

IBDC

WHEN FINRA COMES A KNOCKIN'

(with apologies to *Hamilton*)

**BAUGH
DALTON** LLC

James C. Yong
Partner
Baugh Dalton LLC

Cause Exams
Or
Sweeps

Customer
Complaints

8210
REQUESTS

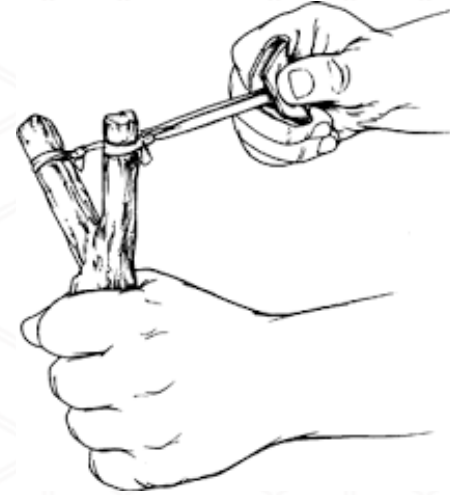
U-4 or U-5

Arbitrations

AN 8210 REQUEST FROM FINRA IS SIMILAR TO A DUEL



THE ONLY DIFFERENCE IS YOU HAVE NO CHOICE OF WEAPONS



SO IF IT IS ...



Then you have to ...

- “ Rise Up” ...
- And say to yourself. “I am not throwing away my shot...”



So, as Hamilton would say ...



TEN DUEL COMMANDMENTS

1. CALL YOUR HOME OFFICE

- There is a good chance that Compliance has already been copied on FINRA's Request

If it is an initial request, it is a PRELIMINARY INQUIRY and not a FORMAL INVESTIGATION. Therefore, it is not reportable on the U-4



December 3, 2014

Electronic Mail: JYong@baughdaltonryan.com
First Class U.S. Mail

James Yong, Esq.
Baugh, Dalton, Carlson, and Ryan, LLC
135 South LaSalle Street, Suite 2100
Chicago, IL 60603

RE: FINRA Examination No.
Customer Complaint by

Dear Mr. Yong:

Investor protection. Market integrity.

139 West 121st Street 1 866 421 5100
Suite 800 1 816 427 5829
Kansas City, MO 64115 www.fir.org

James Yong, Esq.
December 3, 2014
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Please be advised that a firm employing a registered representative with a history or pattern of investor complaints, disciplinary actions, and/or arbitrations must consider imposing heightened supervisory procedures and/or educational programs designed to address the issues raised by the history or pattern of any such registered representative (see Notice to Members 97-19).

Because this is a preliminary inquiry, it does not require reporting under Form U4, Question 14G, regarding notice of investigations.

Please find the attached addendum which addresses the information requested in this letter. This inquiry should not be construed as an indication that FINRA or its staff has determined that any violations of federal securities laws or FINRA, NASD, NYSE, or MSRB rules have occurred. If you have any questions, please contact me at

Sincerely,

Senior Examiner

/s/

Enclosure: Attachments A & B

2. CHECK WITH YOUR INSURANCE CARRIER

- SOME CARRIERS OFFER COVERAGE OF CERTAIN SITUATIONS BY ENDORSEMENT
- COVERAGE IS TIED TO A CUSTOMER DRIVEN CLAIM OR COMPLAINT

3. I AM NOT GOING TO THROW AWAY MY SHOT

- GENERAL LITIGATION STRATEGIES FALLS INTO THREE GROUPS
 - SUBMIT AS LITTLE INFORMATION AS POSSIBLE
 - JUST ANSWER WHAT WAS ASKED OF YOU AND NOTHING ELSE
 - RISKS ASSOCIATED WITH THAT STRATEGY
 - BURY THEM WITH DOCUMENTS
 - LET FINRA SORT THROUGH ALL THE DOCUMENTS
 - RISKS

OR TELL YOUR STORY



- GATHER YOUR INFORMATION
- REQUESTS MAY SEEM TO BE PRETTY EASY TO RESPOND TO BY YOURSELF
- YOU NEED TO KNOW THE REGULATORY RISKS OF EACH ELEMENT OF YOUR STORY
- INCLUDE CAREFULLY SUPPORTED CROSS-REFERENCED DOCUMENTS

4. DOCUMENTS

- SANCTIONS FOR NOT RESPONDING
- BROAD REACH OF DOCUMENTS IN POSSESSION, CUSTODY OR CONTROL
 - In the Matter of *Jay Alan Ochanpaugh* Exchange Act Rel. No. 54363 (Aug 25, 2006)
 - FINRA amended rules in 2009, which were approved in 2013 to broaden its reach
 - Taxes, Banking accounts, third party books and records (such as books and records of outside business activities and private securities transactions) are all within reach
 - FINRA NTM 13-06 contains FAQs on scope
- DEFENSES
 - Tighten review of outside business activities and private securities transactions during branch examination process and question representatives about document in their possession custody or control
 - Communicate with RRs about broad reach and implications on their non-firm related activities

5. BE PATIENT

- Several years ago, FINRA examiners in Chicago carried about 20 to 25 Cause Examinations, with some carrying as much as 40 Cause Exams
- There has been a push to complete inquiries faster, but inquiries are often fact specific and thus, there is no meaningful “average” time.
- At the end of each year, there is generally a push to get the oldest matters done first, so there may be a flurry of activity during that time period
- I have matters last as long as three years, but it was well worth it because it was closed without action

6. ON THE RECORD INTERVIEW

- FINRA'S VERSION OF A DEPOSITION
 - You can and should be represented by counsel
 - You should review all submissions (especially personal statements) and documents prior to the OTR
 - Like a deposition, one plays DEFENSE and not offense
 - If the production was done correctly, you have already told your story so all you need to do is listen to the question and only answer the question that was posed to you

7. CLOSED WITHOUT ACTION (CWA) OR WELLS NOTICE

- **CLOSED WITHOUT ACTION (CWA)**
 - Best result. FINRA has concluded that it does not have evidence to proceed with enforcement action
- **REFERRAL TO ENFORCEMENT**
 - FINRA examiner has concluded that there may be issues in this matter, but examiner has run out of time and refers the matter to Enforcement for “further inquiry”. This is not an investigation for reporting purposes.
- **WELLS NOTICE**
 - FINRA Staff has concluded that it should bring disciplinary action

WELLS NOTICE (CONTINUED)

- COMES IN TWO PARTS
 - WELLS CALL – This is the most important part. The call between FINRA Staff and counsel identifies not only the specific charges, but also the conduct that gives rise to the charges
 - WELLS LETTER – Written Documentation of Wells Call. In prior years, it was a written version of the Wells Call, but FINRA does not do that any more. Instead, it is now a bare bones letter, which sets forth the charges and the associated rule
 - This now becomes a reportable event.

8. WELLS RESPONSE

- DECISION NEEDS TO BE MADE AS TO WHETHER TO SUBMIT A WELLS RESPONSE, GO DIRECTLY TO SETTLEMENT OR GO TO HEARING
 - Although FINRA does not publish any stats on the success of Wells Responses, the *Wall Street Journal* reported that, for the two year period ending September 2012, about 20% of Wells Responses changed the SEC's decision to proceed. Former SEC Commissioner Grundfest thought that number was high based on his experience from 1985 to 1990.
 - Consider response if you can convince FINRA Staff and ODA that either its facts or its interpretation of the law is incorrect or you can provide additional facts that were not previously produced
 - Be wary that the Wells Response is admissible, discoverable and could be used by other regulators and claimants

9. AWCs (LETTERS OF ACCEPTANCE, WAIVER AND CONSENT)

- RR AND FIRM CAN ATTEMPT TO SETTLE AFTER THE ISSUANCE OF WELLS NOTICE BUT BEFORE COMPLAINT IS FILED
 - Defendants neither admit nor deny allegations, but must agree to the findings of fact, the violation and the sanctions
 - Once finalized, AWC resolves the matter and FINRA cannot return with another action alleging the same conduct
 - Important to review consequences of entering the AWC
 - Important to review FINRA's Sanctions Guidelines for range of potential fines
 - Even after negotiations, FINRA's ODA reviews before agreeing to terms
 - Once approved, payment of fine is due within ten business days from date of letter from FINRA Accounting

10. HEARING

- **FINRA STAFF NEEDS FINRA ODA TO AUTHORIZE THE ISSUANCE OF A COMPLAINT**
 - Respondent files answer and generally requests a hearing
- **FINRA HEARING OFFICER IS ASSIGNED**
 - Hearing Officer sets a pre-hearing conference and schedules deadlines for motions, discover, witness list and exhibit list and hearing dates
 - Other two panelist are typically industry professionals chosen by member firms
- **HEARING IS LESS FORMAL THAN COURT, BUT OPERATE IN SIMILAR MANNER**
- **APPEALS CAN BE MADE BY THE NAC OR TO THE NAC BY EITHER PARTY**

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