

Compliance

211 Main Street, San Francisco, CA 94105-1905
Tel (415) 667-7000

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BY EMAIL TO: pubcom@finra.org

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

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

Dear Ms. Asquith:

Charles Schwab & Co. Inc. (Schwab) appreciates the opportunity to comment on proposed new FINRA Rule 1230 and 1250 ("Proposed Rules"), commonly referred to as "Operations Professional Registration." Schwab concurs with FINRA that certain employees and associated persons play an integral role in the securities business of a member firm, and shares FINRA's express goal "to help ensure that investor protection mechanisms are in place in all areas of a member firm's business"¹ While sharing this goal, Schwab believes certain aspects of the Proposed Rules warrant refinement and clarification, as described below.

Depth of Personnel ("Covered Persons")

Schwab believes that proposed rule 1230(b)(6)(A)(ii), which would require the registration of certain supervisors, managers and others, to be overly broad, possibly capturing employees of affiliates and third-party service providers as requiring registration, *and*, as a result, becoming associated persons of a member firm.²

¹ See FINRA Regulatory Notice 10-25, "Registration and Qualification Requirements for Certain Operations Personnel (May 2010) at Page 3.

² Schwab notes FINRA commentary in Regulatory Notice 10-25 that "Importantly, 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."

Existing regulatory guidance in NASD Notice to Members 05-48, Members Responsibilities When Outsourcing Activities to Third-Party Service Providers, requires a member firm to supervise the activities of third-party service providers, stating (excerpt, emphasis added):

*After the member has selected a third-party service provider, the member has a continuing responsibility to oversee, supervise, and monitor the service provider's performance of covered activities. This requires the member to have in place specific policies and procedures that will monitor the service provider's compliance with the terms of any agreements and assess the service provider's continued fitness and ability to perform the covered activities being outsourced. Additionally, the member should ensure that NASD and all other applicable regulators have the same complete access to the service provider's work product for the member, as would be the case if the covered activities had been performed directly by the member.*³

Schwab recommends that Rule 1230(b)(6)(A)(ii) be amended to reflect consistency with the guidance provided in NASD NTM 05-48 and that the definition in Rule 1230(b)(6)(A)(ii) be refined to only include *associated* persons of the member responsible for overseeing, supervising or monitoring the third-party service provider's performance.

This refinement of the proposed rule may also alleviate concern that FINRA may be exceeding its statutory authority by requiring the registration *and*, consequently, association of covered persons at third-party service providers. FINRA's jurisdiction generally extends to any *securities activity* by a FINRA member firm or associated person.⁴ Further, Exchange Act and SEC rules require FINRA to regulate the conduct of "*securities persons*:" partners, officers, control persons or certain employees of a member firm.⁵ It appears that not all "covered persons," particularly at third-party service providers not required to be registered as a broker-dealer, would be engaged in "securities activity" and/or be considered "securities persons" of the member firm. It is not clear that FINRA has jurisdiction over these persons. Given the possible impact, scope and cost associated with implementation of the Proposed Rules, Schwab believes it is important that FINRA articulate a clear jurisdictional basis for all aspects of the Proposed Rules.

Covered Functions

Schwab believes that the technology and information security covered functions, notably:

- Capturing of business requirements for sales and trading systems and any other systems related to the covered functions, and validation that these systems meet such business requirements;

³ See NASD Notice to Members 05-48 at Page 3

⁴ See Exchange Act 15(A)(b).

⁵ Exchange Act 19(g)(2); SEC Rule 19g2-1

- 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);
- Defining information entitlement policy in connection with the covered functions;

are inherently *activities* undertaken and *supportive* of the brokerage operations and finance “covered functions.”

Schwab believes that proposed Rule 1230(b)(6)(A)(ii) captures the brokerage operations and finance and reporting persons who would approve or accept or who have the “decision-making and/or oversight authority”, which FINRA seeks to include as qualified and registered personnel. Schwab does not believe that the technology and information security persons whose activities support the aforementioned functions should be required to be registered. Therefore, Schwab requests that the *supportive* technology and information security activities be deleted as “covered functions.”

Schwab is also concerned that the last “covered function” in proposed FINRA Rule 1230(b)(6)(B)(xv), “[p]osting entries to the books and records of a member firm in connection with the covered functions” is so broad as to make its application highly problematic if it is adopted as proposed.

Transition Period and Implementation Date

FINRA proposes a six to nine-month transition period for existing personnel to request Operations Professional registration via Form U4 and pass the Operations Professional qualification exam. Schwab believes the scope of the proposed rule would require the registration and testing of a significant number of individuals, a majority of whom may never have prepared for or taken an industry qualification examination. Schwab recommends that FINRA expand the transition period to 24 months and modify the time period for retaking a failed exam to provide for a 30 day period, consistent with the approach the NASD took with the Series 55.⁶ This would allow member firms to:

- Minimize disruptions to firm operations and customer service, as “covered persons” prepare for and take the qualification examination.
- Appropriately prepare personnel to take the examination. The qualification examination would be new and, for a substantial period of time after the adoption of the Operations Professional requirement, preparatory materials and test preparation courses (if available) would be limited, possibly resulting in increased likelihood of failure.

⁶ NASD Notice to Members 98-17, “SEC Approves New NASD Qualification Requirements And Examination For Equity Traders (Series 55).”

Schwab also requests that FINRA extend the transition period to persons who are hired, promoted, transferred or otherwise transitioned to a covered function. In addition, Schwab believes that, after the transition period has expired, new hires or other personnel who begin working in a capacity that requires this registration be provided a "grace period" of 90 days in which to take and pass the exam.

Schwab appreciates the opportunity to provide comments on FINRA's proposed new rules and believes its suggestions and recommendations will continue to allow FINRA to meet its commitment to the SEC "...to establish a new system to enhance the oversight and professional requirements of personnel performing back-office functions at broker-dealer firms."⁷

Schwab thanks FINRA staff for consideration of the points raised in this letter and welcomes any further discussions or questions.

Sincerely,



Bari Havlik
SVP and Chief Compliance Officer
Charles Schwab & Co., Inc.

⁷ The Securities and Exchange Commission Post-Madoff Reforms (December 7, 2009) at Page 3. Available at <http://www.sec.gov/spotlight/secpostmadoffreforms.htm>