEC use Web CRD to register and/or license broker-dealers and/or their personnel.<sup>3</sup> In addition to processing these registration forms, Web CRD serves as an on-line data repository for the registration-related information that is filed.

As indicated by their titles, Forms BD and BDW are used to register and withdraw registrations of broker-dealers. Form BR is used to register (or notice-file) and de-register (or provide notification of the closing of) branch offices. Forms U4 and U5 are used to register and terminate the registrations of persons associated with broker-dealers. These uniform registration forms require comprehensive reporting of administrative information (e.g., in the Form U4 context, personal and contact data, as well as information relating to a person's employment or registration history), and disclosure information (i.e., information reported in response to questions about criminal, regulatory and financial matters, including information relating to customer disputes). As a result of the comprehensive nature of the information collected on the forms and the volume of filings made, the forms create significant recordkeeping obligations for FINRA members.

Broker-dealers use Web CRD to meet certain regulatory requirements, particularly in the registration area. The SEC and other federal regulators, state securities regulators, and the SROs use Web CRD in fulfilling their regulatory responsibilities. In this regard, regulators use the system not only in connection with their licensing and registration responsibilities, but also in support of their enforcement initiatives and, in particular, their examination programs.

The original CRD system was established in 1981. That initial system (now referred to as the "Legacy CRD system") was essentially a mainframe computer system into which hard copy registration forms were data-entered by FINRA staff. Web CRD was deployed in August 1999 as a replacement for the Legacy CRD system; it enables users to electronically file registration forms and to access the system via the Internet. FINRA designed Web CRD with

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<sup>2</sup> The CRD system is owned and operated by FINRA and jointly administered by FINRA and the North American Securities Administrators Association (NASAA). The system was created, in large part, to centralize the registration process for broker-dealers and their personnel and to accommodate the "one-stop" filing process, rather than requiring applicants/registrants to file separately in multiple jurisdictions.

<sup>3</sup> In this regard, FINRA notes that this no-action request is narrowly focused to provide relief to FINRA members from the retention requirements imposed on broker-dealers by Rule 17a-4. If such relief is granted, it would not affect other Web CRD record retention obligations or practices.

the benefit of many years of administering the Legacy CRD system and built it to meet the strict standards required of an electronic national registration database. Like the Legacy CRD system, Web CRD has been universally accepted by broker-dealers and regulators alike; both groups historically have relied on it as the system of record for registration filings and their dispositions. Summary highlights of the system are described below.

*Entitlement/Security/Audit Capabilities*

FINRA employs a rigorous entitlement program for Web CRD that is designed to ensure that only authorized users are able to view information, make required filings or otherwise interact with the system. As part of the Web CRD entitlement process, FINRA establishes “accounts” for all Web CRD users. Such users (including FINRA members) accept responsibility for filings made by any entitled person on behalf of the organization.<sup>4</sup> All of an organization’s users are assigned passwords (under the organization’s account) that enable them to access Web CRD. Each organization designates an account administrator who determines the scope of a particular user’s access and the functional activities he or she can perform within the system. System audit capabilities are able to identify users and their activities within the system.

*Data Integrity*

Broker-dealers file registration forms directly into Web CRD. The form filings (i.e., initial forms and amendments thereto) submitted to the system are date and time-stamped upon filing. The system employs completeness checks to ensure that all required data fields on the forms are completed.<sup>5</sup> In addition, all filings are able to be accurately reproduced as filed, and viewed or printed by any authorized CRD user via any computer that is capable of accessing the Internet. Broker-dealers cannot delete form filings once they have been filed in Web CRD.

As noted above, a broker-dealer must establish an “account” to secure entitlement privileges to Web CRD. Once that process is completed, the system automatically recognizes that a form filing has been made by a particular broker-dealer. In addition, as part of the interactive form filing process, the system captures the electronic signature of the person at the broker-dealer who is responsible for making the filing.<sup>6</sup>

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<sup>4</sup> Before securing entitlement privileges to Web CRD, an authorized representative of an organization (typically an officer when the organization is a broker-dealer) must execute a simple agreement containing basic terms of use for the system.

<sup>5</sup> If a required data element is not provided, the filing will fail the completeness check and the filing cannot be made until the missing data element is provided. The system alerts the user (through an online message) that the filing was not submitted and identifies what data elements are needed to successfully submit the filing.

<sup>6</sup> All form filings within the scope of this no-action request require the execution of an “appropriate signatory” of the firm. “Appropriate Signatory” in this context means the person authorized by the firm to execute the filing on behalf of the firm. Firm representatives accomplish this execution in Web CRD through an electronic signature (i.e., by typing the appropriate signatory’s name in the designated field). *See, e.g.,* Section 15 on Form U4.

As a result of Web CRD's robust entitlement and security procedures, as well as its interactive filing process, the forms filed and the dispositions recorded on the system generally are accepted as the true and accurate record. FINRA occasionally is asked to supplement this "system-certification" with a staff statement that a particular form was filed or a disposition was recorded consistent with Web CRD protocols. FINRA currently provides such certification on an as needed basis and will continue to do so.

*Accessibility/Retention and Retrieval/Disaster Recovery*

Web CRD is, by design, well-organized and easy to access. All of the form filings made on the system, including those within the scope of this request, are easy to identify and retrieve. Web CRD will retain the form filings identified in this no-action request for the time periods broker-dealers are required to retain such records under Rule 17a-4.<sup>7</sup> In addition, FINRA has a state-of-the-art disaster recovery program for Web CRD and its records.<sup>8</sup>

In light of the established, central role played by Web CRD in forms processing, its acceptance by broker-dealers and regulators as the system of record, and the safeguards and attributes inherent in the system, FINRA requests that certain registration-related records filed with and maintained on Web CRD be relied upon by FINRA members to meet their Rule 17a-4 recordkeeping requirements in lieu of retaining either hard copy reproductions or images maintained on firms' internal electronic systems. Specifically, FINRA requests that such no-action relief be granted for the following registration-related records:

- Form U4 amendments that do not require the registered person's signature;<sup>9</sup>
- Form U5 Filings (both initial Forms U5 and any amendments thereto); and
- Form BR Filings (both initial Forms BR and amendments thereto)

All of these form filings are submitted by the firm under the entitlement structure described above; they are filed by the firm, under the firm's Web CRD account, and contain an electronic signature of the "appropriate signatory" of the firm.

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<sup>7</sup> Under Rule 17a-4(e)(1), broker-dealers are required to maintain and preserve in an easily accessible place Forms U4 until at least three years after the associated person's employment and any other connection with the broker-dealer has terminated. Under Rule 17a-4(b)(4), broker-dealers are required to preserve Forms U5 and Forms BR for a period of not less than three years, the first two years in an accessible place. Web CRD currently retains, and will continue to retain, these records for the requisite time periods. This no-action relief, if granted, would not affect Web CRD's other record retention obligations or practices.

<sup>8</sup> FINRA maintains a complete disaster recovery environment for Web CRD in Plano, Texas.

<sup>9</sup> Initial Forms U4 and amendments thereto that provide disclosure information must be signed by the registered person on whose behalf the filing is made. Form U4 amendments that provide or update administrative information may be filed without the signature of the registered person. Such administrative information includes the addition of state or SRO registrations, exam scheduling, and updates to residential, business, and personal history. See Securities Exchange Act Rel. No. 37439 (July 15, 1996); 61 FR 37950 (July 22, 1996). Although initial Forms U4 and amendments thereto that provide disclosure information are not included in this request, relief for maintaining Form U4 amendments that provide or update administrative information nevertheless will be significant as this latter category represents the overwhelming majority of the Form U4 amendments filed.

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If such no-action relief is granted, firms will be relieved of the administrative burden of storing forms already filed with and maintained on Web CRD, and regulators will continue to have easy and immediate access to such records through Web CRD. We appreciate the staff's consideration of this request. If there are any questions, please contact me at 240.386.4821 or Patrice Gliniecki, Office of General Counsel, at 202.728.8014.

Sincerely,

A handwritten signature in black ink, appearing to read "R. Pullano", written in a cursive style.

Richard E. Pullano