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FORM U-5 REQUIREMENTS FOR FINRA MEMBER FIRMS

FINRA requires member firms to report terminations of registered representatives on a Form U-5. Because the information from Form U-5s is publicly accessible, these disclosures have been the subject of much litigation and arbitration. In this article, the authors describe the background and regulatory requirements of Form U-5 practice. They conclude with a discussion of the recourse available to brokers who believe a disclosure is improper (expungement), as well as the protections available to member firms when a broker claims that a disclosure is defamatory (absolute or qualified immunity).

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The securities industry is highly regulated, with much of it being self-regulated. Protection of the investor and market integrity are paramount. The Financial Industry Regulatory Authority (“FINRA”) is a non-government organization responsible for regulating every brokerage firm, and its personnel, doing business in the United States. The Securities and Exchange Commission (“SEC”) oversees FINRA. As of July 2018, FINRA regulated 3,690 member firms and their 629,032 registered representatives.¹

FINRA requires that member firms report the termination of its registered representatives within 30 days.² To do so, FINRA members must file a disclosure document called a Uniform Termination Notice for Securities Industry Registration (“Form U-5”). In the Form U-5, the firm must respond to a series of disclosure questions concerning the registered representative’s termination.³ If the termination is anything other than a voluntary dismissal, the member firm has to provide the specific reason(s) why the firm

¹ <https://www.finra.org/newsroom/statistics>.

² FINRA By-laws, Article V, Section 3.

³ See Uniform Termination Notice and General Instructions.

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