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August 2, 2010

By Electronic Mail (pubcom@finra.org)

Marcia E. Asquith
Office of the Corporate Secretary
FINRA
1735 K Street, NW
Washington, D.C. 20006-1506

RE: FINRA Regulatory Notice 10-25: Proposed Registration and Qualification Requirements for Certain Operations Personnel

Dear Ms. Asquith:

Scottrade, Inc. ("Scottrade") appreciates the opportunity to comment on FINRA Regulatory Notice 10-25 ("Notice 10-25"), which would expand FINRA's registration requirements to include individuals who are engaged in, or supervising, activities relating to: (1) sales and trading support, and (2) the handling of customer assets, with the stated goal of enhancing the regulatory structure surrounding member firms' back office operations. Proposed FINRA Rule 1230(b)(6)(A) (the "Proposed Rule") requires "Covered Persons" who work in one of fifteen (15) covered functions to: (1) register as an Operations Professional, (2) unless exempt, take a qualifying exam, and (3) fulfill certain Continuing Education requirements. The Proposed Rule also prescribes a six- to nine-month transition period for member firms to comply with its requirements.

Summary of Scottrade's Comments

Scottrade could support expanded registration and continuing education requirements for the first two levels of back-office Operations leaders *if* the Proposed Rule was simplified and significantly clarified so that member firms could: (1) better understand their new regulatory obligations, (2) reasonably estimate the costs and other resource implications on their organizations, and, (3) plan accordingly. To be clear, Scottrade does not oppose the concept of registration and continuing education requirements for operations management. However, the proposed rule, in our view, is overly complex and not practical to implement and administer in its present form. As such, we believe that the final rule should be reworked to make it easier for firms to implement and administer going forward. For example, a bright line rule requiring the registration of the head of operations and his/her direct reports would be much easier to implement and administer while achieving the regulatory objective of causing the most senior operations managers to become registered.

Scottrade also recommends that FINRA: (1) extend the proposed six-to-nine month transition period to twelve-to-eighteen months; and, (2) consider applying the transition period to new hires and to existing employees who transition to covered functions or, alternatively, grant these persons a 90-day “grace period” to perform covered functions while preparing for the qualifying exam. Scottrade believes that extending the transition period is particularly advisable in light of the unprecedented burdens placed on member firms by recently enacted legislation and other recently adopted regulations. Granting the proposed 90-day grace period would give member firms critically needed time to devise business plans and deploy resources to comply with the Proposed Rule. Finally, Scottrade does not believe that the new Operations Professional registration requirements should apply to persons who are not employed by member firms because existing guidance *already* requires member firms to supervise third party vendors.

FINRA Should Further Clarify the Scope of the Proposed New Registration Categories

Scottrade recommends that FINRA clarify certain aspects of the Proposed Rule.

- **Registration Categories**

Scottrade believes the second and third proposed new registration categories are overly broad and ambiguous. With respect to the second proposed new registration category (“Supervisors, managers **or other persons responsible for approving or authorizing work in direct furtherance of the covered functions**, including work of other persons in the covered functions.”) (emphasis added), Scottrade believes the bolded text is vague, and would arguably include persons performing routine functions, such as a margin clerks, which is inconsistent with the stated purpose of the Proposed Rule set forth in Notice 10-25.

Scottrade also requests that FINRA further clarify the term “**firm capital**” in the third registration category. “Firm capital” has one meaning in the trading sense, but as written, this category could also be construed to encompass persons who approve the payment of vendor invoices for the performance of some service related to some aspect of a covered function. Scottrade also recommends that FINRA revise this category as follows (“Supervisors or managers with authority or discretion to commit the firm’s capital to covered functions or approve any covered function contract or agreement (written or oral”).

- **Covered Function Categories**

Scottrade also believes the covered function categories are vague and overly broad and should be clarified to avoid confusion. Specifically:

- Scottrade requests that FINRA clarify the meaning of the phrase “**development and approval of pricing models**” in the first covered function. It is

unclear, for example, whether pricing feeds third parties provide members firms would fall within this covered function.

- Scottrade also requests that FINRA clarify the meaning of the term “**capturing**” in the sixth covered function (“Capturing of business requirements for sales and trading systems and any other systems related to the covered functions; and the validation that these systems meet such business requirements.”) or replace it with more descriptive language. The term “capturing” could arguably apply to numerous functions and varying levels of responsibility. As drafted, it would arguably apply to Project Managers and their managers. Scottrade also requests that FINRA clarify the term “**validation**”. For example, would this provision require Quality Assurance managers to register?

- Scottrade also requests that FINRA clarify the seventh covered function (“With respect to the covered functions, defining and approving business security requirements and policies for information technology (including, but not limited to, systems and data).”) It is unclear to whom FINRA intends this covered function to apply. For example, would this provision require someone who defines and approves physical business security requirements for IT to register? Also, would this cover all persons involved, in any way, in formulating business requirements and related policies as well as persons with the authority to approve such policies?

- Scottrade also requests clarification of eighth covered function (“Defining information entitlement policy in connection with the covered functions.”) It is unclear why the phrase “in connection with the covered functions” is used in this context while “with respect to the covered functions” is used elsewhere. Do the two phrases have different meanings? Also, it is unclear why persons “defining **and approving** business security functions” are included in the seventh covered function, while only those “defining” “information entitlement policy in connection with covered functions” are included in the eighth covered function.

- Scottrade believes that the fifteenth covered function category (“[p]osting entries to the books and records of a firm in connection with the covered functions”) is so broad as to render interpretation impossible. As drafted, this category arguably requires accounts payable supervisors to register even though their function is not unique to the securities business.

Concerns Regarding Deeming Third Parties to Whom Covered Functions Are Outsourced “Associated Persons” of Member Firms

Notice 10-25 states “that those persons subject to the new Operations Professional registration category would be considered associated persons of a firm **irrespective of their employing entity** and would be subject to **all** FINRA rules applicable to associated persons and/or registered persons.” (Emphasis added.) Scottrade believes that the Proposed Rule should only apply to existing employees and other associated persons of

member firms. Existing regulatory guidance (see NASD NTM 05-48) already requires member firms to supervise the activities of third party vendors and deeming third parties “associated persons” would raise a vast array of exceptionally complex issues, include jurisdictional questions.

Scottrade believes there may also be unintended consequences if third parties are considered “associated persons” of member firms since this could create a branch office registration requirement. Specifically, a “branch office” is *any* location where one or more “associated persons” of a member firm regularly conducts business. Rule 3010(g)(2)(B) expressly states that, notwithstanding the general definition and exclusion, *any* branch office location that is responsible for supervising the activities of “associated persons” at one or more non-branch locations is considered a “branch office.” Scottrade respectfully requests FINRA clarify that back-office and support locations will *not* be deemed a branch office, under the new rules, simply because third parties vendors perform operations and support functions there. Scottrade is also concerned about who would supervise third parties vendors who are required to register. For example, if Scottrade were to outsource foreign securities custody to a member firm and filed the requisite control location letter with the SEC, what sense does it make to require a FINRA registration at the member firm that already has supervisory responsibility for its associated persons?

Exclusions in Regulatory Notice 10-25 Should Be Included in the Proposed Rule

Notice 10-25 states that registration will **not** be required for those performing a function “ancillary to a covered function” or a role “supportive of, or advisory to” a covered function, “such as internal audit, legal or compliance personnel” or those engaging in clerical or ministerial activities in any of the covered functions. Scottrade respectfully requests that FINRA include these exclusions in the text of any amended Proposed Rule.

FINRA Should Extend the Transition Period to Twelve to Eighteen Months and Grant Persons Transitioning to Covered Functions a 90-Day Grace Period

Given the massive financial and other resource implications of the Proposed Rule and recently enacted regulatory legislation and recently adopted regulations on member firms, Scottrade respectfully requests that FINRA extend the six-to-nine month transition period in the Proposed Rule to twelve-to- eighteen months to allow member firms sufficient time to: (1) take all necessary steps to comply with the Proposed Rule, (2) identify and provide notice to impacted Operations personnel of their new obligations, and (3) allow impacted Operations Professionals sufficient time to prepare for and take the qualifying exam (and re-take it if necessary). Scottrade also requests that FINRA consider applying the transition period to new hires and to existing employees who transition to covered functions. Alternatively, Scottrade proposes that new or current employees who transition to covered functions be granted a 90-day “grace period” to allow them to perform covered functions while preparing for the qualifying examination. Scottrade

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believes this grace period would provide member firms critically important flexibility in deploying resources to comply with the Proposed Rule.

Sincerely,



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