

# CAREFULLY CRAFTING REASONS FOR A REGISTERED REPRESENTATIVE'S DEPARTURE FROM A BROKER-DEALER INVESTMENT FIRM IS CRITICAL TO MINIMIZING U-5 DEFAMATION LIABILITY

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**Chicago, IL, July 1, 2014** - Broker-dealer investment firms are required to file a Form U-5 when terminating their relationship with a registered representative. On the U-5, investment firms describe the specific reason(s) that the registered representative was terminated or resigned. Because the Form U-5 is published, if any of the information is false, misleading, exaggerated, or otherwise inaccurate, potential liability exists for investment firms.

Disparaging remarks on a registered representative's U-5 form can make obtaining another position extremely difficult, if not impossible. "If these comments or remarks are found to be untrue, intentional, or reckless, the potential liability is massive," says Ankur Shah, an associate attorney with Ali Law Practice LLC. "Registered representatives may seek several remedies including expungement (having the comments removed) and compensatory and punitive damages."

More recently, FINRA arbitrations have led to substantial compensatory and punitive damages awards for defamatory comments left on a registered representative's U-5 forms. For example, FINRA recently awarded over \$3M in damages to a former broker dealer representative for defamation and other related damages. The case is *Gorter v. Questar Capital Corp*, FINRA Case No. 08-03514 (award signed Jan. 13, 2012). In another case, Greg Kipple, a former representative at Wells Fargo Advisors obtained \$1M for defamation, as part of a \$6.8M total award. The arbitration case is *Greg Kipple v. Wells Fargo Advisors LLC and Wachovia Securities LLC*, No. 10-2871.

"Because FINRA has intensified its regulatory functions, firms reasonably feel more unsure about what details to disclose on Form U-5 than they did before," says Tawfiq Ali, principal attorney of Ali Law Practice. "The risk of a defamation or wrongful-termination suit looms for even truthful disclosures, if they are perceived to be false and disparaging."

Shah and Ali recommend that firms and registered representatives recognize the potential dangers inherent to the submission and publication of Form U-5, especially if the termination is less than amicable. Because so much is at stake, parties should consider hiring qualified counsel to advise them and protect their interests before and after a firm terminates a registered representative.

**Tawfiq I. Ali**, principal attorney of Ali Law Practice LLC, graduated from Harvard College and received his Juris Doctor from Harvard Law School. He served and trained at the famed Harvard Legal Aid Bureau, and at the internationally and nationally renowned law firms of Kirkland & Ellis LLP and Grippo & Elden LLC. He is a trusted litigator who has successfully prosecuted and defended high-stakes civil lawsuits and arbitrations for businesses and executives, obtaining favorable results for his clients. He is available for media inquiries and engagements regarding these and other matters.

**Ankur Shah**, an associate attorney with Ali Law Practice LLC, graduated from the University of Wisconsin at Madison and the University of Minnesota Law School. He is a trusted litigator and advisor who has successfully negotiated favorable settlements and argued and won in court. He is available for media inquiries and engagements regarding these and other matters.

**Ali Law Practice LLC** is a law firm dedicated to helping businesses solve and prevent legal disputes in ways that other law firms cannot or will not, to make a meaningful difference. The firm focuses on achieving successful outcomes for clients in business negotiations, disputes, and litigation.

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