

July 30, 2010

VIA ELECTRONIC DELIVERY (pubcom@finra.org)

Marcia E. Asquith
Senior Vice President and Corporate Secretary
Office of the Corporate Secretary
FINRA
1735 K Street, N.W.
Washington, DC 20006-1500

Re: FINRA Regulatory Notice 10-25; Registration of Operations and Support Personnel

Dear Ms. Asquith:

The Securities Industry and Financial Markets Association (“SIFMA”)¹ is pleased to comment on FINRA Regulatory Notice 10-25 (the “Notice”), through which FINRA solicits public comment on a proposal to create a new registration category and qualification examination, and related continuing education requirements, for certain operations and other support personnel (the “Proposal”). More specifically, the Proposal would expand FINRA’s registration requirements to include as qualified and registered persons certain individuals who supervise, and in some cases directly engage in, activities related to sales and trading support and the handling of customer assets. SIFMA notes that the Proposal would subject thousands of member firm personnel to a securities licensing regime for the first time.

Despite the magnitude of this initiative, SIFMA agrees that individuals performing operational and related support functions play an integral role in the business of member firms and generally supports extending registration requirements to appropriate operations and support personnel who work in a decision-making or oversight capacity.²

¹ SIFMA brings together the shared interests of hundreds of securities firms, banks and asset managers. SIFMA’s mission is to support a strong financial industry, investor opportunity, capital formation, job creation and economic growth, while building trust and confidence in the financial markets. SIFMA, with offices in New York and Washington, D.C., is the U.S. regional member of the Global Financial Markets Association (“GFMA”). For more information, visit www.sifma.org.

² FINRA states in the Notice that the Proposal “generally is aimed at capturing those persons with decision-making and/or oversight authority.” *Notice* at page 1.

SIFMA also appreciates FINRA's willingness to discuss and address certain industry concerns as the Proposal was developed.

Although SIFMA continues to support the goals of the Proposal, we believe that the provisions of proposed FINRA Rule 1230(b)(6) related to "depth of personnel" and "covered functions" should be revised in a number of respects, as described below, to clarify the new registration requirements and address in a more targeted manner FINRA's ultimate regulatory objectives. SIFMA also believes that, in light of the significant number of member firm personnel who will be required to register under the Proposal, FINRA should lengthen the transition period and make other related changes to facilitate implementation of this significant expansion of the securities licensing scheme.³

I. Depth of Personnel

SIFMA agrees with FINRA's general approach to require registration of those operational and support professionals with decision-making or oversight authority in direct furtherance of the covered functions identified in the proposal. Indeed, SIFMA believes that these more senior-level professionals are in the best position to identify and address "red flags" and other potential securities law issues. SIFMA is concerned, however, that proposed FINRA Rule 1230(b)(6)(A) is written too broadly in some respects and is unclear in other respects.

In particular, proposed Rule 1230(b)(6)(A)(iii) would require *any* person with authority or discretion to commit the member's capital in direct furtherance of the covered functions or to commit the member to any agreement in direct furtherance of the covered functions to register in the new registration category. The requirement is not limited to managers or supervisors, and, therefore, could be read to apply to personnel without any oversight or decision-making authority. We understand FINRA's intention is to reach individuals engaging in or supervising securities lending activities, but it is unclear what other activities FINRA intends to cover with this proposed language.

Because securities lending is already included as a covered function under subparagraph (6)(B)(iii), SIFMA respectfully submits that proposed paragraph (6)(A)(iii) introduces unnecessary ambiguity and confusion. To be consistent with the spirit and structure of

³ We also note that FINRA's proposed title for the new representative registration category is the "Operations Professional." Although we recognize that the exam likely will be referred to in shorthand as the "Ops Exam," we believe that FINRA should consider a title for the registration category that is more reflective of all the covered functions. In many firms, the term "operations" is used to describe a distinct set of business activities and FINRA clearly intends that professionals beyond solely "operations" personnel become licensed (*e.g.*, financial controllers). With all respect, the term "back office" is simply not adequate to describe these highly valued professionals. Therefore, we believe that the most appropriate title for the new registration category would be "Operations, Support or Securities Lending Professionals." This proposed title also helps reinforce that securities lending professionals are included in the new registration category.

the remainder of the proposed rule, FINRA should eliminate subparagraph (6)(A)(iii) in its entirety.

Alternatively, FINRA could replace proposed subparagraph (6)(A)(iii) in its entirety with the following new paragraph, based on NYSE Rule 345.10, which currently governs securities lending personnel:

“(A)
(iii) Securities Lending Representatives and their direct supervisors. For purposes of this subparagraph, a “securities lending representative” is defined as any person who has discretion to commit his member to any contract or agreement (written or oral) involving securities lending or borrowing activities with any other person.”

Under this alternative, proposed subparagraph (6)(B)(iii) would be deleted as no longer necessary.

In addition, proposed FINRA Rule 1230(b)(6)(A)(ii) requires registration for “[s]upervisors, managers or other persons responsible for approving or authorizing work in direct furtherance of the covered functions in paragraph (b)(6)(B) of this Rule, *including work of other persons in the covered functions in paragraph (b)(6)(B) of this Rule;*” (emphasis ours). SIFMA believes it is unclear what the italicized phrase is intended to address and that member firms will find the proposed rule confusing and difficult to interpret. Accordingly, SIFMA requests that FINRA delete the italicized language.

Finally, the Notice provides that registration would 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 “solely in clerical or ministerial activities” in any of the covered functions. SIFMA very much appreciates these clarifications and respectfully requests that these exclusions be included in the text of the rule or in supplementary material. This will help avoid confusion and unnecessary interpretive questions in the future when member firms are applying and implementing the final rule.⁴

⁴ FINRA states in the Notice 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,” *citing* NASD Notice to Members 05-48 (Members’ Responsibilities When Outsourcing Activities to Third-Party Service Providers). Although we understand FINRA’s statement, we question the relevance of the Outsourcing Guidance in this context. We understand through conversations with the FINRA staff that FINRA is planning to engage in a separate rulemaking initiative on the topic of outsourcing. We assume that FINRA does not intend to alter either the definition of “associated person” or the existing regulatory guidance on outsourcing arrangements indirectly through this new registration proposal. Therefore, we respectfully suggest that this statement should not be included in FINRA’s rule filing with the SEC for registration of operations, support and securities lending personnel.

II. Description of Covered Functions

SIFMA fully appreciates the challenge of accurately describing the covered functions in rule text, particularly when terminology used to describe the same function may vary from firm to firm. SIFMA further believes that the list of fifteen covered functions identified by FINRA is generally appropriate, and, if further clarified, should help ensure that registration requirements are extended to critical operations, support, and securities lending activities.

As a threshold matter, however, we note that the approach used to describe the fifteen covered functions is inconsistent and, in some cases, the descriptions are vague and potentially confusing. More specifically, we note that some of the covered functions are described using precise language, making clear the specific activity to be covered, while others simply list a function or functional area of a firm without describing which aspect of the function or functional area FINRA intends to capture. For example, proposed FINRA Rule 1230(b)(6)(B)(i) describes as a covered function the “[d]evelopment and approval of pricing models used for valuations,” but proposed Rule 1230(b)(6)(B)(ii) simply lists four broad activities (“trade confirmation, account statements, settlement, margin”). With regard to account statements, in particular, there are multiple processes involved in generating and furnishing account statements to customers, from creating the files that contain the necessary account information to the physical printing and mailing of account statements. We respectfully submit that, to avoid unnecessary ambiguity, FINRA should consider providing more precise descriptions of which activities in the covered functions require registration.

We also offer the following specific proposed modifications:

A. Systems and Information Technology

SIFMA is concerned with the description of functions in subparagraphs (vi), (vii), and (viii) of proposed FINRA Rule 1230(b)(6)(B). We do not believe that FINRA necessarily intends to sweep in personnel in the information technology departments of member firms, per se, but rather a limited number of those individuals responsible for: (1) ensuring that systems related to sales and trading and to covered functions meet business and regulatory requirements; and (2) “information security” – firewalls, data access, and system entitlements in connection with the covered functions. As an initial matter, therefore, SIFMA believes that in fact only two, rather than three, functions need to be described.

In addition, in order to reduce the likelihood of inadvertently capturing personnel who merely prepare initial drafts of business requirements documents and who perform routine quality assurance or quality control testing, as opposed to more senior approvers

of this completed work, we respectfully request that the concepts of “accepting” and “approving” be used in the rule text, in lieu of “capturing” and “defining.”

Accordingly, SIFMA proposes the following alternative rule text to replace subparagraphs (vi), (vii), and (viii) of proposed FINRA Rule 1230(b)(6)(B) in their entirety:

“(vi) Acceptance and approval 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;

(vii) With respect to the covered functions, acceptance and approval of business security requirements, policies for information security (including, but not limited to systems, software applications and data), and information entitlement policy;”

B. Posting of “Books and Records”

SIFMA also remains concerned with the last covered function in proposed FINRA Rule 1230(b)(6)(B)(xv), “[p]osting entries to the books and records of a member in connection with the covered functions.”

This clause is written so broadly as to make its application highly problematic if it is adopted as proposed. First, merely “posting entries” is commonly understood as a clerical or ministerial function, which does not appear consistent with the “depth of staff” concept that FINRA has incorporated into its proposal. Second, it is not clear which “books and records” are of concern to FINRA, beyond the long list of those already governed by the record-keeping requirements of SEC Rules 17a-3 and 17a-4. If FINRA is concerned about customer protection, then the proposed rule should refer to “transactions” instead of “entries” and to “customer accounts,” the member’s “stock record” or the like. If FINRA is concerned about the financial responsibility of members, then the proposed rule should refer to books and records created and maintained in the course of compliance with the SEC’s financial responsibility rules (although the financial controllers who typically perform that role are already covered by another section of the proposed rule). Therefore, unless FINRA can better identify its specific regulatory concerns and identify a limited universe of covered “books and records,” we respectfully urge that this “catch-all” provision should be deleted.

III. Implementation Issues

The Proposal contemplates a transition period of between six to nine months after the rules become effective for *existing* personnel acting in a capacity that would require registration. SIFMA has a number of concerns with the proposed transition period and

further urges FINRA to adopt a “grace period,” as described below that would apply after expiration of the transition period.

First, we believe that a transition period of between six to nine months likely will be an insufficient amount of time for firms to comply fully. Because of the significant number of personnel within the industry who will need to become registered, member firms likely will need to divide affected personnel into groups and stagger or “phase in” such persons’ preparation for and taking of the examination in order to mitigate the potential impact on the firms’ customer service and operations functions. In addition, we believe FINRA should anticipate that some covered persons will not pass the examination on the first attempt and will need extra time to retake it. In this regard, we note that, because the test will be new, test preparation courses likely will be unavailable, or if available, will not be well refined. Accordingly, we suggest that the transition period should be twelve to eighteen months after the new rules become effective.

Second, we note that the proposed transition period would not apply for personnel who begin working in a capacity that requires registration following the effective date of the new registration category (*i.e.*, new hires or existing associated persons who transition into one or more of the covered functions). Such personnel would be required to register as an Operations, Support, or Securities Lending Professional⁵ *before* engaging in the activities that require registration. SIFMA believes it would be fair for new hires and existing personnel who begin working in a capacity that requires registration after the effective date to be given the benefit of the same transition period, and FINRA has not identified a specific rationale for treating them differently.

Finally, SIFMA believes that, after the transition period has expired, new hires or other personnel who begin working in a capacity that requires registration and who are not excepted from the qualification examination should be provided a “grace period” of 120 days to permit them to begin work while they study and sit for the examination, provided such personnel report to a person who holds the Operations, Support or Securities Lending Professional registration or Series 24 or other comparable principal registration. We note that a grace period of 120 days is consistent with proposed FINRA Rule 1220(g) (Requirements for Representatives Functioning as Principals for a Limited Period).⁶

When hiring personnel for the covered functions, firms frequently seek individuals with experience in the financial services industry at large, most of whom will not be registered as an Operations, Support or Securities Lending Professional. Providing a grace period would allow firms to quickly hire and integrate into their operations new employees and

⁵ As noted above, SIFMA believes that FINRA’s proposed title for the registration category, “Operations Professional,” is too narrow and not reflective of all the covered functions, and, therefore, proposes “Operations, Support or Securities Lending Professionals.” *See* note 3, *supra*.

⁶ *See* FINRA Regulatory Notice 09-70 (FINRA Requests Comment on Proposed Consolidated FINRA Rules Governing Registration and Qualification Requirements).

would mitigate the impact of turnover. In addition, a grace period would allow firms to respond to operational “surges” or emergencies where flexibility is needed to transfer internally personnel from other departments of the firm to meet demand.

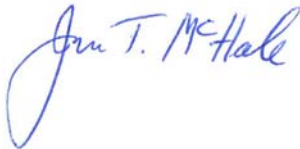
Further, member firms may re-organize or restructure responsibility for the “covered functions” in response to economic, market or business considerations. Such reorganizations or restructuring may involve shifting responsibility for a covered function to a person not previously engaged in or supervising the covered function. A grace period would continue to allow member firms the flexibility to timely respond to these changing conditions without possible registration impediments.

Therefore, we propose a 120-day grace period subject only to the condition that the person in question reports to a person who holds the Operations, Support or Securities Lending Professional registration or Series 24 or other comparable principal registration.

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SIFMA appreciates the opportunity to comment on the Proposal and we look forward to having a continuing dialogue with FINRA on this important regulatory initiative. If you have any questions or would like to discuss our comments, please do not hesitate to contact me at (202) 962-7386 or jmchale@sifma.org.

Sincerely,



James T. McHale
Managing Director and Associate General Counsel
SIFMA

cc: Mr. Marc Menchel
Ms. Patrice Gliniecki
Mr. Joseph McDonald
Ms. Erika Lazar