

## COMPLIANCE WATCH

### When Saying Less Is More

By Caitlin Nish

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--If you're going to comment on Form U4, make sure it's the truth

--Be short, accurate and objective

--Explaining a drug charge from the '60s is different than detailing a customer complaint

NEW YORK -- Less is more when it comes to explaining customer complaints or felony charges on the registration form for brokers.

While the form provides a place to defend yourself, and your first instinct may be to do so, securities lawyers say a long explanation can end up hurting more than it helps.

It may seem simple, but lawyers advise that if you decide to tell your side of the story, tell the truth and only include independently verifiable facts. Otherwise, brokers can be left open to a lawsuit or regulatory action.

Brokers use Form U4 to register with the Financial Industry Regulatory Authority, Wall Street's self-regulator. A broker's firm electronically files the form, which feeds information into BrokerCheck, Finra's public online database on brokers and firms.

Brokers are required to continuously update their U4s, typically within 30 days of an event that requires disclosure, such as a customer complaint or felony charge. That disclosure entails checking a box on the form and providing basic information, but there's also room to include an optional summary.

Whether it's a good idea to do so can depend on the situation. Deciding whether to provide details of a customer complaint is different than explaining a college prank that resulted in a felony charge years ago—like taking a pizza-delivery truck for a joy ride. And brokers shouldn't expect their firms to help them make that call.

As a general rule, if a broker isn't going to retain counsel, there's no need to include any comments, says Barry Lax, a partner at Lax & Neville LLP in New York. Remaining silent isn't an admission of guilt.

In the case of a customer complaint, if an explanation is somehow defamatory and the customer's name slips out, the broker could be liable in a lawsuit, Lax says.

In any explanation, it's best to be short, accurate and objective.



William Farancz

"You don't want to make wild allegations or appear unprofessional," says Jupiter, Fla.-based securities lawyer Marc Dobin. An explanation such as "I only stated to the customer what was stated in the firm's marketing materials" could be acceptable, he says.

However, when dealing with a felony charge, remaining silent while the case is pending may be the most prudent decision.

Once a statement is made on the U4, "it's in the public domain and it can be used against you," says former federal prosecutor Joseph DeMaria.

He advises that if a broker plans to plead guilty, which is how the majority of cases are resolved, to leave the comment box blank. Otherwise, the broker may want to say the charge is being vigorously contested and include the attorney's phone number for questions.

"At least it sends a message to the reader that you're fighting it and that can be an important message," says DeMaria, now a partner at Tew Cardenas LLP in Miami.

It's a "dicey proposition" and brokers should seek the advice of counsel before deciding to include any comments, he adds.

Explaining an old felony charge, like marijuana possession in the 1960s, or one resulting from a prank, is a different story. In those situations, lawyers say it's probably fine to provide some detail.

But "if they have the money, patience and time, the smart thing for these minor issues that are becoming a nuisance is to get them expunged by the local court," Dobin says. Otherwise, it becomes like "a silly tattoo they got in college and they can never get rid of it."

Once an explanation is included on Form U4, it can't be taken back.

"Subsequent updates may change from time to time, but it doesn't erase what's previously been put up there for the regulators to see," says Joel Beck, a securities regulatory attorney in Georgia.

Any inclusion of false or misleading statements, even if unintentional, can violate Finra's rule requiring brokers to observe high standards of commercial honor. Willfully misrepresenting or failing to disclose information on the U4 is subject to statutory disqualification, meaning the broker can't work for a broker dealer.

Lawyers say the most important thing to remember is to disclose everything required. And blaming the firm's compliance department for not telling you to amend the U4 isn't likely to help.

"That's a typical defense but that doesn't fly with Finra," Lax says.

--(Caitlin Nish writes **Compliance Watch**, a column that focuses on compliance and regulatory issues affecting financial advisers. She can be reached at 212-416-2076 or by email at [caitlin.nish@dowjones.com](mailto:caitlin.nish@dowjones.com).)