

Morgan Stanley

July 29, 2010

**By Electronic Mail ([pubcom@finra.org](mailto:pubcom@finra.org))**

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

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

Dear Ms. Asquith:

Morgan Stanley appreciates the opportunity to comment on FINRA Regulatory Notice 10-25 (the "Proposal"), which proposes to establish a registration category, qualification examination and continuing education requirements for certain operations and other back office personnel ("Operations Professionals") as set forth in Proposed FINRA Rules 1230(b)(6) and 1250(b)(1). Although we generally agree with the comments made by SIFMA in its letter, we write separately to emphasize aspects of the Proposal that are of particular concern to Morgan Stanley.

We agree with FINRA that operational and other back office personnel play an integral role in the business of member firms, and that senior personnel in these areas serve a critical control function. The Proposal generally advances the SEC's and FINRA's goal of promoting the qualifications and professionalism of critical back office personnel.<sup>1</sup>

As a firm with a multi-layered operations and support structure for its businesses, however, Morgan Stanley suggests that the Proposal would be even more effective with

<sup>1</sup> See The Securities and Exchange Commission Post-Madoff Reforms (<http://www.sec.gov/spotlight/secpostmadoffreforms.htm>).

clearer statements of the depth and breadth of in-scope personnel. Although it is difficult without final rule language to estimate the total population covered by the Proposal, we believe that the Proposal as currently drafted could potentially – and unnecessarily – capture several thousand mid or line-level employees. We therefore recommend the following modifications, as well as certain adjustments to the process by which the new licensing regime is implemented, in order to allow the firm to license Operations Professionals without disruption to its business and high level of service to its customers.

## **I. Depth and Breadth of Proposal**

The introductory text of the Regulatory Notice provides guidance that we believe is critical to understanding the Proposal. Morgan Stanley agrees with FINRA's statement that personnel with "decision-making and/or oversight authority"<sup>2</sup> are the appropriate level of personnel to be covered by the new licensing regime. These personnel are in the best position to address securities law issues, including identifying and addressing or escalating the types of "red flags" that will be covered by the new examination. Conversely, clerical and ministerial employees, including mid-level employees without decision-making and/or oversight authority, should be excluded from the Proposal because they are not in a critical role such that they could commit the firm without oversight of a licensed person. Requiring the licensing of such mid or lower level employees would not promote FINRA's stated objective of capturing activities that "often have a meaningful connection to client funds, accounts, and transactions."<sup>3</sup>

Accordingly, we strongly recommend that language from the introductory text of the Regulatory Notice be incorporated in the text of Proposed Rule 1230(b)(6) or in supplementary material to the Rule. Otherwise, large firms like Morgan Stanley will face uncertainty in applying certain aspects of the Proposal's depth and breadth provisions to mid or lower level Operations Professionals.

### **A. Securities Lending Professionals**

Morgan Stanley agrees that a firm's proper conduct of stock loan / securities lending activities is crucial to customer protection and may warrant special treatment in the Proposal. It is our understanding from prior conversations with FINRA staff that Proposed Rule 1230(b)(6)(A)(iii) is intended to target securities lending personnel who may not satisfy the depth criteria of paragraphs (i) and (ii). However, paragraph (6)(A)(iii) introduces considerable ambiguity because it does not expressly address securities lending personnel. It is also inconsistent with the overall definition of included personnel (senior managers, supervisors, and anyone who approves work in direct furtherance of the covered functions).

<sup>2</sup> Regulatory Notice at page 3.

<sup>3</sup> Regulatory Notice at page 2.

We suggest that the Proposal can be simplified while still meeting FINRA's objectives by expressly limiting paragraph (6)(A)(iii) to securities lending / stock loan personnel, using the language proposed by SIFMA. This language is consistent with NYSE Rule 345.10, which is well understood within the industry.

Alternatively, FINRA should delete paragraph (iii) and create a stand-alone "Securities Lending Professional" category in 1230(b)(6) that explicitly requires securities lending / stock loan personnel to register as Operations Professionals, notwithstanding the depth criteria in paragraphs (i) and (ii). To the extent that FINRA intends paragraph (iii) to include personnel outside of the securities lending area, FINRA should instead provide more guidance to firms by adding or refining its list of covered functions to include these personnel and restrict its depth criteria to the more readily administrable paragraphs (i) and (ii).

#### B. Systems and Information Technology Personnel

Morgan Stanley urges FINRA to revise the definitions of the covered functions relating to systems and information technology professionals to clarify that only senior approvers within these areas are subject to Operations Professional licensing. The use of the words "capture," "define" and "validate" in Sections (b)(6)(B)(vi) and (vii)<sup>4</sup> raises questions about the depth of individuals intended to be captured. Hundreds of lower level managers within our technology areas arguably "capture" business requirements on an interim basis, "define" business security parameters on a draft level, and take interim steps to "validate" sales and trading systems long before such systems are given approval for business use. It is not necessary to license such a broad group of technology personnel to achieve the goals of the Proposal, and doing so would only create confusion and place an unnecessary and costly administrative burden on securities firms such as Morgan Stanley. Imposing such a licensing framework also undoubtedly would make it harder to attract talented technology professionals to work in our industry.

We suggest instead that FINRA revise these sections to apply to those persons who *approve* business requirements for systems and information technology. This will still ensure that ultimate sign-offs for technology requirements are performed by licensed Operations Professionals.

#### C. Books and Records

We request further clarification as to the intention behind covered function (xv), relating to the posting of entries to the books and records of a firm. Because books and records are already covered by several other subparagraphs ((ii) (confirmations, account

<sup>4</sup> See Proposed Rule 1230(b)(6)(B)(vi) and (vii) ("Capturing of business requirements for sales and trading systems ... and validation that systems meet such business requirements," and "defining... business security requirements.")

statements, settlement, margin), (ix) (Financial Controllers, including general ledger), (xi) (account management and reconciliation), and (xiv) (financial regulatory reporting)), the scope of this subparagraph is unclear. Specifically, this covered function as currently defined is overly duplicative of the preceding covered functions and should be better tailored to an identified regulatory concern. For example, as SIFMA states in its letter, FINRA could more meaningfully address customer protection concerns by targeting the posting of transactions to customer accounts or the firm's stock record.

#### D. Exemption for Individuals with Equivalent Licenses

We strongly support the examination exemptions in Proposed Rule 1230(b)(6)(D) for Operations Professionals who have already obtained other licenses, such as Series 7, 24, and others. These licenses require competencies equivalent to, or in some cases greater than, those that would be required by the Operations Professional examination.

## II. Transition Period and Implementation Date

Morgan Stanley joins SIFMA in requesting twelve to eighteen months to complete the registration process for our Operations Professionals. As a firm with potentially several thousands of employees qualifying as Operations Professionals, we would greatly value a more generous implementation period so we can register this large group in an orderly fashion without disruption to our customer service capabilities or market participation. In addition, like other firms, Morgan Stanley will need to analyze carefully which employees qualify as Operations Professionals while undergoing structural changes to our business model in response to the continually evolving economic and regulatory environment. Giving Morgan Stanley and other large firms twelve to eighteen months to make these determinations and register their Operations Professionals will help ensure that all in-scope personnel are properly licensed on day one.

In addition, as SIFMA notes in its letter, personnel who meet the criteria for Operations Professionals should not be denied the benefit of at least some reasonable transition period simply because they change firms or begin performing covered functions after the Proposal's effective date. Subjecting these individuals to the full obligations of the Operations Professional licensing regime while the vast majority of their peers can continue to perform the covered functions for months before passing the examination undercuts the purpose of the transition period and may chill hiring of Operations Professionals while the transition period is in effect. Personnel who are denied the transition period likely will be further disadvantaged by having few – if any – test preparation resources, which understandably will be designed to coincide with the transition period.

Finally, we agree with SIFMA that personnel who transition into a covered function after the transition period has expired should receive a grace period from the examination if they are not otherwise exempt, similar to the grace period afforded to personnel who transition to a Principal registration category. As SIFMA correctly points

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Page 5

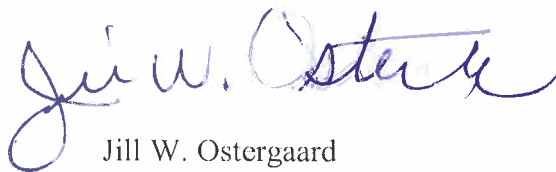
out, such a grace period would be critical to firms in emergency situations where employees from other areas must be swiftly transferred to the covered functions. We support a 120-day grace period, which is consistent with Proposed FINRA Rule 1220(g) (Requirements for Representatives Functioning as Principals for a Limited Period), and concur with SIFMA that the grace period should be conditioned on supervision by a licensed Operations Professional. At a minimum, we request that FINRA provide additional flexibility during BCP events.

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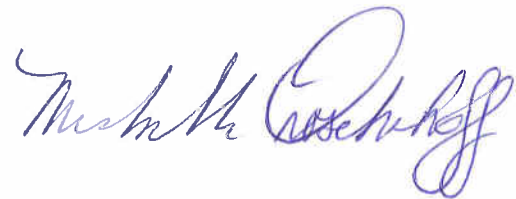
Morgan Stanley agrees that personnel with supervisory or oversight authority over the covered functions have serious obligations to the investing public and must be held to a high standard. FINRA will most effectively promote this standard by revisiting the breadth, depth, and implementation of the Proposal as we respectfully suggest above.

We appreciate the opportunity to provide comments on Regulatory Notice 10-25. If you have any questions or require further information, please do not hesitate to contact us.

Sincerely,



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